Neutral Citation Number: [2023] EWHC 3058 (Ch)

Case No: BL-2022-000885

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

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 1 December 2023

Before :

Master McQuail

- -

Between :

STEPHEN JOHN FINNAN	**Claimant**
- and -	
CHARLES RUSSELL SPEECHLYS LLP	**Defendant**

Mr Finnan in person
Thomas Ogden (instructed by **RPC)** for the **Defendant**

Hearing dates: 4 & 5 September 2023

- -

Approved Judgment

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MASTER McQUAIL

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Master McQuail:

Introduction

1. This a professional negligence claim brought by Mr Stephen Finnan (**the claimant**) against his former solicitors Charles Russell Speechlys LLP (**CRS**).

2. On 2 May 2023 the defendant issued an application to strike out the claimant's claim or for reverse summary judgment alternatively that the claimant file amended particulars of claim or his claim be struck out.

3. On 22 May 2023 the claimant issued an application to strike out CRS's defence or for summary judgment alternatively that CRS file an amended defence or their case be struck out.

4. Following representations from the parties I made an order on 1 June 2023 listing the two applications before me for a 1.5 day hearing to commence at 2pm on 4 September and giving directions as to evidence, bundles and skeletons.

5. In the week before the hearing it became apparent that the claimant wished to place reliance at the hearing on the recording or the transcript of the recording of a without prejudice telephone meeting that took place on 22 November 2022 between the claimant and CRS's solicitors and that CRS objected to the transcript being so deployed. Accordingly, I directed that if the claimant wished to rely on the transcript, he should make a formal application. An application was duly made by the claimant on 30 August 2023, supported by a witness statement of the claimant also dated 30 August. I directed the application to be listed at the 4 September hearing. That application was dealt with at the outset of the hearing and for the reasons I gave in a short judgment was dismissed and I certified it as totally without merit, I also refused the claimant permission to appeal that decision. Some 1.25 hours of the 1.5 days estimated for the hearing was consumed in dealing with the claimant's application.

6. Mr Ogden opened CRS's application but had not finished his submissions by the end of the court day on 4 September. I indicated that a position had been reached where the remaining day might not be sufficient to deal with the claimant's application as well as CRS's application. I indicated that it might be necessary to adjourn the claimant's application and that there might, in any event, be some logic in not dealing with the claimant's application before I had made my decision on CRS's application.

7. At the end of the court day on 5 September the parties had both made their submissions on the defendant's applications, but no start had been made on the claimant's application. I therefore adjourned that application until following the handing down of this judgment.

The Evidence on the Applications

8. In addition to the claimant's witness statement of 30 August 2023, the following witness statements were before me:

   (i) the witness statement of Rachael Healey, partner in RPC solicitors for CRS, of 2 May 2023;
   (ii) the witness statement of Ms Healey of 14 July 2023;
   (iii) the claimant's witness statement of 4 May 2023;
   (iv) the claimant's witness statement of 22 May 2023; and

(v) the claimant's witness statement of 25 July 2023.

The chronologically collated and de-duplicated exhibits to the statements run to something over 2,000 pages. In addition, a supplemental bundle containing nearly 500 further pages was prepared at the claimant's request.

9. The claimant has a number of complaints about Ms Healey's witness statements. He criticises the deployment of Ms Healey as the source of evidence on the application, rather than the solicitors at CRS themselves giving witness statements. He says that her first witness statement contains excessive recitation of extracts from exhibited correspondence. He says also that the Appendices to her second witness statement which comprise tables identifying respectively what are said to be new allegations in the claimant's second witness statement, what are said to be factual errors in that witness statement and what are said to be inherent contradictions in that witness statement are not verified by a statement of truth. He also says that Ms Healey fails to identify the sources of matters of information and belief.

10. Mr Ogden's response to these criticisms is that, even if well-founded which he says that they are not, they do not provide any answer to the defects identified in the claimant's pleaded case.

11. I agree that the criticisms of the evidence will have no significant bearing on the application to strike out, since for the purposes of that application the court will assume that the claimant's pleaded case is true, save to the extent it is contradictory or plainly wrong. The criticisms may potentially have a greater bearing on the summary judgment application where the evidence may need to be evaluated.

Background to the Application

12. The claimant alleges that he was negligently advised and represented by CRS in relation to a dispute with his brother, Sean Finnan (**Sean**).

13. It is CRS's position that the claimant's pleaded case on causation is defective and is liable to be struck out on the basis that the particulars of claim do not identify a single coherent counterfactual scenario in which the claimant would be in a materially more advantageous position than he is now and/or that he has suffered a loss as a result of the allegations of negligence the claimant has made against CRS.

14. CRS gave the claimant opportunities to clarify his case both in correspondence and by serving a RFI but by the time of the CCMC before me in December 2022 it was CRS's position that the claimant's pleaded claim remained unclear and inadequate. Although the RFI included a partially pleaded counterfactual scenario. I explained to the claimant at the CCMC that he needed to plead a case on causation and endeavoured to explain the concept of causation to the claimant. Among other things I said this:

> "So the first bit is you have got to say: "They did this wrong." That is the breach of duty or contract. And that if they had done it correctly there would have been an alternative historical world where a different thing would have happened. You have got to say what that different thing is, and you would, at trial, have to establish why you say that happened.…You have got to prove, you will eventually have to prove, that the alternative scenario was a realistic one. So first of all you need to set it out… what you say would happen in the alternative world…"

15. The Order made at the CCMC (**the CCMC Order**) provided inter alia:

> “3. The Claimant has permission to amend his Particulars of Claim in order to accurately reflect his revised position on causation, as set out in his responses dated 25 November 2022 to the Defendant's request for further information, to be provided in draft to the Defendant by 4:00pm on 11 January 2023.
> “4. The Defendant shall indicate whether it agrees to the Claimant's proposed amendments to the Particulars of Claim by 4:00pm on 25 January 2023. If the Defendant does not agree with the Claimant’s proposed amendments and the amendments cannot be agreed between the parties, and the Claimant wishes to make the proposed amendments, then an application to the court for permission to rely on the amended Particulars of Claim would be required.”

16. The claimant provided draft amended particulars of claim to CRS on 11 January 2023. However, CRS did not agree to the proposed amendments because it said they were incoherent and had no prospect of success. CRS informed the claimant of its position and invited the claimant in letters dated 25 January, 31 January and 9 February 2023 to make an application for permission to amend.

17. The claimant refused to make an application to amend his particulars of claim. This refusal appears to stem from his view that the CCMC Order was in some way unfair and that I had displayed bias in making it and/or that CRS’s solicitors had perpetrated some form of fraud at the without prejudice meeting on 22 November 2022, that CRS’s defence is in some way dishonest and/or that the CCMC Order was in some way wrongful.

