

ENGLAND AND WALES / JUDGMENT

Vertical Aerospace Group Ltd v Ngoma

[2026] EWHC 1096 (KB) (08 May 2026)

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Neutral Citation Number: [2026] EWHC 1096 (KB) Case No: KB-2026-001230 IN THE HIGH COURT
OF JUSTICE KING'S BENCH DIVISION Royal Courts of Justice Strand London WC2A 2LL
08/05/2026 B e f o r e : TOM LITTLE KC (sitting as a Judge of the High Court)

Between: VERTICAL AEROSPACE GROUP LIMITED Claimant

- and – THANDIWE NGOMA Defendant

Paul Nicholls KC (instructed by Osborne Clarke LLP) for the Claimant Diya Sen Gupta KC and
Nick Zweck (instructed by Farrer & Co) for the Defendant Hearing dates: 29 April 2026

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circulation to the parties or their representatives by e-mail and by release to the National
Archives. Tom Little KC:

Introduction:

This judgment follows the submissions made on the return date on 29 th April 2026 for an interim injunction application that was granted, without notice, on 15 th April 2026 by Eyre J sitting in private. It addresses the imaging order made on 15 th April 2026 by the Judge and consequential applications made by both the Claimant and by the Defendant. The Claimant's application is for directions to allow them access to (relevant) material preserved by the imaging order. The Defendant applies to vary or revoke the imaging order on a number of grounds including for an alleged failure by the Claimant to comply with the duty of full and frank disclosure. Parties: The Claimant is Vertical Aerospace Group Limited. The Defendant is Thandiwe Ngoma. Factual background: The Claimant is a global aerospace and technology company with headquarters in

Bristol. It was founded in 2016 and its primary business is the development and commercialisation of Electric Vertical Take Off and Landing ["VTOL"] aircraft and related technologies. One of the Claimant's ambitions is to offer a new solution to short distance regional travel. The Claimant's VTOL business is therefore properly to be regarded as 'cutting edge'. The Defendant is an employee of the Claimant. She started work for the Claimant in February 2023 as a Senior Electrical Systems Engineer and her contract of employment is dated 17 th January 2023. The restrictive covenants in that contract are set out at paragraph 10 of the introduction to the contract. The duties of confidentiality are set out at clause 22 of the contract. The Defendant resigned from her employment with the Claimant on 27 th February 2026. She is currently on garden leave which is due to expire on 27 th May 2026. In accordance with her contract of employment there is a 'no compete' period until 27 th August 2026. At the time of her resignation, the Defendant held the role of Head of Systems Engineering. Following her resignation the Defendant informed the Claimant that she had accepted an offer of employment with Archer Aviation UK Limited ["Archer"]. They are a direct competitor to the Claimant. The Defendant is not the first person to have moved from the Claimant to Archer in the last six months. On 2 nd March 2026 the Claimant sent a letter, by email, to the Defendant which included information on her notice period and garden leave, the post-termination restrictive covenants and her obligations in relation to the return of property and the deletion of company data on personal devices and cloud storage and the disablement of her access to the Claimant's IT systems. Specifically, the letter stated under the heading 'Next Steps and Return of Property': "You must return all company property, including but not limited to your laptop, mobile phone (if applicable), access card, security tokens, and any documents or data (physical or electronic) Any company data in your possession must be deleted from personal devices and cloud storage (if applicable)". On 4 th March 2026 the Claimant sent an email to the Defendant reminding her about certain duties and obligations that she owed as a result of her employment. That email referred to their letter of 2 nd March 2026. On 7 th March 2026 the Claimant replied to the email of 4 th March 2026 and stated: "I'm following up regarding the letter you mentioned was sent on March 2 nd , as I've not yet received it. Was this was sent by post or e-mail? I returned from holiday last night and have checked my post but nothing has arrived. If the letter was sent via e-mail, could you please confirm the e-mail address it was sent to and resend it if possible?". Further email correspondence followed on 7 th and 8 th March 2026 and at 6.36pm on 9 th March 2026 the letter of 2 nd March 2026 was resent to the Defendant by the Claimant. On 13 th March 2026 the Defendant emailed the Claimant. The email was also copied to two Solicitors from Farrer & Co, who she had instructed. The email referred to the letter of 2 nd March 2026 and made clear that the Defendant had taken independent legal advice. The email referred to the Claimant's IT equipment which would need to be collected. It also stated: "In relation to the request to delete any company data held on personal devices, on review, I also have some work-related photos taken during a public launch event in London on 10 December 2025 and photographs shared with me via WhatsApp on 10 March 2024 of equipment in the Vertical Energy Centre. I attended the public launch event in a personal capacity and I was sent the other photos in the course of carrying out my duties for Vertical. They are on a personal phone because Vertical does not provide work phones. It is therefore common for Vertical employees to use the

camera on their personal phones in this way. I have also exchanged WhatsApp messages with friends and colleagues over the years on my personal phone which, on occasion, may have touched upon work at (sic). Unless I hear otherwise from you, within 5 working days in accordance with the request in the letter of 2 March 2026, I shall take steps to delete both the photos shared with me via WhatsApp on 10 May 2024 and WhatsApp messages that relate to work at Vertical. However, I will retain the photos from the public launch event, as they are photos that any member of the public could have taken on the day. I also have one work related e-mail that I forwarded from my Vertical e-mail to my personal e-mail account. The e-mail subject is "Feedback on Communication of System Safety Changes" and I forwarded to myself on 19 January 2016 which is the same date I raised the matter to the company. I will send you separately following this e-mail and then permanently delete it. I have not made any use of this document since, nor have I shared it with any third parties. Having taken legal advice, I understand that this document is or could be work related and so should be returned/deleted." The Claimant replied to that email a week later on 20 th March 2026. Meanwhile the Claimant's IT team were analysing the Claimant's laptop that had been used and returned by the Defendant following her resignation, as well as the Defendant's electronic accounts and records (such as her Virtual Print Queue records). The findings of this analysis were reported to Sanjay Verma on 26 th March 2026. He is employed by the Claimant as the Chief Legal and Corporate Affairs Officer. The analysis revealed a number of matters:

