Neutral Citation Number: [2024] EWHC 286 (Ch)

Case No: BL-2020-002063

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: 23/02/2024

Before :

Elizabeth Jones KC (sitting as a deputy judge of the High Court)

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Between :

Nicholas Stoop **(Trading as Warwick Risk Management)**	**Claimant**
- and -	
Nicola Maxine Johnson	**Defendant**

- -
- -

Michael McLaren KC (instructed by **Greenwoods Solicitors**) for the **Claimant**
Laurie Scher (instructed by **Withers LLP**) for the **Defendant**

Hearing dates: 4, 5, 6 December 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 23 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Elizabeth Jones KC (sitting as a deputy Judge of the High Court)

Elizabeth Jones K.C. :

1. The Claimant, Mr Stoop, conducts a claims management business, trading as Warwick Risk Management. He is authorised by the Financial Conduct Authority to perform regulated claims management services.

2. In this action Mr Stoop seeks to recover a success fee under a damages-based agreement for the provision of consultancy work and claims management services signed on 4 May 2018 by the Defendant, Ms Johnson.

Background and facts

3. Ms Johnson was formerly married to a Mr Ziad Takieddine. Divorce proceedings were started by Mr Takieddine in 2006. There were a number of reconciliations and separations between Ms Johnson and Mr Takieddine, and in 2009 Ms Johnson met Mr Stoop, and shortly thereafter began a relationship with him. They lived together from around mid-2010 until October 2017 at a property called Warwick House, 8 Addison Crescent, London W14 8JP ("**Warwick House**"), which had been one of the former matrimonial homes of Ms Johnson's marriage to Mr Takieddine. Warwick House was at the relevant time registered in the name of a company, Warwick Estates Ltd.

4. Ms Johnson registered a Home Rights Notice against Warwick House, but removed it in December 2007 when it appeared that reconciliation with Mr Takieddine was possible. In January 2008, a charge dated 21 December 2007 was registered against Warwick House by Standard Bank. In 2008 Ms Johnson registered another Home Rights Notice against Warwick House, which was again removed in January 2009 on the basis of a possible reconciliation. On 2 February 2009 a mortgage between Warwick Estates Ltd and Barclays Bank was entered into, and that mortgage was registered on 4 March 2009 (**"the Barclays mortgage"**). Barclays also took security against a further residential property in Paris (**"the Paris Property"**). Prior to the removal of both Home Rights Notices, Ms Johnson received separate legal advice.

5. From 2007 Ms Johnson was living not at Warwick House but in separate rented accommodation paid for by Mr Takieddine. However, in July 2010 Ms Johnson obtained an occupation order in respect of Warwick House, and a non-molestation order prohibiting Mr Takieddine from entering Warwick House. Ms Johnson says that the first time she appreciated that mortgages had been granted over Warwick House and the Paris Property was when she re-entered Warwick House and found documents left there by Mr Takieddine, though it is apparent from the letters recording the independent advice referred to above that she had been informed that mortgages were to be granted.

6. In October 2012, Barclays appointed receivers over Warwick House. By this time, Mr Takieddine was embroiled in criminal proceedings in France in relation to alleged arms dealing, corruption and tax fraud. The evidence is that Mr Takieddine was tried in France and convicted in January 2017 in connection with illegal commissions from arms contracts. I was not shown the judgment of the French court, and the exact allegations against Mr Takieddine, and the nature of his conviction, are not directly relevant to this action. I do not therefore go into them further.

7. Ms Johnson therefore faced a very complicated situation in relation to the divorce, the ownership of Warwick House and the Paris Property, her rights in relation to both, and the effect and validity of the charges. During the period from the start of their relationship, Mr Stoop became very involved in supporting Ms Johnson in the divorce proceedings, and in the associated issues about the properties in London and Paris. It was common ground that he did so as her boyfriend and partner and not for reward.

8. Withers LLP acted for Ms Johnson on matters relating to the divorce and, for a while, in relation to the properties. Withers wrote to Barclays' solicitors on 20 November 2012 and 3 December 2012 asserting that the mortgage over Warwick House was not binding on Ms Johnson, and that if possession proceedings were brought, they would be defended and a counterclaim brought to set aside the mortgage. The letter of 3 December 2012 invited discussion to achieve a pragmatic solution. Withers then instructed Simon Farrell QC in relation to a potential claim in conspiracy against Barclays, and as to how to coordinate action in England and France.

9. In early 2013, Withers then told the Defendant that they were conflicted in relation to a claim against Barclays, and suggested that she took independent advice. They sent a letter to potential new solicitors for Ms Johnson setting out the background, and referring to the potential for a claim based on the knowledge of Barclays of Mr Takieddine's wrongdoing. However, no steps were taken at this time in relation to a claim against Barclays.

10. The divorce proceedings had taken place in France, and it appears from the judgment of Moylan J dated 2 June 2016 at [2016] EWHC 1895 (Fam) that the order for divorce was made by a French court. Ms Johnson then initiated proceedings under Part III of the Matrimonial and Family Proceedings Act 1984, and to enforce, by way of charging order, a capitalised maintenance order made by the French court. On 16 September 2016, Moylan J declared that Mr Takieddine was the direct beneficial owner of Warwick House and that Warwick Estates Ltd held the legal title as nominee for Mr Takieddine, and ordered that Warwick House be placed on the open market for sale with Ms Johnson having sole conduct of the sale save as provided for in the order. The order then provided that the proceeds of sale should be applied first to discharge "*any sums payable under the mortgage in favour of Barclays*"; and then, after solicitors' and estate agents' costs, to pay 50% of the balance to Ms Johnson, and the balance in payment of various charges, including the costs of Withers as Ms Johnson's solicitors, and the *prestation compensatoire* and child maintenance in the sum of c 3 million Euros which had been ordered by the French Court.

11. Ms Johnson did then seek to market Warwick House, but it took a considerable time to achieve a sale. Eventually a sale was agreed with a neighbour, with a formal offer being made in October 2018.

12. In the meantime, Mr Stoop had worked as an independent consultant advising clients in relation to mis-sold banking products, and had started a number of businesses, which until October 2017 he ran from an office at Warwick House. Specifically, in 2014 Mr Stoop formed a company called Cap-It Financial Limited, which offered interest rate caps to UK SMEs, and which, according to Mr Stoop's evidence, became regulated by the FCA in 2016. In 2015 he became authorised as a regulated claims manager, trading as Warwick Claims Management.

13. Mr Stoop introduced Ms Johnson to Charles Russell Speechlys (**"CRS"**) sometime around 2015, sending them a selection of relevant documents in September 2015. Mr Stoop's evidence is that he was involved in a number of banking claims with CRS, and it appears that there was an arrangement whereby he was paid 15% commission in relation to fees earned by CRS from matters introduced by him. CRS appears to have been willing to do a certain amount of work in relation to Ms Johnson's case without charging directly, presumably on the basis that they anticipated being retained properly at a later date. Ms Johnson at the time had no money to pay lawyers. CRS gave some initial advice to Mr Stoop in late 2015, and advised Ms Johnson in early 2016 that there was a case worth investigating.

14. In July 2016, shortly after the June 2016 judgment of Moylan J, CRS produced a draft letter of claim against Barclays. That letter included a number of suggested bases for suggesting that the mortgage against Warwick House was not binding on Ms Johnson, including that Ms Johnson had a beneficial interest in Warwick House and was in occupation so that her interest was not defeated by Barclays' charge; that Barclays knew at the time of the charge that Mr Takieddine was under examination by a French magistrate for corruption, money laundering and fraudulent activities; that the marriage was subject to the French regime of community of assets; and that the Bank was aware of the distinct possibility of a divorce at the time it loaned the money and took the charge. In September 2016, CRS pointed out to Mr Stoop that Moylan J's judgment caused additional difficulties for Ms Johnson in relation to a claim against Barclays that the charge was not binding on her. In August 2017 CRS wrote a letter to Mr Stoop setting out a summary of what is required to bring claims in conspiracy. The letter envisaged that CRS would instruct Simon Farrell QC to plead the case, and gave an indication that preparation of instructions would cost c £10,000 plus VAT, which would be split between CRS and Warwick Risk Management (i.e. Mr Stoop).

