



Neutral Citation Number: [2026] EWHC 1845 (TCC)

Case No. HT-2026-000072

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 21/07/2026

Before :

MR JUSTICE CONSTABLE

Between:

PRIME WAY CARE LTD

Claimant

-and-

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK
Defendant

Joseph Barrett KC (instructed by **DWF Law LLP**) for the **Claimant**
Benjamin Tankel (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing date: 10 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Constable:

Introduction

1. This judgment determines the application by the Claimant ('Prime Way') for specific disclosure brought against the Defendant, ('Southwark').
2. Prime Way has brought a challenge under the Procurement Act 2023 ("the Act") to the procurement by Southwark for the establishment of a multi-lot framework agreement relating to the provision of Adult Home Care Services ("the Procurement"). The Procurement was to be conducted in two stages. The first stage comprised an Invitation to Participate pursuant to which candidates were required to submit a response to a Procurement Specific Questionnaire ("PSQ") by 8 October 2025. Only bidders who were successful in the first stage would be shortlisted and invited to proceed to the second stage of the Procurement.
3. The PSQ included, at 22(ii) the following question ('Q22(ii)'):

“Managing workforce (Core services)

Please tell us about your organisation’s experience managing workforce to deliver a similar service.

Your response should include, but not be limited to:

- How your recruitment and training practices ensured the attraction and retention of skilled and motivated staff
- How you supported and respected diversity and inclusion for staff
- How you minimised disruption when organising cover arrangements for staff absence, or a change of care worker, in relation to both planned and emergency cover arrangements

(NOTE: Your response should be no more than 500 words. Any words or content submitted which exceeds this limit will be disregarded by the Authority in its evaluation.)”

4. Marks were to be awarded on a scale of 0-5. Under the relevant part of the mark scheme, marks were awarded as follows:

Assessment	Score	Interpretation
Good response	4	Demonstration by the potential supplier of a good level of ability, understanding, experience, skills, resource and quality measures required to provide the Services. Response identifies factors that may offer potential added value, with good evidence to support the response.
Satisfactory response	3	Demonstration by the potential supplier of satisfactory level of ability, understanding, experience, skills, resource and quality measures required to provide the Services with sufficient evidence to support the response.

5. On 29 January 2026, Southwark sent Prime Way a decision letter stating that it had not passed to the second stage of the Procurement ("the Decision Letter"). The Decision Letter stated that the Claimant had not been awarded the required minimum score of 4

in respect of Q22(ii) of the PSQ (the Claimant was awarded a score of 3). The letter provided the following feedback specific to Q22(ii), seeking to explain why the response had been ‘Satisfactory’:

“The response demonstrated a successful mobilisation example. However, it mentioned the Ethical Care Charter without demonstrating specific examples. It had limited information on supporting residents through changes of care worker. The EDI example - lacked relevance to staff’s EDI. The response should have provided a bit more information on how and where they recruit.”

6. On 23 February 2026, Prime Way responded:

“Clarification Requested

...

Given that the published scoring matrix defines a score of 4 as demonstrating credible methodology alongside clear processes and added value, we request clarification on:

- Which specific elements required for a score of 4 were considered not met;
- How the mobilisation scale and workforce resilience systems were weighted;
- Whether any additional internal sub-criteria were applied during moderation;
- Where the mandatory minimum score of 4 for Q22(ii) was explicitly disclosed prior to submission.

For transparency, we also request the moderation record for Q22(ii) and confirmation of the evaluator guidance applied.

We seek this clarification to understand the basis of the scoring decision and ensure the published criteria were applied consistently.”

7. Southwark replied to this letter on 25 February 2026. This set out over a page and a half further reasons why Southwark contended that the response was correctly marked. It concluded that:

“Finally, in relation to your request for moderation records and evaluator guidance, we are able to provide the moderated rationale, which is reflected in the clarification above. However, in accordance with procurement governance requirements, we cannot release individual evaluator notes, internal deliberations or detailed moderation documentation. The evaluation panel followed the standard evaluator guidance issued to all officers involved in this procurement, ensuring consistency and adherence to the published scoring criteria. We hope this response provides the clarity you have requested and confirms that the published criteria were applied consistently throughout the evaluation.”

