



Neutral Citation Number: [2022] EWHC 1510 (Comm)

Case No: CC-2021-LDS-000019

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
CIRCUIT COMMERCIAL COURT (QBD)

1 Oxford Row, Leeds LS1 3BG

16 June 2022

Before:

Her Honour Judge Kelly sitting as a Judge of the High Court

Between:

UMBRELLA LEGAL SOLICITORS LIMITED

Claimant

- and -

AFFIRM LEGAL LIMITED

Defendant

Ms Bridget Williamson (instructed by Umbrella Legal Solicitors Limited) for the Claimant

Mr Sebastian J. B. Clegg (instructed by Affirm Legal Limited) for the Defendant

Hearing date: 2 February 2022

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Her Honour Judge Kelly

1. This judgment follows the hearing of the Claimant's application for a Norwich Pharmacal order. The hearing took place via Microsoft Teams on 2 February 2022.
2. Immediately before the hearing of the substantive application, I heard an application for relief from sanctions to enable the Claimant to rely upon the witness statement of Mr Amjad Ali in response to the Defendant's evidence filed. I granted relief from sanctions and gave permission to rely upon the witness statement of Mr Ali. I do not propose to rehearse my reasons given during the hearing in this judgement.
3. I had the benefit of hearing from Ms Bridget Williamson for the Claimant and Mr Sebastian Clegg for the Defendant. Both counsel had also provided me with very helpful skeleton arguments in advance of the hearing and Mr Clegg also provided me with a detailed chronology.

Background

4. The Claimant is a Company which provides legal services. The Claimant engaged contractors, HestaBit Technologies Pvt Limited ("Hestabit"), which is a company incorporated in India, to develop a website setting out information about the legal services provided by the Claimant. HestaBit worked closely with a Mr Adnan Malik ("Mr Malik") who was contracted by the Claimant to assist the Claimant. Most of the development of the website was done between Mr Malik and HestaBit, with some input from various employees of the company.
5. Before the website went live, the Claimant became aware that text, identical to some of the information intended to be part of the Claimant's website (specifically relating to the mis-selling of car finance), appeared on the Defendant's website. The Claimant discovered this shortly after Mr Malik was no longer working with the Claimant company.
6. The Claimant wrote to the Defendant asking it to remove the material from its website. The Defendant promptly did so. The Defendant stated that it had received

the material innocently from its contractors. Thereafter, the Claimant asked the Defendant to identify its contractors. The Defendant agreed to provide the identity of the contractors by way of open letter but refused to provide a witness statement as requested by the Claimant. The Claimant then brought this application for a Norwich Pharmacal order.

7. I have had the benefit of reading all of the witness statements contained within the bundle, together with the various documents to which I was taken during the course of the hearing and directed to in skeleton arguments. I read the witness statements of Mr Mohammed Majid Rashid dated 28 October 2021 and Mr Amjad Ali dated 11 January 2022 and 12 January 2022 for the Claimant. I read the witness statements of Mr Mohammed Mansour dated 7 December 2021 and 20 December 2021, for the Defendant.
8. I do not propose to rehearse all of the arguments raised, nor all of the evidence referred to during the course of the hearing. However, I record that I read and considered the evidence as a whole, as well as various documents within the trial bundle to which my attention was drawn, in addition to all those arguments, before coming to my decision.

The Law

9. Happily, counsel largely agree on the legal principles. The general principles upon which Norwich Pharmacal orders are made are set out in Baker LJ's judgement in *EUI Limited v UK Vodaphone Limited* [2021] EWCA Civ 1771 and in the decision of Lightman J *Mitsui & Co Limited v Nexen Petroleum UK Limited* [2005] EWHC 625 (*Ch*) at paragraph 21. Three conditions need to be satisfied for the court to exercise its power:
 - (1) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer ('the first condition');
 - (2) there must be the need for an order to enable action to be brought against the ultimate wrongdoer ('the second condition');
 - (3) the person against whom the order is sought must:
 - a. be mixed up in, so as to have facilitated, the wrongdoing; and

- b. be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued ('the third condition').