15. In September 2017 Ms Johnson wrote to CRS asking if they would be available to help her with regard to the Barclays mortgage. The letter records that Mr Stoop had told her that he had no time to deal with this.

16. In October 2017, the relationship between Mr Stoop and Ms Johnson broke down, and Mr Stoop moved out of Warwick House on 11 October 2017. On 14 October 2017 Ms Johnson sent a text to Mr Stoop saying *"I will send you money when I sell the house. Barclays project is still open for you too. I'm doing it anyway but you can be involved if you want*". Mr Stoop responded by email saying "*Thank you for telling me that you would send me money when you sell the house. Please can we quantify the amount? What do you propose? I hope it would reflect the quality and quantity of the effort to secure the house for you and on the various other cases. I would also be happy to take on Barclays. I have a couple of ideas about that. It would be good to clear up the first matter first*".

17. Ms Johnson then asked Mr Stoop what he was expecting in terms of payment, and told him that she was meeting CRS shortly. Mr Stoop responded *"In terms of payment, what do you think would be reasonable? I put absolutely everything into fighting for you. But for me you would have been left with nothing. Simon Farrell suggested £2 million. I think that may be a bit high……Please may we resolve this part reasonably swiftly? I think it needs to be clarified before the prospective battle against Barclays*".

18. Ms Johnson responded by email dated 6 November 2017 saying that she was very shocked, and that she would be lucky if there was £2m left. Her email referred to Mr Stoop having made "*outrageous demands*". Mr Stoop responded saying that he had not made any demands, that Ms Johnson had asked him to suggest a figure, and that the £2m was Simon Farrell's suggestion and he (Mr Stoop) had even said that he thought it was a bit high. The continuing correspondence shows that Mr Stoop and Ms Johnson then arranged to meet, and the personal relationship was obviously renewed later in the year, though Mr Stoop did not ever move back into Warwick House. Although there was an issue on the pleadings about when the relationship ended, it was conceded by Mr Stoop in evidence that the relationship continued, on an on/off basis, until August 2019.

19. In December 2017 Ms Johnson sought advice from the Khan Partnership in relation to the claim against Barclays. The letter of advice from the Khan Partnership recorded Ms Johnson's desire to avoid litigation if possible, but advised that threatening or bringing a claim might be necessary to impress upon Barclays the need to enter into constructive negotiations. The Khan Partnership offered to act on the basis of a fixed fee of £5,000 and a percentage of any reduction of the charge. They advised on a number of legal and commercial considerations, including reputational risk for Barclays, but advised that Barclays would likely be able to mount a strong defence.

20. In early 2018 Ms Johnson and Mr Stoop had further discussions about the possibility of Mr Stoop assisting Ms Johnson in relation to Barclays. According to Mr Stoop it was Ms Johnson who suggested that he manage her claim and proposed a 50:50 joint venture, with the costs shared between them, and he told her that a written agreement would be necessary. According to Ms Johnson it was Mr Stoop who raised the possibility of a formal contract and became increasingly insistent, and it was Mr Stoop who suggested the 50:50 split. I will return to this later.

21. Mr Stoop then produced a draft agreement dated 24 March 2018, and Ms Johnson provided him with a number of relevant documents. A further draft agreement was provided on 9 April 2018. On 22 April 2018, Mr Stoop sent Ms Johnson an email referring to things having become "*heated the other night*". The email includes the following *"I have never demanded £2m from you, or any other amount. I thought your question on Friday was whether I thought my contribution to your various actions is (or was) equivalent to that of Withers. To that question my answer is always going to be "yes" or, more precisely, "my contribution to your various action in England and France was much more effective than Withers' contribution…To be clear I am still not making any demands. I am sad if you think otherwise. I did what I did for love and for no other reason. In the circumstances I expect that you do not want me to assist in the future*".

22. Ms Johnson had around the same time received an email from Withers suggesting a meeting to discuss their outstanding fees. Mr Stoop and Ms Johnson continued to discuss how to deal with Withers. On 24 April 2018 Mr Stoop emailed Ms Johnson saying *"It seems weird that you are prepared to go in to the lions' den at Withers (at risk of personal bankruptcy!) at the drop of a hat and without any lawyer yet at the same time require weeks to obtain legal advice about the Barclays contract (which anyway has a two week cooling off period). I think that contract reflects what we agreed in clear terms (50/50 on the upside, 100% of the downside for my account). If*

you have any questions about the contract please put those to me in the first instance……..".

23. Ms Johnson then emailed Mr Stoop with her questions on 25 April 2018, and Mr Stoop responded with his answers on 26 April 2018. As a result, Mr Johnson agreed to insert a clause providing that Ms Johnson would be kept fully informed. A further draft containing a clause to that effect was sent to Ms Johnson on 2 May 2018. Ms Johnson signed a contract on 4 May 2018 and returned it to Mr Stoop, but the version she signed was the version produced on 9 April 2018, not the version of 2 May 2018. However nothing turns on that difference.

24. The contract signed on 4 May 2018 ("**the Agreement**") provides as follows:

    i) The preamble states that the document sets out formally the terms for Mr Stoop to carry out "**the Assignment**". The objective of the Assignment is described as being to secure compensation in relation to the mortgages against Warwick House and the Paris Property (together **"the Mortgages"**). The preamble contemplates compensation being secured from Barclays or alternative sources. It also states that the compensation secured could take one or more of a variety of forms, including but not limited to a cash settlement or settlements, full or partial release from the burden of the Mortgages or a combination of the above.

    ii) Clause 1 states that the Assignment comprises consultancy work and claims management services with reference to the Mortgages, and that the Assignment will be carried out in the UK and other jurisdictions and may be on multiple fronts, including but not limited to litigation against Barclays and/or third parties, negotiation with Barclays and others, media campaigns in support of the Assignment and co-ordination with politicians, regulators and/or criminal prosecutors.

    iii) Clause 1 also provides that Mr Stoop will be responsible for instructing such legal and other advisors as he may consider necessary to carry out the Assignment and for co-ordinating their actions, and states that Mr Stoop will be responsible for meeting the costs and expenses of any advisors so instructed.

    iv) Clause 1 also provides that there is a 14 days cooling off period within which the agreement can be cancelled. It also says as follows:

        "*Thereafter this agreement may be terminated without penalty by either party at any stage. For the avoidance of doubt, termination of the agreement after the 14 days "cooling off" period will not terminate the Success Fee arrangement set out below*".

    v) Clause 3 provides that no fee will be payable apart from the Success Fee (which is provided for later in clause 3). It also provides that Ms Johnson *"will not be responsible for meeting any of the costs incurred by [Mr Stoop] in the course of the Assignment unless such costs have been expressly agreed by you in writing"*.

vi) Clause 3 also provides as follows:

> "*We have agreed that the "Success Fee" will be 50% of any compensation realised pursuant to the Assignment, monetary or otherwise, howsoever obtained ("the Compensation").*
>
> *We have agreed that, for the purpose of calculating the Success Fee, no costs will be deducted from Compensation, unless such costs have been expressly agreed by you in writing. Simply put, in the event of success we will share the Compensation on a 50:50 basis, but any costs or expenses will be wholly for my account (unless otherwise agreed in writing by you)."*

vii) Clause 4 contains an entire agreement clause.

viii) Clause 5 is headed "Risks" and provides as follows:

> "*We would point out that there are risks involved in making a claim against a bank. They include cost, time involved of pursuing a claim against a bank, the risk that the dispute will end in court and the possibility of losing money"*.

ix) Clause 6 states that Mr Stoop accepts liability to consumers as defined in and to the extent applicable under the Consumer Rights Act 2015.

25. On 17 May 2018 Mr Stoop agreed to engage a Mr Harry Farrell as a consultant.

26. Ms Johnson did then obtain some legal advice about the Agreement which appears to have been obtained on about 17 May 2018, just before the end of the cooling off period.

