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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1701/5/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Wednesday 15th July 2026

Before:
Charles Morrison
(Sitting as a Tribunal in England and Wales)

BETWEEN:

NST WORLDWIDE LIMITED

Claimant

v

(1) WORLD SNOOKER LIMITED
(2) WORLD SNOOKER HOLDING LIMITED
(3) WORLD PROFESSIONAL BILLIARDS AND SNOOKER ASSOCIATION

Defendants

A P P E A R A N C E S

Ben Quiney KC and Hamish Fraser (Instructed by London Litigation Partnership) on behalf
of NST Worldwide Limited
Tim Johnston (Instructed by Livida Legal) on behalf of World Snooker Limited and
World Snooker Holding

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(2.00 pm)

Housekeeping

THE CHAIR: Mr Johnston. I'll just give the usual live stream warning. Some of you are joining us live stream on our website, so I must start, therefore, with the customary warning. An official recording is being made and an unauthorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as contempt of court. Yes.

MR JOHNSTON: Sir, I'm very grateful. As you know, this is the completion of the earlier CMC. One of the consequences of the fact that we have moved it back is that my instructing solicitor is where one might expect somebody to be on 15 July.

THE CHAIR: Yes.

MR JOHNSTON: That being the case, I may be receiving instructions by WhatsApp as we go. Mr Rabinowitz is here solely for the purposes of being a -- I mean him no disrespect -- a water carrier in that respect. Because there's no solicitor or indeed anyone from my instructing solicitor. So if I need a moment, I will let you know that that's what I'm seeking to do.

THE CHAIR: Yes. As I indicated, I'm more than happy to accommodate any reasonable requests that you might make in that respect.

Application

Submissions by MR JOHNSTON

MR JOHNSTON: I'm very grateful. So you're aware, I think, from having seen the skeletons, of the relevant background to this application, but just to set it out briefly:

1 the application relates, at least in substance, to a telephone call between Barry Hearn
2 and Mr Francis, the moving mind behind the claimant, in September 2023. It's an
3 important facet of the common ground that Mr Francis recorded that phone call without
4 seeking or obtaining the consent of Mr Hearn.

5 Now, sir, if I could ask you to turn within the core bundle to page 812. This is the
6 earliest document that you need to see in relation to the history of this matter. This is
7 an email from the claimant's solicitors to my solicitors saying, "Please find attached".
8 What is attached to that email is the transcript of the phone call.

9 If you scroll up to page 811, you'll see:

10 "You have attached a transcript of a phone call to your letter ... which includes ... [an]
11 'inaudible' part. Please provide [the inaudible part]."

12 And then if you go further up the page on 811, you'll see a response dated
13 12 February 2024:

14 "Dear Liz.

15 The recording can indeed be provided.

16 "However, it should be borne in mind that should your clients be minded to settle, then
17 any settlement agreement may well want to place restrictions on any person who has
18 the recording and how it may be used/liability for any leakage.

19 "As things currently stand, our client has placed tight restrictions on those who possess
20 the recording, which does not go beyond the director of our client and legal advisers."

21 That is where matters lay until 17 February, so shortly afterwards, when, in breach of
22 those tight restrictions, the transcript was posted by an associate of Mr Francis on X,
23 formerly Twitter. This is still early 2024. There's then correspondence between the
24 parties and solicitors, and it is taken down.

25 That is where matters lay until page 813 in the bundle. What you have at page 813 is
26 a post that was materially identical on the Snooker Legends Facebook and X pages.

1 | You can see there:

2 | "For those wondering why NST Worldwide Ltd is taking legal action the following call
3 | between Barry Hearn and Jason Francis may go some way to understanding why court
4 | action was necessary. WST claimed that Mr Hearn has not held any decision making
5 | power in their company since his retirement ... this call was made in September 2023."

6 | So that is the posting on 20 May 2026, so just over two years after it had been taken
7 | down. For the avoidance of doubt, that posting was entirely without foreshadowing
8 | and without warning.

9 | There then followed urgent correspondence between the parties over the course of 20
10 | and 21 May. The long and short of that, which I think you've seen, is that that my
11 | solicitor was asking for it to be taken down because it was confidential and also wholly
12 | inappropriate in the context of the litigation.

13 | At this point, it's worth you seeing, to complete the picture, the letter at page 830. Now,
14 | this is a letter also sent on 20 May. It is from a different firm; it's from Livida Sport
15 | rather than Livida LLP, which is a confusing point, but the short point here is that they
16 | are acting in this capacity for Barry Hearn, not for D1 and D2.

17 | If you see from the paragraph that starts, "As your client is aware":

18 | "As your client is aware, the Recording was made improperly without our client's
19 | knowledge or consent, is inherently confidential and our client has a reasonable
20 | expectation of privacy in relation to it. We again draw your client's attention to the
21 | legal point set out in our cease and desist letters of ... 2024. Following our
22 | correspondence with your client and his third party associate ... the previous
23 | publications were withdrawn from the public domain.

24 | "Despite your client being put on strict notice of the confidentiality ... your client has
25 | once again disclosed the Recording in flagrant breach of his duties of confidentiality
26 | and our client's Article 8 privacy rights.

1 "We consider these continued breaches further also amount to harassment. Your
2 client's history of improperly disseminating ... for unlawful purposes beyond private
3 use, including the attempted blackmail of our client to extort money and attempts to
4 solicit negative public attention by publishing ... is unjustified."

5 That is the letter on behalf of Mr Hearn, and you have him very clearly there writing
6 and saying this is confidential from his perspective. Now, what happens very shortly
7 after this is that the recording is moved from the Snooker Legends page to Mr Francis's
8 personal account, but nothing of any substance turns on that.

9 That then brings us to the application itself, which is on page 800. I anticipate, sir, that
10 you've read it. Sorry, I may have said Livida LLP. It's Livida Legal, as you can see at
11 the top of this letter.

12 Just to go through it briefly, this was the application made following correspondence,
13 declining to take it down, starting at page 800. There's a reference, as you'll see above
14 the heading "Recent Republication" to the history in relation to 2024, then an
15 explanation of what has been published going over onto page 801.

16 Then in the paragraph starting, "These are social media posts":

17 "These are social media posts which specifically refer to the proceedings before the
18 CAT, which disclose and/or refer to the content of the Recording, which indicate an
19 intention to publish correspondence in these proceedings."

20 I will come back to that later, sir, to clarify.

21 "The basis asserted for publication [is] ('to allow the social media team to run the
22 Snooker legends page') is unsustainable. The publications of the Recording do not
23 make clear the self-serving nature of the Recording, or the deceitful and unfair
24 circumstances in which it was created.

25 "Mr Hearn [has asked you to take it down]."

26 Then there's discussion of the confidentiality of the recording. I'll address you on this

1 point later, but there's reference here to the fact that it's been referred to in the claim
2 form, and it's therefore lost its confidentiality.

3 You'll see over the page onto 802, there is the discussion of the fact that it should be
4 included within the CRO. Then broader misuse of legal correspondence over the page
5 on 802, sir:

6 "The effect of this misconduct is exacerbated by the fact that the threat of publication
7 does not stop with the recording. Mr Francis has referred to the posting of 'all future
8 correspondence on this matter'."

9 Again, I'm going to come back to that point and round it out.

10 "Our clients are concerned [in relation to that]. At the very least, it is highly unattractive
11 that one of the parties is seeking to make each step in these proceedings into a subject
12 of public commentary."

13 And then over the page onto 803, you see the relief sought. So the relief sought is in
14 three alternative options: firstly, that the recording and the transcript should be placed
15 into the confidentiality ring; secondly, pursuant to CAT rule 102, that the use of it for
16 purposes other than this litigation should be prohibited; and thirdly, seeking express
17 undertakings from Mr Francis that he won't publish, disseminate, disclose or refer to
18 the contents of disclosed documents into parties, correspondence or evidence for the
19 purposes of these proceedings.

20 You'll see that each of those, sir, is pursued in the alternative, and you'll have seen
21 from my skeleton argument that the way I'm putting it to you today, in particular, is by
22 reference to the second of those options, CAT rule 102. I'll explain to you why, orally,
23 that seems to be --

24 THE CHAIR: Yes, it's the prohibition claim that you argue out first and foremost in
25 your skeleton, and then you come to the confidentiality, three or four, in the list of
26 points.

1 | MR JOHNSTON: Precisely. Exactly. So these are all alternatives. I can put it this
2 | way: each of these would be sufficient for my client's purposes. To assist the tribunal,
3 | we've made clear which we consider to be the most apt route to take you.

4 | THE CHAIR: Yes. It's a prohibition case that you're making and if that doesn't
5 | succeed, then you're trying your luck with the confidentiality ring approach?

6 | MR JOHNSTON: Well, I might not quite put it as "trying my luck", sir. What I would
7 | say is that, of course, confidentiality is a part of the context to the prohibition, if I can
8 | put it that way; forms a part of the picture.

9 | THE CHAIR: Yes.

10 | MR JOHNSTON: These are alternatives. I'm ready to assist the tribunal if -- to the
11 | extent that you have any questions about the appropriate route, but certainly it strikes
12 | the applicant that the most logical route is the second. I'll explain to you why in
13 | a moment, but in a nutshell, it's in part at least because it addresses a number of the
14 | points that are taken against me to the effect that, "Well, this has been referred to in
15 | open court and so on, referred to in a pleading".

16 | Well, the CAT rules expressly make provision for that possibility by saying, "Just
17 | because a document has been referred to in open court, it's perfectly within the powers
18 | of the tribunal, in all the circumstances, looking at the case in the round, to say this is
19 | a document in respect of which we're going to restrain you ..."

20 | THE CHAIR: Yes.

21 | MR JOHNSTON: That's part of the reason for ending up in that position. So if that
22 | helps.

23 | THE CHAIR: Because as you say, you accept that the prohibition case is bound up
24 | with the confidentiality point.

25 | MR JOHNSTON: Well, sir, let me put it this way. I don't think I need the confidentiality
26 | point, actually, to succeed on my prohibition case, because there are limbs to that.

1 The first of which is the weaponisation of this document, in the way that it has been
2 used at this particular point in time in this litigation. We do say it's remarkable -- and
3 I'm leaping ahead of my submissions -- we say it's remarkable, having taken it down
4 for two years, at the very point at which my client is preparing witness evidence, it
5 reappears on the internet with really very substantial, considerable consequences.

6 THE CHAIR: Yes.

7 MR JOHNSTON: So I say I actually don't need the confidentiality point, but I do say
8 that it buttresses and reinforces that application as well.

9 THE CHAIR: Yes. In other words, take out any confidentiality point, you would
10 succeed on your prohibition, in any event, on the point that you have, for example --

11 MR JOHNSTON: (Overspeaking) We say that the confidentiality point --

12 THE CHAIR: The weaponisation point, for example, in the litigation.

13 MR JOHNSTON: Precisely, sir. That's the structure and logic to it, sir, which is --

14 THE CHAIR: Yes. I see.

15 MR JOHNSTON: -- I don't need it, but I do say it's right to do it that way.

16 THE CHAIR: Yes.

17 MR JOHNSTON: And it reinforces and (overspeaking).

18 THE CHAIR: Yes. It's potentially helpful. In certain circumstances, it does support
19 the argument, but the argument stands alone in other instances. I see.

20 MR JOHNSTON: Exactly, sir.

21 My learned friend would doubtless want me to take you to his client's letter at 820.
22 This is his client's letter of the 26th, I think it is, of May, and in there he expresses in
23 some detail -- I won't take you through it in any great detail, but I will take you to one
24 part which I know is relied on -- he expresses his views as to why this is all wholly
25 inapt.

26 823 is important. Before getting there, the thrust of it is, this isn't confidential. If it were

1 | ever confidential, it's lost its confidentiality. It's been referred to, so on and so forth.

2 | THE CHAIR: Yes.

3 | MR JOHNSTON: I'm going to come back and address all of those points. But 823 is
4 | important, because it's said there in respect of the grounds for the application that
5 | you're going to hear from me shortly but I know you're aware of, at paragraph 1.15:

6 | "It is difficult for the Claimant or Mr Francis to believe:

7 | "1.15.1. that Mr Hearn would be intimidated by the publication of the Hearn Call
8 | considering his frank, outspoken and no nonsense public persona; or that.

9 | "1.15.2. any potential witness would be intimidated by Mr Francis publishing the Hearn
10 | Call which does not concern anybody other than Mr Hearn and the WSL parties."

11 | Then it goes on to express various examples of Mr Hearn's robust personality, and I'll
12 | come back to that. But to foreshadow my submission, that is a wholly flawed way of
13 | approaching this kind of question, and I'll make that good, I hope, legally.

14 | If I can take you to 835 as well, sir, which is, I hope, the last of the letters that I need
15 | to take you to. This is explaining after the response why the application is maintained.

16 | It's addressing points that I'm going to address you on later.

17 | I would like to draw your attention to what's in paragraph 7, 8 and 9. This is in
18 | response to one of the submissions which is made, and I think will be renewed to you
19 | today, which is: these documents are in the public domain. They've been referred to
20 | online in certain newspapers, and you'll see what's said there on the facts in response
21 | to that. This is paragraph 8(a):

22 | "The 'Eastern Eye' ... published on 10 January ... a series of excerpts from the
23 | transcript (which is said to have been 'seen'). This article was published only two days
24 | after the Claim Form had been filed."

25 | And then the next:

26 | "The 'Southern Daily Echo' ... 28 September 2025 ... a single extract from the

1 transcript (which is attributed to '[p]apers filed with the [CAT]'. This article contains
2 comments provided to the journalist by the Claimant's lawyers after CMC 1."

