

Friday, 16 July 2021

(10.30 am)

(Judgment given)

MR LORD: Thank you, my Lord. Your Lordship has seen that there has been some movement overnight, which will probably shorten things.

MR JUSTICE MICHAEL GREEN: Yes.

MR LORD: There was one additional pleading point in relation to the plea about Mr Gerrard and the Al Sadeq evidence. Your Lordship will recollect that point.

MR JUSTICE MICHAEL GREEN: Yes.

MR LORD: Mr Azima and Mr Gerrard and Dechert, they have reached agreement, subject to your Lordship's approval, as to how that matter should be dealt with, namely to stand that point over, so not take it as an initial objection.

MR JUSTICE MICHAEL GREEN: Okay.

MR LORD: But Mr Gerrard and Dechert wish to reserve their right to challenge that particular bit of the pleading at a later stage but don't press it now. So it would remain in the counterclaim for now.

MR JUSTICE MICHAEL GREEN: So like the other objections --

MR LORD: Like the other points, my Lord, they would be stood over.

MR JUSTICE MICHAEL GREEN: Right, okay.

1 MR LORD: And I think the form of wording I think that the  
2 parties have agreed is that those paragraphs can be  
3 included in the amended counterclaim without prejudice  
4 to the defendant's position, that the underlying  
5 allegations in the Al Sadeq proceedings are not relevant  
6 to the issues in these proceedings, and without  
7 prejudice to the defendant's right first to object to  
8 disclosure in relation to the facts and matters raised  
9 in the Al Sadeq paragraphs and, secondly, to object to  
10 the admissibility at trial of the facts and matters  
11 raised in the Al Sadeq paragraphs.

12 And we are content with that wording. Obviously, we  
13 don't accept there is anything amiss about those  
14 paragraphs, and we should make it clear, my Lord, that  
15 the intention behind that plea is not to usher in  
16 a trial of the Al Sadeq proceedings, that are set down  
17 for later next year in another division, but simply to  
18 focus on the matters really in the corrective statement  
19 that Mr Gerrard filed before Judge Lenon, which led to  
20 the addendum judgment which that judge gave, in other  
21 words, the veracity or the honesty with which Mr Gerrard  
22 gave that evidence to the judge in the original trial.

23 MR JUSTICE MICHAEL GREEN: He did say he didn't think it  
24 affected the hacking claim.

25 MR LORD: He did, but Lord Justice Arnold, when he gave

1 permission to appeal in this case, said that that was  
2 a concerning aspect and it was certainly arguable that  
3 Mr Gerrard should have been recalled to be  
4 cross-examined.

5 MR JUSTICE MICHAEL GREEN: And this was one of the aspects,  
6 I suppose, that the Court of Appeal then didn't deal  
7 with.

8 MR LORD: Correct, and it was one of our specific criticisms  
9 that fell not to be considered because the Court of  
10 Appeal, by that stage, decided to remit the matter  
11 because of the fresh evidence and so on. So there was  
12 a paragraph where they said, "We make detailed  
13 criticism," but there was no need to deal with them.

14 MR JUSTICE MICHAEL GREEN: Yes.

15 MR LORD: So we don't in any way shy away from the  
16 importance, we say, of that aspect of the matter  
17 forensically.

18 MR JUSTICE MICHAEL GREEN: To a certain extent, even if it  
19 is only related to credibility -- and I see the way you  
20 put it, that it's not, but you are giving advance  
21 notice, basically, of your cross-examination.

22 MR LORD: We are, my Lord, and turning it round, one can  
23 well see there could be objection taken if we hadn't  
24 foreshadowed that point. In fact, ordinarily, you might  
25 expect -- whether well made or not, you might well meet

1 criticism if a serious allegation of dishonesty, which  
2 this would be against Mr Gerrard, that he gave dishonest  
3 evidence to the High Court judge, that that hadn't been  
4 ventilated up front, and so --

5 MR JUSTICE MICHAEL GREEN: I don't really see that it causes  
6 that much extra disclosure.

7 MR LORD: No, my Lord.

8 MR JUSTICE MICHAEL GREEN: Or anything like that.

9 MR LORD: The way it may generate some disclosure is clearly  
10 there ought to be some documents that would bear upon  
11 the particular engagement that Mr Gerrard gave evidence  
12 of. Your Lordship will recollect that his evidence was  
13 that he had had not many meetings -- I can't remember  
14 the exact details, but in the end he had to accept that  
15 there were many more meetings and they had taken  
16 (inaudible) a different way and so on. So he had  
17 a daybook or notebooks and so on and there may be  
18 diaries and emails and so on. So I am not suggesting  
19 that the underlying Al Sadeq allegations themselves form  
20 part of it. But documents that would bear upon  
21 Mr Gerrard's particular evidence he gave, that would be  
22 potentially disclosable. We are not asking the court to  
23 rule on that, but the parties' agreement has the  
24 advantage that the debate about the propriety of the  
25 plea and its ramifications for disclosure could be stood

1 over until after defences have been filed, more likely  
2 at the CMC, when your Lordship would be looking at any  
3 vestigial pleading points that may remain, may well  
4 surface then, one would think in a more distilled form,  
5 and also, of course, disclosure would fall to be  
6 considered then. So there would be a convergence at  
7 that stage of the relevance of disclosure ramifications  
8 and so on, so it may be a more appropriate time.

9 Certainly that is our understanding of what lies behind  
10 what we say is a sensible accord --

11 MR JUSTICE MICHAEL GREEN: I can see the point about the  
12 other trial, which I think is due to start next October.

13 MR LORD: It is, my Lord.

14 MR JUSTICE MICHAEL GREEN: There is obviously a potential  
15 for completing findings of fact. That will have to be  
16 managed in some way, I don't know whether this trial is  
17 likely to come on before then, probably not, but anyway  
18 there it is.

19 MR LORD: And that may be an issue as to the timing of the  
20 trial.

21 MR JUSTICE MICHAEL GREEN: Yes.

22 MR LORD: But certainly your Lordship will see that we say  
23 that the matter is relevant because, if one goes to the  
24 project update document, which your Lordship has seen,  
25 the one surviving version, that anchors RAKIA's

1 hostility towards Mr Azima, as we put it, in what they  
2 perceive to be Mr Azima's interest in human rights  
3 abuses in Iraq, in which Mr Gerrard played his -- so if  
4 one reads that project update, one can see the relevance  
5 of that part of the story, as we submit it, to the  
6 targeting of Mr Azima thereafter, which we said led to  
7 the hacking.

8 So it is not the sort of pure credit point. It does  
9 have that relevance. It goes to the motivations, we  
10 say, behind the RAKIA's targeting of Mr Azima and,  
11 secondly, it obviously goes to the cogency of the  
12 evidence that is required to prove the conspiracy case  
13 as a matter of inference. If Mr Gerrard is giving  
14 deliberately untruthful evidence about some of these  
15 matters, one might ask why he is doing that and  
16 a different approach might be called for, as explained  
17 by the Court of Appeal in the Bank St Petersburg v  
18 Arkhangelsky case, which we cited in our skeleton.