10. In *Ramilos Trading Limited v Buyanovsky* [2016] EWHC 3175 (Comm), Flaux J (as he then was) set out the test for making a Norwich Pharmacal order at paragraph 14 where he stated:

"...I agree with Mr Akkouh that the appropriate analogy is not with service out, but with applications for freezing orders, where the test for when the requirement of a "good arguable case" is satisfied is well-established. The test laid down by Mustill J (as he then was) in *The Niedersachsen* [1983] 2 Lloyd's Rep 600 at 605 (lhc) has been followed and applied many times since:

"I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one which the Judge believes to have a better than 50 per cent chance of success."

11. It is clear that the jurisdiction is an exceptional one. At paragraph 24 of his judgement in the *Mitsui* case, Lightman J stated:

"24. In my judgment despite the argument of Mr Carr that there is no authority directly in point, it is clear that the exercise of the jurisdiction of the court under Norwich Pharmacal against third parties who are mere witnesses innocent of any participation in the wrongdoing being investigated is a remedy of last resort. (It is the Claimant's case that the Defendant is such an innocent third party.) The jurisdiction is only to be exercised if the innocent third parties are the only practicable source of information. The whole basis of the jurisdiction against them is that, unless and until they disclose what they know, there can be no litigation in which they can give evidence: see e.g. Lord Kilbrandon in *Norwich Pharmacal* at 203B and 205G. Whilst there is a public interest in achieving justice between disputing parties, there is also a public interest in not involving third parties if this can be avoided: see Sir John Donaldson MR in *Harrington v. Polytechnic of North London* [1984] 1 WLR 1293 at 1299 F-G. The jurisdiction is both exceptional and only to be exercised when it is necessary: Lord Woolf CJ in *Ashworth Hospital Authority v. MGN Ltd* [2002] 1 WLR 2033 at 2049. The necessity required to justify exercise of this intrusive jurisdiction is a necessity arising from the absence of any other practicable means of obtaining the essential information."

12. As to the first condition, the Claimant must establish a good arguable case that a form of legally recognised wrong has been committed against it by a person (see the judgement of Saini J at paragraph 35(i) in *Collier v Bennett* [2020] EWHC 1884 (QB)).

13. As to the second condition, the issue of necessity was considered by Andrew Baker J in the *Burford Capital Limited v London Stock Exchange Group Limited* [2020] EWHC 1183 (Comm) at paragraphs 40 and 42, where he stated:

“40. ...the supposed pre-condition of necessity "does not require the remedy to be one of last resort, but the need to order disclosure will be found to exist only if it is a "necessary and proportionate response in all the circumstances"", per Zacaroli J in *Blue Power Group SARL et al. v ENI Norge AS et al.* [2018] EWHC 3588 (Ch), at [17(ii)], derived from the *Rugby Football Union case*, supra, per Lord Kerr of Tonaghmore JSC at [16]. Thus, it is not correct to say that the jurisdiction is limited to cases of strict necessity. Rather, the question is whether, in the circumstances of a particular case, justice requires from the facilitator the particular cooperation demanded of him by the Claimant, with a view to righting facilitated wrongdoing.

“42. I think there is room for the view that in truth there is:

- (i) but one strict pre-requisite (unless the cause of action issue creates a second, as to the nature of the wrongdoing that the Claimant must be alleging), namely that the *Norwich Pharmacal* Defendant must have been mixed up in so as to have facilitated that which the *Norwich Pharmacal* Claimant alleges to have been wrongdoing against him; and
- (ii) thereafter, a single question for the court, assessing and balancing all of the factors that bear upon it in any particular case, namely whether justice requires that the Defendant provide the assistance that the relief sought would compel him to provide, to further the end of righting a facilitated wrong.”

14. The jurisdiction cannot be used for evidence gathering nor for obtaining disclosure, but rather is strictly confined to obtaining necessary information (see paragraphs 46 and 62 of Flaux J’s judgement in *Ramilos Trading Limited*).

15. Even if all three conditions are satisfied, the court retains a discretion whether to make the order or not. The general principles to consider when exercising that discretion are set out in the judgement of Lord Kerr *In the case of Rugby Football Union v Consolidated Information Services Ltd (formerly Viagogo Ltd) (in liquidation)* [2012] 1 W.L.R. 3333, 3338F - 3339G. The need to order disclosure will be found to exist only if it is a “necessary and proportionate response in all the circumstances”. The test of necessity does not require the remedy to be one of last resort.

