In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN

(1) MICCA FERRERO

(2) RIDA LABABEDI

(3) TIGER TRADING LIMITED

(4) SCI SILVERSTAR 2020 LIMITED

Claimants

and

(1) DRECFORD HOLDING LIMITED

(2) CRAIG COUGHLAN

(3) PATRICK SULZER

Defendants

JUDGMENT OF JUSTICE PAUL HEATH KC

Neutral Citation:	[2025] ADGMCFI 0022
Before:	Justice Paul Heath KC
Decision Date:	12 September 2025
Decision:	Pre action disclosure ordered.
Hearing Date:	23 July 2025
Date of Orders:	12 September 2025
Catchwords:	Pre-action disclosure.
Legislation Cited:	ADGM Commercial Licensing Regulations 2015 ADGM Companies Regulations 2020 ADGM Court Procedure Rules 2016 ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 English Civil Procedure Rules Senior Courts Act 1981 (UK)
Cases Cited:	*Abu Dhabi Commercial Bank PJSC v Manghat* [2024] ADGMCFI 0020. *Assetco plc v Grant Thornton UK LLP* [2013] EWHC 1215 *Black v Sumitomo Corporation* [2001] EWCA Civ 1819 *BTI 2014 LLC v Sequana SA* [2023] 2 All ER 303 (UKSC) *Carillion Plc (in liq) v KPMG LLP* [2020] EWHC 1416 (Comm) *Eng Mee Yong v Letchumanan* [1980] AC 331 (PC) *Hands v Morrison Construction Services Ltd* [2006] EWHC 2018 (ChD) *Hutchinson 3G UK Ltd. v O2 (UK) Ltd* [2008] EWHC 55 (Comm), *Total E&P Soudan SA v Edmonds* [2007] EWCA Civ 50
Case Number:	ADGMCFI-2025-160
Parties and representation:	Peter Smith of Charles Russell Speechlys LLP for the Claimants No appearance by, or on behalf of, the First and Second Defendants Patrick Hennessey of Mohammed Al Dahbashi Advocates LLC for the Third Defendant

JUDGMENT

The application

1. Messrs Micca Ferrero, Mr Rida Lababedi, Tiger Trading Ltd ("**Tiger Trading**") and SCI Silverstar 2020 Ltd ("**SCI Silverstar**") (together, the "**Claimants**") seek orders for pre-action disclosure[1] (the "**Disclosure Application**") against Drecford Holding Limited ("**Drecford**") and its directors, Mr Craig Coughlan and Mr Patrick Sulzer (together, the "**Defendants**").

2. Despite having been served and provided with an opportunity to appear and be heard on the Disclosure Application, neither Drecford nor Mr Coughlan took any steps to oppose. In those circumstances, on 9 June 2025, the Claimants filed an application for summary judgment, including an application seeking permission, (the "**Summary Judgment Application**") to obtain the orders sought against Drecford and Mr Coughlan.[2] I granted permission for the Summary Judgment Application to be made in an order issued on 20 June 2025.[3]

3. As the Summary Judgment Application is designed to obtain against Drecford and Mr Coughlan materially the same orders sought in the Disclosure Application against Mr Sulzer, I shall deal with both applications under the rubric of the Disclosure Application.

4. Mr Sulzer has actively opposed the Disclosure Application, primarily on the basis that he had "*virtually no knowledge or involvement in anything pertaining to the [intended claim] and played no active role in the management or operations*" of Drecford.[4]

5. The Disclosure and Summary Judgment Applications were heard together on 23 July 2025. The Applications raise important questions about the nature and scope of this Court's powers to order pre-action disclosure, and the factors that ought to be taken into account in making any such decision. Because Mr Smith, for the Claimants, contended that the Court's discretion to refuse an order was narrow,[5] I reserved my decision to study the legislative provisions and authorities to which Mr Smith had referred, as the issue has not previously been considered by this Court.

Structure of judgment

6. I consider the Disclosure and Summary Judgment Applications as follows:

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[1] ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**Courts Regulations**"), section 36(2). The application is brought as a claim under rule 30 of the ADGM Court Procedure Rules 2016 (the "**ADGM CPR**"). Section 36(2) is set out at paragraph 32 below.
[2] ADGM CPR, rule 68(1).
[3] Permission was required under rule 30(5) of the ADGM CPR.
[4] A summary of the alleged facts on which the intended claim is based is set out at paragraphs 9-27 below.
[5] During the course of oral argument, Mr Smith contended that compared with the English Civil Procedure Rules, "*the fetters on [the] discretion are far narrower*" (see Transcript of Hearing dated 23 July 2025, page 13, line 22). This submission was based on the wording of section 36(2) of the Courts Regulations, and rule 86 of the ADGM CPR.

a. First, I set out relevant background facts. Because the underlying allegations are untested, my summary is necessarily provisional in nature. My aim is to provide a sufficient factual context on the basis of the materials currently before the Court, to explain the reasons for the decisions I have made.

b. Second, I consider an application by Mr Sulzer for permission to admit a late witness statement which was tendered to respond to allegations that he lacked credibility and had acted in an unacceptable commercial manner.

c. Third, I review the relevant legislation and authorities to identify the principles that must be applied in deciding whether orders should be made.

d. Fourth, I explain my reasons for my decision on the Disclosure and Summary Judgment Applications.

e. Fifth, I deal with questions of costs.

