

**IN THE HIGH COURT OF JUSTICE**

**KING'S BENCH DIVISION**

**MEDIA AND COMMUNICATIONS LIST**

**14 May 2025**

**BETWEEN:**

**PAYONE GmbH**

**- and -**

**LOGO**



**KB-2023-002134**

**Claimant**

**Defendant**

---

**ORDER**

---

**UPON APPLICATION** by the Claimant by Application Notice dated 24 February 2025 seeking an order, without a hearing, that Paragraph 15 of the Order of 22 April 2024 be varied to provide that the Defendant must pay the Claimant's costs summarily assessed at £100,000 (less any sum paid on account) ("the Variation Application")

**AND UPON READING** (1) the witness statement of Emma Kirsten Zarb dated 24 February 2025 in support of the Variation Application; and (2) the witness statement of the Defendant dated 25 February 2025 in answer to the Variation Application

**WITHOUT A HEARING IT IS ORDERED that:**

1. The Variation Application is refused.
2. The Claimant must pay the costs of the Variation Application. Such costs to be the subject of a detailed assessment if not agreed.

**REASONS**

- (A) The Claimant has not addressed the jurisdiction under which it seeks to make the Variation Application. The Defendant, in his submissions, has identified CPR 3.1(7) as a potential jurisdiction, but submits that it is not available in this case. I accept the

Defendant's submissions. This is not an attempt to correct an error. It is an attempt to change the nature of the order made. Further, it is an attempt to vary a final order. Even under the more generous approach adopted to interim orders, the Claimant would fail to demonstrate that this was a case where the Court should use CPR 3.1(7) to vary the order. The principles are set out in ***Tibbles -v- SIG plc* [2012] 1 WLR 2591**. The jurisdiction to vary under the rule should normally be exercised only (a) where there has been a material change of circumstances since the order was made; or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated. Neither applies here.

- (B) Ignoring the fact that this is a final order, to which more stringent rules apply, and applying the more generous principles from ***Tibbles***, the Claimant cannot bring itself within the category of case where it would for the Court to vary the order under CPR 3.1(7). It appears that the Claimant seeks the variation because it does not want to proceed to detailed assessment of its costs. There is force in the Defendant's contention that the Claimant is seeking "*to circumvent the detailed assessment process and avoid any scrutiny of their costs*". Costs Judge Rowley has already held that it would be "*wrong in principle to deprive the Defendant of the opportunity to see the costs claimed against him set out in a bill of costs*". The Variation Application appears to be an effort to achieve that result by another means.
- (C) Costs follow the event. In principle, the Defendant is entitled to the costs of preparing his witness statement in answer to the Variation Application. Those costs should be able readily to be agreed, but if not, they can also be assessed.
- (D) As the Claimant asked for this application to be dealt with without a hearing, I have done so (being satisfied that it was not necessary to have a hearing to resolve the application). As such, there is no right to have the decision reconsidered at an oral hearing. If the Claimant wishes to challenge this order, it will have to seek permission to appeal from the Court of Appeal.

**14 May 2025**