Appeal No. CA-2025-003233

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM

THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (KBD)

The Hon. Mr Justice Bryan

BETWEEN:

(1) TITAN WEALTH SERVICES LIMITED

Claimant

(2) TITAN ASSET MANAGEMENT LIMITED

Claimant/Appellant

– and –

(1) TAVISTOCK INVESTMENTS PLC
(2) TAVISTOCK ASSET MANAGEMENT LIMITED

Defendants / Part 20 Claimants/Respondents

(3) BENJAMIN SCOTT RAVEN
(4) STEVE MALCOLM MCGREGOR
(5) BRIAN KENNETH RAVEN

Defendants

– and –

TITAN WEALTH HOLDINGS LIMITED

Third Party

RESPONDENTS' SKELETON ARGUMENT

---

24 March 2026

A. INTRODUCTION

1. This appeal concerns a case management decision made during a heavy procedural hearing following full written and oral argument from all parties.

2. The Appellant seeks to appeal one part of Bryan J's decision to grant the Respondents (together **'Tavistock'**) permission to rely on the Amended Defence and Counterclaim (**the 'AD&CC'**), and in particular his decision to permit Tavistock to rely upon a new counterclaim for breach of confidence relating to a model portfolio service (**'MPS'**) created by Titan using information and copyright works from Tavistock (**the 'MPS Confidential Information Claim'**). The Appellant and its related parties (together **'Titan'**) do not appeal the permission to rely upon the copyright limb of the MPS claim, or any other amendment permitted by the Judge.

3. In this appeal Titan is raising points not raised at first instance, unfairly attacking the evidence of a witness who has had no opportunity to respond, stating as fact points which are live issues in dispute, raising arguments on the merits of the MPS Confidential Information Claim which would require a mini-trial, and unfairly criticising the approach of a Judge navigating a hearing made considerably more complex by the approach taken by Titan itself – which included pursuing arguments certified as totally without merit, and abandoning large parts of its hard-fought opposition during the course of the hearing (Titan having incurred costs of £925,812.60 (Judgment [8]) in relation to its wholesale opposition to any amendments being permitted).

4. The threshold for permission to amend is relatively low. The threshold for interference on appeal with a case management decision is high. The MPS Confidential Information Claim is at this stage, entirely properly, raised on an inferential basis pending disclosure. Titan understands the nature of that claim and has pleaded a response to it. The claim has a real prospect of success.

5. Titan's position had and has an "air of unreality", including because Titan both disputes the confidentiality of the information relied upon whilst at the same time (as acknowledged in its appeal skeleton at §47 **[CORE/3/32]**) refusing to

disclose documents containing that very information because Titan says that they were confidential.

6. The Judge gave ex tempore judgment (**the 'Judgment'**) **[CORE/10/86]** during the course of a heavy procedural hearing with only one day allocated. The MPS Confidential Information Claim is one limb of a counterclaim within a complex dispute, started by Titan, with statements of case running to over 200 pages. Titan's focus on Tavistock's witness evidence is entirely new to this appeal. Its focus on AD&CC 153E was raised for the first time at the hearing below, despite Titan having sought clarification on other elements of this claim.

7. The Judge was right to grant permission to amend for the reasons he gave. However, as the Judgment necessarily deals with some points briefly given its ex tempore nature, Tavistock has filed a Respondent's Notice out of an abundance of caution.

B. APPROACH TO APPEAL AGAINST CASE MANAGEMENT DECISIONS

B1. Principles governing approach to appeal against discretionary case management decision

8. The principles on the approach of appellate courts to first-instance case management decisions were summarised by Coulson LJ in *Jalla v Shell International Trading and Shipping Co Ltd* [2021] EWCA Civ 1559 at [27]-[30]. These include the following:

    8.1 it is "*vital for the Court of Appeal to uphold robust, fair case management decisions by first instance judges*" even if the case management decision in question had a very significant impact on the proceedings;

    8.2 in such a case the Court of Appeal "*can only interfere with the decision of the lower court if the judge had regard to a factor that was irrelevant or failed to have regard to a factor that was relevant, or if the judge's discretion was 'clearly wholly wrongly exercised'*"; and

8.3 as part of its consideration of the over-riding objective, "*the court should consider the effect of the application in question on the administration of justice and upon other court users*".

9. The principles on the interference with a discretionary evaluation on these grounds were set out by Saini J in *Azam v University Hospital Birmingham NHS Foundation Trust* [2020] EWHC 3384 (QB); (2021) 178 BMLR 38 at [48]-[52], approved by this Court in *ABP Technology Ltd v Voyetra Turtle Beach Inc* [2022] EWCA Civ 594; [2022] E.T.M.R. 33 at [21]. The judge identified the limited categories in which an appellate court will interfere at [50], and emphasised at [51] that for a decision to be 'plainly wrong', it must be one which '*has exceeded the generous ambit within which reasonable disagreement is possible'.* Saini J. continued at [52]:

> *…What is clear is that the hurdle for an appellant is a high one whenever a challenge is made to the outcome of a discretionary balancing exercise. The appellate court's role is to police a very wide perimeter and it will be rare that a judge who has exercised a discretion having regard to relevant considerations will have come to a conclusion outside that perimeter. I would add that an appellate court is unlikely to be assisted in such challenges by a simple re-argument of the points made to the judge below…*

10. Respect for the proper role of a first instance judge requires the Court to guard against the excessive forensic scrutiny that can come from pursuing individual points on appeal. As Lord Hoffmann said in *Piglowska v Piglowski* [1999] 1 W.L.R. 1360 at 1372:

> *An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself.*

11. That principle applies with particular force to a discretionary case management decision explained in an ex tempore judgment given over the course of a heavy procedural hearing.

