

ENGLAND AND WALES / JUDGMENT

QRT v JBE

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Neutral Citation Number: [2025] EWHC 1561 (KB) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION MEDIA AND COMMUNICATIONS LIST Case No: QB-2022-000825 Royal Courts of Justice Strand, London, WC2A 2LL Date: 23/06/2025 Before : DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

- ----- Between : QRT
- and - JBE
- -----
- ----- Claimant Defendant Anthony Katz (instructed by Gunner Cooke LLP) for the Claimant The Defendant appeared in person Hearing date: 10 June 2025
- ----- Approved Judgment This judgment was handed down remotely at 11:00am on 23 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE Aidan Eardley KC: 1.

Introduction

In this claim the Claimant seeks final injunctive relief in respect of a sexually explicit video of himself (the Video) and the underlying material used to compile the Video (the Explicit Material) which he claims the Defendant has created without his consent and has threatened to publicise. The Claimant obtained an urgent interim injunction in March

2022. Progress since then has been slow, due largely to protracted disputes about the identification and inspection of the Defendant's electronic devices which (on the Claimant's case) may contain the Video or the Explicit Material or other relevant evidence.
2. On 17 January 2025 the Claimant issued an application for a terminating ruling, supported by his Fifth Witness Statement. The essential basis for the application is that the Defendant has repeatedly breached orders aimed at identifying and securing inspection of the relevant devices. The Defendant did not file any evidence in response. On 14 May 2025, the Court listed the hearing of the Claimant's application for 10 June

2025. On 4 June 2025, the Defendant made an application for the hearing to be adjourned, supported by a Witness Statement and exhibit. 3. In advance of the hearing on 10 June 2025, I told the parties that I would begin by considering the adjournment application and I permitted the Defendant to participate remotely if he wished. He took that option and, despite some technical difficulties, we were able to conduct an effective hearing, with the Defendant watching and listening online and speaking to the Court by telephone. He told me that he had not received the main hearing bundle so I caused this to be resent to him electronically. He will have already been familiar with all the documents it contained. The adjournment application
4. The Defendant's application advances the following reasons for adjourning:
- (1) Medical reasons: the Defendant was involved in a motorbike accident on 2 May 2025. He relies on two pieces of medical evidence. A hospital document dated 3 May 2025 records that he attended A&E on 2 May 2025 following a "low speed" collision, complaining of minor bruises and chest pain, localised over his 5th and 6th ribs. It records that x-ray examination did not suggest obvious rib fractures, and that he was discharged later that evening with 14 days' worth of codeine pain killers and some advice about recovery from possible rib fractures. The second piece of evidence is a Med 3 fit note from the Defendant's GP dated 2 June 2025. It states that he is not fit for work, due to "rib fracture following motorbike accident" and it states that this will be the case until 22 June 2025. The Defendant also states that he has ongoing pain and limited mobility. He told me that he is taking opioid pain relief;
 - (2) "Procedural fairness – lack of consultation": the Defendant complains that the hearing was fixed without his input. He says that he was not contacted by the court or the opposing party to provide convenient dates;
 - (3) "Inability to secure legal support": the Defendant says that he relies on legal charities to assist him. He says that he contacted two such charities once notified of the Draft 23 June 2025 14:40 Page 2 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE hearing, but the notice period was too short to enable them to assist him at the hearing;
 - (4) "ongoing criminal proceedings and bail restrictions": as I explain below, the Defendant is subject to a private prosecution for harassment brought by the Claimant. He says that he is subject to bail conditions that prevent him from contacting potential witnesses otherwise than via his legal representatives (who do not represent him in these civil proceedings).
5. As to the law on adjournment: where ECHR Art 6 is engaged and requires the presence and participation of a litigant in person, then the hearing will usually have to be adjourned if the litigant, through no fault of their own, cannot attend and participate, however disruptive the adjournment may be. The burden however is on the litigant to prove that their inability to attend/participate is genuine and that an adjournment is needed: *Teinaz v Wandsworth LBC* [2002] EWCA Civ 1040 at [21]. Where the alleged reason for non-attendance is medical, the Court has given guidance as to the evidence needed to establish the necessity for an adjournment: see e.g. *Decker v Hopcraft* [2015] EWHC 1170 (QB) at [22]-[30]. If the hearing

could go ahead without breach of ECHR Art 6, then the question of whether an adjournment should be granted is a matter of discretion for the Court, to be exercised in accordance with the overriding objective: see generally the commentary at 3.1.3 in the White Book. 6. I decided to refuse the adjournment application for the following reasons.

