IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 158 of 2021 (NSJ)

FSD 169 of 2021 (NSJ)

BETWEEN:

INTERTRUST CORPORATE SERVICES (CAYMAN) LIMITED

APPELLANT

AND:

CAYMAN ISLANDS MONETARY AUTHORITY

RESPONDENT

Before:	**The Hon. Mr Justice Segal**
Appearances:	**Mr Colin McKie QC instructed by Campbells appeared on behalf of Intertrust**
	Mr. Martin Rutherford QC instructed by Ms Jodie Woodward appeared on behalf of the Authority
Heard:	**27 April 2022**
Judgment distributed:	**25 May 2022**
Judgment handed down:	**27 May 2022**

HEADNOTE

GCR O.5, r.6(2) and GCR O.12, r.1(2) – body corporate may only take steps in proceedings by "an attorney" – meaning of "attorney" – are in-house attorneys "attorneys" for this purpose?

JUDGMENT

Introduction

1. This application by Intertrust Corporate Services (Cayman) Limited (***Intertrust***) raises a narrow but important point of construction of GCR O.5, r.6(2) and GCR O.12, r.1(2) (the ***Rules***). These Rules deal with the manner in which a body corporate may commence or defend or take steps in proceedings and prohibits a body corporate from so acting "*otherwise than by an attorney*."

2. Intertrust, which has appealed a fine notice and decision notice issued by the Cayman Islands Monetary Authority (the ***Authority***), argues that the reference to "*an attorney*" is to be construed as meaning and as only applying to attorneys working in external law firms and excludes in-house attorneys employed by the relevant body corporate which is a party to the proceedings. The Authority, by contrast, argues that the reference in the Rules to an "*attorney*" is unqualified and general and that there is no basis for interpreting the term as only applying to a particular sub-set of qualified and admitted attorneys. Both in-house and external attorneys are covered.

3. The issue arises in the context of the purported filing by in-house attorneys employed by the Authority of two affidavits, the First Affidavit of Mrs Cindy Scotland, and the First Affidavit of Mrs Angelina Partridge (the ***Affidavits***), on which the Authority wishes to rely in opposition to an application made by Intertrust for further and better discovery from the Authority. The Authority has instructed Ogier to act for it generally in relation to the appeal and judicial review proceedings, and Ogier are the attorneys of record, but it has chosen to instruct and use its in-house legal team for the purpose of advising it on and conducting discovery in those proceedings. Intertrust argues that the filing of these affidavits constitutes a step in proceedings and the filing can only be done by the Authority's external attorneys, Ogier. As a result, the affidavits must be treated as not yet having been properly filed and unless they are filed by Ogier the Authority must be treated as not having filed and served any evidence in opposition to Intertrust's application for further discovery. The Authority argues that the affidavits were properly filed and may be relied on by it in the further discovery application.

4. On 23 March 2022 Intertrust issued two summons (one in FSD 158 of 2021 and one in FSD 169 of 2021) (the ***Summons***) seeking an order that unless Ogier filed the Affidavits by a deadline to be set by the Court, the Authority should be debarred from relying on the Affidavits in the proceedings. The Summons were heard on 27 April 2022. Mr Colin McKie QC appeared for Intertrust and Mr. Martin Rutherford QC appeared for the Authority. At the end of the hearing I indicated that I would dismiss Intertrust's applications. I said that in my view the Authority was right to assert that the reference in the Rules to "*attorney*" covered an attorney employed by the Authority in its in-house legal department (who was generally admitted and authorised to practice in this jurisdiction and acting as an attorney for the body corporate when taking the relevant step in the proceedings). Accordingly, on the basis that the in-house attorneys who filed the relevant affidavits in this case were so admitted, authorised, and acting, the filing was a valid and effective step in the proceedings and the Authority was able to rely on the affidavits in the further discovery application. I briefly explained the reasons for my decision but was invited by Mr McKie QC to confirm and set out those reasons in writing, which I now do.

