Re: Paul Millinder

Reasons for Order of 18 June 2019

Background

1. By Order dated 28 June 2018 HHJ Pelling QC, sitting as a judge of the High Court, made an Extended Civil Restraint Order (**"ECRO"**) against Mr Paul Millinder. The ECRO restrained Mr Milliner from issuing claims or making applications in the High Court or County Court concerning any matter relating to the proceedings in which the ECRO was made without first obtaining the permission of Arnold J, or if unavailable Norris J.

2. Mr Millinder made an application which was heard by the Chancellor (Vos C) on 22 January 2019 and was treated by him as an application to discharge the ECRO. On 8 February 2019 the Chancellor handed down a 143-paragraph judgment dismissing that application: see [2019] EWHC 226 (Ch). This judgment (**"the Judgment"** or **"Jmt"**) sets out in great detail the background to the making of the ECRO, including an account of the various different proceedings which have been brought and the applications that have been made by Mr Millinder.

3. By Order dated 12 April 2019 the Chancellor varied the ECRO to substitute myself and Snowden J for Arnold J and Norris J respectively.

4. Since 12 April I have received via my clerk a very large number of e-mails from Mr Millinder, some addressed to me, and others which my clerk has been copied into.

5. At an early stage in my involvement I caused my clerk to send an e-mail dated 16 April in which I gave a number of directions intended to make the process more manageable. Those directions included the following:

   (1) Any e-mail from Mr Millinder intended to make an application for permission under para 1 of the ECRO be headed in bold capitals

   "APPLICATION FOR PERMISSION UNDER PARAGRAPH 1 OF ECRO DATED 28 JUNE 2018 No. "

   and numbered sequentially. I identified 3 applications that had been made to date and numbered them 1 to 3. I indicated that I had told my clerk that I would not respond to any other e-mails sent by Mr Millinder, and had asked him to ignore them and not respond to them.

   (2) No applications need be copied into Snowden J unless my clerk has indicated that I am unavailable.

   (3) Any future application for permission should indicate the date of service of the Respondents and the response from each Respondent in a specified format.

E-mails from Mr Millinder

6. I now summarise briefly the e-mails from Mr Millinder. My clerk has numbered them for ease of reference.

No 1: 12.4.19 at 16.23

This is sent to Ms Ford, the Chancellor's clerk. It is a reaction to the Chancellor's Order of 12 April. Mr Millinder took issue with the way the Chancellor had dealt with his application. It is not an application under the ECRO.

No 2: 12.4.19 at 16.46

Similar to e-mail No 1.

No 3: 12.4.19 at 17.34

Similar to e-mail No 1.

No 4: 12.4.19 at 18.29

Similar to e-mail No 1.

No 5: 13.4.19 at 08.23

This is addressed to me and encloses an application for disclosure. I have numbered this **Application No 1** under the ECRO.

No 6: 15.4.19 at 10.36

This is addressed to my clerk. It recites some of the history of the proceedings, as perceived by Mr Millinder. It is not an application under the ECRO.

No 7: 15.4.19 at 12.23

This is addressed to me. It largely goes over some of the history, but on the final page Mr Millinder invites me to make an order setting aside previous orders. It is not clear if this was intended as an application under the ECRO but I have treated it as if it were and have numbered it **Application No 2**.

No 8: 16.4.19 at 09.40

This is addressed to me. It encloses an application to set aside a number of orders. I have numbered it **Application No 3**.

No 9: 16.4.19 at 10.33

This is addressed to a number of recipients and refers to what Mr Millinder has identified as manifest errors. It is not an application under the ECRO.

No 10: 16.4.19 at 13.55

This is addressed to Mr Hannon (the liquidator). It is not an application under the ECRO.

No 11: 16.4.19 at 16.08

This is addressed to my clerk and acknowledges the directions I gave on 16 April. Among other things Mr Millinder said he would not bombard my clerk with further correspondences.

No 12: 17.4.19 at 10.45

This is addressed to me. It enclosed a witness statement in response to Mr Hannon's report, in connection with Application No 1.

No 13: 17.4.19 at 16.52

This is addressed to me. It enclosed a corrected witness statement to replace that sent in e-mail No 12.

No 14: 24.4.19 at 11.33

This is addressed to me. It urged me to decide Application No 1 in his favour.

No 15: 25.4.19 at 10.45

This is addressed to me. It detailed the response, or lack of it, by the Respondents to Applications 1, 2 and 3.

No 16: 26.4.19 at 08.22

This was addressed to my clerk. It asked him to confirm that I had received e-mails No 14 and 15.

No 17: 27.4.19 at 04.54

This is addressed to Dr Oraki and copied to my clerk. It concerns various proposed criminal proceedings, including against my clerk. It is not an application under the ECRO.

No 18: 27.4.19 at 06.56

This is a follow-up to e-mail No 17 with some attachments. It is not an application under the ECRO.

No 19: 27.4.19 at 06.58

Similar to e-mail No 18.

No 20: 29.4.19 at 06.20

This is primarily addressed to Mr Bloom, General Counsel of The Gibson O'Neill Co Ltd (**"Gibson"**), but also marked for my attention in connection with Application No 3.

No 21: 29.4.19 at 10.04

This is an application under the ECRO for the issue of a claim form under Part 7. This is **Application No 4**.

No 22: 30.4.19 at 08.23

This is addressed to the City of London Police and asks that they investigate his complaint. It is not an application under the ECRO.

