



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1569/5/7/22

BETWEEN:

**INSTAPLANTA (YORKSHIRE) LIMITED**

Claimant

- v -

**LEEDS CITY COUNCIL**

Defendant

---

**ORDER**

---

**UPON** the case management conference on 21 July 2023 (the “**Second CMC**”)

**AND UPON** reading the Defendant’s applications dated 7 July 2023 for (i) responses to RFIs (the “**RFI Application**”), (ii) disclosure (the “**Disclosure Application**”), (iii) an order in relation to the second witness statement of Paul Robinson (the “**Witness Statement Application**”), (iv) witness statements in response (the “**Responsive Evidence Application**”), and (v) permission to amend its Rejoinder (the “**Amendment Application**”) (together, the “**Defendant’s Applications**”)

**AND UPON** reading the Claimant’s response dated 13 July 2023 to the Defendant’s applications (the “**Response**”)

**AND UPON** the Claimant’s application for the costs of and occasioned by the Defendant’s amendments to its defence (the “**Claimant’s Costs Application**”)

**AND UPON** hearing counsel for the Claimant and counsel for the Defendant

**AND UPON** the RFI Application not being pursued at the Second CMC with respect to requests 1, 9, 27, 28, 37, 38, or 39

**AND UPON** the Disclosure Application not being pursued at the Second CMC with respect to items 1, 2, 3, 5, 8, or 10

**AND UPON** the Witness Statement Application not being pursued at the Second CMC

**AND UPON** the pre-trial review (“PTR”) having been listed for 6 October 2023

**IT IS ORDERED THAT:**

**RFI APPLICATION**

1. By 4:00pm on Tuesday 1 August 2023, the Claimant is to provide (either by way of response to the Defendant’s request for information number 30, or by way of witness statement) a description in general terms of the locations of its planters outside Leeds.
2. Save as set out at paragraph 1 above and paragraphs 16 and 17 below, the RFI Application is refused.

**DISCLOSURE APPLICATION**

3. By 5:30pm on Monday 24 July 2023, the Claimant is to provide the Defendant with copies of:
  - (a) the invoices referred to at paragraph 51.1 of the Response;
  - (b) a photograph (and pre-existing photographs, if any) of the whiteboard referred to at paragraph 51.2 of the Response;
  - (c) the year-end management accounts referred to at paragraph 52.1 of the Response; and
  - (d) the spreadsheet referred to at paragraph 52.2 of the Response.
4. By 5:30pm on Monday 31 July 2023, the Claimant is to conduct a 30-minute search by a solicitor of the 15 archive boxes referred to at paragraph 52 of the Response, and is to provide the Defendant with a letter, note, or memorandum setting out the content of those boxes as best as reasonably possible on the basis of the aforementioned search.
5. Following provision of the letter, note or memorandum, the parties are to confer and seek to agree a suitable and proportionate approach as to how best to deal with

production of any disclosable documents not otherwise listed by the Claimant. Absent agreement, there is to be liberty to apply.

6. Insofar as it relates to items 4, 6, 7, 9, 11 to 15, and 17 to 27 of Annex B to the Defendant's Applications, the hearing of the Disclosure Application is adjourned.
7. Save as set out at paragraph 6 above, the Disclosure Application is refused.

### **RESPONSIVE EVIDENCE APPLICATION**

8. The factual basis on which Dr Chowdhury is instructed to provide her expert report for the Defendant shall be set out, in the first instance, by way of written instructions to her if and insofar as any such factual basis does not currently appear in the defendant's witness evidence. As necessary or if required by the Claimant, the accuracy of those instructions is to be confirmed by a formal witness statement.
9. If either party wishes to rely on any witness statements in response to those that have already been served, it must:
  - (a) by 4pm three weeks before the PTR, file any such witness statements in response with the Tribunal and serve them on the other party; and
  - (b) at the same time apply for permission to rely on those statements.

### **AMENDMENT APPLICATION**

10. The Amendment Application is granted, except with regard to proposed paragraph 3E (as to which see paragraph 12 below).
11. The Defendant is to file with the Tribunal and serve on the Claimant the Amended Rejoinder by 4:00 pm on 31 July 2023.
12. If the Defendant wishes to amend the Amended Rejoinder by introducing any matters referred to at paragraph 3E of the proposed amended rejoinder, it must:

- (a) by 4pm three weeks before the PTR, file with the Tribunal and serve on the Claimant a draft Re-Amended Rejoinder providing proper particulars of the matters referred to at paragraph 3E; and
  - (b) at the same time apply for permission so to amend the Amended Rejoinder.
13. If the Defendant takes the steps set out at paragraph 12 above, the Claimant must:
- (a) by no later than 4pm 1 week after service of the draft Re-Amended Rejoinder, indicate whether it objects to the amendments proposed therein; and
  - (b) if it does not object, by no later than 4pm 1 week before the PTR, file with the Tribunal and serve on the Defendant a note, memorandum, or other appropriate document setting out the Claimant's substantive position on the case set out in the amendments.

#### **CLAIMANT'S COSTS APPLICATION**

14. The Defendant is to pay the Claimant's costs of and occasioned by the Defendant's amendments to its Defence, in an amount to be assessed at or after trial, if not agreed.

#### **EXPERTS**

15. As soon as practicable, the Claimant's expert and the Defendant's expert are to consider the desirability of a discussion about (i) the Claimant's revenue, (ii) the Claimant's costs, (iii) the counterfactual, and/or (iv) the information required for analysing the foregoing, including in light of the amount in issue and the costs to be incurred in connection with such a discussion. (Any such discussion would be additional to the meeting required under paragraph 20 of the Tribunal's order made and drawn on 7 March 2023.)
16. If either expert considers that a discussion of the nature described at paragraph 15 above would be desirable, such a discussion is to take place as soon as possible and no later than 15 August 2023.

## **COSTS OF THE SECOND CMC**

17. The costs of the Second CMC are to be costs in the case.
18. There is to be liberty to apply.

**Ben Tidswell**  
Chair of the Competition Appeal Tribunal

Made: 21 July 2023  
Drawn: 2 August 2023