3 Paragraph 9 is important, sir, for the context here:

4 "... the Claimant does not squarely state whether the transcript was disclosed to the
5 relevant media outlets by reason of an act or omission of the Claimant, its directors or
6 lawyers. The WSL parties infer that this is the case and invite the Claimant to confirm
7 if that inference is incorrect (or to deny it if it is not correct)."

8 We haven't had any denial to that effect, sir. So you can proceed on the basis that if
9 and to the extent there has been any reference to the content of the transcript, that is
10 because it has been provided by the claimant directly to those journalists, for the
11 purposes of soliciting comment and discussion of it.

12 I won't take you through the rest of the letter, but that really brings me on to the
13 application. As I've already said -- you have seen through my skeleton argument and
14 I've expressed it today -- the primary route by which I make the application is the power
15 in rule 102(5). You have that in my skeleton argument at paragraph 15. It may be
16 easiest to take it from there, sir, and that is that:

17 "The tribunal may, either of its own initiative or on the application of a party under
18 paragraph 6, make an order restricting or prohibiting the use of any document provided
19 in the course of proceedings, even where the document has been read to or by the
20 tribunal or referred to at a hearing which has been held in public." [as read]

21 And I've already outlined to you the reason that I start here at least in part is that this
22 provides, in my submission, a total answer to a number of the points that are taken
23 against me, which is a) it's referred to in the claim form; b) it's been adverted to in open
24 court that the CAT rules expressly anticipate the possibility that it might be appropriate
25 in certain circumstances to restrain use of a document even where it has been referred
26 to in open court. As you'll anticipate, that is precisely the submission that I make to

1 | you today.

2 | Why should the application be granted? Five short points. In these submissions, sir,
3 | I'm not proposing to turn up any of the authorities and deal with them in detail, but if at
4 | any point you want me to, please do pause me and ask me to do so. The reason for
5 | that approach is that I don't think any of the legal propositions I take from the
6 | authorities are contested. It's the application of those authorities to this case that is in
7 | dispute.

8 | The first point is the nature and breadth of the tribunal's jurisdiction. As is clear from
9 | 102(5), it applies not just to documents given in disclosure and restrictions on the use
10 | by the receiving party. In the skeleton argument, you have that referred to in the
11 | context of the VISA litigation, in paragraph 16.

12 | I don't think any of this is dispute, so I'm not going to develop it any further. The core
13 | of the point is that, of course, where a document is disclosed to another party, then
14 | restrictions automatically attached to it, but the jurisdiction in 102(5) is considerably
15 | wider, and it doesn't only apply in circumstances such as that. So that's the first point.

16 | The second, and my primary reason --

17 | THE CHAIR: Well, it's not the 102 basic proposition, which is that where documents
18 | are provided to a party, their use is restricted to the proceedings, and unless certain
19 | tests are satisfied, 102 is the beginning and the end of it, and one only goes to
20 | confidentiality rings if the necessary tests are satisfied.

21 | But where you're looking at a prohibition, you say the jurisdiction is wider and can even
22 | take into account documents that have been, as we see, expressly referred to in the
23 | proceedings (overspeaking).

24 | MR JOHNSTON: (Overspeaking) court.

25 | THE CHAIR: Is that how you see it?

26 | MR JOHNSTON: Indeed, just to be clear, sir, the other limb of it is that it extends not

1 | just to documents that A discloses to B and B's use of them, but also A discloses to B
2 | and A's use of them. Because it's very broad, and it's a, candidly, very sensible
3 | jurisdiction of the tribunal, which is to say: in certain circumstances it may be
4 | appropriate to restrict use of a document. I don't think any of this is in issue.

5 | THE CHAIR: Yes.

6 | MR JOHNSTON: But that's the other aspect of it, because the ordinary way of thinking
7 | about it is: I've disclosed this document to you, and I need to restrain your use of it.
8 | We're in a somewhat unusual position here, which is: this document has been
9 | disclosed to my client, but it's the weaponisation of that document, improperly
10 | prejudicing the litigation, that gives rise to the application, and 102(5) is very clearly
11 | broad enough to encompass that.

12 | THE CHAIR: Yes. 102(1) is the general proposition --

13 | MR JOHNSTON: Yes, exactly, sir.

14 | THE CHAIR: -- I set out a moment ago. The question is: when does the tribunal need
15 | to go further and consider exercising the jurisdiction that it has under 102(5)?

16 | MR JOHNSTON: Yes.

17 | THE CHAIR: And that's what you are addressing me on now.

18 | MR JOHNSTON: That's precisely what I'm encouraging you to do, sir. That's
19 | absolutely the right way to capture it.

20 | My second point, and the primary reason for restraining the use of this recording, is
21 | that the use to which it has been and is being put goes beyond being seriously
22 | unattractive, and has become something that threatens the proper, fair conduct of this
23 | litigation. The claimant is seeking to litigate this issue in public. It has previously
24 | agreed to take the recordings down in 2024, and now, at the very point in the course
25 | of the litigation of which the witness evidence is being prepared, it appears again on
26 | the internet underneath the post, the purpose of which is to engender public

1 | commentary and to engage in criticism of Mr Hearn.

2 | It's important to recognise that the publication is putting it at its absolute lowest, in
3 | a highly prejudicial and acontextual manner. It doesn't say, "The relevant backdrop to
4 | this particular recording is X". It doesn't say, "This was a recording generated without
5 | Mr Hearn's consent, and clear and obvious breach of his expectation of
6 | confidentiality". So as well as giving no context, the recording is being used to whip
7 | up, and in my submission, manipulate public commentary on this case. In that context,
8 | that's why I made the point earlier about the claimant's failure to revert and say, "Yes,
9 | actually, we've sent this to newspapers before, encouraging them to comment on it".

10 | It's tolerably clear, in my submission, that at this point, the purpose of the
11 | publication -- or if I don't need to put it that high, at the very least, the obvious
12 | unavoidable effect of its publication -- was to put pressure on Mr Hearn at the point in
13 | time when it was known that he would be preparing his evidence. That is seriously
14 | prejudicial to this litigation. If we're in the Court of Justice -- and we're not in the
15 | Court of Justice and that may very well be a good thing -- this would be described as
16 | threatening the serenity of the proceedings.

17 | I don't need to use the word "the serenity of the proceedings". My submission is that
18 | it threatens the integrity of the proceedings, sir. It's obvious that the claimant places
19 | very considerable store by the recording, Mr Hearn will be giving evidence in relation
20 | to it. You can anticipate that. The evidence can be tested by cross-examination. But
21 | what the claimant is trying to do at the moment is to air its case in advance in the court
22 | of public opinion, where no proper reply could be given to it for the clear purpose of
23 | applying pressure to Mr Hearn and to the defendant.

24 | It's also very important to recognise that Mr Hearn is not going to be the defendant's
25 | only witness. There's no waiver of --

26 | THE CHAIR: Forgive me, Mr Johnston.

1 | MR JOHNSTON: Of course.

2 | THE CHAIR: How does that come about? Because that's the crux of it, isn't it?

3 | MR JOHNSTON: I'm sorry, sir. I missed that.

4 | THE CHAIR: How does that pressure manifest?

5 | MR JOHNSTON: It manifests itself, sir, in his willingness to attend and give evidence
6 | in relation to this matter, and in particular in relation to the phone call. It generates
7 | discussion and commentary online, or attempts to generate discussion and
8 | commentary online, in relation to this phone call, in advance of him coming to this
9 | tribunal to be cross-examined in relation to it. As well as seeking to deter him
10 | potentially from attending at all -- and that is particularly pertinent in relation to my next
11 | submission I'm going to make -- it is using this transcript as a way of engendering and
12 | creating pressure on Mr Hearn.

13 | Maybe it is. Maybe it's wholly serendipitous that it just happened that it was published
14 | at the very point -- having been taken down by agreement two years ago -- the very
15 | point at which witness evidence is being prepared in this case. If that's right, then the
16 | claimants have been extraordinarily unfortunate. We've all been very unfortunate by
17 | their very bad timing. We do say that might be the case. The claimant hasn't purported
18 | to put forward any explanation as to why this was put --

19 | MR QUINEY: (Overspeaking).

20 | THE CHAIR: Mr Quiney, you will get your opportunity. Please, you know the rules
21 | here.

22 | MR JOHNSTON: Sir, the point that I stress is that it's very important to recognise
23 | Mr Hearn is not going to be the defendant's only witness. There's no waiver of
24 | privilege here and I'm not giving evidence, but it is obvious that the defendant has
25 | been approaching other people within the snooker world to ask if they are prepared to
26 | give evidence at this point in time.

1 | It's been pointed out to me that that the followers of the Francis/Snooker Legends
2 | account comprise, in large part, people who are in the snooker world. The precise
3 | point in time at which this recording is put up, that is the point at which they are being
4 | asked, "Are you prepared to give evidence?" I'll put it no higher than to say the risk of
5 | being blackballed -- which I now realise is possibly a pun in this context,
6 | unintentionally -- and publicly attacked by Mr Francis on his social media platforms is
7 | something that anybody within this industry is likely to be well aware of, and it's highly
8 | likely to be a material factor in whether or not they are prepared to put themselves in
9 | the firing line and come and give evidence in this case. We say that is a really serious
10 | problem for the tribunal. That's why the application was made very quickly, and that's
11 | why, at least in material part, the defendants D1 and D2 are really concerned about
12 | this.

13 | THE CHAIR: Am I right in understanding it in this way, Mr Johnston, that your case is
14 | that: yes, it was published before, but in a limited way.

15 | MR JOHNSTON: Yes.

16 | THE CHAIR: And whatever is the case about whether it was published before, and
17 | whether that means as a matter of law it has confidentiality or not, looking at it through
18 | the prism of 102(5) --

19 | MR JOHNSTON: Yes.

20 | THE CHAIR: -- the question is: why is a recording, which plainly is relevant to the
21 | issues in this case, being published by the agent of the defendant --

22 | MR JOHNSTON: (Overspeaking).

23 | THE CHAIR: -- in public; what's the purpose of that? And given the fact that the
24 | recording and the contents of it are germane to the issues in this case, there can be
25 | no good reason for it. And therefore, if ever there was a case for the tribunal to
26 | exercise its power under 102(5) this is it, because it can't do the claimants any harm,

1 | and it just preserves the playing field; is that in a sense your case, Mr Johnston?

2 | MR JOHNSTON: Absolutely the case, sir. Our position is that we simply want a level
3 | playing field going into trial. This is going to be a point that can be canvassed and can
4 | be discussed at trial, but it's a question about, looking at it through the lens of
5 | a prospective witness, not only do they have to volunteer to be
6 | cross-examined -- which nobody would be enthusiastic for doing unless they're very,
7 | very brave -- but also they have to put themselves in a position where they are at risk
8 | of being put in the firing line by reference to their character and being attacked.

9 | THE CHAIR: Yes.

10 | MR JOHNSTON: So that is the unavoidable --

11 | THE CHAIR: Yes, in other words, it's not an empty submission that there could be no
12 | good reason for the publication. It's not an empty submission because you say, "Look
13 | at the harm that could be done if it is published".

14 | MR JOHNSTON: Exactly so. So we say on the one hand, very substantial prejudice.
15 | On the other hand --

16 | THE CHAIR: Yes. Yes, I see.

17 | MR JOHNSTON: -- (overspeaking) stands to benefit.

18 | THE CHAIR: I see, I see.

19 | MR JOHNSTON: That's what's at the guts of this, if I can put it this way, when one
20 | assesses it.

21 | THE CHAIR: Yes. So you say I have the jurisdiction under 102(5). You say this is an
22 | appropriate case for the exercise of that jurisdiction for the reasons that you have just
23 | taken me through.

24 | MR JOHNSTON: Yes.

25 | THE CHAIR: You can buttress that with a confidentiality argument, which you're no
26 | doubt going to make in a moment. Can you just help me with this? I can see how

1 | I can make an order under 102(5) if I was persuaded in relation to the claimant, what
2 | jurisdiction do I have to make the orders that you seek in relation to Mr Francis?

3 | MR JOHNSTON: So let me turn back to the appropriate page at the end of the
4 | application. It's 803. So the first order is obviously in relation to the confidentiality ring
5 | itself.

6 | THE CHAIR: Yes. You say "designated as confidential". The purposes of the
7 | confidential --

8 | MR JOHNSTON: Put it in the ring; that's option one.

9 | THE CHAIR: We haven't touched on that argument yet. We'll come to it.

10 | MR JOHNSTON: Yes, exactly so. Then we do rely, in the alternative, on CAT rule 19,
11 | which I'll touch on only very lightly.

12 | THE CHAIR: Yes. But first of all, you make the 102 case, the one that we have just
13 | been discussing, and you make that -- you say, that you want an order from me in
14 | relation to Mr Francis. I'd just be grateful for your assistance on how you think I have
15 | the jurisdiction to do that.

16 | MR JOHNSTON: You may be right there, sir. Let me. Reading 102(5):
17 | " ... on the application of a party ... make an order restricting or prohibiting the use of
18 | any document provided in the course of the proceedings."