No 23: 30.4.19 at 09.12

This is a follow-up to e-mail No 22.

No 24: 30.4.19 at 10.32

This is an e-mail to my clerk. It is not an application under the ECRO.

No 25: 1.5.19 at 12.46

This is addressed to my clerk. It enclosed some material that Mr Millinder wished me to look at in support of all his applications under the ECRO.

No 26: 3.5.19 at 08.12

This is addressed to my clerk. It contained further material in support of Application No 1.

No 27: 3.5.19 at 09.29

This is addressed to Mark Field MP, urging him to raise matters in Parliament. It is not an application under the ECRO.

No 28: 3.5.19 at 13.40

This is addressed to my clerk. It attached further material in support of Application No 1.

No 29: 3.5.19 at 14.06

This is addressed to a Mr Mark Daley in connection with alleged corruption at York Magistrates Court. It is not an application under the ECRO.

No 30: 3.5.19 at 15.34

This is addressed to my clerk and forwarded a further copy of e-mail No 26.

No 31: 3.5.19 at 15.52

This asked me for a hearing in relation to Application No 1.

No 32: 3.5.19 at 16.33

This informed my clerk that Mr Millinder intended to serve his "prosecution statement".

No 33: 7.5.19 at 10.43

This enclosed a witness statement for me and the police.

No 34: 7.5.19 at 10.45

This attached a further exhibit to the witness statement sent by e-mail No 33.

No 35: 7.5.19 at 10.50

Similar to e-mail No 34.

No 36: 7.5.19 at 10.52

Similar to e-mail No 34.

No 37: 7.5.19 at 13.38

This contained further material in support of Application No 4.

No 38: 9.5.19 at 09.00

This chased for a response to Application No 1.

No 39: 13.5.19 at 08.45

This reiterated the case that Mr Millinder relies on in support of Application No 1, going over the history again.

No 40: 14.5.19 at 07.55

This sent further material in support of Mr Millinder's applications.

No 41: 14.5.19 at 12.31

This was addressed to Mr Kevin Gray of Womble Bond Dickinson (**"WBD"**). It is not an application under the ECRO.

No 42: 15.5.19 at 10.29

This reiterated Mr Millinder's wish to have Application No 4 decided in his favour. It also applied for me to give a default judgment under CPR 12 in relation to that claim. Although not expressly framed as an application under the ECRO, I will number this **Application No 4A**.

(No 43 forwards an e-mail sent by Mr Millinder to Ms Ford but it was not sent by Mr Millinder to me and I need not refer to its contents).

No 44: 15.5.19 at 16.30

This repeats e-mail No 42.

No 45: 16.5.19 at 14.00

This is addressed to Vos C, warning him that Mr Millinder intends to have him prosecuted. I am asked to read it. It is not an application under the ECRO.

No 46: 16.5.19 at 15.29

This is circulated to a number of recipients. It concerns Mr Hannon. It is not an application under the ECRO.

No 47: 16.5.19 at 15.57

Similar to e-mail No 46.

No 48: 17.5.19 at 08.35

This is a follow-up to e-mails Nos 46 and 47, confirming that Mr Millinder is bringing proceedings in New York.

No 49: 17.5.19 at 16.32

This is addressed to Mr Adam Davis, the Chancellor's Private Secretary and encloses a recording of a call with him. It is not an application under the ECRO.

No 50: 18.5.19 at 07.02

This is addressed to Mr Field MP and others with reference to the intended prosecution of ICCJ Jones. It is not an application under the ECRO.

No 51: 18.5.19 at 07.19

This is addressed to the City of London police and others. It encloses a recording of a conversation with Mr Hannon. It is not an application under the ECRO.

No 52: 18.5.19 at 16.44

Similar to e-mail No 51 except that it encloses a recording of a conversation with Mr Tucay of the Bar Standards Board. It is not an application under the ECRO.

No 53: 19.5.19 at 06.59

This is addressed to another MP, Mr Greg Clark, requesting certain information. It is not an application under the ECRO.

No 54: 21.5.19 at 08.45

This is widely circulated. It goes over some of the history and concludes that certain offences have been proven beyond doubt. It is not an application under the ECRO.

No 55: 21.5.19 at 11.43

This is addressed to my clerk. It threatens to summons me in front of the magistrates on the ground that I have not yet dealt with his applications.

No 56: 21.5.19 at 12.01

This is addressed to my clerk and Chancery listing. It asks for confirmation that e-mail No 54 has been received.

No 57: 23.5.19 at 09.10

This is a press release reciting the history and asserting fraud by a number of members of the judiciary. It is not an application under the ECRO.

No 58: 23.5.19 at 09.54

This is a further press release. It is not an application under the ECRO.

No 59: 23.5.19 at 14.24

This is a complaint that Mr Millinder is not receiving any response to his various e-mails.

No 60: 24.5.19 at 08.06

This is addressed to creditors. It contains what Mr Millinder refers to as an update. It is not an application under the ECRO.

No 61: 24.5.19 at 08.36

This is addressed to Middlesbrough Football & Athletic Co (1986) Ltd (**"Middlesbrough"**) and WBD. It is not an application under the ECRO.

No 62: 28.5.19 at 09.30

This is addressed to me. It is a request to make an oral application.

No 63: 5.6.19 at 10.58

This is addressed to me. It refers to certain material that Mr Millinder wishes me to take account of in connection with Application No 1. It also seeks to extend the scope of that to include disclosure of certain other material. I will treat this as a further or amended application under the ECRO and refer to it as **Application No 1A**.

