Neutral Citation Number: [2023] EWHC 3287 (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: 20th December 2023

Before:

MR. JUSTICE MELLOR

- -

Between:
CRYPTO OPEN PATENT ALLIANCE

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

and

CRAIG STEVEN WRIGHT

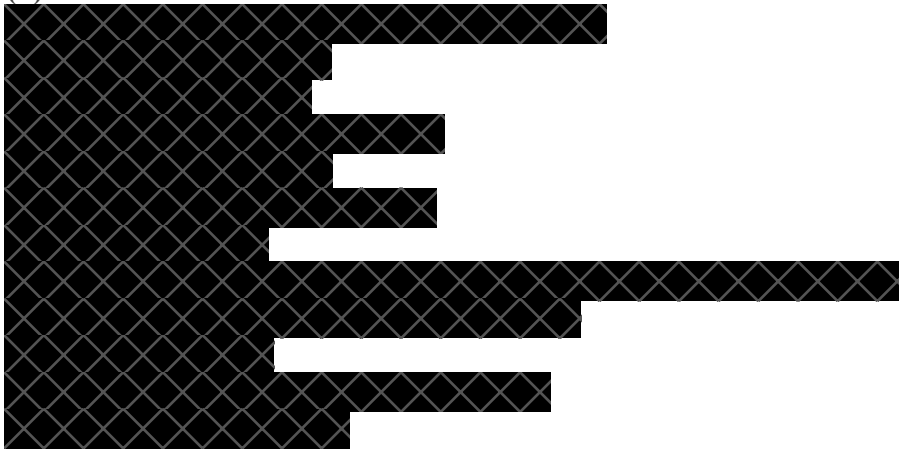
Defendant in the COPA Claim

(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



[redacted]
(16) BLOCK, INC.
(17) SPIRAL BTC, INC.
(18) SQUAREUP EUROPE LTD
(19) BLOCKSTREAM CORPORATION INC.
(20) CHAINCODE LABS, INC
(21) COINBASE GLOBAL 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

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

LORD GRABINER KC, CRAIG ORR KC, MEHDI BAIOU, TIMOTHY GOLDFARB and RICHARD GREENBERG (instructed by Shoosmiths LLP) appeared for Dr Wright in the COPA Claim.

ALEX GUNNING KC and BETH COLLETT (instructed by Macfarlanes LLP) appeared for the Developers in the BTC Core Claim (Defendants 2-12, 14 & 15)

TERENCE BERGIN KC and JACK CASTLE (instructed by Harcus Parker Ltd) appeared for the BTC Core Claimants regarding Security for Costs

Hearing Date: 15th December 2023

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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 Wednesday 20th December 2023 at 10.30am.

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THE HON MR JUSTICE MELLOR

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MR JUSTICE MELLOR :

Introduction

1. This is my judgment on the issues raised at the pre-trial review (PTR) held on Friday 15th December 2023. The issues required a full day of argument (10am-4.50pm) so I announced the result of the principal applications at the conclusion of the hearing, indicating I would give my reasons in writing. This judgment contains those reasons and the results of the remaining applications.

2. The forthcoming trial consists of the main trial in the COPA claim and the trial of a preliminary issue in the BTC Core claim. For that reason it has been referred to as the Joint Trial. It concerns the 'Identity Issue' namely whether Dr Craig Wright is the pseudonymous 'Satoshi Nakamoto' i.e. the person who created Bitcoin in 2009.

3. At this hearing, as the representation on the title page indicates, the parties before the Court fell into three distinct groups:

   i) First, Dr Wright plus his associated companies which are claimants with him in the BTC Core claim.

   ii) Second, COPA.

   iii) Third, the Developers.

4. As the Developers submitted, COPA is an industry body representing a number of corporate entities which operate in the Bitcoin field (albeit I understand that individuals are able to join COPA). By contrast, the Developers contend that they are individuals who are or have been engaged in the maintenance and operation of Bitcoin in its various guises. Whilst the interests of the Developers may in very large part coincide with those of COPA vis-à-vis the Identity Issue, the Developers also contend that their interests cannot be assumed wholly to coincide with those of COPA and that therefore, the Developers are entitled to have their own representation not only at this hearing but also at the Joint Trial. This is an issue to which I must return later.

5. Subject to decisions to be made at the PTR, at the start of the hearing the Joint Trial of the Identity Issue was due to commence on Monday 15th January 2024 with one day of opening submissions, followed by 4 days of judicial reading time, with approximately 20 days of evidence to start on Monday 22nd January, concluding on Friday 16th February 2024. There was then a perhaps overly generous period for preparation of written closings, leading to 4 days of oral closing submissions on 4th-7th March 2024.

6. The principal applications for determination at the PTR were (i) Dr Wright's application to rely on the Additional Documents (defined below) and (ii) his application to adjourn the trial. Before I turn to decide those and other applications, it is necessary to explain how these applications came about.

Relevant procedural history

7. I can take some of the detail from the agreed Case Summary.

8. In the COPA claim (commenced on 9th April 2021), COPA seek a declaration (in effect) that Dr Wright is not Satoshi Nakamoto. Dr Wright and two of his companies commenced the BTC Core claim on 29th July 2022.

9. There are four actions involving Dr Wright as claimant or defendant. These include the COPA and BTC Core Claims and two other claims brought by Dr Wright (the Kraken and Coinbase Claims). These four claims were docketed to me in around January 2023. Somewhat later, the related action brought by Tulip Trading Ltd (another of Dr Wright's companies) against the Developers was also docketed to me. Since around June 2023, I have had significant involvement in the case management of these claims, resolving a variety of applications at numerous hearings.

10. The CCMC in the COPA claim took place before Master Clark on 1-2 September 2022, and directions were given down to the trial which was listed shortly thereafter to take place in January to February 2024.

11. Extended disclosure in the COPA claim took place on 7 March 2023. Both COPA and Dr Wright have produced further disclosure at various points.

12. In the COPA Claim, Dr Wright produced his list of Reliance Documents (i.e. the documents on which he would primarily rely to establish his claim to be Satoshi) on 4 April 2023, subsequently updated. 107 documents are listed. COPA produced its list of Challenged Documents (i.e. those documents the authenticity of which was challenged) on 5 May 2023.

13. My first real involvement came at a joint CMC in May 2023 in the Kraken and Coinbase claims. That led to the Joint CMC in the four actions held on 15th June 2023 at which I defined the 'Identity Issue' and ordered that the main trial in the COPA Claim would serve as the preliminary issue trial in the BTC Core Claim (see [2023] EWHC 1893 (Ch)). The Kraken and Coinbase defendants and the corporate defendants in the BTC Core Claim agreed to be bound by the outcome of the Joint Trial (their interests being represented by COPA), whereupon the claims against them were stayed pending the Joint Trial, following the provision of security for costs for the Kraken and Coinbase defendants and my resolution of certain other issues (see [2023] EWHC 1894 (Ch)).

14. Thus, at that point, the Developers were brought into the COPA Claim for the first time. I set revised directions for the Joint Trial (then due to commence on 15 January 2024) including directions aimed at enabling the Developers to catch-up with the progress of the COPA claim. The Developers had only recently finished serving their Defences in the BTC Core claim, so they had work to do to try to catch up. Disclosure in the COPA Claim was provided to the Developers on 19 June 2023.

15. Dr Wright and COPA exchanged factual witness evidence on 28 July 2023, albeit that further witness statements have been served from time to time, by agreement or order. The Developers served a single witness statement on 13 October 2023.

16. COPA served their expert evidence on forensic document analysis on 1 September 2023 (three of the appendices followed on 4 September, the subject of an agreed extension). This was a substantial report from Mr Madden which, with appendices, amounts to around 900 pages of material.

17. At a further CMC in mid-September 2023, I heard a number of applications, including for Dr Wright to answer a consolidated RFI and his application to adduce expert evidence on autism spectrum disorder (ASD). This resulted in my Judgment ([2023] EWHC 2408 (Ch)) and order dated 3 October 2023 in which I set revised directions to trial.

18. A further hearing took place on 12 October 2023, where the principal application was COPA's application to plead additional allegations of forgery. I handed down a reserved judgment from that application on 24 October 2023, ([2023] EWHC 2642 (Ch)), leading to my Order dated 31 October giving COPA permission to plead additional allegations of forgery against Dr Wright (limited to 50) and some further directions. All of these allegations originated from COPA's challenges to authenticity of documents disclosed by Dr Wright (i.e. the list of Challenged Documents served on 5 May 2023) but Madden 1 enabled COPA to plead forgery.

19. On 17 October 2023, I heard three applications in the BTC Core Claim, the principal applications being by the Developers for security for costs.

20. Meanwhile, on 8 September 2023, Dr Wright served his expert evidence on ASD, from Professor Fazel.

21. Expert evidence on digital currency technology was exchanged on 23 October 2023 and on the same day, Dr Wright served his expert evidence on forensic document analysis from Dr Placks. COPA served their reply expert report (Madden 2) on forensic document analysis on 17 November 2023.

22. COPA served its expert evidence on ASD on 21 November 2023 and on 30 November 2023 the ASD experts produced a helpful agreed joint statement.

23. On 8 December 2023, the Joint Statement from Mr Madden and Dr Placks was served. It addressed 47 of Dr Wright's Reliance Documents. The experts concluded that 32 had had their metadata manipulated to record non-contemporaneous date/time values or are unreliable on other bases. There is disagreement between the experts as to the remaining 15 of the 47. All 28 of the Reliance Documents in COPA's list of 50 forgeries are agreed to be manipulated or unreliable. 17 of the Reliance Documents referred to in Dr Wright's witness statement are agreed to have been manipulated or to be unreliable. In addition, the experts agreed that one of the sets of MYOB data purporting to show entries in 2009-2011 disclosed by Dr Wright was created in 2020, with the other set of MYOB data (provided to Dr Placks by Dr Wright as a reaction to the problems with the earlier data) created in 2023 and then backdated. The significance of at least some of the MYOB data was that they purported to support Dr Wright's purchase of the domain name at which the Bitcoin White Paper was first published.

24. In the revised directions down to trial (which I set in my Judgment of 31 October), the two main procedural steps remaining (apart from in the immediate run up to trial) were:

    i) the service of witness statements in reply on 1st December 2023. This was set *after* the conclusion of the expert evidence on forensic document analysis at the specific request of Dr Wright. He wanted to serve his reply evidence of fact having seen what the experts had said, albeit:

ii) The filing of a joint statement from the experts on forensic document analysis was to follow on 8th December 2023.

The Additional Documents

25. The 'Additional Documents' the subject of Dr Wright's application fall into three categories: (i) the '97 documents', (ii) certain LaTeX documents stored in Dr Wright's Overleaf account and (iii) the Documentary Credits Assignment Documents. I describe them in further detail below. The 97 are a selection from two USB drives which Dr Wright says he discovered in a drawer at his house on 15 September 2023.

26. Since one of the criticisms is that Dr Wright's side have been rather slow to deal with this recent discovery and that Dr Wright's side have been cavalier as regards his disclosure obligations, I should set out what then happened.

