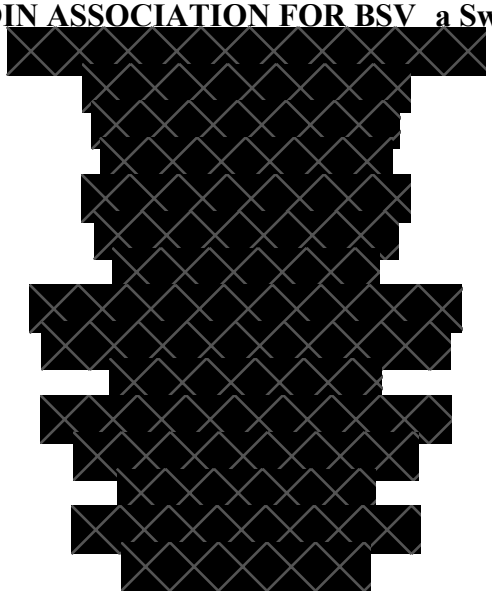
IN THE HIGH COURT OF JUSTICE **Claim No. BL-2021-000313**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
B E T W E E N:

TULIP TRADING LIMITED
(a Seychelles company)

Claimant

-and-

(1) BITCOIN ASSOCIATION FOR BSV a Swiss verein)



Defendants

CLAIMANT'S SKELETON ARGUMENT FOR
STRIKE OUT APPLICATION ON 3 OCTOBER 2023

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*References in the form **[X/Z]** are to the section and tab, and page of the hearing bundle.*

Pre-reading: it is suggested that, if time allows, the Court read (estimated pre-reading time: 45 minutes, estimated hearing time 2.5 hours):

- The Strike-Out Application **[E1/976]**
- Lee 1 **[E2/982]**
- The D2-D12 PI Application **[B1/7]**
- The marked-up version of Elliss 1 (the disputed material is in yellow) **[E3/1092]**

I. INTRODUCTION

1. This is the skeleton argument of the Claimant ("**TTL**") for the hearing of its application dated 8 August 2023, which seeks the strike out of various parts of D2-D12's evidence in support of their application dated 11 July 2023 for a preliminary issues trial (the "**Strike-Out Application**"

and the "**D2-D12 PI Application**") **[E1/976] [B1/7]**. D15 and D16 have also made an application (dated 26 July 2023) for a preliminary issues trial **[D1/958]** (the "**D15-D16 PI Application**", and together the "**PI Applications**"). As explained further below, D15-D16 have made the D15-D16 PI Application without seeking to rely on any of the impermissible material contained in D2-D12's evidence. The Strike-Out Application therefore relates only to D2-D12.

2. The evidence that TTL seeks to have struck out is contained in Mr Elliss's first statement ("**Elliss 1**") and accompanying exhibit. In particular, Mr Elliss repeatedly refers to, and relies on, alleged factual findings in previous judicial and quasi-judicial proceedings involving different parties. These statements contravene the rule in *Hollington v Hewthorn* [1943] KB 578 (the "**Hollington Material**") and therefore are inadmissible; and they should in any regard be struck out as lacking any (or sufficient) relevance. A highlighted version of Elliss 1 is exhibited to the Application at **[E3/1092]**, in which the Hollington Material is marked in yellow.[1]

3. The Hollington Material relates to what is alleged to be, in Elliss 1, "*Dr Wright's history of fraud, forgery and dishonesty*".[2] Specifically, the Hollington Material refers to and relies on alleged findings in alleged judgments and decisions from cases involving different parties in Australia, the United States, Norway, and England and Wales, as well as of the Australian Tax Office ("**ATO**"). As will be readily apparent, TTL does not accept what is stated by D2-D12 by way of the Hollington Material. The veracity of the allegations made by way of the Hollington Material, including as to what in fact was held to be the case in each instance, the status of the alleged decisions in question, and as to the underlying facts that are said to be the subject of such decisions, would all require detailed and comprehensive rebutting by TTL in the event that the allegations were not to be struck out. That would be an extremely time-consuming, distracting and costly exercise.

