



Neutral Citation Number: [2021] EWHC 3440 (Ch)

Case No: IL-2021-000019

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

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 22 December 2021

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

Between :

CRYPTO OPEN PATENT ALLIANCE
- and -
CRAIG STEVEN WRIGHT

Claimant

Defendant

Jonathan Moss (instructed by **Bird & Bird LLP**) for the **Claimant**
Michael Hicks (instructed by **ONTIER LLP**) for the **Defendant**

Hearing date: 10 December 2021

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ Paul Matthews :

Introduction

1. This is my judgment on two applications. The first is one by the defendant by notice dated 28 September 2021, for orders (i) to strike out parts of the claimant's Amended Particulars of Claim and (ii) to exclude certain evidence at the trial of the claim, as well as ancillary orders. The second application is one by the claimant by notice dated 26 November 2021 for an order permitting the claimant to amend the Amended Particulars of Claim and the consequential directions. For convenience I will generally refer hereafter simply to the "particulars of claim". The defendant's application is supported by a witness statement of Simon Alexander Cohen, and the claimant's application is supported by a witness statement of Philip Nathan Sherrell. Each of those two deponents has made a further witness statement in effect responding to points made by the other.
2. The applications are made in the context of a claim for (amongst other things) a declaration that the defendant is not the author of, and is not the owner of the copyright in, a document which has been called the Bitcoin White Paper, published in October 2008 under the name (agreed to be a pseudonym) of Satoshi Nakamoto. It is widely believed, at least in the cryptocurrency world, that whoever is Satoshi Nakamoto is the real father of the Bitcoin cryptocurrency concept. The claimant is a U.S.-based non-profit mutual benefit corporation established in September 2020 under the laws of California. The amended particulars of claim say that it "was formed to encourage the adoption and advancement of cryptocurrency technologies and to remove barriers to growth and innovation in the cryptocurrency space". Over the years, a number of persons have been suggested to be Satoshi Nakamoto. Since about 2015, there have been reports that Satoshi Nakamoto was the defendant, an Australian resident in England and Wales. Since about 2016 the defendant has publicly claimed to be Satoshi Nakamoto. This claim has been brought in order to test those assertions.
3. The claim form, with particulars of claim attached, was originally issued in April 2021 and amended (along with the particulars of claim) in September 2021 with the permission of the court. Requests for further information of the particulars of claim were made and responded to. The defence was originally filed and served in May 2021, and amended, refiled and re-served in September 2021. There has also been a request for further information of the defence, and again a response has been made. The original reply by the claimant was served and filed on 19 July 2021, and an amended reply was refiled and reserved on 11 October 2021.

The claim against the defendant

4. The claimant is seeking a declaration that the defendant is not the author of the Bitcoin White Paper. The claimant seeks to prove a negative by showing (if it can) that the defendant has had various opportunities, and made various attempts, to prove his claim to be the author but on each occasion has failed to do so. The particulars of claim recite that the suggestion that the defendant

was Satoshi Nakamoto first appeared in WIRED magazine in December 2015 (paragraph 13), and was publicly accepted by the defendant in May 2016 (paragraph 14), but that, despite offering to provide “extraordinary proof” of his claims (paragraph 20), the defendant “has failed to provide any credible evidence that he is Satoshi” (paragraph 17).

5. The particulars plead four specific occasions on which the defendant is said to have provided documentary evidence that he is Satoshi, but which evidence (it is said) does not support his claim. These are referred to as the “Sartre message” (paragraphs 23 to 25), the “BlackNet Abstract” (paragraphs 26 to 27), the “12 March 2008 Kleiman email” (paragraphs 28-29), and the “SSRN Submission” (paragraphs 30 to 34). In the following paragraphs, I summarise these allegations sufficiently for present purposes. I emphasise that they are simply the claimant’s allegations, and not facts found by this court.

The Sartre message

6. The claimant says that the first of these was presented to journalists in April 2016 and published in May 2016 to prove the defendant’s claim to be Satoshi. According to paragraph 24 of the particulars of claim, it was

“a message, a hash of the message, and a signature of the hash in the form of the text of a speech by Jean-Paul Sartre (the “Sartre Message”). The signature was purported to correspond to a private key associated with Bitcoins mined in Block 9 of the Bitcoin blockchain (which are believed to be Bitcoins mined by Satoshi).”

7. As to this, the claimant says that the signature did not so correspond:

“However, the provided signature was that of a 2009-era Bitcoin transaction that was publicly available in the blockchain and not one that was contemporaneously generated with regard to the Sartre Message (or one that corresponded to the Sartre Message).” (Particulars of claim, paragraph 25.)

8. In his defence (paragraph 1), the defendant says that any allegation not admitted by him is required to be proved by the claimant. He then goes on to say, with regard to the Sartre message, that the claimant is confusing the interviews carried out in April 2016 with a posting on 2 May 2016 (paragraph 36). Subsequently, the defendant admits that the example of 2 May 2016 posting related to a publicly available signature rather than to a private one. As a result of this, in its reply, paragraph 20, the claimant says that the defendant has effectively not pleaded to the allegations relating to the Sartre message. Given what the defendant says in paragraph 1 of his defence, there is an issue between the parties on this point.
9. At the hearing before me, Mr Hicks for the defendant said that this was not a question that turned on possible forgery. This was simply a question of what were the technical reasons why (in the claimant’s view) the document did not show what the defendant said it showed. I have some difficulty in accepting this. If the provided signature was one which was publicly available in the

blockchain, rather than one which corresponded to the private key associated with block nine of the Bitcoin blockchain, then it could not have been provided as a proof that the defendant was Satoshi (which was what was put forward) but could only be a forgery of such a signature. Whether it was put forward as a proof of being Satoshi Nakamoto is a matter for trial. So, forgery is in issue.

The BlackNet Abstract

10. The “BlackNet Abstract” was published by the defendant in February 2019, who asserted it to be an early iteration of the Bitcoin White Paper, written in 2001 and submitted to the Australian government (particulars of claim, paragraph 26). The abstract is copied from the abstract of the Bitcoin White Paper. The Bitcoin White Paper was, as I have said, published in October 2008. An earlier draft, from August 2008, was corrected before the publication of the final version in October. Yet the “BlackNet Abstract” contains the corrections made between August and October 2008, and therefore cannot predate either the draft Bitcoin White Paper or the Bitcoin White Paper itself (particulars of claim, paragraph 27).
11. The defendant says that the early submissions to the Australian government did not contain the abstract of the Bitcoin White Paper, but the later ones did so (defence, paragraph 45). So, again, the defendant argued that the question here was not forgery or not, but whether the publication of the abstract in 2019 was a statement that the defendant had the 2001 document, rather than something different (defence, paragraph 46). But what was being asserted by the publication in 2019 is a question for the trial. Forgery is again in issue.