Background facts

7. Mr Ferrero holds 25% of the issued share capital in Drecford. Those shares are held on trust for a third party whom it is unnecessary to name. Mr Ferrero also holds 100% of the shareholding in Tiger Trading, an entity through which he made a substantial investment in Drecford after having subscribed for his shares. Tiger Trading is a private holding company based in the Seychelles.

8. Mr Lababedi also holds 25% of Drecford's issued share capital. He too made a substantial investment in Drecford, through SCI Silverstar, a company based in Monaco, in which Mr Lababedi holds a 100% interest. Mr Lababedi is also the chairman of a separate company that provides financial advice and asset management services to private clients.

9. Drecford was incorporated on 29 May 2019, in the Abu Dhabi Global Market ("**ADGM**"). Its status is that of a "*Special Purpose Vehicle and Private Company Limited by Shares*". Drecford was established by Mr Coughlan, who holds the remaining 50% of its shareholding. Its purpose was to raise funds from outside investors to finance the purchase of cash crops and other commodities and facilitate their transfer to other markets. Primarily, these business activities involved the sale and transport of goods from Europe and Asia to businesses in various African countries.

10. Drecford's ADGM trade licence expired on 28 May 2024, and has not been renewed. Although a "*corporate service provider*" is required for a company such as Drecford, one is not currently in place.[6] A "*corporate service provider*" is an entity licensed pursuant to the ADGM Commercial Licensing Regulations 2015, to carry out the controlled activity of

[6] See paragraphs 22 and 23 below.

providing company services.[7] The last activity in the public register maintained by the ADGM Registration Authority and Financial Services Regulations Authority is marked: "*Company is in contravention of ADGM's commercial legislation for failure to deliver the confirmation statement*".

11. The ADGM online register shows Mr Coughlan and Mr Sulzer as having both been appointed as directors in 2019. Mr Coughlan has been a director since incorporation, 29 May 2019. Mr Sulzer was appointed on 20 November 2019. Neither Mr Coughlan nor Mr Sulzer is recorded as having resigned as a director. Mr Coughlan is Drecford's "*authorised signatory*". Both Mr Ferrero and Mr Lababedi acquired their shares in Drecford on the same day as Mr Sulzer was appointed, 20 November 2019.

12. Mr Sulzer is a Swiss citizen, who is said to have extensive experience in the United Arab Emirates with company formation, registration, management and strategy. It appears that neither Mr Ferrero nor Mr Lababedi have had any material interactions with Mr Sulzer since his appointment as a director. They have dealt, principally, with Mr Coughlan.

13. Drecford has a wholly owned subsidiary called Drecford FZ LLC ("**Drecford FZ**"), which was incorporated in the Ras Al Khaimah Economic Zone. The evidence indicates that Drecford FZ is likely to be Drecford's operating company.

14. Having provided a brief introduction to the relationships among the various parties, I now outline the circumstances in which the Claimants say that they have a likely claim against the Defendants in respect of which pre-action disclosure is required. I do so briefly, on the basis that while an anticipated claim should have a "*real prospect of success*", courts generally discourage a detailed investigation of complex and debatable issues of law at the pre-claim stage.[8]

15. Messrs Ferrero and Lababedi appear to have met Mr Coughlan in or about 2013 and had established a business rapport with him. They were aware that he had previously worked at Merrill Lynch. Mr Ferrero and Mr Lababedi, over time, became satisfied of Mr Coughlan's business credibility.

16. Mr Ferrero and Mr Lababedi seem to have become involved in discussions with Mr Coughlan in 2019 about possible investments. They were allegedly told by Mr Coughlan that any investment in Drecford would be secure, given both the state of the African commodities market and Drecford's internal business requirement of 90-day liquidity. On the basis of those discussions, Mr Ferrero and Mr Lababedi say that they introduced Mr Coughlan to third parties to explore investment opportunities.