B2. Proper approach to an amendment application

12. Titan does not suggest that the Judge misdirected himself in relation to the principles as to how he should exercise the broad discretion to grant permission to amend conferred in CPR 17.3. The Overriding Objective is the most important consideration. A comprehensive review of the case law was set out by Bryan J himself in *Invest Bank P.S.C. v El-Husseini* [2024] EWHC 1235 (Comm) at [24]-[54].

13. Any amendment must have a real prospect of success. In general, however, it is not otherwise appropriate to consider the strength of the proposed amendment: *CNM Estates (Tolworth Tower) Ltd v Carvill-Biggs* [2023] EWCA Civ 480; [2023] 1 WLR 4335 at [48]-[49] (Males LJ). In that case, the Court of Appeal also emphasised that:

> *unless it can be seen that a claim has no real prospect of succeeding, its merits should be determined at a full trial. The warnings against mini-trials apply with just as much force to applications to amend as they do to summary judgment or jurisdiction disputes.*

14. In this case, the Judge properly directed himself on all of these matters, setting out these citations at [39]-[46]. Those authorities included the decision in *Rose v Creativityetc Ltd* [2019] EWHC 1043 (Ch) at [50]:

> *The test is comprehensibility and not elegance. The drafting of almost any pleading could be improved with hindsight and the task for the judge in assessing whether this precondition has been satisfied is not to assess the stylistic qualities of the draft but to see if it sets out the amending party's case in such a way that the other party knows the allegations it has to meet."*

B3. Titan's appeal requires Court to take approach which it should not adopt

15. Titan's appeal is framed in a way which does not respect the above principles, or the proper function of an appellate court more broadly. In particular:

    15.1 As noted above, it is not suggested that the Judge misdirected himself.

15.2 The issue which is the focus of the present appeal, namely AD&CC 153E, was not the centre of attention on the MPS Counterclaim until the oral hearing itself, as the Judge noted at [129]. Importantly, the attempted criticisms of Tavistock's evidence in Raven 1 were not made at all before Titan's appeal skeleton, and are new points not raised before the Judge.

15.3 The Court is invited to consider the Judgment in light of the points actually raised below as opposed to those raised for the first time on appeal. These are set out in:

(a) Tavistock's skeleton argument §§46, 48-50 **[SUPP/17/245-246]**;

(b) Titan's skeleton argument §§37-46 **[SUPP/18/269-272]**; and

(c) The oral submissions: Transcript pp.80-127 **[SUPP/19/298-309]**.

15.4 It is also important to understand the enormous volume of material presented to the Judge by Titan as part of its wholesale and wholly unreasonable opposition to the amendment of the claim: see Judgment at [1], [6]-[9] and [38] **[CORE/10/87-89, 94]**. The hearing determined numerous issues (Judgment [1]), every one of which was strongly contested by Titan, including:

(a) Titan's opposition to Tavistock's application to join the Third Party (which Titan abandoned during the hearing: Judgment [112] **[CORE/10/114]**);

(b) Titan's wholesale opposition to Tavistock's application to amend its Defence and Counterclaim to add other allegations to Tavistock's Counterclaim;

(c) Titan's application for summary judgment and/or strike-out of numerous limbs of Tavistock's existing counterclaim, which overlapped with Titan's opposition to the AD&CC but which ultimately fell away when that part of Titan's case was abandoned part-way through the hearing: Judgment [112] and [192]; and

(d) The Third Party's jurisdiction challenge under CPR 11, which was held to be "misconceived" and was formally certified as "totally without merit": Judgment [56], [64] **[CORE/10/99, 101]**.

15.5 Titan's oral submissions focused almost entirely on AD&CC 153E: Transcript pp.102-121 **[SUPP/19/303-308]**. Prior to the hearing, Titan had given no indication of any objection to this paragraph specifically. Indeed, it had positively indicated that 153E was not the issue which prevented it from consenting to the amendments. In a Request for Further Information of 27 November 2025, addressed in the Judgment at [119]-[126] **[CORE/10/122-123]**, Titan itself indicated that it did not need further information of the kind now asserted as inadequate in order to consent to Tavistock's proposed amendments and plead a defence to the counterclaim. Titan's current assertions that it cannot understand the claim against it should be rejected given its own approach prior to the hearing before the Judge.

15.6 Titan also invites this Court to overturn the case management decision of the Judge below on the basis of asserting they are correct on issues which the Judge decided against them, and against which there is no appeal. In particular:

(a) The Appeal Skeleton argument asserts, as fact, controversial factual matters which the Judge refused to deal with summarily. At §1 **[CORE/3/18]**, Titan says that the Titan MPS "*never in fact launched*". This was the subject of extensive evidence below but the Judge rightly refused to determine dispute issues or fact or conduct a mini-trial: see [106]-[108], [137] **[CORE/10/113, 126]**.

(b) The Appeal Skeleton also contends at §28 **[CORE/3/27]** that "*C2 retained all its IP rights*" (by reference to an "Annex on the Intellectual Property Rights"). This is irrelevant to any issue in Titan's appeal, but it was another point which Titan advanced before the Judge and lost: see the Judgment at [182]-[188] **[CORE/10/139-140]**. The Judge rightly considered that a determination of this issue

would require a mini trial. There is no appeal against this decision but Titan now advances a case on appeal inconsistent with it.

(c) The points on which the Judge is said to have failed to engage with Titan's argument (Ground 3) include factual contentions which were dealt with by the Judge in terms by concluding that they were not suitable for summary determination: Judgment [106]-[108] **[CORE/10/113]**.