The Kleiman email of 12 March 2008

12. In US legal proceedings to which I refer further below (the “Kleiman Litigation”), allegations were made against the defendant that, using forged documents, he stole Bitcoin and related intellectual property from a company called W&K Info Defense, LLC after the death of its founder, David Kleiman. In those proceedings, the defendant said he had sent an email to Mr Kleiman on 12 March 2008, which supported his claim to have originated the idea of Bitcoin:

“----- Original Message-----

From: Craig S Wright [<mailto:craig.wright@information-defense.com>]

Sent: Wednesday, 12 March 2008 6:37 PM

To: dave kleiman

Subject: FW: Defamation and the difficulties of law on the Internet.

I need your help editing a paper I am going to release later this year. I have been working on a new form of electronic money. Bit cash, Bitcoin...

You are always there for me Dave. I want you to be a part of it all.

I cannot release it as me. GMX, vistomail and Tor. I need your help and I need a version of me to make this work that is better than me.

Craig”.

13. However, the particulars in this case (paragraph 29) go on to allege that the domain used by the sender of the email (“@information-defense.com”) was not created until 23 January 2009, and that therefore this email could not have been sent in 2008 from the email address given. The defendant argued that this change resulted from the original email being moved from one exchange server to another (defence, paragraph 50). So, this was not a question of forgery, but simply a technical question as to whether the transposition of domain names is possible, and if so under what circumstances. Once more, whether that is the true explanation, or whether it is a simple forgery, is a matter for trial.

The SSRN Submission

14. In August 2019, the defendant posted a document on the Social Science Research Network (“SSRN”) which he asserted to be the “final” version of the Bitcoin White Paper, stated to have been written on 21 August 2008 (the “SSRN Submission”). The metadata of the Bitcoin White Paper contain a creation date of 24 March 2009. In fact, the defendant posted two versions of his document to the SSRN (particulars of claim, paragraph 30).
15. The particulars of claim allege that the first version so posted has discrepancies in its document properties, and that its metadata have been tampered with, so as to suggest a creation date of 24 January 2008 and a modified date of 21 May 2008 (particulars of claim, paragraph 31). Yet the metadata of the first version still include an entry showing that the original creation date was 29 March 2009 (particulars of claim, paragraph 32). The second version of the document is said to have further changes to the metadata compared to the first version, and yet it also includes an entry showing that the original creation date was 29 March 2009 (particulars of claim, paragraph 33).
16. Once more, the defendant says that this is simply a technical question about whether the later date is possible. He says that his pleading does not say that the document was created in 2008 or 2009 (defence, paragraph 58) but accepts it was created in 2019 (defence, paragraph 59). The defence expressly does not admit the claimant’s case on this point, and so there must be an issue between the parties.

General

17. The particulars of claim summarise all these allegations by saying this:

“35. In the premises, on several occasions when Wright has sought to prove he is Satoshi by way of documentary evidence, it has been shown that the documents he relies on are not what he claims they are.”

18. It is not necessary for present purposes for me to go through the defence. It suffices for present purposes to say that, although some points of fact are accepted by the defendant, there are considerable issues between the parties arising out of the allegations made by the claimant (some of which I have just mentioned), and these issues will have to be resolved at trial. In particular, I consider that the claimant, in complying with the relevant pleading rules, is entitled to put these cases forward as cases of forgery, even though the defendant argues that they have innocent explanations.

The Kleiman Litigation

19. Very recently, the defendant has been engaged in litigation in Florida, in the United States of America, as defendant to a suit brought by (amongst others) the estate of David Kleiman, which claimed that the defendant and the late Mr Kleiman had been business partners in the early exploitation of Bitcoin, and that his estate was entitled to a one-half share in the very substantial fortune amassed by the defendant. That claim failed, although a (much less valuable) claim under US law for conversion of intellectual property assets succeeded. The verdict of the jury was handed down only on Monday, 6 December 2021, at the beginning of the week in which these applications were heard.

The particulars of claim in this case

20. Both the original and amended particulars of claim referred to these proceedings in paragraph 28, which I have already referred to above. But there are further references. Paragraphs 63-65 are cross-headed “Findings in the Kleiman Litigation”. Paragraph 63 begins “The Claimant will rely upon a number of findings in the Kleiman Litigation which are probative of [the defendant]’s conduct ... ” Those paragraphs then cite from interlocutory judgments dated August 2019 and January 2020 of judges involved in that litigation, in which those judges make (adverse) findings as to the credibility of the defendant.
21. Paragraphs 66 and 67 are cross-headed “General matters going to [the defendant]’s credibility”. They are currently worded as follows:
- “66. In the Kleiman Litigation, [the defendant] proffered an email from Dave Kleiman to Uyen Nguyen to the court as evidence supporting [the defendant]’s request for the court to dismiss the action for lack of subject-matter jurisdiction. This email was purportedly dated 20 December 2012. When the email became public, members of the public showed that the PGP signature on the email was created a year after the death of Dave Kleiman. [The defendant] subsequently withdrew the email from evidence, stating that he could not verify the date of the email exchange.
67. In the premises, it is averred that [the defendant] has a history of producing false documentation and making assertions which he cannot back up when required by a court.”
22. The email referred to in paragraph 66 was in evidence before me. It reads:

“From: Dave Klieman
To: Uyen Nguyen
Subject: Appointment letter
Date: Thursday, 20 December 2012 8:19:03 AM

-----BEGIN PGP SIGNED MESSAGE-----

Hash:SHA1

UT

Craig speaks highly of you.

I am going to need and ask for your help. You know Craig well and I am an enigma. I have been unwell and in the VA far too much. I need a person who can run around. Craig is too far away and we need him to remain off of this.

I will ask you to be a director with me in W&K Information Defense Research LLC. We are setting up a company in Australia and will move the assets back from Panama once this is complete. We placed them there to protect Craig.

At the time, the Australian IRS valued the IP at nothing, now it is ok, but one day it could be worth more than anything we can imagine. For this reason, we need to work to stop it being seen in the wrong light.

Craig is a great guy, but too volatile. He also does not know when to accept that rules get broken by others far too much. Unless I hear otherwise, I will assume you are coming on-board. I will work out a time to meet with you in May if my health improves. Do not let Craig badger you too much.