8. On 23 February 2026, Prime Way issued the Claim Form.
9. On 27 February 2026, Prime Way sent further correspondence. It alleged that the letter of 25 February 2026 had introduced new ‘failures’ not present in the original rejection, and suggested that Southwark was engaging in post-hoc justification. It claimed that the alleged shift in reasoning represented an unfair and inconsistent evaluation process

contrary to Section 12 of the Procurement Act 2023. The letter sought, amongst other things, the moderated scoring record for Q22(ii).

10. On 5 March 2026, the Defendant responded again refusing to provide the requested disclosure.
11. On 17 March 2026, Prime Way, who at the time was unrepresented, served the Particulars of Claim.
12. At paragraph [10], it alleged as follows:

“During the clarification phase, the Defendant received multiple formal warnings that the 500-word limit was mathematically insufficient to provide the technical depth and evidence required by the complex, multi-part sub-questions. Specifically, in Clarification Thread 24.1 (submitted 12/09/2025 at 16:14, a copy of which is attached at Annex 1)...”

13. At paragraph [14], the Particulars of Claim pleaded that Southwark was subject to, amongst other things, a duty pursuant to Section 12(1) of the Act to treat all suppliers equally. It then identified the following breaches/potential breaches, said to be relevant to the present application:

“Breach 2: Breach of Transparency and Integrity (The Review Letter dated 25/02/2026)

19. The Defendant breached Section 12 of the Procurement Act 2023. In a flawed attempt to retroactively justify the Outcome Letter, the Defendant’s Review Letter admitted that it had evaluated the Claimant’s response against standard practice and measurable outcomes benchmarks.

20. These benchmarks were entirely absent from the published Procurement Selection Questionnaire (PSQ). The retrospective application of these “shadow benchmarks” is a direct, documented violation of the statutory duty of transparency, equal treatment, and the duty to act with integrity.

...

Reservation of Rights (Equal Treatment)

26. Pending standard disclosure, the Claimant reserves the right to amend these Particulars of Claim to plead unequal treatment should the Defendant’s evaluation records reveal that the rigidly enforced 500-word limit, and the associated penalty for “lack of depth,” was not applied equally to all successful tenderers.”

14. On 14 April, the Defence was served. In the Defence, Southwark:
 - (1) averred that the word count allowed for bidders to score the full range of marks for the questions to which the word count applied, and the contention at (in particular) paragraph 10 to the contrary was denied;

- (2) averred that its letter dated 25 February 2026 provided more detailed explanation for the Claimant's score in respect of Q.22(ii), drawn from the moderated evaluator comments.
15. No Reply has been served.
16. On 7 May 2026, having obtained legal representation, Prime Way wrote again requesting early disclosure of the evaluation records related to the other Q22(ii) responses. Correspondence continued throughout May, with Southwark maintaining its refusal to provide any further documentation. On 27 May 2026, Prime Way issued its application for specific disclosure seeking:
- (1) all contemporaneous records of the evaluation of the Claimant's response to question 22(ii) of the Procurement Specific Questionnaire;
 - (2) all contemporaneous evaluation records relating to the evaluation of question 22(ii) of the Procurement Specific Questionnaire responses submitted by bidders who achieved a score of 4 or higher.
17. The first request was resolved in the course of providing responsive evidence. Only the second request, therefore, remains. According to the evidence served by Southwark, there were 144 bidders, of whom 33 scored 4+ on Q.22(ii). The application as originally advanced therefore related to seeking the evaluators' remarks in respect of the 33 bidders who scored more than 4 on Q.22(ii). During the course of argument, Mr Tankel confirmed that there were now 5 bidders in the frame for tender award. Mr Barrett fairly accepted that information restricted to those 5 bidders, rather than all 33, would be sufficient. Mr Tankel did not dispute that the information was readily available, and was contained on a small number of spreadsheets. Whilst he could not commit to the precise practicalities, Mr Tankel also fairly accepted that it was likely that the information could be anonymised whilst still providing the substance of the moderators remarks. In the first instance, in any event, the application seeks disclosure of the material into a lawyers-only confidentiality ring.

