Neutral Citation Number: [2020] EW Misc 23 (CC)

Case No: G00BS238
Case No: G00BS470
Case No: G00BS661
Case No: G00BS662
Case No: G01BS153

IN THE COUNTY COURT AT BRISTOL
BUSINESS AND PROPERTY WORK

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 06/10/2020

Before :

HHJ PAUL MATTHEWS

- -

Between :

DAVID SMITH	**Applicant**
- and -	
RUSSELL MALVERN LTD	**Respondent**

- -

And between :

DAVID SMITH	**Applicant**
- and -	
(1) KINLOSS PROPERTY LTD (UK), **(2) KINLOSS PROPERTY LTD (BVI)**	**Respondent**

- -

And between :

DAVID SMITH	**Applicant**
- and -	
MARSTON HOLDINGS LIMITED	**Respondent**

- -

And between :

(1) DAVID SMITH **(2) TUSCANY TRUST HOLDINGS TRUSTEES**	**Applicant**
- and -	
(1) THE MINISTRY OF JUSTICE **(2) LESLIE GAYLE-CHILDS**	**Respondent**

- - - - - - - - - - - - - - - - - - - -

And between :

KINLOSS PROPERTY LIMITED **Applicant**

- and -

(1) COMPANIES HOUSE **Respondent**

(2) THE REGISTRAR OF COMPANIES

- - - - - - - - - - - - - - - - - - - -

Timothy Becker (instructed by **Nathan Paralegals and Company LLP**) for the **Applicant(s) in each case**

Christopher Edwards (instructed by **Reynolds Colman Bradley LLP**) for the **Respondent Russell Malvern Ltd**

Maria Mulla (instructed by **Marston Holdings Ltd Legal Department**) for the **Respondent Marston Holdings Limited**

Joseph Edwards (instructed by **The Government Legal Department**) for the **Respondents The Ministry of Justice and the Registrar of Companies**

Hearing dates: 24 September 2020

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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.

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII on the date shown at 1:30 pm.

HHJ Paul Matthews :

Introduction

1. On 24 September 2020, there were listed before me six applications, one in respect of an application by a non-party for the disclosure of copy documents from the court file, four for pre-action disclosure under CPR rule 31.16, and one to add a further applicant to one of those pre-action disclosure applications. The five cases in which these applications were made were:

   i) *Smith v Russell Malvern Ltd*, G00BS238

   ii) *Smith v (1) Kinloss Property Ltd (UK), (2) Kinloss Property Ltd (BVI)*, G00BS470

   iii) *Smith v Marston Holdings Ltd*, G00BS661

   iv) *Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, G00BS662

   v) *Kinloss Property Ltd v The Registrar of Companies*, G01BS153.

2. The application for the disclosure of copy documents from the court file arose in the second case above, *Smith v (1) Kinloss Property Ltd (UK), (2) Kinloss Property Ltd (BVI)*. The application to add a further applicant to the pre-action disclosure application arose in the third case above, *Smith v Marston Holdings Ltd*. As it turned out, I did not have to make a substantive decision in the first two matters listed above, for reasons which I shall explain. In relation to the other three matters, which were argued before me, I announced at the end of the hearing that those applications would all be dismissed, as totally without merit, my reasons to be given in writing at a later date. These are those reasons, which also refer briefly to the other two matters.

3. I listed these applications together, not only because four of them were for the same type of relief, but also because the applicant in each case was effectively the same person, one David Smith. (In *Kinloss Property Ltd v The Registrar of Companies*, Mr Smith claimed in his witness statement of 3 September 2020 to be a director of the applicant, a UK registered company called Kinloss Property Ltd, as well as a director of a BVI registered company of the same name.) In recent months, I have dealt with a number of other applications or claims made by David Smith or a company or other entity which he claimed to control. I will mention some of these later.

Procedure

4. The applicant did not lodge hearing bundles in the usual way, although Marston Holdings Ltd's legal department helpfully lodged a bundle for the case concerning that company (indeed also filing two later amended versions, as further documents were added to it). Court staff chased the applicant by email for bundles, but none had arrived by close of business on the day before the hearing, Tuesday, 23 September 2020. Well after court hours on that day (and after the time when everyone had gone home and the court building was locked), the applicant sent emails to the court inbox

attaching hearing bundles, skeleton arguments and costs schedules in four out of the five cases. That filed by Mr Smith in the *Marston* case was an earlier (but by then superseded) version of the final bundle provided by Marston Holdings Ltd. The emails were sent in the name of Mr Smith. Because they arrived in the evening, I did not see them until the following morning, the day of the hearing. The emails and their attachments ran to some hundreds of pages. This puts enormous pressure on the other parties and on the court, and is quite unacceptable.

5. However, no such hearing bundle, skeleton argument and costs schedule were sent in relation to the fifth case, *Smith v (1) Kinloss Property Ltd (UK), (2) Kinloss Property Ltd (BVI)*, G00BS470. In that case, emails had been sent to the court in the name of Mr Smith on 22 September 2020 at 1257 and on 23 September 2020 at 2048. In the former email Mr Smith's name appeared directly above that of "DEZ Trust Holdings Trustees", and the sending email address had the domain name "deztrustholdingstrustees.com", whereas in the latter email Mr Smith's name appeared directly above that of "Tuscany Trust Holdings Trustees" and the email address from which the email was sent was tuscanytrustees@gmail.com.

6. These emails stated that this matter had been "disposed of by consent" and that no order was being sought by either party. However, apart from the emails themselves, no document evidencing this disposal was produced to me, such as a written agreement or even an exchange of letters or emails. Indeed, no actual details of the form of disposal or the form of consent were provided at all. I therefore did not deal with this matter at the hearing. But I cannot leave the matter in limbo. Unless therefore I hear from the parties within seven days of handing down these reasons, I will simply make an order dismissing the application because the applicant has not appeared to make it, with no order as to costs.

The hearing

7. At the hearing before me, Timothy Becker of counsel appeared for the applicants in the four remaining cases, instructed by Nathan Paralegals and Company LLP ("Nathan Paralegals"). He had only been instructed the previous day, and had been sent the papers for the hearings only towards the end of that day. He had therefore not been able to prepare a skeleton argument of his own for any of these cases. Moreover, it soon became apparent that he did not have all the papers which had been filed for the hearings. In particular, he did not have evidence which had been filed by respondents in some of the cases (because the bundles filed by email the previous evening by the applicant did not contain them). I make clear that all communications in these matters prior to the hearing were with Mr Smith rather than Nathan Paralegals, and it was apparently he that sent the bundles the evening before the hearing. Nathan Paralegals appear not to have been involved at all in this aspect of the matter. Counsel representing the relevant respondents at the hearing kindly provided Mr Becker with copies of the relevant documents which he did not have. I then adjourned in order to enable Mr Becker to have some time in which to read these, and to take further instructions by telephone. Once again, it is unacceptable for counsel to be poorly instructed in this way, so that the court is faced with a choice between counsel being unable to assist the court properly, and adjourning to allow counsel to catch up and thus shortening the hearing time.

Nathan Paralegals

8. A second problem related to Nathan Paralegals itself. There is a letter dated 6 March 2019 addressed to the Governor of HMP Wayland, which is exhibited to Shaun Perry's witness statement in *Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, purportedly from an entity called Paine Crow and Partners, with a postal address at Unit 601, 394 Muswell Hill Broadway, London N10. This latter address is one which figures multiple times in this story. For present purposes, the interest lies in a note at the foot of the headed notepaper of Paine Crow and Partners on which this letter was written. It says:

> "Nathan Paralegals and Company, Paine Crow and Partners a LNAC Trading names of Paine Crow and Associates (a Cayman Islands company)".

9. It is not clear to me what LNAC referred to. But I infer that the reference to Nathan Paralegals and Company was intended to mean that it was not then a separate legal entity, but was simply a reference to a Cayman Islands company called Paine Crow and Associates. However, it appears that by the end of the year the position had changed. It had become a limited liability partnership registered in the UK, which is stated (on the Companies House online register) to have been incorporated on 2 December 2019. It had, and apparently still has, its registered office at 7 Bell Yard, London WC2, but on its notepaper (which is much in evidence in this case) it gives its *postal* address also as Unit 601, 394 Muswell Hill Broadway, London N10. The evidence in this case, including a photograph showing a very small one-storey shop at that address, with a large name over saying "Mail Boxes etc", satisfies me that this is simply an accommodation address, where "units" refer in effect to post box numbers, and that no actual business can be or is carried on there by Nathan Paralegals.

10. The company is not apparently regulated by the Solicitors Regulation Authority (it does not feature, so far as I can see, on the SRA's online register). Nor can I find any reference to it on any of the online registers of paralegals in this jurisdiction, such as the National Association of Licensed Paralegals and the Institute of Paralegals (but of course I do not treat this as conclusive of anything, as these are voluntary organisations). In the papers before me, the only mention of a solicitor associated with this company is contained in statements of costs prepared for the purposes of these hearings. The name given is Devon Anthony Brown, which is stated to be the "Name of Partner signing". There is a solicitor called Devon Anthony Brown on the register kept by the Solicitors Regulation Authority, and available online. He is stated to have been admitted in 2009, but to have no current practising certificate, and no practice address either. Up to April 2018 he was associated with a firm called Just & Brown in Tottenham, London N17, which appears no longer to exist. His then practising certificate (for 2017-18) was made subject to conditions by the SRA.

11. Counsel for the Ministry of Justice and the Registrar of Companies raised the further question, if Nathan Paralegals was not regulated by the SRA, of the basis upon which Mr Becker was instructed. Mr Becker suggested that he should take instructions on this matter. I considered that, in the circumstances, this would be sensible. However, given that he would be taking instructions, I also raised a further question which could be considered at the same time.

The identity of David Smith

12. This related to the identity of Mr Smith. I pointed out that there was a considerable number of (electronic) documents apparently signed by Mr Smith in the various cases and applications in which he was concerned, and that the signatures on these were always completely identical, suggesting that perhaps they were computer-generated. However, there was a power of attorney dated 23 May 2019 and exhibited in evidence in *Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, where the signature of Mr Smith was completely different, and there was at least one other different signature of Mr Smith on another document.