Dave

-----BEGIN PGP SIGNATURE-----

Version: GnuPG v2.0.19 (MingW32)

[...]

-----END PGP SIGNATURE-----”

23. I have omitted the actual PGP signature from my quotation of the email, because it is simply a string of characters. For the sake of transparency, I should say that I understand “PGP signature” to mean a method, using a public key-based cryptography programme (where “PGP” stands for “pretty good

privacy”), of verifying the genuineness of a statement that a particular person has authored a particular electronic document.

The defence in this case

24. In his original and amended defence, the defendant pleaded to paragraph 28 of the particulars of claim in his paragraphs 47 to 51. Paragraph 47 is as follows:

“The allegations made in paragraph 28 and 29 of the Particulars of Claim are not relevant to this case and fall to be struck out. Notwithstanding the foregoing, [the defendant] responds as follows.”

And then the defendant pleaded to the specific allegations made. I am not directly concerned with that today.

25. In paragraph 84(1) of his original and amended defence, the defendant pleaded to paragraphs 63 to 65 of the particulars of claim as follows:

“Findings or rulings made in the Kleiman Litigation are of no relevance to and are inadmissible in these proceedings. Therefore paragraphs 63 to 65 of the Particulars of Claim fall to be struck out.”

In the remainder of paragraph 84, the defendant pleaded to the specific allegations in those paragraphs of the particulars of claim. Again, I am not directly concerned with that today.

26. In opening paragraph 85 of his original and amended defence, the defendant pleaded to paragraphs 66 and 67 of the particulars of claim as follows:

“With regard to paragraphs 66 and 67 of the Particulars of Claim, notwithstanding that the allegations fall to be struck out as inadmissible and irrelevant...”

The remainder of that paragraph then pleaded to the allegations in paragraphs 66 and 67. Once more, I am not directly concerned with that today.

The reply in this case

27. For the sake of completeness, I mention that the claimant pleaded to paragraphs 84 and 85 of the defence in paragraphs 28 to 30 of its reply.

The defendant’s application to strike out and exclude evidence

28. As I have already said, on 28 September 2021, the defendant issued an application to strike out paragraphs 63 to 67 of the amended particulars of claim and paragraphs 28 to 30 of the reply, “as an abuse of the Court’s process and/or is otherwise being likely to obstruct the just disposal of the proceedings...” The application also sought an order in the following terms:

“The following shall not be admissible in these proceedings: (i) evidence regarding findings of fact made in the Kleiman Litigation; (ii) evidence regarding the assertions made by members of the public referred to in

paragraph 66 of the [amended particulars of claim]; (iii) evidence to the effect that the email referred to in paragraph 66 of the [amended particulars of claim] and paragraph 30 of the reply (“the email”) was determined by other persons to be a forgery; and (iv) evidence as to the authenticity or otherwise of the email.”

29. There was then correspondence between the parties on various aspects of this application, including whether it should be heard by a master or a judge, how long it should last, and also about the width or narrowness of the order sought excluding certain categories of evidence from the trial of the proceedings.

The claimant’s application to re-amend the particulars of claim

30. Finally, and as I have also said, on 26 November 2021, the claimant issued an application to re-amend its amended particulars of claim and for consequential directions. The significant re-amendments proposed are as follows. First of all, paragraphs 63 to 65 (part of the object of the strike-out application) are deleted. Secondly, at the end of paragraph 66 two further sentences are added, as follows:

“The e-mail was therefore electronically tampered with and forged by [the defendant]. As to the basis on which the Claimant alleges forgery, the Claimant relies on the above matters as establishing this allegation.”

31. Thirdly, after paragraph 66 is added a new paragraph 66A, as follows:

“In the Kleiman Litigation, [the defendant] proffered a Deed of Trust document as evidence of the existence of a trust called the Tulip Trust. [The defendant] has claimed that the Tulip Trust held Bitcoin and/or an encrypted file with keys to that Bitcoin. The Deed of Trust document that was adduced by [the defendant] was dated 23 October 2012. That date was false, and computer forensic analysis of this document shows that it was backdated and that it was not created until at least 22 May 2015 (over two years after the death of David Kleiman on 26 April 2013). This document was therefore forged. As to the basis on which the Claimant alleges forgery, the Claimant relies on the above matters and the fact that this Deed of Trust document was found to be backdated in the Order of Justice Reinhart dated 27 August 2019.”

32. Finally, at the end of paragraph 67, the following sentence is added:

“The Claimant will establish at the trial of this matter by way of forensic computer evidence that the above documents (being those referenced in paragraphs 28-29, 66 and 66A) were, in fact, forged or otherwise doctored unless [the defendant] admits such”.

The issues before the court

33. It will be seen that there is no dispute between the parties about paragraphs 63 to 65 of the amended particulars of claim and consequentially about the relevant paragraphs of the amended defence and the reply. The battleground

falls into three parts. First of all, there are paragraphs 66 and 67 of the particulars of claim and the consequential pleadings in the amended defence and reply, which the defendant says should go in their entirety, but to which the claimant wishes to add further sentences at the end of each paragraph. Secondly, there is a new paragraph 66A, which the claimant wishes to introduce, but which the defendant resists. Thirdly, there is the defendant's application for an order excluding certain evidence generally from the trial of this claim.

34. In seeking to strike out paragraphs 66 and 67, in resisting the new paragraph 66A, and in seeking an order for the exclusion of certain evidence at trial, the defendant relies on two distinct but related rules of the law of evidence. The first is a rule about the admissibility in English proceedings of findings and decisions of courts and tribunals (whether in this jurisdiction or elsewhere) in proceedings between different parties. This is usually known as the rule in *Hollington v Hewthorn*, after the decision of the Court of Appeal in *Hollington v F Hewthorn & Co Ltd* [1943] 1 KB 587. The second is a rule about the admissibility in English civil proceedings of so-called "similar fact evidence", that is, evidence that a party has in the past acted in ways similar to that in which he or she is alleged to have acted in the present case. It is exemplified by recent decisions such as *O'Brien v Chief Constable for South Wales* [2005] 2 AC 534, HL, and *JP Morgan Chase Bank v Springwell Navigation Corporation* [2005] EWCA Civ 1602. Reliance was also placed on CPR rule 32.1. Before me, there was little or no dispute as to the principles of law involved. But it is desirable to set them out nonetheless.