4. It is not disputed by D2-D12 that the allegations made by D2-D12 in the form of the Hollington Material reference and rely on alleged factual findings in alleged previous judicial and quasi-judicial proceedings concerning different parties - as is made clear by ¶52 of D2-D12's skeleton argument for the directions hearing on 15 August 2023 (in which D2-D12 put forward their substantive arguments on the Strike-Out Application, as they sought to have the substantive application determined at the directions hearing) (the "**Previous Skeleton**").

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[1] In order to narrow the issues in dispute, and in the light of the issues raised late in the day in Mr Elliss's third statement dated 27 September 2023 **[B8/919]**, TTL does not pursue the Strike-Out Application in relation to the parts of Elliss 1 highlighted in pink, although it reserves the right to contend on the substantive PI Applications that the parts highlighted in pink are inadmissible and/or irrelevant.

[2] See, for example, ¶10.4 **[E3/1095]**.

5. Notwithstanding this, D2-D12 suggest that they can rely on the Hollington Material. The basis for this assertion was set out in the Previous Skeleton at ¶57, in which D2-D12 contended that *Hollington* "*does not apply in interlocutory proceedings, where the determinations of foreign tribunals are relied on not as conclusive evidence to support a final determination of any matter in issue, but to assist in the assessment of the prima facie merits of the case*". D2-D12 referred to *Sabbagh v Khoury* [2014] EWHC 3233 (Comm) in support of this exception to the *Hollington* principle, and asserted that the Hollington Material fell within that exception.

6. As explained in more detail below, D2-D12's position is misconceived.

   6.1. The *Sabbagh* exception is narrow and self-contained. It is limited to instances in which a party seeks to show a serious issue to be tried at an early stage in proceedings, with that being a dispute to be determined on the application in question. It is, for example, relevant to an application for summary judgment, or an application to set aside an order for service out of the jurisdiction – albeit only if it is contended by the relevant party that there is no serious issue to be tried. *Sabbagh* does not suggest that *Hollington* material may be relied on at any interlocutory hearing as D2-D12 suggest. In fact, it states to the contrary.

   6.2. The Hollington Material is not deployed for the very limited exception set out in *Sabbagh*. It is not disputed for the relevant purposes that D2-D12 have a real prospect of success, and the question of a serious issue to be tried does not arise on the D2-D12 PI Application. Further, and in any event, D2-D12 rely on the Hollington Material for its <u>probative</u> value, which *Sabbagh* itself and subsequent cases make clear is not permissible.

   6.3. In any case, the Hollington Material is inadmissible and/or should be struck out because it is irrelevant or lacks material probative value, in circumstances in which its inclusion would cause substantial disruption and wasted cost.

7. D2-D12's insistence on retaining the Hollington Material – material that D15-D16 do not consider that they need to rely on for the D15-D16 PI Application – is an unsubtle attempt to vex Dr Wright. It is notable that this is the second occasion in recent months on which a contested hearing has been required so as to strike out material of this sort, in proceedings involving Dr Wright. In *Wright v Coinbase Global Inc* [2023] EWHC 1893 (Ch), as the Court will doubtless recall, and as is explained further below, the Court struck out remarkably similar, inappropriate pleas in the defences filed in that claim. The defendants in *Coinbase* used inventive but misconceived arguments in trying to retain inadmissible material so as to vex Dr Wright. The

position adopted by D2-D12 – an approach rightly eschewed by D15-D16 - is of a piece with such tactics.

II. THE HOLLINGTON MATERIAL IS INADMISSIBLE BECAUSE IT BREACHES THE RULE IN HOLLINGTON

The D2-D12 PI Application

8. By the D2-D12 PI Application, D2-D12 seek an order that there be the determination of preliminary issues in these proceedings. The D2-D12 PI Application as originally issued sought a preliminary issue on the question of whether "*TTL owns the Bitcoin in the Addresses (as defined in paragraph 29 of the Amended Particulars of Claim)*" **[B4/792]**. That has now been amended to add further issues, namely "*whether the claim has been brought by TTL knowing that it does not own the Bitcoin in the Addresses, and whether the claim is advanced fraudulently by TTL such that it is an abuse of process"* **[C2/957]**.

