Neutral Citation Number: [2024] EWHC 3306 (Admin)

Case No: AC-2023-LON-003027

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2024

Before :

LADY JUSTICE MACUR DBE
and
MRS JUSTICE COLLINS RICE DBE

- -

Between :

HIS MAJESTY'S ATTORNEY GENERAL FOR ENGLAND AND WALES	**Claimant/ Applicant**
- and -	
MARK GREGORY HARDY	**Defendant/ Respondent**

- -
- -

Bayo Randle (instructed by **Government Legal Department**) for the **Attorney General**
The **Defendant** appeared in person (Mr Hardy)

Hearing dates: 5 & 6 November 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MACUR LJ :

Introduction

1. Mark Hardy has been extensively involved in extensive litigation since 1991, predominantly arising from his own bankruptcy and the insolvency of companies in which he has been an office holder, or in which he has an interest as a shareholder. He has appeared in numerous courts, at home and abroad, in various capacities as a litigant in person, and having obtained rights of audience on behalf of other claimants and respondents, either asserting he has their 'power of attorney' or else in accordance with the sanction of the court (See *Stannard* ([2015] EWHC 1199 (Admin) referenced in [66] and [67] below). In *Sir Henry Royce Memorial Foundation v Hardy* [2021] EWHC 714 (Ch) HHJ Paul Matthews said of Mr Hardy at [56]:

> "I do not know if any of these complaints [which led Mr Hardy to litigate and to make complaints to professional regulatory bodies] is justified. I will only observe that, if they are, then the defendant [Mr Hardy] is a singularly unfortunate person to have come into contact, in his business life, with so many persons committing criminal, regulatory and disciplinary wrongs in matters which he interested himself".

2. The question for this Court is whether Mr Hardy has indeed been unfortunate or, as another court concluded, has been a "serial …vexatious litigant …willing to employ all means, including civil litigation, criminal prosecutions, regulatory and disciplinary jurisdictions, in order to attack those with whom he is in dispute" and, if so, whether we should make an all proceedings order against him pursuant to section 42 (1A) of the Senior Courts Act 1981 ("section 42").

3. His Majesty's Attorney General (HMAG) applies by Mr Bayo Randle of counsel, for such an order to endure for the period of three years and to include *"Vaidya"* terms (*AG v Vaidya* [2017] EWHC 2152 (Admin)), that is preventing Mr Hardy from acting as a representative or McKenzie friend in any proceedings. In specifying this period rather than seeking an indefinite term, it is said that HMAG recognises that Mr Hardy has not been subject to a Civil Restraint Order which has a maximum initial term of three years.

4. Mr Hardy denies that he has instituted any vexatious proceedings or applications in any court anywhere in the world as set out in the application and supporting witness statements: he claims he has only pursued meritorious complaints against various individuals through the courts or their professional bodies. The order sought is "wholly without merit, false, malicious, vexatious and is a deliberately and institutionally corrupt act by HMAG [then serving in post] and those with whom she was conspiring, and that she was in breach of the Ministerial Code and her oath of office as Chief Law Officer of His Majesty's Government in making the application, and/or her conduct amounted to the tort of Misfeasance in Public Office". In short, the application was an attempt to thwart reporting and/or prosecution of HMAG and her ministerial colleagues for criminal offences. Some of the then HMAG's political colleagues, including two former Prime Ministers, had received substantial cash donations from Jonathan Patrick Moynihan ("JPM"), "who is the person who petitioned for my bankruptcy and is paying, believed to be without limit, the related legal and other expenses that are presently estimated to exceed £500,000, and I believe

> the evidence will show that JPM is one of the parties that has improperly encouraged [HM] AG to make this application in order to assist his appointment as a Peer of the Realm as stated in my letter to the present Prime Minister."

5. Mr Hardy filed a defence and counterclaim to like effect on 16 May 2023, seeking that "The Claimant be prohibited from commencing or continuing any civil action against the Defendant for such period of time as the Court shall deem just after considering the evidence and hearing legal argument from the parties at the trial of this claim AND be ordered to pay the Defendant such amount of damages as the Court shall deem fit after hearing legal argument."

6. Nonetheless, Mr Hardy indicated at the outset of the hearing of these proceedings, which he conducts on his own behalf, that he would give an undertaking in terms, or else submit to an order which had the effect of an all proceedings order SAVE in so far as it related to his ability to make application in respect of insolvency proceedings within his own bankruptcy or companies which "cross relate to my bankruptcy". (Mr Hardy has several outstanding claims awaiting disposal against more than one respondent.)

7. This was unacceptable to HMAG for Mr Hardy had given such undertakings in the past but failed to abide by them and more generally has breached or failed to comply with Court orders.

The Legislation

8. Section 42 of the Senior Courts Act 1981 provides that:

> "(1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground—
>
> (a) instituted vexatious civil proceedings, whether in the High Court or the family court or any inferior court, and whether against the same person or against different persons; or
>
> (b) made vexatious applications in any civil proceedings, whether in the High Court or the family court or any inferior court, and whether instituted by him or another,
>
> or
>
> (c) instituted vexatious prosecutions (whether against the same person or different persons)
>
> the court may, after hearing that person or giving him an opportunity of being heard, make a civil proceeding order, a criminal proceedings order or an all-proceedings order.
>
> (1A) In this section—
>
> "civil proceedings order" means an order that—

(a) no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;

(b) any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and

(c) no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;

"criminal proceedings order" means an order that—

(a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and

(b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and

"all proceedings order" means an order which has the combined effect of the two other orders.

(2) An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period but shall otherwise remain in force indefinitely.

