Neutral Citation Number: [2022] EWHC 2124 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
BUSINESS LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 10 August 2022

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Case No: D65YJ669

Between :

Christopher Paul Reynard — **Claimant**
- and -
Nigel Fox — **Defendant**

Case No: B56YP797

And between :

Christopher Paul Reynard — **Claimant**
- and -
Thomas Westcott (a firm) — **Defendant**

Case No: E00BS650

And between :

Christopher Paul Reynard — **Claimant**
- and -
Thomas Westcott (a firm) — **Defendant**

Case No: 2PA8338

And between :

NRAM plc — **Claimant**
- and -
Christopher Paul Reynard — **Defendant**

Case No: E00BS425

And between :

Christopher Paul Reynard — **Claimant**

- and -
NRAM plc **Defendant**

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Mr Christopher Reynard in person

Application dealt with on paper
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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 2:00 pm on Wednesday 10 August 2022.

HHJ Paul Matthews :

Introduction

1. On 30 May 2022 I made an order (sealed on 31 May 2022) declaring that the applications by Mr Reynard in the two cases which he had brought against Thomas Westcott, an accountancy firm, had been automatically dismissed, and that his applications in the other three cases the subject of this judgment (against Nigel Fox, his former trustee in bankruptcy, and NRAM plc, his former mortgagee) had been struck out.

2. By application notice dated 5 June 2022 (but only received by the court on 13 June 2022) he has applied to set aside my order. He states as his grounds that

> "both HHJ Matthews and Bristol Court are automatically disqualified from dealing with any actions concerning myself, and that the order is therefore invalid/void, unjust, factually in error, in breach of my human rights, and has no legal force".

I add that this application notice was sent to me only on 27 July 2022. I expect that the delay is placing it before a judge was the result of pressure of other work on the court staff. They are currently very busy indeed.

3. Regrettably, this is a lengthy and complex story. I will deal with the facts in more detail later on in this judgment. By way of introduction, however, I will say this. Mr Reynard is a former ski tour operator, who was adjudicated bankrupt in October 2012. Nigel Fox, an insolvency practitioner, was appointed trustee in bankruptcy in July 2013. Following drawn-out proceedings brought by his mortgagee, NRAM plc, in 2012-15, a possession order was made in relation to Mr Reynard's large house in a large estate, known as Idehill Lodge, Farway, Cornwall. An application for permission to appeal was refused, and the property was sold on 14 April 2016 by NRAM plc for a price which Mr Reynard claimed was a significant undervalue. He also claimed to have significant claims against two accountants who were former advisers, one of whom was Thomas Westcott.

4. Since at least 2015 Mr Reynard has been in litigation with his trustee in bankruptcy, his former accountants and his mortgagee, about the various claims which he says he has against them. The present application dated 5 June 2022 is the latest in a long line of applications which Mr Reynard has made to the court in one or other of the various pieces of litigation he has been involved in. This application is however made in all five of the captioned cases.

Mr Reynard's witness statement

5. Mr Reynard has made a witness statement in support of his present application. It largely addresses allegations of bias on my part, and the law relating to this. These allegations have in the main been raised and dealt with on other occasions. But, before I can deal with the issues he raises, I comment on the paragraphs in that statement that require specific comment as follows, using Mr Reynard's paragraph numbering:

6. (2) Mr Reynard says that my order is mistaken because I said he did not respond to the order of 5 June 2018. (I think he means my written reasons, rather than the order, but no matter.) However, that is not what I said in my reasons for the order of 30 May 2022. What I said was that he *did* apply to set aside that order, but that the application was dismissed, as were further applications to set aside each following order.

7. Then I summarised the position:

> "In June 2019 Mr Reynard's application to transfer the case to another hearing centre was dismissed, and there had been no appeal against that dismissal. The last entry on the file is for December 2020, and there is nothing since then. So the position is that the claim was originally struck out in June 2018, and every application made since then to resurrect the claim has failed. There is therefore nothing to transfer."

8. (3) Mr Reynard said that he applied to set aside my order of 8 March 2018. I am not aware of any such application. He did apply for permission to appeal against my order, and for an extension of time in which to do so, pending receipt of transcripts of the entire hearings in the application. However, I refused permission to appeal on 28 March 2018: [2018] EWHC 710 (Ch). I do not know if he applied to the Court of Appeal directly for permission to appeal.

9. (4) Mr Reynard says he made an application

> "on instruction from HHJ Matthews to reverse this judgment of the 8 March 2018".

I did not give any "instruction" to Mr Reynard, and, as I say, I am not aware of any application to reverse the judgment except the application for permission to appeal (above), which I refused.