15.7 There is a faint suggestion in the Appeal Skeleton that Tavistock's claim in relation to the MPS Confidential Information Claim is an abuse of process: see §11 **[CORE/3/21]**, suggesting that an inference *can* be drawn from a defective pleading that the claim is intended to be harassment rather than to uphold a party's rights: see §14 citing *Ocular Sciences* (below). The Judge was not invited to make such a finding. He cannot now be properly criticised for not doing so.

C. THE BREACH OF CONFIDENCE CLAIM

16. The claims concern the relationship between two financial services groups. On 27 August 2021, pursuant to a Share Purchase Agreement dated 12 August 2021 (**'SPA'**) **[CORE/16/390]**, C2 (**'Titan AM'**) was sold by D1 to C1. The principal effect was that the Titan group acquired Titan AM and with it, the business of managing a group of related investment funds known as the Acumen Funds. Titan chose not to acquire another business run by Tavistock, which was a model portfolio service (**'MPS'**) provided to financial advisers to assist them in advising their clients (specifically the **'Tavistock MPS'**). Rather than acquire the Tavistock MPS, Titan AM entered into an Outsourced Management Agreement (**'OMA'**), pursuant to which it provided various services to Tavistock in relation to the MPS. At the time of the SPA, Titan AM (then owned by Tavistock) had in excess of £1bn of assets under management, the vast majority of which was invested either in the Acumen Funds directly or in the Acumen Funds via the Tavistock MPS.

17. Tavistock's amendments to the AD&CC included new heads of claim arising from the discovery that Titan had used confidential information and copyright works to create its own MPS, mirroring that of Tavistock, despite having previously decided not to acquire the Tavistock MPS during the SPA transaction (the **'MPS Counterclaim'**). The MPS Confidential Information claim is one limb of the MPS Counterclaim.

C1. Tavistock's pleaded case

18. The MPS Confidential Information Claim is pleaded in the AD&CC at 153E-153F and 153M-153V **[CORE/13/243-248]**, as set out at [117] of the Judgment. Given the wide-ranging nature of the dispute, it incorporates factual matters and defined terms in other paragraphs within the AD&CC. The Judgment sets out some of this context at [130]-[136] **[CORE/10/124-126]**, specifically:

    18.1 AD&CC 40A describes the Tavistock MPS (formally defined in AD&CC 35.2). In short, an MPS is a series of different investment strategies and risk levels, with Tavistock selecting appropriate asset classes to suit specific strategies and risk levels. That allows individual investors to invest in a range of products, selected by Tavistock, without having to construct an investment portfolio of their own.

    18.2 AD&CC 54.3 pleads that C1 purchased Titan AM without purchasing the Tavistock MPS, and AD&CC 61 pleads relevant background to the OMA.

    18.3 In AD&CC 121A, Tavistock pleads specific terms of the OMA concerning the handling of confidential information, including:

    (a) Clause 1.1. which defined confidential information in very broad terms: as '*all information…disclosed by either Party to the other Party… in connection with this agreement, which is either labelled as confidential or which should reasonably be considered confidential because of either its nature or the manner of its disclosure*'; and

    (b) Clause 5.1, which provided for Confidential Information to be kept confidential and provided that the parties shall not (by 5.1.1.) '*use*

any Confidential Information for any purpose other than complying with its obligations under this agreement'.

19. None of these paragraphs of the AD&CC is denied in Titan's Amended Reply and Defence to Counterclaim, save in respect of one point of factual detail about the factual background in AD&CC para 61.2: see Amended Reply and Defence to Counterclaim at 28.3.3. **[CORE/14/328, 330, 333, 352]**.

20. As Bryan J noted at [141], the pleaded background *"involves a relationship with the two parties whereby it was contemplated that confidential information would be transmitted, with provisions in the relevant OMA that such confidential information should not be used in the terms that are set out in the OMA, and an allegation that a rival product to the Tavistock MPS was set up using that information by the Claimants"*.

21. On 27 November 2025, Titan wrote to Tavistock saying that *"there may be scope for the parties to avoid troubling the Court with their respective applications if your clients were able to provide further and better particulars…"* **[SUPP/15/218]**. The Judge rightly found, in the context of the correspondence and applications, that this was clearly indicating that if those questions were answered, Titan would be able to plead a defence to the Counterclaim and would no longer oppose its inclusion: [122]-[125]. This included two requests in relation to the MPS Confidential Information Claim, limited to AD&CC 153N and 153Q. 153E was not included. Tavistock responded by reference to the (then draft) AD&CC: **[SUPP/16/223]**. Titan sought no further information in response.

22. By the time of the hearing below on 11 December 2025, Titan had had many months to seek clarification of Tavistock's case on the MPS Confidential Information Claim. It had sought clarification, had received it, and apparently was satisfied.

C2. The Parties' evidence

23. Both parties put evidence before the court to assist its understanding of the parties' positions on the MPS Confidential Information Claim.

24. Titan relied upon the Second Witness Statement of Yasseen Gailani of 1 August 2025 (**'Gailani 2'**) **[SUPP/7/46-116]** and the Third Witness Statement of Yasseen Gailani of 20 October 2025 (**'Gailani 3'**) **[SUPP/12/183-205]**, both of which contained a considerable amount of hearsay evidence: Judgment [106]-[107]. Titan adduced no evidence from any person with first-hand knowledge of the matters in issue.

25. Tavistock relied upon the witness statement of Benjamin Raven **[SUPP/10/152]** in support of the MPS Confidential Information Claim (**'Raven 1'**). Mr Raven is the Third Defendant and is the Managing Director of Wealth Management at the First Defendant. Raven 1 sets out evidence of the management of the Tavistock MPS and of the running of an MPS in general from Mr Raven's personal knowledge as referred to and quoted in the Judgment at [143]-[150].