The rule in *Hollington v Hewthorn*

35. In *Hollington v F Hewthorn & Co Ltd* [1943] 1 KB 587, CA, the plaintiff sought to rely in civil proceedings for negligence upon the defendant driver's criminal conviction for careless driving as evidence of his negligence. The Court of Appeal (Lord Greene MR, Goddard and Du Parcq LJJ) held that evidence of the conviction was inadmissible. Giving the judgment of the court, Goddard LJ (as he then was) said, at 596-97:

"A judgment obtained by A against B ought not to be evidence against C, for, in the words of the Chief Justice in the *Duchess of Kingston's Case* (1776) 2 Sm LC 13th ed. 644, 'it would be unjust to bind any person who could not be admitted to make a defence, or to examine witnesses or to appeal from a judgment he might think erroneous: and therefore the judgment of the court upon facts found, although evidence against the parties, and all claiming under them, are not, in general, to be used to the prejudice of strangers.' This is true, not only of convictions, but also of judgments in civil actions. If given between the same parties they are conclusive, but not against anyone who was not a party. If the judgment is not conclusive we have already given our reasons for holding that it ought not to be admitted as some evidence of a fact which must have been found owing mainly to the impossibility of determining what weight should be given to it without retrying the former case. A judgment, however, is conclusive as against all persons of the existence of the state of things which it actually affects when the existence of that state is a fact in issue.

Thus, if A sues B, alleging that owing to B's negligence he has been held liable to pay *xl.* to C, the judgment obtained by C is conclusive as to the amount of damages that A has had to pay C, but it is not evidence that B was negligent: see *Green v. New River Co* (1792) 4 Term Rep. 589, and B can show, if he can, that the amount recovered was not the true measure of damage.”

Land Securities plc v Westminster City Council

36. I will refer to some of the recent cases in which the rule has been discussed. The first of those cited to me is *Land Securities plc v Westminster City Council* [1993] 1 WLR 286. In that case, an arbitrator in a rent review arbitration admitted evidence of an arbitration award in another such arbitration between different parties in relation to similar premises. Hoffmann J (as he then was) held that such evidence was inadmissible. He said (at 288F-H):

“In principle the judgment, verdict or award of another tribunal is not admissible evidence to prove a fact in issue or a fact relevant to the issue in other proceedings between different parties. The leading authority for that proposition is *Hollington v. F. Hewthorn & Co. Ltd.* [1943] K.B. 587, in which a criminal conviction for careless driving was held inadmissible as evidence of negligence in a subsequent civil action. There has been criticism of this decision, and important exceptions have since been created by statute, notably in the Civil Evidence Act 1968, but none of them would apply here. In *Hunter v. Chief Constable of the West Midlands Police* [1982] A.C. 529, 543, Lord Diplock said that *Hollington v. F. Hewthorn & Co. Ltd.* was ‘generally considered to have been wrongly decided.’ He did not elaborate on this remark, which in any case was not necessary for the decision. In *Savings & Investment Bank Ltd. v. Gasco Investments (Netherlands) B. V.* [1984] 1 W.L.R. 271, 280, Peter Gibson J. said that *Hollington v. F. Hewthorn J_J & Co. Ltd.* still represented the common law.”

37. Counsel then argued that the arbitrator (a rent review surveyor) was himself an expert and could give expert opinion evidence. As to this, the judge said (at 289D-F):

“Mr. Clark is no doubt an expert valuer but I do not think he gave his award in that capacity. An arbitrator is obliged to act solely on the evidence adduced by the parties. Mr. Clark may, by reason of his expertise, have known about matters which cast doubt on points which went unchallenged in the arbitration. If he had been acting as an expert he would have been able to take this knowledge into account. As an arbitrator he would not. His position, in my judgment, was no different from that of a judge determining the rent of a new lease of premises under the Landlord and Tenant Act 1954. The admissibility of his judgment as evidence of the value of the premises in proceedings between different parties cannot depend on whether he happens to have expertise in valuation.”

38. Finally, Hoffmann J also pointed out (at 289F-G) that a further basis for the rule in *Hollington v Hewthorn* was that the evidence sought to be adduced was hearsay:

“The arbitrator's award, expert or not, is an assertion as to the value of a comparable property made by a person not called as a witness and used to prove the truth of that assertion.”

Of course, since the important reforms wrought by the Civil Evidence Acts 1972 and 1995, that is no longer a substantive objection, and I need not consider it further now.

Secretary of State for Trade and Industry v Bairstow

39. The next case that I would like to refer to is *Secretary of State for Trade and Industry v Bairstow* [2003] EWCA Civ 321. In that case, the Secretary of State brought company director disqualification proceedings against the appellant, and sought to rely on findings by a judge (appealed unsuccessfully to the Court of Appeal) in earlier wrongful dismissal proceedings brought by the appellant against the company in respect of which the disqualification proceedings were now brought. At first instance the judge made an order permitting such reliance, and the appellant now appealed, successfully, against that order.

40. Sir Andrew Morritt V-C (with whom Potter and Hale LJJ agreed) said:

“26. I am unable to accept the distinction on which counsel for the Secretary of State relies. Even if *Hollington v F. Hewthorn & Co. Ltd* could originally have been confined to cases in which the earlier decision was that of a court exercising a criminal jurisdiction, it has stood for over 60 years as establishing a much broader proposition. There was no criminal prosecution in any of the other cases to which I have referred except *Hui Chi-Ming v R*. The submission of counsel is inconsistent with the judicial statements made in each of the other cases to which I have referred, in particular of Lords Steyn, Hope of Craighead and Hutton in *Three Rivers District Council v Bank of England*. It is true that in most of them the decision in question was not that of a court, but of inspectors appointed under the Companies Act, an arbitrator or extra-statutory investigators. But that feature was not the basis of the decision in any of those cases and cannot account for the dictum of Balcombe LJ in *Symphony Group plc v Hodgson* or the decision of Keene J in *Hawaz v The Thomas Cook Group Ltd*.

27. Accordingly I would accept the submission of counsel for Mr Bairstow that the factual findings and conclusions of Nelson J in the earlier proceedings are not admissible as evidence of the facts so found in these proceedings. Counsel for the Secretary of State accepted that he could not rely on any statutory or common law exception to render those conclusions admissible for the purpose of proving those facts. ... Counsel for the Secretary of State also accepted that if the factual conclusions of

Nelson J are inadmissible there is nothing in the Civil Procedure Rules, in particular CPR Rule 32.1, to alter the position.”