19 | That would ordinarily bite on a party. So if and to the extent you say, "I can make this
20 | order vis a vis the claimant and Mr Francis wouldn't need to be named", that is partly
21 | why, if I can put it that way, the third order is sought as well. If the claimant's position
22 | is that if an order pursuant to 102 is made, that would result in the taking down, if I can
23 | put it that way -- because it would be a use of the recording other than for the purposes
24 | of these proceedings -- then it may not be necessary to make a specific order in
25 | respect of Mr Francis. So I see the thrust of that, sir, and I'll hear my learned friend
26 | on whether or not, if such an order were made --

1 THE CHAIR: Yes.

2 MR JOHNSTON: -- he would take the rather bold position, which is, "Well, you're only
3 binding the claimant, so Mr Francis is going to do what he wants".

4 THE CHAIR: Yes.

5 MR JOHNSTON: And if that were the case, then my submission would be that we
6 would be -- it would be appropriate to have the third. I rather hope there would be an
7 outbreak of common sense, and that the claimant would take the view that an order in
8 respect of the claimant would be something that Mr Francis would --

9 THE CHAIR: So, Mr Johnston, you're very elegantly skirted around the thrust of my
10 question, which I know you appreciate. That's whether I have the power and the
11 jurisdiction to make an order against Mr Francis under 102.

12 I'm going to say to you that for the moment I don't think I have, and I don't hear you as
13 being keen to persuade me that I do. I don't see, similarly, that I have the jurisdiction
14 to make the order in relation to Mr Francis that you seek at number 3 under 19, and
15 I just observe that in rule 19 at 2(u), I may give directions for hearing a person who is
16 not a party, where in any proceedings it is proposed to make an order to give
17 a direction in relation to that person.

18 But at any rate, audi alteram partem and so on, I would have thought that Mr Francis
19 would be entitled to be heard before I made any order against him, wouldn't you think?

20 MR JOHNSTON: I suppose I'd say two or three things in answer to that, sir. Firstly,
21 it's important to recognise that he is a director of the claimant.

22 THE CHAIR: I see that, and hence the use of the word "agent" earlier when I was
23 referring to him.

24 MR JOHNSTON: Yes. We do say, looking at the way the publication has been made,
25 it's plainly been made in his capacity as an officer of NST. And that's because it says,
26 "If you want to know why WSL has brought this claim".

1 THE CHAIR: Yes.

2 MR JOHNSTON: If, in relation to 102, there is -- you say you have concerns about
3 whether you have jurisdiction to make an order vis a vis Mr Francis, then either the
4 third or, of course, the first under 101. That is the other option. He is a party to the
5 confidentiality ring, as I understand it, and so were you to put it into the ring, then he
6 would be bound by that, sir.

7 So I don't think you're left without routes, if I can put it that way.

8 THE CHAIR: If you are hanging your hat on that point, I suspect I would be wanting
9 to hear from you on whether I ought to direct that he be heard by the tribunal.
10 Although, of course I would hear Mr Quiney first, as I will on all of these points. But
11 unless you wanted to put authorities before me in relation to whether the agent, in the
12 sense of the director of the party, could be bound by an order against that
13 party -- because of course I do see that it would be odd, wouldn't it, if there was an
14 order against the party but that could be circumvented, because the party is
15 a company, and its director then took the step.

16 So if you wanted to put authorities before me on that point, I would hear you, of course,
17 but my starting point is that Mr Francis would need to be heard before I would make
18 any order against him. And for the moment, I don't see that I have the jurisdiction.

19 MR JOHNSTON: Sir, let me come at that then two different ways, very briefly, before
20 I move on to confidentiality. The first would be to say that I do say that if an order is
21 made prohibiting the claimant from using a document in this manner, and the director
22 of the claimant uses the document in a manner prohibited vis a vis the claimant, acting
23 in his capacity as a director, then we do say that would be a breach. And --

24 THE CHAIR: I suspect you would, and it would not surprise me if that matter came
25 back before this tribunal in such circumstances. Without prejudging it, it wouldn't
26 surprise me if that did.

1 | MR JOHNSTON: And we do say, secondly, that the manner of --

2 | THE CHAIR: But that's where you are.

3 | MR JOHNSTON: -- the publication at the moment is that this has been published in

4 | his capacity as an agent of the claimant.

5 | THE CHAIR: Yes.

6 | MR JOHNSTON: If you want to know why WSL Limited is issuing this claim, here's

7 | the answer.

8 | THE CHAIR: Yes.

9 | MR JOHNSTON: So I say squarely that we're in that territory. So an order vis a vis

10 | Mr Francis specifically doesn't need to be made, because an order vis a vis the

11 | claimant is sufficient to bind him, including for the purposes for which he has used the

12 | document.

13 | THE CHAIR: Yes. Up to a point, Mr Johnston, I can see how you can invoke or rely

14 | upon the fact that it was Mr Francis who published it. In support of your application to

15 | me to exercise my power under 102(5) to make a prohibition order against the

16 | claimant, where I think you have to stop is when you ask me to make an order against

17 | Mr Francis himself, a nonparty, for all the obvious reasons, unless you want to

18 | persuade me that I can see a common identity. But for the moment, I'm not persuaded

19 | that I can.

20 | MR JOHNSTON: You have my submission, which is that you don't need to at the

21 | moment, because an order vis a vis the claimant --

22 | THE CHAIR: Yes, you would be satisfied by that and satisfied with: if Mr Francis took

23 | the steps, you would come back in the way that you outlined.

24 | MR JOHNSTON: If Mr Francis does not --

25 | THE CHAIR: Yes, I see.

26 | MR JOHNSTON: -- remove the publication following an order from this tribunal to do

1 | so --

2 | THE CHAIR: Yes.

3 | MR JOHNSTON: -- then he would be skating on extraordinarily thin ice. Let me put
4 | it that way, sir. I apprehend that further application wouldn't need to be made -- I'd
5 | rather hope wouldn't need to be made.

6 | THE CHAIR: I'm not going to, for the obvious reason, comment on that. But
7 | I understand your submission.

8 | MR JOHNSTON: So that leads me on to the third key plank of the submissions, which
9 | is that the recording is confidential in nature.

10 | THE CHAIR: Yes, please.

11 | MR JOHNSTON: As to that, first, the circumstances in which it was generated lent it
12 | a confidential character. Mr Francis did not seek Mr Hearn's consent to record the
13 | call; it was recorded covertly. The starting point, therefore, is that it is confidential in
14 | nature. Publication of it is a breach of confidence. If you have my skeleton, sir -- I said,
15 | I don't propose to turn all of these references up, but I can if you want me to.
16 | Footnote 4 on page 10:

17 | "DNL. Court of Appeal. On the face of it, the publication of a covert tape recording of
18 | a private conversation involves a breach of confidence." [as read]

19 | That is the starting point. Now, there may be circumstances in which it is or is not
20 | appropriate to restrain publication, but that is the starting point, that it is a breach of
21 | confidence.

22 | If you also see from the next footnote over the page, footnote 5, ZXC, and again, I'm
23 | ready to assist on the details of any of these cases to the extent it assists. But this is
24 | important, because it says the circumstances in which a recording is made is relevant.
25 | Then what it sets out is what's known as the Murray factors, and the Murray factors
26 | are, effectively, the question is firstly: is it confidential in nature? Answer: yes. Then

1 | secondly, there is a weighing exercise.

2 | What's weighed up in this context is the balance between the interest in publication, if
3 | I can put it that way; or to put it another way, Article 10, right of freedom of expression
4 | on the part of the claimant, against -- in this context -- Article 8, privacy and
5 | confidentiality; and Article 6, the opportunity to have a fair trial.

6 | We do say that this case, where those factors are weighed up, is compellingly in favour
7 | of the application; because the public interest, or the private interest of the claimant in
8 | having that publication in the public domain, simply doesn't weigh, or bears almost no
9 | weight; whereas on the other side, the prejudice arising out of it is very substantial.
10 | We do say, applying that two-stage test, that this clearly weighs in favour of the
11 | application.

12 | The second aspect of the argument in relation to confidentiality is that the conversation
13 | itself is broadly commercial in nature. That's a factor again that weighs in favour of
14 | restraining indiscriminate public use. Mr Hearn has a reasonable expectation his
15 | conversation was confidential and would be treated as such.

16 | Thirdly, we know it's confidential in character, because the claimant has previously
17 | taken it down when asked to do so. It said, "We've got it under tight restrictions". Then
18 | it's published it, in breach of that. Then it's taken it down when asked to do so, and
19 | then it's decided to weaponise it again in the way that it has at this point in time.

20 | Fourthly, to unpack a little bit more the weighing of those factors that I just outlined for
21 | you. My submission is that there is zero, or next to zero, weight to be attached to the
22 | claimant's desire freely to publish an illicitly recorded phone conversation obtained
23 | without consent, a fortiori, when it's been deployed at this point in time for forensic
24 | advantage that it is going to obtain in the context of this litigation. When that is weighed
25 | against the confidentiality of the content itself, WSL has very serious concerns about
26 | the misuse of this document in this litigation. The answer, in my submission, to that

1 | weighing exercise is very clear indeed.

2 | The fifth and final point in my submissions is to consider what the claimant's case
3 | against this application is, and with respect, it is not particularly compelling. First, the
4 | claimant says: "Don't worry, Mr Hearn's a tough old sort. He won't mind".

5 | There's a legal answer to that, and there's a human answer to that. The legal answer
6 | to it is in footnote 3 of my skeleton argument, and it's the Hislop case. This is a case
7 | in which Ian Hislop, famously the most sued man in British history, was preparing for
8 | a libel trial, and in anticipation of that trial, published articles in Private Eye about one
9 | of the witnesses. The submission was put: well, this witness is -- quote from the
10 | footnote -- "a dogged pursuer of litigation". The court says: that's not the right
11 | approach. That's not the right approach to take, and you'll see the answer. The proper
12 | approach, having not heard the witness, was to treat them as, "neither unduly sensitive
13 | nor unduly robust".

14 | So we do say that this is the wrong approach in law to say, "Well, we think Mr Hearn
15 | is a bit of a tough old dog, and so he won't mind, and he's not going to be intimidated".
16 | We do say that argument, that submission, has no weight at all. But more importantly,
17 | that point doesn't bite at all vis a vis the other potential witnesses who will be giving
18 | evidence at trial, and the risk they face of, "If I'm prepared to be a witness, am I going
19 | to be the next person who's being criticised on Twitter?"

20 | THE CHAIR: Yes.

21 | MR JOHNSTON: I'm very careful, sir, not to put the point. I'm very careful not to stray
22 | into anything that's privileged or to give evidence. But you have the point, I think.

23 | THE CHAIR: Yes.

24 | MR JOHNSTON: The second argument made against me is to say, "Well, it's not
25 | confidential anyway, because it was published in 2024 and it's been commented on in
26 | the press in 2025". I do say that point goes nowhere, because it's true that the

1 | claimant can identify two news articles that set out brief citations from the recording,
2 | but that's plainly not the same as publishing it online in full. Further, the claimant has
3 | not taken the opportunity to deny that it specifically wrote to those papers, provided
4 | them with the transcript, and procured comment on the same.

5 | Really, what this submission amounts to saying is: "I've breached my duty of
6 | confidentiality in the past, and I am misusing documents in this case to litigate it in the
7 | court of public opinion. But I've already done it now, so there is no point in restraining
8 | me further or in the future". We do say that that is a submission that should be given
9 | very short shrift.

10 | THE CHAIR: Well, Mr Johnston, I can see how -- and I don't mean to put you off your
11 | stride --

12 | MR JOHNSTON: Not at all.

13 | THE CHAIR: -- I can see how that argument carries force in relation to the 102(5)
14 | point. But even if one accepts that the conversation was entitled to protection in the
15 | law of confidence, because of the nature of the phone call and the contents of it, the
16 | answer that's given is: "Well, even if that were so, the fact is it's been published, and
17 | Attorney-General v Guardian (No 2), and so on. Once the cat's out of the bag, the
18 | cat's out of the bag and it can no longer be deserving of protection in the law of
19 | confidence".

20 | That's the case, and it seems to me that the argument you're making is, "Well, it was
21 | published, but only a little bit; and therefore, just overlook that and treat it as if it had
22 | not been published". Is that the case you're making?

23 | MR JOHNSTON: I'm very grateful. That's not the case that I'm making, sir. The case
24 | that I'm making is: there has been a breach of confidence in the past which has been
25 | scrambled back, if I can put it that way, in 2024.

26 | THE CHAIR: Well, the breach of confidence because there was a publication.

1 MR JOHNSTON: In 2024.

2 THE CHAIR: That then takes you to Attorney-General v Guardian (No 2), doesn't it?

3 MR JOHNSTON: Well, sir, I don't think the position of Attorney-General v Guardian
4 (No 2) is that once there has been any publication of any kind, all confidentiality is lost
5 forever. It's a question of weighing it. It's a question of asking what confidentiality
6 remains. Looking to the newspaper articles themselves, there is one short quote from
7 one of them, and some slightly fuller quotes from another. What we haven't had is the
8 full transcript, and there's obviously a substantive difference between snippets and the
9 full transcript. Then the final breach of confidentiality is the claimant's breach of
10 confidentiality. So the claimant is saying, "Well, I'm terribly sorry, the ship has sailed
11 and therefore there is no point. There is no need in restraining me in circumstances
12 where I have breached confidentiality in this respect".

13 That is why I say that that is -- let me put it this way -- it is a deeply, deeply unattractive
14 submission to be making. It goes into the balance when asking the question whether
15 or not there is a legitimate freedom of expression right to protect in these
16 circumstances, and it also goes to the core of my primary submission was looking at
17 the way this document is deployed in the context of this litigation, in the context of
18 102(5). At the very least, the fact of confidentiality improperly breached; then the
19 improper breach being relied upon is a matter that goes to the court's assessment
20 under 102(5) as to whether or not it should make an order. So even if you were to be
21 against me and to say, "Well, look, there's just no confidentiality in this, Mr Johnston,
22 anymore at all", 102(5) anticipates that.

