Neutral Citation Number: [2021] EWHC 2810 (Ch)

Case No: BL-2020-000504

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**BUSINESS LIST (ChD)**

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

Date: 22/10/2021

**Before**:

**MRS JUSTICE FALK**

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**Between:**

**MR SIMON JOHN GRIFFIN (T/A SIMON GRIFFIN ANTIQUES LIMITED)** — **Claimant**

**- and –**

**(1) RAY NIXON BROWN**
**(2) INCE GORDON DADDS LLP**
**(3) THOMAS BRAITHWAITE**
**(4) WALLACE LLP**
**(5) STEPHEN SCHAW MILLER**
**(6) CHRISTOPHER SEMKEN**
**(7) CAVENDISH LEGAL GROUP**
**(8) MAURICE RIFAT**
**(9) A CITY LAW FIRM LIMITED**
**(10) BRIE STEVENS HOARE QC**
**(11) IAN MASON**
**(12) JOSHUA HEDGMAN**
**(13) CHRIS DE BENEDUCCI** — **Defendants**

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**Simon Griffin** appeared in person as the **Claimant**
**Tom Stafford** (instructed by **Clyde & Co)** for the **First Defendant**
**Simon Wilton** (instructed by **BLM Law)** for the **Fourth Defendant**
**Miles Harris (**instructed by **Mills & Reeve)** for the **Third, Fifth, Sixth, Eight, Tenth, Eleventh, Twelfth, and Thirteenth Defendants**
**Bianca Venkata** (instructed by **Kennedys Law**) for the **Seventh Defendant**
**Michael Patrick** (instructed by **A City Law Firm**) for the **Ninth Defendant**

Hearing date: Friday 15 October 2021

APPROVED JUDGMENT

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 2pm on Friday 22 October 2021.

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Mrs Justice Falk

**Mrs Justice Falk:**

## Introduction

1. This is the hearing of applications by all the defendants in these proceedings, other than second defendant who has taken no active part in them, to have the claimant's claim against it struck out and/or for summary judgment to be awarded in their favour. Most of the defendants have also applied for an extended or general civil restraint order to be imposed. Unless otherwise indicated, references in this decision to the defendants exclude the second defendant.

2. The claimant, Mr Griffin, appeared in person. The defendants were each represented by Counsel, Mr Stafford for the first defendant, Mr Wilton for the fourth defendant, Ms Venkata for the seventh defendant, Mr Patrick for the ninth defendant and Mr Harris for the remaining defendants, who are all barristers. I am grateful for the assistance that Counsel provided, and in particular for two joint documents provided on behalf of the defendants, namely an agreed summary of the factual background and a joint statement of applicable legal principles.

3. The applications were listed for one day, which left insufficient time to hear in full from each of the parties and deliver a judgment. I adjourned the case part heard to accommodate delivery of a judgment and time to deal with costs. In the event it proved difficult to arrange a suitable hearing date at short notice and I concluded that it would be preferable to hand down a written judgment, with consequential matters to be dealt with at a later date.

## Factual and procedural background

4. At its heart, this is a dispute about a commercial lease. At all relevant times Mr Griffin held the benefit of an underlease of a shop in the Royal Arcade, which runs between Bond Street and Albermarle Street in Mayfair ("the Premises"). He traded from the Premises through a company controlled by him, Simon Griffin Antiques Limited (the "Company"). A dispute arose between Mr Griffin and his landlord, Bluston Securities Ltd ("BSL"). Mr Griffin alleged that BSL had acted in breach of covenant by failing to clean common parts properly, and in particular failing to clean upper parts of the arcade. The dispute led to Mr Griffin stopping payments of service charges from late 2001 onwards. From August 2006 he also started to withhold rent.

5. Mr Griffin explained that this was not the first dispute with BSL. His business has been in occupation since 1979. (This must have been under an earlier underlease, since the one the subject of the dispute was granted in 1994.) An earlier dispute following a collapse of part of the roof in 1983 led to litigation between tenants and BSL the outcome of which was an order in 1987 for the tenants to bear the costs of the repairs. Mr Griffin clearly continues to feel strongly about this, and understandably has a strongly held view that BSL ought to comply with its own obligations under the lease.

6. In December 2006 BSL served a statutory demand on Mr Griffin, requiring him to pay the arrears of rent and service charges. Mr Griffin applied to set aside the statutory demand on the basis that BSL was in breach of its covenant to maintain,

repair and cleanse the common parts. The set-aside application was listed in February 2007, but shortly before it was heard BSL's solicitors proposed that in exchange for BSL agreeing not to petition for bankruptcy Mr Griffin would withdraw his application. Mr Griffin sought advice from the first defendant, Ray Nixon Brown, a firm of solicitors with whom he had had dealings in the past, including in respect of the Premises. Simon Peacock of the first defendant advised Mr Griffin by phone, as a result of which Mr Griffin agreed to the proposal. The attendance note of the call records that Mr Peacock explained to Mr Griffin that he would expect that BSL would issue proceedings to recover the outstanding amounts and that Mr Peacock expressed doubt as to the amount that Mr Griffin could claim back by way of counterclaim. Mr Griffin signed a document recording the agreement with BSL on the same day, which expressly referred to BSL's intention to proceed in the County Court to recover the amounts owed.

