Neutral Citation Number: [2021] EWHC 130 (QB)

Case No: QB-2020-004182

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/01/2021

Before :

MASTER SULLIVAN

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Between :

The Rt. Hon. Jeremy Corbyn MP	**Applicant**
- and -	
David Evans (On behalf of all the members of the Labour Party except the Applicant)	**Respondent**

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Mr Christopher Jacobs (instructed by **Howe & Co**) for the **Applicant**
Ms Rachel Crasnow QC and Mr Tom Gillie (instructed by **Kingsley Napley**) for the **Respondent**

Hearing dates: 18 January 2021

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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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MASTER SULLIVAN

Covid-19 Protocol: This judgment was handed down by the Master remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 3.30pm on 27 January 2021

Master Sullivan :

1. The Applicant is the former Leader of the Labour Party and Leader of the Opposition and is a long serving Member of Parliament.

2. The Respondent is the General Secretary of the Labour Party. The Labour Party is an unincorporated association and the Respondent is named as the representative of all members of the Labour Party. I will refer to the parties to the application as Mr Corbyn and the Labour Party.

3. The Labour Party Rule Book ("the Labour Party rules") sets out the contractual relationship between the Party and its members governing the conditions of membership. The rules include the requirement that no member of the Party shall engage in conduct which in the opinion of the National Executive Committee (NEC) is prejudicial or grossly detrimental to the Party.

4. On 29th October 2020 the Equality and Human Rights Commission (EHRC) published a report entitled *Investigation into antisemitism in the Labour Party'*.

5. The report was published at 10am. At 10.35am on the same day Mr Corbyn published a statement on his Facebook account about the report. It included the words:

> "One antisemite is one too many, but the scale of the problem was also dramatically overstated for political reasons by our opponents inside and outside the Party, as well as by much of the media. That combination hurt Jewish people and must never be repeated".

6. At about 1pm on 29 October 2020 the Labour Party wrote to Mr Corbyn notifying him that he had been suspended from the Labour Party pending an internal Labour Party investigation into whether, by the Facebook post, Mr Corbyn had breached the Labour Party rules (as set out above). That suspension had the effect that Mr Corbyn was unable to sit in the House of Commons as a Labour MP.

7. The Party's Governance and Legal Unit ("GLU") undertook an investigation and presented a report to the NEC Disputes Panel on 17 November 2020. During the course of the investigation Mr Corbyn provided a 'public statement of clarification' which stated:

> "The point I wished to make was that the vast majority of Labour Party members were and remain committed anti-racists deeply opposed to antisemitism. I fully support Sir Keir Starmer's decision to accept all the EHRC recommendations in full and, in accordance with my own lifelong convictions, will do what I can to help the Party move on, united against antisemitism which has been responsible for so many of history's greatest crimes against humanity"

8. The clarification was posted on his Facebook account in the morning of 17 November 2020.

9. The NEC Disputes Panel hearing took place on the afternoon of 17 November 2020. The report presented to it did not find that Mr Corbyn had engaged in conduct which was prejudicial to the Party (and so in breach of the relevant Labour Party rule).

10. The question of whether Mr Corbyn's conduct was "grossly detrimental" to the Labour Party was left for the NEC Disputes Panel to determine. They made no finding that it was grossly detrimental, but a formal warning was given and the suspension was lifted.

11. On 18 November 2020 Mr Corbyn received a letter from Nicholas Brown MP, the Opposition Chief Whip, stating that he was again suspended from the Whip whilst an investigation was underway for a possible breach of the Parliamentary Labour Party (PLP) code of conduct. The suspension was stated to be for a reviewable period of 3 months. The breach to be investigated was of the provision of the code which requires Members of the PLP to do nothing which brings the Party into disrepute. The investigation is in relation to the original Facebook post.

12. Mr Corbyn has, through his solicitors, indicated to the Labour Party that he intends to bring proceedings for a declaration that the suspension of the Party Whip on 18 November 2020 was unlawful and in breach of contract and to claim an injunction to restrain the Labour Party from taking any further action in relation to his response to the EHRC's report. A subject access request was made for all personal data held by the Labour Party in respect of Mr Corbyn held by particular offices. He has also made a subject access request to the Chief Whip.