- (a) The Claimant had tried unsuccessfully to print an 'Aircraft Description document' and another document on 8 th January 2026.
- (b) On 20 th January 2026 the Claimant had printed the 'Aircraft Description document'. This contained extensive confidential information and engineering information. It is the version that was issued in September 2025. It is a 90 page document.
- (c) On 19 th February 2026 (eight days before her resignation) the Defendant uploaded to her Google Drive account a document entitled 'VA-1 AC2 EHPS System Description Document'. This was the fifth issue of this document and is known as the 'Propulsion document'. It provided a detailed overview of the propulsion system for the Claimant's aircraft with a focus on the all-electric propulsion system. It is 56 pages in length. The document would be of significant value to any competitor to the Claimant.
- (d) Between the evening of 26 th February 2026 and midday on 27 th February 2026 (so very close in time to her resignation) the Defendant copied data content from documents that she had open on her work laptop. The analysis did not reveal what content was copied and pasted from those documents but three of the documents were themselves highly confidential. They were (i) a 'Vehicle Functional Design' document relating to certification (ii) 'VX4 ConOps' relating to the concept of operations for the VTOL aircraft and data that underpins design requirements and (iii) 'AC2 HV System Description Document Issue 2' relating to the high voltage system of the Claimant's aircraft. An inference was that the data was being transferred on to the Defendant's personal Google drive. The Defendant was not aware of these IT discoveries until after the imaging order was obtained on 15 th April 2026.

On 2 nd April 2026 the Defendant emailed the Claimant again stating that having conducted a further check she had located additional documents which needed to be returned. She attached a zip folder which included additional work related photographs and documents. She stated that she had looked at her home for anything else that belonged to the Claimant and had found three notebooks and an Aircraft Description document (referred to above) and which she would need to return. On 2 nd April 2026 the Defendant sent a further email to Claimant stating, "I also meant to include that I can shred the aircraft description document at home too, alongside the notebooks, if preferable." On 8 th April 2026 the Claimant replied to the Defendant's second email of 2 nd April 2026 and asked her not to shred the hard copy notebooks or the Aircraft Description document. Issue of the claim and the hearing on 15 th April 2026: On 14 th April 2026 the Claimant issued a claim that included the return of (and restraint upon the use of) confidential information and documents where any such use would be in breach of contractual and equitable duties of confidence. On the same date the Claimant issued a without notice application for an imaging order in respect of the Defendant's electronic data storage devices and relevant online accounts. That application was supported by an Affidavit of the same date from Sanjay Verma. The Affidavit at paragraphs 58 - 69 set out the basis for the application namely the preservation of documents containing the Claimant's confidential information as well as evidence as to what use that documentation has been put to. Emphasis was placed on the fact that the Defendant referred to other documents but never referred to the Propulsion document. Further that there was evidence that other confidential information had been extracted and uploaded to her personal cloud storage account. At paragraphs 70 – 74 the Affidavit set out why the application was being made without notice. In short the necessity for such an application was said to be the risk of evidence being deleted and which was said not to be a generic concern but specifically one based on the Defendant's failure to be open with the Claimant. The without notice application was heard on 15 th April 2026 before Eyre J and lasted for 65 minutes. There is a detailed note of the hearing. The Judge made clear at the outset of the hearing that he had read the Skeleton Argument and the Affidavit and the draft order but that he had not read the authorities or the exhibits to the Affidavit. During the course of the hearing the Judge was taken to some of the exhibits. Neither the Skeleton Argument nor the Affidavit referred to the basis for the parts of the draft Order that relate to the 'Provision of Information' (paragraphs 10 and 11 of the draft Order). During the course of the hearing the Judge specifically raised whether a preservation order should be made rather than an imaging order and submissions were made about that. The Judge granted the application and made an imaging order. He did not make the order in precisely the terms sought. Specifically, one of the terms of the model order that had not been included (namely that the Defendant be provided with a replacement mobile telephone whilst hers was imaged) was added by the Judge. During the ruling the Judge referred to the three aspects of the Defendant's conduct that gave cause for concern and stated: "Those actions against the background of the timing, close to resignation, the fact that the respondent is moving to work for a competitor, the fact that when the respondent received a standard form letter asking about documentation, her response was in bland terms, referring to inconsequential

material but not the Aircraft Description document or Propulsion document. There was a subsequent return of the printed document but no indication by the respondent of her copying the Propulsion document, nor what if any material was copied from the 9 documents on the night before her resignation." In relation to whether it was appropriate to make an order without notice the Judge stated: "the question is whether there is a sufficient risk that the giving of notice could thwart the application." The Judge does not appear, from the note of the hearing, to have overtly and separately answered that issue but in the context of whether to make a lesser order – a preservation order – he does address it by stating: "There is clear evidence that the Respondent has at least one incriminating document, potentially others. In light of her lack of frankness, destruction absent an imaging order is possible. I've reflected on a simple preservation order. I'm persuaded by Mr Nicholls due to lack of frankness and ease of destruction there is a risk the Respondent if not confronted with such an order would destroy the material". In relation to the merits, the Judge stated: "Then in terms of the imaging order, I have to be satisfied that there is a strong prima facie case that damage avoided by the order is serious. There must be clear evidence of possession and a significant risk of removal/destruction absent an order. I must also consider proportionality Here in terms of the overall position, I am satisfied that there is a legitimate and grave cause for concern ... There is a strong prima facie case of a breach of duty, Potential for serious damage. Once material in the propulsion document is known, it cannot be unknown, in a field where there is a race to be the first developer of this craft. There is clear evidence that the Respondent has at least one incriminating document, potentially others. In light of her lack of frankness, destruction absent an imaging order is possible I'm satisfied the proposed order will not cause significant harm. An alternative device should be provided to her. The order ensures her confidential information is not seen by anyone other than the IT expert." The order, in so far as is material, stated: ELECTRONIC DATA IMAGING