16. At paragraph 17 of his judgement in the *Rugby Football Union* case, Lord Kerr set out ten considerations:

“17 The essential purpose of the remedy is to do justice. This involves the exercise of discretion by a careful and fair weighing of all relevant factors. Various factors have been identified in the authorities as relevant. These include: (i) the strength of the possible cause of action contemplated by the applicant for the order: the Norwich Pharmacal case [1974] AC 133, 199F-G, per Lord Cross of Chelsea, Totalise plc v The Motley Fool Ltd [2001] EMLR 750, para 27, per Owen J at first instance, Clift v Clarke [2011] EWHC 1164 (QB) at [14], [38], per Sharp J; (ii) the strong public interest in allowing an applicant to vindicate his legal rights: the British Steel case [1981] AC 1096, 1175C-D, per Lord Wilberforce, the Norwich Pharmacal case [1974] AC 133, 182C-D, per Lord Morris of Borth-y-Gest, and p 188E-F, per Viscount Dilhorne; (iii) whether the making of the order will deter similar wrongdoing in the future: the Ashworth case [2002] 1 WLR 2033, para 66, per Lord Woolf CJ; (iv) whether the information could be obtained from another source: the Norwich Pharmacal case [1974] AC 133, 199F-G, per Lord Cross, the Totalise plc case [2001] EMLR 750, para 27, President of the State of Equatorial Guinea v Royal Bank of Scotland International [2006] UKPC 7 at [16], per Lord Bingham of Cornhill; (v) whether the respondent to the application knew or ought to have known that he was facilitating arguable wrongdoing: the British Steel case [1981] AC 1096, 1197A-B, per Lord Fraser, or was himself a joint tortfeasor, X Ltd v Morgan-Grampian (Publishers) Ltd [1991] 1 AC 1, 54, per Lord Lowry; (vi) whether the order might reveal the names of innocent persons as well as wrongdoers, and if so whether such innocent persons will suffer any harm as a result: the Norwich Pharmacal case [1974] AC 133, 176B-c, per Lord Reid; Alfred Crompton Amusement Machines Ltd v Customs and Excise Comrs (No 2) [1974] AC 405, 434, per Lord Cross of Chelsea; (vii) the degree of confidentiality of the information sought: the Norwich Pharmacal case [1974] AC 133, 190E-F, per Viscount Dilhorne; (viii) the privacy rights under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of the individuals whose identity is to be disclosed: the Totalise plc case [2001] EMLR 750, para 28; (ix) the rights and freedoms under the EU data protection regime of the individuals whose identity is to be disclosed: the Totalise plc case [2001] EMLR 750, at paras 18-21, per Owen J; (x) the public interest in maintaining the confidentiality of journalistic sources, as recognised in section 1 of the Contempt of Court Act 19 8 1 and article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: the Ashworth case [2002] 1 WLR 2033, para 2, per Lord Slynn of Hadley.

“18 Many of these factors are self-evidently relevant to the question of whether the issue of a Norwich Pharmacal order is proportionate in the context of article 8 of the Charter.”

The Evidence

17. The following chronology is relevant:

28 May 2020	The Claimant entered into a consultancy agreement with Mr Malik. The agreement covered services provided by Mr
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	Malik in relation to the “GDPR Helpline”. It does not appear to relate to Personal Contract Purchase (“PCP”) finance mis-selling nor to the development of a website under the brand name “Car Finance Refund” (“CFR”).
Early 2021	The Claimant decided to create a new department providing legal services for PCP mis-selling.
Early June 2021	The Claimant engaged the services of HestaBit to develop a website under the brand name CFR. The project was led by Mr Malik.
13 July 2021	The CFR webpages were completed by HestaBit and were awaiting the Claimant’s approval before going live and being made available in the public domain.
08 August 2021	Mr Malik stopped working for the Claimant without providing any indication or prior notice.
10 August 2021	Mr Rashid undertook an online search of the Defendant’s webpages on hearing a rumour that Mr Malik was engaged in a commercial partnership with the Defendant. On the Defendant’s webpage for “Mis-Sold Car Finance”, Mr Rashid discovered that some of the wording under various headings was identical to the text intended to appear on the Claimant’s CFR website.
11 August 2021	The Claimant wrote to Mr Mansoor of the Defendant asserting use of confidential information, copyright infringement and passing off. The letter asserted copyright in the Claimant’s website including the text, the layout and user experience and the code on which the website was built.

