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4 record.

5 **IN THE COMPETITION** CaseNo:1642/12/13/24

6 **APPEAL**  
7 **TRIBUNAL**

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10 Salisbury Square House  
11 8 Salisbury Square  
12 London EC4Y 8AP

13 Wednesday 30<sup>th</sup> October 2024

14  
15 Before:

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17 The Honourable Mr. Justice Peter Roth  
18  
19 (Sitting as a Tribunal in England and Wales)

20  
21  
22 BETWEEN:

23 **Claimant**

24  
25 **Mr Aubrey Weis**

26  
27 v

28 **Defendant**

29  
30 **Greater Manchester Combined Authority**

31  
32  
33 **A P P E A R A N C E S**

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35  
36 JOSEPH BARRETT KC (instructed by Grosvenor Law) on behalf of Mr Aubrey Weis

37  
38 AIDAN ROBERTSON KC (Instructed by DLA Piper) on behalf of Greater Manchester  
39 Combined Authority

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Wednesday, 30 October 2024

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(1.00 pm)

**MR JUSTICE ROTH:** We start with a warning. This hearing, like all hearings before this tribunal, is being live streamed. An official recording is being made and a transcript is being taken, which will be placed on the tribunal's website. It is strictly prohibited for anyone to make any unauthorised recording of the proceedings or to take any image of the proceedings, and to do so is punishable as a contempt of court. I've received the two skeleton arguments from both sides.

Now I have to say, Mr Barrett, your skeleton completely ignores the practice direction of the tribunal regarding skeleton arguments. So in future in this case, please would you pay regard to it; it's on the website.

I think the first matter is the forum. Clearly, these proceedings' subject matter takes place entirely within England, and I think the parties have agreed that the forum should be England and Wales, and that seems clearly correct, and I will make that order.

Secondly, on intervention, the case summary was published on the tribunal's website back in July. So the time for any application to intervene has long expired. There's no sign of any interventions.

The next matter, I think logically, is the question of a stay. So Mr Robertson, what is now the position regarding a decision by the authority?

Stay

**MR ROBERTSON:** As we said in our skeleton, commercial negotiations are still ongoing for the 2024 Renaker loans.

**MR JUSTICE ROTH:** Yes.

**MR ROBERTSON:** I can't give any specific indication as to when those will be formally concluded.

**MR JUSTICE ROTH:** Yes. I mean, I can see that Ms Blakey, not long ago, said she

1 anticipated they'd be completed in September.

2 **MR ROBERTSON:** Yes, and --

3 **MR JUSTICE ROTH:** And they obviously haven't been.

4 **MR ROBERTSON:** There have been ongoing negotiations. Commercial realities  
5 mean that the parties are yet to be in a position formally to conclude. I'm disinclined  
6 to put any specific timeline --

7 **MR JUSTICE ROTH:** Right. So it's not imminent, as it were.

8 **MR ROBERTSON:** It may be. It may not be. Of course, there are, you know,  
9 ongoing -- for example, we're here today on budget day.

10 **MR JUSTICE ROTH:** Yes.

11 **MR ROBERTSON:** Who knows what implications that may have for the final financial  
12 position of the parties.

13 **MR JUSTICE ROTH:** The other thing that Ms Blakey says is that on the basis it would  
14 be completed in September, she anticipated drawdown would take place at some point  
15 in the summer of 2025. In other words that between completion and the first  
16 drawdown, there would be a significant interval. Is that the structure that's basically  
17 envisaged?

18 **MR ROBERTSON:** I don't think there's been any change to that structure, but I will  
19 just check with Ms Blakey. Ms Blakey informs me that that remains the case.

20 **MR JUSTICE ROTH:** Yes. So there will be quite a gap. Then, as regards the stay, I  
21 think the parties have agreed that there should be a stay. One needs to be precise  
22 about, what the end of the stay should be.

23 **MR ROBERTSON:** Sir, do you have the draft order that was sent this morning?

24 **MR JUSTICE ROTH:** I do, yes. It says, "Execution of the final transaction documents"  
25 is what's been put there.

26 **MR ROBERTSON:** Yes.

1 **MR JUSTICE ROTH:** Just to relate that to the way that she explains ...  
2 So if we could just look at her witness statement at paragraph 57 and 58, which is in  
3 bundle 2, or if one's working electronically, page 554, of the hearing bundle. So she  
4 says on the heading "Completion":  
5 "Once the loan documents have been sealed and signed by the parties, they are then  
6 sent back to the external legal advisers. Documents are held to order until the  
7 instruction is given to release them and complete the loans."  
8 Not sure I quite understand that. Once they've been sealed and signed, they've been  
9 executed and they might have --  
10 **MR ROBERTSON:** Dispensed or subject to formal completion, and that's what's  
11 referred to in paragraph 58.  
12 **MR JUSTICE ROTH:** What does that mean?  
13 **MR ROBERTSON:** Well, in the same way exchange of contracts in a house  
14 purchase is subject then to completion.  
15 **MR JUSTICE ROTH:** But completion is that you transfer the house. But here  
16 drawdown, which is payment of the loan, is months away. So that's what I don't  
17 understand.  
18 **MR ROBERTSON:** It's the right to the funds that arises on completion in accordance  
19 with what's been agreed. And what's been agreed is the drawdown then takes place  
20 after a lapse of time.  
21 **MR JUSTICE ROTH:** Well, is completion when drawdown takes place, or is  
22 completion --  
23 **MR ROBERTSON:** It's in advance of drawdown. It is completion which gives rise to  
24 the legally enforceable right, then to the --  
25 **MR JUSTICE ROTH:** Well, the exchange of the contracts gives a legally enforceable  
26 right, doesn't it? The signing of the contracts.

1 **MR ROBERTSON:** I'll take instructions on this. (Pause)

2 **MR JUSTICE ROTH:** Yes.

3 **MR ROBERTSON:** The way it works is, on the documents being signed and sealed,  
4 each party signs and seals a set of the documents.

5 **MR JUSTICE ROTH:** Yes.

6 **MR ROBERTSON:** These are then exchanged as between the parties and checked  
7 that they essentially conform with each other.

8 **MR JUSTICE ROTH:** Yes.

9 **MR ROBERTSON:** Then the process of completion, which is essentially confirmation  
10 that both parties have got signed, sealed documents, takes place. It's the completion  
11 that gives rise to the legally enforceable right to funding in accordance with the  
12 drawdown terms.