27. Arrangements were made to take forensic images of the two drives on 20 September 2023. Then on 2 October 2023, in solicitor's correspondence Dr Wright's then solicitors, Travers Smith LLP, gave a very brief account of the discovery of the New Drives, saying that Dr Wright had found a Samsung USB drive and a MyDigital USB which he claimed contained relevant documents. The following day, the solicitors for COPA, Bird & Bird LLP, wrote pointing out that no reliance could be placed on new documents without the Court's permission; asking for an explanation of the discovery of the drives and technical details; and requesting access to full forensic images. Three days after receiving that letter, Travers Smith came off the record.

28. On 11 October 2023, Shoosmiths (Dr Wright's new solicitors) wrote with an account of the discovery of the New Drives albeit one which COPA say was convoluted but again incomplete. Shoosmiths explained that the Samsung USB drive contained an image of a drive which Dr Wright had used when he worked at BDO (2004-2009) ("**the BDO Drive**"), although the USB stick itself had been bought in 2015/16. They said that they would not review material on these New Drives against the keywords ordered at the CCMC but would instead apply a much smaller range of keywords selected by Dr Wright. COPA say that this smaller range of keywords has never been explained, nor has any application been made to be released from the obligation ordered at the CCMC.

29. Then, on 13 October 2023, Shoosmiths served a long schedule of further chain of custody information. COPA say this is a striking document, which (in summary) casts doubt on most of Dr Wright's Reliance Documents by saying that they could have been or were altered by many people over the years. The schedule suggests in numerous places that "newly discovered" documents are more authentic copies of the Reliance Documents listed. Likewise, with his fourth witness statement of 23 October 2023 (answering COPA's Consolidated RFI), Dr Wright exhibited a schedule of drafts of the Bitcoin White Paper in his disclosure, stating in many cases that the document could have been altered by unnamed "*research staff and consultants*" (CSW5). COPA suggest that the position is that he has cast doubt on most of his Reliance Documents and has not since nominated any more.

30. After a further exchange of correspondence in which COPA pressed for further information and for access to the forensic images of the New Drives, Bird & Bird wrote on 23 October 2023 explaining in detail why the information and images were important and insisting that Dr Wright's selected keywords were inadequate. On 25

October 2023, Dr Wright gave disclosure of VOL008, containing 93 documents which had been obtained from the New Drives after searches against Dr Wright's self-selected keywords.

31. On 31 October 2023, Bird & Bird wrote again asking for access to the raw image of the BDO Drive, pointing out that the image itself was a disclosable document since it had been referred to repeatedly in Wright 4. They offered to enter into confidentiality terms to address concerns previously raised. Dr Wright did not agree to that proposal. On 8 November 2023, he gave disclosure of VOL012 containing 300 documents (again, identified on the basis of Dr Wright's self-selected keywords).

32. On 10 November 2023, in response to a Court order, Shoosmiths wrote to answer questions about the New Drives and their discovery. This letter stated (para. 8) that the BDO Drive had been captured on 31 October 2007 and that the Samsung USB stick contained another encrypted drive of which Dr Wright did not have the password. It stated that documents on the New Drives may have been edited while in use, but that Dr Wright had not since then manipulated any of them. Some correspondence followed, in which Bird & Bird reiterated COPA's request for access to the forensic raw image of the BDO Drive and maintained the position previously set out.

33. On 27 November 2023, Bird & Bird sent a letter detailing the disclosure history and the unsatisfactory position with Dr Wright's disclosure, pressing requests for information and access to the forensic raw image. Later that day, Shoosmiths wrote to say that Dr Wright would be disclosing yet more material, namely (a) 352 documents from the MyDigital USB drive omitted from previous disclosure; (b) some documents concerning his dispute with the Australian Tax Office also omitted before; (c) a few "newly discovered" documents concerning an LLM assignment from 2007; and (d) LaTeX files hosted on a web-based document editor known as Overleaf. Shoosmiths said that it was critical that Dr Wright should be permitted to rely upon the BDO Drive documents and the Overleaf LaTeX files in particular. In this letter, they raised for the first time their request for an adjournment of the trial and the further directions Dr Wright is now seeking.

34. COPA suggest that Dr Wright set his face firmly against provision of the BDO Drive image to COPA until 6 December 2023, when Shoosmiths finally wrote suggesting that they might agree to inspection subject to confidentiality terms. At that point, COPA say their evidence for this hearing, including Mr Madden's third report, was being finalised.

35. Although there is some substance to COPA's complaints and the process of producing the Additional Documents has been slow, I have to deal with the situation which presented itself at the PTR on 15th December 2023. I can now turn to Dr Wright's application.

36. On 1st December 2023, Dr Wright's Application Notice was issued, seeking (a) permission to rely on the Additional Documents, (b) an Order for disclosure of the White Paper LaTeX files and inspection of them on confidentiality restrictions set out in a Schedule to the draft Order (c) an Order adjourning the trial listed to begin on 15 January 2024 and (d) an Order for directions to the adjourned trial (with various steps specified).

37. I should mention the significance of some of the directions sought. Under the existing directions, Dr Wright was to file his evidence in reply on 1st December 2023. This deadline has passed without any reply evidence being served from Dr Wright. I detail below the evidence I have received on this application, but I have not been given any information as to what was done to meet that deadline nor as to progress since 1st December with a view to completion and service of that evidence.

38. The Application Notice was supported by three witness statements which I have read and considered carefully. Here I give a summary of their contents:

    i) **Wright 5**: explaining why the two drives were not previously included in his disclosure. It is fair to say that COPA do not believe this explanation, but I cannot resolve any issues over his explanation on this application and I proceed on the basis it is true.

    ii) **Wright 6:** a short witness statement confirming the facts and matters in Field 1 are true, and in particular his belief that '….the Identity Issue cannot fairly be determined with those documents being before the Court. For that reason I ask the Court to adjourn the trial and give revised directions to the adjourned trial, as set out in the Application.'

    iii) **Field 1** (18 pages). After her summary of the progress of the litigation, Ms Field turns to consider the Additional Documents, which in her statement are referred to as 'the paragraph 12.5 documents' which she divides into three categories:

        a) **The 97 documents** which were stored on the Samsung Drive, of which 95 were stored within the BDO Image, which are said by Dr Wright all to date from before 31 October 2007 and in respect of which he says he has not edited or amended any documents in the BDO Image since 31st October 2007. As Ms Field says: '*If that is correct, then the 95 documents are at least very strong evidence that Dr Wright is Satoshi Nakamoto, as is clear from their nature and contents*.' Ms Field has set out in Schedule 1 to her statement an explanation of the relevance of these documents based on information provided by Dr Wright which '*proceeds on the basis that the documents in the BDO Image were not modified since 31 October 2007'*. Ms Field makes one qualification: she refers to the Stroz Friedberg ('SF') memorandum and relates, as in Wright 5, that there are a number of data points identified by SF which require further investigation. Dr Wright accepts these points will need to be analysed by the parties' forensic experts when considering the provenance of the hard drives.

        b) **the LaTeX Documents**. In respect of these, Ms Field relates two key pieces of evidence from Dr Wright. In summary:

            i) The relevant LaTeX files are unique, such that mere possession of them is evidence of authorship of the White Paper.

            ii) It is practically infeasible to reverse engineer the LaTeX Code from the published Bitcoin White Paper (for two reasons which she sets out).

And she concludes:

> '34. The White Paper LaTeX Files are therefore of the highest possible importance for the trial of the Identity Issue, and that issue cannot fairly be determined unless Dr Wright is entitled to rely on these documents and have his case on the significance of these documents addressed in expert evidence.'

c) The Documentary Credits Assignment Documents. These are relied upon to rebut an allegation by COPA that the version of this document already disclosed was backdated to 2007 by forgery. Ms Field says:

> 'Given the seriousness of the allegation made by the Claimant, and the potential for these documents to answer that allegation, fairness requires that Dr Wright be permitted to rely on them.'

39. COPA responded to the evidence filed in support of the application by filing the following evidence, all dated 7th December 2023, in the form of:

i) Sherrell 18 (48 pages) which also exhibits three short statements of Mr Hinnant, Dr Loretan and Professor Macfarlane, each dealing with a short point, each of which is said to establish that documents on the BDO drive contain features which cannot date to 2007.

ii) The third expert report of Mr Madden, comprising 69 pages. I am told this report was prepared in 6 days.

iii) I need not relate the content of Sherrell 18 and Madden 3. It suffices to say that this evidence identified further anomalies (to use a neutral term) in the Additional Documents or their metadata, on the basis of which COPA allege there is additional evidence of fabrication and forgery of documents in these Additional Documents and, more generally, reason to disbelieve that significant documents date from 2007.

40. The Developers responded in the form of the witness statement of Lois Horne (14 pages), also dated 7th December 2023.

41. Very limited reply evidence was served in the form of Wright 7 dated 11th December 2023, in which Dr Wright responded only on the date and significance of some tweets from Mr Agar Hanssen, the former CEO of nChain, a company with which Dr Wright is closely associated.

42. Sherrell 19 dated 12th December 2023 was filed in response to:

i) Wright 7; and

ii) Provision of the BDO file listing which was sent to COPA only after their evidence had been filed. Mr Sherrell reports that Mr Madden was well advanced in his review of it, but that their own review at Bird & Bird over the weekend

had identified several points of fact which seem to further call into question the validity of the drive.

43. I received very helpful skeletons from all involved. Although recommended pre-reading was listed for 6 hours, in view of the significance of the application to adjourn in particular, I found it necessary to devote considerably more time to preparation. This enabled me to explore, via various requests I asked my clerk to send to the parties, some possible ways to ensure a fair trial could still take place within the existing trial listing. I emphasise that these requests were sent after I had considered the authorities cited in Dr Wright's Skeleton Argument.

44. My first set of requests were sent around 11am on Wednesday 13 December in the following terms:

> 'In advance of the hearing on Friday the Judge makes the following requests (having done some – but not complete - reading (which has included all the skeletons and most of the witness statements)):
>
> 1. He would like COPA and Dr Wright to consider whether there are practical limitations which can be imposed on each side's case so as to enable the trial to proceed in the existing trial listing.
>
> 2. More specifically:
>
> a. COPA should consider which of their currently pleaded 50 allegations of forgery may be repetitious and nominate their principal allegations.
>
> b. Dr Wright must produce an updated list of his Reliance Documents, with an indication of which such documents are the most important for his case.
>
> c. Both sides should produce an updated estimate of how long it would take to conduct forensic analysis of the 97 new documents, assuming forensic images are provided, and/or Dr Wright's selection of Reliance Documents from the 97.
>
> 3. He would also like an update as to Dr Wright's progress since 1st December 2023 in responding to COPA's allegations of forgery. Specifically, to which documents has he been able to formulate his evidence in response?'

45. COPA's response was set out in a letter from their solicitors to Dr Wright's (14 December 2023, Third Letter), which repeated a point from their letter of 13 December 2023, to the effect that COPA was willing to limit the focus of the pleaded forgery case at trial (albeit on the basis that the current trial date was maintained). To that end, they included a Schedule of the 20 Documents that they intended to focus on. They also made it clear that, in focussing on those 20, they would not be asking the Court to rule on the other 30 allegations of forgery, but reserved the right to lead evidence that those documents (and any other of the Challenged Documents) are inauthentic.