23 THE CHAIR: Yes.

24 MR JOHNSTON: It anticipates a scenario where it's been read to and referred to, and
25 the fact that it was confidential, even if it were right, sir, is a point that weighs very
26 heavily in favour of making the order.

1 THE CHAIR: Yes. I see it in relation to the 102(5). I was asking you about how you
2 made your case in relation to the confidentiality ring application, that limb of your
3 argument.

4 MR JOHNSTON: (Overspeaking).

5 THE CHAIR: That's where I was taking you to there. I have already, as you know,
6 accepted that your 102(5) argument doesn't need this point.

7 MR JOHNSTON: Yes.

8 THE CHAIR: But here you are arguing: put 102(5) to one side. This is sensitive
9 information, to use the words of the practice direction language, and this should be
10 treated as sensitive because there is a public interest in the confidentiality; that's how
11 you make your argument because of Lord Phillips, the Master of the Rolls in DNL. If
12 there is that public interest, you satisfy the first test of sensitivity, and you say I should
13 go on and treat it as confidential and make it subject to the confidentiality ring; and
14 that way you get an order that it's not used otherwise for these proceedings, and it's
15 kept to the people in, indeed, the inner ring, if you got that far. That's your case as
16 I understand it.

17 MR JOHNSTON: The thrust of the case. Precisely, sir.

18 THE CHAIR: Yes.

19 MR JOHNSTON: I don't say -- it's obviously not irrelevant to 102(5). It's a very
20 important further contextual factor in 102(5) that we're not just talking about any
21 information. We're actually talking about confidential information that has been
22 improperly obtained, and then, in my submission, improperly deployed.

23 THE CHAIR: Yes.

24 MR JOHNSTON: So we do say that that is part of the context there. But for 101,
25 you're right, sir. My case is: it is sensitive information, and it is the use of it in an
26 ongoing manner -- there is an ongoing breach of the confidentiality of that information,

1 | let me put it that way; and I don't accept that that some publication is sufficient to put
2 | us in a position where it has lost all confidentiality. I don't accept the proposition that
3 | it's wholly binary in that way.

4 | I suppose I deploy this argument twice, if I can put it that way, and I'm going to take
5 | (overspeaking) --

6 | THE CHAIR: Yes.

7 | MR JOHNSTON: -- this afternoon. I deploy it under both 102 and 101.

8 | THE CHAIR: Yes.

9 | MR JOHNSTON: I do say that it's enough for 101, and it's certainly very significant.

10 | Even if you're against me on loss of confidentiality itself, it's very significant for 102.

11 | The third point my learned friend makes is that it's been referred to in open court. The
12 | short answer to that is that it hasn't been referred to in any detail, only its existence.

13 | Furthermore, 102 the rule, at least, is expressly designed to deal with that. But the
14 | fact of somebody saying in court that there is a document of this kind does not mean
15 | that the totality of the transcript and all of its content has lost confidentiality.

16 | Fourth, it said the recording was only ever made by Mr Francis to protect himself. It's
17 | a difficult suggestion to respond to, but in any event, it's a surprising suggestion. But
18 | suffice to say, even accepting that at its highest and as true, that could not provide any
19 | possible justification for the use to which it is now being put, nor could it change the
20 | confidential nature of the information.

21 | So if it is said against me, "Well, it was necessary to record this", that is obviously not
22 | accepted. It may be an issue at trial, but I'll take the point on the chin and against me,
23 | and I'll say, "What does it go to?" It couldn't possibly be a justification for either the
24 | ongoing breach of confidentiality vis-à-vis this information, or the extraordinary use to
25 | which it is now being put, which has no connection at all to its purported justification
26 | at the point of creation.

1 Fifth, it's said, "Look, this is a question between Mr Hearn and Mr Francis; it's got
2 nothing to do with these proceedings. If Mr Hearn has a concern, he should come and
3 he should bring injunctive relief in another jurisdiction". With respect, that's
4 a submission that goes only so far and not very far at all. Of course, Mr Hearn could
5 have brought proceedings for breach of confidence, and if he'd done that, it might have
6 been in a different jurisdiction to this one. But the existence of a parallel entitlement
7 on a different basis, overlapping but not the same, on the part of Mr Hearn, is no
8 answer to the thrust of this application, because at the core of this application, in
9 particular vis a vis 102, is the integrity of these proceedings, and that's not Mr Hearn's
10 concern.

11 THE CHAIR: Yes.

12 MR JOHNSTON: So we do say, taking a step back, this application is made in relation
13 to a document that's confidential in nature, has been disclosed, is being used for
14 particular purposes in these proceedings. So we find it a rather remarkable
15 submission that the only route by which an application of this kind could have been
16 made was by Mr Hearn. If the point against him that he could have made an
17 application as well, the answer to that is: well, of course he could have made an
18 application as well, but D1 and D2 has done that. This matter is before the tribunal.
19 It squarely sees it as litigation, so we don't think there's any force attaching to that at
20 all.

21 THE CHAIR: Yes.

22 MR JOHNSTON: Sir, I'm conscious that I've taken a reasonable portion of time. I'm
23 very grateful. If I could just turn to Mr Rabinowitz for a moment. (Pause)

24 Sir, unless I can insist any further, those are my submissions.

25 THE CHAIR: Very helpful. Thank you very much, Mr Johnston. Yes. Mr Quiney.

26 MR QUINEY: Sir, are we looking to give the transcribers a rest, or shall I just press

1 | on?

2 | THE CHAIR: Let me just consult with the ...

3 | Thank you very much, Mr Quiney, for that reminder. I might otherwise have

4 | overlooked it. Yes, we will take ten minutes now for the transcribers to have a bit of

5 | a break.

6 | (2.55 pm)

7 | (A short break)

8 | (3.11 pm)

9 | MR JOHNSTON: Please allow me to just address you for literally 30 seconds in

10 | relation to one point. I'm slightly self-conscious about it because I twice wrote the

11 | cheque but never cashed it.

12 | In relation to the publication of correspondence in the matter, what's been said by the

13 | claimant is -- that was a reference to their correspondence in relation to a different

14 | dispute they had with Sheffield City Council. So they say we're going to publish that

15 | correspondence, they're not saying there is an ongoing intention to publish the

16 | correspondence in this matter between the solicitors.

17 | THE CHAIR: Yes.

18 | MR JOHNSTON: That must be right, because that's within the definition of confidential

19 | information in the confidentiality order in any event. But I twice said, "I'll come back to

20 | this and round the point out", and I didn't. So I just want to make sure out of fairness

21 | the claimants that I've said that and close the loop.

22 | THE CHAIR: Thank you.

23 | MR JOHNSTON: I'm very grateful.

24 | THE CHAIR: Yes. Mr Quiney.

25 | Submissions by MR QUINEY

26 | MR QUINEY: Good afternoon, sir. Dealing with matters, I think there's a need for

1 | some clarity here to understand the application I'm here to meet and, sir, you're here
2 | to decide. The first port of call for that is the letter that we were looking at earlier,
3 | which is familiar territory now, which is that written by Livida.

4 | We find the application at 803, or at least the three elements of the relief sought. It's
5 | right to say that at 803(i), one sees that there's reliance on CAT rule 1 -- essentially,
6 | that's saying we want to bring the Hearn transcript call into the confidentiality ring.

7 | Further, we see under (ii), they want to appeal to 102, specifically 102(5) as elaborated
8 | on today, and have an order in addition that there should be a prohibition. But to be
9 | fair to my learned friend, I do say there's no jurisdiction for the orders he seeks against
10 | Mr Francis today, but of course, Mr Francis is a signatory to the outer ring of the
11 | confidentiality agreement, so I have to bear in mind, if I need to make an order over
12 | under 101, that agreement. And with respect to 102, the subject matter there is the
13 | document of the people who might have it -- if there's an order regarding the use of
14 | the document --

15 | THE CHAIR: Yes.

16 | MR QUINEY: -- if it's good against the world, the world includes Mr Francis.

17 | THE CHAIR: Yes, well, I'd suspect that Mr Francis was a willing signatory to the
18 | confidentiality order. That was not an obligation imposed upon him without him having
19 | been given the chance to argue his case. Thank you.

20 | MR QUINEY: And just on the question of the confidentiality ring, really, this is the
21 | essence of the issue. My client, when disclosing material, has actually put everything
22 | outside the ring, including their document, the transcript and the Hearn call.

23 | THE CHAIR: Yes.

24 | MR QUINEY: What my learned friend's clients have done is put everything in the ring,
25 | including their copy of the transcript and the Hearn call. They've a kind of blanket
26 | approach to confidentiality and disclosure. So what you have is a tussle between two

1 | parties, one saying it is confidential, the other saying it isn't confidential. Indeed, that
2 | explains the approaches Mr Francis has taken to the use of this material.

3 | Just going to the clarity that's needed, and if one considers 101 and 102.

4 | THE CHAIR: Although forgive me, Mr Quiney, whilst he can make his case based on
5 | confidentiality in exactly the way you just recited it, he also makes his case based on
6 | improper use under 102(5).

7 | MR QUINEY: Yes, and that's why there are two limbs there.

8 | THE CHAIR: Yes.

9 | MR QUINEY: But as my friend has rightly said, an ingredient of 102 is his
10 | confidentiality assertion, and as we will see shortly, the discretion is not to be used
11 | lightly. There are there is useful guidance, certainly in the arena of the CPR with the
12 | equivalent provisions, as to how one approaches this.

13 | THE CHAIR: Thank you.

14 | MR QUINEY: So with respect to 102, obviously 102 is relating to subsequent use of
15 | documents. Traditionally that would be, for example, if there was a full-blown trial,
16 | documents used in that trial, and then one of the parties wants to use those documents
17 | afterwards.

18 | We accept 102(5) has a slightly different approach, and a wider approach, and we'll
19 | see why when we look at the case law on that. But it is limited in application and
20 | should be rarely and lightly used, is our position. So I think, unlike my learned friend
21 | suggested, there is a difference between us on the law, and there's definitely
22 | a difference in application of this case.

23 | So if one can look at the circumstances briefly, and just picking up the point my learned
24 | friend just mentioned. Of course, what's said in the letter from those instructing me,
25 | which starts at 820, is that the publication of the audio recording was as a result of
26 | focusing on the question of what was happening at the Crucible at the time, the

1 | location of the World Snooker Championships.

2 | This explanation starts with section 2, which is 823 of that letter. Just as an aside, it's
3 | not right to say that the previous publication was done by -- he was called an
4 | "associate", or described as an "associate of Mr Francis", but in fact a journalist. That
5 | was in 2023.

6 | Then we come to the background of the publication of the call in 2026 at 3.1 onwards.
7 | That sets out in detail that the reason for publication and the timing of publication is
8 | because at that time, there was a potential brewing issue between NST, Mr Francis
9 | Sheffield City Council, relating to the way in which it had been put forward that World
10 | Snooker had come to some form of final agreement with Sheffield City Council and
11 | the Crucible Theatre as to the hosting of the World Snooker Championships then and
12 | also in the future. That's why it was requested.

13 | Indeed, the post you have been taken to when Mr Francis says, "People have been
14 | asking why there is a dispute here, well, here's the reason why". So to suggest or
15 | characterise it as some sort of weaponisation at a crucial point within this litigation, we
16 | would just profoundly disagree with. The reason and the rationale for that is the
17 | evidence is set out in this letter for that.

18 | We'll come on to whether or not the concerns expressed by my learned friend are
19 | realistic or supported by evidence. We will be saying they're not realistic and not
20 | supported by evidence. That's important.

21 | THE CHAIR: Yes. This may be another foolish question, but I'll ask it nonetheless.
22 | Is it still your case that you resist the notion of being restrained from publishing the
23 | recording and using the recording -- that's your clients I'm referring to, not
24 | Mr Francis -- otherwise than for the purposes of these proceedings?

25 | MR QUINEY: When you're asking that question, obviously it could cover a whole
26 | variety of different instances. And I'm not here necessarily to speak for Mr Francis in

1 | that capacity.

2 | THE CHAIR: Put Mr Francis to one side. I'm only asking that question to discover
3 | your position for your clients. As you know, the order is sought under 102(5) to, if you
4 | like, fortify the general proposition under 102(1) and to make an order that you be
5 | prohibited from publishing the recording and using it otherwise than for the purposes
6 | of these proceedings; do you still resist the making of that order?

7 | MR QUINEY: Absolutely resist the making of these orders that are sought. And
8 | maybe I can answer the question --

9 | THE CHAIR: That order.

10 | MR QUINEY: The prohibition order under 102(5).

11 | THE CHAIR: Yes, the order I have just recited, you resist that?

12 | MR QUINEY: We resist both the 101 order and the 102(5) order. You resist them and
13 | I'll explain when appropriate here. To answer your question in a way that I can,
14 | because obviously I can't speak for what people do with the documents or whatever:
15 | the consequence of this document not being confidential, and the consequence of
16 | there not being an order under 102(5) is that it is a document that has been and
17 | remains in the public domain and can be referred to by Mr Francis, by a journalist, by
18 | anyone, for example, who requests the pleadings, which has an annex to it, which is
19 | the document, or quotations from it.

