

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE HIGH COURT OF JUSTICE  
KING'S BENCH DIVISION  
MEDIA AND COMMUNICATIONS LIST



No. QB-2021-003999

**[2023] EWHC 2697 (KB)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Monday, 16 October 2023

Before:

MRS JUSTICE COLLINS RICE

B E T W E E N :

JENNIFER MARIE BRIDGETT WEBSTER

Claimant/Respondent

- and -

HIS MAJESTY'S REVENUE AND CUSTOMS

Defendant/Applicant

---

MR T DE LA MARE KC and MR Y VANDERMAN (instructed by Mishcon de Reya LLP)  
appeared on behalf of the Claimant/Respondent.

MR J MILFORD KC, MR R BAINES and MISS K TAUNTON (instructed by HMRC Solicitors  
Office and Legal Services) appeared on behalf of Defendant/Applicant.

---

**J U D G M E N T**

MRS JUSTICE COLLINS RICE:

- 1 This is the Defendant's application for the inspection of certain documents disclosed further to an Order of Deputy Master Fine dated 21 September 2022.
- 2 The Order recited the Defendant '*seeking a ruling upon the scope of the Claimant's standard disclosure*' and made provision in the terms sought by the Defendant, namely:

The parties shall give standard disclosure of documents by list by 4pm on 14 December 2022. The Claimant's standard disclosure shall include, but is not limited to, documents in the Claimant's control relating to: (a) the Claimant's and/or the Claimant's solicitors' motivations for bringing the claim; and (b) the Claimant's and/or claimant's solicitors' interactions with third parties concerning FATCA (including any third parties funding the claim).
- 3 The documents subsequently disclosed included documents relating to '*the Claimant's and/or the Claimant's solicitors' interactions with third parties concerning FATCA*'; and included such interactions with '*third parties funding the claim*'.
- 4 It is plain from Deputy Master Fine's judgment that she made this Order because she had concluded, after hearing argument, that these documents, as described, were *relevant* to the Defendant's pleaded defence of abuse of process, and fell to be disclosed on that basis.
- 5 The Claimant applied for permission to appeal the Order. The proposed grounds were that (a) the Deputy Master erred because this material, that is to say these documents, were *not* relevant and not properly disclosable, and (b) the Deputy Master had given insufficient reasons for her decision. Permission to appeal was refused at the paper stage. The order refusing permission set out the Claimant's entitlement to apply for a hearing to renew the application for permission to appeal. She did not do so.
- 6 She appears to have accepted that she was accordingly required to disclose documents relating to her and her solicitors' interactions '*with third parties concerning FATCA, (including any third parties funding the claim)*', and she did so. But in doing so she has redacted the principal third party funder's identity. The Claimant proposes that that is in accordance with a proper interpretation of Deputy Master Fine's Order.
- 7 I cannot agree. I am unpersuaded in the first place that there is any ambiguity in Deputy Master Fine's Order about which *documents* were to be disclosed. On the materials before me I can see no indication that there was uncertainty or ambiguity about that at the time either. Had there been, further directions could and should have been sought. They were not.
- 8 The same applies, in my view, to the issue of redactions. I am unpersuaded there is any ambiguity or difficulty about this either. If these documents were (a) properly relevant and (b) properly disclosable, then the documents ought to have been disclosed in full, absent any discrete and established legal basis for doing otherwise – such as legal professional privilege for example. No such basis is claimed.
- 9 Instead, the Claimant continues to maintain the irrelevance of the funder's identity to the Defendant's pleaded case.

- 10 Disclosure is a procedure which operates on *documents*. In Deputy Master Fine's Order, documents relating to interactions with third parties funding the claim and concerning FATCA were confirmed to be disclosable, and that was indicated by *specific identification* with reference to *subject matter, senders and recipients*. I can see no basis for contending that that left the Claimant free to make her own decisions to edit out any aspect of those *specific identifiers* by reference to their contended irrelevance. The question of relevance had already, plainly, been decided against the Claimant.
- 11 The Claimant had a clear choice. She could have appealed the decision on *relevance* as being wrong in law or outside the range properly available to the Deputy Master. Or she could have disclosed the documents, complete with the identifiers, by reference to which their relevance had been identified. But she did neither. She did not pursue the appeal and she did not disclose the documents in full.
- 12 For completeness, I should record that I have no application for variation of the Order before me. By order of Nicklin J of 19 June this year, in any event, any applications to be determined at this pre-trial review were directed to be issued, filed and served by 4.30 p.m. on 2 October. The Claimant has taken no step to comply with that timetable and I have no application for relief from sanctions. It is not even clear that I would have been in any position to vary the order, in any event, in the absence of any obvious change in circumstances or any argument of law (or any other argument) which was not available to have been made at the time.
- 13 Mr De La Mare has addressed me with arguments going to a possible legal mismatch between the Order, the Defendant's pleaded defence of abuse of process, and the ultimate propriety or sustainability of any such defence. The Claimant has made no application to strike out this defence. It is proceeding towards trial as pleaded as, indeed, is the Claimant's claim. If either party thought the other's pleading misconceived, an application for a terminating ruling was the obvious means of addressing that question and the pleading's ultimate sustainability.
- 14 As it is, with the trial one month away, an unappealed decision on the relevance of these documents and an Order for disclosure not fully complied with, now is not the time to try to penetrate the ultimate merits of the Defendant's defence, nor to debate whether a different Order should have been made. It is premature for the former, and too late for the latter.
- 15 I simply observe that, as I understand it, the Defendant's pleaded case relies on a species of abuse which depends on its position as a public authority, and takes into account a potentially wide range of factors including considerations of public policy and of the administration of justice. As such, it does not necessarily rely on a malicious or vitiating  *motive*  in a funder, of the kind ruled as irrelevant by the Court of Appeal in *Broxton v McClelland* [1995] EMLR 485 on the facts of that case. It relies, instead, on a full picture of the public and private interests at stake on the facts of this case, including those having a bearing on the public interest in the administration of justice, with particular reference to how claims should be brought against public authorities. The use of the language of  *motivations*  in this case, including as captured in Deputy Master Fine's Order, may not, in retrospect, have been altogether helpful in keeping a clear focus on that issue. But it is no doubt at the root of the Deputy Master's decision on the facts, in granting the Defendant's application and making the Order she did; and indeed there may be further material considerations concerning the public interest in the transparency of the conduct of litigation of this sort. I do not, of course, at this stage take any view whatever of the respective merits of the parties' positions on the issues now going to trial.

16 I am minded, in all of these circumstances, to make the order for inspection (or de-redaction) along the lines sought. The Claimant tells me that the funder has made anonymity a condition of the funding, and may be expected to refuse to continue funding if de-redaction of its identity is ordered. She will, no doubt, wish to reflect on her options in these circumstances.

---

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
**5 New Street Square, London, EC4A 3BF**  
**Tel: 020 7831 5627 Fax: 020 7831 7737**  
***civil@opus2.digital****

This transcript has been approved by the Judge.