Neutral Citation Number: [2026] EWHC 2041 (Comm)

Case No: CL-2025-000565

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 31/07/2026

Before :

LOUISE HUTTON KC

- -

Between :

Union Bancaire Privée, UBP SA	**Claimant**
- and –	
L Catterton Europe SAS	**Defendant**

- -
- -

Tim Lord KC and Mohammud Jaamae Hafeez-Baig (instructed by **Travers Smith LLP**) for the **Applicant**
Marcia Shekerdemian KC and Francesca Mitchell (instructed by **Mishcon de Reya LLP**) for the **Respondent**

Hearing date: 13 May 2026

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APPROVED JUDGMENT

This judgment was handed down remotely at 14.00 on 31 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

LOUISE HUTTON KC:

Introduction

1. The Applicant, Union Bancaire Privée, UBP SA ("UBP"), is a private bank and asset manager headquartered in Switzerland. It applies for pre-action disclosure under CPR 31.16 from the Respondent, L Catterton Europe SAS ("LCE"), a private equity firm domiciled in France which is part of the L Catterton group, headquartered in the United States. UBP seeks disclosure for the purpose of a deceit claim it intends to bring against LCE in relation to UBP's acquisition of an indirect interest in Jaguar Topco SAS ("Jaguar Topco"). Jaguar Topco and its subsidiaries operate the Jott clothing brand ("Jott").

The relevant legal principles

2. The order is sought pursuant to s.33(2) Senior Courts Act 1981 and CPR 31.16(3), which provides that:

> "the court may make an order under this rule only where:
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> (a) the respondent is likely to be a party to subsequent proceedings;
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> (b) the applicant is also likely to be a party to those proceedings;
>
> (c) if proceedings had started, the respondent's duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and
>
> (d) disclosure before proceedings have started is desirable in order to –
>
> (i) dispose fairly of the anticipated proceedings;

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

(iii) save costs."

3. Pre-action disclosure was considered by the Court of Appeal in *Black v Sumitomo* [2002] 1 WLR 1562, which both parties agree remains the leading authority. The parties also referred to Jacobs J's judgment in *Carillion plc (in liquidation) v KPMG LLP* [2020] EWHC 1416 (Comm), in particular at [15]-[16], [66]-[68], [69], [75]-[76]. Jacobs J summarised the principles as follows at [66]-[68]:

> "66. The relevant legal principles are conveniently summarised by Blair J. in paragraph 17 of *Assetco* [*Assetco plc v Grant Thornton UK LLP* [2013] EWHC 1215]. CPR 31.16 provides that the court may make an order for pre-action disclosure only if certain conditions are satisfied:
>
> i) The respondent and applicant must both be likely to be parties to subsequent proceedings. It is not however necessary to show in addition that the initiation of such proceedings is itself likely: *Black v Sumitomo Corp* [2002] 1 WLR 1562 at [71 – 72], Rix LJ, which is the leading case on the rule.
>
> ii) The documents sought must fall within the scope of the standard disclosure which the respondent would have to give in the anticipated proceedings. It follows that at the time of the application, the issues must be sufficiently clear to enable this requirement to be properly addressed.
>
> iii) Disclosure before proceedings have started must be desirable (i) to dispose fairly of the anticipated proceedings, (ii) to assist the dispute to be resolved without proceedings, or (iii) to save costs: CPR 31.16 (3) (d).
>
> iv) In considering whether to make an order, among the important considerations are the nature of the loss complained of, the clarity and identification of the issues raised by the complaint, the nature of the documents requested, the relevance of any protocol or pre-action inquiries, and the opportunity which the complainant has to make his case without pre-action disclosure (*Black v Sumitomo Corp* at [88]).

> v) The anticipated claim must have a real prospect of success.
>
> vi) In the commercial context, a pre-action disclosure order, even if not exceptional, is unusual.
>
> 67. The request must be "highly focussed" and confined to what is "strictly necessary" for the purposes for which pre-action disclosure may be ordered: *Hutchinson 3G UK Ltd. v O2 (UK) Ltd.* [2008] EWHC 55 (Comm) at [40] (Steel J.); *Snowstar Shipping v Graig Shipping* [2003] EWHC 367 (Comm) at [35] (Morison J).
>
> 68. Two other judicial observations are pertinent. In *Total E&P Soudan SA v Edmonds* [2007] EWCA Civ 50, the Court of Appeal described applications under CPR 31.16 as being "in the nature of case management decisions requiring the judge to take a "big picture" view of the application in question". This was said in the context of discouraging detailed investigation of legally complex and debateable issues of law, but in my view it is true as a general proposition. This means that a judge should look at the case in the round, and take into account how matters are likely to proceed in the litigation in the event that disclosure is ordered or refused. In *Hands v Morrison Construction Services* Ltd., [2006] EWHC 2018 (Ch) Mr. Michael Briggs QC (as he then was) said that the court must also stand back at some point and look at the matter in the round – in other words, not fail to see the wood for the trees. The question at that level "may include the general question: does the request for pre-action disclosure further the over-riding objective in this case, or not" (paragraph [30])."

4. It is also relevant to note that in *Smith v Secretary of State for Energy and Climate Change* [2014] 1 WLR 2283, the Court of Appeal considered (obiter) at [23] whether the applicant had to establish "some minimum level of arguability" to make out the court's jurisdiction to grant pre-action disclosure. Underhill LJ (with whom Floyd and Longmore LJJ agreed) said:

> "… it is clear from *Black v Sumitomo* … that there is no such requirement: all that has to be shown is that it is likely that the respondent would be a party to such proceedings if commenced (see para 71 of Rix LJ's judgment …). I accept of course that it cannot have been the intention of the rule-maker that a party

> should be entitled to pre-action disclosure in circumstances where there was no prospect of his being able to establish a viable claim; but in such a case disclosure could and no doubt would be refused in the exercise of the discretion which arises at the second stage of the inquiry".

UBP's proposed claims

5. UBP's claims are summarised as follows in the witness statement filed in support of the application:

> "UBP's Claims will seek to establish that, while LCE was providing investment information to UBP which purported to show that Jott was a healthy and thriving business, LCE was at the same time aware of, and indeed actively engaged in attempting to manage, a serious deterioration of Jott's business, which has led to an almost complete erosion of Jott's value and left it now close to insolvency."

6. In support of that case, UBP says that two partners in LCE who sat on Jaguar Topco's supervisory board, Eduardo Velasco and Nicolas Desbois, played a central role both in supplying the investment information to UBP and in LCE's operational involvement with Jott. UBP says that they knew at least as early as August 2023 of operational problems that ultimately led to Jott's failure, and that those problems meant that the information given to UBP in the context of its proposed acquisition was false.

7. By its application, UBP seeks disclosure of documents which go to what LCE knew about Jott's operational and financial deterioration before UBP invested on 22 November 2023, and when LCE knew it.

8. LCE invested in Jott in January 2021 and by spring 2023 was seeking further co-investors. At that time, UBP and LCE entered into discussions about

potential investment opportunities for UBP. On 8 June 2023, they entered into a Letter Agreement (the "Letter Agreement") pursuant to which LCE provided UBP with information in connection with UBP's possible co-investment in Jott.

9. The Letter Agreement included the following provisions (among others):

> "In connection with your consideration of a possible co-investment alongside L Catterton Europe SAS ("L Catterton", "we", "us") in Jaguar Topco SAS and/or its subsidiaries (the "Company"), you have requested information regarding the Company. As a condition to your being furnished such information, you agree to treat any information (whether prepared by the Company, its advisors or otherwise) which is furnished to you by or on behalf of the Company in connection with a potential co-investment in the Company (herein collectively referred to as the "Evaluation Material") in accordance with the provisions of this letter (the "Letter Agreement") and to take or abstain from taking certain other actions herein set forth.
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> ...
>
> You hereby agree that the Evaluation Material will be used solely for the purpose of evaluating a possible co-investment in the Company with L Catterton, that such information shall not be used for your own benefit including with respect to the planning, marketing, product development, and pricing of any products manufactured or sold by you or your affiliates, and that such information will be kept confidential by you and your Representatives;
>
> …
>
> You hereby agree not to initiate or maintain contact with the employees of the Company (including any of its subsidiaries) concerning the discussions or Evaluation Material referred to herein, and that all contact regarding same shall be only with L Catterton or such other person as it designates.
>
> …
>
> Although the Company has endeavored to include in the Evaluation Material information known to it which it believes to

> be relevant for the purpose of your investigation, you understand that neither the Company nor any of its representatives or advisors have made or make any representation or warranty as to the accuracy or completeness of the Evaluation Material. You agree that neither the Company nor its representatives or advisors, and nor L Catterton shall have any liability to you or any of your Representatives resulting from the use of the Evaluation Material.
>
> …
>
> Unless and until a definitive agreement between the Company, L Catterton and you with respect to any transaction referred to in the first paragraph hereof has been executed and delivered, and except for the matters specifically agreed to herein, L Catterton will not be under any legal obligation of any kind whatsoever with respect to any transaction by virtue of this Letter Agreement or any written or oral expression with respect to any such transaction by the Company or any of its directors, officers, employees, agents or other representatives. You understand and agree that the Company and L Catterton shall be free to conduct the process relating to a transaction as they in their sole discretion shall determine (including without limitation negotiating with any prospective party, entering into agreements to effect a transaction and changing the procedures with respect to a transaction, in each case without notice to you or any other person).
>
> …
>
> This Letter Agreement is for the benefit of the Company, L Catterton, and their respective affiliates, successors assigns and will be governed by and construed in accordance with the laws of England, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. Any dispute in connection with this Letter Agreement shall be subject to the courts of England."

