THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

BETWEEN

SHIRAZ MAHMOOD

Claimant

and

STANDARD CHARTERED BANK DIFC

Defendant

ORDER WITH REASONS OF JUSTICE WAYNE MARTIN

UPON reviewing the Claimant's Application No. CFI-044-2021/3 for a Document Production Order dated 19 May 2023 (the "Application")

AND UPON the Consent Order dated 2 June 2023

AND UPON reviewing Part 28 of the Rules of the DIFC Courts

IT IS HEREBY ORDERED THAT:

1. The Defendant shall undertake the following searches in response to the Requests made in the Claimant's request for production dated 9 March 2023 (the "First Request"), the Claimant's revised request for production dated 30 March 2023 (the "Revised Request"), and the Application:

(a) a search for communications sent by Mr Bill Winters to all compliance staff of the Defendant relating to the subject matter of Request 1, as expressed in the Claimant's First Request;

(b) a search for all relevant correspondence between the Claimant and Mr Haris Law responsive to Request 4 of the Claimant's First Request, including both of Mr Law's registered email accounts in Great Britain and Taiwan using the search terms provided by the Claimant in his Revised Request;

(c) a search for those documents requested by the Claimant responsive to Request 5(b) of the Claimant's First Request, using the suggested search terms set out in the Claimant's Application;

(d) a search for correspondence responsive to Request 6 of the Claimant's First Request, using search terms expressed in the Claimant's First Request, with the additional custodians of Adam Long and Adina Cameron;

(e) a search for the documents requested in the Claimant's Application that are responsive to Request 7 of the Claimant's First Request;

(f) a search for the documents requested in the Claimant's Application that are responsive to Request 8 of the Claimant's First Request;

(g) a search of the Defendant's instant messaging channels for any correspondence relating to Request 10 of the Claimant's First Request;

(h) a search of the Defendant's instant messaging channels for any correspondence relating to Request 11 of the Claimant's First Request;

(i) a search of the Defendant's instant messaging channels for any correspondence relating to Request 115 of the Claimant's First Request;

(j) a search for the documents requested in the Claimant's Application that are responsive to Request 17 of the Claimant's First Request;

(k) a search of the Defendant's instant messaging channels for any correspondence relating to Request 18 of the Claimant's First Request;

(l) a search for all documents and copies relating to the Claimant's performance reviews during his entire employment relationship with the Defendant, being Request 24 of the Claimant's First Request;

(m) a search of the Defendant's instant messaging channels for any correspondence relating to Request 26 of the Claimant's First Request; and

(n) a search for the documents requested in the Claimant's Third Request that are responsive to Request 27 of the Claimant's First Request.

2. The Defendant shall produce to the Claimant any relevant documents located as a result of the above searches within 45 days from the date of this Order.

3. Within a further 14 days of the date in paragraph 2 above, the Defendant shall file and serve a supplementary document production statement explaining the searches carried out in performance of this Order.

4. The reasonable costs of the parties shall be costs in the case.

5. The parties shall have liberty to apply.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 5 July 2023
Time: 2pm

SCHEDULE OF REASONS

Summary

1. On 19 May 2023 the Claimant ("Mr Mahmood") applied for an order that the Defendant (the "Bank") produce documents in 15 categories. The Bank accepts that orders should be made for production of documents within 5 of those categories, and says it is prepared to produce documents within two of those categories subject to the use of search terms to identify those documents other than those proposed by Mr Mahmood, although in fact there is only one such category. The Bank also agrees to conduct searches of its Instant Messaging system in relation to a number of categories. The Bank objects to producing documents within nine categories. The conclusions I have reached in relation to the ten categories in dispute are embodied in the orders above and are explained in the reasons below.