Rogers v Hoyle

41. *Rogers v Hoyle* [2015] 1 QB 265, CA, was the case of a claim in negligence brought by the estate of a passenger in an aeroplane who was killed when the aeroplane crashed. The defendant was the pilot of the aircraft. The question arose whether the report of the Air Accident Investigation Branch of the Department of Transport into the aeroplane crash was admissible at the trial. The judge, Leggatt J (as he then was), held that it should be admitted. The pilot appealed, arguing that the rule in *Hollington v Hewthorn* applied, and that the report was inadmissible. The appeal failed.
42. Christopher Clarke LJ, with whom Arden and Treacy LJJ agreed) said:

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

It will be seen that this reasoning tracks that of Hoffmann J in the *Land Securities* case.

Ward v Savill

43. The final case to which I wish to refer on this point is *Ward v Savill* [2021] EWCA Civ 1378, a very recent decision of the Court of Appeal. Here, the claimants sought to trace money that they invested in a scheme that turned out to be a fraud into a property in the sole name of the defendant. The defendant resisted this claim. The claimants sought to rely on declarations obtained in earlier civil proceedings between the claimants and the fraudsters (one of whom was the defendant’s husband). At first instance the deputy judge, Robin Vos, dismissed their application, and the claimants appealed, unsuccessfully.
44. The Court of Appeal considered a large legal canvas, including the effect of judgments *in rem*, with which I am not concerned. But it also concerned the rule in *Hollington v Hewthorn*. On this question Sir Julian Flaux C (with whom Elisabeth Laing and Warby LJJ agreed) said:

“85. In *Calyon [v Michailaidis [2009] UKPC 34]* Mr Steinfeld QC, who also appeared for the claimants in that case, sought to persuade the Privy Council to depart from the established principles underlying *Hollington v Hewthorn*, but they declined to do so. In [28] of the judgment, the Privy Council recognised that, whilst the actual decision in *Hollington v Hewthorn* had been criticised, it continued to embody the common law as to the effect of previous decisions. It was in that context that they referred at [30] to [31] to the Report of the Law Reform Committee and concluded, not just that the reasoning of the Court of Appeal in *Hollington v Hewthorn* on this aspect of the law was compelling, but that it was significant that, in passing the Civil Evidence Act 1968, Parliament made no change to this aspect of the law. In other words, the rule in *Hollington v Hewthorn* represents a well-established principle of law which this Court should follow.”

Civil Evidence Act 1968

45. I should also refer briefly to the reforms made to the rule by the Civil Evidence Act 1968, ss 11-13. Section 11 provides that the fact of conviction of any criminal offence in a UK court, or of a “service offence” anywhere, is admissible in any subsequent civil proceedings in England and Wales to prove the commission of that offence, and if such fact of conviction is proved, the burden will lie on the defendant in the criminal proceedings to prove that he or she did not commit the offence. In essence this section reverses the actual decision in *Hollington v Hewthorn*, without abolishing the underlying rule. However, the Act goes on to deal with two other specific cases.
46. Section 12 is concerned with certain family proceedings. It provides that in civil proceedings in England and Wales findings of (i) adultery in earlier matrimonial proceedings, and (ii) findings of paternity in earlier UK affiliation proceedings or other relevant proceedings in England and Wales, are admissible evidence of such adultery or paternity (as the case may be) in the later proceedings. Again, if the fact of such finding is proved, the burden will lie on the relevant party in the later proceedings to prove that that finding was wrong.
47. Finally, there is a *conclusive* reversal of *Hollington v Hewthorn* in certain defamation cases. Section 13 provides that, in proceedings for defamation where the allegation is that the claimant committed a criminal offence, evidence that the claimant was convicted of that offence in a UK court (or, if it is a service offence, anywhere) shall be admissible in the defamation proceedings, and the conviction if proved will be *conclusive* evidence of commission of the offence (thus going further in defamation cases than section 11 does generally).

Commentary

48. It will be seen that the so-called rule is, in modern times at least, simply an application of the common law rule that non-expert opinion evidence is inadmissible in English law, subject to limited statutory exceptions. It would have been possible for English law to develop in a different way. For example,

the courts could have held that, since a judge is an expert in weighing evidence and finding facts according to a procedural system designed to be fair, and must have received evidence to satisfy him or her of the fact concerned, that judge's opinion had some probative value that could at least be taken into account in the second proceedings. This would stand in stark contrast to the opinion evidence of an uninformed layman.

49. Obviously, even where the judge's opinion was treated as admissible, there would still potentially be arguments about the weight to be given to such evidence, for example because the witnesses available and the issues at stake in the first proceedings might well be very different from those on the second. No doubt this was what Goddard LJ meant in *Hollington v Hewthorn* when he referred to "the impossibility of determining what weight should be given to it without retrying the former case". But it is clear that some such idea as this lay behind the decision of Parliament in 1968 to reverse the effect of the rule in three specific areas where United Kingdom or English courts had reached a decision on the same issue, albeit between different parties.
50. Yet it is also clear that the English courts did not take this alternative path, and the decision of the Court of Appeal in *Rogers v Hoyle* shows exactly where the line has been drawn. The fact-finding of professional, independent and impartial judges operating in sophisticated civil procedure systems is treated as no more weighty than the opinions of an uninformed layman. It is also clear that it is not now open to the English courts to change course, at least beneath the level of the Supreme Court. Indeed, given the merely partial legislative intervention of 1968, without altering the remainder of the common law rule, and as Sir Julian Flaux C hinted in *Ward v Savill*, it may now not even be open to the Supreme Court to do so either.
51. One argument for leaving matters as they are may be that reversing the rule would lead to even more satellite litigation about the circumstances in which the earlier decision was come to, and how far it could properly be helpful in the later proceedings, and that there is a value for those involved in litigation as a whole in preventing such further disputes from complicating existing proceedings and making them even slower and more expensive. Of course, looking at the matter from where I sit, at first instance, it makes no difference. The rule is binding upon me, none of the statutory exceptions applies, and so I will apply it.

Similar fact evidence

52. The second point of law concerns the admissibility of similar fact evidence in English civil proceedings. Here I was referred to *O'Brien v Chief Constable for South Wales* [2005] 2 AC 534, HL, *JP Morgan Chase Bank v Springwell Navigation Corporation* [2005] EWCA Civ 1602, and CPR rule 32.1.

CPR rule 32.1

53. As to the last of these, that rule provides as follows:

“(1) The court may control the evidence by giving directions as to –

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide those issues; and
- (c) the way in which the evidence is to be placed before the court.

(2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.”