10. (5) Mr Reynard says that the court cannot say

> "that the cases against Thomas Westcott are at an end, and then hear a strikeout application in these cases the very next day!"

I would agree, but the court did not say that. The applications in relation to the Thomas Westcott cases were dismissed automatically for non-compliance with CPR PD 3C para 3. It was the applications in the *other* three cases that were dismissed because those proceedings were already at an end.

11. (7) My Reynard takes issue with the fact that it took six weeks to deal with his application of 16 March 2020. He also says that his further application dated 16 May 2022, marked urgent, because there was to be a hearing on 31 May, it was not dealt with until "the late afternoon the day before the hearing … ". As a general point, I dealt with each of Mr Reynard's applications as soon as practicably possible. I do not now know why his application of 16 March took 6 weeks. The first coronavirus lockdown started two weeks later, and that may have had an impact. I also note that Easter fell in that period, and I certainly had annual leave then.

12. As to his further application of 16 May 2022, I do not know why, but that application was sent up to my office only on Thursday 26 May. During that week (and the previous one) I was sitting in London, so I did not see it until my return to Bristol on 30 May. I dealt with the matter as soon as I saw it, realising that it would be relevant to a hearing (before another judge) next day. I asked for it to be sent out the same day, but I do not know if it was.

13. (17) Mr Reynard says that I received the claim which he had brought against me on 23 November 2020 and "the very next day, 24 November 2020 he issued a so-called restraint order dated 17 August". I did indeed make the extended civil restraint order against Mr Reynard. But I did that on 17 August 2020, on the basis of an application by Thomas Westcott by notice dated 15 April 2020, but which I had only recently received. On the same day (*ie* 17 August) I sent it to the specialist team for sealing and sending out.

14. As I say below, Mr Reynard sent a letter to the court in November 2020, saying that he had issued a claim against me and another judge, but was not going to serve those claims yet. I thought that this must have been a breach of the August civil restraint order, so I checked with the specialist team. However, I discovered that, because of an administrative oversight, the team had never sealed and sent out the order. I directed that they should seal it and send it out anyway, on the basis that it would not be retrospective in operation, and would come to an end when the original two year period would have come to an end. Although sealed only in November, the order I made bears the date 17 August 2020 and refers to the application by Thomas Westcott dated 15 April 2020.

15. (19) Mr Reynard says that "the Judge knows perfectly well he is biased". I know nothing of the kind. He cites no evidence of *actual* bias. Accordingly, I assume he is referring to *apparent* bias, to be inferred from objective phenomena. That is supported by his reference to the *Magill* case (discussed below), and the test which it lays down. In his present application Mr Reynard has not made any application for me to recuse myself for apparent bias, but since it appears to be the foundation of his application I shall proceed as if he had.

The test for apparent bias

16. The test for apparent bias is that set out in the decision of the Court of Appeal in *In re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700, and confirmed by the House of Lords in *Porter v Magill* [2002] 2 AC 357, [102]:

> "The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased."

17. So far as concerns the "informed and fair-minded observer", in *Harb v HRH Prince Abdul Aziz bin Fahd bin Abdul Aziz* [2016] EWCA Civ 556, the Court of Appeal said:

> "[69] … We would however, emphasise two important points. First, the opinion of the notional informed and fair-minded observer is not to be confused with the

> opinion of the litigant. The 'real possibility' test is an objective test. It ensures that there is a measure of detachment in the assessment of whether there is a real possibility of bias… [T]he litigant is not the fair-minded observer. He lacks the objectivity which is the hallmark of the fair-minded observer. He is far from dispassionate. Litigation is a stressful and expensive business. Most litigants are likely to oppose anything that they perceive might imperil their prospects of success, even if, when viewed objectively, their perception is not well-founded.
>
> […]
>
> [72] Secondly, the informed and fair-minded observer is to be treated as knowing all the relevant circumstances, and it is for the court to make an assessment of these… It was held in *Virdi v Law Society* [2010] EWCA Civ 100 that the hypothetical fair-minded observer is to be treated as if in possession of all the relevant facts and not only those that are publicly available…"

So the hypothetical informed and fair-minded observer knows all the relevant facts, whether publicly available or not, and has a perception of the case which is *not* that of the litigant, but is instead more objective and dispassionate. That is the standard to be applied.