5. I also noted that the legitimacy and effectiveness of the filing by the Authority's in-house attorneys of the affidavits might be affected by another issue, raised by Intertrust in a further and separate application, namely whether the steps that these in-house attorneys were permitted to take in the proceedings were affected or limited by the fact that Ogier are the attorneys of record for the Authority. Since that separate application had already been listed for a hearing in the near future, on 16 June 2022, it was convenient to leave the consideration of that issue to be dealt with at that hearing.

The background

6. On 11 June 2021, Intertrust filed an *ex parte* application for leave to appeal against the decision of the Authority to issue a fine notice dated 13 May 2021. That application was dealt with on the papers and on 18 June 2021 I handed down judgment granting Intertrust leave to appeal. The cause number of the appeal is FSD 158 of 2021. On 17 June 2021, Intertrust issued a notice of motion (to which was appended a general ground of appeal) by which it appealed the Authority's decision also dated 13 May 2021 to issue a decision notice pursuant to section 18(1)(vi) of the Banks and Trust Companies Act (2021 Revision) (***BTCA***). That notice of motion had been served out of time and accordingly on 24 June 2021 Intertrust issued a summons seeking an order that the time for service of the notice of its intention to appeal as well as its general ground of appeal be retrospectively extended until 17 June 2021. Intertrust's application was heard on 5 August 2021 and my judgment setting out my reasons for granting the extension of time sought by Intertrust was handed down on 30 September 2021 (following my informing the parties on 13 August of my decision). The background to the appeals and to the application which now falls to be considered can be found in those judgments.

7. Intertrust considers that the Authority has failed to comply with its duty of candour and to give adequate discovery in the appeals. Therefore, Intertrust issued two summons dated 22 October 2021 (one in the fine notice appeal and the other in the decision notice appeal) seeking an order pursuant to GCR Order 24, rule 3(1) that the Authority make and serve on Intertrust a list of documents, such list to include any documents within any of the classes of documents set out in the non-exhaustive list at Appendix One of the summons. Intertrust also sought orders that (a) the list of documents be signed "*by the attorneys for the [Authority] and verified by an affidavit sworn on behalf of the Authority*"; (b) pursuant to GCR Order 24, rule 11(2) Intertrust be permitted to inspect within seven days after the date of the order all those documents listed in Appendix Two of the summons, and all other documents listed in Part I of Schedule 1 of the list of documents within seven days after service of the list and (c) that if the Authority asserted a

claim to public interest immunity or legal professional privilege, it must explain and justify the factual and legal bases of such claims at the time of serving the list of documents, and either party be given liberty to apply to the Court to determine any dispute in relation to any such claims.

8. On 23 March 2022, members of the Authority's in-house legal department filed and served (or, as Intertrust claims, purported to file and serve) the Affidavits. Intertrust considered, as I have explained, this filing was of no effect and on 25 March 2022 it issued the Summons seeking an order that unless by 10am on 30 March 2022 either the Authority had caused Ogier to have filed the Affidavits and to have served sealed copies on Campbells or Ogier had undertaken to the Court to do so by that date, the Authority be debarred from relying on the Affidavits in the appeals. Intertrust also sought an order that the Authority pay its costs on an indemnity basis.

The Authority's use of its in-house legal team

9. In her Second Affidavit, Mrs Cindy Scotland gave details of who from the Authority's legal department had been involved in advising on and conducting the discovery process and in filing the Affidavits. She said as follows (at [16]):

> *"Three Legal Counsel from the Legal Division are involved with the 'Intertrust' litigation currently before the Court, supported by a paralegal. These are Angelina Partridge (Deputy General Counsel), Helen Spiegel (Senior Legal Counsel) and Jodie Woodward (Legal Counsel Enforcement) all of whom have current and valid practising certificates which provide them with the right to conduct litigation and rights of audience within the Islands."*

10. The Authority employs six in-house legal counsel of varying seniority. In-house counsel are responsible for advising the Authority as matters arise. The Authority also from time to time instructs outside counsel. The Authority decided to instruct Ogier to advise in relation to the appeals.

