JUDGMENT : JOHN BEHRENS QBD. 30th May 2007

1. Introduction

1. This is an application is for pre-action disclosure. Landis + Gyr Ltd ("LGL") are considering making a claim against Scaleo Chip ET ("SCE") in respect of cost savings which SCE was obliged to pass on to LGL or for damages for failing to procure cost savings.

2. LGL believes that substantial cost savings were achieved but is unable to establish such a case without disclosure from SCE of documentation relating to those cost savings.

3. A complicating feature of the application is that there are existing proceedings between the same parties arising out of the same contract proceeding in the business court in Grasse France.

4. SCE submits that the provisions of Article 22 of the Amended Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 ("Article 22")[1] would apply to any proceedings brought by LGL in this country. It submits that the English Court would either stay the English proceedings or decline jurisdiction. In the circumstances SCE submits it is not appropriate for there to be pre-action disclosure in respect of the English proceedings.

5. In the alternative SCE submits that LGL already has enough material at its disposal to bring the proceedings in England. In particular it contends that the material is more than sufficient for a case to be pleaded that could not be struck out. In those circumstances pre-action disclosure is unnecessary. It would give LGL an unfair advantage and should be refused.

6. LGL do not accept that the English proceedings will be stayed as a result of Article 22. Nor does it accept that the English Court would decline jurisdiction. Indeed, LGL contends that I should not concern myself with Article 22 in this application. If I do, I should conclude that the two sets of proceedings are not *"related"* within the meaning of Article 22.

7. LGL contend that all of the criteria for pre-action disclosure are met. Whilst they accept that it would be possible to formulate a claim, they contend that it would lack focus and would need to be amended once disclosure has taken place. They also make the point that settlement negotiations and/or any form of ADR cannot take place until such disclosure has taken place. In those circumstances the sooner the disclosure takes place the better.

2. Representation

8. LGL were represented by Mr Gregory Pipe instructed by Hammonds of Leeds; SCE were represented by Mr Martin Budworth instructed by George Davies of Manchester. Both Counsel produced skeleton arguments and presented their respective cases both clearly and helpfully. I am most grateful to them.

3. Evidence

9. The evidence consisted of 3 witness statements from Sally Lodge (a partner in Hammonds) on behalf of LGL, and one witness statement from Mark Lewis (a partner in George Davies).

10. In his skeleton argument Mr Budworth criticised Mrs Lodge because she did not mention the French proceedings in her first witness statement. In his oral submissions he did, however, accept that the witness statement was a full and helpful document. If this had been a without notice application it would, of course, have been essential for Mrs Lodge to draw the French proceedings to the Court's attention. It was, however, not a without notice application. Mr Lewis was well able to mention the French proceedings in his witness statement and the court was in no way misled.

11. Whilst I accept that it would have given a more complete picture if Mrs Lodge had mentioned the French proceedings, I do not, in the circumstances accept Mr Budworth's criticism.

4. The English claim

12. Much of the material in relation to the contract is taken from the first witness statement of Mrs Lodge.

4.1. *The contract*

13. LGL is engaged in the design, manufacture and supply of a range of metering products, systems and solutions for energy utilities. SCE is a company incorporated in France engaged in, inter alia, the design and manufacture of components for incorporation within gas metering systems.

14. On 13 August 1997, Landis & Gyr Utilities (UK) Limited as agent for LG(UK) Ltd entered into a contract with Europe Technologies ("ET") for the design, development and support into production by ET of a module (the "Module") for integration into LG(UK) Ltd metering products (the "1997 Agreement").

15. The manufacture of the Module was to be carried out by a Contract Electronic Manufacturer ("CEM") under the commercial management of LG(UK) Ltd. In due course, Sagem S.A. ("Sagem") and subsequently Jabil Circuit Poland Sp ("Jabil") were used by LG(UK) Ltd as CEM.

16. The commercial relationship was such that LG(UK) Ltd placed orders on the CEM for the manufacture of Modules. The CEM in turn would place orders on ET for the delivery of parts designed by ET under the Final Agreement (namely the Microprocessor and the Liquid Crystal Display ("LCD")) for incorporation into the Modules.