6. The Respondent must immediately give the Independent IT Expert effective access to:
 - (1) any electronic data storage devices, including but not limited to USBs, mobile telephones, PDAs, tablets, computers, laptops, internal or external hard disks, compact discs, magnetic tapes, electronic files, back-ups and servers ("Electronic Data Storage Devices") in the control of the Respondent which may contain reference to the Listed Items or the Information. The Electronic Data Storage Devices include without limitation:
 - (a) the Respondent's mobile telephone;
 - (b) the Respondent's computer; and
 - (c) the Respondent's tablet;

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- (2) any online accounts in the control of the Respondent, including but not limited to email accounts, online storage platforms or cloud services, and online message services which may contain reference to the Listed Items or the Information ("the Relevant Online Accounts") The Relevant Online Accounts include without limitation:
- (a) thandigngoma@gmail.com; and
 - (b) the Respondent's Google Drive; and
- (3) without limitation to subparagraphs (1) and (2) above, all relevant account information, usernames, PIN numbers, passwords, combinations, keys, codes, security tokens, software, permissions and/or devices associated with any two factor or other authentication in the knowledge, possession or control of the Respondent relevant to achieving effective access to the Electronic Data Storage Devices and/or the Relevant Online Accounts.
7. The Independent IT Expert shall make two electronic copies of the contents of the Electronic Data Storage Devices and of the Relevant Accounts ("the Electronic Copies"). If it is not practical to make the Electronic Copies at the Premises, the Independent IT Expert may remove any Electronic Data Storage Device from the Premises for the purpose of making the Electronic Copies. The Independent IT Expert, or the Claimant's solicitors, shall, while copies are being taken of the Respondent's mobile telephone, and if so requested by the Respondent, provide a mobile telephone for the Respondent's use.
8. The Electronic Copies will be held by the Independent IT Expert who will keep them safely in their custody to the order of the court.
9. The Applicant is not allowed to access or inspect or use the Electronic Copies without the permission of the court. PROVISION OF INFORMATION
10. The Respondent must as soon as practicable inform the Applicant's Solicitors (in the presence of the Supervising Solicitor) so far as the Respondent is aware:
- (1) the location of all the Listed Items;
 - (2) the location of all Electronic Data Storage Devices;
 - (3) full details of all Relevant Online Accounts;
 - (4) the name and address of everyone who has supplied the Respondent, or offered to supply the Respondent, with Listed Items;
 - (5) the name and address of everyone to whom the Respondent has supplied, or offered to supply, Listed Items; and
 - (6) full details of the dates and quantities of every such supply and offer.

11. Within 10 working days after being served with this order, the Respondent must swear and serve on the Applicant's Solicitors an affidavit setting out the above information. 'Listed items' and 'The Information' are broadly defined at Schedule B of the order as follows:
 - (i) A document entitled 'VA-1X AC2 EHPS System Description Document (Issue 5); (ii) Any information belonging to or concerning the Applicant; (iii) Any document showing the use or communication of any document or information falling within (i) or (ii) above. Events since the hearing on 15 th April 2026: Attempts to serve the sealed order in advance of 5.30pm on 15 th April 2026 were not successful. However, it was served the following morning in person on the Defendant at the Defendant's parents' home in Bromley. Present at the property were the Supervising Solicitor, Ms Brunton and two solicitors from Osborne Clarke (the Claimant's solicitor). In addition, the Defendant's solicitor was present. The terms of the order were explained and discussed. Relevant devices (namely a MacBook Pro, iPad Pro and iPhone 16) were provided at the Defendant's home address and were then imaged. She informed Teneo who were the imaging specialists that there may be an additional mobile telephone. Later that day (16 th April 2026) the Defendant spoke to Teneo and informed them that there were two iPhones at her sister's property in Clapham. She had originally thought that there was one but in fact there were two such devices and they were then provided to Teneo. The Defendant has served two witness statements. They are dated 22 nd and 28 th April 2026. There was also a witness statement of Sanjay Verma dated 28 th April 2026 served on behalf of the Claimant, largely addressing matters set out in the Defendant's witness statement dated 22 nd April 2026. In the detailed witness statement dated 22 nd April 2026 the Defendant addressed a number of matters. From paragraphs 29 to 56 the Defendant addressed the three concerns that the Claimant relied upon to obtain the order and were referred to by the Judge in his ruling. The witness statement explained that the reason for printing the 'Aircraft Description document' was that it was a long document and that she needed to refer to it frequently and it was therefore easier to have a physical document to refer to at home and during virtual meetings. The explanation that the Defendant gave for having the documents open on the night before her resignation was that she was reflecting upon what she had done in the previous years and that she was compiling handover notes so that her team were not left in the lurch following her resignation. The Defendant's explanation for uploading the 'Propulsion document' was that this was a piece of work that she was particularly proud of and she was the author of the original version of this document. She stated that in future employment she may be able to refer to it in terms of the structure of this type of document and the way in which the content was presented. The Claimant filed and served an application notice dated 23 rd April 2026 for (relevant) material preserved by the imaging order. The Defendant filed and served an application notice dated 23 rd April 2026 seeking the discharge or variation of the order of 15 th April 2026. On 28 th April 2026 the Claimant served Particulars of Claim for injunctive relief against the Defendant arising from breaches of contractual and equitable duties of confidence in relation to confidential information.

Legal framework:

Imaging orders Section 7(1) of the Civil Procedure Act 1997 is in the following terms: 7 Power of courts to make orders for preserving evidence, etc.