10. UBP says that, pursuant to the Letter Agreement, it was provided with information including the following:

    i) By email from Romain Verani (LCE, Vice President) dated 8 June 2023 to Grégoire Sella (Managing Director and Senior Investment Structurer, UBP), copied to Mr Velasco, Mr Desbois and Luigi Feola (a Managing Director of LCE), the first financial model provided by LCE. That model projected EBITDA of EUR 54.5m, 74.2m and 98.4m for the years ending 31 December 2023, 2024 and 2025 respectively.

ii) By email from Mr Verani to Simon Würthenberger (Managing Director and Head of Business Development, UBP) on 15 June 2023, a revised financial model which concluded, on the basis of the same EBITDA figures provided in the earlier financial model, that Jott's Enterprise Value ("EV") was EUR 568m (the "June 2023 Valuation"). Thus, the EV was a multiple of c.10.42x the projected 2023 EBITDA amount. Mr Velasco, Mr Desbois and Mr Feola were also copied to this email.

iii) By email on 20 July 2023, Mr Verani sent Mr Würthenberger an investor presentation which projected a reduction in Jott's net sales from EUR 172m to EUR 162m in FY2023 and downgraded Jott's projected FY2023 EBITDA from EUR 55m to EUR 50m. The EBITDA projections for FY2024 and FY2025 were as projected in the June 2023 Valuation. The presentation nonetheless projected a multiple of 11.6x. Mr Velasco, Mr Desbois and Mr Feola were copied to this email and the following exchanges:

a) On 21 July 2023, Mr Würthenberger asked Mr Verani "why you have so drastically downward revised the 2023E expectations, when 3 weeks ago you were very confident on achieving those initial figures?"

b) Mr Verani replied later that day, saying among other things that: "2023 ambitions have slightly been revised downward due to some uncertain market conditions related to a set of B2B clients".

c) In response to further queries from Mr Würthenberger, Mr Verani stated on 25 July 2023 that the impact on Jott's EV according to a Discounted Cash Flow model would be limited to "[approx.] 1% max".

iv) On 24 August 2023, Dejan Matic (Private Markets Analyst, UBP) asked Mr Verani and Kate Dowley (Investor Relations, LCE) to "confirm that the JOTT valuation as of June 2023 (i.e. equity value of EUR 405.4mn and implied enterprise value of EUR 568mn) has not changed, despite the downward adjustment of the 2023B EBITDA (and thus lower valuation multiple)?" Mr Velasco was copied to this email.

v) The following day, on 25 August 2023, Mr Verani stated in response that "Valuation as of June has not changed and equity value of 405.4m€ with corresponding implied EV of 582.5m€ (i.e. 11.6x the 2023 reforecast EBITDA of 50.1m€ as indicated in the deck". Mr Velasco was also copied to this email.

vi) On 27 September 2023, Marina Flynn (Managing Director, Investor Relations at LCE) shared an investor presentation with Mr Sella, dated 21 August 2023, which included a financial overview of Jott. The financial overview projected Jott's FY2023 EBITDA to be EUR 55m (in line with the June 2023 Valuation) and made no mention of any issues in FY 2023 (Jott's financial year runs from 1 January to 31 December). The presentation recorded that "YTD performance as per June 2023 – revenue is in line with budget at €38million in sales …B2B is in line with the budget". Mr Velasco and Mr Desbois were copied to this email.

11. UBP says that these were continuing representations on which it relied when it agreed to enter into the investment through a Partnership Agreement and a Subscription Agreement on 22 November 2023, as follows:

i) On 22 November 2023, pursuant to an Amended and Restated Limited Partnership Agreement entered into between UBP, Fashion & Consumer Access GP S.à.r.l. (the "General Partner") and Mr Feola (signing in his individual capacity as a limited partner), UBP became a partner in Fashion & Consumer Access I SCSp (the "Partnership").

ii) The objective of the Partnership was to invest 40% of its capital commitments in an L Catterton Fund ("LCE5") and the remaining 60% in two specified co-investments, namely (a) 40% in Jott and (b) 20% in the clothing brand APC. The investment in Jott was to be made indirectly by acquiring shares in S.L.09 S.à.r.l. ("SL09"), a co-investment vehicle which held shares in Jaguar Topco.

iii) Also on 22 November 2023, UBP subscribed to the Partnership in the sum of EUR 80,166,667 pursuant to a Subscription Agreement entered into between UBP and the Partnership.

iv) On 7 December 2023, the Partnership executed a Sale and Purchase Agreement (the "SPA") to purchase shares in SL09 (the "SL09 Shares") for the sum of EUR 28,837,494.09. Pursuant to provisions in the Partnership Agreement, the price for the SL09 Shares acquired by the Partnership was determined by reference to a valuation of Jott as at 30 June 2023 which was provided by LCE.

v) The SL09 Shares were purchased from a number of pre-existing shareholders including an L Catterton fund ("LCE4"), which was the majority shareholder in SL09.

12. The evidence of Mr Stannard filed on behalf of UBP in support of this application ("Stannard 1") is that he understands LCE4 and LCE are closely related. He notes that:

i) Mr Desbois was a Manager of LCE4 until 27 December 2024, and

ii) one of the shareholders of LCE4 from 5 November 2018 to 8 November 2024 was L Catterton Europe IV, SLP. Mr Desbois became a shareholder of that entity on 26 June 2020, and LCE is the Alternative Investment Fund Manager of that entity.

13. UBP says that Jott encountered serious operational issues from at least August 2023 which materially impacted its performance from then onwards. Most significantly, Jott's key logistics provider SNDR, operating the primary warehouse for Jott in France, fell into serious default of its obligations and repeatedly fell short of delivery targets.

14. UBP says these issues were first admitted to it in a year-end 2023 co-investor report provided to UBP on 2 April 2024, which was followed by a call between Mr Velasco, Mr Würthenberger and Brice Thionnet (Global Head of Private Markets, UBP) on 3 April 2024. Mr Verani then provided UBP with a detailed report on the issues with Jott on 4 April 2024. Subsequent meetings between UBP and LCE about Jott's deteriorating position then followed and information provided thereafter included the following:

    i) During a call on 4 June 2024, UBP was told that SNDR had been contracted to ship c.15,000 to 20,000 units per day in August 2023 but in fact shipped 7,000 to 8,000 units per day and that reduced over time so that, by October 2023, no deliveries were being made.

    ii) A presentation sent to UBP on 16 October 2024 stated that Jott's actual EBITDA for FY2023 was EUR 20.5m, less than half LCE's downgraded projection of EUR 50m provided on 20 July 2023 and 37%

of the projected EBITDA of EUR 55m as stated in the presentation provided on 27 September 2023.

iii) The 16 October 2024 presentation projected Jott's EBITDA for FY2024 to be EUR 15-17m, EUR 55-57m below LCE's previous projection of EUR 74m.

iv) In LCE's June 2025 update, Jott's actual EBITDA for FY2024 was recorded as EUR 0.1m.

15. Since April 2024, Jott has required repeated liquidity injections from its investors at short notice to continue operating. UBP says that it has had to participate in these liquidity injections in order to avoid its interest in Jott being entirely diluted. It says it has thus contributed additional sums totalling just under EUR 3m, bringing its total indirect investment in Jott to c.EUR 31.8m.

16. Stannard 1 accordingly summarised UBP's proposed claim as follows:

> "In short, UBP's claims will seek to establish that, while LCE was providing investment information to UBP which purported to show that Jott was a healthy and thriving business, LCE was at the same time aware of, and indeed actively engaged in attempting to manage, a serious deterioration of Jott's business, which has led to an almost complete erosion of Jott's value and left it now close to insolvency.
>
> In particular, UBP will allege that two LCE partners who also held positions on the supervisory board of Jaguar Topco, Mr Eduardo Velasco and Mr Nicolas Desbois, were intimately involved in both the provision of investment information to UBP, and LCE's engagement with Jott at an operational level. On that basis, UBP will claim that those individuals were aware that the information provided to UBP was not correct. Given that another L Catterton fund (LCE4 …) stood to benefit from UBP's

> investment in Jott and the information was provided by LCE to enable UBP to evaluate the investment, UBP will also allege that LCE deliberately or recklessly omitted to inform UBP of the issues impacting Jott's valuation in order to maintain an inflated purchase price for the investment."

17. LCE says that the June 2023 Valuation was accurate as at 22 November 2023, because throughout November it considered that the operational issues were an exceptional event from which Jott would recover. It says it was not until late December 2023 that LCE were informed that the collapse of Jott's operations provider was likely, and that even after that, LCE's Valuation Committee projected Jott's Normative EBITDA for YE 2023 at €40 million and valued its equity value at €355,592,000 (amounting to a 6.8% reduction in the equity value of Jott between 30 June 2023 and 30 December 2023).

Jurisdiction

18. LCE's first point in response to this application is that it should be dismissed because this court does not have jurisdiction over the proposed claim.

19. UBP's application is for pre-action disclosure in relation to the claim for fraudulent misrepresentation which it says it intends to bring in this jurisdiction. UBP says that its claim falls within the jurisdiction clause in the Letter Agreement, pursuant to which LCE provided UBP with the investment information. It says its claim is a "*dispute in connection with*" the Letter Agreement because it is a claim in respect of the information provided pursuant to that Letter Agreement, relying on *Eastern Pacific Chartering Inc v Pola Maritime Ltd* [2021] 1 WLR 5475.

20. Mr Lord KC (who appeared with Mr Hafeez-Baig for UBP) further submitted in his oral arguments that, by operation of Article 3 of the Hague Convention on Choice of Court Agreements 2005, the jurisdiction clause here is to be treated as exclusive because it is a clause which designates the courts of England and Wales (a contracting state) and does not provide that it is not exclusive. UBP submits that there would therefore be no residual discretion in the English court to refuse jurisdiction if a CPR 11 challenge were made asking the Court not to exercise any jurisdiction it has.

21. Accordingly, UBP says it was entitled to serve this application (and will be entitled to serve the substantive proceedings in due course) out of the jurisdiction without permission pursuant to CPR 6.33(2B)(a), (b) and/or (c) (because by CPR 6.2(c), "claim" for the purposes of Part 6 includes any application made before action, and "claim form", "claimant" and "defendant" are to be construed accordingly).

22. UBP also relied, in any event, on the Court of Appeal's decision on a CPR 31.16 application in *Total E&P Soudan SA v Edmonds* [2007] EWCA Civ 50, in which Tuckey LJ (with whom Jacob and Moore-Bick LJJ agreed) said at [30]-[31] that the court should not embark on a consideration of arguments about appropriate forum on an application under CPR 31.16 and that such arguments were better raised after proceedings had been started because the issues were then better defined, and arguments about forum were issue dependent. In that case, arguments about appropriate forum had been raised, as well as arguments about justiciability and the mental element required for certain economic torts.

I accept that this decision shows (at least) that the Court should not usually take into account on a pre-action disclosure application the fact the respondent might in due course seek a stay of the substantive claim under CPR 11.