17. On 1 October 1998, the contractual rights and obligations of LG(UK) Limited were novated to Siemens Metering Limited ("SML"). Following a meeting between the parties on 7 December 1999 the parties entered into an

[1] incorporated into our law by the Civil Jurisdiction and Judgments Act of 1982 (s 2(1) and Sch 1)

addendum to the 1997 Agreement which came into force on 24 December 1999 (the *"Memorandum of Understanding"*). The 1997 Agreement and the Memorandum of Understanding together make up the contract between the parties (the "Contract").

18. On 1 August 2002, the rights and obligations of SML under the Contract were novated to Siemens Metering Products Limited ("SMPL"). SMPL subsequently changed its name to Landis+Gyr Limited ("LGL"). ET has changed its name to Scaleo Chip ET ("SCE").

19. Despite discussions between the parties in December 2005 no agreement was reached as to the terms upon which the Contract might be extended. Accordingly the Contract terminated through the effluxion of time on 24 December 2005.

4.2. ***Terms relating to cost saving***

20. In the preparation of both the 1997 Agreement and the Memorandum of Understanding the parties dealt with the potential cost savings that it was hoped would be made to the cost of the production of the Module over time.

21. It was clear that the responsibility for co-ordinating cost savings lay with Scaleo. In particular it was provided in Schedule B of the 1997 Agreement that:

"ET will co-ordinate continuous improvement and cost reduction activity between CEM and L&G. All changes must be authorised via L&G Engineering Change process and cannot be implemented without L&G authorisation"; and

"Every three months L+G, ET and CEM will review any opportunities for improvements, these include but are not limited to:

- *Cost reduction in components or manufacturing process…*

…ET will be responsible for the co-ordination of this activity. Any changes will be authorised via ECR [Engineering Change Request]"

22. The Contract also dealt with the basis upon which the costs savings should be shared, the Memorandum of Understanding providing at Clause 3(c) that: *"For any cost reduction initiated by ET or necessitating the support of ET and paid by ET… the resulting price reductions will be shared between SML and ET according to the 'Cost Reduction Sharing Mechanism' defined in Schedule C"*

23. Schedule C in turn stated that:

"1. From the current TMS370 based £30 PCA cost down to £20 for the FCM based PCA, the cost reduction will go 100% to SML and zero to ET.

2. The new reference cost for further cost reduction is £20.

3. For any further cost reduction steps, the cost reduction will be shared as follows:

(a) For the first 250 KU of production after the implementation of the cost reduction, this cost reduction will be shared 50/50 between SML and ET.

(b) After 250 KU of production for the first cost reduction step, then after one year of production for the next steps, and for the remaining lifetime of the product, this cost reduction will be shared 70% to SML and 30% to ET.

(c) The new cost becomes the reference cost for the next cost reduction step.

(d) Then we restart the same process steps a/; b/ (except the triggering change which becomes one year and not 250 KU); c/ for the next cost reduction and so on".

24. The Contract was therefore clear that, if cost savings were made, LGL would be a beneficiary of those cost savings.

4.3. ***Terms as to jurisdiction***

25. Clause 7 of the contract provided that: "*the Agreement is subject to English and French Law and the sole jurisdiction of the English and French courts upon the choice of the plaintiff party.*"

26. This provision does not make clear what would happen if on any particular point French law was different to English law. A number of possibilities were canvassed in argument as to what might happen. It is not necessary to explore those possibilities here.

27. Both sides accept that clause 7 permitted them to issue proceedings in either England or France.

4.4. ***Concerns as cost saving***

28. There were effectively two categories of costs savings/reductions that were available to SCE:

1. Cost reductions relating to SCE's acquisition before direct supply to the CEM of the LCD and Microprocessor; and
2. SCE were responsible for the design of the Module and thus controlled the specification of components which they did not supply directly to the CEM (effectively components other than the LCD and Microprocessor) and their continued use in the design. Accordingly, it was possible that cost savings could be made by virtue of the manufacturers of these other components paying volume rebates or commissions to SCE to incentivise SCE to keep them in the design.

29. LGL is concerned that SCE benefited from a number of cost savings which, in breach of the terms of the Contract, it failed to share with SCE.