13 **MR JUSTICE ROTH:** Right. So the stay that's proposed is from that point of the  
14 completion, is that right? Because it says, "Execution of the final transaction  
15 documents". But I think it should be worded so as to conform to the procedure that  
16 you've just explained.

17 **MR ROBERTSON:** The stay should operate until completion.

18 **MR JUSTICE ROTH:** Until completion. You can notify the applicant -- and you don't  
19 need five working days, you can notify within three working days, can't you? In theory  
20 you can notify the same day, but let's say three working days.

21 **MR ROBERTSON:** Three days of completion.

22 **MR JUSTICE ROTH:** Yes.

23 **MR ROBERTSON:** Completion is as described in paragraph 58 of Ms Blakey's --

24 **MR JUSTICE ROTH:** Yes.

25 **MR ROBERTSON:** -- statement. So the stay operates from now; the date of this  
26 order.

1 **MR JUSTICE ROTH:** Subject to any terms of the order.

2 **MR ROBERTSON:** Yes. Then when --

3 **MR JUSTICE ROTH:** Then the stay will then automatically lapse.

4 **MR ROBERTSON:** Yes.

5 **MR JUSTICE ROTH:** Good. And that I think is something that -- indeed it's a slightly  
6 shorter time than was provided for.

7 So, Mr Barrett, you're content with that on behalf of your client?

8 **MR BARRETT:** I am, my Lord.

9 **MR JUSTICE ROTH:** Yes.

10 Expert evidence

11 **MR JUSTICE ROTH:** Before turning to any question of disclosure, can we consider  
12 the question of expert evidence? I think that's something for you, Mr Barrett. I think  
13 you are seeking permission to call an expert, is that right?

14 **MR BARRETT:** That's right. That is agreed by the defendant that we should have  
15 that permission.

16 **MR JUSTICE ROTH:** Yes. But of course, it is a matter for the tribunal.

17 **MR BARRETT:** It is.

18 **MR JUSTICE ROTH:** What expert, in what discipline?

19 **MR BARRETT:** An expert in lending within this field. So lending for the purposes of  
20 property development transactions. We haven't yet identified a specific individual, but  
21 the substance of the expert evidence will be to assist the court in understanding what,  
22 if any, as it were, market range exists in respect of commercial terms for loans of this  
23 sort.

24 **MR JUSTICE ROTH:** So what profession do you --

25 **MR BARRETT:** I think that the chaps who do this work, in my experience, sometimes  
26 come from three different backgrounds: sometimes they're chartered accountants by

1 trade; sometimes I think they have a background in investment banking or corporate  
2 finance; sometimes they're surveyors.

3 I think from each of those starting points they find themselves focusing on, as it were,  
4 the commercial terms of loans. So I think there are, from previous cases, a number  
5 of individuals in the market who offer their services in this capacity. We haven't yet  
6 alighted upon a specific individual.

7 **MR JUSTICE ROTH:** Yes. When you have, you should notify the respondent of the  
8 identity of your expert. Well, I'll give that -- that's not opposed, as I understand?

9 **MR ROBERTSON:** It's not opposed. We'll reserve the right to make observations as  
10 to whether it's genuinely expert opinion evidence or whether in fact, it's factual  
11 evidence.

12 **MR JUSTICE ROTH:** Yes.

13 **MR ROBERTSON:** It sounds to me, from what's just been outlined there, that it's  
14 more factual evidence than opinion evidence.

15 **MR JUSTICE ROTH:** Well, a lot of -- I mean that's true of indeed of all of the evidence  
16 from economists in this tribunal; that's partly factual evidence. But it's not sort of  
17 additional facts concerning this case as such, but it may be drawing on facts of other  
18 cases to inform their experience, rather like surveyors' valuations.

19 **MR ROBERTSON:** Yes, I must admit when I saw the referenced expert, I assumed it  
20 was going to be a chartered surveyor.

21 **MR JUSTICE ROTH:** Yes.

22 **MR ROBERTSON:** That seems to me the obvious expertise in this area. Our position  
23 on that, as I say, it's not opposed, but what we do seek permission to do, if we are  
24 served with an expert's report, is to put in, if so advised, a report from an expert of our  
25 own in response. I should emphasize that we don't at the minute think that the matters  
26 raised are likely to require an expert from the authority, because the authority has

1 within it its own expertise, being engaged in this business for several years now.

2 **MR JUSTICE ROTH:** Yes. Well, you have permission and it's a matter for you and  
3 your client as to whether you want to do so.

4 **MR BARRETT:** Could I address you on that, my Lord?

5 **MR JUSTICE ROTH:** Yes.

6 **MR BARRETT:** That is resisted.

7 **MR JUSTICE ROTH:** You resist that, do you?

8 **MR BARRETT:** I resist that for two reasons, if I could --

9 **MR JUSTICE ROTH:** Yes.

10 **MR BARRETT:** -- explain that. The first one is one of principle. My Lord, this is a  
11 judicial review challenge.

12 **MR JUSTICE ROTH:** Yes.

13 **MR BARRETT:** The courts' function and the relevant inquiry is specifically and solely  
14 concerned with the decision-making process the authority actually followed at the time.  
15 In my understanding of the authorities, there is no case of which I'm aware in a judicial  
16 review where an authority, a defendant, has been allowed to rely on ex post facto  
17 expert evidence to seek to support the lawfulness of a decision, subject to challenge  
18 by way of judicial review.  
19 That is for a number of reasons, one of which my learned friend touched on. The basic  
20 position as a matter of judicial review and public law, is that insofar as the authority is  
21 relying upon expertise, it is either its own expertise or experts that it actually consulted  
22 and drew on at the relevant time of the decision. So, firstly, as a matter of principle  
23 and also as authority, I submit it would be an entirely novel order for a public authority  
24 to be allowed to adduce ex post facto expert evidence in support of a public law  
25 decision challenged by way of judicial review. So that's my first, and if I may say so,  
26 fundamental submission.



1 Just related to that, my Lord, if I could, there's also a short point I would make as a  
2 matter of, if you like, the specific principles that the tribunal will be applying in a subsidy  
3 challenge. Would my Lord be able to take up the authorities bundle?

4 **MR JUSTICE ROTH:** Yes. What case?

5 **MR BARRETT:** Actually, I'm going to show you, my Lord. It's actually tab 3; it's the  
6 commission notice, I think, is the shortest way to make the submission.

7 **MR JUSTICE ROTH:** Yes.

8 **MR BARRETT:** If my Lord has that?

9 **MR JUSTICE ROTH:** Yes.