13. In addition to that, I pointed out that there were several addresses given for Mr Smith in the various court documents. Sometimes it was "Office 238, 179 Whiteladies Road, Bristol BS7" (and again the evidence before me amply satisfied me that this is another accommodation address, where "office" corresponds to a post box number). In *Kinloss Property Ltd v The Registrar of Companies*, his address was given as "Woodbourne Hall, Road Town, Tortola, BVI". A simple Google search suggested that this too was an accommodation address where many businesses had their post sent to. Yet the power of attorney to which I referred above gave Mr Smith's address as a quite different and (so far as I can see) residential address in north London.

14. Moreover, in a case that I dealt with some months ago, also involving Mr Smith, *Smith v Whiting Timmis and Partners*, G00BS287, the claim form gave a residential address in Bishopston, Bristol, for Mr Smith, although later on in the claim form it also gave the Whiteladies Road accommodation address as well. In addition, in an email to the court on 25 February 2020 Mr Smith used an email address with the domain name "@deztrustholdingstrust.com", but Dez Trust Holdings has its registered office at Office 601, 394 Muswell Hill Broadway, London N10. I mention in passing (because it is both curious in the context of that case and also relevant to another matter which I mention later on) that the address given in the claim form for the defendant, Whiting Timmis and Partners, is "care of Paine Crow & Associates, Unit 601, 394 Muswell Hill Broadway, London N10".

15. And, in another case with which I previously dealt involving Mr Smith, *Smith v Heritage*, G00BS237, the claim form gave the same residential address in Bishopston for Mr Smith at the beginning, and the Whiteladies Road accommodation address at the end. In addition, however, the draft consent order submitted *also* gave Mr Smith's address as "Dez Hold, 32 Bloomsbury Street, London WC1B 3QJ". A Google search suggests this address to be a suite of furnished and "virtual" offices, with additional office services available. (In addition, I mention that the draft consent order was purportedly signed on behalf of Heritage, giving the address of 394 Muswell Hill Broadway, London N10.)

16. Above I referred to "at least one other different signature of Mr Smith on another document". That other document was a witness statement made by Mr Smith on 29 August 2020, in *Smith v Russell Malvern Ltd*. At the end of that witness statement, the signature clause and the signature of Mr Smith appear on a separate page. The version of the statement which was filed and served at the time shows the signature of Mr Smith as comprising the three initials "LGC", which just happen to be the initials of Mr Leslie Gayle-Childs, who comes into the story at various points, as will be seen later. However, in the version of that witness statement contained in the hearing bundle filed by the applicant Mr Smith with the court by email late in the evening of 23 September 2020, the final page of the witness statement, containing only the

signature clause and the signature, is different, and contains the standard (perhaps computer-generated) signature of Mr Smith that we have seen many times before. No explanation was given for this disparity. On any view, this is a childish attempt at deception of the court and a further example of unacceptable behaviour by the applicant (however, I do not suggest that Mr Becker was in any way involved in this).

Mr Becker's instructions

17. ***Smith v Russell Malvern Ltd*:** It was not a surprise to me that, after Mr Becker had had the opportunity, over the short adjournment, to take further instructions on the status of those instructing him, and the identity of Mr Smith, I was informed that the applicant was no longer proceeding with the two applications in *Smith v Russell Malvern Ltd*. However, this change of mind was put to me on a different basis than any difficulties that there might be in the evidence. I was informed that a substantive claim had now been issued, in the online money claims system, against Russell Malvern Ltd, although in the name of Tuscany Development BVI Ltd (the intended co-applicant), which, rather confusingly, is said to be a company registered in the UK. Given that there was now a substantive claim, Mr Smith apparently considered that there was no point in proceeding with its applications for pre-action disclosure and to join Tuscany Development BVI Ltd as a co-applicant.

18. I should add that at the hearing Christopher Edwards, counsel for Russell Malvern Ltd, told me that his client had been notified of the online money claim at 10.59 am that morning, meaning that the claim was likely to have been issued either the previous day or that morning itself. Yet (if it was issued the previous day) the applicant still sent out documents that evening for the hearing of this application the next day, and (if it was issued the same day) did not tell his own counsel what was going on until counsel sought instructions on other matters. This is yet another unacceptable way to carry on litigation.

19. At the request of Mr Christopher Edwards, counsel for Russell Malvern Ltd, and after hearing Mr Becker for Mr Smith, I dismissed the two applications as totally without merit, for reasons given at the time. I also ordered that Mr Smith pay the respondent's costs, on the indemnity basis. I summarily assessed these at £10,000, payable in 14 days. Accordingly, only three applications (all concerning pre-action disclosure alone) out of the six proceeded to a contested hearing.

20. **Mr Smith's identity:** A second point arising from enquiries made over the short adjournment concerned Mr Smith's identity. Mr Becker told me that his instructions were that a copy of Mr Smith's passport had in fact been sent earlier to the court in connection with another case. I said I remembered asking in that other case, but that I did not recall seeing it afterwards. A further copy was then sent by email to the court and the other parties. This proved to be a copy of a passport, now expired, in the names of David Richard Smith, a British citizen born in 1948. The signature resembled that on the power of attorney exhibited in *Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, and not the usual (possibly computer-generated) signature found on other documents. That, of course, means that there should have been an explanation given for why all the other court documents bearing a signature which is not Mr Smith's should have been filed in that form. Given the obviously poor state of his instructions, I cannot blame Mr Becker for not proffering one.

21. After the hearing was over, I asked to see again the court file in the matter where I had asked to see Mr Smith's passport, *Smith v Whiting Timmis and Partners*. In this file I found an email from Mr Smith dated 24 June 2020, attaching a copy of his (current) passport, again in the names of David Richard Smith, a British citizen born in 1948, as certified on 22 June 2020 by Devon Brown, solicitor, with an email address at Nathan Paralegals. I do not know why this email was not passed to me earlier, and I am sorry that this failure led to the need to send another copy, even if that was of the previous passport. The signature on this later passport is similar to that in the previous one. The photograph appears to be of the same person, but older. Of course, Mr Becker has never met Mr Smith, and indeed he told me that the present was the first instruction he had received from Nathan Paralegals.

22. **Nathan Paralegals:** That leads me to record that Mr Becker confirmed, as a result of his enquiries of his clerk, that he was indeed instructed by Nathan Paralegals, though as Mr Smith's agent pursuant to a power of attorney given by him to that firm. He told me that he was also contracted to Mr Smith by direct access.

23. **Powers of attorney:** The power of attorney question was not pursued at the hearing, though there were at least two such powers in favour of Nathan Paralegals in the papers before me. I have therefore simply assumed for the purposes of the applications and this judgment that the terms of the relevant power were wide enough for this purpose: *cf eg Atkinson v Abbott* (1855) 3 Drewry 251. On the basis that Mr Becker was satisfied that he was not professionally embarrassed, I continued to hear the remaining applications.

Address for service

24. There is one other procedural point which I must mention. Joseph Edwards, counsel for the Ministry of Justice and the Registrar of Companies, referred me to the rules about addresses for service in civil proceedings. In relation to documents other than the claim form, CPR rule 6.23 materially provides:

> "(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode or its equivalent in any EEA state (if applicable) unless the court orders otherwise.
>
> (2) Except where any other rule or practice direction makes different provision, a party's address for service must be –
>
> > (a) the business address either within the United Kingdom or any other EEA state of a solicitor acting for the party to be served; or
> >
> > (b) the business address in any EEA state of a European Lawyer nominated to accept service of documents; or
> >
> > (c) where there is no solicitor acting for the party or no European Lawyer nominated to accept service of documents –
> >
> > > (i) an address within the United Kingdom at which the party resides or carries on business; or

> (ii) an address within any other EEA state at which the party resides or carries on business.
>
> […]"

25. If the applicants in these applications were acting by solicitors or a European lawyer (as defined) they would be obliged to state the "business address" of those solicitors or that European lawyer. Since the applicants in these applications are not acting by solicitors or a European lawyer, they are obliged, under CPR 6.23(c)(i), to state and address *at which they reside or carry on business*. It is obvious that an accommodation address or post office box number is not an address at which anyone resides or carries on business. Accordingly, said Mr Edwards, all these applications are irregular. He supported this submission by reference to commentary in the *White Book*, volume 1, para 6.23.1, pages 299 and 300.

26. This reads as follows:

> "It should be noted that where a solicitor's or European lawyer's address is not given under (2)(a) or (b) the address must be an address within the UK or EEA state at which the party resides or carries on business. The precise wording of this rule is important because on occasions defendants attempt to give a PO box address as an address for service. However, a person cannot 'reside' at or 'carry on business' at a PO box although such a business might be carried on by using such a PO box address. In the circumstances a PO box would not be a valid address for service under that rule."

27. I respectfully agree with the reasoning in this comment. The use of a post office box number or accommodation address, where the person concerned neither resides not carries on business, does not comply with the rule. This is yet further unacceptable behaviour by the applicant. Mr Edwards said that the consequence was that the court might strike out the proceedings. There is of course a power in CPR rule 3.4 to strike out a statement of case where there has been a failure to comply with a rule: see rule 3.4(2)(c). But an application notice is not a statement of case: see the definition in CPR rule 2.3(1). On the other hand, the court clearly has general management powers under rule 3.1, including the power to stay the whole or part of any proceedings: see rule 3.1(2)(f). In an appropriate case, that might be a suitable sanction, until a compliant address were provided. But in circumstances where I have decided on other grounds to refuse the applications as totally without merit, it is not necessary to take the matter further, apart from recording this further example of bad litigation practice.

The relevant law

Civil Procedure Rules

28. These applications are brought under CPR rule 31.16, which provides as follows:

> "(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started.
>
> (2) The application must be supported by evidence.

(3) The court may make an order under this rule only where–

(a) the respondent is likely to be a party to subsequent proceedings;

(b) the applicant is also likely to be a party to those proceedings;

(c) if proceedings had started, the respondent's duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and

(d) disclosure before proceedings have started is desirable in order to –

(i) dispose fairly of the anticipated proceedings;

(ii) assist the dispute to be resolved without proceedings; or

(iii) save costs.