19 MR JUSTICE MICHAEL GREEN: This includes, the standing over  
20 of this point, the allegations in relation to Mr Hughes?

21 I think there's --

22 MR LORD: I think it probably does, my Lord, yes.

23 MR JUSTICE MICHAEL GREEN: That seems to be slightly more  
24 peripheral, even though it was his evidence in other  
25 proceedings.

1 MR LORD: I don't agree it is peripheral but it may be said  
2 to be a relative point.

3 MR JUSTICE MICHAEL GREEN: Anyway, that is also being left  
4 over.

5 MR LORD: It is, and our expectation is there will then be  
6 defences from the defendants, and if they want to take  
7 various points, they have reserved their right to take  
8 various points, various things are demurrable or  
9 whatever.

10 MR MASEFIELD: My Lord, if I may briefly. We have tried to  
11 be pragmatic about this, as my learned friend Mr Lord  
12 says. What we are anxious to do, my Lord, as  
13 your Lordship will understand, is to avoid importing  
14 into these proceedings all of the underlying allegations  
15 in the Al Sadeq and Kuzmar proceedings. That is in  
16 nobody's interests. That gives rise to the risk of  
17 inconsistent judgments, vexation, oppression,  
18 inefficient use of court time, all of that.

19 One could have a debate now on the pleading point  
20 and whether it is an appropriate pleading having regard  
21 to the rules on pleading, vexation, scandalous pleadings  
22 and all the rest. Actually, we think that probably  
23 misses the mark because what one's more concerned with  
24 is the practical consequences for this case and, in  
25 particular, the impact potential of disclosure, witness

1 statements, admissibility of evidence at trial.

2 Now, one could try to have that debate now but it  
3 will be a debate in a vacuum without the benefit of  
4 pleadings or particular disclosure points.

5 MR JUSTICE MICHAEL GREEN: Exactly, and when we are  
6 considering, as no doubt we will, the scope of  
7 disclosure, it will still be open to you to argue these  
8 are pure credit points and there should be no extensive  
9 disclosure in relation to them.

10 MR MASEFIELD: Exactly, so, my Lord, and that will be done  
11 in the context of particular disclosure requests, and  
12 I think the court will be assisted by that. We can  
13 formulate our arguments with more precision. So the  
14 sensible route, it seems to us --

15 MR JUSTICE MICHAEL GREEN: You are able to plead to it, so  
16 far as --

17 MR MASEFIELD: We can plead to it because --

18 MR JUSTICE MICHAEL GREEN: (Overspeaking) the issues are.

19 MR MASEFIELD: Yes. It won't take very long, but that  
20 pleading will be without prejudice to our contention in  
21 due course, that we don't have to provide disclosure,  
22 and reserving our right at trial to say that the  
23 prejudicial value of these allegations outweighs their  
24 probative value because that is pre-eminently a matter  
25 for the trial and the trial judge in due course, when we



1           have got the evidential landscape fully set up.

2           So we think it is sensible, subject to your  
3           Lordship's approval, for this issue to be put off until  
4           a later date, and the form of wording that Mr Lord read  
5           out to the court has been agreed between ourselves.

6           MR JUSTICE MICHAEL GREEN: Yes. I think it is very sensible  
7           and I think probably the best use of court time in the  
8           circumstances.

9           MR MASEFIELD: I am grateful.

10          MR JUSTICE MICHAEL GREEN: The next stage is probably more  
11          appropriate, a more appropriate time or the stage at  
12          which we are considering what are the issues for trial  
13          and what is the appropriate disclosure to be made is  
14          probably the time when those matters ought to be  
15          considered.

16          MR MASEFIELD: Yes. Just on that, just to make it  
17          absolutely clear, we don't accept that this is either  
18          relevant to motive and that it goes purely to credit,  
19          but that is an issue for another day. It is just so  
20          that is there on the record.

21          MR JUSTICE MICHAEL GREEN: Yes, okay. So thank you very  
22          much. I think RAKIA were also objecting to it on that  
23          basis. I assume you are content with that.

24          MR TOMLINSON: My Lord, we are. We entirely agree with  
25          Mr Masefield's position and we do think this is

1 something that goes entirely to credit and shouldn't  
2 properly be pleaded at all. However, we think  
3 pragmatically, as your Lordship says, it is better to  
4 put this over until your Lordship has a fuller picture  
5 at the next outing in this case and we can then look at  
6 it in the context of disclosure and evidence.

7 MR JUSTICE MICHAEL GREEN: Right. An extraordinary measure  
8 of agreement there.

9 MR LORD: There is. This case is getting more and more  
10 unique, my Lord, if that is possible.

11 The second point is joinder. Your Lordship will see  
12 that the additional defendants all now consent to  
13 joinder.

14 MR JUSTICE MICHAEL GREEN: Yes, subject to certain  
15 conditions.

16 MR LORD: Yes, they all -- I think they wrote letters.

17 I think there were letters -- I don't know whether they  
18 found their way to your Lordship.

19 MR JUSTICE MICHAEL GREEN: I think I've seen -- I might not  
20 have seen Mr Page's, but I gather from one of the other  
21 letters that there was a letter from you.

22 MR FLETCHER: My Lord, there wasn't actually a letter.

23 There was an email from myself to Mr Lord.

24 MR LORD: If I hand those up. That is the email from ...  
25 (Handed).

1 MR JUSTICE MICHAEL GREEN: Thank you. Yes.

2 MR LORD: My learned friend Mr Fletcher to me yesterday  
3 evening, which started the ball rolling, as it were.

4 MR JUSTICE MICHAEL GREEN: Yes.

5 MR LORD: And then there were letters from the other  
6 defendants' solicitors.

7 MR JUSTICE MICHAEL GREEN: Right. Again, it all seems very  
8 sensible. I have read those letters, yes.

9 MR LORD: The only point to pick up by way of caveat or  
10 provisos, if we could just pick those up. In the Enyo  
11 letter, your Lordship will see that there were three  
12 provisos in Roman numerals towards the foot. The second  
13 and third are agreed. But the first point my clients  
14 went back on and said that --

15 MR JUSTICE MICHAEL GREEN: About the discontinuance.

16 MR LORD: Yes, that they do agree to withdraw or discontinue  
17 the protected claim upon joinder being ordered and  
18 taking effect, provided also that there was agreement  
19 that there would be no order as to costs on the  
20 withdrawal or discontinuance of that claim, and Enyo  
21 have helpfully confirmed that is the case. So one would  
22 hope that all the additional defendants would agree  
23 that, once the joinder takes effect, we will then draw  
24 the protective proceedings with no order for costs on  
25 those proceedings. Unless I hear contrary, one would

1           assume that can be built into the order.

