Neutral citation [2025] CAT [27]

IN THE COMPETITION APPEAL TRIBUNAL

Case Nos: 1642/12/13/24

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

29 April 2025

Before:

HODGE MALEK K.C.
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

MR AUBREY WEIS

Appellant

- v –

GREATER MANCHESTER COMBINED AUTHORITY

Respondent

Heard at Salisbury House on 29 April 2025

RULING (CONFIDENTIALITY RING) (ADMISSIBILITY)

APPEARANCES

Joseph Barrett KC (instructed by Walker Morris LLP) appeared on behalf of the Appellant.

Aidan Roberston KC (instructed by DLA Piper UK LLP) appeared on behalf of the Respondent.

CONTENTS

A. INTRODUCTION

1. The Appellant's claim is an application for review, under section 70(1) of the Subsidy Control Act 2022 ('the 2022 Act'), of the Respondent's decision to grant alleged subsidies, as defined in section 2(1) of the Act, comprising: (i) a loan in the sum of £60.7 million to Trinity Developments (Manchester) Limited ('Trinity'), and (ii) a loan in the sum of £59.3 million to New Jackson (Contour) Investments Limited ('Jackson') (together, the '2024 Renaker Loans'). The Appellant submits that the loans would not have been granted by a commercial operator or that the loans have been concluded on non-market terms and have distorted the proper and fair operation of the relevant market in and around Manchester.

2. Trinity and Jackson are each private limited companies and special purpose corporate vehicles herein referred to as 'Renaker', which companies are owned and controlled by the 'Renaker Group'. Renaker, the intended recipient of the alleged subsidies, are a third party to these proceedings and have not applied for permission to intervene.

3. The loans are made under the Greater Manchester Housing Investment Loans Fund ("GMHILF") by the Greater Manchester Combined Authority ("GMCA"), that is the mayoral combined authority in Greater Manchester and the Respondent to these proceedings. The Respondent carries out various statutory functions, including relating to economic redevelopment and regeneration in Greater Manchester. The Appellant, Mr Aubrey Weis, owns and controls various corporate structures, referred to in the Appellant's supporting witness statements as the 'Weis Group', with substantial property development investments and projects in and around Manchester. The Appellant seeks a declaration that the Respondent has granted an unlawful subsidy to Renaker and an order prohibiting the provision of the subsidies and or quashing of loan arrangements.

B. BACKGROUND

4. On 7 June 2024, the Appellant filed a Notice of Appeal under section 70 of the 2022 Act. At that juncture, as set out by the Respondent in its Defence dated 2 August 2024, GMCA had taken the decision in principle to make loan facilities available to Renaker. However, the due diligence process pursuant to which the commercial terms of the 2024 Renaker Loans would be finalised and entered into by Renaker, had not yet completed with result that there was no subsidy decision within the meaning of section 70(1) of the 2022 Act capable of challenge. Accordingly, the Respondent sought a stay on proceedings pending the completion of the 2024 Renaker Loans so as to enable the Tribunal to undertake the section 70 review of the loan arrangements on the basis of their finalised terms. By letter dated 16 August 2024, the Respondent opposed the stay on the basis that the matter should be expedited urgently. Given the contested nature of the stay application, a case management conference was listed to hear that application and set out directions to progress the litigation. That case management conference was held before the Acting President, Mr Justice Peter Roth, on 30 October 2024. At the time of the first case management conference, no disclosure had yet been provided by the Respondent to the Appellant.

(1) First case management conference

5. In its Notice of Appeal and supporting witness statement and exhibit thereto, the Appellant asserted that the disclosure of key documents relating to commercial terms of the loan arrangements by the Respondent was necessary to enable the Respondent to articulate its claim under section 70(1) of the 2022 Act. At paragraphs 10, 23, 33 and 50 of the Notice of Appeal, the Appellant proposed that the unredacted versions of certain requested documents be disclosed into an external lawyers' only confidentiality ring. This approach to managing confidential information was also set out at paragraphs 52 and 53 of the supporting witness statement of Mr Benjamin Rose, a property development consultant who provides his services to the Weis Group through the trading name "Rose Realty". Mr Rose is an individual external to the Weis Group,

described by him as his most significant client, whom he has advised for more than sixteen years.

6. In its Defence and supporting witness statement and exhibit thereto, the Respondent denied making any alleged subsidy decision on the basis that, irrespective of whether the loans when granted might constitute a subsidy which was denied, no decision to make the 2024 Renaker Loans had yet been completed. This explained in paragraphs 73 to 78 of the first witness statement of Ms Laura Blakey, who is the Director of Strategic Finance & Investment of GMCA with operational responsibility for the GMHILF.

7. At the first case management conference, other directions for determination included (i) issues relating to confidentiality, including whether a confidentiality ring should be established in the proceedings, (ii) directions as to disclosure and (iii) the Appellant's request to rely on expert evidence. In its submissions, diverging from its position as set out in the Notice of Appeal and supporting witness statement of Mr Rose, the Appellant opposed the establishment of a confidentiality ring in these proceedings on the basis that the Respondent had not satisfied the Tribunal that the requested documents were confidential such the establishment of a confidentiality ring was not a necessary or proportionate derogation from the open justice principle. Alternatively, the Appellant submitted that, if a confidentiality ring was to be established, Mr Aubrey Weis and or his representative Mr Rose should be included in that ring and the ring should not be limited to external lawyers only. The Appellant also made an application for permission to adduce expert evidence required to assist the Respondent in evaluating the terms of the loan arrangements with a view to determining whether the Respondent had complied with the commercial market operator test set out in section 3(2) of the 2022 Act.