23. LCE framed its argument as a submission that the application "must be dismissed" because the English court would not have jurisdiction over the substantive proceedings, saying that, by analogy with *Green v CT Group Holdings Limited* [2023] EWHC 3168 (Comm), the court should not order pre-action disclosure in aid of foreign proceedings. This submission was not developed in oral argument, but *Green v CT Group*, which was a Norwich Pharmacal case, does not seem to me to provide a basis (by analogy or otherwise) for dismissing this application. In his decision, Charles Hollander KC held at [44] that:

> "the effect of [*R (Omar) v Secretary of State for Foreign and Commonwealth Affairs* [2014] QB 112] and the cases which follow it is that where the purpose of the Norwich Pharmacal application is to obtain evidence for use in foreign civil proceedings, or in connection with criminal proceedings or a criminal investigation being carried on outside the United Kingdom, the court has no jurisdiction to make a Norwich Pharmacal order because the exclusive remedy is under the respective statutory scheme."

24. The Judge therefore held that in cases involving jurisdiction issues, the identification of the purpose for which the Norwich Pharmacal relief was sought was crucial (at [48]). In that case, the witness statement in support of the application stated that the Claimant sought the permission of the English court to use the documents disclosed pursuant to any order for the purposes of (a) bringing civil proceedings, if so advised and subject to the permission of the

Jersey and Guernsey courts where proceedings were ongoing, against the relevant persons; (b) disclosing any crime and/or making a regulatory complaint in any relevant jurisdiction; and (c) for the purposes of the proceedings in the Royal Courts of Jersey and Guernsey to which the Claimant was a party (at [15]). The respondent to the Norwich Pharmacal application was a private investigation company ("CT Group") resident in this jurisdiction which had conducted investigations into the Claimant's affairs on the instructions of the defendants to the proceedings in the Channel Islands. During argument it was submitted that it was possible that obtaining the information sought would lead to civil or criminal proceedings in this jurisdiction, either against CT Group themselves or against the ultimate wrongdoer (the "third party"). The Judge dealt with this submission as follows (at [58]-[59]):

> "… there is nothing in this case which connects it with this jurisdiction other than the residence of CT Group. There is no reason on the evidence to believe the third party has anything to do with this jurisdiction.
>
> As for the suggestion the purpose could be to bring proceedings against CT Group, it seems to me that if that was the intention, this application would have needed to be framed very differently and should have been brought under CPR 31.16 for pre-action disclosure. CT Group are entitled to complain that purpose was not foreshadowed and is not a legitimate use of the Norwich Pharmacal procedure …."

25. Thus the jurisdictional issues which the Judge identified in that case were specific to the Norwich Pharmacal jurisdiction and its overlap with the statutory regime for obtaining evidence for use in foreign proceedings and the Judge expressly recognised at [59] (above) that the CPR 31.16 jurisdiction would raise different issues. It was not submitted that this application fell within the

exclusive statutory regime in the 1975 Act for obtaining evidence for use in foreign civil proceedings and, as advanced by UBP, it plainly is not such an application: it is brought as an application for disclosure in respect of proposed proceedings in this jurisdiction.

26. It is not clear to me on what other basis the jurisdictional arguments advanced by LCE were relied on as a standalone response to the application, but I summarise the arguments made and address them below.

27. LCE says that any fraudulent misrepresentation claim UBP might have would be governed by Luxembourg law and should be determined in the Luxembourg courts, and that (leaving the Letter Agreement to one side), no aspect of the proposed claim has any connection to England and Wales. LCE says:

i) UBP is Swiss, LCE is French;

ii) The investment was in a Luxembourg private equity fund, F&C;

iii) Jott is French;

iv) Any loss "occurred" in Switzerland, France or Luxembourg;

v) The value of Jott was determined by clause 6.3.2 of the Partnership Agreement, which provided that the acquisition price of UBP's investment into SL09 would be based and calculated strictly on the basis of the 30 June 2023 Valuation. Hence, LCE says, the operative clause that UBP wish to impugn is contained in a contract governed by

Luxembourg law and which contains Luxembourg exclusive jurisdiction clauses (at clauses 10.9 and 10.18); and

vi) UBP committed to the investment on 22 November 2023 when it entered into the 3 transaction documents, all of which are governed by Luxembourg law and contain Luxembourg exclusive jurisdiction clauses.

28. LCE's principal argument on the construction of the jurisdiction agreement in the Letter Agreement was that, although the clause is not "a classic asymmetric exclusive jurisdiction clause", it is at least strongly arguable that it takes effect as an asymmetric jurisdiction clause. The basis of LCE's argument, as I understand it, is that the entire Letter Agreement (not just the jurisdiction clause) is for the benefit of LCE and the Company (and their affiliates etc), not for UBP. I set out the relevant provision again here for ease of reference:

> "This Letter Agreement is for the benefit of the Company, L Catterton, and their respective affiliates, successors assigns and will be governed by and construed in accordance with the laws of England, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. Any dispute in connection with this Letter Agreement shall be subject to the courts of England."

29. This is, therefore, as LCE recognised, not a classic asymmetric jurisdiction clause (see, for example, the clause set out in *Etihad Airways PJSC v Flöther* [2022] QB 303 at [3] which provided in a final sub-clause that "<u>This Clause 33</u> is for the benefit of the Lender only. As a result, <u>the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts</u> with

jurisdiction. To the extent allowed by law, <u>the Lender may take concurrent proceedings in any number of jurisdictions</u>" (emphasis added).) By contrast with the agreement in that case, the jurisdiction agreement in the Letter Agreement does not provide the jurisdiction agreement is for the benefit of one party "only" (whether or not including its affiliates, successors and assigns) and does not provide that that party may sue elsewhere. Rather, the relevant clause in the Letter Agreement appears to be intended to extend the benefit of the Letter Agreement to affiliates, successors and assignees of the Company and of L Catterton, not to constitute an asymmetric jurisdiction agreement. So far as LCE's argument is that the entire Letter Agreement is for the benefit of L Catterton and Jaguar Topco and their affiliates, and therefore not for the benefit of UBP with the result that UBP cannot claim pursuant to it or in connection with it, that is an argument going to the merits of the underlying claim, which is not a matter LCE disputes for the purpose of this application, rather than going to jurisdiction.

30. In any event, I would not consider there is sufficient merit in any such argument (that UBP simply cannot bring any claim at all in connection with the Letter Agreement because the Letter Agreement confers no rights on UBP, the named counterparty to that contract) to make it relevant to any jurisdictional threshold issue on this pre-action disclosure application. Nor do I consider there is sufficient merit in LCE's argument (if different) that, although UBP is the named counterparty to the Letter Agreement, it cannot bring a claim in the English courts pursuant to the jurisdiction agreement in the Letter Agreement

to make it relevant for the purposes of this pre-action disclosure application. I am fortified in those conclusions by the fact that LCE did not cite any authority in support of these arguments other than *Etihad Airways* (above, as a case concerning asymmetric jurisdiction agreements).

31. LCE further contended that if it was right that the jurisdiction agreement took effect as an asymmetric jurisdiction clause, then Article 3(b) of the Hague Convention deeming the clause to provide for exclusive jurisdiction does not apply. LCE relied in support of this argument as to the Hague Convention on *Etihad Airways* (above) in which Henderson LJ (with whom Hickinbottom and Newey LJJ agreed) said at [85] that he was prepared to proceed on the basis that the Hague Convention should probably be interpreted as not applying to asymmetric jurisdiction clauses (although Henderson LJ emphasised that it was unnecessary for the Court of Appeal in that case to decide that question and he was not doing so). As I understand it, this point is relied on by LCE in response to the suggestion that there is no prospect of it successfully applying for a CPR 11 stay of the substantive claim. In light of the decision in *Total E&P Soudan* (above), I do not consider that there is any reason why this case should be treated as outside the general approach set out in that case, that the Court should not consider arguments about appropriate forum on an application under CPR 31.16 and I do not do so. Accordingly, the issues LCE raises which would go to support a CPR 11 stay application in respect of the substantive claim are not matters for this hearing.

32. LCE's further submissions on this topic were primarily to the effect that UBP had no claim in connection with the Letter Agreement and/or could pursue no claim other than under the transaction documents. Thus, in its skeleton argument:

i) First, LCE pointed to the fact that by clause 3(d) of the Subscription Agreement, UBP expressly stated that in deciding whether to invest, it did not rely on any documents other than (a) the private placement memorandum dated May 2023; (b) the Partnership Agreement; (c) the Subscription Agreement; and (d) the Side Letter; and also acknowledged it had been given the opportunity to ask questions, perform its own independent investigations and obtain additional information.

ii) Second, LCE pointed to the following express provisions in the Letter Agreement (in addition to the provision that the Letter Agreement was for the benefit of the Company, L Catterton and their affiliates etc, which I have addressed above):

a) No representation or warranty is made by Jaguar Topco SAS (the owner/custodian of the "Evaluation Material") "as to the accuracy or completeness of the Evaluation Material" and neither Jaguar Topco nor LCE "shall have any liability resulting from the use of the Evaluation Material"; and

b) The “Evaluation Material” was being “furnished to [UBP] by or on behalf of [Jaguar Topco SAS]”. LCE was not acting as principal in the provision of the Evaluation Material to UBP.

33. LCE also submitted that:

i) The Letter Agreement is irrelevant to UBP's proposed claim. The claim concerns UBP's investment in F&C, in which UBP participated by acting as a limited partner and as a party to the Partnership Agreement and other transaction documents. The transaction documents expressly anchor Luxembourg as the only applicable jurisdiction for the determination of disputes between the parties.

ii) Clause 5.7.3 of the Partnership Agreement provides that UBP granted LCE extensive releases from any Liabilities and Actions (as defined therein) “relating to the performance or non-performance of the activities of the Fund”. LCE says that the losses which UBP seeks to recover, and the claim it now intimates, fall squarely within this definition, and that whether LCE can rely on clause 5.7.3 is a matter for the Luxembourg courts to determine, pursuant to Luxembourg law.

iii) Leaving aside UBP's contractual obligation to bring its disputes in Luxembourg, then Article 4 of the Rome II Regulation nonetheless provides that UBP's proposed claim (in the tort of fraudulent misrepresentation) would be governed by Luxembourg law, as it is that country with which the alleged tort is manifestly most closely connected.

