Neutral Citation Number: [2019] EWHC 2350 (Ch)

Case No: HC-2016-003579

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 September 2019

Before :

UPPER TRIBUNAL JUDGE ELIZABETH COOKE SITTING AS A DEPUTY HIGH COURT JUDGE

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Between :

(1) SIR CHRISTOPHER EVANS	**Claimants**
(2) LADY ANNE EVANS	
- and -	
PRICEWATERHOUSECOOPERS LLP	**Defendant**

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Nigel Jones QC and Laurence Page (instructed by **CGS Legal**) for the Claimants
Graham Chapman QC and Pippa Manby (instructed by **Herbert Smith Freehills LLP**) for the Defendant

Hearing dates: 23 July 2019

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APPROVED JUDGMENT

Judge Elizabeth Cooke:

1. This is an action brought against the Defendant alleging negligence and breach of statutory duty in the provision of tax advice. In March 2019 I heard the Defendant's application to strike out the claim and other applications by both parties; a draft judgment was provided to counsel on 23 April 2019, and some time was then spent in dispute about the form of the order and the directions to be given, with the result that my decision and order were handed down on 17 June 2019. On 23 July 2019 I heard the parties in the Rolls Building on matters consequential upon that decision, namely costs, the proposed re-amendment of the Claimants' Particulars of Claim, and the Defendant's application for permission to appeal my decision of 17 June 2019.

2. The Claimants were represented by Nigel Jones QC and Laurence Page of counsel, and the Defendant by Graham Chapman QC and Pippa Manby of counsel; I am grateful to them all for their careful arguments.

3. This is my decision on the applications for costs and on the Claimants' proposed amendments of the Particulars of Claim; permission to appeal was refused for the reasons that I gave at the hearing.

4. For the background facts and the course of the action to date I refer to my decision of 17 June 2019, [2019] EWHC 1505 (Ch). By way of brief introduction, the claim arose from a tax avoidance scheme devised for the Claimants and put into effect in 2001. It was a "round the world" scheme whereby the place of effective management of the trust was moved to another jurisdiction and then back to the UK, and the provisions of the relevant double taxation treaty were relied upon to prevent the taxation of a gain arising on the

sale of shares during the period when the trust was offshore. The jurisdiction used was Canada. The scheme turned out to be ineffective; the Claimants say that had Mauritius been used instead, all would have been well. They say therefore that advice given from 1998 and up to the termination of the Defendant's retainer in 2011 was negligent and was given in breach of contract and of statutory duty. Proceedings were issued on 14 December 2016.

5. The application to strike out was made on the basis that the Claimants' causes of action were all barred by limitation. It was conceded at or shortly before the hearing that the claim in contract was statute-barred because of the six year limitation period, and also that any cause of action based on a breach of duty that took place before 14 December 2001 was likewise barred because of section 14B of the Limitation Act 1980. Otherwise the application to strike out failed because I decided, first, that breaches of duty alleged from 14 December 2010 onwards were clearly not barred; second, that there was a realistic chance of the Claimants showing at trial that no cause of action accrued before 17 December 2013; and third that in any event there was a realistic chance of the Claimants showing at trial that any cause of action that accrued prior to 14 December 2010 was saved by section 14A of the Limitation Act 1980.

6. However, the tax avoidance scheme which gave rise to the action was devised and put into effect in 2001; the Defendant was incorporated in December 2002 and began work for clients on 1 January 2003, and the work done for the Claimants before that date was done by PricewaterhouseCoopers United Kingdom, a traditional partnership ("the Partnership"). This had not been noticed by either party when the action was commenced. The Defendant

applied at the March hearing to re-amend its Defence by withdrawing admissions that it had advised the Claimants before 1 January 2003. I gave permission for it to do so.

7. I also gave permission for the Claimants to substitute the Partnership as defendant in the action. The application made by the Claimants appeared to be to add the Partnership as a second defendant, but during the hearing in March Mr Jones QC said that he had changed his mind and instead made an application to substitute the Partnership. He also said that if permission was given he and his clients would need to take time to decide whether to avail themselves of it. It will be appreciated that they had to choose either to continue the action against the Partnership, substituted as sole defendant, and therefore relating only to what happened before 1 January 2003, or to continue only against the current LLP Defendant and therefore to abandon breaches of duty alleged before 1 January 2003. If they did elect to substitute they could bring a further action against the LLP, but of course there would be a period from 1 January 2003 until (at the earliest) 15 years before the commencement of the new action that would be off limits by virtue of limitation.