(3) Leave for the institution or continuance of, or for the making of an application in, any civil proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application.

(3A) Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection(1) shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.

> (4) No appeal shall lie from a decision of the High Court refusing leave require by virtue of this section.
>
> (5) A copy of any order made under subsection (1) shall be published in the London Gazette.
>
> …"

Preliminary Matters

9. The parties were notified in advance of the hearing that the constitution of the Court to hear the extant application included my lady, Collins Rice J who had, prior to her appointment to the High Court in 2020, previously served in HMAG's department, the Attorney General's Office. Mrs Justice Collins Rice had no dealings with any matter involving Mr Hardy and, after careful reflection, did not see the necessity to recuse herself. However, the parties were invited to indicate any objections to her hearing the application. Mr Hardy expressly indicated in writing that he had no such objections.

10. During the hearing, Mr Hardy required confirmation that, following the change of administration in July 2024, HMAG has personally given his fiat to the continuation of the proceedings commenced by his predecessor. This was confirmed by Mr Randle on instruction before the Court.

Preliminary Issues

11. A number of preliminary issues were raised by Mr Hardy, some of which clearly engage with aspects of the substantive application; however, it is convenient to refer to them here.

Part 8 procedure

12. CPR 8.1 (2) provides that:

> "A claimant may, unless any enactment, rule or practice direction states otherwise, use the Part 8 procedure where they seek the court's decision on a question which is unlikely to involve a substantial dispute of fact."

13. Mr Hardy challenges HMAG's issue of a CPR Part 8 claim in the application despite knowing that there are "substantial disputes as to the facts." In one of the several witness statements he has filed in these proceedings Mr Hardy indicates that he has produced:

> "12. A limited number of the thousands of pages of evidence and legal argument from the various applications referred to by AG that clearly rebut and refute AG's Grounds are contained in the accompanying Witness Statement and Exhibit thereto. I wish to supplement this evidence with oral testimony at trial and such other written evidence as the Court will permit."

14. I can corroborate Mr Hardy's assessment of the volume of documentation he has produced. During the proceedings, at the commencement of the second day of the hearing, he sought to introduce yet more documentation into the proceedings saying he had received "hundreds of e-mails" overnight, from someone whom he did not know previously but who had sat at the back of the Court on the first day of the hearing and wished to support various of Mr Hardy's points. Mr Hardy had not fully assimilated the information which he proposed to adduce and could neither identify the nature or the provenance of the further evidence he sought to introduce beyond to say that it supported his application for this Court to appoint a Special Advocate (see below). We summarily refused his request to adduce the additional evidence he said he had been provided with.

15. The documentation that he has produced and exhibited to his witness statements, which fills several court bundles and has taken considerable time to read, is irrelevant in so far that it seeks to re-argue the cases and undermine the previous rulings, judgments and orders upon which HMAG relies: See *Attorney General v Jones* [1990] 1 WLR 859 at 863 D -F; see also *Attorney General v Millinder* [2021] EWHC 1865 (Admin) at [55].

16. As we have needed to remind Mr Hardy on more than one occasion, this Court does not sit as the Court of Appeal. As indicated below, I would also refuse Mr Hardy permission to make his counterclaim. Therefore, there is no substantial dispute of fact to try.

17. Mr Hardy does not identify any enactment, rule or practice direction which disapplies the Part 8 procedure to section 42 applications. Consequently, I am satisfied that the CPR Part 8 procedure is correctly invoked in respect of a section 42 application.

18. That being so, HMAG raises a procedural issue with the service of the defence and counterclaim:

(i) CPR rules 8.9 (a) (ii) and 15.1 confirm that rule 15 (which provides for the filing of a defence) does not apply in Part 8 proceedings; the appropriate response is to provide an acknowledgment of service and evidence (if relied upon), in accordance with CPR rules 8.3 (1) and 8.5 (1).

(ii) CPR rule 8.7 provides that where the Part 8 procedure is used a party may not make a counterclaim without the court's permission.

19. Mr Hardy has not sought permission to make a counterclaim and said that "events have moved on" and he is concerned only to protect his ability to make future representations arising from his bankruptcy and in adjourned proceedings. This is a pragmatic and realistic approach. However, undoubtedly, I would have refused him permission to pursue the counterclaim as drafted or at all. I agree with HMAG that the purpose of a section 42 application is to determine whether a litigant is vexatious and what restrictions should be placed on their ability to engage in litigation and should not be waylaid by other claims. In any event, the counterclaim as drafted is not properly particularised or of sufficient clarity for HMAG to fully understand the nature of the claim.

Cross examination of witnesses

20. Mr Hardy indicated a wish to cross examine at least one of the authors of the witness statements served in support of the extant application. Frazer William John Halcrow and Aaqib Majid are both lawyers of the Government Legal Department and are authorised to make statements on behalf of HMAG.

21. Mr Hardy did not make a formal application to the Court for the attendance of either Mr Halcrow or Mr Majid to give oral evidence and be cross examined, although I note that in e mail correspondence with Mr Majid on 2 July 2024, that he asked:

> "So far as the Trial is concerned please would you confirm that you personally will be present at the hearing so that I may cross examine you on your Witness Statement that contains many false statements upon which you seek to rely? Will Mr Halcrow be available to be examined on his false statements? Also please confirm that you will include in the bundle all correspondence between us to the date of the trial".

