Neutral Citation Number: [2025] EWHC 14 (Ch)

Case No: BL-2022-MAN-000036

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

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Friday, 17 January 2025

Before :

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between :

NIPROSE INVESTMENTS LIMITED
AND 34 OTHER CLAIMANTS

60th to 94th Claimants

- and -

VINCENTS SOLICITORS LIMITED **10th Defendant**

- -
- -

Mr Simon Wilton KC (instructed by **RPC**, London) for the **10th Defendant/Applicant**
Mr Laurie Scher (instructed by **Walker Morris LLP**, Leeds) for the **60th to 94th Claimants/Respondents**

Hearing date: Thursday, 5 December 2024
Date judgment circulated: Tuesday, 7 January 2025
Hand down date: Friday, 17 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.00am on Friday 17 January 2025 by circulation to the parties or their representatives by e-mail, by uploading it to CE-File, and by release to the National Archives.

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HIS HONOUR JUDGE HODGE KC

Professional negligence *– Solicitors – Defendant's application for strike out or summary judgment – Defendant acted for purchasers of some 50 residential units in a buyer-funded, off-plan development scheme – Purchasers losing their substantial up-front payments on failure of development – Purchasers suing their conveyancing solicitors for breach of duty – Extent of duty on purchasers' solicitors – Whether duty to advise that deposit-holding machinery offered no meaningful protection – Whether duty to advise purchasers against risks of investing in development – Whether duty to advise purchasers against entering into transaction – Whether duty to ensure advice fully understood – Whether solicitors in breach of duty – Whether loss of purchasers' investments legally attributable to any breach of duty – Whether claim sufficiently pleaded – Whether purchasers' claims should be struck out or summary judgment entered for defendant solicitors*

Amendment *– Application to amend outside the applicable limitation period – Whether amendments seeking to add a new cause of action – If so, whether amendments arising out of the same, or substantially the same, facts as are already in issue – If so, whether the court should exercise its general discretion to allow any, and if so which, amendments – Limitation Act 1980, s. 35 (5) (a); CPR 17.4 (2)*

The following cases are referred to in the judgment:

Ballinger v Mercer Ltd [2014] EWCA Civ 996, [2014] 1 WLR 3597
Berezovsky v Abramovich [2011] EWCA Civ 153, [2011] 1 WLR 2290
Carradine Properties Ltd v DJ Freeman & Co [1999] Lloyd's Rep PN 48
Co-Operative Group Ltd v Birse Developments Ltd [2013] EWCA Civ 474; [2013] BLR 383
Dickinson v Lowery Unreported, 23 March 1990 (Auld J)
Elite Property Holdings Ltd v Barclays Bank Plc [2019] EWCA Civ 204
Kawasaki Kisen Kaisha Ltd v James Kemball Ltd [2021] EWCA Civ 33, [2021] 1 CLC 284
Morris v Williams & Co Solicitors [2024] EWCA Civ 376, [2024] 3 WLR 693
Mulalley & Co. Ltd v Martlet Homes Ltd [2022] EWCA Civ 32, 200 Con LR 1
Niprose Investments Ltd v Vincents Solicitors Ltd [2024] EWHC 801 (Ch)
Petersen v Personal Representatives of Cyril B. Rivlin [2002] EWCA Civ 194, [2002] Lloyd's Rep (PN) 386
Rubenstein v HSBC Bank Plc [2012] EWCA Civ 1184, [2013] PNLR 9
Savings and Investment Bank Ltd v Fincken [2001] EWCA Civ 1639
South Australia Asset Management Corporation v York Montague Limited [1997] AC 191

His Honour Judge Hodge KC:

Introduction

1. This considered judgment is a sequel to, and should be read in conjunction with, the written judgment I handed down in this case on 17 April 2024 bearing the neutral citation number **[2024] EWHC 801 (Ch)**. That judgment was delivered on an application by the 10th defendant ('**Vincents**'), issued on 21 February 2024, to strike out a claim in professional negligence brought against Vincents by 35 separate claimants (numbered 60 to 94) arising out of their purchase of 50 residential units in a buyer-funded, off-plan development scheme in Liverpool 6, or for summary judgment against the claimants under CPR 24. As I explained in my earlier judgment, each of the purchasers lost substantial up-front payments on the failure of the development; and they are now suing Vincents, who acted as their conveyancing solicitors, for breach of duty.

2. The issues raised by Vincents' application include the nature and extent of the duties they owed to purchasers to advise them against the risks of investing in this particular development; whether Vincents are in breach of such duties; the nature of the risks against which the law imposed a duty of care on Vincents (the scope of duty issue); whether the loss for which the claimants seek to recover damages is the consequence of Vincents' acts or omissions (the factual causation issue); whether there is a sufficient nexus between a particular element of the harm for which the claimants seek to recover damages and the subject-matter of Vincents' duty of care (the duty-nexus issue); and whether the claims against Vincents are sufficiently pleaded.