17. Initially, this seems to have been on a private basis (through Tiger Trading and SCI Silverstar), at the time Messrs Ferrero and Lababedi acquired their shares. Later further

[7] ADGM Companies Regulations 2020, section 296A(2)(b). Generally speaking, a company service provider is required to maintain records listed in section 296B. Failure to notify the Registrar of Companies that the company no longer has a company service provider has the consequence of rendering any defaulting person liable to a fine: section 296C.
[8] *Carillion Plc (in liq) v KPMG LLP* [2020] EWHC 1416 (Comm) at paragraphs 66(v) and 68.

funds were invested to provide working capital for Drecford FZ. This was done through a convertible note into which the Claimants entered in reliance on a Note Placement Letter, dated "*August 2020*" (the "**Note**"). The offer was directed to selected private individuals rather than the public at large. The subscription amount was a total of €500,000. The Note was to reward investors with a coupon of 8% per quarter from the time of inception. Mr Ferrero and Mr Lababedi allege that Mr Coughlan misrepresented the nature of Drecford's business and likely returns from their investment.

18. Until sometime in 2022, relations among the parties appear to have been good. During this period, it appears that Mr Coughlan provided relevant financial data on request. In or about January 2023, Mr Coughlan is said to have approached the Claimants and other Note Holders to discuss conversion of the debt held in the Note to a bond (the "**Bond**"). A prospectus was issued by Drecford for that purpose around 1 January 2023.

19. The Claimants now allege that false representations were made in the prospectus, on the basis of which various investors subscribed to the Bond. In total, it is said that funds totalling between USD 15 million and USD 20 million were invested through the Bond issue.

20. SCI Silverstar sought and received a redemption of part of its investment in 2022. Correspondence took place in 2023, by which the Claimants sought further redemptions of investments in the Note/Bond. The email exchanges that followed suggested attempts by Drecford to delay payment. A coupon payment under the Bond, due in March 2023, had been delayed by three months. Further coupon payments due in January, April, July and September 2024 do not appear to have been received by relevant investors. The reasons given for not paying seem somewhat suspicious; on the face of it, they give the impression of an attempt to explain away solvency concerns by proposing unsubstantiated options, including the introduction of "*a new and substantial lead investor*".

21. From September 2023, Mr Ferrero has attempted to obtain information from Drecford, Mr Coughlan and third parties to ascertain the current financial position of Drecford, and why any deterioration may have occurred. In particular, Mr Ferrero contacted TrustQore, Drecford's fiduciary in Mauritius, which manages Drecford's documents. Emails to TrustQore went unanswered.

22. In October 2023, Mr Ferrero was contacted by a representative of M-HQ Ltd ("**M-HQ**"), a corporate services provider in the United Arab Emirates which had acted on Drecford's corporate registration with the ADGM authorities. M-HQ was seeking routine "*know your customer*" information. At the time, M-HQ was Drecford's corporate services provider.[9] On 23 November 2023, M-HQ requested information to fulfil its role as a corporate service provider. It became clear, from that request, that over five months had passed since necessary due diligence information had last been provided by Drecford. M-HQ wrote:

[9] See paragraph 11 above.

"*In recognition of our business relationship, we kindly reach out to you one last time to request your cooperation in providing the outstanding information and documentation by 25th November. Respectfully, if we do not receive the additional information requested by this date, we will have no other option than to initiate formal termination of our services as appointed [corporate service provider] pursuant to Rule 12(6)(b) of the Commercial Licensing Regulations … and inform the ADGM Registry Authorities of the basis of our resignation*".

(Emphasis added)

23. The Claimants were aware that M-HQ's resignation as corporate service provider ran a serious risk of sanction by the ADGM authorities and/or Drecford being struck off the register. Attempts were made by Mr Ferrero to obtain further documents from the ADGM Registration Authority. On 5 January 2024, Mr Ferrero was advised that it could not provide the information unless requested by the corporate service provider. By this stage, none was in place.

24. Mr Sulzer appears to have played no role in the Claimants' efforts to obtain relevant information. However, pre-action disclosure is sought from him on the basis that he is a director of Drecford. Mr Sulzer complains that he was not aware of the requests for information until the Disclosure Application was made. He considers that "*all of the material allegations in the [intended claim] relate exclusively*" to Mr Coughlan. In his first witness statement, Mr Sulzer said:

> "6. … *While it is correct that I was appointed as a company director of [Drecford] in 2019, my role was very limited and I had no knowledge of the matters in this dispute and am simply not in possession of any documents or information of the nature sought by the Claimants who appear to have misunderstood or misrepresented my involvement with [Drecford].*
>
> 7. *… my appointment as a director of [Drecford] was purely administrative: I had no involvement in the day-to-day operations and management of the company or knowledge of specific investment strategies or client relationships".*
>
> …
>
> *17. In the circumstances I request that the [Disclosure] Application against me be dismissed with an order that the Claimants pay my costs of having to deal with what appears to be a speculative attempt to bully someone who the Claimants know full well had nothing to do with any of the matters in dispute".*
>
> (Emphasis added)

25. In my view, as a matter of ADGM law, Mr Sulzer understates the legal and equitable obligations that he owed to the company and potentially to relevant stakeholders, by virtue of holding the office of director.