34. During the hearing, I asked the parties whether the decision of the Court of Appeal in *BNP Paribas SA v Trattamento Rifiuti Metropolitani SpA* [2019] EWCA Civ 768, [2020] 1 All ER 762, and the summary by Hamblen LJ (as he then was) at [68] of the approach to be taken to the construction of competing jurisdiction clauses was relevant to the jurisdiction issue raised by LCE in this case. Mr Lord submitted that it is not relevant because in that case the claimant and defendant were both party to the different agreements and the discussion in Hamblen LJ's judgment was of the situation "where there are interlinked contracts between the same parties" ([66]), whereas here LCE accepts that it is not a named party to the Partnership Agreement or the Subscription Agreement but it is a party to the Letter Agreement. Ms Shekerdemian KC (who appeared with Ms Mitchell for LCE) accepted that LCE did not contend it was a party to the transactional agreements and submitted that the approach in the *BNP Paribas* case supported her submission that the overall picture here is of a non-disclosure agreement (the Letter Agreement) that permits LCE (and only LCE) to sue in England, and a suite of transaction documents that give UBP the right to sue only in Luxembourg.

35. LCE agreed to accept service of the application pursuant to CPR 6.33 without prejudice to its arguments on jurisdiction, and has advanced those arguments at this hearing. It has formulated those arguments as being that "the English courts have no jurisdiction <u>over UBP's purported claim</u> in fraudulent

misrepresentation" and that "If LCE is right that the proposed claim is not an English claim, then plainly, that disposes of the application. It must be dismissed" (emphasis added). LCE's jurisdiction argument was thus advanced as an argument going to the merits of this application, rather than being an argument that the court should decide that it has no jurisdiction, or should not exercise any discretion it has, to consider this application. (I have addressed above LCE's submission that the application should be dismissed by analogy with *Green v CT Group*.)

36. It seems to me that the court must consider, for the purposes of this application for pre-action disclosure, the claim identified by the applicant and, for the purposes of this application, I accept UBP's submissions that its proposed claim falls within the jurisdiction clause in the Letter Agreement on the basis that a claim that the provision of information under that agreement involved fraudulent misrepresentation is, as it submits, a claim "connected with" the Letter Agreement and that that is sufficient for this application. I reach that decision in light of the guidance given by Rix LJ in *Black v Sumitomo* at [70]-[72] as to the approach that should be taken to the requirements of CPR 31.16(3)(a) and (b) ("likely to be a party").

37. My reasons are as follows:

i) I have already decided above that forum-type arguments which may be relevant to a CPR 11 stay application are not a matter for this application.

ii) Those arguments do not otherwise assist LCE if the proposed claim falls within the scope of the jurisdiction agreement in the Letter Agreement.

iii) I have also already decided above that LCE's arguments about the asymmetric nature of the jurisdiction agreement in the Letter Agreement do not mean UBP does not have a claim of sufficient merit for the purposes of this application (the merits of UBP's proposed claim not in fact being an issue disputed by LCE for the purpose of this application), and I did not understand Ms Shekerdemian to contend on any other basis that the proposed claim does not fall within that jurisdiction agreement.

iv) In any event, I accept that, essentially for the reasons advanced by Mr Lord, none of the other points made by LCE (and summarised above) by reference to express provisions of the Letter Agreement mean that UBP's proposed claim does not fall within the scope of its jurisdiction clause:

   a) The clauses stating that no representation or warranty is made by Jaguar Topco SAS (the owner/custodian of the "Evaluation Material") "as to the accuracy or completeness of the Evaluation Material" and neither Jaguar Topco nor LCE "shall have any liability resulting from the use of the Evaluation Material" do not affect the construction of the jurisdiction clause.

b) Similarly, the provision which LCE relies on to submit that it acted only as agent for Jaguar Topco also does not affect the construction of the jurisdiction clause.

v) Insofar as LCE's arguments go to the merits of UBP's claim rather than to jurisdiction, then they are relevant to the exercise of the court's discretion to grant the disclosure sought rather than to the issue of the court's jurisdiction to grant such an order (see, in addition to *Black v Sumitomo*, *Smith v Secretary of State for Energy*, above).

Compliance with the requirements of the Pre-Action Practice Direction

38. There is a dispute between the parties as to whether and, if so, to what extent, LCE has failed to comply with the relevant pre-action requirements. It is common ground that there is no specific pre-action protocol that applies in this case and that, accordingly, the relevant requirements are those set out in the Practice Direction – Pre-Action Conduct and Protocols (the "Pre-Action Practice Direction").

39. UBP points to paragraphs 3 and 6 of the Pre-Action Practice Direction:

i) Paragraph 3 provides that:

> "Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to –
> (a) understand each other's position;
> (b) make decisions about how to proceed;
> (c) try to settle the issues without proceedings;
> (d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;

(e) support the efficient management of those proceedings; and
(f) reduce the costs of resolving the dispute."

ii) Paragraph 6 provides that where there is no relevant pre-action protocol,

> "the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate. The steps will usually include –
>
> (a) the claimant writing to the defendant with concise details of the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated;
> (b) the defendant responding within a reasonable time – 14 days in a straightforward case and no more than 3 months in a very complex one. The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed and whether the defendant is making a counterclaim as well as providing details of any counterclaim; and
> (c) the parties disclosing key documents relevant to the issues in dispute."

40. The relevant provisions in the Commercial Court Guide are at B.3.1 to B.3.4 as follows:

> "B.3.1 The [Pre-Action Practice Direction] applies to cases in the Commercial Court and should usually be observed, although it is sometimes necessary or proper to start proceedings without following the procedures there contemplated: for example, where delays in starting proceedings might prompt forum-shopping in other jurisdictions. Cases in the Commercial Court are sometimes covered by an approved protocol because of the subject matter, such as the Professional Negligence Pre-Action Protocol.
>
> B.3.2 Subject to complying with the Practice Direction and any applicable approved protocol, the parties to proceedings in the Commercial Court are not required, or generally expected, to

> engage in elaborate or expensive pre-action procedures, and restraint is encouraged.
>
> B.3.3 Thus, the letter of claim should be concise and it is usually sufficient to explain the proposed claim(s), identifying key dates, so as to enable the potential defendant to understand and to investigate the allegations. Only essential documents need be supplied, and the period specified for a response should not be longer than one month without good reason.
>
> B.3.4 A potential defendant should respond to a letter of claim concisely, and only essential documents need be supplied. It should often be possible to respond sufficiently within 21 days. A potential defendant who needs longer should explain the reasons when acknowledging the letter of claim."

41. As Jacobs J explained in *Carillion* at [8]-[9], it is important when considering arguments about breach of the protocol to "pay regard to the 'spirit' of the Protocol", referring (among other things) to paragraph 13 of the Pre-Action Practice Direction itself, which provides as follows:

> "If a dispute proceeds to litigation, the court will expect the parties to have complied with a relevant pre-action protocol or this Practice Direction. The court will take into account non-compliance when giving directions for the management of proceedings … and when making orders for costs …. The court will consider whether all parties have complied in substance with the terms of the relevant pre-action protocol or this Practice Direction, and is not likely to be concerned with minor or technical infringements, especially when the matter is urgent (for example, an application for an injunction)."

42. UBP sent a letter before action on 5 September 2025 (the "LBA"), which was expressly stated to be sent in accordance with the Pre-Action Practice Direction. The LBA summarised what UBP says are the relevant facts and stated that UBP considers it has prima facie claims against LCE in the tort of fraudulent misrepresentation, setting out the basis on which it considers the elements of the tort are established. The LBA stated that UBP "stands ready to bring its

claims against LCE" but recognised that the English court expects parties to engage before issuing proceedings, in order to attempt to resolve disputes, and requested LCE to provide the following information/documents, failing which UBP reserved the right to make an application for pre-action disclosure:

i) When LCE first became aware of the logistical issues encountered by Jott in 2023;

ii) All information provided by Jott to LCE regarding the logistical issues encountered by Jott between 1 June 2023 and 7 December 2023, including all information relating to the impact of those issues on Jott's orders, delivery targets, sales and revenues;

iii) All monthly updates (such as management information packages or equivalent) provided by Jott between 1 June 2023 and 7 December 2023;

iv) All quarterly and annual updates provided by LCE4 to co-investors in SL09 between 1 June 2023 and 7 December 2023 further to Section 12 and Schedule D of the SL09 Shareholders' Agreement;

v) LCE's internal assessments and communications regarding its valuation of Jott between 1 June 2023, and 7 December 2023, including (i) LCE's assessments of Jott's enterprise value; and (ii) LCE's forecasts of Jott's EBITDA for FY2023 and subsequent years; and

vi) Records of all internal considerations within LCE between 1 June 2023 and 30 April 2024 regarding (i) the logistical issues encountered by Jott;

and (ii) LCE's valuations of Jott and projections of the financial performance of Jott.

43. LCE provided its substantive response to the LBA by letter of 28 October 2025. In that letter, it stated that:

i) The LBA failed properly to articulate UBP’s purported claim and the LBA therefore did not comply with the Pre-Action Practice Direction.

ii) To the extent LCE was able to understand the purported claim, the English court had no jurisdiction over it.

iii) LCE denied any liability to UBP and did not submit to the jurisdiction of the English court.

iv) In particular, LCE set out its position that what it characterised as the “many and insurmountable difficulties inherent in any attempt to construct an English law case have resulted in your client’s misplaced reliance” on the Letter Agreement. LCE stated that that was not an agreement capable of forming the basis of a misrepresentation claim but was no more than a simple non-disclosure agreement.

v) LCE set out what it said was “an illustrative, rather than exhaustive, list” of the ways in which the LBA failed to set out the basis on which UBP’s claim was made:

> “(a) The factual summary is selective and omits key information, such as your client's status as a sophisticated investor, the fact

that the investment in Jott was made by the Partnership, and the existence of representations, warranties, and limitations and releases in the ultimate investment documents.

(b) The [LBA] fails to explain the basis on which your client is relying on an NDA, which (1) expressly is for the benefit of the Company and not your client, and (2) contains express provisions preventing your client from relying on any representation of the Evaluation Material (as defined in the NDA).

(c) The [LBA] fails to provide full and detailed particulars of the alleged fraud, as is necessary when making allegations of fraud. This includes specifying when and how each alleged misrepresentation was made, by whom, to whom, the precise words used, what was known at the time, and the intention to deceive.

(d) The [LBA] also fails to properly quantify the purported claim as required by paragraph 6(a) of the Pre-Action Protocol. Beyond noting that your client has invested €31,811,033.09, there is no attempt to explain what loss your client claims to have sustained as a result of the alleged misrepresentations."

vi) LCE stated that UBP's requests for "the wide-ranging disclosure of documents" were "wholly disproportionate and inappropriate at the pre-action stage …, amounting to nothing more than a fishing expedition rather than a genuine attempt to clarify the issues in dispute", and that the mooted application for pre-action disclosure was "entirely without merit".