The parties' approach to document production

2. The Application has generated the exchange of voluminous documents prepared by each party. Significant portions of those documents are devoted to the disparagement and criticism of the approach taken by the other party in relation to document production. The Court does not find documents of that kind to be constructive or helpful. The production and exchange of lengthy documents of that kind is contrary to the overriding objectives embodied in Part 1.6 of the Rules of the Dubai International Financial Centre Courts 2014 ("RDC") which include:

> "1.6 .
>
> (2) Saving expense;
>
> (3) Dealing with the case in ways which are proportionate -
>
> (a) to the amount of money involved;
>
> (b) to the importance of the case;
>
> (c) to the complexity of the issues; and
>
> (d) to the financial position of each party,
>
> (4) Ensuring that is dealt with expeditiously and fairly; and
>
> (5) Allotting to it an appropriate share of the Courts' resources, while taking into account the need to allot resources to other cases."

3. In this case the written recriminations which the parties have directed against each other serve little or no purpose. It follows that deployment of the resources required to make and answer the various allegations is contrary to the overriding objective. It would be difficult for the Court to fairly determine the appropriate allocation of responsibility for the many disputes which have arisen in the course of the document production process without conducting a hearing and undertaking a very detailed analysis of the various allegations which have been made. Such a course would also be contrary to the overriding objective, by consuming a disproportionate share of the Court's resources in an exercise of very limited forensic utility. Accordingly, it is neither necessary nor appropriate to express any view on the various allegations each party has made in relation to the conduct of the other in connection with the document production process.

4. The approach taken by the parties to document production has also been inconsistent with the express terms of RDC Part 28. The provisions of that Part clearly and expressly provide that the parties are to confer collaboratively in relation to the document production process throughout the course of that process. The continuing obligation to confer collaboratively is evident from the following Rules:

> "28.10 The parties should, prior to the first Case Management Conference, discuss any issues that may arise regarding searches for and the preservation of electronic documents. This may involve the parties seeking and providing information about the categories of electronic documents within their control, the computer systems, electronic devices and media on which any relevant documents may be held, the storage systems maintained by the parties, their document retention policies and the anticipated time and cost of carrying out any searches which might be requested.
>
> 28.11 Where the number or volume of documents to be searched is likely to be extensive, the parties should, where possible, seek to exchange preliminary production requests in draft form before standard production of documents takes place. Any such exchange shall not limit the parties rights to submit further requests to produce after standard production in accordance with RDC 28.16.
>
> 28.12 The parties should co-operate at an early stage as to the format in which electronic copy documents are to be provided on production of documents.
>
> 28.13 If the physical structure of a file is or is claimed to be of evidential value:
>
> (1) any such claim should be raised at the earliest opportunity;

and

(2) the legal representatives of the party holding the file should make one complete copy of the file in the form in which they received it before any documents are removed for the purpose of producing documents.

28.14 In the case of difficulty or disagreement on any of the matters referred to at RDC 28.10 to 28.13 above, the matter should be referred to a judge for directions at the earliest practical date, if possible at the first Case Management Conference."

5. The obvious purpose of these provisions is to prevent precisely what has occurred in this case, in which there has been very limited conferral, negligible collaboration and a great deal of contention and controversy. Each party blames the other for this outcome. As I have already indicated, resolution of the competing contentions of the parties in this respect would be contrary to the overriding objective. However, it is indisputable that the result of the way in which the parties have engaged with each other has been to:

(a) Necessarily consume significant time and to involve each of the parties in significant unnecessary expense; and

(b) Present the Court with a complex web of allegations and counter allegations contained within a voluminous set of documents which are difficult to comprehend, contrary to the evident objective of Part 28, which is to provide the Court with a straightforward Redfern Schedule which the Court can use to summarily determine whether or not requested documents should be produced.

The course of the Application

6. It is desirable to briefly essay the procedural course of the Application, stripped of the pejorative assertions made by the parties against each other.

7. Mr Mahmood served his first Request to Produce (the "First Request") on 2 March 2023. The document included 27 numbered Requests, although some of those Requests involved multiple categories of documents.

8. The Bank responded to the First Request on 16 March 2023, rejecting all but five of the Requests. However, the Bank took steps to search for documents responding to 11 of the Requests made, and on 30 March 2023 the Bank produced documents responding to 10 out of 11 of those Requests.