C3. Analysis of the MPS Confidential Information Claim

26. The MPS Confidential Information Claim is appropriately inferential at this stage of the proceedings given the disparity in knowledge between the Claimants and the Defendants: Judgment [151]. The level of particularity was closely considered by the Judge, who applied the appropriate standards with the necessary degree of care.

Legal principles of particularity in confidential information claims

27. The Judge set out the applicable principles in relation to duties of confidence at [93]-[105] **[CORE/10/106-112]**.

28. First, he noted that it is important to ensure that a claimant gives full and proper particulars of all the confidential information on which they intend to rely in the proceedings: *Ocular Sciences Ltd v Aspect Vision Care Ltd (No. 2)* [1997] RPC 289 per Laddie J at [359], cited in the Judgment at [98].

29. However, the degree of particularisation required is not the same in all cases, and is not the same at all stages of a case of this nature. The Judge was taken to the dicta of Arnold LJ in *Shenzhen Senior Technology Material Co Ltd v Celgard LLC* [2020] EWCA Civ 1293; [2021] F.S.R. 1 at [48], which makes clear that:

> *What amounts to sufficient particularisation must depend on the circumstances of the individual case, however. Furthermore, a lesser degree of particularisation may be acceptable at the outset of a case than at later stages of the case. Still further, I accept that it is relevant to take into account the claimant's ability to provide further particulars, and the extent to which the claimant has been hampered by obstructiveness, or at least non-cooperation, on the part of the defendant. In the circumstances of the present case, I consider that Celgard has done enough for now, although it will undoubtedly have to give further particulars at a later stage.*

30. Further, in *Gulati v MGN* [2013] EWHC 3392 (Ch), Mann J. said, in an often-cited dictum:

> *It is a familiar state of affairs that a claimant is ultimately reliant on disclosure from the other side in order to bring his case home, particularly in cases where the nature of the wrong is such that the defendant's activities were covert so that, if the case is good, the defendant is likely to have a substantial amount of material in its hands with no equivalent in the hands of the claimant. Unless the prospects of getting disclosure are 'fanciful', the claimant is generally entitled to maintain its case in those circumstances.*

31. These authorities make clear that proper particularisation in a breach of confidence claim depends on the circumstances of the case, in which the conduct of the defendant is relevant and a lesser degree of particularisation can be appropriate at the outset of a claim before disclosure has taken place. This was acknowledged by the Judge at [152] and is not disputed: Appellant's Skeleton §44 **[CORE/3/31]**.

Particulars of information relied upon

32. The information on which Tavistock relies is defined at AD&CC 153N as the **'Tavistock MPS Information'**. This comprises:

32.1 **the Tavistock MPS** as described at AD&CC 40A;

32.2 **'Investment Information'**, defined at AD&CC 153E as *"instructions as to which investments were to be onboarded for the Tavistock MPS"*, which includes and is not limited to the **'Investment Emails'** annexed to the AD&CC by way of example; and

32.3 Model Portfolios (defined as **'MPs'** at AD&CC 35.2), explained at AD&CC 41.1 as comprising *"a basket of investments selected and managed by Tavistock AM in line with a strategy and within a risk or volatility range which is set out in a publicly available factsheet"*.

33. The pleading is deliberately broad, because it is Tavistock's position that all of this information was confidential within the scope and purpose of the relationship between these parties.

34. That is neither legally nor commercially surprising. From a commercial perspective, the Tavistock MPS was fundamentally a business asset which depended on the analysis of information, and judgments made, about the selection of a portfolio of investments to recommend. When Tavistock's 'Investment Team' which had been doing the work prior to the SPA moved, under the SPA, from Tavistock to Titan, but the MPS did not, it was agreed that – under the OMA – the Investment Team (now acting as 'Titan') would continue to provide many of the same services for the Tavistock MPS as they had previously done as employees of Tavistock.

35. The Judge had no difficulty in appreciating the nature of the case, which he summarised clearly (albeit not completely comprehensively) at [130]-[137].

36. From a legal perspective, it is also far from unusual. At [105] the Judge rightly cited Megarry J in *Coco v AN Clarke (Engineers) Ltd* [1968] F.S.R. 415, where it was said:

> *In particular, when information of commercial or industrial value is given on a business like basis and with some avowed common object in mind, such as a joint venture or the manufacture of articles by one party for the other, I would regard the recipient as carrying a heavy burden if he seeks to repel a contention that he was bound by an obligation of confidence.*

37. As noted above, paragraph 153N clearly pleads that the confidential information relied on includes both investment information and information about the structures of the MPS which was used in the work under the OMA. Despite this, the Appeal Skeleton focuses almost exclusively on paragraph 153E and, moreover, on the examples of documents set out there, rather than the underlying allegation which those documents relate to.

38. There is a clear plea that the information included instructions as to which investments were to be onboarded for the Tavistock MPS. This is the answer to Titan's assertion that it cannot understand the case on the information said to have been disclosed. Further particularity is not required or appropriate before disclosure, because Tavistock cannot yet know what information was used by Titan.

39. Titan asserts at §4 of its skeleton that the MPS Confidential Information Claim brings "significant disclosure consequences" which make it "hard to envisage how disclosure can be meaningfully restricted". This is an artificial and unfounded complaint. While disclosure will be required, it will be limited in time and will be limited to documents relevant to that specific part of the parties' relationship. The scope of the claim is limited to information connected with the Tavistock MPS.