27. Mr Stoop and Harry Farrell then clearly did start work on Ms Johnson's potential claim. However, Mr Stoop did not instruct CRS to act for Ms Johnson and undertake to pay their fees as required by the Agreement. Instead, he sought their agreement to act for Ms Johnson on a CFA. As a result, only a few short letters were thereafter sent by CRS to Barclays or their solicitors. The first letter was sent by CRS on 16 July 2018 and Barclays' solicitors, Dentons, responded on 30 August 2018 stating that they were willing to meet to have discussions resulting in the redemption of the Bank's legal charge, but not a discussion along the lines suggested by CRS. A further letter was sent on 9 October 2018 on a without prejudice basis inviting discussions, and a further chasing letter was sent on 26 October 2018. Dentons responded on 19 November 2018 requesting that CRS provide Dentons with their client's explanation of the legal basis for the allegation, together with supporting evidence where appropriate. Further exchanges of correspondence took place between CRS and Dentons in December 2018, with Dentons repeating the request for an explanation of the legal basis of Ms Johnson's case together with supporting evidence in their letter of 12 December 2018. However, no letter of the kind requested by Dentons, explaining the legal basis for the contentions made and including supporting evidence, was ever sent by CRS.

28. On 29 November 2018 Mr Simon Farrell QC advised in consultation that the claim against Barclays had a less than 50% chance of success.

29. In parallel with the correspondence between CRS and Dentons, there was consideration of writing to Ms Johnson's MP. In July 2018 Ms Johnson was speaking to a friend of hers, a Ms Heather Buchanan, who was involved with the All Party Parliamentary Group on Fair Business Banking ("**APPG**"). Ms Buchanan suggested that Ms Johnson should write to her MP, Emma Dent Coad, copying Ms Buchanan. There was a great deal of to and fro between Ms Johnson and Mr Stoop about whether and when a letter should be sent, and to whom, and I will return to this in more detail below. Eventually a letter ("**the MP Letter**") was sent to Ms Dent Coad on 20 March 2019, and on 16 April 2019 Ms Dent Coad's office confirmed that Ms Dent Coad was happy to refer Ms Johnson's case to the APPG. It appears that the APPG then forwarded the MP Letter to Barclays.

30. Also in February 2019, Ms Johnson was introduced to another barrister, a Mr Reevell. The evidence is somewhat unclear as to whether this introduction came from Ms Buchanan or from the chair of the APPG. Mr Reevell wanted to meet Ms Johnson without Mr Stoop. Mr Reevell advised Ms Johnson that the case against Barclays was weak and had only nuisance value, and that Mr Stoop was not acting in Ms Johnson's best interest. Mr Stoop was extremely angry about this. By this time, Ms Johnson was also extremely angry with Mr Stoop. She wrote to him on 3 May 2019 saying that he had failed her and put her in a catastrophic situation where she was on the brink of losing her home and could hardly breathe for worry.

31. CRS then informed Ms Johnson that they could not continue to act without a signed CFA. On 3 June 2019 Ms Johnson emailed Mr Stoop and told him that she had informed CRS that she was no longer proceeding against Barclays.

32. However, on 20 June 2019 Dentons contacted CRS inviting Ms Johnson to propose a date, venue and agenda for a meeting. On the same day Barclays wrote to the APPG, attaching a letter setting out a detailed response to the MP Letter which had been forwarded to Barclays by the APPG, but also telling the APPG that they had invited Ms Johnson to meet with them.

33. In June 2019 Mr Stoop advised Ms Johnson to make a Data Subject Access Request to Barclays in London and Paris, including to Milleis Bank which had succeeded to Barclays' business in Paris.

34. In late July 2019 Ms Johnson had arranged to see CRS with Mr Stoop and Ms Buchanan. On the day of the meeting Mr Stoop told Ms Johnson it had been cancelled. Ms Johnson decided to attend anyway, and when she and Ms Buchanan arrived at the offices of CRS, the relevant partner was in a meeting with Mr Stoop. This seems to have been the last straw for Ms Johnson. On 8 August 2019 Ms Johnson met with Mr Stoop, and she broke off their personal relationship.

35. Ms Johnson continued to seek to work with CRS after August 2019, and there were negotiations with Mr Stoop about revising the Agreement. However, no agreement was reached.

36. On 24 October 2019 Withers agreed to act for Ms Johnson on the negotiations with Barclays, and subsequently John Wardell QC was instructed to act as well. Also on 24 October 2019 Mr Stoop sent a letter, in terms which he accepted were unprofessional, to Heather Buchanan, Lord Cromwell, who was Vice-Chair of the APPG, and Kevin Hollinrake MP, demanding certain information and also demanding that neither any of them nor the APPG should have any further dealings with Ms Johnson's case.

37. On 19 November 2019 Ms Johnson gave notice to terminate the Agreement.

38. On 5 December 2019 Ms Johnson attended a meeting with Barclays at Dentons offices. Mr Chesser and James Copson of Withers attended, as did Mr Wardell QC. A further meeting took place on 28 January 2020 after discussions between Ms Johnson's French lawyers and Barclays' French lawyers in relation to the Paris Property. At that meeting, Barclays agreed to accept £6 million in satisfaction of the liabilities secured by the mortgage over Warwick House. Warwick House was then sold on 3 June 2020 and the settlement agreement with Barclays was also finalised on 3 June 2020.

The issues

39. The agreed issues between the parties were as follows:

    i) Is the Agreement unenforceable?

        a) Does it breach regulation 3(c) of the Damages Based Agreements Regulations 2013?

        b) Does it relate to family proceedings in breach of s 58AA(4)(aa) Courts and Legal Services Act 1990?

    ii) On a true construction of the Agreement, for a Success Fee to be payable, to what extent must the Claimant's consultancy and claims management work have brought about the Compensation (as defined in the Agreement)?

    iii) If there is a causal requirement, has the Claimant satisfied it?

    iv) What is the value of the Barclays settlement agreement?

40. A further issue about the application of section 62 of the Consumer Rights Act 2015 fell away during trial. A pleaded case under section 63(1) and paragraph 18 of Part 1 of Schedule 2 to the Consumer Rights Act 2015 was similarly not pursued.

The witnesses

41. There were 4 witnesses, Mr Stoop, Ms Johnson, Mr Andrew Chesser of Withers and Mr Harry Farrell. No issue was taken as to the honesty of Mr Chesser or Mr Farrell. Counsel for both parties urged me to accept their client as truthful and the other party as dishonest and unreliable. My impression of both Mr Stoop and Ms Johnson is that they were essentially honest witnesses, who did each seek to give evidence that supported their own cases, but who were willing to accept where appropriate that the evidence they had given could not be supported.

Issue 1(a): is the Agreement unenforceable because it breaches regulation 3(c) of the Damages-Based Agreements Regulations 2013 ("the Regulations")?

42. The relevant provisions of Section 58AA of the Courts and Legal Services Act 1990 ("**CLSA")** for this issue are subsections (1), (2), (3), (4) and (5), which provide as follows:

"(1) A damages-based agreement which satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.

(2) But….a damages-based agreement which does not satisfy those conditions is unenforceable.

(3) For the purposes of this section-

(a) a damages based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that-

(i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided and

(ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained.

(4) The agreement –

………..

(c) must comply with such other requirements as to its terms and conditions as are prescribed.

(5) Regulations under sub-section (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements".

43. The Regulations prescribed under subsection (4) of section 58AA are the Damages Based Agreements Regulations 2013 ("**the 2013 Regulations**"). Regulation 3 of the 2013 Regulations provides, as far as material, as follows:

"3. The requirements prescribed for the purpose of section 58AA…are that the terms and conditions of a damages-based agreement must specify-

….

(c) the reason for setting the amount of the payment at the level agreed….."

44. It was common ground that the Agreement provided for Mr Stoop to provide claims management services as defined in section 58AA, which in turn refers to the definition in the Financial Services and Markets Act 2000 at section 419A. It was

accordingly common ground that the Agreement is a damages-based agreement within the meaning of section 58AA CLSA.

45. It was submitted by Mr Scher that the reason specified in a damages-based agreement pursuant to Regulation 3(c) of the 2013 Regulations must be the true reason for setting the amount of the payment at the level agreed. I accept that submission, and indeed I did not understand Mr McLaren to contend otherwise[1].

