



Neutral Citation Number: [2020] EWHC 56 (QB)

Case No: TLQ19/0604

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21 January 2020

**Before :**

**Ms Margaret Obi**

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**Between :**

**PHYLISS CLARKE**

**Claimant**

**- and -**

**(1) ARC LEGAL ASSISTANCE LIMITED**

**Defendants**

**(2) BAR STANDARDS BOARD**

**(3) DAS LEGAL EXPENSES INSURANCE**

**COMPANY LIMITED**

**(4) THE FINANCIAL OMBUDSMAN SERVICE  
LIMITED**

**(5) LEGAL OMBUDSMAN**

**(6) SOLICITORS REGULATION AUTHORITY**

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The Claimant did not attend and was not represented  
**Ian McDonald** (instructed by **ARC Legal Assistance Limited**) for the **First Defendant**  
**Steven Reed** (instructed by **Bar Standards Board**) for the **Second Defendant**  
**Richard Whitehouse** (instructed by **DAS Legal Expenses Insurance Company Limited**) for  
the **Third Defendant**  
**Stephanie David** (instructed by **The Financial Ombudsman Service Limited**) for the **Fourth**  
**Defendant**  
**Taranjit Hayre** (solicitor-advocate for the **Legal Ombudsman**) for the **Fifth Defendant**  
**Grace Hansen** (instructed by **Capsticks Solicitors LLP**) for the **Sixth Defendant**

Hearing date: 5 December 2019

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**APPROVED JUDGMENT**

## **Ms Margaret Obi:**

### **Introduction**

1. The First Defendant (Arc Legal) is a manager of legal expenses insurance claims. The Second Defendant – the Bar Standards Board (BSB) regulates barristers and specialised legal services businesses in England and Wales. The Third Defendant (DAS Legal) is a provider of legal expenses insurance. The Fourth Defendant (Financial Ombudsman Service) settles individual disputes between consumers and businesses that provide financial services. The Fifth Defendant (Legal Ombudsman) settles complaints between consumers and individuals or businesses that provide legal services. The Sixth Defendant – the Solicitors Regulation Authority (SRA) regulates solicitors and firms in England and Wales. Collectively they are referred to in this judgment as the Defendants.
2. This is an application by the Defendants to:
  - a) Strike out Ms Clarke’s claim without further order; and/or
  - b) Grant summary judgment.
3. The Defendants’ applications are in similar terms. The applications are made on the basis that Ms Clarke’s claim discloses no reasonable grounds for bringing the claim, is an abuse of the Court’s process, fails to comply with the Civil Procedure Rules (CPR); and/or that it has no real prospects of success and there is no other compelling reason why it should be disposed of at a trial. Ms David, on behalf of the Financial Ombudsman Service, also drew to the Court’s attention to CPR 3.4(6) which provides that if a claimant’s case is struck out and the Court considers that the claim is ‘*totally without merit*’ the Court must record that fact and at the same time consider whether it is appropriate to make a civil restraint order.
4. Ms Clarke indicated, in correspondence with the court office, an intention to make a cross application for the Defendants’ application to be struck out. However, there was no such application before the Court.

### Application to Proceed in Absence

5. Ms Clarke did not attend the hearing. She had made an application for the hearing to be adjourned on the basis that she would be out of the country on business. The application was opposed by the First Defendant (with the support of some, if not all, of the other defendants) in an email, dated 30 October 2019, for the following reasons: (i) the strike out applications were issued in May 2016 and June 2016 and it had already taken in excess of six months for the hearing to be listed; (ii) there are six defendants all of whom issued strike out applications and it had been extremely difficult to find a

convenient hearing date for all parties and counsel; (iii) Ms Clarke had already sought to restrict listing dates by excluding Tuesdays to Thursdays inclusive in every week; (iv) Ms Clarke provided no evidence of her business trip nor evidence of when it was arranged; (v) it is Ms Clarke's case and the onus is on her to ensure that she is available for procedural hearings; (vi) the hearing date was fixed on 17 September 2019 and it took Ms Clarke almost six weeks to request a relisting.

6. The application was refused by Mr Justice Stewart on 12 November 2019, for the six reasons outlined by the First Defendant.
7. At the outset of the application hearing Mr McDonald, on behalf of the First Defendant, made an application for the hearing to proceed in Ms Clarke's absence. The application was supported by the other defendants. I granted the application for the same reasons that the application to adjourn was refused. In reaching this conclusion I took into account the overriding objective to deal with cases justly and at proportionate cost.