- (1) The court may make an order under this section for the purpose of securing, in the case of any existing or proposed proceedings in the court—
 - (a) the preservation of evidence which is or may be relevant, or
 - (b) the preservation of property which is or may be the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings. In light of the technological advances since 1997, that section provides, amongst other matters, the power for the Court to make an imaging order. In TBD (Owen) v Simons

[2020] EWCA Civ 1182 ;

[2021] 1 WLR 992 the Court of Appeal provided guidance in relation to imaging orders, which given what I have to determine I need to set out in some detail. In that judgment Arnold LJ stated [§§176 - 181]:

- 176. It will be appreciated that search orders originated in the analogue era when most documents existed solely in paper form. Since then, of course, technology and business have been transformed by digitisation, widespread availability of significant portable computing power and the explosion in both wired and wireless connectivity. The result is that most documentary evidence nowadays exists in digital form stored either in digital devices or in cloud storage. The relevance of this transformation to search orders has been insufficiently appreciated.
- 177. For over a decade, it has been technically possible for forensic computer experts to take complete copies, referred to as images, of the contents of storage media incorporated in or associated with computers, without affecting the data stored there. Over time, this capability has been extended to smart phones and cloud storage.
- 178. In the present context, imaging has both advantages and disadvantages. The key advantages are that (i) it is a relatively non-intrusive process which does not involve any removal of documents and (ii) it enables all digital evidence to be preserved for subsequent analysis. The key disadvantage is that imaging is, by its very nature, incapable of discrimination between information that is relevant to the issues in the proceedings and information that is irrelevant, or between business information and personal information, or between information that is subject to legal professional privilege and information that is not. Thus imaging can only ever be a preservation step, and it must be followed by proper consideration of the issues of disclosure and inspection of the documents preserved by the imaging process.

179. The availability of imaging has important consequences for search orders which in my experience have frequently been disregarded. The first is that, if what is needed is a remedy to preserve evidence in order to ensure that it cannot be altered, destroyed or hidden, then in many cases an order requiring the respondent to permit imaging of its digital devices and cloud storage (an imaging order) will be the most effective means of achieving that objective. The second, which follows from the first, is that, if an imaging order is made, then that may well make a traditional search order unnecessary, or at least may enable the scope of the search order to be significantly restricted e g to articles as opposed to documents.
180. It has become increasingly common for claimants in cases like the present one to make without notice applications seeking both a traditional search order and an imaging order. In my view, any court confronted with such an application should first consider whether to grant an imaging order. If the court is prepared to grant an imaging order, then it should be presumed unless the contrary is shown that a traditional search order is unnecessary. Even if the court is prepared to grant a search order at all, careful consideration should be given as to the scope of the order having regard to the imaging order.
181. Where an imaging order is made, it should be obvious that appropriate safeguards are required for the protection of respondents. Experience shows, however, that applicants and courts do not always give proper consideration to the safeguards that should be provided. By contrast with search orders, no standard form of imaging order has been developed. In my view this case demonstrates there is an urgent need for the Civil Procedure Rule Committee to promulgate a standard form of imaging order. Until such time as a standard form is available, however, it is incumbent upon solicitors and counsel representing applicants, and judges hearing applications, to give careful consideration to the provision of appropriate safeguards. I will return to this point below." Arnold LJ then went to analyse two authorities. The first of which was *CBS Butler Ltd v Brown*

[2013] EWHC 3944 (QB) and the second was *A v B*

[2019] 1 WLR 5832 . The latter of those two authorities was a judgment of Mann J and which, subject to a qualification (which does not matter in the instant case), was endorsed by Arnold LJ in the following way [§§ 189-193]:

189. In his judgment Mann J considered *EMI v Pandit* [1975] 1 WLR 302, the *Anton Piller* case

[1976] Ch 55 , section 7 of the 1997 Act and CPR PD 25A, and concluded, as I have, that the primary purpose of a search order was the preservation of evidence. As he observed at para 23, it was not "to give the claimants a form of disclosure exercise which is (a) early and (b) a do-it-yourself form of exercise which would not normally be done as part of standard disclosure". He went on:

24. The reason that, to a degree, the old form of [search order] in relation to documents seems to involve a disclosure exercise is because the exercise of preservation in relation to physical documents necessarily involves a search and assessment by the claimant. If one is

preserving physical documents from a potentially predatory party then there is no other way of going about it. The same is true of digital documents which are not imaged (see the standard form of order). But that should not disguise the fact that the exercise is usually intended to be a preservation one, not (at that stage) a disclosure one.

25. In my view that informs an assessment of what should normally be done with an image of digital data once it is secured. Once the image is taken the documents on it are preserved and safe from the risk of destruction, and it is that wish which the order was primarily intended to meet. It is not necessary to carry out any searching or identification for that purpose; the image is safe. Any searches carried out in relation to those documents cannot be justified on the footing that it is necessary for the preservation of those documents. I can see no justification for a search of those documents being, as a general rule, carried out by the claimant and/or at that stage.
26. I therefore agree with the submissions of the defendants in both cases that if there is to be an inspection of documents on the images at this stage and by the claimants then it needs to be justified as a separate exercise, and analysed in terms of the disclosure jurisdiction . . ."
190. Mann J then proceeded to consider *CBS v Brown* and concluded at para 30: "The decision whether to allow it, like any other dispute about disclosure, has to be dealt with on the basis of the particular facts of a particular case. There will be many factors potentially in play, and they will include the following: (i) The order will have been obtained in the first place on the basis of a strong *prima facie* case of not only the dishonesty of the defendant but also the propensity of the defendant to cover his or her tracks by destroying evidence. That may mean that the defendant should not necessarily be trusted to carry out the disclosure (inspection) exercise properly, though this factor may be seriously ameliorated by the defendant's solicitors being involved in the process. (ii) It may be the case that, as a matter of practicality, the relevance of some important documents may be honestly missed by the defendant's solicitors. This is something particularly relied on by the claimant in *A v B*. (iii) It may be the case that urgency justifies the claimant's carrying out the search. For example, it might be necessary, as a matter of urgency, to follow property, or to identify other wrongdoers in a supply chain, and it may be the case that having the defendant's solicitor carry out the search will not fulfil that need. (iv) It may be that the application of search terms can narrow the field to such an extent that the exercise becomes akin to the more familiar one of compelling disclosure of a class of documents, not all of which may be relevant, but which can be searched by the receiving party for relevance. (v) It may be that the resources available to the claimant are greater than those available to the defendant (particularly in a lot of intellectual property cases where the claimant is likely to be a well-heeled organisation) so that it makes practical sense, in order to further the overriding objective, to allow the claimant to go first, though this must not be allowed to become a charter for the well-heeled to get an advantage over others merely by virtue of being better-heeled. (vi) On the other side of the argument is the very important factor, which must not be lost sight of, that the whole exercise (including the order itself) is a highly intrusive one,

and any digital image of the kind in issue in these cases is likely to contain irrelevant material which is private and confidential (if not privileged) and which should not, if it can be avoided, be seen by the claimant at all. A v B is potentially a very good example of this. The business that the defendants carry on or would like to carry on is in competition with the claimant. Even if they have confidential information of the claimant on their digital devices, or evidence that they have purloined it, there is also likely to be their own confidential information about their own business which they would normally be entitled to keep from the claimants. To allow the claimants to see that at all involves a high degree of intrusion which must be acknowledged in the process.