46. So the first issue to consider is: what was the true reason for setting the amount of the payment at the level agreed? Mr Stoop's case at trial, as pleaded in paragraph 4b of his Amended Reply, was that the reasons for setting the amount of the payment at the level agreed were set out in clause 5 of the Agreement. However, the evidence was quite otherwise.

   i) Mr Stoop in his original Particulars of Claim dated 28 August 2020 set out the material terms of the Agreement in paragraph 22, including clause 3 which set out the level of the payment agreed, and then pleaded that "*the function of those contractual terms was to provide an incentive for the Claimant to work diligently until a settlement was obtained and to compensate him for the years of work and assistance provided both during and after the Defendant's divorce*". That plea was then amended after the Defendant applied to strike out the claim.

   ii) Mr Stoop's witness statement says that the payment was set at the level of 50% because that was what Ms Johnson offered him. Mr Stoop does not say in his witness statement that the payment was set at the level of 50% because of the risks set out in clause 5 of the Agreement. Ms Johnson denied in cross examination that she had offered 50% and said that it was Mr Stoop who asked for that amount. I accept that evidence; it is consistent with the general tenor of the correspondence between them prior to the 50% figure first being mentioned, and Ms Johnson's tone and demeanour when she dealt with this in cross examination gave the impression that she was telling the truth and expressing a strongly held opinion. However, nothing turns on who in fact suggested 50%.

   iii) Ms Johnson's witness statement says that she asked Mr Stoop why the payment was set at the level of 50%, and he told her that it was because he was worth it and that he was worth far more than Withers or her French lawyers. That evidence is corroborated by the email of 22 April 2018 which is referred to in paragraph [21] above.

   iv) There is an email written by Mr Stoop to Withers in 2019 in response to the notice terminating the agreement in which Mr Stoop says this: *"I am Nicola's former partner and have worked closely alongside Nicola for almost ten years helping her with extensive litigation in France and the UK, mostly relating to her divorce and her efforts (1) to take occupation of and (2) to remain in*

[1] In Silvera v Bray Walker [2010] 4 Costs LR 584 at [27] it is recorded that counsel agreed, and the Court of Appeal seem to have accepted, that the reasons given do not have to be good reasons, i.e. reasons which would (under the regime which applied in that case) withstand disallowance on assessment. Whether the reasons are good reasons is however a different issue from whether the reason specified (if a reason is specified) is the true reason.

occupation of Warwick House…It had always been agreed and expressly understood that I would be remunerated for my work and that this would be settled once the divorce had been finalised and when Warwick House was sold. In November 2017 our personal relationship broke down…shortly after Nicola offered once again to pay me some money when she sold the house to reflect our longstanding agreement. The figure of £2m was discussed, but Nicola eventually offered only a 50% share of any proceeds that I could help to obtain from Barclays in respect of the monies diverted by the bank to Nicola's former husband in the context of their divorce and to include a sum equivalent to 50% of the value of any cash compensation or release of the mortgage debt secured in Barclays' favour….". Mr Stoop said that he was angry and did not express himself well when he wrote that email, but accepted that he was not angry when he signed the statement of truth on his original particulars of claim.

v) Mr Stoop in cross examination fairly accepted that it was his lawyers' idea, not his, to say that the reason for the payment being set at the level of 50% of the recoveries was set out in clause 5 of the Agreement. I should note that the lawyers concerned were not those who represented Mr Stoop at trial, and no criticism is intended of those who represented Mr Stoop at trial.

vi) Although a great deal of time in submissions and cross examination of Ms Johnson was spent on seeking to establish that the risks set out in clause 5 of the Agreement were Mr Stoop's risks rather than Ms Johnson's risks, Mr Stoop's email of explanation dated 26 April 2018 which is referred to in paragraph [23] above says that clause 5 is a standard paragraph in all his engagement letters. It cannot therefore be a reason for setting the level of the payment at 50% of the Compensation because different cases would justify different percentages. The explanation of clause 5 given in the email of 26 April 2018 was moreover given in answer to a question from Ms Johnson about ensuring that Ms Johnson did not take any risk of losing anything from the proceeds of the Warwick House sale. Further, at the time of entering into the Agreement, Mr Stoop was not aware of the existence of the 2013 Regulations (this being the first Damages Based Agreement (**"DBA"**) which he had entered into). However, there were different regulations which applied to Mr Stoop as a claims manager, namely the Claims Management Regulation Conduct of Authorised Business Rules 2018, made pursuant to the Compensation (Claims Management Services) Regulations 2006. Those rules, which came into effect on 1 April 2018, required, by rule 11(a) thereof, Mr Stoop to provide Ms Johnson with honest, comprehensive and objective written information to assist the client to reach a decision including the risks involved in making a claim, in particular the possibility of losing money and, in the case of legal action, appearing in court. Clause 5 of the Agreement plainly is intended to fulfil that requirement and no other written information provided to Ms Johnson gave her that information.

vii) There is no witness evidence or contemporaneous documentary evidence to the effect that the reason for setting the payment at the level of 50% was the existence of the risks set out in clause 5 of the Agreement. When I asked Mr McLaren for the evidence supporting his pleaded case, he was not able to point

to anything other than Mr Stoop's Amended Reply, which sets out that case, and which contains a statement of truth signed by Mr Stoop. Mr Scher submitted that the Amended Reply could not be relied upon at trial, relying on CPR 32.2 and 32.6. I think that he is right about that, but even if he is not, the Amended Reply cannot bear any weight in the light Mr Stoop's evidence in his witness statement and in cross examination, as set out above.

47. I consider that the evidence set out above plainly points to a conclusion, on the balance of probabilities, and I therefore find, that the reason for the payment being set at the level of 50% of any compensation obtained was that Mr Stoop wished to be remunerated for the work he had done in the previous 10 years as well as the work he was going to do in the future, and further, even if I am wrong about that, that the reason for the payment being set at that level was not because of the risks set out in clause 5 of the Agreement.

48. Mr McLaren submitted that any breach of the Regulations was a non-material and technical breach and referred me to three authorities: *Hollins v Russell* (also known as *Tichband v Hurdman*) [2003] 1 WLR 2487, *Garrett v Halton Borough Council* [2007] 1 WLR 554 and *Silvera v Bray Walker Solicitors* [2010] 4 Costs LR 584. None of those cases assist Mr McLaren.

49. In *Hollins v Russell*, supra, the Court of Appeal considered 6 appeals which turned on similar (but not identical) provisions to those which are in issue in this case, because the relevant agreements in that case were not DBAs but conditional fee agreements ("CFAs").

    i) Section 58(1) of CLSA provided that *"A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of it being a conditional fee agreement; but any other conditional fee agreement shall be unenforceable"*.

    ii) Regulation 3 of the Conditional Fee Agreement Regulations 2000 (SI 200/692, now repealed) **("the CFA Regulations")** provided relevantly as follows:

    3. Requirements for contents of conditional fee agreements providing for success fees.

    (i) A conditional fee agreement which provides for a success fee;

    (a) Must briefly specify the reasons for setting the percentage increase at the level stated in the agreement, and

    (b) Must specify how much of the percentage increase, if any, relates to the cost to the legal representative of the postponement of the payment of his fees and expenses."

50. The Court of Appeal relevantly held that:

    i) The words "*satisfies all of the conditions*" in section 58(1) were not intended to render unenforceable a CFA which adequately met the requirements designed to safeguard the administration of justice and protect the client (at [105]);

ii) The question was one of substantial compliance, and of whether the particular departure from a regulation made pursuant to section 58(3)(c) or a requirement in section 58, either on its own or in conjunction with any other departure, had a materially adverse effect on the protection afforded to the client or on the proper administration of justice (at [106] – [108] and [128]);

iii) That in determining whether particular matters were specified the CFA had to be read as a whole (at [127]).

51. Mr McLaren next took me to Garrett v Halton BC [2007] 1 WLR 554. In that case the Court of Appeal was again considering CFAs, and a failure to declare whether a solicitor had an interest in recommending a particular insurance contract. Mr McLaren relied on the statements of principle at paragraphs [30] to [39]. The Court of Appeal pointed out at [29] that there is no distinction made in section 58 of the CLSA between innocent and non-innocent breaches of the regulations, so that the statutory scheme is tough; and at [30] and [38] and [39] that the mitigation of that approach is, as set out in Hollins v Russell, that the breach must be material in the sense described in paragraph 107 of the judgment in Hollins v Russell, i.e. it must have a materially adverse effect on the protection afforded to the client or on the proper administration of justice. As indicated by the judgment at [36], and as submitted by Mr McLaren, the position must be judged at the date of commencement of a contract.