30. In particular, the LCD was sourced by SCE from BF Technology Ltd ("BF"). BF charged SCE €5.13 (£3.37) for the onward supply of each LCD for incorporation within the Module. However, LGL were informed that the LCD's would be available for purchase at $4.40 (£2.24) per unit.

31. Accordingly, LGL suspects that cost savings of at least £1.13 per Module were made by SCE which were not shared with LGL. 518,714 Modules have been manufactured making the potential costs savings that should have been shared in excess of £585,000.

32. Further, LGL suspects that there may be further costs savings made by SCE which have not been notified to or shared with LGL. By way of example, LGL considers it likely that the costs of sourcing microchips for the Module would have decreased over the course of the Contract. Fabrication and electronics packaging costs fluctuate over time and this is reflected in the prices of chips. There were likely to have been times during the period of the Contract when chip prices decreased resulting in cost savings. No cost savings in respect of microchips have been shared.

5. The disclosure sought

33. LGL seeks disclosure of 4 classes of document pursuant to CPR 31.16:

1. All documents relating to the cost of purchasing LCD's for incorporation within the Module and the price at which those LCD's were supplied to Sagem and Jabil by SCE;
2. All documents relating to the cost of purchasing microchips for incorporation within the Module and the price at which those microchips were supplied to Sagem and Jabil;
3. All documents relating to the reduction in the cost to SCE of any component part of the Module and all documents relating to the sharing of those cost reductions with LGL; and
4. All documents relating to any volume rebates, commissions or any other inducements paid to or given to SCE by manufacturers relating to SCE's inclusion of those manufacturers' products in the design of the Module.

34. A number of points can be made about this list.

1. It is self evident that a large number of documents are likely to be included within the list. In those circumstances the task of complying with any order will necessarily be onerous.
2. Mr Lewis did not in his witness statement address the individual items in the list at all. Nor did he give any indication of the extent of the obligation that would be imposed by the order.

35. In the circumstances, with the agreement of the parties, I indicated that I would deal with the matter as one of principle. I indicated that in the event that I thought that disclosure should take place I would give SCE a further opportunity to address the question of whether any particular documents should be excluded from the order or whether the order ought to be limited in any way.

6. The French proceedings

36. The French proceedings were started on 29th September 2006 They are summarised in paragraph 6 of Mr Lewis's witness statement and I gratefully adopt that summary.

1. In 1997 the Respondent entered into a 6 year agreement (the "Agreement") with the Applicant. The Agreement provided that the Respondent design and develop the electronic system of a gas meter. On 24 December 1999 the Agreement was extended for 6 years to 24 December 2005.

2. After the expiration of this further six year period the Agreement was not extended further and as such it came to an end in December 2005. It was agreed that the parties would honour all orders placed as at 24 December 2005.

3. The Agreement provided at Clause 7 (c) that the Applicant pay an additional fixed price of £2.50 per unit. After the expiry of the term of the contract, the Applicant refused to pay to the Claimant the £2.50 the Agreement provided for in respect of each module assembled after 24 December 2005 (in connection with orders placed as at 24 December 2005) in the sum of €293,650.85 ("the debt").

4. When the Respondent requested payment of the debt, the Applicant disputed the number of modules assembled and attempted to set off the value of the Respondent's claim against other claims the Applicant attempted to raise, one of which included that the Respondent had failed to pass on cost savings during the term of the Agreement in breach of Schedules B and C of the Agreement.

37. In his witness statement Mr Lewis makes a number of points about the French proceedings:

1. 3 hearings have been postponed as a result of LGL failing to present an answer to SCE's claim.
2. he is advised by SCE's French Lawyer M Rotgé that the documents would be produced within the French proceedings.

38. In her third witness statement Mrs Lodge makes 3 important points:

1. She accepts that there have been 3 postponements of the French proceedings. She understands that that is not unusual. In any event one of the postponements was at the request of M Rotgé. The Defence is imminent. [I was informed at the hearing on 23rd May 2007 that it had been served on that day].
2. Whilst she accepts that the question of cost saving has been raised in correspondence with SCE's French lawyers she did not accept that it had ever been raised as a set off against SCE's claim. Furthermore the Defence as filed does not refer to the question of cost savings nor does it seek to raise it as a cross claim.