18. Moreover, it must be borne in mind that, in our system, litigants are not permitted to choose their judges. In *Dobbs v Tridios Bank NV* [2005] EWCA 468, Mr Dobbs criticised Chadwick LJ in relation to a hearing in which the judge had taken part, and asked that he recuse himself. Chadwick LJ (with whom Longmore and Neuberger LJJ agreed) declined to do so. He said:

> "7. … But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant -- whether it be a represented litigant or a litigant in person -- criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticising all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticised -- whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr Dobbs a fair hearing because he is criticising the system generally. Mr Dobbs' appeal could never be heard.".

19. So the judge asked to recuse him- or herself should do so only where the case is properly made out. Another way of putting this point is that the rule is a rule of law, and confers no discretion on the judge. If the case crosses the line, the judge must not hear the case. If it does not do so, the judge cannot decline to do so.

Relevant facts

20. The relevant facts in this case that would be known by the informed and fair-minded observer include those set out in paragraphs 3 and 4 above, but also the following. As

I have said, since at least 2015 Mr Reynard has been in litigation with various other persons whom he accuses of causing him loss. But I need to give a little more detail.

Litigation against the trustee in bankruptcy

21. In 2015 Mr Reynard applied for an order against his trustee in bankruptcy under section 303 of the Insolvency Act 1986, that the latter assign to him the estate's claim against the accountants. That application was dismissed on 24 November 2015 in Mr Reynard's absence. Mr Reynard applied to set the order aside, but on 9 March 2016 that application was dismissed as well. The judge on both occasions was DJ Watkins. On the second occasion Mr Reynard also failed to obtain a disclosure order for which he had also applied. He sought to appeal the original dismissal, and in November 2016 lost once more. The judge on the appeal was HHJ McCahill QC, the resident Bristol chancery judge.

22. From his subsequent complaints, Mr Reynard appears to attribute his failure before DJ Watkins to a "clandestine meeting" between that judge and counsel for the trustee, which is said to have taken place at the Bristol Civil Justice Centre between 2 and 2.30 pm on 9 March 2016. At paragraph 46 of the particulars of claim in the claim subsequently issued against me, Mr Reynard says that, on that day:

> "District Judge Watkins had a clandestine meeting with his opponent's barrister Mr Clarke, and that subsequently there was an elaborate cover-up of this meeting which has involved 9 Judges."

23. This allegation is elaborated in the following paragraphs.

> "47. What happened on the 9th of March was that the Claimant turned up for the 2 o'clock hearing at around 1:15, checked himself in and then went and sat outside the door of the Court to wait. Once it got to 2 o'clock and his opponent's barrister had not turned up he began to get excited at the prospect of being unopposed.
>
> 48. At 2:10 he decided to go back to the desk to ask if a start could be made. He had in mind that on the previous occasion the Court had started without him.
>
> 49. He was told that that wasn't possible, because they couldn't find the Judge. He looked at the page on which his arrival had been recorded and saw that his opponent's barrister Mr Clarke had also been recorded as having arrived.
>
> 50. He went back to sit outside the door of the Court, expecting that Mr Clarke would turn up at any moment. He didn't. It wasn't until 2:30 that he casually sauntered up, not in any way appearing agitated, not out of breath, and with no apology for being more than half an hour late.
>
> 51. He immediately walked up to the door of the Court and tried to open it. He then turned to the Claimant and told him it would open in a minute, and true enough a minute later he did manage to open it, and there was the Judge sitting at his desk all ready.

> 52. District Judge Watkins could not be found between 2 o'clock and 2:30pm on the 9th March 2016. He was half an hour late for the hearing.
>
> 53. The Court staff were unable to find him and yet would have known where to look. He was not in any usual place.
>
> 54. Half an hour is a long time if in a toilet, and he showed no signs of subsequent distress during the two hour hearing that followed.
>
> 55. Mr Clarke was also the same half an hour late, and both of them reappeared at exactly the same time.
>
> 56. At 2:30 he sauntered down casually, not in the slightest bit agitated or out of breath and offered no apology at all, either to the Claimant or to the Judge.
>
> 57. He might have been expected to at least have apologised to the Judge. This omission was very significant says the Claimant, because in any normal situation an apology would surely have been given.
>
> 58. He showed great confidence that when he went across to open the Court door and it didn't open, that he could tell the Claimant that it would open any minute. He opened it a minute later.
>
> 59. The Claimant will submit that the plan was that upon Mr. Clarke first trying the door DJ Watkins would take that as his cue to undo the lock on the door. The minute that then elapsed before Mr. Clarke tried again was to give DJ Watkins time to return to his seat.
>
> 60. The next day the Claimant checked with the Court office and was told that neither Mr Clarke or his chambers had telephoned to the Court to warn that he was likely to be at least half an hour late. The Judge was not alerted to his situation. Why not asks the Claimant. Again, normal behaviour would have decreed that this courtesy would have been accorded, particularly to a Judge.
>
> 61. The Court knew that Mr Clarke was in the building, but it could not start the hearing without him even though it knew that the Claimant was present and had been waiting for more than an hour. This contrasted badly with the fact that at the previous hearing the Court refused to wait for the Claimant in similar circumstances and with similar timing."

