Neutral Citation Number: [2023] EWHC 2642 (Ch)

Claim Nos. IL-2021-000019
IL-2022-000069

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 24th October 2023

Before:

MR. JUSTICE MELLOR

- -

Between:
CRYPTO OPEN PATENT ALLIANCE

Claimant in IL-2021-000019
(the "COPA Claim")

and

CRAIG STEVEN WRIGHT

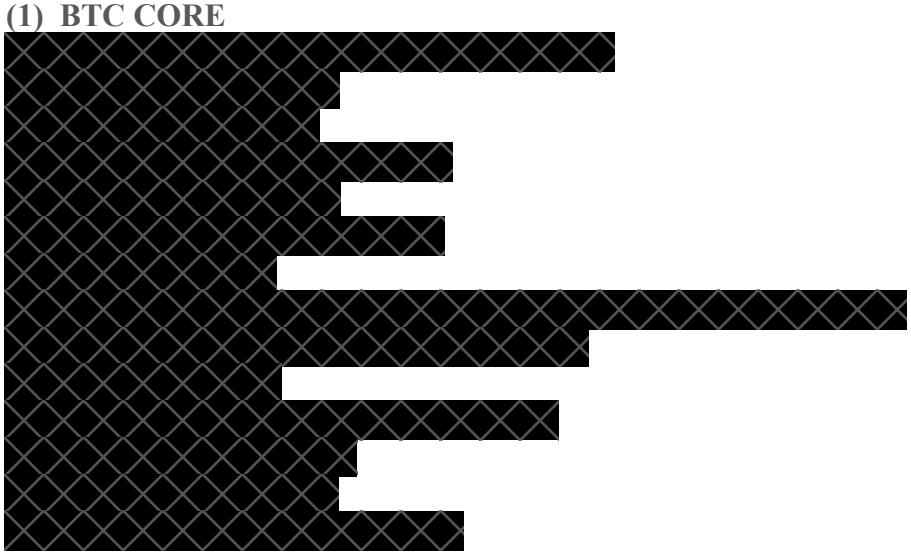
Defendant in the COPA Claim

(1) DR CRAIG STEVEN WRIGHT
(2) WRIGHT INTERNATIONAL INVESTMENTS LIMITED
(3) WRIGHT INTERNATIONAL INVESTMENTS UK LIMITED

Claimants in IL-2022-000069 (the "BTC Core Claim")

and

(1) BTC CORE



(16) BLOCK, INC.
(17) SPIRAL BTC, INC.
(18) SQUAREUP EUROPE LTD
(19) BLOCKSTREAM CORPORATION INC.
(20) CHAINCODE LABS, INC
(21) COINBASE GLOBA INC.
(22) CB PAYMENTS, LTD
(23) COINBASE EUROPE LIMITED
(24) COINBASE INC.
(25) CRYPTO OPEN PATENT ALLIANCE
(26) SQUAREUP INTERNATIONAL LIMITED

Defendants in the BTC Core Claim

- -
- -

MR. JONATHAN HOUGH KC and MR. JONATHAN MOSS (instructed by Bird & Bird LLP) appeared for the COPA Claimant.

MR. VERNON FLYNN KC and MR. RICHARD GREENBERG (instructed by Travers Smith LLP) appeared for Dr Wright.

The Claimants in the BTC Core claim are represented by Harcus Parker LLP, who did not appear at this hearing. Similarly, the Second to Fifteenth Defendants in the BTC Core claim were not represented at this hearing and made no submissions.

Hearing Date: 12th October 2023

- -

APPROVED JUDGMENT

- -

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.
This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on the National Archives and other websites. The date and time for hand-down is deemed to be Tuesday 24th October 2023 at 10.30am.

THE HON MR JUSTICE MELLOR

MR JUSTICE MELLOR:

Introduction

1. In the COPA Claim the Claimant ('COPA') seeks to prove that Dr Craig Wright, the Defendant to that Claim, is not the author of the Bitcoin White Paper and, more generally, not the person who adopted the pseudonym Satoshi Nakamoto (the person credited with having invented Bitcoin). In the BTC Core Claim, Dr Wright seeks to prove that he was. As I have previously explained, I have directed that this 'Identity Issue' (common to these two actions and two others) be determined in these two actions at the trial of the COPA claim which is set to commence on 15 January 2024. Only the individual Defendants in the BTC Core claim are party to the January trial (i.e. Defendants 2-15, 'the Developers', which is why the other defendants in the BTC Core claim are slightly greyed out in the heading).

2. This is my judgment following a hearing of an application by COPA to amend their Particulars of Claim to add three paragraphs – [35A-C] (in which I have underlined certain words and expressions which I discuss below). For context I have also set out here the existing [35], which, in the existing POC, is the concluding paragraph under the heading 'Wright's failed attempts to prove he is Satoshi':

> '35. In the premises, on several occasions when Wright has sought to prove he is Satoshi by way of documentary evidence, it has been shown that the documents he relies on are not what he claims they are.'
>
> '35A. In the course of these proceedings, in accordance with the order of the Court, (a) Wright has identified his "reliance documents", namely those on which he primarily relies in support of his claim to be Satoshi; and (b) those and other documents disclosed by Wright have been the subject of examination and a report by an expert in forensic document examination for the Claimant. For <u>many</u> of the "reliance documents", there are indicia showing that they have been altered or otherwise tampered with. The same is true of <u>many</u> other documents in Wright's disclosure which appear to bear on the question as to whether he is Satoshi. Details of indicia of alteration or tampering are set out in the First Expert Report of Patrick Madden dated 1 September 2023.
>
> 35B. It is to be inferred (a) that Wright is responsible for the alteration of or tampering with <u>these documents</u>, whether by carrying them out himself or having others do so at his direction or with his knowledge; or at least (b) that he is aware of the alteration or tampering. In the circumstances, it is also to be inferred that the purpose of these acts was <u>to create documents</u> that would be deployed to prove that Wright is Satoshi. The Claimant places reliance on the alteration of and tampering with <u>such documents</u> in support of its case that Wright is not Satoshi.

> 35C. The Claimant will also rely upon Wright's history of plagiarism as similar fact evidence to show his propensity to take credit for work others have undertaken and pass it off as his own. Specifically, Wright's LLM thesis submitted to Northumbria University in 2008 entitled 'The Impact of Internet Intermediary Liability', plagiarises the works 'Liability of Internet Service Providers' published in 1996 and 'Intellectual Property and the Internet: A Comparison of UK and US Law' published in 1998, both by Hilary Pearson.'