10 **MR BARRETT:** If you're able to turn to paragraph 78. You'll find that -- the internal  
11 numbering -- at page 153.

12 **MR JUSTICE ROTH:** Yes.

13 **MR BARRETT:** Perhaps if my Lord could just take a moment to read paragraph 78  
14 to yourself.

15 **MR JUSTICE ROTH:** Yeah.

16 **MR BARRETT:** My Lord, I rely upon both the first and the final sentences. Perhaps  
17 unsurprisingly, the European case law has a similar approach to our domestic public  
18 law and judicial review case law. Specifically in the context of state aid challenges it  
19 is not open to the authority to seek to defend its decision by way of expert evidence  
20 produced after the fact. What matters in terms of the authority's evidence, the  
21 authority's case, is what was done at the time or not done at the time. So for those  
22 two short, but in my submission fundamental reasons, we resist this application.

23 **MR JUSTICE ROTH:** Of course, on judicial review, Mr Barrett, it's generally unusual  
24 to have any expert evidence at all.

25 **MR BARRETT:** Yes.

26 **MR JUSTICE ROTH:** Because it relies on what was before the decision maker. But

1 you want to introduce expert evidence which may draw and seek to refer to  
2 comparables and other situations. So any expert evidence that the authority would  
3 produce could not be simply to buttress its decision for the reasons you've given. But  
4 if they want to meet what your expert is saying, and say "No, this comparable is  
5 actually not comparable for the following reasons", it seems to me they should be  
6 entitled to do that, shouldn't they? Because you're bringing in expert evidence. If you  
7 were not asking for expert evidence --

8 **MR BARRETT:** (Overspeaking) my Lord --

9 **MR JUSTICE ROTH:** -- then there's no way, it seems to me, that I would allow the  
10 authority to bring an expert, but it's something that you've opened.

11 **MR BARRETT:** Yes. So I entirely understand the point my Lord puts to me. Again,  
12 my Lord, as a matter of authority and a matter of principle, if one were to open the  
13 case law reports there are a plethora of cases where claimants are relying upon expert  
14 evidence in precisely the way that we are in this case. There is no authority of which  
15 I am aware in which a defendant has been allowed in a judicial review to adduce ex  
16 post facto expert evidence to meet that.

17 Of course, I accept that my Lord puts to me the defendant is entitled to seek to meet  
18 any points. Because we are dealing with a judicial review, the principles I've sought  
19 to summarise -- in my respectful submission, that answer must come by way of either  
20 factual evidence from the authority or submission from my learned friend.

21 **MR JUSTICE ROTH:** Not factual evidence, because your expert is going to put in an  
22 element of opinion evidence based on other things, so it would be an opinion in  
23 response. I can't see any -- I mean, I'm not troubled whether there was -- I don't know  
24 if there's any authority around which actually says, "This is not permissible".

25 There is of course the authority which I think you referred to, where Mr Justice Singh,  
26 as he then was, refused expert evidence. And the Court of Appeal, in an unreported

1 decision, said that was wrong and you should be allowed to do it.

2 What I'm minded to say is that they have permission to, if so advised, to call expert  
3 evidence only to respond to new points that are raised in the applicant's expert  
4 evidence; that's the scope of it. One will look carefully at if they do -- and Mr Robertson  
5 said he thinks it's unlikely -- to see that they are doing that and not seeking, as you put  
6 it quite fairly, not to buttress decisions that were taken in the past.

7 **MR BARRETT:** Yes. I think I've made my submissions, my Lord. I don't think I'm  
8 going to move on that position.

9 **MR JUSTICE ROTH:** Yes. I mean, I think it will very much depend on the approach  
10 your expert takes and what he says. You don't know -- you haven't even identified  
11 him or possibly her.

12 So I think I'll give you permission, Mr Robertson, but you've heard what's been said; it  
13 is very much to respond to any matters outside the scope of the actual decision-making  
14 process --

15 **MR ROBERTSON:** (Inaudible).

16 **MR JUSTICE ROTH:** -- that the authority adopted, and no doubt, if you do approach  
17 an expert, you'll be careful to deal with that.

18 **MR ROBERTSON:** We'll have the transcript of the CMC. We use the word  
19 "responsive expert" to encapsulate that in the draft, and my understanding of the term  
20 "responsive" is in accordance with what you've just indicated. So I don't think that  
21 needs further --

22 **MR JUSTICE ROTH:** As you say, it's on the transcript, and if you decide to put in  
23 expert evidence, and if the appellant applicant considers that it goes beyond the scope  
24 of being truly responsive, they can object, and if necessary the tribunal will then rule.

25 **MR ROBERTSON:** Yes.

26 **MR JUSTICE ROTH:** I've dealt with that first because I think it may impact on the

1 question of disclosure. Though there's a stay, and it's sensible as you've proposed,  
2 that that's dealt with now.

3 Disclosure

4 **MR JUSTICE ROTH:** First of all, there is in the draft order, under subheadings 1 to  
5 five of subparagraph 1(b), a list of those documents that the respondent is ready to  
6 disclose. Does that, Mr Barrett, meet your client's requirements as we are today?

7 **MR BARRETT:** At this stage, it does. We've sought to agree what the sensible initial  
8 order for disclosure is. Obviously, I need to record that as yet, we have no visibility as  
9 to the decision-making process. To that extent our position is necessarily reserved,  
10 but this drafting reflects the discussions between the parties.

11 **MR JUSTICE ROTH:** Well, that's very helpful. It says "21 days". Can they not be  
12 disclosed, Mr Robertson, within 14 days? I think 1 to 3 of that list is largely available  
13 now, so, it can be prepared indeed in advance, but --

14 **MR ROBERTSON:** Mr Barrett originally suggested in this draft, 14 days, I took  
15 instructions and was told that was a bit on the tight side, hence we agreed 21 days.  
16 The process of identifying the documents is well underway --

17 **MR JUSTICE ROTH:** Yes.

18 **MR ROBERTSON:** -- but I wouldn't want to commit my client to do something which  
19 they indicated is a bit tight to achieve within 14 days. Obviously, we need to do the  
20 job comprehensively and --

21 **MR JUSTICE ROTH:** Yes. Well, there's a strong steer in the legislation that these  
22 cases should be determined quickly, and that's why I'm pushing back on the timetable.  
23 I don't think it makes sense to have any disclosure now because it's always possible  
24 that the negotiations will collapse, and there won't be a loan at all, as you haven't  
25 reached full agreement yet, but the --

26 **MR ROBERTSON:** My Lord, should I take instructions on this point?