24. Mr Reynard accordingly infers the taking place of the "clandestine meeting" before the hearing. He also accuses HHJ McCahill QC of being involved in a cover-up of this "clandestine meeting". There is no explanation as to why a judge needed to have a secret meeting in the court building with counsel, when they could have met on any other day, or spoken by telephone, or corresponded by post or email. Neither is there any suggestion of any motive for DJ Watkins to have this meeting, or for HHJ McCahill QC to "cover it up".

25. HHJ McCahill QC dismissed Mr Reynard's appeal from DJ Watkins' decisions in November 2016. In February 2017, HHJ McCahill QC transferred, at his own request, from Bristol (where he had sat for several years) to the court at Birmingham (where

he had practised at the Bar, and had been first appointed a judge, and where he still lived). I was appointed as his successor. I had previously been a practitioner and then a judge in London, with no significant connection to Bristol beforehand. I did not know any of the local judges when I arrived. In particular, I had never previously met or had any contact with DJ Watkins or HHJ McCahill QC.

26. In 2017 Mr Reynard issued a claim against the trustee for breach of contract and negligence. This was struck out by me in March 2018: [2018] EWHC 443 (Ch). Permission to appeal was refused: [2018] EWHC 710 (Ch). In April 2018 I made an ECRO against Mr Reynard for two years: [2018] EWHC 878 (Ch). An application to set aside the ECRO was dismissed. Mr Reynard also applied for an under section 304 of the Insolvency Act 1986. This application too was dismissed by me, in August 2018: [2018] EWHC 2141 (Ch).

Litigation against NRAM plc

27. In January 2018, Mr Reynard issued a claim against NRAM plc, alleging breach of contract and negligence in selling his property at an undervalue. In June 2018, DJ Rowe on her own initiative struck out the claim form and particulars of claim on the basis that the claim was totally without merit. Mr Reynard applied for the order to be set aside but in September 2018 the application was dismissed by her in his absence.

28. Mr Reynard applied for that order to be set aside, on the basis that the decision was unfair because he had been delayed in traffic. That application was also dismissed as totally without merit. There then followed a series of applications, each one to set aside the previous dismissal order, but each one resulting in a further dismissal order. On 3 January 2019, DJ Rowe made a limited civil restraint order under para 2 of CPR PD 3C. In June 2019 Mr Reynard's application to transfer the case to another hearing centre was dismissed, and there has been no appeal against that dismissal.

Litigation against Thomas Westcott

29. Notwithstanding that Mr Reynard had failed to obtain an assignment to himself of any claim against Thomas Westcott, in November 2015 he nevertheless issued a claim in November 2015, in his own name, against that firm for breach of contract and negligence, valuing his loss at in excess of £1m. In April 2018 he issued a second claim, also in his own name, against that firm. The allegations in both claims were in substance identical.

30. The defendant in the accountancy claims, Thomas Westcott, applied on various grounds to strike out both the 2015 and the 2018 claims against it. However, between 2018 and 2021 there were several interlocutory hearings of other applications made by the claimant which in effect prevented that application's being heard. Those other applications by the claimant, before various judges, all failed.

31. Directions were ultimately given by me on 25 October 2021 for the hearing of the defendant's strike-out application. Mr Reynard applied to set aside the directions order. But he did not follow the mandatory procedure for an ECRO under CPR PD 3C, and therefore the application was to be treated as automatically dismissed without order. Eventually, the strike-out application came before DJ Markland on 31 May

2022, when she heard argument and reserved judgment. I understand that that judgment will be given in the autumn.

ECRO against Mr Reynard

32. In the meantime, and as a result of the failed interlocutory applications by Mr Reynard, Thomas Westcott applied in April 2020 for an ECRO against him. As I have said, I made that ECRO in August 2020 (though, as I have also said, because of an administrative error it was sealed and served on him only in November 2020). He applied to set that order aside, but Mr Justice Marcus Smith dismissed the application on the papers in December 2020. The judge indicated that he would be prepared to hear Mr Reynard orally if he wished to apply to set aside that order, but on the date set by the judge Mr Reynard did not appear.

33. As a result, Mr Justice Marcus Smith definitively dismissed the application. Mr Reynard then applied to set aside the judge's order, and, when that application was dismissed, applied to set aside *that* order. That application did not follow the mandatory procedure under CPR PD 3C, and therefore was to be treated as automatically dismissed without order.