8. Finally, I considered an application to amend the Claimants' Particulars of Claim, and insofar as it was still being pursued at the end of the hearing I refused it.

9. In the event the Claimants have chosen not to substitute the Partnership as defendant. The effect of that is that the action now relates only to breaches of duty alleged from 1 January 2003 onwards.

The applications for costs

10. Because of the way submissions were developed at the hearing, I shall consider separately the costs applications made in respect of the different applications pursued at the March hearing, and then look at the picture in the round.

Costs of the application to strike out.

11. The Claimants say that they should have the costs of the strike out application because their action was not struck out. It survived, and the amount claimed was unaffected by the loss of the contract claim and the operation of section 14B. Mr Jones QC argues that the application to strike out was misconceived, firstly because it relied upon the effect of the decision in *HMRC v Smallwood* [2010] EWCA Civ 778, which Mr Chapman QC conceded at the hearing was irrelevant, second because of points made about evidence which turned out to be unconvincing, and third because the action was bound to survive because of the allegations of negligence continuing beyond 14 December 2010.

12. For the Defendant, Mr Chapman QC says that there should be no order for costs of the strike out application, because he says the Defendant achieved a considerable degree of success. Claims in contract were conceded as being time-bared, the effect of section 14B was accepted, and an attempt (not pursued at the March hearing) to rely on section 32 of the Limitation Act 1980 was dropped.

13. The outcome, says Mr Chapman QC, is that the claim is now very limited, relating only to breaches occurring after 14 December 2001 – in practice, after

1 January 2003 because of the decision not to substitute. Moreover, it is said that the Claimants' approach to the strike out application was unreasonable in that concessions were made only at a very late stage. The Defendant did not succeed in striking out the entire claim and on that basis it is suggested by Mr Chapman QC that there should be no order for costs of the strike out application.

14. I regard Mr Chapman QC's arguments as over-optimistic. The strike out application could never have been entirely successful, because of the allegations of negligence and breach of statutory duty which were within the limitation period even at its narrowest six year extent. Moreover the Claimants were successful on the most contentious point, namely the survival of the allegations of breach of duty occurring in December 2001, between 14th and 18th; the fact that those allegations are no longer in issue is not the result of any failure to resist the strike-out application but because of the decision to continue against the LLP rather than substituting the Partnership. The outcome of the strike-out application was not that the Claimants were left with a "wafer-thin remnant", as Mr Chapman QC put it, or that "the gravamen of the claim had gone". The claim for £3.5 million arising initially from alleged breaches of duty in 2001, and then from a continuing duty to advise after that date and until 2011, remained intact.

15. Accordingly I take the view that the Claimants were substantially successful in resisting the application to strike out, and should have their costs subject to a reduction to reflect the loss of the claim in contract and of allegations of breach of duty prior to 14 December 2001. Those were significant matters and

I make a 20% reduction as a result; the Defendant is to pay 80% of the costs of the application to strike out the claim.

Costs of the Defendant's application to amend

16. The Defendant's application to amend was successful. It says that it should have the costs of the application, while agreeing that it should be responsible for the Claimants' costs of and occasioned by the amendment.

17. The Claimants by contrast say that the Defendant should pay the costs of the application as well as the costs occasioned by the amendment. They say that when the mistake about the identity was appreciated, in the early summer of 2018, they had suggested that it be dealt with by consent, and they say that had that been agreed to the "minor applications" as they call them (to amend the Defence and to substitute the Partnership as defendant) would not have been necessary.

18. No doubt the Claimants hoped that the Defendant would have been agreeable simply to add in the LLP in respect of allegations of breach of duty before 1 January 2003, so that there were two Defendants but with each liable in respect of different time periods. Unsurprisingly the Defendant did not agree. The application to re-amend the Defence was hotly contested, and was complex because of the need to consider the effect of the re-amendment upon the Claimants in the light of various possible positions on limitation.

19. The Defendant's position on costs is clearly correct; it made an application that was opposed and it succeeded. It is entitled to the costs of the application.