No 63A: 5.6.19 at 12.12

This encloses a transcript of the hearing before Vos C and makes a number of further points. It is not an application under the ECRO.

No 64: 5.6.19 at 12.56

This asserts that Mr Millinder's claim falls outside the insolvencies and vests in him.

No 65: 6.6.19 at 14.02

This is a complaint that Mr Millinder's complaints are being ignored. It is not an application under the ECRO.

No 66: 7.6.19 at 13.07

This is addressed to me. It encloses a restatement of Mr Millinder's position in support of Application No 3.

No 67: 10.6.19 at 12.22

This is addressed to me. It further elaborates on Mr Millinder's position in relation to what he refers to as the malicious winding up petition.

No 68: 10.6.19 at 15.26

This is addressed to my clerk, pressing for a response. My clerk replied that I was out of London.

No 69: 11.6.19 at 10.02

This is a reply to my clerk.

No 70: 12.6.19 at 11.03

This is addressed to me and others. It refers me to various further submissions.

No 71: 12.6.19 at 11.47

This circulates a transcript of a recording with Mr Gray of WBD. It is not an application under the ECRO.

No 72: 12.6.19 at 17.58

This makes further submissions in relation to disclosure of proofs of debt.

No 73: 13.6.19 at 07.27

This supplements e-mail No 72.

No 74: 13.6.19 at 08.31

This goes over the history to make Mr Millinder's position clear. It is not an application under the ECRO.

No 75: 13.6.19 at 15.30

This expresses Mr Millinder's frustration at not receiving replies to his e-mails. It is not an application under the ECRO.

7. I have set out these e-mails for a number of reasons:

(1) I wish to assure Mr Millinder that I have received and read all the e-mails that he has sent to my clerk.

(2) I have done so in order to ensure that I identify what applications Mr Millinder wishes to makes under the ECRO. I had hoped that the directions I made in April would have made this unnecessary, but as is apparent from the above summary, Mr Millinder has on occasion included a request for me to extend the applications he has already made (see e-mails Nos 42 and 63); and he also has a habit of adding to, or reiterating, submissions in support of the applications he has made. This has meant that I have had to consider each one separately and cannot simply rely on the subject line.

(3) It is apparent even from the brief summary above that many emails have been sent, or copied, to my clerk which are not applications under the ECRO or directly in support of such applications. I have nevertheless felt it necessary to read each of them to see if they assist in resolving the applications.

(4) It is also apparent that Mr Millinder thinks it is in his interests to continue to send material, often reiterating what has already been said, and to copy my clerk in to e-mails primarily addressed to others and not directly in support of applications under the ECRO. I cannot emphasise too strongly how this is *not* in his interests. It has meant that instead of dealing with his applications sooner I have had to find time to consider the entirety of the material he has

sent and continues to send. As my clerk has repeatedly told him, I am not ignoring his applications but I have many calls on my time and other litigants expect their cases to be dealt with as well. I intend to deal with Mr Millinder's applications thoroughly and carefully, partly because that is what he is in any event entitled to, but partly because one of his complaints is that he has not been listened to. But the more material he sends, the longer it will take to consider and the longer he will have to wait.

8. Since drafting the above list of e-mails, Mr Millinder has sent a further batch of e-mails taking the total by my clerk's count to 85. I do not propose to list them: none of them includes a further application under the ECRO.

9. I will now consider the applications under the ECRO that I have identified above.

Application No 1

10. This application was made in e-mail No 5. It is an application seeking disclosure of documents pursuant to CPR r 31.8. CPR r 31.8 is in fact a provision which limits a party's duty of disclosure to documents which are or have been in his control and explains what that means. It is not a rule which itself imposes any duty of disclosure on a party, or empowers the Court to order disclosure. But I will assume that what Mr Millinder seeks is an order for specific disclosure and inspection pursuant to CPR r 31.12.

11. Mr Millinder made a similar application to Arnold J, which was refused by him by Order dated 26 March 2019. As he recognises (see his witness statement dated 13 April 2019 para 4) he must first have this Order set aside, and he therefore asks me to set aside the Order of Arnold J pursuant to CPR r 3.3. Again I do not think Mr Millinder has identified quite the right rule, as CPR r 3.3 is concerned with the Court making an order of its own initiative, and I do not think it has any application where a party asks the Court to do something. But again I will assume that what Mr Millinder seeks is an order revoking the Order of Arnold J pursuant to CPR 3.1(7) which provides:

> "A power of the court under these Rules to make an order includes a power to vary or revoke the order."

12. It is next necessary to identify the basis on which Mr Millinder invites me to revoke Arnold J's Order. What he says is that Arnold J acted illogically (para 4 of his witness statement). He later refers to the fact that on 28 November 2018 Arnold J held that a similar application for disclosure made by Mr Millinder had been automatically struck out pursuant to the ECRO because he had not first applied for permission to make it under the ECRO, a decision which he also characterises as "totally illogical" and "wholly illogical" (w/s para 9). He then asserts that it is clear from both applications for disclosure that Arnold J is "abusing his position", "deliberately disregards all of the evidence to prove the fraud and misconduct" while "failing to … provide any reasoned judgment" and is "guilty of … fraud by abuse of position and in conspiring to pervert the course of justice" (w/s paras 10 and 11).