9. Mr Elliss states in ¶97 of Elliss 1 **[E3/1121]** that the test for whether a preliminary issue ought to be ordered is set out in *Steele v Steele* [2001] C.P. Rep. 106. As prefaced in Mr Lee's fourth statement at ¶21-¶22 **[B6/809]**, it is accepted that *Steele* sets out the test to be applied (albeit subject to amplification in certain other cases).

10. In *Steele*, the Court set out 10 relevant factors. In summary, they are: (1) whether the preliminary issue would dispose of the case or one aspect of the case; (2) whether the determination of the preliminary issue could significantly cut down the cost and time involved in pre-trial preparation or in connection with the trial itself; (3) if a question of law, how much effort, if any, would be involved in identifying the relevant facts for the purpose of the preliminary issue; (4) if an issue of law, to what extent it is to be determined on agreed facts; (5) where the facts are not agreed, to what extent that impinges on the value of a preliminary issue; (6) whether the determination of a preliminary issue might unreasonably fetter either or both parties or, indeed, the court, in achieving a just result; (7) to what extent there is a risk of the determination of the preliminary issue increasing costs and/or delaying the trial; (8) to what extent the determination of the preliminary issue may be irrelevant; (9) to what extent there is a risk that the determination of a preliminary issue could lead to an application for the pleadings being amended so as to avoid the consequences of the determination; and (10) whether, taking into account all the previous points, it is just to order a preliminary issue.

11. The question of whether or not there is a serious issue to be tried is not one of the tests as to whether or not a preliminary issue should be ordered.

The Hollington Material

12. The Hollington Material is highlighted in full in yellow in the version of Elliss 1 at **[E3/1092**]. However, it includes the following, by way of summary:

12.1. Statements that Dr Wright has a "*history of fraud, forgery and dishonesty*" and similar. See Elliss 1 ¶¶7, 10.4, 12, 31, 32 and 33 (referring to "*proven instances of dishonesty*") **[E3/1094, 1095, 1100, 1103]**. While Elliss 1 later states that, "*none of the findings in the above section are binding on the Court*" (¶34 **[E3/1103]**), that does not detract from the statements that Dr Wright has a history of fraud, forgery and dishonesty, and that these are "*proven*".

12.2. The assertion that Dr Wright has been "*found to have relied on falsified documents and otherwise provided dishonest evidence in proceedings in Australia, the United States, Norway and the UK*": Elliss 1 ¶32 **[E3/1100]**. Elliss 1 then includes quotations from *Wright v Ryan & Anor* [2005] NSWCA 368, *Ang v Reliantco Investments Ltd* [2020] EWHC 3242 (Comm); what Mr Elliss refers to as the Kleiman Claim; *Granath v Wright* (Case No. 19-076844TVI-TOSL/04); and *Wright v McCormack* [2022] EWHC 2068 (KB). In addition, at ¶33 **[E3/1103]** Mr Elliss asserts that while Dr Wright, "*has attempted to explain that these (and other) adverse findings as to his credibility is a result of Autism Spectrum Disorder*" this does not "*explain the multiple clear and proven instances of dishonesty*" and refers to the point concerning Dr Wright's autism having been "*considered and rejected in the McCormack Proceedings*".

12.3. Elliss 1 goes on to refer to the findings he says were made by the ATO following an investigation: Elliss 1 ¶¶55, 56, 58 **[E3/1111]**. Elliss 1 then refers at ¶63 to what he says were findings concerning Dr Wright's evidence in the Kleiman Claim **[E3/1113]**, stating that Judge Reinhart "*gave the following assessment of Dr Wright and his evidence*".

12.4. In addition, in relation to certain documents that have previously been deployed by TTL, Elliss 1 ¶49.5 **[E3/1109]** states that, "*counsel for the Plaintiffs in proceedings in Florida where Dr Wright deployed these same records noted "significant ref flags"*"".

