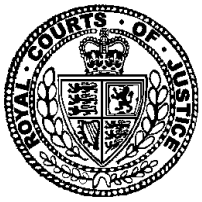

Neutral Citation Number: [2023] EWHC 2800 (Ch)

Case No: HC-2017-000642

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

7 Rolls Building
Fetter Lane
London, EC4A 1NL

09/11/2023

Before :

MRS JUSTICE JOANNA SMITH

- -

Between :

SEEMA ASHRAF
(Acting as Executrix of the estate of Syed Ul Haq
(Deceased)

Claimant

- and –

~~**(1) LESTER DOMINIC SOLICITORS (a Firm)**~~
(2) ~~**MR L KAN**~~
(3) MR ATTARIAN
~~**(4) MR B NIJJAR AND MRS S NIJJAR**~~
(5) CHIEF LAND REGISTRAR
~~**(6) BANK OF SCOTLAND PLC**~~
~~**(7) REES PAGE (A Firm)**~~

Defendants

- -
- - - - - - - - - - - - - - - - - - -

Ms Spencer (instructed on a direct access basis) for the **Claimant**
Ms Yates (instructed by the **Government Legal Department**) for the **Fifth Defendant**

Hearing date: 25 October 2023

- -

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on Thursday 9 November 2023 by circulation to the parties or their representatives by email and release to the National Archives

Mrs Justice Joanna Smith:

1. This is an application by the Fifth Defendant ("**the CLR**") dated 29 March 2023 to strike out the Claimant's case against him, alternatively for reverse summary judgment on that case ("**the CLR Application**"). The application came before me as one of three applications to be heard by the court on 25 October 2023, the others being an application by the Claimant dated 9 February 2023 ("**the February Application**") to amend her pleading in the form attached to that application (referred to at the hearing for reasons which will become clear as "**the Sheridan Draft**") and an application dated 3 August 2023 ("**the August Application**") to substitute the Sheridan Draft for a further draft pleading in respect of which the Claimant now sought permission to amend, which I shall refer to as "**the draft Re-Re Amended Particulars of Claim**", together with an application for relief from sanctions in relation to the August Application, if necessary.

2. For reasons which appear in an *ex tempore* judgment, I determined at the hearing that it was necessary for the Claimant to seek relief from sanctions in respect of the August Application and I also determined that, having regard to the three stage test in *Denton v TH White Ltd* [2014] EWCA Civ 906, it was not appropriate, in all the circumstances of the case, to grant relief. The consequence of that decision is that the Claimant's case against the Seventh Defendant (represented at the hearing by Mr Ben Hubble KC and Mr Peter Dodge) stands dismissed. In circumstances where the Claimant could no longer pursue the August Application, she invited the court to dismiss the February Application, owing to the accepted fact that the Sheridan Draft was not the pleading that the Claimant wished to pursue at trial.

3. The CLR Application was made before these events, but its outcome has inevitably been influenced by them, as I shall explain in a moment. Suffice at present to say that, following the dismissal of the claim against the Seventh Defendant, CLR was the only one of the original seven defendants who remained active in the proceedings (no relief having been sought against the Third Defendant, despite his being joined), and the outcome of the application to strike out her claim was accordingly of considerable importance to the Claimant. Both for this reason, and because of the considerable procedural complexity underlying the CLR Application, I indicated at the hearing that I would reserve judgment so as to deal fully with the arguments that were addressed to me.

The Claim against the CLR

4. This claim was commenced by Mr Syed Ul Haq ("**the Deceased**") in 2016. When he died in 2017, the action was pursued by the Claimant in her capacity as executrix of his estate. The details of the claim are set out in the judgment of Edwin Johnson J dated 21 March 2022 (*Ashraf v Lester Dominic Solicitors & Others* [2022] EWHC 621 (Ch) at [29]-[77]) ("**the March 2022 Judgment**") and in the decision of the Court of Appeal dated 13 January 2023 (*Ashraf v Lester Dominic Solicitors & Others* [2023] EWCA Civ 4, per Nugee LJ at [7]-[34] ("**the CA Decision**")). In so far as is necessary, this judgment assumes a familiarity with those judgments.

5. Although the claim now exists only as against the CLR, I shall continue to refer hereafter to the original defendants (with the exception of the CLR) as D1-D7.

6. For present purposes I need record only that at the core of the Claimant's claim is a contention that a Form TR1 transfer of 91 Argyle Road, Ealing, W13 0LZ ("**the Property**"), as registered at HM Land Registry under Title Number MX389787 to D3, was a forgery, created in about 2010 by an imposter who forged the signature of the Deceased ("**the 2010 Transfer**").

7. The context of this central allegation was an earlier transaction, described in the March 2022 Judgment as "**the 2008 Transaction**" by which the Deceased intended to sell the Property to D3 for the sum of £1.25 million. D3 was to be assisted by a mortgage from D6 (a Bank), the proceeds of which were intended to redeem an existing charge on the Property in favour of (coincidentally) D6. The Deceased, D3 and D6 all instructed FLP Solicitors ("**FLP**") to act on their behalf. A transfer in the Form TR1 was executed by both the Deceased and D3, but it was not witnessed. D6 remitted the funds it was lending to D3 for the purpose of completing the purchase of the Property to FLP, but while the mortgage funds were under the control of FLP in their client account they were misappropriated by an employee of FLP (with the exception of approximately £98,000 which the Deceased actually received). The employee was subsequently sent to prison for this offence. The existence of this fraud has never been in dispute in the proceedings. Owing to the fact that the Form TR1 was not witnessed, attempts were subsequently made in 2010 to remedy the position by way of the 2010 Transfer.

8. Against that background, the claim against the CLR is a narrow one. It involves a claim for an indemnity pursuant to section 103 of, and Schedule 8 to, the Land Registration Act 2002 ("**LRA**"). It arises because it is said that the amendments made to the register to reflect the 2010 Transfer were made under a mistake, namely that the 2010 Transfer was a valid and effective transfer (when in fact it was not signed by the Deceased and was a forgery).