3. At the earlier hearing, on 20 March 2024, Vincents were represented by Mr Simon Wilton KC, instructed by RPC, whilst the (then) 35 purchasers who had instructed Vincents on their respective purchases were represented by Mr Laurie Scher (of counsel), instructed by Walker Morris LLP. The same counsel and solicitors continue to act in the case. Save where the context otherwise requires, in this judgment I shall refer to Mr Scher's lay clients as **'the claimants'**.

4. The background to Vincents' application is set out in my earlier judgment; and I do not propose to repeat it here. That judgment also contains (at Section III) a detailed analysis of the existing pleadings, including (at [12-19]) the particulars of claim. For the reasons set out in that judgment, I concluded that I should not finally determine Vincents' application on the materials then before the court. Rather, I should afford the claimants an opportunity to amend their original statement of case. I indicated that, at least on a preliminary, and provisional, basis, I had formed the view that there might be some traction in at least some of the claimants' assertions that Vincents owed them duties to: (1) advise that the prescribed deposit-holding machinery afforded no meaningful protection to the claimants, (2) advise against entering into these particular purchase contracts, and (3) ensure that individual claimants properly understood Vincents' advice. However, I considered that the factual bases for such duties needed to be properly pleaded out, both at a generic, and also at a granular, and individual, level: see [76].

5. In summary, my order provided for:

   (1) The claimants to file and serve draft amended particulars of claim;

(2) Vincents to indicate to what extent it agreed to the draft amendments (with reasons for any disagreement);

(3) The claimants to file and serve refined, draft amended particulars of claim, taking account of Vincents' comments, in advance of an adjourned hearing;

(4) The listing of the adjourned hearing, at which the court would consider the final disposal of the application and whether to give permission for the amendments to the particulars of claim without the need for any further application, giving such consequential directions as might be needed in that regard;

(5) The costs to be reserved, to be dealt with when the application was disposed of at the adjourned hearing; and

(6) The pending hearing of the CCMC was vacated, to be re-listed after the adjourned hearing.

A timetable was set out for each of these various steps, which has subsequently been extended by agreement between the parties. Due in large part to difficulties in arranging a hearing date for the mutual convenience of counsel and the court, the application only returned to this court on Thursday 5 December 2024. That delay has some significance because it means that more than six years have now elapsed since all the claimants exchanged contracts for the purchase of their respective units in the development.

6. Prior to the adjourned hearing, the parties filed further evidence in the form of:

(1) the second witness statement, dated 18 November 2024, of Mr Paul Douglas Hargreaves, a solicitor and partner in Walker Morris LLP, instructed by the claimants;

(2) the third witness statement of Mr Graham Matthew Reid, dated 25 November 2024, an employed barrister and partner in RPC, instructed by Vincents (or its insurers); and

(3) the third witness statement of Mr Hargreaves, dated 3 December 2024.

Little (if any) reliance was placed upon these witness statements in oral submissions at the hearing. Rather, the focus of those submissions was the current iteration of the draft amended particulars of claim, and the skeleton arguments of counsel. The court also had before it a letter to the court, dated 28 November 2024, written by Clyde & Co, the solicitors acting for the only other presently active defendant (EAD Solicitors LLP, the second defendant). This records Clyde & Co's concerns about the effect that permitting the claimants' proposed amendments might have, both upon the existing case management strategy and directions, and the conduct of any trial. The latter concerns focus upon the difficulties that may ensue should the claims against the second defendants and those against Vincents be pursued in significantly different ways during the course of the same trial. The court now has before it a paginated bundle of some 817 pages of documents, across two PDF files. There are also two bundles of authorities, extending to over 560 pages. With the benefit of my pre-reading, the hearing was again comfortably completed within its time estimate of one

day. As on the previous occasion, I found it necessary to reserve my judgment at the conclusion of the hearing.

7. In my earlier judgment, I expressed concerns (at [6-7]) about the joinder of claims by 94 different claimants against ten separate conveyancing practices – some solicitors and others licensed conveyancers – within a single set of proceedings when the claims are largely founded upon the contents of reports on title in materially different terms. By chance, on the day after I handed down my earlier judgment on the present application, the Court of Appeal delivered judgment in *Morris v Williams & Co Solicitors* [2024] EWCA Civ 376, [2024] 3 WLR 693. There the appeal court considered the use of a single claim form by multiple claimants, albeit in the different context of a claim by 134 claimants against a single law firm arising out of investments in one or more of nine separate development projects which had been promoted by the same group of companies. The gist of the decision is that multiple claimants may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings, with what is convenient being determined according to the facts of the particular case. However, at [54] Sir Geoffrey Vos MR accepted that defendants to group actions initiated by a single claim form may face potential unfairness in the absence of active case management. He urged that steps should be taken to ensure that each claimant's case was properly explained, so that the defendant might know the case it had to meet, and so as to facilitate early dispute resolution. I note also what the Master of the Rolls said at [55]:

> *The questions of what disclosure is ordered and how the claims are managed generally can be dealt with by applications to the court at appropriate stages in the conduct of the litigation. A case such as this will inevitably require active case management and proper engagement with the court by the parties and their lawyers.*

My earlier judgment

8. Mr Wilton analyses my earlier judgment at paragraphs 2 to 5 of his supplemental skeleton argument. He says that the essence of the judgment is captured at [69] and [71]. The court ruled that it would be premature to strike out the existing particulars of claim, or enter summary judgment for Vincents, without giving the claimants an opportunity to amend, commenting:

> *69. … The dispute about the precise nature, and extent, of the duty of care owed by Vincents to each of its purchaser clients is highly fact-sensitive, and some, at least, of their claims may be suitable for trial. I have already observed that the allegations by all 94 of the claimants against all ten defendants have been set out in a single statement of case, supplemented by a spreadsheet purporting to set out any particular material facts distinguishing individual claimants from each other. However, this spreadsheet does not address, or identify, any particular characteristics, or vulnerabilities, of individual claimants. Nor does it condescend to particulars about any discussions with particular clients of Vincents …*
>
> *71. … I do consider that substantial clarification, and amplification, of the claimants' case is required. Vincents need to know the particular*

> *facts and matters upon which these 35 claimants found their claims against them, so that Vincents can identify, and seek to address, the particular facts in dispute, and focus upon the matters relevant to these claims. At the moment, this exercise is clouded by the use of generic, and 'scatter-gun', particulars of claim, which divert Vincents' attention away from what is strictly relevant to the case against them, as distinct from other of the defendants, which leave some matters to be inferred, and which leave other facts and matters unpleaded.*

9. Mr Wilton points to a number of different respects in which the court indicated that the existing statement of case was inadequate. The court commented:

(1) at [70] that the factual basis (such as the level of the particular client's financial sophistication and experience) needed to be properly pleaded in order to sustain any allegation of an enhanced duty to explain, and to check, a particular client's understanding;

(2) at [73] that further facts needed to be pleaded to support the plea that the terms on which the *'deposits'* were held *"offered no meaningful security or protection"*; and that the claimants had not set out any general or specific facts and matters to support the existence of any duties either to ensure that advice was *"fully understood"* or to advise against entering into the transactions at all; and

(3) at [75] that Vincents was "*entitled to know precisely how the case against it is put"* and *"should not be left to conjecture*"; and that it was also "*entitled to know precisely how each claim is put against it ... If it is to be alleged that particular claimants misunderstood Vincents' advice, then this should be properly pleaded, with full particulars*."

10. Mr Wilton also points to the court's refusal (at [78]) to venture at that time upon any consideration of the duty-nexus issue in circumstances where it considered that that issue was closely linked to the existence of any duty to advise the claimants not to proceed with their purchases at all. He notes the court's preliminary, and provisional, view that *if* it considered there to be a real prospect of establishing such a duty, then that would seem to create a sufficiently clear nexus between any breach of that duty and the loss of the claimants' deposits.

The draft amendments to the particular of claim

11. The draft amendments to the particulars of claim are directed only to the claims against Vincents. Subject to any further order, the original particulars of claim are intended to stand against the other, remaining defendants. Since my earlier judgment was handed down, claimants 79, 91, 93 and 94 have settled their claims against Vincents, involving some 13 units. Claimants 79, 93 and 94 were all main lead claimants; but Mr Scher points out that the 'lead claimant' model anticipated this development by providing for some reserve lead claimants. Mr Wilton analyses the proposed amendments at paragraphs 8 to 13 of his supplemental skeleton argument.

12. First, paragraph 26.6 originally pleaded merely *"a duty to advise the claimants of the risks to which they were exposed, as set out below"*. Paragraph 26.6 is now expanded

so as expressly to aver *"(in case it is not clear from the original statement of case)"* that this duty included:

> *... a duty to ensure (alternatively, to take reasonable steps to ensure) that the claimants fully understood the advice, and to advise the claimants against entering into the transaction, as set out below. These duties arise and are particularly onerous because of (i) the nature and characteristics of the transaction and surrounding circumstances, as set out in paragraph 26.7 below, and (ii) the characteristics of the particular claimants, as referred to in paragraph 26.8 below.*

Paragraph 26.7 identifies, and expands upon, four specific aspects of the *"nature and characteristics of the transaction and surrounding circumstances"*. In summary, these are: (1) the warnings contained within the SRA's Warning Notice (previously pleaded at paragraph 17); (2) the terms of the purchase contracts (some of which were previously pleaded, or alluded to, at paragraphs 25 and 26.1 to 26.5); (3) the developer's refusal to accept any changes to their standard documents; and (4) the particular attractiveness of schemes (including this development) which promise secure, high, and quick returns, on relatively small capital investments, to naïve or financially unsophisticated clients.