7. As to the case based on medical grounds, the evidence supplied by the Defendant does not meet the standards required in (e.g.) *Decker v Hopcraft*. The GP's Med 3 certificate is evidence that the Defendant is not fit for work, but that is different from whether he is fit to participate in a hearing. Neither is it inherently likely that the Defendant would be unable to participate, given the description of his injuries and the date of his accident. The Court can (and did) make the reasonable adjustment of permitting the Defendant to participate remotely, so as to save him from any discomfort that might have arisen were he to have attended in person. Although the Defendant referred to being on opioid pain relief, he did not provide any current prescription, nor any medical evidence that this would impair his ability to participate in a hearing remotely.
8. As to the alleged lack of consultation with the Defendant over the listing of this hearing, the Claimant's solicitor has provided a Witness Statement and exhibit setting out extensive communications with the Court and the Defendant from February 2025 onwards about the listing of the Claimant's application. I do not accept that the Defendant has been unfairly excluded from this process.
9. As to the Defendant's complaint that the listing has deprived him of the ability to secure support from legal charities, I would observe first that this is not one of those rare cases in which, for ECHR Art 6 reasons, a party must be represented. There are no difficult legal issues involved. The essential question for me, on the Claimant's application, is whether the Defendant has complied properly with the requirement to identify all the devices that he possessed or used during a specified period. That is a question of fact which the Defendant is well placed to answer. I would further observe that, whether or not it is the case that the legal charities the Defendant contacted were unable to offer representation at Draft 23 June 2025 14:40 Page 3 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE the hearing on 10 June 2025, it has been open to him to seek advice and assistance at any point since the Claimant's application was issued in January 2025.
10. As to the Defendant's bail conditions (which I have not seen, but take to be as described by him), I do not see how they could inhibit his preparation for this hearing. The question raised by the Claimant's application (did the Defendant possess or use devices that he has not yet disclosed?) is a factual question to which the Defendant himself knows the answer. I do not see why he would need to contact third parties in order to respond to the Claimant's application.
11. The Claimant's application does engage ECHR Art 6, because it seeks a terminating ruling that will determine the Defendant's civil rights and liabilities. However, the Defendant has not discharged the burden of showing that he is genuinely unable to attend and/or

participate in the hearing. As to the wider discretionary factors, I decided that these all favoured going ahead. Proceeding would not create any unfairness to the Defendant and, as I explain below, there have already been enormous delays in putting in place, and then carrying into effect, a regime for the early identification of relevant devices and the preservation of the evidence that they might contain. Those delays have come about in part because of prevarication by the Defendant. It is high time that some progress is made. The Parties' pleaded cases

12. The claim as set out in the Particulars of Claim is for misuse of private information. There is little dispute about the background: the Claimant is a successful US businessman; the Defendant lives in the UK and has worked in the financial sector. Between May 2014 and July 2021 they conducted a clandestine homosexual relationship, keeping both the relationship and the Claimant's sexuality secret. They met in the US, the UK and on trips abroad. They had some business dealings together, though the extent of this is disputed. It is accepted that the Claimant was generous to the Defendant financially. After the Claimant had ended the relationship, the Defendant made various demands for money. There are disputes about what these demands related to and whether any of them were justified.
13. The Claimant pleads that, in March 2022, he received a WhatsApp message from an unknown number, containing the Video: a 1.2 minute piece made up of recordings on 3 occasions when he and the Defendant were engaged in sexual activity in private. The Claimant says that these images were made without his knowledge or consent. The Video had text added to it at certain points, with words like "You destroyed my life, I promise you I won't stop until I destroy yours" and threats to send the Video to the Claimant's family.
14. The Defendant denies all responsibility for the Video and pleads that he has never seen it or had it in his possession. He denies ever having recorded sexual videos and he denies sending the WhatsApp to the Claimant or otherwise threatening to disclose the Video.
15. The Defence does not seriously challenge the proposition that the Claimant would have a reasonable expectation of privacy in the Video and the Explicit Material, other than to question whether that issue may be affected by the fact that the Claimant is a US resident and that the acts allegedly depicted occurred in the US. Indeed the Defendant pleads that he too wished to keep their relationship secret. Self-evidently, since the Defendant denies Draft 23 June 2025 14:40 Page 4 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE having anything to do with the Video or the Explicit Material, the Defence does not advance any case that he was entitled to create, retain or disseminate it. Neither does the Defence advance a positive case that some other identified individual was responsible for the Video or the threat to deploy it.
16. The Defence includes a certain amount of "mudslinging" material about the Claimant's alleged sexual conduct with others, and allegations that the Claimant and his subsequent partner have made threats towards the Defendant. The Claimant's application