9. In so far as relevant, LRA Schedule 8 provides as follows:

    (i) at paragraph 1(1), "A person is entitled to be indemnified by the registrar if he suffers loss by reason of (a) rectification of the register, (b) a mistake whose correction would involve rectification of the register…";

    (ii) at paragraph 1(3), "No indemnity under sub-paragraph 1(b) is payable until a decision has been made about whether to alter the register for the purpose of correcting the mistake; and the loss suffered by reason of the mistake is to be determined in the light of that decision";

    (iii) at paragraph 11(2), "In this Schedule references to rectification are to alteration of the register which (a) involves the correction of a mistake, and (b) prejudicially affects the title of a registered proprietor". Rectification is therefore a sub-category of alteration, which involves prejudice to the title of the registered proprietor.

10. It is common ground that there can therefore be no claim to an indemnity unless four pre-conditions are satisfied: (i) a mistake on the Register of Title; (ii) rectification of the Register to correct that mistake or a decision that no alteration of that kind will be made; (iii) the suffering of loss by the claimant; and (iv) that such loss must have been caused by the rectification of the Register or the decision not to rectify, as the case may be.

11. As I shall turn to in a moment when I come to look at the pleadings in detail, the factual question relevant to loss and causation in these proceedings turns on how the funds were treated by FLP (and specifically how they were allocated) before their misappropriation (referred to at the hearing as "**the Allocation Issue**"). Indeed it appears to be recognised on both sides that this is the key factual issue in the claim against the CLR for an indemnity.

The Procedural Background

12. The Claimant's case against the CLR was first pleaded in 2016 and subsequently amended by way of Amended Particulars of Claim ("**APOC**") prepared by Mr Geoffrey Zelin of counsel and permitted by the order of Master Clark on 15 January 2018. The APOC made no material amendments to the case against the CLR, but were designed to make amendments necessitated by reason of the death of the Deceased and the need to substitute the Claimant in his place.

13. Amongst other things, the APOC claimed rectification of the Register of Title to the Property against D4, by then the registered proprietors of the Property following a sale to them by D6 in 2013, and an indemnity from the CLR based on the registration of the alleged forged transfer (see [203]-[204] of the March 2022 Judgment). The Claimant's primary case as to the treatment of funds in the 2008 Transfer at this time was set out in paragraphs 22(a) and (c) of the APOC as follows (with immaterial amendments removed):

> "22. The Claimant's primary case is that the result of the matters set out in paragraphs 8 to 21 above was that:
>
> (a) the Deceased remained the registered proprietor and beneficial owner of the Property subject to the obligations under any valid contract for sale that might have existed between him and the Third Defendant;
>
> (b) …
>
> (c) If (contrary to the Claimant's primary contention) any valid transfer document had been executed the Deceased was in the position of an unpaid seller and was entitled to be paid or to receive the benefit of the balance of the purchase price."

14. There was, as Ms Spencer acting on behalf of the Claimant frankly accepts, no express plea as to the allocation of the funds received by FLP from D6 to the Deceased. However, paragraph 18(e) of the APOC pleaded that those funds "were paid by the Sixth Defendant into FLP's client account and credited to the Third Defendant's client ledger". No client ledger has ever been produced in this case.

15. By an order of Master Clark dated 4 April 2018, the claim for rectification of the Register was dismissed as against D4.

16. In early 2019, D1, D2 and D7 all applied for reverse summary judgement against the Claimant. This appears to have prompted a review of the APOC, because under cover of an email dated 21 June 2019, the Claimant's then solicitors circulated Draft Re-

Amended Particulars of Claim ("**the Draft RPOC**") among the parties and sought their consent. At the time, the Draft RPOC was described by those solicitors as "[t]he authentic version of the draft amendments which our client wishes to rely upon".

17. In relation to the Allocation Issue, the Draft RPOC was in a different form from the existing APOC. At paragraph 15, it pleaded that:

    "15. It is averred that the following steps towards (purported) completion occurred on 10 March 2008:

    15.1 On 7 March 2008, [D6] advanced the purchase monies to FLP *qua* solicitors for [D6] and [D3];

    15.2 On the same day, and in accordance with ordinary conveyancing practice, FLP allocated the purchase monies to the credit of the Deceased (i.e. FLP treated the purchase price as having been paid);

    15.3 On the same day, and in accordance with ordinary conveyancing practice, FLP *qua* solicitors for the Deceased arranged to allocate the monies to FLP qua solicitors for the Bank for the purpose of repaying the Argyle Road Mortgage (i.e. FLP applied the purchase monies received by the Deceased from [D3] to the discharge of his indebtedness to [D6] as a necessary step to completion…".

18. At paragraph 17, the Draft RPOC pleaded that the legal effect of the steps set out in paragraph 15 was that "the Argyle Road mortgage was redeemed upon payment to [D6] (received by its agent, FLP, as confirmed by its letter dated 27 March 2008 to the Bank)…".

19. In an alternative case pleaded at paragraph 25 in the Draft RPOC, the Claimant asserted that:

    "…if which is denied, the legal effect of the steps stated in paragraph 15 is that FLP held the monies for the benefit of the Deceased (and not the Bank) then it is averred that they were stolen from the Deceased by FLP…".

20. Pursuant to the Draft RPOC, therefore, there was a positive assertion (albeit not yet verified by a statement of truth) that the purchase monies received from D6 had been allocated by FLP to the Deceased before the funds were misappropriated. I shall refer to this version of the facts, for reasons which will become clear in a moment, as "**Allocation Facts Version A**".

21. The Claimant did not issue an application to amend the APOC in the form of the Draft RPOC and accordingly the CLR sought further information from the Claimant on 11 December 2019 designed to clarify whether the Claimant intended to rely upon the facts now pleaded in the Draft RPOC. The Claimant's response on 17 December 2019 was unhelpful and (as described in the March 2022 Judgment at [217]) "equivocal". In essence, she said merely that, until she applied to amend, her case was as set out in her existing APOC.

22. On 10 December 2019, Deputy Master Lloyd entered reverse summary judgment on the claims against D1, D2 and D7. The Claimant made an application for permission to appeal.

23. By an application notice dated 11 March 2021 ("**the First CLR Application**"), the CLR made an application to strike out the claim against him and/or for reverse summary judgment on various grounds, including that (i) the Draft RPOC showed that the indemnity claim had no real prospect of success because the Deceased had suffered no loss for that purpose; and (ii) the APOC failed to plead an alteration "decision" which is a necessary precondition to making an indemnity claim under LRA Schedule 8 paragraph 1(3).