3. This application to amend was vigorously resisted by Dr Wright: indeed Mr Flynn KC submitted that this was probably the most important application in the case to date. The argument from the two sides occupied a full day.

4. As the parties did at the hearing, I will deal with the proposed amendments in two parts. I will call the amendments in paragraphs 35A and 35B 'the Forgery Amendments'. The amendment at paragraph 35C is distinct. It is essentially a plea of similar fact evidence, the alleged similar fact being Dr Wright's propensity to pass off the work of others as his own.

5. In order to understand the proposed amendments, and the respective arguments on whether permission should be given, I need to explain how this claim reached this point. The evidence in support of the application was given by COPA's solicitor, Mr Sherrell, in the Application Notice. Mr Lee responded on behalf of Dr Wright in his witness statement dated 2 October 2023 (Lee 2) which gave rise to a fairly lengthy witness statement from Mr Sherrell in reply dated 6 October 2023 (Sherrell 17).

The Forgery Amendments

6. The Forgery Amendments at [35A-35B] are a rather general plea of wholescale forgery of documents. COPA say that the purpose of those is formally to *clarify* COPA's pleaded case to reflect reliance upon the expert evidence that has been served. In particular, COPA relies upon the instances of document alteration or tampering identified in the Expert Report of Mr Madden served by COPA in support of their case that Dr Wright is not Satoshi Nakamoto and that he consistently proffers false and doctored documents in support of his claim. COPA say that the amendments '*do no more than to restate COPA's existing position'*.

7. In summary, COPA's argument is as follows. At the time proceedings were served, COPA did not know on what documents Dr Wright would rely in this action in support of his claims. Nor was COPA in a position to analyse his documents until they had been disclosed. Therefore, when first pleading their case, COPA gave the best particulars they could at the time. COPA proceeded to make clear (a) that the examples they had pleaded were particulars of a case of dishonesty and forgery and (b) that they would in due course rely on such other findings of alteration as might be made on the basis of forensic examination of documents relied on by Dr Wright. COPA further say that the directions given at the CCMC reflected that latter point, which was understood by Dr Wright's then Counsel. Hence, COPA say these amendments are exactly

what was always expected to happen, once COPA had the chance to have Dr Wright's documents forensically analysed (by Mr Madden).

8. Dr Wright contends the Forgery Amendments should be refused for 10 reasons: (i) they are not merely clarificatory and do not simply "*restate COPA's existing position*"; (ii) there is insufficient time from now until trial for Dr Wright to be given a fair opportunity to respond to the vast number of new, very serious allegations raised by the proposed amendments; (iii) the trial timetable itself cannot accommodate the new allegations raised by the proposed amendments; (iv) they are "*very late*" in the sense that they threaten the trial date; (v) they are on any view "*late*" because they will require Dr Wright to revisit significant steps in the litigation; (vi) they are unnecessary because assuming (for the sake of argument) that the court accepts COPA's case on the alleged inauthenticity of documents, it would be unnecessary for the purposes of resolving the Identity Issue for the judge to go on to make additional findings of forgery in respect of those documents; (vii) they are disproportionate because attempting to introduce a vast number of new allegations of forgery, only a matter of months before trial, goes well beyond what proportionality requires for the fair determination of the Identity Issue; (viii) the amendments are not properly particularised and fall foul of the most fundamental principles relating to pleading fraud; (ix) they will cause significant prejudice to Dr Wright, including serious disruption of his preparations for trial; and (x) the prejudice to COPA of disallowing unnecessary and disproportionate amendments, which have not been properly particularised, will be very limited.

9. As can be seen, these reasons engage several points from the well-known authorities on amendments. However, underpinning Dr Wright's resistance are the following key points:

    i) That hitherto this was not a case of forgery (alternatively, there were only four (or six) pleas of forged documents). Instead, hitherto, it was a case where the documents relied on by Dr Wright were said not to be authentic. Significant emphasis was placed on the distinction between documents said to be inauthentic as opposed to forged.

    ii) These amendments now seek to put in issue forgery of some (it is said) 400 documents.

    iii) The Forgery Amendments are not a proper pleading of forgery and fall foul of the principles relating to pleading fraud.

10. There is force in the contentions made by each side. However, each has adopted, in my view, a relatively extreme position. The answer (as is often the case) lies somewhere between the two extremes.

Relevant Background

11. COPA say that their pleaded case has always been that Dr Wright is making a dishonest claim to be Satoshi Nakamoto and that he has consistently proffered false and forged documents in support of that claim. In the original Particulars of Claim ('POC'), COPA pleaded:

i) that Dr Wright's claims to be Satoshi Nakamoto are false.

ii) that he has "*on numerous occasions*" said he would provide proof of his claim, but in each case when he has done so the "proof" he has offered has been false: POC [17].

iii) that he claimed he would establish his identity by reference to various documents, including drafts of the Bitcoin White Paper: POC [22].

iv) that, on the occasions when he has sought to prove his claim with documents, it has been shown that the documents he relied upon were not what he claimed them to be: POC [35]

v) that Dr Wright has a history of producing false documentation and making assertions he cannot back up when required by a court: POC [67].

vi) that Dr Wright is making these false claims with a view to gaining an advantage for himself: POC [56-59].

12. These were and remain serious allegations, akin to fraud. As I explained in my previous judgment [2023] EWHC 2408 (Ch) at [34]-[36], COPA sought to substantiate those general pleas by reference to the publicly available information where 'Wright has proffered documentary evidence which purports to (but does not) support his claim to be Satoshi.': POC [22]. Four particular occasions were relied upon and were addressed under the following headings: 1) The Sartre Message, 2) The BlackNet Abstract, 3) The 12 March 2008 Kleiman email and 4) The SSRN Submission.

13. On this application, in his witness statement opposing the application (Lee 2), Dr Wright's then solicitor disputed whether forgery had been put in issue by the POC. This point has been raised before. In December 2021, Dr Wright's application to strike out parts of the (by then) Amended Particulars of Claim was heard by HHJ Paul Matthews. COPA's position at that hearing was that Dr Wright had knowingly put forward forged documents in support of his claim to be Satoshi. Dr Wright argued that some of the pleaded particulars were not really allegations of forgery.