22. CPR8.6(3) provides that the court may give directions requiring the attendance for cross-examination of a witness who has given written evidence. Mr Majid was present in Court attending Mr Randle and was therefore available to give evidence if required or directed. When I asked which falsehoods Mr Hardy was seeking to expose, he explained that he wished to correct the impression given in the statements regarding his role in the Focus Insurance Co Ltd litigation. It became clear that he wished to distance himself from the allegation, as recorded in *Privy Council Appeal No. 6 of 1995*, that "he had milked Focus of very large sums of money". However, this would constitute an attempt to undermine what were the findings and/or judgments of the Chief Justice of Bermuda, the Court of Appeal of Bermuda and the Privy Council. We therefore refused Mr Hardy permission to cross examine either Mr Halcrow or Mr Majid. I agree with HMAG: the statements of Mr Halcrow and Mr Majid intend to summarise the procedural background to the application and record the outcome of, and findings made in previous court proceedings by reference to, published and public judgments of civil and criminal courts. If there is a personal gloss upon the accounts, I have studiously ignored it. If personal opinion is expressed, I have not adopted it unless it coincides with my own.

Appointment of a Special Advocate and leapfrog appeal

23. Mr Hardy invites the Court to:

(i) appoint an advocate to the Court under the provisions of CPR PD3F. "The grounds of the request are that AG is conflicted, unrepresented and is accused of gross impropriety and/or Misfeasance in Public Office ... The matters involve complex questions of law, including implications under the Human Rights Act 1998 ("HRA") and the Insolvency Act 1986 ("IA86") that have not been considered by this or any Superior Court of the United Kingdom, or by the European Court of Human Rights ("ECtHR")."

(ii) To state a case, or direct the AG, to State a Case [CPR Part 52] to the Court of Appeal, or by way of leapfrog to the Supreme Court, in the matter of whether any Order made under s.42 Superior Courts Act can restrict a Bankrupt's rights to have the designated court review/reverse the decisions of any Trustee appointed to office under

IA86 by having to make prior application to the same Court that will hear any appeal of any such decision upon which it has already adjudicated.

24. These two matters go hand in hand.

25. Practice Direction 3F supplements CPR, rule 3.1 (that is the Court's general rules of management) and concerns requests for the appointment of an Advocate to the Court. A court may properly seek the assistance of an Advocate to the Court when there is a danger of an important and difficult point of law being decided without the court hearing relevant argument.

26. I saw no good reason arising from the written submissions contained within the contents of Mr Hardy's several witness statements to seek the assistance of a Special Advocate but indicated that the Court would keep his request under review throughout the proceedings. Ultimately, it appeared to me that Mr Hardy wished an Advocate of the Court to act as his advocate. Nothing arose during the hearing to persuade me that HMAG should be invited to instruct a Special Advocate.

27. In summary, Mr Hardy argues that the 'special nature' of bankruptcy proceedings differentiates them from 'civil proceedings'. A bankrupt may challenge the issue of any statutory demand or decision of the appointed Trustee, but the necessity to make a prior application to commence such a challenge if he was made a vexatious litigant, will mean that the same court that would otherwise hear his appeal against any such decision, would necessarily adjudicate upon the merits of the claim in advance of hearing the challenge. Further, since the Senior Courts Act 1981 was enacted prior to the Insolvency Act 1986, bankruptcy proceedings could not have been in the contemplation of the legislature to be appropriately within scope of section 42 proceedings. The vexatious litigant process is in breach of his Article 6 right to a fair hearing.

28. I regard the argument Mr Hardy advances as to the 'special nature' of bankruptcy proceedings to be fallacious. His argument about prejudgment would apply across the board in any civil proceedings but in any event is misconceived. Section 42(3) provides that leave for the institution or continuance of, or for the making of an application in, any civil proceedings by a person who is the subject of an order in force under s42 (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application. (Emphasis provided) That is, the test does not require the nominated judge, who determines the application of the vexatious litigant to commence or continue proceedings, to assess the merits of the claim rather the circumstances in which it is apparently made and see *Williamson v Bishop of London* [2023] 1 WLR 2472 below.

29. The Court of Appeal in *AG v Jones* [1990] 1 WLR 859 were called upon to define civil proceedings in the context of proceedings in the Court of Appeal. Lord Donaldson of Lymington MR, at page 863C, indicated that although the 1981 Act was "primarily concerned with the powers, duties and procedures of the Supreme Court, this section [s 42] was to extend to proceedings initiated in other courts, such as county courts, but was not intended to extend to proceedings initiated in those tribunals which were not properly characterised as courts." The bankruptcy and insolvency proceedings upon

which Mr Hardy has embarked have undoubtedly been instituted or heard in civil courts albeit under specialist jurisdiction.

30. I am satisfied that bankruptcy proceedings comprise civil litigation and any litigant in such proceedings may, in relevant circumstances, be subject to section 42 proceedings.

31. It matters not that the Senior Courts Act 1981 was enacted before the Insolvency Act 1986. The Senior Courts Act 1981 is a statue 'always speaking' and has been amended accordingly throughout the years; see *R (Quintavalle) v Secretary of State for Health* [2003] 2AC 687 at [8].

32. The interplay of a vexatious litigant's Article 6 rights and unfettered access to the courts has been authoritatively determined in different judgments of the Court of Appeal.

33. Staughton LJ in *AG v Jones supra* at [84 C] held that:

> "The power to restrain someone from commencing or continuing legal proceedings is no doubt a drastic restriction of his civil rights and is still a restriction if it is subject to the grant of leave by a High Court judge. But there must come a time when it is right to exercise that power, for at least two reasons. First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection; secondly the resources of the judicial system are barely sufficient to afford justice without unreasonable delay to those who do have genuine grievances and should not be squandered on those who do not."