7. BSL duly issued proceedings in the County Court in February 2007, claiming arrears of rent, service charges and interest (the "First BSL Claim"). The first defendant gave further advice in the form of a letter from Mr Peacock which commented that to have any chance of defending the claim it would be necessary to show that a considerable loss had been suffered as a direct result of the landlord's failure.

8. Mr Griffin then instructed Gordon Dadds solicitors. In the current proceedings Mr Griffin names Ince Gordon Dadds LLP as the second defendant. That is a distinct legal entity from Gordon Dadds, and in fact was not incorporated until 21 March 2013.

9. Emma Box of Gordon Dadds gave written advice in March 2007 explaining the difficulty that Mr Griffin would have in disputing BSL's claim. The letter stated that whilst BSL was in breach of covenant "…you freely accepted that you did not think you had suffered much in the way of financial loss directly arising from [BSL's] breach of covenant". The advice concluded that it would be very difficult for Mr Griffin to make out his proposed defence and counterclaim.

10. Mr Griffin nonetheless proceeded to enter a defence to the claim in person. Gordon Dadds were re-instructed in November 2007, and an amended defence and counterclaim was prepared with the assistance of the third defendant, Thomas Braithwaite, a barrister whom Gordon Dadds instructed. The defence alleged that BSL had failed to comply with end of year accounting provisions in the underlease in respect of service charges, which were supposed to provide a mechanism to adjust interim payments made during the year to reflect actual costs. The counterclaim, relied on by way of set-off, alleged that financial loss had been suffered in the form of a diminution in the value of Mr Griffin's shareholding in the Company as a result of the breach of the covenant to clean common parts, which it was alleged had resulted in a loss of profits.

11. The documentary evidence indicates that the third defendant, like Gordon Dadds, expressed serious concern about the merits of Mr Griffin's position. He advised a negotiated settlement. Expert accountant evidence was sought by Gordon Dadds on the extent of any loss of profits, but the view was expressed that no loss had been caused. Although Mr Griffin's own accountant was prepared to provide a report he warned that it would be unlikely to stand up to scrutiny.

12. The First BSL Claim was heard by HHJ Dight, who entered judgment in favour of BSL and dismissed Mr Griffin's counterclaim on 11 June 2008. HHJ Dight held that whilst he was not satisfied that BSL had complied with its end of year accounting obligations, this did not absolve Mr Griffin of the obligation to pay provisional contributions. He concluded that there had been intermittent failures to clean lower levels of the common parts and there was some breach of covenant in respect of the higher parts because of the considerable delay in arranging cleaning. However, BSL had not acted in breach in failing to clean the high areas every year given the difficulties in doing so. Moreover, and importantly, HHJ Dight was not satisfied that there was the causative link that Mr Griffin alleged between the state of the upper parts and the turnover of the business. He therefore concluded that no loss had been caused by the breaches of covenant which could be recoverable in the counterclaim. There was no appeal against this decision.

13. Following a complaint to the first defendant in 2009, Mr Griffin instructed the fourth defendant, Wallace LLP, to advise whether he had a claim against the first defendant in negligence. He was advised that he did not. Mr Griffin nonetheless issued a claim in July 2010 against both the first defendant and Gordon Dadds (the "First Professional Negligence Claim"). Following an unless order requiring the particulars of claim to be amended into a compliant form, Mr Griffin approached the fourth defendant for further assistance. Michael Clinch of the fourth defendant advised that he could not see that Mr Griffin had a claim against either the first defendant or Gordon Dadds but agreed to redraft the particulars of claim in a compliant manner, leaving blanks in the document for Mr Griffin to insert details of what he considered they had done that amounted to negligence. The essence of the complaint against the first defendant was that Mr Griffin had been wrongly advised to agree to BSL's proposal because, but for that, he would have been able to pursue his allegations against BSL in the High Court rather than the County Court. The claim against Gordon Dadds was essentially that it had failed to collate and present evidence to support his counterclaim, or (somewhat inconsistently) had failed to advise him properly as to its weak prospects. There was no claim against the third defendant.

14. The fifth defendant, Stephen Schaw Miller, was instructed by the fourth defendant and provided a note of advice on the merits. He explained that if he appeared for Mr Griffin he would not pursue the claim against the first defendant except for costs of less than £1000 which might have been ordered if the application had proceeded, a claim which he thought unlikely to succeed but to be arguable. He described the claim against Gordon Dadds as speculative. The fourth defendant forwarded this advice to Mr Griffin, recording that Mr Griffin had confirmed that he did not have evidence to substantiate the claim against Gordon Dadds.