(4) An order under this rule must –

(a) specify the documents or the classes of documents which the respondent must disclose; and

(b) require him, when making disclosure, to specify any of those documents –

(i) which are no longer in his control; or

(ii) in respect of which he claims a right or duty to withhold inspection.

(5) Such an order may –

(a) require the respondent to indicate what has happened to any documents which are no longer in his control; and

(b) specify the time and place for disclosure and inspection."

Caselaw

29. This rule has been considered by the courts in a number of decisions. The leading case is *Black v Sumitomo Corporation* [2002] 1 WLR 1562. However, for present purposes, I need only refer to *Smith v Secretary of State for Energy and Climate Change* [2013] EWCA Civ 1585, which discusses that authority. In that case Underhill LJ (with whom Longmore and Floyd LJJ agreed) said:

"5. Authoritative guidance on the meaning and effect of CPR 31.16 is to be found in the judgment of Rix LJ in this Court in *Black v Sumitomo Corporation* [2002] 1 WLR 1562 ([2001] EWCA Civ 1819) – though, as will appear, it has been argued that he leaves an important question unanswered. The relevant parts of Rix LJ's judgment for present purposes can be summarised as follows:

(1) He starts his general discussion by summarising, at paras. 49-50 of his judgment, the recommendations of Lord Woolf's "Access to Justice" report which lie behind CPR 31.16. Paras. 51-58 are concerned with a question which is irrelevant to the issue before us.

(2) At paras. 59-68 he reviews the authorities on the provisions as they stood prior to 1998 (see para. 8 above). Most of this passage is immaterial for present purposes, but I should set out para. 68, which reads:

> "What … these authorities on the unamended section in my judgment reveal, and usefully so, is as follows. First, that at any rate in its origin the power to grant pre-trial disclosure was not intended to assist only those who could already plead a cause of action to improve their pleadings, but also those who needed disclosure as a vital step in deciding whether to litigate at all or as a vital ingredient in the pleading of their case. Secondly, however, that (as what I would call a matter of discretion) it was highly relevant in those cases that the injury was clear and called for examination of the documents in question, the disclosure requested was narrowly focused and bore directly on the injury complained of and responsibility for it, and the documents would be decisive on the conduct or even the existence of the litigation. Thirdly, that on the question of discretion, it was material that a prospective claimant in need of legal aid might be unable even to commence proceedings without the help of pre-action disclosure."

(3) Rix LJ turns to the current regime at para. 69 of his judgment. He says:

> "I now turn to the amended section 33 (2) and the current rule of court, and will consider first of all the jurisdictional thresholds which have to be passed ("only where") in order to vest a court with discretion to make an order for pre-trial disclosure."

It is worth spelling out that that way of putting it recognises that the structure of CPR 31.16 formally requires a two-stage approach. The first stage is to establish whether the jurisdictional thresholds prescribed by heads (a)-(d) are satisfied. If they are, the Court proceeds as a second stage to consider whether, as a matter of discretion, an order for disclosure should be made.

(4) He then proceeds to consider heads (a)-(d) in turn. He takes (a) and (b) together. The passage begins as follows:

> **"**70. The application has to be made by "a person … likely to be a party to subsequent proceedings" against "a person … likely to be a party to the proceedings" (section 33 (2)) and those requirements are reflected (in reverse order) in CPR r 31.16 (3) (a) and (b). There is no longer any

> statutory requirement that 'a claim … is likely to be made'."
>
> 71. Of course, in one sense it might be said that a person is hardly likely to be a party to subsequent proceedings whether as a claimant or otherwise unless some form of proceedings is itself likely to be issued. Two questions, however, arise. One is whether the statute requires that it be likely that proceedings are issued, or only that the persons concerned are likely to be parties *if* subsequent proceedings are issued. The other is whether "likely" means "more probably than not" or "may well". As to the first question, in my judgment the amended statute means no more than that the persons concerned are likely to be parties in proceedings if those proceedings are issued. That was what Lord Woolf had in mind when he wrote of the requirement that "there is a likelihood that the respondent would indeed be a defendant if proceedings were initiated" (in Section III, para 50, of his final "Access to Justice" report, ...). The omission of any language which expressly requires that the initiation of proceedings itself be likely, which could have been included in the amended section, appears to me to reflect the difficulties which the earlier authorities had explored in the sort of circumstances found in *Dunning v United Liverpool Hospitals' Board of Governors* [1973] 1 WLR 586. What the current language of the section appears to me to emphasise, as does the rule of court, is that the parties concerned in an application are parties who would be likely to be involved if proceedings ensued. The concern is that pre-action disclosure would be sought against a stranger to any possible proceedings, or by a party who would himself be unlikely to be involved. If the statute and rule are understood in this sense, then all difficulties, which might arise where the issue of proceedings might depend crucially on the nature of the disclosure sought and where it is impossible at the time of making the application to say whether the disclosure would critically support or undermine the prospective claim, disappear.

(5) At para. 72 he addresses the second of the two questions adumbrated at the start of para. 71, namely what is meant by "likely". He points out that that question loses most of its significance by reason of his answer to the first question; but he says that if necessary he would read it as meaning "may well", i.e. as opposed to "more likely than not". At para. 73 he says:

> "… In my view, apart from the two issues of principle which present themselves and which I have sought to answer in this section of my judgment, the word itself presents no difficulties. Temptations to gloss the statutory

> language should be resisted. The jurisdictional threshold is not, I think, intended to be a high one. The real question is likely to be one of discretion, and answering the jurisdictional question in the affirmative is unlikely in itself to give the judge much of a steer as to the correct exercise of his power."

(7) What Rix LJ says about head (c) is immaterial for present purposes. Nor is head (d) directly material; but in his very full analysis in paras. 79-83 he teases out the difficulties caused by what is clearly framed as a jurisdictional requirement being dependent on the exercise of a judgment about "desirability" and in that context notes that it is important to separate out the truly jurisdictional condition, which may be relatively easily satisfied, from the subsequent discretionary exercise: see para. 82 (at p. 1586 F-G).

(8) Having found that the Court had jurisdiction to consider the application Rix LJ proceeds finally at paras. 87-101 (pp. 1587-1592) to consider whether disclosure should be ordered in the exercise of its discretion. He holds that the application should be dismissed, essentially because the prospective claim was "speculative in the extreme" and the request for disclosure very wide-ranging. It is worth noting that he does not regard the fact that a claim might be characterised as "somewhat speculative" as necessarily fatal to an order for disclosure. Rather, it is a factor going into the discretionary balance. He says, at para. 95 (p. 1590):

> "In my judgment, the more focused the complaint and the more limited the disclosure sought in that connection, the easier it is for the court to exercise its discretion in favour of pre-action disclosure, even where the complaint might seem somewhat speculative or the request might be argued to constitute a mere fishing exercise. In appropriate circumstances, where the jurisdictional thresholds have been crossed, the court might be entitled to take the view that transparency was what the interests of justice and proportionality most required. The more diffuse the allegations, however, and the wider the disclosure sought, the more sceptical the court is entitled to be about the merit of the exercise."

30. Later in his judgment, Underhill LJ said:

> "23. … The jurisdictional requirements for the making of an order under CPR 31.16 are expressly set out at heads (a)-(d) in para. (3) of the rule, and they say nothing about the applicant having to establish some minimum level of arguability. If such a requirement exists it can only be implicit, and I see no basis for making any such implication. If heads (a)-(b) required an applicant to show that it was likely that proceedings would be commenced I could see an argument that that necessarily involved showing that the putative proceedings had some chance of success (because people are not likely to start hopeless cases). But it is clear from *Black v Sumitomo* that there is no such requirement: all that has to be shown is that it is likely that the respondent would be a party to such proceedings if commenced (see para. 71 of Rix LJ's judgment – para. 10 (4) above). I accept

> of course that it cannot have been the intention of the rule-maker that a party should be entitled to pre-action disclosure in circumstances where there was no prospect of his being able to establish a viable claim; but in such a case disclosure could and no doubt would be refused in the exercise of the discretion which arises at the second stage of the enquiry.
>
> 24. That seems to me not only to be the right approach on a straightforward reading of the rule but also to be more satisfactory in practice. If there were a jurisdictional requirement of a minimum level of arguability the question would necessarily arise of how the height of the threshold is to be described. But abstract arguments of that kind tend to be arid and unhelpful. It is inherently better that questions about the likelihood of the applicant being able in due course to establish a viable claim are considered as part of a flexible exercise of the court's discretion in the context of the particular case."

31. The threshold (jurisdictional) questions are therefore those in CPR rule 31.16(3)(a)-(d). If they are satisfied, the court then has to exercise a discretion. The fact that a claim may be barely arguable, or even unarguable, does not prevent it from meeting the criteria, although that would be a significant factor in the court's exercise of discretion thereafter. The main threshold questions in most cases are likely to be those in (c) and (d), that is, the documents falling within the scope of ordinary Part 31 disclosure if a claim were started, and the desirability of pre-action disclosure to achieve one of the three statutory purposes.

Proceedings in good faith?

32. At the hearing counsel for the Ministry of Justice and for the Registrar of Companies, Joseph Edwards, put forward a further argument on the threshold conditions, with which I ought to deal, albeit briefly. He submitted that the word "proceedings" in CPR rule 31.16(3) meant "*bona fide* proceedings", or proceedings in good faith. Thus, he said, if the contemplated proceedings once brought could be struck out as an abuse of the process of the court, then they were not brought in good faith and no pre-action disclosure could be sought in relation to them. This is a superficially attractive argument. But it has its difficulties. Presumably "proceedings" would mean the same in rule 31.16(1), so that, regardless of the jurisdictional conditions in rule 31.16(3), the provisions of rule 31.16 simply did not apply to proceedings not brought in good faith. But the main problem would be that, in order for the court to know whether proceedings were being brought in good faith, it would have to go through a process of considering whether, if the proceedings were subsequently brought, they could be struck out as an abuse of the process of the court. Moreover, the court would have to do this without having a proper statement of case from the claimant to consider.

33. This seems to me to be a recipe for unduly complicating, as well as lengthening, applications for pre-action disclosure, which is undesirable. As Longmore LJ said in *Smith v Secretary of State for Energy and Climate Change* [2013] EWCA Civ 1585,

> "39. … Applications for pre-action disclosure are not meant to be a mini-trial of the action and should be disposed of swiftly and economically. Elaborate arguments are to be discouraged; I hope that my Lord's judgment will mean that in the future these applications can be disposed of without resort to the appellate process."