## **Background**

### Factual Outline

8. The purpose of this outline (which is primarily based on the witness statement of Mr Keeling, on behalf of Arc Legal, and Mr William Ellerton on behalf of DAS Legal) is to provide context. The overall circumstances are in line with Ms Clarke's chronology of events. However, I recognise that the facts are not agreed, and Ms Clarke may well take issue with aspects of it.
9. Ms Clarke is a private individual. She was employed by GlaxoSmithKline (GSK) from 17 February 2014 until 27 January 2017 as a Data Analytics Manager.
10. In 2016 Ms Clarke made a claim against her former employer GSK in the Employment Tribunal ("the GSK Claim") including unfair dismissal, claims in relation to protected disclosures and discrimination on the grounds of race. Ms Clarke initially issued two separate claims which were subsequently consolidated. She had the benefit of an insurance policy managed by Arc Legal (the "Arc Policy") under which she sought cover for legal assistance in relation to the first claim. The Arc Policy provided that such cover would be withdrawn if Ms Clarke's prospects of success in the GSK Claim fell below 51 per cent, or if any offer of settlement from GSK was not accepted by Ms Clarke against legal advice.
11. On 28 June 2016, Irwin Mitchell advised Arc Legal that the GSK Claim did not have the requisite prospects of success. However, on 3 October 2016, Ms Homa Wilson, a solicitor privately instructed by Ms Clarke, provided an opinion stating that certain elements of the GSK Claim did have prospects of 51 per cent. Accordingly, in line with an email sent to Ms Clarke on 13 September 2016, Arc Legal instructed a barrister, Mr Maurice Rifat, to provide an overruling opinion on the merits of the GSK Claim. Mr Rifat concluded that it had "*no merit with about, at the very best, 5% chance of*

*success*". Ms Clarke complained about Mr Rifat to the Second Defendant. The complaint form is dated 23 October 2016.

12. On or around 25 November 2016, Ms Clarke supplied Arc Legal with a further assessment of the GSK Claim from Mr John Stephenson, a barrister privately instructed by her. Mr Stephenson advised that certain elements of the GSK Claim had sufficient prospects of success. Arc Legal informed Ms Clarke that it would consider cover for those elements. Arc Legal funded the reviews undertaken by Irwin Mitchell and Mr Rifat and, despite being under no obligation to do so, also reimbursed Ms Clarke for the cost of Mr Stephenson's opinion.
13. Ms Clarke subsequently instructed Ms Jacqueline McGuigan to represent her in the GSK Claim. In February 2017, Ms Clarke approached DAS Legal in relation to a second claim and the funding of Ms McGuigan's instruction under an insurance policy managed by DAS Legal (the "DAS Policy"). According to Arc Legal, the DAS Policy had not been disclosed by Ms Clarke in breach of the Arc Policy. It was not brought to Arc Legal's attention that Ms Clarke had an additional policy until it received correspondence from DAS Legal. On 24 April 2017, although Arc Legal managed and had control of the legal expenses insurance on behalf of both insurers, Ms Clarke was informed that as she also held the DAS Policy, Arc Legal would only be able to consider funding its share of the GSK Claim.
14. Ms Clarke complained that Arc Legal had not reimbursed her for Ms Wilson's fees. On 22 March 2017, relying upon guidance published by the Financial Ombudsman Service, Arc Legal rejected Ms Clarke's complaint. Ms Clarke made a complaint to the Financial Ombudsman Service. On 22 May 2017, the Financial Ombudsman Service recommended that Arc Legal reimburse Ms Clarke for Ms Wilson's fees. As DAS Legal declined to cover its share, Arc Legal paid Ms Clarke in full for the fees she had incurred in instructing Ms Wilson.
15. Arc Legal also made a payment to Ms McGuigan, in respect of the work undertaken by her on Ms Clarke's behalf between January and June 2017. On 6 June 2017, Ms McGuigan ceased acting for Ms Clarke. Ms Clarke subsequently complained to the SRA about Ms McGuigan.
16. On or around 14 June 2017, Ms Clarke instructed the law firm Pannone Corporate ("Pannone") to attend mediation in relation to the GSK Claim and represent her in any final hearing before the Employment Tribunal. On 9 August 2017, Arc Legal paid Pannone, enabling it to act and instruct a barrister, Ms Tina Ranales-Cotos. During this time, GSK made an offer to Ms Clarke to settle the GSK Claim for £60,200 (the "Settlement Offer"). On 24 August 2017, Pannone advised that the Settlement Offer should be accepted; and that Ms Ranales-Cotos' opinion was that the GSK Claim no longer enjoyed the requisite prospects of success.
17. Ms Clarke did not accept the Settlement Offer. On 25 August 2017, Arc Legal withdrew cover, in accordance with the Arc Policy. DAS Legal also withdrew cover. On 29 August 2017, Pannone ceased acting and applied for postponement of the final hearing