14. In his judgment, HH Judge Matthews made the following points: (a) in respect of the Sartre message, "forgery is in issue"; (b) in respect of the BlackNet Abstract, "[f]orgery is again in issue"; (c) in respect of the Kleiman email, it was an issue whether the email was "a simple forgery"; and (d) addressing COPA's allegations compendiously, "[COPA] is entitled to put these cases forward as cases of forgery". Although not much turns on this, Mr Flynn KC for Dr Wright was prepared to accept that in the original POC, there were four or possibly six allegations of forgery. Although the word 'forgery' was not used, I am satisfied that COPA's original case was clear: they were alleging forgery of the particular documents which they had identified from the publicly available information about Dr Wright's claims to be Satoshi.

15. As COPA submitted, nobody suggests that Dr Wright could be mistaken about his assertion that he is Satoshi and wrote the White Paper. COPA's case has

always been that his claims are fraudulent and that he has backed them with forged or unreliable documents.

16. COPA then point to what occurred at the CCMC before Master Clark in early September 2022. COPA make two points:

    i) First, COPA say that both sides at the CCMC understood COPA's case to involve allegations of dishonesty and systematic forgery by Dr Wright. From the passages quoted from the skeletons and transcript, it certainly seems to be the case that Dr Wright's then Counsel had that understanding of COPA's case.

    ii) Second, COPA point to certain of the directions made by Master Clark and in particular the sequencing of evidence outside the norm:

        a) First, Dr Wright was to give disclosure and specify the documents on which he primarily relied for his claim to be Satoshi (the 'Reliance Documents'). Next, COPA could request chain of custody information on the reliance documents and could identify challenged documents more generally. The parties would then provide forensic document reports in sequence, first COPA and then Dr Wright.

        b) Consistently with those directions, that Dr Wright's reply witness statement should be served last, after all the expert evidence (in particular the evidence from forensic document experts) had been served.

17. COPA also rely on the correspondence about disclosure to support two contentions:

    i) First, that Dr Wright's then solicitors understood that COPA's case involved wide-ranging allegations of forgery and dishonesty which would be supported by the findings of COPA's forensic documents expert, Mr Madden.

    ii) Second, that bespoke procedural orders had been made to accommodate these allegations. Thus, Travers Smith LLP said in a letter dated 12 July 2023:

> "Bespoke procedural orders were made in this case (back in October 2022) in order to ensure that such issues could properly be dealt with by reference to forensic document analysis. Your client [COPA] has known for some time that it would be alleging forgery in relation to our client's [Dr Wright's] disclosure."

18. COPA also rely on certain extracts from the transcript of the hearing before me at the Joint CMC on 15 June 2023, which it is not necessary to set out.

19. For his part, Dr Wright points to other facets of the procedural steps:

i) Extended disclosure has taken place.

ii) Dr Wright produced his list of Reliance Documents on 4 April 2023, then 100, but subsequently updated in the light of some further disclosure he gave to 107.

iii) COPA produced its list of Challenged Documents on 5 May 2023 (again later revised in the light of the further disclosure given by Dr Wright) which made clear that COPA was challenging authenticity in respect of (almost) all of Dr Wright's Reliance Documents, as well as a large number of other documents in Dr Wright's disclosure.

20. It was contended on behalf of Dr Wright that the bases of challenge identified by COPA were unclear and opaque: 'context unknown', 'imaged document' and 'altered document' are all examples. The letter accompanying COPA's list of Challenged Documents provided an expanded definition of the term 'altered documents':

> "We draw your specific attention to documents that have been challenged on the basis that they are altered documents. We use that term to include documents which appear to be false based on contextual or technical review, including on the basis that the content, data, or metadata have been fabricated, altered, or otherwise are not what they apparently purport to be. It may also include documents that have been contaminated as a result of the disclosure collection process. Please note that all documents challenged on this basis should be taken to include a challenge on the underlying basis that the context is not known to the Claimant pending the provision of chain of custody information and further explanation."

21. Dr Wright contended that this definition was so broad that it robbed the term 'altered documents' of any meaning. He also contended that this definition cannot amount to an allegation of forgery, because it does not specify that the documents were altered by him nor that he altered them with the requisite subjective intent for an allegation of forgery.

22. For those (and other reasons), Dr Wright's position was that the list of Challenged Documents entitles COPA to challenge the authenticity of the documents in the list but does not entitle COPA to suggest that the wide-ranging forgery allegations, now sought to be made in 35A-35B, are merely clarificatory and in line with COPA's existing case.

23. The report of COPA's forensic documents expert, Mr Madden, was served on 1st September 2023. As to this, Dr Wright submits that:

i) The proper scope of Mr Madden's expert evidence is defined by paragraph 22 of the CCMC Order, which makes clear that such evidence is "*permitted in relation to (i) any Challenged Documents and (ii) any other documents not disclosed but put in evidence, the authenticity of which is disputed by the Claimant…*".

ii) Thus, where Mr Madden addresses a particular document, he does so for the purpose of evidencing COPA's case on the authenticity challenges identified in COPA's list of Challenged Documents.

iii) Mr Madden does not (or at least should not) make any "*findings*" of deliberate forgery at the hand of Dr Wright. To the extent that he does so, he would be trespassing well beyond the proper bounds of his evidence. Mr Madden correctly defines the scope of his report as relating to the investigation of "*the disclosure documents provided by Dr Wright as to their authenticity, from a technical perspective*" at [11]. He rightly accepts that he is not in a position to say anything about "*why a document has been altered and what the purpose was of doing so*" at [241].

iv) As explained in paragraph 31 of Lee 2 [**I/25/324**], Dr Wright's understanding is that Mr Madden has addressed 92 of Dr Wright's Reliance Documents (if Reliance Document No.74 is treated as 43 separate documents) and around 339 other documents from Dr Wright's disclosure.

24. In summary, COPA submit:

i) That the Madden Report reveals that numerous documents in Dr Wright's disclosure have been altered or otherwise tampered with.

ii) In general, the alterations have been such as to make the doctored document appear to be one that would support Dr Wright's claim to be Satoshi Nakamoto. These are documents which came from Dr Wright's own document sources and were under his control at the time of disclosure. In very many cases, it has been confirmed that the documents in question were authored by Dr Wright. Pending further provision of chain of custody information (as recently ordered), COPA understand that most or all the documents have remained continuously in his control.

