IN THE COUNTY COURT AT
CENTRAL LONDON
ON APPEAL FROM DEPUTY DISTRICT
JUDGE CHEUNVIRATSAKUL

Case No: 445MC599

Thomas More Building
Royal Courts of Justice
Strand
London, WC2A 2LL

Date: 6th December 2024

Before :

HIS HONOUR JUDGE HOLMES

- -

Between :

MR JERRY LOGO **Appellant/Claimant**

-and-

PAYONE GMBH **Respondent/Defendant**

- -

Mr Jerry Logo in person
Mr Leo Davidson (instructed by **Orrick, Herrington & Sutcliffe (UK) LLP**) for the **Defendant**

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Hearing date: 21st November 2024
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JUDGMENT

His Honour Judge Holmes:

1. Mr Logo was employed by Payone GMBH. Mr Logo was concerned about certain business practices and therefore made various complaints and disclosures. His employment came to an end and he became embroiled in litigation in the employment tribunal, the County Court, the High Court, and the Court of Appeal. The parties entered into settlement negotiations, but as part of those settlement negotiations, Payone sought a requirement that Mr Logo would withdraw various complaints he had made to regulators about Payone. As part of the settlement process Payone agreed that they would pay £500 plus VAT for Mr Logo to obtain independent legal advice on the settlement. Mr Logo went to Mr Spencer Keen, a barrister on a direct access basis. Mr Keen's advice was that the clause concerning the withdrawing of complaints from regulators was impermissible. Payone disagreed and the settlement negotiations went no further.

2. Mr Logo commenced proceedings in the County Court on 8th September 2023 to recover from Payone the £500 plus VAT which he had paid to Mr Keen. As the settlement negotiations had foundered, Payone said it had no obligation to pay that money. The claim was defended and having been allocated to the small claims track, came on for hearing before Deputy District Judge Cheunviratsakul, sitting at the Mayors and City of London Court, on 23rd February 2024. The Deputy District Judge dismissed the claim.

3. Three days prior to the hearing, Payone made an application that certain documents in the trial bundle be sealed on the court file and kept confidential. The application encompassed a substantial amount of the material referred to before the Deputy District Judge including the witness statements and exhibits. The application did not include the statements of case. During the course of the hearing it was expanded to include them. The Deputy District Judge granted the application. Subsequent to the hearing, in email exchanges, the order was expanded to include the parties' skeleton arguments and Mr Logo's response to the application to seal the documents.

4. Mr Logo was dissatisfied with the decision and by an Appellant's Notice dated 15th March 2024 he seeks to challenge the decision to dismiss his claim and the order sealing the various documents on the court file. Ground 1 deals with whether there was a contract for the payment of the £500 plus VAT. Ground 2 with whether there was a misrepresentation which required the payment of the £500. Ground 3 seeks to challenge the sealing of the various documents on the court file. His Honour Judge Parfitt, on 19th July 2024, granted permission to appeal on ground 3, but refused permission to appeal on grounds 1 and 2. Mr

Logo seeks to renew the application for permission before me. I have heard that application and the appeal on ground 3 as a rolled-up hearing pursuant to Judge Parfitt's order.

GROUNDS 1 & 2

5. The application for permission to appeal on Grounds 1 and 2 can be disposed with relatively shortly. Under CPR r.52.6 the court can only grant permission to appeal where the court considers that the appeal would have a real prospect of success or there is some other compelling reason for the appeal to be heard. The "real prospect" must be real as opposed to fanciful, see *Swain v. Hillman* [2001] 1 All E.R. 91, CA, per Lord Woolf, M.R.

6. At the heart of this issue is an exchange of without prejudice correspondence. On 29th December 2022 that correspondence began. That email is headed, "Without prejudice save as to costs and subject to contract". That is also the subject of the email. One of the terms of the proposed settlement is this, "Payone would contribute £500 plus VAT, as requested, for you to take advice on such agreement."

7. As the Deputy District Judge noted in her judgment, "In my judgment, the ordinary meaning of "subject to contract" is clear, and it was also accepted by Mr Logo in cross-examination. Subject to contract simply means that what is being discussed is subject to a contract being finalised and formed". The offer of £500 was conditional upon settlement being reached.