54. As to rule 32.1(2), it is clear that the power to exclude evidence must be exercised in accordance with the overriding objective in CPR Part 1: see *eg Grobbelaar v Sun Newspapers Ltd, The Times*, 12 August 1999, CA. In my judgment it is significant that the rule makes clear the possible exclusion of otherwise admissible evidence, but does not refer to the possible inclusion of inadmissible evidence. In *Secretary of State for Trade and Industry v Bairstow* [2003] EWCA Civ 321, [27], Sir Andrew Morritt V-C accepted that rule 32.1 did not assist in rendering admissible that which was otherwise inadmissible. I respectfully agree.

O'Brien v Chief Constable for South Wales

55. In *O'Brien v Chief Constable for South Wales* [2005] 2 AC 534, the claimant had been convicted of murder, but his conviction was subsequently quashed. He brought a claim against the police for misfeasance in a public office and malicious prosecution, on the basis that the police had used specific investigation techniques against him which he said were oppressive, dishonest and unprofessional. He sought to introduce evidence of similar techniques being used by the same investigating officers in other cases. The police objected, and, when the objection was not accepted, they appealed, twice, each time without success.
56. In the House of Lords, Lord Phillips MR (with whom the rest of their Lordships agreed, although some of them also made concurring remarks) said:

“52. ... The test of admissibility of similar facts against a defendant in criminal proceedings, as propounded in *DPP v P* and in the [Criminal Justice Act 2003], requires an enhanced relevance or substantial probative value because, if the evidence is not cogent, the prejudice that it will cause to the defendant may render the proceedings unfair. The test of admissibility builds in protection for the defendant in the interests of justice. It leads to the exclusion of evidence which is relevant on the ground that it is not *sufficiently* probative. So far as evidence of bad character that the defendant wishes to adduce against a police witness, the test of admissibility in both *Edwards* and section 100 of the 2003 Act requires an enhanced relevance in order to ensure that the ambit of the trial remains manageable.

53. I can see no warrant for the automatic application of either of these tests as a rule of law in a civil suit. To do so would build into our civil procedure an inflexibility which is inappropriate and undesirable. I would

simply apply the test of relevance as the test of admissibility of similar fact evidence in a civil suit. Such evidence is admissible if it is potentially probative of an issue in the action.

54. This is not to say that the policy considerations that have given rise to the complex rules of criminal evidence that are now to be found in sections 100 to 106 of the 2003 Act have no part to play in the conduct of civil litigation. They are policy considerations which the judge who has the management of the litigation will wish to keep well in mind. CPR 1.2 requires the court to give effect to the overriding objective of dealing with cases justly. This includes dealing with the case in a way which is proportionate to what is involved in the case, and in a manner which is expeditious and fair. CPR 1.4 requires the court actively to manage the case in order to further the overriding objective. CPR 32.1 gives the court the power to control the evidence. This power expressly enables the court to exclude evidence that would otherwise be admissible and to limit cross-examination.

55. Similar fact evidence will not necessarily risk causing any unfair prejudice to the party against whom it is directed. It would not have done so in *Metropolitan Asylum District Managers v Hill*. It may, however, carry such a risk. Evidence of impropriety which reflects adversely on the character of a party may risk causing prejudice that is disproportionate to its relevance, particularly where the trial is taking place before a jury. In such a case the judge will be astute to see that the probative cogency of the evidence justifies this risk of prejudice in the interests of a fair trial.

56. Equally, when considering whether to admit evidence, or permit cross-examination, on matters that are collateral to the central issues, the judge will have regard to the need for proportionality and expedition. He will consider whether the evidence in question is likely to be relatively uncontroversial, or whether its admission is likely to create side issues which will unbalance the trial and make it harder to see the wood from the trees. He will have well in mind the considerations that concerned this House when contemplating the effect of the admission of the disputed evidence in *Metropolitan Asylum District Managers v Hill*.

57. For these reasons I would reject the appellant's submission that similar fact evidence is only admissible in a civil suit if it is likely to be reasonably conclusive of a primary issue in the proceedings or alternatively if it has enhanced relevance so as to have substantial probative value."

JP Morgan Chase Bank v Springwell Navigation Corporation

57. In the subsequent decision of the Court of Appeal in *JP Morgan Chase Bank v Springwell Navigation Corporation* [2005] EWCA Civ 1602, Brooke LJ (who had also given the leading judgment in the Court of Appeal's decision in *O'Brien*, affirmed by the House of Lords), giving the judgment of the court, said:

“67. There is a two-stage test: (i) Is the proposed evidence potentially probative of one or more issues in the current litigation? If it is, it will be legally admissible. (ii) If it is legally admissible, are there good grounds why a court should decline to admit it in the exercise of its case management powers? Lord Bingham suggested at para 6 three matters that might affect the way in which a judge exercised his/her discretion in this regard:

(i) That the new evidence will distort the trial and distract the attention of the decision-maker by focussing attention on issues that are collateral to the issues to be decided;

(ii) That it will be necessary to weigh the potential probative value of the evidence against its potential for causing unfair prejudice;

(iii) That consideration must be given to the burden which its admission would lay on the resisting party.

The first two of these considerations were said to be particularly potent when trial was to be by jury. In relation to the third of these matters, Lord Bingham referred at para 6 to:

‘the burden in time, cost and personnel resources, very considerable in a case such as this, of giving disclosure; the lengthening of the trial, with the increased cost and stress inevitably involved; the potential prejudice to witnesses called upon to recall matters long closed, or thought to be closed; the loss of documentation; the fading of recollections.’

68. He ended by saying:

‘In deciding whether evidence in a given case should be admitted the judge's overriding purpose will be to promote the ends of justice. But the judge must always bear in mind that justice requires not only that the right answer be given but also that it be achieved by a trial process which is fair to all parties.’

69. Lord Phillips identified a relevant consideration at para 56:

‘ ... [W]hen considering whether to admit evidence, or permit cross-examination, on matters that are collateral to the central issues, the judge will have regard to the need for proportionality and expedition. *He will consider whether the evidence in question is likely to be relatively uncontroversial*, or whether its admission is likely to create side issues which will unbalance the trial and make it harder to see the wood from the trees.’ (Emphasis added)”

Application of the rule in *Hollington v Hewthorn*

58. I shall deal first with the application of the rule in *Hollington v Hewthorn*. Paragraphs 63-65 seek to rely on findings in the US proceedings, and therefore

fall foul of the rule. They will disappear in the claimant's Re-Amended Particulars of Claim (to which to that extent the defendant obviously consents). However, the defendant's application to strike out paragraphs 66 and 67 is not based on that rule. Those paragraphs do not plead findings in other legal proceedings. Paragraph 66 does *refer* to the US proceedings, but only so as better to identify the allegation which is then pleaded, namely, the tendering by the defendant of a certain email as evidence in those proceedings, and to allege that that evidence was subsequently withdrawn for reasons stated. None of this however offends the rule in *Hollington v Hewthorn*. Paragraph 67 simply makes a generalised allegation about the defendant's history.