44. UBP's solicitors responded to that letter on 1 December 2025, saying that in light of LCE's failure to engage, it intended to proceed with an application for pre-action disclosure and enclosed a draft witness statement in support of the application which it intended to file "in short order".

45. On 8 December 2025, LCE's solicitors replied to say that LCE maintained any pre-action disclosure application was misconceived, and confirming that they were instructed to accept service without being deemed to submit to the jurisdiction and without prejudice to its right to challenge jurisdiction at the substantive hearing, and/or to contend that England and Wales is not the proper forum, and/or to contend that the criteria in CPR 6.37 had not been satisfied (as they would have to be if UBP were found not to be entitled to proceed under CPR 6.33), and/or to raise any other procedural or substantive objections.

46. UBP's solicitors then served this application by letter dated 11 December 2025, LCE's evidence in answer was filed on 6 March 2026 and UBP's evidence in reply was filed on 2 April 2026.

47. UBP says that LCE failed to comply with the Pre-Action Practice Direction because, contrary to the requirements of paragraphs 3 and 6 (set out above) of that Practice Direction, it refused to engage with the substance of UBP's claims or with UBP's requests for information and documents. UBP says that LCE's contention that it could not properly understand the claim against it is given the lie by the fact that in response to Stannard 1 (which essentially repeats the allegations in the LBA), LCE was able to provide a substantive response in the form of the first witness statement of Mr Velasco ("Velasco 1").

48. LCE relies on paragraph B.3.2 of the Commercial Court Guide (above), and its statement that the parties to Commercial Court proceedings are not required to engage in elaborate or expensive pre-action procedures, but I accept UBP's

submission that the Commercial Court Guide makes clear that parties are required to comply with the substance of the Pre-Action Practice Direction (or any applicable specific protocol) and that the statement in paragraph B.3.2 which LCE relies on is expressly said to be "*Subject to complying with the Practice Direction and any applicable approved protocol* ...". *Carillion* (above) was a Commercial Court case where it was recognised by both parties and the Judge (see, for example, at [7]) that the parties were required to comply with the spirit of the relevant protocol, which in that case was the Pre-Action Protocol for Professional Negligence.

49. In my view, UBP is correct to say that LCE failed to engage with the substance of UBP's proposed claim, and to provide certain documents and information, as required by the Pre-Action Practice Direction. The points made by LCE as to why the LBA did not comply with the requirements of the Practice Direction were not a reason why it could not have engaged earlier with the substance of the claim identified by UBP (as it has now done in Velasco 1) rather than responding with points on jurisdiction and asserting that the only claims available to UBP were different claims (to be made under the transaction documents rather than under the Letter Agreement), and while I agree with LCE on some of the points it makes about the breadth of the disclosure sought by UBP (for reasons set out below), it did not provide until later any of the documents sought. The fact it has now provided copies of its valuations of Jott between 1 June and 7 December 2023 is, in my view, a demonstration of the fact that it did not engage with the substance of the claim and the requests for

documents as it should have done as part of the protocol process but only once this application was issued.

50. I consider below the relevance to this application of LCE's failure to engage with the substance of UBP's claim and to provide some documents and information in accordance with the spirit of the Pre-Action Practice Direction.

CPR 31.16(3)(a) and (b)

51. LCE accepts that, if it is wrong on its jurisdiction point, then CPR 31.16(3)(a) and (b) are satisfied, because LCE and UBP are likely to be parties to subsequent proceedings. It is not necessary to show that the initiation of such proceedings is in itself likely: see *Carillion* at [66](i), citing *Black v Sumitomo* at [71-72] per Rix LJ.

52. Accordingly given my decision on LCE's jurisdiction points (above), I am satisfied that this application meets the criteria in CPR 31.16(3)(a) and (b).

CPR 31.16(3)(c)

53. Schedule 1 to this judgment sets out the documents originally sought by UBP when it issued this application, and Schedule 2 sets out the revised list of documents sought by UBP following service of LCE's evidence in answer and, in particular, of Velasco 1. Each of UBP's draft orders provides for "a reasonable search" by LCE of the documents in its control and disclosure by LCE of the classes of documents listed in the draft order, supported by a

disclosure statement with a list of documents and copy of each of the documents in the list.

54. I note that UBP made requests for documents under CPR 31.14 in respect of Velasco 1. LCE initially refused to provide any documents but has subsequently provided a limited number of the documents requested. UBP has not issued an application under CPR 31.14 but has reserved the right to do so.

55. UBP relies on the judgment of Deputy Master Brightwell in *Willow Sports Ltd v SportsLocker24.com Ltd* [2021] EWHC 2524 (Ch) at [14-15] as to how the court should approach a pre-action disclosure application where the disclosure regime provided for by Practice Direction 57AD ("PD57AD") applies in place of various provisions in CPR 31 (including the provision in CPR 31.6 for standard disclosure), given that CPR 31.16 expressly refers to the respondent's duty of standard disclosure set out in CPR 31.6. In *Willow*, Deputy Master Brightwell considered that issue in a case where the Disclosure Pilot (the forerunner of PD57AD) applied. He held at [15] that, given the express reference in CPR 31.16 to the duty of standard disclosure set out in CPR 31.6, and that CPR 31.16 was reproduced in those terms in Section II of the Disclosure Pilot itself, when considering whether there is jurisdiction to make an order, "the court should ask whether the documents sought would be available in subsequent proceedings on the assumption that standard disclosure applied, i.e. without regard to the Disclosure Pilot".

56. Ms Shekerdemian accepted that the approach in *Willow* was the correct approach. Given the fact that CPR 31.16 is set out in the same terms (including a reference to standard disclosure under CPR 31.6) in Section II to PD57AD (the point Deputy Master Brightwell made in respect of the Disclosure Pilot), it seems to me to be the correct approach also where PD57AD will apply, to ask whether the documents sought would be available on standard disclosure pursuant to CPR 31.6.

57. UBP says the narrowed categories of documents it seeks would be within standard disclosure under CPR 31.6 because they are:

    i) Documents going to the information that was exchanged between Jott and LCE about Jott in the critical time that the evaluation process was unfolding;

    ii) Documents showing LCE's assessment or valuation of Jott at this time, which are (UBP says) fundamental to LCE's state of mind and the question of its honesty in the information it furnished to UBP under the due diligence process.

58. LCE does not accept that, if proceedings had started, all the documents sought would be within the scope of standard disclosure. It says that what UBP seeks by this application is tantamount to an order for what would otherwise be extended disclosure under PD57AD. In particular, it says that the "purportedly 'narrowed' categories" of documents sought by UBP by its revised order fall well outside CPR 31.6's formulation of standard disclosure (namely, (i) the

documents on which a party relies and the documents which (ii) adversely affect his own case; (iii) adversely affect another party's case or (iv) support another party's case, together with 'the documents he is required to disclose by a relevant practice direction') and that UBP is seeking documents that are relevant to the background and wider "story", and that the application includes impermissible requests for "train of inquiry" type documents. In *Carillion*, Jacobs J referred at [69] to Steel J's judgment in *Hutchinson 3G UK Ltd v O2 (UK) Ltd* [2008] EWHC 55 (Comm) as authority for the proposition "that the application must 'clearly' not encompass categories of documents which will simply prove to be relevant (if at all) as part of the background, let alone documents which might merely lead to a train of inquiry."

59. LCE further relied on what Steel J said at [44] of *Hutchinson*:

> "The applicants have to show that it is more probable than not that the documents are within the scope of standard disclosure in regard to the issues that are likely to arise."

60. Ms Shekerdemian characterised the disclosure sought by UBP on this application as being "the entire universe of documents relating to this investment, from June through to December. They want everything that may show what we know, how we process what we knew, what we might have known, the information that we were given, and how that might have informed us or might not have informed us". LCE submitted that UBP were effectively seeking "extended disclosure of the sort that would be ordered in the ordinary course of proceedings, following proceedings and with a disclosure model. It is jumping the gun".

61. LCE also relied on the approach taken by UBP in correspondence as showing the problem with the merits of this application. Having received the evidence filed by LCE in answer to the application, the solicitors for UBP wrote to LCE's solicitors as follows:

> "UBP assumes that Mr. Velasco prepared his statement with reference to the contemporaneous documents relevant to the matters addressed in his statement, and that these documents are therefore readily identifiable. The suggestion that a structured review exercise is necessary to identify documents relevant to the matters addressed in Mr. Velasco's statement implies that the relevant contemporaneous documents had not already been identified for the purposes of preparing his statement, or at least not all of the relevant documents, because if they had been, no such exercise would be necessary. This would suggest that Mr. Velasco's statement was prepared based on an incomplete account of the contemporaneous documents, which would call into question the reliability of his statement. UBP invites LCE to clarify the position."

62. Ms Shekerdemian said that this showed the problems with the disclosure sought by UBP, which includes a disclosure statement verified by a statement of truth. This is a significant point but, at least in this case, one which goes to the exercise of the court's discretion if it finds the jurisdictional requirements are met, rather than to the question whether the documents sought are within the scope of standard disclosure, and I therefore address it further below.