Confidentiality of information

40. This claim is about Titan copying investment information in real time to create a competitor product to the Tavistock MPS when they should have been doing the work for Tavistock under the OMA. Selection of assets in the portfolio is at the heart of the business of an MPS. It is self-evidently confidential. This is expressly pleaded at AD&CC 153N and supported by the evidence of Raven 1 §§25-28 **[SUPP/10/157]**, as set out at Judgment [147]. These passages were not criticised by Titan. There was no evidence to contradict them.

41. After investments are made, some information about each MP is published in factsheets for financial advisers to use with their clients and in order to satisfy regulatory requirements: AD&CC 153G. Once that information is published it is plainly no longer confidential. This is why the definition of Tavistock MPS

Information at AD&CC 153N covers each part of the Tavistock MPS Information “save in so far as that information was deliberately published” by Tavistock.

42. However, such publication obviously does not mean that the information was not confidential before publication. While the choice of which funds to invest in would be made public after an investment is made, that choice is confidential before it is made. This is an obvious and essential aspect of investment strategy. As Mr Raven says at paragraphs 26-27, put before the Judge at Transcript pp.92-93 **[SUPP/19/301]**:

> *… if a successful fund or portfolio makes a profitable investment and this is reflected in the factsheet which is published later, other competitors may copy the strategy and hope to benefit from the successful fund's expertise by doing so. However, by the time that the factsheet showing the profitable investment is made public, the value of the relevant investments will have changed. A fund which mimics other funds' investments using public factsheets will often be behind the curve and will lose out on some of the profit made by the original fund because it identified the opportunity earlier than others. If a rival fund or portfolio service has access to investment decisions in real time, then it does not have that disadvantage and can copy the investment strategy much more successfully, thereby positioning itself as a rival more successfully. For this reason, investment research and analysis is highly confidential and a significantly valuable asset for a firm such as Tavistock.*

43. Titan has never grappled with this point. They did not address it at or before the hearing below, and they do not address it in their skeleton argument for this appeal.

44. Confidentiality also extends to other information, in addition to the selection of investments, which is “necessary to implement the Tavistock MPS". Reading 153E and 40A/41 together: the MPS is pleaded to be comprised of a series of investment strategies at different risk levels (40A). Each given portfolio is managed in line with a strategy (40A, 41.1). The designated risk classifications for the portfolios are internal classifications (41.3). 153E cross-refers to all of

that in pleading that Tavistock communicated information necessary to implement the MPS, and 153N pleads that all of the information about the MPS, its constituent portfolios, and the selection of investments was all confidential. The famous dictum in *Coco* (above) makes it clear that there is – at the very least – a real prospect of establishing as duty of confidence over all of this information, and the OMA's express obligation supports that as well.

45. In simple terms, Tavistock's case is that all information about the selection of investments is confidential to Tavistock until and unless it is published, and (pursuant to the OMA and the equitable duties of confidence) was to be used by Titan only for the purpose of discharging its obligations under the OMA. It was not supposed to be used by Titan to set up a rival MPS. This is supported by the breadth of the definition of confidential information within the OMA, to which both parties agreed in entering into the OMA, as set out above and in the Judgment at [135].

46. Titan's own position in relation to disclosure and in its appeal skeleton supports the conclusion that this information is confidential. As Titan explains at §47 of its skeleton, it resists disclosure of "*the key documents associated with the Titan Active, Passive, and Sustainable MPS profiles including…Full details of the investment histories from 31 January 2023 to 1 October 2024, including all details of investments and rebalancing*" because it *"declined to open up **its confidential documents** for inspection […] in the context of such broad requests"* (emphasis added). It is not tenable for Titan to argue, as it does, that documents of this nature are confidential when it is asked to disclose them but are not confidential in the context of the OMA.

47. Titan's skeleton §§17-23 invites the Court to ignore all of this. It also ignores the cross-reference to para 40A and 41 in 153E, unlike the Judge, who set it out in the Judgment at [130]-[132] and [136]. Titan sets up a straw man by focusing only on the limited set of emails provided by Tavistock expressly as examples of the onboarding process. It does not engage at all with the underlying point that all information about the selection of investments is confidential. Whether that is actually the case is a matter for trial, but it cannot be said that Tavistock's pleaded case on this is unclear or unarguable.

48. Indeed, the material before the Judge shows that it is in fact understood by Titan. Although Titan (no doubt with this appeal in mind) pleads its defence to 153E by criticising the adequacy of the pleading (Amended Reply and Defence to Counterclaim 112E **[CORE/14/367]**), it is plain from the material before the Judge that it understands that the claim against it is that (among other things) information about investment decisions was confidential to Tavistock. Gailani 2 sets out a factual case as to why Titan says this is wrong: see paragraphs 69-71 and 99 at **[SUPP/7/84-85, 93-94]**. The Judge, during the course of argument, put to Titan's leading counsel that this allegation was clear and could be admitted or denied; Titan's leading counsel explained the factual case advanced by Titan and confirmed that it would be denied: Transcript pp.104-105 **[SUPP/19/304]**.

Circumstances in which the information is said to have been transmitted

49. Titan refers to this in Ground 2 of its appeal but does not address it in its appeal skeleton. In so far as necessary for Titan to understand the claim, the circumstances are the relationship between the parties from the OMA onwards, as acknowledged in the Judgment at [141]. Information will have been communicated between the parties during the course of their commercial relationship under the OMA. The exact circumstances and precise mechanism by which it was shared cannot at this stage be determinative of whether the MPS Confidential Information Claim has real prospects of success. It would be artificial to say otherwise.