The application

13. The application made is for pre-action disclosure under CPR 31.16 for 5 classes of documents:

    i) documents related to the decision to administratively suspend membership, automatically suspend the Whip and investigate the Applicant on 29 October 2020;

    ii) documents related to the investigation into the Applicant by the GLU, and the meeting of the Disputes Panel of the NEC, including documents relating to the conclusion reached to issue a warning and lift the Applicant's administrative suspension (the Applicant seeks documents other than the Investigation Report and Notes of the Disputes Panel meeting which were disclosed on 24 November 2020);

    iii) documents related to the decision to suspend the Applicant from the Party Whip, including but not limited to documents related to the Chief Whip's 'consultation' with the Leader of the Labour Party;

    iv) documents related to the negotiated agreement to lift the administrative suspension and the precautionary suspension giving rise to potential issues of promissory contractual estoppel; and

    v) documents related to investigations which have taken place since the Chief Whip's letter of 18 November 2020.

14. The starting point is that, apart from those documents required by pre-action protocols, there is normally no pre-action disclosure. However, pre-action disclosure may be ordered if the jurisdictional matters set out in CPR 31.16 are met and if the court considers in its discretion that an order for disclosure should be made. Those are two separate stages, although the considerations are likely to overlap.

15. I have been referred to a number of different authorities and a useful summary of the general principles I have to apply is set out by Blair J in paragraph 17 of *Assetco Plc v Grant Thornton UK LLP* [2013] EWHC 1215 (Comm).

16. Every case must be determined on its own facts. Amongst the important considerations are those set out by Rix LJ in *Black v Sumitomo Corp* [2002] 1 WLR 1562; the nature of the loss complained of, the clarity and identification of the issues raised by the complaint, the nature of the documents requested, the relevance of any protocol or pre-action inquiries and the opportunity which the complainant has to make their case without pre-action disclosure. However, I am not limited to those considerations but must take into account any relevant consideration. I should of course take into account the overriding objective.

17. Save for one issue which relates to the scope of the disclosure sought, the dispute between the parties as to whether the disclosure is appropriate is whether the jurisdictional threshold at 31.16(2)(d) is met and whether I should exercise my discretion to make the order. I agree that the jurisdictional tests in (a) to (c) are met, subject to the issue of the scope of disclosure.

18. CPR 31.16(2)(d) requires a finding that disclosure before proceedings have started is desirable in order to –

    (i) dispose fairly of the anticipated proceedings;
    (ii) assist the dispute to be resolved without proceedings; or
    (iii) save costs

The Applicant's submissions

19. Mr Corbyn's solicitors have set out the legal basis of the case he intends to bring in numerous letters to the Labour Party and in the witness statement in support of the application. By the time of the hearing and in Mr Jacobs' skeleton argument there were two main grounds which were relevant to the application. The first is in relation to the terms of an oral agreement Mr Corbyn says has been breached by the Labour Party.

20. Mr Corbyn states that on or around 30 October 2020 a meeting took place in the Leader of the Opposition's boardroom between senior Labour Party members (including the Party Leader and the Deputy Leader) and two of Mr Corbyns' colleagues. As a result of that meeting, negotiations continued to take place, following which a 'public statement of clarification' was agreed between representatives of Mr Corbyn and the Labour Party on or about 31 October 2020.

21. It is also said that a Zoom meeting took place on 12 November 2020 between the Labour Party Leader's Chief of Staff, a senior advisor to the Party leadership, Mr Corbyn's former Director of Strategy and Communications and the former Shadow Minister for the Cabinet Office under Mr Corbyn. At that meeting it is said that the Chief of Staff agreed that Mr Corbyn be reinstated.

22. During the hearing Mr Jacobs confirmed that those discussions amounted to an oral agreement between Mr Corbyn and the Labour Party that on provision of the agreed statement of clarification, the suspension of the Whip would be lifted, no further sanction in respect of the Facebook post would be applied and that an apology outside of what was in the statement of clarification was not required. Mr Corbyn was not personally involved in the discussions, but his representatives were there on his behalf.

23. Mr Corbyn's case is that the further suspension is in breach of that oral agreement and gives rise to an estoppel argument.

24. It is said that Mr Corbyn's representatives did not make any notes at any of the meetings but that Mr Corbyn knows that minutes would have been taken on behalf of the Labour Party. He is seeking disclosure of those notes which he says will support his case.