1 **MR JUSTICE ROTH:** Yes.

2 **MR ROBERTSON:** Well, I am instructed that there is actually, item 5 on that list --

3 **MR JUSTICE ROTH:** Yes.

4 **MR ROBERTSON:** -- is the bulk of the volume of the documentation, and that will be  
5 a stretch to do that in the --

6 **MR JUSTICE ROTH:** Can you do 1 to 4 in 14 days?

7 **MR ROBERTSON:** Yes.

8 **MR JUSTICE ROTH:** Yes, well --

9 **MR ROBERTSON:** And an additional seven days for item 5.

10 **MR JUSTICE ROTH:** Well, let's do it like that.

11 Confidentiality

12 **MR JUSTICE ROTH:** Now, the question of confidentiality. Mr Barrett, you know that  
13 a lot of cases in this tribunal, and indeed in the TCC on public procurement, which  
14 have certain similarities to subsidy control in terms of local authority contracting, there  
15 is a confidentiality ring and the principles for that are well recognized. Of course, the  
16 court has regard to open justice, but it takes account of that, and you've seen, I hope,  
17 the statement of principles set out by Lord Justice Floyd in what I think is now the  
18 leading authority on confidentiality rings.

19 It seems to me there may well be confidential documents or parts of documents that  
20 are confidential here, and it is an appropriate case for a confidentiality ring. The real  
21 question is: who's within the ring, not whether there should be a ring at all. I note that  
22 indeed in the notice of appeal, repeatedly, there are references to disclosure being  
23 within a confidentiality ring. So I understand your position. Are you opposed to, in  
24 principle, having any confidentiality ring, or is it more a question of who should be  
25 within it?

26 **MR BARRETT:** My instructions, my Lord, are to resist a confidentiality ring in

1 principle, but the focus of my submission is, if now is the time to make my submissions  
2 about this, certainly beyond composition and the inclusion or exclusion of my clients  
3 within the confidentiality ring.

4 **MR JUSTICE ROTH:** I mean, you say your instructions are to proceed in principle.

5 **MR BARRETT:** Yes.

6 **MR JUSTICE ROTH:** If one looks at your notice of appeal, that's certainly not the  
7 position.

8 **MR BARRETT:** Yes. Matters have -- if I may explain?

9 **MR JUSTICE ROTH:** Yes.

10 **MR BARRETT:** Matters have moved on since the appeal was filed. And in my  
11 respectful submission, the striking feature of the application which is now made to the  
12 court is that no witness evidence whatsoever has been provided to explain, support or  
13 justify the imposition of a confidentiality ring.

14 So, as my Lord was putting to me a moment ago, I think my starting assumption,  
15 working assumption in this case was that there would be some explanation given,  
16 some evidence given that would say, "there are these features of these documents  
17 which contain this information, which we say is confidential and needs to be protected  
18 for these reasons". That was my working assumption.

19 My Lord, I'm not sure to what extent you've had the chance to look at the  
20 correspondence. There has been quite extensive correspondence about this issue --

21 **MR JUSTICE ROTH:** Yes.

22 **MR BARRETT:** -- and what is, in my respectful submission, striking is that at no stage  
23 has the defendant been able to articulate or explain any basis for the assertion that it  
24 is necessary or appropriate for a confidentiality ring to be imposed on these  
25 proceedings.

26 **MR JUSTICE ROTH:** Although, given that your starting position was there would be

1 a confidentiality ring and they should be disclosed into a confidentiality ring, that  
2 doesn't exactly invite a respondent to start explaining why there should be a ring when  
3 the applicant has accepted that even before the respondent opened their mouth.

4 **MR BARRETT:** Well, I would respectfully submit that that's actually not an answer  
5 here because as my Lord will have seen, what the defendant goes on to do is to say  
6 that clients need to be excluded. And when that is debated over four months of  
7 correspondence, again, there is no explanation, no evidence as to what is said to be  
8 the confidential information that requires the exclusion of the clients. It just hasn't been  
9 grappled with at all.

10 **MR JUSTICE ROTH:** One imagines it might be certain details of the commercial  
11 terms. I mean, I can hear from Mr Robertson but as I say, that's a fairly normal course  
12 in public procurement, where again you're looking at what has won because your client  
13 effectively is, to some extent, a competitor of Renaker.

14 **MR BARRETT:** Yes.

15 **MR JUSTICE ROTH:** I mean, that's why he's aggrieved by what's happening.

16 **MR BARRETT:** Yes. Well, could I make some submissions about --

17 **MR JUSTICE ROTH:** Yes.

18 **MR BARRETT:** I mean, as we've already said, it is very common in public  
19 procurement disputes and also other state aid cases that I've dealt with over the years.  
20 Speaking for myself, I have never come to a hearing where a party seeks either the  
21 imposition of a confidentiality ring order or certainly a confidentiality ring order which  
22 excludes clients and has not adduced evidence to explain and support that application.  
23 So I've not encountered that in 15 years. I haven't been able to find any reported  
24 cases --

25 **MR JUSTICE ROTH:** Yes.

26 **MR BARRETT:** -- of an instance where that has occurred. So that's the first point I

1 would wish to make.

2 The second point I wish to make, my Lord, is, you use the word "imagine". And, in my  
3 respectful submission, that word is rather telling because it would be a work of  
4 imagination to start to speculate as to what the basis of the application is.

5 And if it is what my Lord put to me, which is commercial terms of the loans, that is  
6 utterly hopeless, because we've given you in the bundle, my Lord the statutory  
7 accounts for three Renaker SPVs, just three examples. I'll show you them if it's helpful,  
8 but what my Lord will see is that Renaker itself publishes in its statutory accounts the  
9 rates of its loans and the value of its loans.

10 So if what my Lord imagined was the basis of the application, that would, in my  
11 respectful submission, be a thoroughly bad basis of the application for those reasons.

12 **MR JUSTICE ROTH:** Yes.

13 **MR BARRETT:** Could I show you those, my Lord, just so you've got those?

14 **MR JUSTICE ROTH:** No, I don't think we need to spend so much time on that. Let  
15 me hear from Mr Robertson in answer to the question raised about what is confidential  
16 here.

17 **MR ROBERTSON:** What is confidential here is the contemporaneous financial  
18 information provided to the authority by Renaker. It also includes confidential financial  
19 information from other third parties. So, it's the sort of confidential information that's  
20 classically protected in a confidentiality ring.