8. The Respondent maintained that confidentiality was in issue as the requested disclosure comprised certain documents that contained third party confidential information which could not be disclosed to the Appellant beyond its legal advisers within a confidentiality ring. It was asserted that this disclosure could not be provided on the basis that the nature of the information concerned was

commercially sensitive information, the disclosure of which between competitors would constitute a serious breach of the Chapter I prohibition.

9. The Acting President was of the view that a proportionate and pragmatic approach should be adopted to promote the swift progression of the proceedings. As the loan arrangements were not yet finalised and, therefore, the Tribunal did not yet have sight of documents relating to the commercial terms of the loan, the Acting President was not willing to reach a determination as to the nature of the information likely to be recorded in documents pertaining to the loan arrangements although recognising that confidentiality was likely to be issue.

10. By his *ex tempore* Ruling at the case management conference on 30 October 2024, as formalised in an order of the same date (the "Directions Order") and subsequently amended by consent order made on 20 December 2024, the Acting President (i) permitted the Appellant to adduce suitable expert evidence and (ii) ordered the establishment of an external lawyers and experts only confidentiality ring which would apply to the disclosure being provided following completion of the 2024 Renaker Loans. The Directions Order, as amended, granted a stay and set out a procedural timetable for the filing of amended pleadings following disclosure into the ring of the requested documents, as set out in paragraph 1(b)(i) to (v). A second case management conference was to be listed following the closure of the pleadings.

11. Although the confidentiality ring was to be limited to external lawyers and any experts to be appointed by the Appellant in the first instance, the Acting President granted leave to apply to extend the ring following the first review by the Appellant's lawyers and experts of the documents disclosed therein. Following that review and on advice from lawyers and experts, the Appellant's legal team could take an informed view as to whether and to what extent the documents disclosed therein were confidential in nature and whether any documents were required to be shared with the Appellant in order to progress the case. It was envisaged that the Appellant's expert would act as the client representative in the ring and provide him with a non-confidential summary of the requested disclosure in order to enable him to give instructions about the

conduct of the proceedings to his legal team, including whether any amendments were required to the Notice of Appeal. At the time for the first case management conference, the Appellant had yet to identify the expert to be retained and from what profession, although there could be a number from professions from which the expert could be drawn whether in finance, accountancy, project management, or even surveying.

12. By letter dated 26 November 2024, the Respondent informed the Appellant that it had formally completed the 2024 Renaker Loans on 22 November 2024. A confidentiality ring was established by Order made on 29 November 2024. By letter dated 11 December 2024, solicitors for the Appellant notified the Tribunal that the Respondent had agreed to the admission of four experts from Grant Thornton to the confidentiality ring on 9 December 2024. Paragraph 8 of the confidentiality ring order ("CRO") requires the parties to inform the Tribunal in writing if one of it wishes to remove one of its members from the confidentiality ring. Thereafter Grant Thornton commenced their review of the material and formed at least a preliminary view on the issues, but did not proceed as far as compiling any report.

(2) Appellant's application for admission of Mr Joel Weis to the CRO

13. By Application dated 31 January 2025 and supporting witness statement of Mr Joel Weis, the Appellant requests that Mr Joel Weis be added to the CRO and seeks an extension to the extant deadline for the filing of an Amended Notice of Appeal and any supporting evidence, which fell due on 31 January 2025, until 28 days after the requested unredacted documents are disclosed to Mr Joel Weis. As set out in his first witness statement, Mr Joel Weis is the son of Mr Aubrey Weis, the Appellant, from whom he assumed responsibility from around 2012 for the day to day responsibility of the management of a property portfolio, trading under the name "Combined Property Control" or "CPC", forming part of the Weis Group.

14. As set out at paragraphs 13 to 15 of his first witness statement, Mr Joel Weis states that extensive efforts were made to identify a suitable expert to be admitted to the confidentiality ring as the Appellant's client representative.

Whilst experts from Grant Thorton had been admitted on the CRO on the Appellant's behalf, those experts had been de-instructed on the basis that he considered that in the light of the sums quoted by Grant Thornton for providing a detailed report it would be too costly to engage them further. Mr Joel Weis points out that there is no Appellant client representative admitted to the CRO who can review the unredacted documents disclosed and provide a report to Mr Aubrey Weis to enable him to instruct his legal team and, if so advised, to amend the Notice of Appeal and supporting witness evidence. Whilst the Appellant's legal team are admitted to the confidentiality ring, it is said that for them to do their work properly, to advance the case, prepare the evidence and to give informed advice to the Appellant, a client representative with access to key financial information provided by Renaker to the Respondent is required.

15. On 11 February 2025, the Respondent filed a Response and supporting witness statement including an exhibit setting out in Redfern Schedule format the submissions of the Appellant and Respondent in relation to the redactions proposed by the Respondent in relation to specific documents which had been disclosed into the confidentiality ring. The redacted sections of the annexes (Schedule A to G) to that exhibit comprise the information over which confidentiality is claimed, an unredacted version of those exhibits being disclosed into the confidentiality ring and which were exhibited to the Tribunal at the second case management conference as Tab 2 to the CRO bundle in addition to three other redaction requested documents at Tab 3 to 5 of same bundle . In the third witness statement of Ms Laura Blakey dated 11 February 2024, the Respondent explains that the redactions maintained relative to the requested documents relate to the commercial terms and financial information of the third party Renaker Group and outlines potential detriment to the Renaker Group of its disclosure. She points out that the redacted information is commercially sensitive in nature to the Renaker Group and concludes that "Renaker would be very uncomfortable about the prospect of this being reviewed by Mr Joel Weis or any other competitor."