18. The claimant’s position seemed on the one hand to be that because the CCMC Order permitted him to amend to clarify his case on causation as set out in his responses to the RFI the claimant was limited to making amendments pleading that partially identified counterfactual scenario. However the claimant has always well understood that it was open to him to make amendments to his pleadings more widely, if the court were to permit them, as is apparent from the terms of his letter of 14 February 2023.

19. In light of the claimant’s refusal to make the application envisaged by the CCMC Order, or any wider amendment application, its view of the particulars of claim, of the responses to the RFI and of the only amendments proposed by the claimant CRS issued its 2 May 2023 application.

20. The claimant’s response was the retaliatory application of 22 May 2023.

History of the Underlying Claim

21. The claimant is a retired professional footballer. The claimant provided funding for a business of purchasing, developing, selling and renting properties in South-West London which was managed by Sean. The business operated through the following relevant corporate entities (**the Companies**):

(i) Wimbledon Developments Limited (**WDL**);
(ii) Finnan Developments Limited (**FDL**); and
(iii) Finnan Land & Property Limited (**FL&P**), which was a wholly owned subsidiary of FDL.

22. The claimant and Sean were 50% shareholders in WDL and FDL and the only directors of the Companies.

23. It is common ground that the Companies at all material times owned various properties as follows (**the Properties**):

(i) WDL owned 5, The Green, Wimbledon (**The Green**), a substantial property located next to Wimbledon Common.

(ii) FDL owned (a) land to the rear of 144 Wandsworth High Street; (b) freehold properties at 28 and 30 Ridgeway Place, Wimbledon; and (c) the head lease of Village Court, Cheam.

(iii) FL&P owned (a) 3 and 3B Thornton Hill, Wimbledon; and (b) Flat 34, Hill Court, Wimbledon.

24. The claimant pointed out that FLP owned 3 further properties, which were sold during the course of his retainer of CRS, for a combined total of £1,332,000 (£487,911.53 net), as follows:

(i) FL&P sold Flat 13, 100-106 13 Haydons Road for £647,000 (£184,014.47 net) in June 2016;

(ii) FL&P sold Flat 10 Village Court for £360,000 (£102,119.00 net) in March 2017; and

(iii) FL&P sold Flat 11 Village Court for £325,000 (£201,778.06 net) in June 2017.

25. The value of the Companies consisted of the value in the Properties, subject to liabilities charged against them or otherwise payable by the Companies.

26. The first expression of the claimant's concerns in the evidence before me is contained in an email sent by the claimant to Robin Koolhaven, a solicitor acting for the Companies, dated 29 January 2016. The main points, in summary, were:

(i) despite significant funding from the claimant by way of loans the Companies appeared to have no money, at least in part because Sean had spent it personally;

(ii) money had been wasted on legal fees sorting out situations which were down to Sean;

(iii) there appeared to be a risk of the Companies defaulting on loans so that control of the Companies would be lost; and

(iv) that Sean's dealings with a contractor called Colin had been needlessly expensive and left a mess for the claimant to sort out;

In the concluding paragraph of the email the claimant wrote "I can't write one line to say I want my money back because it does not register with Sean."

27. On 3 February 2016 Mr Koolhaven responded by email stating that the claimant would be repaid some £300,000 shortly, as it seems that he was, and putting forward a suggestion that there be a meeting to discuss the position with a view to agreeing the issues between the claimant and Sean and how to divide their interests including realisation of assets and then recording that agreement in writing.

28. The claimant first spoke to James Hyne, a partner at CRS, about the dispute with Sean on 4 March 2016. By this time he was concerned because he had advanced something of the order of £3.8m to the Companies (**the Director's Loans**). CRS understood, as is recorded in the attendance note of the call, that the claimant's objective was to recover the Director's Loans and exit the business.

29. The loans were not formally documented and, although the claimant has asserted in evidence and submissions that they were repayable on demand, that was certainly disputed by

Sean. For example in the letter sent by Emin Reed, who were at that stage acting for Sean, dated 26 August 2016 it was said that there was no agreed repayment date and the claimant would be paid upon the sale of developments which the Director's Loans financed. It was also the case that there were no adequate or complete records of the Companies' income or expenditure.

30. On the claimant's instructions Jamie Cartwright, then an associate but shortly thereafter a partner at CRS, entered into correspondence with Sean. Sean made proposals for how matters might be taken forward in a letter of 27 May 2016. There was no proposal in the letter for immediate repayment of the Director's Loans; it was said that completion of current projects would be necessary to enable repayment.

31. Mr Hermann Boeddinghaus of Counsel was retained in June 2016 to advise in conference about the claimant's options.

32. CRS sent Sean a letter before action dated 13 July 2016. The Emin Read response of 26 August 2016 contained proposals for the future of the business and the repayment of the loans. Again, there was no proposal for immediate repayment of the Director's Loans; repayment was linked to the sale of developments. The claimant's reaction to this letter was that it was "an insult to [his] intelligence." The claimant instructed CRS to present two petitions under s.994 of the Companies Act 2006 against Sean, WDL, FDL and FL&P in September 2016.

33. Sean defended the claims. In his defences Sean admitted that there had been an irretrievable break down of mutual trust and confidence with the claimant but denied that any misconduct on his part was the cause and cross-claimed alleging wrongful withdrawal of money from the Companies by the claimant.

34. In late 2016 the claimant made further advances totalling approximately £150,000 to the Companies.

35. During the course of the litigation the claimant obtained expert reports from:

(i) Mr Richard Bliss of Vail Williams who valued the Properties; and
(ii) Ms Kate Hart of Roffe Swayne who valued the Companies.

At the CCMC the claimant's position was that he intended to rely on those expert reports in the current proceedings.

36. The claimant's retainer of CRS terminated in January 2018 following the PTR in the petitions. The claimant instructed Candey Ltd in place of CRS and the matter proceeded to trial in March 2018 before His Honour Judge Pelling QC.

37. Before the trial concluded the claimant entered into a Settlement Agreement (**the Settlement Agreement**) with Sean. The key provisions were:

(i) Sean was to transfer his shares in WDL (which owned the Green) to the claimant;
(ii) the claimant was to transfer his shares in FDL to Sean;
(iii) Sean, FDL and FL&P agreed to pay the Claimant £4m in instalments, secured by charges over the properties owned by FDL and FL&P.