in the GSK Claim. However, those acting on GSK's behalf objected to the application. Ms Clarke then applied for the postponement herself. The application was refused by the Employment Tribunal. Arc Legal (acting on behalf of itself and DAS Legal) confirmed by email that it had withdrawn the legal expenses insurance cover in accordance with its terms.

18. The final hearing in the GSK Claim commenced on 4 September 2017 and concluded on 12 September 2017. Ms Clarke appeared on the first day and represented herself. However, she did not attend on the subsequent days of the hearing. The Employment Tribunal unanimously dismissed Ms Clarke's GSK Claim in its entirety.
19. Ms Clarke persisted with her complaint about Arc Legal to the Financial Ombudsman Service. On 27 November 2017, the Financial Ombudsman Service issued a provisional decision, which indicated that it would uphold the complaint in part (in relation to the communication with Ms Clarke), which had not been clear on the issue of the refund of the Employment Tribunal fee. Ms Clarke sought to challenge this conclusion. On 26 April 2018, the Financial Ombudsman Service issued a final decision, stating that its findings remained unchanged. Ms Clarke did not accept this. On 15 June 2018, she alleged that the Financial Ombudsman Service's decision constituted "*fraud*".

## Procedural History

### The Pre-action Letter

20. On 25 August 2018, Ms Clarke wrote to the six Defendants, under the heading "*Legal Letter – Pre Action Protocol*" (the "Pre-Action Letter"). She alleged that Arc Legal and DAS Legal had committed "*several breaches*" of the Arc Policy and DAS Policy and were "*in breach of contract of my legal expenses insurance*". No further particulars were provided. Ms Clarke also alleged that Arc Legal and DAS Legal were liable for failing to investigate an "*evidenced breach*" of her confidentiality, whereby confidential information was purportedly "*leaked*" to GSK during the GSK Claim before the Employment Tribunal.
21. Ms Clarke made additional allegations of "*fraud by false representation*" against the BSB, the Financial Ombudsman Service, the Legal Ombudsman and the SRA. She also alleged that the SRA had infringed her human rights.

### The Claim

22. On 12 April 2019, Ms Clarke brought a claim under CPR Part 8. Her claim form was in almost identical terms to the Pre-Action Letter.
23. The claim form was accompanied by a document entitled "*Summary of Written Evidence*". This document is dated 11 April 2019 and was accepted by the parties as Ms Clarke's Particulars of Claim ("the Particulars"). The Particulars consist of 16

pages; the majority of which is a chronology of events from December 2015 to August 2018 relating to Ms Clarke's grievance against GSK and her subsequent dissatisfaction with the Defendants. Under the heading "*Complaints*" the Particulars state in relation to (i) Arc Legal, DAS Legal and the Financial Ombudsman Service: "*Final Outcome: Decision that amounts to fraud, aiding and abetting fraud*"; (ii) Legal Ombudsman and BSB: "*Final Outcome: No response, aiding and abetting fraud*"; (iii) SRA: "*Final Outcome: infringement of Human Rights, aiding and abetting fraud.*" Under the heading "*List of Issues*" the Particulars state:

***4.1 Breach of Contract...***

*Under a dual funding arrangement with Arc Legal and DAS, whereby Arc Legal administered the claim on behalf of both parties. Several breaches of terms means that the insurers are in breach of contract of C's [Claimant's] legal expenses insurance policies.*

***4.2 Breach of Confidentiality...***

*The insurers Arc Legal and DAS have failed to investigate adequately or at all the evidenced breach of C's confidentiality whereby confidential information was leaked to the Respondent to C's claim at the ET.*