21 Mr Barrett talks about his experience; well, in my experience, which goes back a little  
22 bit longer, I've never known a party suggest a confidentiality ring in a notice of appeal  
23 and then withdraw that at a case management conference. It's obviously appropriate  
24 to manage the problems. It would be particularly unsatisfactory to disclose the  
25 information concerned that's been provided by Renaker and also comes from third  
26 parties without those parties being given an opportunity to be heard.



1 **MR JUSTICE ROTH:** Well, it will go into the ring, so it won't be heard before that.

2 **MR ROBERTSON:** Yes. And that's a proportionate way of dealing with the issue.

3 **MR JUSTICE ROTH:** Yes. Well, I mean, we'll come to the position of Mr Weis or

4 Mr Rose in a minute. But within the ring, as you would envisage it, will be named

5 solicitors, named counsel and the expert.

6 **MR ROBERTSON:** Yes. That's the draft that I sent to Mr Barrett yesterday. And he

7 told me this morning he hadn't been able to take instructions on it, but it's -- I've just

8 taken the standard CAT confidentiality ring order.

9 **MR JUSTICE ROTH:** Yes.

10 **MR ROBERTSON:** And it will be Mr Barrett, it will be his instructing solicitors at

11 Grosvenor Law; it will be an expert witness, if they instruct an expert; and for us, it will

12 be myself, Mr Szlezinger --

13 **MR JUSTICE ROTH:** Well, the documents are coming from you, I think, so --

14 **MR ROBERTSON:** Yes, I don't imagine they will be providing --

15 **MR JUSTICE ROTH:** Unless there's disclosure from the other side.

16 **MR ROBERTSON:** -- confidential information to us as part of their evidence, but they

17 may do and if they do, it can go into the confidentiality ring which will comprise the

18 three people on the front row here on this side of the tribunal.

19 **MR JUSTICE ROTH:** Yes.

20 **MR ROBERTSON:** Now, if that protection turns out to stymie the applicant's ability to

21 present its case, then at that point, the applicant can make an application to this

22 tribunal for additional individuals to be admitted into the ring.

23 **MR JUSTICE ROTH:** Yes, well, we haven't got to that point yet about who's in it.

24 **MR ROBERTSON:** Yes. But that's how we envisage it working.

25 **MR JUSTICE ROTH:** I have to say, Mr Barrett, it does seem to me, without -- first of

26 all, we haven't got the documents yet at all, and we won't for some time -- that there

1 | may be confidential documents. It's a duty on the respondent and particularly on their  
2 | solicitors to be satisfied that there is a bona fide basis for claiming confidentiality. It  
3 | may be that in the case of a number of documents, it's not the whole document that's  
4 | confidential but there are certain figures or certain passages that need to be redacted  
5 | and the rest of it can be disclosed outside the ring.

6 | **MR ROBERTSON:** So, that's the approach that we're taking.

7 | **MR JUSTICE ROTH:** Yes. Well, that's what I expected.

8 | **MR ROBERTSON:** It's just redacting individual figures or sentences from documents.  
9 | It's not blacking out a whole document.

10 | **MR JUSTICE ROTH:** And you will have an expert who will also see them. My general  
11 | approach is to take it in stages that it goes into the ring. If you then (a) query whether  
12 | it's confidential at all, that's raised in correspondence in the first instance, saying,  
13 | "There's nothing confidential about this", and either the respondent accepts that or if  
14 | not, you apply to the tribunal and it can be done in writing.

15 | Secondly, there's then the question of who else needs to see it at that point, at that  
16 | stage of disclosure. I know that your position is that I think it's either Mr Weis or  
17 | Mr Rose or both and that both should be able to see it.

18 | But, in the first instance, I would have thought it should be looked at by your lawyers  
19 | or their lawyers including yourself and expert, because you will now have an expert  
20 | and, at that point, they can take a view that we consider that we need to share this  
21 | information with our client in order properly to get instructions. At that point, you can  
22 | again raise that with the respondent and seek agreement that they'd be admitted to  
23 | the ring, either completely or for this document. If they don't agree, you can apply to  
24 | the tribunal again in writing.

25 | That is the approach that generally works quite well. And the parties, in my  
26 | experience, are fairly grown up about this.

1 **MR BARRETT:** Yes.

2 **MR JUSTICE ROTH:** And so I'm not saying and am not minded to say at all that  
3 Mr Weis and Mr Rose -- I don't know much about Mr Rose, I have to say, so I'm not  
4 sure about Mr Rose, because there's very little information about him in his witness  
5 statement, but certainly Mr Weis has a lot of experience in property  
6 development -- should not be admitted to the ring or at least not be able to see certain  
7 of the documents.

8 But it seems to me that is better approached once you and your solicitors -- and your  
9 expert, because you will have the benefit of an expert experienced in these  
10 matters -- have seen the document and can then actually say to this tribunal, "Look,  
11 this is exactly the document we need to show to Mr Weis for these reasons."

12 **MR BARRETT:** My Lord, I think I'm required to make submissions resisting that  
13 approach.

14 My Lord, can I start by asking you to look at the OnePlus case very, very quickly?

15 **MR JUSTICE ROTH:** Yes.

16 **MR BARRETT:** Can you turn that up, please? I think you'll have it loose --

17 **MR JUSTICE ROTH:** I have it loose, yes.

18 **MR BARRETT:** -- within the authorities bundle. Can I ask you to start at  
19 paragraph 34, please.

20 **MR JUSTICE ROTH:** Yes.

21 **MR BARRETT:** Bear with me one moment.

22 So, my Lord, the statement of principle, external eyes only, what is proposed here, is  
23 exceptional. So in my submission, any suggestion that that is or should be a starting  
24 point, I would submit would not be correct.

25 What it goes on to explain, referring to the Henry Carr judgment, my Lord, is that  
26 sometimes it can be a starting point if one is dealing with a disclosure of lots of

1 documents which are likely to be of peripheral relevance.

2 Then in my submission it says, very importantly, at 35 it appears that what  
3 concerned Henry Carr J was the exclusion of access by one of the parties to the  
4 relevant parts of key documents. I agree that that should not be the result of the  
5 establishment of an external eyes only tier.

6 If I could just pause there, my Lord. The documents that we have referred to in the  
7 draft order are the key documents. My Lord could take a quick look at those --

8 **MR JUSTICE ROTH:** But we have the general principles, don't we, set out at 39 and  
9 it is often key documents that are within confidentiality rings. And ...