25. The second main ground is that the 17 November 2020 suspension is in breach of the Labour Party rules as the determination of the NEC on 18th November 2020 was final. Mr Corbyn wishes to be able to plead that the Labour Party was in breach of the requirement of chapter 2.II.7 of the Labour Party rules that "Party officers at every level shall exercise their powers in good faith and use their best endeavours to ensure procedural fairness for all members". So it is said further documents are required in order to have sufficient evidence to be able to plead that the Labour Party, including the Leader or his office, acted in bad faith.

26. It is also alleged that there was political interference in the disciplinary process, which is improper and in bad faith. It is said that there are reports in the press that Dame Margaret Hodge MP and the President of the Board of Deputies of British Jews contacted the Leader of the Opposition's staff and that influenced the decision to suspend Mr Corbyn on the second occasion. It is said the disclosure sought will show this.

27. It is said the jurisdictional requirements are made out for the following reasons (in summary):

    i) Without disclosure Mr Corbyn will be prejudiced in preparing and pleading the case on bad faith, which is a vital ingredient in the case. It cannot be pleaded without the documents sought;

    ii) Waiting until standard disclosure within the claim is likely to lead to the need for amendments to the pleadings;

    iii) The documents sought must be in existence and are limited in scope and easily accessed;

    iv) Disclosure is likely to lead to early resolution of the mater without litigation; if the documents show the agreement alleged or political interference in the decision to re-instate the suspension, the Labour Party's position will be untenable and the reasons for the Labour Party changing its position between 17 and 18 November will be relevant to whether there was a breach of the Labour Party rules;

    v) The clarification of the factual issues and avoiding the need to amend pleadings would save costs; a part 8 claim could be brought instead of a part 7 claim;

    vi) There is a marked inequality between the parties in relation to access to information. The Labour Party are the investigators and decision makers and have access to documents. Mr Corbyn has limited documents;

    vii) The Labour Party has not responded to the allegation that the Party had agreed to take no action on provision of the statement of clarification or provide the relevant documents voluntarily despite requests and a GDPR subject access request;

viii) Mr Corbyn is being attacked in the media but cannot put his case forward that the Party acted in bad faith without disclosure; waiting for standard disclosure would prolong that;

ix) Pre action disclosure would be fair as a number of other Labour Party members have been suspended for expressing support of this and some have started proceedings. Disclosure in this case could assist in resolving those cases;

x) It would provide transparency on both sides which is appropriate in this case;

28. In respect of my discretion, in addition to the matters set out above which fall both within the jurisdictional threshold and my discretion, the following are relevant factors to take into account:

i) The scrutiny of the media means that this is not a run of the mill case. Mr Corbyn wishes to ensure he is properly informed before commencing proceedings and cannot do so without disclosure;

ii) Mr Corbyn only found out through the disclosure of the internal investigation report following a pre-action disclosure request that his conduct had not been found to be grossly detrimental or brought the Party in to disrepute. That is illustrative that information is being withheld.

The Respondent's submissions

29. Ms Crasnow QC on behalf of the Labour Party submits that this is not a case which is out of the ordinary where pre-action disclosure should be allowed. It is essentially a straightforward contractual dispute based on allegations of breaches of the Labour Party rules and the alleged oral agreement.

30. I note that Ms Crasnow made it clear that the Labour Party's case is that there was no oral agreement as alleged.

31. In respect of the jurisdictional threshold the Labour Party says the following in summary:

i) Mr Corbyn is perfectly able to plead his claim without the disclosure. His claim has been articulated by his solicitors in a number of letters and in the witness statements and in the skeleton argument for the hearing. That applies to both limbs of his argument, that there was a breach of the Labour Party rules and oral agreement;

ii) In the normal run of cases where there is a suspicion or concern that the requirement that the parties to the contract act in good faith is breached, the court is asked to infer that from the known facts. It is perfectly common for the aggrieved party not have the full documentation until disclosure within an action. This is not a fraud claim and the specific pleading requirements for fraud do not apply;