26. In his Skeleton Argument, Mr Smith identified the circumstances in which it was said that Mr Sulzer became an active director of Drecford, apparently as a nominee of TrustQore. That company administered the Note and was responsible for making payments to Note Holders.

27. Mr Smith framed Mr Sulzer's involvement by reference to information that had been provided by Mr Coughlan, who is averred to have been intimately involved with the management and operations of Drecford. Mr Smith summarised the Claimants' position as follows:

    a. On 27 December 2019, Mr Sulzer was described by Mr Coughlan as being "*our new company Director, on behalf of [Geneva Management Group; to which I refer by its present name, TrustQore]*". He was provided financial information regarding investments into Drecford ("*please see attached Drecford Investor Breakdown...*"); asked for his "*help and involvement in all of this, which will help me focus on our performance and business development*"; provided other key financial documents including executed Note placement letters, executed assignment agreements, the loan agreement between Drecford and Drecford FZ; and he was indirectly asked to "*start working with an auditor to ensure our performance and financials are audited*".

    b. On 7 January 2020, TrustQore introduced the "*team...that will take care of the administration and accounting*" for Drecford, with "*an online access to the Citi account*" and as a recipient of "*all related legal documentation*". The Claimants infer that Mr Sulzer was part of that team. It is submitted that, as Drecford's operations developed, so did TrustQore (and by extension Mr Sulzer's involvement). TrustQore's accounting team attended discussions with Drecford and Mr Coughlan to "*discuss the layout of investment reports, time frame etc*" on 17 February 2020.

    c. Geneva Management Group (of whose team Mr Sulzer was a member) was said to have had "*direct account access*" to Drecford's Citibank account from 8 January 2020, confirmed by TrustQore on 17 February 2020, enabling them to "*confirm the method/formulas to calculate what can be distributed*" under the Note, having been asked by Mr Coughlan to do this on 11 February 2020. It is said that TrustQore sought various documents from Drecford in a chain of emails headed "*preliminary accounting queries*" including evidence explaining transfers of funds on 3 March 2020, and sought corporate documents from Drecford including share certificates, subscription agreements and share purchase agreements between Mr Coughlan and Mr Ferrero and Mr Lababedi. Mr Coughlan is said to have supplied TrustQore with answers on 15 March 2020 and 23 March 2020. TrustQore was said to have been asked to, and did, assist in producing financial statements for investors on 23 April 2020.

Additional evidence proffered by Mr Sulzer

28. An application for pre-action disclosure is, necessarily, summary in nature. The Court does not embark on a detailed assessment of the evidence said to support the making of an order.[10] In the absence of such evidence being tested by cross-examination, evidence from the witnesses must be taken at face value. The generally accepted exceptions to that rule were articulated by Lord Diplock, giving the advice of the Privy Council in *Eng Mee Yong v Letchumanan*.[11] His Lordship said that a Court will not normally resolve material conflicts of evidence or assess the credibility of deponents to an affidavit on a summary application. But it need not "*accept uncritically*" evidence that is lacking in credibility, as for example where the evidence is "*...lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent or [is] inherently improbable...*".[12] This general statement of principle is important when considering whether the late witness statement that Mr Sulzer sought to produce should be admitted in evidence.

29. My summary of background facts has been drawn primarily from witness statements made by Mr Patrick Gearon, a partner in the law firm Charles Russell Speechlys LLP in Dubai (which acts for the Claimants), including a witness statement dated 26 March 2025 ("**Gearon 1**") and a witness statement from Mr Sulzer in response. At present, I have no means of knowing which version of contested facts would be accepted if a trial of an intended proceeding eventuated.

30. Following the last of Mr Gearon's witness statements, Mr Sulzer made a late application to admit an additional witness statement that he had made on 22 July 2025. This had only been served on the Claimants about 20 minutes before the hearing on 23 July 2025 began. The late application was made to respond to what he perceived as unwarranted attacks on his credibility, character and reputation. I admitted the witness statement on a *de bene esse* basis, saying that I would rule on admissibility in my judgment.

31. I have decided to admit the additional witness statement from Mr Sulzer. However, I place no weight on it for the purpose of my decision. As I have said, it is not my function, on an application for pre-action disclosure, to make credibility findings. I must decide whether the grounds for an order have been made out, based on the criteria identified in the relevant legislation and authorities. I admit the additional statement for the limited purpose of allowing Mr Sulzer to respond to Mr Gearon's evidence, so that if any proceedings do follow, there can be no suggestion that he has allowed those allegations to go unchallenged. Deliberately, I make no comment as to whether or not Mr Gearon's allegations are justified or not.

[10] See paragraph 14 above and paragraph 51 below.
[11] *Eng Mee Yong v Letchumanan* [1980] AC 331 (PC).
[12] Ibid, at 341.