3. She is advised by LGL's French lawyer Mr Adeline that it is incorrect that the documents sought would be produced in the French proceedings. There would only be disclosure of these documents in the French proceedings if:
   1) The issue of cost savings was raised as a Defence or a set off by LGL in its Defence; and
   2) SCE was willing to give disclosure of those documents, it not being possible to enforce disclosure of documents in French proceedings.

39. She makes the further points that the issue of cost saving has not been raised in the Defence and that SCE has so far shown no enthusiasm to disclose documents relating to cost savings, despite repeated requests.

7. CPR 31(16)(1)

40. Section 33(2) of the 1981 Act provides as follows: *'On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court … the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim—(a) to disclose whether those documents are in his possession, custody or power; and (b) to produce such of those documents as are in his possession, custody or power to the applicant …'*

41. CPR 31.16 provides as follows:

'(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started.

'(2) The application must be supported by evidence.

'(3) The court may make an order under this rule only where—(a) the respondent is likely to be a party to subsequent proceedings; (b) the applicant is also likely to be a party to those proceedings; (c) if proceedings had started, the respondent's duty by way of standard disclosure, set out in rule 31.6, would extend to the documents or classes of documents of which the applicant seeks disclosure; and (d) 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.'

42. The authority referred to in almost all of the cases to which I was taken to is the judgment of Rix LJ in ***Black v Sumitomo***[2]

43. In paragraphs 70 to 73 of his judgment Rix LJ considered the meaning of *"likely to be a party"*. He concluded :

"As to the first question, in my judgment the amended statute means no more than that the persons concerned are likely to be parties in proceedings if those proceedings are issued.

As to the second question, it is not uncommon for 'likely' to mean something less than probable in its strict sense. It seems to me that if I am wrong about the first question, then it is plain that 'likely' must be given its more extended and open meaning (see Lord Denning MR in Dunning's case), because otherwise one of the fundamental purposes of the statute will have been undermined. If, however, I am right about the first question, the second question is of less moment. Even so, however, I am inclined to answer it by saying that 'likely' here means no more than 'may well'.

44. In paragraphs 74 he considered the question of documents subject to standard disclosure. He made 2 points in paragraphs 76 and 77.

"In general, however, it should in my judgment be remembered that the extent of standard disclosure cannot easily be discerned without clarity as to the issues which would arise once pleadings in the prospective litigation had been formulated.

It also seems to me to follow that if there would be considerable doubt as to whether the disclosure stage would ever be reached, that is a matter which the court can and should take into account as a matter of its discretion."

45. In paragraphs 79 to 86 he considered the word *"desirable"* in CPR 31.16(3)(d). After commenting on the three considerations set out in the subclause he points out in paragraph 81 that there is a two stage process:

"It is plain not only that the test of 'desirable' is one that easily merges into an exercise of discretion, but that the test of 'dispose fairly' does so too. In the circumstances, it seems to me that it is necessary not to confuse the jurisdictional and the discretionary aspects of the sub-rule as a whole. In the Bermuda International case Waller LJ contemplated (at [26]) that CPR 31.16(3)(d) may involve a two-stage process. I think that is correct. In my judgment, for jurisdictional purposes the court is only permitted to consider the granting of pre-action disclosure where there is a real prospect in principle of such an order being fair to the parties if litigation is commenced, or of assisting the parties to avoid litigation, or of saving costs in any event. If there is such a real prospect, then the court should go on to consider the question of discretion, which has to be considered on all the facts and not merely in principle but in detail."

46. In paragraphs 87 to 100 Rix LJ discussed discretion with particular reference to the issues that arose in that case. He gave general guidance in paragraph 88. *"That discretion is not confined and will depend on all the facts of the case. Among the important considerations, however, as it seems to me, are the nature of the injury or loss complained of; the clarity and identification of the issues raised by the complaint; the nature of the documents requested; the*

[2] [2003] 3 AER 643

relevance of any protocol or pre-action inquiries; and the opportunity which the complainant has to make his case without pre-action disclosure."