25. In his evidence in support of the application to amend, COPA's solicitor, Mr Sherrell, says the documents found by Mr Madden to have been altered include:

i) *many* of the 107 documents that Dr Wright has identified, pursuant to the CCMC Order, as documents on which he "*primarily relies*" for his claim to be Satoshi;

ii) *many* on which he has relied in other litigation as supporting that claim, including documents which he has verified by testimony on oath;

iii) documents that Dr Wright has sent to others (including by emails preceding any litigation) apparently in support of his claim to be Satoshi;

iv) some documents which feature Dr Wright's own handwriting;

v) very *many* documents authored by Dr Wright and obtained from his devices;

vi) emails authored and sent by Dr Wright (obtained from his own "sent items"); and

vii) other documents from sources personal to Dr Wright, such as accounting records bearing his log-in information, emails connected with his private accounts and screenshots of his personal banking records.

26. In all those circumstances, Mr Sherrell relates that COPA will say the natural inference of the findings is that the alterations and tampering were by way of deliberate forgery and that this was carried out by Dr Wright, with his involvement or at least with his knowledge and consent. This accords with COPA's case as pleaded, presented and understood from the outset.

27. Mr Sherrell exhibited six Appendices from the Madden Report '*to give a flavour of the points which will be made in cross-examination and argument at trial'*. These were:

i) PM7 – the MYOB accounting records.

ii) PM8 – the BlackNet Documents

iii) PM17 – internet banking screenshots, which purport to show Dr Wright making a payment by credit card to anonymousspeech.com, a domain associated with an email known to have been used by Satoshi. By letter dated 27 September 2023, Dr Wright's previous solicitors, Travers Smith LLP, admitted the internet banking screenshots in document ID_003455 were not authentic. At that point, no explanation was given as to how Dr Wright came to disclose bank records from his own account which were doctored, apparently in support of his claims. But see further below.

iv) PM21 – spoofed emails

v) PM24 – Lynn Wright documents

vi) PM25 – Dr Wright's LLM Dissertation Proposal

28. Mr Hough KC took me through these Appendices in his oral submissions. Naturally enough, these six Appendices appear to provide strong support for COPA's allegations of forgery, and they address specific documents. However, the identification of specific documents in those Appendices does not assist with the identification of other documents in the two groups of 'many' documents referred to in the proposed [35A- 35B] which are alleged to have been forged.

29. For his part, Dr Wright submits that it remains unclear how many documents are intended to be covered by the Forgery Amendments:

i) On the basis of the Forgery Amendments themselves, Dr Wright's best estimate was that COPA was seeking to make around 400 such allegations. That figure is an approximate total of (i) the "*many*" Reliance Documents (i.e. around 92 or 43) and (ii) "*many other documents*" (i.e. around 339) that are addressed in the Madden Report

and appeared to be relied on by COPA for the purposes of its Forgery Amendments: see Lee 2 [31]. However, the position on the face of the amendments was (and is) unclear.

ii) Dr Wright's current best guess is that COPA intends to make at least around 180 (but in fact more) allegations of forgery, based on the number of documents expressly identified in the schedule referred to in paragraph 43 of Sherrell 17 (PNS-108) (the "**Schedule**"). However, the Schedule itself (see the 'ID number' column) contains a number of vague references ("*and associated documents*"; "*and various related documents*"; "*and similar documents*"; "*and others*" etc.), which make clear that the Schedule is not comprehensive.

iii) The upshot is that Dr Wright is still in the dark about some of the most basic aspects of COPA's new allegations of forgery, including for example COPA's case on the documents such allegations relate to. That is so despite the markers laid down in Dr Wright's responsive evidence (Lee 2, [30-31]).

30. I have not yet seen the entirety of Mr Madden's report, although I have been shown certain of the Appendices at this and at a previous hearing. I understand it comprises about 970 pages, including the Appendices. From the Appendices I have seen, his analysis is painstaking and detailed. For these reasons, the idea floated at one point by COPA that Dr Wright's team could identify the allegations of forgery from Mr Madden's report, is a complete non-starter.

31. In terms of the picture from now until trial. The trial is due to commence on 15 January 2024. In my previous judgment, I reset the directions down to trial and, as Dr Wright submitted, the timetable is compressed and there is much for both sides to do to meet the outstanding deadlines. On this basis, Dr Wright submits there is insufficient time for these widescale allegations of forgery to be dealt with.

32. A final but critical aspect of Dr Wright's position needs to be noted. He accepts that all the allegations of authenticity/inauthenticity made by COPA in its list of Challenged Documents, to the extent they are supported by evidence, and in particular, the Madden Report, can and will be examined at trial. So, Dr Wright's objections are really founded on what can or should be done on the basis of any findings that documents are not authentic. Dr Wright says nothing needs to be done (this is his reason (vi) set out above, to the effect that the amendments are unnecessary).

Applicable Principles

33. The two sides relied upon different sets of applicable principles. I did not understand any of these principles to be disputed, so I will briefly summarise them. What was in dispute is which principles are applicable to this particular application to amend.

COPA's contentions.

34. With heavy emphasis on the procedural backdrop, COPA submitted as follows:

i) "*The overriding objective (of the CPR) is that the court should deal with cases justly. That includes, so far as practicable, ensuring that each case is dealt with not only expeditiously but also fairly. Amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice caused by the amendment can be compensated for in costs, and the public interest in the efficient administration of justice is not significantly harmed*." This passage from the unreported judgment of Peter Gibson LJ in Cobbold v Greenwich LBC (9.8.99) has been cited with approval by the Court of Appeal several times, including in Law Debenture Trust Corp. Ltd v Lexington Insurance Company [2002] EWCA Civ 1673 at paragraph 5 and in Roberts v Williams [2005] CP Rep 44 at paragraph 19. COPA also submitted that this statement had 'recently' been approved at High Court level in *Hewson v Times Newspapers Ltd* [2019] EWHC 1000 (QB)

ii) Whether to allow an amendment is a matter for the discretion of the Court, with a particular focus upon the overriding objective. In deciding an application, the Court balances the injustice to the applicant of refusing the opportunity to advance the case in a particular way against any prejudice to the respondent and other litigants resulting from the amendment being allowed. See: *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm) at paragraph 38(a) (Carr J); *Vilca v Xstrata Ltd* [2017] EWHC 2096 (QB) at paragraphs 29-30 (Stuart-Smith J). Prejudice to a respondent may range from simple inconvenience to disruption of trial preparation or a threat to the trial date. The circumstances are "*infinitely variable*": *Vilca* at para 22; *Zuckerman on Civil Procedure (4th ed.)* at paragraph 7.49.

iii) A "late" application to amend is one which could and should have been made earlier, and such applications should be justified. In deciding such an application, the Court will consider the procedural history, the nature of the amendment, the explanation for its timing and the effects it will have: *Quah Su-Ling*, paragraph 38(d)-(f). Meanwhile, a "very late" application to amend is one which threatens the trial date. In such a case, there is a heavy burden to justify the amendment sought: *Quah Su-Ling* at paragraph 38(b)-(c). Generally, while the quality of the explanation for the time taken to advance an amendment is a relevant factor, delay (and even unexplained delay) should not be regarded as fatal to an amendment application: *Vilca* at paragraph 29.