20 | Indeed, anyone who wants to quote from the transcripts that other hearings or earlier
21 | hearings, they're free to do that. If, for example, at the trial, Mr Hearn is taken to that
22 | document and cross-examined, the transcript will be available; people will be free to
23 | refer to it, because that is the consequence of: (a) it not being confidential; and (b) not
24 | being prohibited.

25 | I hope to persuade you that an order under 102(5) is not appropriate. What I can't say
26 | to you, because I don't know -- that we can give you evidence -- is whether there's any

1 | present intention by someone to disseminate this document. What I can say is: in the
2 | absence of the orders sought, people would be free to do so. If someone had
3 | downloaded the document, the audio recording, when it was first published on the
4 | internet or published again, or referred to by the journalists, or whether it's in the
5 | possession of those journalists, there's nothing to stop them from using it.

6 | THE CHAIR: Forgive me, Mr Quiney. I don't think it would be giving evidence if you
7 | were to explain to me whether your client had a current intention, a present intention
8 | to publish the recording, or wished to be free to do so at a future point.

9 | MR QUINEY: The reason I can't answer that question is because I don't know the
10 | answer.

11 | THE CHAIR: You don't have those instructions. I understand. But what you are telling
12 | me -- and I want you expressly to put confidentiality, any question of confidentiality to
13 | one side -- I'm asking you only in relation to whether I might make an order. I'm sorry.
14 | I am being asked to make an order prohibiting the use by your client of the recording.
15 | Do you still resist that, even if confidentiality is no part of the making of that order?

16 | MR QUINEY: Yes, I resist it, because that order should not be made today.

17 | THE CHAIR: Okay. Thank you.

18 | MR QUINEY: I say that for two reasons, one of which I'm about to elaborate on. It's
19 | not just a question of what is good for my client or not good for my client. This is
20 | a question of open justice. That's the fundamental thing that's been missing from my
21 | learned friend's submissions, but as we will see, the fundamental paramount starting
22 | point that these questions have to consider, which is why orders of this type are very
23 | rare, and we'll see that.

24 | If I could take you to the case of Chodiev, which is in the bundle of authorities at 415.

25 | (Pause)

26 | This is the decision of Mr Justice Leggatt, as he was, in the case of Chodiev. This

1 | was, as we can see from paragraph 1, an application by the defendant seeking:
2 | "... an order under CPR31.22(2) restricting the use of documents disclosed in these
3 | proceedings, including documents read to and by the court and which were referred
4 | to at an earlier hearing held in public."

5 | We would say equivalent. Helpfully, the equivalent provisions for the CPR are set out
6 | at paragraph 13, which is at page 418.

7 | One can see there at 31.22, subparagraph (2), essentially the same provisions as the
8 | 102(5) in this case.

9 | THE CHAIR: Yes.

10 | MR QUINEY: The reason why I'm taking you to a CPR authority is because it's
11 | actually the main helpful authority on this, and more importantly, there doesn't seem
12 | to be a body of case law in this court as to the exercise of 102(5) with respect to this
13 | sort of prejudicial argument.

14 | The majority of the cases -- and we'll look at Sainsbury's in a minute, (inaudible)
15 | MasterCard or Visa litigation, deal with, for example, "I want to use other documents
16 | from other cases to bolster the case that we're dealing with"; which is different from
17 | here, which is talking about the utilisation of documents (inaudible).

18 | THE CHAIR: Yes, hence its prior production in that case. Yes.

19 | MR QUINEY: Precisely. So what one sees is Mr Justice Leggatt helpfully deals with
20 | a number of points, and I'm just going to take you on a journey through this, if I may.

21 | At paragraph 14 through to 16, there was a submission made by Mr McQuater in that
22 | case that, well, actually what that CPR provision and the equivalent wording in this is
23 | focused on is purely in an instance where A receives a document from B, then wants
24 | to use B's document; not, A has its own document which it provides to B, and then
25 | wants to use that document for collateral or subsequent use. Mr Justice Leggatt, to
26 | be fair to my learned friend, does say that actually it isn't quite as binary as that or as

1 | limited as that.

2 | So it is open to my learned friend to point to 102(5) case and seek its assistance with
3 | respect to a document that was (inaudible) and created. However, that is nonetheless,
4 | I say, an important question or issue, a factor that will go into the mix, so to speak,
5 | when exercising the discretion by this court. Indeed, in the majority of the cases that
6 | we'll be looking at, the court considers the collateral use of documentation or questions
7 | of confidentiality or questions of privacy, and actually nonetheless comes to a decision
8 | that the importance of open justice is so overweening that nonetheless disclosure
9 | should be permitted.

10 | If one looks at how one approaches the question of how to exercise the discretion, we
11 | can see he sets out helpfully at the starting point of paragraph 19 --

12 | THE CHAIR: Forgive me, Mr Quiney. Just before you carry on there, where do you
13 | say the line is, then, between the general proposition that one sees at CAT
14 | rule 102(1) -- you must only use documents for the purposes of the proceedings -- and
15 | what you say is an open justice principle?

16 | MR QUINEY: The question regarding that boundary is essentially twofold. I don't
17 | know if you've got a copy of 102.

18 | THE CHAIR: Yes, I do. Yes.

19 | MR QUINEY: I'm grateful.

20 | 102, 102(1), 102(2), and 102(5) are doing materially different things, but within the
21 | same context, which is: what do with documents outside the proceedings that have
22 | been generated or disclosed within?

23 | The open justice element comes in clearly when one considers the exceptions to 102;
24 | and the exceptions to 102 -- sorry, 102(1) -- are 102(2)(a). 102(2) says:

25 | "Except where a document or part of document has been provided within
26 | a confidentiality ring, the restriction in paragraph (1) does not apply ... if

1 (a) subject to paragraph (5), the document has been read to or by the Tribunal ['by' is
2 important] or referred to, at a hearing that has been held in public ..."

3 So when we're dealing with the question of open justice -- and we'll come on to see
4 the authorities explaining the depth and breadth of that principle -- if this document,
5 the Hearn call document, has been read by this tribunal, as I anticipate it has, and
6 I have referred to it in open court, it is important that that is maintained to preserve the
7 integrity of the justice system, and also to be fair to the parties. In a sense, it's very
8 similar to the confidentiality question. You can't put the genie back in the bottle. That's
9 out of the bag.

10 That's why the starting point here is open justice, once we've crossed that line. If it
11 was purely the case -- my Lord can see that it isn't -- that for example, this document
12 was simply in the possession of Mr Francis, my learned friend might have a better
13 argument. Not a complete argument, but a better one. But the fact of the matter is:
14 it's in the pleadings; attached to the pleadings; posted in the pleadings; exhibited by
15 my learned friends' solicitors in their witness statements; I've referred to it and I've
16 read from it in open court and broadcast; and indeed, it's been read by you. That's
17 why the principle of open justice is engaged in this case.

18 If I could take you to how that principle works.

19 THE CHAIR: Yes. That's 102(2)(a). What do you say about 102(2)(c)?

20 MR QUINEY: Well --

21 THE CHAIR: Do you say that can't have any relevance because the confidence
22 belongs to -- although I'm straying into the law of confidence here -- the confidence
23 belongs in part or entirely to Mr Hearn?

24 MR QUINEY: Yes. This is why there is material crossover between 101 and 102,
25 both (1) and 102(5), which is one of the things that the court has to consider,
26 particularly under 102(5), when exercising the discretion is the quality of the

1 | information within the document. It might be easier if, for example, that document
2 | being read out in court had the secret recipe for KFC, say, within it. It would come to
3 | the view: well, the quality of that information is so acute that the exercise of discretion
4 | is necessary. But if, for example, it was a document which is relatively trivial -- we say
5 | non-confidential -- then the desire to exercise, or the need to exercise discretion is
6 | materially low.

7 | That's why I say the quality of the information -- and we'll come to see the
8 | confidentiality is a key component of it -- is a relevant consideration as to how the court
9 | exercises discretion that exists under 102(5). And within the exercise of discretion, if
10 | I can put it this way, there might be three components, but not limited to
11 | three components: a) in this instance, the open justice question; and indeed, that's
12 | a reason why, for example, confidentiality rings are not the norm and should be
13 | exercised in a reasonable fashion.

14 | Secondly, the quality of information: is it in fact confidential at all, and if it was, has it
15 | lost that quality, so is there a need for the court to intervene at this stage?

16 | Then third, the more broader sort of equitable questions, such as the balance of
17 | prejudice between parties and the alleged intimidation, for example, my learned friend
18 | seeks to rely on.

19 | THE CHAIR: Yes. Again, shorn of its confidentiality aspects, the argument that could
20 | be made is that I cannot or should not make an order under 102(5), as I have been
21 | invited, because that would fly in the face of 102(2)(a).

22 | MR QUINEY: Exactly.

23 | THE CHAIR: And that's -- how on earth could the tribunal be seen to exercise its
24 | jurisdiction under 102(5) when express provision is made under 102(2), is the case
25 | I suspect you're making.

26 | MR QUINEY: I might not go quite that far, in the sense of: I'd like to go that far, but

1 | I don't think I can, because 102(5) expressly countenances the exercise of
2 | discretion --

3 | THE CHAIR: Of course, of course.

4 | MR QUINEY: -- even if it's been (overspeaking).

5 | THE CHAIR: Of course.

6 | MR QUINEY: But nonetheless, given the quality of the exercise and the high bar that
7 | I'm about to demonstrate there has to be got over, the interplay is important
8 | nonetheless. So if it is the case that 102(5) is to be exercised in a way that my learned
9 | friend invites you to, it can only be an exceptional case, because the normal case is
10 | that identified at 102(2)(a). That's why it has to get over (overspeaking).

11 | THE CHAIR: Yes, and I suspect you're going to show me an authority on that very
12 | point, because it might just as easily have been argued that when looking at the
13 | discretion in 5, what the rule-maker has done is made sure that the court is not in any
14 | way fettered by a 102(2)(a) situation, so it's a complete freedom. But you're, I think,
15 | going to show me some authority on that point.

16 | MR QUINEY: Just to explore that a little bit more on that point, one can see why the
17 | drafters of this, and indeed the court, and it's probably within the inherent jurisdiction
18 | of this tribunal -- as it would be, say, in the High Court -- is that one doesn't want to
19 | fetter completely, in an absolute fashion, the ability of this court to regularise and
20 | manage the just outcomes. But there are material limits. That's why when one looks
21 | at the way that 102(5) is expressed, those limits need to be borne in mind.

22 | If I could just take you to this.

23 | THE CHAIR: Yes.

24 | MR QUINEY: At paragraph 19, Mr Justice Leggatt sets out what he considered to
25 | be a) common ground, and b) the starting point, which was: the application must be
26 | approached in the principle of open justice. Of course, that's because that case -- and

1 | we say this case -- involved documents being referred to in open court. That's why
2 | this is fundamental.

3 | He explains:
4 | "It is a fundamental principle of the common law, recognised in many authorities, that
5 | the legal process should be conducted in public and should be accessible to the public.
6 | That includes, in principle, access not only to what is said and read out in open court,
7 | but also to evidence which is referred to in open court or read by the judge outside
8 | court as part of the process. In principle, all the material that has or may have affected
9 | the decision-making process should be open to public scrutiny."

10 | We'll go on to look at a case called Dring in a minute, but the essential point is: it's
11 | a two-fold principle, a) to protect the participants within the litigation; b) to engage the
12 | public, they understand, because it's open.

13 | THE CHAIR: Yes.

14 | MR QUINEY: We can see at paragraph 20, he cites Lord Reed in just underlining how
15 | important that point is.

16 | Then at paragraph 21, which is in a sense an answer to your question earlier regarding
17 | interplay between the two principles, 102(2) and 102(5):
18 | "The principle is not unqualified. In particular, restrictions may be imposed by the court
19 | where they are in the interests of justice, or where there is good reason for them, but
20 | any restriction [must] be justified. [Then, importantly] The presumption is in favour of
21 | publicity."

22 | That's why I say it's a hard hurdle to overcome.

23 | Then there's further guidance, which I'll just ask you to read rather than (inaudible),
24 | which is at paragraph 22, that he takes on the case of Lilly Icos and the judgment of
25 | Lord Justice Buxton. (Pause)

26 | THE CHAIR: Yes.

1 | MR QUINEY: So taking the points there and applying them to this case, we start with
2 | the presumption, as I've described it, the high hurdle. When looking at the document
3 | in question, one must consider the centrality of the document -- we discussed this,
4 | I think, at the last CMC, 2, as to what I described it as being exhibit A. Of course, it's
5 | not the only part of our case, but it's an important part of our case. So the centrality is
6 | important, and so if the public were to understand this case, it's important that it
7 | remains open once it's been referred to.

8 | Equally, at (iv), simply to assert confidentiality -- we'll deal with that point a little bit
9 | more detail later -- and assert:

10 | "... the damage that will be done by publication, even if supported by both parties,
11 | should not prevail. The court will require specific reasons why the party would be
12 | damaged by the publication of the document. Those reasons will in appropriate cases
13 | be weighed in the light of the considerations ..."

14 | Dealt with above at (ii), which is the importance of the document. And then that (v):
15 | it's important to bear in mind the public interest, and not simply the convenience of the
16 | parties, to try and have their disputes -- dirty washing -- aired in private. That is the
17 | overweening point.

18 | THE CHAIR: Yes, but Mr Quiney, surely there's a difference here. No one's being
19 | asked to treat something as confidential or "in camera" -- well, for the purposes of the
20 | 102(5) application that I'm debating with you. This is not a hearing in private or
21 | a hearing in camera; all that's being asked for is the application to that document of
22 | the orthodox principle set out at 102(1). That's all that's said. You can use that
23 | recording for the purposes of these proceedings, and of course, it will be ventilated at
24 | trial and no doubt elsewhere, but only use it for these proceedings. That's what's said.