	<p>The letter asked the Defendant to stop using the content and sought further information including the identity of the people involved in the creation of the Defendant’s website, the date the web page was created and first publicised, and who was hosting the website. In addition, the letter sought information about Mr Malik confirming whether he was known to anyone within the Defendant firm, whether he had any kind of contract of service or for services and whether he had provided any services to the Defendant. They also required “a detailed witness statement endorsed with a statement of truth” in respect of those matters.</p>
18 August 2021	<p>Lawbriefs, acting for the Defendant, wrote to the Claimant informing the Claimant that the offending content had been removed from its website while it investigated the allegations made. The letter asserted that the Defendant had been provided with the content in good faith and was not aware that any other entity had any ownership claim to the intellectual property rights. The Defendant agreed not to use the specific content again in the future. In those circumstances, an injunction would not be required. The letter sought an amicable solution, but refused to provide the Claimant with any of the Defendant’s confidential information at this stage.</p>
26 August 2021	<p>The Claimant wrote to Lawbriefs. In the letter, it was asserted, amongst other things, that Mr Malik was the person who had “misappropriated” the information. In addition, it asserted that the Claimant did not accept that the extent of the material passed to the Defendant by Mr Malik was confined to the website alone and the Claimant expected that other “know-how materials were made available relating to this</p>

	<p>and other projects. The website itself is likely to be the tip of the iceberg”. The letter abandoned the passing off allegation but sought voluntary disclosure of all communications between the Defendant and Mr Malik in relation to the website.</p> <p>On the same day, Mr Rashid sent an email to Mr Malik asserting that Mr Malik had repudiated the consultancy agreement with the Claimant alleging multiple grave breaches of the agreement and refusing to pay any fees under the agreement as a result.</p>
14 September 2021	<p>Lawbriefs wrote to the Claimant stating that the relevant website content was provided to the Defendant. In addition, it stated that the Defendant was not in possession of any correspondence between itself and Mr Malik of any relevance to the material used on the website. There was therefore nothing to disclose. It was confirmed again that all copies of the allegedly infringing material had been deleted from the website and deleted or destroyed.</p>
22 September 2021	<p>The Claimant wrote to “LawBite” (the name on the postal address for Lawbriefs) seeking the identity of the contractor referred to in the letter of 14 September 2021 and the circumstances in which the material was provided. It again asked for that information to be provided in a witness statement confirmed with a statement of truth and signed by a director of the Defendant company. If the identity of the contractor was not disclosed, the Claimant threatened to bring an application for Norwich Pharmacal relief.</p>

28 September 2021	Lawbriefs wrote to the Claimant on behalf of Mr Malik in respect of various allegations made against him and asserted no breach of the consultancy agreement.
30 September 2021	<p>The Defendant wrote directly to the Claimant asserting that there was no requirement to provide a witness statement supported by statement of truth in relation to a Norwich Pharmacal order.</p> <p>Further and in any event, the letter offered to disclose the identity of the person who provided the material in open correspondence.</p>
04 October 2021	The Claimant wrote to the Defendant insisting on provision of a witness statement verified by statement of truth. In addition, the letter sought additional details not previously requested in relation to the identity of the person, those being the full name, full postal addresses, telephone numbers and email addresses of the person.
11 October 2021	The Defendant wrote to the Claimant refusing to provide a witness statement and the additional details. The letter noted that the offer to provide the identity of the person to the Claimant in open correspondence had been refused.
28 October 2021	<p>The Part 8 Claim Form was issued supported by the witness statement of Mr Rashid dated 28 October 2021. The Claim Form itself sought the identity of the contractor who had provided the alleged infringing copyright content.</p> <p>The draft order provided with the Claim Form sought the full name, postal addresses, telephone numbers and email addresses of the provider of the information, those details to</p>

	be provided within a witness statement. The draft order also sought permission for the Claimant to use the information for the purposes of bringing breach of confidentiality and copyright infringement proceedings.
14 December 2021	HHJ Saffman extended time for the Defendant to respond to the claim to 20 December 2021.
20 December 2021	The Defendant acknowledged service of the claim and served the second witness statement of Mr Mansoor.
05 January 2022	The time for any statement in reply expired.
11 January 2022	The Claimant served a witness statement from Mr Ali in reply to the Defendant's evidence.
12 January 2022	The Defendant informed the Claimant that it would need to apply for relief from sanctions to rely on the evidence in reply. The Claimant filed an application and a second witness statement from Mr Ali seeking relief from sanctions. HHJ Klein listed the application for hearing on 2 February 2022 and gave directions.
02 February 2022	Application listed for hearing.