***4.3 Fraud Section 2 of the Fraud Act 2006...***

*The Bar Standards Board (BSB), Legal Ombudsman (LO), The Solicitor's Regulatory Authority (SRA) and Financial Ombudsman (FOS) have committed fraud by false representation. C will seek to rely on the correspondence and in particular outcome letters produced by these organizations, which run contrary to evidence, policies and their public duties.*

***4.4 Infringement of Human Rights Article 6 Right to a Fair Trial***

*4.4.1 In particular SRA's treatment of C's complaints further lends itself to an infringement of C's human rights.*

*4.4.2 Considers the wider issue of representation meant that these organizations deliberately or not infringed on C's human rights in regards to representation.*

*4.5 C seeks declaration on these points of law. ..."*

24. No further particulars were provided. Enclosed with the Particulars were 741 pages of documents including (i) correspondence between Ms Clarke and the Defendants; (ii) insurance policies; (iii) Ms Clarke's complaints; and (iv) responses to Ms Clarke's complaints.

*Acknowledgment of Service*

25. The Defendants each filed an Acknowledgement of Service (on various dates) under CPR Part 8. DAS Legal initially served an Acknowledgment of Service on 12 April

2019 under CPR Part 7. DAS Legal subsequently realised that as the claim was made under CPR Part 8 the wrong acknowledgment form had been used (“the Part 7 Acknowledgment error”). DAS Legal subsequently filed an Acknowledgment of Service dated 1 May 2019, under CPR Part 8.

26. During the hearing, Mr Whitehouse on behalf of DAS Legal, made an application for permission to participate in these proceedings and for relief from sanction in relation to the Part 7 Acknowledgment error. I granted the application to participate on the grounds that it was in the interests of justice. I did not grant the application for relief from sanction.

### Application to Strike Out and Response

27. The Defendants made applications to strike out Ms Clarke’s claim on various dates between April and July 2019. In addition to the argument that the application should have been issued under Part 7 rather than Part 8 (“the Part 8 procedural issue”), the Defendants all complained, in essence, that Ms Clarke’s claim is incoherent, unreasonably vague and ill-founded. Each application was supported by a witness statement.
28. Ms Clarke responded to the application to strike out in a document entitled “*Claimant’s Response to Acknowledgment of Service Summary of Additional Written Evidence*” (the “Strike Out Response”) dated 15 May 2019. The document runs to 25 pages. Approximately 5 of those pages are taken up with what Ms Clarke describes as an “*illustrative anecdote via paraphrasing to support in amplifying and streamlining her interpretation of events to date towards the overriding objective of the court...*”. It is a commentary on the Defendants’ response to her claim.
29. In the Strike Out Response Ms Clarke went on to refer to the issue of service, the Part 7 error, her justification for using the Part 8 procedure and her concerns with regard to the pre-action conduct of the Defendants. She stated that “*All, bar the fourth defendant FOS, made any effort to isolate and focus the issues. This behaviour was contrary to CPR Pre Action Conduct and Protocols paragraph (4). Therefore, the repeated requests for particulars and alleged failure to understand the claim were construed as efforts to seek to take advantage of C. ...This was particularly so, since the correspondence had not been brought out of the blue, several complaints had been raised.*” Ms Clarke reiterated that her claim is for breach of contract, breach of confidentiality, fraud and breach of the Human Rights Act.
30. Under the heading “*Strike Out Application*” the Strike Out Response only makes specific reference to Arc Legal and the Financial Ombudsman Service. It states:

“*11.1.2 FOS [Financial Ombudsman Service] claims protection under FSMA [Financial xx]...and further relies...on R (Williams v Financial Ombudsman Service [2008] EWHC 2142...in so far as the conclusions are not perverse. C contends that the issue of fraud is sufficient for these matters to be considered.*”



...

*11.3 Both parties contend that there is no other compelling reason that the claim should be disposed of at a trial... . However C asserts that putting aside the serious matters of fraud and discrimination, the Channel 4 documentary of 12 March 2018 of which FOS was the subject, the government enquiry that followed showing at least 2.2% of cases of a selected sample were wrongly decided translated to 7639 cases over 2018, are sufficient grounds for public interest.*

*11.4 ... C refers the court to Fairclough Homes Ltd v Summers [2012] UKSC 26 (27 June 2012) and requests Arc submission be struck out on the basis that these points are exaggerated and dishonest.*

*11.5 C contends that if her claim were to be struck out as lacking merit, she would seek legal proceedings against the Ministry of Justice and the Courts of Justice for the law becoming so convoluted so as to prevent access to justice to the litigant in person, alternatively for wrongly suggesting it is so.”*