13. The circumstances in which a Court will exercise its powers under CPR r 3.1(7) to revoke an order were considered by Vos C in the Judgment at [83]-[92]. For the reasons there given, the cases establish that although the wording of the rule is entirely open, the discretion has to be exercised in accordance with principle; and as a matter of principle, the Court will normally only exercise the discretion (a) where there has been a material change of circumstances since the order was made or (b) where the facts on which the original decision was made were (innocently or otherwise) misstated: see *Tibbles v SIG plc* [2012] EWCA 518 at [39] per Rix LJ, *Terry v BCS Corporate Acceptances Ltd* [2018] EWCA Civ 2422 at [75] per Hamblen LJ, both passages being cited by Vos C (Jmt [88] and [89]). Both these cases are decisions of the Court of Appeal and I am obliged to follow the guidance that is there given.

14. In my judgment neither of the normal circumstances in which the powers under CPR r 3.1(7) will be exercised exist here. Mr Millinder does not suggest that the facts were misstated to Arnold J: since he was the one who put the facts as he saw them before Arnold J, this is not surprising. Nor does he suggest that there has been any material change of circumstances since the application before Arnold J: indeed he relies on the same material before me. Mr Millinder's dissatisfaction with the Order of Arnold J is not that he made the order on the basis of the wrong facts or that things have now changed, but is simply that he considers that Arnold J's decision was wrong on those facts. A complaint that a judge got the decision wrong is not what CPR 3.1(7) is designed for. It is a matter that has to be taken to an appellate court, in this case the Court of Appeal. That of course requires permission to appeal to be granted, and an appeal to be brought within quite a short time, neither of which has happened in the present case, and it is no doubt now too late for an appeal to be brought. But that does not mean that Mr Millinder can apply for me to exercise my powers under CPR r 3.1(7) as an alternative where the correct route to challenge Arnold J's order was the Court of Appeal.

15. The Court of Appeal cases to which I refer are careful not to define exhaustively the circumstances in which the discretion under CPR r 3.1(7) will be exercised but I see no reason to depart from the normal rule that CPR r 3.1(7) will only be applicable in the two circumstances referred to. It would be quite wrong for me to embark on an examination of Arnold J's decision: for one High Court Judge to examine another's decision in this way would be to exercise a quasi-appellate function which as I have explained is not the purpose of CPR r 3.1(7) at all. It is for the Court of Appeal to say that a High Court Judge was right or wrong, not normally for another High Court Judge to sit in appeal on his decision.

16. In those circumstances I do not think it is open to me to revoke Arnold J's Order and I do not intend to do so. That means, as I think Mr Millinder recognises, that his Application No 1 must also be dismissed. It is a general principle that where an application has been made and refused, the Court will not permit a second application for the same relief, at least without a material change of circumstances. There are numerous authorities to this effect: see for example *Holyoake v Candy* [2016] EWHC 1718 (Ch) at [21] where Etherton C said:

> "The starting point in such a case as the present is that the claimants must point to something that has happened since the grant of the original order. They must show something material has changed to make it appropriate to investigate the same issues over again at yet another extensive hearing with even more voluminous evidential material. Absent any such change, the application for a freezing order is not only a disproportionate call on the court's resources, but an abuse of the court's process, in effect making successive applications for the same objective but testing the court's willingness each time to see how far the court will go, each such application involving, to a greater or lesser extent, duplication of issues, evidence and arguments."

17. That makes it unnecessary for me to consider the substantive points made by Mr Millinder in support of his application. But it is apparent that Mr Millinder is very reluctant to accept any judgment that he disagrees with, and I should briefly explain why I would in any event have refused the application.

18. Two bases for disclosure are set out in Mr Millinder's witness statement (para 4):

    (1) He is entitled as a creditor of Empowering Wind MFC Ltd (**"EWM"**) to inspect proofs of debt pursuant to rule 14.6 of the Insolvency (England and Wales) Rules 2016 (**"the Insolvency Rules"**).

    (2) He requires them as part of evidence in a criminal prosecution.

19. Neither in my judgment justifies the order that he seeks. Taking the latter first, the purpose of disclosure in the CPR is to assist the Court to resolve the issues in the litigation in which disclosure is sought. It is limited to what is required for that purpose. By definition this litigation will be civil proceedings, as the CPR only apply to civil proceedings. Thus for example the Disclosure Pilot (set out in Practice Direction 51U), which applies in the Business and Property Courts, provides at para 2.1:

> "Disclosure is important in achieving the fair resolution of civil proceedings. It involves identifying and making available documents that are relevant to the issues in the proceedings."

    It is not the purpose of the disclosure powers in the CPR to compel a person to provide evidence for use in criminal proceedings. Indeed, a party can resist disclosure (even where otherwise required for civil proceedings) if the document would tend to incriminate that party. In other words, far from being a ground to order disclosure, the possible use of a document in criminal proceedings is in fact a ground to withhold disclosure. In my judgment the Court has no power to order disclosure under the CPR where the purpose of disclosure is not to resolve the issues in the civil litigation before the Court but to assist in the prosecution of offences or alleged offences.

