

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT (KBD)**

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

Date: Friday, 1st November 2024

**Before:**

**MR. JUSTICE PICKEN**

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**Between:**

**NMC HEALTH PLC**  
**(IN ADMINISTRATION)**  
**- and -**

**Claimant**

**ERNST & YOUNG LLP**

**Defendant**

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**MR. TOM PASCOE, MR. CHINTAN CHANDRACHUD and MR. JAMES SHAERF**  
(instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) appeared on behalf of the  
**Claimant.**

**MR. THOMAS PLEWMAN KC, MR. EDWARD HARRISON and MS. KATHERINE**  
**RATCLIFFE** (instructed by **RPC LLP**) appeared on behalf of the **Defendant.**

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**JUDGMENT 3**

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**MR. JUSTICE PICKEN :**

1. The next matter concerns so-called UAE regulatory documents. There are two issues which arise, and I should say that this is a topic that was dealt with by Mr. O'Rourke in his seventh witness statement at paragraphs 87 to 94. Specifically at paragraph 91 he says as follows:

"Without any waiver of privilege, I have been instructed that, as regards interactions with UAE authorities (as generally referred to in Limited's administration progress reports), those concerned matters to do with the establishment and progress of the UAE administration, which are not relevant to the issues in these Proceedings, such as issues arising around the ADGM's jurisdiction. It follows that they are not documents that NMC should be required to go to the cost of collating and reviewing for the purposes of disclosure in these Proceedings, or request that Limited provide to NMC so that NMC may review them. That exercise would be nothing but a fishing expedition."

2. He then goes on at paragraph 92 to say this:

"As to engagement with the Public Prosecutor for Abu Dhabi: 92.1. I am instructed that the communications similarly included matters to do with the establishment and progress of the UAE administration, such as the release of attachment orders, which NMC should not be required to search or request from Limited for the same reasons as given above."

3. Pausing there, what Mr. O'Rourke is here dealing with was the suggestion made by the Defendant that the relevant documents have a relevance so as to mean that they should be disclosable in these proceedings. This is indeed Mr. Plewman's position in the submissions which he has advanced. He submits that Mr. O'Rourke is in no position to know whether the relevance hurdle is overcome in relation to the documents concerned in circumstances where he has not himself looked at the documents but has instead been informed in the way described in paragraphs 91 and 92.1.

4. On this issue, I am not persuaded that the Court should conclude that Mr. O'Rourke's approach is flawed. On the contrary, it does seem to me that there has to be a limit to the review that in any case should be required. Putting that point more shortly, it was open to Mr. O'Rourke, quite rightly, to seek to be told by those instructing him the broad nature of the documents and then to conclude that they do not meet the relevance test, and so that there is no need to incur the cost involved in reviewing them.
5. On this issue, therefore, I do not accept Mr. Plewman's submission.
6. I turn then to the second issue. This concerns the category of documents described by Mr. O'Rourke in paragraph 92 as the engagement with the Public Prosecutor for Abu Dhabi. Mr. O'Rourke says this at paragraph 92.2:

"Where the communications concerned potential criminal proceedings against third parties, NMC is, without any waiver of privilege, advised that those communications are of a confidential nature according to UAE law, such that Limited would be unable to provide them to NMC for searching and review in any event. Specifically, Article 67 of the Criminal Procedures Law states that, '[t]he investigation procedures per se and the ensuing results shall be deemed of a confidential nature. Consequently, members of the Public Prosecution and their assistants, clerks, experts and others who are involved in or attend the investigation ex officio shall not disclose the same. Whoever breaches this duty shall be punished by the same penalty prescribed for the crime of disclosure of confidential information'."