24. The First CLR Application was heard by Edwin Johnson J alongside (i) the Claimant's appeal from the order of Deputy Master Lloyd of 10 December 2019; and (ii) an application by D6 for reverse summary judgment/strike out. The upshot of that hearing as against D1, D2 and D7 was that Edwin Johnson J upheld Deputy Master Lloyd's Order of 10 December 2019 dismissing the claims against D1, D2 and D7. He also dismissed the claim for rectification of the register in so far as it continued to exist against any of the remaining defendants to the proceedings.

25. At the hearing before Edwin Johnson J, the Claimant's then counsel, Mr Brown, indicated that the Claimant would be applying to amend her statement of case but that it would be "clarified further" from the position stated in the Draft RPOC. Edwin Johnson J described this reservation of the Claimant's position as "unsatisfactory" and said this at [81] of the March 2022 Judgment:
"There is an extensive draft re-amendment of [the Claimant's] pleaded case in existence, in the form of the RPOC, but there is no application to amend and the actual final form of the re-amended statement of case of [the Claimant] is not known, and cannot yet be known…the net result of this is that if and when the application for permission to re-amend may come to be made, the proposed re-amendments could, in theory, be in a very different form to the RPOC. It also struck me as significant that elements of the RPOC had been seized on by the Defendants, in support of their various summary judgment/strike out applications. It was hard to avoid the impression that [the Claimant's] reluctance to pin [her] colours to the mast of the RPOC was, at least in part, because parts of the RPOC had turned out to be unhelpful in [her] resistance to the summary judgment/strike out applications".

26. The judge repeated this observation at [220] saying this:

"…I have considerable sympathy for all four of the Defendants engaged in the Appeal and the Applications, so far as the [Draft RPOC] is concerned. It seems to me unsatisfactory for [the Claimant] to have produced the [Draft RPOC], with the expression of a clear intention to re-amend [her] case in the terms of the [Draft RPOC], and then to retreat to a position where the question of re-amendment is left up in the air. As I have said, it is hard to avoid the impression that [the Claimant] decided to abandon the [Draft RPOC] once [she] appreciated that its content was actually destructive to [her] case".

27. These observations (which were repeated again at [263] of the March 2022 Judgment) appear to have been apposite in connection with the CLR's First Application, which depended heavily upon the Draft RPOC.

28. Edwin Johnson J said this about the claim for loss against the CLR at [205]:

> "…the basis of the loss claimed by way of indemnity is the contention that, as a result of what is said to have been the mistaken registration of the 2010 Transfer, the Deceased lost the value of his interest in the Property and his unpaid vendor's lien. This in turn begs the question…of whether the Deceased did in fact have an unpaid vendor's lien at the time when the 2008 Transaction was supposed to have completed"

.

29. The CLR argued, with reference to the Draft RPOC, that the Claimant was now seeking to advance a case that the Deceased was paid the purchase monies in the 2008 Transaction, because the purchase monies were allocated to the credit of the Deceased by FLP, and that accordingly the claim for an indemnity must fall away because the Deceased had no unpaid vendor's lien and could not have resisted a claim by D3 for the Deceased to be required to transfer the Property to him; in other words, there was no mistake made, either in the registration of the 2010 Transfer or in the registration of the charge in favour of D3, which prejudicially affected the Deceased. This was accepted by Edwin Johnson J at [211] as "in theory" a good argument, but he ultimately rejected it because (as he explained at [212]-[213]) it assumed that the Claimant's case was as set out in the Draft RPOC and that, where counsel for the Claimant had "rowed back" from the Draft RPOC, it was not open to him to treat that pleading as an articulation of the Claimant's case; as he said "[t]he pleaded case of [the Claimant] remains as set out in the [APOC]".

30. The CLR also argued at that hearing that, on the face of the existing APOC, it could be concluded in any event that the Deceased was paid the purchase monies in the 2008 Transaction and that, accordingly, the indemnity claim was bound to fail. This argument was rejected on the basis that it could not be said that the APOC contained a clear statement that the Deceased was paid the purchase monies in the 2008 Transaction. The Judge accepted that the APOC contained material that suggested this was the case, but observed that the true factual position around what FLP did with the purchase monies prior to their misappropriation was "opaque".

31. Although he did not accede to the First CLR Application to strike out based on either the Draft RPOC or the existing APOC, and although he also rejected an argument of abuse of process, to which I shall return later, Edwin Johnson J did find (at [243]-[250]) that the APOC was defectively pleaded as against the CLR in relation to the indemnity claim, owing to the fact that it failed to plead the existence of the "decision" that is a condition precedent to the making of a claim for an indemnity pursuant to LRA Schedule 8 paragraph 1(3). Although the CLR had sought further information as to this issue, the Claimant had, he found, "obfuscated, and the opportunity to clarify this part of [the Claimant's] case was ignored" (at [245]). The Judge determined that this essential element of the claim to an indemnity needed to be pleaded and he gave the Claimant the opportunity to correct the defect in her pleading noting (at [272]) that what he had in mind was "a form of unless order, which will provide for the claim for an indemnity against the CLR in this action to be struck out unless (i) within a certain period of time the Estate applies to re-amend the [APOC] in order to put right the defect in the pleading which I have identified, and (ii) thereafter permission is granted, on the application, for a re-amendment which puts right the defect". This was reflected in his conclusions at [289(2)].

32. Pausing here for a moment, I accept the submission made by Ms Yates on behalf of the CLR, that although an order in these terms was never made because the parties agreed a disposal order dated 27 June 2022 following the March 2022 Judgment, nevertheless, it is plain that the Judge regarded the opportunity to cure the Claimant's defective pleading against the CLR as final and time-limited.

33. A proposed Re-Amended Particulars of Claim (the "**RPOC**") was attached to an application for permission to amend made by the Claimant on 14 April 2022. It was settled by Edward Brown KC and verified by a statement of truth from the Claimant. At paragraphs 34 and 35 it pleaded out the Claimant's case on the issue of a "decision" pursuant to LRA Schedule 8, paragraph 1(3). The CLR consented to the Claimant's amendment in the form of the RPOC, as was recorded in the recitals to the disposal order of 27 June 2022, although D6 continued to resist it.