191. On the facts of both of the cases before him, Mann J decided to allow the claimants to undertake searches of the images for relevant documents subject to safeguards. What he said with respect to the second case at para 48 is important in this regard: "The first is that it is right that the defendants should first be able to review the documents in order to remove documents which they claim are privileged. That reflects the normal procedure. That review, if it happens, must be carried out by solicitors and not by the defendants personally. Second, I am uncomfortable about the claimants simply imposing their will in relation to keywords on the defendants. They should at least inform the defendants of the keywords that they are proposing to use, so that if the defendants have some form of objection they have an opportunity to have their concern ventilated at a hearing. Keywords are, of course, important. They are the way in which the large amounts of data relied on by the defendants in opposition to the order are reduced to manageable proportions. Anyone reviewing this data would have to do so via keyword searches. A review of the proposed keywords by the defendants is also a mechanism pursuant to which they can form a view as to whether or not the searches might go too far, though I accept that it is a pretty blunt instrument in that respect."
192. I would endorse Mann J's analysis in the passages I have quoted subject only to one small qualification. The keywords to be used in keyword searching must be agreed between the parties or determined by the court. It is unacceptable for claimants to be able unilaterally to decide what keywords to employ, since experience shows that, as in this case, parties all too often propose keywords that are far too all embracing. Considerable care is required when selecting keywords, and often it will be necessary for an intelligent combination of keywords to be employed. Furthermore, even careful keyword selection may not necessarily be an answer to the problem posed by privileged documents.
193. Returning to the point I raised in para 181 above, the basic safeguard required in imaging orders is that, save in exceptional cases, the images should be kept in the safekeeping of the forensic computer expert, and not searched or inspected by anyone, until the return date. If there is to be any departure from this, it will require a very high degree of justification, and must be specifically and explicitly approved by the court. On the return date, consideration must be given to the timing and methodology of disclosure and inspection of documents captured in the images. The presumption should be that it will be for the defendant to give

disclosure of such documents in the normal way, but this presumption may be departed from where there is sufficient justification. Even if the presumption is departed from, there should be no unilateral searching of the images by or on behalf of the claimant: the methodology of the search must be either agreed between the parties or approved by the court. Following the judgment in TBD, and the Court's observations of the urgent need for consistency of imaging orders, a model order was promulgated by the Civil Procedure Rule Committee to CPR PD 25A from 6 th April 2022. From April 2025 a combined search and imaging model order (NM/01) came into force. At the beginning of that model order is what is referred to as an 'Important Note' which states (with emphasis added): "A search order is an exceptional form of relief, more particularly where it includes provision for the imaging of electronic data storage devices in cases in which the Listed Items include documents and information stored electronically. Applicants are reminded of their duty of full and frank disclosure to the court. Failure to comply with that duty may lead to the discharge of the order and other sanctions including in relation to costs. An applicant for a search and/or imaging order should always base their draft of the proposed order on the model order. The draft order presented to the court should only include those parts of the model order which are necessary based on a realistic assessment of what is required. Departures from the model order are permissible, but the existence and scope of any suggested changes must be highlighted and the reasons for the proposed departures must be explained. This model order includes footnotes, which are provided for guidance, and do not form part of the model order itself. Two copies of the draft order proposed by the applicant must be submitted at or before the hearing in Word, one with the footnotes included for the assistance of the court and one without the footnotes for sealing and service". Whilst the draft order provided to Eyre J reflected the content of paragraphs 20 – 23 (Electronic Data Imaging) and paragraphs 24 and 25 (Provision of Information) of the model order, the Court was not provided with two copies (one with the footnotes) of the model order. Footnote 10 of the model order relates to the service and filing of an Affidavit as part of the 'Provision of Information' and states: "Careful consideration should be given to ensuring that this period is realistic having regard to the nature and volume of information that may be involved. It is not acceptable to invite the court to impose unrealistic time limits, and costs orders may be made where this results in the party subject to the order having to bring the matter back before a judge. The period should ordinarily be longer than the period in paragraph (4) of Schedule E" Pre-conditions before a Court will consider granting an imaging order The Claimant submits (and I do not understand these principles to be disputed) that a Court may grant an imaging order if:

- (a) There is a strong prima facie case in relation to the underlying cause(s) of action;
- (b) The damage actual or at risk must be very serious for the Claimant;
- (c) There is clear evidence that the defendant has in their possession incriminating documents/material and that there is a real possibility that the defendant may destroy such material if an on notice application is made;

- (d) The harm likely to be caused by the execution of an order must not be disproportionate to the object of the order. Without notice applications for interim injunctions and the duty owed The duty on a party making an application for an interim injunction without notice are well-established and non-contentious. Thirteen principles (derived from a number of authorities) were clearly set out in *Tugushev v Orlov*

[2019] EWHC 2031 (Comm) by Carr J (as she then was). Those principles were supplemented in *Derma Med Ltd v Ally*

[2024] EWCA Civ 175 . The duty includes disclosing all facts which reasonably could or would be taken into account by the judge in deciding whether to grant the application. As was made clear in *Mex Group Worldwide Ltd v Ford*