25 | MR QUINEY: With respect, I think much more is being said.

26 | THE CHAIR: More is said, but for the purposes of this limited formulation of the

1 application that I'm debating with you.

2 MR QUINEY: That's why I've said it, and that's why I start with the open justice. So
3 what's the consequence of using it, for example? Does it stop my client from referring
4 to pleadings, and indeed the quotes from the transcript? Does it stop my client from
5 referring to the transcripts from the earlier hearings?

6 THE CHAIR: But surely that would be a purpose in the proceedings?

7 MR QUINEY: Well, there's a purpose which is explaining why we're having these
8 proceedings. It's open to my client, and my client has complete freedom -- assuming
9 these documents aren't confidential -- to explain to people when he's challenged,
10 "Well, why are you suing Barry Hearn? Why are you suing World Snooker?" Well,
11 the reason we're doing that is, for example, our pleading, here, for example; not none
12 of that has been described as confidential to date. Here, for example, is a transcript
13 from a CMC1, CMC2. These are the reasons we're fighting this case.

14 So what I would urge the tribunal to avoid is the characterisation my learned friend has
15 put on it, which is some sense of weaponisation. Now, if we're in a situation like the
16 Hyslop case -- which I actually say is materially different -- where there is a publication
17 deliberately making further articles which is described as defamatory in the middle of,
18 for example, a witness giving evidence, one can understand why the court might
19 intervene. This isn't that case. This is simply a case where Mr Francis, as we've seen,
20 in response to issues relating to the Crucible Theatre, and being asked, "What is the
21 point of view? Why are you wasting this time? Why are you suing Barry Hearn and
22 his companies?" Quite reasonably, he said, "This is why", my client, assuming the
23 documentation isn't confidential, as a freedom of expression.

24 THE CHAIR: Yes. Yes, I think there's a limit how far I will push you on this, of course,
25 Mr Quiney, but it's terrifically helpful to the tribunal to hear your submissions on it. If
26 one looks at the second limb of the application --

1 | MR QUINEY: Yes.

2 | THE CHAIR: -- Mr Johnston, doesn't seek to restrict the any reference to the
3 | pleadings. What he says is that your client be prohibited from using the recording for
4 | purposes other than this litigation, and should be removed from social media
5 | platforms.

6 | MR QUINEY: Well, that's an important point to test, if I may say. If we go into the
7 | main bundle -- we'll come back to that in a minute; I don't want to lose sight of the
8 | importance of open justice, which is vital here -- at page 36 of the main bundle,
9 | paragraph 116.

10 | THE CHAIR: Forgive me, I'll just make a note. (Pause)
11 | Yes.

12 | MR QUINEY: The main bundle at page 36, which is paragraph --

13 | THE CHAIR: 36, the main bundle. I expect by magic is going to -- oh no, I have it
14 | here. I have it already on the screen.

15 | MR QUINEY: 36.

16 | THE CHAIR: Yes.

17 | MR QUINEY: So this is the claim form from my instruction.

18 | THE CHAIR: Yes.

19 | MR QUINEY: This is already within the context of what's been described as
20 | "Mr Hearn's intervention". It was said that during attempt to get the sanctioning of first
21 | and second of WSL --

22 | THE CHAIR: Yes.

23 | MR QUINEY: -- there was an understanding from Mr Francis that Mr Hearn had tried
24 | to effectively hamstring his event by contacting and we would say threatening Channel
25 | 5 with litigation. So that's why at 116 we have the phone call, and then we plead out
26 | at 117 a number of elements of the phone call, including we've already been cited at

1 | earlier hearings.

2 | THE CHAIR: Yes.

3 | MR QUINEY: So for example, he "didn't want any competition" at 117:

4 | "Spent 45 years of life making sure I don't have competition."

5 | At 117.1. And at 117.2, he doesn't want to create a precedent. He doesn't allow this.

6 | It will bankrupt everyone; if anyone tries to do this, he'd spend millions to try and do

7 | so.

8 | THE CHAIR: Yes.

9 | MR QUINEY: And so on and so forth.

10 | THE CHAIR: So, "Don't make an order in vain, tribunal, it's already there in the

11 | pleadings"?

12 | MR QUINEY: Yes. And that has two effects: (a) that's relevant to the quality of the

13 | information, and that includes a question of confidentiality which I'll come on to; but

14 | secondly, and this is the open justice question, it demonstrates that there are materials

15 | which explain and set out my client's case that, currently, my client should be entitled

16 | to tell the world, if he chooses to, or it chooses to. Because this is in its pleadings,

17 | which are available upon request by third parties if they want it, and no suggestions

18 | should they be treated as confidential.

19 | Of course, this is purely focusing on the question of the 102(5), because if my learned

20 | friend succeeded in asking you to put the genie back in the bottle, and treat what we

21 | say isn't confidential now as confidential, I'm sure the next question will be, "Well,

22 | those documents referring to it must also be treated as confidential".

23 | THE CHAIR: Yes, Mr Quiney, but it's important -- and you may not accept this -- but

24 | Mr Johnston puts his case on the general power that the tribunal has under 102(5),

25 | which is not restricted to a case where confidentiality is at issue. And he's been very

26 | careful to do that, so ...

1 | MR QUINEY: But my point is we're not being asked to exercise discretion that you
2 | are being asked, the quality of the information is important, which is why I have gone
3 | on a bit about conditionality, and I'll go on a bit more about it. But I heard my learned
4 | friend to accept that a component of his application included confidentiality being
5 | asserted, but he asserts that he doesn't need it to get through the door.

6 | THE CHAIR: Yes.

7 | MR QUINEY: And I say that he definitely needs it to get through the door. Remainder
8 | of his application -- intimidation, the prejudice and all those points -- are, if one goes
9 | back to Lord Justice Buxton in paragraph 22 of the authority we're just looking
10 | at -- those are unsupported by any evidence and they're assertions. And he has to
11 | have more than those assertions to get through the door, particularly if he's at that
12 | point, lacking the confidentiality argument, because I've succeeded in demonstrating
13 | it isn't confidential.

14 | So I quibble with my learned friend as to whether he can get through the door without
15 | confidentiality, which is why I'm focusing on it now.

16 | So going back, if I may, to the authority, just to make that point clear to you. The
17 | paragraph 22 that I was talking about is at 420. Within the exercise of this discretion,
18 | as I said, there are essentially three components: the open justice; the policy of the
19 | information, including confidentiality; but also then the prejudice.

20 | I'm now going to move on -- I've already touched on it -- the quality of information, and
21 | whether or not: (a) it's confidential in the first place; and (b) whether it's lost the quality
22 | of confidentiality.

23 | THE CHAIR: Yes. Forgive me, Mr Quiney, would you be kind enough just to go back
24 | to the last point? Were you going to take me to, a passage in the judgment of
25 | Mr Justice Leggatt, as he then was, on this point that you were making that if
26 | confidentiality is not part of Mr Johnston's case --

1 MR QUINEY: Yes.

2 THE CHAIR: -- he then, as you put it, can't give evidence of the impact of the
3 information. You were taking me to the argument as to why, in those circumstances,
4 he couldn't succeed.

5 MR QUINEY: Yes.

6 THE CHAIR: Or that it would be wrong for this tribunal to exercise its jurisdiction in
7 his favour.

8 MR QUINEY: So the point that I was making is going back to the authorities bundle,
9 page 420.

10 THE CHAIR: 420.

11 MR QUINEY: Yes.

12 THE CHAIR: Let me just get there. Yes, I have it.

13 MR QUINEY: So paragraph 22 is the paragraph that I took your attention to earlier --

14 THE CHAIR: Yes.

15 MR QUINEY: -- which quotes from Lord Justice Buxton.

16 THE CHAIR: Yes.

17 MR QUINEY: And it was (iv) that I was emphasising. What I'm doing at the moment
18 is setting out the structure, hopefully, which the court might exercise its discretion.

19 THE CHAIR: Yes.

20 MR QUINEY: I haven't come on to address the substance of the allegations yet.

21 THE CHAIR: Yes.

22 MR QUINEY: But I'm making the point is that there is no substance.

23 THE CHAIR: Yes, but I suspect you would concede that what Lord Justice Buxton
24 was addressing there at (iv) is assertions of confidentiality in the context of public or
25 private proceedings, as opposed to the controversy before me, which is one of
26 improper use.

1 | MR QUINEY: I would suggest he's doing two things in that paragraph, and while it's
2 | obviously not a good idea to approach it as a sort of legislative or statutory document,
3 | one can see that he's talking about: (a) the quality, the assertion of confidentiality; (b)
4 | the damage done to the applicant. So it's the assertion of confidentiality and the
5 | damage that will be done by the publication.

6 | Because, in the second sentence:

7 | "The court will require specific reasons why the party would be damaged by the
8 | publication of the document."

9 | And the gloss I would add to that, in order to exercise discretion.

10 | First of all, I say this supports my position that my learned friend has to do better than
11 | simply make assertions, because that's what it's saying. But even if you don't interpret
12 | this judgment as saying that, I would say that as a matter of common sense and
13 | general justice, if -- which I've asserted -- open justice principles are engaged, and
14 | if -- which is the case -- they are paramount, you, I would suggest, as the tribunal have
15 | to be pretty sure that those principles are worthy of being trumped in this case. I'm
16 | saying that's what Lord Justice Buxton is saying there, and I'm saying that is
17 | self-evident and true as a matter of exercise of discretion in this tribunal.

18 | If I may take you a little bit further in this. (Pause)

19 | I'm grateful. Going on, just to see the conclusion of this judgment, at 38 and 39,
20 | at 423. (Pause)

21 | THE CHAIR: Yes.

22 | MR QUINEY: Here we can see that ultimately, and the judge decided that he couldn't
23 | see:

24 | "... however, that any case could reasonably have been made for restricting in their
25 | entirety the use of the documents ... which the claimants were seeking to rely [upon]
26 | and [for] keeping the entirety of that information confidential; nor do I accept the

1 | passage of time since then can be said to put the defendant in a stronger position."

2 | And he says:

3 | "It seems to me most desirable that, if a party wishes the court to restrict the use of
4 | documents which are being or are about to be referred to at a hearing taking place in
5 | public, that question should be addressed at the time so that everyone knows where
6 | they stand in relation to the use of the documents."

7 | While he says at 39 there is no bar to come to the court later, "The extent of any
8 | publicity which there has been in relation to the documents in the meantime will be
9 | one relevant factor". That's because one has to consider the utility of the order, the
10 | nature of the order.

11 | So in this case, as my learned friend has explained, you had -- sorry, finishing off --

12 | THE CHAIR: Yes. Please.

13 | MR QUINEY: I'm grateful.

14 | In this case, you've had -- we issued in 2023, when the Hearn call and the transcript
15 | and the audio was made available; and Mr Nunez(?), who is a journalist, was asked
16 | to take it down and he did.

17 | You then had the pre-action correspondence, which referred to the Hearn call and the
18 | transcripts at length. Indeed, that's one of the documents exhibited by Ms Ellen on
19 | behalf of the defendants at the hearings.

20 | You then get the pleadings where, as I've shown you at various points, including at
21 | paragraph 117, it's quoted. I refer to it; I quote it. Indeed, the tribunal, more
22 | importantly, read it at CMC 1,2 and indeed, last Monday it was referred to again. It's
23 | only in recent times, ie since the publication on the internet, that a step has been taken
24 | to assert confidentiality over this.

25 | I can understand that Mr Hearn probably doesn't like people talking about him on
26 | Twitter in May of this year. I can understand he might find what he said in the transcript

1 | a bit embarrassing. But if it was truly believed that this was a confidential document,
2 | at the very start of this process within this tribunal -- because indeed, there are
3 | mechanisms for this to be achieved -- those instructing my learned friend should have
4 | said, "We need to treat it as confidential". What's even more surprising is that at every
5 | hearing, there wasn't an assertion that it had to be treated as confidential. Indeed, on
6 | these applications, which are being broadcast right now, there is no assertion that this
7 | should be treated as confidential now.

8 | So when one is looking at the utility and timing, in accordance with Mr Justice Leggatt
9 | at 38 and 39 of the authority I just took you to; leaving it (inaudible) this late, to take
10 | this point, that is well and truly out of the bag, is a legitimate factor to consider when
11 | exercising jurisdiction you're being invited to. I say it shouldn't be (inaudible) in that
12 | fashion.

13 | Moving, if I may, to first of all one of the broader considerations of the exercise of
14 | discretion; then looking at confidentiality and then looking at the allegations of
15 | prejudice my learned friend has made.

16 | I'm aware we're now at 4.00. I'm assuming -- I may be wrong -- that you might reserve
17 | judgment on this, because that will impact on the amount of time.

18 | THE CHAIR: Yes, there is a prospect of that, I must say.

19 | MR QUINEY: I'm grateful.

20 | THE CHAIR: I'm not certain on that, of course, but there is a prospect of it, yes.

21 | MR QUINEY: It only impacts on how long I've got, and it may be you give an indication
22 | of your decision with reasonable (inaudible).

23 | THE CHAIR: Yes.

24 | MR QUINEY: But I can see my learned friend has probably got things to say about
25 | that, so let's get back to that and (overspeaking).

26 | THE CHAIR: How long do you expect you will be?