35. I confess I was somewhat surprised to see the reliance on *Cobbold*, since I understood it was considered no longer good law. Mr Flynn KC so submitted. *Cobbold* is now referred to in only three places in the White Book and is not referred to at all in the notes in CPR Pt 17 (Amendments to Statements of Case). I take the three remaining references in reverse order:

i) The reference in Section 11, 11-8 (WB Vol II at p2941) to *Cobbold* comes with a significant health warning. It is said this decision must now be read subject to the decisions in *Savings & Investment Bank v*

Fincken [2003] EWCA Civ 1630, *Swain-Mason v Mills & Reeve LLP* [2011] EWCA Civ 14, as well as other cases including *Quah Su-Ling.*

ii) The other two references (in 2F-7.11, i.e. in CPR Part 63 Intellectual Property Claims, and in A1.5-008 'Procedural Guides') seem to me to be hangovers from earlier editions that have not been kept up to date.

Dr Wright's contentions on the applicable principles

36. For their part, Counsel for Dr Wright cited a much more extensive array of authority concerned with four topics relating to the Forgery Amendments. Having reviewed all the submissions (which were not really disputed), I consider them to be correct and I propose to apply them. Due to their importance to the current application, I have set out all these submissions in paragraphs 37-49 below, and I emphasise, these paragraphs contain submissions.

A. Amendments to pleadings

37. Relying on the summaries of the principles in ***Pearce v East and North Hertfordshire NHS Trust*** [2020] EWHC 1504 (QB) at [10]; ***Quah v Goldman Sachs International*** [2015] EWHC 759 (Comm) at [38]; ***CIP Properties (AIPT) Limited v Galliford Try Infrastructure Limited & Ors*** [2015] EWHC 1345 (TCC) at [19] and ***Worldwide Corporation Ltd v GPT Ltd*** (1998) WL 1120764 at pp.7 and 17-18, Dr Wright submitted:

i) The starting point is CPR r.17.3 which confers on the Court a broad discretionary power to grant permission to amend. In exercising that discretion, the overriding objective is of central importance. Applications always involve striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted.

ii) The timing of the application should be considered and weighed in the balance. Lateness is a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done.

iii) An amendment is "*late*" if it could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the resisting party to revisit any significant step in the litigation (such as disclosure, witness statements, or expert reports).[1]

iv) An amendment is "*very late*" if permission to amend threatens the trial date, even if the application is made some months before the trial is due to start. Where a very late amendment is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. A "*heavy burden*" lies on the party making a very late amendment to show the strength of

[1] See further ***Worldwide Corporation Ltd v GPT Ltd*** (1998) WL 1120764 at pp.7 and 17-18.

the new case and why justice to him, his opponent and other court users requires him to be able to pursue it.

v) The history of the amendment, together with an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise. In essence, there must be a good reason for the delay.

vi) The particularity and/or clarity of the proposed amendment is a relevant factor. Different considerations apply to amendments which are not tightly-drawn or focused.

vii) The prejudice to the resisting party will incorporate, at one end of the spectrum, being 'mucked around' to the disruption of and additional pressure on their lawyers in the run up to trial and the duplication of cost and effort at the other. Risk to the trial date may mean that the lateness of the application will of itself cause the balance to be loaded heavily against permission. If allowing the amendments would necessitate the adjournment of the trial, this may be an overwhelming reason to refuse the amendments.

viii) Prejudice to the amending party if the amendments are not allowed includes its inability to advance its amended case, but that is just one factor. If that prejudice has come about by the amending party's own conduct, it is a much less important element of the balancing exercise.

38. Proportionality is another relevant factor in this case, given the vast scope of the proposed Forgery Amendments. Reliance upon multiple incidents or examples, as increase time and cost but do not advance the case overall, is to be avoided. As Mann J put it in ***Various Claimants v MGN Ltd*** [2020] EWHC 553 (Ch) at paragraph 59: "*A common sense judgment needs to be made in the light of what proportionality requires. If the claimants make their case on a few, they do not need the rest. If they cannot make their case on their best few, the addition of more is unlikely to improve matters.*"

B. Pleading Fraud

39. Fraud must be distinctly alleged and as distinctly proved: ***Davy v Garrett*** (1878) 7 Ch. D. 473 at p.489 (per Thesiger LJ); ***Armitage v Nurse & Ors*** [1998] Ch. 241 at p.256G to p.257C (per Millett LJ); ***Three Rivers DC v Bank of England (No 3)*** [2003] 3 AC 1[2]; ***National Bank Trust v Yurov*** [2020] EWHC 100 (Comm) at paragraph 251(4); ***Sofer v Swissindependent Trustees SA*** [2020] EWCA Civ 699 at paragraph 23. These rules are strict.

40. That fundamental principle is reflected in paragraph 8.2 of PD16, which requires the claimant specifically to set out any allegation of fraud relied on.

41. As for what must be specifically set out, there are a number of subsidiary (but nevertheless important) principles, including:

[2] See paragraphs 47-55 (per Lord Hope), 122-124 (per Lord Hutton), and 184-189 (per Lord Millett).

i) It is not sufficient for a claimant to use equivocal or ambiguous language when pleading fraud: ***Armitage v Nurse & Ors*** at p.257B; ***Three Rivers DC v Bank of England (No 3)*** at paragraph 185; ***National Bank Trust v Yurov*** at paragraph 251(3)(a).

ii) A vague or general allegation of fraud, however strong the words used, where there is no statement of the circumstances relied on as constituting the alleged fraud, is insufficient even to amount to an averment of fraud of which any Court should take notice: ***Wallingford v Mutual Society*** (1880) 5 App Cas 685 at p.677 (per Lord Selborne L.C.); ***National Bank Trust v Yurov*** at paragraph 251(3)(b) and (4).

iii) Where an inference of fraud/dishonesty is relied on, it is necessary to plead the primary facts which will be relied upon at trial to justify the inference. It is not open to the Court to infer dishonesty from facts which had not been pleaded: ***Three Rivers DC v Bank of England (No 3)*** at paragraph 186; ***National Bank Trust v Yurov*** at paragraph 251(4). Further, dishonesty/fraud is not to be inferred from facts which are equally consistent with honesty: ***Three Rivers DC v Bank of England (No 3)*** at paragraph 161; ***Sofer v Swissindependent Trustees SA*** at paragraph 23(iii).