52. Finally, Mr McLaren took me to Silvera v Bray Walker Solicitors [2010] 4 Costs LR 584. As appears from that judgment at [6], most of the disputes in this area are between claimants and insurers of defendants who have been successfully sued; Silvera is a rare case which is between the parties to the CFA. Wilson LJ explained at [8] that one of the purposes of the requirement that the agreement must specify the reasons for setting the percentage increase at the level stated in the agreement is to enable the client who was entering into the agreement to perceive, in writing, why, broadly, the success fee had been set at the level stated.

53. In Silvera, the CFA stated as follows:

"The success fee is set at 75% of basic charges and cannot be more than 100% of basic charges. The percentage reflects the following:

i) *The fact that if you win we will not be paid our basic charges until the end of the claim;*

ii) *Our arrangements with you about paying disbursements;*

iii) *The fact that if you lose, we will not earn anything;*

iv) *Our assessment of the risks of your case. These include the following;*

v) *Any other appropriate matters".*

54. It will be noted that the assessment of the risks of the case in sub-paragraph 4 of the relevant clause had not been completed. On this basis Mr Silvera argued that the relevant CFAs did not comply with regulation 3 of the CFA Regulations. In fact, the assessment of the risks of the case, including the fact that there was a different prospect of success in different parts of the case, had been explained to Mr Silvera by

the solicitors before the date of the CFAs. The CFA had been determined, Mr Silvera had subsequently been successful, and the solicitors were seeking to recover their basic charges, as the termination provisions permitted. The Court of Appeal held that:

i) The information required to be given by regulation 4 of the CFA Regulations had been given orally before the contract was entered into and there was nothing that Mr Silvera did not understand, and the brevity of the reasons given in the CFA should be measured against that factual background;

ii) That since the CFA Regulations included the word "briefly", that had sufficient flexibility to allow the background features (i.e. the explanation which had been given and the fact that Mr Silvera understood everything) to render the requisite specification in writing extremely brief; and if there was a technical breach, it was, in the events which had happened and in the context of that claim, entirely immaterial.

55. However, the facts in all these cases were very different from this case. In this case:

i) No reason is specified at all on the face of the agreement.

ii) The clause which is relied upon by the Claimant, even if it had been stated to be the reason for setting the amount of the payment at the level agreed, did not in fact set out the true reason.

In my view there is indeed a breach of Regulation 3(c) for these two reasons.

56. Further, I cannot see that breach as a trivial or non-material breach which has no material effect on the statutory purpose of providing protection to the client, namely to enable the client who was entering into the agreement to perceive, <u>in writing</u>, why, broadly, the success fee had been set at the level stated. I reach that view for the following reasons:

i) One of the consequences of the failure to specify the reason in the terms and conditions of the agreement is that there has been real difficulty in establishing what the actual reason was for setting the amount of the payment at the level agreed. That alone has been a significant feature which in my view makes this a material breach.

ii) Moreover, Ms Johnson was not provided with the kind of information that one would expect to see, for example as to the amount of time which it was anticipated Mr Stoop would spend, the costs he was expecting to pay, and the chances of succeeding in obtaining compensation or losing any litigation which was commenced. The prospect of success is material in that a high probability of success is unlikely to justify a very high share of the proceeds (indeed the maximum share permitted under regulation 4(3) of the 2013 Regulations).

iii) Although in <u>*Silvera*</u> the court held that reasons which were specified could be very brief, that does not assist Mr Stoop because the CFA in <u>*Silvera*</u> did in fact specify on its face the reason why the payment had been set at the level which

had been agreed, which reason included a number of factors which were set out on the face of the agreement, so that the only issue was whether the reasons had been sufficiently specified[2]. In this case, no reasons were specified at all, and even if Mr McLaren had persuaded me that clause 5 of the Agreement set out a reason for the level of the payment, that reason was not the true reason. That is a very long way from the facts of *Silvera*.

iv) Ms Johnson was deprived of the ability to take advice on an agreement which set out in writing the reason for setting the payment at the level specified.

57. I do not therefore think it necessary to deal with the debate between the parties as to whether the 2013 Regulations should be applied more rigorously than the CFA Regulations. Even on the basis of the CFA cases to which Mr McLaren took me, and without applying any different approach, in my view the terms and conditions of the Agreement plainly did not state any reason for setting the amount of the payment at the level agreed; if they did, in the guise of clause 5 of the Agreement, then the reason stated was not the true reason. Accordingly, the Agreement does not comply with regulation 3(c) of the 2013 Regulations and it is therefore rendered unenforceable by section 58AA of CLSA. Mr Stoop's claim under the Agreement therefore fails.

58. In case this matter goes further I will however go on to consider the other issues raised.

59. The next issue, still arising under issue 1, is whether the Agreement is unenforceable because it breaches s58AA(4)(aa) CLSA. The provision is as follows:

"The Agreement .....(aa) must not relate to proceedings which by virtue of section 58A(1) and (2) cannot be the subject of an enforceable conditional fee agreement ……"

60. Section 58A(1)(b) CLSA provides that:

"The proceedings which cannot be the subject of an enforceable conditional fee agreement are….(b) family proceedings".

61. Family proceedings are defined in subsection 2 as follows:

"(2) In subsection 1 "family proceedings" means proceedings under any one or more of the following-

.....

(d) Part III of the Matrimonial and Family Proceedings Act 1984".

62. It is therefore argued on behalf of Ms Johnson that if the true reason for setting the amount of the payment at the level agreed is at least in part to compensate Mr Stoop for his work in relation to the Part III proceedings referred to above, then the Agreement is invalid because it relates to the Part III proceedings and is therefore unenforceable by reason of 58AA(4)(aa) CLSA.

[2] In the light of the CFA Regulations which included the word "briefly", whereas the 2013 Regulations do not. However in my view nothing turns on this difference. No reasons were specified in the present case, and if they were specified in the form of clause 5 they were not the true reasons, whether they were brief or not.

63. Mr McLaren submitted that on the contrary, the Agreement must be construed on its face against the factual matrix and that it plainly does not relate to family proceedings. Everything in the wording of the Agreement is about services to be provided in relation to or with reference to or in respect of (these phrases all occur in the Agreement) the Barclays Mortgages. Mr McLaren pointed to section 58AA(10) of CSLA as an aid to construction as to what "relates to" might mean in 58AA(4)(aa) CLSA. Section 58AA(10) is related to s 58AA(9), and the two sub-sections are as follows:

> *"(9) Where section 57 of the Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies to a damages based agreement other than one relating to an employment matter, subsections (1) and (2) of this section do not make it unenforceable.*
>
> *(10) For the purposes of subsection (9) a damages based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal."*

64. I do not find that provision of assistance. It contrasts with the definition of "*family proceedings*" in section 58A(2) of CLSA. Section 58A(2) defines "*family proceedings*" as "*proceedings under any one or more of"* certain provisions. Section 58AA(10) defines "*an employment matter*" as a matter that "*is or could become the subject of proceedings before an employment tribunal*". Thus the purpose of s 58AA(10) is to expand the definition of employment matter to include matters which could become the subject of proceedings before an employment tribunal, as well as those which are the subject of proceeding before an employment tribunal. It does not assist with the meaning of "*relates to*" proceedings in section 58AA(4)(aa) of CLSA.

65. Section 58AA(4) CLSA refers to a DBA which relates to proceedings which cannot be the subject of an enforceable CFA. Thus there is a distinction in section 58AA(4) between the concept of particular proceedings being the subject of a CFA, and of a CFA relating to particular proceedings. It seems to me that Mr McLaren is right that the subject of the Agreement is not family proceedings; but "*relates to*" must mean something different from being the "*subject of*" the relevant DBA. Otherwise section 58AA(4) CLSA would provide that proceedings which by virtue of section 58A(1) and (2) CLSA cannot be the subject of an enforceable conditional fee agreement cannot be the subject of an enforceable damages based agreement.

66. I do not consider that it is necessary only to consider the words of the agreement for the purpose of considering whether the Agreement related to family proceedings. Indeed in other contexts Mr McLaren urged on me that in order to consider whether section 58AA CLSA had been complied with, it was permissible to look outside the terms of the agreement, relying for that proposition on *Silvera*, supra. The evidence shows, as I have set out above, that the reason for the 50% success fee in the Agreement was, among other things, to compensate Mr Stoop for work which he had done on the proceedings under part III of the Matrimonial Causes Act 1984. Therefore in my view the Agreement did relate to family proceedings, and is unenforceable for this additional reason.