## **Relevant Law and Procedure**

### Overview

31. CPR r.3.1A (2) provides that in the exercise of its case management powers, the Court is required to have regard to the fact that at least one party is unrepresented. However, as Lord Sumption explained in *Barton v Wright Hassall* [2018] UKSC 12 at [18] the “...lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties.”
32. The service of Particulars of Claim is not a mere technicality. One of the aims of the CPR is to ensure that the material facts necessary for formulating the cause of action, are set out in clear terms. A hearing will not be fair unless it is possible for a defendant to understand and respond to the claimant’s case.

### Part 8 Procedure

33. The Part 8 procedure is permitted where a rule or practice direction requires or permits its use, or where the claimant seeks the court's decision on a question that is unlikely to involve a substantial dispute of fact. It is an alternative to the Part 7 procedure.

### Strike Out

34. The Court has the power pursuant to CPR 3.4(2), to strike out a claim if it appears that:
- a) No reasonable grounds are disclosed for bringing the claim (CPR 3.4(2)(a)). Examples include cases “...which are incoherent and make no sense”, and those claims “...which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant.” (see CPR Practice Direction 3A, paragraph 1.4).
  - b) The claim is an abuse of the Court’s process or is otherwise likely to obstruct the just disposal of the proceedings (CPR 3.4(2)(b)). A case may fall within CPR 3.4(2)(b) “...where it is vexatious, scurrilous, or obviously ill-founded.” (see CPR Practice Direction 3A, paragraph 1.5); or where it represents an attack by a party on a final decision adverse to it (this is not limited to the Courts but extends, where appropriate, to decisions of administrative bodies also: see the commentary to the CPR, at 3.4.3.3). Furthermore, it is an abuse of process to bring an ordinary claim which should normally be brought by judicial review to take advantage of the longer limitation period in longer claims (see *Clark v University of Lincolnshire and Humberside* [2000] 1 WLR 1988 CA, obiter and *Carter Commercial Developments v Bedford BC* [2001] EWHC Admin 669 and White Book commentary at 3.4.3.7).
  - c) There has been a failure to comply with a Rule or Practice Direction of the CPR or a Court Order.

### Summary Judgment

35. The Court has the power to give summary judgment against a claimant pursuant to CPR 24.2, on the whole of the claim or a particular issue if:
- a) The Court considers that the claimant has no real prospect of succeeding on the claim or issue (CPR 24.2(a)(i)). In this regard, the claimant needs more than just an arguable case; it has to be one that has a “real”, as opposed to “fanciful”, chance of winning: see *Swain v. Hillman and Another* [2001] 1 All ER 91, at [92]; and,
  - b) There is no other compelling reason why the case or issue should be disposed of at a trial (CPR 24.2(b)).

### **Analysis**

#### Are there reasonable grounds for bringing this Claim?

36. The claim as a whole is not explained in terms that make out a well-defined case to answer. Despite the Particulars, which run to 15 pages and the additional 741 pages of

documentation, it is also not clear what specific facts are relied upon and how and why they support the causes of action. This is central to Ms Clarke's case. It is not appropriate to expect the Defendants and the Court to decipher the nature and extent of the claim based on a vague outline with reference to page numbers in an accompanying bundle of documents. Furthermore, although Ms Clarke is a litigant in person, it does not fall upon the Defendants or the Court to try to articulate Ms Clarke's claim for her.

37. As critical elements have not been clearly pleaded a close analysis of the merits of Ms Clarke's claim is not possible. What is clear is that Ms Clarke is not satisfied with the service she received from Arc Legal and DAS Legal and the handling of her complaints by the BSB, the Financial Ombudsman Service, the Legal Ombudsman and the SRA. However, based on my understanding of Ms Clarke's claim she faces several considerable problems. These are set out below.