38. The share transfers were implemented, and the charges were put in place. However, the £4m was not paid and the claimant presented a bankruptcy petition against Sean based on that

debt on 23 January 2019. In a judgment dated 18 July 2019 Deputy ICC Judge Shekerdemian QC concluded that a bankruptcy order should be made against Sean. In the course of her judgment, in discussing whether an offer by Sean to give security over his shares in FDL and FL&P was an offer of security that the claimant should have accepted, the Judge concluded that under the terms of the Settlement Agreement the claimant had obtained all the value in the Companies already.

39. The claimant explained in his first witness statement that his only recoveries have been as follows:

(i) £187,570 following the sale of WDL; and

(ii) £89,345 following the sale of the Headlease of Village Court owned by FDL.

The steps he took to achieve these recoveries are described in his second witness statement.

The Claim Form

40. The brief details of claim endorsed on the claim form are:

"The Claimant brings a Professional Negligence and breach of contract claim against a firm (Defendant). The Defendant misadvised the Claimant to commence proceedings in the Chancery Division of the High Court of Justice pursuant to section 994 of the Companies Act 2006, with the petitions being presented to the Court on 08 September 2016. The facts of which are set out in the attached Particulars of Claim. The Claimant has adhered to Pre Action Protocol for Professional Negligence."

The Particulars of Claim

41. The particulars of claim contain 64 allegations of breach against CRS including various allegations that CRS gave the claimant wrong advice.

42. The claimant contends that as a result of breaches by CRS he has suffered losses of at least £6,000,000 comprising:

(i) £3,335,541 representing the Director's Loans to the Companies;

(ii) a minimum of £2,662,079 being the value of his shares in the Companies;

(iii) £396,194 being his costs of the proceedings; and

(iv) a minimum of £30,000 representing the costs of funding those costs.

The Defence

43. CRS's position is that the claim is without merit and the claim is denied in its entirety. CRS defends the claim on, inter alia, the following bases:

(i) the claimant's unfocused and prolix allegations of breach are totally without merit.

(ii) the claimant instructed CRS to issue the s.994 petitions following advice about his options from both CRS and Counsel.

(iii) the claimant's determination to pursue legal proceedings against Sean and his belief that Sean would not agree a settlement is plain from what he said and wrote to CRS, including saying to Jamie Cartwright on 27 May 2016 "Will be court - I've had enough." and on 2 September 2016: "Every point he makes we can raise 20 more. Just an insult of my intelligence – all values are wrong.";

(iv) the claimant has not pleaded a case on causation and therefore the claim cannot succeed as a matter of law.

(v) the claimant has not suffered any loss, because the claimant could not have recovered any more than he in fact did.

It is points (iv) and (v) that are the focus of CRS's application.

44. The defence denies, for the avoidance of any doubt, that had the claimant not commenced the s. 994 proceedings that he would be in a better position than he is now and pleads that the claimant was determined to pursue legal proceedings against Sean rather than settle with him and/or that settlement was not possible.

The Law on Strike Out and Summary Judgment

45. CPR 3.4(2) provides that:

> "(2) The Court may strike out a statement of case if it appears to the court -
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim."

46. Mr Ogden referred to the following principles, set out in the Notes to the White Book at [3.4.2], as material here:

> "Statements of case which are suitable for striking on ground (a) include those which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides [and ones] not being a valid claim or defence as a matter of law."

and

> "Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out before first giving the party concerned an opportunity to amend (*Soo Kim v Youg* [2011] EWHC 1781)."

47. The claimant referred me to the cases of *Bord Na Mona Horticulture Ltd v British Polythene Industries PLC* [2012] EWHC 3346 (Comm) at [29] and *Hughes v Colin Richards & Co* [2004] EWCA Civ 266 as authorities for the proposition that a claim should only be struck out if it is bound to fail.

48. CPR 24.2 provides:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if:
> (a) it considers that -
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
> (b) there is no other compelling reason why the case or issue should be disposed of at trial."

49. Mr Ogden identified the following principles, set out in the Notes to the White Book at [24.3.2] as relevant here:

> "(i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All E.R. 91;
> "(ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

> "(iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*;
> "(iv)This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];
> "(v)However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No.5)* [2001] EWCA Civ 550;As is this set out at [24.2.4]"

And this, set out at [24.3.3]

> (vi) "The overall burden of proof rests on the applicant to establish that there are grounds to believe that the respondent has no real prospect of success and that there is no other reason for a trial."

50. The claimant referred in his submissions to further cases which discuss the tests for strike out and granting summary judgment, which do not add to material to which Mr Ogden referred me.

51. Mr Ogden referred also to the principles governing permission to amend in the Notes to the White Book at [17.3.6]:

> "A proposed amendment must be arguable, carry a degree of conviction be coherent, properly particularised; and supported by evidence that establishes a factual basis for the allegation: see *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33 at [18]."

And

> "The Court may reject an amendment seeking to raise a version of events which is inherently implausible, self-contradictory or is not supported by contemporaneous documentation: *Collier v P&MJ Wright (Holdings) Ltd* [2007] EWCA Civ 1329."

The Substantive Law

52. Mr Ogden referred me to *McGregor on Damages* 21st edition. [8-003] which explains the necessity of satisfying the "but for" test in tort if causation is to be established and says this:

> "Since the test is concerned with the necessity of the factual event for the factual outcome it is commonly referred to as "factual causation" although strictly the test itself is not factual or physical but metaphysical. It involves asking the "counterfactual" question of what would have happened but for the wrongdoing."

53. In its discussion on causation in contract at [8-142] *McGregor* says this:

> "In general the same issue of causation applies to damages for breach of contract as it does for torts although it is essential to reiterate the two different meanings of loss that apply in claims for breach of contract. Where the claim for loss from a breach of contract concerns the value of promised benefits which have not been provided, the element of causation is usually satisfied by the claimant showing that but for the breach of contract the promised performance would have been received. Where the claim for loss concerns further, consequential losses such as lost profits then it is

usually necessary for a claimant to show that but for the breach of contract the further loss would not have been suffered."

54. Mr Ogden submitted that absent causation of loss the claimant's cause of action in tort is incomplete and his cause of action in contract would lead to no recoverable loss so that there is no purpose in the proceedings continuing.

55. The claimant referred in his skeleton argument and in submissions to *Bolam* and other cases dealing with the standard of care that he says might be expected from solicitors such as Jamie Cartwright and Stephen Burns, the partner supervising him at the commencement of the claimant's retainer of CRS, who held themselves out as specialists in shareholder disputes.

56. He referred also to the observation of His Honour Judge Taylor in *Clark v Sainsburys Supermarkets Ltd* [2022] EAT 143

> "Litigation is to be avoided where possible. Reasonable settlement of claims is to be encouraged. Many litigants come to appreciate this with the benefit of hindsight. Even those who are successful are often not as successful as they wanted, may be subject to criticism, and can find that the costs of the litigation in terms of time, money and emotion makes the victory Pyrrhic."