13. Paragraph 26.8 asserts that the claimants' characteristics, as set out in Appendix 1, "*tended to show (inter alia) naivety and/or a low level of financial sophistication*". Appendix 1 then sets out ten pages of "*characteristics*" of the individual claimants "*tending to show a low level of relevant financial sophistication, or otherwise tending to make the Tenth Defendant's duties more onerous*". Presumably in support of the alleged duties comprised within these amendments, paragraph 44A also alleges that Vincents "*knew, or should reasonably have known or ascertained, the characteristics of the claimants identified in Appendix 1 (which tended to show, inter alia, that they were financially unsophisticated)*". No particulars of actual knowledge are provided.

14. Second, paragraph 29.10 includes further criticisms of Vincents' report on title, namely that it failed to advise that the permitted use of the claimants' money to *'market'* the development implied a risk that the developer would not obtain sufficient *'deposits'* to finance the build; and that the advice about the risks which was given in paragraphs 3.6 and 3.7 could easily, and reasonably, have been overlooked, or misunderstood, because it was not sufficiently emphasised, and was detracted from by statements that (1) the deposit required was in line with other developers, and (2) subject to the matters referred to in the report, Vincents was of the opinion that upon completion and registration, the purchaser would obtain a good and marketable title to the property.

15. Third, paragraph 29A (headed *'Individual advice'*) and Appendix 2 advance the case that, in addition to the report on title, some of the claimants received individual advice by email and/or telephone which was wrong, as particularised in Appendix 2. Appendix 2 details specific communications involving the 60th, 63rd and 64th, 68th, 78th, 84th, 87th and 88th, and 89th claimants. By paragraphs 45 and 45.6, this advice is said to have been negligent and in breach of duty.

16. Fourth, paragraph 45.7 relies upon the matters newly pleaded in paragraph 26.6 in aid of the alleged breach of duty in failing to consider whether it was necessary to advise

the claimants against entering into the transaction. In his skeleton argument, Mr Scher acknowledges that the corresponding cross-reference should appear in paragraph 45.8, in aid of the alleged breach of duty in failing to advise the claimants against entering into the transaction.

17. Fifth, at paragraph 46A it is pleaded that the loss of the claimants' deposits was within the scope of Vincents' duty "*in at least the following further ways*", that is:

(1) The *'deposits'* were supposedly protected by a process in which they were released only in connection with a '*Valuation Certificate'* or similar, "*implying that money would only be released in connection with the value of the Development*" whereas:

> *Over £7,000,000 was spent on the Development, and over £6,000,000 passed through MSB's account, but the land was sold for only £4,000,000. If there had been meaningful security or protection for the Claimants' money, it would not have been released, either because a professional owing duties to the Claimants would have noticed that the value was so far below expenditure, and/or because such a professional would have identified that the releases of funds were not adding value to the development"*;

(2) The amount of the claimants' deposit was extremely high, and far above the usual 10%. Vincents' *"failure to ensure that this was fully understood by the claimants is closely connected with their loss of (far more than) 10% of the purchase price"*.

18. Sixth, paragraph 46B and Appendix 3 plead that the claimants identified in Appendix 3 (all the remaining claimants) *"did not fully understand the risks identified, but not emphasised, in paragraphs 3.6 and 3.7"* of Vincents' report on title; that Vincents *"knew, or should reasonably have known, that such claimants may not fully have understood that advice"* because of their particular characteristics, the likelihood that such schemes would attract naïve or financially unsophisticated clients, and the obscurity of Vincents' advice; and that Vincents therefore had a duty to ensure that those claimants fully understood the advice and/or a duty to advise them against entering into the transaction, such claimants having exchanged contracts *"under the mistaken impressions and wrong understandings"* particularised in Appendix 3. Appendix 3 then contains over nine pages of particulars, detailing various *"mistaken understandings"* under which individual claimants are said to have exchanged contracts.

The applicable law

19. In my earlier judgment, I have already set out the law governing applications to strike out a statement of case (at [66-67]), and the legal principles which govern applications for summary judgment (at [68]). On the present application, it is also necessary for me to consider the legal principles which govern applications to amend a statement of case. As to these, there was a considerable measure of agreement between counsel (although some differences did emerge during the course of oral argument).

20. The first matter concerns an issue of jurisdiction. Where a proposed amendment seeks to add a new cause of action after the expiry of the relevant limitation period, the court can only allow the new claim if it "*arises out of the same facts or substantially*

the same facts as are already in issue on a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings": see CPR 17.4 (2), applying s. 35 (5) (a) of the Limitation Act 1980.

21. In *Ballinger v Mercer Ltd* [2014] EWCA Civ 996, [2014] 1 WLR 3597, Tomlinson LJ (at [15]) identified the three stage test a claimant needs to satisfy before being granted permission to raise a new claim in an existing action. It involves consideration of three questions: (1) Is it reasonably arguable that the opposed amendments are outside the applicable limitation period? (2) If so, do they seek to add or substitute a new cause of action? (3) If so, does the new cause of action arise out of the same, or substantially the same, facts as are already in issue in the existing claim?