### Breach of Contract

38. The alleged breach of contract by Arc Legal and DAS Legal appears to be based on the complaints that Ms Clarke made to the Financial Ombudsman Service. Although she asserts that Arc Legal and DAS Legal breached "*several*" terms of the contract it is not clear which specific terms she is referring to. It is also not clear what specific facts are relied upon and how and why these amount to a breach of contract.
39. I accept the submissions made by Mr McDonald. Arc Legal was entitled to rely upon the opinions of Irwin Mitchell and Mr Rifat. When Ms Clarke provided Mr Stephenson's advice, stating that elements of the GSK Claim had sufficient prospects of success, Arc Legal agreed to cover those elements. To the extent that Ms Clarke's Claim is based upon Arc Legal's initial refusal to reimburse her for Mr Stephenson's and Ms Wilson's fees, Arc Legal was relying upon the Financial Ombudsman Service's guidance. In any event, Ms Clarke was reimbursed in full for these fees. Arc Legal paid out some £50,000 in respect of the GSK Claim. It was entitled to withdraw cover once Ms Clarke failed to accept the Settlement Offer and Ms Ranales-Cotos advised that the GSK Claim no longer had the requisite prospects of success. The Financial Ombudsman Service concluded that Arc Legal acted reasonably and fairly in doing so. Ms Clarke has not pleaded any loss. The meritorious parts of the GSK Claim were funded by Arc Legal. Ms Clarke has also been reimbursed for all legal fees personally incurred by her, and the Financial Ombudsman Service determined that any delays by Arc Legal in making payments were not excessive and did not hinder the GSK Claim. The Employment Tribunal unanimously dismissed the GSK Claim, after Arc Legal withdrew cover, which is the outcome that Irwin Mitchell and Mr Rifat predicted. To the extent that Ms Clarke suggests that Arc Legal promised to reimburse her for the Employment Tribunal fee of £950, and that this constituted a separate binding contract, that contention appears to be hopeless. In any event, the Supreme Court issued a ruling in 2017 that such fees are unlawful. The fees are recoverable by Ms Clarke and as a consequence she has not suffered any loss.

40. I also accept the submissions made by Mr Whitehouse. There was an agreement between Arc Legal and DAS Legal; DAS Legal would contribute to the indemnity and Arc Legal would act on behalf of both companies. DAS Legal had not agreed directly with Ms Clarke that it would indemnify her. DAS Legal was entitled to rely on the advice of Ms Clarke's solicitors that the Settlement Offer should be accepted. The Financial Ombudsman Service took the view that the decision to withdraw the indemnity cover was reasonable and carried out in accordance with the terms of the policy. Ms Clarke has not pleaded any loss as a consequence of the actions taken by DAS Legal.

### Breach of Confidentiality

41. Ms Clarke's claim for breach of confidentiality against Arc Legal and DAS Legal appears to be based on the email sent by GSK's solicitors, dated 29 August 2017. The email is addressed to Ms Clarke and the Employment Tribunal and states, "*We understand that the Claimant had legal expenses insurance and that Pannone were instructed on that basis* [my emphasis]." It would appear that Ms Clarke has assumed that because the references to legal expenses and instructions are in the past tense, either Arc Legal or DAS Legal (or perhaps both) communicated the removal of her funding to GSK's solicitors before she was made aware of the withdrawal.
42. The email is not evidence of a breach of confidentiality and Ms Clarke has not provided any other information to substantiate this aspect of her claim. Ms Clarke does not appear to have considered that it is much more likely that GSK came to its own conclusion that Arc Legal had withdrawn cover given the circumstances and the fact that Pannone were no longer acting for her.

### Fraud

43. The fraud allegation appears to be levelled against the BSB, the Legal Ombudsman, the SRA and the Financial Ombudsman Service only. Ms Clarke refers to section 2 of the Fraud Act 2006 and therefore it appears to be an allegation of fraud by false representation. By virtue of section 1 of the Fraud Act 2006, fraud by false representation is a statutory criminal offence.
44. The rules which govern proving an allegation of fraud are very strict. The particulars of the fraud must be clear and precise. Ms Clarke's fraud allegation is based on assertion. There is no factual or evidential basis for the allegation of bad faith.