[2025] 1 WLR 1010 by Coulson LJ [§§127, 128]: ".... It is almost always the position that, no matter how big the case or how complex the underlying issues, a defendant's case that the claimant failed to make full and frank disclosure at the ex parte hearing will stand or fall on no more than a handful of alleged failures. That is because, if the big ticket allegations of failure are not established, or established but found to be immaterial, then the less significant failures will not bridge the gap. It is the law of diminishing returns. In our view, this case is no different to the norm. Quality not quantity should be the watchword. The failure to follow that course, as happened both before the judge and again on appeal, means that there is a real risk that the best points become buried in an avalanche of trivia." During the course of the hearing I raised whether there is a requirement to address specifically the obligation of full and frank disclosure in writing in either the Affidavit or in the Skeleton Argument in support of a without notice application. The Defendant referred me to the judgment of Silber J in *CEF Holdings v Munday*

[2012] EWHC 1524 (QB) , [2012] IRLR 912 where the Judge stated [§255(c)]: "Every witness statement made in support of an application for an injunction made without any or any proper notice should contain a statement setting out the duty to give full and frank disclosure and then indicating how that duty has been complied with." Submissions on the applications and the order of 15 th April 2026: The Claimant seeks to maintain the order of 15 th April 2026, essentially for the same reasons that the order was made in the first place, subject to some amendments and limitations to paragraph 10 of the order. The Claimant does not accept that there were any failings, and certainly not any material failings, in so far as the duty of full and frank disclosure is concerned. In addition, the Claimant has made a separate application for interrogation of part of the material that has been imaged after the Defendant's solicitors have removed privileged, personal and obviously irrelevant material. The Defendant seeks to discharge the interim injunction made against her, either in whole or in part, on the following bases:

- (a) That there was insufficient factual or legal basis for the mandatory interim injunctions that were obtained;

- (b) The terms of the mandatory injunction orders sought were both imprecise and too wide;
- (c) The guidance and requirements in the model order for an imaging order were not complied with;
- (d) Mandatory interim injunction orders should not have been sought or obtained on a without notice basis;
- (e) There was a substantial delay before the Claimant made its without notice application and failed to address the issue of delay;
- (f) The balance of convenience was against the grant of the injunctions;
- (g) The Claimant failed to comply with its duty of full and frank disclosure and fair presentation in material respects; The Defendant opposes the Claimant's application on the basis that her solicitors can and should be trusted to deal with the matter properly and in accordance with her disclosure obligations and therefore this is not a case in which the Court should depart from proceeding in the standard way. Discussion: I have considered all of the material placed before me including, but not limited to, the written and oral arguments and the authorities. The fact that I have not referred to all them in this judgment does not mean that they have not been considered. I will address the issues in the order that is the most logical, namely to address the Defendant's application to discharge or vary the order of 15 th April 2026 and then, in light of my conclusions on those issues, to turn to the Claimant's application and/or to determine what should happen to the material that has been imaged from the Defendant's electronic data storage devices and relevant online accounts. Some of these matters are linked or have similar/overlapping considerations. Justification for a without notice application on 15 th April 2026 I proceed on the basis that a without notice application for an imaging order is an exceptional remedy. However, in my judgement it is not tenable to contend, as the Defendant has done, that the application for an imaging order should not have been made. That is a different issue to whether that application should also have included (without notice) the requirement for the 'Provision of Information' including by way of an Affidavit from the Defendant (and to which I will return). The reality of the need for an imaging order without notice in this case is that there was cumulative force in (a) the fact of the uploading/copying/printing of a number of the Claimant's documents by the Defendant without any ostensible legitimate reason and the timing of such (b) the content of/importance/commercial sensitivity of some (at least) of those documents and (c) the temporal proximity of the imminent departure of the Defendant to one of the Claimant's rival businesses and the uploading/copying/printing referred to above. It is when those three matters are considered together and alongside the fact that the Defendant did not refer initially to some of those documents when asked generic questions following her resignation but did so to others that were of limited consequence and then subsequently not to all of the sensitive/confidential documents that leads to a position where the high threshold of necessity for a without notice application for an imaging order was established. No basis for an injunction/balance of convenience against the granting of the injunction In a

similar way to my conclusion on the need for the application for the imaging order to be made without notice I reject the submission that there was not a factual or legal basis to seek the injunction in the first place. In my judgement there was a basis both in fact and in law to do so. As the Defendant has accepted in her witness evidence she was an author of an original version of one of the confidential/sensitive documents. In particular I make clear that I am satisfied that there is a strong prima facie case and that all other requirements (set out in paragraph 45 above) are established and that led to a proper basis to seek and obtain an injunction in this case on 15 th April 2026. Further, in my judgement, no lesser measure such as a preservation order was appropriate in this case, essentially for the reasons Eyre J gave. In coming to my conclusions on these matters I have taken into account that there was, at the very least, some cooperation by the Defendant with the assistance of solicitors in advance of the order of 15 th April 2026 being made and that the Defendant had returned company property and identified at different stages some of the material that she was in possession of. The Judge was aware of these matters. However, it was what the Defendant did not say in March 2026 and early April 2026 that mattered far more here, than what she did say and do. I make clear that I have also taken into account the fact that the Defendant was not being asked direct questions about particular documents or types of documents and that the focus of the letter of 2 nd March 2026 could have been slightly clearer. However, the difficulty for the Defendant is that the documents that she did not refer to, either at all or at the outset, are the most significant ones and they are, in my judgement, those which would have come to mind without the need to conduct any searches on any electronic data storage devices or in relevant online accounts. Her own subsequent explanation about her reasons for accessing and obtaining this documentation supports that fact and given that this all occurred very recently it is not realistic to conclude that it was not in her mind on the facts of this case. Delay I accept that delay between the date when a party becomes aware of the need to make an application to the court on a without notice basis and the date on which the application is made to the court, is a potentially relevant consideration when deciding whether the case is sufficiently urgent to merit injunctive without notice relief (see for example Snell's Equity 35 th edition (2025) at 18-065 and *Planon v Gilligan*