13. The basis on which D2-D12 seek a preliminary issue is then summarised at ¶97 of Elliss 1, under the heading, "*SUITABILITY OF THE OWNERSHIP ISSUE FOR PRELIMINARY ISSUE TRIAL*"

[E3/1121]. There, Mr Elliss sets out what D2-D12 say are the relevant factors, by reference to the criteria in *Steele*. The only mention he makes of the Hollington Material in that paragraph is at ¶97.6, under the heading "*Right and just*" **[E3/1122]**. He says that (emphasis added), "*For the reasons I have explained at length, there is more than sufficient prima facie evidence to call into serious question the bona fides of TTL's claim to ownership of the Digital Assets. In those circumstances, and where the alternative is that the Enyo Defendants will be forced to spend in excess of £7 million to litigate this matter to trial at some time in 2025 with the threat of a £4bn claim hanging over them in the meantime, it is plainly right and just that the Ownership Issue is determined first*".[3]

14. Mr Elliss therefore makes clear that the only basis on which the Hollington Material is said to be relevant to the *Steele* factors is in relation to factor (10). However, Mr Elliss states that there is "*sufficient prima facie evidence to call into serious question the bona fides of TTL's claim*". That is reiterated in Mr Elliss's more recent, third statement, in which he refers to further material (which TTL does not at this stage seek to strike out) and claims at ¶29 that there is a "*significant volume of prima facie evidence that undermines TTL's claim to ownership and indicates that the claim is being brought fraudulently and that TTL and Dr Wright are abusing the process of this Court*" **[B8/925]**.

15. As explained above, Elliss 1 accepts at ¶34 that "*none of the findings in the above section are bonding on the Court*" **[E3/1103]**. Mr Elliss does not make the same concession in respect of the alleged "*red flags*" from the proceedings in Florida, ATO findings or findings as to credibility in the Kleiman Claim – see ¶12.3 to ¶12.4 above.

16. However, regardless, ¶31 of Elliss 1 makes clear that the statements concerning Dr Wright's alleged conduct are made in order to provide "*context*" which is "*relevant and necessary*" **[E3/1100]**. The Court is asked to proceed on the basis that Dr Wright has a "*history*" of fraud, forgery and dishonesty, with the position being "*proven*" – which necessary connotes that Dr Wright is in fact guilty of such wrongdoing.

There is no exception to the rule in *Hollington* that would render the Hollington Material admissible

The rule in *Hollington v Hewthorn*

[3]As with D2-D12's position in relation to the D2-D12 PI Application more generally, TTL does not accept the contentions made by Mr Elliss in the quoted text.

17. The principle in *Hollington* is that a decision of another court or tribunal between different parties is inadmissible as evidence of the truth of those findings. As explained in *Wright v Coinbase* [2023] EWHC 1893 (Ch) at [33], quoting from *Rogers v Hoyle* [2015] QB 264 (per Christopher Clarke LJ):

"*As the judge rightly recognised the foundation on which the rule must now rest is that findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ("the trial judge"), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard and in reliance on the opinion of someone who is neither the relevant decision maker nor an expert in any relevant discipline, of which decision making is not one. The opinion of someone who is not the trial judge is, therefore, as a matter of law, irrelevant and not one to which he ought to have regard*."

18. In *Calyon v Michailaidis* [2009] UKPC 34, the Privy Council quoted with approval from the Fifteenth Report of the Law Reform Committee (1967, Cmnd 3391), which stated:

"*But we do not think that, where there are two civil actions between different plaintiffs against the same defendant or by the same plaintiff against different defendants which do raise the same issue of fact, the finding of the court should be admissible in the second action. As we have already pointed out, in civil proceedings the parties have complete liberty of choice as to how to conduct their respective cases and what material to place before the court. The thoroughness with which their case is prepared may depend upon the amount at stake in the action. We do not think it just that a party to the second action who was not a party to the first should be prejudiced by the way the party to the first action conducted his own case, or that a party to both actions, whose case was inadequately prepared or presented in the first action, should not be allowed to avail himself of the opportunity to improve upon it in the second*" (see [30] of *Calyon*).

19. In *Wright v Coinbase* (as the Court will doubtless recall), the question related to the admissibility of pleas that covered similar ground to the Hollington Material.

19.1. As explained at [27], the plea was that Dr Wright "*has been involved in various proceedings, in this jurisdiction and overseas, in which his evidence (including documentary evidence adduced by him) has been the subject of serious adverse comment*". These were the

same proceedings mentioned in Elliss 1: *Wright v Ryan*; the ATO findings; *Ang v Reliantco*; the Kleiman Claim; *Wright v McCormack*; and *Granath v Wright*.