Applications to transfer out

34. In April 2022 Mr Reynard applied for the five cases involving his mortgagee, his trustee in bankruptcy and his former accountants to be transferred to a different court from Bristol. As to the two cases against Thomas Westcott, the application was automatically dismissed for failure to comply with the PD 3C procedure for applications. As to the other three cases the application was dismissed by me on the basis that those cases had all come to an end, and hence there was nothing left to transfer.

35. In May 2022 Mr Reynard applied to set aside the orders made on the April application. So far as concerns the two Thomas Westcott claims, once more Mr Reynard did not comply with the PD 3C procedure, and so the application was automatically struck out. So far as concerns the remaining three claims, the application was struck out by me as an abuse of the process.

36. The judges who have found against Mr Reynard at various stages in this sorry litigation are many. They include: DJ Watkins, HHJ McCahill QC, HHJ Cotter QC, HHJ Salomonsen, DJ Rowe, Mr Justice Birss, and Mr Justice Marcus Smith. But undoubtedly I am the judge with the most involvement in Mr Reynard's litigation. Since coming to Bristol in February 2017, I have made at least 14 reasoned decisions in relation to his matters, all of them against him. So far as I am aware, all Mr Reynard's applications have been fee-exempt.

Litigation against judges

37. It is also relevant that, as mentioned above, on 18 November 2021 Mr Reynard wrote to the court in Bristol to say that he had issued proceedings against DJ Watkins and me in respect of our conduct of the litigation involving him, but that he would pause before serving the proceedings, in order to enable "the process of ADR to take place". The claim forms were in fact issued in the County Court Money Claims Centre, on 10

November 2020. Particulars of claim were to follow. The particulars of claim in my case were dated 23 January 2021.

38. The claim form (which I saw only later on) sought:

> "Damages for breach of duty and/or negligence and/or misconduct in a public office, plus interest.
>
> > 1. Failure to deal with the administration and hearing of my case against my trustee in a just and reasonable manner.
> >
> > 2. Failure to act justly and reasonably in his involvement in four other cases both in what he did and in what he failed to do.
> >
> > 3. Being involved in a cover-up of a clandestine meeting involving another judge and of the consequences that flow from this.
>
> I cannot say how much I expect to recover but it could be in excess of £10 million."

39. On 8 January 2021 (order sealed 12 January 2021), Deputy District Judge Willis, sitting in the County Court Money Claims Centre, on his own initiative struck out the claim against me under CPR rule 3.4(2)(a) (no reasonable grounds for bringing the claim), and recorded the claim as being totally without merit. I do not know the judge's reasons for taking that course, but I expect it was because judges are generally immune from civil liability in respect of their judicial acts: *Sirros v Moore* [1975] QB 118, CA; *Mazhar v Lord Chancellor* [2021] Fam 103, CA.

40. In the former case, Lord Denning MR (with whom in substance Ormrod LJ agreed) said (at page 136B-D):

> "Every judge of the courts of this land—from the highest to the lowest— should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure " that they may be free in thought and independent in judgment," it applies to every judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself: 'If I do this, shall I be liable in damages?' So long as he does his work in the honest belief that it is within his jurisdiction, then he is not liable to an action."

41. The third judge of the Court of Appeal, Buckley LJ, put the principle this way (at page 140A, D):

> "In my judgment, it should now be taken as settled both on authority and on principle that a judge of the High Court is absolutely immune from personal civil liability in respect of any judicial act which he does in his capacity as a judge of that court. He enjoys no such immunity, however, in respect of any act not done in his capacity as a judge. …

> This does not mean that if a High Court judge, or indeed a judge of the Court of Appeal, purports to do something demonstrably outside his jurisdiction, he will be entitled to immunity. He must have acted reasonably and in good faith in the belief that the act was within his powers."

42. That decision dealt with the question of immunity at common law, and was made before the Human Rights Act 1998. So it necessary to consider how far the 1998 Act has changed the common law. That Act relevantly provides:

> "**6. Acts of public authorities**
>
> (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
>
> […]
>
> (3) In this section public authority includes
>
> (a) a court or tribunal …
>
> **7. Proceedings**
>
> (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may
>
> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
>
> (b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.
>
> (2) In subsection (1)(a) appropriate court or tribunal means such court or tribunal as may be determined in accordance with rules …
>
> **8. Judicial remedies**
>
> (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
>
> (2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.
>
> **9. Judicial acts**
>
> (1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only
>
> (a) by exercising a right of appeal;
>
> (b) on an application … for judicial review; or
>
> (c) in such other forum as may be prescribed by rules.

