



Neutral Citation Number: [2023] EWHC 2408 (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: 3<sup>rd</sup> October 2023

Before:

**MR. JUSTICE MELLOR**

Between:

**CRYPTO OPEN PATENT ALLIANCE**

**Claimant in IL-2021-000019**  
**(the “COPA Claim”)**

and

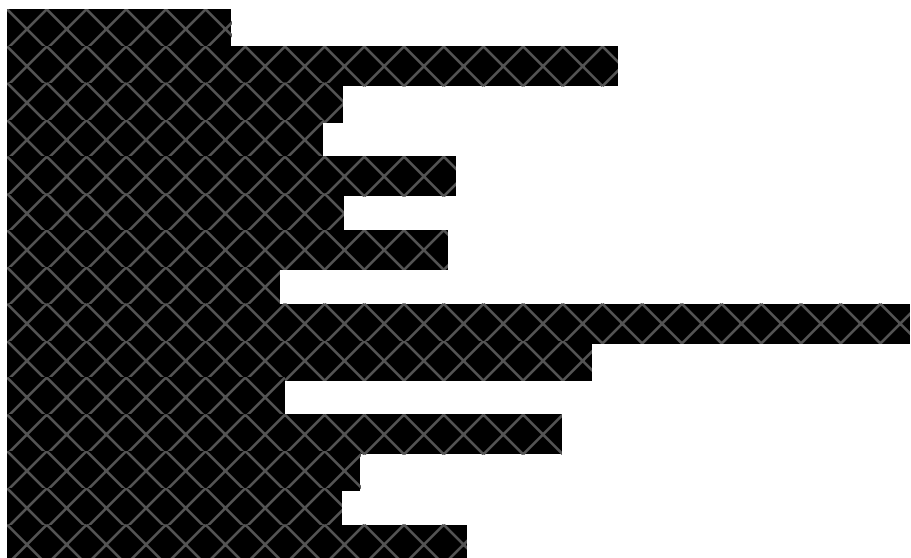
**CRAIG STEVEN WRIGHT**

**Defendant in the COPA Claim**

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

**Claimants in IL-2022-000069 (the “BTC Core Claim”)**

and



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

**Defendants in the BTC Core Claim**

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

**MR. VERNON FLYNN KC and MR. RICHARD GREENBERG (instructed by Travers Smith LLP) appeared for Dr Wright and the Claimants in the BTC Core Claim.**

**Hearing Dates: 19<sup>th</sup>, 22<sup>nd</sup> & 26<sup>th</sup> September 2023**

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**APPROVED JUDGMENT**

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on the National Archives and other websites. The date and time for hand-down is deemed to be Tuesday 3<sup>rd</sup> October 2023 at 10.30am.

THE HON MR JUSTICE MELLOR

**MR JUSTICE MELLOR :****Introduction**

1. This is my judgment from a further CMC, appointed to be heard in the vacation in an effort to keep the timetable down to trial on track. There were five applications before the Court, two brought by the Claimant in the COPA Claim ('COPA') and three by the Defendant in the COPA Claim ('Dr Wright'). The position on each application can be summarised as follows:
  - i) COPA's Consolidated RFI application: COPA served a comprehensive RFI on 23 June 2023. After the issue of COPA's application, Dr Wright provided a response on 11 September 2023, but COPA is not satisfied with virtually all of his responses and asks the Court to order that substantive answers are given.
  - ii) COPA's chain of custody application: The CCMC order provided for Dr Wright to supply chain of custody information in relation to Dr Wright's principal reliance documents. COPA was not satisfied with the information supplied, so it issued an application (as the order required). Dr Wright agreed to provide further information but the outstanding issue concerned the deadline for that information to be provided. Fortunately, this was agreed and I need say no more about this application.
  - iii) Dr Wright's ASD expert evidence application: Dr Wright seeks permission to adduce expert evidence on autism spectrum disorder ("ASD") with a view to arguing for adjustments regarding his cross-examination. COPA resists the application, suggesting that he can provide notes from treating clinicians and the Court can form its own view on what, if any, measures to take at trial.
  - iv) Dr Wright's RFI application on COPA's draft primer: The parties were not able to agree a technical primer on cryptocurrency technology relating to Bitcoin. Each side blames the other for the failure. Dr Wright has applied for COPA to answer an RFI about whether its draft primer related to the technology at its inception or taking account of later developments. COPA's position is that it would be a pointless exercise to revisit the draft primer, and that the answer is for the experts to address this topic in their reports.
  - v) Dr Wright's application to exclude hearsay evidence: COPA served a CEA notice in relation to expert reports served in previous proceedings involving Dr Wright. He applies to exclude the material from evidence. COPA maintains that the material is admissible, relevant and ought not to be excluded, while accepting that Dr Wright may make any points he wishes at trial as arguments as to weight.
2. I address the four outstanding applications in turn, although it will be noted that the bulk of this judgment concerns the first.

## Background

3. Following a joint CMC in four actions (IL-2021-000019, IL-2022-000035, IL-2022-000036 and IL-2022-000069), all involving Dr Wright, I directed the trial of what has been called ‘the Identity Issue’, namely whether Dr Wright is the pseudonymous ‘Satoshi Nakamoto’ i.e. the person who created Bitcoin in 2009. The Identity Issue is essentially the issue in the COPA action, and is now the preliminary issue in the BTC Core action. The defendants in the other two claims (IL-2022-000035 and IL-2022-000036) are bound by the determination of the Identity Issue. The Identity Issue is the subject of the COPA trial, set to commence in January 2024. See generally my judgment from that joint CMC – [2023] EWHC 1894 (Ch).
4. As I mentioned at the end of that judgment, there were outstanding and threatened applications which needed to be determined quickly. Hence this hearing.
5. I received very useful Skeleton Arguments from Counsel listed on the title page. In addition, I received a letter from Macfarlanes LLP, the solicitors representing the 14 individual defendants in the BTC Core claim. Macfarlanes’ letter was a useful reminder that, when case managing the Identity Issue to the trial in January, I must also keep in mind the interests of those 14 individual defendants. In their letter, Macfarlanes made a series of representations concerning the ASD Application, which I have taken into account.

## COPA’s RFI Application

6. The relevant background to this application is as follows:
  - i) COPA had served three RFIs and had also sought answers in correspondence about Dr Wright’s pleaded case. COPA contends that Dr Wright consistently failed properly to answer the RFIs and questions.
  - ii) COPA then served a Consolidated RFI on 23 June 2023, seeking a response by 28 July 2023, the date on which fact evidence was due. COPA made it clear that Dr Wright could answer any request by reference to passages in his witness statement.
  - iii) Dr Wright suggested that COPA should wait to see his evidence before deciding whether to press its request. COPA took the view that this was a delaying tactic and issued its application on 14 July 2023 seeking a time order for Dr Wright to serve a response. This application was referred to me on paper shortly before the end of the summer term. Having briefly reviewed the 66 requests, I determined it was not an appropriate application to decide on paper and invited the parties to liaise with my clerk to arrange a hearing in the Long Vacation – which led to this hearing being appointed.
  - iv) Having reviewed Dr Wright’s witness statements, COPA issued a fresh application dated 8<sup>th</sup> September 2023, this time seeking an order that Dr Wright must provide substantive answers to the requests. This application is supported by Sherrell 12, in which Mr Sherrell explains,

by reference to groups of requests, why the information is required to enable COPA to prepare its case.

- v) On 11<sup>th</sup> September 2023, Dr Wright's response to the Consolidated RFI was served. As COPA submitted, he refused to respond to a substantial number of the requests, but his response assisted to define the scope of the dispute.

### Applicable Principles

7. I was addressed at length as to the applicable principles. I summarise these below. There was little dispute as to the principles, but plenty as to precisely how they should be applied to this particular case. Much of the dispute turns on how one interprets 'matters in dispute'.
8. CPR r.18.1(1) provides that "[t]he court may at any time order a party to – (a) clarify any matter which is in dispute in the proceedings; or (b) give additional information in relation to any such matter, whether or not the matter is contained or referred to in a statement of case".
9. PD18 §1.2 adds that "[a] Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet".
10. COPA referred me to the following passages in the authorities:
  - i) The power is "one of the court's case management powers, and its exercise should be considered in the context of the case management of [the] action", powers which are "capable of being used flexibly to meet the precise needs of the individual case": *Toussaint v Mattis* [2001] CP Rep 61, para. 16 (Schiemann LJ).
  - ii) "A Part 18 request is not like the old request for particulars under the [RSC]. It is to be interpreted in the light of the overriding objective and is part of the more open approach to litigation which the CPR seeks to establish and promote. Information sought must of course relate to 'any matter in dispute'. But if it does, then the rule precisely covers a situation where there is potentially relevant information relating to the matter which is solely within the knowledge of one side. In modern litigation, it is not the position that a party can hold back on relevant information and leave its opponent to take a chance to see if it chooses to put forward a witness from whom that information might be elicited by way of cross-examination at trial." (*National Grid Electricity Transmission plc v ABB Ltd* [2014] EWHC 1555 (Ch), para. 39 (Roth J).) The application of the requirements of proportionality and necessity "will have regard to the nature of the particular case": *National Grid*, para. 40.
11. For his part, Mr Flynn KC for Dr Wright was keen to emphasise the limitations on the scope of Part 18 Requests. He pressed a series of 10 points, some drawn from the CPR and passages in the authorities, and some based on passages in

*Disclosure* (5<sup>th</sup> Edition, 2017, ed. Matthews & Malek). In the former category, he submitted that requests may be refused where:

- i) They are not strictly confined to “*matters which are reasonably necessary and proportionate to enable the [other] party to prepare his own case or understand the case he has to meet*” (cf. PD18 §1.2). The authorities make clear that Requests must be “strictly” confined to what is necessary and proportionate: *King v Telegraph Group Ltd* [2005] 1 WLR 2282 at §63. Cockerill J has emphasised the hallmark of “necessity”: *Qatar v Banque Havilland SA* [2020] EWHC 1248 (Comm) at §2. These are threshold conditions. If they are not met the court has no jurisdiction to make the order sought: *HRH Prince Khaled Bin Abdulaziz Al Saud v Gibbs* [2022] 1 W.L.R. 3082 at §35.
- ii) They do not relate to “*matter[s] in dispute in the proceedings*” (cf. CPR r.18.1(1)).
- iii) They are not “*concise*” (cf. PD18 §1.2). The need for concision concerns the formulation of the request, which must be sufficiently precise etc., but also the nature of the information requested. The further information provided in response to a Pt 18 Request is a pleading (see CPR r.2.3). This impacts the proper scope of such requests. It will not generally be necessary or proportionate for the other party to request a party who has served a compliant but concise statement of case to expand upon that pleading by the provision of more detailed further information: see *HRH Prince Khaled Bin Abdulaziz Al Saud v Gibbs* at §§39-41; and *Trader Publishing Ltd v Autotrader.com Inc* [2010] EWHC 142 (Ch) at §22.
- iv) They pre-empt cross-examination or seek information going solely to cross-examination. As the editorial notes to the White Book point out at §18.1.2, a Pt 18 Request “*should not be treated as an opportunity to attempt pre-emptive cross-examination on paper*”. See, for example, *Henderson & Jones Limited v Ross & Ors* [2022] EWHC 2560 (Ch) at §46(b).
- v) They go to the credit of a witness. Requests will not be allowed if they go solely to cross-examination as to credit: see *Thorpe v Chief Constable of Greater Manchester* [1989] 1 W.L.R. 665; *HRH Prince Khaled* at §33.
- vi) They are ‘fishing’. What amounts to fishing depends on the facts and issues in any particular case but is generally understood to involve a party trying to see if it can find a case of which it knows nothing or which is not yet pleaded: *Hennessy v Wright (No.2)* (1888) 24 Q.B.D. 445 at p.448.
- vii) They are disproportionate in terms of cost. The proportionality of a request includes “*the avoidance of disproportionate expense*”: *King v Telegraph Group Ltd* at §63.
- viii) They are unduly oppressive, not only in terms either of cost (see above) but also in terms of the onerousness of what they require the responding

party to undertake in order to provide the information requested: *HRH Prince Khaled* (ref. supra) at §§46-47.