The Legal Framework

18. CPR 31.12 provides:
- “Specific disclosure or inspection
31.12
(1) The court may make an order for specific disclosure or specific inspection.
(2) An order for specific disclosure is an order that a party must do one or more of the following things –
(a) disclose documents or classes of documents specified in the order;
(b) carry out a search to the extent stated in the order;
(c) disclose any documents located as a result of that search.”
19. Early specific disclosure, in accordance with these provisions, has been a feature of procurement disputes. This is reflected in the TCC Guidance Note (see Appendix H to the 2026 TCC Guide) which makes clear that contracting authorities should provide the “*key decision making materials*” at a very early stage in procurement claims:

“6. The parties should also act reasonably and proportionately in providing one another with information, taking into account any genuine concerns with regard

to confidentiality, whether their own, or those of third parties. The parties are strongly encouraged to adopt confidentiality rings and undertakings to support resolution of the dispute prior to the issue of proceedings or other confidentiality arrangements where practical ... The aim should be to avoid the need to issue proceedings simply to obtain early specific disclosure.

7. Contracting authorities are expected to disclose the key decision materials relating to the complaints made against them. Where the complaint relates to the award decision or disqualification at an earlier stage of the procurement, such materials should include the instructions given to the evaluation team, documents showing the individual and consensus scores, minutes of moderation meetings, the contemporaneous documentation produced for and by the actual evaluation process, and any documents generated by any independent check of the evaluation process actually carried out."

20. The leading authority is Roche Diagnostics Limited v Mid Yorkshire Hospitals NHS Trust [2013] EWHC 933 (TCC). In Roche, there had been five attempts at a successful procurement. On the fifth attempt, upon discovering it had not succeeded, Roche promptly sought further information relating to the evaluation process. Rather than providing the primary material, the defendant's solicitors provided a series of ex post facto explanations of how the evaluation process had been conducted. The explanations provided in the spreadsheets contained errors and were inconsistent with one another. No primary documents were disclosed at all, apparently including those relating to Roche's own bid. The claimant's pleading concerned the evaluation of both bids. Coulson J, as he then was, set out the following guidance:

"20. In my view, the following broad principles apply to applications for early specific disclosure in procurement cases:

- (a) An unsuccessful tenderer who wishes to challenge the evaluation process is in a uniquely difficult position. He knows that he has lost, but the reasons for his failure are within the peculiar knowledge of the public authority. In general terms, therefore, and always subject to issues of proportionality and confidentiality, the challenger ought to be provided promptly with the essential information and documentation relating to the evaluation process actually carried out, so that an informed view can be taken of its fairness and legality.*
- (b) That this should be the general approach is confirmed by the short time limits imposed by the Regulations on those who wish to challenge the award of public contracts. The start of the relevant period is triggered by the knowledge which the claimant has (or should have) of the potential infringement. As Ramsey J said in Mears Ltd v Leeds City Council [2011] EWHC 40 (QB), "the requirement of knowledge is based on the principle that a tenderer should be in a position to make an informed view as to whether there has been an infringement for which it is appropriate to bring proceedings".*
- (c) However, notwithstanding that general approach, the court must always consider applications for specific disclosure in procurement cases on their individual merits. In particular, a clear distinction may often be made between those cases where a prima facie case has been made out by the claimant (but further information or documentation is required), and those*

cases where the unsuccessful tenderer is aggrieved at the result but appears to have little or no grounds for disputing it.

- (d) *In addition, any request for specific disclosure must be tightly drawn and properly focused. The information/documentation likely to be the subject of a successful application for early specific disclosure in procurement cases is that which demonstrates how the evaluation was actually performed, and therefore why the claiming party lost. Other material, even if caught by the test of standard disclosure, is unlikely to be so fundamental that it should form the subject of a separate and early disclosure exercise.*
- (e) *Ultimately, applications such as this must be decided by balancing, on the one hand, the claiming party's lack of knowledge of what actually happened (and thus the importance of the prompt provision of all relevant information and documentation relating to that process) with, on the other, the need to guard against such an application being used simply as a fishing exercise, designed to shore up a weak claim, which will put the defendant to needless and unnecessary cost.”*

21. Coulson J ordered three of the six categories of documents sought in Roche, including all the contemporaneous records of the evaluation process relating to both bids. He observed that this category was ‘fundamental’.

22. In Geodesign Barriers Ltd v The Environment Agency [2015] EWHC 1121 (TCC), the claimant was an unsuccessful bidder who had finished sixth. Relevantly, the claimant’s pleaded complaints related only to criticisms of the evaluation of the first placed tender, and no pleaded complaints related to the evaluation of the claimant’s own bid. At paragraph [14], Coulson J accepted that the claimant had demonstrated a *prima facie* case, although he noted that it was not a claim which could be described as particularly strong. He did, however, form the conclusion that the defendant’s tender evaluation was ‘most unsatisfactory’, and described the defendant’s claim that the claimant had been provided with everything ‘extraordinary’, and ‘giv[ing] rise to a whole host of questions’. At [26] the judge summarised the position as follows:

“In forensic terms, it might be said at this stage that the fact that this claim cannot be described as strong on the face of the pleadings is balanced out by the fact that the evaluation process on the documents looks, to put it neutrally, questionable.”