46. Leading Counsel for Dr Wright provided me with a lengthy response. In short:

i) They submitted that the problems in being ready for a trial on the 15 January 2024 were insuperable (for the various reasons set out);

ii) That they were not in a position to state which of the existing Reliance Documents and/or the Additional Documents were 'the most important' for Dr Wright's case because Dr Wright considered all these documents to be important and they form part of his case on the Identity Issue. Any further answer to the question would require a waiver of privilege, which would be improper.

iii) They also pointed out that Master Clark's direction on 2 September 2022 provided that the Reliance Documents comprise the documents on which Dr Wright '**primarily** relies in relation to the factual issue of whether or not he is the author of the Bitcoin White Paper' and that the list of such documents '**will not preclude [Dr Wright] from relying on other documents** in support of his case and may be updated from time to time to include further documents or to exclude documents'.

iv) On that basis, they submitted that 'Any further selection of 'the most important' Reliance Documents is therefore unlikely to impact the scope of the issues and evidence that will need to be considered at trial.'

v) In response to my question 3, they submitted that the subject of this question is privileged information although they were able to say that Dr Wright had been 'working assiduously on his reply evidence, alongside all other matters needing his attention in the run-up to trial. As explained in our Skeleton Argument, we remain satisfied that Dr Wright's reply evidence cannot be completed before 12 January 2024.'

47. In response to question 2(c), Counsel provided the following response:

> 'As explained in our Skeleton Argument, we are satisfied that forensic analysis of the 97 Documents cannot be completed before the scheduled start of trial. Having spoken to Dr Placks, he does not believe that he could complete the exercise of analysing the Additional Documents, including the 97 Documents, and examining the non-Reliance Documents alleged by COPA to be forgeries, before the end of January 2024 at the earliest.
>
> As already noted, Dr Placks will need to take account of Dr Wright's factual evidence about the computer environment in which he was working at material times. In their joint report, Mr Madden and Dr Placks agree on the importance to their analysis of "*contextual data regarding the provenance and transmittal of the subject files*" {Q/2/2}. Dr Wright is working to provide such textual information in his reply evidence.
>
> Allowing sufficient time for completion of these exercises will be essential to the fairness of the trial.

> The exercise that Dr Placks is required to complete cannot be compared to the much shorter exercise carried out by Mr Madden to produce his third expert report (apparently in six days, although we note that Bird & Bird has subsequently accepted that Mr Madden had access to the relevant documents for longer than that and had carried out "preparatory" work).'

48. Having made further enquiries as to the listing position, my second request was sent at around 2pm on Thursday 14 December 2023 and was in the following terms:

> 'On the assumption that Dr Wright is given permission to rely on the majority/all of the Additional Documents and possibly some other active case management as well, the parties are requested to propose (and if possible, agree) a timetable to the following alternative trial listings:
>
> 1) Trial hearing commences on 29th January 2024 with 1 day of oral openings, judicial pre-reading in the week before, evidence commencing on 30th January, and oral closing submissions on 5th-8th March 2024.
>
> 2) Trial hearing commences on 5th February 2024 with 1 day of oral openings, judicial pre-reading in the week before, evidence commencing on 6th February, and oral closing submissions on 12th-15th March 2024.'

49. COPA's solicitors, Bird & Bird LLP, responded later that day proposing a set of directions on the first alternative, and explaining that the second alternative would create some difficulties for their leading counsel in that he is under brief for another case in the week suggested for oral closing submissions. On that second alternative, which would enable various directions to be extended by a week, they pointed out that would give Dr Wright *more time* to produce his own factual evidence and his further expert evidence than his own application was asking for.

50. Dr Wright's team did not respond to either my second request or Bird & Bird's proposals. Furthermore, the way that Lord Grabiner KC set about his submissions at the hearing caused me to doubt that this second request had reached Dr Wright's side. However, my enquiry to that effect confirmed it had been received.

The issues for determination

51. Against that backdrop, I approach the issues for determination in the following logical order:

i) Dr Wright's application for permission to rely on some or all of the Additional Documents, which also includes a dispute over the terms as to confidentiality which should be imposed regarding the LaTeX documents.

ii) Dr Wright's application to adjourn the trial, in which a critical issue is whether it is possible to set a revised timetable to complete the steps necessary for all sides to be ready for a trial.

iii) Further Directions.

iv) The Developers Application for Further Security.

v) COPA's application for costs of the ASD issue.

vi) An issue over some evidence of the cryptocurrency experts.

vii) Various costs issues.

viii) Remaining PTR issues.

Applicable Legal Principles

52. These fall into three main areas namely, those applicable to the Application to Adjourn, to the Application to rely on the Additional Documents and whether I should determine at this hearing that the Additional Documents have 'no evidential value'. It is convenient to set them all out here because there is some cross-over. Although it may appear unfashionable to do so, I start with a reminder of the Overriding Objective, which underpins all these principles:

> 'The overriding objective
>
> 1.1.(1) These Rules are a procedural code with the overriding objective of enabling the court to deal with cases justly and at proportionate cost.
> (2) Dealing with a case justly and at proportionate cost includes, so far as is practicable –
> (a) ensuring that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence;
> (b) saving expense;
> (c) dealing with the case in ways which are proportionate –
> (i) to the amount of money involved;
> (ii) to the importance of the case;
> (iii) to the complexity of the issues; and
> (iv) to the financial position of each party;
> (d) ensuring that it is dealt with expeditiously and fairly;
> (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
> (f) enforcing compliance with rules, practice directions and orders.
>
> Application by the court of the overriding objective
> 1.2 The court must seek to give effect to the overriding objective when it –
> (a) exercises any power given to it by the Rules; or
> …
>
> Duty of the parties

> 1.3 The parties are required to help the court to further the overriding objective.
>
> Court's duty to manage cases
> 1.4 (1) The court must further the overriding objective by actively managing cases.
> (2) Active case management includes –
> (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
> (b) identifying the issues at an early stage;
> (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
> (d) deciding the order in which issues are to be resolved;
> …
> (g) fixing timetables or otherwise controlling the progress of the case;
> …
> (i) dealing with as many aspects of the case as it can on the same occasion;
> …and
> (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.'

The principles applicable to the application to adjourn the trial

53. Ultimately these principles were not really in dispute. The debate in submissions largely revolved around questions of emphasis as to the importance of ensuring a fair trial and the balancing exercise required in the exercise of the Court's discretion.

54. What follows is a distillation of the various authorities to which my attention was drawn by the parties. I can start by gratefully adopting the following passages from the judgment of Henshaw J. in *Barclays Bank v Shetty* [2022] EWHC 19 (Comm) which usefully encapsulate a number of the authorities relied upon by Dr Wright.

> '44. The decision to adjourn a hearing to a later date is a case management decision, to be exercised in accordance with the overriding objective (White Book note 3.1.3). The overriding objective includes, so far as practicable, ensuring that the parties are on an equal footing (rule 1.1(2)(a)), saving expense (rule 1.1(2)(b)) and ensuring that a case is dealt with expeditiously and fairly (rule 1.1(2)(d)).
>
> 45. If the Court concludes that it is necessary to adjourn a hearing in the interest of fairness, then it must be adjourned, for the court cannot countenance an unfair hearing.
>
> 46. Reviewing the principal cases cited by the parties in chronological order, in *Teinaz v Wandsworth LBC* [2002] EWCA Civ 1040, Peter Gibson LJ gave general guidance as follows:

> "20. Before I consider these points in turn, I would make some general observations on adjournments. Every tribunal or court has a discretion to grant an adjournment, and the exercise of such a discretion, going as it does to the management of a case, is one with which an appellate body is slow to interfere and can only interfere on limited grounds, as has repeatedly been recognised. But one recognised ground for interference is where the tribunal or court exercising the discretion takes into account some matter which it ought not to have taken into account … Although an adjournment is a discretionary matter, some adjournments must be granted if not to do so amounts to a denial of justice. Where the consequences of the refusal of an adjournment are severe, such as where it will lead to the dismissal of the proceedings, the tribunal or court must be particularly careful not to cause an injustice to the litigant seeking an adjournment. …
>
> 21. A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court and to the other parties. That litigant's right to a fair trial under Article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment."

47. In *Terluk v Berezovsky* [2010] EWCA Civ 1345 the Court of Appeal dismissed an appeal against the refusal of an application to adjourn, made on the eve of trial in a long-running case, to enable the defendant to obtain legal representation. The Court of Appeal made clear that the relevant question was whether the decision on the adjournment application was fair (§ 18). On the facts, the Court of Appeal said:

> "31. …The point on which Mr Davenport lays all emphasis is the fact that proper legal representation was now within the defendant's grasp if the judge would adjourn the case. If that meant three months' delay, it was, he submits, an entirely fair price to pay for equality of arms.
>
> 32. It is this which has given us the greatest pause. In deciding whether it was a factor which made it clearly unfair to proceed with the trial, however, it is necessary to look a little further. ...
>
> 33. What confronted Eady J, however, was an assertion that money, in a large sum and from a still mysterious source, was going to be available. What was strikingly absent was so much as a letter from McGrigors or any other firm of solicitors

> confirming their preparedness to act and the reliability of the promised funding. It is unsurprising in these circumstances that the judge took the view that there was "no clarity" about it. It was less significant in this situation that he was also dubious about counsel's availability. If sound evidence of dependable funding had been put before him, we might very well have held that individual counsel's availability was not a sufficient reason for denying the defendant the benefit of it. But what was critical for the judge, as it has to be for us, is that even on the Monday it appeared unlikely that an adjournment would achieve anything because there was no sufficient reason to believe that the promised money would materialise."

Terluk was, Dr Shetty says, an extreme case where there had been years of delay, to the claimant's disadvantage, and there was no prospect of the defendant obtaining legal representation in the future, but merely a vague promise of a large sum of money appearing from a mysterious source.

48. In *Solanki v Intercity Telecom Ltd* [2018] EWCA Civ 101 the Court of Appeal, reversing the judge, emphasised that the issue was one of whether it would be fair to hold the hearing. The appellant had sought an adjournment on the ground that, following further medical assessments, his doctor had advised him that he was not fit to stand trial. The court cited *Terluk*:

> "… the authorities make clear that, in reviewing the exercise of discretion, the Court of Appeal has to be satisfied that the decision to refuse the adjournment was not "unfair": for example, see *Terluk v Berezovsky* [2010] EWCA Civ 1345 (per Sedley LJ at paras 18-20), quoted below, particularly in circumstances where his right to a fair trial under Article 6 ECHR is at stake"

and the passages from *Teinaz* §§ 21 and 22 quoted above. On the facts, the court concluded:

> "44. In my judgment, therefore, this was one of the rare circumstances, as considered by Peter Gibson LJ in *Teinaz*, where an adjournment had to be granted, because not to do so amounted to a denial of justice. The consequences of the refusal of an adjournment in this case, apparently based on the judge's personal assessment of a litigant in person's health, notwithstanding the appellant's general practitioner's view that he was suffering from depression, were particularly severe. The appellant's defence was struck out and he was deprived of an opportunity to give live evidence, to cross-examine any of the respondents' witnesses or to call evidence on his own behalf. The respondents' evidence was adduced without any challenge since the two witnesses called did

> nothing more than state that their witness statements were true. Moreover, the appellant faced a claim for what, so far as he was concerned, was a substantial sum in damages and resultant legal costs.
>
> 45. I have no doubt that, on a proper evaluation of the relevant considerations, the appellant's Article 6 rights and the irreversible prejudice occasioned to him as a result of the refusal of an adjournment, clearly outweighed the costs and unavoidable inconvenience to the respondents that would have been occasioned by a short adjournment."