1 | MR QUINEY: 20 minutes, I hope.

2 | THE CHAIR: 20 minutes. I suspect that's fine.

3 | MR JOHNSTON: Sir, if I can have five minutes or so in reply. I won't need long, but

4 | I think there are a couple of things I do need to address.

5 | THE CHAIR: Yes. Thank you.

6 | MR QUINEY: That's absolutely fine.

7 | Moving on to the generality of this issue. You've had the principle of open justice. It

8 | was communicated to you, from Mr Justice Leggatt's judgment, the importance of that;

9 | but equally, looking at the particular qualities of this case, we are indeed dealing with

10 | the sport of snooker. It's of interest to the public, and indeed, dealing with defences

11 | being run on objective justification, one of which is that what was done by the

12 | defendants was for the good of the general populace who enjoys snooker. This is of

13 | public importance, and so that is a relevant consideration. I'm not going to put too

14 | much weight on it, but it's a relevant consideration that goes in the mix as to whether

15 | the application is well made. I say it isn't.

16 | Moving on to the question of confidentiality, which is a crossover point between 101

17 | and 102. It's obviously central to 101, and the main reason why we say that

18 | 101 application must fail; but it is of relevance to 102, because the quality of the

19 | information after the fact.

20 | THE CHAIR: Yes. Forgive me, Mr Quiney, again. I know I'm taking up your time

21 | here. The point that you just addressed --

22 | MR QUINEY: Yes.

23 | THE CHAIR: -- am I right in understanding that you do not make that point in the

24 | context of a public interest argument, as it might be made in one of the sensitivity

25 | grounds under the practice direction and the approach to the confidentiality point

26 | itself?

1 | MR QUINEY: We can't go that high to engage that threshold --

2 | THE CHAIR: Thank you.

3 | MR QUINEY: -- although I suspect it might be (inaudible) snooker is the most
4 | important thing in life.

5 | THE CHAIR: Yes.

6 | MR QUINEY: But that is perhaps not my best point.

7 | THE CHAIR: That's not a case you make today. Thank you.

8 | MR QUINEY: But it is of interest to the exercise of discretion.

9 | Moving on to the question of confidentiality. What we have here, we say, is an
10 | adversarial phone call between two competitors; which is materially different from, say,
11 | a private conversation between two partners, both of a commercial or otherwise, or
12 | between an employer and employee, or a client and a consultant. Indeed, we will look
13 | at the quality of what's being said, and we will say there is nothing confidential. There
14 | hasn't been an attempt to identify what is the confidential policy here. It's not like
15 | a trade secret, or something particular. We'll also be saying that the quality of
16 | confidence, if it ever exists, has been lost.

17 | Just briefly, if I may, looking at the IBM case, which is at page 1060 within the
18 | authorities. Mrs Justice O'Farrell sets out this very short summary of what she
19 | considers to be the crucial question of whether something is confidential or not.

20 | THE CHAIR: Yes.

21 | MR QUINEY: The key point there is the circumstances and the quality of the
22 | relationship between the parties, as well as the information. This is then elaborated
23 | on by Mrs Justice Cockerill, as she was, within the Cavallari case.

24 | If I could take you to paragraph 34, which one will find at 1072. If I could ask you to
25 | read paragraph 34 through to 39, I'll just make two points, if I may. (Pause)

26 | THE CHAIR: Yes.

1 MR QUINEY: The two points are: first of all, the focus is very much on the nature of
2 the information and then the circumstances of receipt; and the case of
3 Thomas Marshall, which is cited at 36, is very helpful on this and sets out:

4 "... four elements may be discerned which may be of some assistance in identifying
5 confidential information or trade secrets which the court will protect. I speak of such
6 information or [trade] secrets only in an industrial or trade setting."

7 We say that that is the setting. Then he says that:

8 "I think that the information must be information the release of which the owner
9 believes would be injurious to him or of advantage to rivals ..."

10 We will be seeing that there is nothing of that quality in the Hearn call. Then:

11 "I think the owner must believe that the information is confidential or secret, i.e., that it
12 is not already in the public domain."

13 We don't know one way or the other on that. We have no evidence:

14 "Third, I think that the owner's belief under the two previous heads must be
15 reasonable. Fourth, I think that the information must be judged in the light of the usage
16 and practices [in the industry]."

17 So when one talks about the categorisation of relationships, the adversarial
18 relationship that we have between Mr Francis and Mr Hearn, I would say, is not one
19 of those. Further, the fact that it was a covert recording of a private phone call is not
20 in and of itself enough, and what needs to be done is an identification of what is said
21 that is the information. It is right to say in the decision of D v L, which my learned friend
22 relies upon, there is a comment there which suggests that there might be an
23 expectation of privacy between, in that case, two lovers in a phone call as to, for
24 example, discussions of their particular sexual proclivities. But what's not being said
25 is that's an absolute rule. Indeed, in that case of D v L, there was not an order made
26 to maintain or restrict the use of the transcripts or (inaudible) in those instances.

1 | So you can't just say it's recorded privately. You've got to prove confidentiality. You
2 | can't just conflate the right to privacy, which is something held by Mr Hearn, not held
3 | by the defendants in this case, with the quality of confidence in the information. They
4 | are different things. That's why, for example, the appeal in ZXC that my friend relied
5 | upon, relating to the Murray test, which one sees at 730, paragraph 50, is of no
6 | assistance to him. (Pause)

7 | At paragraph 50 --

8 | THE CHAIR: Yes.

9 | MR QUINEY: -- the Supreme Court sets out the test for privacy; and none of that
10 | relates to, for example, the necessity to have confidence. They are two different
11 | things. The Murray test we see set out there, points 1 through 7 do not focus on the
12 | quality or the attributes and circumstances relating to the relevant claimant and the
13 | degree of intrusion.

14 | THE CHAIR: Yes. I don't think any of this is controversial, Mr Quiney. I don't think
15 | Mr Johnston would argue with you if you said that it would be difficult for him to run an
16 | argument here under 102(5) if the conversation was between two parties, where one
17 | asked what they thought of the weather today. But you made the point
18 | earlier -- I thought very well, if I may say so -- when you made reference to the KFC
19 | recipe. That would satisfy, in an ordinary case -- it would be hard to think of how it
20 | wouldn't -- the first limb of the test that you took me to a moment ago. Then the
21 | question is the second one, the circumstances.

22 | MR QUINEY: The reason I perhaps have laboured the point is to set up a structure
23 | where we can now look at the Hearn call and ask, is this confidential at all? At 87
24 | within the main bundle, you can see this.

25 | THE CHAIR: Yes.

26 | MR QUINEY: At 87, we see the beginning of the call. I don't think there's any

1 | disagreement that Mr Hearn and Mr Francis are daggers drawn at this point. They are
2 | competitors. We could see that immediately, when Mr Francis introduces himself.
3 | Barry Hearn asks how he is.

4 | THE CHAIR: Yes.

5 | MR QUINEY: He says, "I was alright until channel five called me". Of course,
6 | our pleaded case is that is because Mr Hearn had kiboshed that.

7 | But when you go on -- I'm not going to read all of this out again -- it's a discussion
8 | about, in summary, Mr Francis saying to Barry Hearn, "Why have you kiboshed me?
9 | Why won't you sanction me? Why won't you give me what I ask?"

10 | What isn't here, to take the example I've given, is a discussion of the secret sauce,
11 | snooker. That secret sauce might be, for example, details relating to customer
12 | relationships with broadcasters; details relating to the profit and loss of world snooker;
13 | details relating to the way in which arrangements are being made with venues and
14 | with players. This is simply two men jousting, if I can put it that way, in colourful terms
15 | about the delivery of the sanction.

16 | THE CHAIR: It's a bit more than that, Mr Quiney, isn't it? It's a discussion about the
17 | basis upon which Mr Hearn views the question of sanction, and the way he sees the
18 | market operating, whether it's an invitation event or a tour event. It's a bit more, isn't
19 | it? He goes into a discussion and an explanation as to why it's a different question
20 | when one is looking at sanction for an invitation event, which might cause difficulty, in
21 | his mind, to the business model of the tour.

22 | MR QUINEY: This is precisely the problem at the root of my learned friend's
23 | application, is what he hasn't done is actually identify what that information is to you.
24 | Now, sir, I can understand the comment you're making. I can understand the
25 | observation you make that there are business things in here.

26 | THE CHAIR: Yes.

1 | MR QUINEY: But my point is twofold: (a) the general gist is not enough either to
2 | describe it as a confidential, let alone engage the principles under 102(5) and the
3 | exercise of discretion that you'll be invited to do; and (b) with respect to the balance of
4 | prejudice -- and this is the 102(5) point as well -- what's the damage here?

5 | What my friend hasn't done is say, "Okay, let's say paragraph 30, 43, 44, whatever,
6 | that's Mr Hearn giving away the secret sauce. That's the thing that damages World
7 | Snooker's business. That's the thing that needs protecting". He's done none of that.
8 | That's because the reality here is what's driving this is a degree of embarrassment, it
9 | might seem, by Mr Hearn, that people have heard him in pretty colourful terms,
10 | asserting that these defendants occupy monopoly in this particular (inaudible).

11 | Now, that might be embarrassing, but it's not in any way reason to exercise
12 | a discretion. And it also puts a line to the question of whether there's any prejudice
13 | here at all. That's something I'm going to come on to at the end of my submissions.

14 | Dealing with the question of confidentiality --

15 | THE CHAIR: Yes.

16 | MR QUINEY: -- there has been nothing that has been identified with any precision or
17 | confidence that could be described as confidential. I say that this is not confidential at
18 | all, but even if you're not with me on that, sir, the cat is out of the bag, so to speak.

19 | One can see, going back to Mrs Justice Cockerill's decision in Cavallari -- and this was
20 | at paragraph 39 -- that, of course, confidentiality is not set in stone. We've said that:
21 | first of all, the pleadings; second of all, the open court; third of all the reading of it by
22 | yourselves; fourth of all, the exhibiting of the transcript by my own friends solicitor;
23 | fifthly, the broadcast at CMC's 1, 2, 3 and indeed now at 4; and finally and sixthly, the
24 | fact that it has been published in 2023, 2025, and it is --

25 | THE CHAIR: Yes.

26 | MR QUINEY: So those are all the reasons why the cat's out of the bag.

1 THE CHAIR: Yes, and I know that you make that argument both in relation to the
2 confidentiality point, and you make it in relation to the discretion point, because you
3 say it should weigh on me in that context too. And I have that point.

4 MR QUINEY: And I have an authority that is relevant as well, if I may.

5 THE CHAIR: I'm going to be very grateful for that. I'm sure Mr Johnston has seen it?

6 MR QUINEY: He has.

7 THE CHAIR: Thank you.

8 MR QUINEY: So this is a decision in Bunn v BBC, Mr Justice Lightman. The question
9 here was whether or not documents, including a witness statement which had been
10 read out in a previous court hearing, could be described and treated as confidential.
11 The learned judge deals with the question of how something might enter the public
12 domain in that arena. That is dealt with at page 76, heading B.

13 THE CHAIR: 76.

14 MR QUINEY: That's "Public Domain".

15 THE CHAIR: Oh forgive me, yes.

16 MR QUINEY: Yes, I'm grateful. The point here, and in some ways it's neatly coming
17 full circle to the 102(5) point is -- if I could ask you to read it. (Pause)

18 So the point I want to focus on is point 1. There is a neatness now between a unifying
19 theory of 101, 102, 102(2), 102(5) and confidentiality, which is: if something has been
20 referred to the court, read by the court -- doesn't need to be referred to -- and also
21 read out in court, then that engages the principle of open justice. That is why: (a) it
22 can't be treated as confidential -- that's what Bunn tells us.

23 THE CHAIR: Yes.

24 MR QUINEY: And the other points, too.

25 THE CHAIR: Yes. These things will be in my judgment, fact specific, but whilst before
26 Mr Justice Lightman the reading of the particular statement had an impact on the

1 | confidentiality, that's confidentiality of the document as opposed to the use. And here,
2 | to take Mr Johnston's narrow application, it's about use and improper use, not
3 | confidentiality.

4 | MR QUINEY: But that's --

5 | THE CHAIR: Leaving aside the express carve out in 105.

6 | MR QUINEY: But the impropriety of the use is directly related, amongst other things,
7 | to the quality of the information, which is why I pointed to the lack of confidentiality
8 | here.

9 | So one can see that if the secret sauce was read out in open court, the quality of that
10 | information would prevent one of the parties broadcasting it to the world. If there is
11 | simply an email that was embarrassing, in which a participant within the litigation had
12 | said disparaging comments about a third party, and then that was reported on by
13 | a journalist -- because it's in open court -- or indeed one of the parties, that couldn't be
14 | and shouldn't be something that the court would intervene to prevent the use of.

15 | That's why this discretion has to have an eye to open justice, and has to have
16 | a question of use. And balancing the question of use, one then has to look at the real
17 | risk of prejudice or not, because my starting point is that my client has the right to
18 | deploy this document if he chose to. I don't know if he's going to. It may be a journalist
19 | who does it, inasmuch as a journalist might have been listening to all the things I've
20 | just said and reporting them on Twitter right now, I don't know. But in exercising that
21 | balance of prejudice, one has to now address -- I finally come to it -- what is said is the
22 | damage.

23 | The reason why I was focusing on the Hearn call transcript is, as I said, there's nothing
24 | damaging in that. Embarrassing, yes, but not damaging. Nothing precious, nothing
25 | confidential. We're being told, and this is set out at paragraph 17 of my learned friend's
26 | skeleton, there's some terrible, terrible problem.