34. In relation to the Allocation Issue, the RPOC departed from the approach taken in both the APOC and the Draft RPOC and sought to advance two alternative factual cases expressly on the basis, as explained in paragraph 1 of the RPOC that:
"The material available discloses alternative factual cases, the detail of which is outside the knowledge of the Claimant. The Claimant accordingly pleads alternative factual cases pursuant to the guidance of the Court of Appeal in *Binks v Securicor* [2003] 1 WLR 2557".

35. This approach appears to have been prompted by the March 2022 Judgment in which the Judge observed (at [265]) that "in principle and all other things being equal", it would have been open to the Claimant to plead her case against the CLR on the factual hypothesis that the original charge was not redeemed, and against the Bank on the factual hypothesis that the original charge was redeemed.

36. The two alternative factual cases were pleaded under the headings "Alternative Factual Case A" and "Alternative Factual Case B".

37. Alternative Factual Case A pleaded (under the sub-heading "Redemption of the Argyle Road Mortgage") as follows:

> "15. On 7 March 2008,
>
> 15.1 The Bank advanced the purchase monies to FLP qua solicitors for [D6] and [D3];
>
> 15.2 FLP allocated the purchase monies to the credit of the Deceased and redeemed the Argyle Road Mortgage;
>
> 15.3 FLP thereafter held the monies qua solicitors for [D6] (or D3).
>
> 16. By letter dated 27 March 2008, FLP qua solicitors for [D6] confirmed to [D6] that completion had occurred and that the Argyle Road Mortgage had been redeemed and that the Bank should proceed to discharge his charge with HM Land Registry."

38. Alternative Factual Case A therefore maintained the Allocation Facts Version A as they had appeared in the Draft RPOC, to the effect that the Bank's advance was applied for the benefit of the Deceased.

39. Alternative Factual Case B pleaded (under the sub-heading "Non-redemption and defective completion") as follows:

> "24. On 7 March 2008:
>
> 24.1 The Bank advanced the purchase monies to FLP *qua* solicitors for [D6] and [D3];
>
> 24.2 FLP did not allocate the purchase monies to the credit of the Deceased and did not redeem the Argyle Road Mortgage (cf Alternative Factual Case A);
>
> 24.3 FLP arranged purported completion of the sale and conveyance of the Argyle Road Mortgage to [D3].
>
> 25. However, the aforesaid purported completion was defective…"

40. I shall refer to this version of events as "**Allocation Facts Version B**".

41. The statement of truth, signed by the Claimant, on the RPOC was in an unusual form and did not comply with the requirements of CPR 22PD, at 2.2. It said this:
"I believe that the facts stated in these [RPOC], but as to either Alternative Factual Case A or Alternative Factual Case B, are true…".
It is unclear exactly what this was verifying, but given the content of paragraph 1 of the RPOC, the Claimant appears to have been verifying that although she did not know which version of the facts was true, nevertheless she believed that one or other must be true.

42. Although not strictly necessary for current purposes, I observe that it is not immediately clear to me that this was a legitimate approach to the pleading of alternative cases. Certainly I find it difficult to see that it is on all fours with the principle identified by Maurice Kay J at [8]-[9] in *Binks*. There the Judge envisaged alternative pleadings where a claimant wished to advance an alternative case (i.e. alternative to his primary case) based on a defendant's pleadings or evidence, making it clear that there will be cases where it is appropriate for a party to rely upon a pleading "which he is not putting forward as the truth, provided that there is some evidential basis for it". Here, however, the Claimant was doing no more than saying that the facts may be one thing or the other, but that she did not know. She was not advancing anything as "the truth". Neither alternative case refers to any evidence on which the Claimant relies for the purposes of drawing an inference one way or the other.

43. Be that as it may, the CLR consented to the RPOC, as I have said, and on 9 February 2023, served an Amended Defence responding to it, pursuant to the disposal order made by Edwin Johnson J on 27 June 2022. At paragraph 10 of the Amended Defence, the CLR made the point that, if the averments in paragraph 15 of the RPOC were correct "then the Claimant has no claim against [the CLR]". At paragraph 11, the CLR set out the evidence from which he said it was to be inferred that Alternative Factual Case A (as opposed to Alternative Factual Case B) had occurred.

44. By an order dated 21 September 2022, Arnold LJ granted permission to the Claimant to appeal against the disposal order dated 27 June 2022, which arose from the March

2022 Judgment, specifically in relation to the reverse summary judgment entered in favour of D7. On 13 January 2023, the Court of Appeal handed down its judgment in that appeal, allowing the appeal to a limited extent. The Court of Appeal's order permitted the Claimant to apply for permission to re-plead the claim against D7 but only on the basis that such pleading was confined to a plea that D7 owed a narrow duty of care to the Claimant as a third party of the type identified in *Al-Kandari v JR Brown & Co* [1988] 665. The order provided that if the application for permission to appeal was not made by 4pm on Friday 10 February 2023, or if permission to amend was refused, then the claim against D7 would stand dismissed.

45. The Claimant's February Application was made pursuant to this Court of Appeal order and was made in time on 9 February 2023. It annexed a pleading entitled "Re Amended Particulars of Claim" (albeit that this document should have been entitled "Re-Re-Amended Particulars of Claim"). The pleading was settled by Mr Robert Sheridan, the Claimant's then counsel, and has hence come to be referred to as "the Sheridan Draft". It was verified by a statement of truth from the Claimant which was now in the form "I believe that the facts stated in these re-re amended Particulars of Claim are true".

46. Crucially, from the perspective of the CLR, the Sheridan Draft which was being put forward as the form of pleading that the Claimant now wished to rely upon in the proceedings pursuant to the order of the Court of Appeal, no longer included the headings "Alternative Factual Case A" and "Alternative Factual Case B". Indeed, it no longer appeared to advance an alternative case at all. Instead, at paragraph 15 it said this:

    "15. It is averred that the following steps towards (purported) completion occurred on 10 March 2008:

    (a) On 7 March 2008, [D6] advanced the purchase monies to FLP qua solicitors for [D6] and [D3];

    (b) On the same day, and in accordance with ordinary conveyancing practices, FLP allocated the purchase monies to the credit of the Deceased (i.e. FLP treated the purchase price as having been paid);

    (c) On the same day, and in accordance with ordinary conveyancing practice, FLP qua solicitors for the Deceased arranged to allocate the monies to FLP qua solicitors for [D6] for the purposes of repaying the Argyle Road Mortgage (i.e. FLP applied the purchase monies received by the Deceased from [D3] to the discharge of his indebtedness to [D6] as a necessary step to completion);

    (d) FLP accordingly and thereafter held the monies qua solicitors for [D6]…"

47. Given the apparent abandonment of any alternative case in the Sheridan Draft, it is difficult to arrive at any conclusion other than that the statement of truth of the Claimant on this draft was intended to signal her intention to advance a positive case that Allocation Facts Version A was true – i.e. to return to the position that had been intimated in the Draft RPOC which had been the subject of close scrutiny at the hearing before Edwin Johnson J.