49. In *Bilta (UK) Ltd (In Liquidation) v Tradition Financial Services Ltd* [2021] EWCA Civ 221, the Court of Appeal held that a trial should have been adjourned where an important witness for the defendant, who was accused of dishonesty, was unable to attend trial to give oral evidence for bona fide medical reasons, but (in the light of a new and much improved prognosis) there was every reason to think that she would be able to attend if the adjournment were granted. The court considered authorities including *Teinaz, Terluk and Solanki*, and made the following statements of principle:

> "30. … the guiding principle in an application to adjourn of this type is whether if the trial goes ahead it will be fair in all the circumstances; that the assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist; that although the inability of a party himself to attend trial through illness will almost always be a highly material consideration, it is artificial to seek to draw a sharp distinction between that case and the unavailability of a witness; and that the significance to be attached to the inability of an important witness to attend through illness will vary from case to case, but that it will usually be material, and may be decisive. And if the refusal of an adjournment would make the resulting trial unfair, an adjournment should ordinarily be granted, regardless of inconvenience to the other party or other court users, unless this were outweighed by injustice to the other party that could not be compensated for."

and (by reference to the appellant's submissions):

> "49. Mr Scorey's propositions were as follows:
>
> (1) Whether as a matter of the common law's insistence on a fair trial, or the requirements of Article 6, or the application of the overriding objective, the test is the same, namely whether a refusal of an adjournment will lead to an unfair trial.
>
> I agree. This is a consistent thread from the early cases … which refer to a miscarriage of justice or an injustice, through

> *Teinaz* ("a denial of justice") to the more recent cases, which repeatedly identify the question as one of fairness: see in particular *Terluk* at [18] and *Solanki* at [32].
>
> …
>
> (3) When considering whether a particular outcome is fair, it should not be assumed that only one outcome is fair.
>
> This is established by the authorities: *Terluk* at [20], *Dhillon* [*Dhillon v Asiedu* [2012] EWCA Civ 1020] at [33(b)]. But equally in some circumstances there is really only one answer: see *Teinaz* at [20] ("some adjournments must be granted").
>
> (4) Fairness involves fairness to both parties. But inconvenience to the other party (or other court users) is not a relevant countervailing factor and is usually not a reason to refuse an adjournment.
>
> This is again established by the authorities. As to fairness involving fairness to both parties, see *Dhillon* at [33(a)], *Solanki* at [35]. As to the requirements of a fair trial taking precedence over inconvenience to the other party or other court users, see *Teinaz* at [21]. But Mr Scorey acknowledged, as can be seen from the earliest cases, that uncompensatable injustice to the other party may be a ground for refusing an adjournment."
>
> 50. While *Bilta* and *Solanki* concerned adjournment for medical reasons, the same framework, in particular the guiding principle of fairness, applies also when considering an application to adjourn so as to enable the applicant to be professionally advised and represented. In both *Bilta* and *Solanki*, the Court of Appeal, when setting out the applicable principles, cited *Terluk*: which, as noted above, concerned legal representation.
>
> 51. As to the circumstances in which legal representation is required in order for a hearing to be fair, Dr Shetty refers to the case law the European Court of Human Rights (ECtHR), which places the emphasis on effective participation….'

55. I end the quotation there because the remainder is concerned with aspects of the need for legal representation which do not arise here. However, I should also quote from [53]:

> '53. Barclays cited the decision of Coulson J in *Elliott Group Ltd v GECC UK (formerly GE Capital Corp)* [2010] EWHC 409 (TCC); [2010] 3 WLUK 11, where he said this:
>
> "7. The applicable principles on an adjournment application can be traced back to the overriding objective in CPR 1.1; the notes in the White Book at paragraph 3.1.3; and the decision

> of the Court of Appeal in *Boyd and Hutchinson (a firm) v Foenander* [2003] EWCA Civ 1516. In particular, the court must endeavour to ensure that:
>
> (a) the parties are on an equal footing;
>
> (b) the case is dealt with proportionately, expeditiously and fairly;
>
> (c) a proportionate and appropriate share of the court's resources is allocated to the case, taking into account the need to allot resources to other cases.
>
> 8. In paragraph 9 of the judgment in *Fitzroy Robinson v Mentmore Towers No 2* [2009] EWHC 3070 TCC, I identified a number of particular matters which may be relevant to a contested application for an adjournment, although at least some of these are specifically referable to applications made at the eleventh hour. They were:
>
> "(a) The parties' conduct and the reason for the delays;
>
> (b) The extent to which the consequences of the delays can be overcome before the trial;
>
> (c) The extent to which a fair trial may have been jeopardised by the delays;
>
> (d) Specific matters affecting the trial, such as illness of a critical witness and the like;
>
> (e) The consequences of an adjournment for the claimant, the defendant, and the court"
>
> 9. In essence, on an application of this sort, the court is faced with a balancing exercise between, on the one hand, the obvious desirability of retaining a fixed trial date (which promotes certainty) and avoiding any adjournment (which can only add to the costs of the proceedings) and, on the other, the risk of irredeemable prejudice to one party if the case goes ahead in circumstances where that party has not had proper or reasonable time to prepare its case."
>
> Coulson J concluded that the case could be properly and fairly prepared in the 4½ months remaining before the (unadjourned) trial date, and refused an adjournment.'

56. Lord Grabiner KC was critical of references to *Boyd and Hutchinson* and *Fitzroy* on the basis those cases did not properly reflect the emphasis in later cases on the overriding necessity of a fair trial. I have his criticisms well in mind.

57. The Developers drew my attention to the following passages in the very recent judgment of O'Farrell J in *IBM United Kingdom Ltd v LZLABS GmbH & Ors* [2023] EWHC 3015 (TCC), 29 November 2023. For reasons which appear below, I have included the emphasis added by the Developers in their Skeleton Argument:

> "18. When considering the exercise of such powers, the court must have regard to the overriding objective set out in CPR 1.1 , namely, that the court should deal with cases justly and at proportionate cost. That includes, so far as practicable: (a) ensuring that the parties are on an equal footing and can participate fully in proceedings and that parties and witnesses can give their best evidence; (b) saving expense; (c) dealing with the case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party; (d) ensuring the case is dealt with expeditiously and fairly; (e) allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases; and (f) enforcing compliance with rules, practice directions and orders.
> 19. No authority is needed for the proposition that there must be a fair hearing. The court must give the parties a reasonable opportunity to prepare and present their case. <u>But that does not entitle a party to unlimited preparation and hearing time, particularly where that would result in unacceptable delay to resolution of the dispute or loss of a fixed trial date</u>. When considering an application to adjourn a trial, the court must carry out a balancing exercise, endeavouring to manage the case so as to hold the trial date to which everyone has been working, whilst ensuring the least risk of irremediable prejudice to any party in all the circumstances of the case, which may necessitate revising the timetable or adjourning the trial." (emphasis added).

58. The Judge went on at [24] as follows:

> "24. Having decided that there is sufficient time between now and April 2024 to give the parties a fair and reasonable opportunity to prepare their respective cases, the court must balance the desire of the claimant to adjourn the trial against the consequences of any adjournment for the parties, the court and other court users. Mr. Stewart is correct that there are hidden costs to any adjournment which would only serve to increase the vast legal resources deployed on both sides in this case. <u>Further, the court is always reluctant to adjourn a trial date that has been fixed for many months in circumstances where other court users have been deprived of the opportunity to have their cases heard at such earlier date. Of greatest significance, the allegations against the defendants are very serious, with potentially far reaching consequences; it is unfair to keep them, and in particular the individual defendants, in jeopardy for any longer than is absolutely necessary for a fair disposal of the case."</u>

59. The emphasised passages presented Lord Grabiner KC with an opportunity roundly to criticise what he saw as COPA and the Developers advocating the wrong approach. He drew particular attention to the first sentence of paragraph 19 which he said identified the critical threshold point, and which he submitted they were missing.

60. As I indicated above, this was not a dispute of principle, but rather a difference in emphasis. It was clear to me that COPA and the Developers were not seeking an unfair trial, rather their position was that a fair trial could still take place (and on the basis of the existing trial listing).

61. Other authorities cited to me make the same points as are summarised by Henshaw J. and it is not necessary to lengthen this judgment further.

62. I agree entirely that there is an overriding consideration: the Court must be satisfied that it will be possible to have a fair trial. However, I do not see this as a separate or threshold question. In each case there is likely to be an iterative process in which the Court (assisted by the parties) has to consider all the other factors identified by O'Farrell J. with a view to achieving a fair trial: e.g. to assess what steps are required to be completed down to the trial, whether any limitations must be imposed, what resources each side can be expected to devote to the tasks and so on.

63. In view of some of the matters I have considered below, I emphasise the duty of the parties to assist the Court in active case management. In the present circumstances where it is a default on Dr Wright's side which has given rise to his application for an adjournment, this duty has some added force.

The principles applicable to the application for permission to rely on additional documents

64. COPA submitted as follows. If a party does not disclose documents by the time ordered for extended disclosure, the rules impose a sanction under CPR 57AD, para. 12.5, which states that a party may not rely upon such further documents without the permission of the Court or agreement of the parties. In *La Micro Group (UK) v La Micro Group Inc* [2022] EWHC 588 (Ch), the Court was faced with late disclosure of documents and an application to rely upon them. Refusing the application, HHJ Jarman KC said (at para. 6):

> "[On] such an application for permission, the matter does not proceed simply on a consideration of relief from sanctions. Wider issues have to be considered, such as why there was a failure to produce these documents in accordance with the disclosure regime, whether they can properly be dealt with, and whether it affects any trial that is listed."

He went on to consider these factors, noting as to the third that "*the risk that the trial will not proceed as listed or will not finish when envisaged is an important factor*" (para. 17).

65. I did not understand Dr Wright to dispute those submissions.

The principles applicable to whether the Court should determine at this hearing that the Additional Documents have no evidential value.

66. Based on the evidence filed by COPA in response to this application (specifically Sherrell 18, Madden 3 and Sherrell 19), COPA submitted that I should decide now that the Additional Documents have no evidential value.

67. Dr Wright acknowledges that COPA has adduced voluminous further factual and expert evidence designed to undermine the authenticity of the Additional Documents and that COPA alleges that at least some of the Additional Documents are forged and that Dr Wright's explanations about their provenance and significance are untrue. Dr Wright submits he must be given a fair opportunity to respond to this material. I agree. He also submits that these issues cannot be resolved at this hearing and they require a trial. Again, I agree.

68. In that regard, Counsel for Dr Wright warned me against conducting any sort of mini-trial and submitted that the Courts have repeatedly emphasised the need for particular caution before summarily determining on paper allegations of serious wrongdoing. For example, in **Allied Fort Insurance Services Ltd v Ahmed** [2015] EWCA Civ 841, the Court of Appeal allowed an appeal where the Judge had conducted a mini trial to resolve conflicts of evidence against a background of complex facts which would ordinarily be given and tested by cross-examination at trial. At [81], Sir Terence Etherton C emphasised that "*particular caution should be exercised before depriving a party of the opportunity of rebutting allegations of dishonest conduct*", citing with approval Sir Igor Judge P in **Wrexham Association Football Club Ltd v Crucialmove Ltd** [2007] BCC 139, at [57]:

> "I do not underestimate the importance of a finding adverse to the integrity to one of the parties. In itself, the risk of such a finding may provide a compelling reason for allowing a case to proceed to full oral hearing, notwithstanding the apparent strength of the claim on paper, and the confident expectation, based on the papers, that the defendant lacks any real prospect of success. Experience teaches us that on occasion apparently overwhelming cases of fraud and dishonesty somehow inexplicably disintegrate. In short, oral testimony may show that some such cases are only tissue paper strong."