8. The Deputy District Judge found that there was no standalone contract. In my view she was entirely correct in that finding. There was no consideration unless and until there was a concluded contract of compromise. That did not happen and therefore Payone got nothing. Ground 1 is without merit and permission to appeal is refused.

9. Ground 2 concerns the misrepresentation claim. Mr Logo says that he was induced into entering into a contract with Mr Keen, and thereby he has suffered loss. Misrepresentation is often deployed as a ground for voiding or avoiding a contract. For reasons already stated there is no contract here, save for the contract that Mr Logo entered into with Mr Keen for advice. The Misrepresentation Act 1967 is concerned with a misrepresentation between the contractual parties (see s.2(1) of the 1967 Act).

10. A positive claim can be brought outside of the contractual sphere in the tort of deceit and in more general negligence. It is not necessary to set out a detailed analysis of the law of misrepresentation because a common element to all

contractual and tortious misrepresentation, is that there is a representation which induced a party to act to their detriment.

11. The primary assertion here is that Payone's solicitor on 20th January 2023 represented that the Pensions Regulator is not a prescribed person for the purposes of the whistleblowing legislation. However, as the Deputy District Judge found, this was made after the contract with Mr Keen had been entered into on 13th January 2023. There is no appeal against that conclusion and nor could there be. It follows that even if the statement was a representation, it could not have induced Mr Logo to enter into a contract with Mr Keen.

12. Mr Logo in his submissions to the Deputy District Judge expanded the claim to say that the proposal of a term in a settlement agreement – that a complaint to the pension regulator would be withdrawn – was itself a representation. The proposed terms were certainly communicated prior to the contract with Mr Keen being entered into. I agree with the Deputy District Judge that such a proposed term cannot be a representation. A negotiating position sets out what one party would like the agreement to be. It is hoping the other party will agree. It is not saying that such a term is one which a court or tribunal would endorse, it is not representing fact or law. It is seeking an agreement.

13. Mr Logo's application to adduce fresh evidence on appeal does not take the matter any further forward. He seeks to rely upon a letter from the Solicitors Regulation Authority which informs him that the SRA has given advice to the Respondent's solicitors. If I had to engage in a *Ladd v. Marshall* exercise I am far from certain that I would have allowed permission in any event, but for the purposes of this ground I have proceeded on the basis that the comment on 20th January 2023 was wrong. The view of the SRA that it was wrong does not advance matters. The document adds nothing and therefore permission is refused.

14. In my judgment there is no real prospect of Mr Logo persuading a court that the proposal of a term in a draft contract of compromise is a representation. Even if I am wrong about that, the proposed term alone did not induce Mr Logo to enter into a contract with Mr Kene. The reality is that Mr Logo was labouring under a misapprehension. He thought that the £500 was not conditional on the agreement being reached. In that he was wrong. But at no stage did Payone mislead Mr Logo as to this. Permission to appeal is refused on ground 2.

GROUND 3 – THE SEALING UP OF DOCUMENTS ON THE COURT FILE

15. The final issue in this case is that relating to sealing of various documents on the court file. It concerns the tension between open justice on the one hand and confidentiality on the other.

16. Lord Hewart, C.J. said over a century ago in *R v. Sussex Justices, Ex. p. McCarthy* [1924] 1 K.B. 256 at 259, "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

17. In *R (Guardian News and Media Ltd) v. City of Westminster Magistrates' Court (Article 19 intervening)* [2012] EWCA Civ. 420; [2013] Q.B. 618, Toulson L.J. (as he then was) said, at paragraph 1,

> "Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. Quis custodiet ipsos custodes—who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse."

18. There is no shortage of similar paeans of praise for open justice in the authorities and rightly so: it is a fundamental principle of the common law. But few principles are absolute, allowing for no exceptions. The principle of open justice is not absolute. National Security is dealt with in private, with various safeguards. The identification of complainants in sexual offences cases cannot be routinely published. There are similar restrictions in family proceedings. The reasons for the exceptions are obvious: the publicity that could arise could be highly prejudicial to those involved in the case or to the wider public interest.