20. As to the power to order inspection under the Insolvency Rules, Rule 14.6 indeed provides that an office-holder must allow proofs to be inspected by creditors and members of the company. Mr Millinder believes that Middlesbrough lodged proofs

of debt (i) in the sum of £255,00 and (ii) £541,308. He can point to the fact that Mr Anthony Campbell of the Insolvency Service told him in an e-mail of 26 January 2017 that Middlesbrough:

> "have advised that they are owed £541,308. This is based on their original claim of £255,000 plus a balance of £285,039 representing lost rental and free supply of electricity for the period from 25 June 2015 until the date of the winding-up order. The original claim plus the balance of £285,039 do not add up to £541,308 but to £540,039 so their claim has been amended down until such time as any formal proof of debt is submitted."

21. I do not myself understand why Mr Millinder considers it so important to see the documents in which these claims were made. He already has the information that Middlesbrough's original claim was for a total of £256,269.89 made up of claims for rent allegedly payable under a lease (**"the Lease"**) and energy payments allegedly due under cl 3.4 of an energy supply agreement (**"the ESA"**): see Jmt [22]. He presumably has a copy of the invoice of 25 June 2015 and letter of the same date in which those claims were put forward. It was this claim that Middlesbrough relied on when claiming to be a supporting creditor in HMRC's petition in July 2016: see Jmt [29]. (Incidentally the explanation for the discrepancy in the figures identified by Mr Campbell is no doubt because Middlesbrough's original claim against EWM was not exactly £255,000 but was £256,269.89.) As to the claim to be a creditor in the sum of £541,308, Mr Millinder already has the evidence from Mr Campbell's e-mail that Middlesbrough claimed to be entitled to a further £285,039 in respect of lost rent and free supply of electricity from 25 June 2015 to the date of the winding up order. It is not obvious what else he needs.

22. Nevertheless, taking the argument on its merits, the answer to it is that given by Mr Campbell. He said:

> "I would point out that creditors , including Middlesbrough Football Club , have not been asked to submit a proof of debt. Creditors are only invited to submit a proof of debt if a meeting to appoint a liquidator other than the official receiver is arranged or if sufficient funds are available to enable a dividend to be paid to creditors. It is only at these stages that either the chairman of the meeting considers the claims submitted by creditors to determine whether they should be admitted for voting purposes or the official receiver as liquidator determines whether the claim should be admitted for the payment of a dividend. If considered necessary the creditor will then be asked to provide further information to support their claim."

23. That seems to me to be right. Rule 14.6 is about inspection of proofs of debt. Rule 1.2(2) contains definitions as follows:

> "In these Rules…
>
> "prove" and "proof" have the following meaning—
>
> (a) a creditor who claims for a debt in writing is referred to as proving that debt;

(b) the document by which the creditor makes the claim is referred to as that creditor's proof; and

(c) for the purpose of voting, or objecting to a deemed consent, in an administration, an administrative receivership, a creditors' voluntary winding up, a CVA or an IVA, the requirements for a proof are satisfied by the convener or chair having been notified by the creditor in writing of a debt"

The significant point here is that sub-para (c) provides that in certain types of insolvency proceedings all that is required for a proof is notification by the creditor in writing of a debt. But this only applies to administration, administrative receivership, a creditors' voluntary winding up, a CVA or IVA. It does not apply to a compulsory winding up by the Court (which is the relevant insolvency proceeding in the case of EWM). That indicates that in such a winding-up something more is needed than mere notification in writing of a debt, and hence that when sub-para (a) refers to a creditor "who claims for a debt in writing" and sub-para (b) refers to "the document by which the creditor makes the claim", what the rule envisages is a formal claim for a debt as opposed to a mere notification of a debt.

24. If that is right, and it seems to me inevitably to follow from the terms of Rule 1.2(2), then I see no reason to doubt Mr Campbell's statement that Middlesbrough had not been asked to submit a proof of debt as the stage at which creditors are asked to submit formal proofs had not been reached.

25. In those circumstances I conclude that Rule 14.6 does not apply so as to enable Mr Millinder to require Mr Hannon to allow him to inspect the documents by which Middlesbrough asserted that they were owed first £255,000 and then £541,308.

26. I have reached this view simply on the wording of Rule 1.2(2), but it is supported by the structure of the Insolvency Rules. Rule 14.6 is part of a group of rules in Part 14 of the Insolvency Rules. Part 14 is all about claims by creditors for the purposes of distribution. Rule 14.3 provides that a creditor "wishing to recover a debt" must submit a proof; Rule 14.4 sets out how a proof is to be made; and Rule 14.5 provides for the creditor to bear the cost of a proof. Then comes Rule 14.6 permitting inspection of proofs, followed by Rule 14.7 which provides that an office-holder can admit or reject a proof "for dividend" and Rule 14.8 which provides for appeals against decisions under Rule 14.7. In this context it seems plain to me that the "proof" referred to in Rule 14.6 is a proof lodged in accordance with Rule 14.4 by a creditor wishing to recover a debt under Rule 14.3. In other words the only proofs that Rule 14.6 applies to are those lodged for the purposes of claiming a dividend in a distribution. There are currently no assets for distribution in the winding up of EWM, and the creditors have therefore not been asked to lodge proofs for dividends. There is therefore nothing to disclose and I would not have allowed Application No 1 even if it had not already been decided against Mr Millinder by Arnold J.

27. Mr Hannon has also given further reasons why the application should be dismissed, including the point that Mr Millinder is not himself a creditor of EMW: see his 5th and

6th reports dated 27 November 2018 and 16 April 2019. It is not necessary for me to consider these points.