11. However, due to the sensitive information that the Authority holds, and its statutory duties established by the Monetary Authority Act (***MAA***), in particular the confidentiality provisions contained within section 50, the Authority decided to instruct its own in-house counsel to conduct the disclosure exercise in relation to the appeals. The Authority often instructs its in-house counsel to act on its behalf (such as when the Authority's counsel represent the Authority in winding-up petitions or when the Authority's in-house counsel represents the Authority in other judicial review matters before this Court and the Court of Appeal).

12. In the present case, the three members of the Authority's Legal Division have been working on the appeals since they commenced. All these individuals (indeed all six members of the Legal Division) are qualified and admitted to practice in this jurisdiction and hold current and up-to-date practicing certificates.

Intertrust's submissions

13. Intertrust's position as set out in its brief skeleton argument filed in advance of the hearing was not easy to follow.

14. Intertrust submitted that the Authority was prohibited from taking steps in the appeals and could only do so by its attorneys on the record but the basis for this proposition was not made clear.

15. Intertrust cited the Rules. They noted that the Rules were in the same terms as their equivalents in the old RSC save that solicitor was used in the RSC instead of attorney. GCR O.5, r.6(2) is in the following terms (underlining added):

> *"Except as expressly provided by or under any Law, a body corporate may not begin or carry on or defend any such proceedings otherwise than by an attorney."*

16. GCR O.12, r.1(2) states as follows (underlining added):

> *The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by an attorney or by a person duly authorised to act on the defendant's behalf but, except as aforesaid or as expressly provided by any Law, such a defendant may not take steps in the action otherwise than by an attorney.*

17. Intertrust noted that the Authority is a body incorporated by statute and said that neither the MAA nor the BTCA permitted the Authority to take steps in proceedings otherwise than by way of an attorney in compliance with the Rules. But the Authority had never argued that the MAA or the BTCA had that effect. The Authority's position was that it was permitted to take steps in proceedings by way of and by instructing its fully qualified in-house lawyers.

18. Intertrust, to meet this point, asserted that the result of the interplay between GCR O. 12, r.1(2) and GCR O. 5, r.6(2) was that the Authority was precluded from taking any steps in the appeals (including the filing of affidavits) other than by their attorneys on the record, that is Ogier. But their skeleton did not explain or cite any authority for the proposition that a body corporate could

only take steps in proceedings by its attorneys on the record, let alone only a sub-category of qualified attorneys.

19. After citing a number of authorities (*Arbuthnot Leasing Ltd. v Havelet Leasing Ltd.* [1991] All ER 591, *Radford v Freeway Classics Ltd.* [1994] 1 BCLC 445, *Crescent Oil and Shipping Services Ltd v Importang UEE* [1997] 3 All ER 428 and *RH Tomlinssons (Trowbridge) Ltd v Secretary of State for the Environment* [1999] 2 BCLC 760), Intertrust asserted that the Rules established that *the Authority can only takes steps in these Appeals through its attorneys on the record*" (my underlining). They said that it was no answer to this "*absolute prohibition*" for the Authority to say that it was acting by in-house attorneys and therefore it does not fall foul of the prohibition and gave two reasons why this was so. First, in *Radford* Bingham MR had "*expressed that the balance between the rules of court (which are not "merely rules for the sake of having rules") and the privileges afforded a body corporate falls in favour of the rules of court*". That was because "*the rules "rest on a basis of fairness and good sense" and the privileges afforded a body corporate come at a price, namely the requirement to act through (external) attorneys*"" (my underlining). Secondly:

> *"the English judges in the cases [cited] would have been very familiar with the terms of the Courts and Legal Services Act 1990 and the Solicitors Act 1974, and the large number of in-house solicitors. They would not have described, in wholly unqualified terms, the absolute prohibition on a body corporate taking steps in proceedings if it did not apply to a subset of bodies corporate, i.e. those who happened to have in-house solicitors. The authorities are long-established and clear, the Authority cannot take steps in these proceedings, including the filing of affidavits; only its attorneys on the record can."*

20. At the hearing, Mr McKie QC, for the first time, made a number of further submissions. He said that they were made in response to the Authority's submissions, which was the explanation why they were not included in Intertrust's skeleton argument. I have to say that I see no reason why the submissions could not have been included in the skeleton. In my view, they should have been.