57. He referred also to the case of *Corbett v Corbett* [1998] BCC 93 where Judge Howarth sitting as a High Court Judge said the following:

> "'I am well aware of the fact in s. 459 cases they are in every bit like an acrimonious divorce case between two people whose marriages fail. They are one of the instances in life where frankly bloody-mindedness takes over and people are capable at least acting in a way of doing the other side down and getting pleasure from doing the other side rather than by acting in accordance with strict, rational forms of behaviour for their own long term interests of the company '

58. The claimant pointed out that that passage was cited by Sir David Eady in the case of *Graham Seery v Leathes Prior* [2017] EWHC 80 (QB) when dismissing a claim that a solicitor had been negligent in not encouraging a client to pursue s. 994 proceedings because of the risks and difficulties in taking such a course.

59. The claimant referred also to *SAAMCO* [1997] AC 191 and the distinction made in that case between losses arising in an information case and an advice case. He pointed out that the Supreme Court has recently revisited that analysis in the two cases of *Manchester Building Society v Grant Thornton UK LLP* [2021] UKSC 20 and *Kahn v Meadows* [2021] UKSC 21. He referred to the six-point analysis to be applied in determining the scope of a professional's duty set out in [6] of the leading judgment in the *Manchester* case:

> "(1) Is the harm (loss, injury and damage) which is the subject matter of the claim actionable in negligence? (the actionability question)
> (2) What are the risks of harm to the claimant against which the law imposes on the defendant a duty to take care? (the scope of duty question)
> (3) Did the defendant breach his or her duty by his or her act or omission? (the breach question)
> (4) Is the loss for which the claimant seeks damages the consequence of the defendant's act or omission? (the factual causation question)

(5) Is there a sufficient nexus between a particular element of the harm for which the claimant seeks damages and the subject matter of the defendant's duty of care as analysed at stage 2 above? (the duty nexus question)
(6) Is a particular element of the harm for which the claimant seeks damages irrecoverable because it is too remote, or because there is a different effective cause (including novus actus interveniens) in relation to it or because the claimant has mitigated his or her loss or has failed to avoid loss which he or she could reasonably have been expected to avoid? (the legal responsibility question)

60. He also pointed out that at [4] of that judgment the following was said:
“In summary, our view is that (i) the scope of duty question should be located within a general conceptual framework in the law of the tort of negligence; (ii) the scope of the duty of care assumed by a professional adviser is governed by the purpose of the duty, judged on an objective basis by reference to the purpose for which the advice is being given (in the context of this judgment, we use the expression “purpose of the duty” in this sense); (iii) in line with the judgment of Lord Sumption in Hughes-Holland at paras 39-44, the distinction between “advice” cases and “information ” cases drawn by Lord Hoffmann in his speech in SAAMCO should not be treated as a rigid straitjacket; and, following on from this, (iv) counterfactual analysis of the kind proposed by Lord Hoffmann in SAAMCO should be regarded only as a tool to cross-check the result given pursuant to analysis of the purpose of the duty at (ii), but one which is subordinate to that analysis and which should not supplant or subsume it. The points which we make below in relation to the facts of the case as found by the judge reflect our view regarding the proper approach to be adopted.”

61. He also referred me to [94] of *Kahn*, where Lord Leggatt said this:
“In my judgment in *MBS* at paras 105-106, I have addressed the circumstances in which it may be useful to apply the counterfactual test stated by Lord Hoffmann in *SAAMCO* of asking whether the loss would have occurred even if the information or advice given by the defendant had been correct. I have also emphasised (at paras 128-129 of that judgment) that when such a test is applied the relevant question is not - as has sometimes mistakenly been supposed - whether, if the advice given by the defendant had been correct advice to give, the claimant would have acted differently. The question is whether, if the advice had been correct in the sense that the facts had been as the defendant represented them to be, the action taken by the claimant as a result of the defendant’s negligent advice would have caused the same injury.”

The Responses to the RFI and the Proposed Amendments

62. CRS’s relevant RFIs were as follows.
“28. Please set out
(a) what advice the Claimant contends he should have been given by the Defendant;
(b) when the Claimant alleges that advice should have been given and
(c) what the Claimant says he would have done upon receipt of the advice he says he should have been given (and when he would have done it).
“29. Is it the Claimant’s case that had the Defendant not acted negligently he would not have presented the unfair prejudice petitions on 8 September 2016?
(a) If so, what does the Claimant contend he would have done instead and when would he have done it?

(b) If not, what does the Claimant contend he would have done and when would he have done it?

63. The claimant produced responses in a document dated 6 September 2022. The claimant's responses to Requests 28(a) and (b) identified various further alleged failures to give advice by CRS, but the responses to Requests 28(c), 29, 29(a) and 29(b) did not set out the claimant's case as to what he would have done and with what result and why he would now be in a better position than he is now. CRS wrote in a letter of 20 October 2022:

> "In responding to these RFIs you have not, for example, explained what you say you would have done with that advice and why you say that such advice would have led to a different outcome and what you say that outcome would have been.
>
> "The purpose of this correspondence is to seek to narrow the issues in dispute between the parties. We would be grateful, therefore, if you could respond fully to RFIs 28 and 29."

64. The claimant responded with an amplified set of responses to 28(c), 29(a) and 29(b) as follows (6 September responses in normal type, 22 November in italic):

28(c)

"Relied upon the advice (being advice from a specialist in these matters) at the time it was given.

"The Claimant considers the response is sufficient for the Defendant to understand the Claimants case. For example, amongst other things, the Claimant did not want to instruct a barrister in the matter but relied on the Defendants advice to instruct a barrister. The Claimant did not want to instruct a forensic account to rewrite the Companies' accounts but relied on the Defendants advice to instruct a forensic accountant. The Claimant did not want to spend a lot of money and had to be careful financially but relied on the Defendants advice the matter required upfront spending (and that money would be recovered). The Claimant did not want to amend the petitions but relied on the Defendants advice to amend them. In other words, the Claimant did not do anything other than rely on advice given by the Defendant (relying on every piece of advice at every step). Had the Defendant advised differently (as pleaded by the Claimant), the Claimant would have relied on that advice at the time it was given."

29

"Yes, as well as the Defendant being in breach of clause 4 of the Letter of Engagement.

"The Claimant considers the response is sufficient for the Defendant to understand the Claimants case."

29(a)

"The Claimants response to 28(c) above is repeated.