69. As will be seen below, I am not going to engage in any sort of mini-trial. I propose to abide by the warnings in those authorities.

Dr Wright's application for permission to rely on some or all of the Additional Documents

70. I consider this issue in principle, recognising that the adjournment issue may require limitations to be imposed on the quantity of Additional Documents for which Dr Wright should be given permission.

71. There are effectively two main considerations. The first is the importance which Dr Wright ascribes to certain of the Additional Documents, especially the LaTeX documents and some of the 97 Documents. By way of example is this submission:

> 'In this case the Additional Documents are critical to Dr Wright's case, including his rebuttal of the serious allegations of fraud made against him. COPA does not and cannot deny the importance of these documents; to the contrary, the volume of evidence it has produced even for the purposes of the PTR demonstrates how important they are. The short point is that if

> the Additional Documents are authentic, they are likely determinative of the Identity Issue in Dr Wright's favour.'

72. In view of the emphasis placed on the importance of the LaTeX files on this application, it is moderately surprising to say the least that Dr Wright did not seek to rely on these files many months ago. His failure to do so cannot be blamed on the supposedly poor advice he received from previous solicitors that such files were not disclosable because, even long before he had to consider his obligations as regards disclosure, Dr Wright must have been aware of what he now says is the unique nature of the LaTeX files and the fact, on his case, that the Bitcoin White Paper was originally written in LaTeX.

73. However, issues of this nature must be left to trial. In this regard, in the course of the PTR hearing, in view of the reliance placed on some previous advice that Dr Wright said was given by a previous firm of solicitors (not Travers Smith) as recounted in Ms Field's witness statement regarding whether the LaTeX files were disclosable, I ruled that privilege in that advice had been waived. As it turned out, the advice was not recorded in any written form. Furthermore, those previous solicitors denied that any such advice had been given. I cannot decide any of these issues on this application. If they are to be ventilated, that must take place at trial.

74. The second main consideration is COPA's opposition to my giving permission. I have already touched on this. Although COPA put forward a number of criticisms of the way in which the Additional Documents came to light and made accusations of delay in the identification and production of these documents, I highlight two particular submissions which COPA made. First, that '*there is strong evidence that Dr Wright has fabricated his account of the discovery of the New Drives'* and second, '*There is strong evidence that the BDO Drive and the material it contains have been manipulated and subject to backdating*.'

75. These are serious allegations of deliberate fabrication and forgery of evidence. Even bearing in mind the content of the Joint Experts' Statement from Mr Madden and Dr Placks, I do not think it would be right to determine any issues of this nature at this hearing (particularly in circumstances where Dr Wright has not yet responded to these allegations), and I do not do so. I consider it is far better to examine the allegations from a neutral standpoint and consider how they can be brought to and considered at a fair trial. So I agree with Dr Wright that these allegations must be considered at trial.

76. Overall, I am left in no doubt that Dr Wright should have permission to rely on some or all of the Additional Documents, on certain conditions. Having reviewed Ms Field's Schedule which seeks to explain the significance of the 97 and her other explanations, I say 'some or all' for two reasons: first, even to my relatively uneducated eye, it is clear that some of the documents are more significant and important for his case than others; second, it will be recalled that Dr Wright remains under a case management direction to nominate his Reliance Documents.

77. In that regard, I was slightly surprised that Dr Wright's application did not include/propose a revised list of his Reliance Documents, since such a list would have provided a useful focus for the scale of the work to be completed before trial. For that reason, amongst my requests to the parties in advance of the PTR, I asked Dr Wright's side for an updated list of his Reliance Documents.

78. This was not provided. When, in the course of submissions, I asked why a revised list had not been produced, Lord Grabiner KC explained it was because permission to rely on the Additional Documents had not yet been given. Although the explanation was strictly correct, this approach was less than helpful.

79. Furthermore, if Dr Wright wishes to lessen the amount of work that he and his experts must undertake in order to be ready for trial, I consider he has it within his power to do so, by making an appropriate selection from the Additional Documents of those he considers central to his case. If, however, he wishes to rely on all the Additional Documents, he can do so in view of the seriousness of the allegations of fabrication and forgery levelled against his case, but that may mean his team must devote additional resources to the tasks which must be completed before trial.

80. One of the conditions on which I give permission to rely on the Additional Documents is that COPA are permitted to rely on the evidence in the witness statements of Mr Hinnant, Professor Macfarlane and Mr Loretan. Lord Grabiner KC raised a complaint that the witness statements of each of these witnesses covered evidence of both fact and an expert nature. It is true that each was invited to and did express an opinion. That does not mean, however, that the full machinery of CPR Part 35 must be brought to bear on each statement.

81. In *Fenty v Arcadia* [2013] EWHC 1945 (Ch), Birss J. had to deal with a number of issues at the PTR concerning whether certain passages in statements from so-called 'trade witnesses' were or were not expert evidence. He reviewed the relevant authorities in detail, but the point of interest for present purposes is his application of proportionality considerations. At [49] he considered the witness statement of the head of market at the defendant, Topshop. It comprised 46 paragraphs, but objection was taken to a single sentence in which she expressed an opinion which was plainly based on her experience in the trade. Birss J. ruled that this did not convert her entire evidence into expert evidence, that to impose the expert evidence regime as a result would be a sledgehammer to crack a nut and that it was outside CPR Part 35.

82. Although the three statements in issue here are different, I consider it would be disproportionate to impose the expert evidence regime in CPR Part 35. In the circumstances, I give COPA permission to rely on the three statements, including the brief expressions of opinion. If Dr Wright wishes to obtain similar short statements in response on these topics, they will be treated in an equivalent manner.

Confidentiality of the Overleaf LaTeX files

83. The LaTeX documents have not yet been provided to COPA or the Developers, pending the resolution of a dispute over the terms as to confidentiality which should govern the possession and use of those documents. Disputes as to confidentiality arise relatively frequently in the Patents Court and I am familiar with the decision of the Court of Appeal in *Oneplus v Mitsubishi* [2020] EWCA Civ 1562, [2021] FSR 13, and Floyd LJ's non-exhaustive list of points of importance drawn from the authorities at [39]-[40]. There is no dispute over the applicable principles and I keep those in mind.

84. In this case Dr Wright's team have refused to provide these LaTeX files unless under stringent terms as to confidentiality, whereas COPA and the Developers say that (a) no additional confidentiality terms are required but (b) they are prepared (adopting the usual pragmatic approach) to agree to the standard confidentiality terms set out in the

Patents Court Guide applying, pending further Order from the Court. They contend those terms are more than sufficient, at least in the first instance.

85. In her witness statement, Ms Field included her explanation as to why such stringent terms were necessary. It was said that the evidential value of the White Paper LaTeX files on Dr Wright's case lies in their unique nature (i.e. the fact that, on Dr Wright's case, only he has possession of them and that this puts him in the unique position of being able to compile an exact replica of the Bitcoin White Paper published by Satoshi Nakamoto. So this explanation appears to be founded on (a) the allegedly unique nature of the LaTeX code and (b) the assertion that it was 'practically infeasible' to reverse engineer the LaTeX code from a pdf version of the Bitcoin White Paper.

86. Even before taking account of the additional evidence served in relation to these issues, I confess I was unable to understand why such stringent confidentiality terms were required. However, COPA's evidence in answer showed that the two foundation points appear to be incorrect. There was also further correspondence regarding the LaTeX files which appeared to me further to undermine the necessity for such stringent confidentiality terms. Indeed, by the conclusion of argument, it appeared that Lord Grabiner KC was inclined to accept that the standard Patents Court confidentiality terms would be sufficient. I had already reached that conclusion and so stated at the hearing.

87. Accordingly, I directed that the Overleaf LaTeX files were to be disclosed to COPA and the Developers on the basis of the confidentiality terms as set out in the Patents Court Guide.

Confidentiality of the forensic images of the BDO Image/Samsung Hard Drive

88. A separate issue arose (on which I did not rule during the hearing) as to the terms on which forensic images of the BDO Image/Samsung Hard Drive should be disclosed. I received further submissions on this issue on Monday morning when the parties provided their comments on the non-agreed paragraphs of the draft Order.

89. As already mentioned, Dr Wright's evidence was that the BDO Image has not been altered since it was recorded on 31 October 2007. The purpose of requiring disclosure of the forensic image of the BDO Image on the Samsung Hard Drive is so that the forensic document analysis experts can carry out their checks on the authenticity of the data in that Image. It is not, despite COPA's complaints about the disclosure process, for the purpose of allowing a review of the disclosure process nor for allowing keyword searches to be carried out by COPA applying the keywords set at the CCMC.

90. Dr Wright maintained that it would be wrong in principle to require him to provide inspection of (a) privileged and (b) irrelevant documents to COPA and the Developers. Dr Wright therefore proposed that the forensic image be provided to Mr Madden on terms that he could not without Dr Wright's permission, disclose to any person (including COPA, the Developers and their legal advisers) the contents (other than metadata) of any document contained on the Samsung Hard Drive of which inspection had not previously been provided to COPA and the Developers in these proceedings (including any privileged information or documents identified to Mr Madden by Dr Wright's legal representatives).

91. COPA pointed out that the BDO Image should not contain any documents or information confidential or privileged in the hands of BDO, and that the risk of the BDO Image (bearing in mind it is said not to have been altered since October 2007) containing any privileged information of any interest to COPA or relevance to these proceedings was effectively zero. COPA also submitted that Dr Wright's proposal might give rise to serious problems for Mr Madden if he was not able to inform COPA of material on the BDO Image/Samsung Drive save for the content of disclosed documents. They pointed out that Mr Madden might find documents on the Image which are not directly relevant but are inconsistent with the purported dating of the BDO Image. They submit Mr Madden should be able to discuss such matters with COPA's solicitors without having to go through Dr Wright's solicitors first. Ultimately COPA submitted that any confidentiality/privilege concerns are met through the use of the Patents Court standard confidentiality terms.

92. Even though I agree that the risk that the BDO Image contains privileged material seems to be very remote indeed, I bear in mind it is COPA's case that the BDO Image or important parts of it do not date from before October 2007.

93. In these circumstances, neither side's proposals seem to me to be a complete solution to the potential problems which have been identified. In my view, Mr Madden should be able to investigate whatever metadata can be gleaned from the BDO Image/Samsung Hard Drive which may bear on either (a) the authenticity of the documents on that Image or (b) the dating of that Image to October 2007. After all, that is the purpose, as I understand it, of the disclosure of the forensic image.

94. To take account of the remote possibility that the BDO Image contains any confidential or privileged documents, I believe the solution is as follows. Whilst I hesitate to increase the burden on Mr Madden, I believe he can be educated fairly swiftly as to what to look out for as indicating a privileged document. If he is in any doubt about whether a particular document is privileged, he should refer that document to Dr Wright's solicitors for their view. If they contend the document is privileged, then the document should not be shown to COPA's solicitors, albeit that Mr Madden remains free to refer to the *metadata* of such documents, if relevant to authenticity/dating of the BDO Image, provided that the content of such documents is not revealed.