10 **MR BARRETT:** My Lord, 39 in my respectful submission, what the judge there does  
11 is to set out a non-exhaustive list of factors. 35 is, in my respectful submission, a  
12 statement of principle and a very important statement of principle.

13 **MR JUSTICE ROTH:** Yes.

14 **MR BARRETT:** It should not be the result of the establishment of an external eyes  
15 only ring that the client cannot see key documents. We are talking here about the key  
16 documents. We're talking about the documents that are the absolute bull's eye of the  
17 debate that's going to be heard before this tribunal.

18 **MR JUSTICE ROTH:** Well, they may or may not be, I don't know.

19 **MR BARRETT:** My Lord, if it's --

20 **MR JUSTICE ROTH:** Given what we've been told about what's said if it's about the  
21 financial viability or internal finances of Renaker, they may not be key documents, I  
22 think. But I don't know. I don't know what the third party information is.

23 **MR BARRETT:** My Lord, what you have in the list of documents in the draft order  
24 are the documents that the parties between them have agreed are the important  
25 documents that need to be disclosed, ie they are the --

26 **MR JUSTICE ROTH:** But they're not all key documents. I mean, in the usual way,

1 the volume of disclosure and the volume of documents that actually are in play at trial  
2 are likely to be very different.

3 **MR BARRETT:** My Lord, I don't want to repeat submissions I've made that there's no  
4 witness evidence supporting such a suggestion. There's a list of documents that the  
5 parties have agreed are the appropriate documents, necessary documents to be  
6 disclosed.

7 **MR JUSTICE ROTH:** Yes.

8 **MR BARRETT:** They are, in my respectful submission, that one reads the list, plainly  
9 the documents that go to this challenge. They're the records of the decision-making  
10 process.

11 **MR JUSTICE ROTH:** Well, they're relevant documents, but whether all of them are  
12 key -- I can't believe that every document there is a key document. It would be  
13 astonishing.

14 **MR BARRETT:** (Overspeaking) I don't think --

15 **MR JUSTICE ROTH:** In many years as a judge, never once have I found all the  
16 documents on disclosure to be key documents. Usually the other way round.

17 **MR BARRETT:** No, my Lord, I respectfully agree with that. I think partially that's the  
18 submission. It's hard to say that they can or should be regarded as peripheral  
19 documents in circumstances where the documents need to be disclosed.

20 **MR JUSTICE ROTH:** Well, they're relevant, but for disclosure purposes. I mean, we  
21 just don't know at this point. That's the issue.

22 I'm not seeking to prejudice your client in any way.

23 **MR BARRETT:** I understand that.

24 **MR JUSTICE ROTH:** And I don't see the big problem about -- your solicitors are going  
25 to get a lot of documents, they'll look through them. They will work out, with your  
26 assistance, possibly, what are the key documents. They'll then see which of those

1 have been labelled confidential, if any, because it may be they aren't key documents  
2 that are confidential. And then, it can raise that with the respondent.

3 **MR BARRETT:** Yes.

4 **MR JUSTICE ROTH:** And if the respondent is unreasonably hampering your  
5 preparation of the case, you apply in writing to the tribunal.

6 What is also clear, is that when it comes to the actual trial, it would be wholly unusual  
7 to exclude one party from access to documents that are in play at trial, the narrow  
8 category of documents, which is the second principle set out by Lord Justice Floyd but  
9 also, it's important that your client should have access, possibly subject to safeguards,  
10 to other documents which may have to be disclosed to him so that you can get advice,  
11 so that you can take instructions. There are various things that may arise in the course  
12 of preparation of the case, I see that. But I think it's difficult at this stage to be dogmatic  
13 about it one way or the other.

14 It's clear that your client and Mr Rose is, from what I see, active in this market such  
15 that it may be that there's concern about the confidence as regards what they do.

16 This is not a case where your clients are a large company where we can put in a sort  
17 of information barrier and say it can be Ms X and Mr Y who can see the documents  
18 but they can't share them with anyone else. Your client is an individual and so that  
19 course isn't open to us.

20 **MR BARRETT:** So my Lord, I understand, firstly, as you've stated, that (inaudible)  
21 prejudice.

22 **MR JUSTICE ROTH:** Yes. I just -- one wants to be pragmatic about it at this point.

23 **MR BARRETT:** I understand the pragmatic logic, if I may use that language, of the  
24 course my Lord is articulating.

25 In my submission, it is a reversal of the principled approach that the authorities  
26 indicate. I mean, my Lord, if I could ask you to pick up OnePlus again, paragraph 39,

1 which my Lord put to me, subparagraph iv:

2 "The court must be alert to the fact that restricting disclosure to external eyes only at  
3 any stage is exceptional."

4 To v:

5 "If an external eyes only tier is created for initial disclosure, the court should remember  
6 that the onus remains on the disclosing party throughout to justify that designation."

7 So my Lord, in my submission, asking for an order of this sort is genuinely an  
8 exceptional course. The onus to justify it does rest, in my submission on the  
9 authorities, very squarely from the defendant.

10 The limitation it places on the ability of the claimant to conduct the litigation is very  
11 significant. To take one practical example, my Lord, if one wants to think about  
12 practicalities, one of the things that would be very important for my client is to seek to  
13 quickly digest the disclosure, take decisions about this litigation and what should  
14 happen with this litigation: should the litigation proceed? Should the litigation be  
15 substantially amended? Should the litigation be narrowed? Should the litigation  
16 potentially be withdrawn? The order that's being sought significantly interferes with  
17 my client's ability to conduct the proceedings.

18 **MR JUSTICE ROTH:** Can I interrupt you, if I may.

19 **MR BARRETT:** Yes.

20 **MR JUSTICE ROTH:** You say you have a lot of experience of these cases. I mean,  
21 we have a notice of appeal where, knowing the sort of process involved, knowing what  
22 your client wishes to do, understanding the kind of documents there might be, one  
23 sees if one looks at your notice of appeal, in paragraph 10, a complaint about failing  
24 to provide details notwithstanding the claimant has made clear that:

25 "The essential documents should be disclosed into a lawyers-only confidentiality ring  
26 with solicitors and counsel giving appropriate undertakings to maintain the

1 confidentiality of any commercially confidential information."

2 So, your client, with all his experience of property development in Manchester, clearly  
3 thought there are likely to be commercially confidential matters and it doesn't stop  
4 there.

5 The section 76 request that was made clear that any documents which the defendant  
6 considered should be withheld or redacted should be disclosed only to external legal  
7 advisers.