19. There are many and varied reasons and circumstances in which exceptions to open justice might arise and they develop over time. As Baroness Hale observed in *Dring (on behalf of the Asbestos Victims Support Groups Forum UK) v. Cape Intermediate Holdings Ltd (Media Lawyers Association intervening)* [2019] UKSC 38; [2020] A.C. 629, civil proceedings used to be "dominated by the spoken word—oral evidence and oral argument, followed by an oral judgment, which anyone in the court room could hear, these days civil proceedings generate a great deal of written material—statements of case, witness statements, and the documents exhibited to them, documents disclosed by each party, skeleton arguments and written submissions, leading eventually to a written judgment."

20. One of the disadvantages of such a large written component of civil proceedings is that it is sometimes necessary to see certain documents to make sense of what is being said in court. That has led to the development of rules to help manage this process. Two are relevant in this appeal.

> **5.4C— Supply of documents to a non-party from court records**
> (1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of—
>
> (a) a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it;
>
> (b) a judgment or order given or made in public (whether made at a hearing or without a hearing).
>
> …
>
> (2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.
>
> (3) A non-party may obtain a copy of a statement of case or judgment or order under paragraph (1) only if—
>
> (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
>
> (b) where there is more than one defendant, either—
>
> (i) all the defendants have filed an acknowledgment of service or a defence;
>
> (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
>
> (c) the claim has been listed for a hearing; or
>
> (d) judgment has been entered in the claim.
>
> (4) The court may, on the application of a party or of any person identified in a statement of case—
>
> (a) order that a non-party may not obtain a copy of a statement of case under paragraph (1);
>
> (b) restrict the persons or classes of persons who may obtain a copy of a statement of case;
>
> (c) order that persons or classes of persons may only obtain a copy of a statement of case if it is edited in accordance with the directions of the court; or
>
> (d) make such other order as it thinks fit.
>
> (5) A person wishing to apply for an order under paragraph (4) must file an application notice in accordance with Part 23.
>
> (6) Where the court makes an order under paragraph (4), a non-party who wishes to obtain a copy of the statement of case, or to obtain an unedited

copy of the statement of case, may apply on notice to the party or person identified in the statement of case who requested the order, for permission.

31.22— Subsequent use of disclosed documents and completed Electronic Documents Questionnaires

(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where—

(a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;

(b) the court gives permission; or

(c) the party who disclosed the document and the person to whom the document belongs agree.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

(3) An application for such an order may be made—

(a) by a party; or

(b) by any person to whom the document belongs.

(4) For the purpose of this rule, an Electronic Documents Questionnaire which has been completed and served by another party pursuant to Practice Direction 31B is to be treated as if it is a document which has been disclosed.

21. The Court has a power, which derives from the common law and or the inherent power to regulate a court's own proceedings, to make orders in respect of various documents which are filed with the court during the progress of a claim.

22. In this case, the Respondent applied for an order sealing up various documents on the court file. The Deputy District Judge made an order in these terms:

> 2. The following documents are to be sealed on the court file and kept confidential:
> a. The Claim Form (pages 5-12 of the Bundle);
> b. The Defence (pages 13-25 of the Bundle);
> c. The witness statement of Ms Kelly Hagedorn, dated 12 February 2024 (pages 36-43 of the Bundle);
> d. Exhibit KHl to the witness statement of Ms Kelly Hagedorn (pages 252-280 of the Bundle);

> e. The Claimant's witness statement dated 14 February 2024 (pages 26-35 of the Bundle);
> f. Section D of the Bundle ("Drafts of WPS ATC and STC Settlement Agreements") (pages 49-143 of the Bundle);
> g. Section E of the Bundle ("WPSATC Inter Partes Correspondence") (pages 144-168 of the Bundle);
> h. The letter from the Claimant to the Defendant dated 14 August 2023 (pages 177-178 of the Bundle);
> i. The parties' skeleton arguments; and
> j. The Claimant's response, dated 21 February 2024, to the Defendant's 20 February 2024 application.