16. By letter dated 14 February 2025 the Appellant asserts that, save to the sources and amount of any equity, the categories of information referred to in Ms Laura Blakey's third witness statement as being particularly commercially sensitive

had already been publicly disclosed thus undermining any claim to confidentiality. The Appellant relies on a number of Financial Viability Assessments published by the Respondent as part of its planning processes, including four such assessments relating to the Jackson and Trinity developments generally.

17. In its response by letter dated 24 February 2025, the Respondent contends that the Financial Viability Assessments are a tool used to evaluate the economic feasibility of a proposed development in order to ascertain whether, due to profit levels, developers should be required to build affordable housing units. The information published pursuant to these assessments is information aggregated across multiple developers in an area to avoid sensitive information being disclosed publicly. The information therein is not as detailed as the individual third party financial information considered by the Respondent when concluding loan arrangements and that the published assessments did not reveal any underlying sensitive detail.

C. LEGAL PRINCIPLES

(1) Relevant law: Subsidy control regime

18. Section 2(1) of the 2022 Act defines "subsidy" as follows:

> "In this Act, "subsidy" means financial assistance which— (a) is given, directly or indirectly, from public resources by a public authority, (b) confers an economic advantage on one or more enterprises, (c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and (d) has, or is capable of having, an effect on— (i) competition or investment within the United Kingdom, (ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or (iii) investment as between the United Kingdom and a country or territory outside the United Kingdom."

19. Section 3(2) of the 2022 Act defines the concept of "economic advantage":

> "Financial assistance is not to be treated as conferring an economic advantage on an enterprise unless the benefit to the enterprise is provided on terms that are more favourable to the enterprise than the terms that might reasonably have been expected to have been available on the market to the enterprise."

20. Section 70 of the 2022 Act provides in relevant part:

> "(1) An interested party who is aggrieved by the making of a subsidy decision may apply to the Competition Appeal Tribunal for a review of the decision.
>
> [...]
>
> (5) In determining the application, the Tribunal must apply the same principles as would be applied—
>
> > (a) in the case of proceedings in England and Wales or Northern Ireland, by the High Court in determining proceedings on judicial review
>
> […]
>
> (7) In this Part— "interested party" means—
>
> (a) a person whose interests may be affected by the giving of the subsidy or the making of the subsidy scheme in respect of which the application under subsection (1) is made, or
>
> (b) the Secretary of State;
>
> […] "subsidy decision" means a decision to give a subsidy or make a subsidy scheme..."

(2) Relevant law: Confidentiality rings

21. With respect to external eyes only confidentiality rings, the Supreme Court in *Al Rawi and Others v The Security Service and Others* [2011] 3 WLR 388 at [64] observed as follows:

> "Similarly, where the whole object of the proceedings is to protect a commercial interest, full disclosure may not be possible if it would render the proceedings futile. This problem occurs in intellectual property proceedings. It is commonplace to deal with the issue of disclosure by establishing confidentiality rings of persons who may see certain confidential material which is withheld from one or more of the parties to the litigation at least in its initial stages. Such claims by their very nature raise special problems which require exceptional solutions. I am not aware of a case in which a court has approved a trial of such a case proceeding in circumstances where one party was denied access to evidence which was being relied on at the trial by the other party." (emphasis added)

22. The Court of Appeal decision in *OnePlus Technology v Mitsubishi* [2020] EWCA Civ 1562 *('OnePlus')* is the leading authority on the legal principles pertaining to confidentiality rings in the context of intellectual property disputes at [21] to [40]. Floyd LJ acknowledged that provision for an external eyes only tier of a confidentiality ring is exceptional at [34] and [35]:

> "34. I agree that an external eyes only tier is exceptional. I also agree that it is wrong to place the onus on the receiving party to establish that a document is non-confidential. I do not agree, however, that an approach where prima facie highly confidential documents are first disclosed on an external eyes only basis is wrong in principle. The authorities establish that staged or progressive disclosure of confidential information is permissible. Indeed, later in his judgment, Henry Carr J said this at [23(iv)]:
>
> > "external eyes only access to individual documents of peripheral relevance, whose disclosure would be damaging, may be justified in specific cases…".
>
> "35. It appears that what concerned Henry Carr J was "the exclusion of access by one of the parties to the relevant parts of key documents" (see [24]). I agree that that should not be the result of the establishment of an external eyes only tier."