48. Ms Spencer drew my attention to paragraph 28 of the Sheridan Draft saying that the obvious intention from this paragraph was to maintain an alternative case. It reads as follows:

"28. The Claimant's secondary case is that the result of the matters set out above was that:

a) The Deceased remained the registered proprietor and beneficial owner of the Property subject to the obligation under any valid contract for sale that might have existed between him and [D3]

…

d) If and when the transaction was ever completed by registration of a transfer and the entry of [D3's] name in the register as proprietor then unless he received payment or the benefit of the balance of the purchase price the Deceased would have the benefit of an unpaid vendor's lien for the amount outstanding…"

49. However, as Ms Yates pointed out, paragraph 28 is expressly said to be "the result of the matters set out above" (including of course paragraph 15) and thus cannot possibly be understood as an alternative factual case. The fact that the statement of truth no longer seeks to identify the existence of two alternative cases only serves to confirm this point. Furthermore, the case as to the continuing existence of an unpaid vendor's lien in 28(d), to which Ms Spencer specifically pointed, is clearly pleaded on the basis that it applies "unless" the Deceased received payment – which paragraph 15(b) asserts that he did.

50. In any event, the advent of this revised pleading (which also contained no plea as to the existence of a 'decision' under paragraph 1(3) LRA Schedule 8) prompted the CLR Application which was made on the basis that there was no real prospect of succeeding on the indemnity claim given the terms of the Sheridan Draft and, further, that the manner in which the Claimant was conducting the litigation was an abuse of process. In a witness statement in support, the CLR expressly stated that he consented to the proposed amendments in the Sheridan Draft, subject to the CLR Application. On the subject of abuse of process, the statement pointed out that the Sheridan Draft was in materially the same form as the Draft RPOC which the Claimant's counsel had disavowed at the hearing before Edwin Johnson J with a view to opposing the First CLR Application. The statement went on to say this:
"Now, after all that, including the time and costs spent on the matter, the Claimant has reverted to the position she adopted as long ago as June 2019…The litigation has not progressed in any meaningful way since then".

51. On 23 May 2023, the Claimant served a further copy of the Sheridan Draft which was identical to the original version save that it struck out all claims against D6. This version of the Sheridan Draft was again verified by a statement of truth from the Claimant simply confirming that the "facts stated" were true.

52. By a consent order dated 11 June 2023, the Claimant's claim against D6 was dismissed.

53. On 10 July 2023, a third version of the Sheridan Draft (again without any material amendments to the original version) was circulated on behalf of the Claimant by Mr Sheridan's clerk in an unsigned form.

54. The Claimant's Application to amend her case in the form of the Sheridan Draft and the CLR Application were listed to be heard together with a time estimate of 1 day in a window between 18 and 20 July 2023. The Claimant was notified of this listing by email on 19 April 2023, thereby providing her with ample time to instruct legal representation in advance of the hearing, if she so wished.

55. The CLR served his skeleton argument for the hearing ("**the July Hearing**") on 13 July 2023, setting out in detail his arguments in support of the CLR Application. On 18 July 2023, the Claimant made an application to vacate the July Hearing in circumstances where she said in her application notice that Mr Sheridan was unavailable for the hearing and Ms Spencer had withdrawn from the case in circumstances where she had only received instructions on Friday 14 July 2023. The Claimant said that it was now too late to instruct counsel to attend the July Hearing (which by then had been fixed for Thursday 20 July 2023). The Claimant did not explain in her application why she had not taken steps to instruct appropriate representation sufficiently in advance of that hearing.

56. Neither the CLR, nor D7, agreed to this application and the July Hearing went ahead on 20 July 2023 before Mr Robin Vos (sitting as a Deputy Judge of the Chancery Division). The Claimant did not attend and was not represented. I understand that at the hearing itself, the judge informed the parties that the Claimant had emailed the court that morning to say that she was ill. No medical evidence had been filed at that time and Ms Spencer very fairly informed the court during her submissions that she had not been aware that the Claimant was unwell. Nevertheless, she showed me a letter (not available at the July Hearing) confirming that the Claimant had been admitted to hospital two days *after* the date of the July Hearing. I confess that I cannot see that much, if any, weight can be attached to this letter.

57. In any event, notwithstanding the absence of any medical evidence at the time, the judge adjourned the July Hearing and made an order requiring the Claimant to pay the CLR's and D7's costs thrown away by the adjournment. The hearing was subsequently re-fixed in a 3 day window commencing on 23 October 2023 and notice of the new hearing was provided to the Claimant by way of an email from D7's solicitors dated 9 August 2023.

58. Against that background, it is rather surprising that the August Application by the Claimant to substitute the Draft Re Re Amended Particulars of Claim for the Sheridan Draft was not served on CLR and D7 until 13 October 2023, some 7 working days prior to the start of the hearing window. The August Application explains that the Sheridan Draft was wrongly attached to the February Application owing to "an error of my barrister". In her statement in support, the Claimant says, in the briefest terms, that:

    "It has now been brought to my attention that Mr Sheridan has amended the wrong version of the Re-Amended Particulars of Claim because rather unfortunately there was more than one version of that document in circulation".

59. There is no explanation whatever in her statement as to how the Claimant came to verify the Sheridan Draft with a statement of truth, why she did not notice the very different way in which the Sheridan Draft was pleaded (given the terms of the RPOC) and what she means when she says that there was more then one version of the pleading in

existence. There was only one RPOC, consented to by the CLR and it is unclear how or why Mr Sheridan could mistakenly have reverted to a pleading in the terms of the Draft RPOC. There is also no explanation as to why the Claimant took no action to address this error upon receipt of the CLR Application and supporting statement which made abundantly clear the CLR's understanding that the Claimant was now intending to revert to a case which could not possibly succeed as against him in light of the approach taken by Edwin Johnson J to that case in the March 2022 Judgment.