28. For the reasons I have given I refuse permission under the ECRO for Application No 1 to be brought.

Application No 1A

29. In e-mail No 63, Mr Millinder asked me to extend the scope of the order he sought under Application No 1 to include further disclosure. The basis of the application was that Ms Clare Drummond, the internal audit supervisor of WBD, had deleted a number of e-mails from Mr Millinder without having read them, and Mr Millinder seeks an order for disclosure of the evidence that Ms Drummond has "sought to dispose of".

30. This application is misconceived. The meaning of disclosure under the CPR is given by CPR r 31.2, which provides that:

> "A party discloses a document by stating that the document exists or has existed."

Disclosure is limited to what is necessary to resolve the issues in the proceedings. Mr Millinder does not need an order for disclosure to know that the e-mails which he sent to Ms Drummond existed. Nor presumably does he need to inspect them, as I assume he retains his copies of the e-mails as sent. No useful purpose would be served by ordering disclosure.

31. In those circumstances I refuse permission under the ECRO for Application No 1A.

Application No 2

32. As explained above, in e-mail No 7 Mr Millinder invites me to make an order setting aside previous orders, and I will treat this as an application under the ECRO.

33. As with Application No 1, Mr Millinder invites me to exercise powers under CPR r 3.3, but I do not think this is the right rule as this applies where the Court is deciding of its own initiative to make an order, not where a party asks the Court to do something. In e-mail No 7 what Mr Millinder says is:

> "I invite both Mr Justice Nugee and Mr Justice Snowden to review the other transcripts and the application of Part 14 of the Insolvency Rules 2016 and to make an order, pursuant to CPR Part 3, R 3.3 in setting aside orders founded by fraud and awarding compensation to [me] accordingly."

It seems to me that the substantive relief that Mr Millinder wants is an order setting aside the relevant orders for fraud, and I will treat the e-mail as an application under the ECRO for permission to bring an application for such relief.

34. Mr Millinder does not clearly specify which are the relevant orders, but the body of his e-mail refers to (i) the transcript of a hearing before ICCJ Barber on 28 March

2018 and (ii) the transcript of a hearing before Chief ICCJ Briggs on 11 April 2018. The "other transcripts" to which he refers are not specifically identified, but apart from my own judgment of 5 February 2018 (which I do not think it is suggested should be set aside) the only other transcript attached is that of ICCJ Jones of 26 March 2018. I will therefore assume that the orders which Mr Millinder seeks to set aside for fraud are (i) the Order of ICCJ Jones of 26 March 2018; (ii) the Order of ICCJ Barber of 28 March 2018; and (iii) the Order of Chief ICCJ Briggs of 11 April 2018.

35. There is no doubt that the Court has power to set aside an order if it is proved to have been obtained by fraud. The Supreme Court recently considered the relevant principles in *Takhar v Gracefield Developments Ltd* [2019] UKSC 13. The majority judgments were given by Lord Kerr and Lord Sumption. Each approved the statement of principle by Aikens LJ in *Royal Bank of Scotland plc v Highland Financial Partners LP* [2013] EWCA Civ 328 at [106]: see per Lord Kerr at [57] and Lord Sumption at [67]. Lord Briggs and Lady Arden, who gave separate judgments, appear to have also agreed with this statement of principle: see at [76] and [104] respectively. What Aikens LJ said was as follows:

> "The principles are, briefly: first, there has to be a **'conscious and deliberate dishonesty'** in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'. 'Material' means that the **fresh evidence** that is **adduced after the first judgment has been given** is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have **entirely changed the way** in which the first court approached and came to its decision. Thus the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence." (My emphasis)

Those then are the principles which I must apply in order to see if there is an arguable case that the relevant orders were obtained by fraud.

36. The first in time is that of ICCJ Jones dated 26 March 2018. I have read the transcript of the judgment as Mr Millinder asked me to. ICCJ Jones decided a number of issues. He first dealt with an application from Mr Millinder that he recuse himself. He declined to do so for the reasons he gave: see his judgment at [9]-[26]. He then dealt with an application by Mr Millinder as a creditor of EWM pursuant to Rule 14.11 of the Insolvency Rules: see at [27]-[48]. He finally considered an application by Mr Millinder to have a different liquidator appointed: see at [49]-[59].

37. Mr Millinder disagrees with ICCJ Jones' decisions on these three points. But a contention that a judge has made a wrong decision is plainly not enough to have his judgment set aside for fraud. As already explained the way in which a party can

challenge a decision of a judge that he believes to be wrong is to appeal. But Mr Millinder has not appealed ICCJ Jones' decision.

38. Instead he has sought to have it set aside for fraud. In order to do that, as I have explained, he needs to point to some *"fresh evidence"* of *"conscious and deliberate dishonesty"*, adduced after the first judgment has been given, that would have *"entirely changed the way"* the Court would have approached the decision. That means there has to be something new that demonstrates that the first Court was deliberately and dishonestly misled. But I have not been referred to any such evidence. What Mr Millinder has repeatedly pointed to is his belief that Middlesbrough never had a valid claim against EMW, whether for rent or under the ESA, and that Middlesbrough knew that it had no such claim and hence knew that its demands were fraudulent. But there is nothing new in this. Those allegations were squarely before ICCJ Jones: see for example his judgment at [39]. Nothing that Mr Millinder now says seems to me to amount to an assertion that he has fresh evidence that would have entirely changed the way ICCJ Jones approached the case. In those circumstances I do not consider that he has any arguable claim that ICCJ Jones' decision should be set aside for fraud.