2           MR JUSTICE MICHAEL GREEN: Yes.

3           MR LORD: That deals, I think, with that point.

4                     And then on the Stewarts letter --

5           MR JUSTICE MICHAEL GREEN: So you agree the point about  
6           limitation?

7           MR LORD: Yes, we do, yes.

8           MR JUSTICE MICHAEL GREEN: I think you say that in your  
9           skeleton anyway.

10          MR LORD: We do. But if there are limitation points --

11          MR JUSTICE MICHAEL GREEN: This is under US law.

12          MR LORD: If there are any limitation points. I don't  
13          accept there are, but if they are, they can be advanced.  
14          They will have to be filtered through the prism of what  
15          is the right regime and relation back, all the usual  
16          stuff, but the fact of the joinder isn't of itself going  
17          to preempt any of those points.

18          MR JUSTICE MICHAEL GREEN: So the claim is treated as having  
19          been begun at the date of joinder -- is that right? --  
20          or the date of the issue of the protective --

21          MR LORD: I think of the protective proceedings. Enyo, very  
22          fairly, in their letter, make that point in their second  
23          bullet. I think it must be right for limitation  
24          purposes, otherwise one could technically set this up,  
25          in a way, to legislate for any hiatus between April and

1           now, and Enyo, to be fair, are very fairly acknowledging  
2           that in this letter and saying we are going to be  
3           sensible about it, and one would hope that the other  
4           defendants will be equally sensible about it. We will  
5           obviously build that into the order for your Lordship's  
6           approval.

7           MR JUSTICE MICHAEL GREEN: Yes.

8           MR LORD: If that's all right.

9                     Then the only other point I wanted to flag up is the  
10           Stewarts letter.

11           MR JUSTICE MICHAEL GREEN: Yes.

12           MR LORD: There is a slightly cryptic point at the end;  
13           their client consents to the joinder on the basis that  
14           its rights to make future applications and to continue  
15           joinder are reserved.

16                     We obviously can't fetter Mr Tomlinson's client's  
17           rights to make whatever applications the White Book  
18           legislates for, but we don't need to append the  
19           White Book to this order. But it is not right to build  
20           in some sort of sense of --

21           MR JUSTICE MICHAEL GREEN: I am not really sure what  
22           continued joinder means.

23           MR LORD: Exactly. It seems to be a little sort of platform  
24           that has been built here to come back and say this was  
25           only some sort of staging post in joinder ruling, which

1 is not right.

2 MR JUSTICE MICHAEL GREEN: It is not like the amendments  
3 which are being left over possibly reserving their  
4 position. I don't think, having consented to joinder,  
5 they can then object to it --

6 MR LORD: Exactly, my Lord. You're either consenting to the  
7 joinder or not.

8 MR JUSTICE MICHAEL GREEN: I suppose it could be on the  
9 basis, if the claim changes radically in some way  
10 against them, but --

11 MR LORD: We are not suggesting --

12 MR JUSTICE MICHAEL GREEN: -- that would be an objection to  
13 the amendments rather than the joinder.

14 MR LORD: Yes, and to be clear, we are of course not  
15 suggesting there is any foreclosure for any future  
16 application that can properly be made. In the usual  
17 way, you can make an application, but you can't sort of  
18 build in some sort of platform or leg up in this way as  
19 if there is going to be some reassessment of the  
20 joinder. There is joinder. All the defendants are  
21 agreeing to be joined. They are joined, and then we'll  
22 move forward. We don't need to build in any further  
23 reservation of positions.

24 MR JUSTICE MICHAEL GREEN: No. I don't know whether  
25 anything in the order to that effect would be proposed,

1 but I find it difficult to see what sort of wording  
2 could cover whatever they are concerned about.

3 MR LORD: The slight mischief of this is, if you build in  
4 this sort of wording, this sort of without prejudice,  
5 and you put a right in that, in theory, might be open,  
6 then there is a danger that someone will see it at  
7 a later date and say, well, why was that put in? There  
8 must have been an expectation it would be looked at  
9 again and that is not really what has been agreed to.  
10 The additional defendants don't suggest that should be  
11 put in and, in fact, when RAKIA, in their  
12 correspondence -- I think it was a letter in June, which  
13 you might have, they agreed this thing should be case  
14 managed together. In fact, if your Lordship has tab 63,  
15 page 1803, you will see that RAKIA's position as of  
16 11 June, which was the date of the issue of the  
17 application for joinder --

18 MR JUSTICE MICHAEL GREEN: 180?

19 MR LORD: 1803, my Lord, 1801 is the front page of the  
20 letter, but it was a letter that RAKIA's solicitors  
21 wrote on the same date as the application was issued for  
22 amendment and joinder. If your Lordship would be kind  
23 enough to go to paragraph 9, page 1803. Does  
24 your Lordship see what is there said?

25 MR JUSTICE MICHAEL GREEN: Yes.

1 MR LORD: So it did seem to be the position of RAKIA on  
2 11 June that they were acknowledging that joint case  
3 management and probably joinder would be the sensible  
4 course, and we say well, of course, of course that's  
5 right. The whole point of the joinder was to avoid  
6 a sort of parallel trap and, helpfully and thankfully,  
7 the defendants have come on board.

8 So the RAKIA skeleton was really a sort of, they  
9 sort of resile from that, the sort of making something  
10 of joinder really involved a bit of a reversal out of  
11 that what was actually rather a sensible and practical  
12 recognition of the situation.

13 We would prefer there not to be any reference to  
14 some right to make future objections, there doesn't need  
15 to be in the order, but certainly to that point, subject  
16 to your Lordship's views about all this, the order would  
17 be that these defendants are joined to the counterclaim  
18 as defendants to it. I will sit down in case anyone  
19 wants to say anything about that point.

20 MR WHITE: I only rise because our letter was meant to  
21 reflect the same conditions as Enyo's. Mr Lord hasn't  
22 mentioned it expressly, but I understand the same  
23 decision to have been reached.

24 MR LORD: Yes, my Lord, I am accepting that those points  
25 will apply across the piece.



1 MR WHITE: Thank you very much.

2 MR JUSTICE MICHAEL GREEN: Yes. Thank you. Mr Tomlinson,  
3 do you want to say anything about the continuing  
4 joinder?

5 MR TOMLINSON: My Lord, no. The only point we have made all  
6 along is that the joinder of these additional defendants  
7 is entirely unnecessary, in terms of the relief sought  
8 and so on, and if the factual position changes,  
9 obviously, we are able to make appropriate applications.  
10 That is all we are indicating by our letter. Of course  
11 we can't be barred from making applications we are  
12 entitled to make, but we are agreed to --

13 MR JUSTICE MICHAEL GREEN: You are not proposing anything to  
14 go in the order?

15 MR TOMLINSON: No, absolutely not, no.

16 MR JUSTICE MICHAEL GREEN: All right.

17 MR LORD: That is very helpful. I am grateful to my learned  
18 friend for that clarification. So if your Lordship is  
19 content with that, then when we come to draw up as part  
20 of the draft minute of order for your Honour's approval,  
21 we can obviously reflect the joinder.