7. The relevant provision, namely Article 67, is indeed faithfully set out by Mr. O'Rourke since it accords with the translation which I have been provided with.
8. There is also expert evidence which has been put before the court in the form of a report or statement from a Mr. Ahmed Ramadan dated 21st October 2024,

who is a partner and the head of the litigation group at Matouk Bassiouny UAE's offices. He has considered among other things Article 67 and he says this at paragraph 27:

"... Article 67 would not apply to NMC Limited (or NMC itself) to prevent it from disclosing to EY copies of any information and/or documents which were given by NMC entities to the Abu Dhabi Public Prosecutor. There is no penalty on NMC's part in producing the same documents to the English courts, especially where such disclosure would not obstruct the investigations conducted by the public prosecutor."

9. That paragraph follows his setting out of the text of Article 67 and, although it is fair to observe that he does not seek to expand on why he says what he says, in setting out Article 67 at paragraph 26, he has underlined the words in the second sentence as follows:

"Members of the Public Prosecution and their assistants, clerks, experts and others who are involved in or attend the investigation ex officio shall not disclose the same..."

Moreover, he has, as well as underlining those words, put in bold the words "ex officio". It is on that basis and with that emphasis that Mr. Plewman has advanced the submissions that he has, focusing in particular on the use of the words "ex officio". As I say, Mr. Ramadan does not himself explain why he considers what he does, but it is a reasonable inference and it is as Mr. Plewman submits and so that his focus is indeed on the words "ex officio".

10. More recently, there is a report or statement which has been put forward by the Claimant from a Mr. Nasser Al Osaiba, who is a senior partner and regional head of the civil and commercial litigation division at Global Advocacy and Legal Counsel based in Abu Dhabi.

11. This is a report or statement to which objection has been taken by the Defendant, given its apparently unheralded appearance on 24th October. There was at one point today thought to be a need for me to determine whether this statement should be before the Court, but, very sensibly, Mr. Plewman has acknowledged that realistically I am going to be looking at it in any event, as indeed I have done so.

12. In that report or statement at paragraph 22, Mr. Al Osaiba himself refers to Article 67 and to Mr. Ramadan's view that Article 67 does not prohibit Limited from providing NMC with copies of the various communications with the Public Prosecutor for Abu Dhabi. Mr. Al Osaiba says as regards that as follows:

"I do not agree with this statement. It is clear from the wording of the first sentence of Article 67 ... that the article applies in a general and comprehensive way. Article 67 not only applies to the public prosecutor but also to whomever receives the information subject to this article."

13. Again, this is not an opinion which is overly replete with explanation. However, it is tolerably clear what it is that Mr. Al Osaiba is saying. His focus, as he in fairness states in terms, is the first sentence of Article 67, namely, and to repeat, "the investigation procedures per se and the ensuing result shall be deemed of a confidential nature."

14. His opinion, as developed by Mr. Pascoe in the course of submissions, is that the first sentence without more is apt to cover the current situation, namely where Limited was, in effect, helping the Abu Dhabi prosecution authorities with inquiries into the activities of certain others. Mr. Pascoe submits that it necessarily must be the case that, in those circumstances, Limited, like

anybody else who has been drawn into the investigation, should be subject to the strictures identified in the first sentence of Article 67.

15. I do not agree. It seems to me that the first sentence of Article 67 needs to be read and understood with the aid of the second sentence. The second sentence is specific in its identification of the categories of people or parties which are caught by the confidentiality bar. In setting out those categories, there is no mention of an entity in the position of Limited, namely, as I say, essentially a party helping the prosecution authorities with their inquiries.
16. The fact that the second sentence opens with the word "consequently" and then identifies the specific categories that it does seems to me to underline the point that I have just sought to make.
17. Mr. Pascoe submits that, on the contrary, the word "consequently" should be understood as in effect being followed by some further words, namely "in particular" so as to make it clear that the first sentence is to be not viewed as in any way restricted by the second. The difficulty with this is that those further words "in particular" do not appear. It seems to me that this is a powerful factor in favour of Mr. Plewman's position, but so also is the reference in the second sentence to "ex officio" since the use of that phrase underlines the fact that the duty of confidentiality is the limited one that Mr. Plewman has suggested, rather than the broader one which Mr. Pascoe urges upon me.
18. On this issue but not the first, the issue of relevance, I consider that the Defendant prevails.

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