23. In particular, Floyd LJ at [39] sets out the following non-exhaustive list of points of importance when managing confidential information during litigation:

> "(i) In managing the disclosure of highly confidential information in intellectual property litigation, the court must balance the interests of the receiving party in having the fullest possible access to relevant documents against the interests of the disclosing party, or third parties, in the preservation of their confidential commercial and technical information: Warner Lambert at page 356; Roussel at page 49.
>
> (ii) An arrangement under which an officer or employee of the receiving party gains no access at all to documents of importance at trial will be exceptionally rare, if indeed it can happen at all: Warner Lambert at page 360: *Al Rawi* at [64]. Judgment Approved by the court for handing down. *OnePlus and others v Mitsubishi and others*
>
> (iii) There is no universal form of order suitable for use in every case, or even at every stage of the same case: Warner Lambert at page 358; *Al-Rawi* at [64]; IPCom 1 at [31(ii)]
>
> (iv) The court must be alert to the fact that restricting disclosure to external eyes only at any stage is exceptional: Roussel at [49]; Infederation at [42]
>
> (v) If an external eyes only tier is created for initial disclosure, the court should remember that the onus remains on the disclosing party throughout to justify that designation for the documents so designated: TQ Delta at [21] and [23];
>
> (vi) Different types of information may require different degrees of protection, according to their value and potential for misuse. The protection to be afforded to a secret process may be greater than the protection to be afforded to commercial licences where the potential for misuse is less obvious: compare Warner Lambert and IPCom 1; see IPCom 2 at [47].
>
> (vii) Difficulties of policing misuse are also relevant: Warner Lambert at 360; Roussel at pages 51-2.
>
> (viii) The extent to which a party may be expected to contribute to the case based on a document is relevant: Warner Lambert at page 360.

> (ix) The role which the documents will play in the action is also a material consideration: Roussel at page 49; IPCom 1 at [31(ii)]; x) The structure and organisation of the receiving party is a factor which feeds into the way the confidential information has to be handled: IPCom 1 at [33]."

24. The guidance set out in *OnePlus* was further summarised and to an extent expanded upon by O'Farrell J in *IBM UK v LzLabs* [2024] EWHC 423 (TCC) at [26]-[37], the salient paragraphs of which summarise the balancing exercise to be undertaken when managing competing interests and confidentiality, in circumstances where principle of open justice is a fundamental aspect of English law:

> "[…] the facts of the particular case may require the court to carry out a balancing exercise, taking into account competing interests of the parties, when ordering disclosure. The general rule is that each party should have unrestricted access to relevant documents held by the other party for the purpose of the proceedings, to enable it to consider, prepare and present its case at trial. […] In managing the disclosure of such confidential information in the litigation, the court must balance the interests of the receiving party in having the fullest possible access to relevant documents against the interests of the disclosing party in the preservation of their confidential commercial and technical information." (at [31]).

25. In relation to the process for the designation of documents as confidential for disclosure into confidentiality ring, O'Farrell J summarises the following at [34]:

> "[…] the designation of documents as confidential for the purpose of disclosure through the Confidentiality Ring is not conclusive for the purpose of the trial. A conservative approach to the designation of documents as confidential during disclosure may be understandable, when the extent of public knowledge and significance of the information may then not be apparent. But the court must be astute to the potential for a party to misuse the Confidentiality Ring, deliberately or inadvertently. The burden is on the party seeking to maintain the level of confidentiality designated within the Confidentiality Ring to produce clear and cogent evidence to explain and justify the same, particularly where the documents have been designated as Inner Confidentiality Ring."

26. It is underlined that the appropriate approach to confidentiality is specific to the circumstances of each case at [37]:

> "Finally, it is stressed that the appropriate order is specific to the circumstances arising in each case. The categories of confidential information are broad, ranging across private, security and commercial matters. The approach of the court in considering whether such information is so sensitive such that it demands additional protective measures during the trial will be driven by the facts of the particular case and the context in which the relevant documents are said to be material."

27. Applying *OnePlus*, Trower J in *JSC Commercial Bank Privatbank v IGOR Valeryevich Kolomoisky* [2021] EWHC 1910 sets out the following:

> "42. Where, as in the present case, a blanket approach is taken to the exclusion of access by one of the parties to the relevant parts of key documents there are real dangers that this will be incompatible with article 6 of ECHR and with basic principles of natural justice at common law. As Henry Carr J explained in TQ Delta LLC v Zyxel Communications UK Ltd [2018] Bus LR 1544 at [24], such an exclusion will also cut across the obligations of lawyers to their clients, obliged as they are to share with them all relevant information of which they are aware. Although Floyd LJ in One Plus at [34] and [35] qualified this statement of principle by explaining that staged or progressive disclosure of confidential information is permissible and agreed that the position may be different with documents of peripheral relevance, he agreed that exclusion of access by one of the parties to the relevant parts of key documents should not be the result of an external eyes-only confidentiality club."

> "70. But there are other significant adverse consequences of the "external eyes only" aspect of the confidentiality club, which become increasingly difficult to mitigate as the case gets closer to trial. Disclosure by the first and second defendants is (or should be) largely complete and witness statements and expert reports are now being prepared against the background of what has become a relatively tight timetable. After recent extensions of time, witness statements are now to be exchanged in a little over 3 months' time, with exchange of expert evidence to take place shortly thereafter. It is clear to me that any decisions as to how the case can best be prepared and presented will have to be taken by the claimant on an increasingly regular basis from now until the commencement of the trial."