- ix) They seek information which will in due course be revealed on disclosure or which will be contained in witness statements or expert reports: *HRH Prince Khaled* at §42. This is another example of the distinction between matters that properly fall within the domain of pleadings (which is what a response to a Pt 18 Request really is) and matters of evidence.
12. Both sides relied on passages from Chapter 20 of *Disclosure*. Some of the propositions put forward were at a high level of generality and were uncontroversial. In this category were two submissions from COPA, which were supported by the passages identified:
- i) The concept of a matter in question which an RFI may address is a broad one: see *Disclosure* at §§20.34 to 20.35.
  - ii) A person responding to an RFI can be expected to exercise reasonable diligence in responding, including by making reasonable enquiries of others. The person may also be expected to examine documents in his/her control or that of servants or agents. See *Disclosure* at §§ 20.96 to 20.101.
13. Of greater significance and relevance was the parties' reliance on two passages in *Disclosure*, under the headings 'Matters in dispute' and 'Documents'. To my mind, these passages need to be approached with some care, for two related reasons:
- i) First, publication in 2017, with writing completed in 2016, means the analysis is dated.
  - ii) Second, it can be seen from the various authorities cited by Mr Flynn (see paragraph 11 above) that there have been a number of significant cases relating to CPR Pt 18 since 2016, but even various cases in the 2000s are not referred to.
14. It would not ordinarily be necessary to discuss passages from a textbook which, on analysis, is somewhat out of date. However, in the context of this application, heavy reliance was placed on §20.40 in Dr Wright's argument. This reliance gave rise to an issue of principle: is it permissible to use CPR Pt18 requests to ask for information as to attributes of documents in disclosure: their existence, their identity, whether they are authentic or have been altered and in what respects, or does the only power to order such information to be provided arise in the context of the rules on disclosure (in this case CPR PD57AD)? I provide my answer below.
- 'Matters in dispute'
15. Both sides referred to *Disclosure* at §20.34, albeit they relied on different parts of the passage. I set out the passage here, with its footnotes below, for reasons which will become apparent:

Matter in question is a fairly broad concept, and the right to make Requests is not confined to facts directly in issue, but will extend to any facts the existence of which is relevant to the existence or non-existence of facts directly in issue.<sup>83</sup> However, the relevancy test must not be extended too far and the court will be astute to prevent Requests from becoming an instrument of oppression and from straying away from the real issues between the parties in the action. For the purposes of ascertaining what matters are in dispute, it is the statements of case which should be primarily referred to. Incidental matters not related to matters raised in the statement of case should not ordinarily form part of Requests. Even where Requests may (to a limited extent) extend beyond facts directly in issue, the court will generally not permit Requests as to what line of facts the applicant's opponent is going to rely on as relevant to the existence or non-existence of the facts directly in issue.<sup>84</sup> In the usual case, it is unlikely that the court will compel a party by means of a Pt 18 order to disclose the evidence which he intends to adduce at trial.<sup>85</sup>

fn83: This was the approach by the courts in relation to interrogatories: *Mariott v Chamberlain* (1886) 17 Q.B.D. 154 at 163 CA; approved in *Nash v Layton* [1911] 2 Ch. 71 CA; *Osram Lamp Works v Gabriel Lamp* [1914] 2 Ch. 129 CA; see also the Australian decisions: *Potter's Sulphide Ore Treatment v Sulphide Corp* (1911) 13 C.L.R. 101; *Australian Blue Metal v Hughes* [1960] N.S.W.R. 673; *Cumming v Matheson* (1970) 92 W.N.(N.S.W.) 339; *Fischer v City Hotels Pty* (1970) 92 W.N.(N.S.W.) 322; *Sharpe v Smail* (1975) 49 A.L.J.R. 130. A narrower test formulated by Smith L.J. in *Kennedy v Dodson* [1895] 1 Ch. 334 at 341 was held to be not good law insofar as it conflicted with the test of Lord Esher (*Rockwell Corp v Serck Industries* [1988] F.S.R. 187 at 203); however it has been followed in some Australian cases: see *Osborne v Sparke* (1907) 7 S.R.(N.S.W.) 460; *Green v Green* (1913) 13 S.R.(N.S.W.) 126 and in particular *Tiver v Tiver* [1969] S.A.S.R. 40 where the full Court of South Australia tried to reconcile the two lines of authorities.

fn84: *Hooton v Dalby* [1907] 2 K.B. 18 at 21 (interrogatories).

fn85: In the case of interrogatories the practice of the court was to refuse them in such cases: *Eade v Jacobs* (1877) 3 Ex. D.335 at 337; *Att.Gen. v Gaskill* (1882) 20 Ch.D. 519 CA.

16. It is noticeable that all the authorities referred to in §20.34 pre-date the introduction of the CPR. Some of them are very old indeed. They embody some of the technical and (to modern eyes) arcane rules which grew up around interrogatories.
17. This may be illustrated by reference to the judgment of Falconer J. in *Rockwell v Serck* in 1987, a case in which I had some involvement at the start of my career



at the Bar. It was an action for infringement of copyright in engineering drawings. Both parties had a long history producing valves for fluid pressure applications. Rockwell had developed new designs of a dynamic balanced plug valve (each valve comprising some 20 component parts) and accused Serck of copying the design of certain component parts in their own valves. The allegation of infringement of copyright (including the allegation of reproduction of the allegedly copyright drawings) was met with a bare denial.

18. Lengthy interrogatories were served by Rockwell ‘directed towards identifying the origin of the designs of the defendant’s valve and its constituent parts’. As the Judge said ‘in effect the interrogatories are directed to asking the defendants: ‘Tell us what you did.’
19. Basing himself particularly on *Marriot v Chamberlain* (a libel case where the issue was justification) and *Hooton v Dalby* (in which the claim was for seduction of the plaintiff’s daughter), Falconer J. set aside the Master’s Order allowing certain interrogatories. His judgment indicates that he did not consider the interrogatories allowable because they were (a) fishing and (b) sought ‘*the evidence of the detailed history of the defendants’ development and design of their valve*’. One of the principles he applied was derived from *Hooton v Dalby* and was to the effect that ‘*a party may interrogate to support his own case, or to impeach his opponent’s case but not as to facts which support his opponent’s case*’.
20. Falconer J. also took the view that answering the interrogatories would be very onerous and ‘*would be of no benefit to the plaintiffs*’, apparently because, if the defendants were going to rely on any case of independent design, ‘*it will be the subject of evidence; so that there cannot be any question of costs saving.*’
21. *Rockwell v Serck* was due to be tried in October 1987. This was at a time before exchange of evidence by way of witness statements and before exchange of written skeleton arguments. The effect of the disallowance of the interrogatories was that the first time that Rockwell would know whether Serck was running a defence of independent design was when the first Serck witness went into the witness box and was examined in chief.
22. From the perspective of the CPR overriding objective/‘cards on the table’ approach, this decision seems bizarre. The defendant’s bare denial of copying in the defence was almost certainly pregnant with some sort of positive case of independent design (and if it wasn’t, that of itself was important information to allow the parties to prepare properly for trial) and, in order for the plaintiff to know the case it had to meet at trial, it would have been important for the plaintiff to know at least an outline of the defendant’s plea of independent design.
23. Transposing that case to today, in an action for infringement of design right, the defendant would not get away with a bare denial of copying, would be obliged to state whether it was running a positive case of independent design and would also be obliged to give at least an outline of its independent design process, so the claimant knew the case it had to meet at trial.

24. Having said all that, the propositions set out in §20.34 are applicable, in my view, to the approach to be taken under CPR Pt 18. What I disagree with are the footnotes said to support those propositions in which the old and pre-CPR authorities, if consulted, are capable of leading one astray. It would be far better, in my view, to discard those old authorities and support the propositions by reference to caselaw under CPR Pt 18. I should add that I sympathise with the burden on the authors to keep their textbook up to date.
25. In the next paragraph, the first five sentences continue in the same vein, relying on a series of very old authorities on interrogatories. The paragraph concludes with a much more up to date proposition based on *National Grid*, which reflects the modern approach. Overall, however, the balance is tilted heavily in favour of the old approach to interrogatories and needs updating to reflect at least some of the key aims of CPR Part 18 namely (a) cutting back on the previously extensive requests for further and better particulars by applying the test of strict necessity and (b) doing away with all the arcane rules surrounding interrogatories. This was achieved by the focus on only allowing requests which are (in the words of PD18 §1.2) ‘*concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet.*’
26. This is a much more practical test which is, of course, dependent on the facts and circumstances of the particular case.

‘Documents’

27. Under this heading *Disclosure* at §§20.40 & 20.41 were relied upon. These read as follows:

‘The court generally will not permit Requests and Pt 18 applications to be used as a means of challenging the accuracy and completeness of an opposing party’s disclosure of documents. Where disclosure of documents is believed to be inadequate, the appropriate route is to apply for specific disclosure under CPR r.31.12. In relation to interrogatories, it was held that interrogatories asking generally what documents the party had or had had in his possession, custody or power,<sup>105</sup> or as to whether the opposing party had or had had documents other than those disclosed in a list or affidavit of documents<sup>106</sup> would generally be refused. Only in special circumstances have interrogatories been allowed as to the existence of particular documents.<sup>107</sup>

Where a Request is not used as a method of obtaining or challenging any disclosure of documents, a Request as to documents is permissible so far as it relates to matters in dispute. In relation to interrogatories the practice grew up whereby whilst interrogatories as to the contents of an existing document would not usually be permitted,<sup>108</sup> they would be permitted as to the contents of a lost document.<sup>109</sup> A party may be asked as to whether he wrote a particular document. Before answering the

party is entitled to see a copy of it; thus in practice it will often be convenient to exhibit a copy of the document to the Request, if a copy is not already in the hands of the other party.<sup>110</sup> There can be no objection in principle to a party being asked whether a document is in the hand of a particular person.<sup>111</sup> Similarly a party may be asked whether a particular document was prepared or sent with his consent, or whether it is in his hand-writing<sup>112</sup> or whether a particular document had been received.<sup>113</sup>

fn105 *Jacobs v GW Ry Co* [1884] W.N. 33; *Hall v Truman* (1885) 28 Ch.D. 307 CA.

fn106 *Robinson v Budgett* [1884] W.N. 94.

fn107 *Jones v Monte Video Co* (1880) 5 Q.B.D. 556 at 558; *Hall v Truman* (1885) 29 Ch.D. 307, esp. at 320; *Nicholl v Wheeler* (1886) 17 Q.B.D. 101; *Morris v Edwards* (1890) 15 App.Cas. 309 at 313–315; *Bray*, at pp.213–214; *CTC Resources NL v Australian Stock Exchange* [2001] W.A.S.C. 40.

fn108 *Hershfield v Clarke* (1856) 11 Exch. 712, which was not followed by *Simon Brown J* in *Butler v GKN Foundations Ltd*, unreported, May 22, 1992.

fn109 *Wolverhampton New Water Works v Hawksford* (1859) 5 C.B.(N.S.) 703; *Ramsey v Ramsey* [1956] 1 W.L.R. 542.

fn110 This has been the practice in relation to interrogatories: *Dalrymple v Leslie* (1881) 8 Q.B.D. 5; *Lyell v Kennedy* (No.4) (1883) 33 W.R. 44.

fn111 *Lovell v Lovell* [1970] 1 W.L.R. 1451 CA (interrogatories).

fn112 *Jones v Richards* (1885) 15 Q.B.D. 439 for the purposes of proving the handwriting in another document (interrogatories).

fn113 *King v Commercial Bank of Australia* [1920] V.L.R. 218; *Jordan v Sanders* [1934] S.A.S.R. 424 (interrogatories).

28. As with §20.34, these paragraphs seem to reflect the old approach, particularly to interrogatories, a view supported by the age of the authorities cited. The overall impression is that these passages in *Disclosure* appear to put forward an out-of-date approach. As I indicated above, CPR Pt 18 set out a new approach which did not carry with it the accumulated baggage of all the old authorities on interrogatories.
29. The parties sought to extract different points from these paragraphs:
- i) Based on §20.40, Dr Wright submitted that issues of disclosure ought properly to be raised by way of an application for specific disclosure (or

other disclosure powers) and should not be the subject of an RFI. By extension, he submitted:

... requests asking what documents a party has in its control or whether it has documents other than those already disclosed will generally fall foul of this principle. By the same token, requests that simply ask a party to curate its own disclosure for the other party are not the proper subject of an RFI.

- ii) Based on §20.41, COPA submitted ‘It is legitimate for an RFI to raise questions about documents, so long as they relate to matters in dispute. Accordingly, a request can properly ask if a document was written by a particular person, whether a document was prepared or sent with the person’s consent, whether it is in his handwriting or whether a particular document had been received.’

### **The respective oral submissions in outline**

30. In his oral submissions Mr Hough KC for COPA drew my attention to the legal principles outlined in his Skeleton and added a few additional points in view of Dr Wright’s submissions on the law. He then addressed the requests in groups, setting out his case as to why each request should be answered, identifying the very few which were no longer pursued.
31. For his part, Mr Flynn KC for Dr Wright only addressed me on the 10 limitations as set out in his Skeleton argument. He did not address any of the individual requests, but essentially contended that the effect of his 10 limitations meant that I should make no order for any answers on COPA’s application.
32. Other than at a high level (i.e. the main issue is whether Dr Wright is Satoshi), and although COPA linked various requests to paragraphs in the pleadings, neither side provided a full analysis of the ‘matters in dispute’. I must therefore undertake that exercise.