Issue 2: On a true construction of the Agreement, for a Success Fee to be payable, to what extent must the Claimant's consultancy and claims management work have brought about the Compensation?

67. Since I have found that the Agreement is unenforceable, the questions of construction and causation do not arise. However, again in case this matter goes further, I will set out what my findings would have been if I had found that the Agreement was enforceable.

68. I should note by way of background that in *Lexlaw Limited v Zuberi* [2021] 1 WLR 2797 the Court of Appeal decided that termination provisions in a damages based agreement which provided for the claimant to pay fees and expenses incurred before the termination were enforceable. The Court of Appeal did not consider a termination provision of the kind which was in issue here. The contract in *Zuberi* was a contract of retainer with solicitors rather than a claims management contract. There is no case which counsel were able to draw to my attention, or which I have found, which relates to a termination provision of the kind found in the Agreement. However it was not contended that a termination provision which provides for a success fee was not enforceable, and as recorded above, the pleaded case arising from the provisions of the Consumer Rights Act 2015 was not pursued.

69. The relevant provisions of the Agreement are summarised above. Clause 3 contains the provision for the Success Fee and says:

"the "Success Fee" will be 50% of any compensation realised pursuant to the Assignment, monetary or otherwise, howsoever obtained ("the Compensation")"

70. By clause 1, the Success Fee was payable if the Agreement was terminated after the 14 day cooling off period.

71. The critical question therefore is what is meant by "*realised pursuant to the Assignment*"?

72. Mr Scher submitted on behalf of Ms Johnson that on the proper construction of the Agreement, it was required that the Agreement required Mr Stoop to be the effective cause of the Compensation being recovered, and that the Success Fee should be payable only if Mr Stoop "really brought about" the compensation which Ms Johnson received, referring to *Nahum v Royal Holloway and Bedford New College* [1999] EMLR 252. However that authority, which depended on the meaning of "introduced" where the plaintiff had been engaged by the defendant to seek out buyers of paintings is not helpful here as both language and factual matrix are too distant.

73. Mr McLaren's case on construction developed both in his skeleton argument and in submissions. The pleaded case for Mr Stoop was that there was no causal requirement at all but if it was necessary for Mr Stoop to be an effective cause then he was an effective cause of the recovery of the Compensation. In the skeleton argument Mr McLaren submitted that there was a requirement for some causal nexus between the services provided by Mr Stoop and the recovery of compensation, but that that causal nexus was not that Mr Stoop had to be the effective cause of the recovery of compensation: rather he had to play some non-negligible role in bringing about the compensation. By closing submissions, Mr McLaren submitted that there had to be a

common sense approach and that Mr Stoop had to have played some significant part in bringing about the compensation. Mr McLaren accepted that what would be a sufficiently significant contribution to exceed the threshold above which the Success Fee would be payable was a very grey area.

74. Mr McLaren referred me to *Wollenberg v Casinos Austria International Holding GmbH* [2011] EWHC 103. In that case the claimant, who acted as an introducer of opportunities, brought a claim against the defendant under two consultancy agreements. The first agreement provided that the claimant would be entitled to receive from the defendant *"[t]he right to acquire 4% of the equity held by [the defendant or its affiliate] of each UK project introduced by you"*. The second agreement provided that the claimant had the "*right to acquire 4% of the equity attributable directly or indirectly to the [defendant] group of any new business acquired or operated by us, pursuant to your initiatives referred to above".* The judge, Lewison J as he then was, accepted the submission that "pursuant to" in the second agreement meant "resulting from" or "consequent upon", but held that that did not mean that the claimant had to be an effective cause of the acquisition of the business, because the parties did not choose the language of "*introduction*" for this agreement but rather chose the words "*initiatives*" (at [193]- [195].

75. Both parties referred me to *Rees v Gateley Wareing* [2014] 2 Costs LR 210. (The decision was later overruled by the Court of Appeal, but the issue of construction was not considered in the Court of Appeal). This case was closer on the facts in that it considered a CFA, and also because it was contemplated that the solicitors in that case might not be acting in litigation themselves, but would be looking after the interests of Mr and Mrs Rees in relation to complicated transactions which might involve litigation in which other solicitors acted (at [121]). However the wording of the agreement was quite different. The relevant wording in one of the contracts was that *"the firm's charges shall be 5% of any monies recovered on your behalf"*.

76. Morgan J considered at [115]- [120] the submissions on one side that there was no requirement for any causal nexus between the action of the solicitors on the one hand, and submissions on the other hand that Gateley Wareing had to be the effective cause of the recovery, or that the recovery had to be "*by*" Gateley Wareing and that Gateley Wareing could not recover if they had done no work. At [121]- [123] Morgan J said as follows:

" I *find that this question of causation a difficult one. There are parts of each side's submissions which I am unable to accept. I am not attracted by the suggestion that Gateley Wareing had to be the effective cause of the recovery. The circumstances of this case are too different from the typical estate agent's commission case to make that type of case any sort of helpful analogy. This is particularly so where it was foreseeable at the date of the agreement that the work required of Gateley Wareing was to look after the interests of Mr and Mrs Rees in circumstances where a relevant recovery might come about as a result of proceedings brought by another party and handled by another firm of solicitors. In those circumstances, it cannot have been envisaged that the advice given by Gateley Wareing had to be the effective cause of the recovery. Further in circumstances where there might be a large number of factors which combined to bring about a recovery I find it difficult to define what the parties must have envisaged would be a sufficient causal connection between Gateley*

Wareing's advice and the recovery……….As is usually the case, it is best to start with the language of the agreement itself."

77. At [128] the judge continued as follows:

"I find it very difficult to define more precisely what is required and what will suffice. It may be easier to answer the question in any individual case rather than to attempt a comprehensive definition which will cover all the cases contemplated and not contemplated".

78. Starting therefore with the language of the Agreement, the Success Fee is *"50% of any compensation realised pursuant to the Assignment, howsoever obtained"*. Mr McLaren sought to rely on the words "*howsoever obtained*" as limiting the degree of causal connection, but in my view those words clearly refer back to the object of the Assignment set out in the preamble: "*Compensation may potentially be secured from Barclays Bank and/or from a number of alternative sources, including but not limited to the financial, legal and other advisors involved in the Mortgages…..the compensation secured could take one or more of a variety of forms, including but not limited to a cash settlement or settlements, full or partial release from the burden of the Mortgages, or a combination of the above*". I therefore consider that "*howsoever obtained*" is referring to the various different ways in which the compensation could be obtained, and does not address any question of whether any causal connection is required.

79. However, in my view the words "*realised pursuant to*" the Assignment clearly denote a causal connection with the Assignment; the compensation must result from or be consequent on the Assignment. The Assignment is defined in detail in clause 1, which I set out here in more detail:

"The Assignment comprises consultancy work and claims management services with reference to the Mortgages.

The objective of the Assignment is to secure compensation in respect of the Mortgages. The Assignment will be carried out in the UK and other jurisdictions and may be on multiple fronts, including but not limited to litigation against the Bank and/or third parties involved with the Mortgages, including financial, legal and other advisors, negotiation with the Bank and/or the advisors, media campaigns in support of the Assignment and co-ordination with politicians, regulators and/or criminal prosecutors.

I will be responsible for instructing such legal and other advisors as I may consider necessary to carry out the Assignment and for co-ordinating their actions, I will also be responsible for meeting the costs and expenses of any advisors so instructed.

You will supply me with all background information necessary for due completion of the Assignment, including any contracts, reports, presentations, email correspondence and any other ancillary documentation relevant to the Assignment."

80. The Agreement therefore contemplated that others as well as Mr Stoop would play a significant part in bringing about the wished for compensation. The Agreement required Mr Stoop to instruct and pay lawyers, who obviously would play a significant part. It was also contemplated that Mr Stoop might liaise with prosecutors who might also play a significant part, or manage a media campaign or liaise with politicians who might also play a significant part in bringing about the compensation. The language suggested by Mr Scher of "effective cause" or "really bringing about" the Compensation does not therefore seem to me to be appropriate.