iii) The alleged breach of the Labour Party rules is known and Mr Corbyn can ask his representatives, who he says made the oral agreement on his behalf, what the terms of it were. If he does not know what they were, he cannot have been a party to the agreement and cannot rely on it. If the reasons put forward for seeing the Labour Party's notes are good reasons for pre-action disclosure in this case, they would be in nearly every oral contract case;

iv) It is unlikely that any significant costs will be saved. It is unlikely that any disclosure will avoid substantive proceedings before the court given the disputes between the parties. Although some costs of amending the claim might, on Mr Corbyn's case, be avoided, those are likely to be small;

v) This is a fishing expedition, Mr Corbyn wishes to see the evidence in advance to be able to assess the merits and plead more specifically what he can already plead without it. That is not a sufficient reason for pre-action disclosure;

vi) The Labour Party has already made disclosure of documents by way of response to the subject access request. The disclosure given was that requested by Mr Corbyn's solicitor; that supports the Labour Party's position that there won't be any further relevant documents;

vii) The fact of asymmetry in documents and knowledge between parties is not unusual. It is entirely normal for example for organisations which are conducting a disciplinary investigation to have custody of more relevant documents than the individual. That is not of itself a good reason for pre-action disclosure;

viii) It is unlikely to resolve the proceedings in their entirely. Whether there is evidence of bad faith or not, Mr Corbyn has identified allegations of procedural unfairness which he is able to go on and plead. The suggestion made that it would force the Labour Party to capitulate is not a proper matter to take in account. Pre-action disclosure is not designed to force disclosure to weaken the other side's case;

ix) The fact of media interest and any reputational damage caused by reporting is not a proper matter to take into account. Many prospective claimants may suffer reputational damage before proceedings are started, that is not relevant to the test in the CPR.

32. In respect of my discretion, and in addition to the matters above, the Labour Party makes the following additional submissions:

i) The Labour Party has disclosed the two specific documents initially requested by Mr Corbyn, the investigation report prepared by the GLU and the note of the disciplinary panel on 17 November 2020 and "all personal data held by the Labour Party since 29 October 2020 in respect of Jeremy Corbyn" held in 3 requested locations;

ii) The Labour Party has been reasonable in setting out its position on the rest of the disclosure in its letters;

iii) The nature of the documents requested is relevant. The request is very broad, it includes documents which were sent by third parties to the proceedings which raises issues of privacy of their information. It may be that the documents would not be relevant under standard disclosure once Mr Corbyn's case is properly formulated;

iv) In respect of the 5 categories sought in the order, categories 1 and 2 relate to the first investigation and suspension. They are not required in order to plead that the second suspension is unlawful in the ways set out. The final category is to do with the current investigation, which has no bearing on whether the second suspension is unlawful and there is no explanation why it is necessary to plead the case. All of the items set out in the letters referred to at paragraphs 21 and

22 of Mr Howe's witness statement (as referred to in the draft order) fall within categories 3 and 4. Those are not expressly limited to communications involving or concerning Mr Corbyn and the requested order is too wide.

Jurisdictional threshold

33. I am concerned only with CPR 31.16(3)(d). The jurisdictional threshold is relatively low. The requirement is to show a real prospect of one of the matters set out in one of the three sub-paragraphs to that rule being satisfied (see *Carillion v KPMG PLC* [2020] EWHC 1416 at *para 75)*.

34. Insofar as any disclosure is said to be relevant to the oral agreement, I am not persuaded the jurisdictional threshold is met. The representatives of Mr Corbyn can give witness evidence on which pleadings can be based. Mr Corbyn, in order to rely on the agreement must know of its terms. The three terms which have been set out are easily understood and any breach can be pleaded.

35. I am not satisfied, even at the low jurisdictional threshold, that seeing any documents created by the other side to an oral contract has a real prospect of disposing fairly of the proceedings, assisting the dispute to be resolved without proceedings or saving costs.

36. The only way it is said that the dispute would be resolved or costs saved in respect of the oral agreement is if the documents show an agreement in the terms alleged by Mr Corbyn. I cannot make any judgment about what any documents might show and I take at face value the Labour Party's case that there was no such agreement. I cannot say that there is a real prospect that disclosure would resolve or reduce the issues. That dispute is likely to remain after disclosure. I note that dispute means it is unlikely that Part 8 rather than Part 7 proceedings are likely to be suitable.