> […]
>
> (3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by article 5(5) of the Convention …
>
> […]"

43. In addition, CPR rule 7.11 relevantly provides:

> "(1) A claim under section 7(1)(a) of the Human Rights Act 1998 in respect of a judicial act may be brought only in the High Court.
>
> […]"

44. In *Mazhar v Lord Chancellor* [2021] Fam 103, the Court of Appeal considered these provisions, and in particular how far damages could now be awarded under the 1998 Act in respect of a judicial act. Their conclusion was as follows:

> "67. We therefore conclude on the central question of statutory interpretation which arises in this appeal that: (1) section 9(1)(c) must be read with section 9(3) and only permits a claim for damages for breach of article 5 and does not go further … "

(Article 5 of the Convention deals with deprivation of liberty.)

45. Accordingly, where a judicial act is done in good faith but breaches section 6(1), the only remedies available are: (1) exercise of a right of appeal, (2) judicial review, and (3) (but only in the case of a breach of article 5 of the Convention) an action for damages in the High Court. Mr Reynard has not sought to appeal, nor to bring proceedings for judicial review. Instead, he has claimed damages. Yet he does not claim that his loss arises as a result of a breach of article 5 (and plainly it does not). His claim does not therefore fall within the scope of the relevant provisions.

46. On 23 January 2021, Mr Reynard applied to set aside the order of DDJ Willis of 8 January 2021. On 17 February 2021 HHJ Bird, Designated Civil Judge for Greater Manchester, directed a hearing to consider (inter alia) whether to make a civil restraint order against Mr Reynard. On 9 April 2021, after a hearing at which Mr Reynard did not appear but of which he had notice and indeed had sought to adjourn, HHJ Bird refused Mr Reynard's application for an adjournment, dismissed his application to set aside the order of DDJ Willis, and made another ECRO against him for two years.

47. However, there appears to have been some dispute about the judge's jurisdiction to make that order. On 14 February 2022, Yip J made an order for the reconsideration of the terms of the ECRO, for consideration of Mr Reynard's application to set aside the ECRO, and for consideration of a further application made by Mr Reynard dated 25 May 2021 (I do not know what that is for). I now understand that these matters will be considered at a hearing in Manchester in the autumn.

Is the test for bias satisfied?

48. Having rehearsed the relevant facts, the question is whether a fair-minded and informed observer would "conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased". I have no doubt that Mr Reynard sincerely believes both that he has been grievously wronged, and that there has been a gross miscarriage of justice, as a result of some kind of judicial conspiracy which has then been covered up. He thinks I am part of that. But, with all respect to him, this is not about his point of view. As I have said, it is more objective than that.

49. The first point is that (apart from their involvement in this litigation) I do not know any of the parties, and I had and have no interest in the outcome of their litigation. The second point is that, as I have said, I did not know any of the Bristol judges when I arrived. I had not been a local practitioner. I was from London, a "new broom". Thirdly, the fact is that many judges, at three different levels (district judge, circuit judge and High Court Judge), have found against Mr Reynard in his various claims.

50. Fourthly, Mr Reynard lost applications and claims before I arrived in Bristol in 2017. He has continued to lose them after DJ Watkins and HHJ McCahill QC moved elsewhere and DJ Rowe retired. Judges of the High Court have come from outside Bristol and dealt with other applications, and found against him. It is not credible that just one or two of all these judges (for examples, DJ Watkins and me) are biased against Mr Reynard, because then he would expect to succeed when other judges make decisions. But he does not. Instead, Mr Reynard attributes this to a universal "cover-up".

51. I accept that Mr Reynard has sued me (and been struck out). But every judge receives complaints and threats of litigation. It goes with the territory. Any resulting litigation is dealt with by others. And as I have said, judges are immune from civil liability, and any claim would be struck out (as Mr Reynard's has been). As Chadwick LJ said in the *Dobbs* case, it cannot be a good ground for recusal that a judge has been criticised, nor, I would add, that he has been sued. If it were, suing judges would be a good way to eliminate judges you did not want to try your case. Standing back, on all the material before me, no fair-minded and informed observer would conclude that there was a real possibility that I was biased against Mr Reynard. Accordingly, I conclude that the test for apparent bias is not satisfied, and accordingly I have no basis for recusing myself.