Since, as Underhill LJ said in *Smith*, there is a discretion to be exercised once the threshold is crossed, and the strength of the claim can be taken into account at that stage, I respectfully doubt the utility of a further requirement that the contemplated proceedings should also be brought in good faith. However, as will be seen, in the circumstances of this case it is not necessary for me to deal substantively with this argument, and I therefore leave it for another occasion on which it matters.

34. I turn now to consider each of the three remaining applications in turn.

***Smith v Marston Holdings Ltd*, G00BS661**

35. In *Smith v Marston Holdings Ltd*, the application notice is dated 6 April 2020, and is supported by a witness statement from Mr Smith of the same date. The relief sought by the notice is:

> "That the Court orders that the Defendant disclose the documents which are or have been in his control pursuant to CPR 31.16. Because the documents electronic or otherwise holds evidence that furthers the Applicant's claim in the interests of the administration of justice and/or in the consequence of CPR 1.1 the overriding objective."

36. The witness statement of Mr Smith of 6 April 2020 in support relevantly says this of the relief sought:

> "1. I am the trustee and assignee of this cause of action from Miss Althia Childs (the Assignor) …
>
> […]
>
> 3. I make this witness statement in support of the Claimant's application for an order for this Court for pre-action disclosure of the authority held on trust by the Second Defendant for the First Defendant in relation to specific computer hard drives and portable data storage devices.
>
> […]
>
> 18. In the consequence of CPR Part 31, I submit this application for disclosure of electronic documents or otherwise namely evidence of the suspension of enforcement by TfL I believe is vital evidence and would therefore be able to provide first-hand witness testimony as to how the Defendant unilaterally acted to take enforcement without TfL's permission.
>
> 19. The Claimant seeks disclosure of the authority relied on by the Defendant's several employees on 4 February 2020 at the Assignor address, when TfL stated that there was no lifting of the suspension of the enforcement due to material evidence that the debtor sought did not live at the Assignor address."

37. I pause to observe, in relation to paragraph 3 of the witness statement, that there is in fact only one defendant in this case, so the reference to the Second Defendant holding any "authority" (whatever that means) on trust for the First Defendant makes no sense. It is possible that this sentence has been copied over from a witness statement

in a different case. At all events, it is impossible to give effect to this part of the request.

38. The draft order accompanying the notice and statement seeks an order that:

> "The Defendant do forthwith file and serve within 14 days of the receipt of this order all electronic documents namely evidence that stated that there was a material lifting of the suspension of enforcement against the Assignor contrary to 10 September 2019 when TfL informed the Assignor in writing that TfL had suspended enforcement indefinitely."

39. The application is opposed by two witness statements of Simona Morina, of the defendant's legal department, one dated 21 August 2020 and the other dated 23 September 2020. Between these two, Mr Smith made a second witness statement dated 3 September 2020. (I interpolate to say that paragraphs 8-9 and 31 of this latter statement clearly do not belong in this case. Paras 8-9 appear to be substantially identical to paras 6-7 of Mr Smith's witness statement of the same date in the *Kinloss Property* case referred to below, and para 31 appears to be based on paragraph 34 of that witness statement. Once more this is very sloppy litigation practice.) The witness statement of 3 September adds nothing to the earlier one in identifying the documents sought. Ms Morina's second statement simply responds to Mr Smith's of 3 September.

40. The as yet unissued claim which Mr Smith wishes to pursue relates to incidents at a domestic address in London SE16 in February this year. Enforcement officers employed by the respondent attended the premises in order to enforce orders relating to debts arising from penalty notices issued by Transport for London and Highways England to one Maurice Childs-Smith. It appears that Ms Althia Childs (who appears to be Mr Childs-Smith's wife or former wife) lives there with her children. She alleges that the enforcement officers committed acts of harassment, trespass and other torts including deceit against her at the premises. The respondent denies this.

41. The applicant claims to be the assignee of the causes of action thereby vested in the wife or ex-wife. However, the document relied on to assign the claims, exhibited in the evidence, is on its face an assignment of such causes of action expressly to an entity known as "DEZ Trust Holdings Trustees" (a name I have already mentioned). It is also fair to say that, at the bottom of the document, where the signature clauses are, the assignee is stated to be a *different* entity, called "Tuscany Trust Holdings Trustees", and Mr Smith is described as an authorised signatory on behalf of *this* entity. But it is clear that there is nothing on the face of this document to show that this is or even purports to be an assignment in favour of Mr Smith. As presently constituted therefore, this claim is bound to fail.

42. Nevertheless, for the reasons already given, that does not prevent the applicant from passing the two first threshold conditions, that is, that the applicant and the respondent are likely to be parties to any subsequent proceedings that there may be. At the hearing Ms Maria Mulla, for Marston Holdings Ltd, argued that, because there was no valid assignment of Ms Childs' claims to Mr Smith the application for pre-action disclosure had to fail. But this looks at the arguability or otherwise of the claim as a threshold question, something which the Court of Appeal in *Smith v Secretary of State*

for Energy and Climate Change said was not to be done. The weakness of the claim is something to be taken into account at the second stage, of exercising discretion.

43. The next question is whether the documents sought are likely to disclosable in the contemplated proceedings in the ordinary way under CPR Part 31. The description in the application notice of documents sought is entirely unspecific and does not enable the court to decide whether they would be disclosable. It is a form of description that has been used before in other cases brought in Bristol by Mr Smith (see *eg Smith v Reynolds Porter Chamberlain LLP* [2020] EW Misc 11 (CC)). The description in the draft order is more specific, namely

> "all electronic documents namely evidence that stated that there was a material lifting of the suspension of enforcement against the Assignor."

44. In the witness statement of Mr Smith paragraph 3, as I have already said, is incomprehensible. Paragraph 18 refers to

> "disclosure of electronic documents or otherwise namely evidence of the suspension of enforcement by TfL",

which appears to be the same in substance as in the draft order. Paragraph 19 seeks "the authority relied on by the Defendant's several employees on 4 February 2020 at the Assignor address, when TfL stated that there was no lifting of the suspension of the enforcement". This appears also to be in substance the same, and a reference to the statement by Ms Morina at paragraph 6(h) of her first witness statement that

> "on 24 and 27 January 2020, a note was left on the Defendant's system requesting that the Defendant recommence the enforcement of all four WOC that were on hold."

45. The question of the authority that the defendant held to continue to enforce the penalty notices was discussed by Ms Morina in her second witness statement of 23 September 2020 at paragraph 5, where she says:

> "that on 27 January 2020 the cases that related to the WOC issued by TFL were removed from the status of being on hold due to an administration error…"

46. However, she goes on to say "that TFL had no concerns with enforcement continuing in respect of the live and valid WOC" [warrant of control], and she exhibits an email to Nathan Paralegals from TfL of 5 March 2020 (a month before the application notice was issued), in which TfL says that Ms Childs allowed the enforcing agent into her property, and that there was no trespass and no harassment. Whether that is true is or may be an issue to be decided in later proceedings, but in view of this evidence the question of the authority of the defendant to enforce the penalty notices falls away, either because it ceases to be relevant at all, or because even if relevant it cannot fulfil any of the three statutory purposes in CPR rule 31.16(3)(d).

47. That means that there is strictly no need to consider the question of discretion. But I will add that, even if the threshold conditions had been satisfied, I would not have exercised my discretion in favour of making an order for pre-action disclosure. The claim as currently contemplated is bound to fail, because the claimant has no title to

sue. Even if the correct party were suing, it would still be a highly speculative claim which, on the documents currently before the court, would not seem likely to succeed. Moreover, it is hard to see how documents relating to the defendant's authority would make any real difference. What would matter would be the court's assessment of the live evidence of what happened at the property. Disclosure, whether in advance or during the substantive proceedings, is unlikely to make any difference to that.

48. Accordingly, I dismiss this application as totally without merit.

***Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, G00BS662**

49. In *Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, the application notice is dated 8 April 2020, and is supported by a witness statement from Mr Smith of the same date. The notice states that the applicant is "David Smith & Tuscant Trust Holdings Trustees" [sic]. The relief sought by the notice is:

> "That the Court orders that the Defendant disclose the documents which are or have been in his control pursuant to CPR 31.16. Because the documents electronic or otherwise holds evidence that furthers the Applicant's claim in the interests of the administration of justice and/or in the consequence of CPR 1.1 the overriding objective."

This is identical to the relief sought in the notice in the *Marston Holdings* case. It is notable for ignoring that there are in fact two defendants/respondents to this application. But it is obvious that the Ministry of Justice is the party against whom the pre-action disclosure is sought.

50. There are two witness statements made in support. The first is made by Mr Smith, and states that the claimant is "David Smith & Tuscany Trust Holdings Trustees". It relevantly says this of the relief sought:

> "3. I make this witness statement in support of my application for an order for this Court for pre-action disclosure of the electronic records, documents or otherwise held on specific computer hard drives and portable data storage devices controlled by the Defendant which would provide information and clarity in order to narrow the legal issues pursuant to this cause of action and in the interests of the administration of justice.
>
> […]
>
> 16. In the consequence of CPR Part 31, I submit this application for disclosure of documents electronic or otherwise held by the first Defendant that provides material information on causative effect following the conduct by the first Defendant's employees which resulted in the seizure and dissipation of the unknown whereabouts of the 80,000 financial and legally privileged documents and exhibits held on trust in a purported secure location within HMP Wayland.
>
> 17. Moreover, I therefore believe vital evidence pursuant to a disclosure order would be able to narrow down the issues and facts of the cause of action prior to my seeking relief from the courts on the substantive grounds I intend to rely on.

> 18. I now seek the disclosure by the first Defendant of all the records both electronic or otherwise and/or the reporting processes relied on in order to record and store the material 80,000 financial and legally privileged documents and exhibits the second Defendant instructed Paine Crow and Partners to provide to be released into the Court's custody which caused significant financial loss, harm, damage to property due to the reckless and unconscionable failure by the first Defendant to prevent the loss of the material property pursuant to CPR 31.16."