17. The Application Notice invites the Court to strike out the Defence as an abuse of process pursuant to CPR 3.4(2)(b), alternatively to enter summary judgment against the Defendant. It states, “This application is made necessary due to D’s repeated and continual breaches of the order of Master Dagnall. In particular D’s misleading the Court in providing his incorrect electronic devices”.
18. As Mr Katz, counsel for the Claimant, developed his application, it became clear that what he really wanted was a finding from the Court that the Defendant had indeed breached one or more orders in relation to the devices and some sort of further order in respect of the devices, whether or not combined with an order for strike out or summary judgment. I have approached the application in that way. I do not think it causes the Defendant any prejudice: the centrality of the alleged non-compliance with the device orders is clear on the face of the application and the supporting evidence. The “compliance” issue The Defendant’s first evidence about the devices
19. The Defendant first addressed his electronic devices in a Witness Statement dated 23 March 2022, filed in opposition to the continuation of the interim injunction on the return date. He wrote: “I have no access to any videos of a sexual nature...QRT nephews broke my phone in Florida in March 2021 and QRT broke my laptop in April 2021. I lost all data on my devices a month before I left Florida for the last time and ever saw QRT again.” He exhibited an email dated 19 March 2021 in which he wrote to the Claimant, “I will get a new phone over the next few days”. He also referred to an exhibit which he said “shows me confirming to QRT I got a new phone on 23 March 2021”. That exhibit is an extract from a Whatsapp chat with the Claimant. It shows a message on 23 March 2021 that says “got new phone”. At the top of this exhibit, the Defendant has written, “I sent QRT a message I got a new phone 23rd march. QRT nephews damaged my phone a few weeks prior, by dropping in the ocean. I lost all data”. Another exhibit to the Defendant’s First Witness Statement is an email from him to the Claimant dated 20 February 2022 in which he states, “I don’t have any new number. I am using the same number for past 15 years” and “You will recall I bought a new phone last April” .
20. The Defendant’s account about having had a phone and laptop broken in (respectively) March and April 2021 was then incorporated in the Defence at paragraph [18](e)&(f). Orders about the devices and the Defendant’s responses
21. At a CCMC on 8 September 2022, Master Dagnall made an order requiring each party to file a witness statement “listing all electronic devices, being mobile phones, laptops, tablet computers, owned and/or in use from 1 January 2020 to date and, if any device Draft 23 June 2025 14:40 Page 5 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE ceased to be owned or used by them to set out what when and what has become of said device”.

22. The Defendant purported to comply with this order by filing a Witness Statement dated 30 September 2022, containing in the following information: “I confirm that I have owned and controlled the following devices: Tablets & Laptops (i) Macbook Pro (still have possession) Smart Phones (i) (ii) Samsung Galaxy S4 (still in possession) Samsung Galaxy Ace (still in possession)”
23. At a hearing on 7 February 2023, Master Dagnall heard an application by the Claimant for inspection of the devices that the Defendant had identified. The Recital to the Master’s Order carefully records a number of matters that were stated or clarified at the hearing. These include: “...(2) the Defendant and the Claimant clarifying the words “owned and controlled” used in their witness statements regarding the electronic devices means “owned and used”
- (3) The Defendant stating that the 3 electronic devices that are listed in his witness statement dated 30 September 2022... are the only devices that he has owned, controlled and used from 1 Jan 2020 to 8 Sep 2022 [...]
- (5) the Defendant clarifying paragraph 18.e. of the Defence ...in which he stated “QRT’s nephews broke the Defendant’s phone in Florida in March 2021”, in that, the “phone” is the Samsung Galaxy S4 in the Defendant’s list of electronic devices and it was broken by being submerged in water ...”
24. Master Dagnall then went on to give directions for the appointment of a Single Joint Expert (SJE) and for the SJE to inspect the devices identified by the Defendant for (in summary) evidence of the Video and/or Explicit Material and associated metadata, and to provide a report of their findings (the Electronic Devices Order).
25. Thereafter, there were a large number of applications, hearings and orders concerning the implementation of the Electronic Devices Order. It is not necessary to give a full narrative or to mention all the problems that arose. Twice (in June 2023 and again in March 2024) a date set by the Court for the Defendant to deliver his listed devices to the SJE passed without him having done so.
26. One of the complicating factors was that, in Spring 2023, the Claimant initiated a private prosecution against the Defendant for harassment. (I am told this does not concern the Video or the Explicit Material, but I do not know the details). This evidently gave the Master some concerns about how the civil claim could be progressed while respecting the Defendant’s right against self-incrimination and achieving fairness generally. The Master dealt with this definitively in a judgment and Order dated 9 February 2024. He held that Draft 23 June 2025 14:40 Page 6 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE the Electronic Devices Order must be complied with and carried into effect, and that this could be done without infringing privilege against self-incrimination (which he expressly declared to be preserved) or causing other unfairness. The only variation to the scheme was that the Master now directed that, once the SJE had produced their report, it should be held confidentially by the Court and not released to the parties without an order or the parties’ mutual consent. The thinking, it seems, was to ensure that the relevant