63. Although LCE submits that the categories sought are categories of documents going to the story or the background of the dispute, rather than being documents within the scope of standard disclosure as provided for by CPR 31.6, in my view, given the claim outlined in some detail by UBP in its evidence in support

of this application, the documents sought are within the scope of standard disclosure:

i) As to paragraph 1 of the revised request, formulated by reference to Velasco 1, these are in my view all:

a) documents on which LCE will rely (CPR 31.6(a)), or

b) documents which would adversely affect LCE's own case or which would adversely affect or support UBP's case (CPR 31.6(b)).

ii) That is shown by the contents of Velasco 1, which addresses UBP's proposed claim and the information and documents LCE received in respect of Jott, and by the formulation of the requests by reference to what is said in that witness statement (the revised requests being set out in full in Schedule 2 to this judgment). Given the nature of the claim, it is not realistic to characterise the documents listed in this paragraph as documents going to the background or to the story, let alone as "train of inquiry"-type documents, rather than documents which would fall to be disclosed as part of standard disclosure.

iii) I do not accept LCE's submission that any documents that post-date 22 November 2023, the date on which UBP committed to the investment by entering into the Subscription Agreement and the Partnership Agreement, are irrelevant. It seems to me that the documents post-dating

22 November 2023 which fall within the paragraph 1 requests are documents which will support or adversely affect UBP's case, because they will still support or adversely affect LCE's case as to what it (LCE) knew before UBP committed to the investment and support or adversely affect LCE's case as to whether it made any false representation deliberately or recklessly (including by showing when information about Jott's operational issues and the impact on its financial performance was both (1) received by LCE and (2) provided by LCE).

iv) As to paragraph 2 of the revised request ("The monthly reports that are 'prepared by Jott after the month ends and sent to LCE thereafter' in the period between June 2023 to December 2023, including the date on which the report was received by LCE"), these are also in my view within the scope of standard disclosure. Documents showing the reports made by Jott to LCE between June and December 2023 are documents which will support or adversely affect LCE's case, in particular, as to what it knew and when. LCE's submissions in opposition to this request focussed on the difficulty of identifying these documents (and the burden therefore involved in producing them) because it says there are not in fact monthly reports but that Mr Velasco was referring to "a totality of reportings that come in on an ad hoc basis". This is again a point which goes to discretion rather than to whether the documents are within the scope of standard disclosure. LCE again also makes a point about the date range, as to which my view is as set out above in respect of documents after 22 November 2023. As to the start date of the range, documents from June 2023 are within the scope of standard disclosure because the first financial model was provided by LCE to UBP on 8 June 2023.

v) As to paragraph 3 of the revised request ("Internal assessments and valuations of Jott in the period between 1 June and 7 December 2023 held by the LCE Custodians including (i) LCE's assessment of Jott's EV; and (ii) LCE's forecasts of Jott's EBITDA for FY2023 and thereafter"), LCE says that these documents have all been voluntarily produced and provided to UBP already.

vi) As to paragraph 4 of the revised request ("All quarterly and annual updates provided by LCE4 to co-investors in SL09 between June 2023 and December 2023 pursuant to Section 12 and Schedule D of the SL09 SA"), LCE submitted that UBP was not entitled to the co-investor updates for the period before it became a co-investor by executing a deed of adherence on 7 December 2023, and after that it received the updates and that is all it is entitled to. That submission confuses UBP's entitlement as a co-investor with the question of whether the co-investor updates provided by LCE during the period from June 2023 to December 2023 would be within the scope of CPR 31.6 standard disclosure on UBP's proposed claim. In my view, those updates would indeed be within the scope of standard disclosure, because they would support UBP's case, adversely affect UBP's case or adversely affect

LCE's case (in particular, as to what LCE knew and when, and whether any false representations made by LCE to UBP were made deliberately or recklessly). The date range is not too wide for the reasons I have set out above.

The scope of the disclosure sought

64. The decision that the disclosure sought is within the scope of CPR 31.6 standard disclosure does not determine the issue between the parties as to how extensive or burdensome, and therefore costly, the disclosure required by the order UBP seeks would be. That issue is relevant to the exercise of the court's discretion under CPR 31.16 but can conveniently be addressed here.

65. Ms Tobin, the partner at Mishcon de Reya LLP with conduct of these proceedings on behalf of LCE, filed a witness statement ("Tobin 1") in response to the application addressing the scope of the disclosure exercise required by the original order sought by UBP. Ms Tobin described that exercise as "disproportionately onerous, disruptive and expensive" on the basis that:

i) Stannard 1 names 6 individuals copied to, or apprised of, the documents on which it relies, and Ms Tobin says that there are 11 additional members of the LCE Investment Team who are likely to be relevant custodians, meaning 17 likely custodians in all;

ii) The total volume of emails and Teams messages to be collected from the 6 individual custodians named in Stannard 1 is about 509,000 emails and messages; in fact Ms Tobin explains that the total volume is likely to be significantly higher (she suggests over 700,000 documents);

iii) On the basis that document-by-document review would be disproportionate, Ms Tobin proposed the use of search terms which would have to be negotiated between the parties, but by way of example, she stated that if the search terms were “JOTT”, “Jaguar Topco”, “UBP” and “Union Bancaire Privée”, LCE’s global communications provider had provided an indicative volume of c.37,000 documents;

iv) Ms Tobin’s evidence was that the time required for a review of those documents was likely to be lengthened because (a) there were likely to be a significant volume of foreign language documents; (b) there were likely to be a significant volume of commercially sensitive documents in relation to deals unrelated to the application which would require redactions for commercial sensitivity; and (c) there were likely to be privileged documents;

v) Ms Tobin’s evidence is that, on the basis of her experience, she would expect the first pass review of resulting documents to take a minimum of 4 weeks involving 3 paralegals/trainees, supervised by a managing associate, and there would then be a second pass review by associates and/or managing associates, and a final limited review by Ms Tobin, with an estimated cost of £250,000 exclusive of VAT, plus about

£75,000 exclusive of VAT for the cost of hosting and processing the data for 3 months during the process.

66. While I have some sympathy with UBP's submissions to the effect that this evidence does not seem to reflect a determination to identify the most cost-effective and proportionate way of identifying the documents sought (as is broadly inevitable on applications of this type where evidence in filed in opposition to the application), I have concluded (as explained below) that the nature of this claim and the issues between the parties means that the disclosure sought would involve a relatively extensive and expensive disclosure exercise.

67. Ms Tobin's evidence pre-dated the revised form of order sought by UBP, which was (it says) narrowed as a result of Velasco 1. Stannard 2 also identified a number of ways in which the disclosure exercise described in Tobin 1 could be reduced in scale:

i) Further search terms could be applied to reduce the number of documents involved;

ii) Category 1 could be further reduced by limiting it to emails sent by Jott to LCE, or onward circulation of such emails;

iii) Category 2 could be limited by much more targeted search terms;

iv) Category 4 relates to quarterly and annual updates provided by LCE4 to co-investors in SL09 between 1 June 2023 and 7 December 2023, which is a specific and limited category of documents which should be easily accessible to LCE and not require detailed searching.

68. Stannard 2 then went on to say that UBP's revised request relied on the contents of Velasco 1, which he said had provided some clarity about the existence of specific kinds of documents in LCE's possession that UBP expects will contain the information it is seeking, and continued:

> "These documents must be readily available to LCE given that Mr Velasco must have had reference to them for the purposes of preparing Velasco 1. Accordingly, it should be possible for LCE to provide these documents without needing to undertake an extensive exercise of collecting and reviewing documents from numerous custodians of the kind described in Tobin 1.
>
> In this regard, UBP is mindful of its obligations to limit a pre-action disclosure request to that which is strictly necessary. For those purposes, I consider it vital to bear in mind that UBP has made allegations of fraud, and that it was misled by LCE, which have not been clearly denied. Further, LCE has not provided the proper pre-action engagement and provision of information that would allow UBP to efficiently plead its claim. The requests that are maintained are therefore those that I consider necessary to: (i) provide UBP with information that should already have been provided by LCE, as part of pre-action engagement, in order for UBP to understand LCE's response to the allegations made against it, and (ii) to avoid the foreseeable circumstance that there needs to be an expensive repleading exercise that could have been avoided had LCE provided proper information pre-action."

69. UBP rely on the point that the documents sought by reference to Velasco 1 must be readily available to LCE because they must already have been assembled and reviewed for the purposes of preparing Velasco 1, to argue that the order sought is not burdensome. That point was also made in the underlying correspondence (referred to above) and emphasised in UBP's skeleton for this

hearing. It is not clear that such an exercise has in fact been carried out, and whether or not UBP is right to say such an exercise should have been done already given what is said in Velasco 1, UBP's repeated framing of its position in this way shows that UBP requires such an exercise to have been carried out before the disclosure it seeks can properly be provided by LCE. The request is therefore not limited to specific documents which could be relatively easily identified and located.

70. UBP also relies on the fact that its proposed claim involves allegations of fraud and that it was misled by LCE, and that those allegations have not been clearly denied. UBP has therefore stated that it is willing to consider limited and targeted search steps but only if they are (in the words used in UBP's skeleton) "accompanied by an appropriate statement of truth that Mr Velasco and Mr Desbois are not aware of documents relevant to those categories which have not been disclosed".

71. This approach of narrower searches supported by "an appropriate statement of truth" initially seems attractive as a proportionate approach (as I put to Ms Shekerdemian during the hearing). Mr Lord submitted that the proposal for a statement of truth was designed to be helpful and to try to narrow things down. On consideration, however, I accept Ms Shekerdemian's submission that that requirement of a statement of truth significantly undermines the apparent advantages of the proposals for narrower searches. It seems to me that, against the background of UBP's repeated assertions in correspondence, in its evidence and in its submissions for this hearing that the documents it seeks by reference

to Velasco 1 must already have been assembled and reviewed because otherwise that witness statement was based on an incomplete account of the contemporaneous documents, which would call into question its reliability, LCE's legal representatives will almost inevitably advise against providing such a statement of truth unless a significant document retrieval and review exercise has been carried out. This conclusion does not involve any criticism of either side's approach to such a disclosure exercise. UBP's insistence on a statement of truth to bolster the reliability of more limited searches seems to me, in the circumstances, understandable. It also seems to me that LCE's response that the requirement for the type of statement of truth that UBP proposes makes a significant document retrieval exercise inevitable is also understandable, given the points made about Velasco 1.

72. This issue as to the scope of the disclosure sought is one which cannot, in the circumstances, be satisfactorily addressed by any of the proposed limitations on searches proposed by UBP because they are all proposed on the basis that the resulting disclosure would be accompanied by statements of truth that Mr Velasco and Mr Desbois are not aware of documents relevant to those categories which have not been disclosed. It is therefore not realistic to contend that a proportionate disclosure exercise can identify the documents sought, and on the terms sought, by UBP by this application.

CPR 31.16(3)(d): jurisdiction

73. CPR 31.16(3)(d) provides that, "The court may make an order under this rule only where … (d) disclosure before proceedings have started is desirable in order to (i) dispose fairly of the anticipated proceedings; (ii) assist the dispute to be resolved without proceedings; or (iii) save costs".

74. The approach to this part of the rule was explained by Rix LJ in *Black v Sumitomo* at [81]-[82] as follows (emphasis original):

> "In my judgment, for jurisdictional purposes the court is only permitted to consider the granting of pre-action disclosure where there is a real prospect in principle of such an order being fair to the parties if litigation is commenced, or of assisting the parties to avoid litigation, or of saving costs in any event. If there is such a real prospect, then the court should go on to consider the question of discretion, which has to be considered on all the facts and not merely in principle but in detail.
>
> Of course, since the questions of principle and of detail can merge into one another, it is not easy to keep the two stages of the process separate. Nor is it perhaps vital to do so, *provided* however that the court is aware of the need for both stages to be carried out. The danger, however, is that a court may be misled by the ease with which the jurisdictional threshold can be passed into thinking that it is thereby decided the question of discretion, when in truth it has not. This is a real danger because first, in very many if not most cases it will be possible to make a case for achieving one or other of the three purposes, and, secondly, each of the three possibilities is in itself inherently desirable."