9. Also, on 30 March 2023 Mr Mahmood served a Revised Request to Produce(the "Revised Request"). On 6 April 2023 the Bank responded to the Revised Request. Although objections were made to many of the Requests, the Bank agreed to undertake "reasonable and proportionate" searches in respect of documents within 25 of the remaining 29 categories of Requests using search criteria promulgated by the Bank, rather than Mr Mahmood.

10. On 3 May 2023 Mr Mahmood's counsel advised the Bank's counsel that Mr Mahmood intended to apply for a document production order. The parties agreed upon an extension of time until 19 May 2023 to enable that to occur.

11. The Application was made on 19 May 2023 (the "Application"). The terms of the Requests made in the Application vary, to some extent, from the terms used in the previous two versions of the Request. The Application was supported by a lengthy witness statement from one of Mr Mahmood's legal representatives, to which a substantial bundle of documents was attached.

12. The parties agreed upon a timetable for the exchange of documents in response to the Application. Pursuant to that timetable on 9 June 2023 the Bank served two witness statements in opposition to the Application - one from a member of the Bank's eDiscovery team, and another from one of the Bank's legal representatives. Those statements were accompanied by substantial bundles of documents. In those documents the Bank indicated the position which I have set out above - namely, that it agreed to produce documents in response to five of the 15 Requests and would undertake searches for documents in accordance with refined search terms in relation to one of the Requests, together with searches of its Instant Messaging Systems in relation to a number of the Requests. The Bank opposed nine of the Requests.

13. On 16 June 2023 Mr Mahmood served his Response to the Bank's Statement of Position, which included a lengthy statement from one of his legal representatives dealing with, *inter alia*, Mr Mahmood's position in relation to the ten categories of Requests which remained in contention.

Disposition

14. As it is common ground that orders should be made requiring the Bank to search for and produce documents in accordance with Mr Mahmood's Request in relation to five of the fifteen categories of documents, and to conduct searches of its Instant Messaging systems and produce documents responsive to Requests in relation to a number of other categories. It is only necessary to deal with the category of documents in relation to which the Bank proposes to use different search terms to those proposed by Mr Mahmood, and the nine categories of documents which the Bank objects to produce.

15. In its submissions the Bank states that there are two categories in which it proposes disclosure using different search terms to those proposed but in fact, upon analysis, there is only one such category. That category is Request 6, in respect of which there is a dispute in relation to the search terms to be used. In relation to Request 1, which the Bank would also place in this category, the Bank agrees to produce one item within the Request in the terms sought, but not the other, on any basis.

Dispute as to search terms

Request 6

16. Request 6 requests the provision of documents which preceded a trip to Dubai in 2018 made by Mr Phebey of the Bank. In his Revised Request, Mr Mahmood suggested the search terms which should be used to identify the documents. The Bank used those search terms, which produced more than 400 documents. The Bank then refined the search by adding additional search terms, which resulted in five documents being

disclosed in response to the Request. In the Application Mr Mahmood requests that the Bank be directed to conduct a further search including in relation to meetings which may have been arranged by Mr Long and Ms Cameron of the Bank.

17. The Bank agrees to undertake a further search for correspondence sent in advance of Mr Phebey's trip to Dubai, including meetings arranged by Mr Long and Ms Cameron, using the same search terms as previously used, but with the added custodians of Mr Long and Ms Cameron.

18. It is not clear how this differs from the Revised Request made by Mr Mahmood. The Revised Request contains no additional search terms which would produce a refined data set responsive to the Request. Rather, Mr Mahmood seeks "the full extent of the documents and copies relevant" to the Request without suggesting any practical way in which that objective might be achieved. The Bank's proposed course is reasonable and proportionate to the forensic significance of the documents sought.

Requests to which objection is taken

Request 1

19. Request 1, as formulated in the Application contains three components. The first component is no longer pressed and the Bank agrees to undertake a search in the terms of the third component.