34. Simler LJ (as she then was) in *Williamson v Bishop of London* [2023] 1 WLR 2472, at [37] reiterated that:

> "… a CPO operates as a filter and not a barrier. Once a CPO is made, it regulates a vexatious litigant's access to the courts, rather than barring it. The vexatious litigant may not institute or continue or make an application in any civil proceedings unless a High Court judge is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application. The vexatious litigant who is the subject of a CPO will know about the restriction that has been placed on their right of access, and the responsibility for making an application for leave must therefore lie on the subject of the CPO. Putative respondents or defendants (and the courts and tribunals themselves) may not have the same ready knowledge. While it is true that this process may act as a deterrent to further proceedings, it does not deny rights of access to justice."

35. The Lord Chief Justice, Lord Woolf in Attorney *General v Covey; Attorney General v Matthews* [2001] EWCA Civ 254 said at [6] – [9]

> "[6] It is common ground that Mr Covey and Dr Matthews are entitled to rely on art 6 of the European Convention on Human

> Rights which is set out in the Schedule to the Human Rights Act 1998. Section 6 of the 1998 Act provides:
>
> "(1) It is unlawful for a public authority to act in a way which is incompatible with Convention rights."
>
> [7] Section 6(3) of the Act states that a "public authority" includes a court or tribunal.
>
> [8] Article 6 so far as relevant provides:
>
> "(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
>
> [9] On behalf of Dr Matthews, Mr Pickering accepts that it is clear from the case law that the right given by art 6 is not absolute but may be subject to limitations by a regulation. However, he argues that the limitation must not be such that the very essence of the right is impaired. He therefore submits that s.42 is to be applied and interpreted in a manner which is consistent with art 6. That was accepted to be the position by the Divisional Court if there is any question of conflict with art 6 in the case of Dr Matthews (see para 55 of the judgment) and is also accepted by me to be the position when considering an application under s.42."

Subsequently, at [60] he went on:

> "…it is useful to refer to the decision of the European Court of Human Rights in *Tolstoy Miloslavsky v United Kingdom* (1999) 20 EHRR 442. In that case the court said:
>
> "59. The Court reiterates that the right of access secured by Article 6(1) may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. However, the Court must be satisfied, firstly, that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Secondly, a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aims sought to be achieved."

36. To make such a section 42 order, if warranted, does "pursue a legitimate aim" and there is "a reasonable relationship and proportionality between the means employed and the aims sought to be achieved". Furthermore, because of the ability of the court to give permission for the bringing of any proceedings which are justified, the limitation which is imposed does not restrict or reduce the access left to the individual

to an extent that the "very essence of the right of access to justice is removed"; see *Attorney General v Covey* at [61].

37. If I do not consider that any of Mr Hardy's arguments give rise to a novel or difficult point of law to justify the appointment of a Special Advocate, it must follow that I do not consider that there is any proper basis which justifies a 'leapfrog' appeal by way of case stated to the Court of Appeal. A right of appeal lies to the Court of Appeal from any order this Court makes in the application. It may be for the Court of Appeal to determine whether, as Mr Hardy contends, there is a point of public importance that should be considered by the Supreme Court.

The substantive application

38. The statements prepared by Frazer William John Halcrow dated 30 March 2023 and Aaqib Majid dated 28 June 2024, summarise the "court cases in which Mr Hardy has played a significant role" and which have led to adverse judicial comment. Exhibited to the statements is a schedule of claims and table of judgments containing a brief synopsis of the cases and/or decisions upon which HMAG based the decision to proceed with this application.

39. It is unnecessary to refer to the detail of all such proceedings. Mr Hardy has not challenged the number or nature of the claims as listed, merely their categorisation as 'vexatious'. It is sufficient to summarise that between July 1995 and May 2024 Mr Hardy has: made unsuccessful appeals to the Privy Council, the Court of Appeal and the High Court in respect of orders made in his own bankruptcy; unsuccessfully challenged the actions of administrators of EDI and Newscreen Media Group plc (in liquidation), KPMG and others, has been subject to an injunction against presenting a winding up petition addressed to KPMG, Begbies Traynor and the Royal Bank of Scotland plc after his service of a statutory demand for payment of £1m; had summary judgment he obtained against the liquidator of the Oil and Gas Insurance Company in Ohio set aside; filed what was held to be an unmeritorious complaint against the National Association of Insurance Commissioners and others in the United States; had his application for a winding up petition in respect of Connemara Mining Company dismissed in Ireland; unsuccessfully sought to proceed against Judah Eleazor Binstock through the vehicle of a limited liability partnership which he set up named as JEB; sought to prosecute Haslers (a partnership), two of whose partners were liquidators of JEB; unsuccessfully sought access to the register of members of Sir Henry Royce Memorial Foundation; unsuccessfully applied for a summons to prosecute Sir Henry Royce Memorial Foundation, Vote Leave Limited and named individuals; had his claim for compensation for JEB from the liquidators of JEB struck out; unsuccessfully applied for permission to appeal against costs orders made in his application for judicial review against the refusal of the issue of criminal summons; had his claim against Sir Henry Royce Memorial Foundation for 'exemplary damages' stayed; had a claim for defamation struck out as wholly without merit; had his application for removal of his trustee in bankruptcy struck out as totally without merit, and had his claim against David Burchler, DB Consultants Limited and Zulu Realisations Limited struck out as totally without merit. Mr Hardy's application seeking permission to appeal the orders made relating to Hardy v Bulcher and others has been dismissed as totally without merit, and indication given by Rajah J, that he is considering the making of a Civil Restraint Order.