75. I am satisfied that:

i) there is a real prospect of the order sought being fair to the parties if litigation is commenced, in that such disclosure would address the informational asymmetry between UBP and LCE which UBP relies on in making this application, and which it says has become more entrenched by reason of LCE's failure to engage substantively with UBP's claim pursuant to the Pre-Action Practice Direction;

ii) there is a real prospect of the order sought assisting the parties to avoid litigation, in that the identification and provision of further relevant information and documents will enable each side to assess the merits of their position more accurately and is therefore likely to facilitate settlement; and

iii) there is a real prospect of the order sought saving costs, in that facilitating settlement (as above) would save costs and also in that obtaining the disclosure sought at this stage is likely to reduce the need for amendments to the pleadings to be made after disclosure in the usual course of proceedings.

Discretion

76. Rix LJ in *Black v Sumitomo* at [88] explained that:

> "That discretion is not confined and will depend on all the facts of the case. Among the important considerations, however, as it seems to me, are the nature of the injury or loss complained of; the clarity and identification of the issues raised by the complaint; the nature of the documents requested; the relevance of any protocol or pre-action inquiries; and the opportunity that the complainant has to make his case without pre-action disclosure."

77. UBP recognises that the Court ordinarily only orders pre-action disclosure in cases outside the "*usual run*" (*Carillion* at [15], in turn referring to *Hutchinson*

3G) but advances eight reasons why this is such a case and why the Court should exercise its discretion to order the disclosure it seeks.

78. First, the information asymmetry referred to above. I accept that there is an asymmetry of information between UBP and LCE as to what LCE knew and when, but that is an entirely common feature of claims of this type and it does not seem to me to provide a relevant ground of distinction in circumstances where UBP's position is that it can plead its proposed claim on the basis of the information currently available to it.

79. Secondly, the fact that there is a real prospect that the disclosure sought would facilitate settlement of the proposed claim (and thus avoid the need for proceedings altogether) is not a matter which takes this case out of the normal run. UBP relies on the fact that its case is that senior individuals at LCE knew the valuation representations made in August and September 2023 were, or had become, materially false, yet knowingly or recklessly failed to correct them before UBP invested, and says that the disclosure of information as to what LCE knew and when is therefore of paramount importance and significant for settlement purposes. There is, as I have found, a real prospect that the disclosure sought would facilitate settlement but that does not seem to me to be an overwhelming likelihood, given the approach taken so far by LCE, and it is in no way unusual for the issue of who knew what and when to be particularly important in Commercial Court cases, in which allegations of fraudulent misrepresentation against senior individuals are not uncommon.

80. Third, the fact that the disclosure sought would enable UBP to plead its claim (especially its fraud allegations) with more precision is not something that takes this case out of the normal run of misrepresentation claims in the Commercial Court. However, UBP rightly submits that this is "a well-recognised discretionary factor in favour of pre-action disclosure" (citing *Bermuda International Securities Ltd v KPMG* [2001] EWCA Civ 269 at [27]; *Hands v Morrison Construction Services Ltd* [2006] EWHC 2018 (Ch) at [31]; *Carillion* (above) at [88]; and *Total E&P Soudan* (above) at [27]) and I consider this factor further below.

81. Fourth, UBP says that there can be no real doubt that the claim has a real prospect of success. It relies on *Smith v Secretary of State for Energy and Climate Change* (above) as [23-24], [28] as showing that the likelihood of the applicant being able to establish a viable claim is considered as part of a flexible exercise of the court's discretion. Here, it is common ground that UBP can plead a claim that would withstand strike-out, and I accept that the chronology UBP is able to advance (as summarised above) indicates a claim of some merit. That is relevant to the court's discretion but again, is not something that takes this claim out of the ordinary run of Commercial Court cases.

82. Fifth, UBP says that pre-action disclosure is necessary in this case for it to obtain the documents and information that LCE should have provided in pre-action correspondence. It says that LCE's breach of the Pre-Action Practice Direction takes the case outside the "usual run" and makes pre-action disclosure appropriate and necessary to (i) enable UBP to understand LCE's response to

the allegations made against it and (ii) avoid the need for a later expensive repleading exercise. In his oral submissions, Mr Lord particularly focussed on this factor, namely, what he submitted (and I have found above) was LCE's failure to comply with the Pre-Action Practice Direction by failing to engage with the substance of UBP's claim.

83. Mr Lord submitted that if a respondent refused to hand over information and documents required by a pre-action protocol, then the court's power to order pre-action disclosure under CPR 31.16 was a lever available to the court to remedy that situation. In support of that submission, Mr Lord relied on the decision of Miles J (as he then was) in *Dennis v Queenwood Golf Club Limited* [2024] EWHC 3191 (Ch). That case was an application for pre-action disclosure in respect of an intended action under s.994 Companies Act 2006 in relation to alleged unfair prejudice in the conduct of the affairs of the respondent ("the Company"). There is no specific pre-action protocol for s.994 claims so, as here, the position was governed by the Pre-Action Practice Direction. Miles J relied on the fact that some of the documents sought (those in Category A) would be "key documents" for the purpose of paragraph 6 of the General Protocol in reaching his conclusion that pre-action disclosure of those documents should be given. In that case, there had in fact not yet been a request for documents as part of a Letter before Claim. The Judge considered that one of the reasons to make the order sought was that it would enable the applicants to "produce a considerably more informative (and therefore more useful) letter before claim if they have the documents before putting pen to paper" (at [59]).

Dennis v Queenwood is not therefore a case where pre-action disclosure was ordered because the respondent had failed to provide documents in the course of the formal pre-action process. Other key factors in the decision were the facts that (i) the proposed claim was a claim under s.994 Companies Act and (ii) the Company's Board had commissioned a report from Deloitte to resolve the dispute that had arisen, and that the report did not satisfy the applicants but instead had potential gaps without the underlying documents and threw up potential inconsistencies with other explanations that had been given for the transactions. The Judge stated (at [57]) that, "In my judgment there is a real likelihood that, once they have seen the transactional documents analysed by Deloitte, the applicants will be in a position to entertain serious negotiations with a view to resolving the disputes." At [60] the Judge found as follows:

> "… in light of the particular history, involving the production and circulation of the Deloitte Report as part of an attempt by the Board of the Company to resolve the dispute, I am satisfied that this case falls sufficiently outside the norm to justify an order limited to the documents provided to Deloitte. In my judgment, this factor distinguishes the case from the ordinary run of commercial litigation. I emphasise that this feature relates specifically to the documents in Category A, which is specifically limited to the documents provided by the Company to Deloitte. It is therefore specifically tied to the Deloitte Report (which was commissioned, using Company funds, in response to the complaints articulated by the applicants); disclosure is justified to enable the applicants properly to understand the contents of the Report."

84. In reaching his decision, Miles J also particularly emphasised at [56] the limited category of documents which he was ordering should be disclosed (Category A):

> "… the requests for documents are limited and compliance will not be particularly burdensome. Requests 1 to 9 are for specific documents referred to in the Deloitte Report. Request 10 is for other documents provided to Deloitte. The Company did not seriously contend that it would be hard to identify and provide them. Nor will identifying them require any exercise of judgment. They are also likely to be limited in number."

85. As set out above, I accept that LCE's failure to engage with the substance of UBP's claim in response to the LBA or to provide any documents as part of that process (although it has subsequently provided certain documents ahead of this application) is something which takes this case out of the usual run. I consider in more detail below how far LCE's non-compliance with the protocol process goes in this case in deciding whether to exercise the discretion to order CPR 31.16 disclosure.

86. UBP's sixth point was that it expressly accepts "that pre-action disclosure requests must be highly focused and confined to what is strictly necessary for the purposes for which pre-action disclosure may be ordered" (referring to *Carillion* at [67]), and submits that that is the case for the requests it makes. It points to the fact it has further narrowed its requests in light of the information provided in Velasco 1.

87. Seventh, and relatedly, UBP says that Ms Tobin's estimate of the burden and cost of the disclosure exercise required by the order sought as being disproportionately onerous, disruptive and expensive is the result of "a maximalist and disproportionate approach to the contemplated exercise", that the exercise she describes is not narrowed to the key custodians proposed by

UBP, and does not focus on ways in which searches could be proportionately targeted.

88. UBP also says that it is "open to considering limited and very targeted document search steps, provided these are accompanied by an appropriate statement of truth that Mr Velasco and Mr Desbois are not aware of documents relevant to those categories which have not been disclosed". And UBP continued in its skeleton as follows:

> "UBP does not understand LCE's suggestion that 'in order to provide such a statement of truth, a systematic review exercise would have to be carried out, including to ensure that adverse documents have been identified'. That would defeat the purpose of UBP's proposal, which is intended to avoid the need for a full systematic review exercise. UBP does not envisage that Mr Velasco and Mr Desbois would guarantee that no relevant documents had been omitted; rather, they would confirm that they were not consciously aware of any other relevant documents (without undertaking any further searches)."

89. LCE made submissions on discretion under three headings, which I summarise as follows:

   i) First, LCE says that nothing about UBP's proposed claim justifies pre-action disclosure in this proposed Commercial Court claim. It is not enough to say, as could be said in most cases, that pre-action disclosure might assist with settlement or save costs, referring to *Hutchinson 3G* at [55] per Steel J, and the Commercial Court Guide at B3.2 ("Subject to complying with the Practice Direction and any applicable approved protocol, the parties to proceedings in the Commercial Court are <u>not</u>

required, or generally expected, to engage in elaborate or expensive pre-action procedures, and restraint is encouraged" (LCE's emphasis)).

ii) Second, LCE says that UBP already has sufficient material to plead a claim. It refers to Stannard 1 which includes the statement at paragraph 7.6 that "the requested disclosure would enable UBP to be able to plead its case, which would make an allegation of fraud, more precisely than it would be able to at present". LCE accepts that UBP's letter before claim and Stannard 1 "could be distilled into a coherent (and non-strikable) particulars of claim in support of its fraud claim".

iii) Third, LCE says that the disclosure sought is wide-ranging and extended, rather than a "highly focussed" request for what is "strictly necessary" (*Hutchinson 3G* at [40]), and that the statement of truth sought from Mr Velasco and Mr Desbois is not something they will be able to provide unless "the entire universe of potentially relevant documents had first been considered". On any view, LCE says, the exercise will be burdensome, and this is not a case in which a small, focused collection of key documents is sought, where a court might consider that the balance came down in favour of production.