22. Mr Wilton points out that if the answer to the first two questions is yes, and the answer to the third is no, then the court has no jurisdiction to permit the amendment. In all other circumstances, the court has its usual jurisdiction, and discretion, whether or not to allow the amendment. Mr Wilton emphasises that the burden is on the claimant to establish jurisdiction to permit an amendment, whether by showing that a limitation defence is not reasonably arguable; or that no new cause of action is involved; or, if it is, that it arises out of the same, or substantially the same, facts as are already in issue on the claim. Here, it is common ground that permission for the proposed amendments is sought following the expiry of the standard limitation period prescribed by ss. 2 and 5 of the Limitation Act 1980. That is because all of the claimants exchanged contracts for the purchase of their respective units more than six years ago. No reliance is placed upon the special three years' time limit for negligence actions provided by s. 14A of the 1980 Act (where facts relevant to the cause of action are not known at the date of its accrual). This is because the claimants' solicitor's pre-action protocol letter of claim is dated 28 October 2020, more than three years ago. In the present case, therefore, the answer to the first of the three *Ballinger* questions is clearly in the affirmative; and so the first stage of the test is not in issue on this application.

23. As to the second question, guidance as to what constitutes a new cause of action for these purposes is provided by the leading judgment of Coulson LJ in *Mulalley & Co Ltd v Martlet Homes Ltd* [2022] EWCA Civ 32, 200 Con LR 1 at [40-46], drawing upon observations of Tomlinson LJ in the earlier case of *Co-Operative Group Ltd v Birse Developments Ltd* [2013] EWCA Civ 474, [2013] BLR 383 at [20-26]. In order to ascertain whether the opposed amendments amount to a new cause of action, the court has to compare the essential allegations which are in issue on the original pleadings with those proposed by way of amendment. At [22] Tomlinson LJ notes that the courts have sometimes experienced difficulty in deciding whether a new cause of action has arisen in circumstances where different facts are alleged to constitute a breach of an already pleaded duty:

> *Where an amendment pleads a duty which differs from that pleaded in the original action, it will usually assert a new cause of action … However … where different facts are alleged to constitute a breach of an already pleaded duty, the courts have had more difficulty in deciding whether a new cause of action is pleaded.*

The question to be resolved is one of fact and degree. Tomlinson LJ was not convinced that one needed *"to look further than for a change in the essential features*

of the factual basis relied upon, bearing in mind that the factual basis will include the facts out of which the duty is to be spelled as well as those which allegedly give rise to breach and damages". Tomlinson LJ did not dissent from the following distillation of principle by Jackson J in an earlier case:

> *'(i) If the claimant asserts a duty which was not previously pleaded and alleges a breach of such duty, this usually amounts to a new claim.*
>
> *(ii) If the claimant alleges a different breach of some previously pleaded duty, it will be a question of fact and degree whether that constitutes a new claim.*
>
> *(iii) In the case of a construction project, if the claimant alleges breach of a previously pleaded duty causing damage to a different element of the building, that will generally amount to a new claim.'*
>
> *I would simply add my own gloss to the effect that if the new breach does not arise out of the same or substantially the same facts as those already in issue on a claim previously made in the original action, it is likely to be a new cause of action.*

On the facts of *Co-Op v Birse,* Tomlinson LJ had no doubt that the amendment comprised a new cause of action. At [26], he said this:

> *I cannot agree with the judge that an allegation of a further defect in the slabs arising out of design, workmanship or failure to comply with the contractual requirements must, necessarily, be an assertion of the same cause of action as that upon which reliance has already been placed, simply because breaches in relation to design, workmanship and failure to comply with contractual requirements are already in play. That approach ignores the importance which the judge had earlier recognised of identifying the essential facts upon which reliance is placed. Furthermore the judge's (correct) conclusion that the further allegations involve separate and distinct allegations of breach and separate and distinct allegations of loss is in my view incompatible with his ultimate conclusion that they are 'part of the same cause of action'. It is, rather, indicative that they comprise a new and different cause of action.*

24. In the course of his oral submissions, Mr Scher pointed to citations from earlier authorities to be found in the leading judgment of Longmore LJ in *Berezovsky v Abramovich* [2011] EWCA Civ 153, [2011] 1 WLR 2290 at [59-62]. These emphasise that *"the selection of the material facts to define the cause of action must be made at the highest level of abstraction"*; so that *"in identifying a new cause of action the bare minimum of essential facts abstracted from the original pleading is to be compared with the minimum as it would be constituted under the amended pleading"*. I note that this authority was considered by Tomlinson LJ in his judgment in *Co-Op v Birse*. I therefore infer that he has duly taken these citations into account when arriving at his conclusions.