15. The First Professional Negligence Claim was subject to applications to strike it out and/or for reverse summary judgment. These applications were heard by Master Jervis Kay QC, who distributed a draft judgment setting out his reasons for acceding to the applications. He found that Mr Griffin had not in fact lost a chance to have the dispute heard in the High Court as a result of the First Defendant's actions, and concluded that the allegations against Gordon Dadds did not stand up "to the most minimal scrutiny". Before the judgment was handed

down Mr Griffin instructed the sixth defendant, Christopher Semken, who advised that there was no prospect of a successful appeal and further that there was no obvious deficiency in the third defendant's opinion. The sixth defendant appeared at the hand down in July 2011, at which Master Kay struck out the claim and refused permission to appeal.

16. Acting in person, Mr Griffin applied to the High Court for permission to appeal, which was refused on the papers by Lang J in December 2011 and on an oral renewal by Swift J in January 2012. The following month Mr Griffin concluded a new 15 year underlease with BSL. The covenant to maintain, repair and cleanse the common parts remained in the same form in the new lease.

17. In October 2012 Mr Griffin made a complaint to the Office of Judicial Complaints ("OJC"), alleging bias on the part of Swift J. In January 2013 he asked the Judicial Appointments and Conduct Ombudsman ("JACO") to review the OJC's dismissal of the complaint. That was also dismissed. In response Mr Griffin issued Part 8 claims against the OJC and JACO, which were struck out of the court's own motion. This led to Macduff J making a general civil restraint order ("GCRO") against Mr Griffin on 15 July 2013 for the maximum two year term.

18. Mr Griffin made an application to set the GCRO aside. This application was dismissed by Turner J, and a request for permission to appeal his order was refused by Lewison LJ on the papers. An oral renewal was listed, and Mr Griffin asked the seventh defendant, Cavendish Legal Group, to assist. The seventh defendant instructed the eighth defendant, Maurice Rifat, to represent Mr Griffin in the Court of Appeal. The eighth defendant's view was that the likely result of an appeal would be a reduction from a GCRO to an extended civil restraint order ("ECRO"), which would not materially assist Mr Griffin since he had no other outstanding litigation. The eighth defendant also advised that he would have to concede that the claims struck out against OJC and JACO were an abuse of process and without merit, which Mr Griffin did not want him to do. As a result Mr Griffin appeared in person before Patten LJ on 29 January 2014, who dismissed his application for permission to appeal.

19. The GCRO expired on 15 July 2015. Shortly after that Mr Griffin sought advice on a direct access basis from the eleventh defendant, Ian Mason, about a proposed further claim against BSL. He received negative advice, including about the effect of limitation periods and the difficulty of proving actionable loss. Shortly thereafter Mr Griffin sought further advice on the proposed claim against BSL by instructing the ninth defendant, A City Law Firm Limited, who in turn instructed the tenth defendant, Brie Stevens Hoare QC. Negative advice was again received, referring among other things to limitation periods and estoppel.

20. Despite the negative advice Mr Griffin issued another claim against BSL in the Central London County Court (the "Second BSL Claim") in February 2016. Like the First BSL Claim this claim related to the underlease granted in 1994 rather than the later one granted in 2012. BSL's application to strike the claim out was granted by DJ Lightman on the papers in August 2016 on the basis of abuse of process and on the basis that any complaints arising before 19 February 2004 (at least) were statute barred. The order records that the claim was totally without merit and misconceived. Attempts to appeal failed.

21. Mr Griffin then instructed the twelfth defendant, Joshua Hedgman, on a direct access basis on the merits of a potential professional negligence claim against the fourth defendant. An opinion was provided in November 2016. Again, the advice was negative, including as to whether the third defendant should have been joined in to the First Professional Negligence Claim. Undeterred by this, Mr Griffin issued proceedings against the fourth, fifth and sixth defendants in January 2017 (the "Second Professional Negligence Claim"). Green J heard the defendants' applications for strike out and reverse summary judgment, and for a further civil restraint order, in June 2017. The applications were granted and an ECRO was made for the maximum two year period.

22. During the course of the ECRO Mr Griffin sought permission to make another claim against BSL, which was granted in February 2018 on certain conditions. Mr Griffin subsequently sought the opinion of the thirteenth defendant, Chris de Beneducci, as to the merits of the proposed claim. In October 2018 the thirteenth defendant produced a written opinion which provided a pessimistic assessment.