23. It is not suggested by Mr Logo that the Deputy District Judge did not have the power to do this. It is said that she was wrong to do so in this case. Why did the Deputy District Judge decide to exercise her discretion in the way she did? She gave her reasons in these terms:

> JUDGE CHEUNVIRATSAKUL: All right, well, the without prejudice rule, Mr Davidson, Mr Logo, you have helpfully taken me to it, is set out on a page...well, it is digital page 199 of the bundle for me, and essentially states the very trite law that statements made in the course of without prejudice discussions cannot be used against those who make those without prejudice statements in subsequent proceedings unless there is evidence of unambiguous (?) impropriety. I am not satisfied that there is anything that has been said by you, Mr Logo, to demonstrate there is an unambiguous (?) impropriety here in relation to the statements made and which you refer to such that the...essentially the application should not be granted and the without prejudice rule should be disapplied. To the contrary. It would be, I find, contrary to the interests of justice if the Defendant, in being required to defend a claim brought by you, Mr Logo, and in being required to defend, has to refer to those without prejudice discussions and correspondence, then found itself in a situation where inadvertently the without prejudice rule is put to one side because those documents are in the public domain, and similarly, just...I am satisfied that because they have been put...or, rather, they have been alluded to in some way or, indeed, because they have been published in some way by you on another forum, I am not satisfied that that makes any difference to the operation of the without prejudice rule for these purposes and for the purposes of the Defendant's application, and, Mr Davidson, I will grant you the application to have the documents referred to in the N244 sealed, and I will ask you to draw that part of the order afterwards, Mr Davidson,

> so it is very clear, and as regards the claim form and response, now, of course, that does allude to certain aspects. Is it an oversight, Mr Davidson? Are you asking to also include those? Mr Logo picked up on it.
>
> MR DAVIDSON: Yes. No, (inaudible) and I am grateful to Mr Logo. For completeness, it is probably wise to include those in the order on the same basis.
>
> JUDGE CHEUNVIRATSAKUL: It does not make sense because, as Mr Logo says, he alludes to all of those things in his claim form. It is quite frankly illogical if certain documents are sealed for the purposes of the court record and the claim form and the Defendant's form are...remain public documents.
>
> MR DAVIDSON: I am grateful. Yes.
>
> JUDGE CHEUNVIRATSAKUL: So, Mr Logo, thank you very much for pointing that out. It is very open of you to do that, and I will add the claim form and the response to the documents which should be sealed and kept confidential for the purposes I have already set out, all right?
>
> MR LOGO: Yes, Judge. Does that make this part of the hearing a private hearing, then, not in the public -----
>
> JUDGE CHEUNVIRATSAKUL: It does not make it a private... Well, it does not make it a private hearing. It just means that those documents are sealed, and they are not documents which will be available for public scrutiny.
>
> MR LOGO: Okay.
>
> JUDGE CHEUNVIRATSAKUL: That is my understanding, Mr Davidson, yes?
>
> MR DAVIDSON: Thank you.
>
> JUDGE CHEUNVIRATSAKUL: Yes.

24. I should say, in passing, that the judgment and subsequent discussion appears in the transcript of the proceedings rather than in a separate judgment. It appears the Deputy District Judge has not had the opportunity to correct or improve upon the short judgment that she gave, which ordinarily she would have been able to do.

25. To succeed on an appeal, Mr Logo must identify an error of law on the part the Deputy District Judge. Mr Davidson reminds me of the need for an appellate court not to overstep the mark. In *G v. G (Minors: Custody Appeal)* [1985] 1 W.L.R. 647, HL, at 625E, Lord Fraser said:

> "We are here concerned with a judicial discretion, and it is of the essence of such a that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere."

26. Lord Hoffmann in *Piglowska v. Piglowski* [1999] 1 W.L.R. 1360, HL, at 1372G said:

> "The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed… These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account… An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

27. The central submission of Mr Davidson is that the Deputy District Judge was exercising a discretion. He derives support for that proposition from the judgment of Baroness Hale in *Dring*, at paragraphs 45 to 48. *Dring* is a case which concerned disclosure of material to third parties under CPR r.5.4C and or the court's inherent jurisdiction. Her Ladyship held that it was for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle. Where such an application is made, the court has to carry out a fact-specific balancing exercise. In that balancing exercise is the purpose of the open justice principle and the potential value of the information in question in advancing that purpose. On the other side of the scale will be any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others.