25. As an illustration of the process of reducing matters to what he termed *"the barest of bones"*, Mr Scher pointed to the leading judgment of Peter Gibson LJ in *Savings and Investment Bank Ltd v Fincken* [2001] EWCA Civ 1639 at [32-33]:

> *32. But the present case is altogether more simple. Take the claim in contract. The material facts are no more than (1) the giving of the warranty by Mr Fincken and (2) the breach of that warranty. True it is that SIB could not succeed on that claim without proving a specific breach in that some specific asset was not disclosed. I respectfully disagree with the Deputy Master to the extent that he thought that unnecessary. The pleading in respect of Field House Barn shows that on 6 June 1992 not all material assets were disclosed. But the subsequent discovery of a further undisclosed asset does not alter the fact that the warranty was breached on 6 June 1992. I agree with the Deputy Master that the non-disclosure of the Boss was a mere further instance or particular of how the warranty was breached by non-disclosure.*
>
> *33. Keene LJ in the course of the argument before us posited the case of the ordinary Sale of Goods Act warranty that a car is of merchantable quality. A defect in the gearbox is discovered and breach of warranty is pleaded by the purchaser. Subsequently a further defect, say, in the transmission, is discovered. It is hard to believe that to amend to plead the further defect is the addition of a new cause of action. So also in the present case.*

I cannot see that this authority was considered in the more recent authorities, such as *Co-Op v Birse*. These establish that the question is essentially one of fact and degree. They also emphasise the importance of identifying the essential facts upon which reliance is placed in support of the amended allegations. I consider that if there is any conflict between the general guidance afforded by the later Court of Appeal authorities, and the views expressed by Peter Gibson LJ, then I should follow that later general guidance as authoritative. It is not for this court to treat the later Court of Appeal authorities as if they had been decided per incuriam.

26. In my judgment, the following legal principles arise when considering the second of the *Ballinger* questions ('*new cause of action*'):

(1) Whether an amendment seeks to introduce a new cause of action is not a matter of discretion or case management but is a substantive question of law, which depends on analysis and evaluation to arrive at the correct answer.

(2) It is of critical importance to carry out a careful, comparative evaluation of the scope and nature of the facts in issue in the existing claim and the facts alleged in the new claim.

(3) If, on evaluation, the new claim is of an entirely different character from the existing claim, the threshold for permission will not be met. Broadly similar allegations, implicitly made or understood, will not do.

(4) In the vast majority of cases, what is *'in issue'* in an existing claim will usually be determined by examination of the pleadings alone. It will be the primary, and probably the only, source of material for deciding that question.

(5) The *'cause of action'* is that combination of facts which gives rise to a legal right; it is the *'factual situation'*, rather than a form of action used as a convenient description of a particular category of factual situation.

(6) The '*cause of action'* is every fact which is material to be proved to entitle the claimant to succeed. Only those facts which are material to be proved are to be taken into account; the pleading of unnecessary allegations, or the addition of further instances, does not amount to a distinct cause of action. At this stage, the selection of the material facts to define the cause of action must be made at the highest level of abstraction.

(7) In identifying a new cause of action the bare minimum of essential facts abstracted from the original pleading is to be compared with the minimum as it would be constituted under the amended pleading.

(8) The addition or substitution of a new loss is by no means necessarily the addition of a new cause of action; nor is the addition of a new remedy, particularly where the amendment does not add to the *'factual situation'* already pleaded.

(9) Where a claim is based on a breach of duty, whether arising in contract or in tort, the question whether an amendment pleads a new cause of action requires comparison of the unamended and amended pleading to determine (a) whether a different duty is pleaded, (b) whether the breaches pleaded differ substantially, and (c) where appropriate, the nature and extent of the damage of which complaint is made. Where it is the same duty and the same breach, new or different loss will not be a new cause of action. But where it is a different duty or a different breach, then it is likely to be a new cause of action.

27. Turning to the third of the *Ballinger* questions ('*arising out of the same, or substantially the same, facts*'), Coulson LJ's judgment in *Mulalley* (at [47-54]) draws on observations of Tomlinson LJ in *Ballinger* to provide guidance as to the appropriate test for determining whether one factual basis is substantially the same as another. A critical question is whether, after the expiry of the limitation period, a defendant will be obliged to investigate facts, and obtain evidence of matters, which are completely outside the ambit of, and unrelated to, those facts which he could reasonably be assumed to have investigated for the purposes of defending the unamended claim. The substance of the purpose of the exception in s. 35 (5) is based on the assumption that the party against whom the proposed amendment is directed will not be prejudiced because that party will, for the purposes of the pre-existing matters in issue, already have had to investigate the same, or substantially the same, facts. It is necessary to make an evaluation of the new case as against the old case in order to ask the threshold question whether the new case arises out of the same, or substantially the same, facts as the old one. It is also important to stress two further points to be derived from Tomlinson LJ's judgment in *Ballinger*. The first is that whilst, in borderline cases, the question whether a new cause of action arises out of substantially the same facts as those already pleaded may be decided substantially as a matter of impression, in most cases it must be a matter of analysis: see [35-36]. The

second is that *"the same or substantially the same"* is not synonymous with *"similar"*: see [37]. The reason that the Court of Appeal allowed the appeal from part of the judge's decision in *Ballinger* was that he had not carried out *"a sufficient analysis of the extent to which the defendants would be required by the new claims to embark on an investigation of facts which they would not previously have been concerned to investigate"*: see [38].