42. See also paragraph 4.8 of the Chancery Guide, which refers not only to the fundamental principle that full particulars of an allegation of fraud must be provided, but also to the specific requirements mentioned above in relation to pleading an inference of fraud or dishonesty: "*Parties must ensure that they state: (a) full particulars of any allegation of fraud, dishonesty, malice or illegality; and (b) where an inference of fraud or dishonesty is alleged, the facts on the basis of which the inference is alleged.*"[3]

43. Dr Wright is not aware of any suggestion in any of the authorities that a "*common understanding*" may be sufficient to found an allegation of fraud, where that allegation is not to be found in the pleadings. Any such suggestion would drive a coach and horses through the principles referred to above.

C. Forgery

44. For the purposes of criminal law, the offence of forgery is defined by s.1 of the Forgery and Counterfeiting Act 1981 (the "**Act**"): "*A person is guilty of forgery if he makes a false[4] instrument[5], with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.*" It is clear that the reference to making a "*false*" instrument with the "*intention… to induce somebody to accept it as genuine… to his own or any other person's prejudice*" imports an element of fraud/dishonesty.

45. For the purposes of civil law, the definition of forgery in s.1 of the Act is relevant: see for example ***Kreditbank Cassel GmbH v Schenkers Ltd*** [1927] 1

[3] Paragraph C1.3(c) of the Commercial Court Guide is to similar effect.
[4] Defined in s.9 of the Act.
[5] This includes "*any document*": s.8 of the Act.

K.B. 826 at p.840 (albeit referring to the materially similar position under s.1 of the Forgery Act 1913); ***Lombard Finance Ltd v Brookplain Trading Ltd*** [1991] 1 W.L.R. 271 at pp.275-276 (definition of forgery under s.1 of the Act relevant); ***Jeffery v Financial Conduct Authority*** [2013] 6 WLUK 856 at paragraph 106[6]; and ***Chitty on Contracts*** (34th ed.) at paragraph 36-049 (the reference to forgery in s.24 of the Bills of Exchange Act 1882 is interpreted in light of the criminal definition of forgery, as found in the Act and its predecessors). See also ***Ruben and Another v Great Fingall Consolidated and Others*** [1906] AC 439 at p.445 (a case pre-dating the Act but "*intent to defraud*" understood to be an element of forgery).

D. Authenticity challenges vs forgery allegations

46. Dr Wright places significant emphasis on the distinction between authenticity challenges, on the one hand, and forgery allegations, on the other, which he submits follows as a matter of first principle. Whereas the authenticity of a document may be challenged for a range of reasons (as COPA's list of Challenged Documents itself illustrates), forgery is a species of fraud. It follows that forgery must be specifically and clearly pleaded, in accordance with the fundamental principles on the approach to pleading fraud set out above.

47. The position is explained in ***Civil Fraud*** (1st ed.) at paragraphs 34-014 to 34-017. In summary:

    i) Under CPR 32.19, a party is taken to admit the authenticity of any document unless a notice requiring the other party to prove the document at trial is served, which must be done either within 7 days after disclosure or by the latest date for filing witness statements.

    ii) Failure to serve the requisite notice leaves a party unable to challenge the authenticity of a document unless the court grants permission, applying the principles of relief from sanction.

    iii) The concept of "authenticity" is broad and "does not merely refer to whether the document disclosed is a "genuine" document, in the sense of one that has been doctored or concocted. Any issue that goes to whether the document is what it purports on its face to be can be seen as an issue of authenticity."

    iv) While necessary, mere service of a notice under r.32.19 (or, in this case, serving the list of Challenged Documents) is not sufficient if a party intends to allege deliberate forgery. A clear and distinct pleading of forgery is required.

48. See further **Redstone Mortgages Limited v B Legal Limited** [2014] EWHC 3398 at paragraphs 57-58 and in particular this key passage:

[6] No authority on the meaning of forgery was cited in that case but the reasoning of the Upper Tribunal (Tax and Chancery Chamber) on the relevance of the definition in s.1 of the Act is clearly correct (and in line with the other authorities referred to).

> "It is vital that the process of challenge is fair. Criticism of the evidence about the authenticity of the document cannot amount to a covert and unpleaded case of forgery. If a case of forgery is to be put then the challenge should be set out fairly and squarely on the pleadings (and appropriate directions can be given)."

49. For present purposes, there can be no principled distinction between an authenticity challenge under CPR r.32.19 and an authenticity challenge under paragraph 21 of the CCMC Order. In circumstances where the service of a notice under r.32.19 is not sufficient if a party intends to allege deliberate forgery, the position must be the same under the procedure for challenging the authenticity of documents set out in paragraph 21 of the CCMC Order.

Discussion

50. Following my pre-reading, at the start of the hearing I mentioned to the parties a preliminary view as to a possible way forward which lay somewhere between the positions taken by each side on this application. Again, I had cast my mind forward to what would occur at trial and what the Judge would have to decide. It would be disproportionate for the Judge to have to decide around 400 allegations of forgery (even if the parties had been able to prepare for a trial of that number of allegations).

51. I also had a recollection of a direction given by Lloyd J. (as he then was) in a passing off case brought by HFC Bank plc against HSBC Bank plc just after it had changed its name from Midland Bank plc. I think at the equivalent of a pre-trial review, HFC contended that it had evidence of many hundreds of instances of confusion, whereupon Lloyd J. gave permission for them to adduce evidence of their best 20, applying the same notion as is evident from the citation from the *MGN* case (see at paragraph 38 above), that if they did not succeed on those, another 100 or 200 would not help.

52. On that basis, I indicated I was contemplating allowing a reduced number of additional allegations of forgery, possibly all Reliance Documents + 20 others. In the course of argument, Mr Flynn KC suggested 5 (apparently in line with *MGN*), whereas COPA put forward a number higher than my initial suggestion.