### Human Rights Act

45. Ms Clarke's claim that her rights under Article 6 of the European Convention of Human Rights have been breached appears to be targeted towards the SRA.
46. I accept the submissions made by Ms Hansen that Ms Clarke's complaints and correspondence to the SRA are misguided. Her complaints did not relate to the determination of her civil rights and or criminal charges. Therefore, the Article 6 right to a fair trial is not engaged.
47. In conclusion the merits of the overall claim are very poor. In my view there are clearly some parts of Ms Clarke's claim which have no prospects of success. There are other parts which are difficult to evaluate with precision given the lack of adequate pleading. However, I am satisfied that overall the claim is incoherent and does not make sense.
48. This claim clearly requires amendment if it is to proceed. Therefore, I considered whether Ms Clarke should be given the opportunity to amend her claim. However, I concluded that this would not be appropriate for the following interrelated reasons: (i) Ms Clarke has not made an application to amend and no document has been provided reflecting any proposed amendments; (ii) The Strike Out Response appears to be an attempt by Ms Clarke to set out her claim in more detail, however, it is apparent that she is either unwilling or unable to amend her claim in a manner which is legally intelligible; (iii) There is no indication that if coherently pleaded an amended claim would establish reasonable grounds, as Ms Clarke would face a considerable hurdle in re-casting her causes of action.
49. There are no reasonable grounds for bringing this claim.

#### Is Ms Clarke's Claim an Abuse of Process?

50. Even if I am wrong with regard to the merits of the claim it cannot proceed because it is abusive in nature and/or otherwise likely to obstruct the just disposal of the proceedings. The Particulars as drafted represent an indiscriminate attack on decisions or opinions which have been adverse to Ms Clarke. In addition, Ms Clarke (i) accuses Irwin Mitchell of bias (ii) questions Mr Stephenson's level of preparation; (iii) doubts Ms Wilson's professionalism; (iv) criticises Ms McGuigan's conduct; (v) suggests that Ms Ranales-Cotos lacks a "*moral compass*"; and (vi) describes the Employment Tribunal as unjust. Although the accusations plainly reflect Ms Clarke's personal views the Particulars do not set out any cogent basis for these accusations and criticisms.
51. Furthermore, Ms Clarke's commentary within the Strike Out Response which as stated in paragraph 28 she described as an "*illustrative anecdote via paraphrasing*", has a distinct mocking tone. For example, it states:

*"As my profession is solicitor, in my estimation, well versed in the law, in my representation of the defendant, it is not possible for me or my client to understand*

*C's claim, which has been submitted in plain English. Though this is also my language it has just not been possible.*

...

*Now that C has submitted her claim to the courts, I will not take this seriously. Actually what I will do is make a submission on behalf of my client for example SRA and I will cherry pick what I put in my witness statement. I will exclude significant aspects of the background to C's claim at the employment tribunal...such as an unusually long suspension with no disciplinary outcome..."*

52. The commentary continues in a similar manner for approximately 5 pages. There is no genuine attempt to address the concerns that had been raised. Therefore, if this case is permitted to continue there is a real risk that the Defendants will be put to considerable expense defending a claim which may not be pursued or may not be pursued as understood based on the documents that Ms Clarke has provided. This Court has no information about Ms Clarke's financial circumstances, but there is a strong possibility that the Defendants, if successful, would not be able to recover their costs.
53. There can be no doubt, based on the content of Ms Clarke's Particulars and Strike Out Response, that she feels aggrieved and is distressed that her claim in the Employment Tribunal was unsuccessful. Her claim in this Court is an attempt to reventilate those matters. In my view, Ms Clarke has lost all sense of objectivity and proportionality about the GSK Claim. Even if there is a reasonable claim against the Defendants there is no realistic prospect of identifying the key issues and no realistic prospect of cooperation in the management of the case in preparation for trial.
54. Furthermore, any challenge to the merits of the findings of the BSB, SRA, the Financial Ombudsman Service and the Legal Ombudsman must be by judicial review. The time limits for bringing such a challenge are strict. It is well-established that it is an abuse of process to bring a claim by way of ordinary proceedings to circumvent limitation periods for a judicial review challenge.
55. In these circumstances, I conclude this claim is an abuse of the Court's process and that the problems cannot be addressed by any measure less draconian than a strike out.

## **Conclusion**

56. Ms Clarke's claim is struck out. There are no reasonable grounds for bring the claim and it is abusive or otherwise likely to obstruct the just disposal of the proceedings. To the extent that I have been invited to consider whether the case is '*totally without merit*' I make no such finding.
57. The above conclusions are sufficient to resolve the application in favour of the Defendants and therefore I need not go on to determine the procedural part 8 issue or summary judgement.

58. Parties should seek to agree terms of an order that reflects my conclusions and deals with any other consequential matters including costs. In the absence of agreement, the parties are at liberty to make an application in writing within 14 days following the formal hand-down of this judgment (for which the parties need not be present). If such an application is made, the opposing party will have another 7 days to respond in writing. If there are any consequential matters, they will be determined without a hearing.