19.2. It was contended by the defendants in *Wright v Coinbase* that they were entitled to refer to these claims by way of explanation as to the "*reason why the Defendants require the Claimants to substantiate their various assertions with hard evidence*" (see [31]).

19.3. The Court appropriately described this as an "*imaginative attempt*" to retain the material in question ([35]) and rejected the defendants' assertions.

The limited exception in *Sabbagh*

20. As explained above, the basis on which D2-D12 have contended that the Hollington Material is admissible notwithstanding the rule in *Hollington* is because of the decision of Carr J in *Sabbagh v Khoury*, which D2-D12 contend permits such material to be used in an interlocutory hearing. The *Sabbagh* decision does not, in fact, avail them. On the contrary, it makes clear that the Hollington Material is inadmissible.

21. *Sabbagh* related to applications challenging the Court's jurisdiction, in which the Court was required to determine whether or not there was a serious issue to be tried. The claimant, Sana, sought to pursue claims against various family members and companies owned and/or controlled by them. The companies included those in the CCC group which had been involved in what was called the "Masri litigation". The Masri litigation was relied on in relation to the merits of the Claim brought by Sana.

22. The Court held at [206-207] that (emphasis added):

"*206. I am inclined to agree with Sana that the findings of another court may be relied on at an interlocutory stage for the limited purpose of demonstrating whether there is a serious issue to be tried, for example in considering what material at trial there might be. The Court of Appeal in Joint Stock Co Aeroflot – Russian Airlines v Berezovsky (supra) clearly thought it appropriate to do so, and would have been well aware of the relevant principle in Hollington v Hewthorn. To deploy the findings of another court in this way does not endanger a fair trial for any of the parties. The situation in Calyon v Michailidis and others (supra) is distinguishable: there the findings of the Greek court were being relied on as conclusive, alternatively probative, evidence of a central plank of the claimants' case, without more.*

207. Thus, to the extent that the Masri litigation is being used simply to inform the question of whether there is a properly arguable claim in prospect, that is, in my judgment a legitimate exercise in principle. To the extent that Sana seeks to use any findings in the Masri litigation as admissible evidence to prove a fact in issue or a fact relevant to the issue in these proceedings, I agree with the Defendants that she cannot do so (see paragraph 28 of the judgment in Calyon v Michailidis and others (supra))."

23. The Court in *Sabbagh* therefore rejected the suggestion that such material would be permitted on a blanket basis at the interlocutory stage. On the contrary, Carr J specifically limited the admissibility of such material to the "*limited purpose of demonstrating whether there is a serious issue to be tried*".

24. Carr J also made clear in terms that such material cannot be relied on as probative evidence of a party's case. In other words, in a case in which the dispute concerns the threshold test of serious issue, the material can be relied on to show that there is a sufficient prospect of making good the relevant contentions at trial – as Carr J put it "*simply to inform the question of whether there is a properly arguable claim in prospect*". It goes no further than that.

25. That this is the case is confirmed by *Heiser v Islamic Republic of Iran* [2019] EWHC 2074 (QB). There, the Court held at [77] that Carr J, "*said she was inclined to accept that findings in another court may be relied on at an interlocutory stage for the limited purpose of demonstrating whether there is a serious issue to be tried. She distinguished Calyon because there the findings of the Greek court were being relied on, without more, as conclusive, alternatively probative, evidence of a central plank of the claimant's case*".[4]

26. In *Hosking v Apax Partners LLP* [2016] EWHC 558 (Ch) reference was again made to the decision in *Sabbagh* in support of the proposition that "*what another court has decided is relevant to the court deciding whether there is a belief that a claim has a reasonable prospect of success*": see [47]. In the context of a decision concerning whether or not there was a serious issue to be tried for the purposes of serving proceedings out of the jurisdiction, the Court stated at [46] that, "*although any narrative of the evidence within a judgment may be referred to for the purpose of identifying the evidence before the court, the judgment is inadmissible as evidence of the facts found or the decision reached and the opinion of that court is irrelevant*".