37. The fact that Mr Corbyn's representatives did not make any notes but they believe the Labour Party did does not give rise in my judgment to the sort of asymmetry of control of documents which would mean pre-action disclosure was desirable. His representatives could have made notes but did not. This is not a situation where one party was unable to document the oral agreement which might give rise to such asymmetry.

38. In respect of the argument that the documents are needed in order to properly plead the bad faith aspect, I am of the view that the jurisdictional threshold is met. Although I accept Ms Crasnow's submissions that the claim could be pleaded now, there is a real prospect that following disclosure there would be amendments to the pleadings which would be avoided and so avoid some costs as there is a real prospect something will be disclosed relevant to the reasons for the second suspension.

39. I am not satisfied that under the jurisdictional threshold considerations, that the effect on other cases which I am told have been started by Labour Party members is a relevant consideration. The jurisdictional issues relate only to the anticipated proceedings with which I am concerned, not others.

Discretion

40. I will consider discretion as it affects both aspects of Mr Corbyn's case (in case I am wrong about the jurisdictional threshold in respect of the oral contract). I look at the individual factors raised by the parties and then step back and take a look at the matter in the round, taking into account the overriding objective.

41. In terms of Mr Corbyn's ability to properly plead his case, I do not accept that he would suffer significant prejudice without pre-action disclosure as Mr Jacobs submits. Pleading a breach of the oral agreement or of the term that decisions must be taken in good faith does not require the level of evidence of a fraud pleading. The facts as known can be pleaded and if appropriate inferences can be asked to be drawn.

42. In respect of the documents which it is said will show third party interference in the decision, that is speculation based on press reporting. I have not been taken to any detail of the press reports referred to. Whilst the publicity this matter has attracted is out of the ordinary, that sort of speculation as to the reasons behind decision making is not. What is sought are "documents related to the decision to suspend the Applicant from the Party whip". It is said this includes documents sent from Dame Margaret Hodge MP and the President of the Board of British Jews. What, if any communication took place, whether it was in writing, what was said and whether it was taken into account are unknown. It seems to me that the request is indeed fishing. It is not appropriate for the court to allow a prospective litigant to review the documents to see if there is something that may be of use to them in advance of the litigation.

43. I do not accept it is desirable to require pre-action disclosure of minutes of internal meetings of Labour Party officers. Mr Corbyn's argument would mean that in any case where it was said there was a breach of *Braganza* type clause and there was suspicion that improper considerations had been taken into account, pre-action disclosure would be necessary. That cannot be right. In my view Mr Corbyn can make his case without resort to pre-action disclosure. There may need to be amendments to the pleadings following standard disclosure or indeed witness evidence, but the additional cost of such amendment is unlikely to be significant.

44. I do not accept that the fact that the parties to this claim are the former Leader of the Opposition and the Labour Party, and that it appears allegations may be made against the Leader of the Opposition, mean that this case is out of the ordinary in a relevant sense. Yes, there is public interest in the dispute, but that does not mean by itself that the ordinary litigation process should not be followed as with cases not involving politicians. The media attention does not in my judgment mean that transparency between the parties greater than would normally be the case at this stage is desirable. Whilst I understand Mr Corbyn is aggrieved that statements have been made in the media about him in circumstances where he believes the Labour Party has acted in bad faith, that does not in my judgment weigh significantly in his favour in the pre action disclosure application. The press was well represented at the hearing and Mr Corbyn's position is now public.

45. In the exercise of my discretion, the wider implications in this case on other cases which I am told have been issued or will be might be relevant, but there is not sufficient weight for it to be a determining factor. The same applies to the fact that Mr Corbyn's ability to represent his constituents as a member of the Labour Party is affected. In the context of this claim, as I have found he is able to plead a case, the delay in waiting for any documents until standard disclosure is not of sufficient weight to mean I should exercise my discretion to order disclosure.

46. I do not accept that the documents requested are very limited in scope. It seems to me that that the documents in classes 1 to 2 are not required for the dispute to be pleaded and much of what is in class 5 may be related to the investigation but not the reasons for the second investigation and suspension, and may not be relevant.

47. The fact a SAR has been undertaken is relevant. Documents have been produced, although I understand none of them assist Mr Corbyn. That may be due to the nature of the request or that there are no documents, but the respondent has complied with the request.