95. In relation to documents not already disclosed but in respect of which Mr Madden does not believe there is any issue over privilege, Mr Madden remains free to refer to the metadata of such documents if relevant to authenticity/dating of the BDO Image and may identify such documents to the solicitors for COPA and the Developers. If any of these documents appear to be confidential (but not privileged), then the solicitors will, I am sure, take appropriate precautions and hold them subject to the confidentiality terms as set out in the Patents Court Guide. I hope that these arrangements will not cause Mr Madden any difficulty, but if they do, he can apply to the Court in writing for directions.

Dr Wright's Application to Adjourn the Trial

96. The principal application was Dr Wright's Application to Adjourn the trial. The application was founded on this conclusion in the witness statement of Ms Field, which in turn was based on the preceding paragraphs of her witness statement, which I consider below:

> '45. In the light of the developments set out above, Dr Wright cannot fairly or realistically meet the current deadlines for service of his reply witness statements of fact or completion of expert evidence on forensic document analysis. Further time is required to:
>
> 45.1. enable Dr Wright to address the Claimant's forgery allegations,
>
> 45.2. enable him to disclose the further documents identified in paragraph 19.2 above [these are the LaTeX documents] and
>
> 45.3. enable the parties to produce the further expert evidence identified in paragraph 39 above [in three categories, two for the experts in forensic document analysis and the third for a new expert on LaTeX files].
>
> 46. My firm believes that the service of reply witness statements of fact and completion of expert evidence on forensic document analysis needs to be postponed until at least 12 January 2024 and recognise that this will inevitably require an adjustment to the start date of the trial. However, the additional matters identified above (i.e., provision of further disclosure by Dr Wright, preparation and service of reply witness statements and preparation and service of further expert evidence) could be completed in time for the trial to start on 19 February 2024.'

97. In the following paragraph, Ms Field set out proposed revised directions to an adjourned trial commencing on 19 February 2024. This was characterised in Counsel's Skeleton Argument as a 'short adjournment'. Her proposed directions down to the new proposed trial date were as follows:

> 47.1. Service of factual witness statements and simultaneous exchange of further expert evidence on 12 January 2024;
>
> 47.2. Completion of the joint expert process by 2 February 2024;
>
> 47.3. Filing of agreed trial bundles by 7 February 2024;
>
> 47.4. Filing and exchange of skeleton arguments for trial by 12 February 2024;
>
> 47.5. The trial to start on 19 February 2024 …

98. As Mr Gunning KC for the Developers pointed out, in Ms Field's proposed timetable, once the step in [47.1] has been completed, there remains just over 5 weeks until that proposed start of the trial, providing plenty of opportunity for squeezing that period to facilitate a slightly earlier trial date.

99. I should point out that Ms Field's statement as to her firm's belief in her [46] is founded on her evidence in her [40] (quoted in full below) that 'Having spoken to Dr Placks, Dr

Wright's expert on forensic document analysis, he could not realistically produce a report on these matters before 12 January 2024.'

100. On the point as to whether there would only be a 'short' adjournment, initial enquiries of the Chancery Lists indicated that Ms Field's timetable would result in a very much longer adjournment. For example:

i) In the absence of expedition, and applying a normal listing approach, the earliest that a 26-day trial would be listed would be June 2025.

ii) If I retained the trial as the docketed Judge, the earliest the trial could come back is January 2025, and that would necessitate a degree of expedition.

iii) Even if I released this trial to another Judge of the Chancery Division, the earliest it could take place would be October 2024 and such a listing would require me to certify a significant degree of expedition. I do not regard this option as particularly attractive for two reasons: first, because such a listing would necessarily displace probably several other cases which have been waiting their turn to be heard; second, because, from my current viewpoint, I anticipate that there is likely to be considerable emphasis at trial on the way this case has progressed to trial, over the period when I have been actively managing the litigation, and my knowledge and experience of this litigation would be lost. I am not saying this would be insurmountable, but it is a factor.

Dr Wright's position

101. I recognise that insisting on the trial proceeding according to its current listing (i.e. commencing on the 15th January 2024) would impose a significant burden on Dr Wright, his legal team and experts and would create a significant risk of the trial process not being fair, and I recognise also that the overriding factor arising from the authorities I have discussed is that I must endeavour to ensure a fair trial.

102. However, it is clear to me that, at this point, the Court should not simply throw up its hands and grant the adjournment sought. The Court is required to further the Overriding Objective and the parties are required to help the Court in that endeavour. In this situation, furthering the Overriding Objective means looking for ways to actively manage this litigation and the Identity Issue in particular, so that it can be determined, if possible, in the existing trial listing which was set in July 2022, 18 months ago.

103. When I speak of the 'existing trial listing' I refer to the entire period which has already been set aside for the Joint Trial (i.e. from 15th January to 8th March 2024).

104. First, I must have regard to all the work which is required to be done on Dr Wright's side before the trial can commence.

105. In her witness statement, Ms Field conveniently divides this work into two parts: the additional work caused by the introduction of the Additional Documents and completion of the work under the existing timetable.

106. In relation to the first category of work, Ms Field states as follows in her witness statement:

> '39. If Dr Wright is permitted to rely on the Paragraph 12.5 Documents, my firm believes that expert evidence will be required on the following matters that are not currently topics addressed by the parties' existing experts:
>
> 39.1. The authenticity of the White Paper LaTeX Files and some at least of the 97 Documents and Documentary Credits Assignment Documents;
>
> 39.2. The provenance of the Hard Drives, including the date(s) on which the BDO image on the Samsung hard drive was captured and accessed prior Dr Wright's discovery of the Hard Drives during September 2023; and
>
> 39.3. The significance of the White Paper LaTeX files, how precisely they reproduce the Bitcoin White Paper and the extent to which (if at all) source code capable of compiling a precise replica of the published version of the Bitcoin White Paper can be reverse-engineered.
>
> 40. My firm anticipates that the first two categories above will be capable of being addressed by the parties' existing experts on forensic document analysis, though they will of course need time to consider the issues and prepare reports. Having spoken to Dr Placks, Dr Wright's expert on forensic document analysis, he could not realistically produce a report on those matters before 12 January 2024.
>
> 41. The third category of expert evidence referred to above, concerning the significance of the White Paper LaTeX Files, is not on its face a matter of forensic document analysis, and so my firm anticipates that it will fall outside the expertise of both parties' experts on forensic document analysis (and for his part, Dr Placks has confirmed that it is not a matter he is qualified to opine on). My firm is presently investigating who might be a suitable expert in this field, but any such person would need time to consider the White Paper LaTeX Files and the Bitcoin White Paper, and produce a report of their findings. That is an exercise that could take some considerable time.

107. As for the second part of the work required, Ms Field says this:

> 42. Furthermore, the need to obtain further expert evidence (and instruct a new expert in a new discipline) arises at a time when Dr Wright is already facing an insurmountable burden in properly preparing his evidence and case within the existing timetable:
>
> 42.1. The Schedule of forgery allegations attached to the Claimant's RRRAPOC (the "Forgery Schedule") was served on 30 October 2023. It runs to 102 pages and contains detailed factual, opinion and expert forensic allegations concerning each

of the 50 documents alleged by the Claimant to have been forged.

42.2. As foreshadowed by Dr Wright at the hearing before Mellor J on 12 October 2023, responding to the new allegations of forgery made by the Claimant in the Forgery Schedule is a very substantial exercise that has placed an additional heavy burden on Dr Wright at a time when there has been a considerable amount of other work to be done to meet the directions to trial.

42.3. The documents that the Claimant asserts to be forgeries include 21 documents that are not relied upon by Dr Wright as Reliance Documents and have not been addressed by Dr Placks, in his expert report dated 23 October 2023 ("Dr Placks' Report"). Dr Placks only had 7 weeks to respond to Mr Madden's first report ("Mr Madden's First Report"), which runs to over 1,000 pages including Appendices. By contrast, Mr Madden had approximately 5 calendar months in which to prepare his First Report. Dr Placks had no practical option in the time available to him but to focus on the Reliance Documents analysed in Mr Madden's First Report.

42.4. Fairness requires that Dr Placks be given a proper opportunity to address the 21 non-Reliance Documents that are now alleged by the Claimant to be forgeries. However, Dr Placks is currently working on the experts' joint statement as well as having to consider Mr Madden's Reply Report. Mr Madden's Reply Report (which was served on 17 November 2023 and runs to 172 pages including Appendices) raises yet further allegations to which Dr Placks will need to respond, but which Dr Placks has had limited time to consider. These include new allegations of forgery and/or manipulation concerning:

42.4.1. Dr Wright's Chain of Custody table (Appendix PM43 to Mr Madden's Reply Report);

42.4.2. Dr Wright's documents related to the Bitcoin White Paper (Appendix PM44 to Mr Madden's Reply Report);

42.4.3. matters arising out of Dr Wright's 4th witness statement, including new allegations of forgery relating to videos showing Dr Wright accessing the Anonymous Speech account through which he established the satoshi@anonymopusspeech.com and satoshi@vistomail.com email accounts during 2008 (Appendix PM45 to Mr Madden's Reply Report).

43. As already explained, Dr Placks cannot complete the exercises required of him any earlier than 12 January 2024.

44. Dr Wright is also required to file any responsive witness statement by 4pm on 1 December 2023. This is entirely

> unrealistic in light of the volume, complexity and seriousness of the allegations to which Dr Wright needs to respond, the burden of doing so having been exacerbated by the piecemeal manner in which the Claimant has introduced its allegations of forgery against Dr Wright. As to this:
>
> 44.1. As explained above, the Forgery Schedule makes 50 individual allegations of forgery and runs to 102 pages of allegations, but also frequently cross-refers to and relies on Mr Madden's First Report, which itself runs to over 1,000 pages including Appendices. Many of the allegations are technical in nature, and require investigation in order to understand and respond to. As already noted, Professor Madden produced his report over a 5-month period.

108. In relation to the work required to meet obligations under the existing timetable, I was interested to know how much progress had been made by the time of Ms Field's statement and how much progress has been made in the two weeks since. In other words, a progress report on how far Dr Wright had got in formulating his answers to the forgery allegations. A progress report would not require advance disclosure of his evidence or any waiver of privilege, but simply some indication of how many allegations he had dealt with and how many remained outstanding.

109. It was for this reason that I was somewhat surprised at the nil return answer received to my third question in my second request. Even if I am wrong on privilege, I remain of the view that the Overriding Objective required some assistance from Dr Wright's team informing the Court as to their perception of the scale of the task, how much had been completed, how much remained and a reasoned estimate of the time required for completion, as opposed to conclusory statements.

110. Ms Field concluded as follows:

> '45. In the light of the developments set out above, Dr Wright cannot fairly or realistically meet the current deadlines for service of his reply witness statements of fact or completion of expert evidence on forensic document analysis. Further time is required to:
>
> 45.1. enable Dr Wright to address the Claimant's forgery allegations,
>
> 45.2. enable him to disclose the further documents identified in paragraph 19.2 above and
>
> 45.3. enable the parties to produce the further expert evidence identified in paragraph 39 above.
>
> 46. My firm believes that the service of reply witness statements of fact and completion of expert evidence on forensic document analysis needs to be postponed until at least 12 January 2024 and recognise that this will inevitably require an adjustment to the start date of the trial. However, the additional matters identified

> above (i.e., provision of further disclosure by Dr Wright, preparation and service of reply witness statements and preparation and service of further expert evidence) could be completed in time for the trial to start on 19 February 2024.