Costs of the Claimant's application to substitute the Partnership as defendant

20. The Claimants in response to the Defendant's application to re-amend the Defence applied to enter judgment on the admissions made by the Defendant as to its identity in the original Defence, and for permission to substitute the Partnership as defendant. The application for judgment was not pursued at the hearing and I take the view that even had the Defendant failed in its application to re-amend it would not have been appropriate to enter a judgment. There would simply have been a decision against the Defendant on the application to re-amend, which would have dealt with the matter.

21. The Claimants succeeded in obtaining permission to substitute, but they have chosen not to use that permission. The application turned out to be a waste of time and costs, and the Defendant says it should have its costs on an indemnity basis.

22. Mr Chapman QC argues for the indemnity basis because of the conduct of the Claimants, in vacillating between addition and substitution, in presenting confusing evidence which appeared to use the test for substitution when addition was being applied for, and in deciding they wanted substitution on the second day of the hearing.

23. I agree that the Defendant should have its costs of the application to substitute. For the avoidance of doubt that includes any costs incurred on the application to enter judgment if any separate costs can be attributed to that application, although I doubt that there would be any. I am not persuaded that the costs should be paid on an indemnity basis; certainly there were confused and confusing elements in the application and the last-minute change of tack was unhelpful, but I regard this as the consequence of the genuine dilemma posed

by the complexities of limitation in this case rather than being so unreasonable as to merit an indemnity costs order.

Costs in the round

24. Mr Jones QC argues that I should make an overall costs order in respect of the March hearing, in the Claimants' favour subject to a reduction. I have carefully considered whether to make such an order for the sake of simplicity in assessment, although the reduction of 10% proposed by the Claimants is unrealistically low.

25. I have not seen costs schedules but the parties have exchanged them and Mr Jones QC has produced a summary from which it is apparent that the parties have been able to divide their costs between the various applications. And I agree with Mr Chapman QC that I need to make separate orders because of the different considerations arising for the different applications. I therefore make costs orders in relation to the applications as I have set out above rather than making a global order with a reduction that would necessarily be arbitrary.

26. Accordingly the Defendant is to pay 80% of the Claimants' costs of the strike out application, while the Claimants are to pay the Defendant's costs of the application to re-amend the Defence and of their own application to substitute the Partnership as defendant. There will be detailed assessment in default of agreement.

27. The Defendant also asks for its costs of the period from March 2019 to the handing down of judgment on 17 June 2019 on the basis that the Claimants failed unreasonably to engage in agreeing a draft order and proposed re-

amendments of their Particulars of Claim. I take the view that it is not appropriate for me to conduct a mini-trial of the virtues of the parties' conduct in their correspondence, and those costs are to remain costs in the cause.

28. Both parties agreed at the hearing that there should be payment on account of whatever costs order or orders I make, and have said that they will endeavour to agree that once they have my decision. That should be a simple matter and I hope that no costs will be incurred in quarrelling about it.

The application to re-amend the particulars of claim

29. At the hearing in March Mr Jones produced a draft re-amended Particulars of Claim, showing in red amendments already made, in green amendments sought to be made as a consequence of the addition of the Partnership as a defendant, and in blue amendments sought in any event. The result of his change of mind about substitution was that the green amendments were no longer wanted; it was unclear if permission was still sought in relation to the blue amendments but in case it was I refused it; and it was understood that if the Claimants were permitted to substitute the Partnership and elected to do so then other amendments would be needed since nothing would need to be said about anything that happened after 1 January 2003.

30. The Claimants now apply to make different green amendments, and in Mr Jones QC's skeleton argument he asks the court to determine whether the draft Re-amended Particulars of Claim reflect my judgment of 17 June 2019.

31. Pausing there I ask myself whether any amendment is actually necessary following the failure of the strike-out and the decision not to substitute.

Clearly it is helpful if references to the claim in contract are deleted, as they have been, and if breaches of duty dated before 14 December 2001 are removed from the particulars of breach. These are not *necessary* but they certainly "reflect" what has been decided. It is also going to be helpful to have the narrative amended so that it is clear that the identity of the Claimants' adviser changed on 1 January 2003. Again it is not actually *necessary* because the trial judge will no doubt be brought up to date in skeleton arguments, but it is helpful and no objection could be made to that.