### **Matters in dispute on the pleadings.**

33. Although the headline issue is whether Dr Wright is the person who created and developed Bitcoin using the pseudonym Satoshi Nakamoto, it is necessary to focus on the matters by which COPA seek to prove he is not Satoshi and conversely, Dr Wright’s responses to those matters and any other matters which he has raised by which he seeks to prove he is or was Satoshi. It is important to keep in mind that each of these matters can fall into one of three categories: (1) it may be said to prove he is Satoshi; (2) it may be said to prove he is not Satoshi; or (3) it may not be probative either way.
34. For understandable reasons, COPA’s Particulars of Claim (now Re-Re-Amended, but which I refer to simply as the ‘POC’) focus on the publicly available information which conveniently divides into two time periods. The issues in each time period are different, as I explain below. First, there are the events surrounding the release of the White Paper on 31 October 2008 and the release of the first version of the Bitcoin source code on 8 January 2009. Second, there are the events from December 2015 onwards. It was in December

2015 that initial claims emerged to the effect that Dr Wright was or might be Satoshi and then, on 2 May 2016, Dr Wright's public proclamations that he was Satoshi. These public claims arose from a series of interviews ('the Interviews') which Dr Wright gave, the reporting of which was subject to an embargo until 2 May 2016. COPA also plead reliance on the EITC Agreement, pursuant to which it is alleged that Dr Wright agreed (a) that there would be a public announcement that Dr Wright was Satoshi and (b) he would be interviewed and would "*answer all questions put to him in a full, frank and truthful manner, including providing all such detail and information as he is able*".

35. In theory, there is a third intermediate period, between 8 January 2009 and April 2011. April 2011 is the date when it seems to be generally accepted that Satoshi stepped back from any involvement in the development of Bitcoin. I say 'in theory' because to my understanding, neither side in the pleadings has put in issue any pronouncements from Satoshi in that intermediate period as proving or disproving that Dr Wright is Satoshi.
36. COPA's POC focus in particular on the occasions in which (it is said) Dr 'Wright has proffered documentary evidence which purports to (but does not) support his claim to be Satoshi.' The occasions relied upon are then addressed under the following headings: 1) The Sartre Message, 2) The BlackNet Abstract, 3) The 12 March 2008 Kleiman email and 4) The SSRN Submission. I address those topics below, but the fact that many paragraphs in the POC and Defence relate to those topics should not be allowed to obscure the importance of the issues concerning (a) Dr Wright's authorship of the White Paper and (b) Dr Wright's authorship of the Bitcoin source code and its publication on the bitcoin.org website. Thus the issues in the first period concern whether Dr Wright can demonstrate he personally undertook the relevant events, and whether he undertook the work leading up to the publications. For the second period, there is no doubt over Dr Wright's involvement, but the issues are whether what he did (or purported to do) are consistent only with him being Satoshi.
37. Before proceeding further, there are some other aspects of this action which should be noted. These circumstances are relevant to how I should utilise the Court's case management powers:
  - i) First, Dr Wright has now given disclosure – I am told – of over 4,000 documents. This body of disclosure includes many documents which appear to be drafts of the White Paper.
  - ii) Second, I note from Dr Wright's Disclosure Certificate (filed 7 March 2023, but which was not in the bundles for this hearing) that the parties agreed to dispense with the need for Extended Disclosure List of Documents. To spell out the obvious point, this means that the documents in disclosure are identified only by an identification number (such as ID\_002284 or C000000971) and by no other information other than their content.
  - iii) Third, pursuant to directions given by Master Clark, Dr Wright has nominated some 107 documents as his 'Principal Reliance Documents'.

I have not been shown how these documents are identified, but I assume only by their identification numbers.

- iv) Dr Wright has now served his witness statement in chief. Although the Annex identifies some 96 documents (by an identification code) which were shown to Dr Wright in the course of preparation of the statement, there is only one document (as far as I could discern) which is explicitly identified in a single footnote as present at a particular web address (from which I infer it is not a document he has produced on disclosure). No doubt there are documents in disclosure which can be readily identified (e.g. the article in WIRED). Thus, apart from the footnote document, Dr Wright does not exhibit or explicitly identify any documents from disclosure in his witness statement.
  - v) The parties have permission to serve reports from experts in the fields of (a) digital currency technology (reports due to be exchanged on 6<sup>th</sup> October 2023) and (b) forensic document analysis. Based on the information and documents currently available, COPA has served the expert report of Mr Madden as its expert in forensic document analysis, with the report from Dr Wright's expert currently due on 23<sup>rd</sup> October 2023, and a reply report from Mr Madden due on 17<sup>th</sup> November 2023.
38. For understandable reasons, I cast my mind forward to what will happen at trial. In the course of argument, I posed to Mr Flynn KC, by way of example, the Kleiman email, suggesting that the best person to explain how the email header came to be changed was Dr Wright. Upon reflection, this may not have been the best example because it *may* be the case that Dr Wright's expert will have a better grasp of the technical processes (if it be the case) as to how an email header comes to be changed when the email is moved from one exchange server to another. However, it is the case that it is Dr Wright who has put forward this 'server moving' explanation to explain the change in the header.
39. The general point remains that there are undoubtedly pieces of information sought in the RFI which are known only to Dr Wright and COPA need to know at least some of these to know what case they have to meet at trial. Undoubtedly, these pieces of information also constitute evidence and, if the information is not elicited before trial, the information would have to be elicited in cross-examination. These factors make it easy to raise the objections that the request is for evidence or pre-empts cross-examination. However, these objections have little or no merit if the information (a) concerns a matter in issue and (b) I am persuaded the information is necessary to enable COPA to understand and prepare for the case they have to meet at trial.
40. Mr Flynn gave a long answer to my question, which, to my mind, identified a number of stages at which the information e.g. as to how the header came to be changed *might* be revealed. This was part of his explanation as to why the information should not be revealed now, why provision of the information was not 'strictly necessary', why what was sought was evidence and this was pre-emptive cross-examination. These were:
- i) In the expert evidence served on behalf of Dr Wright.

- ii) In Dr Wright's reply witness statement (currently due on 17<sup>th</sup> November, but there is a proposal to defer to 1<sup>st</sup> December 2023)
- iii) In Dr Wright's answers in cross examination at trial.

And Mr Flynn's final point was that if Dr Wright in cross-examination failed to provide a satisfactory answer, that would itself be taken into account.

- 41. For information sought which is known only to Dr Wright, this explanation would mean that the information *might* be revealed, at the earliest, in Dr Wright's reply witness statement. This would occur, as I understood matters, after all the expert evidence had been served.
- 42. Mr Flynn also submitted that COPA had already served their expert report on document analysis – that of Mr Madden – without needing the information which is now pursued. That begs the question as to whether, in the light of the information sought being received, Mr Madden and other experts on COPA's side would have relevant evidence to provide.
- 43. I found Mr Flynn's answer somewhat counter-intuitive because one would expect Dr Wright to want to explain in detail how and why the various incidents raised in the pleadings demonstrated (if it be the case) that he is/was Satoshi (recognising that he says some of the incidents are not probative). However, I keep an open mind because it must be recognised that some litigants prefer to keep their cards close to their chest, even if they support their case. In any event, Mr Flynn's answer failed to address those issues where I have concluded (see below) that the information needs to be provided now, so that it can be considered by various of the expert witnesses and so that COPA know the case they have to meet at trial.

### Further Developments

- 44. When I began preparing this judgment, I was struck by the large number of requests which asked Dr Wright to identify documents in his disclosure. This caused me to find Dr Wright's disclosure certificate on CE-file, from which I noted that the parties had agreed to dispense with Extended Disclosure Lists of Documents. This was the reason why all Dr Wright's disclosure documents are, at present, identified only by ID number. There is no List of Documents which actually identifies what each document is.
- 45. For that reason I asked my clerk to send a message to both sides which asked them to consider whether at least some of the difficulties highlighted in the RFI could be remedied or ameliorated by the provision of a List of Documents, ordered under PD57AD paragraph 18 which required (a) identification of each document, (b) its date of creation and (c) notification of whether it had been altered since its creation etc.
- 46. I invited submissions on this possible way forward, including the scale of the exercise, and whether it should be limited (e.g. to Dr Wright's Principal Reliance Documents or all drafts of or leading to the White Paper), and asked the parties to attend a further short hearing at 2pm on Friday 22nd September, which was a day also set aside for the hearing of these applications.

47. It is most regrettable that the email message was not sent to Dr Wright's representatives, with the result that, for entirely understandable reasons, they were not in attendance at 2pm on Friday. Due to the fact that a transcript was being taken and Dr Wright's representatives would see the transcript as soon as it was ready and because I was not going to make any decisions at that hearing, I decided to continue with the short hearing in order to keep things moving. It started with me explaining something more about my provisional thinking. Thereafter, Mr Hough KC explained COPA's position and in particular some of the complications over disclosure which had led to the consolidated RFI being served in the form in which it was served. Again, I considered it would be helpful for Dr Wright's representatives to see COPA's explanation and consider it. The hearing concluded with an invitation from me to Dr Wright's representatives to come back to Court at the earliest opportunity (i.e. on the Monday or Tuesday) to make any submissions they wished to make to me. This further short hearing was appointed for 10am on Tuesday 26<sup>th</sup> September 2023. It was preceded by a letter from the solicitors for Dr Wright sent on Monday 25<sup>th</sup> September, which contained a number of indications of Dr Wright's position. Dr Wright was willing to agree to provide certain parts of the information requested:

i) First, to identify all authentic drafts of the White Paper in his disclosure on the basis of certain conditions:

'Having considered the clear view expressed by Mr Justice Mellor (p.1, line 20 to p.2, line 1), Dr Wright is willing to agree to identify all authentic drafts of the White Paper in Dr Wright's disclosure, specify the date on which each such document was created (to the best of his recollection), and state whether Dr Wright is aware of any of those documents having since been altered, and if so in what respects, provided that Dr Wright is given until 23 October 2023 to provide this information. Dr Wright understands that this would be in lieu of providing a response to the corresponding requests in the Claimant's Request for Further Information. Dr Wright hopes this indication is of assistance to the Judge.'

ii) Second, he was prepared to agree to provide answers to the requests in Section E of the Consolidated RFI, provided he had until 23 October 2023 to do so and the deadline for the expert evidence in digital currency technology fell 14 days later, on 6 November 2023.

48. The letter went on to state that Dr Wright was not prepared to provide equivalent information in respect of any further documents, but that, if I had in mind any other 'key documents', Dr Wright would want to understand what they are, in order to consider the matter further. The letter continued:

'To that end, Dr Wright proposes that the judgment identifies any other "key documents" in respect of which the Judge would find further information helpful. Dr Wright will consider the judgment, following which the parties can seek to agree what (if any) further information should be provided. If the parties cannot



reach agreement in that regard, the matter can conveniently come back before the court at the hearing that is likely to take place on 12th or 13th October 2023.’

49. Whilst I am grateful to Dr Wright for his agreement to provide information in relation to ‘all authentic drafts of the White Paper’, this is not a negotiation. His agreement resolves a few of the outstanding requests, but the position remains that I must resolve the issues on the remainder. Nonetheless, in so doing, I will be identifying other ‘key documents’. Furthermore, Dr Wright is at liberty at any time to serve voluntary particulars of his case.
50. Section E is entitled ‘*E. Requests in relation to the Defendant’s case on his supposed proof of possession of private Bitcoin keys (Defence, paragraphs 37-40, and First RFI Response, (11)-(12))*’ and concerns Requests 19-22.
51. In summary, Requests 19 & 20 require Dr Wright to specify the precise technical means he used to demonstrate (in each of the four interviews) his possession of the private keys for blocks 9 and 1. Request 21 asks for the same information in relation to block 11 but also to whom, how and when Dr Wright demonstrated his ability to sign a message on block 11. In his initial response, Dr Wright referred to certain paragraphs in his witness statement. COPA submitted those paragraphs did not provide sufficient answers and I agree.
52. Request 22 is concerned with whether the reference to block 11 was a typo for block 1. This was answered as ‘Not applicable’, which I understand to signify that there was no typographical error.
53. If Dr Wright had not offered to provide answers to the Section E Requests, I would have ordered them to be answered.
54. Certain other suggestions were made in the letter as to how the timetable down to trial should be varied. Having considered the letter, I considered it would still be helpful to have a short hearing and so it proved. Further clarifications were provided and we were able to have further discussions about revising the timetable, which were then summarised in a joint document the parties sent (at my request) after the hearing. I address the timetabling issues at the end of this Judgment, so the dates mentioned above may well be subject to revision.
55. Having heard what Counsel for COPA submitted regarding the feasibility of ordering identification of documents in Dr Wright’s disclosure by means of a List of Documents, I was inclined to agree that a complete List of all documents would be a sledgehammer to crack a nut and would result in disproportionate cost. To order a list of documents restricted to identifying the documents the subject of various of the requests would be doing nothing more than ordering the requests to be answered in a different form. To my mind, this supports the view that this type of information can be ordered to be provided via CPR Part 18 because its provision satisfies the strict necessity test provided the requests are focussed and concise.
56. Thus, returning to the issue of principle raised by Dr Wright’s argument, my conclusion is that CPR Pt 18 is a broad power which enables the Court to order the provision of further information which is strictly necessary to enable a party

to know the case it is going to have to meet at trial. The power is not hidebound by the old approach to interrogatories. Although CPR Pt18 is explicitly not restricted to the provision of further information relating to matters in dispute in statements of case and whilst its normal or usual application will be the provision of further information linked to the statements of case, the power can be exercised at any stage of an action for its stated purpose. Any perceived overlap with powers under PD 57AD is not a bar to an order for the provision of information under CPR Pt18, although CPR Pt18 cannot be used to circumvent the requirements for an order for specific disclosure. The Court can use any of these powers as appropriate to ensure the overriding objective is being complied with.