8 And then again, I think paragraph 33:

9 "Acknowledgement ... external lawyers only confidentiality ring to ensure that any  
10 legitimate concern is addressed."

11 So, I mean, I wouldn't say that this is some complete surprise in this case.

12 **MR BARRETT:** Well, a few answers to that if I may.

13 **MR JUSTICE ROTH:** Yes.

14 **MR BARRETT:** The first answer to that is, that proposal, I entirely accept, of course,  
15 it's my document, that was made. It was made in the pre-action correspondence.  
16 Because, as my Lord may have seen, we were writing pre-action correspondence for  
17 many weeks and months, and then issued a claim, because we were provided with no  
18 information and no documents whatsoever. So as a frankly pragmatic matter to seek  
19 to encourage, as far as we possibly could, the authority to provide some information,  
20 that was the approach proposed at that stage.

21 **MR JUSTICE ROTH:** But on what you're telling me, it wouldn't work, because your  
22 client wouldn't be able to take any decisions.

23 **MR BARRETT:** Well, in my experience, I think also in the cases, one sees that at the  
24 pre-action stage or at very early stages, sometimes the material is released to a  
25 lawyers-only ring, in the first instance. Then in my experience, certainly once you get  
26 to the first CMC, there is either evidence from the defendant explaining -- justifying



1 what it says is confidential, or if there's not such evidence, you will have a client within  
2 the ring. As I sought to explain a little earlier in my submissions, there has then been  
3 four months of correspondence about the inclusion or not of clients within the ring;  
4 there has been no explanation, no justification provided.

5 I do submit my Lord, a number of the points that you are putting to me are effectively  
6 reversing what, in my submission, is the approach the authorities call for, which is the  
7 starting point, and very strong starting point, is there is not an external eyes only ring,  
8 and there has to be powerful evidence and justification to support the imposition of  
9 such a ring.

10 I understand all of the pragmatic points my Lord puts me in. I should make clear, I'm  
11 not trying to be difficult, my Lord, but I am, speaking for myself, troubled by the  
12 approach. I do think there is effectively here a reversal of what I understand to be the  
13 approach the authorities mandate.

14 I can understand pragmatic arguments for that, and I can see how pragmatically it  
15 might be made to work, but in my respectful submission, it's not what the authorities  
16 say is the correct approach. It doesn't recognise adequately, in my submission, the  
17 extent, the significance of the order that's sought. Excluding clients entirely, in my  
18 submission, is a very significant step.

19 **MR JUSTICE ROTH:** I think --

20 **MR BARRETT:** That's as far as I can take the point, my Lord.

21 Order

22 **MR JUSTICE ROTH:** Yes. Well, I think part of the problem that has arisen in this  
23 case -- perhaps because the starting point of the appellant was that there were likely  
24 to be commercially confidential documents, and that they could be therefore disclosed  
25 in a confidentiality ring. The complaint is now made that there's been no further  
26 explanation, or any explanation, it's said by the respondent, as to what is truly

1 | commercially confidential so as to justify a ring.

2 | Mr Barrett points out that the onus is on the respondent to make out that case, because  
3 | the starting point, of course, is that disclosure should be not subject to any such  
4 | restrictions.

5 | Mr Robertson has given a very brief explanation in the course of this hearing to the  
6 | effect that the confidence relates to certain financial information provided by Renaker  
7 | concerning its internal position, and confidential financial information from other third  
8 | parties, that does not in my view go very far. It certainly would be possible for the  
9 | tribunal to adjourn this matter for the respondent to file further evidence explaining the  
10 | confidentiality. That in effect would be the result of the course that Mr Barrett, for the  
11 | appellant, urges upon me.

12 | I don't think, however, that would be a very proportionate way to go forward. On a  
13 | matter like this, at this very early stage where we don't yet have a completed loan  
14 | agreement at all, it's sensible to deal with this matter here and now, and to direct that  
15 | there should be a confidentiality ring to include the expert to be appointed by the  
16 | appellant.

17 | It would be for the respondent to say and its solicitors to look, in particular, at any  
18 | document which their client says -- which the respondent says -- is to be treated as  
19 | confidential, so that the solicitors are satisfied that a bona fide claim to confidentiality  
20 | can be made out, and that any non-confidential version of that document with limited  
21 | redactions cannot be provided outside the ring.

22 | I have accelerated the date for disclosure of all but one of the categories of documents  
23 | agreed between the parties for disclosure. I anticipate that it will rapidly become  
24 | apparent to the appellant's solicitors, counsel and expert whether, and to what extent,  
25 | confidential documents that have been disclosed only within the ring need to be  
26 | shared, in their view, with their client. At that point, the matter can be raised with the

1 respondent to seek some arrangement that the respondent regards as satisfactory.

2 There are also various alternative means that can be used in such cases. For  
3 example, for a summary of a relevant document to be made by the solicitors and  
4 provided to the client or, as happened in one of the public procurement cases, that  
5 disclosure to the client takes place in the office of the client's solicitors. The client is  
6 not allowed to make any copy or take away any copy of the document, so they can  
7 read it in the solicitors' offices and discuss its implications there.

8 I mention that only to suggest possible ways forward if this should arise, but it seems  
9 to me that's the step that should be taken now.

10 If there are disputes either as to the confidentiality of the document, or as to whether  
11 a document which is confidential should be disclosed to the appellant or his  
12 adviser -- as I understand, Mr Rose to be -- then that can be raised with the tribunal in  
13 writing with short written submissions from both sides, accompanied by the document,  
14 to be resolved rapidly.

15 I fully take account of what Mr Barrett says about the need for the matter to be dealt  
16 with swiftly, so that his client would be in a position to know how to proceed or what  
17 allegations are to be made. But, particularly in the situation where we don't have any  
18 of the documents yet to be produced to the court to look at, I don't think that adjourning  
19 this part of the case for a further witness statement, and then bringing everyone back  
20 to argue it on that basis, is a proportionate course to take. It does seem to me that  
21 this is a matter where pragmatism should prevail, and so that is the order that I will  
22 make: there should be a confidentiality ring.

23 It will need, in due course the name of the expert when he's appointed, although that  
24 can be added subsequently. There will need to be undertakings in the usual way, in  
25 particular from the expert who's not an officer of the court.