81. However, I am not able to accept Mr McLaren's initial submission that the level of Mr Stoop's involvement had only to be that he had played some non-negligible role in bringing about the compensation, and as recorded above, that submission had moved on by closing submissions. Since the Agreement also contemplated that the Success Fee was also payable even if the Agreement was terminated 15 days after it was entered into, it seems to me that the parties must have intended that the Success Fee was payable only if there was a strong causal connection between Mr Stoop's carrying out of the Assignment and the obtaining of the Compensation, or to put it another way, that Mr Stoop's role in bringing about the Compensation had to be very substantial or very significant. It might be that Ms Johnson terminated the Agreement on the 16th day after it was signed and then had to instruct other lawyers and PR agents or another claims manager and pay them substantial fees. It cannot have been the intention of the parties that in those circumstances Mr Stoop should be paid, unless he had done something in the interim which was of sufficient significance that the Compensation eventually recovered could be said to have resulted from or been consequent upon his carrying out of the Assignment. Indeed, when I asked Mr McLaren what playing a "non-negligible" role meant, Mr McLaren submitted that it meant that Mr Stoop had to play some significant or substantial part in bringing about the compensation.

82. Mr Scher urged me to take into account section 69 of the Consumer Rights Act 2015 which provides that "*If a term in a consumer contract…could have different meanings, the meaning that is most favourable to the consumer is to prevail*". I do not think that it is necessary or appropriate to have recourse to that section since in my view the construction of the Agreement is as I have set out above; but section 69 would certainly support the construction which I have arrived at.

Issue 4: Did Mr Stoop satisfy the relevant causal requirement?

83. Mr McLaren submitted that Mr Stoop did satisfy the relevant causal requirement. He submitted that the position was rather like a game of cricket, where several different team members could be described as an effective cause of a batsman being out. Mr McLaren submitted that Mr Stoop did some or most of the ground work leading to the meetings with Barclays which took place in late 2019 and early 2020, and that those meetings were set up during his tenure. He relied on 3 matters. (A further issue about the subject access request made in 2019 fell away during cross examination).

84. First, he submitted that Mr Stoop procured that CRS should act, and that CRS was part of the team orchestrated by Mr Stoop, and CRS obtained the offer to talk from Barclays. The submission was that CRS's contribution should be treated as Mr Stoop's contribution to bringing about the compensation.

85. Second, Mr McLaren submitted that Mr Stoop contributed to or was responsible for the MP Letter sent on 20 March 2019 and that accordingly he satisfied whatever causal connection was required. In particular, Mr McLaren submitted that the MP letter itself is almost entirely comprised of text which is also contained in a number of letters or draft letters authored by Mr Stoop. The bulk of the MP Letter comes from the draft letter sent to Ms Johnson by Mr Stoop on 5 December 2018. Other sections come from Mr Stoop's draft letter of 12 July 2018 which preceded CRS' letter of 16 July 2018, CRS's WP letter to Dentons dated 9 October 2018, and a draft created by Mr Stoop of the proposed long letter to Dentons (which was never sent) on 22 January 2019.

86. Third, Mr McLaren submitted that Withers and Mr Wardell QC did not bring anything new to the party when they were instructed, and that neither the agenda they produced for the meetings with Barclays in December 2019/January 2020 nor their approach of seeking to be more low-key and less aggressive made any difference to the obtaining of the compensation. It was also submitted that Withers and Mr Wardell QC must have built on the work which Mr Stoop had done.

87. As regards the involvement of CRS, as set out in the factual narrative above, although CRS wrote a number of letters including that of 16 July 2018 on which Mr McLaren placed much reliance, the (unsurprising) response from Dentons was to ask for a proper letter which set out the allegations in detail with supporting evidence. CRS never wrote such letter setting out Ms Johnson's case in detail with supporting evidence, even though work was done on such a letter by both Mr Stoop and his employees and by CRS. This was because Mr Stoop never properly instructed them. Instead of organising their instruction and paying them, he tried to get Ms Johnson to sign a CFA. That is not what he was required to do by the Agreement by way of carrying out the Assignment. Since no appropriate letter was sent, the correspondence from CRS to Barclays and then Dentons went nowhere. Ms Johnson was extremely upset and frustrated at the time which the proposed legal letter to Dentons was taking, and as recorded in paragraph [29] above, on 3 June 2019 Ms Johnson told CRS and Mr Stoop that she was giving up her claim against Barclays. She only continued pursuing Barclays when she received the invitation to a meeting which came about as a result of the intervention of the APPG and Ms Dent Coad MP.

88. As regards the MP letter, I have set out above the fact that the MP Letter contains text which is taken from various letters drafted by Mr Stoop. The history of the sending of the MP letter requires a little more examination.

    i) The Agreement refers to co-ordination with politicians. However the first movement towards co-ordination with politicians came from Ms Johnson who contacted her friend Heather Buchanan in July 2018. Ms Buchanan told Ms Johnson that she wanted to think about the right person to talk to and also wanted to flag it up personally. On 9 July 2018 Ms Johnson forwarded to Mr Stoop an email from Ms Buchanan advising that Ms Johnson should email her MP, Emma Dent Coad, saying as follows: (i) that she had spoken to the APPG, (ii) asking Ms Dent Coad to assist in escalating her complaint and (iii) giving permission to speak to Ms Buchanan. Ms Johnson's email to Mr Stoop included a short and incomplete draft of a letter.

ii) Mr Stoop sent back a partially developed draft on 10 July 2018 which ended *"[I have got this far and it now occurs to me that it might be better to first see how matters go with the bank via direct contact before we raise the temperature too much, eg by involving MPs]*". It was following that exchange that the CRS letter of 16 July 2018 was sent.

iii) Ms Johnson then created a further draft which she sent to Ms Buchanan on 8 November 2018. It does not appear to bear much relation to Mr Stoop's draft of 10 July, but parts of it were taken from CRS's letter to Barclays of 16 July 2018 (which was itself based on a draft prepared by Mr Stoop on 12 July 2018). Ms Johnson then sent the draft to Mr Stoop on 14 November. The covering email said as follows:

"*Here attached is the draft letter to EDC. I'm afraid that Heather hasn't tweaked it at all so here it is in its raw form. She just said that it was great and that I should mention that I would like to bring this to the attention of the APPG and to copy her in. Would you mind applying your writing skills to the draft? It needs a good polish. I think keep it as short as possible. I'd like to get it off this week*."

iv) Mr Stoop returned a draft on 5 December 2018. That draft unsurprisingly mentioned many of the same matters which were contained in Ms Johnson's draft, but did reorganise what Ms Johnson had written. Mr Stoop's draft also referred to criminal fraud against the French state. Ms Johnson responded pointing out that CRS had warned them not to alert government entities. Mr Stoop responded saying *"If you don't like the MP letter that's OK. Suggest whatever change you like, or else bin the idea of writing to her completely. It is absolutely your call. But please remember that you asked me to redraft the letter."*

v) There were then further amendments to the draft letter by Ms Buchanan, Mr Stoop and Ms Johnson in January 2019. On 29 January 2019 Ms Buchanan enquired about the draft letter to the MP, and Mr Stoop responded saying that he hoped the legal letter to Barclays would be ready that week, and that the letter to the MP would be based on that. The legal letter was never finalised. In February and March 2019 Ms Buchanan and Ms Johnson further corresponded about further amendments to the draft letter to the MP.

vi) On 27 February 2019 either Ms Buchanan or Lord Cromwell, the chair of the APPG, introduced Ms Johnson to another barrister, Mr Reevell. Mr Stoop told Ms Johnson in early March 2019 that he did not think the APPG's intervention appropriate because Lord Cromwell had worked at Barclays Wealth at the time of the mortgage. Mr Stoop was extremely angry that Ms Johnson had consulted Mr Reevell. He wrote Ms Johnson a number of angry emails.

vii) The MP Letter was eventually sent to Ms Johnson's MP, Emma Dent Coad, on 20 March 2019, after the final version was reviewed by Ms Buchanan. Mr Stoop did not know that the MP Letter was being sent. He was still focussed on the proposed legal letter to be sent by CRS, and on persuading Ms Johnson to enter into a CFA with CRS, and was investigating the availability of ATE insurance.