57. After that overlong discussion of the applicable principles, I can now return to summarise the matters in dispute. This action is unusual in that the parties seek to prove or disprove the headline issue by reference to a number of different series of events. Furthermore, the issues raised in relation to each event were changed by Dr Wright's responses in his Defence, some of which raised further questions.
58. I discern the following principal matters in issue on the pleadings, which give rise to the further matters in dispute mentioned in each sub-paragraph:
- i) **Whether Dr Wright was the author of the White Paper.** Whether the documents in Dr Wright's disclosure which appear to be drafts of the White Paper are such. Whether those documents in Dr Wright's disclosure which appear to be drafts of the White Paper form a sequence (or more than one) which evidences the development of concepts or ideas in the White Paper. Whether each of those documents is authentic – in the sense that it was created on a particular date prior to 31 October 2008. Whether each of those documents has been altered since its creation.
  - ii) **Whether Dr Wright shared drafts of the White Paper with certain individuals in (at least) August 2008 prior to its public release.** Which draft version of the White Paper was shared with each person identified. When and how the draft version was sent to each person identified.
  - iii) **Whether Dr Wright was the author of the Bitcoin source code.** Whether the documents in Dr Wright's disclosure which appear to be versions of the Bitcoin source code are such. Whether those documents in Dr Wright's disclosure which appear to be versions of the Bitcoin source code form a sequence (or more than one) which evidences the development of concepts or ideas in the White Paper. Whether each of those documents is authentic – in the sense that it was created on a particular date prior to 31 October 2008. Whether each of those documents has been altered since its creation.
  - iv) **Whether Dr Wright had control over the website at bitcoin.org to enable publication of the Bitcoin source code on that website in January 2009.** Whether Dr Wright acquired the domain name

bitcoin.org or control over it to be able to publish the Bitcoin source code in January 2009. When and how Dr Wright acquired the domain name or control over it.

- v) **Whether the processes used by Dr Wright in each of the interviews with (a) Rory Cellan-Jones (b) Ludwig Siegele, (c) Jon Matonis and (d) Gavin Andresen established that Dr Wright was in possession of the private keys for at least blocks 1 and 9.**
- a) In the interviews with Cellan-Jones and Siegele, in which Dr Wright says he signed messages, attaching the text of a speech by Jean-Paul Satre with a private key for block 9, what was the process used and did it establish that Dr Wright was in possession of the private key for block 9.
- b) What was the digital signature algorithm used by Dr Wright in the interview with Jon Matonis.
- c) More generally, what technical means were used in the interviews with Jon Matonis and Gavin Andresen to verify the messages.
- vi) **The significance of the 2<sup>nd</sup> May 2016 post.**
- vii) **The significance of the BlackNet Abstract, the image of which was published on Twitter by Dr Wright on 10<sup>th</sup> February 2019.** Whether Dr Wright has asserted that the BlackNet Abstract was written in 2001. Whether his unsuccessful applications to AUSIndustry in 2009 and 2010 contained an abstract of the White Paper. The dates of those applications.
- viii) **Whether Dr Wright sent an email message to David Kleiman on 12 March 2008 containing the text as set out in paragraph 28 of the POC.** Whether the domain in the header recording the email address from which the email was sent was changed as a result of moving the email from one exchange server to another.
- ix) **Whether the documents which were uploaded to the SSRN website on or about 21 August 2019 by Dr Wright:**
- a) are originals of the Bitcoin White Paper; or
- b) based on the version of the White Paper Dr Wright had uploaded to SourceForge Bitcoin Project in March 2009;
- c) had had their metadata altered and in what way.

### The Individual Requests

59. The consolidated RFI contains 66 requests. A few (identified below) are not pursued. The requests are divided into sections, each with a heading. I address each section in turn.

*A. Requests in relation to the Defendant's case on versions of the White Paper (Defence, paras. 5, 7 and 13)*

60. I will deal in some detail with the first section of requests because they raise issues which are applicable to a number of later requests. In common with other sections, in this section, COPA set out the key allegations against which the requests must be read.

‘A. Requests in relation to the Defendant's case on versions of the White Paper (Defence, paras. 5, 7 and 13)

Paragraph 5 of the Defence states that the White Paper was “the first publicly available description of the digital asset known as ‘Bitcoin’.”

At paragraph 7 of the Defence, the Defendant asserts that on 31 October 2008 he “released the White Paper under the pseudonym ‘Satoshi Nakamoto’” by uploading it to the Bitcoin.org Website, which was a website “he had created which was accessible at <http://www.bitcoin.org>” and posting an announcement on The Cryptography Mailing List.

At paragraph 13(2) of the Defence, the Defendant asserts that “Bitcoin was developed before and during 2008” and that he “started to write the White Paper... in 2007”.

In the trial of the Kleiman Litigation in Florida, and in particular in his oral evidence on 22 November 2021 (transcript from p93), the Defendant gave an account about the process by which he prepared and revised a series of versions of the White Paper. By letter dated 9 February 2022, the Claimant's solicitors summarised this account and asked the Defendant's solicitors whether the Defendant intended to maintain it. By letter dated 7 March 2022, the Defendant's solicitors stated that he did intend to maintain that account but might expand upon it

In the Defendant's disclosure, the Defendant has disclosed a number of documents which appear to be or purport to be drafts and/or versions of the White Paper. It is critical for the Claimant to understand the Defendant's case as to what each of these documents is, when each was created and whether it has been altered.

1. Please state which documents in the Defendant's disclosure are drafts or versions of the White Paper.

2. More particularly, please identify any and all documents in the Defendant's disclosure which the Defendant maintains are drafts or versions of the White Paper that were created prior to 31 October 2008.

3. For each disclosure document identified in response to Requests 1 and/or 2 above, please state the date of creation of that document. If the date of creation is not known with certainty, please if possible state the approximate date of creation or give the most precise date range possible for the period in which the document was created.

4. For each disclosure document identified in response to Requests 1 and/or 2 above, please state whether it is the Defendant's case that that document is an authentic copy of the document as originally created and, if it is not, explain why not.

5. For each disclosure document identified in response to Requests 1 and/or above, please state if that document has been altered in any way (including by digital means) since it was first created in its full form. If it has been altered, please give the best particulars known to the Defendant of: (a) the nature of the alteration; (b) the time of the alteration; (c) who altered it; and (d) what was the purpose of altering it.

6. Please explain which versions of the White Paper were shared with third parties and provide the dates of such versions, along with the time and method of sharing and the details of all such persons.

7. More particularly, please state whether the following documents, to which the Defendant referred in his evidence in the Kleiman Litigation trial, appear in his disclosure in these proceedings and, if so, please identify them in the disclosure. Page references to the Kleiman trial transcript are all to the transcript for 22 November 2021.

(a) the handwritten first draft of the White Paper which he said he had written in about March 2008 (see Kleiman transcript, 95/8-9);

(b) the first typed version of the White Paper (of about 40 pages) which he claimed to have produced in April to May 2008 (see Kleiman transcript, 95/13-15);

(c) the second version (of about 20 pages) which he claimed to have produced after comments from others on the first typed version (see Kleiman transcript, 96/15-24);

(d) the third version (of about 10 pages) which he claimed to have produced after comments from others on the second version (see Kleiman transcript, 97/17-20);

(e) the various later drafts which he claimed were subsequently produced (each of about 9-10 pages) (see Kleiman transcript, 97/22 to 98/4).

8. For each document identified in response to request 7 above, please state whether it was shared with third parties and, if so, please state the time and method of sharing together with the details of all such persons. This response need not be answered to the extent that the information has already been provided in response to request 6 above.

9. For any documents identified in request 7 above which do not appear in the Defendant's disclosure, please explain what has happened to those documents and why they have not been disclosed.

10. Please explain the steps the Defendant took to create the Bitcoin.org Website. If the Defendant's case is that he paid for this domain name, please indicate how he paid for it and which documents in the Defendant's disclosure evidence that purchase.'

## Discussion

61. It seems to me that Dr Wright's offer (see paragraph 47.i) above) addresses Requests 1-5.
62. I can deal briefly with the remaining requests in Section A.
63. Request 6 must be answered, because the sharing of drafts of the White Paper with certain individuals before its publication is an important plank of the case of each side. If the details of the sharing are full and convincing, they will support Dr Wright's case. Alternatively, if the details of the sharing are diffuse and concern documents which appear to have been altered subsequently (e.g. by being backdated), that will tend to support COPA's case. Either way, the information sought is necessary to enable COPA to know the case it has to meet at trial. Dr Wright can only provide answers to the best of his knowledge and belief. If his answer is that he has already set out all the information he can recall in his witness statement, then he can so state.
64. In view of the confirmation in correspondence that Dr Wright does rely on what he said in evidence in the Kleiman case, Request 7 refers to various drafts of the White Paper. It would be surprising if all these drafts were not identified in his answers to Requests 1-3, with the additional details provided in response to Requests 4 & 5. If they have been, Request 7 will require no further answer.
65. Request 8 asks for information as to whether those drafts were shared with third parties and acknowledges that it need not be answered to the extent that the information has already been provided via Request 6.
66. Request 9 only concerns documents referred to in Request 7 if they do not appear in Dr Wright's disclosure. There may be no such documents, but if there are, I consider that COPA should know why. Dr Wright must answer.
67. Request 10 is the only request which concerns the bitcoin.org website. I consider it is necessary for Dr Wright to respond, so that COPA knows the case

it has to meet regarding the website and his ability to access it and post material on it.

*B. Requests in relation to the Defendant's case on versions of the White Paper uploaded to SSRN (Defence, paras. 52-53)*

68. Requests 11-14 seek effectively the same information in relation to the versions uploaded to SSRN as was sought in Requests 1 & 3-5. For essentially the same reasons, I consider Dr Wright must provide answers to Requests 11-14. It is necessary for the information to be provided now, so that COPA can prepare its evidence and so it knows the case it has to meet at trial.

*C. Requests in relation to the Defendant's alleged work underlying the White Paper (Defence, para. 13(2), and First RFI Response (1))*

69. In his Defence, Dr Wright pleads that the White Paper is 'based on concepts Dr Wright [had] been working on for many years previously'. In answer to Request 1 in the First RFI, Dr Wright responded that the concepts included (i) digital currency systems (ii) audit technologies (iii) incentive systems (iv) peer networks and (v) digital signatures and key exchange systems.

70. Against that backdrop, Request 15 asks:

'15. In relation to each of these five concepts, please state:

(a) What documents, if any, the Defendant produced in the course of his work on the concept.

(b) If documents were produced, please identify them in the Defendant's disclosure or explain why they have not been disclosed.

(c) What is the relevance of each of these concepts and/or the documents identified to the content of White Paper.

(d) Which parts of the White Paper, if any, are based on any earlier documents relating to the concept.'

71. In his Response, Dr Wright refers to §§26-60 of his witness statement and contends that further information is not necessary or proportionate. Objection is taken also on the grounds that the requests lack concision and/or clarity and are excessively broad and untargeted.

72. In his evidence, Mr Sherrell accepts that Dr Wright addressed some of these concepts at §§26-60 but complains that he does not refer to any specific documents as examples of the output of the development of these concepts. He contends '*it is reasonable for COPA to seek clarification regarding how Dr Wright says that these concepts informed the development of Bitcoin and where it is he says the evidence supporting his account is located.*'

73. This Request gives the impression that it is simple to take each of the five (and other) concepts and plug them together to see how the White Paper was devised.

However, whoever wrote the White Paper had engaged in some novel thinking. It is often extremely difficult after the event for someone with an inventive frame of mind to pinpoint where all the ideas came from and which coalesced to give rise to the concrete description in a document like the White Paper.

74. Having considered this Request carefully, I conclude the bulk of it falls the wrong side of line in seeking evidence and possibly also in pre-empting cross-examination. Furthermore, the Request is likely to be onerous to answer in full. However, I will order that Dr Wright answers Request 15(b), so that he must identify those papers in his disclosure which he contends contributed to his development of Bitcoin in the White Paper.