51. The draft order accompanying the notice and statement seeks an order that:

> "The Defendant the Ministry of Justice do forthwith file and serve within 14 days of receipt of this order:
>
> (a) all electronic and/or paper documents prior and post acknowledgment of the unknown whereabouts of the 80,000 financial and legally privileged documents and exhibits held on trust; and
>
> (b) evidence of what steps the first Defendant has taken in the consequence of the findings and acknowledgment of the unknown whereabouts of the 80,000 financial and legally privileged documents and exhibits held on trust."

52. The application is further supported by a witness statement of Mr Leslie Gayle-Childs dated 29 August 2020, stated to be of "C/o Office 929 Moat House, 54 Bloomfield Ave, Belfast BT5 5AD". A simple Google search suggests that, once again, this is an accommodation address. An Endole Explorer search says there are 148 companies based at that address. Mr Gayle-Childs states that his witness statement is made "in response to the first Claimant's witness statement dated 8 April 2020". This suggests opposition to the application. In fact, Mr Gayle-Childs seeks to support it. He makes various assertions which go essentially to the underlying intended claim rather than to the application for pre-action disclosure. In terms of identifying the documents sought by the application, he adds nothing to Mr Smith's witness statement.

53. The application is opposed by a detailed witness statement of Shaun Perry, of the Government Legal Department, dated 21 September 2020, exhibiting a number of key documents. I mention some of these below. For the moment I simply note that the person who witnessed the signature of David Smith to the power of attorney in favour of Nathan Paralegals of 23 May 2019 was an individual called Sa-Ra Robinson, whose address is given as Unit 601, 394 Muswell Hill Broadway London N10. Mr Perry exhibits a copy of an extract from the online register at Companies House showing Ms Sara Louise Robinson's appointment as a director of Gayle-Childs Holdings Ltd in 2010. No registered office is stated. However, from another extract exhibited to the same witness statement, it appears that Gayle Childs and Partners LLP was incorporated in 2019 with a registered office at Unit 601, 394 Muswell Hill Broadway London N10.

54. As it happens, we in Bristol have also in the past dealt with claims brought in Ms Robinson's name. These include *Robinson v Shaban and the State of Libya*, G00BS090, another pre-action disclosure application, which was transferred to the High Court in London in April 2020. They also include two other claims bearing strong similarities to the *Smith v Kinloss Property Ltd* case above, because Ms Robinson in each case was suing two companies with the same name, one a UK

company and the other a BVI company. They were *Robinson v Capitana Seas Ltd*, F01BS422, and *Robinson v Ashton Global Investments Ltd*, F01BS779. In these proceedings Ms Robinson's addresses are variously given as the same Bristol residential address as Mr Smith in *Smith v Whiting Timmis and Partners* and *Smith v Heritage*, already mentioned, 2 Gloucester Terrace Leeds LS12 2TJ (the address of Leeds Prison), the same accommodation address in Belfast as Mr Gayle-Childs has used in this case, and also care of "Paine Crow and Partners LLP , Unit 601, 394 Muswell Hill Broadway, London N10". I note that, in his judgment in *Gayle-Childs v Timmis* [2013] EWHC 4283 (Ch), to which I refer below in more detail, Newey J (as he then was) said that Ms Sara Louise Robinson was described by Mr Gayle-Childs in his evidence in that case as his "partner": see at [18].

55. The as yet unissued claim which Mr Smith and Tuscany Trust Holdings Trustees wish to pursue relates to an allegation that some 80,000 documents belonging to Mr Gayle-Childs but in the custody of the Prison Service went missing when he was transferred from HMP Wayland to HMP Brixton on August 2018. Mr Gayle-Childs made a formal written complaint about this on 16 August 2018 on the appropriate prison form (FORM COMP 1), and is handwritten in capitals. His name is clearly written at the beginning of the form, and he has signed it "LGC" in a distinctive cursive style at the end. On 27 August 2018, a document handwritten in capitals on unheaded, lined notepaper, purporting to be a letter before claim from Paine Crow and Associates, of Unit 601, 394 Muswell Hill Broadway London N10, was sent to the Ministry of Justice. The letter, albeit apparently sent on behalf of a commercial business, did not give a telephone number. It sought to claim damages of £105,000 for Mr Gayle-Childs' alleged loss. But it did not allege any assignment of rights by Mr Gayle-Childs to Paine Crow and Associates (or anyone else).

56. This was followed by a typewritten letter on headed notepaper to the Ministry of Justice dated 12 November 2018, similarly not giving a telephone number, but this time apparently from Paine Crow *and Partners*, also of Unit 601, 394 Muswell Hill Broadway London N10. This letter gave notice of an assignment to *that* firm (but not to Mr Smith or Tuscany Trust Holdings Trustees) under section 136 of the Law of Property Act 1925 of "rights to collect the outstanding debt owed by HMP Wayland … to Mr Leslie Gayle-Childs". A copy of the assignment itself was not however disclosed. A note in small type at the bottom of the page stated that "Paine Crow and Partners" was a trading name of "Paine Crow and Associates (a Cayman Islands company)". This is consistent with the footnote to the letter dated 6 March 2019 from Paine Crow and Partners addressed to the Governor of HMP Wayland, which is exhibited to Shaun Perry's witness statement in *Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, and which I referred to above.

57. Yet the evidence of Mr Perry is that Paine Crow and Associates was an entity registered at (UK) Companies House, which was dissolved in April 2014. In his judgment in *Gayle-Childs v HM Treasury* [2015] EWHC 2747 (Ch), referred to below, Newey J refers at [28] to an order of his dated 12 June 2015 reciting that a search of the Law Society's online database showed that an entity called Paine Crow and Partners LLP was struck off the register in April 2014. Mr Perry's evidence was that Paine Crow and Associates had the same registered company number as Paine Crow and Partners. Of course, it may be that the same name has subsequently been used to form an entity in the Cayman Islands.

58. However, a simple online (UK) Companies House search shows that an entity called Paine Crow and Partners LLP was incorporated as a limited liability partnership on 29 May 2019, with registered office at "C/O David Smith & Associates, 85 Great Portland Street, London, England, W1W 7LT". A simple Google search suggests that this is the registered or correspondence address for many companies and other organisations. Indeed, an Endole Explorer search gives a total of 7934 companies for this address.

59. The only Companies House entry for "David Smith & Associates" is for "David Smith & Associates UK Ltd", which was incorporated in 2003 and dissolved on 11 December 2018, with its registered office in Wickford, Essex. That company had a director called David Stanley Smith, so is perhaps unlikely to be connected to David Richard Smith. Of course, "David Smith & Associates" might refer to the trading name for a different company, or to an unincorporated business, such as a partnership.

60. Mr Gayle-Childs also complained about a failure of the prison authorities to facilitate his taking part by telephone in a hearing in the County Court at Manchester. He wrote a letter before claim to the Government Legal Department dated 28 August 2018, seeking compensation of £64,000, and stating that he retained the right to assign this claim to a third party in future. This letter is also handwritten in capitals, and is signed at the end with the initials "LGC", over the name "L Gayle-Childs".

61. I am not a handwriting expert, and I have seen only copies of these documents, rather than the originals, but to me the handwriting on the two letters of claim and the form of complaint are strikingly similar, especially since a number of the paragraphs in the two letters of claim are virtually identical in what they say. I also note that the signatures (in the form "LGC") on one of the letters of claim and on the complaint form are to my mind the same, and strikingly similar to the cursive signature "LGC" on the witness statement made by David Smith on 29 August 2020, in *Smith v Russell Malvern Ltd*, and also referred to above. Accordingly, I see no difficulty, in such a straightforward case, in accepting that on the balance of probabilities the same person (*ie* Mr Gayle-Childs) wrote not only the personal letter of claim and the formal complaint, but also the letter of claim purportedly from Paine Crow and Associates, and also signed the witness statement of 29 August 2020 allegedly from Mr Smith.

62. At the time when Mr Gayle-Childs wrote the two letters of claim and the formal complaint, he was subject to the GCRO made by Andrews J (as she then was) in July 2017, to which I refer below. He may have thought that if he assigned claims to third parties that would get round the restriction on his starting claims without permission. But the terms of the order of Andrews J themselves show that this will not work. In any event, as I have said, there is no evidence whatever of an assignment of Mr Gayle-Child's claims to the claimants.

63. I should specifically say that it is not clear to me why Mr Gayle-Childs has been joined as second respondent to this application. No relief is sought against him. Indeed, his witness statement supports the application. In the present case he has a role as the person originally making the claim against the MoJ, and who is said to have assigned his claim. But he appears to be connected in other ways to other litigation involving Mr Smith. In addition, there are cases involving him going back many years which appear to have a bearing on the present situation.