The nature and scope of the pre-action disclosure regime

(a) The statutory regime

32. The Disclosure Application is brought under section 36(2) of the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**Courts Regulations**"). Section 36(2) provides

> ***"36. Powers of the Court of First Instance exercisable before commencement of action***
>
> ...
>
> *(2) The Court of First Instance, on the application of a person who appears to that Court to be likely to be a party to subsequent proceedings in that Court shall, in such circumstances as may be specified in court procedure rules, have power to order a person who appears to it to be likely to be a party to the proceedings and is likely to have or have had in his possession, control, 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, control, custody or power; and*
>
> *(b) to produce such of those documents as are in his possession, control, custody or power to the applicant or, on such conditions as may be specified in the order, to any advisors of the applicant."*
>
> (Emphasis added)

33. Rule 86(1) of the ADGM Court Procedure Rules 2016 (the "**ADGM CPR**") supplement (but do not materially affect) the scope of the jurisdiction conferred by section 36(2) of the Courts Regulations. Rule 86(1) provides:

> ***"86. Order for disclosure***
>
> *(1) Pursuant to and except as provided by practice directions, the Court can make an order for disclosure in relation to any documents it considers relevant to the subject of the proceedings at any time prior to or after the commencement of proceedings.*
>
> ...."
>
> (Emphasis added)

34. There are no specific disclosure provisions within Practice Direction 2 ("**PD 2**") that impact on the powers conferred by section 36(2) of the Courts Regulations, or , in this context, rule 86(1) of the ADGM CPR. However, paragraph 2.64 of PD 2 does set out relevant definitions of the terms "*document*", "*copy*" and "*electronic document*" for the purpose of any type of disclosure order that might be made, whether pre-action, during the course of the proceeding, or against non-parties.

(b) The scope of the Court's jurisdiction

35. During oral argument, I discussed the questions of jurisdiction and discretion with Mr Smith. His submission was that the Court's discretion to refuse a pre-action disclosure application was narrow. He based that submission on a comparison of section 36(2) of the Courts Regulations and rule 86(1) of the ADGM CPR, on the one hand, with section 33 of the Senior Courts Act 1981 (UK) and rule 31.16 of the (English) Civil Procedure Rules (the English Civil Procedure Rules) on the other.[13]

36. The primary jurisdiction of Courts of England and Wales to make pre-action disclosure orders is found in section 33 of the Senior Courts Act 1981 (UK), which is in materially the same terms as section 36(2) of the Courts Regulations. Both contain the qualifier, "*in such circumstances as may be specified in the rules*". The difference in approach between the English and ADGM legislation lies in the way in which the ADGM CPR and the English Civil Procedure Rules respectively complement the power conferred by the primary legislation. While rule 86(1) of the ADGM CPR adds nothing to the section 36(2) power, rule 31.16 of the English Civil Procedure Rules creates additional jurisdictional requirements. Rule 31.16 of the English Civil Procedure Rules states:[14]

> ***"31.16 Disclosure before proceedings start***
>
> *(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;*

[13] Rule 13.16 is set out at paragraph 36 below.

[14] The chapeau to section 33(1) of the Senior Courts Act 1981 (UK) states: "*On the application of any person in accordance with rules of court, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order ...*". Compare with section 36(2) of the Courts Regulations, set out at paragraph 32 above.

(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.

(4) An order under this rule must –

(a) specify the documents or the classes of documents which the respondent must disclose; and

(b) require him, when making disclosure, to specify any of those documents –

(i) which are no longer in his control; or

(ii) in respect of which he claims a right or duty to withhold inspection.

(5) Such an order may –

(a) require the respondent to indicate what has happened to any documents which are no longer in his control; and

(b) specify the time and place for disclosure and inspection."

(Emphasis added)

(c) The elements of section 36(2) of the Courts Regulations

37. In my view, section 36(2) of the Courts Regulations[15] identifies three linked pre-requisites to the making of a pre-action disclosure order. They are:

a. The applicant must be someone who appears to the Court "*to be likely*" to be a party to any subsequent proceedings;

b. The defendant must appear "*to be likely*" to be a party to the proceedings;

[15] Set out at paragraph 32 above.

c. The defendant "*is likely*" to have or have had in his possession, control, custody or power any documents which are relevant to an issue arising or likely to arise out of the intended claim.[16]

38. For convenience, I refer to those three elements as the "*likelihood criteria*". The first two are replicated in rule 13.16(3)(a) and (b) of the English Civil Procedure Rules.[17]