40. I agree with Mr Hardy that a reading of the judgments in the cases cited do not demonstrate that all the proceedings he has initiated or all the applications he has made have been without reasonable ground: see for example the finding of HHJ Paul Matthews and DJ Woollard referred to below. However, to determine whether litigation behaviour is habitual and persistent and without reasonable cause, this Court must look at the "cumulative effect of [Mr Hardy's] activities, both against the individuals who are drawn into the proceedings and on the administration of justice generally"; see *Attorney General v Covey* (supra) at [61]. I consider that the summary in [39] above more than adequately demonstrates this quality. It is the overwhelming and overall picture of Mr Hardy's willingness to sustain campaigns of litigation against several individuals with apparent improper intent that informs HMAG's application.

41. However, I remind myself that although I find Mr Hardy has been consistent and persistent in the profligacy of his claims which have been found to be without reasonable ground, this does not necessarily define him as 'vexatious'. As per Lord Bingham in *AG v Barker* [2000] 1 FLR at [19]:

> "The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process. "

42. Various of the judicial comments made within the judgments against Mr Hardy speak to this issue. They merit reproduction below.

43. In *Hardy v McCloughlin and Watson (in their capacity as the former joint administrators of Newscreen Media PLC (in liquidation)* [2009] EWHC 944 (Ch), Bernard Livesey QC, DHCJ: found at [21] that

> "Mr Hardy's present application appears to be a further attempt to pursue what is essentially the same campaign. The tactic arises from the fact that, at a hearing before Sir John Lindsey on 15th January 2009, in face of an application by the Joint Administrators of EDI for a civil restraint order against him, Mr Hardy accepted an undertaking not without the permission of the court to make any application in any civil court in England and Wales "in relation to or connection with the administration of EDI". It is evident that Mr Hardy has crafted the present application so as not to be in breach of this undertaking. As can be seen the heading on the title to the present application is "In the Matter of Newscreen Media Group pic (in Liquidation)"

In [41] he found as regards Mr Hardy's complaints of negligent or fraudulent misrepresentation that:

> "In the present case, the Respondents did not make a single misrepresentation to Mr Hardy person to person; indeed, he did not arrive on the scene until seven months after they had ceased acting as Administrators. While acting, they did not have any relationship with him or even know of him. Since they neither addressed the alleged misrepresentations to him nor intended him to rely on them, they had no duty to retract them. The attempt to impose on them, after they have been discharged from acting as Administrators, liability for representations implied by him from their conduct is in my judgment illegitimate and hopeless and must fail."

44. In *In the matter of the Connemara Mining Company PLC"* [2013] IEHC 225, Ms Justice Laffoy at [19] addressing the allegation of Mr Finn, a shareholder and creditor of the company resisting the winding up petition of Trampus, fronting Mr Hardy, that the petitioner had an ulterior motive to put pressure on the company to sell to the petitioner its main asset at a reduced value or to secure the appointment of a liquidator from whom the asset could be purchased on more favourable terms, said:

> "It is impossible for the Court to form a definitive view on Mr Finn's allegation or Mr Hardy's response to it on the basis of that affidavit evidence alone and in the absence of cross examination. Notwithstanding that, taking an overview of the position adopted by the Petitioner, it has to be said that it is so fundamentally riddled with inconsistencies and clear contradictions, that a question inevitably arises as to the Petitioner's true intention".

45. Subsequently, addressing the basis upon which Mr Hardy, on behalf of the Petitioner, had sought to satisfy the Court that it was just and equitable to wind up the Company, she said at [55]:

> "…the Petitioner is one member out of in excess of four hundred members on the Company. The Petitioner's claim that the Company should be wound up on the ground that it is just and equitable to do so because he no longer has confidence in the directors of the Company is utterly unstateable. If it were otherwise, a disgruntled shareholder could cause mayhem in the corporate sector…"

46. In the Chelmsford Magistrates Court on 10 December 2020, DJ Woollard reviewing the issue of a summons issued by a legal adviser on the application of Mr Hardy against Haslers stated:

> "The application makes an assertion that on 26 October 2019 the ICAEW had written to him [Mr Hardy] confirming their conclusion that there was clear evidence to support their investigation of other offences of the proposed defendant relating to other incomplete or improper disclosure of the proposed defendant. It also asserts that a copy of that letter was included with the witness statement. I do not have any reason to disbelieve that but for reasons not explained to me, the person

who made the decision did not consider any of that, nor that this was an application by an unrepresented applicant who thus had no one acting for him who was bound by the duties required of solicitors or barristers to act as a Minister of Justice.

He was making allegations of a minor offence but in terms that suggested a significant history of antagonism towards the proposed defendant who was disclosing that the partnership's professional body was involved but had decided not to prosecute without giving any reasons for the disciplinary offence alleged.

All this should have sounded significant alarm bells, significant enough to have demanded of the applicant far greater disclosure from the applicant than was contained in his cursory statement which I do not recognise has approached any sufficient detail to justify the issue of the summons or to give the proposed defendant an opportunity of being heard as to whether a summons should be granted.

…

Private prosecution is a very important safeguard for the citizen where they have been harmed by others or acted to their detriment by those who have allegedly committed criminal offences, they should be able to take action in the criminal Courts if they believe the original decision was wrong. …

In this case Mr Hardy has not suffered any injury or loss as a result of this particular breach of the law assuming for a moment that he could prove it. It is a minor offence which would attract a minor penalty if proved. He has not seen it fit to report the matter to the Secretary of State or through Companies House or elsewhere or to the police and the director of public prosecutions. He says he is public spirited enough to want to bring to book bodies which do not comply with Companies Act requirements. It is noticeable however that the only bodies he seeks to proceed against are businesses with which he has ongoing litigation in other areas.