"The Defendants requests are confusing and they have failed to adequately explain them. The Claimant understands 29(a) to be the exact same question as 28(c). The request at 29 asks;

> *Is it the Claimants's case that had the Defendant not acted negligently he would not have presented the unfair prejudice petitions on 8 September 2016?*

29(a) follows with;

> *If so, what does the Claimant contend he would have done instead and when would he have done it?*

"If the Defendant had not acted negligently (29), then they would have given non-negligent advice. The Claimant was not retained to give no advice. The Claimant has already responded in great detail to these requests at 28(a) and 28(b). Therefore, requesting at 28(c) 'what the Claimant says he would have done upon receipt of the advice he says he should have been given (and when he would have done it)' and then at 29(a) 'If so, what does the Claimant contend he would have done instead and when would he have done it?' are one and the same requests."

29(b)

"This is not understood. The question appears to imply no advice would of been given to the Claimant had the petitions not been issued. To that end, the question is only relevant had the Defendant not been instructed (the Defendant was instructed to give advice of which the Claimant was relying upon). For the avoidance of doubt, the Claimants response to 28(c) above is repeated but in any event, Counsel advised in the conference of 16 June 2016 of a 'do nothing' approach and allow the assets to be sold (the Defendant had stated to Sean Finnan in the 28 April 2016 letter that discussions shall take place to agree an acceptable timeframe to sell the Companies' assets).

"Again, a confusing request that has to be taken as an opposite request to that of 29(a). The Claimants response on this point is therefore repeated. The Defendant has also ignored, and failed to accept, the Claimant simply had to demand repayment of his loans.

"The Defendants requests are extremely difficult to follow. If the Defendant were to give no advice then they should have informed the Claimant and ended the retainer prior to mis-advising the Claimant to present the petitions. Save for ending the retainer, the Defendant could have only done one thing when retained. Give advice. That advice was either negligent or non-negligent. The Defendant is being ignorant of the Claimants claim and the following has to be repeated with evidence attached.

Sean Finnan;

> *1. Agreed to a parting of the ways, prior to the Defendant being instructed and prior to the presentation of the petitions. This is acknowledged by the Defendant on page 1 and by Counsel on pages 2 and 3.*
>
> *2. Agreed the Claimants directors loans (admitted by the Defendant in their Defence at 51 - page 4) and they're repayment prior to the presentation of the petitions (pages 5 & 6).*
>
> *3. Agreed to the winding up of the Companies prior to the presentation of the petitions (page* 5).
>
> *4. Agreed to a split of assets prior to the presentation of the petitions (pages 5 & 6).*

"In such circumstances, the 'dispute' between the Claimant and Sean Finnan was created by the Defendant as they advised to threaten Sean Finnan (locking him into litigation) to accept liability for misappropriating funds with the knowledge he was unable to buy out the Claimant (therefore using the petitions for an improper purpose).

"The Claimants pleaded case is based on the value of his 50% shares and not an additional amount to reflect Sean Finnan misappropriating funds. The Defendant was retained to assist in the repayment of the Claimants directors loans and thereafter,

his 50% shares (admitted by the Defendant at page 7 and 16(c) of their Defence - page 8). The Claimants pleadings reflect this (for example, separate from Sean Finnans second offer in his 27 May 2016 letter or first offer in his 26 August 2016 letter of response, if the Defendant advised the Claimant to negotiate and / or discuss the management of the Companies, the Claimant is pleading this would have resulted in the repayment of directors loans and 50% shares - something that was never disputed by Sean Finnan).

As mentioned above, all the Defendant had to do was advise the Claimant to demand repayment of directors loans. Despite the Defendant denying at 25(c) of their Defence that they sent an email stating demanding the loans was a legitimate demand (page 9), page 10 shows the opposite. Furthermore, prior to the petitions being issued, page 11 shows Jamie Cartwright acknowledging the loans to be repayable on demand. Any solicitor acting with reasonable skill and care would have advised their client to send a letter to the Companies demanded repayment of those loans (especially when Sean Finnan accepted the amounts and agreed they're repayment). If the Defendant was not willing to give advice or, as requested above (What would the Claimant had done differently' (based on no advice being given)), the Claimant would have demanded repayment of his entire loans (a process he started just prior to instructing the Defendant and was paid £300,000 with Sean Finnan's agreement). Whatever the separation between the Claimant and Sean Finnan, this could only have started with the repayment of directors loans, whether that be by selling properties and/or splitting assets (not by a buy out of shares from an impecunious individual)."

65. Following the CCMC Order the claimant put forward proposed amendments as to causation and loss as follows:

"142. Save for any other advice the Claimant has pleaded the Defendant should have given, the Defendant should have advised the Claimant to demand repayment of directors loans from the relevant Companies by sending letters to those Companies demanding the loans be repaid (whilst providing copies of the letters to the Claimants brother). The Defendant should have given the advice at any such time from 18 March 2016 to 08 September 2016, but in particular on the following dates;

[18 March 2016, … 11 April 2016, … 20 April 2016, … 27 May 2016, … 16 June 2016, … 15 July 2016, 28 July 2016, … 10 to 15 August 2016, …26 August 2016, 31 August 2016, …, 2 September 2016…

"143. Had the Defendant given such advice as referred to above at 142, the Claimant would have agreed with the advice and instructed the Defendant to send the letters to the relevant Companies demanding the loans be repaid. Once the letters had been sent, the Claimant would have acted immediately and;

143.1 Withdrawn a reasonable amount of monies from the Companies had there been monies available, and/or;

143.2 Withdrawn a reasonable amount of monies from the Companies on completion of sale of properties / assets that were at the time in the process of being sold, and/or;

143.3 Started the process of selling additional properties / assets and withdrawn a reasonable amount of monies from the Companies on completion of sale of those properties / assets, and/or;

143.4 Agreed terms with his brother to split the properties and/or assets and/or Companies to reflect the amounts owed by way of directors loans (including a value to the Claimants shareholding), and/or;

143.5 Once the Claimant had been paid his directors loans from the relevant Companies as referred to above at 143.1 to 143.3, the Claimant would have i) withdrawn a reasonable amount of monies from the Companies reflecting the value of his shares and/or ii) continued with the sale of properties / assets and withdrawn a reasonable amount of monies from the Companies reflecting the value of his shares upon completion of sale of those properties / assets and/or iii) agreed terms with his brother to split the remaining properties / assets / Companies.