64. In *Gayle-Childs v Timmis* [2013] EWHC 4283 (Ch), Newey J struck out two claims against two separate defendants, Mrs Timmis and Mrs McKendrick, in relation to a payment of £100,000 in 2008 to a bank account in the name of "Heritage". (Both Timmis and Heritage are of course names that have already featured in this judgment.) In relation to Mrs Timmis, he did so on two grounds. The first was that the claimant had already assigned the claim to a company called GC Financial (London) Limited. The second was that he had thereafter been made bankrupt, so that any claims would have vested in the trustee in bankruptcy for the benefit of his creditors. In the other case only the first reason applied. However, in the course of that judgment, the judge also said this:

> "2. The claimant in the Timmis case is named in the claim form as "Q Leslie Gayle Childs" and in his witness statement as "Quinton Leslie Gayle Childs" and "Quinton Leslie Alphonso Gayle-Childs". In the Kenrick case, the claimant is identified in the claim form as "Leslie Gayle-Childs" and in his witness statements as "Leslie Gayle-Childs" and "Leslie Alphonso Gayle-Childs". There is, as I understand it, no issue but that the claimant in the two cases is the same individual.
>
> 3. Various proceedings have been instituted in respect of the £100,000 in the past. In January 2010, 32 cases brought by "Quinton Leslie Childs" were listed before District Judge Silverman in the Edmonton County Court. Five of these cases related to Heritage, and in each of the cases that involved Mrs Timmis the complaint related to a £100,000 payment that was said to have been made into a Heritage account with Lloyds TSB on 3 April 2008 and shared with Mrs Timmis. Three of the five cases were struck out on 15 January, and one of the remaining cases was struck out, again by District Judge Silverman, on 22 July, on the basis that the claimant had assigned any cause of action to a company called GC Financial (London) Limited and so could have no personal interest in the case. The last of the five cases has subsequently, as I understand it, not been pursued by "Quinton Leslie Childs".
>
> 4. On 2 August 2010 a bankruptcy order was made in the High Court against "Quinton Leslie Childs".
>
> 5. On 24 August 2010 His Honour Judge Mitchell, sitting in the Central London County Court, made a general civil restraint order against "Quinton Leslie Childs" for a 2-year period. The order referred to seven claims brought by "Quinton Leslie Childs" against a variety of parties which had been struck out as totally without merit, including two that were repetitions of cases that had already been struck out.
>
> 6. Notwithstanding the civil restraint order, there were further court applications. On 2 September 2010, "Q L Gayle Childs" presented a bankruptcy petition against Mrs Timmis in the High Court; that was dismissed on 20 October. On 30 November, another bankruptcy petition was presented against Mrs Timmis; that was dismissed on 18 January 2011. On the following day, the bankruptcy petition against Mrs Timmis was presented by GC Financial (London) Limited, whose directors are said to have included a company called Gayle Childs Holdings Limited, Leslie Nathan Alphonso Childs and Leslie Gayle-Childs. The petitioner's solicitor was named in the petition as "Kenroy Brown", and a

"Kenroy Brown" is also recorded as having been GC Financial (London) Limited's secretary. This petition was dismissed on 26 January 2012. On 1 March 2012, "Q L Gayle Childs" presented another bankruptcy petition against Mrs Timmis, with "Q Childs" named as the solicitor; that petition was dismissed as "wholly without merit" on 20 June.

7. A statutory demand was also served on Mrs Kenrick, on the basis that she was in possession of a vehicle purchased with property belonging to "Quinton Leslie Childs". District Judge Marston set aside the demand on 18 October 2010, but by then "Quinton Leslie Childs" had issued a claim form against Mrs Kenrick. The particulars of claim alleged that money derived from sums paid to Heritage's accounts at Lloyds TSB had been used for Mrs Kenrick's benefit. A further claim followed on 12 November. On this occasion, the particulars of claim referred to the payment of £100,000 made by "Quinton Leslie Childs" and Sara Robinson, who was described as the claimant's "business partner", on 3 April 2008 to account number 03576979 in the name of Heritage. However, on 25 and 26 January 2011 Judge Mitchell struck both claims out as in breach of the civil restraint order. "Quinton Leslie Childs" sought to re-open the judge's decision, but his application was dismissed on 3 June 2011, as was another application "Quinton Leslie Childs" had made. Each application was described as totally without merit.

8. Other claims of relevance have also been brought in the High Court. Aside from the two claims that are before me, I am aware of six sets of proceedings that have connections with the present claimant, or, if different, the claimant in the proceedings to which I have just been making reference. In two cases, the claimant was named as "Leslie Gayle Childs". The earlier of these claims, issued on 14 April 2011, alleged that Ashton Global Investments Limited owed some £138 million and that the debt had been assigned to "Gayle Childs & Company" by Heritage Commodities AG. On 21 July 2011 Master Teverson struck the claim out as totally without merit. The second claim brought by "Leslie Gayle Childs" was issued on 6 June 2012 against HM Revenue & Customs and related to the execution of a search warrant on 31 May 2012. The claim was discontinued in July 2012.

9. The other claims are brought by "Kenroy Brown" or "Ken Brown". On 17 May 2011, "Ken Brown" issued proceedings against Antey Group Co Limited for some £22 million. A week later, "Kenroy Brown" issued a claim for more than £262 million against the Libyan Foreign Investments Company and Libyan Investment Authority. "Ken Brown" issued a similar claim for about £1.2 billion on 18 July. Both claims were purportedly admitted on the defendants' behalf by "Paine Crow and Partners" as their solicitors, and judgment was entered in the first set of proceedings. However, Allen & Overy subsequently came onto the record as the defendants' solicitors, and on 27 September 2012 they obtained an order for the claims to be struck out. As was explained in a witness statement from a partner in Allen & Overy, Mr Jonathan Hitchin, the defendants' position was that that the claims represented frauds perpetrated by Mr Leslie Gayle-Childs. […]

10. "Paine Crow and Partners" also feature in the sixth claim. On 22 July 2011, "Kenroy Brown" issued proceedings against Capitana Seas Limited for in excess

> of £20 million. "Paine Crow and Partners" admitted liability on the defendants' behalf.
>
> […]
>
> 13. I have been supplied by Chief Master Winegarten with a copy of a page from the passport for a Mr Leslie Alphonso Gayle Childs. The Chief Master informs me that the individual in question appeared before him on 5 October 2011 calling himself "Kenroy Brown" and again on 1 November 2012 as "Leslie Gayle-Childs".
>
> 14. The claimant in the proceedings that are before me has put in witness statements in each of the two sets of proceedings. In the course of those witness statements, he has denied that he has ever been made bankrupt. It is apparent, moreover, from those statements that the claimant would have it that there are other members of his family with similar names to his. He has referred to a half brother called "Quinton Leslie Childs" and a son called "Leslie Nathan Alfonso Childs".
>
> […]
>
> 22. In all the circumstances, the materials before me suffice, as it seems to me, to establish that the present claimant is the person who has brought a variety of claims in respect of the £100,000 in the past, and also that he is the person who was made bankrupt in August 2010. […]"

65. In the result, the judge not only struck out the proceedings, but also made a general civil restraint order against the claimant for the maximum period of 2 years.

66. Subsequently, in *Gayle-Childs v HM Treasury* [2015] EWHC 2747 (Ch), the same judge, Newey J, had to consider six further claims brought by Mr Gayle-Childs, against Ashton Global Investments Limited, the City of London Corporation, the European Union, HM Treasury, Mr Mohammed Hussein, the Libyan Investment Authority, Mr Harun Miah and Mr Antony Yallop. The judge referred to his earlier decision in 2013, when he had made a 2-year GCRO against Mr Gayle-Childs, and to an earlier GCRO made against him by HHJ Mitchell in the Central London County Court in 2010. He went on:

> "3. Later in 2013, Mr Gayle-Childs was convicted of offences of dishonesty and sentenced to 12 years' imprisonment. He remains in prison. I gather that he has recently been moved from Lowdham Grange Prison to Bullingdon Prison.
>
> 4. The CRO that I made in January 2013 expired in January of this year. Since then, Mr Gayle-Childs has issued a variety of new claims in the County Court. On 16 April, I gave directions for five of these claims to be transferred to the High Court and for there to be a hearing to consider whether the claims should be struck out and a further CRO made against Mr Gayle-Childs. A sixth claim, that against the European Union, was transferred to the High Court by Deputy District Judge Pickup on 4 June, and on 15 June I ordered that it should be listed for hearing with the other five claims to consider whether it, too, should be struck out and, again, whether a CRO should be made against Mr Gayle-Childs."

67. The judge considered the claims made against HM Treasury, the European Union, and the City of London Corporation, and struck them out. In relation to another of the claims, where Mr Gayle-Childs sought judgment on the basis of a purported admission by the defendant, he said this:

> "20. I turn now to the claim that Mr Gayle-Childs has brought against Ashton Global Investments Limited (which I shall call "Ashton"). The particulars of claim in these proceedings allege that Ashton defaulted on a loan from the Ramis Fund, a Cayman Islands subsidiary of Churwitz Stanford AG Holdings Limited. The Ramis Fund is said to have assigned all its rights to Mr Gayle-Childs. On this basis, he claims to be owed £200 million plus interest.
>
> 21. Mr Gayle-Childs' claim was purportedly admitted in its entirety by "Paine Crow and Partners" on Ashton's behalf on 31 March 2015. Relying on that document, Mr Gayle-Childs applied on 8 April for judgment to be entered in his favour. At the end of May, Mr Gayle-Childs issued an application notice by which he pressed for judgment to be entered. After I had directed him to file any evidence on which he wished to rely to confirm that Paine Crow and Partners acted for Ashton and had admitted the claim on its behalf, Mr Gayle-Childs put in a witness statement dated 25 June in which he explained that Paine Crow and Partners are "financial intermediary brokers based in the Cayman Islands". He went on to say that Paine Crow and Partners had been granted a power of attorney by a company called Dalia Advisory Limited, which had itself in January 2010 been granted authority to act by "the then director and vice chairman of the Libyan Investment Authority Mustafa Zarti".
>
> 22. On 8 July 2015, Berwin Leighton Paisner wrote to the Court explaining that they acted for Ashton, which, they said, had known nothing about the proceedings until it received a letter dated 29 April from the Court. The letter further explained that Berwin Leighton Paisner had acted for Ashton in earlier proceedings brought by Mr Gayle-Childs which had been struck out by Master Teverson on 21 July 2011.
>
> 23. I mentioned those earlier proceedings in paragraph 8 of the judgment I gave in January 2013. I also referred in that judgment to Paine Crow and Partners. As I noted in paragraphs 9 and 10 of the judgment, several claims had purportedly been admitted by Paine Crow and Partners. In two of the claims, Allen & Overy subsequently came onto the record as the solicitors for the defendants and obtained an order for the claims to be struck out. A partner in Allen & Overy explained in a witness statement that his clients, who were the Libyan Foreign Investments Company and Libyan Investment Authority, maintained that the claims against them represented frauds perpetrated by Mr Gayle-Childs.
>
> 24. Mr Andrew Rose of Berwin Leighton Paisner appears on behalf of Ashton today. He has told me that Ashton's position is that it has never authorised Paine Crow and Partners to act for it and has no knowledge of Churwitz Stanford or the Ramis Fund."