28. The decision of the High Court in *SRCL Ltd v National Health Service Commissioning Board* [2018] EWHC 1985 ('*SRCL*'), which predates *OnePlus*, considers the admission to the confidentiality ring of personnel of the receiving party:

> "72. *[…]* If the only personnel who see such information are simply the barristers and solicitors instructed on the case, then the party itself is deprived of knowing the relevant factual information. In civil litigation, such an extreme situation would have to be justified by extraordinary facts. […]"

> "73. Here, NHSE objected to the widening of the confidentiality ring to include any suitable employee of SRCL. That matter was never brought to the attention of the court, nor was any application made. It is not unusual to have opposed applications to add personnel into confidentiality rings in procurement litigation. *[…]*." (emphasis added)

29. Also in *SRCL*, in the context where a solicitor is the only person who is available to give factual evidence by virtue of the confidential ring being restricted to external lawyers only, the following is noted at [81(2)]:

> "If the membership of a confidentiality ring is restricted such that a party's own solicitor appears to be the only possible witness to give evidence of fact on matters concerning confidential information, then consideration must be given to increasing the membership of the confidentiality ring to include another person or persons to give evidence instead. If agreement cannot be reached with the other party/parties, then an application should be made to the court. The undesirability of a party's own solicitor being called as a witness of primary fact on that party's behalf will be a powerful factor which the court will take into account when considering that application."

30. The Tribunal has extensive experience managing confidentiality issues, including experience in relation to the use of confidentiality rings particularly in the context of the competition cases before it. The Tribunal, as expressly stated in *Lexon v CMA* [2021] CAT 5 at [176] to [187], is obviously astute to the fact that the exchange of commercial information between competitors gives rise to the risk breach of the Chapter I prohibition. At a level of generality, the Tribunal decision in *Viasat v Ofcom* [2018] CAT 5 (in which the confidentiality interests of a third party with commercial information disclosed into a confidentiality ring was in contemplation) sets out the Tribunal's approach at paragraph [11].

> "These applications have to be approached from the starting point that, prima facie, litigation, even of this nature, is supposed to be open and is certainly a procedure in which the client is entitled to expect to be fully involved in and in which a client would normally expect to see all the material that is being deployed in the litigation. That prima facie position gives way to the need to preserve the legitimate commercial confidences of a party to the litigation, particularly a party who is a respondent to an appeal and who has, therefore, been dragged here against that party's will. This Tribunal has to acknowledge that it may be quite wrong for such a party to have to give extensive revelations as to confidential material which it would not wish to give. Confidentiality rings are a way of squaring the particular circle which arises out of those two competing positions."

D. ANALYSIS

31. Both parties agree that these proceedings need to be resolved quickly. These are, in effect, judicial review proceedings. The Respondent and Renaker need to know where they stand well before the drawdown date. If Renaker is going to need to get alternative funding, the sooner they know the better and then they can go to the market, nationally and possibly internationally, for capital.

32. The Appellant also seeks this matter to be resolved quickly. In his first statement, Mr Rose sets out the Appellant's concerns about the conduct of the GMCA in respect of its lending to Renaker. In his second statement, Mr Rose goes on to refer to the clear public interest in these proceedings being determined as quickly as possible.

33. The substantive hearing in these proceedings, with a two day estimate and one day in reserve, has been set down for the 27, 29 and 30 May 2025. The Notice of Appeal is in very general terms and is not specific in identifying in what respects it is said that the terms of the loan arrangements are such that the loans fall outside the terms of section 3(2) of the 2022 Act. That provision in effect defines the concept of economic advantage under the subsidy control regime, which is broadly financial assistance provided on terms that are more favourable than might reasonably have been available to an enterprise on the market.

34. The directions given at the first case management conference on 30 October 2024 stipulated that the Notice of Appeal be amended in the light of the actual terms of the lending once disclosed, which at that point had not been disclosed for the good reason that the final transaction documents relating to the 2024 Renaker Loans had not yet been completed. The Respondent notified the Appellant and the Tribunal Registry that the loan arrangements were completed on 22 November 2024, and consequently disclosure of the requested key documents as ordered at the first case management conference was then able to be provided to the Appellant so that he and his legal team would be able to take a position on whether the terms are unusual such that they fall outside section 3(2) of the 2022 Act and hence may amount to financial assistance.

35. As noted above, it had been envisaged that the Appellant would engage a suitable expert to review material and the terms of the lending who would then provide an expert report to be relied upon at the substantive hearing. The Directions Order envisaged that the Appellant was to file and serve, if so advised, an Amended Notice of Appeal and any supporting witness statements or expert report within 28 days of receipt of the requested disclosure. By consent of the parties the timeframes stipulated in the Directions Order were extended, with the Amended Notice of Appeal and supporting witness statement or expert

report to be filed by no later than 31 January 2025. On that date, the Appellant filed the present application for his client representative, Mr Joel Weis, to be added to the confidentiality ring in respect of the requested disclosure only and for an extension of time to the deadline for the filing of an Amended Notice of Appeal and supporting witness evidence until 28 days after the requested key documents are disclosed to Mr Joel Weis. The dispute on this application is whether Mr Joel Weis should be granted access to certain sensitive financial information provided by Renaker to the Respondent as part of the process of applying for and being granted the 2024 Renaker Loans, which is contained in three specific documents. The legal team of the Appellant have considered all the disclosure provided and taken care to identify exactly what information they consider Mr Joel Weis should see in order that they may properly advise their client and to progress the proceedings, including the filing of any further witness evidence.

36. The current position is that there is still no Amended Notice of Appeal identifying the grounds on which it is said that the relevant section 3(2) of the 2022 Act is not going to be fulfilled in this case. In order to resolve these proceedings within a satisfactory timeframe given the need to resolve the issues as quickly as reasonably practicable, it is imperative that an Amended Notice of Appeal is filed as soon as possible. I have no doubt that the Appellant's lawyers will have already prepared a draft amendment and that that draft is in an advanced stage, although obviously it will need to be finalised.