"144. Had the Defendant not acted negligently by advising the Claimant to present s994 petitions seeking a buy-out of shares from an impecunious individual, but instead gave non-negligent advice to the Claimant to demand repayment of directors loans from the relevant Companies, and with the Claimant acting on the advice given at the relevant time(s) as pleaded;

144.1 The Claimant would have received circa £3,000,000 of directors loans owed to him by the relevant Companies, and;

144.2 The Claimant would have received a minimum payment of £2,662,079 (being the value of his shareholding in the relevant Companies), and/or

144.3 The Claimant would have received the value of his shares (the sum referred to a above at 144.2) by way of a split of properties and/or assets and/or Companies after receiving his directors loans as referred to above at 144.1, and/or;

144.4 The Claimant would have received the value of his directors loans and the value of his shares (the sums referred to above at 144.1. and 144.2.) by way of a split of properties and/or assets and/or Companies, and;

144.5 The Claimant would not have advanced further loans to the Companies of circa £300,000 after the commencement of the s994 petitions, and;

144.6 The Claimant would not have spent £414,806 on legal fees, and;

144.7 The Claimant would not have needed to require loans to fund legal fees, of which came at a minimum cost of £30,000 by way of interest, fees or otherwise, and;

144.8 The Claimant would not potentially remain liable to alleged creditors relating to;

144.8.1 Personal Guarantees relating to any properties associated with FDL and FL&P, and;

144.8. Legal Fees."

CRS's Submissions

66. Mr Ogden submitted that the existing particulars of claim and reply do not set out what the claimant says that he should have been advised by CRS or what CRS should have done or what the claimant says would have happened as a result. Nor he said, do they set out any counterfactual situation where he would be in a more advantageous position than he is now in as a result of the advice or action CRS should have given or taken and nor do the existing particulars of claim set out a case that the claimant has been caused loss as a result of an alleged breach of contract or negligence on the part of CRS.

67. Therefore, Mr Ogden said, the claimant's claim is liable to be struck out and/or summary judgment should be entered against him.

68. Mr Ogden identified the essence of the claimant's presently pleaded case from, in particular, RFI Response [29(b)] – "The Defendant has also ignored, and failed to accept, the Claimant simply had to demand repayment of his loan." That is that the claimant would have received the sums of over £6,000,000 in respect of his Director's Loans and the value of his shares and would not have expended around £430,000 to fund the proceedings, these being the amounts he now claims as damages, had CRS advised that the claimant simply demand repayment of the Director's Loans.

69. Mr Ogden said that that case has no merit and cannot succeed at trial for a number of reasons.

70. First, on the claimant's own case demands were made of Sean for repayment of the Director's Loans. [28-31] of the claimant's third witness statement are headed "The Demand For the Loans". In that section the claimant complains that Rachael Healey's second witness statement states that the Loans were never demanded. (This appears to be a misinterpretation of Ms Healey's evidence to the effect that demands for repayment of the loans would not have led to repayment.) In support of his complaint Mr Finnan refers to the demand made by the claimant via Mr Koolhaven on 29 January 2016 which produced £300,000. He then refers to Jamie Cartwright advising the claimant to demand the loans in a letter of 20 April 2016 and then making a demand on behalf of the claimant in a letter to Sean dated 28 April 2016. Finally he refers to the pre-action letter dated 13 July 2016 including a demand for repayment of the loans. [32] concludes this section of evidence:

> "Throughout the times the loans were demanded, none[sic] put the Companies into liquidation, but rather I received monies and/or my brothers agreement to the loans being repaid."

71. Later in the same witness statement at [238] the claimant records that the loans were demanded 3 times - by letter of 28 April 2016, by letter of claim dated 13 July 2016 and at mediation. His complaint at [239] appears to be that he should have been advised to demand repayment from the Companies, not Sean, and that the demand should not have been accompanied by a threat to wind up the Companies.

72. The claimant also referred to the demands having been made during the CCMC in December 2022. As appears from the transcript his position seemed to be that he was advised by CRS that it was legitimate to make demands for the loans and therefore that they must have been repayable when demanded.

73. Thus the claimant's own evidence contradicts the partial counterfactual that response [29(b)] of the RFI postulates. To the extent that the counterfactual advanced is that the Director's Loans should have been demanded, that did in fact occur. The outcome of demanding repayment is known - the Director's Loans were not repaid, proceedings were issued and in due course the Settlement was reached.

74. There is no relevance in the fact that the demands were addressed to Sean and not the Companies, in circumstances where Sean was the only other person who could agree or action any demand made of the Companies. Further, to the extent that it is suggested by the claimant that Sean agreed the Director's Loans should be repaid, Sean did not cause any repayment to be made after CRS became involved in March or April 2016.

75. Secondly, the reason for the Director's Loans not being repaid is clear. The Companies did not have cash available to make payment. The claimant's instructions to CRS in his initial telephone call on 4 March 2016 with Mr Hyne recorded in CRS's attendance note were:

> "he believes there are unpaid bills and tax liabilities…. There is little cash in the business and such cash will run out quickly now that [the claimant] has withdrawn his funding."

76. Ms Hart's expert report recorded the cash position of the Companies as follows:

(i) FDL had £10,051 at 30 April 2016 and £138 at 9 November 2017 while the claimant's loans were £2,799,274 and £2,989,100 on those dates;
(ii) FL&P had cash of £163,469 at 30 April 2016 as at £4,601 9 November 2017 while the claimant's loans were of £343,555 and £355,840 on those dates;
(iii) WDL had no cash at either 30 April 2016 or 9 November 2017 while the claimant's loans were £9,300.

77. Thirdly, by reaching the Settlement Agreement with Sean the claimant in effect placed himself in a position to realise the entire value of the Companies. There is no evidence or any pleading that more might have been realised by the claimant. By the terms of the Settlement Agreement the claimant:

(i) became sole owner of WDL; and
(ii) acquired charges over the properties owned by FDL and FL&P.

78. Mr Ogden pointed out that the claimant has not made an application to amend his particulars of claim. He has refused to do so despite the terms of the CCMC Order and repeated invitations by CRS. If, despite that, I were to grant the claimant the indulgence of considering the proposed amendments and possible other amendments that the claimant might seek to make, Mr Ogden said that they do not assist the claimant. Again, this is said to be for a number of reasons.

79. First, the claimant's position appears to be that if a further demand for repayment of the Director's Loans had been made the claimant could simply have withdrawn money from the Companies. This fails to take account of the lack of cash in the Companies and that the claimant could not have made a unilateral and immediate withdrawal of cash for his own benefit.