28. Mr Scher also took me to a passage in *McGee: Limitation Periods* (9th edn) at para 23.030, citing an unreported decision of Auld J on 23 March 1990, the case of *Dickinson v Lowery*. The claimant there sought to set aside the conveyance of her house to the defendant, as well as claiming damages from the solicitor who had originally been instructed to act for the vendor but who, it was alleged, had wrongfully allowed himself to act for both parties. The basis of the action was that the primary defendant had exerted undue influence to procure the original conveyance. That defendant subsequently sought to bring third-party proceedings against her solicitor in respect of his involvement in the transaction. The solicitor, who was of course already a co-defendant to the main action, argued that this was not a matter arising out of the same facts as the claimant's action against the primary defendant, since it related to the contract between that defendant and her solicitor, and the matters which would have to be proved in order to succeed in the new action differed significantly from those relevant to the action between the claimant and the primary defendant. Auld J rejected this argument. The question was not whether the facts to be proved were the same, but whether the two matters arose out of the same facts. Here, both claims clearly related to the circumstances in which the claimant had come to convey her house to the primary defendant at a considerable undervalue. Accordingly, it would be appropriate to allow the solicitor to be joined as a third party.

29. I cannot see that *Dickinson v Lavery* was cited in any of the other authorities that are relied upon before me. The full report is not available; and the case is cited only by way of reference to the short precis in *McGee*. The proposed amendments in that case clearly sought to add a new claim so the issue before the court was the third of the *Ballinger* questions: whether the new cause of action arose out of the same, or substantially the same, facts as were already in issue in the existing claim. If not, the court had no discretion to permit the amendment. It is important to bear in mind that at stage 3 the court is not examining whether the facts to be proved are the same or not. To do that would be to repeat the stage 2 exercise of putting the original, and the amended, statements of case side by side and comparing them. At stage 3, the enquiry is necessarily broader, and less abstract, than the stage 2 enquiry. The court needs to look beyond the original, and the amended, particulars of claim, and to consider the defence as well, in order to ascertain what factual issues are already likely to arise at trial. If the new claim can be said to arise *substantially* from the same facts as are already in issue, then (subject to matters of discretion) it ought to be allowed.

30. Save as a useful label by which to be reminded of the difference between the nature of the enquiry at stages 2 and 3, I do not gain much assistance from being taken to the precis of the unreported case of *Dickinson v Lowery*. In the absence of any transcript or report of the decision, it seems to me that all that can safely be said about that case is that, on the evidence he was presented with, Auld J must have come to the conclusion that the third party claim which the primary defendant wished to bring against the solicitor arose out of the same facts, or substantially the same facts, as the

claim already made by the claimant against that defendant and that same solicitor. The decision does not appear to me to establish any new point of principle which would assist me in determining the informal amendment application in the instant case.

31. In my judgment, the following legal principles emerge from the authorities when considering the third of the *Ballinger* questions ('*arising out of the same or substantially the same facts*'):

(1) Whether a new claim arises out of the same, or substantially the same, facts as an existing claim is not a matter of discretion or case management but is a substantive question of law, which depends on analysis and evaluation to arrive at the correct answer.

(2) It is of critical importance to carry out a careful, comparative evaluation of the scope and nature of the facts in issue in the existing claim and the facts alleged in the new claim.

(3) If, on evaluation, the new facts are of an entirely different character from the existing facts in issue, the threshold for permission will not be met. Broadly similar facts, implicitly raised or understood, will not do.

(4) '*Same or substantially the same*' is not synonymous with '*similar*'.

(5) Whilst, in borderline cases, the answer to this question may be substantially a '*matter of impression*', in others it must be a question of analysis.

(6) The purpose of the requirement at stage 3 is to avoid placing the defendant in a position where he will be obliged, after the expiry of the limitation period, to investigate facts, and obtain evidence of matters, completely outside the ambit of, and unrelated to, the facts which he could reasonably be assumed to have investigated for the purpose of defending the unamended claim.

(7) It is thus necessary to consider the extent to which the defendants would be required to embark upon an investigation of facts which they would not previously have been concerned to investigate. At stage 3 the court is concerned at a much less abstract, more granular, level than at stage 2; it is a matter of considering the whole range of facts which are likely to be adduced at trial.

(8) In considering what relevant facts are put in issue by the original pleading, a material consideration is the factual matters raised in the defence.

(9) The core of the stage 3 test is very simple indeed. It is whether the new claim introduces new facts not already substantially in issue. It reflects the policy which underlies s. 35 of the Limitation Act 1980; that is, that if factual issues are going to be litigated between the parties in any event, the parties should be able to rely on any cause of action which substantially arises from those facts.