8. Article 22

Article 22 provides:

'Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings. A court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the law of that court permits the consolidation of related actions and the court first seised has jurisdiction over both actions. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

47. Mr Budworth submitted that the English proceedings (if brought) and the French proceedings would be related actions within the meaning of Article 22. He made the point that they arose out of the same contract and were between the same parties. He referred me to the judgment of Lord Savill in ***Sarrio v Kuwait Investments*** [3] In the Court of Appeal Evans LJ had considered that the primary issues of fact in the English proceedings were distinct from any raised in the Spanish proceedings and accordingly there was no risk of irreconcilable judgments. Lord Savill disagreed with the approach. He made a number of points:

Both the Advocate General and the European Court of Justice were at pains to emphasise that the objective of art 22 is to improve co-ordination of the exercise of judicial functions within the Community and to avoid conflicting and contradictory decisions, thus facilitating the proper administration of justice in the Community

The actions, to be related, must be 'so closely connected that it is expedient to hear and determine them together' to avoid the risk of irreconcilable judgments resulting from separate proceedings. To my mind these wide words are designed to cover a range of circumstances, from cases where the matters before the courts are virtually identical (though not falling within the provisions of art 21) to cases where although this is not the position, the connection is close enough to make it expedient for them to be heard and determined together to avoid the risk in question. These words are required if 'irreconcilable judgments' extends beyond 'primary' or 'essential' issues, so as to exclude actions which, though theoretically capable of giving rise to conflict, are not sufficiently closely connected to make it expedient for them to be heard and determined together. The words would hardly be necessary at all if the article was to be confined as suggested. Indeed, in that event, it seems to me that quite different words would have been used.

In the fourth place, I take the view that to attempt to analyse actions so as to distinguish between different kinds of issues would be likely to add to the complexity of applications under art 22 and thus to the expense and delay in dealing with them. Instead of simply considering whether the actions were so closely connected that it was expedient that they should be heard and determined together to avoid the risk of conflicting decisions, the parties and the court would have to embark upon a sophisticated and difficult exercise of legal analysis, made more complicated by the fact that the court would be dealing not with actual judgments, but with what judgments yet to be given would be likely to contain. It must be borne in mind that art 22 is concerned not with the substantive rights and obligations of the parties, but with the ancillary and procedural question as to where in the Community those rights and obligations should be heard and determined. There is nothing in the 1968 convention that suggests that it is in the interests of the Community that litigation on this question should be made more expensive and time-consuming than is necessary.

48. I fully accept the guidance given by Lord Savill in the above passages. It cannot however in my view be enough to submit (as Mr Budworth does) that any dispute between the same parties relating to the same contract is sufficient to make the disputes related for the purpose of Article 22.

49. On the face of it the claim by SCE in the French proceedings is a straightforward claim in debt for the additional price in relation to goods supplied. It appears to have nothing to do with LGL's claim for a share of the cost savings. If it had been raised in the French proceedings as a set off or cross claim then the two proceedings would obviously have been related and there would have been a risk of conflicting decisions. However where, as here, LGL have elected not to raise the issue in the French proceedings it is difficult to see how the risk of conflicting decisions arises even on the broad test suggested by the European decisions referred to by Lord Savill.

50. In my view therefore there must be considerable doubt as to an application for a stay by SCE under Article 22 would succeed. In those circumstances it is not a material consideration for this application.

51. I am, to some extent, fortified in my view by a consideration of paragraphs 28 to 29 of the judgment of Tuckey LJ in ***Total v Edmonds***,[4] a case that also involved pre-action disclosure :

28 So I turn to discretion. It was here that the Respondents deployed their arguments about justiciability and the mental element required to establish the economic torts which Total rely on. We made it clear from the outset of the appeal that we were not proposing to decide any of the difficult legal issues which these arguments raised. Mr Bloch accepted this, but said that the Judge failed to give sufficient weight to these arguments because his assessment of their merits was wrong. Mr Bloch therefore addressed us on the mental element of the economic torts and why he said the judge was wrong to say that the tort of inducing a breach of contract does not require a desire to injure. We were then addressed by Mr Mendelson Q.C. as to why the judge was wrong to say that issues

[3] [1997] 4 AER 929
[4] [2007] EWCA Civ 50

of justiciability would not necessarily arise and other interesting issues of international law touched on in the judgment.