(i) withdrawals of the cash amounts lent by the claimant would not obviously be in compliance with the claimant's duties as a director under the Companies Act 2006 to act within his powers, to promote the success of the Companies, to exercise independent judgment, to act with reasonable care, skill and diligence, to avoid conflicts of interest and to declare his interest;
(ii) although the claimant has asserted the loans were repayable on demand Sean took a different position, as recorded in the Emin Reed letter of 24 August 2016 and, in the absence of formal documentation, any dispute on this point would not have been swiftly resolved; and
(iii) there is nothing to suggest Sean would have allowed the claimant to withdraw cash from the Companies when it was needed to fund continued trading. Sean's position was that cash withdrawals would cause the Companies to default on lending obligations to third parties and the loss of the Properties,

80. Secondly, any argument that the claimant should have been advised about making a demand and what would have occurred had he been so advised is contradictory and incoherent. In his own evidence the claimant asserts that demands were made. The claimant also says that he should have been advised to demand the loans without threatening to wind up the Companies, on the other hand the claimant says elsewhere ([82] of his second witness statement) that he should have been advised "to agree the sale of the properties and the wind up of the Companies."

81. Thirdly, any argument that there would have been a split of the Properties or assets does not assist the claimant. By the Settlement Agreement the claimant did better than a split of the assets as the effect was to enable him to realise all the Companies' net assets, after the payment of creditors, for his own benefit.

82. Fourthly, Mr Ogden said that the proposed amendments are vague, do not carry a degree of conviction and are not supported by evidence which establishes a factual basis which meets the merits test.

83. Fifthly, to the extent that Sean made any offer capable of acceptance in his letter of 27 May 2016, the claimant's response to it was that the proposal was not acceptable to the claimant, that he did not think Sean was genuinely trying to reach a settlement and did not think the proposal was achievable or would result in property sales in the near future, as is pleaded at [36(a)] of the Defence and which is the subject of a non-admission by [23] of the claimant's reply. Even if, despite that disavowal of the offer being workable the claimant were to get such a case off the ground, the claimant cannot say he would in the end have arrived at a different financial outcome.

84. To the extent that Sean made an offer capable of acceptance by his solicitor's letter of 26 August 2016 acceptance of it was not consistent with the claimant's instructions at the time. He wanted a clean break and as pleaded at [60(b)] of the defence "had no interest in the offers and wanted to move forward with urgency with the petitions" which is the subject of a non-admission by [40(a)] of his reply.

85. Any case that correspondence with Sean might have achieved a different settlement does not credibly lead to a better outcome. The claimant wanted out, but he did not want to engage with the offers. Even if such a case about a negotiated settlement was not contradicted by the evidence of his position at the time it goes nowhere because no different financial outcome was possible.

86. Mr Ogden therefore asked me to strike out the claimant's claim and/or enter reverse summary judgment. He said that the claimant has been given numerous opportunities to put forward a coherent case on causation but has failed to do so. Given what the Settlement Agreement achieved, there is nothing to suggest a yet further opportunity will do anything other than delay the inevitable.

The Claimant's Submissions

87 The claimant's skeleton argument summarised his position as follows:

(i) his priority was to obtain repayment of the Director's Loans, which he says were repayable on demand and he had agreed that and a subsequent split of the assets of the Companies in principle with Sean;

(ii) he made that priority clear to CRS.

(iii) CRS and Counsel advised that he should proceed with s.994 petitions, notwithstanding that Sean was impecunious and that the claimant did not want to litigate but wanted to settle quickly;
(iv) bringing proceedings would make matters worse.

88. The claimant said in relation to causation that the purpose of CRS being retained was to assist him obtaining repayment of the Director's Loans which were repayable on demand, not to seek a buy-out of shares from an impecunious individual, or wind up the Companies, or demand from Sean more than the Director's Loans and 50% of the shares. In addition, he said that CRS had a duty to safeguard the claimant from harm or loss.

89. The claimant said that the court should not focus on the counterfactuals he has or has not pleaded, but rather the scope of CRS's duty of care having particular regard to the purpose for which CRS was retained.

90. The claimant went on to make a number of other points. He asserted that the defendant had failed to support their application with sufficient evidence to show why the claimant's case has no prospect of success and asserted that evidence that has been filed contradicts their position. He complained that Ms Healey places reliance on a letter from Mr Boeddinghaus's solicitors, in answer to a possible claim against him which asserts that the Settlement Agreement was a good one and yet he points out that CRS's defence denies that the Settlement Agreement was reasonable.

91. The claimant alleged that dishonesty of CRS's solicitors with regard to the conduct of the meeting on 22 November 2022 means that their application should be dismissed.

92. The claimant complained that because contingent amounts for both a summary judgment or strike out application and an application to court to require the claimant to properly set out his pleadings were included in CRS's costs budget it is not open to CRS to have brought its application to strike out or for summary judgment before making an application for the claimant to amend his pleadings.

93. The claimant further asserted that his evidence in response to CRS's application demonstrates that the application should fail.

94. In his skeleton argument, the claimant stated that the draft amended particulars of claim are "not proposed by the claimant and they never will be (if the claimant were ordered to amend his particulars of claim, which for reasons given below is denied he should do so or even could do so)."

CRS's Responses to the Claimant's Other Points

95. Mr Ogden's answer to the claimant's submission that the application is not supported by evidence is that the claim is liable to be struck out because of its identified deficiencies and that the views of either Ms Healey or Mr Boedinghaus's solicitor as to the merit of the Settlement Agreement are irrelevant.

96. Mr Ogden submitted that there is no proper basis whatsoever for the allegation of any dishonesty on the part of CRS's solicitors at the meeting on 22 November 2022 that is made and that I should reject it.

97. Mr Ogden's answer to the point on costs budgeting is that CRS are procedurally entitled to make the application that they have made without first making a separate application for the claimant to amend his pleadings.

98. Mr Ogden's answer to the claimant's submission that his evidence demonstrates that CRS's application should fail is that he has identified in his submissions why the strike out/summary judgment application should succeed and the claimant's witness evidence does not provide any answer to it.

Conclusions

99. Causation of loss is an essential part of any cause of action that the claimant may have in tort and in its absence there can be no valid claim in tort; a cause of action in the tort of negligence is only complete when damage occurs . If there is no sustainable case on causation of loss there is no reasonable ground for pursuing any claim in contract as it will result in no benefit to the claimant.

100. The claim form's complaint is that the claimant was misadvised to pursue s. 994 proceedings but the claim form fails to identify the causation of loss. Despite multiple further complaints alleged to be breaches of duty contained in the particulars of claim there is no identification of causation of any loss.

101 There is no pleading within the particulars of claim along the lines:

(i) CRS should have advised or done x;

(ii) in reliance on that advice or as a consequence of that act the claimant would have done y; and

(iii) as a consequence z would have happened, where z includes the claimant recovering a net amount in excess of that which he has in fact recovered net.