viii) In April 2019, as recorded above, Ms Dent Coad confirmed that she would refer Ms Johnson's case to the APPG. Mr Stoop continued to seek to persuade Ms Johnson to engage CRS on the basis of a CFA and to have CRS send the detailed letter he had been working on.

ix) Also as recorded above, on 20 June 2019 Barclays indicated its willingness to meet with Ms Johnson and wrote a detailed letter to Ms Dent Coad. Mr Stoop became aware that Ms Johnson had sent the MP letter on 20 June 2019, after Ms Johnson had received the offer from Barclays to speak to her, when Ms Johnson told him how that had come about.

x) Mr Stoop then wrote to Ms Johnson in July 2019 telling her that Heather Buchanan and her colleagues at the APPG were conflicted and were acting inappropriately and that he would take whatever steps are necessary to expose their misconduct. The personal relationship between Mr Stoop and Ms Johnson finally broke down in August 2019. On 24 October 2019 Mr Stoop wrote a letter to each of Lord Cromwell, Ms Buchanan and Kevin Hollinrake MP demanding that each of them ceased to have any further involvement with Ms Johnson's case and threatening a formal complaint to the House of Lords and Parliamentary Commissioners for Standards.

xi) Ms Johnson terminated the Agreement on 19 November 2019, and Withers then handled the negotiations with Barclays.

89. As regards the MP letter, it is therefore fair to Mr Stoop to say that although Ms Johnson had put together a draft in November 2018, she did ask him to redraft it and he did so, and that redraft was a very substantial part of the eventual MP Letter, which also contained text from other letters drafted by Mr Stoop. On the other hand, Ms Buchanan had in November 2018 already told Ms Johnson that the draft Ms Johnson had produced would be fine, with just the addition of saying that Ms Johnson wanted it brought to the attention of the APPG and copying Ms Buchanan in. Moreover, much of the underlying factual material which is referred to in the drafts produced both by Ms Johnson and Mr Stoop had been previously contained in letters from Withers back in 2012 and a draft produced by CRS in 2016, prior to the Agreement being entered into. Further, Mr Stoop did not seek to persuade Ms Johnson to send the MP Letter. In December 2018 he said it was entirely up to her whether she sent the MP Letter. Having discovered in February 2019 that Lord Cromwell had introduced Ms Johnson to Mr Reevell, Mr Stoop told Ms Johnson that the APPG's intervention was inappropriate. It was Ms Buchanan who was encouraging Ms Johnson in February and March 2019 to engage the interests of the APPG by sending a letter to her MP. Mr Stoop was therefore unaware that Ms Johnson had sent the MP letter until after Barclays had offered to talk. Through the period from January 2019, Mr Stoop was instead focussed instead on trying to get Ms Johnson to sign a CFA with CRS who would then send a long letter to Dentons. Moreover, even after he had discovered that the MP Letter had been sent, he complained about the involvement of the APPG and eventually wrote to Lord Cromwell, Ms Buchanan and Kevin Hollinrake MP, requiring them to stop working on Ms Johnson's case.

90. As regards the agenda for and approach to the meetings with Barclays, Withers had been on the scene since 2012 and had already considered the basis of a claim against Barclays in early 2013 before they indicated that they were conflicted. It is not

surprising that the agenda contained matters which are both in documents produced by Mr Stoop and CRS and in documents produced by Withers before they stopped acting. Mr Chesser's evidence was that he was sent a draft of the proposed long letter to Dentons but that he and Mr Wardell QC were pretty underwhelmed by it, and they then put some of the underlying documents together and had to think about what substance there was in any claim against Barclays and decide how much of an attack on the front foot would be possible at the proposed meeting with Barclays.

91. Mr McLaren suggested that standing back for a reality or sense check, Mr Stoop got Barclays into a position where they were willing to talk to Ms Johnson. However, taking the matters put forward on behalf of Mr Stoop as a whole, I am unable to consider that they played a significant part in obtaining the compensation for Ms Johnson. The short letters from CRS to Dentons did not achieve anything. The bulk of Mr Stoop's efforts was directed towards the proposed long letter to Dentons which was never sent. He did play a part in drafting the MP letter, but I am not persuaded that his contribution even to that was particularly significant. The underlying facts were well known to Ms Johnson and had been included in several earlier letters to Barclays from 2012 onwards, and Ms Buchanan had already suggested to Ms Johnson that Ms Johnson's draft was adequate. The important thing was to get a letter sent to the MP and to get Ms Buchanan and the APPG formally involved, and it was Ms Johnson and Ms Buchanan who were driving that forward. Mr Stoop was initially ambivalent about sending the MP letter, and then actively against the involvement of the APPG. Withers and Mr Wardell QC did not use material produced by Mr Stoop. The fundamental problem for Mr Stoop is that he simply did not carry out what he had promised to carry out. That is why Ms Johnson became so dissatisfied with him, and terminated the Agreement.

92. Accordingly, if this issue fell to be decided, I would hold that the Compensation as defined in the Agreement which was recovered by Ms Johnson was not realised pursuant to the Assignment as defined in the Agreement, and that Mr Stoop's claim would fail for this reason also.

Issue 4: Quantum

93. Again, although this issue does not arise for decision I proceed to deal with it in case this matter goes further.

94. By the time of closing submissions, it appeared to be common ground that the best evidence of the amount due to Barclays at the time of the settlement agreement with Barclays was that it was £7.2m. The deal reached with Barclays was that they would be paid the original amount of the loan, namely £6m. The headline amount of Compensation would therefore be £1.2m, and the Success Fee would be £600,000.

95. The issue between the parties was whether the costs of Withers and counsel which were incurred after the Agreement had been terminated should be deducted from the headline figure. Again, by the time of closing submissions it was common ground that the sum in question was £125,000, since the other costs of Withers which were paid out of the sale price of Warwick House were conveyancing costs, and because costs incurred by Barclays had in fact been absorbed by Withers.

96. The issue is therefore whether under the terms of the Agreement the calculation of the Success Fee has to take into account costs incurred by Ms Johnson after the termination of the Agreement.

97. Costs are referred to a number of times in the Agreement.

    i) In the preamble, it says that "*Compensation could potentially include the principal amounts loaned….and other amounts including but not limited to compensation in respect of legal costs incurred in the course of the assignment…..*"

    ii) In clause 1 it says that "*I will be responsible for instructing such legal and other advisors as I may consider necessary to carry out the Assignment and for co-ordinating their actions. I will also be responsible for meeting the costs and expenses of any advisors so instructed*".

    iii) In clause 3 under the heading "Fees" it says "*We have also agreed that you will not be responsible for meeting any of the costs incurred by me in the course of the Assignment unless such costs have been expressly agreed to by you in writing*."

    iv) In the same clause 3 under the heading "Success Fee" it says *"We have agreed that for the purpose of calculating the Success Fee, no costs will be deducted from Compensation unless such costs have been expressly agreed by you in writing. Simply put, in the event of success we will share the Compensation on a 50:50 basis, but any costs or expenses will be wholly for my account (unless otherwise agreed in writing by you*)."

98. Mr McLaren relied on the wording in clause 1, namely that "*I will also be responsible for meeting the costs and expenses of any advisors <u>so instructed</u>"*. This he said showed that it was only costs incurred during the period of the Agreement that would be deducted from Mr Stoop's share of the compensation.

99. However, clause 1 is dealing with Mr Stoop's responsibility to pay lawyers and advisors during the course of the Assignment, not with the Success Fee. The relevant wording is that in clause 3, which I have set out above. That wording it seems to me shows that the costs incurred in obtaining the Compensation are to be deducted from Mr Stoop's 50% share unless it had been otherwise agreed by Ms Johnson in writing. The wording of the Agreement is that any costs or expenses will be for Mr Stoop's account. Since the Agreement contemplates that a Success Fee is payable after termination, it must also contemplate that others may have to do and be paid for work which Mr Stoop would otherwise have had to pay for, and I see no reason why such costs should not be deducted from Mr Stoop's share of the Compensation as they would have been if Mr Stoop had completed the Assignment, and in accordance with the clear words of the Agreement. Accordingly, if this issue arose then I would have assessed the compensation at £475,000.

Conclusion

100. For the reasons set out above Mr Stoop's claim fails and should be dismissed.