37. The Tribunal has extensive experience in handling confidential information including through establishing confidentiality rings. I am conscious that the Tribunal must have the right balance between open justice and access of the parties to the evidence and the need to preserve the confidentiality of information that is particularly sensitive. Cases before this Tribunal often involve competitors and the Tribunal is conscious to avoid outcomes whereby competitors gain a competitive advantage or are able to reduce competition on the market by utilising information disclosed within proceedings.

38. Further, third parties, in this case Renaker, have a reasonable expectation of confidentiality. Renaker no doubt is very concerned by the prospect of an

outcome whereby their main rival in the Greater Manchester area is given access to their sensitive pricing information and other sensitive information relative to their operations that could then be used by the other party to Renaker's disadvantage or, at the very least, to the advantage of the receiving party on utilising that information.

39. I have reviewed the material that is sought to be disclosed to and reviewed by Mr Joel Weis, and I am satisfied that it is precisely the type of information that this Tribunal would not ordinarily allow someone who is active in the same business to access directly, particularly here where the Appellant and Renaker are competitor developers in the same district. In most cases, the Tribunal is able to manage this issue in a practical way either through the admission of an expert or client representative who is or can be sensibly isolated from those aspects of a business that is in competition. However, due to the particularities of the Appellant's business operation and the absence of an instructed expert that has not been possible in these proceedings. In the circumstances, I have to balance the undesirability of Mr Joel Weis having access to this material against what is fair to Mr Aubrey Weis in terms of being able to advance these proceedings properly and have the requisite information to give instructions as to whether to proceed with the litigation and if so in what direction. I also have to take into account and balance the interests of the third party Renaker, who whilst not formally a party to these proceedings, has a major stake in their outcome and it is their confidential information that is sought to be reviewed by Mr Joel Weis.

40. Mr Joel Weis, in his first statement explains why, in his view, a client representative of the Appellant needs access to this material (paras. 13 and 14):

> "As things currently stand, my father has no client representative or appointed expert within the Confidentiality Ring. There have been extensive efforts made to identify a suitable expert, but this has not been possible. I should explain that although Grant Thornton were admitted to the Confidentiality Ring in their capacity as expert and have had sight of the confidential information, a report has not been commissioned. I viewed the costs of doing so as prohibitive, in the context of a case that has already put my father to considerable expense.
>
> This means at present my father is in a position where the confidential information can only be considered by his legal team without any client input or instructions of any type whatsoever. This puts my father at a significant

> disadvantage and means he is not properly able to conduct the claim. For example, he cannot consider whether to progress the claim, discontinue, or provide instructions in relation to any amended notice of appeal or witness evidence, if the matter is to move forward. The legal team are doing their best, but these are not steps they can take in insolation and without proper instructions."

41. In his submissions, Mr Barrett KC has said that he appreciates the confidentiality concerns raised but that his team has identified what they say is the irreducible minimum of sensitive and confidential information needed to be disclosed to Mr Joel Weis in order to get instructions from Mr Joel Weis. He submits that this is not a case where he is asking for a large number of documents to go to his client's representative, rather it is only a limited amount.

42. The three documents with redacted passages are (i) firstly, an investment proposal dated February 2023, (ii) secondly, an undated document entitled "Trinity D1 & Contour Summary Heads of Terms" and (iii) thirdly, an undated document entitled "Interest Rate Setting Paper". The third document clearly is a very important document, which the Respondent confirms was finalised just before completion of the transaction documents on 22 November 2024 having been updated over time prior to finalisation. In order to understand and follow these documents the sensitive financial information needs to be considered, so in redacted form they do not give a complete enough picture that one can work from. Such information would have been material to the Respondent in deciding whether or not to enter into the 2024 Renaker Loans, and if so on what terms. I have little doubt that this is the type of information that any other lender would wish to have available before entering into loans of the type and size in question in these proceedings.

43. I am satisfied that the information that Mr Joel Weis seeks access to is highly important for assessing the merits of the case and in deciding what points to take or not take. The 2024 Renaker Loans concern lending to two special purpose vehicles with no outside guarantees, including parent company guarantee. A lender in such circumstances would need to look at the overall project to take a view as to whether a loan should be given at all, and if so, on what terms. The requested documents include information relating to rates of interest, loan to value and projected profits. These are all the things that lenders

consider before making a lending proposal and thereafter enter into a loan transaction.

44. I would like to flag now that I am not necessarily persuaded that it is possible to determine whether or not section 3(2) of the 2022 Act is fulfilled by simply looking at what the position is of two, let us say, large developers and lenders specifically operating in the Greater Manchester area. There are a large number of projects in the United Kingdom. There are a number of major operators, such as housing associations, who engage in major developments for which they obtain funding. Yet still there are a variety of different funding sources, both domestic and international, as well as differing funding types, models and structures . Different lenders may offer different terms and rates and they may concentrate on or give different consideration to different types of financial information and parameters. I very much doubt from what I have seen so far, including my own experience in these cases, that there is only one possible set of terms and one possible rate that could legitimately be said to be on market terms falling within section 3(2). The evaluation is probably going to have to be cast a lot broader than simply looking at large developments in the Greater Manchester area, unless the parties provide evidence that there is something specific to the area and may cast things in a different light. Nevertheless, I do accept that the requested documents include information that is critical to the decision making process going forward as between Mr Barrett KC, Walker Morris LLP, and their client.