22 That leaves, I think, then just directions and costs  
23 on the agenda, certainly so far as we are concerned.

24 MR JUSTICE MICHAEL GREEN: Yes.

25 MR LORD: In terms of directions, there obviously needs to

1           be some stipulation as to the timetable.

2           MR JUSTICE MICHAEL GREEN: What, for defences?

3           MR LORD: Yes, and we would suggest that the -- first we  
4           obviously have to serve the amended pleading. My Lord,  
5           can I just flag that there are -- various points were  
6           taken in the skeleton, if my Lord, the second order,  
7           perhaps a third order point, which we would like to be  
8           able to reflect in the draft that we finally serve.  
9           A point was taken about exemplary damages by  
10          Mr Tomlinson, which I think we need to reflect in the  
11          way we formulate our claim for that. A point was taken  
12          in the skeleton on the Data Protection Act, as to the  
13          data processor, which again we would like to reflect  
14          upon. It may be that we adjust the plea on that or that  
15          we drop that plea, but we are going to reflect on the  
16          point he made in his skeleton. Then there is a third  
17          point on disgorgement, we propose to add in the  
18          remuneration that Dechert and Mr Gerrard enjoyed from  
19          their retainer by RAKIA.

20                 So those are three, we would say, not even second  
21          order, but they are further adjustments that we are  
22          going to make, we say constructively, in the light of  
23          the points that are taken against us.

24                 And we would ask for permission to serve our  
25          pleading in or substantially in the form that we filed

1 with our skeleton to your Lordship. The in or  
2 substantially in would legislate for those three  
3 adjustments. Clearly, if points arise and the  
4 defendants are concerned about that and they think they  
5 are more substantive, then obviously, they will be able  
6 to take whatever steps they want to take, but that would  
7 be likely to be scooped up in their pleading back, in  
8 the way that we have agreed for the other point. In  
9 other words, it is hard to see how these adjustments are  
10 going to elevate any points of concern to a level that  
11 needs to be dealt with other than through that  
12 mechanism.

13 MR JUSTICE MICHAEL GREEN: You are trying to meet their  
14 concern.

15 MR LORD: We are trying to meet their concerns. We are. We  
16 are trying to meet those, and it may well be some of the  
17 points they make, they will find to have been addressed  
18 or remedied.

19 MR JUSTICE MICHAEL GREEN: Yes.

20 MR LORD: As they suggest.

21 So that would be our suggestion, that we be allowed  
22 or be ordered to serve this counterclaim by 4 pm on  
23 23 July, and then there would be the question of the  
24 time for the defences to the counterclaim, and we would  
25 suggest --

1 MR JUSTICE MICHAEL GREEN: That is next week?

2 MR LORD: Yes, that's right, my Lord, and we would suggest  
3 perhaps 3 September 2021, acknowledging the holiday  
4 season.

5 MR JUSTICE MICHAEL GREEN: Yes, I think we all deserve  
6 a little bit of a holiday.

7 MR LORD: We will see what the defendants say about that,  
8 and then we would ask for a month or so to serve any  
9 replies, which would take us up to 1 October.

10 One further point; we think that the pleadings that  
11 are served in this case, they should be regarded as  
12 statements of case for the purposes of paragraph 5.1 of  
13 the practice direction, 51U. Your Lordship knows that,  
14 under the disclosure pilot, initial disclosure is to be  
15 given by parties. We respectfully endorse  
16 your Lordship's ruling or judgment that what is  
17 happening in this case is akin to the matter starting  
18 afresh for retrial purposes. That may not be quite  
19 right for limitation but it is certainly right otherwise  
20 in terms of case management, and we say, therefore, that  
21 that initial disclosure should apply. If there are  
22 documents that would fall to be disclosed at this point  
23 in the pilot, they ought to be disclosed to aid the sort  
24 of constructive despatch of the litigation.

25 MR JUSTICE MICHAEL GREEN: That is disclosure by the

1           defendants to the counterclaim.

2           MR LORD: Yes, it would be. And by us. It would be  
3           disclosure by all parties. I think the disclosure pilot  
4           enjoins parties to give at least some initial  
5           disclosure, so really all the parties would have to do  
6           would have to reflect on what initial disclosure they  
7           should be giving. We would have to do that and so would  
8           the defendants, I think is the plan.

9           We also suggest, if your Lordship would find this  
10          helpful, that we would like our counterclaim to start  
11          off as a counterclaim; in other words, without too much  
12          red or green ink on it, so if we could call it  
13          counterclaim for the retrial or something like that, it  
14          could then start off life at least without any  
15          multicoloured annotation. Obviously, we would accept  
16          that historically it has been spawned by previous  
17          multicoloured document. I accept that. And I am not  
18          trying to suggest that that is being sort of sloughed  
19          off in that regard.

20          MR JUSTICE MICHAEL GREEN: Hopefully it won't become too  
21          multicoloured.

22          MR LORD: No, we hope to keep it as black and white as we  
23          can, as it were. So that would help us and it would  
24          help -- in the usual way, once you start to add in, it  
25          starts to become more difficult to read and you get more

1 sort of, more amended and re-amended and so on has to  
2 come in. So that would be helpful.

3 And then there would be a case management  
4 conference. Clearly, that needs to be a date after when  
5 it is to be listed and it needs to be in front of  
6 your Lordship, and there needs to allow enough time  
7 after close of pleadings for the parties to go through  
8 the usual case management preparation, namely trying to  
9 agree a list of issues, and comply with the disclosure  
10 pilot, with the various disclosure review documents and  
11 schedules and exchanges and so on.

12 MR JUSTICE MICHAEL GREEN: Yes.

13 MR LORD: That can be a reasonably involved process and  
14 there needs to be a sufficient hiatus between the reply  
15 and the CMC for that properly to be worked through.

16 MR JUSTICE MICHAEL GREEN: I imagine there has been -- a lot  
17 of the disclosure has already taken place.

18 MR LORD: Yes.

19 MR JUSTICE MICHAEL GREEN: Is there much new disclosure  
20 anticipated on your side?

21 MR LORD: I don't know, is the answer to that, I am afraid.  
22 I don't know. It is certainly right there has been  
23 disclosure. I think some of the -- there will be points  
24 on disclosure, disclosure in the original action was,  
25 for example, RAKIA identified Mr Buchanan as the sort of

1 point person for disclosure, and my clients went along  
2 with that, and then we say it turned out that perhaps  
3 there were gaps in Mr Buchanan's archive which might  
4 have led to a different approach being taken. But in  
5 the way of these things, as your Lordship knows --

6 MR JUSTICE MICHAEL GREEN: These were all the emails  
7 destroyed in the Apple store?

8 MR LORD: Yes, they were, my Lord. So having had things set  
9 up in on one basis, it was then disappointing to find  
10 that that store was perhaps not as --

11 MR JUSTICE MICHAEL GREEN: You might be looking at  
12 a different target.

13 MR LORD: Exactly. There might have been other ways in  
14 which one could capture this material and, obviously,  
15 things came out of the trial and things have come out  
16 subsequently in other respects that may need to be  
17 folded into the disclosure process.