20. The contentious component relates to a Request for a search of communications sent by six specified officers of the Bank "and any other members of Mr Winter's management team" to all staff of the Bank and all compliance staff of the Bank relevant to the subject matter of the Request. To this extent, the Request in the Application expands the corresponding Request made in both the First Request and the Revised Request, which were limited to communications sent by Mr Winters. The Bank objects to the expansion of the Request in this way. It asserts that Mr Mahmood has not provided a cogent basis for the expansion of the search and further asserts that if any of the individuals identified by Mr Mahmood in the Request had sent emails on behalf of Mr Winters via a generic email address that were responsive to Request 1, they would have been disclosed.

21. Mr Mahmood presses the Request and asserts that the Bank has widened the scope of its disclosure by disclosing emails from other members of the Bank's senior management. The Bank has explained that this was because the emails were sent from the generic address to which the Bank has referred and were responsive to the Request. Mr Mahmood asserts that having disclosed documents outside the scope of the Request, searches should be conducted of all members of the management team relating to the Request.

22. Mr Mahmood has not established that there is a likelihood that there are emails from management members other than Mr Winter which are responsive to and relevant to the Request, which was made in in the first and second instance in relation to emails sent by Mr Winter or on Mr Winter's behalf. The Bank contends that emails sent using the generic email to which it has referred meet this description. Disclosure of emails from officers other than Mr Winter does not render all emails sent by those officers relevant. They may become relevant if evidence or documents from those officers is tendered, but that point has not yet been reached.

23. The Bank's objection to the second component of Request 1 is upheld.

Request 3

24. In Mr Mahmood's First Request, Request 3 sought a general category of documents relating to a policy/procedure known as the Framework. In Mr Mahmood's Revised Request he suggested custodians, search terms and a date range. The Bank asserts that it applied those criteria to the search, which produced 81 results, of which seven were relevant and disclosed. In the Application, Mr Mahmood seeks an order that the Bank "provide the full extent of the documents and copies relevant" to this Request. He suggests that this would require a second search for all feedback provided to Mr Mahmood by members of the Islamic Banking Team relating to the Framework. Mr Mahmood asserts that a number of documents included within the Bank's response to Request 28 include correspondence relevant to this Request.

25. The Bank responds by pointing out that the documents which were disclosed in response to Request 28 were obtained from the mailbox of an officer who is not a member of the Islamic Banking Management Team, and who was not therefore one of the custodians defined by Mr Mahmood under his Revised Request.

26. Mr Mahmood contends that it can be inferred that there are other documents in existence which have not been disclosed. He relies upon assertions made in the Amended Defence to support that assertion, including a reference to meetings relating to the Framework. However, it is difficult to see why the conduct of meetings relating to the Framework sustains the proposition that there are documents in existence which have not been disclosed.

27. Mr Mahmood also relies upon the Bank's plea to the effect that Mr Akbar provided a range of feedback on the Framework. He contends that while Mr Akbar may have either deleted documents from his inbox or archived them to a local drive in order to comply with the size limits upon date retention imposed upon the Bank by its officers, Mr Akbar may not be the sole custodian of that data. However, no practical means of identifying recipients of emails which may have been sent by Mr Akbar has been identified by Mr Mahmood.

28. Mr Mahmood also relies upon the fact that some documents evidencing Mr Akbar's evidence on the Framework were provided as part of the Bank's initial disclosure. However, it does not follow from that fact that there are other documents of that kind which have not been disclosed.

29. Mr Mahmood further contends that it is unlikely that all senior managers of the Islamic Banking Team involved in providing feedback on the Framework deleted all of their emails relating to a very significant document to their business. However, the Bank has carried out searches of the email accounts of all of those managers, and there does not appear to be any evidentiary basis for this assertion.

30. For these reasons, Mr Mahmood has failed to establish that there are reasonable grounds to believe that there are documents within this category which have not been disclosed and the Bank's objection to Request 3 is upheld.