48. I do not accept that there is an imbalance between the prospective parties that is outside the norm in such cases and would lead to pre-action disclosure being desirable.

Additional Evidence

49. Following the hearing, on 20 January 2021, Mr Howe on behalf of Mr Corbyn provided a further witness statement and submissions for my consideration. On 19 January 2021 the Chief Whip provided the subject access request ("SAR") disclosure to Mr Corbyn who seeks to rely on matters arising out of that disclosure. The Labour Party does not object to me considering these additional submissions. Their view is that they do not add anything relevant.

50. Mr Howe states that Ms Crasnow submitted during the hearing that a SAR submitted by Mr Corbyn to the Chief Whip "had produced no documents for the Applicant as the Chief Whip does not have any documents relevant to paragraph 1.5 of the draft order before the court" and further submitted that "no documents had been provided as there were no documents to produce". It is said the disclosure contradicts that. No criticism is made of Ms Crasnow, she was acting on instructions from the Labour Party. But the point is made that the Party has made misleading statements about the SAR disclosure and so I should treat with caution their other representations, namely that the was no oral agreement and that there are no notes or minutes in relation to such an agreement.

51. Mr Howe points out (as was pointed out at the hearing by Mr Jacobs on Mr Corbyn's behalf, who also submitted that no disclosure had been made at all) that the disclosure was made outside the 30 day time frame required and states it is a matter of concern it was given after the pre action disclosure application.

52. Whilst it is said an analysis of the documents is not the focus of the statement, it is pointed out that the disclosure includes reports the Chief Whip made to the PLP and others referring to a "conversation" that took place between the Chief Whip and the Leader of the Labour Party subsequent to the decision of the NEC Disputes Panel.

53. In fact the reports state variations on the following: "the Chief Whip notified the committee of the decision, following a conversation with the leader, not to restore the Whip" to Mr Corbyn. "The decision was made subsequent to the NEC disputes sub panel decision to restore Jeremy's membership of the Party".

54. The Labour Party disputes Mr Howe's note of what Ms Crasnow said. Their position is that she correctly said no documents had been disclosed by the Labour Party which were relevant to the application.

55. I have listened to the recording of the hearing. Ms Crasnow stated that a subject access request had been served on the Chief Whip "which did not reveal the documents sought under paragraph 1.5 of the draft order but I understand no meeting between the Chief Whip and applicant has yet occurred". Paragraph 1.5 of the draft order is set out in paragraph 13 above, but is "documents related to investigations which have taken place since the chief whip's letter of 18 November 2020".

56. I had reached my conclusions above prior to receiving the additional evidence. I have now considered that further evidence and submissions. First, in respect of Ms

Crasnow's submissions, I accept that the submission on behalf of the Labour Party was that the SAR to the Chief Whip had not revealed any documents sought under paragraph 1.5 of the draft order. It appears to me that, whilst possibly a day premature, the submission was correct.

57. I do not consider that the documents reveal any further information that Mr Corbyn did not already have access to, nor are they related to investigations which have taken place since 18 November 2020.

58. The fact that there was a conversation between the Chief Whip and the Leader of the Labour Party prior to the decision to suspend Mr Corbyn on 18 December 2020 is clear from the letter to Mr Corbyn from the Chief Whip on 18 November 2020. That must have been a decision after the 17 November NEC disputes panel decision or there would have been no need to suspend the Whip, the previous suspension would still have been in place. That letter also makes it clear the Parliamentary committee would be notified of the decision and the subsequent letter dated 23 November 2020 from the Chief Whip to Mr Corbyn notes other stakeholders would be notified of the decision. Those are the reports disclosed.

59. I do not see anything in the submissions or the SAR which lead me to conclude that any material misrepresentation has been made, nor to treat with caution the other representations made at the hearing that there was no oral agreement or note or minutes in relation to any such agreement. Nothing in the additional evidence or submissions leads me to change the conclusions I had reached or the reasons for them.

Conclusion

60. Stepping back and looking at the matter in the round, and taking into account the overriding objective, I do not accept pre-action disclosure is desirable. Mr Corbyn has sufficient material to make a decision on the merits of his case and to plead to both arms of the case he wishes to advance. The matters raised are not sufficient to depart from the usual course of events and I refuse the application.