*D. Requests in relation to individuals with whom the Defendant allegedly discussed the White Paper (Defence, para. 25, and First RFI Response (7))*

75. The background to these requests is as follows:

‘The Defence states, at paragraph 25, that before prior [sic] to 2016, the Defendant “*had discussed with a number of individuals that he was working on and had subsequently released Bitcoin and had notified various individuals that he was working on the project.*”

In Request 7 of the First RFI, the Claimant asked the Defendant to specify (a) the names of the individuals with whom he had discussed his working on the White Paper; (b) the nature of the communications; and (c) the dates on which such communications happened. The Defendant responded:

*“The quoted passage from paragraph 25 refers to Bitcoin generally and the Bitcoin project and not specifically to the White Paper. The individuals with whom Dr Wright discussed his working on Bitcoin included: Wing Commander Donald Lynam OM; Stefan Matthews; and David Kleiman. Moreover, Dr Wright discussed concepts underlying Bitcoin with employees of BDO and Centrebet.”*”

76. Then Request 16 asks:

‘16. For each of these individuals, please state what he told the person about his work on Bitcoin generally and the Bitcoin project; at what time(s) he told the person about such work; and whether any of the communications was in writing. If any of the material communications were in writing, please provide copies or identify them in the Defendant’s disclosure.’

77. In response, Dr Wright refers to a number of paragraphs in his witness statement (§§48-55, 87-89, 96-99, 115 and 123) where he addresses his communications with Messrs Lynam, Matthews and Kleiman and his discussions with former colleagues at BDO, Allan Granger, Neville Sinclair and Ignatius Pang (who has provided a witness statement about these discussions). The response identifies



some further individuals including David Bridges, Rob Jenkins and Shoaib Yusuf.

78. In his evidence in support of COPA's RFI application, Mr Sherrell refers to §§86-97 in Dr Wright's witness statement and says that '*on the understanding that this represents the totality of Dr Wright's knowledge and evidence on those matters*', COPA is content for him to confirm that he has no further information to give in answer to these questions, but that where any communications are given in writing, to identify where in his disclosure they are located.
79. I find that no further response is necessary or proportionate. It is likely that Dr Wright has identified the most significant individuals with whom he discussed the concept underpinning Bitcoin. He may remember discussions with others in the lead up to or during his evidence, but a sufficient number of individuals have been identified for COPA to be able to prepare its case for trial. Furthermore, it is to be assumed that COPA has reviewed Dr Wright's disclosure already and noted the names of people with whom Dr Wright communicated by email. COPA can correlate the names provided to documents in disclosure.
80. Request 17 asks for more details of the discussions with these individuals and specifically, which he told he was releasing or had released the White Paper and when, identifying the communications in his disclosure. Request 18 asks for each employee of BDO and Centrebet with whom Dr Wright discussed any concepts underlying Bitcoin to be identified and specifics of which concept(s) were discussed, when the discussions took place, whether the exchanges were in written form and identification of documents in disclosure.
81. These two requests are open-ended and are likely to be either difficult to answer (because of the passage of time) or onerous to answer. Again I conclude that they fall the wrong side of the line. The 'matter in dispute' is whether Dr Wright discussed the concept underpinning Bitcoin with third party individuals. This does not require every discussion with every individual to be identified. Dr Wright has identified a sufficient number of individuals whom COPA can, if they so wish, attempt to contact to see if their accounts chime with Dr Wright's.

*E. Requests in relation to the Defendant's case on his supposed proof of possession of private Bitcoin keys (Defence, paragraphs 37-40, and First RFI Response, (11)-(12)) Requests 19-22*

82. As already noted, Dr Wright has agreed to provide the information requested in Requests 19-22 in this Section. This information is likely to be technical in nature and will need to be considered by the experts in digital currency technology.

*F. Requests in relation to the Defendant's case on his alleged loss of access to private keys used in the demonstrations (First RFI Response (13))*

83. In response to Request 13 of COPA's first RFI, Dr Wright responded:

"Dr Wright is not in possession of the private key, as stated in paragraph 83(3) of the defence. In early May 2016, Dr Wright

destroyed the hard drive which contained the private keys which he had used in the private demonstrations – including the private key to block 9 of the Bitcoin Blockchain.”

84. One notable absence from his witness statement is any explanation as to why Dr Wright destroyed this hard drive. The explanation is an important part of the reason why Dr Wright is now unable to replicate the demonstrations he undertook during the interviews, nor, for that matter, demonstrate he is/was in possession of the private keys to the very early blocks.
85. Whether this information is strictly necessary is less clear than for the key documents. Nonetheless, I consider it is information which COPA needs to be able to meet the case against it at trial. It may well be too late if the explanation is only extracted from Dr Wright in cross-examination.

*G. Requests in relation to the Tulip Trust and its Deed of Trust (Defence, para. 85A, and Second RFI Response)*

86. Paragraph 85A of the Defence responds to paragraphs 66 and 67 of the POC which sit under the heading ‘General matters going to Dr Wright’s credibility’.
87. In my view, the issues surrounding the date of the Deed of Trust and the Tulip Trust generally are not ‘matters in dispute’. Neither side requires to succeed on these issues in order to succeed in their case. These issues go to Dr Wright’s credibility and are not strictly necessary to enable COPA to know the case it has to meet.

*H. Requests in relation to versions of the Bitcoin software and source code (Defence, para. 13, and Third RFI Response (13))*

88. The documents in Dr Wright’s disclosure which are (or are alleged to be) versions of the Bitcoin software and source code rank equally in terms of importance with the drafts of the White Paper and I consider them to be key documents as well. For the same reasons as in relation to drafts of the White Paper, I consider Dr Wright must answer Requests 34-35.
89. In my view, it is clearly a matter in dispute as to whether Dr Wright can establish that he has disclosed a series of versions of the software and source code which demonstrate a convincing process of development leading to the Bitcoin software and source code which was made public in 2009.

*I. Requests in relation to the Defendant’s case on individuals to whom he sent the White Paper (Defence, para. 18)*

90. In his response to Request 36, Dr Wright correctly identifies this request as duplicative of Request 6. However, to the extent that Request 36 has not already been answered in the response to Request 6, it must be answered by Dr Wright.

*J. Request in relation to the Defendant's case concerning agreements related to / precursors to the EITC Agreement (Defence, para. 31A)*

91. Paragraph 31A of the Defence pleads that the EITC Agreement ‘*was one aspect of a series of agreements made from June 2015 onwards relating to the start of what became nChain UK Limited (initially called nCrypt Limited).*’ Requests 37 and 38 ask for identification of each such agreement, a summary of the subject matter of each one, whether it is in disclosure or if not, an explanation as to why not.
92. The only relevance of the EITC Agreement so far identified is that Dr Wright agreed there would be a public announcement that he was Satoshi, he would be interviewed, he undertook to tell the truth, EITC would secure the rights to exploit Dr Wright’s life story and in return EITC would pay AUS\$1,000,000.
93. In his witness statement, Mr Sherrell referred to the witness statement of Stefan Matthews, saying he had provided some details about the agreements preceding the EITC Agreement and about the EITC Agreement itself. He says that COPA would be content for Dr Wright to answer these Requests by confirming whether and details of the documents provided by Mr Matthews is correct. He says that Dr Wright has disclosed a significant number of documents which appear to be duplicates of documents referred by Mr Matthews and says it may be necessary to revisit the position, if there are found to be material differences between the documents in question.
94. I am unable to identify any need for answers to be given to these Requests. I also see no reason to require Dr Wright to provide the confirmation which Mr Sherrell requests.

*K. Requests in relation to the Defendant's case concerning the payment pursuant to the EITC Agreement (Defence, para. 31B)*

95. In his Defence, Dr Wright pleads that to the best of his recollection ‘he was not personally paid AUS \$1,000,000 in full pursuant to the EITC Agreement’, the implication being that he or possibly someone in his stead was paid somewhat less than the full figure. Requests 39-42 concern the payment made to Dr Wright pursuant to the EITC Agreement, seeking a series of details about what payment or payment in kind was made, to whom, when, Dr Wright’s awareness of those matters and what proof he has.
96. On the current state of the pleadings, I cannot see what relevance the details sought have to any matter in issue. I see no need for these Requests to be answered.

*L. Requests in relation to the Defendant's case as to documents he supplied in connection with the EITC Agreement (Defence, para. 31C(1))*

97. Paragraph 31C of the Defence pleads:

“(1) Dr Wright held discussions orally and in email correspondence prior to the making of the series of agreements referred to in paragraph 31A above. In the course of those

discussions Dr Wright identified certain documents relating to his authorship of the White Paper and indicated that he was the author of the White Paper. He has not publicly disclosed the nature of those discussions and was not obliged to do so.

(2) Dr Wright did not provide ‘Subject’s Materials’ following the making of the EITC Agreement. However, Dr Wright did engage in the following matters which have been made public: (a) the interviews referred to in paragraph 31 above and paragraph 32 below (b) the 2 May Post to the extent referred to in paragraph 33 below and (c) the demonstrations referred to in paragraph 34 below.”

98. Request 43 asks Dr Wright to identify ‘the email correspondence’ in his disclosure or an explanation for its absence.
99. Request 44 asks Dr Wright to identify the documents referred to in the second sentence of 31C(1), whether they are in disclosure and if not, why not.
100. Request 45 seeks a list of all documents which Dr Wright supplied ‘in purported compliance with his obligations under the EITC Agreement.’
101. Request 46 requests, if it is the Defendant’s case that he has lost or destroyed any of the documents identified in respect to the three preceding requests, that he explains when why and how that happened.
102. In my view, these requests are excessive and the bulk of them are not necessary. I will, however, require Dr Wright to identify ‘the email correspondence’ and the ‘certain documents relating to his authorship of the White Paper’ to the extent they appear in his disclosure on the basis those documents may shed light on the support for his claim to be the author of the White Paper.

*M. Requests in relation to the Defendant’s case concerning the BlackNet Abstract (Defence, para. 45)*

103. The POC plead a series of allegations about a picture posted on Twitter by Dr Wright on 10 February 2019 of an abstract regarding a project entitled ‘BlackNet’ which it is alleged he asserts is an early iteration of the Bitcoin White Paper. It is also pleaded that Dr Wright asserts that the abstract was written in 2001. The POC go on to explain why the BlackNet abstract contains corrections made to the White Paper between August and October 2008 and therefore it is not a document which predates either the draft Bitcoin White Paper or the Bitcoin White Paper.
104. Although Dr Wright admits the tweet, almost all of these allegations are denied in Dr Wright’s Defence. He denies he asserted that the extract published on Twitter was from a version written in 2001 and avers it was not. He provides the following explanation in paragraph 45 of his Defence:

“Dr Wright first submitted his Project BlackNet research paper to AUSIndustry in 2001 as part of an application for a research grant and R&D tax rebate. He obtained R&D tax rebates from

AUSIndustry (but not research grant funding) for project BlackNet during the period 2001 to 2009. He subsequently and unsuccessfully sought research grant funding and R&D tax rebates in 2009 and 2010. Dr Wright updated his Project BlackNet research paper each year that he submitted it to AUSIndustry. Early applications did not contain the abstract of the White Paper but later unsuccessful applications did. The image of the research paper published on Twitter is that used for a later application containing an abstract from the White Paper.”

105. The effect of this paragraph is that there appears to be no issue but that the image of the abstract published in his tweet on 10 February 2019 was taken from the published White Paper and was not an image of a document which predated the White Paper. What remains in issue is whether Dr Wright made the assertions pleaded in the POC. Although it would seem that it is Dr Wright’s case that by 2009 and 2010 the BlackNet project was concerned with the White Paper, it is unclear whether Dr Wright maintains that the work leading up to the White Paper was always part of Project BlackNet. The POC seems to assume that that is Dr Wright’s position, but the blanket denial in the Defence (save only for his express admissions, plus his paragraph 45) would appear to dispute any such assumption.
106. Against that backdrop Requests 47-49 make a series of requests about the applications which Dr Wright submitted to AUSIndustry:
- i) First, as to the applications which did not contain the abstract of the White Paper.
  - ii) Second, as to the applications which did contain the abstract of the White Paper.
  - iii) Third, as to each version of the Project BlackNet Paper which Dr Wright produced and submitted to AUSIndustry.
107. Each request asks for the documents in question to be identified by date, a statement whether each such document appears in Dr Wright’s disclosure, and if so, the identification number and if not, why not.
108. Mr Sherrell’s explanation in his 12<sup>th</sup> Witness Statement as to why answers are needed is as follows:
- ‘...COPA seeks information in order to understand fully what Dr Wright’s pleaded case is. If he has submitted documents or communications to AUSIndustry (or similar authorities) containing materials relating to Bitcoin or the Bitcoin White Paper prior to the publication of the Bitcoin White Paper then those materials (and the dates on which they were submitted) will clearly be relevant to these proceedings, and as such COPA is entitled to ask for them. Equally, if Dr Wright cannot identify the applications or point to any relevant supporting documents, that is at least arguably a point on which COPA is entitled to rely.’