Circumstances in which the information is said to have been misused

50. Like many confidential information claims, this is a claim in which (if Tavistock is right) Titan knows what information was used and Tavistock does not. This is why pleading an inferential case before disclosure is an approach endorsed by the authorities and approved by the Judge in this case. Tavistock cannot know what pieces of information were misused to create the Titan MPS. It can only know that through disclosure. Tavistock has sought that disclosure, and Titan has resisted it on the basis that the information sought is "confidential".

51. Raven 1, rightly accepted by the Judge, sets out at §32 categories of the confidential information to which Titan had access which would have been helpful in creating the Titan MPS: (i) structure and applicable risk factors (pleaded in AD&CC 40A and 41, and therefore in 153E and 153N); (ii) investment strategy and onboarding (AD&CC 153E, 41.1 and 153N); and (iii) selection of assets for rebalancing portfolios to bring them back in line with risk designation (another example of Investment Information).

52. In its appeal skeleton at §43, Titan criticises Raven 1 §32 as "carefully worded" because Mr Raven does not expressly state that he had reason to believe that Titan used the information that he identifies. This demonstrates nothing (and was not raised below). To pass the relatively low threshold for permitting this amendment, the Judge simply had to be satisfied that the claim had real prospects of success.

53. For these purposes it does not matter at all whether Mr Raven states that he personally has reason to believe that Titan used the information to create the Titan MPS. What matters is whether the Court can draw a reasonable inference that Titan did. In circumstances where (a) Titan had access to all of the information identified in Raven 1 §32; (b) the information would have been helpful to Titan in creating an MPS; (c) Titan actually did create an MPS; and (d) Titan has refused to give disclosure, the Court can draw that inference. It is not for Mr Raven to do so in his witness evidence.

54. The first sentence of AD&CC 153M sets out the belief that the information was used, and it carries a statement of truth signed on behalf of all of the Defendants including (although he is not a claimant in the counterclaim) Mr Raven himself **[CORE/13/258]**.

55. As to Titan's assertion in its appeal skeleton at §27 that *"it is not suggested that Titan had to act exclusively for Tavistock and thus could not 'onboard' the same publicly available funds for its own benefit"*, that is simply wrong:

    55.1 Firstly, Titan mischaracterises Tavistock's pleaded case. It is expressly pleaded at AD&CC 153R that Titan AM owed a contractual and/or equitable obligation of confidence to Tavistock AM not to use the

Tavistock MPS Information for any purpose other than complying with its obligations under the OMA. It is precisely Tavistock's case that Titan could not 'onboard' the same publicly available funds for its own benefit. Titan denies this in paragraphs 112N-112O of its responsive Amended Reply and Defence to Counterclaim **[CORE/14/369-370]** on the basis that the supporting paragraphs are "vague and defectively pleaded", but does not address the scope of its obligations as to use of Confidential Information as defined under the OMA (the terms of which Titan admits at 80A **[CORE/14/352]**).

55.2 <u>Secondly</u>, Titan ignores that the choice of which funds to invest in is confidential before the investment is made and later publicised. This is an obvious and essential aspect of investment strategy, as explained in Raven 1 §§26-27. The fact that the funds themselves were publicly available is irrelevant.

56. Titan argues that C2 had the skills and expertise to set up an MPS itself, and hints that there was nothing "particularly special or distinctive about the Tavistock MPS": Appeal skeleton §8. The argument that Titan "had used its own skills and knowledge to develop its own MPS" is nowhere near sufficient on its own to dismiss summarily the inference raised by Tavistock's pleading and evidence, let alone to argue that the Judge was "plainly wrong" to allow the MPS Confidential Information claim to proceed on this basis. In any event, Tavistock was entitled to the exclusive benefit of the investment information produced by Titan's "skills and knowledge" under the OMA, as pleaded at Amended Reply to Defence to Counterclaim 18E.1 **[CORE/15/386]**.

57. Titan's comments on the nature of the Tavistock MPS should be disregarded because they (a) were not raised below, do not speak to Titan's Grounds of Appeal, and are raised for the first time in Titan's appeal skeleton; (b) ignore Tavistock's pleaded case that the Tavistock MPS Information had commercial value because it is secret, expressly pleaded at AD&CC 153P; (c) are legally irrelevant, because the test for confidential information does not depend on the information being "special or distinctive"; (d) are unsupported by evidence, would be disputed and would require a mini-trial to determine, which would

have been inappropriate at first instance and is impermissible in this appeal; and (e) even if true, would at best, form part of the fact-sensitive inquiry of the wider circumstances to be conducted at trial, not dismissed summarily in an amendment application.

D. TITAN'S GROUNDS OF APPEAL

58. Titan's appeal is limited to whether the MPS Confidential Information claim has a real prospect of success. Titan does not raise any argument against Tavistock's pleading on points relevant to the Trade Secrets Regulations. These are not in the Grounds of Appeal and need not be considered by the Court.

59. There is overlap between the Grounds of Appeal, which are not addressed separately in Titan's skeleton. Tavistock addresses each separately below.

D1. Ground 1 – Failure to apply appropriate standards of particularity, coherence and evidential support

60. Titan does not suggest that the Judge identified the wrong standards. Its points on particularity fall under Ground 2, and its points on coherence and evidential support fall under Ground 3. This does not appear to be a free-standing ground of appeal but will be addressed separately in oral submissions as necessary.

D2. Ground 2 – Failure to apply the degree of care necessary

61. It is undeniable that the Judge applied a considerable degree of care in considering the MPS Confidential Information Claim. Oral argument covers 48 pages of the hearing transcript (from pp.80-128 **[SUPP/19/298-310]**). Discussion of the claim (setting aside the legal principles) occupies 46 paragraphs and 17 pages of the Judgment (from §§117-163 **[CORE/10/115-133]**). Even within a demanding hearing day, this is not an issue that was dealt with briskly, in a slapdash manner or without full reasons given. The Judge gave a thorough reasoned judgment which fully addressed all points raised.