devices had been properly imaged and the evidence on them preserved in a timely manner, even if it might not be lawful or fair to release that evidence to the parties while the criminal proceedings remained on foot.

27. It seems that another concern then began to trouble the Claimant: if the SJE report (when produced) was to be kept from the parties, how could the Claimant even be sure that the Defendant had handed over the 3 devices mentioned in his 30 September 2022 Witness Statement? Master Dagnall addressed this concern in an Order of 10 May 2024. It provided that, upon receipt of the devices, the SJE would email the Court and the parties answering certain questions about each device aimed at ascertaining whether it matched the descriptions so far given.
28. The Defendant finally handed his devices to the SJE on 12 June 2024. On 14 June 2024, the SJE emailed the Court and the parties with the answers to the questions posed. So far as relevant, they read: In respect of the Samsung Galaxy S4 mobile phone: [...] iv: Does it show evidence of being “broken”? Yes v: does it show evidence of having been “submerged in water”? Unable to Confirm vi: does it show any evidence of any such event as having occurred in or about March 2021? Unable to Confirm [...] vii: Does the phone bear any evidence of use between any or all of 1 January 2020 and 8 September 2022? Unable to Confirm
 - b. In respect of the Samsung Galaxy Ace mobile phone: [...]
 - v. Does the phone bear any evidence of use between any or all of 1 January 2020 and 8 September 2022? No Claimant’s submissions on the compliance issue
29. The Claimant’s case is that, as well as failing to meet the Court’s deadline for provision of the listed devices on two occasions, the Defendant is in more fundamental breach of the Draft 23 June 2025 14:40 Page 7 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE Court’s orders, namely by failing to list in the first place (and then provide to the SJE) all the devices that he owned and used between January 2020 and 8 September 2022 (the Relevant Period). The Claimant submits:
 - (1) first, on the Defendant’s own evidence (and statements he has made to the Court, recorded in recitals to Orders), the Samsung Galaxy S4 corresponds to the phone that was broken in March 2021;
 - (2) Second, again on the Defendant’s own evidence, the Defendant purchased a new phone on or around 23 March 2021, shortly after the Samsung Galaxy S4 had been broken;
 - (3) Third, the Claimant says he can corroborate this with his own evidence, because he says that the Defendant used the Claimant’s credit card to buy the new phone: he points to a credit card statement showing an entry for 22 March 2021 with a name that looks like a mobile phone store and the sum of \$596;

- (4) Fourth, the Claimant says that I can infer the Defendant continued to use a phone after his phone was broken in March 2021 because he WhatsApp'd the Claimant on 22 March 2021 saying "got new phone" and emailed him in February 2022 stating "I don't have any new number. I am using the same number for past 15 years"; but
- (5) Fifth, the Samsung Galaxy Ace cannot be the phone that the Defendant acquired in late March 2021 and then used during the Relevant Period, because it shows no signs of use during that period. Defendant's submissions on the compliance issue
30. As I have mentioned, the Defendant has not submitted any evidence in response to this application. In submissions, he told me that, so far as he was aware, he had identified submitted all the devices he was required to identify and submit. He made these further points:
- (1) He said he thought he had submitted the phone he bought in March 2021 (while not distinctly admitting that there was such a phone) but would have to check his notes. He also said that he did not wish to say anything more about his devices without talking to his criminal lawyers;
- (2) The Defendant explained to me his understanding of the words "owned and used" (the words used in the recital to the Order of 7 February 2023). He said that, as he understood it, "using" a phone means making a call or sending a text message, but excludes using it for internet-based communications like WhatsApp. From this submission, I took the Defendant to be saying that he may have possessed other devices during the Relevant Period but, if so, he was not required to disclose them, because he had not "used" them in the relevant sense;
- (3) The Defendant submitted that WhatsApps can be sent from laptops, so the WhatsApps from himself to the Claimant that he exhibited to his first Witness Statement were not evidence that he had a phone at that time; Draft 23 June 2025 14:40 Page 8 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE
- (4) The Defendant said he did not accept the SJE's answer in respect of the Galaxy Ace (i.e. that it did not bear any evidence of use during the Relevant Period). He said that the whole process of identifying and instructing the SJE had been driven by the Claimants, who had fed her the questions. Discussion and conclusion on the compliance issue
31. I accept the Claimant's submissions. The evidence (mostly emanating from the Defendant himself) that the Defendant purchased a new phone in late March 2021 and then went on to use it during the Relevant Period is overwhelming. Clearly that new phone was not the Galaxy Ace, which bears no evidence of being used during the Relevant Period.
32. As to the Defendant's points:

- (1) I do not accept the implication that the Defendant may have had better explanations to give but could not give them through not having his “notes” or for fear of saying something that might compromise his criminal defence. He has had since January 2025 to refresh his memory and prepare for this hearing. The Master has already definitively ruled that the electronic devices regime he put in place can be carried into effect without compromising the Defendant’s position in the criminal proceedings;
 - (2) I doubt very much that the Defendant truly believes that one only “uses” a mobile phone if making calls and texting, and that the term does not extend to internet-based communications. In any event, what matters is the meaning of the Electronic Devices Order, objectively construed in light of the purpose for which it was made. There is nothing on the face of any of the Master’s orders to suggest that “use” was intended to have this highly artificial and narrow meaning. Neither would it have served the purpose of the Order to give it that meaning: the Order is, after all, aimed at investigating (among other things) whether any of the devices were used to send the WhatsApp to the Claimant containing the Video;
 - (3) Whether or not WhatsApps can be sent from a laptop, the WhatsApps that the Defendant himself introduced into evidence give the strong impression of having been sent from a phone (not least, the message “got new phone”);
 - (4) I have not seen anything to suggest that the chosen SJE lacked independence or expertise. She was appointed through the process laid down in detail in Master Dagnall’s orders and the Master also approved the specific questions she was to be asked about the devices. The Defendant has not persuaded me that there is any reason to doubt the SJE’s conclusion that the Galaxy Ace phone was not used during the Relevant Period.
33. It follows that the Defendant is in breach of the Order of 8 September 2022 because he has failed to identify at least one device which he possessed and used during the Relevant Period, namely the phone he bought in late March 2021 and used thereafter (the Concealed Phone). This was very serious non-compliance because it has thwarted the Court’s evident intention to ensure that all relevant devices were identified and their contents preserved at a very early stage in proceedings. It is all the more serious because the Defendant has persisted in this concealment for so long and despite (I am told) the Claimant confronting him with evidence that he had failed to disclose relevant devices as long ago as June 2023. Draft 23 June 2025 14:40 Page 9 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE What order should I make? Strike out?
34. I am not persuaded that I should strike out the Defence.
- (1) First, the application is on its face brought under CPR 3.4(2)(b). Mr Katz sought to persuade me that the Defence is “paradoxical” since it asserts that the Defendant, like the Claimant, wished to keep their relationship secret but nevertheless resists a final injunction. There is nothing paradoxical or abusive about this. At the heart of the Defence is a straightforward denial that the Defendant was responsible for the Video. If the Defendant is right about that, he is perfectly entitled to dispute the claim for an injunction. The most that could be said is

that there are some peripheral elements of the defence (e.g. the “mud-slinging” parts) that are otherwise likely to obstruct the just disposal of the proceedings by diverting the Court and the parties from the true issues in dispute;