45. I accept, as submitted by the Respondent, that both Mr Aubrey Weis and Renaker are in the property development business and both have property development projects and interests in the Greater Manchester area with result that they are direct competitors. However, I very much doubt that they are competitors for funding outcomes from the GMCA. That is quite obvious given the strength of views expressed in correspondence on behalf of Mr Aubrey Weis as to how the GMCA operates generally and in relation to lending to the Renaker Group in particular. On the basis of that it seems highly unlikely as things stand that he would wish to cooperate with the GMCA on funded development projects.

46. Normally, a case like this would be largely driven by expert evidence. A confidentiality ring with external legal advisers would also include experts. That is what the Directions Order envisaged. At the directions hearing on 30 October 2024, the Acting President did leave open the possibility that another client representative within the operations of the Appellant may have to be provided with specific documents or information in order to provide instructions to the legal team. He said the time to consider an application for such access is after the disclosure ordered had been disclosed and reviewed by the Appellant's external advisors, at which point they could make a focused application. Thus the Acting President left the door open for an application such as the present. After the hearing it appeared that the Appellant was progressing down the expert route and Grant Thornton were instructed. On 6 December 2024 the lawyers for the Appellant wrote to the Respondent naming the four individuals from Grant Thornton which were sought to be admitted into the confidentiality ring. This was agreed to by the Respondent on 9 December 2024. Thereafter it does appear that Grant Thornton examined the documents and provided some preliminary advice to the Appellant, leading counsel and solicitors.

47. By 31 January 2025, which is the date on which the present application was filed, the Appellant had de-instructed Grant Thornton on the basis that their quote to undertake a detailed review and provide advice with any report was regarded by the Appellant and his son to be prohibitively expensive and that the fees proposed were neither reasonable nor appropriate. Counsel for the Respondent, Mr Robertson KC, says that what should have happened is that the Appellant should have continued to engage Grant Thornton or have engaged another expert to avoid the present situation whereby an Amended Notice of Appeal has still not been filed. He in effect suggested that Mr Aubrey Weis is somehow gaming the system and the decision to de-instruct his experts was a purely tactical decision to, in effect, delay proceedings or to create a situation whereby he or his son as competitors could see the confidential financial information of their main rival in the large scale property development business in the Greater Manchester area. I am not prepared to go that far and on the evidence before me I consider that the present application is a bona fide application with no improper alternative motive. The Applicant and his son have

made clear that they want these proceedings to be determined as quickly as possible. Further they are both willing to give undertakings as to the use of any information disclosed.

48. Mr Barrett KC, on instructions, has said that Grant Thornton did review some of the requested documents in the confidentiality ring and expressed some preliminary observations on that information during a telephone call with the Appellant's solicitors, which observations were later summarised in a short note. By letter dated 30 April 2025, following the case management conference, the solicitors for the Appellant provided confirmation as to the extent of advice given by Grant Thornton, affirming that the initial observations expressed were both high level and provisional. On the basis of these submissions, I am satisfied that Mr Aubrey Weis took the decision to de-instruct Grant Thornton for the reason that their services were in his view too expensive and the cost was prohibitive.

49. In response, Mr Robertson KC notes that Mr Aubrey Weis' has substantial financial means and has been engaged in other expensive legal proceedings including a matter currently pending before the Court of Appeal. He is therefore an affluent person who is able to fund expensive litigation and hence that could have easily afforded to continue to instruct Grant Thornton if he really wanted to. I do not think that is a complete answer on which I can rely. People with financial means can and are entitled to be cost conscious. If Mr Aubrey Weis has taken the view that Grant Thornton's fees are disproportionately expensive relative to the task that they are proposing to do, he is fully entitled to take that view and I am certainly not going to impose a requirement that he must instruct Grant Thornton.

50. As a consequence, the Appellant does not have an expert client representative within the confidentiality ring to review the requested disclosure. As I alluded to above (at 39), the current confidentiality issue is complicated by the nature of the Appellant's corporate structure. Ordinarily, when a corporate party is engaged in litigation, there will be an individual within that corporate entity that will be able to review documents disclosed into a confidentiality ring and who is not involved in the decision making relating to the operations of that entity in

the market to which those documents relate. Often it may be an individual in the in house legal department, but it could be any suitable individual who is not involved in the decision making of the business or at least an aspect of the business not in competition with the entity whose sensitive financial information is in question. That suitable individual will typically give appropriate undertakings.

51. That course is not an option in these proceedings given that Mr Aubrey Weis runs a family business across a number of corporate entities, collectively the Weis Group, such that suitable client representatives that could be proposed will invariably have a familial connections or be involved on the business side of operations in areas in competition with the Renaker Group. He does not have the typical corporate structures that one would normally see in operations of the size that he is running. His operations are not run on formal lines, at least not on a structural level. The individual with requisite knowledge that has been managing a property portfolio within the Weis Group is his son, Mr Joel Weis. There is no other proposed suitable individual within the organisation that would be able to take on the role of instructing lawyers and providing input to them on the requested documents and information as the Appellant's client representative.

52. Whilst two statements from Mr Rose have been filed on behalf of the Appellant and he is an advisor to the Weis Group, he is still outside the group, likely with a whole book of clients of which Mr Aubrey Weis is a major one. Being external to the Weis Group, Mr Rose is not a suitable individual to be admitted to the confidentiality ring as a client representative and in my view is not a substitute for Mr Joel Weis.