39. The second relevant order is that of ICCJ Barber dated 28 March 2018. This was the hearing of Middlesbrough's petition to wind up Earth Energy Investments LLP (**"EEI"**) on the basis of an Order made by Norris J by consent that EEI pay Middlesbrough £25,000 in respect of costs. ICCJ Barber declined to adjourn the hearing and ordered EEI to be compulsorily wound up.

40. It appears from the Judgment that this is not the first time that Mr Millinder has sought to challenge ICCJ Barber's Order, although he never appealed it. On 29 March 2018 EEI made an application to rescind the Order; this was dismissed by HHJ Pelling QC on 7 June 2018: see Jmt at [51], [56]. A second application to set it aside was dismissed on 24 July 2018 by Arnold J: see Jmt at [60]. A third application was made by Mr Millinder in the application which was before the Chancellor: see Jmt at [7], [61]. Although the Chancellor dealt with the application on the basis that the only matter formally before him was an application to discharge the ECRO (no permission having been given under the ECRO for any other applications to be made – see Jmt at [7]), he did consider whether there were any grounds for setting aside ICCJ Barber's decision. His conclusions were that "ICCJ Barber had no real choice but to wind up [EEI] on 28th March 2018 based on the costs debt of £25,000" (Jmt at [124]); "any attempt to set aside the winding up of [EEI] was always doomed to fail" (Jmt at [125]); and "the compulsory winding up ordered by ICCJ Barber was inevitable" (Jmt at [126]).

41. Where matters have been considered and rejected by three judges sitting in the High Court (HHJ Pelling, Arnold J and Vos C), it would take some truly exceptional new material to persuade a fourth judge of the High Court to take a different view. But I have not understood Mr Millinder to have any new material. His complaint as I understand it is the same as it was before Vos C. In those circumstances it would be enough for me to say that Mr Millinder cannot now reopen what has already been

decided. As already referred to above, it is an abuse of process for a litigant whose application has been rejected by one judge to ask another judge for the same relief on the same material.

42. But even if I had been persuaded to look at the substance of the application, I would have come to the same view as Vos C. The hearing before ICCJ Barber was the hearing of the petition to wind up EEI on the basis of the £25,000 costs debt. The ground on which Mr Millinder sought an adjournment was that the debt was disputed, but the difficulty with that is that the debt undoubtedly subsisted as the Order of Norris J of 16 January 2017 was an existing order and had not been complied with. Mr Millinder on behalf of EEI had on 5 February 2018 sought to persuade me in the Applications Court to set it aside but I had rejected that application. Mr Millinder had issued on 1 March 2018 (in the name of EEI) another application to set it aside which had not yet been heard, but he relied on the same non-disclosure argument as he had before me (and in due course the application was dismissed): see Jmt at [120]. It was therefore correct for ICCJ Barber to say that the grounds on which the petition was disputed relied on the same grounds as had already been adjudicated on. Mr Millinder says that Mr Staunton misled her because he knew that the application of 1 March 2018 sought to deal with Middlesbrough's claims. In fact I do not see that he misled her at all, as he referred to the fact that Mr Millinder wished to have the petition adjourned:

> "because he wanted to make a second application, the first having been dismissed by Mr Justice Nugee on 5th February."

This seems to me an entirely accurate statement. But even if he could and should have said more about the application of 1 March 2018, the question (as appears from the statement of principles above) is whether that would have *"entirely changed the way"* ICCJ Barber would have approached the decision. I do not see that there is any prospect of Mr Millinder establishing that. Even if ICCJ Barber had been taken to the application of 1 March in detail, she would still have had to form a view whether it constituted a ground for regarding the petition debt as disputed, and in circumstances where it repeated the arguments that I had already rejected on 5 February, it is inconceivable that she would have done. I conclude therefore that even if it had been open to me to consider the question, there is no reasonable prospect of setting aside ICCJ Barber's Order for fraud.

43. The third relevant Order is that of Chief ICCJ Briggs on 11 April 2018. This was the hearing of EEI's application of 29 March 2018 to rescind the winding up order. Chief ICCJ Briggs decided to adjourn that application to be heard together with the application of 1 March 2018: Jmt at [53]. Mr Millinder makes a number of points, but they do not seem to me to amount to a suggestion that Mr Staunton misled Chief ICCJ Briggs. They are based rather on the assumption that there was a conspiracy to pervert the course of justice to which Chief ICCJ Briggs was a party. But none of the material put before me by Mr Millinder begins to suggest that he could establish this. Part of Mr Millinder's case is that once I had directed that the application of 1 March 2018 should be listed in the usual way, that made the matter

sub judice and hence that it was inappropriate to proceed with the winding up of EEI. But that is wrong. In directing that the 1 March application be listed, I was doing no more than providing for an oral hearing. I was not deciding that there was any merit in the application, only that there was no point in disposing of it on paper without a hearing, as Mr Millinder would have undoubtedly asked for it to be reconsidered at an oral hearing. The fact that the application had been listed was no bar to the winding up order; and the fact that Chief ICCJ Briggs did not on 11 April 2018 rescind the winding up order but adjourned it to be heard with the application of 1 March 2018 does not suggest, let alone prove, that he was party to a conspiracy. I conclude that there is no reasonable prospect of Mr Millinder having his order of 11 April 2018 set aside either.