90. Having stood back and looked at matters in the round (*Hands v Morrison Construction*, above), I am not satisfied, in the exercise of the discretion under CPR 31.16, that an order for pre-action disclosure should be made. My reasons are as follows.

91. As it is common ground that UBP is already able to plead a non-strikable claim for fraudulent misrepresentation, it does not need pre-action disclosure in order to be able to bring its claim. It is not unusual in claims like this in the Commercial Court for there to be an information asymmetry at this stage of the proceedings.

92. The application does not involve a narrow and focused request for a small number of specific documents (compare, for example, the disclosure ordered in *Dennis v Queenwood*, set out at [40] and [55]-[56], which was of certain specific documents and a set of documents which had been provided to Deloitte). UBP has sought to minimise the burden by saying that a search should already have taken place given the terms of Velasco 1 but (as set out above) it is not clear there has been such an exercise, and UBP's approach in any event demonstrates that it expects such an exercise to have been carried out before the disclosure it seeks can properly be provided by LCE. I have found above that it is not realistic to say that a disclosure exercise which is proportionate in the context of a pre-action disclosure application in this case can produce the documents sought by UBP on the terms it seeks by this application. That weighs heavily against granting the order sought.

93. It is relevant that the Commercial Court Guide provides that, subject to complying with the Pre-Action Practice Direction and any applicable specific protocol, the parties to Commercial Court proceedings are not generally expected to engage in "elaborate or expensive pre-action procedures, and restraint is encouraged". Although I have found above that LCE did not comply

with the spirit of the Pre-Action Practice Direction in its response to UBP's LBA, this provision in the Guide makes clear (consistently with the authorities on pre-action disclosure in the Commercial Court generally) that parties are not expected to carry out extensive pre-action disclosure processes. While I consider that compliance with the Pre-Action Practice Direction required LCE to do more than it did (and that may have consequences for LCE in the course of any substantive proceedings issued by UBP), I do not consider that the type of disclosure process required by a disclosure order in any of the forms sought by UBP is consistent with the approach to pre-action disclosure processes set out in the Commercial Court Guide. While *Dennis v Queenwood* shows that a failure to comply with the Pre-Action Practice Direction by providing documents can result in an order for the pre-action disclosure of specific documents or narrow categories of documents which can be easily identified and assembled, the extent of the disclosure exercise that I have found would be required here, in all the circumstances set out above, means that it is not appropriate for pre-action disclosure.

94. It seems to me that the more proportionate approach here would be for disclosure to be provided in the usual way once proceedings have been issued. The disclosure process pursuant to PD57AD would provide a framework that can better reflect the concerns each party has as to the scope of the exercise required, given the allegations made.

95. While obtaining the disclosure it seeks now might well enable UBP to plead its case now with more precision than it otherwise would at this point, it seems to

me unlikely, given the nature of and background to this claim, that it would entirely avoid the need for the claim to be amended after disclosure was ultimately given during the proceedings.

96. I note that one of the submissions made by Mr Lord in oral submissions as to why being able to plead with more precision is important in this case is that the PD57AD disclosure regime seeks to confine disclosure more narrowly. As I understand it, the submission was that if UBP do not get the pre-action disclosure they seek, there would be a risk that the disclosure that would be ordered under PD57AD would not extend to all the documents they would have been entitled to by way of standard disclosure under CPR 31.6, and that that is a reason why the order for pre-action disclosure it seeks now would be appropriate. Given what I have decided about the realistic scope of the disclosure exercise required by the order UBP seeks, I do not consider that this argument, if correct, would weigh sufficiently heavily to make pre-action disclosure appropriate in this case. However, in any event, it seems to me that this argument is not soundly based. At least in a case like this where the applicant says it is already in the position to plead its claim, it would be inconsistent with (i) the overriding objective, (ii) the current approach to disclosure reflected by PD57AD and (iii) the authorities on pre-action disclosure which emphasise that such disclosure should be narrow and focused, for a party to be able to obtain pursuant to CPR 31.16 wider disclosure than it would otherwise obtain in the course of proceedings pursuant to PD57AD disclosure, in order to ensure it obtained the fuller disclosure it seeks overall

(whether in the course of pre-action disclosure alone or together with subsequent disclosure in the normal way during the course of the substantive proceedings).

97. UBP's skeleton also relied on the fact that this is a fraud claim, saying that the pleading strictures which apply to fraud claims reinforce the appropriateness of the order sought. The potential relevance of such issues was considered by the Court of Appeal in *Black v Sumitomo*. In the course of the discussion of that issue in his judgment, Rix LJ said at [54]:

> "At a general level, there are clearly concerns that allegations of dishonesty are not lightly made, that a defendant to an allegation of dishonesty knows plainly what it is that is alleged against him, and also that dishonesty does not spread its cloak over the means by which it can be detected and revealed. It is not plain how these concerns are to be reconciled in any particular case in the context of pre-action disclosure, but it would seem to me that a court which is asked to grant such disclosure should be careful to pay proper regard to each of them. In any event it cannot be right that an allegation of fraud should assist the potential claimant to obtain pre-action disclosure, unless his allegations carry both some specificity and some conviction and his request for disclosure is appropriately focussed."

98. I accept that UBP's allegations summarised in its evidence for this application meet these requirements of specificity and conviction but, for the reasons set out above, I do not consider that the request is sufficiently focussed for an order for pre-action disclosure. Further, as UBP says (and LCE accepts) that UBP is already in a position to plead its claim, this is also not a case where pre-action disclosure is necessary in order to enable an applicant to plead a case it would not otherwise be able to plead because of the obligations that apply to pleading allegations of fraud (see *Black v Sumitomo* at [57]-[58] and [88]).

99. In all these circumstances, the matters relied on by UBP – including what it says are the merits of its claim, the potential advantages in relation to greater precision of the pleading, reducing information asymmetry, supporting compliance with the Pre-Action Practice Direction and increasing the prospects of settlement - do not, in my judgment, weigh sufficiently in favour of exercising the discretion under CPR 31.16 to order the disclosure sought by UBP. The application is accordingly dismissed.

SCHEDULE 1: DOCUMENTS SOUGHT BY UBP'S ORIGINAL DRAFT ORDER

This Schedule uses the terms defined in the First Witness Statement of Barnaby Stannard dated 10 December 2025.

Communications between Jott and LCE in the period between 1 June 2023 and 7 December 2023 concerning the logistical issues faced by Jott. For the avoidance of doubt, this would include any information, attachments or materials provided by Jott to LCE with those communications, such as monthly management updates or information packages.

LCE's internal communications, and notes and minutes of any meetings, regarding the logistical issues faced by Jott in the period between 1 June 2023 and 30 April 2024.

LCE's internal assessments and valuations of Jott in the period between 1 June 2023 and 7 December 2023 including (i) LCE's assessment of Jott's EV; and (ii) LCE's forecasts of Jott's EBITDA for FY2023 and thereafter.

All quarterly and annual updates provided by LCE4 to co-investors in SL09 between 1 June 2023 and 7 December 2023 pursuant to Section 12 and Schedule D of the SL09 SA.

SCHEDULE 2: DOCUMENTS SOUGHT BY UBP'S REVISED DRAFT ORDER

This Schedule uses the terms defined in the Second Witness Statement of Barnaby Stannard dated 2 April 2026.

1. The Applicant requests the following documents, stated generally by reference to the specific averment made by Mr Eduardo Velasco in Velasco 1:

1.1 "*In the autumn of 2023 LCE were informed by Jott's management that certain operational challenges had arisen in connection with the warehouse move*."[1]

Request: emails / documents or notes of calls or meetings from Jott's management to the Reduced LCE Custodians in the period August to November inclusive which comprise or evidence the informing of LCE by Jott management of the operational challenges which had arisen in connection with the warehouse move.

1.2 "*In mid-November 2023 LCE was informed that Jott's issues with the logistics provider might have a short-term effect on the EBITDA for the 2023 YE*".[2]

Request: the emails / documents or notes of calls or meetings by which Jott so informed LCE or which evidence the same.

1.3 "*On 28 November 2023 Jott's executive team provided LCE with re-forecasted figures which revised the projected EBITDA for the 2023 YE to EUR 40 million*."[3]

Request: the documents by which these re-forecasted figures were provided.

[1] Paragraph 36 of Velasco 1.
[2] Paragraph 38 of Velasco 1.
[3] Paragraph 39 of Velasco 1.

1.1.1 *"In December 2023 LCE was informed by Jott that SNDR's operations were not improving despite the actions taken by Jott's management and SNDR's collapse was likely.*"[4]

Request: the emails / documents or notes of calls or meetings by which Jott so informed LCE or which evidence the same.

1.4 "… *throughout November, what was presented to LCE by the Jott management team was an exceptional event… which would not ultimately impact the longer-term value of Jott*".[5]

Request: the documents or notes of calls or meetings by which Jott so informed LCE, for the period 1 – 28 November or which evidence the same.

1.5 With reference to the communications between UBP and Mr Verani in July and August 2023 (see paragraphs 4.1.3 – 4.1.5 of Stannard 1):

Request: Emails / documents, or notes of calls or meetings between Jott and the Reduced LCE Custodians which informed the materials concerning Jott sent to UBP by Mr Verani on 20 July 2023, 21 July 2023, 25 July 2023 and 25 August 2023.

2. The monthly reports that are *"prepared by Jott after the month ends and sent to LCE thereafter*"[6] in the period between June 2023 to December 2023, including the date on which the report was received by LCE.

3. Internal assessments and valuations of Jott in the period between 1 June and 7 December 2023 held by the LCE Custodians including (i) LCE's assessment of Jott's EV; and (ii) LCE's forecasts of Jott's EBITDA for FY2023 and thereafter.

[4] Paragraph 45 of Velasco 1.
[5] Paragraph 49 of Velasco 1.
[6] Paragraph 26 of Velasco 1.

4. All quarterly and annual updates provided by LCE4 to co-investors in SL09 between June 2023 and December 2023 pursuant to Section 12 and Schedule D of the SL09 SA.