59. Paragraph 66A follows a similar pattern to paragraph 66. It alleges that a certain document was tendered in evidence in the US proceedings, but that it was falsely dated and therefore forged. The rule in *Hollington v Hewthorn* does not require this to be struck out. However, the last sentence, which I repeat for ease of reference, reads:

“As to the basis on which the Claimant alleges forgery, the Claimant relies on the above matters and the fact that this Deed of Trust document was found to be backdated in the Order of Justice Reinhart dated 27 August 2019.”

60. The defendant objects to the words from “the fact that...” to the end, because they refer to the order of one of the judges in the US proceedings. If this was being pleaded in order for the trial judge in the present case to take that order into account so as to prove the facts stated in it, then there would be substance in the complaint. It would offend the rule in *Hollington v Hewthorn*. But the opening words of the final sentence make clear that that is not its purpose. This sentence instead gives the particulars required by paragraph 10.2 of the Chancery Guide:

“In addition to the matters which PD 16 requires to be set out specifically in the particulars of claim, a party must set out in any statement of case:

- full particulars of any allegation of fraud, dishonesty, malice or illegality; and
- where any inference of fraud or dishonesty is alleged, *the facts on the basis of which the inference is alleged.*” (Emphasis supplied)

61. In other words, part of the *basis upon which* the claimant claims to be justified in pleading the serious allegation of forgery is that the US judge so found. But the decision of the judge will not be admissible at trial to prove the allegation. That proof must be achieved, if at all, by other admissible evidence. In the circumstances, there is no justification for striking out the second part of the sentence. So far as I understand, there is nothing else in the pleading (save matters consequential on those which have been discussed), which is said to be vulnerable to the rule in *Hollington v Hewthorn*.

Application of the rules relating to similar fact evidence

Strike-out of paragraph 66

62. Paragraph 66 of the amended particulars of claim refers to an email dated December 2012, apparently from Mr Kleiman (although the header of the email, in the “From” box, misspells his name as “Klieman”) to someone called Uyen Nguyen, who is addressed in the body of the email as “UT”, the T apparently referring to a middle name. The original version of this paragraph said that “members of the public showed that the PGP signature on the email was created a year after the death” of Mr Kleiman. But it did not make any express allegation of forgery. The proposed re-amendment would add a sentence making an express allegation of forgery and tampering in relation to this document by the defendant.
63. It is not clear to me that this paragraph has any *direct* relevance to the issue of the identity of Satoshi Nakamoto. Indeed, the claimant’s evidence accepts that the email’s content does not relate to the issues in the case. On the other hand, it *is* relevant to the question whether the defendant has a propensity to forge or tamper with documents. The defendant submits that, in order for any probative value to be obtained from this email, it will have to be investigated thoroughly, both at a factual and a technical level, and that this will become “a significant satellite dispute”. He says it should be struck out either because the allegations are irrelevant and therefore inadmissible or alternatively (if admissible) excluded on case management grounds pursuant to CPR rule 32.1.

Paragraph 66A

64. Although the intended new paragraph 66A of the amended particulars of claim is not in fact the object of the strike-out application, because properly it is the object of the claimant’s application to re-amend, it is convenient to consider it here. This paragraph refers to a deed of trust document for a trust known as the Tulip Trust, dated 23 October 2012, and alleges that that date was false. It says the document was not created until at least 22 May 2015, and is therefore a forgery. In the evidence filed on behalf of the claimant, this paragraph is said to be factually relevant to the central issue in the present case, because the claimant says that the defendant stated during the Kleiman Litigation that the Tulip Trust holds some of the earliest Bitcoin that the defendant claims to have created. Later (the claimant says) the defendant said it was keys to the Bitcoin, rather than the Bitcoin themselves, that were placed into the trust. Whether either or those is true or not, once more it is clearly relevant to the question whether the defendant has a propensity to forge or tamper with documents. The defendant makes similar submissions to those in relation to paragraph 66, that is, that it is irrelevant or at least has such low probative value that it should be excluded on case management grounds.

Strike-out of paragraph 67

65. Paragraph 67 of the amended particulars of claim is simply a generalised claim, pulling together allegations made in earlier paragraphs, that the defendant has a history of making unsupportable assertions and producing false documentation. The defendant makes no additional argument to strike

out this paragraph beyond those submitted in relation to paragraphs 66 and 66A.

Decision on strike-out

66. In my judgment, the allegations in paragraph 66, 66A and 67 cannot properly be objected to on the basis that they are not relevant. They are relevant to the question of the credibility of the defendant, and in addition paragraph 66A is at least potentially relevant also to the question whether the defendant was in control of the earliest Bitcoin created. In my judgment those allegations, if proved, are potentially probative of issues in the litigation. The question therefore is whether there is any good ground for excluding evidence which supports them under the power given to the court under CPR rule 32.1.
67. The defendant argues that they are or would amount to satellite litigation, they will cause unfair prejudice and also cause an undue burden on the defendant. I do not accept these submissions. In my judgment, these questions are exactly the kind of debate which will need to be had in order to test the defendant's claim that he is indeed Satoshi Nakamoto. To my mind they are not unfairly prejudicial, or an undue burden, but on the contrary exactly what must be faced. This is in any event a fact heavy case. The game is certainly worth the candle. They are proportionate, to the point, and if the defendant survives these tests, it makes his claim all the stronger. As Megarry J said in *Cordell v Second Clanfield Properties Ltd* [1969] 2 Ch 9, 17, in admittedly a different context, "Argued law is tough law". I decline to strike out these paragraphs.

Evidence exclusion order

68. I have already set out earlier in this judgment the terms of the evidence exclusion order that the defendant seeks. Ordinarily, questions about the admissibility of evidence are determined at trial, by the trial judge, or at least at an application heard close to the trial, once the pleadings are closed, disclosure has taken place and witness statements and any expert reports have been served. Until all those things have occurred, it will not be known precisely what evidence will be needed to prove what allegations. Here the pleadings are closed, but not yet in final form, there has been no CMC, the scope of disclosure is disputed and accordingly has not yet been ordered. It seems very early to be dealing with questions of admissibility of evidence at trial. Nevertheless, the application has been made and I must deal with it.
69. The claimant accepts that it cannot rely on absolutely all the evidence going to credibility that it can find. There must come a time when it has fairly made its point and must move on. But it argues firstly that the application is premature, because even the first case management conference has not yet been held, and disclosure has not yet been ordered. It says that the proper time for consideration of the admissibility of evidence is at trial, unless there are special reasons. The claimant submits secondly that the evidence exclusion order sought by the defendant would result in the claimant being unable to enjoy a fair trial. It says the order would prevent the claimant from cross-examining the defendant (or any of his other witnesses) on anything said in the Kleiman Litigation which contradicts something said in the present litigation.