Request 10

31. Request 10 is for documents relating to the written outcome of the search of Mr Shaikh's email account. The Bank provided Mr Mahmood with a copy of the investigations log relating to the investigation of the relevant email account. In the Application, Mr Mahmood seeks an order for a further search "in order to provide the full extent of the documents and copies relevant" to the Request which is said to include all relevant email correspondence regarding the search undertaken of Mr Shaikh's email and instant messaging conversations.

32. The Bank has agreed to undertake a search of the Defendant's instant messaging channels in accordance with this Request but objects to conducting any further search on the ground that the Request was complied with, by the provision of the outcome of the investigation of the account.

33. Mr Mahmood presses the Request on the basis that it is apparent that a formal process was undertaken in respect of the relevant email account, but no details of the searches have been provided to Mr Mahmood.

34. The request was for the written outcome of the investigation and the Bank has complied with the request by producing a document which specifies the written outcome of the search of the account. Mr Mahmood now seeks documents relating to the process which was undertaken to review the email account, but no forensic justification has been provided for that different Request. In particular, it is not at all apparent what forensic purpose would be served by the provision of those documents.

35. The Bank's objection to Request 10 is upheld.

Request 11

36. Request 11 seeks "all documents and copies relating to the HR investigation into the complaints made against" Mr Mahmood. No search terms were provided. The Bank carried out a search using specified criteria which resulted in 452 results, of which 374 documents were disclosed.

37. In the Application Mr Mahmood seeks an order for the conduct of a further search to "provide the full extent of the documents and copies relevant" to this Request. This is said to include all versions and iterations of the investigation report, all documents related to the drafting of the investigation report, all documents related to the investigation of an anonymous complaint and a search of the instant messaging channels for any correspondence relating to the investigation report. The Bank agrees to undertake a search of the instant messaging channels as requested, but objects to making any other searches. The Bank contends that Mr Mahmood has still failed to provide any proportionate search terms and contends that the search which it has undertaken is proportionate to the forensic utility of the documents requested.

38. Mr Mahmood presses his Request for the various drafts and iterations of the investigation report, without explaining or identifying the forensic purpose of the request for those drafts, which is far from self-evident. Mr Mahmood also relies upon general assertions he has made with respect to the inadequacy of the approach taken by the Bank in relation to its disclosure obligations. However, those assertions, even if accepted (and they are of course disputed), would not sustain the conclusion that the disclosure of 374 documents in response to this request is inadequate. Apart from the drafts and iterations of the investigation report, Mr Mahmood has not identified any specific document or category of documents which has not been disclosed and which it is reasonable to assume remains in the possession of the Bank.

39. The Bank's objection to Request 11 is upheld.

Request 13

40. Request 13 seeks all documents and copies of correspondence in relation to the commencement of disciplinary proceedings against Mr Mahmood. In his Revised Request, Mr Mahmood suggested search criteria which when applied by the Bank, generated 3,247 results. As a result of the large number of responses, the Bank carried out another search using refined search criteria which resulted in 59 results and 49 documents were disclosed to Mr Mahmood.

41. In the Application Mr Mahmood sought an order that the Bank conduct a further search "in order to provide the full extent of the documents and copies relevant" to the Request, which are said to include documents relating to the decision to commence disciplinary proceedings, documents notifying personnel of the decision to begin disciplinary proceedings, and copies of various policy documents.

42. The Bank objects to the Request, asserting that the claim for policy documents impermissibly expands the Request well beyond the time by which requests for disclosure were to be made. The Bank contends that a detailed search with sensible and proportionate search terms has been carried out and all relevant documents located have been disclosed.

43. Mr Mahmood supports the Application by asserting that it can be inferred that the question of an investigation would have been escalated to senior management, and that it can be inferred that other internal communications would have taken place. Mr Mahmood contends that the policy documents which he seeks are relevant to the disciplinary proceedings against him and therefore within the scope of his Request.

44. The assertions made by Mr Mahmood in support of this Request with respect to the existence of undisclosed documents passing between senior managers are supposition unsupported by any evidence. Further, as the Request relates to documents relating to "the commencement" of the disciplinary proceedings against him, the policy documents which he now seeks clearly fall beyond the ambit of the Request.