18 So your Lordship is right that a lot of disclosure  
19 has been given, but it will bear a proper and careful  
20 review once the pleadings have closed in this case.

21 MR JUSTICE MICHAEL GREEN: And now you have the other  
22 defendants as parties.

23 MR LORD: We do.

24 MR JUSTICE MICHAEL GREEN: They had previously had to  
25 provide their own disclosure.

1 MR LORD: So Mr Gerrard's notebooks for example, he has  
2 a daybook which he had in court when he gave evidence.  
3 That hadn't been disclosed. He hadn't made that  
4 available to RAKIA, it was said, and therefore, we  
5 didn't get to see it, which was something that we  
6 obviously want to pick up in disclosure now.

7 Dechert and Mr Gerrard, one would expect that they  
8 would have kept their own files and records, which may  
9 be a source of material that otherwise wouldn't be  
10 available from RAKIA for example, due to Mr Buchanan's  
11 losses.

12 So there are various things which will need to be --  
13 your Lordship is right that a lot of it has been given,  
14 but it will be need to be done faithfully and carefully  
15 this time round.

16 MR JUSTICE MICHAEL GREEN: We are looking at a CMC some time  
17 probably towards the end of November, beginning of  
18 December.

19 MR LORD: Exactly, my Lord.

20 MR JUSTICE MICHAEL GREEN: Something like that.

21 MR LORD: Exactly. It needs to fit with your Lordship's  
22 diary.

23 MR JUSTICE MICHAEL GREEN: Certainly before the end of term.

24 MR LORD: I don't know how we best go about doing that  
25 because we obviously want to book early to avoid



1           disappointment, as it were, but we can't constrain  
2           listing or your Lordship's diaries. I don't quite know  
3           how that is best to be -- because your Lordship is the  
4           assigned judge, we obviously must get that before you.

5           MR JUSTICE MICHAEL GREEN: Why don't you just liaise with my  
6           clerk, I think is probably better, and then she can deal  
7           with listing as necessary.

8           MR LORD: And it may be sensible to allow for two days for  
9           that.

10          MR JUSTICE MICHAEL GREEN: Yes.

11          MR LORD: And to have it, as your Lordship suggests, towards  
12          the end of November or in December seems to allow enough  
13          time for the pleadings to have completed and CMC  
14          preparation to have been undertaken.

15          MR JUSTICE MICHAEL GREEN: Yes.

16          MR LORD: So that would be subject to our suggestions on --  
17          and we would obviously withdraw the protective claim  
18          once joinder takes effect, no order as to costs. That  
19          can be in the order. Then I think, as far as we are  
20          concerned, those are the directions we would be asking  
21          for.

22          MR JUSTICE MICHAEL GREEN: You would be leaving the issue of  
23          expert evidence over to then?

24          MR LORD: Yes, or to the CMC. The directions for disclosure  
25          beyond initial disclosure and lay evidence and experts

1           and so on need to be determined by your Lordship at the  
2           first CMC, yes.

3           MR JUSTICE MICHAEL GREEN: Right.

4           MR LORD: When a trial date would obviously be fixed as  
5           well.

6           MR JUSTICE MICHAEL GREEN: Yes.

7           MR LORD: So we have an application for costs but that  
8           probably falls to be dealt with after any submissions on  
9           preparation.

10          MR JUSTICE MICHAEL GREEN: Yes, Mr Tomlinson, do you agree  
11          with that broad scheme?

12          MR TOMLINSON: My Lord, we agree with the broad scheme. We  
13          are certainly happy for Mr Lord to clean up his  
14          pleadings, and one or two inadvertent errors appear to  
15          have crept into them, which he will doubtless remove,  
16          and we are happy for it to be in a single colour. We  
17          don't require him to amend. It is obviously better for  
18          everyone to start with a clean slate.

19                 Just dealing with disclosure before the timetable,  
20          if I may.

21          MR JUSTICE MICHAEL GREEN: Yes.

22          MR TOMLINSON: The Court of Appeal obviously contemplated  
23          that the disclosure given on these issues in the action  
24          would be disclosure in the counterclaim and, my Lord, we  
25          ask your Lordship to direct or make it clear that the

1 disclosure already given can count as disclosure on the  
2 counterclaim. It would be a pointless waste of time and  
3 cost for us to do it again to redisclose the same  
4 material. Obviously, if there is any additional  
5 material, we will disclose it. But, my Lord, we have --  
6 contrary to, perhaps, the impression given by Mr Lord,  
7 there was a very considerable argument about custodians,  
8 search terms, where documents were going to come from.  
9 They weren't all from Mr Buchanan by any means. We  
10 conscientiously disclosed everything relevant to the  
11 hacking issue as well as the material relevant to the  
12 other issues.

13 My Lord, we say it would be a waste of time for us  
14 just to formally repeat that exercise. We will do it if  
15 your Lordship thinks it is necessary.

16 MR JUSTICE MICHAEL GREEN: Presumably --

17 MR TOMLINSON: But everyone has done it already.

18 MR JUSTICE MICHAEL GREEN: Yes, I mean, if anything, it  
19 would be extracting documents from that --

20 MR TOMLINSON: Yes, it would be taking the old disclosure,  
21 going through working out what's relevant to hacking,  
22 redisclosing it again in another list. If your Lordship  
23 thinks we need to do that, then it seems to us --  
24 everybody knows what the documents are.

25 My Lord, I would also add, and so your Lordship can

1 be clear about this, we obtained, as we were ordered to  
2 do and agreed to do by Judge Kramer -- we obtained  
3 documents from Dechert, Mr Gerrard, Mr Page and,  
4 obviously, Mr Buchanan, so all disclosure that they have  
5 available relevant to the hacking issue has actually  
6 already been given.

7 Now, of course, Mr Lord may have some very specific  
8 points, I don't want to argue or debate this now.

9 I mean, if, for example, Mr Gerrard's daybooks, if he  
10 wants to make applications in relation to those, then of  
11 course he can. But to suggest that we need formally to  
12 go through a new disclosure process when the whole thing  
13 has already been done once.

14 MR JUSTICE MICHAEL GREEN: That would probably be a bit of  
15 a waste of time.

16 MR TOMLINSON: So if your Lordship can direct that the  
17 disclosure already given can stand and, obviously, we  
18 will look at the pleadings and we will give any  
19 additional disclosure that arises out of any new issues  
20 which arise on analysis.

21 I mean, there are -- bearing in mind the fresh  
22 evidence, we anticipate that Mr Azima has already, in  
23 his fresh evidence application, actually disclosed what  
24 he's got already in his witness statements for the  
25 Court of Appeal, and if we had anything relevant to

1 that, obviously we'd disclose it.