60. Although I have rejected the application for relief from sanctions in relation to the substitute Draft Re Re Amended Particulars of Claim, nevertheless it is important to record how it sought to amend the Sheridan Draft. It was settled by Ms Spencer and it sought to re-introduce the pleading as to the 'decision', together with jettisoning Allocation Facts Version A entirely, in favour of Allocation Facts Version B. It pleaded no alternative case and nor did it suggest that the Claimant did not know what had taken place by way of allocation. The statement of truth (which clearly contains an error) said only this: "I believe that the facts stated in these Re Re Amended Particulars of Claim."

61. Paragraph 13 of the Draft Re Re Amended Particulars of Claim set out Allocation Facts Version B as follows:

"13. On 13 March 2008:

13.1 The Bank advanced the purchase monies to FLP qua solicitors for [D6] and [D3];

13.2 **FLP did not allocate the purchase monies to the credit of the Deceased** and did not redeem the Argyle Road Mortgage;

13.3 FLP arranged purported completion of the sale and conveyance of the Argyle Road Mortgage to [D3]" (**emphasis added**).

62. Notwithstanding the detailed plea in the CLR's Amended Defence setting out the evidence from which it was to be inferred that Allocation Facts Version A was true, the Draft Re Re Amended Particulars of Claim made no attempt whatever to say how or why this alternative version of facts was now the version which the Claimant considered to be true or what, if anything, had caused her to decide that Allocation Facts Version A, which she had verified with a statement of truth in the Sheridan Draft, was <u>not</u> now true. The only clue to the approach taken is to be found in the Claimant's statement in support of the August Application in which she observes that she had originally understood the need to plead two alternative factual cases but that "this is no longer required as there is no claim against [D6]".

63. The CLR sought to explore the Claimant's position further in advance of this hearing by serving a Part 18 Request for Further Information dated 17 October 2023 which sought urgent details of the factual basis in support of this change of case. In particular, the CLR asked how the Claimant's knowledge had changed (so as to enable her positively to assert that Allocation Facts Version B was true) since she had served the RPOC in April 2022 which said that the detail of the alternative cases was "outside the knowledge of the Claimant". However, the Claimant did not reply to that request, saying only on 18 October 2023 that she was "unwell and not in a position to reply substantively".

64. During the course of her helpful (and frank) submissions, Ms Spencer made it clear that it was not suggested on behalf of the Claimant that there was any new evidence available. Her explanation for the pleading in the Draft Re Re Amended Particulars of Claim was that she had sought to streamline the pleading so as to remove the case against D6. In doing so, she had removed the alternative factual case necessary for the claim against D6. She accepted that the Claimant's statement of truth on the RPOC verified that she did not know the factual position, but said that there was now nothing wrong with her verifying the truth of only one set of facts, as long as there was an evidential basis for it. She accepted, however, that any such evidential basis had not been pleaded.

65. In circumstances where I had dismissed the application for relief from sanctions and had been invited to dismiss the February Application, Ms Spencer invited me to proceed on the basis that the RPOC is the existing case against the CLR and that the Claimant should be permitted to proceed with that case, which should not be struck out on any of the grounds advanced by the CLR.

66. Had the July Hearing proceeded, as is clear from the CLR's skeleton argument for that hearing, he would have invited the court to grant reverse summary judgment on the indemnity claim because the only version of events which the Claimant was then advancing as the truth (contained in the Sheridan Draft) meant that there was no loss (an argument which, in light of the March 2022 Judgment appeared very likely to succeed).

67. However, the CLR Application also seeks a strike out on grounds of abuse of process and, for reasons which will already be clear, the CLR focussed specifically on that aspect of his application for the purposes of this hearing, saying that recent events only serve to reinforce the abuse application. Ms Yates points out that the Claimant has now signed multiple statements of truth which appear to verify the truth of differing factual positions without pleading any evidential basis for each different factual position and without explaining why there has been a change. She submits that the CLR has twice made applications for reverse summary judgment premised upon an understanding as to the case that the Claimant intends to advance at trial, only to find on each occasion that the Claimant has sought to revise her position upon understanding the impact of the legal arguments being advanced against her. This, she contends, is the clearest possible case of abuse.

The Principles

68. Pursuant to CPR 3.4(2) the court may strike out a statement of case if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing the claim; (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or (c) that there has been a failure to comply with a rule, practice direction or court order. The CLR's application notice in this case identifies each of these grounds. The applicable law is uncontroversial.

69. As the notes to the White Book make plain (at 3.4.3), the concept of abuse of process of the court has been explained in *Attorney General v Barker* [2000] 1 FLR 759, DC, per Lord Bingham of Cornhill as "using that process for a purpose or in a way

significantly different from its ordinary and proper use". The categories of abuse of process are many and are not closed.

70. Abuse of process may include unreasonably vague and incoherent statements of case which are likely to obstruct the just disposal of the case. As Teare J observed in *Towler v Wills* [2010] EWHC 1209 (Comm) at [18]:

"The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. If the case which is brought against him is vague or incoherent he will not, or may not, be able to do any of those things. Time and costs will, or may, be wasted if the defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies…".

71. A related form of abuse, also concerned with the way in which a party chooses to put her case, arises where a party "blows hot and cold" as to the nature of that case; this is also known as the doctrine of approbation and reprobation. Edwin Johnson J described this doctrine in the following terms in the March 2022 Judgment (at [242]):

"The doctrine usually applies where one party pursues a particular case in proceedings and then seeks to do an about face, in the same proceedings or in other proceedings, for the purposes of pursuing an inconsistent case".

72. Edwin Johnson J rejected a submission by the CLR made in respect of the First CLR Application based on this doctrine in circumstances where the APOC did not significantly change the original pleaded case observing, in an obvious reference to the terms of the Draft RPOC which had been disavowed at the hearing, (at [242]) "[f]or better or worse the [APOC] remain [the Claimant's] pleaded case, and it is by reference to that pleaded case that I am deciding the Appeal and the Applications". For similar reasons, at [220]-[221], the judge also rejected an argument based on the case of *Nekoti v Univilla Ltd* [2016] EWHC 556(Ch).