45. The Bank has undertaken a search in relation to documents responding to the Request as framed and it has not been established that relevant documents responsive to the Request are in the Bank's possession which have not been disclosed.

46. The Bank's objection to Request 13 is upheld.

Request 15

47. Request 15 seeks all documents and copies in response to the first draft report issued by the Bank on 3 October 2019 in response to Mr

Mahmood's allegations of threatening and discriminatory language. In his Revised Request Mr Mahmood suggested search criteria which were applied by the Bank, generating 1,236 results. Due to the large number of results, the Bank applied a further filter to the documents, conducting a search by reference to Mr Mahmood's first and second names, which resulted in 103 results, 43 of which were disclosed as responsive to the Request.

48. In the Application Mr Mahmood asks for an order for a further search "in order to provide the full extent of the documents and copies relevant" to the Request, which are said to include any comments made by Mr Shaikh and any other review of the draft report, including any instant messaging correspondence dealing with the draft report.

49. The Bank agrees to undertake a search of its instant messaging channels as requested, but objects to undertaking a further search on the ground that it has already run a search applying appropriate search parameters and has disclosed the documents revealed by that search.

50. Mr Mahmood presses the Request, on the ground that only one of the emails provided by the Bank displays any feedback provided by the recipients of the draft report. He asserts that it can be inferred that the changes made to the draft report were the consequence of feedback provided by Mr Shaikh, but no documentation has been disclosed in relation to feedback from Mr Shaikh.

51. These assertions are supposition which lack any evidentiary basis, at least on the materials presently before the Court. Nor has Mr Mahmood demonstrated the forensic utility or significance of identifying the precise means by which changes came to be made to the investigation report.

52. The Bank has undertaken a search which has not been demonstrated to be inadequate and its objection to Request 15 is upheld.

Request 18

53. Request 18 seeks all documents and copies of correspondence from Ms Al Najjar during a specified period relating to Mr Mahmood's disciplinary appeal. No search terms were provided by Mr Mahmood. The Bank carried out a search using defined search terms which resulted in 59 results, 16 of which were disclosed to Mr Mahmood. In the Application Mr Mahmood seeks an order that the Bank undertake a further search using the search terms it had previously engaged, together with a search of the Bank's instant messaging channels. The Bank agrees to undertake a search of the instant messaging channels, but objects to undertaking another search by reference to the same search terms.

54. Mr Mahmood presses the Request on the ground that only one email has been provided between Ms Al Najjar and Mr Bajwa. Implicit in this assertion is that there must be other correspondence between those two, but no evidentiary basis for that assertion is identified.

55. Mr Mahmood also refers to the disclosure of documentation falling outside the search period, but it is difficult to see why that fact, if accepted, sustains the conclusion that the search has been inadequate.

56. There is no reason to suppose that re-running a search which has already been conducted by reference to the same terms would produce any different result.

57. The Bank's objection to Request 18 is upheld.

Request 23

58. Request 23 seeks all documents and copies relating to Mr Mahmood's transition from a temporary employment contract to a permanent contract in 2016 and his subsequent transition/promotion to his role in the Islamic Banking business of the Bank.

59. In response to the Request the Bank searched the personnel file of Mr Mahmood, which contained 45 documents, all which have been disclosed.

60. In the Application Mr Mahmood asked the Court to make an order that the Bank conduct a further search "in order to provide the full extent of the documents and copies relevant" to the Request. The Bank objects to the Request on the ground that the entire personnel file has been disclosed, and Mr Mahmood has failed to identify any other search parameters which might produce documents responding to this Request.

61. Mr Mahmood presses the Application on the ground that the contents of his personnel file are entirely deficient in responding to the content of the Request. However, he has failed to identify or produce any evidence which would sustain the conclusion that there are in existence documents responsive to this Request which have not been disclosed, or to identify any search terms which might be used to identify such documents.

62. In these circumstances Mr Mahmood has failed to establish that the Bank's response is deficient and the Bank's objection to Request 23 is upheld.