28. But the current case is different. The purpose, or at least the principal purpose, behind the application is to prevent Mr Logo from using material which would otherwise have remained confidential, but which may have lost that confidentiality by being referred to in court and in the judgment of the court, for other purposes. Such an order does engage the open justice principle, but this is

not a legitimately interested third party, as in *Dring*, or the press seeking to report on the case. Mr Logo has all the information in his possession. He knows exactly what occurred in court and what information was before the Deputy District Judge. For him, justice was entirely open.

29. That distinction is at the heart of a misunderstanding that Mr Logo appears to have laboured under. The application is not about seeking to keep information from the public. The Court was not asked to sit in private. No reporting restrictions were made. Although no member of the press was in court, there was nothing in the application which would have prohibited a member of the press reporting what was said in court had they chosen to be present. The court did its work in public. This application is focused on the use to which Mr Logo may wish to put various documents which were and, but for these proceedings, would have remained confidential.

30. This is not the first occasion on which these parties have litigated about the confidential nature of documents. Following proceedings in the Employment Tribunal, Mr Logo was seeking to use material which he had obtained whilst employed by Payone. Payone applied to the High Court for an injunction seeking delivery-up of the documents and other related remedies. The ultimate basis upon which Mr Logo sought to defend the proceedings was to say that any confidential nature was lost by these documents having been referred to in the Employment Tribunal. Saini, J made the injunction sought, *Payone GMBH v. Logo* [2024] EWHC 981 (KB). An interim injunction had been granted at the time of the hearing before the Deputy District Judge, the final injunction was made after the hearing.

31. Before turning to the Deputy District Judge's reasons and whether the appeal should be allowed, it is necessary to say something about without prejudice correspondence and confidentiality. The confidentiality of without prejudice correspondence is well established and there is a strong public interest in maintaining it, *Rush & Tompkins Ltd v. Greater London Council* [1989] A.C. 1280, HL. It is advantageous to litigants and courts alike that disputes can be settled between the parties. It is an essential part of that process that correspondence and other documents created to facilitate those negotiations remain confidential to the parties. The confidentiality extends beyond making reference to the negotiations in proceedings which may follow if the negotiations are unsuccessful. In *Passmore on Privilege* (5th edition, 2024), at 10-120 this is said:

> "While non-discoverability does not equate to confidentiality, the fact that those with a real interest in seeing these negotiations are not able to do so points to the importance of the detail of the negotiations remaining confidential as between the negotiators. On this basis, it is difficult to see why it is legitimate for one party without the consent of the other to share such materials with a third party to the litigation or even to allow them to be published (at least without perhaps a very strong countervailing public interest justification), as that risks the very "serious fetter" on negotiations that Lord Griffiths [in *Rush & Tompkins*] warned against if this were allowed to happen."

32. As is said in *Passmore on Privilege* and by the editors of *Toulson & Phipps on Confidentiality* (4th edition, 2020) the law in this area is still developing. The precise boundaries of confidentiality are yet to be fully tested. However support for the wider confidentiality of without prejudice correspondence can be found in *Unilever plc v. Proctor & Gamble Co.* [2000] 1 W.L.R. 2436; *Ofulue v. Bossert* [2009] UKHL 16; [2009] 1 A.C. 990; *TVZ v. Manchester City Football Club Ltd* [2021] EWHC 1179 (QB); *Woodward v. Santander UK plc* [2010] I.R.L.R. 834, EAT; *Prudential Assurance Co. Ltd v. Fountain Page Ltd* [1991] 1 W.L.R. 756 (Hobhouse J); *Rollingson v. Hollingsworth* [2020] EWHC 3568 (QB) (Master Dagnall); and *EMW Law LLP v. Halborg* [2017] EWHC 1014 (Ch); [2017] 3 Costs L.O. 281 (Newey J).