102. The claimant's submissions on standard of care are not relevant to the application before me.

103. The three cases to which the claimant referred in which judges warned about the risks of litigation generally and the particular risks of shareholder litigation have potential relevance to questions of breach of duty but, again, are not directly relevant to the application before me.

104. The questions within the *Manchester Building Society* 6-point analysis of scope of duty relevant to CRS's application are: 2 – the scope of duty question and 4 – the factual causation question.

105. The scope of CRS's duty question literally asked is: what are the risks of harm to the claimant against which the law imposes on CRS a duty to take care? The phraseology of the question is not entirely apt to consideration of the scope of the duty of a solicitor asked to achieve what CRS was asked to achieve here namely, the payment of the Director's Loans and 50% of the value of the Companies' shares. It might instead be more appropriate, in seeking to identify the scope of the duty, to ask: what is the net recovery that it was possible for CRS to achieve for the claimant? The answer to that question can be no more than the maximum net value that it was possible for the claimant to extract from the Companies and Sean taking account of the costs of achieving that result.

106. The factual causation question is: is the loss for which the claimant seeks damages the consequence of the defendant's act or omission? The loss which the claimant seeks to recover in these proceedings could only have been achieved for the claimant by CRS to the extent that Sean or the Companies could have paid the amounts owing and the costs incurred. The claimant's own initial instructions to CRS and the evidence of the claimant's own expert in the petitions, is that there was never a time when there was cash available to make payment. It is also notable that the claimant himself injected further cash into the Companies in late 2016, which is entirely consistent with the Companies being short of liquid funds. By the terms of the Settlement Agreement the claimant obtained the promise of payment of a substantial sum, which proved ultimately to be significantly more than that which he was able to extract in value from the Companies and Sean.

107. It is then instructive to consider the counterfactual cross-check. What advice could CRS have given or what action could CRS have taken which would have led to the claimant achieving recovery of the sums which he claims by way of damages in these proceedings? At present the only partial counterfactual upon which the claimant has sought to rely, although not at this stage formally included in his particulars of claim is that he should have been advised to demand repayment of the Director's Loans or CRS should have made such a demand. However, the claimant's own evidence is that demands were made and that evidence is entirely consistent with CRS's letters which include such demands. Accordingly, the pleading is not of a partial counterfactual, but of what in fact occurred. Since the demands were in fact made the outcome of their being made is known. Neither Sean nor the Companies responded by meeting the demands with payment at any stage after CRS were instructed. There is no evidence of the means, against the background of the known cash position and the known eventual working out of the Settlement Agreement, by which the making of any such demands would or could have led to a better result than that which the claimant actually achieved.

108. It is not necessary for a defendant to adduce evidence to show that a claimant's pleaded case should be struck out. If a claimant's case as pleaded is deficient in and of itself the court may conclude that it should be struck out. It is accordingly not necessary to explore the claimant's criticisms of Ms Healey's evidence in determining the strike out application.

110. It is not relevant that Ms Healey places reliance in her evidence on a letter from Mr Boeddinghaus's solicitor, in answer to a possible claim against him, which asserts that the Settlement Agreement was a good one and yet CRS's defence denies, in the alternative to its primary line of defence, that the Settlement Agreement was reasonable. If CRS's primary position on causation of loss is correct the reasonableness or otherwise of the Settlement Agreement does not fall to be considered.

111. The claimant's allegation that CRS or its solicitors were in some way dishonest in their conduct of the meeting on 22 November 2022 or in obtaining the CCMC Order is not coherently particularised and is impossible to understand and there has been no application to set aside or appeal the CCMC Order. I reject that allegation of dishonesty. Even if it were made out, it would not be a reason for not acceding to an application to strike out the claimant's pleadings were I otherwise minded to do so.

112. Just because a party at a CCMC persuades a court that there are two contingent applications for which it is proper to budget at that stage of the litigation, does not mean that

if, as the litigation develops, the party decides that the better approach is to roll the contingent applications into one that that course is impermissible procedurally.

113. I am therefore satisfied that the claimant's presently pleaded particulars of claim disclose no reasonable ground for bringing the claim. The cause of action in tort is incomplete in the absence of any pleaded causation of loss and the cause of action in contract could lead to no benefit to the claimant and pursuit of that claim would be wasteful of the resources of the parties and the court.

114. Having reached that conclusion the question that remains is whether I should afford the claimant a final opportunity to produce new particulars of claim.

115. It is not enough for the claimant to complain that he should not have been advised to commence the s.994 petitions and instead CRS should have advised that he make demands for repayment of the Director's Loans. Any new particulars of claim would need to include a coherent case on causation of loss which had a reasonable prospect of success.

116. If the claimant's evidence in opposition to the application were supportive of a case on causation that the claimant could convincingly plead and succeed upon it might lead to the court giving the claimant a further opportunity to plead a case with a realistic prospect of success.

117. The claimant's proposed amendments and his evidence filed in response to CRS's application fail to identify how the claimant could amend his particulars of claim to plead a viable case on causation of the loss which he claims in the proceedings.

118. The claimant has no answer to the lack of cash within the Companies or the lack of any value available to be extracted from the Companies or Sean. The claimant has no explanation either for how if, as was in fact the case, Sean did not respond positively to demands for payment he could have extracted monies from the Companies against Sean's wishes.

119. The claimant's case that he was not advised to make demands is contradicted by his own evidence and the correspondence that shows that demands were in fact made. The fact is that Sean did not respond to any demands after CRS were instructed by making or causing the Companies to make any repayment.

120. There is nothing in the claimant's evidence which supports a credible and realistic case that any different and better outcome than he achieved could ever have been achieved.

121. The claimant's problem in pleading a case with a realistic prospect of success is that the limiting factor in achieving any better result than he did was the inability of Sean and the Companies to yield more value by way of recovery. That limit is in effect the extent of the scope of CRS's duty to the claimant and is the reason why there is no convincing or coherent counterfactual case available to the claimant to advance which could, on the facts, lead to the recovery of a sum in the amount that he seeks.

122. The claimant was given permission to amend in a particular way at the CCMC in December 2022. The claimant proposed draft amendments in January 2023 but they were not agreed by CRS. The claimant did not make any application to amend either in accordance with his proposals or in any wider form as his letter of 14 February 2023 made clear was

something that he knew he could do. He also did not make any application to amend in response to the strike out application.

123. In his own skeleton argument, the claimant states that the draft amended particulars of claim are "not proposed by the claimant and they never will be (if the claimant were ordered to amend his particulars of claim, which for reasons given below is denied he should do so or even could do so)."

124. Taking all those matters into account there is no reason to give the claimant any further opportunity to amend and I do not propose to do so. The particulars of claim and the claim will be struck out.