23. The ECRO expired on 13 June 2019.

## These proceedings

24. These proceedings were issued on 17 March 2020 in the form of 13 Part 7 claim forms. In addition to individual allegations of negligence there is an allegation against all defendants that they:

> "…have been engaging in acts of collusion & conspiracy against the claimant preferring to look after & help out BSL in preference to observing their primary duty of upholding the rule of law & assisting the claimant & the court in the proper administration of justice."

25. Following an initial stay of the proceedings the defendants made applications for strike out or summary judgment. By an order dated 9 November 2020 Master Teverson listed the applications to be heard together. He also made an order on 8 January 2021 that those applications be determined prior to further steps being taken in another claim brought by Mr Griffin against BSL, under case reference PT-2020-000240, which like the claims against the defendants was issued in March 2020.

## Discussion: summary

26. I have no doubt that the appropriate course is to grant the defendants' applications and to make an ECRO for a further two years.

27. It is clear, not least from written submissions (described as a witness statement) filed by Mr Griffin and read out to me in court, that his real complaint is about what he believes to be breaches of covenant by BSL. Put simply, he has a very strong view that those breaches ought to have entitled him to a remedy and that the defendants have failed in their professional duties by not properly assisting him to obtain the remedy to which he believes that he is entitled. Mr Griffin's failure to succeed before HHJ Dight in the First BSL Claim is therefore at the heart of the problem.

28. In these proceedings Mr Griffin has developed a slightly different approach to his complaints against his professional advisers as compared to the ones made previously. This approach is that they have wasted his time and money by not explaining to him, as they should have done, that what he first needed to do was to set the “defective” judgment of HHJ Dight aside and then ensure that his dispute with BSL was properly adjudicated in the High Court, which in his view is the correct court for dealing with wrongdoing. He considers that his difficulties since then are attributable to that failure. As Mr Griffin puts it, he believes that his legal advisers have “failed in their primary duty of having respect for the rule of law”, because they have not assisted him to ensure that BSL complies with its legal obligations set out in the lease. He believes that, with the difficulty presented by HHJ Dight’s judgment out of the way, his most recent claim against BSL will succeed, and his claim in these proceedings will then provide him compensation for the money and time he has wasted, as well for the delay in obtaining compensation from BSL and the tax consequences of its receipt.

29. Unfortunately, Mr Griffin is seriously misguided. The notion that HHJ Dight’s judgment can be, or could at any material time have been, set aside is fanciful. There is no scope for a negligence claim based on a failure to volunteer that as a possibility. More broadly, I have seen nothing in the evidence to indicate that any of the defendants have failed in their professional duties, whether in terms of breach of a duty of care or of other professional obligations on which Mr Griffin relied in his submissions.

30. Successive advisers, and judges, have explained to Mr Griffin that the remedy to which he believes that he is entitled, whether against BSL or advisers who have not given him the advice that he would like to have received in connection with his dispute with BSL, is not available to him, and that advice that does not provide a route to a successful outcome against BSL has not been negligent. The difficulty is that Mr Griffin will not take no for an answer, to the extent that the matter has become an obsession, and one from which those connected with it, including Mr Griffin himself, continue to need to be protected. Put simply, Mr Griffin cannot accept that it is not sufficient to establish a breach of a legal duty in order to obtain compensation. Damages can only be recovered to the extent that a breach causes loss, and a court of competent jurisdiction has found that he has not suffered loss. Advice which recognises these realities is simply not negligent.

## The court’s jurisdiction

*Strike out and summary judgment powers*

31. Under CPR 3.4(2)(a), a court may strike out a claim if (among other things) it discloses no reasonable grounds for bringing it. This would cover a case that is unwinnable, where continuance of the proceedings is without possible benefit and would waste resources: *Harris v Bolt Burdon* [2000] C.P. Rep. 70. Under CPR 3.4(2)(b) a case may alternatively be struck out if it is an abuse of the court’s process.

32. Where fraud is alleged, it is necessary for the claimant to plead primary facts that would, if proved, justify an inference of dishonesty. As explained by Flaux J in

*JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm) at [20], the correct test of what is required for a valid plea of fraud:

> "…is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it [in *Three Rivers District Council v Bank of England* [2003] AC 1] there must be some fact "which tilts the balance and justifies the inference of dishonesty". At the interlocutory stage, when the court is considering whether the plea of fraud is a proper one or whether to strike it out, the court is not concerned with whether the evidence at trial will or will not establish fraud but only with whether facts are pleaded which would justify the plea of fraud."

33. Summary judgment may be granted under CPR 24 if the court considers that the claim has no real prospect of success and there is no other compelling reason why the case should be disposed of at trial. The principles were summarised in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] and approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five)* Ltd [2009] EWCA Civ 1098 at [24]. The court must consider whether the claim has a realistic, as opposed to a fanciful, prospect of success. It must not conduct a mini trial. However, that does not mean that the court must take at face value everything that the claimant says, if it is clear that there is no real substance in the factual assertions made: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [10]. The burden is on the applicant for summary judgment to establish that there is no real prospect of success: *ED&F Man* at [9].