There was a lack of candour on his part in disclosing the full history both in relation to his dealings with the ICAEW and letters that they had written to him. He has still not provided this court with any formal evidence upon which he would seek to proceed. He has not shown anything other than statements in correspondence and elsewhere which may or may not amount to hearsay evidence and may or may not be admissible and could not prove the actus res in this case.

Taking all of those factors into account the court's view is that this is far from a situation where a member of the public has been deprived of seeking redress in criminal offending. This is a man

> who is prosecuting a company with whom he has a complaint for a minor offence designed to put pressure on them in settling or otherwise disposing of civil proceedings and I refuse to issue the summons he seeks."

47. In *Sir Henry Royce Memorial Foundation v Mark* Gregory [2021] EWHC 817 (Ch), on the question of costs arising from Mr Hardy's unsuccessful application for access to the register of members, HHJ Paul Matthews formed the overall assessment that:

> "…the conduct of the defendant in the present case was well out of the norm, in the way he approached the inter partes correspondence, and in the language and tone that he employed in conducting it, in the way that he attempted to put in large amounts of irrelevant material as evidence, and in the way that he made unsupported accusations of serious offences against the claimant and its directors.
>
> 21. The defendant is (as he more than once reminded me) a litigant in person, and not a qualified lawyer, but that does not excuse him. There are not two sets of rules for litigation in this jurisdiction, one for represented litigants and one for unrepresented. As Lord Briggs said in *Barton v Wright Hassall LLP* [2018] 1 WLR 1119, [42], "Save to the very limited extent to which the CPR now provides otherwise, there cannot fairly be one attitude to compliance with rules for represented parties and another for litigants in person, still less a general dispensation for the latter from the need to observe them".
>
> 22. In any event, the evidence has disclosed that the defendant is intelligent and articulate, and an experienced litigant in person, with access to legal resources. The problem is that being neither professionally trained nor qualified as a lawyer, he has no sense of responsibility to the system, no duty of the kind that would be owed by a lawyer to the court (and sanctioned if breached), and no professional reputation to lose. In my judgment, this is a clear case for costs to be assessed on the indemnity basis, and I will so order."

48. On 29 March 2021, DJ Dodds dealt with Mr Hardy's application for a criminal summons against the Sir Henry Royce Memorial Foundation and others for the failure to complete a confirmation statement to the Registrar of Companies contrary to s 853L. Noting that:

> "Private prosecutors must observe the highest standards of integrity and act as Minister of Justice … includes private prosecutors being candid in disclosure so that the court is aware of any material background. Note: there were criticisms that MH had not disclosed everything that he should have done. By the time of today's hearing, I had a veritable 'War and Peace' quantity of documents from MH and the potential defendants so that I had the fullest possible picture of the background and circumstances

> and law relevant to my decision. I therefore did not choose to investigate whether or not MH had fully complied with his duty of candour.
>
> …
>
> (g) Are there compelling reasons not to issue the summons? Compelling reasons include the involvement of an abuse of process or some other lack of propriety or an improper purpose e.g. to pursue a collateral purpose such an undermining the orders made by another court or the application being vexatious. Applying *R (Haig) v City of Westminster MC* [2017] EWHC.
>
> …
>
> I am satisfied that there is history of MH conducting campaigns of vexatious litigation and pursuing poor points to pursue personal vendettas for financial gain or revenge because:
>
> (and then followed reference to cases in which Mr Hardy had been involved, some of which are summarised in [39] above)
>
> …
>
> (c) MH had suffered no injury or loss from the alleged offence

…."

49. The District Judge put all these points to Mr Hardy who responded:

> 1. that several of the critical judicial comments made about him had subsequently been taken back or corrected although not in publicly issued documents. 2. He had been trained in company law to ensure compliance with the requirements of the Companies Act and argued that he was justified in bringing prosecutions for failure to comply with the Act's strict requirements which were there for a reason. The authorities failed to properly enforce the Companies Act 2006.

50. Understandably, DJ Dodds did not accept these explanations, and neither would I. After further investigation, DJ Dodds concluded that Mr Hardy was seeking to prosecute relatively minor breaches of the Companies Act 2006 because he 'had bigger fish to fry'. He dismissed MH's applications to issue summonses because he had an "improper motive in attempting to use the device of prosecuting relevant minor offences as a way of keeping other claims Mr Hardy wished to make".

51. DJ Dodds queried whether this was a case of a starkly improper prosecution? Mr Hardy argued that it was likely that there had been breaches of the Companies Act 2006 so bringing the prosecutions was not starkly improper. However, this:

> "ignores that bringing a prosecution is a more nuanced process balancing the nature of the alleged offence, the public interest and the costs and difficulties of bringing prosecutions. It was not for [Mr Hardy] to act as his own Registrar of Companies. [He]

> has a history of not walking away causing those about whom he makes complaints and claims considerable costs. [He was like] a 'dog with a bone'. The long history of judicial disapproval (which MH appears to me to be blind to) makes these attempted prosecutions starkly improper and I therefore make orders for costs in favour of SHRMF and of VL and Jonathan Moynihan."