1 | Now, he's made the effort and made the pains, relying on the case of Hyslop, which
2 | I say is a completely different case to this, to suggest that the court needs to look at
3 | these questions of risk and prejudice objectively. Insofar as the submission is that the
4 | court has to look at things objectively, I would agree, but on the basis of evidence.

5 | So what is the evidence here? The position adopted by my learned friend, both today
6 | and also in his skeleton, is neatly set out in para 17 of his skeleton at page 10. First
7 | of all, it's the general proposition that the claimant should be firmly discouraged from
8 | seeking to conduct this litigation in public. That's just a flawed starting point. It may
9 | be embarrassing to another party -- there is discussions in public about litigation -- but
10 | it doesn't get you any.

11 | THE CHAIR: Yes. I don't need to hear you further on that point, Mr Quiney.

12 | MR QUINEY: The second point is the question of pressure on Mr Hearn. Now, I stand
13 | by what those instructing me said about Mr Hearn being a robust chap, but even if one
14 | looks at this objectively and just considers a witness, or someone who might be
15 | involved in litigation, the fact of that transcript and the fact of that telephone call
16 | remains in plain. The fact it's been broadcast doesn't make any difference to how he
17 | will participate in the litigation, because he will be cross-examined at length about that
18 | if he participates. So to suggest that there's some additional moral pressure, to quote
19 | from paragraph b, I would say is illusory, and certainly it is unlikely to be a material
20 | damaging point that outweighs the open justice principle, for example.

21 | The third point, point (c), is, as my learned friend has mentioned previously in his oral
22 | submissions, without waiver of privilege, WSL is engaged in crucial industry witnesses
23 | at this time. (Inaudible) do with that? It's not evidence of anything. I think at highest
24 | it morphs into, "We would like to get some witnesses, and we fear that the Hearn call
25 | might have something to discourage them from engaging with it".

26 | Well, the call is about Mr Hearn and Mr Francis. Prospective witnesses aren't at risk

1 | of having a similar situation. In fact, if anything, if they talk to Mr Francis on the phone,
2 | they might be a bit more wary. But it doesn't intimidate; there's no evidence of that.

3 | The fourth point is the confidentiality point; we've dealt with that at length.

4 | The fifth point, which is point (e), is -- and this is the problem -- that the discussions
5 | are broadly commercial in nature. That's not enough, I say, for the reasons I've said.

6 | Then really what it comes down to, at (f) and (g), is that there's a criticism of the nature
7 | of the recording, being some sort of improper thing. Even if the court has a view about
8 | the propriety or otherwise of making a secret telephone recording in these
9 | circumstances -- and we've explained to you why it was made -- that, again, isn't
10 | enough in and of itself to put the genie back in the bottle.

11 | So that's the sum total. The conclusion is that there's serious prejudice here. That
12 | prejudice has not been properly identified, and that prejudice should not carry the day,
13 | and those are the reasons why I urge you to reject both applications.

14 | Any further questions?

15 | THE CHAIR: Thank you very much, Mr Quiney. Mr Johnston.

16 | MR JOHNSTON: Sir, looking at the time --

17 | THE CHAIR: If it assists you. I'm against you on the confidentiality arguments as
18 | matters stand, but I'm with you on the very narrow application of section 102(5), and
19 | I'm willing to make an order in terms of the second limb of your application, absent the
20 | reference to Mr Francis, on the basis of 102(5). I'm not doing so because of anything
21 | relating to confidentiality, because I'm against you on all of the arguments relating to
22 | confidentiality as matters stand, but I am persuaded that this is not a confidentiality
23 | case, it's not an open justice case, it's an improper use case. It's a case of the
24 | application of 102(1); that, it seems, has not applied.

25 | You are therefore called to make an application under 102(5). And it matters not, as
26 | you submitted to me, that there has been reference to the recording, and I'm not

1 persuaded, when I weigh the confidentiality issue in the scales, that it's against you on
2 the exercise of discretion on the improper use point. Hence, I would make the order
3 that you seek under the second limb.

4 As matters stand, I would not make any other order that you have sought, for the
5 reasons that I suspect you can gather. It's therefore open to you to carry on and try to
6 persuade me on the confidentiality grounds, but you may feel content in the
7 circumstances with the order that I am willing to make. You may feel content with the
8 reasons for it that I have just outlined, but I am perfectly willing to deliver a full,
9 reasoned judgment on that point. I don't see a reason to deliver a judgment on the
10 confidentiality issues unless you want to persist in that argument, which you're quite
11 entitled to do, and I will continue to hear you today in relation to those arguments,
12 responding to Mr Quiney King's Counsel, if you choose.

13 If you want to take instructions on what I have just put to you, given all the
14 circumstances, I'm happy to let you do that. And yes, I am happy to rise for
15 five minutes to let you think that through, because I can see it's something you might
16 want to discuss with your colleagues instructing you.

17 MR JOHNSTON: I'm very grateful, firstly for the clarity of your indication, secondly,
18 for the opportunity to have a very brief discussion with my clients. It really will need to
19 be five minutes and no more, but I think it would be sensible.

20 THE CHAIR: Thank you very much. I'll rise now.

21 (4.29 pm)

22 (A short break)

23 (4.36 pm)

24 MR JOHNSTON: Sir. I'm very grateful for the indication that you've given. My
25 instructions are, perhaps unsurprisingly to the tribunal, from the very first letter and
26 first correspondence in this matter what we wanted is the removal of the posting online.

1 | That has been my client's number one priority right from the beginning of this. That is
2 | what we were asking for off the bat. We're very grateful to the tribunal for its indication.
3 | We hear your indication in relation to 101. I think particularly at this point in the day,
4 | I won't seek to dissuade you from that. That will also, I think, as you put it, relieve you
5 | of the obligation to write a judgment in relation to 101 as well. The only question that
6 | then remains is the question of costs. We are --
7 |
8 | Order
9 | MR QUINEY: There is a question about the scope of the order. I just want to clarify --
10 | MR JOHNSTON: Yes, I'm grateful. Yes.
11 | THE CHAIR: Yes.
12 | MR QUINEY: So I understand, sir, your position, and very grateful for you sitting late
13 | as well on this. If we were to look at 803, (ii), "Take-Down Order". (Pause)
14 | THE CHAIR: Yes, I was taking it from page 8 of Mr Johnston's skeleton, actually, as
15 | to the order he was seeking, which is 14(f) of his skeleton. But of course, the proper
16 | place is the application, so no difficulty looking at that Mr Quiney.
17 | MR QUINEY: Well, I think they're interchangeable.
18 | THE CHAIR: Yes, they should be the same. Yes.
19 | MR QUINEY: So:
20 | "... that an order be made prohibiting the Claimant [delete the words] and
21 | Mr Francis ..."
22 | THE CHAIR: Yes.
23 | MR QUINEY: "... from using the Recording other than for the purposes of these
24 | proceedings, meaning that it should immediately remove from all social media
25 | platforms, pursuant to cap CAT Rule 102."
26 | THE CHAIR: Yes.

1 | MR QUINEY: So there are two questions, and this is probably a question that is
2 | important to my learned friend. When you say "recording", do you mean (a) the audio
3 | recording; and (b) the transcript of that recording?

4 | THE CHAIR: Yes.

5 | MR QUINEY: I'm grateful.

6 | THE CHAIR: Yes. I'll hear Mr Johnston on that and give you an opportunity to
7 | respond.

8 | MR QUINEY: I'm sure that's what he wants.

9 | MR JOHNSTON: Okay. So you won't be surprised to know that it's the transcript and
10 | the audio visual recording.

11 | THE CHAIR: Yes.

12 | MR JOHNSTON: And that's what's sought.

13 | THE CHAIR: Yes. If you want to send in a draft order, can you just give some thought
14 | to the construction of it there, because it's immediately be removed, it's prohibiting the
15 | claimant and it's the claimant that this order bites on. So if the claimant is responsible
16 | for, then the claimant must do. If there is a party wholly unconnected with, then there
17 | needs to be some thought given to that. I see the point in relation to the agent of the
18 | party, the claimant, but you just might want to give some thought to the construction
19 | of that limb. And I'm happy to clear that up now, if that's helpful.

20 | MR JOHNSTON: Sir, let me take that away and think about it. I don't think Mr Quiney
21 | will suggest that Mr Francis, in his capacity as a director of the claimant, is in a position
22 | to post it, obviously. The question then arises whether or not posting by third party
23 | might be procured, sir, and I see the thrust of your point.

24 | THE CHAIR: Yes.

25 | MR JOHNSTON: It may be something that is best to be chewed over slightly, but
26 | I hear the spirit of your question, sir, which is that you don't want --

1 THE CHAIR: We want to make sure that this is complied with, or that the extent of the
2 order is clear.

3 MR JOHNSTON: Yes, the scope of the order is clear and that we don't want to either
4 unwittingly bring wholly independent and wholly unconnected third parties within the
5 scope of contempt, by the same token, were the claimant to provide the document to
6 a third party and say, "Please post that", that would obviously be a contempt, so we
7 need to think carefully about that.

8 I hope that the claimant and Mr Francis will hear the spirit in which the order has been
9 made in light of the submissions today, and will be rather prudent, and so we don't
10 need to concern ourselves with it. But I understand that the tribunal --

11 THE CHAIR: I can see you're entirely on the point; you have taken exactly where
12 I was trying to get to. Thank you very much, Mr Johnston.

13 Yes, Mr Quiney.

14 MR QUINEY: So the order is obviously focused purely on the claimant. The point,
15 obviously, my friend made is that the posting of the audio recording is on Mr Francis's
16 personal Twitter. Mr Francis will have to consider the points that have been made --

17 THE CHAIR: Yes.

18 MR QUINEY: -- at this point, as to what steps he may or may not do.

19 As to expanding the order in the drafting to anyone but the claimant, the third party is
20 the one my learned friend has been talking about, I would suggest that we need to
21 keep the order simple -- in fact, in the way it's been sought in this application. That's
22 because, for example, the transcript today will have elements of the Hearn call quoted.

23 THE CHAIR: Yes.

24 MR QUINEY: And an enterprising journalist could do that.

25 THE CHAIR: That, if I may say so, Mr Quiney, is part of the proper use within these
26 proceedings.

1 MR QUINEY: Precisely, and indeed consistent with open justice, et cetera, et cetera,
2 et cetera. So, I would happily go back and chew the fat as my learned friend suggests,
3 but I'm not going to be materially shifting from what I learned from the tribunal said, as
4 the text here.

5 THE CHAIR: Yes.

6 MR QUINEY: Which is as written.

7 THE CHAIR: Yes.

8 MR JOHNSTON: Sir, I'm grateful for that. I took the tribunal to be indicating that in
9 light of the wider submissions that have been heard today, and in light of the question
10 of what might be described as circumvention, some thinking should be done as
11 regards the wording. I can provide a draft to Mr Quiney, he can have a look at it. If
12 he doesn't like it, we can put two drafts to you in the ordinary way; one in red, one in
13 green, and you can be --

14 THE CHAIR: I would be disappointed if it comes to that.

15 MR JOHNSTON: I agree.

16 THE CHAIR: It would be the tribunal's strong preference that counsel are able to reach
17 a sensible agreement as to the wording. You can see what we're trying to achieve
18 here. It would be unfortunate if there had to be a further application dealing with the
19 nature of the agency relationship, and the role of a director and officers of
20 a corporation and so on and so on. That would be unfortunate.

21 MR JOHNSTON: I --

22 THE CHAIR: We know what we're trying to achieve here.

23 MR JOHNSTON: We know what we're trying to achieve. It's plain that used for
24 purposes other than these proceedings would include giving it to a third party and
25 saying, "Please publish this". It would be extraordinarily unfortunate where we back
26 before you, sir, and it would have all manner of consequences.

1 THE CHAIR: I'm grateful.

2
3 Costs

4 MR JOHNSTON: Mr Quiney said that was his final point of clarification. Unless he
5 has any other point of clarification, we will be seeking the cost of the application to be
6 assessed and if not agreed. That is because, as you will anticipate, I won't go any
7 further, but the applicant has achieved its primary objective in this application. It was
8 its primary objective right at the start. It was the first request made immediately after
9 publication. We do say in those circumstances that they have substantively achieved
10 the outcome they were seeking, and they seek the costs of the application and the
11 hearing today.

12 THE CHAIR: Yes. Thank you, Mr Johnston.

13 MR QUINEY: We would suggest that the appropriate order is cost in the case. This
14 is a case management decision, obviously left over from CMC3 that we had, costs in
15 the case before, and say at the very minimum it's a score draw. What we were really
16 concerned about is obviously the question of confidentiality for this particular
17 document, and we achieved that.

18 THE CHAIR: Yes. Yes, I'm with you, Mr Quiney. In my discretion, but I need to give
19 some explanation of how my discretion is exercised. It seems to me that Mr Johnston
20 has succeeded, but on a limited basis. Mr Johnston has failed in relation to limb one,
21 failed entirely in relation to limb three, and a portion of limb two where he did succeed.
22 They've lost on the confidentiality argument, in my judgment, in total, and in those
23 circumstances, the proper order is costs in the case, and that's the order I shall make.

24 I will look forward to the draft coming, which I hope very much is agreed by the time it
25 reaches me. I think I only need to express my gratitude to counsel for the quality of
26 the submissions and the argument, the patience in responding to my questions on

1	both sides. I will now rise.
2	(4.46 pm)
3	(The court adjourned)
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