*ECRO*

34. Although some of the defendants applied for a GCRO, it was accepted in submissions that the appropriate order was an ECRO. Mr Griffin's continued attempts to litigate unmeritorious claims all relate to the same underlying subject matter.

35. The threshold requirement for an ECRO is that a party has "persistently issued claims or made applications that are totally without merit". *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225 confirmed that three such application is the minimum but made it clear that the test remains one of whether the claimant or applicant is acting persistently. Claims and applications that are totally without merit can be taken into account even if they were not certified as such at the time. Further, nothing prevents account being taken of totally without merit claims and applications made before an earlier ECRO: *Society of Lloyd's v Noel* [2015] EWHC 734 (QB). An ECRO can be made for a maximum of two years.

## Discussion: the claims in these proceedings

36. The reasons that follow aim to cover in more detail the reasoning that has led me to reach the conclusions that I have. I will deal with some common themes and points of general application to all or a number of defendants before going on to address each defendant in turn.

*Conspiracy claim*

37. The claim of collusion and conspiracy is wholly fanciful, and to be fair to Mr Griffin I did not understand it to be pursued in his oral and written submissions. The claim was put forward on the basis of no pleaded facts and it is entirely unparticularised. For example, it is not alleged how and when the defendants were said to have combined, or that they had an intention to injure. It appears to be contradicted by the particulars of claim in respect of individual defendants, which allege negligence rather than deliberate bad faith. There is no substance to it, it is wholly without merit and it should not have been made.

*Abuse*

38. These proceedings are fundamentally abusive. The precise nature of the abuse varies between individual defendants but a common theme is that it really represents a collateral attack on earlier decisions, and in particular HHJ Dight's decision in the First BSL Claim. The actions against the first, fourth, fifth and sixth defendant also fall foul of principles of estoppel and/or abuse under the principle first formulated in *Henderson v Henderson* (1843) 3 Hare 100, 115.

39. The concepts of estoppel and *Henderson v Henderson* abuse were considered by the Supreme Court in *Virgin Atlantic Airways Limited v Zodiac Seats Limited* [2014] AC 160 at [17] to [26], where Lord Sumption considered and summarised the principles. In brief summary the relevant concepts in this case are cause of action estoppel, which arises where a cause of action has been held to exist or not exist in earlier proceedings between the same parties, in which case in general neither party may challenge the outcome in subsequent proceedings; issue estoppel, which may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided upon in earlier proceedings and the same issue is relevant to a different cause of action in subsequent proceedings between the same parties; and the broader *Henderson v Henderson* principle, which allows a court to preclude a party from raising in subsequent proceedings matters which could and should have been raised in earlier proceedings, and which requires a broad merits-based judgment by the court to determine whether the process of the court is being misused or abused.

40. Abuse of process in the form of a collateral attack is a different form of abuse, defined in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 ("*Hunter*") at p.541B, as follows:

> "…the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which had been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had full opportunity of contesting the decision in the court in which it was made."

41. Collateral attacks arise most frequently where the claim conflicts with a prior decision in criminal proceedings. But it can arise in civil proceedings if the claim would be manifestly unfair to a party to the new proceedings or would bring the administration of justice into disrepute: *Secretary of State for Trade and Industry*

*v Bairstow* [2004] Ch 1 at [38]. This may be the case in a professional negligence claim against lawyers which raise the same issues as were adjudicated upon in the earlier proceedings and it is not possible to avoid a conflict of judgments by reference to fresh evidence or arguments which it is said that the lawyer should have deployed in the earlier proceedings. There is a discussion of this in *Allsop v Banner Jones Ltd* [2021] EWCA Civ 7. Where the challenge amounts to no more than saying that the earlier court got it wrong by reference to the evidence and submissions before it, then that can be characterised as an abusive collateral attack because to allow a challenge to proceed in those circumstances would bring the administration of justice into disrepute. It would simply be a relitigation of the earlier case on the basis of the same material (see the discussion in *Allsop v Banner Jones* at [39]-[44] of the earlier decision in *Laing v Taylor Walton* [2007] EWCA Civ 1147; [2008] PNLR 11).

*Limitation periods*

42. The claims against the first, third, fourth, fifth, sixth, seventh and eighth defendants would fail on limitation grounds.

43. The limitation periods against the defendants are established by s 2 and/or s 5 Limitation Act 1980, which deal with time limits for actions founded on tort and contract respectively. In each case the period is six years from the date on which the cause of action accrued. For breach of contract, time will start running when the contract is breached. For tort, time will start running from the first date on which at least some damage has been sustained as a result of the breach of duty, which may include contingencies such as the loss of a chance: *Nykredit Plc v Edward Erdman Ltd* [1997] 1 WLR 1627 at 1630.