23. Whilst the Judge accepted that the tenders of the four unsuccessful bidders were relevant, this was in the context of causation (see [42]).

24. Mr Barrett drew attention to Serco Ltd v Secretary of State For Defence [2019] EWHC 515 (TCC), a case in which Fraser J (as he then was) applied the Roche principles when considering the reasonableness of a failure to have provided evaluation records of the claimant’s and the winning bids, which he described as ‘essential information’. In OCS v CHP [2023] EWHC 3369 (TCC), the claimant had pleaded a specific complaint in respect of Qs.6 and 13, and had also pleaded a positive averment in general terms that “In breach of the duties of inter alia transparency and equal treatment and under the regulations, the defendant has failed to provide the claimant with any or any sufficient, clear and transparent statement of reasons for the decisions communicated in the award letter”. At [60] [62] and [71], HHJ Pearce observed that:

“...in a public procurement case where the knowledge is very much stacked in favour of one side, with the other side in relative ignorance about the process that has taken place, it is inevitable that the pleaded case for the party who is in relative ignorance is likely to be less detailed and specific than one would otherwise look for....

Of course, any disclosure order must balance the claimant's lack of knowledge with the need to avoid a fishing exercise designed simply to shore up a weak case, and, of course, any disclosure order must be proportionate and drawn as tightly, as is consistent with any obligation to give reasons or to give disclosure in support of reasons that the defendant might be under.

The mere fact that the claimant cannot assess its case without knowing more of the Mitie bid would not though be sufficient to justify a specific disclosure application under the Roche principles unless the claimant shows a prima facie case. It does do so for reasons I have given already in respect of questions 6 and 13.”

25. As submitted by Mr Tankel, it appears to have been a combination of a prima facie case in respect of some questions, a lack of transparency in relation to the other questions, and the claimant having done the best it could on the information available to it by pleading a lack of transparency in its pleaded case, that justified the order for specific disclosure in OCS.
26. I do not consider it sensible or appropriate to seek to restate or gloss the general principles set out in Roche. It is sufficient to note that the cases explored in oral and written submissions indicate that underlying the rationale for the relatively low bar for early specific disclosure in procurement cases is the asymmetric position of the parties. That there is a low bar, however, does not mean that there is no bar at all. Once a claim has been pleaded, that pleading bears examination for relevance, even if it may properly be said that a Court would be entitled to construe a broad pleading generously if a lack of particularity is itself a result of the absence of the information sought. Having identified the pleaded case, the gateway to disclosure is generally predicated upon the existence of a *prima facie* case. Importantly, it is open to the Court, as demonstrated in particular both by Roche itself and OCS, to consider the entirety of the case advanced by the Claimant when considering whether there is a *prima facie* case. In other words, the Court may have regard to other aspects of the procurement process which are themselves not necessarily directly related to the documentation sought.
27. The Court must bear in mind the proportionality of the exercise and guard against requiring a contracting authority to waste time and cost providing documentation. The more focussed and discrete the documentation sought, particularly in circumstances where disclosure of that documentation may bring an early end to the litigation (in circumstances where it demonstrates the consistency and fairness of the decision making process), the more readily the Court will, in that balancing exercise, err in favour of granting disclosure even if it is sceptical about the strengths of the allegations made.

28. Finally, it is worth noting that the authorities relied upon, including Roche itself, all relate to early specific disclosure: i.e. earlier than the point at which standard disclosure would ordinarily be given. Ordinarily, the touchstone for standard disclosure will be relevance (and a reasonable and proportionate search). Relevance is defined by the pleaded issues. It is not ordinarily a touchstone of disclosure that the pleader must have established a 'prima facie case' in order to justify the disclosure of documents (whether as part of standard disclosure or a specific disclosure application) which are relevant by reference to the pleaded issues. Such an additional requirement must therefore be seen in the 'out-of-the-ordinary' context of allowing *early* specific disclosure.