33. Mr Logo seeks to argue that there is an exception where misconduct is revealed in the without prejudice communications. He refers me to the judgment of Lindley L.J. in *Walker v. Wilsher* (1889) 23 Q.B.D. 335, where at 337 this is said:

> "What is the meaning of the words "without prejudice"? I think they mean without prejudice to the position of the writer of the letter if the terms he proposes are not accepted. If the terms proposed in the letter are accepted a complete contract is established, and the letter, although written without prejudice, operates to alter the old state of things and to establish a new one."

34. That case was dealing with the emerging practice of using without prejudice correspondence on the question of costs. Mr Logo referred to the decision of the Court of Appeal in *Oceanbulk Shipping & Trading SA v. TMT Asia Ltd* [2010] EWCA Civ. 79; [2010] 1 W.L.R. 1803, a case which concerned the construction of a contract which had been formulated following without prejudice discussions. The issue in the case was the degree to which the without prejudice

discussions could be used as an aid to interpretation. The decision of the Court of Appeal was overturned by the Supreme Court [2010] UKSC 44; [2011] 1 A.C. 662. I cannot see any specific reference to a misconduct exception to the without prejudice rule, as Mr Logo suggests in his skeleton argument. However, I would accept that there may be an exception in certain circumstances if there is a sufficient degree of misconduct.

35. Mr Logo in essence seeks to argue that there was misconduct on the part of Payone in seeking to include a term in the settlement which would have secured Mr Logo's withdrawal of complaints to a regulator. I am not satisfied that there was misconduct in this case. Seeking to include a term in a settlement agreement would be ineffectual: the contract, at least that term of the contract, could not be enforced. Payone were offering £500 for independent legal advice. The legal advisor was always likely to pick-up on the issue. There is no wider basis upon which the confidentiality of without prejudice correspondence could be said to have been set aside in this case: the relevant documents have been seen by the appropriate regulator and decisions made concerning them.

36. I am not convinced that the use of CPR r.31.22, or the courts inherent jurisdiction in this case, engages the open justice principle in the way suggested by Mr Logo. As I have already observed, there was no application for the case to be heard in private or for judgment to be given in private. Such applications would have been exceptional and would have required significant justification. The Court has done its work in public.

37. Rule 31.22 seeks to regulate the use of documents which have been disclosed in proceedings, and which may have lost their confidential status by virtue of having been referred to in public. But these documents have not been disclosed in the proceedings: Mr Logo already had them in his possession. The rule does, however, acknowledge a general principle that documents referred to in a public court do, generally, lose their confidential status. But equally, there are exceptions to that position as r.31.22 sets out.

38. The application itself does not make reference to r.31.22, or indeed to any other power to make the order which the Court was being invited to make. However, Baroness Hale acknowledged in *Dring* that the court has an inherent jurisdiction to control its proceedings by making an order about the use to be made of documents.

39. The clear intention of the application was to restrain Mr Logo from making use of the material. The point of principle that the application was seeking to have clarified was that the confidentiality should not be lost as a result of reference to

the documents in court. I am satisfied that the Deputy District Judge had the power to make the order that she did. I am also satisfied that her decision to make the order in the terms that she did was within the wide ambit of discretion afforded to first instance judges.

40. What was required was a balance between open justice and confidentiality. There was little to weigh in favour of open justice. These were documents available to Mr Logo. He was able to prosecute his case without hinderance. He will retain the documents for his own records. No one else attended the hearing. The judgment is, and will remain, a public document. Nothing in the order would prevent an application under CPR r.5.4C by a non-party. Nor does it prevent any interested third party from applying to set the order aside or to have it varied. It could not confer confidentiality where none already existed.

41. The essential reasoning of the Deputy District Judge was that without prejudice discussions are confidential. She finds that it would be contrary to the interests of justice if the Defendant was to either seek to defend the proceedings without making reference to without prejudice documents or to be forced to place them in the public domain.

42. The reasons are not lengthy, but when seen against the backdrop of this application being heard at the beginning of a one and a half hour small claims track trial over £600, and in light of the authorities of *G v.G* and *Piglowska*, the reasons are perfectly sufficient to demonstrate why the decision was made and to show the exercise of the discretion. In those circumstances it is not for me to pick apart the decision and to ask whether I would have made an order in precisely the same terms.