The conditions for making a Norwich Pharmacal Order

A wrong must have been carried out or arguably carried out

18. The Claimant asserts that there is adequate evidence within Mr Rashid's witness statement to establish copyright infringement by virtue of the identical wording on the

Defendant's website. Further, the Claimant relies on the first witness statement of Mr Ali which asserts that the Claimant's agreement with HestaBit provided that copyright of the website and its contents to belong to the Claimant. In addition, the consultancy agreement with Mr Malik provided for copyright of all work arising from the provision of services under the consultancy agreement to belong to the Claimant.

19. The Claimant further relies on the fact that the Defendant removed the material immediately on being asked to do so as evidence that the Defendant has made a tacit admission that copyright either had been or appeared to have been breached. As the Defendant identified no other owner of copyright, all of those facts taken together, it asserted, suffice to establish that the wrong either has been or has arguably been carried out.
20. The Defendant submits that it is important to have in mind what the Claimant's complaint is at this stage. Although the initial letter complained about the use of "text, layout, user experience and website coding", there is no evidence of any infringement presented by the Claimant apart from the same words appearing on the Defendant's website. A passing off claim has specifically been dropped. The material on the website was unpublished at the time the Defendant put the material on its website.
21. No claim against the Defendant is intimated and there is no suggestion of any other potential infringement beyond use of the words on the Defendant's website. Those words were removed almost as soon as the complaint was made by the Claimant.
22. Although the claim alleges copyright infringement pursuant to section 17 and 20 of the Copyright, Designs and Patents Act 1988 ("the 1988 Act") by publication of the material on the Defendant's website, the Defendant asserts that the burden is on the Claimant to demonstrate that a form of legally recognised wrong has been committed against it by a person (see *Collier v Bennett*). The Defendant asserts that the Claimant's evidence has failed to identify the author of the work within the meaning of section 9 of the 1988 Act so as to establish ownership by reference to section 11 of the 1988 Act or otherwise.

23. Although Mr Rashid refers to using HestaBit to develop the website and the CFR webpages being completed by HestaBit, and that Mr Malik was leading the project, there is no evidence about who actually created or wrote the content. Mr Rashid did not give any evidence about intellectual property rights between the Claimant and HestaBit. After this omission was pointed out by the Defendant in Mr Mansoor's witness statement, an attempt was made to rectify the omission in the witness statement of Mr Ali. Unfortunately, although Mr Ali referred to the contract with HestaBit providing for copyright on the website and its contents to belong to the Claimant, no part of that contract was exhibited, nor was it asserted that someone from HestaBit authored the relevant words.
24. There is an implication in the witness statement of Mr Ali that Mr Malik was the author of the relevant words. However, there is an additional difficulty here because although there is a provision in his consultancy agreement about the intellectual property relating to the GDPR Helpline, that consultancy agreement does not appear to cover any work relating to PCP finance mis-selling or CFR claims to which the offending words relate.
25. The burden is on the Claimant to establish the necessary elements for its claim. In the circumstances outlined above, I cannot find that the Claimant has established that a wrong must have been carried out or has arguably been carried out. The Claimant has simply not established that it was entitled to the copyright asserted on the evidence presented to the court.
26. In the event that I am wrong in my conclusion that the Claimant falls at the first hurdle, I will go on to consider the further conditions for making a Norwich Pharmacal order.

Necessity for an Order

27. The Claimant asserts that it is necessary for an order to be made to enable it to identify the person who provided the information to the Defendant in breach of copyright. The Claimant set out that it believes that the category of potential

Defendants can be narrowed down to either individuals from HestaBit or Mr Malik. However, the Claimant says it cannot go further than that.