109. Although Sherrell 12 was made after Dr Wright's witness statement was served (and Mr Sherrell exhibits it), Mr Sherrell does not refer to what Dr Wright says about Project BlackNet in his witness statement. Dr Wright says he embarked on Project BlackNet in 1998. He says it was an attempt at creating a fully secure encrypted internet intended for business to business transactions, with a critical element being the introduction of micropayments using tokens dubbed 'crypto credits'. He indicates that this, together with some other ideas from a payment protocol called Millicent, laid the foundational groundwork for what would later become Bitcoin.
110. Thus the picture emerges that part of Project BlackNet is said by Dr Wright to be an early contributor to the development of Bitcoin.
111. However, to return to the reasons put forward by Mr Sherrell, his explanation seems speculative to me. Furthermore, it may be noted that his reasons would not be sufficient to support an application for specific disclosure of these AUSIndustry applications, for the same reason. For these requests, the requirements of CPR Pt18 and those applying to an application for specific disclosure lead to the same result.
112. Of course, *if* his applications to AUSIndustry did contain details relating to or evidencing the development of Bitcoin, they would be highly relevant and one would have expected Dr Wright to want to rely upon them. Although I accept that the position on the pleadings is somewhat obscure (as I have attempted to illustrate above), Dr Wright does not (as the case is currently pleaded) appear to be asserting in this action that anything to do with Project BlackNet directly proves he was/is Satoshi, only that it was an early contributor to the ideas which eventually became Bitcoin. In these circumstances, I cannot identify any necessity for these Requests to be answered.

*N. Requests in relation to the Defendant's case on the 12 March 2008 Kleiman email (Defence, paras. 49-50)*

113. The significance of the Kleiman email is that, if it is authentic, it evidences Dr Wright working on a project – Bitcash or Bitcoin – some time before the White Paper was made public, which was the first public announcement of Bitcoin. The dispute arises because the email address from which the email was sent had a domain which was not created until January 2009. The explanation for the change in domain put forward in Dr Wright's Defence is that '*the difference has arisen as a result of the original email being moved from one exchange server to another*'. COPA's expert says this explanation is implausible. So the authenticity of the Kleiman email is very firmly in issue.
114. Requests 50 and 52 have already been answered, in that Dr Wright has said the email was sent from [wright\\_c@ridges-estate.com](mailto:wright_c@ridges-estate.com). Request 51 asks a series of questions about the moving of exchange servers and, in particular, what technical process was used for moving exchange servers, including the details of all software used. Request 53 asks how and why Dr Wright has come to believe the header is different, asking for the sources of information which have led him to come to this belief.

115. Whilst the technical experts will be able to comment on the ‘moving of exchange servers’ issue, it is plain that it must be for Dr Wright to explain what was done or, at the very least, what he thinks was done, both being the basis for him forming the belief he has pleaded. Although Requests 51 and 53 raise some detailed questions, Dr Wright can only be obliged to answer to the best of his knowledge and belief. I consider it is necessary that answers are given to Requests 51 and 53 so that the key issue which has emerged over the Kleiman email can be properly investigated in the expert evidence and so that COPA knows the case it has to meet at trial.

*O. Requests in relation to the Defendant’s case as to Bitcoin being characterised and described as a cryptocurrency (Defence, para. 78(d))*

116. Request 54 is no longer pursued.

117. Request 55 refers to a posting made by Satoshi on 6 July 2010 in which he described Bitcoin as a cryptocurrency and asks whether Dr Wright wrote that post. If not, he is asked to identify who wrote it and why it was attributed to Satoshi. Request 56 poses the question, on the assumption that Dr Wright wrote the post under the pseudonym of Satoshi, why he has altered this position on whether Bitcoin is properly to be described as a cryptocurrency.

118. Whilst answers to these Requests might be nice for COPA to have and whilst the question whether Bitcoin is properly characterised as a cryptocurrency or not is live on the pleadings, my conclusion is that answers to these Requests are not necessary. To the extent that this question needs to be debated at trial, these points can be raised in cross-examination.

*P. Requests in relation to the Defendant’s case as to a private key created in 2011 (Defence, para. 83(2))*

119. Requests 57-61 are said to relate to the control of Satoshi’s private key(s). The pleadings which underpin these requests are a little obscure:

- i) The POC plead that Dr Wright has publicly asserted that he can prove he is Satoshi by reference to the Genesis Block, an allegation that Dr Wright denies.
- ii) The POC go on to plead that Dr Wright should therefore be able to show that he has control over Satoshi’s private key and the Genesis Block. In response, Dr Wright denies that anyone could have ‘control’ over the Genesis Block and he pleads that it is not clear what ‘private key’ is being referred to and continues (paragraph 83(2) of his Defence):

‘There has been a public discussion of a key created in 2011 after Dr Wright retired his Satoshi persona. The key was created by persons unknown. Therefore, control, command and ownership of that key has no probative value as to the identity of Satoshi Nakamoto.’

- iii) His Defence goes on to admit and aver that he had access to the private keys associated with the earliest blocks in the Bitcoin Blockchain, and that he no longer has such access.
120. These pleadings appear to me to raise a series of both technical issues (which the experts should be able to clarify) and issues of fact (whether the assertion was made, what it is capable of signifying, which key is being referred to etc.) Ultimately, the resolution of those issues will determine whether COPA's founding allegation is correct or not: whether Dr Wright has failed to demonstrate access to accounts controlled by Satoshi and/or whether the allegation is probative of the headline issue.
121. Against that backdrop, Requests 57-59 seek to clarify which public key Dr Wright is referring to in paragraph 83(2) of his Defence. Request 57 provides a link to a specific public key and asks whether that is the key to which Dr Wright referred. If not, then Request 58 asks Dr Wright to identify and provide a copy of the key referred to in paragraph 83(2) of his defence. Request 59 asks when the PGP key was generated.
122. Requests 60-61 raise some further specific points:
60. Does the Defendant presently have the private PGP key corresponding to a public PGP key which belonged to Satoshi in or before 2011? If so, why has the Defendant not signed a message using that key pair?
61. If the Defendant does not presently have any private PGP key corresponding to any public PGP key which belonged to Satoshi in or before 2011, did he have any such private key at any time in the past? If so, what has happened to cause him no longer to have the key?
123. These Requests 57-61 raise a series of short questions which ought to be easily answered. It seems to me that if answers are given, we will be able to tell whether these allegations go nowhere or whether they have some relevance to the headline issue. Either way, clearing up the present obscurity is likely to save costs. For these reasons I conclude these Requests are necessary and should be answered.

*Q. Requests in relation to the Defendant's case on activities of Satoshi Nakamoto*

124. Requests 62-65 have either been answered and/or are no longer pursued.

*R. Request in relation to the Defendant's operating systems used for sources of documents*

125. Request 66 engages one of Dr Wright's key objections to the effect that any request which relates to documents should be pursued through the framework of PD57AD and not CPR Pt 18:



‘66. For each document source of the Defendant which is referred to in the Disclosure Review Document, please identify the operating system used.

Response

66. It is not clear what is meant by “the operating system used”. Assuming that this is a reference to the operating system used by the custodian of the relevant documents (either now or at the time of collection of the document), the Claimant is not entitled to this information, for the following reasons:

(a) It is not reasonably necessary to enable the Claimant to prepare its case or to understand the case it has to meet.

(b) It is not proportionate.

(c) It is, in any event, irrelevant.

(d) It is, in substance, an oppressive request for additional disclosure and/or additional information about the Defendant’s disclosure. Such requests should be raised (and properly justified) in accordance with the framework of Practice Direction 57AD, rather than by means of CPR Part 18 request.’

126. The need for this information is not entirely clear to me. Mr Sherrell said the following: *‘Understanding the operating system used in respect of the documents that Dr Wright has disclosed is important in a case in which forensic document analysis is likely to play an important role. COPA therefore seeks an answer to this request.’*
127. In his submissions, Mr Hough was more specific. He said this information would be *‘very valuable for the ongoing work of the forensic document experts, as Mr Madden has explained’*.
128. It may be my fault or the result of the issues in the ‘Chain of Custody’ application being agreed between the parties, but I remain unable to assess why or how this information would be ‘very valuable’. No explanation from Mr Madden was drawn to my attention. Therefore, on the current information I have, sufficient necessity for the information to be supplied has not been made out.
129. If, nonetheless, the forensic experts really need this information to be able to conduct a full analysis, either this part of the application can be renewed or the expert(s) can indicate the reasons why they need this information.
130. What remains on COPA’s RFI Application is the setting of a deadline or deadlines for the provision of the information which I have ordered above.

## Dr Wright's ASD expert evidence Application

131. There is a long and involved history to this application but it is not profitable to rehearse it. As finally formulated, the revised application seeks permission to adduce the expert report of Professor Seena Fazel who is described in evidence as a distinguished expert in forensic psychiatry and psychiatric assessment, including in relation to how ASD manifests itself in affected individuals. His report (which I have read) is based on interviews with Dr Wright on 3 occasions and interviews with his wife and mother. He concludes that Dr Wright's ASD impacts his interaction with others and would impact his presentation in court proceedings. He suggests that a range of reasonable adjustments are required at trial in order to accommodate Dr Wright's ASD and allow him to give his best evidence.
132. Based on Professor Fazel's report, the contentions made on Dr Wright's side are relatively straightforward:
- i) Dr Wright has ASD. He is a vulnerable person with a disability.
  - ii) Dr Wright's ASD impacts his presentation in court. It will be important for the Judge and other court-users to be aware of this in order to ensure a fair trial.
  - iii) Given that Dr Wright is a vulnerable person with a disability, the court will naturally wish to consider what reasonable adjustments may be appropriate in order to accommodate his ASD (and it will be necessary to make such decisions in respect of reasonable adjustments in advance of the trial, i.e. at the PTR).
  - iv) In considering issues i)-iii), the court will plainly be assisted by expert evidence. Permission for such expert evidence should therefore be granted.
  - v) The final contention concerned further directions, if permission is given to adduce Professor Fazel's report. I will consider that topic below.
133. COPA vigorously opposed the application, contending Dr Wright had delayed unduly, the application was too late and there was insufficient time before trial for COPA to instruct an expert and produce a report, so COPA would suffer prejudice and the timetable to trial would be seriously disrupted. COPA also submitted the application was unnecessary because Dr Wright had managed to be cross-examined in earlier proceedings without any apparent difficulty or any of the extreme adjustments now sought (the *Kleiman* proceedings in the US, *Granath* in Norway, *McCormack* in the UK (albeit he had a pen and paper in the witness box) etc.). COPA also contended there was reason to believe that Dr Wright had engaged in 'expert-shopping' since he had originally proposed Dr Klin (who had given evidence in the *Kleiman* proceedings, some of which was ruled inadmissible as 'oath-helping'), then Professor Baron-Cohen, finally coming to rest on Professor Fazel.
134. COPA's reliance on what occurred in previous proceedings rather begs the question. In each set of proceedings, some strong views were expressed by each

Judge as to Dr Wright's unreliability as a witness. One does not know whether the same views would have been expressed if some or more adjustments had been made. I am not saying that any of the unfavourable findings of Dr Wright's reliability were wrong but I must now deal with the situation which presents itself, where I have at least prima facie evidence from a distinguished expert that Dr Wright suffers from autistic spectrum disorder and that some adjustments to the trial process should be made.

135. COPA put forward various criticisms about the materials presented to Professor Fazel, complaining that he was not provided with available transcripts or recordings of Dr Wright giving evidence under cross-examination or online links to talks and lectures apparently given by Dr Wright without any apparent difficulty. There is a possibility that Professor Fazel may revise his opinion in the light of such materials or in the light of a report from an expert instructed by COPA. However, none of these criticisms justify me in rejecting Professor Fazel's report outright. In any event, autism is a spectrum and those who suffer from ASD develop various coping mechanisms. These may well enable someone like Dr Wright to appear to speak confidently in a public environment, especially with slides as prompts. He may also be able to cope with cross-examination on aspects of the technology with which he is very familiar, but the cross-examination in this case is most unlikely to be so confined, bearing in mind that COPA challenge the authenticity of every one of the 107 principal reliance documents which Dr Wright has identified. This, however, is not the occasion for making any findings about a proper diagnosis or any adjustments for trial. This is just the start of a process designed to ensure a fair trial for both sides.

### Applicable principles

136. In my pre-reading I was referred to a number of authorities, in view of COPA's vigorous resistance to this application. Ultimately, although COPA continued its resistance at the hearing, I did not detect any real dispute as to the applicable principles, which I should summarise.
137. One of COPA's submissions was that this application was unprecedented in commercial litigation. That may be so, but the authorities and other guidance indicate it is not unprecedented in the criminal sphere and most of the principles or guidance derive from that sphere.
138. In *R v Mulindwa* [2017] EWCA Crim 416, a strong Court of Appeal gave clear guidance as to the permissible role of an expert in this type of circumstance. I cite two passages from the judgment of the Court, acknowledging that in transposing these principles into the context of this civil case, references to the 'jury' are to be read as to the trial judge:

'34. ... As a matter of general principle, it was held by the House of Lords in *Toohy v Metropolitan Police Comr* [1965] AC 595 that medical evidence is admissible to show that a witness suffers from some disease or defect or abnormality of mind that affects the reliability of his evidence. Such evidence is not confined to the general opinion of the unreliability of the witness but may

include all the matters necessary to show not only the foundation of and reason for the diagnosis but also the extent to which the credibility of the witness is affected. There are, however, necessary limitations to the principle. For example, such evidence will not be permitted to amount to “oath helping”: see *R v Robinson* [1994] 3 All ER 346. But sometimes a jury may legitimately require expert assistance in understanding the presentation of a witness with a particular disability. For example, in *R v VJS* [2006] EWCA Crim 2389 the prosecution were permitted to call a paediatrician to explain the presentation of the evidence of a young complainant in a sexual case who was autistic. The court stressed that it remained for the jury to decide whether or not she was to be believed in the light of all the evidence.’