The substance of the application

Thomas Westcott claims

52. I now turn to the substance of Mr Reynard's application of 5 June 2022. So far as concerns the application in respect of the cases against Thomas Westcott, Mr Reynard is subject to an extended civil restraint order made in August 2020. He therefore needs to follow the procedure set out in CPR PD 3C, para 3, before he can make those applications. But he has not done so. He has neither notified the proposed respondents of an application to the court for permission to make those applications, nor actually applied for that permission. Accordingly, as para 3.3(1) states, the application in respect of those cases has been automatically dismissed without the judge having to make any further order, and without the need for the other party to respond to it. I need not therefore make any order in respect of them.

Other claims

53. So far as concerns the application in respect of the other cases, it is relevant to notice that the order which I made on 30 May 2022 was in respect of an application to set aside an earlier order, made on 25 April 2022 (but sealed on 5 May 2022), by which I dismissed an application to transfer those three cases to another court. That order was made on the basis that the relevant proceedings had long since come to an end, and accordingly there was nothing to transfer, and so the application was bound to fail.

54. No attempt was made to seek to appeal my decision, and the time for seeking to appeal has long since expired. Instead, Mr Reynard simply applies once again to set aside my order, on the grounds stated above. This is a familiar technique with Mr Reynard. Since there is no appeal against my decision that the three cases have all come to an end, it is plain that any application to set aside my order is bound to fail. The present application accordingly is an abuse of process and should be struck out, as totally without merit.

The future

55. That leaves the question of what to do for the future. I have spent time over the last five years amounting to many days and even weeks dealing with the detail of this vexatious litigation. That time could have been devoted to the more fruitful resolution of the litigation of others, whose cases cannot be said to be less deserving. This misdirection of judicial resources, in a time of acute shortage, and consequent backlog of work, is a serious matter.

56. The existing civil restraint order in relation to the Thomas Westcott claims will expire in a few days. I should therefore consider whether it is appropriate to renew or extend it. And, in relation to the other claims, I have made an order striking out the application as totally without merit, and therefore under the rules have to consider whether to make a civil restraint order in respect of them also: see CPR rules 3.3(7), 3.4(6) and 23.12.

Extending the existing ECRO

57. I consider first of all the question of extending or renewing the existing ECRO in the Thomas Westcott cases. Para 3.10 of CPR PD 3C (as amended on 6 April 2022) provides:

> "The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but it must not be extended for a period greater than 3 years on any given occasion."

(Prior to 6 April 2022, the maximum duration of a CRO was two years.)

58. In *Ashcroft v Webster* [2017] EWHC 887 (Ch) I looked at the relevant authorities on extending a civil restraint order, and said:

> "38. From these authorities it is clear that, in considering whether it is appropriate to *extend* the ECRO, I cannot go back to the beginning and ask whether the court would now be justified in *imposing* a further ECRO. For one thing, that would be

> to give double credit for the applications or claims held to be 'totally without merit' that justified the order in the first place. For another, the filter mechanism means that there are not inherently likely to be many further applications anyway, much less many which are 'totally without merit'. Third, the test for an extension is simply whether *the court considers* that it is '*appropriate'* to do so. It is quite different from the test for the first ECRO.
>
> 39. On the other hand, in considering whether it is ''appropriate', *all* the circumstances must be taken into account. Here, the Defendant's conduct leading to the ECRO is still relevant, not least as setting the scene: *cf Noel v Society of Lloyd's* [2010] EWHC 360, [38]-[46]. Normal people do not behave in this way. They eventually accept that they have lost, and move on. For such persons, not subject to an ECRO, the subsequent conduct on its own might be more susceptible of an innocent, non-vexatious explanation. But where an ECRO has properly been made, what comes afterwards is seen through the prism of the earlier conduct. In such a case it is easier to see the likelihood of further vexatious conduct. This is not double-counting, but rather better understanding a person's motivation in acting in a particular way."

59. In *Chief Constable of Kent v Godfrey* [2019] EWHC 3005 (QB), Stewart J referred to the authorities on which I had relied in coming to that conclusion, and then quoted paragraphs 38 and 39 with apparent approval. In *AEY v AL (Family Proceedings Extension of Civil Restraint Order)* [2020] EWHC 3539 (Fam), Knowles J also cited these paragraphs with apparent approval. She then said:

> "14. It is clear that there is no presumption of continuance of an expiring ECRO. There must be evidence that it is *'appropriate'* to extend its life. In this case is there good reason to apprehend persistent vexatiousness by AEY in the future?"

60. In the present case, Mr Reynard's vexatious behaviour has shown no sign of abating. He has in recent times made hopeless application after hopeless application to set aside previous orders made against him, but without even complying with the necessary procedure under CPR PD 3C, with the result they have been automatically dismissed. He shows no signs of altering his behaviour. In the words of Knowles J, there is indeed "good reason to apprehend persistent vexatiousness by [him] in the future".