44. In those circumstances I refuse permission under the ECRO for Application No 2.

Application No 3

45. This application is made by e-mail No 8. It seeks to set aside a number of orders pursuant to CPR r 3.1(7). These are (i) the order of ICCJ Jones dated 26 March 2018; (ii) the order of ICCJ Barber dated 28 March 2018; (iii) the order of HHJ Pelling QC dated 28 June 2018; (iv) the order of Vos C dated 8 February 2019; (v) the order of Vos C dated 8 March 2019; and (vi) the order of Vos C dated 12 April 2019.

46. I have already explained that CPR r 3.1(7) is normally only available in two circumstances: where there has been a material change of circumstances since the original order or where the facts on which the original order was made were misstated. CPR r 3.1(7) is not available where a litigant wishes to contend that a judge made a wrong decision on the material before him or her. That type of challenge can only be pursued by an appeal, brought in time and with permission.

47. I have read Mr Millinder's witness statement of 16 April 2019 in support of Application No 3. It rehearses a number of the points that Mr Millinder has made before; in summary his contention is that the various judges whose orders he seeks to have set aside have made "manifest mistakes". He goes further and asserts that ICCJs Jones and Briggs deliberately ignored evidence, that they had no locus to hear the application, that they and the other judges deliberately avoided the facts, wilfully disregarded submissions and wilfully abused their positions.

48. Although couched in the strongest language, culminating in allegations of criminal offences, these are in essence assertions that the various judges reached wrong decisions on the applications made to them. In my judgment complaints of this type are not a suitable basis for invoking the Court's powers under CPR 3.1(7). That remains the case even if it is said that the judges concerned were deliberately reaching wrong decisions. (I may add that I too have read the material that Mr Millinder sent, and like the Chancellor, do not detect any evidence for the suggestion that the judges concerned were deliberately abusing their position (see Jmt at [103]). The fact that they did not accept Mr Millinder's arguments does not mean that they were conspiring against him: it simply means that they were not persuaded by his submissions.)

49. In these circumstances I do not think Mr Millinder has any reasonable prospect of success in seeking to set aside the various orders under CPR 3.1(7). That makes it unnecessary to consider whether his application would in any event be characterised as an abuse of process because it is a repeat of applications that he has previously made.

50. In those circumstances I refuse permission under the ECRO for Application No 3.

Application No 4

51. This was made in e-mail No 21. It is an application to issue a Part 7 claim form. The draft claim form contains a claim to be brought by Mr Millinder personally against Middlesbrough and Gibson. The claim endorsed is as follows:

> "The Claim arises from repudiatory breach and wrongful forfeiture of Lease completed between the parties on 17th June 2013, along with a suite of operational contracts intended to allow the Claimant to construct and operate a 136 meter high, 1.5 mega watt wind turbine in the overflow carpark of the Defendant's Football Stadium."

52. As this formulation of the claim shows, it is predicated on breaches of contract by Middlesbrough in repudiating and wrongfully forfeiting the Lease. As summarised by the Chancellor (Jmt at [129]) Mr Millinder's core submission is that EMW, which was the tenant under the Lease, never owed Middlesbrough anything and Middlesbrough was liable to repay EMW its lease premium of £200,000 and other damages. The basis of that, again as summarised by the Chancellor (Jmt at [130]), is that EMW's non-payment of rent was excused either by misrepresentation, some implied term requiring Middlesbrough to agree a connection agreement or to take ownership of the two sub-stations, or by the force majeure clauses in the Lease and the ESA.

53. The difficulty with all this is that the Lease was vested in EMW, not Mr Millinder personally. That means that the claim for the return of the premium was also vested in EMW (although Mr Millinder's position is that this claim was later assigned to EEI), and any damages for wrongful repudiation or wrongful forfeiture and consequent loss of profits would also be vested in EMW. That was the view taken by the Chancellor: see Jmt at [97]-[98], and at [140] where he said:

> "Mr Millinder's new claim against Middlesbrough was equally misconceived, since it purported to advance claims that lay in [EMW] or [EEI], if they existed at all. As I have explained, Mr Millinder has and had no standing to advance claims on behalf of those companies."

Having considered the matter for myself, I entirely agree and can see no fault in this reasoning. In e-mail No 37 (and see also e-mail No 64), Mr Millinder says that the right of action vests in him, as investor and originator of the project that paid £200,000 for the Lease. But Mr Millinder chose to operate his project through corporate entities, with the consequence, as the Chancellor explained, that claims in relation to the project were vested in those companies. It follows that any such

claim by Mr Millinder personally would have no reasonable prospect of success.

54. In those circumstances I refuse permission under the ECRO for Application No 4.

Application No 4A

55. In e-mail No 42, Mr Millinder asked me to make a default judgment under CPR Pt 12 in relation to this claim. As stated above, I have treated this as an application for permission under the ECRO to apply for default judgment.

56. This is misconceived. The effect of the ECRO is that Mr Millinder cannot bring the Part 7 claim without permission. He does not have that permission. Although he consistently refers to the ECRO as a false instrument, the fact is that it is a subsisting order of the High Court, and his application to have it discharged failed before Vos C. That means that the Part 7 claim has not been validly issued or served and there is no question of the defendants being in default, or of default judgment being issued.

57. I refuse permission under the ECRO for Application No 4A.

Conclusion

58. I have now considered each of the applications under the ECRO which I have managed to identify from the mass of material that Mr Millinder has sent. I refuse permission for any of them to be brought.

Hon Mr Justice Nugee

18 June 2019