28. Further, the Claimant asserts that this is not a case where the Claimant could obtain the information it requires by means of an application for pre-action disclosure pursuant to CPR 31.16 because the Claimant cannot say that either HestaBit or Mr Malik is a likely Defendant because the Claimant does not know which of them provided the information to the Defendant. For that reason, the Claimant asserts that the order is necessary to identify the provider. The Claimant also asserted during the course of the hearing that the Defendant's letter dated 11 October 2021 suggested that the Defendant was now refusing to identify the provider of the content and that must be the correct interpretation as the name had not been given to the Claimant.
29. I do not consider that the wording of the Defendant's letter dated 11 October 2021 can reasonably be read to mean that the Defendant was asserting it would not tell the Claimant who the provider of the material was. All the letter did, in my judgment, was note that the Claimant had refused the Defendant's offer to provide the information in open correspondence as to the identity of the provider because it continued to require provision of the information in a witness statement verified by a statement of truth.
30. I accept the submissions made by the Defendant that the Claimant has not established that an order is necessary in the circumstances of this case. Firstly, the Claimant's correspondence is littered with references to Mr Malik being the person who had misappropriated the information. The Claimant had therefore identified who they thought the likely wrongdoer was long before the proceedings were issued.
31. In any event, the Claimant has narrowed down the likely provider of information to either HestaBit or Mr Malik. Although the Claimant cannot say with certainty which of those two possibilities provided the information to the Defendant, that fact does not, in my judgment, prevent an application being made pursuant to CPR 31.16. As Mr Clegg observed during the course of the hearing, it is not at all unusual to seek pre-action disclosure against one or both of two possible Defendants when the Claimant is unaware who is more likely to be at fault. In those circumstances, it

cannot be said that the Defendant is the only practical source of the information required.

32. Perhaps more fundamentally, and in any event, there is no evidence that the Claimant has written to either Mr Malik or to HestaBit putting its allegations concerning the content provided to the Defendant. Without taking those obvious steps, I accept that it cannot be said that there is a need for an order.
33. In addition, the Defendant has offered to provide in open correspondence the identity of the provider of the content. In my judgment, the Claimant could and should have accepted that offer to identify the provider and then considered its position. I accept that a witness statement verified by a statement of truth would put the Claimant in an evidentially stronger position than the identity of the provider simply being provided by the Defendant in open correspondence.
34. I further accept that in due course, if a claim was brought against the provider, evidence may be required from the Defendant in those proceedings and that evidence could potentially be compelled if necessary. However, I do not accept that when making a Norwich Pharmacal order, it is necessary for the information to enable Claimant to bring a claim against a wrongdoer to be in the form of a witness statement verified by a statement of truth. The Claimant cannot use the jurisdiction to gather evidence – it can only seek necessary information and that necessary information was offered before the claim was issued.
35. I do not propose to consider in detail the third condition because the Defendant accepted that if the first two conditions were made out, the third would also be made out.
36. However, in the event that I am wrong both about the establishment of the wrong and the necessity for an order, I am still required to consider the exercise of my discretion on whether or not to make an order.

The Exercise of Discretion

37. The Defendant submits that in any event, the court should not exercise its jurisdiction to make the order sought. This is because the jurisdiction should not be used for evidence gathering but strictly to obtain necessary information. The Defendant asserts that the application is in effect an abuse of process because the real purpose of the Claimant's claim must be evidence gathering or some collateral purpose because:
- a. the Claimant already knows the identity of those it believes may be the wrongdoers and has declined an open offer of the identity of the provider of the information;
 - b. there is no evidence of wider use of the content than a relatively short-lived appearance on the Defendant's website at a time when the Claimant's website was not live;
 - c. the Defendant has agreed not to use the content at any time in the future and in those circumstances, it is difficult to see the Claimant could have sustained any loss;
 - d. the Claimant is plainly in dispute with Mr Malik about his consultancy agreement and has consistently sought additional information about Mr Malik from the Defendant; and
 - e. in those circumstances, it appears that the claim is more directed at furthering the Claimant's position in its dispute with Mr Malik about the consultancy agreement.

Decision

38. The court can only make an order in circumstances where the order is a necessary and proportionate response in all of the circumstances. Although there is an appearance within the documentation of the Claimant seeking more information than strictly would be necessary to identify the wrongdoer, it is not necessary to make any finding as to whether the intended purpose of this application was to gather evidence. However, in any event, given the circumstances of refusal of an open offer of identification of the wrongdoer and failing to exhaust of the possibilities for obtaining the relevant information, I would not in any event have exercised my discretion to grant the order sought.

39. In those circumstances and for all the reasons given, the Claimant's application is dismissed.

40. I am grateful to counsel for their very able assistance in this matter.