Analysis

29. Mr Tankel argued that the pleading advanced four positive allegations, each of which related to the evaluation of the Prime Way's own PSQ response, and advanced a positively unpleaded allegation relating to unequal treatment in respect of which, pending disclosure, Prime Way reserved its position. It was submitted that this unpleaded ground boils down to the following: that a combination of (a) the wording of the question; (b) level of depth required by the Defendant; and (c) the word count meant that it was impossible to score 4+, and that at the time of drafting its Particulars of Claim, Prime Way had all the information necessary to draft that basic pleading, even if at a high-level at that stage; yet it expressly did not do so.
30. Whilst there is certainly force in the submission that the pleading could have been clearer, and it is right that the fact it was drafted by a litigant then acting in person is not of itself an answer to a fatal absence of plea if such existed, it is clear to me that at paragraphs 19 and 20, the Particulars of Claim advances, in terms, a case based upon '*the violation of ... equal treatment*'. It does so in the context of the allegation that there existed 'shadow benchmarks', i.e. undisclosed criteria. Whilst Mr Tankel is correct that the existence of such undisclosed criteria in itself, if true, would be a claim in its own right, this does not mean that it may not also found a claim for unequal treatment if the undisclosed criteria were applied to some but not others within the evaluation. Prime Way is plainly entitled to put its case in both ways, should it wish to do so, and there is no doubt that it has done so using clear language.
31. Prime Way's pleading also explicitly advances the position that it would wish further to particularise its case following standard disclosure specifically in the context of potential unequal treatment with reference to the 'depth' of answers given in 500 words. It may be that a more astute pleader would have worded this paragraph more felicitously, but combined with the reference to 'violation of....equal treatment' at paragraph 20, a generous but not unfair reading of the document as a whole is that (1) Prime Way was advancing a case not limited to the application of undisclosed criteria in its own right, but included one alleging unequal treatment; (2) it anticipated the provision of further particulars in respect of its pleaded claim in respect of unequal treatment following disclosure. Documents included in 'standard' disclosure would be defined by the ambit of the pleaded allegations as they stood. That the pleading explicitly anticipated that this would include documentation allowing for, if appropriate, further particularisation of the equal treatment case, is a further indication that paragraph 20 should be read as including an extant, albeit generalised, plea of unequal treatment.

32. I therefore conclude that the pleading does include a general plea of unequal treatment sufficient to put in issue a claim to which the documentation sought would be relevant.
33. Mr Tankel advanced the argument that, even if pleaded, there was no *prima facie* case. However, as indicated above, this is a requirement imposed in the context of early specific disclosure. The present case is perhaps unusual in that the application is being heard post pleadings and relatively shortly before disclosure would (subject to any other applications such as strike out/summary judgment) otherwise ordinarily be required of the parties. The question of whether a claim of unequal treatment in respect of Q22(ii) is pleaded having been resolved against Southwark, documents in the control of Southwark discoverable after a reasonable and proportionate search relating to that pleaded issue will need to be disclosed shortly in any event. This application brings their disclosure forward before standard disclosure (a date for which has not yet been ordered). But it is difficult to characterise the remaining application as one of particularly ‘early’ specific disclosure, when the very next step in the proceedings would be to disclose the documents in any event. I am therefore hesitant that an application such as the present one should therefore be subject to the ‘additional’ hurdle of ‘*prima facie case*’ which would not apply to a normal specific disclosure application following what is said to be an inadequate standard disclosure exercise; to do so as a matter of course seems to be imposing a hurdle not justified at least in the specific circumstances of this case. If I am right in this hesitation, disclosure ought to be ordered in circumstances where (as I find to be the case) the document would fall to be disclosed shortly in any event by reference to the pleadings, it is readily available and its disclosure is not disproportionate, confidentiality concerns have been met, and it is in the interests of case management as a whole that this particular sub-set of standard disclosure is brought forward.
34. If it remains necessary to consider whether the pleading discloses a *prima facie* case before ordering specific disclosure at this stage of the limited category of documentation sought, I conclude that, notwithstanding the considerable force in Mr Tankel’s observations about the apparent strength (or lack thereof) in the case as presently advanced by Prime Way, that the low bar of a *prima facie* case has been met. This does not demand an analysis of competing evidence and an assessment of the prospects of success in the manner of a summary judgment application; it requires looking at one side of the picture – the claimant’s – and considering whether the case advanced is sufficient to warrant an answer. Pending disclosure, it may amount to little more than assertion grounded in honest belief, which is coherent and constituted of the necessary elements of a cause of action. The overall assessment may also involve, as the authorities demonstrate, the identification of general concerns about the adequacy of the procurement process.
35. In this context, Mr Barrett placed particular emphasis on the fact, admitted in this case, that Southwark relies in part on its letter of 27 February 2026 which was an *ex post facto* letter with expanded reasons. Mr Tankel, relying upon the evidence of Ms Mussellwhite, contends that the contents of Southwark’s letters are referable back to the underlying contemporaneous evaluation materials. However, whilst it may be that in due course having considered all the evidence the Court determines that there is nothing in the point, on the face of it, it appears unsatisfactory that comments in the typed moderation minutes (disclosed in May 2026) do not appear in the handwritten moderation notes, giving rise to a further concern around *ex post facto* justification.