73. In *Nekoti*, Chief Master Marsh was persuaded to strike out the claimant's re-amended particulars of claim on the basis that the claim was, in the Chief Master's words (at [72]) "endlessly mutable". At [74] he accepted that a party may be "genuinely mistaken about a version of events, particular facts or how best to put forward its case", but he noted that the claimant's case had been "developed to meet the difficulties which have been pointed out by the Defendant with elements of the claim which were no longer convenient being jettisoned". The Chief Master was particularly concerned at the close proximity of statements of truth on a re-amended claim and a witness statement which he said "cannot stand together". He noted that the court's powers to deal with a claim for abuse of the court's process arise not just from CPR 3.4(2)(b) but also the overriding objective.

74. At [76] Chief Master Marsh said:

"The position might be different if the claim were now in a position to move forward. However, at the time of the hearing, two years after issue of the claim, the case was still being developed by the Claimant despite the Claimant having been in a position from the outset to plead its claim. Taken with the remaining lack of coherence and changing shape of the claim supported by statements of truth about which there is a real cause for concern, I am satisfied that in the exercise of my discretion the right course of action is to strike out the re-amended particulars of claim relying on both CPR 3.42(a) and (b)".

75. Ms Spencer drew my attention to the case of *Re Fundao Dam Disaster Municipio v BHP Group plc* [2020] EWHC 2930 (Comm) in which Turner J (at [50]) reiterated the proposition that the court should be reluctant to deprive a claimant, on procedural grounds, of a platform upon which to prosecute a claim of adequate substantive merit where she has not ventilated such a claim in earlier proceedings. At [51] he cited a passage from the speech of Lord Clarke in *Summers v Fairclough Homes Limited* [2012] 1 WLR 2004, in which he drew attention to the right to a fair and public hearing and then said this at [48]:

"It is in the public interest that there should be a power to strike out a statement of case for abuse of process, both under the inherent jurisdiction of the court and under the CPR, but the Court accepts the submission that in deciding whether or not to exercise the power the court must examine the circumstances of the case scrupulously in order to ensure that to strike out the claim is a proportionate means of achieving the aim of controlling the process of the court and deciding cases justly".

I bear these observations firmly in mind in considering the CLR Application.

76. In so far as the CLR also pursued his application under CPR 3.4(2)(a), a statement of case will not be struck out under that provision unless the court is certain that the claim is bound to fail. The closely related power under CPR 24.2 to give reverse summary judgment arises where the court considers that a claimant "has no real prospect of succeeding on the relevant claim or issue" and "there is no other compelling reason why the case or issue should be disposed of at trial". The principles to be applied were set out in the oft-cited case of *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC (Ch) at [15] per Lewison J and I need not repeat them here. Ms Yates pointed out that the relevant test is not one of probability but of "absence of reality" (see *Three Rivers DC v Bank of England (No 3.)* [2003] 2 AC 1 at [158] per Lord Hobhouse).

Abuse of Process

77. I am satisfied that, following a scrupulous examination of all the circumstances of this case, there has been an abuse of the court's process. Although at the time of the March 2022 Judgment the Judge rejected the applicability of the doctrine of approbation and reprobation, together with the related principle set out in *Nekoti*, I accept the CLR's submissions that subsequent events have substantially altered the complexion of this case. My reasons are as follows:

    a. First, it is now clear that the Claimant's case has fluctuated on the facts from (i) there being no pleading in relation to the Allocation Issue in her APoC; (ii) to pleading Allocation Facts Version A in the Draft RPoC; to (iii) pleading Allocation Facts Versions A and B together in the RPOC; to (iv) just pleading Allocation Facts Version A (in the Sheridan Draft); to (v) just pleading

Allocation Facts Version B in the Draft Re Re Amended Particulars of Claim attached to the August Application.

b. Second, each of the versions of the Claimant's statement of case to which I have referred above (with the exception of the Draft RPOC, which was nevertheless originally advanced as the Claimant's intended case), was verified with a statement of truth in terms to which I have already referred. There is no explanation whatever as to how the Claimant came to sign these inconsistent statements of truth in the absence of any new evidential basis on which to do so. Ms Spencer accepted during her submissions that these inconsistent statements of truth "raise very real issues" and she was right to do so. As Simler LJ said in *Clarkson v Future Resources FZE* [2022] EWCA Civ 230 at [47]:

"The signing of a statement of truth is no empty formality. Its importance is emphasised by the potential liability for contempt of court if signed without an honest belief in its truth. At interlocutory stages a statement of case, verified by a statement of truth, is itself evidence of the truth of the facts alleged in it... It therefore carries considerable weight".

Practice Direction 16, paragraph 9.2 provides that:

"A subsequent statement of case must not contradict or be inconsistent with an earlier one".

c. Third, what Ms Yates described as the "flip flopping" to which I have referred above has taken place notwithstanding that on two occasions the court has made clear to the Claimant that she was being given one last chance to set out her case by way of an amended pleading. Notwithstanding these "last chances", the Claimant continues to vacillate over the factual case that she is seeking to advance – one of the reasons why I refused relief from sanctions in respect of the August Application to rely upon the Draft Re Re Amended Particulars of Claim.

d. Fourth, the suggestion in the Claimant's witness statement in support of the August Application that the most recent change of approach was prompted by the fact that she was no longer pursuing D6 is not a good reason in itself for a complete *volte face* on a pleaded factual case. Either there is an evidential basis for a pleaded factual position, or there is not. The Claimant has pleaded no evidential basis for any of the differing factual positions that she has adopted and, although the CLR gave her the opportunity to explain how her knowledge, or the available evidence, had changed since the service of the RPOC by his Part 18 request of 17 October 2023, she failed to provide any substantive answer. It was only at this hearing that Ms Spencer confirmed on behalf of the Claimant that there is no new evidence, but that the August Application represented an attempt to "streamline" the pleading. However, Ms Spencer could provide no adequate explanation as to why the Sheridan Draft and the Draft Re Re Amended Particulars of Claim contained versions of the facts (asserted without any pleaded inference from the evidence) verified with statements of truth which were apparently inconsistent with each other and also inconsistent with the statement of truth on the RPOC, which appeared to

confirm that the Claimant did not know what the factual position was. No explanation has ever been provided by the Claimant for these inconsistencies.