44. Mr Griffin asserts that he has the benefit of the extended limitation periods afforded by s14A and/or s 32 Limitation Act 1980. I disagree. Section 32 can be dismissed quickly because there is no realistic cause of action in fraud and there is no basis to argue that there has been deliberate concealment of any fact relevant to a cause of action. The action is also not one for relief from the consequences of a mistake within s 32(1)(c).

45. Section 14A extends the usual time limits for negligence actions in cases where facts relevant to the cause of action are not known at the date the cause of action accrued. In such a case the claimant has either six years from the date on which the cause of action accrued, or if later three years from the "starting date". The starting date is defined as the earliest date on which the claimant had both a right to bring the action and the knowledge required for bringing an action. The knowledge element requires knowledge of "such facts about the damage in question as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment", knowledge that "the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence", and knowledge of the identity of the defendant (s 14A(6)-(8)). Knowledge includes knowledge a person might reasonably be expected to acquire from facts observable or ascertainable by him, including with the help of appropriate expert advice (s

14A(10)). However, knowledge that any acts or omissions involved did or did not involve negligence as a matter of law is irrelevant: s 14A(9).

46. Mr Griffin has not pleaded any later date by which he says that knowledge was acquired. However, he submitted that the three years has not started running, because the detail of the amount of damage suffered at the hands of BSL has not been determined.

47. That is incorrect in principle, and cannot be cured by an amendment to the pleading. There has been no delay in acquiring the relevant knowledge. The identity of the defendants has been known throughout, as have the other material facts. Mr Griffin has at all material times believed that the judgment of HHJ Dight was "defective". There is no requirement that the precise quantum of the damage be known, only that it is sufficiently serious to justify proceedings. Certainty is not required: see the discussion in *Haward v Fawcetts* [2006] 1 WLR 682 at [8]-[11] and [112]-[126]. Mr Griffin clearly considered proceedings to be justifiable from an early stage. In respect of the first defendant the complaints are the same as raised in the First Professional Negligence Claim. In respect of the third defendant Mr Griffin alleged that his advice was inadequate in submissions to Master Kay in 2011. In respect of the fourth, fifth and sixth defendants Mr Griffin clearly had the requisite knowledge by the time he brought the Second Professional Negligence Claim in January 2017, more than three years before the commencement of these proceedings. As regards the seventh defendant, Mr Griffin informed it that he intended to bring a claim in negligence as early as 30 June 2014. In respect of the eighth defendant, the position must be the same as in relation to the seventh defendant.

*Misunderstanding in respect of HHJ Dight's judgment*

48. As already indicated, at the heart of Mr Griffin's complaint is HHJ Dight's judgment in 2008.

49. Mr Griffin is under the impression that he could have obtained a favourable result in his dispute with BSL if it had been decided in the High Court. His complaint against the first defendant is essentially that the first defendant's advice had the effect of preventing the dispute continuing in the High Court, and instead resulted in BSL taking proceedings to recover the debt in the County Court, where Mr Griffin believes that he was unable to obtain justice. A number of the other complaints really flow from this. However, as Master Kay made clear in 2011 that is not correct even as a procedural matter. With the exception of costs, the effect of the compromise that the first defendant recommended Mr Griffin to agree was the same as if the statutory demand had been set aside, which was the remedy he was seeking. The County Court was always going to be the appropriate court for the proceedings that followed.

50. More fundamentally there is no basis to impugn the HHJ Dight's decision – even if it were otherwise possible to do so, which it is not – on the premise that some better standard of justice would have been available in the High Court, such that Mr Griffin would have succeeded. Swift J made a similar point in 2012.

51. I have read HHJ Dight's decision. Like Green J in 2017, I consider that it makes good sense. Mr Griffin has at no stage explained what it is about that judgment that is wrong and which should have led any of his advisers to give him different advice or, for example, meant that DJ Lightman was wrong to strike out the Second BSL Claim, or meant that an appeal should have been pursued at any stage, either initially or when other advisers were instructed. No fresh evidence or arguments have been identified.

52. Mr Griffin's current view that the right course is to set aside HHJ Dight's judgment is, and always would have been, wholly misguided. It is a final decision of a competent court. Absent an appeal (which would be hopelessly out of time) the only way in which it could be set aside would be to demonstrate some form of fraud or collusion on the part of BSL in obtaining the judgment. I have seen nothing that indicates that BSL did anything, or is alleged to have done anything, which had the effect of deceiving or misleading the court. Further, there is no indication that anything of that nature should have been apparent to any of the defendants, even if it could be argued to be within the scope of their duties to consider it as a possibility (a point which, at least for some of the defendants, would certainly be disputed).

53. Mr Griffin's real problem is that he does not agree with the judgment. But that is based on a misapprehension that, because BSL may have been in breach of covenant, he should have the relief that he continues to seek. Mr Griffin's challenge is nothing more than a collateral attack on HHJ Dight's decision.