111. As I have mentioned, the reply evidence from Dr Wright's side was extremely limited and none of it addressed the work which remained to be completed or the time within which it could be completed.

112. Instead, as noted above, I received via Counsel, a revised estimate of how long it is said Dr Placks would require to complete his work i.e. that he would not be able to complete his work before the end of January 2024, a point which was repeated by Lord Grabiner KC in his oral submissions, but only in response to a question which I posed. In that regard, I accept the underlying point that the scale of the work might have increased somewhat following the service of Sherrell 18 and Madden 3, but the estimate provided in Field 1 cannot have been provided on the basis that no challenge would be made to any of the Additional Documents – that would have been wholly unrealistic.

Analysis

113. During my pre-reading it occurred to me that Dr Wright's team might be attempting to present the Court with a *fait accompli*, so far as adjournment was concerned. I gained this preliminary impression due to the conclusory statements made in Ms Field's evidence and the related submissions in Dr Wright's Skeleton Argument. I was not given any of the underlying information which would have enabled COPA, the Developers and the Court to make a more informed assessment of how much work had already been done in dealing with the existing allegations and how much work remained to be done.

114. The absence of this information was all the more surprising in view of the fact that Dr Wright was seeking an extension of time for service of his witness statement in reply. The authorities are quite clear that before an extension is granted, the litigant must inform the Court as to the steps taken to attempt to meet the deadline, what remains to be done and how long it will realistically take.

115. I accept that these considerations have been partly overtaken by the permission I have given to rely on the Additional Documents. In respect of those, I must form a view, based on the information before the Court, as to the scale of the work required to ready the issues they raise for a fair trial.

116. Whether my preliminary impression was justified depended on how Dr Wright's side reacted to my requests and exploration of active case management options which might lead to the conclusion that a fair trial was possible in the current trial slot.

117. COPA and the Developers prepared and served their evidence in answer to the application speedily on 7th December, and left Dr Wright in no doubt that his Additional Documents raised similar issues as to fabrication of evidence, forgery, manipulation of metadata etc as he was already facing. The sense of urgency displayed by COPA and the Developers in this and other aspects of this case was entirely appropriate in view of the circumstances. In my view and despite an impressive legal team on Dr Wright's side, a suitable sense of urgency appeared to me to be largely absent.

118. Furthermore, it is unfortunate that Dr Wright's team did not engage more constructively with my requests and attempts at active case management. In relation to the two alternative trial dates which I asked the parties to consider, Lord Grabiner KC explained his side's lack of engagement on the basis that they did not have *instructions* to propose a date other than the 19th February 2024 (as set out in Ms Field's evidence and the application). This response was inadequate. It was one of several indications that Dr Wright's side was not prepared to assist the Court in actively managing this case to a trial in the current trial slot, contrary to their duty, albeit I do rely on one helpful suggestion made by Lord Grabiner KC towards the end of the hearing (see below).

119. I also formed a preliminary view that the initial estimate that Dr Placks could not complete his work before 12th January 2024 involved little sense that an appropriate degree of urgency had been taken into account in view of the circumstances.

120. However, it is necessary to take into account that circumstances changed between the launch of Dr Wright's application and this judgment. In my view, the principal changes involved:

    i) The additional challenges by COPA regarding the Additional Documents, as indicated in Sherrell 18 and Madden 3.

    ii) The need for additional expert evidence on the LaTeX documents.

    iii) COPA's offer to limit their existing forgery allegations to the 20 documents listed in the Schedule appended to Bird & Bird's Third Letter of 14 December 2023 (albeit offered on the basis that the trial would commence on 15 January 2023).

    iv) My offer to push the trial back so that it commenced on 5th February 2024, providing further time for preparation of evidence, even though it caused some difficulty for COPA's leading counsel and for the Court.

    v) One proposal helpfully made by Dr Wright that Stroz Friedberg could take on the burden of addressing the forensic document analysis of the Additional Documents (but not including the LaTeX documents), thereby reducing the amount of work required of Dr Placks.

121. I bear in mind that there is a significant difference between the position on Dr Wright's existing Reliance Documents and the Additional Documents. On the existing Reliance Documents, I had understood initially that they had been under his control throughout. Yet, after Madden 1 had been served, the 'chain of custody' information served by Dr Wright seems to indicate the documents had been under the control of other persons who might have been responsible for the changes in metadata.

122. So far as the Additional Documents are concerned, they stand in a different position. There is clear evidence (in Field 1, confirmed in Wright 6) that at least the 97 were solely under the control of Dr Wright after 31 October 2007. I have less information about the Overleaf LaTeX files, but since this is an online account personal to Dr Wright, and in the absence of any evidence to the contrary, I proceed on the basis that those documents have also been solely under the control of Dr Wright. There is almost no evidence about where the new Documentary Credits Assignment Documents have

come from or why they were not disclosed months ago, but these are of far lesser significance than the 97 or the Overleaf LaTeX documents.

123. Thus, the position is simpler in relation to almost all of the Additional Documents, although I bear in mind that this means the burden of dealing with the allegations relating to those documents falls more heavily on Dr Wright. I also have in mind his ASD, but it appears from Ms Field's evidence that he is able to work long days on this case without dysregulation.

124. So far as the LaTeX documents are concerned, the issues appear to be relatively straightforward and self-contained so there is considerable reason to doubt that the exercise of finding a suitable expert and the production of a report 'could take some considerable time', as Ms Field submitted.

125. Although I have given anxious consideration to all the submissions made on behalf of Dr Wright and considered the position carefully, I have reached the conclusion that a fair trial can take place if the trial is set to commence on 5th February 2024 (i.e. the second alternative set out in my second request on 14 December 2024). In reaching this conclusion, I am not persuaded that Dr Wright's substantial team cannot complete all the evidence they wish to present at trial in a suitable timetable down to 5th February.

126. I announced that conclusion towards the end of the PTR hearing and renewed my invitation to Dr Wright's team to engage in attempting to agree a set of directions down to that revised start date. I am very grateful to all three sides for their efforts towards agreeing the terms of an Order from the PTR. On Monday I was presented with a draft Order and the rival contentions on the directions in dispute which were very helpful.

127. I have resolved those rival contentions in the Order. However, there are three points I should mention here.

128. The first concerns evidence from Dr Wright in reply. COPA asked for Dr Wright's evidence in reply to be served in two tranches, one now and the second later. Dr Wright opposes such a direction saying splitting preparation of his witness statement in reply 'is not feasible, especially given the interrelationship of many issues'.

129. Dr Wright has had Mr Madden's first report for more than three months, although I must keep in mind that he has had COPA's pleading of their 50 additional forgery allegations for less time, only since 31st October 2023. He ought to have made some significant progress by now in preparing his evidence in reply. In the circumstances, I consider Dr Wright should serve his witness statement in reply in two tranches and I direct that he must serve a witness statement by 4pm on Thursday 21st December 2023 containing such of his reply evidence as he has been able to prepare. The balance of his reply witness statement must be served on or before 12th January 2024. I do not agree that splitting his reply evidence is not feasible. If he wishes to expand in the second tranche on something he has said in the first, he can do that.

130. The second point concerns the lists of Reliance Documents, Challenged Documents and COPA's allegations of forgery. I have set dates in the PTR Order for service of updated lists of Reliance Documents and Challenged Documents and for COPA to give notice of which of the Additional Documents are alleged to be forgeries, albeit that Dr Wright has notice from Sherrell 18 and Madden 3 of what I suspect will be the bulk of such allegations.

131. That leads to the third point. In view of the Additional Documents, I consider it right to limit COPA's existing allegations of forgery to the 20 documents listed in the Schedule appended to Bird & Bird's Third Letter of 14 December 2023. I propose that COPA should be permitted to add a maximum of 20 further allegations of forgery relating to the Additional Documents, which must be pleaded in due course.

132. It should be apparent from this analysis that my overriding concern has been to ensure that a fair trial can take place. I should however mention the position of COPA and the Developers which I consider in the next section. It was my consideration of the difficulties they would face if the trial had to be adjourned for a substantial time which was a driver for my exploration of various active case management steps (including those discussed above) which would enable a fair trial to take place within the existing trial slot.

Prejudice to the Developers, COPA and others which would be caused by a lengthy adjournment

133. I received evidence from both COPA and the Developers as to the prejudice they would suffer if this trial were to be adjourned, whether to October 2024 or January 2025. This evidence was brushed aside in Dr Wright's Skeleton, on the basis that the unfairness to Dr Wright of proceeding without an adjournment outweighed any prejudice which 'might be asserted by COPA and/or the Developers'.

134. The Developers submitted that the consequences of an adjournment would be grave and unacceptable to them. The principal point was that the present proceedings weigh heavily on the individuals, along with the related Tulip Trading claim. In their BTC Core Claim Form, the BTC Core Claimants estimated the value of the claim '*could be in the hundreds of billions of pounds'* – this in circumstances where the Developers do not stand to gain anything even if they win and even in that event, the Developers stand to be considerably out of pocket since it is well-known that litigants are very unlikely to recover all their costs even if they are awarded on the indemnity basis.

135. There is considerable force in this point, particularly bearing in mind some of the unpleasant threats which have been made by Dr Wright on social media against certain of the Developers, and never, so far as I am aware, withdrawn let alone been the subject of any apology. Whilst these threats have been mentioned to me before in general terms, I have gained a better understanding of them from the witness statement of Mr Lee, a board member of COPA, who describes the chilling effect of Dr Wright's threats on the willingness of individuals to get involved in the maintenance of parts of the Bitcoin system of which Dr Wright does not approve. I refer to Dr Wright's explicit threats published on social media to bankrupt developers, destroy their families, imprison them and even defenestrate one individual (the latter threat made even more graphic by the accompanying photograph of a man who appears to have just been defenestrated from a high building).

136. The other points taken by the Developers have less weight but retain significance. Their second point concerns the alleged factual overlap between this claim and the TTL claim. Even if the factual overlap is somewhat elusive, it is true that it would be preferable to have the Identity Issue determined before the preliminary issue in the TTL claim and adjournment of the Identity Issue Trial would be likely to lead to further delay in the determination of the TTL claim. Third, the Developers also point to the fact that an

adjournment would have knock-on consequences for the proceedings between Dr Wright and Magnus Granath in Norway and in England (both stayed pending the outcome of the Identity Issue Trial), and, it is said, 'subvert the basis on which a stay was granted in the Coinbase and Kraken proceedings'. Fourth, the Developers point to the turbulence in these proceedings which has resulted in considerable costs exposure on their part (albeit they have secured considerable sums by way of security for their costs), and the possibility that their leading counsel would not be available for the adjourned trial.

137. COPA made similar points. In addition, COPA made a series of submissions of the same import as those I discuss above in paragraphs 72 and 75 above. For the same reasons, I decline to decide any of these points and therefore leave these allegations of deliberate fabrication and forgery entirely out of account. Overall, COPA submitted that an adjournment would cause serious disruption to COPA, the Developers and all the parties which agreed to stay proceedings against them, plus very significant wastage of costs. I agree.