62. Titan's criticism on this ground is really limited to one point, reiterated in Appeal skeleton §§35-49: that "*he does not really deal with the inadequacy and self-contradictory nature of the pleading*". This is wrong. The particularity of

the pleaded case occupies much of the Judgment on this claim. Titan does not agree with the Judge's approach, but Titan does not engage with the points raised by the Judge, nor demonstrate why any of those points or the Judge's conclusion was wrong. The specific points raised by Titan now, even if they had merit, would not be enough to put the Judge's determination outside the very wide discretion he had to allow the amendment. Titan's cherry-picking in this appeal ignores the obligation on the Judge to consider the nature of Tavistock's case in the context of the claim as a whole, bearing in mind its inferential nature, as he did at [130]-[141]. It was within the Judge's discretion to determine the level of particularity which was appropriate in this case and he did so. It cannot be said that this discretion was "*clearly wholly wrongly exercised*".

63. The degree of care taken by the Judge is particularly impressive given the circumstances of the hearing and the difficult position in which Titan placed the Court given the amount of material adduced and the opposition to every amendment. The Judge's preparation will have involved attention to the numerous issues raised by Titan which were fundamentally misconceived, meritless and/or abandoned. Judgment was given ex tempore in a hearing which finished at almost 6pm having started early and with a shortened lunch adjournment. The suggestion that the Judge failed to give proper care or deal with specific arguments to the level of granular detail now ventilated by Titan, on a determination which calls for only a relatively low threshold of real prospects of success, is unfair and unrealistic.

D3. Ground 3 – Issues raised in argument

64. The issues raised in argument are at Transcript pp.102/13 to 125/21 **[SUPP/19/303-309]**. The points now advanced in Titan's skeleton argument, <u>some of which were not actually raised in argument at all</u>, are summarised at §48 under the following headings:

What actual information confidential to Tavistock is said to have been used?

65. The Judge addresses this head on at [149]-[158]. Tavistock pleads at AD&CC 153U that the precise nature and scope of use of information is outside its

knowledge. This is explained in the evidence of Raven 1 at §§29-32, now unfairly criticised by Titan as "carefully worded" but not factually disputed. It is within the Judge's very wide discretion to determine the level of particularity that is appropriate in inferential cases of this nature, remembering that each case must be considered on its own facts.

66. Tavistock cannot know matters which are within the sole knowledge of Titan, which is why inferential cases are, and can properly be, pleaded: Judgment [152]. Titan's complaint is that the information is not at this stage particularised. There is nothing inappropriate about that, and it is wrong to say that the Judge failed to address or answer the issue. Titan has entirely failed to take what must be a very large leap from disagreeing with the Judge's determination to demonstrating that it was outside his discretion. It was not.

How can the emails support the case pleaded in 153E?

How can the case pleaded be said to be supported by evidence or be coherent when it is directly contradicted by the evidence of Mr Raven?

67. These points essentially raise the same issues and can be taken together. Titan argues that the Investment Emails are contrary to Tavistock's pleaded case because they comprise instructions given by Titan staff to third party managers of investment funds, copied to a member of Tavistock staff. Titan argues that this is inconsistent with Tavistock's pleaded allegations and "clearly not enough to support a cause of action": Appeal skeleton §§22-23.

68. The emails are expressly pleaded as examples and as such are not a necessary element of AD&CC 153E, which could simply have pleaded that all instructions about what investments were to be onboarded were confidential information to be used only for the Tavistock MPS. Mr Gailani's hearsay evidence (Gailani 2 §99 **[SUPP/7/93]**) was that the information held by Titan about Tavistock's investment decisions was 'self-evidently not confidential'. Mr Raven disagreed: Raven 1 §24 **[SUPP/10/157]**. In light of Megarry J.'s dicta in Coco (see paragraph 36 above) Mr Gailani's stance is difficult to justify, but in any event the judge could not dismiss the claim on this basis without conducting a mini-trial, which he rightly declined to do: Judgment [157].

69. In any event, there is no inconsistency between the Investment Emails and Tavistock's pleaded case. Raven 1 §11 addresses this, explaining Tavistock's case as to the division of functions between them and in particular that decisions on the investments were ultimately made by Tavistock's Investment Committee, on recommendations from the Titan Investment Team. Tavistock's decisions were then implemented. Tavistock's case is that this was done by Tavistock or on behalf of Tavistock by Titan AM under the OMA. This point is now expressly addressed in Tavistock's pleaded case in its Amended Reply to Defence to Counterclaim at 18E **[CORE/15/386]**.

70. This was raised for the first time during oral argument at the hearing below and not mentioned in Titan's hearing skeleton at all. The only purported contradiction identified by Titan is at §21 of its Appeal Skeleton as to how onboarding of investments was to be conducted. Titan draws one point from §11 of Mr Raven's seven-page statement, and ignores that Mr Raven's conclusion in the next paragraph is entirely consistent with Tavistock's pleaded case that "Pursuant to the terms of the OMA, Titan played an administrative role in the provision of investment management services under Tavistock's direction but management of the Tavistock MPS, and in particular the decision-making on which investments should be included in the MPS, was retained by Tavistock".

71. This misrepresents the point that §11 of Mr Raven's evidence actually addressed, which was whether the work performed by the investment team was or was not "self-evidently confidential" as disputed by Gailani 2. The Judge addressed this, and the specific passage of Mr Raven's statement criticised by Titan, in the Judgment at [145]-[147]. The issue here is not that the Judge failed to address or answer the issue raised by Titan. He did not agree with it. He was right not to do so.