[4] In the *Heiser* case, the matter was held not to be interlocutory because it was for the claimants to prove their case on the balance of probabilities.

27. The Court in *Hosking* also made clear at [49] that, "*In reaching that decision I have appreciated that Lord Justice Aikens, with whom Lord Justice Laws and Mr Justice Mann agreed, refers to a party being able to rely on a finding of the Swiss criminal court. However, that is not because the finding is to be treated as binding upon non-parties in different litigation. It is because it identifies the evidence before the court and this evidence may be relevant when deciding whether there is a (in that case) serious issue to be tried. This is clearly explained by Mrs Justice Carr at paragraph 203 of Sabbagh v Khoury*".

The Hollington Material is not admissible

28. It is, accordingly, apparent that the Hollington Material is inadmissible.

29. In the first place, *Sabbagh* makes clear that the exception can only apply to an application on which the point in issue on the application is the threshold question of whether or not there is a serious issue to be tried.

30. In this case, it is clear that the question of whether or not a preliminary issue should be ordered does not concern the question of serious issue to be tried. It is no part of the *Steele* test. In relation to the tenth factor in *Steele* (the only such factor relied on by D2-D12 in this regard), Neuberger J held that:

"*Tenthly, the court should ask itself whether, taking into account all the previous points, it is just to order a preliminary issue. In this connection, it should be mentioned that the nine specific tests overlap to some extent. Further, some of the points I have mentioned for not ordering a preliminary issue in the present case have been overtaken by events (eg the disproportionate effort in preparing a statement of agreed facts)*."

31. There is nothing to suggest that this, tenth factor imports a wider merits test. On the contrary, the point made by the Court was that there should be an overall consideration of justness taking into account the other nine factors. In other words, the tenth factor provides that the previous nine factors need to be looked at as a whole.

32. More fundamentally, however, even if the merits were to be relevant, there is no suggestion that the Court needs to consider a threshold test of arguability. If a party considers that a claim or defence on a particular issue does not disclose a serious issue to be tried, the obvious step would be to make an application for summary judgment. It is not, and cannot be, a reason to order a preliminary issue. Indeed, the very premise of the need for a preliminary issue trial is that the issue is not amenable to summary determination.

33. The D2-D12 PI Application is, accordingly, not an application on which the serious issue test is an integral part of the substantive application – as would be the case with a jurisdiction challenge or application for summary judgment (if the point were taken by the relevant party). That much is made clear by the fact that D15 and D16 eschew reliance on the Hollington Material in the D15-D16 PI Application.

34. If it were otherwise, this would lead to an absurd result. It is apparent that in every single claim a party needs to have a real prospect of success in order to be able to pursue or defend the claim; otherwise its claim or defence would fall to be summarily dismissed. That cannot be used as a back door trick to permit a party to deploy *Hollington* material on every single occasion that an application is brought in a set of proceedings. Indeed, Carr J stated in terms that the limited *Sabbagh* exception cannot be used as an excuse to deploy *Hollington* material in every interlocutory case.

35. In the second place, it is apparent from the judgment in *Sabbagh* that the exception applies only where there is a need to establish a serious issue to be tried – i.e. "*to inform the question of whether there is a properly arguable claim in prospect*". While TTL vehemently denies that D2-D12's substantive points have merit, and TTL's position is that they should be rejected at trial to the extent they arise - TTL accepts at present that the contentions that TTL does not own the Bitcoin in the Addresses and has brought the Claim fraudulently have real prospects of success. It is for this reason that TTL has not sought summary judgment on these points. Where, as here, it is not disputed that there is a serious issue, there is no need to "*inform the question*". The exception does not apply in such a case.

36. In the third place, and in any event, even were the exception potentially to apply in principle, it is apparent that the Defendants do not limit their evidence to the suggestion that there is a serious issue to be tried, and no more than that - as would be required for such an exception to apply.

37. On the contrary, the Hollington Material is relied on to say that, as a matter of fact, there is a "*history*" of dishonesty and the like on the part of Dr Wright; or that such matters are "*proven*": see ¶12 above. That is, necessarily, relying on the findings for their probative value; indeed they are relied on as evidence that what they state is correct. *Sabbagh* itself states in terms that such material is inadmissible when deployed on this basis.