....

‘36 We are satisfied that there is a clear dividing line between evidence from a psychiatrist or a psychologist which may legitimately provide the jury with necessary assistance in understanding the presentation of a defendant in the witness box, and impermissible evidence from such witnesses which amounts to no more than an expert’s opinion on the credibility or truthfulness of the evidence of the witness, an issue which must remain a matter exclusively for the jury. The former is permissible because it is designed to enhance the ability of the jury to perform its fact finding role. The latter is impermissible because it has the effect of suborning the jury’s fact finding role and substituting for it the decision of the expert.

37 Consistent with the authorities, examples of which are given below, only in rare cases will it be appropriate for such evidence to be given, and there must be a proper medical basis for such a course. The defendant must be suffering from a recognised mental disorder, the impact of which may affect his presentation in giving evidence. It must be recalled that in appropriate circumstances a court can insist that counsel ask questions in a straightforward manner (as Dr Birch suggested in this case as set out at para 19 above) or the court can permit an intermediary to assist in accordance with the provisions set out in the Criminal Practice Direction 2015 at paragraph 3F.11–3F.16: see *R v Rashid* [2017] EWCA Crim 2; [2017] 1 WLR 2449 at paras 73–88— a course that Dr Birch did not think necessary.’

139. The judgment in *R v Robinson* makes clear how to avoid ‘oath-helping’. It is not permissible to call a witness of fact and *then* call a psychologist or psychiatrist to give reasons why the jury should regard the witness as reliable. Instead, the jury must be informed by expert evidence (if necessary) as to any vulnerability *before* the witness gives evidence, so the jury can assess reliability for themselves.

140. Professor Fazel annexed to his report a copy of the Advocates Toolkit 3, published on the Advocates Gateway website, which is entitled ‘Planning to question someone with an autism spectrum disorder including Asperger syndrome.’ These toolkits are said to represent best practice guidance. The toolkit provides information about the various aspects of ASD and the toolkit suggests a wide range of possible adjustments, including those suggested by Professor Fazel in his report.
141. Finally, my attention was drawn to CPR PD 1A – Participation of Vulnerable Parties or Witnesses. It reminds one of the following:
- ‘1. The overriding objective requires that, in order to deal with a case justly, the court should ensure, so far as practicable, that the parties are on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence. The parties are required to help the court to further the overriding objective at all stages of civil proceedings.
  2. Vulnerability of a party or witness may impede participation and also diminish the quality of evidence. The court should take all proportionate measures to address these issues in every case.’
142. It is clear that ASD falls within one of the categories set out in paragraph 4 which may cause vulnerability.
143. Then the Practice Direction specifies:
- ‘6. The court, with the assistance of the parties, should try to identify vulnerability of parties or witnesses at the earliest possible stage of proceedings and to consider whether a party’s participation in the proceedings, or the quality of evidence given by a party or witness, is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make directions as a result.
  - ....
  8. Subject to the nature of any vulnerability having been identified and appropriate provisions having been made, the court should consider ordering ground rules before a vulnerable person is to give evidence, to determine what directions are necessary in relation to [various aspects of the trial process].’
144. In the course of COPA’s submissions as to why no expert evidence should be admitted, I referred to the Advocates Toolkit 3 and CPR PD 1A in particular, and posed the question as to how I should fulfil my obligation to ensure a fair trial. At least in the present circumstances, I consider it is not a satisfactory answer to say the trial judge can be assumed to be able to conduct a fair trial simply through observation of the witness. Indeed, both Professor Fazel’s report and the Advocates Toolkit 3 make it clear that one may not appreciate (fully or at all), the effects of a witness’s vulnerability without some expert guidance.

145. I wish to emphasise that I am not reaching any conclusions at this stage that any adjustments are necessary. It is premature to do so without giving COPA the opportunity to serve an expert report in response to that of Professor Fazel. However, now that the issue has been raised, it is necessary to deal with it.
146. COPA had two fall-back positions. The first was to put off making any decision now, allow time for COPA ‘to try to obtain a report in response’, and review the matter again in November 2023. They held out the hope that the parties might be able to agree suitable adjustments. I concluded it was not sensible to allow matters to drift in that way, so I turn to consider COPA’s second fall-back position. This recognised that I might admit Professor Fazel’s report now and suggested the following directions:
- i) COPA is given at least 8 weeks to prepare a report in response, with liberty to apply if more time was needed.
  - ii) There should be a direction for a meeting of experts and a joint statement without the intermediate step of a reply report from Professor Fazel.
  - iii) Permission should be conditional upon Dr Wright making himself available at short notice for COPA’s expert, and giving the expert access to family members who spoke to Professor Fazel.
  - iv) Permission should be conditional upon Dr Wright providing ‘any previous notes, reports or communications expressing the views of other experts instructed (including Professor Baron-Cohen and Dr Klin). COPA suggested this condition was appropriate because the circumstances indicated possible ‘expert-shopping’.
147. Having considered the matter carefully, I give permission to adduce the expert report of Professor Fazel, with the following directions:
- i) COPA has until 13 November 2021 to prepare a report in response (which is 9 weeks from the date of the hearing), with liberty to apply if more time is needed.
  - ii) On or before 22 November 2023, I direct the experts should meet and prepare a joint statement setting out areas of agreement and disagreement.
  - iii) Dr Wright is at liberty, if so advised, to serve a reply report from Professor Fazel.
  - iv) The permission is conditional upon Dr Wright making himself available at short notice for COPA’s expert and giving the expert access to family members who spoke to Professor Fazel.
  - v) Dr Wright indicated he was prepared to disclose reports or final draft reports or opinions of experts previously instructed on ASD issues, and I will so order.
  - vi) The position will be reviewed further at the PTR.

148. There is a final point I wish to emphasise. The fact that I have admitted and given directions for expert evidence in this case does not mean that such evidence will be necessary in every case involving vulnerable witnesses, but only in reasonably exceptional cases where it is proportionate and fair for the parties to incur the cost of expert evidence. In the vast majority of cases, one would expect suitable adjustments to be agreed.

### **Dr Wright's Application for Further Information on COPA's draft Primer**

149. On this application, Dr Wright seeks an order that COPA answer a request for further information in relation to the draft Technical Primer ('the Draft Primer') served on behalf of COPA. Specifically, COPA is asked to say whether the Draft Primer describes cryptocurrency technology (a) in relation to Bitcoin between its invention and April 2011; (b) in relation to BTC Core from August 2017 to the present day; or (c) to Bitcoin and/or BTC Core during any other period. The significance of the dates mentioned is that April 2011 is when it seems to be accepted that Satoshi Nakamoto ceased involvement in the development of Bitcoin, and August 2017 is when the first 'airdrop' or 'hard fork' occurred which gave rise to the separate BTC system.
150. The relevant background is as follows:
- i) In her CCMC order of 2<sup>nd</sup> September 2022, Master Clark directed COPA to serve 'a first draft of a technical primer setting out the relevant basic undisputed digital currency technology as it relates to Bitcoin' with Dr Wright being directed to serve a revised draft including his proposed amendments some weeks later.
  - ii) The parties were directed to seek to agree a revised Primer by a certain date. To the extent that agreement was not possible on a particular issue, that issue was to be omitted from the Primer and dealt with in the expert's reports, for which permission was given.
  - iii) In the event, the parties were not able to reach any agreement on the Draft Primer. Each side blames the other and I am not asked to reach any conclusion as to apportionment of blame. The result is that there is no primer and any evidence as to digital currency technology as it relates to Bitcoin will have to be put forward in the expert reports. In this regard, I note that experts complying with their duties are likely to be able to agree a very substantial amount of the relevant technology and a joint statement will serve as a primer at the trial (albeit after much greater expense).
151. COPA submitted the position was straightforward. The process to produce a Primer had failed, the drafts therefore fell away and it was necessary to concentrate on the production of the expert's reports.
152. In essence, Dr Wright contends he is entitled to know "*whether the Claimant's Bitcoin Primer describes Bitcoin technology as originally conceived and*

*implemented by Satoshi Nakamoto, or, alternatively, a modification of that at a later time by those other than Satoshi Nakamoto”.*

153. This point is explained further earlier in his Application Notice:

‘3. It was evident from the Defendant's amendments to and comments on the Claimant's draft Bitcoin Primer that much of the disagreement between the parties appeared to stem from the Claimant's attempt to describe the technology and protocols used in BTC Core *today*, as opposed to how Bitcoin technology originally conceived and implemented by Satoshi Nakamoto, as set out in the Bitcoin White Paper and other of Satoshi Nakamoto's writings, operated during the period between its launch and his relinquishing control over the project in around April 2011.

4. The Defendant's view was that, per paragraph 27 of the CCMC Order, the contents of any Bitcoin Expert Evidence, and by implication, the Bitcoin Primer, must be limited to those relevant to "*the issues in the claim*". In the Defendant's view, a description of how BTC Core – or indeed any other digital asset – works *today*, given the numerous significant changes it has made to the original Bitcoin conceived and implemented by Satoshi Nakamoto, is not relevant to the central issue in the claim, i.e. whether or not the Defendant is the pseudonymous Satoshi Nakamoto, i.e. the person who created Bitcoin in 2009 (the "Identity Issue") and will therefore not assist the Court.’

154. During oral argument I asked the parties to identify where, in the pleadings, any issue had been raised as to one party or the other misunderstanding some relevant aspect of Bitcoin technology. Answer came there none. In its Skeleton Argument, COPA submitted that it is not aware of what forensic issues in the case will or may turn on aspects of the technology having been developed over time. COPA also submitted that neither side has pleaded reliance on any such changes for the purposes of the Identity Issue. I did not detect that Dr Wright disputed those submissions. Indeed, in another part of his Application Notice his (clear) position was further explained as follows:

‘a. The central issue in these proceedings is the Identity Issue, namely, whether the Defendant is the pseudonymous 'Satoshi Nakamoto', i.e. the person who created Bitcoin in 2009.

b. One relevant, if not fundamental, aspect of that enquiry will be to examine the original intentions and implementation of Bitcoin by Satoshi Nakamoto and to compare them to the Defendant's own work, ideas and inventions.

c. There have been indisputable modifications which have been made by those other than Satoshi Nakamoto to the original implementation of Bitcoin, for example, and without limitation, by BTC Core in relation to the ordering of transactions within each block.



d. Those later implementation by others referred to at c. above will not be relevant to the enquiry referred to at b. above.

e. Therefore, the Defendant is entitled and the Court needs to know whether the Claimant's Bitcoin Primer describes Bitcoin technology as originally conceived and implemented by Satoshi Nakamoto, or, alternatively, a modification of that at a later time by those other than Satoshi Nakamoto.'

## Decision

155. I remain bemused as to the amount of effort and work which has gone into this issue. I reject Dr Wright's application for the following reasons:

- i) First, the RFI does not, it seems to me, relate to any 'matter in issue', nor is the information requested necessary or proportionate for Dr Wright to prepare his case or understand the case he has to meet.
- ii) Second, I agree with COPA that the provision of an answer would waste time and costs. In an effort to resolve the issue, COPA suggested that the experts should specify in their reports whether and how particular parts of the technology described have varied since the inception of Bitcoin. Now that the issue has been more than adequately ventilated, I am sure the expert on each side will be guided appropriately by their respective solicitors.
- iii) Third, sub-paragraph e. (just quoted) seems to be a complete non-sequitur. I was left unable to discern any proper justification for the order sought. I was also left with the impression that this application was made for tactical reasons, possibly to counter COPA's application relating to its RFI.

## Dr Wright's Application to exclude hearsay evidence

156. The relevant background to this application may be summarised as follows:

- i) The CCMC Order granted Dr Wright and COPA permission to adduce expert evidence in the field of forensic document analysis, such permission being expressly "*limited to one expert per party*".
- ii) Following the June 2023 CMC, I ordered COPA to serve its expert report on forensic document analysis by 25 August 2023, the deadline being subsequently amended (following an extension request by COPA) to 1pm on 4 September 2023. At the June 2023 CMC, no mention was made of the subsequent hearsay notice.
- iii) On 28 July 2023, COPA served a hearsay notice giving notice of its intention to rely on (i) the Edman reports, comprising two affidavits and four expert reports of Dr Matthew J. Edman and (ii) the KPMG report. The Edman reports and the KPMG report are expert reports in forensic document analysis, which were adduced in other proceedings (the *Kleiman* litigation in Florida and the *Granath v Wright* litigation in Oslo

respectively). I was only shown one Edman report (his second supplemental report of 28 pages in which he analysed some 18 documents), but the KPMG report is a dense document of 224 pages, including detailed appendices analysing the metadata and content of some 12 documents.