72. The Judge considered the arguments raised by Titan and expressly held at [157] that the version of the facts advanced in the claim is "not self-contradictory". Titan will say that it disagrees with this conclusion – and does so, at length. It cannot properly assert, as it does, that the Judge failed to address or answer the point or that, in concluding that this was an issue which should be determined at trial, he exceeded the generous ambit of his discretion.

How can it be said that the pleading is supported by evidence when Mr Raven's evidence is explicitly speculative and/or theoretical?

73. This point was not argued below at all and is raised for the first time in this appeal. The Judge cannot be criticised for "*failing to address or answer*" points not put to him. There is no criticism of Mr Raven's evidence in Titan's hearing skeleton. The highest criticism made during the hearing was to describe Mr Raven's evidence as "*an entirely generalised statement which does not actually identify any particular information which it is said was transmitted or misused*": Transcript p.119/4-5 **[SUPP/19/307]**.

74. Titan now advances various criticisms, most of which (including the criticisms of §11 and §32 of Mr Raven's evidence) have been addressed above. The additional criticism is of §§13-15 (Appeal skeleton §§30-31), which concern whether the Titan MPS was based on the Tavistock MPS. Titan's description of Mr Raven's evidence as "*entirely illogical*" in unwarranted, for two reasons:

    74.1 Firstly, Titan's case is that Mr Raven is illogical for *"excluding the more obvious possibility"* that Titan had created its MPS using its own skills and knowledge. That is a highly contentious factual assertion. The Titan Investment Team had been, and continued to be, closely involved in running the Tavistock MPS. The suggestion seems to be that Titan's Investment Team created a brand new MPS, entirely independently of their other knowledge and activities relating to Tavistock, and onboarded many similar investments, again independently of their knowledge of what was being done on the Tavistock MPS. The net result of this was a very similar MPS offering. In those circumstances the obvious inference is that they are similar because the Titan Investment Team modelled Titan's MPS on the work it was doing, and on the knowledge it already had, from implementing the Tavistock MPS.

    74.2 Secondly, it fails to take into account Tavistock's case that the OMA and duties in equity did preclude Titan from creating its own rival MPS: see paragraph 45 above.

74.3 Finally, as this Court will appreciate, none of this is the sort of issue which can properly be summarily determined on an amendment application. The Judge recognised this, holding that the factual assertions made in Gailani 2 could not properly be the basis of a summary determination on factual issues on an amendment application: see Judgment [106]-[108]. The Judge was right to reach that conclusion.

75. The criticisms now made are an unfair mischaracterisation of Mr Raven's evidence based only on selected extracts (and an inappropriate submission at an interlocutory stage). Titan's characterisation of the entirety of Mr Raven's evidence as "*explicitly speculative and/or theoretical*" is self-evidently wrong, as is clear from any realistic reading of that statement. It is, in any event, not an appropriate submission in the context of this appeal.

D4. Ground 4 – Relevance of pre-action correspondence

76. At [141] the Judge draws the following conclusion <u>from considering the pleaded case alone</u>:

> *Standing back, it is clear enough what the allegations are that are made, and that those, and that pleaded case is not only coherent but gives rise to a cause of action that has a real (as opposed to fanciful) chance of success.*

77. Titan's starting premise in this Ground of Appeal is entirely wrong. This Ground of Appeal only falls to be considered at all if the Judge had held that the MPS Confidential Information Claim was "*vague and unparticularised*" and was only allowed to proceed "*because the Defendants to the claim had failed to provide disclosure*" in response to a letter before action. This is plainly not what the Judge decided, nor why he decided it.

78. Inter-partes correspondence is relevant to the Court's assessment of a claimant's ability to particularise their case, and the extent to which a claimant has been hampered by obstructiveness, or at least non-cooperation, on the part of the defendant (*Shenzhen* above). It plainly must be, as it is the only way that such non-cooperation can be demonstrated. The pre-action protocol correspondence referred to is relevant on its face for this purpose.

79. Even if that were not the case, and if Titan were right that it was not relevant, Titan's Ground of Appeal at its highest would not justify interference with the Judge's decision. The correspondence was not itself determinative of anything. It is referred to in the Judgment at [128] as a secondary point as to the backdrop of the preparation of the claim. It illustrates the "*air of unreality about [Titan's] assertion as to their supposed lack of understanding of the case that is advanced against them*": Judgment [156]. It does not remedy an otherwise unclear claim; as the Judge notes, it is quite clear from the pleading what the allegations are.

E. CONCLUSION

80. The substance of Titan's Appeal Skeleton simply sets out an expanded case as to why Titan disagrees with the Judge's conclusion. However, the Judge's conclusion was well within the scope of his discretion, and was based on a careful analysis of the pleadings and the evidence before him, together with proper consideration of what can, and cannot, be summarily determined on an amendment application. Titan may dislike the claim, but that does not mean either (i) that it is not properly pleaded such that it can be understood and answered, or (ii) that is does not have a real prospect of success. The Judge was right to conclude that the amended claim meets both of those thresholds.

81. As the Judge correctly stated, Titan's position is a further misguided "*attempt to "snuff-out" a viable claim in circumstances where [Titan] hold most of the cards, and do not want to put those cards on the table*": [159]. It should not now be permitted to renew that attack by way of this Appeal.

82. In light of the above, all of the grounds of appeal should be dismissed with costs.

ANNELIESE DAY KC

PHILIP AHLQUIST

Fountain Court Chambers
Fountain Court,
Temple EC4Y 9DH

MARK WILDEN

3PB Barristers
3 Paper Buildings,
Temple, EC4Y 7EU