- (2) Second, although the gateway in CPR 3.4(2)(c) is open (because the Defendant has failed to comply with court orders), I do not think that striking out the Defence will meaningfully advance matters. The Claimant will still have to prove at trial that it was the Defendant who made and/or threatened to disclose the Video. If he does so, there may still have to be an inquiry into the devices the Defendant used, in order to frame effective final injunctive relief that prevents the Defendant from further misusing the private information;
- (3) Third, insofar as striking out the Defence might have some salutary effect on the Defendant (because, e.g. it would prevent him from raising at trial points that he believes to be important, such as the legitimacy of his demands for payment, or his allegations of misconduct by the Claimant) it is better to keep that in reserve as a possible sanction in response to further non-compliance by the Defendant. Summary judgment?
35. If nothing else changes evidentially, the Claimant may well be in a strong position at trial to invite an adverse inference from the Defendant’s non-compliance with the Orders to date, i.e. an inference that, had he complied properly, the devices he delivered up would have contained evidence of the Video or the Explicit Material demonstrating that he must have created or retained these in breach of the Claimant’s privacy rights.
36. Before I could grant summary judgment however, it seems to me that I would have to be satisfied that there would be no realistic prospect of the Defendant resisting the drawing of such an inference. The modern law stresses that adverse inferences have no special legal magic and may or may not arise as a matter of common sense depending on the context and the circumstances: *Efobi v Royal Mail Group Ltd* [2021] UKSC 33 [2021] 1 WLR 3863 at [41] (Lord Leggatt JSC). In circumstances where the Defendant has not yet served any witness statements for trial or been cross-examined, I do not consider that I can dismiss as fanciful the prospect that he may be able to dissuade the Court from drawing the inference that might, on first appearances, appear to flow. Draft 23 June 2025 14:40 Page 10 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE
37. Accordingly, applying the well-known summary judgment principles (see e.g. *EasyAir Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] – addressing the converse position, where the application is made by a defendant), I am not satisfied that the threshold in CPR 24.3(a) is met. A remedial/coercive order?
38. That leaves me with a choice of either doing nothing, so that the case returns to normal case management, or making some sort of remedial or coercive order reflecting the Defendant’s compliance failures.

39. I reject the “do nothing” option. It is true that, through his non-compliance, the Defendant may have created huge difficulties for himself at trial; and if liability is established, the Court could then return to the question of identifying relevant devices in the context of framing appropriate relief. However, simply to leave the Defendant to his fate at trial would insufficiently serve the overriding objective, which includes “enforcing compliance with rules, practice directions and orders” (CPR 1.1(2)(g)). The Court, after conspicuously careful consideration, has put in place a regime requiring early identification and inspection of relevant devices because it considers that is the best way of securing a fair trial. In my view, that regime should be adhered to and enforced.
40. Accordingly, I propose to make an order that will have the following features:
- (1) The Defendant must, within a short time period (say 7 days), provide a further witness statement, stating what has become of the Concealed Phone, and identifying any other devices not yet identified which he had in his possession or control or used during the Relevant Period (again stating what has become of any such additional devices);
 - (2) If the Concealed Phone or any other device identified in the further witness statement remains within the Defendant’s possession or control, he must deliver it up to the SJE for inspection and imaging on the same terms that have applied to his other devices, again within a short time period (say 14 days);
 - (3) The Claimant may ask questions equivalent to those set out in the Order of 10 May 2024 for the purposes of ascertaining whether any further device that the Defendant delivers up is the device described in his further witness statement, and the SJE will answer those questions in an email to the Court copied to the parties;
 - (4) The SJE will image any further device and report on its contents in the same manner as already set out in the Court’s Orders in respect of the devices the Defendant originally disclosed;
 - (5) The Order will be in “unless” form, with the specified sanction for breach being that the Defence be struck out. As already noted, the salutary effect of this sanction will be limited since the Claimant must still prove his case, but it will mean that the Defendant will be unable to advance his case that he is entitled to money from the Claimant and/or in respect of the Claimant’s sexual conduct with others. Whether or not those matters would require investigation at trial is doubtful but they seem to have some significance for the Defendant, so the prospect of him losing that opportunity may serve to focus his mind; Draft 23 June 2025 14:40 Page 11 DEPUTY HIGH COURT JUDGE SUSIE ALEGRE Approved Judgment QRT v JBE
 - (6) The Order should be endorsed with a Penal Notice, so that the Claimant has the option of addressing any further non-compliance through the contempt jurisdiction.

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41. I shall ask the parties to agree an order that has these features. If agreement cannot be reached, I shall resolve any disputes on the basis of written submissions. I shall also require written submissions on costs if these cannot be agreed but, in case it assists the parties, my provisional view is that the Defendant should be ordered to pay the Claimant's costs of both his adjournment application and the Claimant's application, with the latter to be assessed on the indemnity basis. Conclusion and next steps
42. The Defendant has breached the Order of 8 September 2022 by failing to disclose at least one device that he owned and used during the Relevant Period. He must now comply forthwith, otherwise his Defence will be struck out and he will be at risk of proceedings for contempt of court. Once I have resolved any disputes about the terms of the Order, any further matters concerning the regime for identifying and examining relevant devices should be raised before Master Dagnall in the first instance. Draft 23 June 2025 14:40 Page 12
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