*The individual defendants*

54. *First defendant:* The claim against the first defendant is obviously out of time. Given the First Professional Negligence Claim it also falls foul of cause of action and/or issue estoppel: it is materially the same claim as the one struck out by Master Kay, and the issues were addressed in those proceedings. To the extent that it is framed differently the new points could and should have been raised in the earlier proceedings. It is also a collateral attack on HHJ Dight's decision. In any event it clearly has no merit. The advice was sound and it was not improper to give it by telephone. Most importantly, as explained on previous occasions including by Master Kay, it did not have the effect that Mr Griffin lost the chance to litigate the merits of the dispute in the High Court. The statutory demand mechanism would not have allowed for that, and the proper forum for the dispute was the County Court. HHJ Dight's decision is also the best indicator of what would have happened even if Mr Griffin had had that chance.

55. *Third defendant:* Master Kay rightly concluded in 2011 that the first claims against the first defendant and Gordon Dadds should be struck out. He observed when he did so that he could see no obvious deficiency in the third defendant's opinion, and went on to add that Mr Griffin's contentions that he was ill-advised by the third defendant were "as unmeritorious as the rest of his case". HHJ Dight's decision was consistent with the third defendant's prediction. No proper basis is provided for a challenge to his advice. The claim is also out of time and is a collateral attack on HHJ Dight's decision and Master Kay's decision.

56. *Fourth defendant*: The claim against the fourth defendant is also time barred. No proper basis has been provided for a challenge to the fourth defendant's advice, which was reflected in the outcome of the First Professional Negligence Claim. There is also cause of action and/or issue estoppel in respect of the Second Professional Negligence Claim. To the extent that the allegations are different because Mr Griffin now asserts that the fourth defendant should have advised him to pursue BSL first before taking action against his advisers, the point is without merit. It is not consistent with what the fourth defendant was retained to do and ignores the fact that his claim against BSL had been finally determined by HHJ Dight: see above. In any event the point could and should have been raised earlier and is abusive under *Henderson v Henderson* principles (if not barred by cause of action or issue estoppel). It also amounts to a collateral attack on HHJ Dight's decision and that of Master Kay.

57. *Fifth and sixth defendants:* The analysis is very similar to that for the fourth defendant. The claim is statute barred, there is estoppel, *Henderson v Henderson* abuse and a collateral attack on HHJ Dight's decision and that of Master Kay. There is no basis to challenge the advice of the fifth and sixth defendants. The correctness of the advice is obviously confirmed by the outcome of the First Professional Negligence Claim (in the sixth defendant's case, the refusal of permission to appeal).

58. *Seventh defendant*: The seventh defendant's retainer was a limited one, relating to instructing Counsel in relation to Mr Griffin's oral renewal of his application for permission to appeal against the refusal to set aside the GCRO, pre-hearing preparation and attendance and advice in relation to the hearing and its outcome. That is clear from the engagement letter provided by the seventh defendant. Although Mr Griffin had initially asked whether further advice could be provided, there is no indication that that was pursued by him.

59. The claim against the seventh defendant is out of time. At the latest, damage would have occurred by 29 January 2014 when Patten LJ refused permission to appeal. That is more than six years before this claim was brought. In any event I can see no substance in the allegations made that the seventh defendant somehow deliberately narrowed its retainer to exclude provision of more general or specialised help, or provided advice that was without merit. The advice that the seventh defendant provided with Counsel was eminently sensible. The correctness of its pessimistic nature is well demonstrated by the decision of Patten LJ to refuse permission to appeal against the refusal to set aside the GCRO. The difficulty with broader advice on Mr Griffin's case (even if the initial request had been pursued) was that the advice that he wanted could not properly have been given. Again, in substance it is a collateral attack on HHJ Dight's decision.

60. *Eighth defendant*: The position is similar to the seventh defendant. The claim is statute barred. The eighth defendant advised in accordance with his instructions, and given Patten LJ's decision the content of that advice cannot be impugned.

61. *Ninth defendant*: It is clear from the documentary evidence that the focus of the instructions to the ninth defendant was obtaining advice from the tenth defendant, Mr Griffin having first tried and failed to obtain advice from her on a direct access basis. The ninth defendant also offered to instruct a second barrister when Mr

Griffin criticised the tenth defendant's advice. Mr Griffin complains that the ninth defendant negligently failed to satisfy itself that the tenth defendant's advice was correct. However, beyond a general assertion that it was wrong, nothing is said to explain what the alleged errors were with the tenth defendant's advice, and as discussed below it was consistent with the outcome of the Second BSL Claim. The ninth defendant acted reasonably on the advice of properly instructed Counsel, advice which it had no reason to challenge (see *Dunhill v Crossley* [2018] EWCA Civ 505 at [49] for a discussion of the applicable principles). The case against the ninth defendant amounts in substance to a collateral attack on HHJ Dight's decision, and that of DJ Lightman in striking out the Second BSL Claim.