32. The Claimants' requested amendments go further than that. They agree that one amendment introduces a new cause of action; the Defendant says that two other amendments do so too; to the remaining objections, which might be thought to fill in and correct the narrative and the particulars in the way that I have described in paragraph 31 above, the Defendant makes no objection if indeed they are pursued following my decision on the amendments that *are* objected to. So I deal with those objections first.

33. The legal context for the application is CPR 17.1 and 17.4, the latter giving effect to section 35 of the Limitation Act 1980:

> **CPR 17.1**
>
> (2) If his statements of case has been served, a party may amend it only—
>
> (a) with the written consent of all other parties; or
>
> (b) with the permission of the court.
>
> **CPR 17.4**
>
> (1) This rule applies where:
>
> (a) a party applies to amend his statement of case in one of the ways mentioned in this rule; and
>
> (b) a period of limitation has expired under … the Limitation Act 1980.

> (2) The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in which the party applying for permission has already claimed a remedy in the proceedings.

34. Accordingly, where an amendment does not amount to a new claim the court has a general discretion whether to permit it under CPR 17.1(2)(b) set out above. But where an amendment amounts to a new claim, brought at a point when it is reasonably arguable (*Ballinger v Mercer Ltd* [2014] EWCA Civ 996, Tomlinson LJ at [15] ff) that it is barred by limitation, I have a discretion to permit it *only* if it arises out of the same or substantially the same facts as the claims already pleaded.

35. As I observed in my decision of 17 June 2019, it is certainly arguable that the Claimants' causes of action insofar as they are based on breaches of duty before 14 December 2010 are barred by limitation; the Claimants succeeded on the strike out application because it is also the case that they have a realistic prospect of showing at trial that they are not. So I proceed on the basis that it is reasonably arguable that any new claim brought in the draft re-amended Particulars of Claim is brought outside the limitation period.

36. What amounts to "the same or substantially the same facts" will in some cases be difficult to determine and must be the subject of analysis (Millett LJ in *Paragon Finance PLC v DB Thakerar & Co* [1998] EWCA Civ 1249). In *BP Plc v Aon Ltd* [2006] 1 Lloyd's Rep 549 Colman J stated:

> "Whether one factual basis is 'substantially the same' as another factual basis obviously involves a value judgment, but the relevant criteria must clearly have regard to the main purpose for which the qualification to the power to give permission to amend is

> introduced. That purpose is to avoid placing a defendant in the position where if the amendment is allowed he will be obliged after expiration of the limitation period to investigate facts and obtain evidence of matters which are completely outside the ambit of, and unrelated to those factors which he could reasonably be assumed to have investigated for the purpose of defending the unamended claim."

37. The Defendant of course says that none of the amendments to which it objects arise from the same or substantially the same facts whereas naturally the Claimants say that they do; the point is only relevant to any that amount to a new cause of action.

38. Turning to the amendments themselves it is worth recalling the context in which they are sought to be made, which is that the Defendant is now sued as the Claimants' tax adviser from 1 January 2003, picking up the baton after the Partnership ceased to operate. The situation at that point was that the "round the world" tax avoidance scheme had been advised upon and executed in the tax year 2001-2. The tax return for that year had not yet been submitted. The Defendant continued to act as the Claimants' adviser until 2011. The Claimants originally pleaded (1) that the Defendant was negligent (etc) in advising the Claimants to put the scheme into effect and also (2) that, having done so, it was in continual breach of duty until 2011 because it did not pick up its own mistake and advise the Claimants to mitigate the consequences of what had been done in 2001. As things stand, only that item (2) survives.

39. Had the alleged breaches of duty in 2001 remained in the action, I suspect that little attention would have had to be paid at trial to what happened after that tax year. If the scheme was, as the Claimants say, doomed from the outset then relief would follow from what happened in 2001; if it was doomed not in 2001 but as a result of the *Smallwood* decision in 2010, as the Defendant says, then there would have been no need to give attention to what happened from January 2003 onwards.