39. The nature and purpose of the two likelihood criteria set out in rule 13.16(3)(a) and (b) of the English Civil Procedure Rules was discussed in *Black v Sumitomo Corporation*.[18] Delivering the principal judgment of the Court of Appeal, Rix LJ (with whom Ward and May LJJ agreed) noted that there was no statutory requirement that "*a claim … is likely to be made*".[19] Rather, the likelihood criteria were directed to the likelihood of the applicant and respondent being parties to subsequent proceedings. Rix LJ added that the words used appeared "*to emphasise … that the parties concerned in an application are parties who would be likely to be involved if proceedings ensued*".[20] This removed the need for a claimant to establish, at the time of making an application, whether "*the disclosure would critically support or undermine the prospective claim*".[21]

40. In that context, Rix LJ concluded that the term "*likely*" meant no more than "*may well*". His Lordship added:[22]

> "*72. … Where the future has to be predicted, but on an application which is not merely pre-trial but pre-action, a high test requiring proof on the balance of probability will be both undesirable and unnecessary: undesirable, because it does not respond to the nature and timing of the application; and unnecessary, because the court has all the power it needs in the overall exercise of its discretion to balance the possible uncertainties of the situation against the specificity or otherwise of the disclosure requested. …*"

41. In my view, Rix LJ's approach, in *Black v Sumitomo Corporation*, should be adopted in respect of the three likelihood criteria set out in section 36(2) of the ADGM Courts Regulations.

(d) Interpreting the statutory provisions

42. I start by considering the nature of a pre-action disclosure application. The English courts have recognised that such an application is "*in the nature of a case management decision*" which follows an evaluation of whether the request furthers the overriding objective of the English Civil Procedure Rules: generally, see *Hands v Morrison Construction Services Ltd*,[23]

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[16] See also rule 86(1) of the ADGM CPR as to the element of relevance. Rule 86(1) is set out at paragraph 33 above.
[17] Rule 31.16 of the English Civil Procedure Rules is set out at paragraph 36 above.
[18] *Black v Sumitomo Corporation* [2001] EWCA Civ 1819, at paragraphs 70-73.
[19] Ibid, at paragraph 70.
[20] Ibid, at paragraph 71.
[21] Ibid.
[22] Ibid, at paragraph 72.
[23] *Hands v Morrison Construction Services Ltd* [2006] EWHC 2018 (Ch) at paragraph 30.

Total E&P Soudan SA v Edmonds[24] and *Carillion Plc (in liq) v KPMG LLP*.[25] A similar approach in ADGM is justified by the comparable rules 2 and 8 of the ADGM CPR, which deal respectively with the scope and objectives of the ADGM CPR and the Court's general powers of management.

43. Rules 2(2) and (3) and 8(1) of the ADGM CPR state:

> ***"2. Scope and objective***
>
> ...
>
> *(2) The overriding objective of these Rules is to secure that the system of civil justice in the ADGM Courts is accessible, fair and efficient.*
>
> *(3) The ADGM Courts must interpret and apply these Rules and any practice direction with a view to securing that the Court is accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged.*
>
> ...
>
> ***8. The Court's general powers of management***
>
> *(1) The Court may make any order, give any direction or take any step it considers appropriate for the purpose of managing the proceedings and furthering the overriding objective of these Rules as set out in Rule 2(2).*
>
> ...."

44. In *Abu Dhabi Commercial Bank PJSC v Manghat*[26] Justice Sir Nicholas Patten considered the relevance of rule 8(1) when determining whether the ADGM Courts could make an order for train of inquiry disclosure, notwithstanding the absence of a specific provision such as that contained in Model E of the English Civil Procedure Rules Practice Direction. The Judge held that the ADGM Courts could make such an order. He said:[27]

> *"2. ... There is no equivalent to these provisions in the ADGM CPR, but the court has power under ADGM CPR rule 8(1) to make any order or give any direction which it considers appropriate for the purpose of managing the proceedings and under ADGM CPR rule 86(1) and (2) it may order disclosure on a different basis from standard disclosure. ..."*

[24] *Total E&P Soudan SA v Edmonds* [2007] EWCA Civ 50 at paragraph 29, set out at paragraph 51 below.
[25] *Carillion Plc (in liq) v KPMG LLP* [2020] EWHC 1416 (Comm) at paragraph 68.
[26] *Abu Dhabi Commercial Bank PJSC v Manghat* [2024] ADGMCFI 0020.
[27] Ibid, at paragraph 2.