Thirdly, the claimant argues that the evidence in the Kleiman Litigation is relevant to the dispute in this case, and the court's power to exclude relevant evidence must be exercised consistently with the overriding objective in CPR Part 1. Fourthly, the defendant has indicated that he wishes to call an Autism Spectrum Disorder Expert to give expert opinion evidence of the trial. If he is permitted to do this, then evidence of what happened in the Kleiman Litigation will be relevant in cross-examining such an expert. Fifthly, the claimant submits that the evidence exclusion order would lead to satellite litigation.

First limb

70. The first limb of the order sought seeks an order that evidence of findings of fact made in the Kleiman Litigation be not admissible in these proceedings. This is the subject of the rule in *Hollington v Hewthorn*. If evidence is placed before the court of what a judge in other civil proceedings between different parties found as a fact, it is inadmissible to prove the same fact in the present proceedings. If, however, that evidence is put before the court, not to prove the same fact, but instead (say) for the purpose of proving that the judge in the other proceedings actually said those words, then it will be admissible *for that purpose*. Accordingly, I could not make the order sought under this limb in any event: it is too broadly worded.
71. But, even in the narrower form of order, that the judicial findings from the US litigation be not admissible *as evidence of the facts so found*, I do not consider that I should make the order. The rule in *Hollington v Hewthorn* is clear, and it will be the duty of the trial judge to decide whether it applies to the particular evidence tendered. It would be unusual for another judge, long before the trial, and with less information than the trial judge will have, to bind the hands of the trial judge in this respect. If this limb of the order is made now, what is to prevent other orders being sought at this stage to prevent admissibility of evidence at trial which infringes other of the rules of evidence? These are matters best left to the trial judge.

Second limb

72. Turning to the second limb, this asks for an order that "evidence regarding alleged assertions made by members of the public of the kind referred to in paragraph 66 of the Particulars of Claim" be inadmissible at trial. This seems to suffer from similar problems to those affecting the first limb. Evidence of an assertion of a member of the public to the effect that the PGP signature on an email, having regard to its technical properties, was created at (or before or after) a particular time could be adduced *either* to prove that the assertion was made (in which case it would be admissible for that purpose) *or* for the purpose of proving that the assertion was true. In the latter case it would be (hearsay) evidence of an opinion. The hearsay aspect can be got over. But opinion evidence is not admissible unless from an appropriate expert and (usually, though not invariably) in compliance with CPR Part 35. How far expert opinion evidence will be permitted at the trial is a matter for the court at the CMC. I should not be trying to deal with it now, on more limited material than the court will have then. On the other hand, so far as the assertion was

non-expert opinion, it would be inadmissible anyway, and no order is needed at this stage to control it.

Third limb

73. The third limb asks for an order rendering inadmissible at trial “evidence to the effect that the email referred to in paragraph 66 of the Particulars of Claim and paragraph 30 of the Reply was determined by other persons to be a forgery”. Evidence of a determination by others that an email was a forgery stands on the same footing. If it is adduced to prove merely that someone carried out or produced a particular determination, it is admissible. If it is adduced to prove that the findings in the determination actually happened, it is inadmissible evidence of an opinion, unless the opinion is that of an appropriate expert. By parity of reasoning with the previous limb, I should not make any order under this one.

Fourth limb

74. Lastly there is the fourth limb, seeking an order rendering inadmissible at trial “evidence as to the authenticity or otherwise of the email referred to in paragraph 66 of the Particulars of Claim and paragraph 30 of the Reply.” This stands on a different footing. Since the authenticity of the email is in issue, the parties are entitled to adduce evidence in support of their respective positions. This might be factual, such as showing that the apparent maker could not have made it on the date it bears, for example because he was already dead. But it might be expert opinion evidence, for example to show that its metadata or other properties not understood by lay people are consistent or inconsistent with its authenticity. The question of expert evidence, as I have said, is one for the CMC, rather than for me at this stage.

Decision

75. In the result, therefore, I dismiss the application so far as it relates to the evidence exclusion order sought by the defendant.

Application to re-amend the amended particulars of claim

76. That only leaves the question of the application by the claimant to re-amend the amended particulars of claim. It will be seen from earlier parts of this judgment that I accept the deletion of paragraph 63 to 65, and the additions at paragraphs 66, 66A and 67. The two additional sentences at the end of paragraph 66 make clear that what is alleged is said to amount to dishonesty. The additional sentence at the end of paragraph 67 makes clear that it is being alleged that the various documents there referred to were “forged or otherwise doctored”, and thus an allegation of dishonesty. There are one or two purely formal amendments elsewhere in the particulars of claim, but I do not need to take up time in this judgment with them. I will give permission to the claimant to re-amend the amended particulars of claim in the form attached to the application notice.

Conclusion

77. In the result, I dismiss the defendant's application to strike out and for an evidence exclusion order, and allow the claimant's application for permission to re-amend the particulars of claim. I should be grateful to receive an agreed draft minute of order to give effect to this judgment.

Postscript

78. In the suggestions for correction sent to me after I circulated my draft judgment, the defendant's team told me that the defendant requested that the title of my judgment be amended so that the defendant's name include his university degree of doctor. They referred me to CPR PD 16, paragraph 2.6(a), which states that the claim form must include "the full name of each party". This is defined to mean, in the case of an individual, "his full unabbreviated name and title by which he is known".
79. In fact, the claim form sued the defendant using his full names, but *not* the degree of "doctor". I note that each statement of case from the claimant's side thereafter has omitted any reference to the claimant's university doctorate, whereas each statement of case from the defendant's side has included it. For what it may be worth, however, my view is that paragraph 2.6(a) of PD 16 in referring to "title" means *social* title, and not any other style, office or rank, such as professional, military or academic.
80. Be that as it may, the claim was begun against the defendant under his full names, no application has ever been made to the court to alter the intitulement of the action, no argument has taken place on the point, and no authorities have been referred to. The point has been sprung on the court at the last minute. Dr Wright is justly proud of his academic achievement, but I do not think the court should be dealing with this minor dispute at this very late stage and on such an inadequate basis. I mean no disrespect to Dr Wright by not doing so.