138. COPA also submitted, albeit very much as a fall-back position, that if an adjournment was to be ordered, it should only be on the basis that Dr Wright pays the costs thrown away by the adjournment. It is clear to me that these costs would be very considerable. COPA submitted the costs thrown away by an adjournment to next year would be around £1m. That might be a slight exaggeration, but the costs thrown away could easily be well in excess of £0.5m.

139. With the principal applications decided, I can deal relatively succinctly with the remaining issues which were argued at the PTR.

The Developers' application for further security for costs

140. By way of a brief recap, at the hearing on 17th October 2023, I ordered security for the Developers' costs in the total sum of £650,000, comprising £250,000 for the costs incurred down to that hearing, £300,000 for the remaining steps down to and including this PTR and £100,000 to cover the costs of junior counsel attending the trial.

141. By way of introduction to his application for further security for costs, Mr Gunning KC addressed me on the reasons why the Developers should take an active role in the Joint Trial. For Dr Wright, Mr Bergin KC reminded me of the observations I made my judgment on 17th October 2023 at [29]-[31] as to why I did not order security to cover the cost of leading counsel attending the Joint Trial. In particular:

> '30. I wish to make it clear that I am not excluding the Developers from participating in the trial through the presence of leading counsel, but either shortly before or at the PTR, I will certainly be prepared to hear further submissions from the Developers as to the need, if they are so advised, as to the level and likely cost of their representation at the trial.
>
> 31. Even if I am persuaded that some representation by way of leading counsel is required at the trial, I will need significant evidence to persuade me that leading counsel will need to block out the entire trial period and be paid accordingly. I anticipate that insofar as the Developers need to make any representations

> at trial, the trial can be organised so as to accommodate any representations on behalf of the Developers at suitable points, and that is a matter of timing to be discussed further at the PTR.'

142. However, through the reasonably extensive pre-reading I had to carry out for this PTR, I am now considerably better informed as to the position of the Developers. I have highlighted various aspects of their position above, in particular that they are defendants to Dr Wright's very substantial claim against them, and have had various unpleasant threats made against them. I am satisfied that it cannot be assumed that their interests entirely coincide with those of COPA and I am also satisfied that they should be permitted to be present via leading and junior counsel to be able to represent the Developer's interests at the Joint Trial.

143. I should add that, thus far, the signs are that the Developers have acted in an entirely proportionate manner, co-operating with COPA to avoid duplication of work but making such contributions as the Developers are able to add to the issues. I see no reason to doubt that they will continue to act in this way.

144. For these reasons, briefly expressed, I approach the Developers' application for further security on the basis that they can and will be represented at the Joint Trial by leading and junior counsel. Their schedule of costs indicates that the work required to represent their interests falls principally on Counsel, with relatively minimal costs being incurred by Macfarlanes LLP, their solicitors.

145. I need not repeat the considerations set out in my October ruling, although I remind myself I must consider principally the position of the Second Claimant in the BTC Core claim, plus Dr Wright's ability to be a 'good mark' for costs awarded against that company. In my view, there remains a considerable risk that if Dr Wright loses the Joint Trial, the Claimants will not be able to pay the Developers' costs. Mr Bergin KC relied on the substantial sums which have been put up by way of security already in support of a submission that the risk was minimal. I disagree. There is evidence that Dr Wright is being funded in these actions by Mr Calvin Ayre and there is no guarantee that Mr Ayre will be willing to pay the Developers' costs if Dr Wright loses the Joint Trial.

146. So far as the quantum of security is concerned, the Developers provided me with two sets of figures, the second set adjusted to reflect the guideline hourly rates as opposed to Macfarlanes' hourly rates. The Developers also submitted that if Dr Wright fails to establish that he is Satoshi Nakamoto, it is 'almost certain' that he would be ordered to pay costs on the indemnity basis. In view of the allegations of fabrication and forgery which have already been levelled against Dr Wright, the risk of indemnity costs being awarded is very real if Dr Wright fails on the Identity Issue, albeit I emphasise I form no view as to whether those allegations will succeed or fail.

147. In the circumstances I propose that the Developers should have total security for their participation in the Joint Trial in the sum of £900,000. They already have £100,000 of that total, so I order the provision of further security for the costs of the Developers in the sum of £800,000.

COPA's application for costs of the ASD evidence

148. By way of recap, the fact that Dr Wright has a disability due to ASD was first mentioned at the CCMC. COPA's position throughout was that Dr Wright should produce a report proposing the adjustments which might be required and it would see if they could be agreed.

149. After a considerable period, Dr Wright finally produced the report from Professor Fazel. It proposed a set of adjustments at the extreme end of the scale, including the provision of all cross-examination questions in advance. In the light of Professor Fazel's report, I gave permission to Dr Wright to rely upon it (see [2023] EWHC 2408 (Ch) and my Order dated 3rd October 2023). The set of adjustments recommended by Professor Fazel required COPA to obtain a report from Professor Craig.

150. COPA point out that Dr Wright had previously obtained reports from two other experts who did not propose the extreme adjustments of Professor Fazel. COPA submit that Professor Fazel only proposed his set of adjustments because he had not been provided with any evidence of Dr Wright's previous performance under cross-examination (an omission pointed out at the September 2023 hearing). After seeing footage of Dr Wright being cross-examined in Oslo in the *Granath* litigation, Prof Fazel (quite properly) changed his position.

151. In their Joint Statement, Professor Fazel and Professor Craig agreed on a far more limited set of adjustments required for Dr Wright when giving evidence at trial namely, (a) clear timetabling of his evidence; (b) access to the LiveNote Screen; and (c) a pen and paper to write questions. They agree that the more extreme measures originally suggested by Prof Fazel, such as provision of questions / topics in advance and avoiding complex or tag questions, are not justified.

152. In these circumstances, COPA seeks its costs relating to ASD evidence in general, or alternatively such costs incurred since 21 September 2023, when it made a WPSATC offer to agree adjustments broadly matching those now agreed by the experts (if anything, a little more extensive than those now agreed). COPA's application is made on the following bases: (a) Dr Wright's failure to provide Prof Fazel with proper instructions; (b) his expert-shopping; (c) his failure to engage with and accept the WPSATC offer; and (d) allowing the Court to be actively misled at the CCMC about the status of the report.

153. On that last point, we now know that Dr Wright had Sir Simon Baron-Cohen's final draft report dated 5 October 2021. However, at the CCMC, Dr Wright's counsel (in response to a question from Master Clark as to why that expert's report had not yet been sent) said that they did not yet have his report. That was in September 2022, almost a year after the date of that report. Although the Court ought to have been provided with accurate information, the significance of this last point on costs appears to me to be minimal.

154. Of much greater significance are (a) the point that Professor Fazel was not instructed that Dr Wright had been cross-examined on several occasions before and there was available video of him being cross-examined in Norway, without apparent difficulty; (b) the related point regarding expert shopping and (c) the WPSATC offer.

155. Since Professor Craig first met with Dr Wright to assess his condition on 8th November 2023, it seems to be a safe assumption that the costs of obtaining his report were incurred after the WPSATC offer was made on 21st September 2023. It seems to me that the costs of instructing Professor Craig could have been wholly avoided if Dr Wright had instructed Professor Fazel properly. In addition, the WPSATC offer was an entirely reasonable one which should have been accepted by Dr Wright.

156. Furthermore, the adjustments now agreed between Professors Fazel and Craig are relatively minimal, such that I am sure that COPA would have agreed them if they had been proposed at the outset.

157. I note that in so far as costs were incurred in relation to ASD at the hearing on 19th September 2023, I ordered that those costs should be costs in the case. The WPSATC offer was made 2 days later. In those circumstances it seems I should order Dr Wright to pay COPA's costs in relation to the ASD expert evidence after 21st September 2023. I so order.

The cryptocurrency technology evidence

158. The parties found ways to agree various issues regarding this evidence, save for one principal point. This concerned some fairly extensive parts of the report of Mr Zeming Gao where he argues why BSV is a superior implementation of Bitcoin and more faithful to ideas that Mr Gao attributes to Satoshi. I reviewed the passages to which COPA drew attention namely paragraphs 65-89, 102-154, 180-197 and 217-225. I was unable to identify how any of this evidence might bear on the Identity Issue.

159. In the course of argument as to whether these passages should be struck out, declared inadmissible or be the subject of a ruling that COPA were not required to cross-examine on these passages, it became clear that, to the extent that any of this evidence might bear on the Identity Issue, it would have to be given by Dr Wright personally. On that basis, the issue melted away. For the avoidance of doubt, I rule that COPA need not cross-examine on any of the identified passages in Mr Gao's report.

Costs

160. I deal here with all the remaining applications for costs.

161. COPA and the Developers seek their costs of Dr Wright's application dated 1st December 2023. In response, Dr Wright submits he should be considered to be the successful party on that application, having secured permission to rely on the Additional Documents and an adjournment of the Joint Trial, albeit not the adjournment he sought. Notwithstanding that, Dr Wright submits that the appropriate order is costs in the case.

162. It is true that COPA and the Developers made substantial submissions, both in writing and orally, in which they sought to persuade me to exclude the Additional Documents and in that endeavour they failed. However, the materials on which those arguments were based formed essential information on the further steps necessary to get this case to trial.

163. In my view, Dr Wright's submissions exaggerated the degree of his success on his application, since great effort was made to persuade me of the adjournment sought.

Overall, however, I agree that the appropriate order for costs on Dr Wright's application is costs in the case.

164. Having succeeded on their application for additional security, the Developers seek their costs of their application. Dr Wright submitted that these costs should be paid out from the security awarded to the Developers for the PTR, since my previous order for security was made on the basis that any further application for security would be heard at the PTR. The costs sought are relatively modest and I summarily assess those in the sum of £20,000, but I agree that sum should be paid out to the Developers from the security already ordered. I leave the parties to agree appropriate arrangements, if any.

Remaining PTR issues

165. The remaining PTR issues are reflected in the Order I make. However I will address briefly the allocation of the 19 days for evidence. A variety of issues were addressed in the submissions on the trial timetable and I recognise that further issues arise due to the admission of the Additional Documents and the variety of expert and other evidence which will have to address those documents.

166. As I emphasised to the parties at the PTR hearing, the trial timetable is not set in stone and may have to be revised slightly in the light of further developments. However, pending any revision, the parties should work on the basis of the following allocations:

i) XX of Dr Wright – 6 days.

ii) XX of Dr Wright's other fact witnesses - 3.5 days.

iii) XX of COPA's fact witnesses – 4 days.

iv) XX of Mr Madden – 3 days.

v) XX of Dr Placks - 1 day.

vi) XX of a witness from Stroz Friedberg – 1 day.

vii) XX of both crypto currency experts – 0.5 days.

167. Three things will be noted about these allocations. First, they already add up to 19 days. Second, allocations may need to be made for additional experts e.g. regarding LaTeX files, although I anticipate that they will be short. Third, I have substantially cut back the parties' estimate of 1.5 days for both crypto currency experts, on the basis that, at the moment I do not see that the differences between them are that significant. If I am wrong about that, I will be educated accordingly in the Skeleton Arguments for Trial.

168. However, in a case of this nature I also anticipate that the evidence will speed up as the trial progresses, so for example, I would be reasonably confident that a preliminary allocation of 20 days of evidence for example would be completed within 19.