That this criticism has not (yet) been pleaded is not an answer: as Mr Barrett argued, the intention would be to plead a single further amended pleading following the review of any disclosure obtained by this application. Whilst the other points raised by Mr Williams in his Third Witness statement do not appear particularly compelling, and the facts of this case even at their highest, as they presently appear to be, fall well short of the sort of significant inadequacies within the process identified in cases like Roche and Geodesign, taken in the round I consider that the low threshold (if it is a threshold at all, in this case) of *prima facie* case is met.

36. Mr Tankel argued that the claim around unequal treatment was not raised until after DWF was instructed, two months after Prime Way were provided with the further reasons for its failure to have scored sufficiently on Q22(ii) to move to the next stage of the procurement process. I have concluded otherwise, in that the claim was pleaded, at least in a generalised way, sooner. What it is open to Prime Way to advance by way of amended claim, in due course, may be a matter for argument in the face of any such amendment, and it would not be appropriate to deal further with that question when no amendments are before the Court. To the extent that Southwark criticize the failure to have sought documents relating to other bidders sooner, I consider this criticism unwarranted. Whilst again not advanced with the clarity that one might expect from a represented party, I accept that in its first communication Prime Way raised concerns about ‘consistency’: whilst ambiguous, I consider the language broad enough to encompass consistency of approach between Prime Way and other bidders. Moreover, it lies somewhat ill in the mouth of Southwark to take this point in circumstances where it responded by providing no disclosure at all, even in relation to the evaluation of Prime Way’s own bid. It is not as though it relied upon the narrow meaning of consistency now advanced, by providing documents responsive to that narrow definition. If it had done so and there was no complaint about the extent of disclosure, it would be in a much stronger position to argue that only narrow disclosure had been sought.
37. I do not therefore consider that the timing of the application militates against its being granted.
38. In terms of proportionality, Southwark did not dispute that the relevant spreadsheets were limited and readily available. The application is focussed within that on a single question, and can now be narrowed to just 5 bidders. There is no question but that the disclosure sought is very narrow, and readily available at little or no cost. It may be that concerns about consultation in due course with the bidders whose evaluation materials gave rise to a legitimate concern about the significance of the exercise, particularly when it related to 33 bidders. However, the scale of the task is considerably narrower, and, as Mr Barrett pointed out, the need to liaise with bidders is not in the first instance a concern in circumstances where the first disclosure will be to a lawyer only confidentiality ring. The application is clearly a proportionate one and I do not consider that complying with the order would credibly require the expenditure of any significant resource which may interfere with the frontline procurement work undertaken by Southwark.
39. Mr Tankel’s final objection relating to the likely probative value of the material again makes points which are not generally without some substance. However, seen in the context of the very limited documentation sought, the application cannot sensibly be regarded as a fishing expedition. Moreover, in one sense, the provision sooner rather

than later of documents which, on Southwark's case, will not provide any support at all for a challenge, is in the overall interests of case management, and may see (if Southwark is correct) a narrowing, rather than an expansion, of the issues. The likely probative value of documents must be weighed against the extent of the disclosure exercise required. Where, as here, it is very narrow, concerns as to the probative value do not weigh greatly in the scales against requiring disclosure of something which, on the face of it, is relevant to a pleaded issue.

40. In the circumstances, the disclosure sought, limited to the 5 anonymised bidders who are presently the successful subset of the original 33 who scored 4+ in respect of Q22(ii), is to be disclosed into the confidentiality ring, the terms of which have been agreed by the parties.