40. But as it is, the Defendant did not exist in 2001 and cannot be sued in respect of anything that happened before it was incorporated and started to act. The focus of the trial will now be twofold: first, was the scheme doomed from the outset? That will require a detailed examination of what happened in 2001 and of the state of the law at that time in the UK, Canada and Mauritius. That will have to be investigated no less than it would if the Partnership were now being sued, because only if incorrect advice was given then could the Defendant be under a duty from 2003 onwards to spot that and take action. Second, if and only if it is found that the Partnership gave bad advice in 2001, the trial will have to determine what, if anything, the Defendant got wrong in the period 2003 to 2011. The Claimants will have to prove that the Defendant was in breach of its duty as their tax adviser, and will have to show what it should have advised and did not advise in order to establish a breach of duty. The particulars of breach after 1 January 2003 therefore take on a renewed importance in the action as it now stands.

41. It will be apparent from what I have said so far that I regard the existing Particulars of Claim, without the re-amendments and as I saw them in March,

as alleging continuing breaches of duty up to the end of the Defendant's retainer in 2011. I made that clear when I accepted, at paragraph 34 of my decision of 17 June 2019, what Mr Jones QC said to that effect, as set out at my paragraph 33. So it is simply not the case, as Mr Chapman QC suggests, that allegations of breaches of duty after 1 January 2003 relate to an "entirely new period of time". For the avoidance of doubt I observe that what I referred to in paragraph 34 of my decision of 17 June 2019 as an action that was "a shadow of its former self" was the prospect of an action relating only to what took place after 14 December 2010. What in fact survived was not only the action in respect of advice given in the period 14 to 18 December 2001 (up to the return of the trust to the UK) but also the continuing allegations of negligence and breach of statutory duty continuing throughout the period up to the end of the retainer, and therefore as things now stand from 1 January 2003 to the end of the retainer in 2011.

42. The amendments that the Claimants want to make seek to answer the question what the Defendant should have done and failed, in breach of duty, to do during that period. The ones to which the Defendant objects are:

i) the proposed pleading at 14.15A that the Defendant should have advised the Claimants to sue the Partnership in breach of contract and/or negligence. A similar amendment was proposed in blue at the March hearing, and was not the subject of specific argument so I am content to revisit it in today's very different context.

The Claimants agree that this is a new cause of action. I take the view that it arises out of exactly the same facts as the causes of action already pleaded, namely the advice given in 2001. Despite the expiry of the limitation period for any breaches of duty prior to 14 December 2001, the action as it now stands will require the detailed exploration of that advice, as I explained at paragraph 40 above. The pleading at 14.15A arises very straightforwardly from the new shape of the action and the need to specify what the Defendant should have done. It is an omission that caused the loss of a chance and is therefore a new cause of action, but I take the view that it should be permitted.

ii) Paragraph 48.8, which reads as follows with the words sought to be added underlined:

"Failed to recommend the sale of the Abbotsford shares be voided and thereafter reimplemented making use of the UK/Mauritius DTC as a means of mitigating tax upon the Solidum Trustee's sale of Abbotsford".

This was among the blue amendments for which permission was sought in March, although it was not clear if the application was still pursued by the end of the hearing. I refused permission, but I am content to look at the application again now that the context has so radically changed.

This is not a new cause of action. It seems to me simply to add detail to what is already alleged, namely that the Defendant failed to pick up on what had gone wrong and give effective tax advice after 2002. If it is a new cause of action then it is fanciful to regard it as arising out of anything other than exactly the same facts as the causes of action already pleaded.

Either way, therefore, whether under CPR 17.1 or 17.4, I have a discretion to allow this amendment. The amendment introduces a new idea which contradicts what the Claimants have already pleaded. In their Reply to the Defence they said that once the Canada scheme had been adopted in 2001 they were locked into it and were deprived of the option to use Mauritius (Reply paragraph 18). Therefore I do not permit this amendment; I see no purpose in exercising my discretion in a way that makes the pleadings manifestly contradictory and puts the Defendant into a quandary as to what is being asserted. Accordingly permission to amend paragraph 48.8 is refused.

In paragraphs 49.2.1, 49.2.3, 53, 54, 55, 56 and 58A there are proposed amendments referring to the potential for the sale of the Abbotsford shares to have been "voided" and to the potential for reimplementation of the scheme using Mauritius instead of Canada. It is unclear what is meant by the "voiding" of the sale of the shares and for that reason, and for the reasons given above in relation to earlier contradictory pleading, permission to make those amendments is refused. So far as 56 and 58A are concerned that refusal extends only to the words "and the transaction could not be voided or otherwise unwound".

iii) A proposed new paragraph 48.9, which reads:

"In the alternative, failed to recommend to the First Claimant that he pay the CGT liability arising from the sale of the Abbotsford shares."