62. *Tenth defendant*: One complaint against the tenth defendant appears to be that she wrongly failed to advise on matters arising from the new underlease entered into in 2012. However, her advice clearly recorded that she was not instructed to advise in respect of claims arising out of the new underlease. That reflected correspondence from Mr Griffin to the ninth defendant which indicated that BSL was meeting its maintenance and cleaning obligations under the 2012 underlease and made clear that that lease should not be the subject matter of proceedings against it. Further, nothing is identified which ought to have led the tenth defendant to conclude that there might have been any realistic claim under that lease. To the extent that the complaints relate to the advice that the tenth defendant did give, her pessimistic advice was confirmed by the outcome of the Second BSL Claim and amounts to a collateral attack on the decision of DJ Lightman, as well as that of HHJ Dight.

63. *Eleventh defendant*: Again, the eleventh defendant's negative advice was effectively confirmed by DJ Lightman's decision. The same collateral attack point applies. To the extent that the complaint is that advice should have been given about the 2012 underlease, that did not reflect the instructions given. In any event it is clear from the first of the eleventh defendant's two written opinions that he had seen no evidence of any breach of the leases since 2007. Mr Griffin did not address that point in his complaint about the pessimistic advice, a complaint that led to a further opinion being provided a few days later which explained among other things the eleventh defendant's duty to act in the best interests of his client. It is not enough to say, as Mr Griffin did, that the eleventh defendant knew of the existence of the later lease.

64. *Twelfth defendant*: There is also no merit in the claim against the twelfth defendant. He correctly advised that the claim against the fourth defendant had no real prospect of success: the fourth defendant had clearly not been negligent, as demonstrated by Green J's decision in the Second Professional Negligence Claim. It is a collateral attack on that decision as well as that of HHJ Dight and indeed Master Kay.

65. *Thirteenth defendant*: It is clear from his detailed written opinion that the advice given by the thirteenth defendant related to the underlease granted in 2012, which was it seems the subject matter of Mr Griffin's intended claim against BSL. Mr Griffin's complaint is that the advice was not accurate. However, it is not explained why or in what respects the thirteenth defendant's advice was negligent, other than the obvious point that it was not the advice that Mr Griffin

believes that he should have received. In particular, the advice that any challenge to BSL should be made in the County Court was clearly appropriate given the size and nature of the claim (quite apart from the fact that the court had already ordered that any claim should be issued in the Central London County Court). Given the history of the dispute it is very hard to see how the thirteenth defendant could properly be criticised for expressing serious reservations about the merits of the proposed claim, including in respect of causation and abuse of process. Mr Griffin in any event appears not to be time barred from bringing a claim against BSL in respect of the 2012 underlease, and he has in fact brought a further claim against BSL in the High Court. So he was not deterred by the thirteenth defendant's advice. Again, the substance of the complaint amounts to a collateral attack on earlier decisions.

## Discussion: ECRO

66. I am satisfied that Mr Griffin has persistently issued claims or made applications that are totally without merit, and that it is appropriate to exercise my discretion to make an ECRO for a two year period. Each of the individual claims against the defendants are without merit. I am entitled to, and do, take account of the meritless claims and applications that led to a GCRO being imposed in 2013 and an ECRO in 2015. The previous orders appear to have been largely effective while they lasted, but unfortunately Mr Griffin has shown no sign of being prepared to give up and has renewed his campaign following their expiry. He will not take no for an answer and appears to have an unshakeable belief in the merits of his case.

67. In his judgment granting the previous ECRO in 2017, Green J referred to observations of the Court of Appeal in *Bhamjee v Forsdick* [2004] 1 WLR 88 at [42] about "the hallmarks of persistent vexatiousness" and an "irrational refusal to take 'no' for an answer". I agree. Green J also identified, as I have, that the underlying dispute with BSL is at the heart of each claim.

68. Mr Griffin's claim against these defendants is vexatious, as were the previous claims considered by Green J. The defendants and others are entitled to protection, and it is also necessary to limit further wasting of judicial and court resources on pointless litigation.

69. One effect of the ECRO is that the court's permission will be required for further applications to be made in the claim against BSL under case reference PT-2020-000240.

## Second defendant

70. As already indicated, the second defendant was not incorporated until 21 March 2013, well after the matters complained of, and is not a proper defendant to these proceedings. It is also appropriate to strike out Mr Griffin's claim against it, which is clearly unwinnable.

## Conclusions

71. In conclusion, I am satisfied that the applications should be granted and the claims against all the defendants (including the second defendant) should be struck out and dismissed. I am also satisfied that a further ECRO should be made against Mr Griffin for the maximum two year period.