2 But, my Lord, so that's disclosure. We accept that  
3 the 51U should apply.

4 In relation to timetable, what's been proposed,  
5 I think, at the moment, is six weeks for us to produce  
6 our defences. Your Lordship will of course know that it  
7 took Mr Azima ten weeks to produce his amended  
8 counterclaim and then that was in May and we are  
9 three months --

10 MR JUSTICE MICHAEL GREEN: Ten weeks after the  
11 Court of Appeal --

12 MR TOMLINSON: The Court of Appeal order. That was in May.  
13 We are now two months down the line and he is still not  
14 in proper form. We don't complain about that.  
15 Obviously he has to get it right --

16 MR JUSTICE MICHAEL GREEN: But you want the substance of it.

17 MR TOMLINSON: Bearing in mind the summer, we would like  
18 nine weeks, which is -- because we have got August in  
19 the way. He's proposing to produce his document next  
20 week, by the 23rd. Nine weeks would take us to  
21 17 September and, as your Lordship knows, in practice  
22 that is much less than nine weeks because people aren't  
23 around, and then, of course, if he wants a month for his  
24 replies, then that's fine. That would be 15 October,  
25 and then the CMC to be listed, say, the first available

1 date after 16 November would give a month to do the  
2 various exercises that Mr Lord mentioned.

3 I understand that the other now defendants are happy  
4 with that timetable, although, obviously, some of them  
5 have more demands on their time than others.

6 Your Lordship knows there is a trial going on in the  
7 next court involving Mr Masefield's clients in another  
8 matter involving Mr Gerrard.

9 MR JUSTICE MICHAEL GREEN: Yes.

10 MR TOMLINSON: But as I understand it, everyone else is  
11 happy with that timetable as well.

12 So, my Lord, we would ask your Lordship to order  
13 that defences by 17 September.

14 MR JUSTICE MICHAEL GREEN: Yes.

15 MR TOMLINSON: Replies by 15 October. CMC first available  
16 date, to be listed two days first available date after  
17 16 November, and that disclosure in the main action to  
18 stand as disclosure in this action and it not be  
19 necessary to re-serve lists.

20 MR JUSTICE MICHAEL GREEN: Does that need to go into an  
21 order or can I just indicate that if you provide the  
22 disclosure that you provided in the main action, that  
23 is --

24 MR TOMLINSON: Well, they already have it, so it is not  
25 a necessary --

1 MR JUSTICE MICHAEL GREEN: Right, okay.

2 MR TOMLINSON: The idea of reproviding it seems to us  
3 a little pointless.

4 MR JUSTICE MICHAEL GREEN: Okay.

5 MR TOMLINSON: Because they already have these documents.

6 MR JUSTICE MICHAEL GREEN: So what is its status then? It  
7 is treated as having been disclosed.

8 MR TOMLINSON: Yes, treated as having been disclosed in the  
9 counterclaim.

10 MR JUSTICE MICHAEL GREEN: In the counterclaim but it  
11 doesn't avoid your continuing obligation --

12 MR TOMLINSON: I already indicated that obviously. (a) we  
13 have a continuing obligation to give disclosure which we  
14 will comply with and (b) if and insofar as new factual  
15 issues arise which generate documents, we'll give  
16 disclosure in relation to those and of course that  
17 doesn't cut Mr Lord out from -- if he has issues he  
18 wants to raise which arise from the evidence given at  
19 the trial, then obviously he can do so. I am not  
20 suggesting in any way this limits our obligation. It  
21 just avoids us having to go through --

22 MR JUSTICE MICHAEL GREEN: Having to go through it all again  
23 filter out what might not be relevant.

24 MR TOMLINSON: Go through an essentially administrative  
25 exercise of taking all the documents and deciding which

1           are relevant to hacking and which are not and then  
2           giving them back to Mr Azima when he already has them.

3           MR JUSTICE MICHAEL GREEN: Yes, I follow. Thank you.

4           MR MASEFIELD: My Lord, very briefly if I may. On the  
5           counterclaim, just picking up on that point, Mr Lord  
6           says he shouldn't have to produce anything in different  
7           colours and we are not going to make him do that. We  
8           don't think that's appropriate. What we would say is  
9           that going forward we do think that the original  
10          counterclaim shouldn't just be dropped in a bin. It may  
11          well need to be available at future CMCs going forward  
12          because there are inconsistencies, as the  
13          Court of Appeal observed, between the way the hacking  
14          claim is now put and how it was originally advanced  
15          indeed the first trial and also some of the causes of  
16          action have been withdrawn in effect. There were claims  
17          in deformation and for malicious falsehood and pleaded  
18          links of causation of damage to reputation which is  
19          linked to the loss of business claim. One may need to  
20          see how that is put at future CMCs.

21          MR JUSTICE MICHAEL GREEN: Yes.

22          MR MASEFIELD: So it is just to put down a marker.

23          MR JUSTICE MICHAEL GREEN: They will still be available --

24          MR MASEFIELD: They are still available.

25          MR JUSTICE MICHAEL GREEN: And it was signed with



1 a statement of truth.

2 MR MASEFIELD: Exactly so.

3 MR JUSTICE MICHAEL GREEN: And you can make whatever you  
4 want of that.

5 MR MASEFIELD: Exactly so. The timing of the defence we  
6 would ask until 30 September. We need that time so we  
7 can properly take instructions and prepare our defence.

8 MR JUSTICE MICHAEL GREEN: Yes.

9 MR MASEFIELD: There may also be requests for further  
10 information that we all want a table of Mr Lord's  
11 pleading and we may need to see the responses on that  
12 particularly in relation to causation of loss before we  
13 plead back. We will get on with that, my Lord.

14 In terms of the timing for the reply, 15 October  
15 sounds sensible and CMC at the end of November,  
16 early December sounds sensible as well. After  
17 16 November sounds very sensible.

18 There are going to be disclosure issues so far as  
19 our clients are concerned particularly on the Al Sadeq  
20 issues that may need to be thrashed out in  
21 correspondence and it is sensible to allow time for that  
22 between the end of the pleadings and the CMC, so that  
23 the positions can be thought through carefully by all  
24 the parties.

25 MR JUSTICE MICHAEL GREEN: Yes, you think a two day CMC is

1 sensible.

2 MR MASEFIELD: I think that is sensible to allow for --

3 MR JUSTICE MICHAEL GREEN: I didn't ask Mr Tomlinson that

4 but I assume you agree that, a two day CMC?

5 MR TOMLINSON: My Lord, I do. Can I just correct myself,

6 the dates I gave you were premised on the counterclaim

7 being served today. My learned friend has asked for an

8 extra week, so I wanted nine weeks, so nine weeks from

9 service which is nine weeks from 23 July would give not

10 17 September but the 24th and the 22nd for the reply.

11 MR JUSTICE MICHAEL GREEN: Right. Okay. You have got it in

12 pretty much final form already, haven't you, so --

13 MR TOMLINSON: Well --

14 MR JUSTICE MICHAEL GREEN: -- you don't need to delay

15 starting to prepare your defence.

16 MR TOMLINSON: Your Lordship is right, but --

17 MR JUSTICE MICHAEL GREEN: And the little tweaks that are

18 going to be made I don't think really affects the timing

19 that much.