Request 24

63. Request 24 seeks all documents and copies relating to Mr Mahmood's performance reviews during his employment relationship with the Bank. The Bank asserts that it obtained all relevant performance review documents from Mr Mahmood's line manager *throughout the relevant time*, and disclosed 11 documents to Mr Mahmood. In the Application, Mr Mahmood seeks an order for disclosure of documents relating to his performance reviews throughout the entirety of his employment or alternatively confirmation that the performance documents which have been provided represent the entirety of the performance review documentation which is retained by the Bank.

64. Mr Mahmood presses his Application, which is supported by detailed analysis of the documents which have been disclosed by his legal representatives, which do not apparently include the actual performance review documents covering the entire period of his employment. Further, some of the performance review documents disclosed are incomplete.

65. It is a fair inference from the Bank's statement of the enquiries it has undertaken that it has not disclosed all performance reviews relating to Mr Mahmood during the entirety of his employment. The Bank does not submit that documents within this class are irrelevant, but merely contends

that the documents it has provided, which are in part incomplete, are sufficient.

66. The Bank's objection should be disallowed, as it is apparent from the Bank's response that there may well be relevant documents in the Bank's possession which have not been disclosed. Request 24 is upheld.

Request 26

67. Request 26 seeks all documents and copies relating to Mr Shaikh's instruction to Muhammad Mubeen and Nabeel Taimoori not to communicate with Mr Mahmood. In the Revised Request Mr Mahmood accepted that Mr Shaikh's instruction was oral and asserted that officers of the Bank were informed of Mr Shaikh's actions by email on 13 January 2020.

68. The Bank searched emails to and from Mr Long and Mr De Groot on 13 January 2020 using Mr Mahmood's first and second names, which resulted in 80 results, none of which were relevant.

69. In the Application Mr Mahmood requests an order that the Bank conduct a further search "in order to provide the full extent of the documents and copies relevant" to the Request, which is said to include a search for all documents relevant to the investigation team's investigation of Mr Shaikh's conduct, including meeting notes with Mr Mubeen, Mr Shaikh and Mr "Nabeen" (sic Taimoori?) and documents relating to any investigation into Mr Shaikh's actions. The Bank has agreed to undertake a search of the instant messaging channels in relation to this Request, but otherwise objects to undertaking any further search on the ground that the searches it has undertaken in response to the information provided by Mr Mahmood have not revealed any responsive documents. The Bank submits that Mr Mahmood now asserts that a relevant email was sent to Mr Amos, not Mr Long or Mr De Groot, and now requests documents relating to an investigation of Mr Shaikh's action, when there is no evidence of any such investigation having been carried out.

70. Mr Mahmood has not produced any evidence which establishes that an investigation of Mr Shaikh's conduct was undertaken, or that a relevant email was sent to Mr Amos. The Bank has undertaken reasonable and proportionate searches in response to the information previously provided by Mr Mahmood and has not identified any relevant documents. There is no evidence which would establish that such documents exist.

71. The Bank's objection to Request 26 is upheld.

Summary

72. It will be seen from the reasons given above that Mr Mahmood has failed to establish that his Application should be granted in respect of all but one of the Requests to which the Bank objected. However, in response to Mr Mahmood's Application, the Bank has conceded that further searches should be undertaken in respect of six of the Requests, and has further conceded that searches should be undertaken in respect of its instant messaging channels.

Time for production

73. Mr Mahmood asks that the documents he seeks be produced within 21 days, whereas the Bank asserts that 60 days is a more reasonable period given the extent of the searches that will be required, and the time which they are likely to take. Having considered the evidence given by the Bank with respect to the manner in which such searches are carried out, I have concluded that there is no reason why the Bank should not be able to produce the materials the subject of these searches within 45 days of the date of this Order.

Costs

744. In these circumstances each party has had a measure of success as a consequence of the Application being made. In these circumstances the reasonable costs of the parties should be costs in the case. Whether those costs should include the time and resources which I consider to have been disproportionately applied to these issues will be a matter for assessment in due course.