53. In the round, I accept the submissions made by Mr Barrett KC, that the requested information in the passages from documents contained at Tabs 3 to 5 of the CRO Bundle for this hearing do need to be shown to Mr Joel Weis. As Mr Barrett KC himself recognises, he is not qualified himself to assess the significance of the relevant ratios and figures therein in order to properly advise Mr Aubrey Weis. Further, he submits that no one in the legal team at Walker Morris is qualified in that respect either. It may be that the lawyers are able to understand how the

structures work in theory in order to put documents together for this litigation. But there is a difference between that and commercial insight as to the acceptable figures, rates, ratios and risks tolerable within the 2024 Renaker Loan arrangements. That is a different type of skill or expertise that they do not have and I accept that.

54. In normal circumstances, an application like the present giving a competitor direct access to information belonging to a competitor would be refused. But given the importance of lawyers for the Appellant receiving informed instructions, I am willing to admit, to a limited extent, Mr Joel Weis to the confidentiality ring as the Appellant's client's representative, only in respect of the documents contained at Tabs 3 to 5 of the CRO Bundle filed with the Tribunal for this hearing. In granting this application, the overriding consideration is the need for this litigation to proceed fairly and expeditiously given the unique issues posed by the Appellant's corporate structure and the stage at which these proceedings have reached with a pending hearing date and no expert.

55. I would emphasise that on the facts of this case timing is a pressing consideration factoring into this decision, given that the trial has been listed and the hearing date is not far away. If I refused this application, then Mr Barrett KC may well make the submission that Mr Aubrey Weis would need additional time to instruct another expert and receive their advice on the requested documents and information, which would also impact the trial timetable and the trail date would be lost. It would be extremely difficult to find another hearing slot before July 2025 at the earliest and this would probably be too close to drawdown under the Renaker Loans with the result the 2024 Renaker Loans would not go ahead, thus losing a not insignificant source of revenue for the Respondent and Renaker would need to make alternative arrangements for funding.

56. Mr Robertson KC submits that, in the interests of time, it is an option to re-engage Grant Thornton but as I have already stated (at 49 above), I would be very reluctant to in effect direct that Mr Aubrey Weis must re-engage Grant Thornton. It would not be a great start to a professional relationship to re-engage

a firm with which you already have had an issue relating to fees. I do not consider that it is for this Tribunal to in effect direct a party to use a specific expert in circumstances such as the present.

57. The balancing exercise comprises a number of considerations. Balancing on one side, the practical need to not to delay the trial timetable by adjourning the trial hearing with, on the other side, the need for Mr Aubrey Weis to be fairly able to properly input into decisions on the conduct of the litigation on an informed basis and to give instructions as to what points should and should not be taken, drawing on the wealth of experience that he and his son he have in relation to property development projects in the Greater Manchester area. I also balance, on the other side, the risk to competition and the confidentiality rights of the third party, Renaker, in these proceedings.

58. I accept that there are competition risks in allowing Mr Joel Weis to have access to this material. I also accept that admitting Mr Joel Weis to the confidentiality ring is, to a certain extent, prejudicial to Renaker as its confidential information is being shared with an individual with responsibility for the operational decision making of its rival. Certain financial information is already in the public domain in the Financial Viability Assessments, but such information is not in the same form and detail and probably has a lot less utility to a competitor. In order to mitigate the competition risk and to preserve the confidentiality of what Renaker may rightly regard as highly sensitive financial information, I am imposing two protections to mitigate against those risks.

59. The first protection is that Mr Aubrey Weis and Mr Joel Weis should provide appropriate undertakings in terms, which I am sure Counsel will draft, to not use this material for any other purpose and not to disclose the contents of this information otherwise than in connection with these proceedings to their own legal team. Whatever is disclosed to Mr Joel Weis can only be discussed with the lawyers instructed on this case and no one else. A signed copy of that undertaking is to be filed with the Tribunal Registry.

60. The second protection, to which Mr Barrett KC has already agreed on behalf of the Appellant, is that the material will be shown to Mr Joel Weis at a meeting at

the offices of Walker Morris. At that meeting, Mr Joel Weis can go through the material with the legal team in order that properly considered advice can be taken. If at the end of the day, a witness statement needs to be taken from Mr Joel Weis, that statement will be taken at the offices of Walker Morris. Any witness statement taken will not be provided to Mr Joel Weis for him to remove from those premises, save for a redacted version omitting the confidential information the subject of this application. The unredacted version with confidential information will be retained by the Appellant's legal team. I trust that Mr Barrett KC and Walker Morris will take steps to ensure that these directions are fully understood and strictly complied with. Lawyers will no doubt impress upon the Appellant and his client representative that an undertaking to the Tribunal is an important commitment and the terms of any such undertaking must be strictly complied with in all circumstances. Accordingly, Mr Aubrey Weis and Mr Joel Weis are on notice that the breach of the terms of an undertaking is a serious matter and that serious consequences including penal consequences may be attendant to any such breach.

E. CONCLUSION

61. For the reasons given above, my ruling is as follows:

(1) Mr Joel Weis is to be admitted to the Confidentiality Ring in these proceedings limitedly only in respect of the documents and information contained at Tabs 3 to 5 of the CRO Bundle filed with the Tribunal, subject to the two directions outlined above at 59 and 60.

(2) The parties are to draw up an order setting out the directions to trial, including the timetable for any amendments to pleadings, as directed during the hearing.

(3) Costs of the Application are reserved to the substantive hearing.

Hodge Malek K.C.
Chair

Charles Dhanowa C.B.E., K.C. (*Hon*)
Registrar

Date: 29 April 2025