38. The point is made yet clearer by the fact that these matters are relied on by Mr Elliss by way of "*context*" to the entire application: see ¶16 above. Again, this can only be on the basis that the matters stated are relied on for their probative value – as *Sabbagh* confirms is impermissible.

39. In any regard, ¶97.6 of Elliss 1 states, as explained above, that, "*For the reasons I have explained at length, there is more than sufficient prima facie evidence to call into serious question the bona fides of TTL's claim to ownership of the Digital Assets*" **[E3/1122]**; and Elliss 3 refers to a "*significant volume of prima facie evidence that undermines*" TTL's case **[B8/925]**. These statements go beyond merely asserting that there is a serious issue to be tried. Indeed, the Court can and should take a step back. It is quite clear that the Hollington Material is not being deployed merely to show a serious issue to be tried. On the contrary, it has been deployed so as to seek to persuade the Court that D2-D12 have strong merits, in an attempt to convince the Court that preliminary issues should be ordered because of the alleged strength of D2-D12's position. Such an exercise cannot be squared with the limited exception in *Sabbagh*.

III. THE HOLLINGTON MATERIAL SHOULD BE STRUCK OUT AS INADMISSIBLE DUE TO A LACK OF RELEVANCE

40. As explained in Phipson on Evidence, 20th Edition ("**Phipson**") at 7-05:

> "*Evidence may be relevant and yet, on grounds of convenience or policy, inadmissible. Indeed, this exclusion of matter otherwise relevant has been called he distinguishing feature of the English law of evidence. It is correct then, in deciding whether evidence is admissible, to ask first whether the evidence is relevant and, thereafter, whether there are any rules or discretions, based on convenience or policy, which nonetheless make this relevant evidence inadmissible, or inadmissible unless further conditions are established*".

41. Phipson goes on to explain at 7-07, by reference to *Vernon v Bosley* [1994] PIQR P337 that, "*the proposition that mere logical relevance is an insufficient condition for admissibility <u>where the evidence might cause distraction, unnecessary delay or repetition</u>, is clearly sound, but that the phrases "sufficient relevance" and "degree of relevance" are better avoided. It would be preferable to adopt a phrase which makes clear that the important factor is not merely a function of logical relevance, but requires an assessment of the extent to which the evidence is likely to assist the court*" (emphasis added).

42. In addition, by r.3.1(2)(m), the Court may "*take any other step or make any other order for the purpose of managing the case and furthering the overriding objective*".

43. As explained above, there is no dispute for the purposes of the D2-D12 PI Application that D2-D12 have real prospects of success of showing that TTL does not own the Bitcoin in the Addresses or that D2-D12 would have real prospects of showing that TTL has brought the Claim

fraudulently. Therefore, on any view, evidence that is directed solely at establishing that such a threshold is met is of no relevance, as it seeks to prove a matter that is not in dispute.

44. Alternatively, on any view, the weight is of very little probative value. That is reinforced by the fact that D15-D16 have specifically disavowed reliance on the Hollington Material. Indeed, the Hollington Material does not even relate to findings as to the facts of the posited preliminary issues. It goes only, at most, to Dr Wright's credibility.

45. The Hollington Material is, however, liable to distract the Court. Allowing the evidence to remain in Elliss 1 would lead to detailed and substantial argument concerning the status of the numerous alleged proceedings, the precise findings made in such other proceedings, on what specific basis, and the particular relevance that can be ascribed to such findings. Such an exercise would be of no material assistance to the Court, but it would lead to substantial distraction and wasted cost.

46. Accordingly, even if the Hollington Material does not fall foul of the rule in *Hollington*, then it should be struck out as inadmissible, and/or in the exercise of the Court's discretion, due to its lack of relevance and due to the lack of assistance that it would provide to the Court.

IV. CONCLUSION

47. D2-D12's arguments are similarly ingenious, but no less ill-founded, than those deployed in *Wright v Coinbase*. The Court must here – as it did in *Coinbase* - not permit the manipulation of well-established rules by parties who wish to bring in evidence with the aim of vexing Dr Wright.

48. The Hollington Material is inadmissible and should be struck out on one or more of the bases set out above.

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2 October 2023