20 MR TOMLINSON: My Lord, that's what I would like to ask for.

21 MR JUSTICE MICHAEL GREEN: All right 24 September and 22

22 October.

23 MR TOMLINSON: Of October.

24 MR JUSTICE MICHAEL GREEN: All right.

25 Mr White, are you next?

1 MR WHITE: I am content with Mr Tomlinson's timetable.

2 MR JUSTICE MICHAEL GREEN: Thank you, the adjusted one?

3 MR WHITE: The adjusted one, yes.

4 MR FLETCHER: My Lord, I am content with either the adjusted  
5 or unadjusted.

6 MR JUSTICE MICHAEL GREEN: Okay. And Mr Masefield you said  
7 you were happy with the unadjusted one. All right.

8 Mr Lord?

9 MR LORD: Just, my Lord, on disclosure, your Lordship  
10 doesn't need to make any order on disclosure.  
11 Disclosure is something for the CMC. It is obviously  
12 right that documents that have been disclosed already  
13 are capable of being used by the parties herein and it  
14 is obviously that exercise of reviewing and handing over  
15 that material doesn't need to be re-done.

16 But we do, consistent with the complete  
17 re-evaluation of the claim, we do think that disclosure  
18 needs to be kept, that one needs to approach it with an  
19 open mind at that CMC, building on whatever's happened  
20 now but again not building in some sort of presumption  
21 that any disclosure will be extra. In other words, that  
22 there is some -- there shouldn't be a presumption that  
23 disclosure has all been satisfactorily given.

24 MR JUSTICE MICHAEL GREEN: No, I don't think that's what  
25 Mr Tomlinson was saying.

1 MR LORD: No.

2 MR JUSTICE MICHAEL GREEN: I think he is saying we just  
3 shouldn't have to go through the same exercise again in  
4 terms of the original disclosure but we will do so for  
5 the purposes of the counterclaim.

6 MR LORD: And that doesn't need to be built into any order  
7 that your Lordship makes today on disclosure. There is  
8 no need for a disclosure order today.

9 MR JUSTICE MICHAEL GREEN: But you'll be content to accept  
10 that the disclosure that's made, that was made in the  
11 main claim should stand as their disclosure in the  
12 counterclaim. It is not -- it doesn't mean that they  
13 don't have to provide any further disclosure relevant to  
14 the issues in the counterclaim but that it should stand  
15 as, say, the initial stage of disclosure.

16 MR LORD: That begs -- the problem with the phrase "it  
17 should stand as disclosure" does carry with it at least  
18 a connotation that that is to be the disclosure in the  
19 case.

20 MR JUSTICE MICHAEL GREEN: Right.

21 MR LORD: I mean, it plainly will be part of the disclosure  
22 and it may be a very substantial part of the disclosure,  
23 likely will be a very substantial part.

24 MR JUSTICE MICHAEL GREEN: We just wanted to try and capture  
25 the notion that they don't have to re-evaluate their

1 original disclosure for the purposes of providing  
2 disclosure on the counterclaim.

3 MR LORD: But that can be dealt with at the CMC. It would  
4 be better this is exactly the sort of exchange that  
5 should happen in the context of the disclosure pilot in  
6 the run-up to the CMC. So when pleadings have closed  
7 and we can see the joinder of issues and how those  
8 appear in relation to what happened in the first action  
9 and we can see then what if any further disclosure needs  
10 to be given. Of course we will start with the  
11 disclosure that has been given. That has been given and  
12 we have the documents. We are not expecting that  
13 exercise to be reworked for the sake of it.

14 But one will have to sit down and look at the  
15 defences and the positions of the other defendants and  
16 to think again, each party will have to think again, is  
17 there more disclosure we need to give?, and we must be  
18 entitled to say, well will look at this defence and this  
19 defence and, look at cyber route and look at this, we'd  
20 like these documents and we shouldn't be told, well, the  
21 disclosure should stand as before.

22 And again, I'm bridling at sort of building in  
23 pre-emptively points that may come back to be barriers  
24 in the future, and there is no need for that to be built  
25 in now.

1 MR JUSTICE MICHAEL GREEN: I think that was sort of behind  
2 my suggestion to Mr Tomlinson that, does this need to go  
3 into the order or is an indication from me at this stage  
4 sufficient, and obviously will appear on the transcript,  
5 that the disclosure that they have already given should  
6 stand as part of their disclosure on the counterclaim.

7 MR TOMLINSON: My Lord, I am entirely happy for  
8 your Lordship to deal with it in that way and Mr Lord is  
9 seeing traps where none exist. All I am concerned about  
10 is the idea that when we serve our defence we've got to  
11 go back again through all the disclosure we gave and do  
12 an administrative exercise of separating out documents  
13 and redoing a list. That is all I want to avoid.  
14 I don't want to avoid giving any proper disclosure of  
15 any kind.

16 MR JUSTICE MICHAEL GREEN: I don't think anything needs to  
17 actually go into the order to that effect. But you have  
18 heard it from me that I am content that you do not need  
19 to go through your old disclosure and filter out what is  
20 or is not relevant, that that should stand as satisfying  
21 at least part of your disclosure obligations on the  
22 counterclaim.

23 MR TOMLINSON: My Lord, that's all I was asking for.

24 MR JUSTICE MICHAEL GREEN: There it is.

25 MR LORD: Thank you, my Lord, that is very helpful. I'm so

1           sorry to be so suspicious.

2           On the timing --

3           MR JUSTICE MICHAEL GREEN: Many years of being involved in  
4           this litigation I imagine.

5           MR LORD: Many years of being a barrister probably.

6           Could we, I'm not sure -- is your order of  
7           24 September, it sounds like that's the date that's  
8           coming in --

9           MR JUSTICE MICHAEL GREEN: Do you have any particular  
10          objection to that?

11          MR LORD: Not really, my Lord, but I think we are going to  
12          get four defences, I think it is four, five, four.

13          MR JUSTICE MICHAEL GREEN: Dechert and Mr Gerrard.

14          MR LORD: I assume there will be one from Mr Masefield, my  
15          learned friend, and so four, which might be relatively  
16          chunky documents. Four weeks might be quite tight for  
17          us to produce replies to four defences. Could we have  
18          five weeks? Could we have until 29 October, please?

19          MR JUSTICE MICHAEL GREEN: All right.

20          MR LORD: Which may shuffle back things, I don't know  
21          whether that shuffles things back a bit. It probably  
22          will do.

23          MR JUSTICE MICHAEL GREEN: I think that is an  
24          appropriate quid pro quo for the extension on their  
25          defences, so, yes.

1 MR LORD: And then that would push back the first available  
2 date I think to 23 November after that date, if that's  
3 all right.

4 MR JUSTICE MICHAEL GREEN: Yes.

5 MR LORD: But other than that that's all fine.

6 MR JUSTICE MICHAEL GREEN: Yes. All right I'll --

7 MR LORD: We will obviously try to capture that in a draft  
8 order which we will agree between the parties and submit  
9 to your Lordship in the usual way.