This is not a new cause of action. It is an element of the existing allegation of negligence; again I refer to paragraphs 33 and 34 of my decision of 17 June 2019 where I rehearsed and accepted what Mr Jones QC said was already claimed. I take the view that this is a particular of a breach already pleaded, namely the failure to pick up on the problem and advise on mitigation strategies. However, if it is a new cause of action then, again, it is fanciful to suggest that it does not arise from the same facts as those that gave rise to the existing action and therefore, again, I have a discretion to allow it.

Mr Chapman QC says that this amendment contradicts what the Claimants have said to date, which is that they would have paid the tax without being advised to do so had they known of the risk. I see no contradiction here; if the duty of the tax adviser was to advise on a certain mitigation strategy then the fact that the client might have anticipated the advice does not detract from the duty. It seems to me that this added particular does not require any additional investigation on the part of the Defendant and does not add to costs; it makes the common sense point that if a charge to tax is inevitable then it makes sense to pay it rather than let interest and penalties build up. It helps to answer the question what should the Defendant have done, and it seems to me that there is no difficulty in allowing it and I do so.

iv) At the hearing objection was also taken to the amendment at paragraph 37, which refers to the Defendant's continuing tax advice to the Claimants, and at 43, which states that the Defendant's retainer continued until 2011. I have difficulty in understanding the objection in the light of my findings about the time-span of the alleged breaches of duty in the original pleadings. This seems to me simply to be a filling in of the factual narrative and there is no difficulty in allowing it.

43. As I said above, the rest of the proposed amendments are not objected to subject to anything that arises as a result of my decision on the controversial amendments.

44. Finally on the subject of amendments, the Defendant also complains that some that should have been made have not been, so that it appears that breaches of duty prior to 1 January 2003 are still in issue. Mr Chapman QC refers by way of example to paragraph 48.1, under "Particulars of Breach" where it is said:

> "Recommended the use of a trust planning scheme which sought to utilise the benefit of the UK/Canada DTC…"

45. This certainly reads like something done in 2001. In answer Mr Jones QC says that it refers now to advice given after 1 January 2003.

46. It would be pointless for me to require the Claimants to edit this or any other paragraph in the Particulars of Claim to highlight the fact that they sue only in respect of things done since the Defendant was incorporated. The outcome of the application to re-amend the Defence and their own decision not to substitute the Partnership makes that inevitable and perfectly clear to the parties and to the court. It has always been the case that the Claimants allege a continuing duty after 2001 and up to the end of the retainer in 2011. By retaining paragraph 48.1 they are alleging, and so they will have to prove, that

the Defendant actually recommended the use of the failed scheme after it was incorporated in January 2003; and the same applies to other particulars about which the same objection is raised. Whether that is problematic is a matter for the Claimants. I fail to see, for example, what they propose to do with paragraphs 48.6, 48.7. 48.8 (as unamended) 48.10, 48.11 all of which would appear to be liable to deletion on the same basis as the deleted 48.12, .13 and .14. The same can be said of a number of paragraphs from 51 onwards under the heading "Causation". It may be that the Claimants wish to reconsider those paragraphs rather than to let stand particulars which now appear to require the Defendant post-2002 to have made something happen in 2001.

Further directions

47. There was some discussion at the end of the hearing on 23 July 2019 as to directions for the future course of the action, given that it will require a costs and case management hearing, and that the Defendant will be renewing to the Court of Appeal its application for permission to appeal my decision of 17 June 2019 (as to which, time runs for 21 days from the hearing on 23 July 2019).

48. Unless the parties by written representations, made within 7 days of receipt of this judgment in draft, ask me to do otherwise, I propose to order that a costs and case management hearing be listed before a master on the first open date after 1 November 2019. Realistically, that date is going to be in the new year and therefore the parties will have time to do the preparatory work after the Court of Appeal has responded to the permission application. I am not prepared to certify the listing as suitable for expedition in view of the amount

of work that will be needed on costs and disclosure beforehand. If permission is granted then no doubt the parties will agree a stay, but if they cannot agree then an application can be made.