21. Mr McKie QC put forward an argument (as I understood him) with two steps or stages. First, he submitted, the purpose of the Rules was to ensure that a suitably qualified legal representative was responsible for ascertaining and checking that the company concerned had the requisite *vires* and power to participate in the relevant proceedings and that the decision maker in the company had the requisite authority to authorise the required steps in the proceedings to be taken. The *ultra vires* doctrine which limited the actions which a company could take and made ultra vires transaction void (Mr McKie QC filed just before the hearing a copy of the House of Lords judgment in *Hazell v Hammersmith and Fulham LBC* [1992] 2 AC 1), made it important that the

involvement of bodies corporate in litigation was (to use my words) policed. This was an important protection for other parties to the proceedings. The burden was placed on the company's attorney or solicitor to check *vires* and authority. The other party was not required to work out for itself whether the company had the power and authority to do what it was doing. Second, he argued that this needed to be undertaken by an independent attorney of independent means. This means external attorneys (probably in local law firms). Only they would be sufficiently independent of the corporate client to be able to undertake the verification (again using my term, policing) of the company's power and authority to take the steps in the proceedings. Only they would have the resources to meet an order made against the attorney in case where the steps in the proceedings were taken without authority. Mr McKie QC had also filed just before the hearing a copy of the judgment of the English Court of Appeal in *Airways Ltd v Bowen* [1985] BCLC 355. In that case, an action was dismissed because there was no proper corporate authority authorising the company to be included as an applicant in the proceedings. The court decided (at 362) that "*it must follow that the solicitors, as respondents to the defendants' application, must pay the costs of the action which they have brought without authority*." Mr McKie QC's submission was that the Rules must be interpreted in this context and therefore as referring only to external legal advisers. Mr McKie QC said that the distinction he drew was given support by the fact that the Legal Services Act, when it comes into force, will only compel attorneys in private practice and not in-house attorneys to take out insurance. So there was a risk that in-house attorneys may be uninsured (but he did not take me to the relevant provisions or put in any evidence on these matters). He noted that in-house lawyers as employees might have rights of indemnity against their employers but there would be an issue in at least some cases, for example cases where a company was acting ultra vires, as to whether the in-house attorney would be able to enforce and recover under such an indemnity.

The Authority's submissions

22. The Authority's position was summarised and set out by Mr Rutherford QC at the hearing as follows:

(a). the issue was whether the Authority as a body corporate was required to act in the appeal proceedings only though external attorneys.

(b). all the cases relied on by Intertrust drew no distinction between in-house and external counsel.

(c). there was no basis for Intertrust's assertion that a body corporate was required to act through external counsel.

(d). the Authority accepts that a company must and can only act through an attorney but the Authority had done so.

(e). Intertrust had been unable to point to any prejudice suffered in this case as a result of the Authority conducting discovery and filing affidavits through its in-house attorneys.

(f). the Authority had conducted numerous cases and proceedings through its in-house counsel over twenty-five years without anyone ever having suggested that it had acted improperly.

(g). all the Authority's in-house attorneys are fully admitted and qualified Cayman attorneys.