61. In my judgment, it is entirely appropriate to extend the existing extended civil restraint order, this time by three years. I do not suppose it will persuade Mr Reynard to stop his futile campaign. But it should provide some relief for our hard-pressed civil justice system. It will therefore run from the expiry of the present order on 17 August 2022, to 17 August 2025.

A new ECRO?

62. So far as concerns the other three sets of proceedings, namely those against Mr Fox and against NRAM plc, there is no current civil restraint order in operation. Indeed, in substance those proceedings have all come to an end. NRAM plc recovered possession of the property in their possession claim, and then sold it, and the other two claims by Mr Reynard have been struck out. But Mr Reynard has continued once again to make hopeless application after hopeless application to seek to set aside the

last order made against him. (For some reason, he no longer seems interested in seeking to appeal to the Court of Appeal.)

63. The problem is that Mr Reynard lacks insight into his condition. He remains in the position where he is unable to process his lack of success in the litigation as anything other than the result of fraud and conspiracy by the judiciary. He is not alone in this. There are many litigants in person with a similar lack of insight. But the civil restraint order regime was created in an attempt to deal with the problem of large amounts of scarce judicial resources being devoted to hopeless cases.

64. In my judgment, a limited civil restraint order would not be sufficient in this case. I know that the three cases concerned have all come to an end, but Mr Reynard has not stopped attempting to make applications in them. On the other hand, if I make a limited order, he will simply recast the claim anew in an attempt to avoid the order. On the other hand, a general civil restraint order against Mr Reynard would – as at present advised – be both neither necessary nor proportionate.

65. That leaves an extended civil restraint order. The test for making an extended civil restraint order is set out in paragraph 3.1 of CPR PD 3C:

> "An extended civil restraint order may be made … where a party has persistently issued claims or made applications which are totally without merit".

For this purpose "persistently" means at least three such claims or applications: see *CFC 26 Ltd v Brown Shipley and Co Ltd* [2017] EWHC 1594 (Ch), [13].

66. I dismissed Mr Reynard's application of April 2022 to transfer these three cases elsewhere, on the basis that they had all come to an end. I did not formally record them as totally without merit, but they were bound to fail, and accordingly were in fact totally without merit. Secondly, I dismissed his application of May 2022 to set aside my earlier order, on the basis that it was an abuse of process. Once again, although not formally recorded as totally without merit, it also was bound to fail and therefore was in fact totally without merit. Taken with this latest dismissal of his application, that makes three totally without merit applications. The threshold for making an extended civil restraint order is therefore met.

67. I now have to ask myself whether I should make such an order. In *Courtman v Ludlum* [2009] EWHC 2067 (Ch), Edward Bartley-Jones QC, sitting as a deputy judge, said:

> "12. Assuming that the pre-conditions for the making of a CRO are satisfied, it does not necessarily follow that a CRO should be made. The court has a discretion. It is clear that this discretion must be exercised in a proportionate manner. Whilst the party subject to a CRO is not absolutely prevented from approaching the court, nevertheless that party (unlike any other litigant) has to pass through the filter of obtaining permission from the specified judge. Therefore, the court should carefully consider in a graduated way whether a limited CRO would suffice before making (assuming the pre-conditions allow it) an extended CRO.

> 13. To my mind the most important factor in the exercise of the discretion is the 'threat level' of continued issue of wholly unmeritorious claims or applications. …
>
> 14. Accordingly, it seems to me to be clear that the making of a CRO is in no way punishment for past conduct. But that past conduct is highly relevant in ascertaining what is the 'threat level' of the continuation of future unmeritorious litigation. … "

68. I am afraid that I regard the current 'threat level' created by Mr Reynard as very high indeed. He shows no signs whatever of reducing, let alone ceasing, his campaign to succeed in hopeless litigation. His activities, coupled with those of some other litigants in person, are causing real difficulties to the administration of the court system here in Bristol. We are suffering from an acute shortage of resources, and the behaviour of such litigants in person means that other litigants are unable to access justice in anything like a timely fashion. In my judgment it is entirely appropriate to make an extended civil restraint order against Mr Reynard in all three of the other cases, the two involving NRAM plc and that involving Mr Fox, for a period of three years from today.

Conclusion

69. In the result, Mr Reynard's application of 5 June 2022 has been automatically dismissed without further order in the case of the two Thomas Westcott claims, and I have dismissed the remainder as totally without merit. I have extended the existing ECRO in the case of the two Thomas Westcott claims, and I have made a fresh ECRO in the other three claims, in each case for three years.