- iv) On 1 September 2023, COPA served its expert report on forensic document analysis in these proceedings, namely the report of Mr Patrick Madden (the “**Madden Report**”). Although I was only shown extracts from Mr Madden’s report, I was told it comprises over 900 pages including various appendices which set out detailed analysis.
157. As Dr Wright submitted, the upshot of this is that COPA intends to rely at trial on expert evidence from no less than three experts in the same discipline (albeit that in respect of two of these experts it seeks to do so by way of hearsay). COPA confirmed in correspondence that it intends to rely on the Edman reports and the KPMG report “*for the truth of the matters stated by the experts and their reasoning. We acknowledge that these reports are likely to be primarily relevant insofar as they align with and corroborate the conclusions of COPA’s forensic documents expert in these proceedings*”.
158. In its evidence on this application in Sherell 14, the justification for this course was:

‘To be clear, it [COPA] will rely upon those reports only in relation to documents addressed also in Mr Madden’s report. It wishes to do so for two purposes. First, to prove the fact that these documents have previously been found to be manipulated. Accordingly, if Dr Wright were to say in evidence that, if informed at an earlier point in time, he could have provided more information or supporting material to justify these documents, it can be put to him that they have been considered in earlier proceedings and found by experts to have been altered. Dr Wright has disclosed documents (and in some cases actively placed reliance on documents) which were previously said to have been tampered with and therefore he did so in knowledge of that fact; Dr Wright should not be allowed to plead ignorance on this matter. Secondly, to demonstrate that other skilled forensic document examiners have reached conclusions in line with those of Mr Madden. Thus, for example, any suggestion against Mr Madden that he had not adopted proper methods or had not handled the documents correctly could be met with the answer that other competent experts had used equivalent methods and reached equivalent conclusions.’

#### Applicable Principles

159. In the end there was no dispute as to the legal principles, which can be gleaned from *Rogers v Hoyle* [2015] QB 265, *Mondial Assistance (UK) Ltd v Bridgewater Properties Ltd* [2016] EWHC 3494 (Ch), *Illumina, Inc v TD Genetics Ltd* [2019] FSR 35; and *MAD Atelier International BV v Manes* [2021] 1 WLR 5294. COPA expressed them as follows:

- i) First, a party is entitled to serve under a hearsay notice a report or other document providing expert or other opinion evidence, and the Court will give appropriate weight to it (applying s.4 of the Civil Evidence Act 1995).
- ii) Secondly, the admissibility of pre-existing expert reports served in this way is not governed by CPR Part 35, since that Part only governs reports commissioned for the proceedings in question.
- iii) Thirdly, the Court has a discretion under CPR 32.1 to exclude hearsay evidence (e.g. on the basis that it would be duplicative or give rise to disproportionate cost). COPA nonetheless submitted that the starting-point is that hearsay evidence is admissible and relied in particular on what Nugee J. (as he then was) said in *Mondial* at para. 22:

“22. The consequence of the judgment is that there is, as it seems to me, a sharp divide between opinion hearsay evidence which is adduced in circumstances where Part 35 does not apply because the evidence is not the evidence of an expert within the meaning of 35.2(1) and opinion expert evidence which is sought to be adduced where the person giving the evidence is an expert within 35.2(1). In relation to the former, because Part 35 does not apply, there is no requirement to obtain the permission of the court. The evidence is prima facie admissible under a combination of the 1972 Act and the 1995 Act, as I have explained. Being prima facie admissible, although the Court has a discretion, as it does with all evidence, to exclude it under 32.1(2) ("the court may use its power under this rule to exclude evidence that would otherwise be admissible") the general position is that the Court should be slow to exclude evidence that is admissible, leaving objections to the evidence to be given effect to by affecting the weight to be given by the evidence (see the decisions of David Richards J in *Daltel Europe Limited v Makki* [2005] EWHC 749 Ch and of Norris J in *First Subsea Limited v Balltec Limited* [2013] EWHC 1033 (Pat) . At paragraph [56] of *Daltel* [2005] EWHC 749 , David Richards J said:

"Part 32.1(2) is primarily a case management power. It enables the court to exclude evidence so as, for example, to confine it to particular issues or to control the proliferation of evidence on an issue where significant evidence has already been adduced and the addition of further evidence would involve a disproportionate use of the parties and the court's resources In *Post Office Counters Limited v Mahida* [2003] EWCA Civ 1583 at para [24], Hale LJ said:

"The power of the Civil Procedure Rules to exclude evidence even if it is admissible is

principally a case management power designed to allow the court to stop cases getting out of hand and the hearing becoming interminable because more and more admissible evidence, especially hearsay evidence, is sought to be adduced."

David Richards J continues:

"No doubt the power to exclude evidence may be used for other purposes which are not connected with case management, for example, to ensure compliance with the European Convention on Human Rights. However, in the light of the approach adopted by the Civil Evidence Act 1995, it seems to me it would rarely be a proper use of the power under Part 32.1(2) to exclude hearsay evidence which was relevant to the issues for decision on the ground that it was hearsay."

160. In oral argument, attention focussed on the judgment of Henry Carr J. in *Illumina*. In that case, the claimant patentee, Illumina, sought to rely by way of a hearsay notice on certain paragraphs of an expert's report from a Dr Erlich concerned with common general knowledge which had been served in earlier proceedings. Illumina argued that the defendant had adopted those paragraphs as part of their case in the earlier proceedings but advanced a contrary case in the present proceedings. The defendant argued that the hearsay notice was inadmissible as Illumina did not have permission to adduce such evidence under CPR Part 35. Naturally, this argument was rejected – see the second point above. Henry Carr J. continued:

'27 This does not mean that the court is powerless to exclude expert evidence in appropriate cases and parties should not assume that they have carte blanche to rely upon whatever evidence they wish under hearsay notices, which has been adduced in previous proceedings. For example, if evidence is duplicative of evidence that is already being adduced by one of the parties, the court may take the view that it is appropriate to exclude it under CPR Pt 32.1. When exercising that power, the court will have regard to the overriding objective, and in particular whether its admission will give rise to disproportionate cost. This is supported by the authors of Phipson on Evidence (19th edn), who make the following observation on the judgment in *Rogers v Hoyle* [2014] EWCA Civ 257 at [29.16]:

“Although correct in terms of s.1 of the Civil Evidence Act 1995, the court did not consider the factors that might then need to be balanced in terms of the overriding objective of the Civil Procedure Rules (revised from 1 April 2013), that cases should be dealt with not only justly but also at proportionate cost. On the one hand, it might be said that the report reduces considerably the cost of litigation, by providing a ready-made report by an independent set of experts; that seems to have

been the view taken by the Court of Appeal. On the other hand, unless the party introducing the report also produces its authors, and potentially the witnesses cited therein, to give evidence, the report is unlikely to fare well at the hands of s.4(2) of the Act in terms of weight, and thus the question arises whether a document of little evidential weight should be admitted when it will take considerable effort and cost to assess....””

161. Henry Carr J.’s ultimate conclusion was that permission to rely on the specified paragraphs of Dr Erlich’s report was not required. His conclusion was based in part on a finding that the hearsay notice would not result in disproportionate cost because the relevant paragraphs could be put in cross-examination even in the absence of a hearsay notice.
162. Finally, I make the obvious point that each case turns on its own particular facts, as is readily apparent from the cited cases.

### Decision

163. At the conclusion of the hearing, I announced that I would exclude the evidence sought to be adduced by COPA via this hearsay notice, having reached a clear view. My reasons for so concluding are in summary as follows:
  - i) Although the hearsay notice did not say this, COPA only sought to rely on passages which dealt with *the same documents* as in Mr Madden’s Report. The hearsay evidence would therefore be wholly duplicative.
  - ii) I formed the view that the admission of these 7 further expert reports would result in disproportionate cost. Even if it turns out at trial that COPA did not find it necessary to refer to them, the respective teams would still have to consider their content and correlate the findings to the Madden Report.
  - iii) It is apparent there would be additional practical difficulties which would almost certainly result in further evidence being required. As I observed in argument, how could one tell whether the document referred to in the KMPG report as ‘Bilag 30’ was exactly the same document as one referred to by Mr Madden in his report. Counsel said one could tell by looking at the MD5 hash for each document, but at the very least, it would be necessary to prepare and agree a correspondence table between the evidence of all three experts.
  - iv) The trial already appears to be heavy, with over 30 witnesses and large volumes of material, including the 970 pages of Mr Madden’s first report. I cannot understand how the trial judge (likely to be me) is going to benefit from having another 7 expert’s reports where the only relevant material is accepted to be entirely duplicative.
  - v) As to the two reasons put forward by Mr Sherell in his evidence (both of which I note are speculative), the first does not hold water because, *if* the occasion arose, Counsel could put extracts from the Edman and KPMG

reports in cross-examination; the second carries no weight, because the issue of correct methods can be resolved through the evidence of the instructed experts.

- vi) COPA submitted that there would be no unfairness to Dr Wright because his expert would only need to address the documents considered by Mr Madden. I found this submission disingenuous. If the Edman and KPMG reports remained in evidence, Dr Wright's expert and his legal team would have to consider them.
- vii) Overall, COPA's invitation to allow the hearsay notice to stand, leaving the weight to be given to the 7 additional expert's reports to trial, ducks the issue. In all the circumstances of this case, I consider the nettle ought to be grasped now and discarded.
- viii) Accordingly, I allow Dr Wright's application to exclude COPA's second amended hearsay notice relating to the expert reports of Dr Edman and KPMG.

### Costs

164. At the conclusion of the hearing I announced in outline the outcome of each application and invited submissions on costs. The parties asked for time to consider the position. This time proved fruitful because the parties were able to agree that the costs should be in the case (save in respect of COPA's chain of custody application, which are to be paid by Dr Wright). I will so order.

### Revised Directions

165. In view of the outcome of the applications which have succeeded, it was apparent that certain of the existing deadlines needed revision. It was also apparent that the date previously appointed for the Pre-Trial Review needed to be put back to accommodate all the steps which should be completed before that occurs. So I direct that the PTR will now take place in the window of 13-15 December 2023, recognising that the resolution of the ASD adjustment issues means the PTR should be listed for a 2 day hearing.
166. Working back from the revised date for the PTR, the parties managed to agree certain revised dates. I have approved those and decided those which were not agreed, taking account of the fact that the individuals in the BTC Core Claim are still considering whether they need or wish to contribute to the trial in January 2024.
167. The timing for COPA's application to amend its POC is as follows:
- 2.10.2023 Dr Wright's evidence on COPA's amendment application.
  - 6.10.2023 COPA's reply evidence on that application.
  - 10.10.2023 Skeleton arguments on COPA's amendment application.
  - 12 or 13.10.2023 Hearing of COPA's amendment application.

168. The revised timetable to and in trial is as follows:

- 9.10.2023 Dr Wright must provide responses to Section E of the RFI.
- 13.10.2023 Dr Wright to provide his response to COPA's chain of custody application.
- 23.10.2023 Dr Wright must provide responses to all other requests in the RFI which I have ordered to be answered above.
- COPA and Dr Wright to exchange expert reports in the field of digital currency technology.
- Dr Wright to serve his expert report in the field of forensic document analysis.
- 13.11.2023 On or before this date, the experts in digital currency technology must hold discussions for the purpose of: (i) identifying and further narrowing the issues remaining between them; and (ii) where possible reaching agreement on those issues.
- COPA to serve its expert evidence in the field of autism spectrum disorder.
- 17.11.2023 COPA to serve its reply expert report on forensic document analysis.
- 22.11.2023 On or before this date the experts in autism spectrum disorder must hold discussions for the purpose of: (i) identifying and further narrowing the issues remaining between them; and (ii) where possible reaching agreement on those issues.
- 23.11.2023 On or before this date, the experts in digital currency technology to prepare and file a statement for the court showing: (i) those issues on which they are agreed; and (ii) those issues on which they disagree, and a summary of the reasons for disagreement.
- 24.11.2023 On or before this date, the experts in forensic document analysis must hold discussions for the purpose of: (i) identifying and further narrowing the issues remaining between them; and (ii) where possible reaching agreement on those issues.
- 01.12.2023 On or before this date, the experts in autism spectrum disorder to prepare and file a statement for the court showing: (i) those issues on which they are agreed; and (ii) those issues on which they disagree, and a summary of the reasons for disagreement.

The parties must serve witness statements of fact in reply.

08.12.2023 On or before this date, the experts in forensic document analysis to prepare and file a statement for the court showing: (i) those issues on which they are agreed; and (ii) those issues on which they disagree, and a summary of the reasons for disagreement.

Trial Bundles to be filed with the Court.

13-15.12.2023 Pre-Trial Review hearing.

08.01.2024 Skeleton Arguments for Trial to be exchanged and filed with the Court, together with an agreed chronology (if possible) and an agreed reading guide.

15.01.2024 Opening submissions to be followed by 4 days of pre-reading.

22.01.2024 Further hearing of the trial resumes.

w/c 4.3.2024 4 days of oral closing submissions.

169. Finally, I ask the parties to seek to agree an Order giving effect to this Judgment.