23. The Authority said that the Chief Justice's judgment in *Telesystem International Wireless Incorporated v CVC/Opportunity Equity Partners LP* [2002 CILR 96] was instructive as to the purpose of the Rules. The Authority cited the following passages from the judgment of Smellie CJ (the underlining is added by me and the highlighting by the Authority):

> *"As I understand it, the principle is not simply that a company which is represented, and therefore can afford legal representation, will also likely be able to satisfy a judgment debt obtained by its creditors. That may or may not be the case. More importantly, what is implied, I believe, is that as attorneys also owe public duties as officers of the court, the court can more readily assume that corporations who are represented by attorneys are more likely to conduct themselves in a responsible manner in relation to litigation before the court. This consideration is itself very complex but an elemental example which can readily and appropriately be identified here would be an undertaking in damages of the type so often given to the court by an attorney on behalf of his client. So special is the nature of his obligations owed to the court that an attorney who causes a worthless undertaking to be put before the court (even without mala fides) may find himself liable in costs and damages… The duty of vigilance such an obligation imposes upon an attorney in no way diminishes when he makes representations on behalf of a client corporation.*
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> *"such a rule, limiting a right of audience on behalf of others to members of the… Bars, secures that the House will be served by barristers or advocates who observe the rules of their profession, who are subject to a disciplinary code, and who are familiar with the methods and scope of advocacy which are followed in presenting*
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> *I think it must be against all that background of the* ***nature of the relationship between an attorney, the court, and the client that one might fully appreciate the significance of the rule that requires representation of a corporation by an attorney****. The rule is to ensure that for all purposes of litigation before the court, a party who is a corporation is as fully bound by the rules of litigation and the orders of the court as any other party who might be present in person or present with an attorney….."*

24. The Authority submitted that having regard to the purpose of the Rules, as explained by the Chief Justice, there was no basis or justification for distinguishing between on the one hand admitted attorneys who were employed by and acting for a corporate client and admitted attorneys employed by or partners in an external law firm which was acting for such a client. The public duties to which the Chief Justice referred applied equally to in-house and external lawyers (who were admitted to practice). The Authority also noted that the relevant primary legislation in the UK, the Courts and Legal Services Act 1990, did not treat in-house and external solicitors differently.

25. Mr Rutherford QC referred to the Authority's evidence which showed that the Authority had informed Intertrust promptly, by a letter dated 14 October 2021, that discovery would be dealt with by its in-house legal department and explained the reasons why the Authority considered this to be necessary. The Authority had explained who in its Legal Department was dealing with discovery and acting for the Authority in the appeals and confirmed that they were admitted and fully qualified to act. The Authority, he said, was acting entirely properly in accordance with the governing legislation and took seriously its responsibilities in relation to its statutory duties and its participation in litigation.

Discussion and reasons for my decision

26. In my view the Authority is right and there is no basis for Intertrust's claim that an admitted attorney employed by the Authority and instructed to act for it in relation to relevant proceedings is not to be treated as "*an attorney*" for the purpose of the Rules.

27. In my view, as the Authority submitted, none of the cases cited by Intertrust are authority for the proposition that, or indeed even deal with the question of whether, the reference in the Rules (or their equivalents in the RSC) to "*an attorney*" is intended or to be interpreted as only applying to a particular type of admitted and qualified attorney:

    (a). *Arbuthnot* considered the question of whether a director of a company could be permitted to appear in person on its behalf in proceedings in which the company was also a defendant (the director was joined to the proceedings to enable him to make an application in relation to orders made against the company). Scott J distinguished between two issues: when could a company take steps in proceedings and who could be permitted to appear on its behalf in proceedings? He noted, in relation to the first question, that RSC O.12, r.1 was "*of statutory effect and prohibits a body corporate from taking a step in an action otherwise than*

through a solicitor….an application by [the company] to vary the injunctions that bind it would constitute a step in the action…Accordingly….any application by [the company] must be made under the authority of a solicitor instructed by [the company]" (see pages 597-598).