52. In *Nicholson v Hardy* [2021] EWHC 1311(Ch) Deputy ICC Judge Barnett, in determining an application to strike out Mr Hardy's claims against the liquidators of Mr Binstock's estate pursuant to CPR 3.4 (2)(b), that is as an abuse of process or otherwise likely to obstruct the just disposal of the proceedings, concluded at [65] – [70]

> "65. First, it is clear from the above litigation summary that, over many years, Mr Hardy has been willing to litigate on many fronts against those who cross him whether or not his position is justified.
>
> 66. Secondly, in his dispute with Mr Nicholson he has proved himself willing to take whatever steps may be necessary to damage the reputation of Mr Nicholson and his partners.
>
> 67. Thirdly, Mr Hardy has shown scant regard to the court process in these proceedings. Notwithstanding that he is a litigant in person he has substantial experience of the court process. However, his approach before me has been to include hundreds of pages of material to which he has not then referred. His submissions before me comprised principally of assertions without any supporting evidence, or at least evidence which he has considered fit to show me.
>
> 68. Fourthly, whilst I cannot determine whether, as Mr Brockman submits, Mr Hardy has made himself bombproof, it is not disputed that he has engaged in substantial litigation, had adverse costs orders made against him, and which remain outstanding. Mr Brockman's submission that he has played the system is a fair criticism.
>
> 69. Fifthly, for the reasons given above, it is clear that the s.212 Application is totally without merit.
>
> 70. Having regard to the above points, I am satisfied that the s.212 Application is yet another step in his campaign and that it is an abuse of the court process."

53. In *Milner v Hardy*, decided on 28 July 2023, DJ Hart, sitting in the central London County Court on Mr Hardy's application to remove his trustee in bankruptcy from office, described allegations made by Mr Hardy as 'fanciful' and 'diffuse'. Further, he found at [32] that the purpose of the application was

> "a collateral one, and the manner in which it was conducted is intended, as is the application itself, to cause expense to the bankruptcy estate; to injure the professional reputation of Ms Milner and to cause harassment to her in the exercise of her statutory duties. That is the clear and obvious conclusion when the quality of Mr Hardy's evidence is looked at in the context of his general pattern of behaviour. The intention behind this collateral purpose is likely to distract Ms Milner and any available funds from the investigation of whether there are undisclosed assets that should be recovered from the bankruptcy estate."

54. I consider these judicial assessments to carry considerable weight, extracted as they are from judgments which fairly analyse the strength of the evidence produced and the submissions made during the relevant hearing, and not entirely adversely to Mr Hardy. See, for example, in *In Sir Henry Royce Memorial Foundation v Hardy* [2021] EWHC 714 (Ch), HHJ Paul Matthew noted that Mr Hardy had been a director and company secretary of at least 46 companies that have been dissolved since 1990, that he had breached a worldwide freezing injunction and had been found in contempt of court in litigation in the county court and described as "a serial litigator". He went on:

> "58. None of this amounts to a badge of honour for the defendant. But neither does this background mean that someone who says that information disclosed will not be passed on to third parties is automatically to be disbelieved. Even if a person is found to have lied or behaved dishonestly on one occasion, it does not mean that that person always lies or behaves dishonestly. I am not satisfied on this evidence that the defendant's unstated purpose of the request was to threaten, harass or intimidate members of the claimant."

55. I am in no doubt that the statutory precondition of the order is fulfilled. Mr Hardy has habitually and persistently and without reasonable ground instituted vexatious civil proceedings and made vexatious applications in civil proceedings and instituted vexatious prosecutions.

Discretion

56. I recognise that HMAG seeks a draconian order.

57. Although not explicitly targeted as such, I think it appropriate to take some of Mr Hardy's general points, as going to the question of the Court's discretion to make the 'all proceedings' order sought.

58. Mr Hardy refers to the "Guidance Note: Vexatious Litigants and the Treasury Solicitor published 15 June 2010" and has demanded on several occasions in email correspondence with HMAG's office to know the identity of the party or parties who initiated the complaint about his alleged vexatious litigious activity to lead to an investigation preceding this application. Mr Randle received instructions to reveal the identity of the three parties who initiated the investigation into Mr Hardy's litigation history seeking HMAG to take action against him. They were two firms of solicitors

representing Lord Moynihan and the Henry Rose Memorial Fund respectively and Mr Hardy's trustee in bankruptcy.

59. It follows from matters reported within paragraphs [39] to [53] above that they have a valid standing from which to make the request and a legitimate interest in the HMAG making the application pursuant to section 42. They, or their clients, have been put to considerable financial expense and disquiet at the sustained litigation and have been or are at risk of Mr Hardy seeking their criminal prosecution. There is no demonstration of mala fides by or on behalf of HMAG or any of the referring parties.

60. I do not accept Mr Hardy's assertion that the application is made by way of punishing his past behaviour in making referrals of prominent members of society, or their professional advisers, to regulatory bodies. The purpose of a section 42 order is to regulate future conduct. It does not 'penalise' his past litigation behaviour.

61. A review of the history of litigation in which Mr Hardy has been involved reveals breach of court orders, failure to pay costs and the use of a partnership or corporate personality, created with the sole purpose of litigation. In these circumstances, his offer to give undertakings as to his future litigation behaviour, is entirely unreliable. In any event, the offer, as I indicate in [6] above is heavily caveated. Mr Hardy has numerous outstanding applications and appeals waiting in the wings.

62. I bear in mind that Mr Hardy has never been subject to a Civil Restraining Order. (There is no statutory requirement that he should have been before the application pursuant to section 42 was made.) However, the circumstances in which Mr Hardy has sought criminal summons, and announced in his submissions that there were many more offences he could have chosen to pursue would certainly justify the making of an 'all proceedings' order to restrict his pursuit or vendettas against putative respondents absent filter in accordance with section 42(3). Further, the number of individuals in Mr Hardy's apparent sights and the impact upon the resources of the judicial system make it appropriate for HMAG to take the lead.