[2022] EWCA Civ 642 [98-99 and 113-114]). The question for me is whether the delay was a reason for the Judge not to grant the imaging order. It was, rightly, accepted on behalf of the Defendant at the hearing before me that the question of delay in this context is likely to be a highly fact-sensitive question for the Court. In this case the period of time to be considered is that between 26 th March 2026 and 15 th April 2026. It should be noted that Easter fell in between those two dates and there was ongoing correspondence between the Claimant and the Defendant at that time as well. On the facts of this case and on a fair view of the chronology and taking into account the fact that between 26 th March 2026 and 15 th April 2026 there was still ongoing correspondence about material in the Defendant's possession I do not regard the delay as being such as to lead to a conclusion that there was a lack of urgency meaning that the application for an imaging order should not have been granted. Necessity for the 'Provision of Information' parts of the order including a need

for the Defendant to file and serve an Affidavit The Defendant seeks to set aside paragraphs 10 and 11 of the order made on 15 th April 2026 on the basis that they were not necessary and proportionate on the basis that the application should not have been made and should be discharged. They also allege that the Claimant failed in their duty of full and frank disclosure in this regard. I have considered the ambit of these two paragraphs carefully. Their terms are potentially significant and onerous. A failure to comply with one or both of them could lead to the Defendant being in contempt of court as there is a penal notice attached to the order. I also have to consider the necessity of the terms now and in circumstances where the content of the electronic data storage devices and relevant online accounts (that have been provided by the Defendant) have been imaged and therefore preserved. I have to do so in the context of a failure of the Defendant to have informed the Claimant about her possession of all of their confidential information but also when she has apparently sought to comply with the imaging order. I bear in mind that she volunteered the existence of two additional mobile telephones. In my judgement the provision of an Affidavit, confirming that the Defendant has provided access to all electronic data storage devices and relevant electronic accounts that fall within the scope of the order, was an integral part of an imaging order in this case. Without such an Affidavit the effectiveness could be undermined or even defeated. However, that does not mean that the full extent of the Affidavit required under the current terms of the order was necessary and proportionate. The correspondence from the Solicitors for the Defendant and indeed the Defendant's own witness statement reveals the difficulties with the terms of the order as set out in paragraph 10. This appears to be accepted in part by the Claimant who has provided an amended and narrowed version of paragraphs 10(4) and (5). However, the mischief is the breadth of the definition of Listed Items (see paragraph 30 above) in conjunction with the terms of paragraphs 10 and 11 of the order. This is not a case where there is evidence that the Defendant has transferred the Claimant's confidential information to any other person or that anyone else provided such confidential information to her. However, if that did occur electronically then that would be capable of being identified from the preserved devices and/or accounts – providing they are comprehensive. I should add in that regard that I have considered the content of the Defendant's two witness statements with care to see if she unambiguously confirmed in that evidence (signed with a statement of truth) that she had provided the Claimant with access to all of her electronic data storage devices and all relevant online accounts. Whilst it could be said to be implicit in her first witness statement it is not expressly stated. That is instructive as to why that aspect of the Affidavit was a necessary part of this order. As currently drafted paragraphs 10(4) – (6) of the order in conjunction with the ambit of 'Listed Items' is too broad and imprecise. It is not, for example, time limited despite the fact that the Defendant only began to work for the Claimant in 2023. That is not an illusory concern given the fact that Listed Items extends to information concerning (and not just belonging to) the Claimant. I have already referred to the fact that if confidential information was transferred by or to the Defendant electronically from a personal device then evidence of that should exist in the preserved material. That leaves

the transfer of hard copy (confidential) material. There is no reason why that cannot be captured by an amended paragraph 10 and with the Affidavit also specifically addressing that the Defendant has or has not transferred any such hard copy documents and, if she has done then, to whom and when. In so far as the duty of full and frank disclosure for paragraphs 10 and 11 of the order is concerned, the Claimant accepts that neither the Affidavit nor the Skeleton Argument addressed the necessity for either of these paragraphs either in general terms or in their precise terms. Further hardly anything was said about them at the hearing either. Nothing was said about the Affidavit in the hearing. Given the importance of an Affidavit as an intrinsic part of ensuring that an imaging order (if made) is effective then the Judge should have been directed (albeit briefly) to the need for the Affidavit (by reference to what it had to address in accordance with paragraph 10 of the draft order) and with a focus being on the time scale – especially given the breadth of the 'Listed Items'. The Defendant was only being given 10 days to address all of the information required by the order. It is not, in my judgement, a complete answer to full and frank disclosure on these two paragraphs of the order to say, as the Claimant does, that these terms are those that are set out in the model order. No doubt in many cases such orders or a derivation of them will be necessary but a bespoke position must be considered. The Claimant's point on this is also undermined by the fact that there was a failure to provide the Judge with the version of the model order with the accompanying footnotes. This was relevant to the issue of timescales that I have already addressed. However, if paragraphs 10 and 11 of the order are varied and narrowed alongside the definition of Listed Items then any failures in so far as full and frank disclosure are concerned of those paragraphs fall away and they do not require me to discharge paragraphs 10 and 11 of the order. Full and frank disclosure (more generally) The Defendant submits that the Claimant failed to provide full and frank disclosure to the Judge and that in addition, overall, there was a lack of fair presentation. Having considered the matter with great care and despite Miss Sen Gupta KC's persuasive advocacy I am not persuaded that any of the shortcomings she relied upon were material – other than in so far as paragraphs 10 and 11 are concerned and which I have already addressed. I have approached my considerations consistent with the principles referred to at paragraphs 46 and 47 above. The first complaint made by the Defendant is that the Claimant did not define what it was that was being sought as an 'imaging order'. However, on proper analysis it is clear that the Judge understood what was being sought and in fact the Claimant was at pains to make clear the limit of the imaging order sought. This matter does not, in my judgement, assist the Defendant. The next alleged failure of full and frank disclosure was a failure to point out that (a) imaging orders are highly intrusive and require clear justification and (b) there needs to be clear evidence that any less intrusive order would be insufficient. I was taken in the Note of the hearing to various parts where it was suggested that the Claimant understated the high threshold. Looked at in isolation those points are superficially attractive. However, the difficulty for the Defendant with these arguments is that the Judge was taken to and then read the relevant paragraphs of TBD . Even if that was not enough what is clear is that the Judge specifically raised the