26 If it transpires that there are documents that are confidential, or alleged to be

1 confidential and disclosed within the ring, that Mr Weis, and the solicitors or expert  
2 consider it's important or should be shared with him, then the question of either his  
3 admission to the ring or disclosure to him, and potentially to Mr Rose, can then be  
4 dealt with on an ad hoc basis. So that's the order I'm going to make.

5 I can only add that if there is subsequently a question of whether Mr Rose, who is not  
6 a party to the litigation, should be admitted to the ring, it will be important for the  
7 appellant to provide some information.

8 Regarding Mr Rose, it's not clear to me whether he's a member of any professional  
9 body or what part of his "practice", as he describes it, in fact concerns the various  
10 companies controlled by Mr Weis. He says, I think, that it is a large part -- or the  
11 greater part -- of his work, but that leaves it wholly unclear to what extent he is also  
12 consulting to other developers and how many other clients he has.

13 But that can all be clarified if indeed the question of sharing such documents with  
14 Mr Rose is thought to be necessary, and sharing them with Mr Weis is considered  
15 inadequate. That is all, in my view, for a later date. So that's the order that I shall  
16 make.

17 Housekeeping

18 **MR JUSTICE ROTH:** So, if you can agree the terms of the confidentiality ring order -- I  
19 think Mr Barrett and his solicitors should reasonably have a bit of time to look at it -- it  
20 can then be submitted to the tribunal.

21 **MR ROBERTSON:** I emailed the draft confidentiality ring order to Mr Barrett  
22 yesterday.

23 **MR JUSTICE ROTH:** Yes.

24 **MR ROBERTSON:** I will email, this afternoon, a revised draft of the order that he and  
25 I have been agreeing to take into account what you have ruled this afternoon. I am  
26 aware that Mr Barrett, unfortunately, has to attend a sad family occasion this evening

1 and tomorrow in Scotland. So I do understand if he doesn't respond, you know --

2 **MR JUSTICE ROTH:** I think it can be -- I mean, disclosure is not about to take place.

3 **MR ROBERTSON:** Yes.

4 **MR JUSTICE ROTH:** So I think you can give him a number of days to look at it and  
5 indeed discuss it with his solicitors and client; there's no desperate urgency at this  
6 point.

7 If we then go back to your draft order, I think the next thing is "amendment of  
8 pleadings", and I think you've proposed 28 days, is that right, from ...

9 **MR ROBERTSON:** Yes. So the remainder of the draft order is agreed between us  
10 the, so the paragraph that you're referring to there is paragraph 4(e) which is:

11 "The applicants have 28 days to digest disclosure and to, if so advised, file an  
12 amended notice of appeal, any further supporting witness statements ..."

13 **MR JUSTICE ROTH:** If it's going to be 28 days from receipt of the documents in -- and  
14 we should make clear now -- in what are presently in 1(b)5, in other words, not the first  
15 tranche, but the final tranche.

16 **MR ROBERTSON:** So it is the 21 days that then sets the trigger --

17 **MR JUSTICE ROTH:** Yes.

18 **MR ROBERTSON:** -- for the 28 days. Then we've agreed that the respondents have  
19 28 days to file an amended defence.

20 **MR JUSTICE ROTH:** And then reply, seven days.

21 **MR ROBERTSON:** Yes.

22 **MR JUSTICE ROTH:** Then I think we need some question about the further directions  
23 to trial. It seems to me that it probably is sensible to have a CMC; if not, we'll be  
24 looking at things like trial bundles, dates for skeletons, length of skeletons, and all the  
25 various directions that one would make before a trial. I think we should seek to  
26 list -- well, we can't even look at listing because we don't know when all this is going

1 to take place, do we?

2 **MR ROBERTSON:** To apply for a further CMC to be listed --

3 **MR JUSTICE ROTH:** Well, I think at the same time as you give notice under  
4 paragraph 1(a), about the completion.

5 **MR ROBERTSON:** Yes.

6 **MR JUSTICE ROTH:** So that one can get a date in diaries. If everything can be  
7 agreed in terms of directions to trial, the CMC can be vacated. But I think it's better to  
8 get one in the calendar so that you can get moving on this.

9 **MR ROBERTSON:** It's certainly in the authority's interest to get moving on this.

10 **MR JUSTICE ROTH:** Yes. Very well. I think that's the better course. Again, the CMC  
11 won't be actually heard -- won't take place -- till after the amended pleadings have  
12 closed, and then one will have a much clearer idea about trial length. I mean, I know  
13 you're both saying two days, but at the moment the appellant hasn't seen any  
14 documents, so they're shooting in the dark.

15 **MR ROBERTSON:** Two days was taken on the basis of the Durham case.

16 **MR JUSTICE ROTH:** But it's --

17 **MR ROBERTSON:** It has that sort of feel of scale to me, but --

18 **MR JUSTICE ROTH:** I wouldn't think it's more than three days, but whether it's two  
19 or three, or it's two to three -- one will have a much clearer idea when pleadings are  
20 closed. Again, you know, is there only one expert report or are you actually seeking  
21 to file another report; that will, of course affect the length of trial. So there are various  
22 unknowns at the moment.

23 I do want to provide in the order that there will be a further CMC to be listed and that  
24 the parties should apply for listing of a further CMC to take place after pleadings have  
25 closed, but the application to be made at the same time as you give notice of  
26 completion of --

1 **MR ROBERTSON:** You want the CMC to then fix the trial date?

2 **MR JUSTICE ROTH:** I think so, because -- well, we can't fix a trial date now.

3 **MR ROBERTSON:** And also the time estimate.

4 **MR JUSTICE ROTH:** Yes, and any other matters that may then arise which we can't  
5 anticipate.

6 Is there anything else that needs to be dealt with today? Other than, I would say, costs  
7 in the case, is there anything else?

8 **MR ROBERTSON:** Mr Barrett has just confirmed to me that we don't have anything  
9 more.

10 **MR JUSTICE ROTH:** Yes. Well, but costs in the --

11 **MR ROBERTSON:** (Overspeaking)

12 We would like to express our thanks to the tribunal for fixing this hearing earlier than  
13 originally scheduled.

14 **MR JUSTICE ROTH:** Well, I'm sorry about the circumstances that have led to that.  
15 Very well. I think it's worth inquiring in future whether -- and it may depend on which  
16 judge hears the CMC -- the tribunal needs paper bundles of authorities, because I see  
17 Mr Barrett's been working off electronic bundles. I'm happy to work off electronic  
18 bundles but other judges may differ, so if you check in advance rather than -- very  
19 well, that concludes this hearing.

20 (2.14 pm)

21 (The hearing concluded)

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