53. This situation is somewhat different from that which arises in most passing off cases, where it is for the claimants to prove their case by trying to adduce evidence of individual instances of confusion which are representative of the relevant public. In the COPA claim, COPA have made their basic allegation(s), relying on publicly available information and have had to wait for disclosure to find out what documents Dr Wright relies upon in support of his claim to be Satoshi. Dr Wright has identified 107 Reliance Documents, being the documents which he principally relies upon in support of his claim. This is an important step in this action because the identification of those Reliance Documents essentially tells COPA what is really relied upon by Dr Wright to substantiate his claim to be Satoshi.

54. Now they have been identified, I consider that COPA should have the opportunity not just to challenge the authenticity of those (and other) documents, but to press the essential feature of their claim: that Dr Wright's

claim to be Satoshi is fraudulent and, consistently with that, the documents he relies upon in support of that claim have been forged. This is the reason why I reject Dr Wright's argument that these amendments are unnecessary: they represent the essential core of COPA's case. At the same time, Dr Wright should have the opportunity to explain why COPA's challenges to his documents are wrong. It seems to me that he is going to have to explain why his documents are authentic and reliable in any event on the existing case, so the addition of allegations of forgery ought to add relatively little to the burden of the case, provided the number of allegations is kept within reasonable bounds.

55. I consider it is also necessary to take into account the fact that Dr Wright's list of Reliance Documents may change. At paragraph 27.iii) above, I referred to the screenshots of internet banking records. Dr Wright has recently filed his third witness statement dated 16 October 2023 in which he explains that he did not make those screenshots and explained how they were sent to him by someone who received them from a pseudonymous Reddit user, 'whose identity remains undisclosed'. I do not know whether these screenshots are in Dr Wright's list of 'Reliance Documents'. It does not matter whether they are or not. The point is that there may well be further evidence/explanation either from Dr Wright or his forensic document expert which will or may cause him to seek to remove certain documents from his list of 'Reliance Documents'. Perhaps he may also seek to substitute others. At the hearing I referred to this possibility of COPA facing a 'moving target' but I accept Mr Flynn's point in response that Dr Wright may also face a 'moving target' in the form of possible changes to the challenges made to his documents by COPA.

56. In this regard, although Mr Flynn submitted that COPA were trying to introduce 400 additional allegations of forgery, Mr Hough disputed the number was that high. Mr Hough pointed out that some of Mr Madden's findings were inconclusive and so could not found an allegation of forgery.

57. In theory, there may be a variety of reasons why a document produced in electronic form may be held to be inauthentic. It is possible that the metadata in the document are altered in the course of the extraction and presentation of the document in disclosure, and particularly so if the document has passed through the hands of third parties over which the litigant in question has had no or limited control. This may turn out to be the finding which is made in relation to some of the documents in question and I suspect that, in relation to that type of document, Mr Madden has not been able to reach any concluded view.

58. However, it is clear (at least from the examples cited in Sherrell 17 from Mr Madden's Report) that COPA's case is that there are a large number of documents which are significant to the Identity Issue where the alterations are only consistent with having been made deliberately. I emphasise that I have not reached any concluded views, because the formation of those views must await (a) service of the report from the forensic expert instructed by Dr Wright (b) service of further evidence (in particular in his reply witness statement) from Dr Wright and (c) cross examination and submissions at trial.

59. It also appears that COPA had anticipated that the unnecessarily vague references in their draft to 'many' documents might be considered

unsatisfactory, so one of the exhibits to Sherrell 17 (PNS-108) is a Schedule which says it summarises the findings made in the Madden Report. The Schedule contains four columns. The first identifies the relevant Appendix to Mr Madden's Report; the second gives the ID number of the document(s); the third column is headed 'What the document purports to be on its face'; and the fourth is headed 'Indicative reasons for finding document alteration / tampering' (my emphasis). It is true that most rows relate to a single ID document number, but row 3 concerns 22 documents, by way of example, all listed to be 'Various documents purporting to be or be related to, draft versions of the Bitcoin White Paper…' which also entails that the 'Indicative' reasons are generalised across all 22 documents. Other rows list 2 ID numbers which appear to be the same document, where it is understandable they are grouped together. By my very rough count, the number of specific documents in the Schedule for which ID numbers are given is north of 150 (and there are various mentions of 'and other documents' against some ID numbers).

60. Following my initial indications, after the short adjournment, Mr Hough KC for COPA offered the Schedule as particulars of the findings of alterations referred to in the proposed 35A. I did not and do not find this offer satisfactory, precisely because the Schedule itself is insufficiently precise to meet the requirements of a pleading of fraud/forgery.

61. This is an unusual case. Furthermore, it has reached an unusual stage, as I have endeavoured to explain above. Whilst Dr Wright is correct to point out the distinction between inauthenticity and forgery, in the particular circumstances of this case, for 'many' of the documents which he has identified as 'Reliance Documents' and for 'many' of the other documents he has produced in his disclosure, I consider the distinction to be small for the following reasons.

62. First and foremost, one would expect that the most important documents (e.g. drafts of the White Paper, drafts of the Bitcoin software, emails and other records which clearly emanate from Satoshi) are Dr Wright's own documents which he himself has produced on disclosure. If any alterations to the metadata have occurred through the process of disclosure, Dr Wright should be able to explain what happened (possibly with the aid of his expert). Otherwise, he should be able to explain all alterations (or that they have not in fact occurred) because they are *his* documents which, unless he explains to the contrary, have remained under his control.

63. I recognise that in theory, Dr Wright may admit, not admit or deny each allegation of alteration. But since the alleged alterations have been identified (in the Madden Report), realistically, Dr Wright has to provide his explanation in response to COPA's authenticity challenges or otherwise effectively abandon reliance on the document(s) in question.

64. Second, recognising what is required for a proper plea of forgery and again provided the number of allegations is kept within reasonable bounds, COPA's proposed 35B indicates that COPA's allegations follow a common structure which I summarise as follows. Once the document is identified (e.g. as an early draft of the White Paper which purports to have been created in 2007), reference is made to the relevant paragraphs of the Madden Report, where the alleged

alterations are set out. Due to those alterations, COPA allege the document is a forgery. Then COPA invite the inference set out in paragraph 35B and I anticipate it is the same inference for all these documents, precisely because most of the documents are said to have been created by Dr Wright or under his control and kept under his control until being produced on disclosure in this action.