e. Fifth, even giving the Claimant the benefit of the doubt that the mistake in relation to the Sheridan Draft was the fault of counsel, there is no evidence to explain why she did not immediately address this mistake upon the service of the CLR Application (which should have drawn it to her attention), but allowed that application to get as far as the July Hearing. In any event, it was incumbent on the Claimant to check the Sheridan Draft for accuracy when she verified it by way of a statement of truth; as Ms Spencer accepted, the Claimant cannot simply abdicate all responsibility for the terms of the Sheridan Draft.

f. Sixth, it is difficult not to arrive at the view that any confusion that occurred over the Sheridan Draft was the consequence of a case that has plainly been pursued in a confusing and muddled manner, apparently designed to preserve the Claimant's ability to advance any case that had a prospect of succeeding against any one of the defendants. This chaotic approach is typified by the events of the last 6 months as set out in detail above.

g. Seventh, there now seems to me to be additional evidence of the Claimant adjusting her case in response to the case advanced in defence by the CLR. There was evidence of this at the time of the hearing before Edwin Johnson J, as he pointed out in the March 2022 Judgment, but a similar attempt at adjustment has since occurred again following the making of the CLR Application and the service of the CLR's skeleton argument in advance of the July Hearing. I have no doubt whatever that the points made by the CLR, which were quite obviously fatal to the Claimant's case but could not be pursued by the CLR at the July Hearing because of the Claimant's failure to attend and the consequent adjournment, prompted the Claimant to make the August Application to change, yet again, the factual case advanced in her statement of case against the CLR. Unlike the hearing before Edwin Johnson J, however, the Claimant has not only sought to "row back" on a draft pleading not yet verified by a statement of truth (as was the case with the Draft RPOC), but has now sought to row back (without explanation) from previously verified versions of her statement of case. It follows that I accept Ms Yates' submission that the clear implication from these events is that the Claimant is seeking to pursue and verify whichever alleged set of facts is convenient to her cause in light of the ever diminishing number of available defendants.

78. In all the circumstances, these do not appear to me to be proceedings which have been prosecuted in an ordinary, reasonable manner pursuant to the requirements of the overriding objective. Ms Spencer's submission that this litigation has been difficult for the Claimant to run owing to the fact that she has not had day-to-day legal support and that a finding of abuse and strike out would leave the Claimant with no viable defendants to this claim does not excuse (or explain) her consistent use of the court process in a way that is significantly different from its normal and proper use.

79. Given the circumstances which have led to my finding of abuse, I consider that the only appropriate response is to strike out the Claimant's statement of case and dismiss the claim. Pursuant to the provisions of the overriding objective, it would be manifestly unfair to the CLR to permit the proceedings to continue. Having regard to all of the

arguments raised by the parties, striking out the claim appears to me to be a proportionate means of achieving the aim of controlling the process of the court and deciding cases justly.

80. These proceedings have been on foot for 7 ½ years, but they have not progressed beyond the statements of case phase. This in itself is a considerable concern given that the underlying claim concerns events which took place some 13-15 years ago, a period of time which cannot be anything other than prejudicial to the CLR in terms of the availability and reliability of witnesses. Much of the delay appears to have been caused by the misguided pursuit on the part of the Claimant of numerous different defendants.

81. The CLR has already spent considerable sums of public money in defending this claim, yet the claim against him has proved a moveable feast; even at the hearing before me Ms Spencer was continuing to make suggestions as to the manner in which the case could now be further amended to advance the Claimant's case, apparently suggesting that it was for the court now to indicate whether the Claimant should retain her alternative case as set out in the RPOC or amend to remove Allocation Facts Version A (although she did not address the question of how Allocation Facts Version B could properly be verified with a statement of truth in circumstances where the Claimant appears not to know what took place). It is clear that even now the Claimant is not in a position to move forward with her claim against the CLR.

82. The Claimant has blown hot and cold over her factual case, taken an apparently cavalier approach to the signing of her statements of truth and left the CLR in a position where he still does not know the evidential basis for the claim that the Claimant wishes to advance against him – indeed it is difficult to see that that claim has any real merit given the numerous different ways in which it has been advanced and the lack of any real evidential basis for the specific factual case against the CLR.

83. The CLR consented to the proposed amendments made by the Sheridan Draft, only to find himself potentially facing an entirely new case as set out in the Draft Re Re Amended Particulars of Claim attached to the August Application, without any explanation as to how or why the Claimant's case had changed, yet again. The mere fact that the CLR felt obliged to make the CLR Application (at yet further expense), raising (with good reason) many similar points to those already argued at the hearing before Edwin Johnson J, is testament to the unorthodox and wasteful approach to the litigation that the Claimant has adopted.

84. The requirements of the overriding objective to save expense, deal with the case in ways which are proportionate, ensure that it is dealt with expeditiously and fairly and allotting to it an appropriate share of court resources are all engaged here.

85. The Claimant's statement of financial means, provided further to the order of the court made at the July Hearing, appears to indicate that she does not have the resources to pursue this claim or to satisfy any of the mounting costs orders that have already been made against her. Whilst this is not, itself, a reason to strike out the claim, it seems to me to be a relevant factor when weighing up the prejudice suffered by the CLR by reason of the abusive manner in which these proceedings are being pursued by the Claimant. CPR 1.1(2)(f) is clearly engaged as, were this matter to proceed, it is difficult to see that the court will be able to ensure compliance with its existing orders as to costs.

86. For all the reasons I have given, I consider that the appropriate course of action is to strike out the Claimant's statement of case as an abuse of process and dismiss the claim against the CLR.

87. I observe that the lack of any apparent pleaded evidential basis for Allocation Facts Version B in the RPOC, together with the acknowledgment by Ms Spencer that the Claimant has no personal knowledge whatever as to the conveyancing events which form the factual basis for the claim against the CLR, when seen against the background of the troubling matters to which I have referred, would likely also have convinced me that this is a case in which reverse summary judgment/strike out should be granted in the CLR's favour. However, the position is complicated by the fact that the CLR Application for summary judgment/strike out on the grounds of no real prospect of success was made with reference to the Sheridan Draft, a version of the pleading which is no longer in play given my dismissal of the February Application. The prejudice caused to the CLR by reason of this state of affairs is obvious, and is another factor relevant to my decision on abuse of process. In light of that decision, I need consider this issue no further.

88. I invite the parties to liaise over (and if possible agree) an appropriate form of Order reflecting my decision. If it is necessary to have a consequentials hearing, I have already agreed to it being held remotely in light of Ms Spencer's chambers being located in Exeter.