10 MR JUSTICE MICHAEL GREEN: Yes.

11 MR LORD: I think that probably just leaves costs.

12 MR FLETCHER: I am sorry, my Lord, I was just confused as to  
13 whether the extension for the defences is therefore the  
14 17th or the 24th.

15 MR JUSTICE MICHAEL GREEN: The 24th and 29 October for the  
16 replies and then CMC first available date after  
17 23 November.

18 Submissions re costs

19 MR LORD: Then it is a question of costs. And I do seek my  
20 costs of this hearing in any event. It may well be  
21 right that the costs of the application and the  
22 amendment should be in the case. We obviously had to  
23 amend -- we had to replead pursuant to the  
24 Court of Appeal's order, which we've done, and we had to  
25 issue an application to get permission to amend the



1           pleading and to join the defendants. So those are costs  
2           that may well --

3           MR JUSTICE MICHAEL GREEN: So we had to be here.

4           MR LORD: There had to be an application, my Lord, there had  
5           to be an application and -- but whether there had to be  
6           the degree of resistance that has spawned hundreds of  
7           pages of skeleton arguments and a lot of work and --

8           MR JUSTICE MICHAEL GREEN: It has given me the opportunity  
9           to get into the case to understand what's going on.

10          MR LORD: Yes.

11          MR JUSTICE MICHAEL GREEN: And it has brought a surprising  
12          measure of agreement between the parties.

13          MR LORD: It has.

14          MR JUSTICE MICHAEL GREEN: It has had that beneficial  
15          effect.

16          MR LORD: We did write -- we have asked the defendants  
17          repeatedly over the last few weeks and months to  
18          consider our draft.

19          MR JUSTICE MICHAEL GREEN: Yes.

20          MR LORD: And to consent to the draft and the joinder.

21          MR JUSTICE MICHAEL GREEN: Yes.

22          MR LORD: We made adjustments to the draft in the light of  
23          their objections and yet until very recently we were  
24          facing a full blown opposition to our amendment and to  
25          the joinder.

1           Now, it is true it all seems very rosy now but that  
2           wasn't how it looked yesterday at 2 o'clock and in terms  
3           of sort of fair costs orders we would suggest that our  
4           pleading was perfectly adequate. There may be points to  
5           take on it but they were not points that should have led  
6           to this sort of resistance at this stage. The one point  
7           that was pushed on applicable law, RAKIA have lost on.

8           Preparing to defend the pleading in this way has  
9           taken a lot of time and money, and that should, we say,  
10          that should not really have happened in this way, and  
11          the costs order ought to reflect that.

12          Similarly with joinder, ultimately the defendants  
13          have agreed to be joined, and so it wouldn't be fair for  
14          Mr Azima, in my submission, to have to pay any of the  
15          costs of this hearing as it has unfolded. So if  
16          your Lordship isn't going to give Mr Azima his costs in  
17          any event of the hearing, then there should be Mr  
18          Azima's costs in the case; in other words, he should be  
19          protected from paying any of the costs of this hearing,  
20          as opposed to the application he had to issue, as  
21          a result of the way things turned out, and I would ask  
22          your Lordship to make that order.

23          MR JUSTICE MICHAEL GREEN: Yes.

24          MR TOMLINSON: My Lord, this has been a case management

25          conference in effect, as your Lordship has said. It's

1 given your Lordship the opportunity to have a first  
2 introduction to the case. We have pragmatically held  
3 off what we still regard as valid objections to the  
4 pleading and some of what we say are the legally  
5 misconceived causes of action which were included. The  
6 work has been done to prepare for that and won't be  
7 wasted because they can be dealt with in due course at  
8 the next CMC or at a convenient time, and we say that  
9 the appropriate order is the usual order in a case  
10 management case, an order for costs in the case.

11 MR JUSTICE MICHAEL GREEN: Yes. You are seeking costs  
12 against all the defendants? All the new defendants?

13 MR LORD: Mr Azima's costs in the case against them all on  
14 the joinder, so if he succeeds, he'll get his costs back  
15 of the hearing. I explain -- not of the application or  
16 the amendment. That would be costs in the case because  
17 it is not really an amendment, it is a first pleading.  
18 Those are costs which have to go into the pot we say,  
19 but in terms of the way this hearing has unfolded -- the  
20 way it has gone is the way it should have gone. So it  
21 should have been quite an amicable two-hour trot  
22 through, in our submission. That would have been a very  
23 different beast to the all-singing, all-dancing  
24 authorities and skeletons that we had, and so that is  
25 why we say an order the costs of the hearing being

1 Mr Azima's costs in the case would mean that, if he  
2 succeeds in his claims against these defendants, he will  
3 get his costs back but, if he loses, he will not have to  
4 pay their costs of this hearing. And that would be the  
5 fair order to try and encourage the sort of efficient  
6 proportionate approach which we say has finally  
7 manifested itself, perhaps a little later than ideal.

8 MR JUSTICE MICHAEL GREEN: I think I am not going to make  
9 that order. I am going to order that the costs of today  
10 and yesterday should be costs in the case. This was  
11 effectively a CMC, and I think, to a certain extent, the  
12 reason why agreement broke out amongst the parties was  
13 because of the work that was put in to the preparation  
14 of this. That has obviously cost a lot of money, I have  
15 no doubt about that, but I think it has been beneficial  
16 to all concerned, and the case can now proceed on  
17 a sensible footing, with the parties knowing where they  
18 stand and with me having had a very useful introduction  
19 to the case. So I think the fairest order in those  
20 circumstances is that it should be costs in the case.

21 MR LORD: Very well, my Lord. I will just check but I think  
22 those were all the points that ... (Pause) I think those  
23 were all the points as far as we are concerned. We will  
24 obviously reflect that in the draft.

25 MR JUSTICE MICHAEL GREEN: Yes, thank you.

1 MR LORD: My Lord, I think that's everything. Thank you for  
2 your Lordship's --

3 MR FLETCHER: Sorry, my Lord, I keep interrupting, I do  
4 apologise.

5 MR JUSTICE MICHAEL GREEN: Yes.

6 MR FLETCHER: It is just this: as we made clear, we do  
7 maintain our position on Mr Page, that there is no  
8 reasonable case against him, but we can see the force of  
9 the point that that will become easier to evaluate as  
10 the case develops and, in particular, perhaps once  
11 disclosure has been given but possibly even once the  
12 pleadings are finalised. I certainly say to your  
13 Lordship we don't anticipate making any form of  
14 strike-out application before defence but at that stage  
15 and successive stages, we will be continuing to consider  
16 whether and when the right moment has come for that  
17 application.

18 MR JUSTICE MICHAEL GREEN: Right, I think it is perfectly  
19 understood, in particular by Mr Lord, that you can make  
20 whatever applications you are entitled to under the CPR,  
21 and I am not ruling anything out.

22 MR LORD: Thank you, my Lord.

23 MR JUSTICE MICHAEL GREEN: Thank you very much.

24 (11.42 am)

25 (The hearing concluded)

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