45. I take the same approach in this case. While the term "*shall*" is used in section 36(2) of the Courts Regulations and the word "*can*" in rule 86(1),[28] those words, as precursors to the Court's "*power*" to make an order, convey the right of the Court to exercise that power but do not make it mandatory to do so. In my view, once the likelihood criteria have been established, the Court has a general discretion whether to make an order which will turn on a balancing of relevant factors (not all of which will apply in any given case) and the desirability of securing a "*fair and efficient*" system of civil justice and avoiding unnecessary disputes over procedural matters.[29]

46. While not incorporated expressly into ADGM law, the "*desirability*" criterion set out in rule 31.16(3)(d) of the English Civil Procedure Rules[30] is a relevant consideration, for the purpose of that balancing exercise. I include the "*desirability*" factor in my assessment of where the balance lies, on the basis that it is to be treated as a discretionary factor rather than one that goes to jurisdiction.[31]

(e) The "likelihood criteria"

47. I am satisfied that the Claimants have established all three elements of the "*likelihood criteria*",[32] in the sense in which that term was interpreted by the English Court of Appeal in *Black v Sumitomo Corporation*.[33] In the circumstances described in Mr Gearon's witness statements (to which I have referred, albeit incompletely) I consider that the Claimants are likely to be parties to subsequent proceedings of the type to which I shall refer and that the Defendants are likely to be parties to the same proceeding. In addition, I consider it likely that each of the Defendants has had in its or his "*possession, control, custody or power*" documents relevant to an issue likely to arise out of any such claim.

48. While it is not necessary to point to an arguable cause of action to provide jurisdiction to make an order, it is necessary to do so to determine the scope of any order for pre-action disclosure. That decision must be made in the context of a potential claim in order to assess whether the Defendants have had or are likely to retain documents that are relevant for the purposes of the intended proceeding. In other words, the scope of disclosure cannot be determined without reference to the potential cause of action.

49. I consider that arguable causes of action have been established. Without going into detail, they include: (a) alleged misrepresentation by Mr Coughlan personally and in the prospectus issued by Drecford; and (b) potential breaches of duties owed by directors of Drecford to the company, and potentially to relevant stakeholders.[34]

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[28] Section 36(2) of the Courts Regulations is set out at paragraph 32 above. Rule 86(1) of the ADGM CPR is set out at paragraph 33 above.
[29] ADGM CPR, rule 2(2) and (3), set out at paragraph 43 above.
[30] Set out at paragraph 36 above.
[31] See rule 31.16 of the English Civil Procedure Rules, set out at paragraph 36 above.
[32] See paragraph 38 above.
[33] *Black v Sumitomo Corporation* [2001] EWCA Civ 1819, at paragraphs 71-73, set out at paragraphs 38-41 above.
[34] Generally, see *BTI 2014 LLC v Sequana SA* [2023] 2 All ER 303 (UKSC).

50. Although Mr Sulzer denies having relevant documents in his possession, control, custody or power and appears to make light of his role as a director, I do not consider that he should be excluded from any order. He accepts that he was a director of Drecford at material times. Even if (as he asserts) he had no operational or management involvement, he retained the duties of oversight and supervision required of any director. In other words, whether Mr Sulzer is likely to have any documents to disclose is a separate question from whether he should be exempt from an order to search for and disclose them. The relevance of documents that are or may be in the possession, control, custody or power of each of Mr Coughlan and Mr Sulzer in their capacity as directors of Drecford falls to be considered by reference to potential claims under the Companies Regulations 2020, at common law or in equity.

51. In forming that view, I adopt English authorities which have made it clear that it is unnecessary for the Court to embark on a detailed analysis of a proposed claim. In particular, I refer to the judgment of the Court of Appeal of England and Wales in *Total E&P Soudan SA v Edmonds*,[35] in which Tuckey LJ (with whom Jacob and Moore-Bick LJJ agreed) said:[36]

> *"... 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."*
>
> (Emphasis added)

(f) Discretion

52. The next question is whether, and if so to what extent, it is appropriate to make orders against Drecford, Mr Coughlan and/or Mr Sulzer. I set out below the factors that I consider should be balanced in making that decision.

53. First, I refer to *Carillion*, in which Jacobs J considered applications for pre-action disclosure in the Commercial Court. The Judge said:[37]

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[35] *Total E&P Soudan SA v Edmonds* [2007] EWCA Civ 50.
[36] Ibid, at paragraph 29.
[37] *Carillion Plc (in liq) v KPMG LLP* [2020] EWHC 1416 (Comm) at paragraph 15.

> *"15. Applications for pre-action disclosure in the Commercial Court are relatively rare, and the authorities to which I was referred contain no recent examples of successful applications. The 2018 edition of the White Book (paragraph C1A-010) said that pre action disclosure orders are "far from a foregone conclusion especially in the Chancery and Commercial courts." In Hutchinson 3G UK Ltd. v O2 (UK) Ltd. [2008] EWHC 55 (Comm), Steel J. said (at [55]) that in order to obtain pre-action disclosure, the circumstances must be outside the "usual run"; and that the absence of any convincing grounds for distinguishing the case from the normal run would be telling grounds for not exercising the court's discretion in favour of pre-action disclosure. In Assetco plc v Grant Thornton UK LLP [2013] EWHC 1215, Blair J. said (at [17]) that it was important to bear in mind that, certainly in the commercial context, a pre-action disclosure order is, if not exceptional, unusual. That case shows that pre-action disclosure of audit working papers is not viewed as the norm for audit negligence in the Commercial Court, notwithstanding that such documents will in due course likely be core documents for disclosure once the proceedings have started and pleadings have been exchanged."*