43. After the hearing there was discussion between the parties and the judge by email. Mr Davidson was clearly aware, and correctly so as it turned out, that the Deputy District Judge may not have wished her email address to be disclosed to a litigant in person. There were, therefore, emails which passed between the Deputy District Judge and Mr Davidson, without including Mr Logo, about the documents which were to be the subject to the order. This was unfortunate.

44. Mr Logo understandably perceived that he was being treated differently than he would have been had he been represented. Perhaps with the exception of some personal matter – where counsel has a hospital appointment or child care arrangements, the details of which they do not wish to make public – there should be no private communications between the court and one of the parties, and especially between a judge and one of the parties. This risks a far greater harm to the principle of open justice than did the sealing up order. It will almost always

be a question of perception rather than actual prejudice. But perceptions in the administration of justice are important. A point made by Lord Hewart, C.J. in *Ex. p. McCarthy*.

45. There is a very real problem. Email has allowed a far more efficient means of communication between the court, judges and parties than was possible in the past. Equally, in an era of severe strain upon the court's resources, when documents do not always make their way to the court file, the temptation to communicate directly has become almost overwhelming. Lawyers know that they must copy in the other parties to the litigation. Some litigants in person contact the court directly without copying other parties. This is not a one-sided problem.

46. The specific issue here is about communications between a judge and the parties over the precise terms of the order. Such communications which include all parties can be an efficient means of resolving minor issues. It is important, however, that the process is adapted when litigants in person are involved. I was told that some judges are reluctant to allow litigants in person to have their email address. That is a concern that I share. The vast majority of litigants in person would use it perfectly properly, but a minority would send repeated emails to the judge direct. There is then no proper record. Sometimes people are abusive.

47. The ways round the problem are not as efficient. It is possible to ask for brief written submissions, or to have the emails sent to an inbox controlled by a court officer. It may even be necessary to have a short additional hearing. All of those steps are an inconvenience, but a necessary inconvenience if the litigant in person is not to be left with a feeling of being second class or that he is being excluded from the process by which his own case is being decided.

48. In this case Mr Logo did see all the emails which passed between Mr Davidson and the Deputy District Judge. His views were communicated by Mr Davidson to the Deputy District Judge. I am satisfied that there was no actual injustice and Mr Logo has not sought to challenge the decision on this basis.

49. For all of those reasons the appeal is dismissed.

SEALING-UP OF THE APPEAL DOCUMENTS

50. Finally, I need to consider whether the documents generated on the appeal should be sealed-up on the court file. Those documents are (1) the Appellant's Notice [63]; (2) The Grounds of Appeal [75]; (3) The Order of His Honour Judge Parfitt granting permission to appeal [83]; (4) The Application to adduce new evidence dated 11th September 2024 [174]; and the skeleton arguments of the parties.

51. I can see nothing in the Appellant's Notice which could be regarded as confidential. The Grounds of Appeal do contain reference to without prejudice material. In my judgment balancing the open justice principle and that of the right to confidentiality that I have set out above, the balance falls in favour of sealing the Grounds of Appeal. I can see no reason to seal Judge Parfitt's order. The skeleton arguments make extensive reference to without prejudice material and will therefore be sealed on the Court file.

52. The application to adduce fresh evidence raises a more difficult issue. It concerns a letter from the Solicitors Regulation Authority (SRA) to Mr Logo concerning a complaint he made against Payone's solicitors. Mr Davidson, in opposing the application, drew my attention to various features of the process adopted and the status of the letter. The letter itself does not state that it is confidential. It does not say that Mr Logo should not share the document more widely. It does say that the SRA will not publish their decision.

53. I am not satisfied that there is any confidentiality in the document. Any action to seek to restrain publication would need to be taken by the solicitors, not their client. Such a claim might also require notice to the SRA. For these reasons I will make no order in relation to the sealing of the Application.

54. I circulated in draft the judgment together with a proposed order. I have considered the emails received from the parties. Nothing in those emails has caused me to change the substance of this judgment.