65. So, it is my understanding that COPA has all the material it needs to be able to plead clear allegations of forgery in line with the caselaw. Some work is required (on top of that done for the Schedule in PNS-108), but I consider it must be done.

66. That leaves the critical question of how many allegations I should allow to go forward. Whilst COPA has work to do, the principal burden will fall on Dr Wright and at a time when there is much to be done to meet the directions down to trial. I have well in mind Mr Flynn's impassioned plea that there is insufficient time before and during trial to accommodate all these allegations of forgery.

67. I have considered various quantities of documents which I should allow to be the focus of additional allegations of forgery – whether it should be 5, or 20 or 50 or all Reliance Documents or all Reliance Documents plus, say, 20 others.

Conclusion on the Forgery Amendments

68. In the unusual circumstances before the Court I propose to take a somewhat unusual course in that I propose to give permission to amend in a form which is not before the Court.

69. I propose to allow COPA to plead forgery of a total of 50 additional documents. It is for COPA to identify the documents which they wish to include in the 50 and they must choose wisely (i.e. it may only be necessary to include some of the drafts of the White Paper, some drafts of the Bitcoin Software, and some documents which fall outside Dr Wright's Reliance Documents).

70. I recognise this amendment to the POC comes at a late stage, but an amendment in some form to add further allegations of forgery was, in my view, always in contemplation at least from the CCMC onwards if not earlier, albeit it always depended on what documents Dr Wright produced on disclosure. I consider that limiting the number of additional allegations means that the amendments should not prejudice the trial date nor cause any significant additional prejudice to Dr Wright, particularly bearing in mind the points I mentioned at paragraphs 32 and 61 above. In theory, Dr Wright has to revisit certain steps in the action, his Defence and witness statements in particular, but I propose to make directions to limit the disruption to his preparations as far as possible.

71. In terms of the structure of the amendments, I propose to give permission to COPA to include the first sentence of their proposed paragraph 35A and the whole of paragraph 35B. In addition, COPA must (whether in a Schedule or otherwise):

i) Identify by ID number (a) which of the 'Reliance Documents' they allege to be forged and (b) which other documents they allege to be forged.

ii) Specify *all* the reasons they rely upon in support of the allegation of forgery, cross-referenced to the relevant parts of the Madden Report e.g. the relevant Madden Appendix and/or paragraphs in that Appendix.

iii) Specify the reasons why they invite the inference that Dr Wright was responsible for the alteration of or tampering with each document or was aware of the alteration or tampering.

72. COPA must serve the amended pleading within 7 days of the hand down of this Judgment. I am prepared to hear submissions on when and how Dr Wright should respond to this amendment but in view of the fact that his forensic expert report is due to be served on 23 October 2023 and his reply evidence of fact on 1 December 2023, I take the provisional view that his response can be in his witness statement in reply. Of course, it is open to Dr Wright to plead his consequentially amended Defence before 1 December 2023 if he finds it convenient to plead compendiously to all the additional allegations of forgery or to groups of them or even all of them. One way or another therefore, Dr Wright's response to these amendments comes on or before 1 December 2023.

73. I will give permission to both sides to apply on short notice to me in case of unforeseen difficulty with the implementation of these directions. As I have indicated to the parties on more than one occasion, I exercise my case management powers to ensure this trial proceeds in January 2024, so far as is possible.

The Similar Fact Amendment in paragraph 35C

74. I can deal with this issue relatively briefly.

75. By reference to *Signia Wealth Ltd v Vector Trustees Ltd* [2018] EWHC 1040 (Ch) at paragraphs 462 to 464 and 502, Mr Flynn submitted the applicable principles to pleas of similar fact were as follows:

i) There is a two-stage test:

a) Is the proposed evidence potentially probative of one or more issues in the case? If so, it will be legally admissible.

b) If it is legally admissible, are there good grounds why a court should decline to admit it in the exercise of its case management powers?

ii) Three matters may affect the way in which a Judge may exercise his/her discretion: (i) that the new evidence will distort the trial and distract the attention of the decision-maker by focussing attention on collateral issues; (ii) that it will be necessary to weigh the potential probative value of the evidence against its potential for causing unfair prejudice; and (iii)

that consideration must be given to the burden which its admission would lay on the resisting party.

iii) The introduction of similar fact evidence is "*dangerous to orderly trial management because it brings into play collateral disputes*". The Courts are therefore concerned to ensure that its admission is "*strictly controlled*": paragraph 502(4).

76. I agree and I apply that approach.

77. At a general level, it can be seen that COPA accuses Dr Wright of taking credit for the creation of Bitcoin and passing off that work as his own. At the same general level therefore, evidence that Dr Wright copied passages from the works of Hilary Pearson which are referred to in the proposed paragraph 35C is potentially probative with the result the evidence is legally admissible.

78. Turning to the factors in this case which weigh in the exercise of my discretion whether to admit or decline to admit the allegation:

i) In the present case, Mr Flynn accepted that COPA would be entitled to cross-examine Dr Wright on the allegation that he copied passages from the identified works of Hilary Pearson. This is because Dr Wright has identified his LLM thesis as containing work which contributed to his development of Bitcoin. For that reason, the risk of a collateral issue distorting the trial seems to me to be minimal.

ii) I find the potential probative value of the evidence *as similar fact evidence* to be extremely slight, principally because the accusation that Dr Wright takes credit and passes off the work of others as his own pales into insignificance when viewed against the principal issue which is whether he is Satoshi and the evidence which has already been foreshadowed that the trial Judge is likely to hear. Having said that, it also seems that the risk of unfair prejudice to Dr Wright is minimal or non-existent because of the first point above.

iii) Equally, and for the same reason, the admission of this *similar fact* plea will place a relatively small burden on Dr Wright. If I admit the plea, he will have to plead to the allegation in his Defence in due course, whereas if I decline to allow the plea, Dr Wright would not have to plead to it and would be entitled to leave the allegation to be raised in cross-examination, whereupon he would then give his answer to it. Whether COPA are taken by surprise by his explanation remains to be seen. Whether his explanation is accepted also remains to be seen.

79. Overall, I have concluded that the potential probative value of this similar fact plea is so slight as to require me to refuse permission to amend to include the proposed paragraph 35C.

80. I ask the parties to seek to agree an Order giving effect to this judgment.