68. Accordingly the judge refused to grant judgment to Mr Gayle-Childs, but adjourned his application to be dealt with on a date to be fixed. He then turned to the claim

against the Libyan Investment Authority, which again was founded on an alleged admission by the debtor:

> "26. Paine Crow and Partners feature again in much the largest of the claims before me, that against the Libyan Investment Authority. In these proceedings, Mr Gayle-Childs claims more than £3 billion. That sum is said to be due on the basis that the Libyan Investment Authority acted as guarantor in relation to a promissory note entered into by the State of Libya in 2011. Mr Gayle-Childs claims as assignee: he says that the right to pursue the claim was assigned to him by DEZ Holdings Limited.
>
> 27. Here, as with Ashton, the claim was purportedly admitted by Paine Crow and Partners. On the strength of that, Mr Gayle-Childs seeks judgment.
>
> 28. On 12 June 2015, I directed Mr Gayle-Childs to file any evidence on which he wished to rely to confirm that Paine Crow and Partners act for the Libyan Investment Authority and had admitted the claim on its behalf. A recital to the order noted that no firm of that name was to be found in the Law Society's online database and that an entity called Paine Crow and Partners LLP was struck off the register in April 2014. Mr Gayle-Childs has since filed a witness statement in which he makes the same points about Paine Crow and Partners as he made in the Ashton proceedings.
>
> 29. I continue to have grave concerns about whether the Libyan Investment Authority has authorised anyone to admit Mr Gayle-Childs' claim on its behalf. My misgivings are the greater because, as I have mentioned, in 2012 Allen & Overy obtained an order for the striking out of proceedings against the Libyan Investment Authority that had purportedly been admitted on its behalf by Paine Crow and Partners. Moreover, Mr Gayle-Child's prison sentence appears to be attributable, at least in part, to an attempt to defraud the Libyan Investment Authority. In the circumstances, I shall adjourn Mr Gayle-Childs' application for judgment to a date to be fixed and give directions for the Court to send copies of the documents filed in the proceedings, and the orders made in them, to the Libyan Investment Authority care of each of Enyo Law, Hogan Lovells International and Allen and Overy. I am aware that each of these firms has acted for the Authority in other Court proceedings."

69. A variation on the same theme was the claim against Mr Yallop, The judge said:

> "30. The Ashton claim is not the only one to involve Churwitz Stanford AG Holdings Limited. Another claim to do so has as its defendant a Mr Antony Yallop. Mr Yallop is alleged to have defaulted on a £300,000 loan made pursuant to an agreement dated 28 January 2012. Mr Gayle-Childs asserts his claim as assignee of Churwitz Stanford. Somewhat mysteriously, the particulars of claim state:
>
> > 'The defendant's drawdown on the loan was transferred by agreement to CLZ and Associates Debt Management Services to settle an outstanding debt.'

> 31. On the face of it, Mr Yallop has admitted Mr Gayle-Childs' claim. An admission form dated 27 March 2015 that seemingly bears Mr Yallop's signature states that the full amount claimed is admitted and can be paid on that date. On the strength of this document, Mr Gayle-Childs has pressed for judgment to be entered in his favour. In fact, he first requested judgment on 30 March, the next working day after 27 March.
>
> 32. He may prove to be entitled to it. Given, however, what I know of other claims brought by Mr Gayle-Childs, I am wary of taking the admission at face value. The fact that Mr Yallop appears to be a fellow prisoner increases my unease, as does the fact that (to this untrained eye) much of the manuscript on the admission form seems to be in Mr Gayle-Childs' handwriting."

70. The judge again adjourned the application for judgment to a date to be fixed, with a direction that he should serve and file evidence (a) giving particulars of where Mr Yallop is living and can be contacted, (b) explaining when and how he (Mr Gayle-Childs) received the admission form and (c) exhibiting the assignment and the contract referred to in the particulars of claim.

71. The last claim was against Mr Harun Miah and Mr Mohammed Hussein, alleging default on a loan of £300,000 plus interest from Churwitz Stanford, who according to Mr Gayle-Childs, had assigned its rights to him. One of the alleged debtors was represented before the judge, and claimed to have no knowledge of the matters referred to. The judge indicated that in the circumstances this application should be adjourned to be heard at the same time as the Ashton application. Finally, the judge made a further GCRO against Mr Gayle-Childs for the maximum of two years, to expire in July 2017.

72. In *Barabutu v Timmis* [2017] EWHC 1777 (Ch), decided in June 2017, Chief Master Marsh struck out a claim, brought by a convicted murderer serving his sentence in the same prison as Mr Gayle-Childs, against a Mrs Elizabeth Timmis. The claim concerned a payment said to have been made by a BVI company called KB Trust Company to a firm called Heritage, which was a business run by the defendant's husband, Mr John Mark Timmis. The claimant Mr Barabutu was said to be the assignee of the claim by KB Trust Company against Heritage. (As I mentioned above, I have previously dealt with cases involving Mr Smith and the names Timmis and Heritage.)

73. The Chief Master said this:

> "5. In unrelated proceedings brought in the name of Mr Barabutu - that is claim number HC-2016-003010 - an application came before me on 24th January 2017. In those proceedings I gave judgment and, at para.16 of that judgment, I recorded my findings that Mr Barabutu was a nominal defendant and that the cause of action, again said to have been assigned, was, in fact, a claim brought by Mr Gayle-Childs. […]
>
> 6. In yet further proceedings, in a claim called *Sanderson v The State of Libya*, am order has been made by me striking out the claim and, similarly, concluding that Mr Sanderson, also a serving prisoner at HMP Swaleside and a convicted murderer, was a nominal claimant in relation to a claim brought, in reality, by

> Mr Gayle-Childs. This claim bears the hallmarks of Mr Gayle-Childs' involvement. Mr Gayle-Childs has pursued what can properly be described as a 'campaign of litigation' against Mrs Timmis. There have been five claims previously brought by Mr Gayle-Childs against Mrs Timmis, all of which have been struck out. Three of the five cases were struck out on 15th January 2008 by District Judge Silverman in the Central London County Court, and two further claims were struck out on 22nd July 2008 by the same District Judge.
>
> 7. The claims that were struck out concerned Mrs Timmis and a complaint relating to a £100,000 payment said to have been made into a Heritage account on 3rd April 2008. That brief summary suffices to indicate in the clearest terms that the facts underlying this claim, and the facts in the previous claims brought against Mrs Timmis, show a remarkable degree of similarity. It might be that the claim that is before me today is expressed in different terms, but undoubtedly it relates to the same underlying facts."

74. The Chief Master considered the facts of the case, including the fact that the court had ordered Mr Barabutu to be produced from prison to the hearing, but that this had not resulted in his presence, because he had declined to leave his cell for the purpose. The Chief Master considered that that lent some weight to the concern that he was not in reality the claimant in these proceedings. The Chief Master concluded that he was a mere nominal claimant, and that the true claimant was Mr Gayle-Childs. He ordered My Gayle Childs to be joined as second claimant, and struck out the claim as totally without merit. The Chief Master referred to the question of making a further GCRO against Mr Gayle-Childs, but commented that it was a matter outside his jurisdiction: cf CPR PD 3C, para 4.1.

75. In fact, the following month Andrews J, sitting in the Administrative Court, made a further GCRO against Mr Gayle-Childs, to expire on 23 July 2019. This order was made in *R (Sanderson) v Ministry of Justice,* CO/3254/2017, after the judge had refused permission to apply for judicial review in this and another claim, CO/2330/2017, and had concluded that the claimant in each case, as also in certain county court litigation, was a nominee of or alias for Mr Gayle-Childs, in an attempt to circumvent the GCRO of July 2015. She also noted other High Court litigation in which the claimant had allowed Mr Gayle-Childs to use his name.

76. It is clear from this material that Mr Gayle-Childs has a history of embarking on litigation that is totally without merit, by means of a web of stooges, nominees and aliases, using accommodation addresses and other forms of pretence, and bringing collusive claims which are then apparently settled by consent, leading to orders which may enable registers of title to be changed. Whilst this does not enable the court to conclude that everything he does is fraudulent, the duration and sheer scale of these techniques must put the court on its guard where he is concerned.

77. Returning to the present application, and as I have already said, however, the apparent weakness of the underlying claim does not prevent the applicant for pre-action disclosure from passing the two first threshold conditions, that is, that both the applicant and the respondent are likely to be parties to any subsequent proceedings. I therefore turn to consider whether the documents sought are likely to disclosable in any subsequent proceedings. As with the *Marston Holdings* case, the description in the application notice of documents sought is entirely unspecific and does not enable

the court to decide whether they would be disclosable. The descriptions in the witness statement of Mr Smith are not much better. Those in paragraphs 3 and 17 are similarly unspecific. Those in paragraphs 16 and 18 give a little more detail. They centre on material relied on by the Ministry to record and store the 80,000 allegedly missing documents and on the Ministry's conduct resulting in the loss of those documents. The description given in the draft order is muddled and incoherent, but again appears to focus on material of the whereabouts of the missing documents and what action the Ministry has taken to locate them.

78. Since the complaint is that the Ministry lost the documents and did not return them to Mr Gayle-Childs so that he could make use of them for his own purposes in promoting an appeal against his criminal conviction, I do not see how the recording and processing of the documents, or indeed information about their current whereabouts, is relevant. Either there were 80,000 documents belonging to him which were in the custody of the Ministry, and which they failed to give back to him, and which failure caused him loss, or there were not. I cannot exclude the possibility that *some* of such documents might be disclosable in the contemplated proceedings. But even so I cannot see how disclosure of them in advance would assist or fulfil any of the statutory purposes in CPR rule 31.16(3)(d). Accordingly, the threshold conditions are not satisfied.

79. But even if those conditions *were* satisfied, and it became a question of discretion, I would not exercise my discretion to order pre-action disclosure here. As with the *Marston Holdings* case, the claimant has no title to sue, and the claim itself appears weak and speculative. Moreover, there is a question mark over the very existence of the person to whom the assignment is made (Paine Crow and Partners). The UK LLP was formed only on 29 May 2019, that is, well after the assignment purportedly made to it. If the entity meant is a Cayman Islands company, no evidence has been put forward to show that that entity really exists, other than footnotes on headed notepaper belonging to other entities. In any event, as an entity, it has no discernible commercial interest in the subject matter of the assignment. The application is therefore dismissed as totally without merit.