54. While the English cases necessarily proceed on the footing that the criteria set out in rule 31.16(3) of the Civil Procedure Rules must be considered individually, it seems to me that the question to be decided by this Court is whether, under the relevant ADGM framework, it is appropriate to make an order in the terms sought having regard to the overriding objective set out in rule 2(2) and (3) of the ADGM CPR, and the broad case management discretions conferred by rule 8(1) of the ADGM CPR.[38] I do not consider that the characterisation of a particular claim (for example, one that would fall within the jurisdiction of the Commercial Court in England) is helpful in determining whether to make an order.

55. I consider that, in the context of this particular case, the following factors speak in favour of making an order for pre-action disclosure:

    a. The nature of the relationship between the parties. Drecford was under the operational control of Mr Coughlan. Mr Sulzer had a responsibility to perform his duties of oversight and supervision as a director of Drecford. Messrs Ferrero and Lababedi (despite their attempts) have limited ability to obtain documents about Drecford's financial position.

    b. There is an asymmetry of financial information between that to which Mr Coughlan did (and Mr Sulzer ought to have had) access in their capacity as directors of Drecford (on the one hand) and the Claimants (on the other).

    c. The desirability of allowing the Claimants to have access to relevant documents, so that they can make informed decisions on whether to proceed with any claim. Using

[38] Rules 2(2) and (3) and 8(1) of the ADGM CPR are set out at paragraph 43 above.

the criteria set out in rule 31.16(3)(d) of the English Civil Procedure Rules,[39] the advantages of ordering pre-action disclosure include the possibility of resolving any dispute without the need for substantive proceedings and savings in costs.

56. The possibility of resolving the dispute without the need for substantive proceedings necessarily takes into account the costs and risks of litigation. I accept Mr Smith's submission that production of relevant documents without the need for substantive proceedings may cause or assist resolution of the dispute, with consequential benefits to the parties.

57. Having reached the view that those factors justify orders against all three Defendants, I turn to whether the classes of documents sought are necessary to enable the Claimants to assess potential liability; particularly when substantial documentation (produced in support of the Disclosure Application) is already within the possession of the Claimants, all of whom are making serious allegations against Mr Coughlan and Mr Sulzer.

58. I have reviewed the draft orders submitted by the Claimants in Gearon 1. I am satisfied that the scope of the disclosure sought is reasonable; certainly, it would not be oppressive to require each of the Defendants to provide pre-action disclosure on condition that their reasonable costs of making disclosure were met.

59. Mr Sulzer asserts that he does not have any documents to disclose. If that were so, he will be able to serve an appropriate document for the purpose of confirming that fact to the Claimants. It is my intention that disclosure and production of documents occur within the usual format of a Redfern Schedule, supported by a disclosure statement.

60. The Claimants also seek an order granting permission for them to use and disclose documents and/or information provided under compulsion of a Court order in *any forum*; this would include an arbitration, and (presumably) mediation, expert determination or some other form of alternative dispute resolution.

61. Rule 89(1) of the ADGM CPR limits the use of such documents to Court proceedings. I am not prepared to make an order as to use on a prospective basis, and in a vacuum. There will be general liberty to apply by which the Claimants can seek permission for extended use, should that prove necessary. Evidence will be needed in support of any such application to explain the purpose to which it is intended the documents be put.

62. For those reasons, orders will be made reflecting the substance of the orders submitted by the Claimants with the Claim, with adjustments to reflect the Claimants' concessions at paragraph 49 to their Skeleton Argument filed on 16 July 2025 in advance of the hearing, that the Claimants do not seek disclosure: (i) of the "*2019 and 2020 Accounts*" (as defined in Gearon 1) from any of the Defendants; and (ii) of the Class 3 documents from Mr Sulzer.

[39] Set out at paragraph 36 above.

Costs

63. The Claimants have succeeded on both the Disclosure and Summary Judgment Applications. On that basis, they are entitled to costs. Subject to paragraph 64 below, such costs are to be summarily assessed on the standard basis, if not agreed.

64. Equally, the Defendants are each entitled to receive from the Claimants their reasonable costs of making disclosure. These will be summarily assessed if not agreed.

65. Having indicated that the Claimants are entitled to costs on the Summary Judgment and Disclosure Applications respectively, I reserve quantum, to be determined once the cost of the Defendants making disclosure is known. I will make orders for those costs to be set-off against any costs payable to the Claimants on the Disclosure and Summary Judgment Applications.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
12 September 2025