(b). *Radford* concerned an application by a director to appear and represent the defendant company. The Court of Appeal dismissed the director's appeal against the judge's order debarring him from acting for the company. Bingham MR said as follows (underlining added):

> *"It is worthy of note that the provisions which I have cited from the rules which require corporations to appear through solicitors are not merely rules for the sake of having rules but rest on a basis of fairness and good sense which indeed, as I understand, Mr Corry understood and accepted. A limited company, by virtue of the limitation of the liabilities of those who own it, is in a very privileged position because those who are owed money by it, or obtain orders against it, must go empty away if the corporate cupboard is bare. The assets of the directors and shareholders are not at risk. That is an enormous benefit to a limited company but it is a benefit bought at a price. Part of the price is that in certain circumstances security for costs can be obtained against a limited company in cases where it could not be obtained against an individual, and another part of the price is the rule that I have already referred to that a corporation cannot act without legal advisors. The sense of these rules plainly is that limited companies, which may not be able to compensate parties who litigate with them, should be subject to certain constraints in the interests of their potential creditors."*

(c). In *Crescent Oil* a writ had been issued carrying an indorsement that it was issued by T, a solicitor in the plaintiff's legal department. In fact at the time T was on holiday and subsequently her solicitors wrote stating that the writ had not been issued by her or with her authority. T left the plaintiff's employment and a firm of solicitors was engaged to act for the plaintiff and a notice of change of solicitor was filed (suggesting that T had previously been on the record in the proceedings). The writ was served and on no acknowledgement of service being filed judgment in default was entered. The second and third defendants subsequently applied to set aside the issue and service of the writ. It was held by Thomas J that since T had declared that she had not issued the writ and that it had not been issued on her behalf, and there was no other solicitor acting for the plaintiff until the new firm had been appointed, the writ had been issued by the plaintiff "*otherwise than by a solicitor*" and therefore should be set aside. Interestingly, it was not suggested that because T was an in-house lawyer, she could not be regarded as a solicitor for the purpose of RSC O.5, r.6(2) or RSC O.12, r.1. Thomas J said this (underlining added):

> *Counsel were unable to direct me to any authority directly dealing with the unusual position where a writ has been issued and served by a body corporate acting without a solicitor. However, the absolute nature of the prohibition set out in Ord 5, r 6(2) is underlined by the provision of Ord 12, r 1(2); this rule permits a body corporate to acknowledge service and give notice of an intention to defend but prohibits any further step in the action otherwise than by a solicitor. The court does, however, have discretion to permit in exceptional circumstances representation of a body corporate by a person other than a solicitor: see Arbuthnot Leasing International Ltd v Havelet Leasing Ltd [1991] 1 All ER 591, [1992] 1 WLR 455, where Scott J reviewed all the authorities; and see also the judgment of the Court of Appeal in Radford v Freeway Classics Ltd [1994] 1 BCLC 445. In the latter case the discretion to allow such representation was described as a limited gloss on very clear legislative provisions in Ord 5, r 6(2) requiring a limited company to pursue its litigation by legal advisors. It may possibly be the case that a court does in exceptional circumstances (such as the imminent expiry of a time bar) have power to permit a body corporate to issue a writ, but in general the prohibition in the rules is absolute. In the circumstances of this case, the writ should not have been either issued or served as Crescent were not acting by a solicitor. Ratification cannot assist Crescent as the rules prohibit what was done and it cannot be cured retrospectively.*
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> *In view of the nature of the prohibition and the reasons for it, the ordinary consequence of a body corporate issuing a writ and serving it other than by a solicitor should lead to the court considering setting the writ and service aside; in the circumstances of this case, in my judgment that is the only proper course."*

(d). In *Tomlinssons* a company appeared at a hearing by a director. RSC O.5, r.6(2) applied at the time when the relevant application was issued and the Court held that the company had no right to act in person in any proceedings. The fact that it was implicit in the new CPR in England and Wales that a company could, under the new rules, act without legal representation did not affect that conclusion. Mummery LJ said this:

> *"According to the notes in* The Supreme Court Practice 1999, *vol 1, sub-r (2) embodied the previously existing practice. A body corporate was not entitled, for example, to issue a summons to set aside a default judgment signed against it, except by a solicitor. The rationale of the prohibition against starting and carrying on proceedings without a solicitor is to be found in the privileges conferred by corporate status and in the protection of the interests of the members of the company and its potential creditors, including the parties joined as defendants.*
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> *The notes explained the practice of the court on the different, though related, problem as to when a director of a company might be permitted to act as an advocate on its behalf. Consistently with the prohibition on a body corporate acting in person, the normal rule was that a company must appear by counsel or by a solicitor unless there were exceptional circumstances."*

28. In my view, the policy-based argument put forward by Mr McKie QC at the hearing is both unconvincing and an insufficient basis on which to rely when interpreting the Rules.

29. It is unconvincing because it makes a number of unsubstantiated assumptions about the extent to which admitted in-house lawyers have professional negligence insurance or have rights of indemnity from their employer which would be available in the event that a claim is made against them. Intertrust filed no evidence in support of Mr McKie QC's speculations. Furthermore, as it seems to me, the purpose of the Rules, as clearly and to my mind persuasively articulated by the Chief Justice in *Telesystem International*, is to ensure that bodies corporate must instruct qualified and admitted attorneys who are subject to the professional and related duties of attorneys and subject to the Court's jurisdiction to sanction its officers. In-house attorneys (who are fully admitted and currently qualified) are just as much subject to those duties and the control and sanction of the Court as are external lawyers. In-house lawyers must, and there is no reason for believing that they do not, take their responsibilities to the Court and those duties seriously and must ensure when acting in litigation for their corporate client that they act in accordance with those duties and properly.

30. It is insufficient because there is no basis for concluding that the concerns expressed by Mr McKie QC about the position of in-house lawyers and the supposed differences between their position and that of external attorneys identified in Mr McKie QC's argument were considered by or relevant to those who drafted and approved the Rules (and those who drafted the equivalent provisions in the RSC). In my view, they are not, as I have said, part of the reasoning behind the adoption of the Rules or the long-standing practice (discussed in the authorities) on which they are based.

31. It seems to me it is worth concluding by quoting the well-known comments of Lord Denning in the Court of Appeal in *Alfred Crompton Amusements Machines Ltd v Customs and Excise Comrs*. (No2) [1972] 2 QB 102, 129 (a case that was not cited by the parties but to which I made reference during the hearing) (underlining added):

> *"The law relating to discovery was developed by the Chancery Courts in the first half of the 19th century. At that time nearly all legal advisers were in independent practice on their own account. Nowadays it is very different. Many barristers and solicitors are employed as legal advisers, whole time, by a single employer. Sometimes the employer is a great commercial concern. At other times it is a government department or a local authority. It may even be the government itself, like the Treasury Solicitor and his staff. In every case these legal advisers do legal work for their employer and for no one else. They are paid, not by fees for each piece of work, but by a fixed annual salary. They are, no doubt, servants or agents of the employer. For that reason Forbes J. thought they were in a different position from other legal advisers who are in private practice. I do not think this is correct. They are regarded by the law as in every respect in the same position as those who practise on their own account. The only difference is that they act for one client only, and not for several clients. They must uphold the same standards of honour and of*

> *etiquette. They are subject to the same duties to their client and to the court. They must respect the same confidences. They and their clients have the same privileges. I have myself in my early days settled scores of affidavits of documents for the employers of such legal advisers. I have always proceeded on the footing that the communications between the legal advisers and their employer (who is their clients are the subject of legal professional privilege: and I have never known it questioned. There are many cases in the books of actions against railway companies where privilege has been claimed in this way. The validity of it has never been doubted."*

Costs

32. I shall invite the parties to seek to agree the appropriate costs order. If they cannot do so, they should file within twenty-one days of this judgment being handed down short written submissions setting out their respective positions and the orders they seek.

The Hon. Mr Justice Segal
Judge of the Grand Court, Cayman Islands
27 May 2022