***Kinloss Property Ltd v The Registrar of Companies*, G01BS153**

80. In *Kinloss Property Ltd v The Registrar of Companies*, the application notice is dated 20 July 2020, and is supported by a witness statement from one David Cullinane of the same date, who is described as a "Litigation assistant". (His signature on the statement appears simply as the initials "DS", which seems implausible.) At this stage I note in passing that, in the evidence of Shaun Perry in *Smith v (1) The Ministry of Justice, (2) Leslie Gayle-Childs*, there is a letter from the Administrative Court Office addressed to Nathan Paralegals and Company LLP at Unit 601, 394 Muswell Hill Broadway, London N10. This letter encloses an order made by Steyn J dated 20 January 2020 to refuse permission to a serving prisoner at HMP Wayland called David Cullinane to apply for judicial review of a decision of the Parole Board, as totally without merit. How Mr Cullinane progresses from being a serving prisoner whose attempt to review a decision of the Parole Board is refused in January 2020 to a litigation assistant able to make detailed a witness statement for the purposes of proceedings which do not involve him personally in July 2020 is not explained. But I note that Mr Gayle-Childs was also a prisoner at HMP Wayland.

81. The relief sought by the notice is:

> "That the Court orders that the Defendant disclose the documents which are or have been in his control pursuant to CPR 31.16. Because the documents electronic or otherwise holds evidence that furthers the Applicant's claim in the interests of the administration of justice and/or in the consequence of CPR 1.1 the overriding objective."

This again is identical to the relief sought in the notice in the *Marston Holdings* case.

82. The witness statement of Mr Cullinane, so far as relevant, says this of the relief sought:

> "3. I make this witness statement in support of my application for an order for this Court for pre-action disclosure of the electronic records, documents or otherwise held on specific computer hard drives and portable data storage devices controlled by the Defendant which would provide information and clarity in order to narrow the legal issues pursuant to this cause of action and in the interests of the administration of justice pursuant to CPR 31.16.
>
> […]
>
> 16. In the consequence of CPR Part 31, I submit this application for disclosure of documents electronic or otherwise relied upon by the Defendants that resulted in the failure by the Defendant to accurately update the Companies House register to allow the public register to reflect the identity of the owners and directors of the Claimant.
>
> 17. The disclosure sought of material facts relied on by the Defendants who are bound by the law and CPR 19.8A(2)(b) as ordered in the relevant proceedings that has resulted the Claimant and the public being prevented from accessing accurate records the Defendants are required by law to keep.
>
> 18. The Defendants appear to have shown little regard to the 'real world' position the beneficial owners, shareholders and directors have resolved to record. I assert that in the absence of a genuine oversight or error by the Defendants staff I now seek clarification as to the factual position the Defendant relies that supersedes the order of District Judge O'Neill and whose actions are corrosive of the civil justice system endorsed by parliament."

83. However, unlike the draft orders in the other applications, which purport to order pre-action disclosure, the draft order accompanying this notice and witness statement seeks an order that:

> "The Registrar and Companies House do forthwith add Kinloss Property Ltd (BVI) as a director of Kinloss Property Ltd (UK) to the Companies House register within 7 days of service of this order."

In effect, as will be seen below, this is the substantive relief contemplated in the future substantive proceedings.

84. The application notice and the draft order therefore do not assist me to identify the documents sought by this application. However, the terms of Mr Cullinane's witness statement, although muddled and ungrammatical, make reasonably clear that what the application seeks is documents bearing on the reasons why the Registrar declined to register the BVI company as a director of the UK company.

85. The application is opposed by a witness statement of Myles Cuneo of 21 August 2020, but further supported by a witness statement of Mr Smith of 3 September 2020, in which Mr Smith is described as being of Woodbourne Hall, Road Town, Tortola, BVI.

86. The as yet unissued claim which Mr Smith wishes to pursue relates to a refusal by the Registrar of Companies to register a purported appointment of a BVI company called Kinloss Property Ltd as a corporate director of a UK company of the same name. In summary, a claim was commenced in the County Court at Bristol in February 2020 by Mr Smith against both the UK and the BVI companies complaining that the UK company had not implemented an agreed appointment of the BVI company as a director of the UK company. Subsequently, acknowledgments of service were filed apparently on behalf of both defendants, indicating no intention to contest the claim. Thereafter a draft consent order was sent to the County Court, purporting to settle this litigation by way of a Tomlin order, that is, staying the claim on the terms of an agreement scheduled to the order. On 16 April 2020 DJ O'Neill made that order by consent on the papers and without a hearing. One of the terms of the agreement in the schedule was that the UK company would appoint the BVI company as a director. The relevant application was submitted to the Registrar of Companies, who refused to register the appointment, saying that she was not satisfied that the BVI company had consented to the appointment.

87. The UK company complained, relying on the Tomlin order. But the registrar declined to alter her decision. One might have thought that the correct remedy (if a wrong were done) would be to apply for judicial review of the Registrar's decision, and disclosure is rarely ordered in judicial review claims. But in any event, in my judgment it is clear law that the agreement scheduled to a Tomlin order is not part of the court's order (which is to stay the proceedings, and usually to give leave to enforce the terms of the parties' agreement without the need to start a fresh claim), but is simply a private contract between the parties: see *eg Cartwright v Venduct Engineering Ltd* [2018] 1 WLR 6137, [41]-[44], CA. There is accordingly no order of the court binding the Registrar of Companies to do anything, including requiring her to register the BVI company as a director of the UK company, and she cannot therefore be in breach of any such order.

88. The applicant however refers in addition to CPR rule 19.8A, which in certain circumstances permits the court to make an order binding third parties. But that rules applies only where there is a claim relating to (a) the estate of a deceased person; (b) property subject to a trust; or (c) the sale of any property. This case does not concern the estate of a deceased person, there is no relevant trust alleged or proved, and no sale of any property is involved. Hence this case does not satisfy the criteria for that rule to apply. But in any event, even if it did, the court on 16 April 2020 did not expressly or impliedly make an order under that rule. As matters stand, therefore, I conclude that any such claim would be in great difficulties from the outset, if not indeed doomed to failure.

89. The claimant further alleges that the Registrar is in breach of a common law duty to register the appointment of the BVI company as a director of the UK company. Whilst the decision in *Sebry v Companies House* [2015] EWHC 115 (QB), [111], established that a duty was owed by the Registrar to some third parties, this duty is limited to cases where the status of a company, relevant to its solvency, is in issue, the change to the register is recorded "carelessly" by the Registrar, and it is foreseeable that serious harm would result if the Registrar recorded a change against the wrong company. None of those criteria is met in this case.

90. Once more, of course, the apparent unarguability of the proposed claim does not prevent the applicant from passing the two first threshold conditions, that is, that the applicant and the respondent are likely to be parties to any subsequent proceedings. So I turn to consider whether the documents sought are likely to be disclosable in subsequent proceedings. If the Registrar were indeed in breach of the court order made in April 2020, or of some common law duty owed to Mr Smith, in failing to register the BVI company as a director of the UK one, it is hard to see why the Registrar's reasons for doing so would be relevant. The fact of non-registration is not disputed. So no disclosure is needed in relation to that. The application of the order, and the existence of any common law duty, are both matters of law. Whether the Registrar had a good reason, a bad reason, or none at all, is not in issue, and the documents sought would on the face of it not be disclosable. Even if they were disclosable, I cannot see that such disclosure would be desirable for any of the statutory purposes set out in CPR rule 31.16(3)(d). So I conclude that the threshold conditions are not satisfied.

91. If I were wrong about that, and there were a discretion to be exercised, I am clear that I would not exercise it in favour of ordering pre-action disclosure in this case. The substance of the case is very weak and also speculative. Accordingly, I dismiss this application too as totally without merit.

Civil restraint orders

92. On the material before me in this case, I am entirely satisfied that Mr Gayle-Childs is behind each of these applications. All roads lead back to him. He is using Mr Smith's name (sometimes as director or agent of another alleged entity) to carry on proceedings against third parties. The various ways in which he has conducted litigation in the past are also seen clearly in these applications: the use of accommodation addresses, the names of defunct corporate structures, the liberal use of purported assignments of causes of action and nominees, the use of purported consent orders, and so on. In my judgment, in pulling the strings and making his puppets dance as he has done here he is personally susceptible to a civil restraint order.

93. On the material before me he satisfies the criteria for a *general* civil restraint order, that is, that he "persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate." In this respect I do not rely on the earlier behaviour which led to the making of General Civil Restraint Orders in 2010, 2013, 2015 and 2017, although they underline the point. I rely instead on the behaviour shown in this latest batch of failed applications. He continues to make hopeless applications in all manner of different cases. An extended civil restraint order would not be sufficient to deal

with his activities. A GCRO may be made by a judge authorised to sit as a High Court judge such as I am. I consider that I should make such an order against Mr Gayle-Childs for the maximum period of two years from today.

94. As for Mr Smith, I reject the possibility that his identity has been used without his knowledge. I have been provided with copies of both his present and his immediately past passport, which shows that he is voluntarily involved. He has also provided a power of attorney to Nathan Paralegals to carry on "all my civil legal disputes in England and Wales". Whilst his signature on most of the witness statements and other court documents does not resemble that on his passports, the signature on the power of attorney dated 23 May 2019 does. I conclude that he too is susceptible to a civil restraint order. In my judgment it is appropriate in the circumstances to make a general civil restraint order against him, also for the maximum period of two years from today.

Envoi

95. During the course of this judgment I have referred to many and frequent examples of unacceptable behaviour in the applicant's conduct of these proceedings. Such behaviour is characteristic of litigants in person who often have no idea what they are doing, but even if they do (and it is evident that the applicant in the these cases is well aware of the rules) they have no training, no sense of responsibility to the system and no professional reputation to lose. Such behaviour creates extra costs and unnecessary work for courts and lawyers alike, and creates delays preventing more deserving litigants from having their disputes resolved sooner by the courts. For this reason, in many European countries, litigants are not allowed to carry on litigation (at least above a certain minimum level) without the intervention of a professional lawyer. The comparative freedom of UK litigants to act in person comes with a significant price tag for the legal system and the wider community. The legal system is, more than ever, under considerable strain. Whether the community is prepared to go on paying this price, and whether anything can or should be done about this situation are, however, not matters for me.