issue of whether a less intrusive order would be sufficient. I acknowledge that the duties are on the Claimant but what is clear is that the Judge had identified the relevant legal considerations and then applied them. I therefore do not regard these alleged failings as being made out or being material. One additional matter that I have given careful thought to is the fact that the Judge was not provided or referred to the two short emails between the Defendant and the Claimant on 2nd and 8th April 2026 respectively (see paragraphs 18 and 19 above). It would have been prudent to have included them so that a complete picture was presented. However, the email from the Defendant on 2nd April 2026 did not reveal any greater degree of cooperation than was exhibited by the other emails and I therefore do not regard these matters as amounting to a failure in the duty of full and frank disclosure. Lastly and for completeness I should also make clear that I am not satisfied that there is an absolute requirement to address expressly the duty of full and frank disclosure in the body of the Affidavit and/or in the Skeleton Argument with a specific section. I would regard that more as a matter of style, providing that the duty is complied with substantively by the applicant in advance of the order being made whether orally and/or in writing. The only authority provided to me that came close to a hard edged rule is that of *CEF Holdings v Munday* (see paragraph 48 above) and for which those observations were obiter. I should make clear that it may be good practice and lead to greater rigour if the duty is specifically referred to and addressed in the body of the Affidavit and/or the Skeleton Argument. However, that is very different from it being a requirement to be addressed in writing in a specific section of the Affidavit and/or the Skeleton Argument and that a failure to do so should lead to the order being set aside. The Claimant's application The Claimant has applied for access to the electronic copy of the contents of the devices and accounts after the Defendant's solicitors have identified, removed and separately listed privileged, personal and/or obviously irrelevant material. It was clear during the course of the hearing that different interpretations were being placed upon the effect of TBD in so far as what orders I should make with respect to the product of the imaging order. In my judgement, on proper analysis, there should be no cause for confusion about TBD. The position that Mann J decided to adopt in *A v B*

[2019] 1 WLR 5832 and which is set out in TBD was case specific. It is tolerably clear on analysis of paragraphs 24, 25, 26 and 30 of *A v B* and paragraph 178, 189 and 193 of TBD that the orders made in *A v B* were not the starting point. What is required is to consider the factors that Mann J set out in *A v B* and which are replicated in paragraph 190 of TBD. I have considered those with care. I made the point during the hearing that an imaging order made in respect of a personal mobile telephone (for example) is still a highly invasive order in that it will lead to the copying of vast amounts of data much (if not nearly all) of which is irrelevant to any underlying civil claim. The instant case is a good example of that. Mobile telephones contain a significant amount of personal and sensitive information such as photographs, banking records and communications in relation to medical conditions, to mention just a few. In the instant case it is clear that the Defendant instructed solicitors before the order of 15th April 2026 was made and therefore before

her mobile telephone and other devices were imaged. It also follows that there is also likely to be material that will be covered by Legal Professional Privilege on her devices. The issues for me are whether I should follow the starting position of allowing the relevant content of the imaged devices and accounts to be the subject of disclosure by the Defendant in the normal way or not, and if I do whether CPR 31.5 (which provides a significant degree of flexibility in advance of a first case management conference) means that I should make case management directions to ensure that disclosure is completed by the Defendant's solicitors in advance of such a hearing. It is for the Claimant to justify why on the facts of this case the presumption of disclosure in the normal way should be displaced with their suggested order (which the Defendant refers to as an 'interrogation order') and specifically why that is necessary and proportionate at this time. I am not satisfied that it is necessary and proportionate. My reasons are that the Defendant has instructed solicitors. It is they (no doubt with expert assistance) who should conduct a review of the content of the electronic data storage devices and relevant online accounts for relevant material using focussed search terms, agreed with the Claimant, and then to disclose any material as result. That is a matter that can be progressed relatively shortly. If it is then that will largely meet the concerns expressed by the Claimant about the need for this to be progressed so that the relief sought by the Claimant can be properly formulated. The distinction between what the Claimant seeks and what the Defendant suggests is that the Claimant would be provided with a potentially far greater amount of documentation to search as the ambit of material to be removed is relatively limited. Given that this is not a case where there is significant urgency or where the Defendant is saying that she cannot afford to conduct the review for disclosure purposes (two of the matters that Mann J refers to) then I do not accept there should be a fundamental departure from the normal approach to disclosure. The approach that I am going to direct is not only consistent with the overriding objective under the CPR but also a preponderance of the factors set out by Mann J referred to above. In particular I make clear that there is no proper basis to contend that the Defendant's solicitors will not comply with their obligations to and orders of the Court. There is also force in the Defendant's complaint the Claimant's application as filed and served would involve the further involvement of and costs of an Independent IT Expert and the Supervising Solicitor. I therefore dismiss the Claimant's application.

Conclusion:

For the reasons set out above I am not discharging the order of 15 th April 2026 in full. However, I will vary the ambit of paragraphs 10 and 11 and Schedule 2 of that order and will consider the proposed terms of any such variation consistent with the terms of this judgment. Further I will order that custody of the images of the Defendant's electronic data storage devices and relevant online accounts which are currently held to the order of the court by the IT expert shall be provided, subject to suitable undertakings, to the Defendant's solicitors for the duration of the proceedings. I will make directions in that regard when this judgment is handed down. In light of the content of this judgment, I would invite the parties to discuss how a review of the electronic

material by the Defendant can be taken forward, hopefully with agreed directions, expeditiously over the course of the next few weeks but after service of the Defence with the aim of any disclosure arising being completed (if possible) by end of June 2026. Focussed search terms should be employed but I accept that it may be necessary to search photographs manually (in case they are of documents). However, they can be very carefully time-limited for any review. The appropriate orders arising from this judgment and the question of costs can, if not agreed, also be the subject of submissions following this judgment being handed down. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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