29. I do not think such arguments are relevant to this application or appeal. Generally when considering an application under CPR 31.16 the court does not need to and therefore should not embark upon a consideration of arguments of this kind. Such applications are in the nature of case management decisions requiring the judge to take a "big picture" view of the application in question. This obviously involves the judge taking a broad view of the merits of the potential claim, but should not necessitate an investigation of legally complex and debateable potential defences or grounds for stay. That is what the Respondents' arguments are in this case and I need say no more about them than that. Mr Greenwood conceded that the situation would be different if a respondent could show beyond argument that the claim was hopeless or non-justiciable or if disclosure of the documents themselves raised non-justiciable issues such as sovereign confidentiality. I agree, but that is not this case.

30. For the same reasons I do not think the court should consider arguments about appropriate forum on an application under CPR 31.16.

52. To put it no higher I agree with Mr Pipe that the arguments under Article 22 for a stay are likely to be complex and debateable and by no means certain to succeed.

9. Matters to be considered under CPR 31.16

53. In the light of the judgment of Rix LJ in Sumitomo it seems to me plain that the requirements of CPR 31.16(3)(a) and (b) are satisfied. If proceedings are issued both LGL and SCE are likely to be parties in the proceedings. On the present state of the evidence all of the documents would appear to be within standard disclosure if proceedings had started; they appear to relate to purchase costs or rebates. However for reasons already given I have not reached a concluded view on the point in respect of individual documents.

54. I turn then to CPR 31.16(3)(d). From a jurisdictional point of view I have to be satisfied that there is a real prospect that one or other of the three criteria are satisfied. To my mind there is such a prospect. Whilst it may be true that LGL could plead a case without the documents they are central to LGL's case. There is a real prospect that they will establish what (if any) cost savings have in fact been achieved by SCE. They are documents that are wholly within the control of SCE. In those circumstances I agree with the submission that no real progress can be made in the case until they are disclosed. It is therefore likely to save costs overall if they are disclosed early; equally there is no prospect of alternative dispute resolution until they are disclosed. I accept that orders under CPR 31.16 are unusual (rather than exceptional) but in the circumstances of this case I see nothing unfair in ordering early disclosure.

55. On the limited information before me I am not satisfied that the documents are disclosable in the French proceedings. On the face of it they are not relevant to the issues in that case. If, contrary to my view, they are disclosable Mr Lewis does not suggest that the French proceedings will be in any way prejudiced by early disclosure (if it is early disclosure).

56. It follows that in my view there is jurisdiction to make an order. It is thus necessary to consider the question of discretion. As Rix LJ points out the discretion is not confined and has to be exercised on the facts of the case. LGL's claim is contractual. There is a contractual right to a share in the cost savings. Whether or not there is a cost saving is wholly within the knowledge of SCE. Thus LGL have no way of knowing whether there have been costs savings even though they have sufficient material to have aroused their suspicions. The documents are thus central to LGL's case both on whether there were cost savings and on their amount. Whilst it is accepted that it would be possible for them to plead a case before disclosure any such pleading would be short on particulars and would be virtually meaningless prior to disclosure. In my view it is in just this sort of case that pre action disclosure is useful and ought to be ordered.

57. Mr Budworth made a number of submissions as to why no order should be made. He submitted that the claim involved allegations of fraud or dishonesty by LGL. In those circumstances he submitted that the court should be slow to order pre-action disclosure. He referred me to paragraph 22(iii) of a judgment of Langley J in ***XL London Market v Zenith*** [5] where he said that there is a particular need for caution and focus when an allegation or possibility of fraud is alleged. In my view this is not a fraud claim. It is a claim under a contract. The documents are not relevant to the question of fraud or the possibility of fraud. They are relevant to the question of cost savings and their amount.

58. Mr Budworth made the point that LGL had sufficient material to issue proceedings in the usual way. It would be impossible for SCE to have them struck out. Thus this is not one of those cases where pre-action disclosure is necessary in order for proceedings to be brought. Whilst there is some force in this submission I do not regard it as decisive. Pre-action disclosure will enable LGL to decide whether there have been costs savings, to identify them and to plead its case accordingly. The pleading will thus be more focussed.

59. In all the circumstances I have decided as a matter of discretion to accede to the application and order pre-action disclosure. I will, however, consider submissions on individual documents or classes of documents on grounds of relevance or even proportionality.

[5] [2004] EWCH 1182