63. That he seeks only to 'complete' proceedings already commenced is to ignore the repeated and consequential applications he has made within proceedings after refusal of his claims. The outstanding applications provide no good reason not to impose the order sought. I do not accept Mr Hardy's assurance that at the age of 73 he is less likely to wish to go to law. His e mail exchanges with Mr Majid in his engagement in this process has indicated his enthusiasm for the fray.

64. Further, I do not accept that his impecuniosity arising from his bankruptcy and his continued claims of malfeasance against his trustee in bankruptcy further restricts his access to Court; see *Attorney General v Gray* [2024] EWHC 718 (Admin) at [94] to [98]. He has not been thwarted in his repeated access to the courts over an extensive period, and not merely in his own regard; see, for example, [31] in *Stannard*. Further, Mr Hardy is responsible for assessing the merit of any application he would make pursuant to section 42(3) and (3A) and the likelihood of recouping any court fees he expends.

65. I do not regard the fact of publication in the Gazette of the making of a section 42 order to have any influence upon the balance to be drawn, "taking account on the one hand of a citizen's prima facie right to invoke the jurisdiction of the civil courts and on the

other the need to provide members of the public with a measure of protection against abusive and ill−founded claims. …": see AG v Barker (supra) at [2]. Mr Hardy has already received considerable negative publicity in the law reports, publication in the Gazette is not punitive but with the legitimate aim of publicising the order made.

Form of Order

66. Aware that HMAG seeks an order which includes 'Vaidya' terms, Mr Hardy rightly points out that he was not a Mackenzie friend in the case of *Stannard* ([2015] EWHC 1199 (Admin)) upon which HMAG relies.

67. The judgment in *Stannard* is telling in several respects. There is a sub heading which reads "Enter Mr Hardy". Mrs Justice Andrews, as she then was, dealt with the question of Mr Hardy's representation of Mr Standard in [24] – [31]. In doing so she noted that Mr Hardy had inaccurately described himself as a litigation friend by reason of a Power of Attorney. "It is, however, established in the case of *Gregory v Turner* [2003] 1 WLR 1 149 that a party may not by power of attorney confer on another person the right to appear in court as his lay advocate."

68. She noted that: "In March 2014 Mr Hardy, Mr Stannard and a Mr Wilson formed a partnership named "JEB Recoveries LLP" which is now involved in litigation in the Chancery Division against Mr Binstock. This is a cause for some concern, given that there is a receivership order still in place…". In April 2015 by HH Judge Simon Barker QC sitting as a judge of the High Court, had permitted Mr Hardy to represent JEB and address the Court on its behalf on the basis that it would be inappropriate to deny a principal in a limited liability partnership the right to represent that entity.

69. She determined that:

> "28. Essentially it seemed to me that Mr Hardy was seeking an order for special rights of audience under paragraph 1(2) of Schedule 3 to the Legal Services Act 2007. The notes in the White Book suggest that the appropriate time and venue for making such an application is at the hearing itself, and that is what Mr Hardy has done. The CPS and the Enforcement Receiver were aware in advance that Mr Hardy wished to address the Court and were not prejudiced in any way by the timing of his application.
>
> …
>
> 31…. Mr Hardy satisfied me that he understood and was willing to abide by the duties owed by an advocate to the Court. He told the Court that he had no financial interest in the outcome of the application, and that he had financed it to the extent that he had paid the issue fee and his own travel costs for attending court. He said that his only interest was that it would be of benefit to JEB in the Chancery litigation if Mr Stannard could clear the sums outstanding under the CO and thereby cease to be in contempt of court and that this was what the application was directed towards achieving. Mr Hardy was expressly put on

> notice by Mr Bird that he was at risk of an application being made against him personally for costs should the application fail. Thus he has sought special rights of audience and pursued the underlying application with a full understanding of all that entailed."

70. The description of a Mackenzie friend (see *Stannard* [29]) would not appear to describe any of Mr Hardy's past appearances before the courts. There is, however, every reason to include a prohibition against his undertaking that role, as much as any other proxy he has adopted.

71. I would incorporate Vaidya terms in the section 42 order that I would make.

72. I have little hesitation in concluding that HMAG's application pursuant to section 42 is wholly warranted. In my view HMAG would have been justified in the circumstances indicated above to apply for an indefinite order against Mr Hardy, however, that is not so and, bearing in mind the draconian nature of a section 42 order, I would therefore limit the term of the order to three years. Save in this latter respect, and subject to the agreement of my lady, Mrs Justice Collins Rice, I would make the order as drafted, and invite the President of the Kings Bench Division to nominate the High Court Judge to deal with any section 42(3) (3A) application that may be made.

COLLINS RICE J:

73. I agree.

Postscript

74. HMAG seeks the summary assessment and award of costs in the total sum of £46,339.70.

75. Mr Hardy has responded:

> "I have no comments on the Costs application and if costs are to be awarded I request that fact and the quantum to be stated in the Judgment for the sake of completeness and to demonstrate to others the consequences of a bankrupt or impecunious person contesting any application by the AG.
>
> I look forward to the AG presenting a Bankruptcy Petition as I have no resources to present my own. The Petition will not be contested."

76. We consider that the costs should follow the event in the sum claimed. Mr Hardy's assertion regarding the fate of "a bankrupt or impecunious person contesting any application by [HM]AG" is florid and misconceived. Mr Hardy was not made subject of a section 42 all proceedings order because he is impecunious and was bankrupt, but because of his habitual and persistent institution of vexatious civil and criminal proceedings. The question of whether the order will be able to be enforced in the near to mid future or at all is questionable, for the reasons given by Mr Hardy, but public money has been expended, rightly as it has transpired, upon making the application leading to the 'all proceedings order'. Considerable human resources in AGO and the Government Legal Department have been required to verify the integrity of the claim.