32. Where no issue of limitation arises, or where the court nevertheless has jurisdiction to permit the amendment, the court has an unrestricted discretion, pursuant to CPR 17.1 (2) (b) and 17.3, whether or not to allow the proposed amendment. As is made clear by the notes, and the supporting authorities cited, in the current (2024) edition of Volume 1 of *Civil Procedure*, at paragraphs 17.3.5 and following, there are, however,

well-established principles bearing upon the exercise of the discretion. Mr Wilton identifies the following considerations as being of relevance in the instant case:

(1) The need for the new amendment to be properly arguable, to carry a degree of conviction, to be coherent, to be properly particularised, and to be supported by evidence that establishes a factual basis for the allegation.

(2) The need to show a real prospect of success, particularly if the amendment involves a new claim, and not just new particulars.

(3) Whether the new case concerns matters the parties have already been addressing.

(4) Whether there has been culpable delay, although the explanation for any delay is important too.

(5) The impact of allowing the amendment, particularly if prejudicial to the respondent, or other parties or court users.

(6) The impact upon existing case management arrangements, particularly where the effect of the amendment would be to put the case back almost to square one.

33. Consideration (1) appears in the commentary at the beginning of paragraph 17.3.6 of Volume 1 of *Civil Procedure*. The authority cited in support is the leading judgment of Popplewell LJ in *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33, [2021] 1 CLC 284 at [18]. Paragraph 18 reads:

> *The pleading must be supported by evidence which establishes a factual basis which meets the merits test; it is not sufficient simply to plead allegations which if true would establish a claim; there must be evidential material which establishes a sufficiently arguable case that the allegations are correct.*

The authority cited for that proposition is the leading judgment of Asplin LJ in *Elite Property Holdings Ltd v Barclays Bank Plc* [2019] EWCA Civ 204 at [41]. Omitting case law citations (and correcting an obvious typographical error), that paragraph reads:

> *For the amendments to be allowed the appellants need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction ... A claim does not have such a prospect where (a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a prima facie case that the allegations are correct; and/or (c) the claimant has pleaded insufficient facts in support of their case to entitle the court to draw the necessary inferences ...*

34. In his oral submissions, Mr Scher submitted that Asplin LJ's judgment does not support any supposed requirement for there to be *"evidential material which establishes a sufficiently arguable case that the allegations are correct".* I agree with Mr Scher that there is no need for an application to amend to be supported by a witness statement testifying to, and verifying, each proposed amendment. After all,

the proposed amended statement of case will itself be verified by a statement of truth, which, in the instant case, is to be signed by the claimants' solicitor. But clearly there must be credible material to support at least a prima facie case that the amended allegations are correct.

35. I also note that at [40], Asplin LJ observed that, when considering an application to amend, *"it is important to bear in mind that the overriding objective applies and the question of whether permission to amend should be given must be considered in the light of the need to conduct litigation fairly and justly and at proportionate cost"*. That forms a seventh consideration to be added to the six that Mr Wilton has already identified.

36. Mr Scher also points to the following statement at paragraph 22.043 of *McGee: Limitation Periods* (9th edn):

> *The general rule is that amendments will be allowed wherever this is necessary in order to do justice between the parties by allowing the true issues in the case to be raised by the pleadings, at least where the other party can be sufficiently compensated by the imposition of appropriate terms as to costs.*

However, I am satisfied that the law has moved on in this area since the authorities upon which this statement is founded were decided (in 1893 and 1958); and that the court must exercise its discretion to permit amendments to a party's statement of case only after considering a far wider range of considerations, along the lines I have already indicated. It seems to me that those considerations should also include the impact of refusing the amendment, particularly if prejudicial to the applicant, e.g. because it would prevent the applicant from raising a new claim which is already statute-barred. This is essentially the corollary of Mr Wilton's fifth consideration.

The claimants' submissions

37. Mr Scher invites the court to approve all of his proposed amendments, and to dismiss Vincents' application to strike out, or for summary judgment. He submits that the amended claims have (at the very least) a real prospect of success, based upon a sufficiently particularised statement of case. Allowing the amendments is necessary in order to do justice between the parties. Mr Scher says that the three main breaches of duty relied on by claimants in their claim against Vincents are:

(1) Failing to advise the claimants not to proceed with their purchase. This duty arose in the unusual circumstances of this case, including the SRA Warning Notice (which says in terms *"it may well be necessary to strongly advise clients against entering into the transaction"*); the *'red flags'* in the transaction; and the low financial sophistication of individual claimants.

(2) Failing to ensure that the claimants fully understood the risks of the transaction. This duty arose in the same unusual circumstances mentioned immediately above. It could have been satisfied by, for example, including a bold warning in the covering letter, and in the conclusion of the report on title.

(3) Failing to advise that the deposits had no meaningful security or protection. Under the conveyancing documents, no-one owed the claimants any duty to consider the development's progress, or its value, before their moneys were released. The purchase moneys were effectively held to the developer's order. The claimants were not advised about this. This court has already heard argument for, and against, the duty-nexus defence to this allegation of breach of duty (arguments which do not apply to the two other breaches mentioned above): but the duty-nexus argument should be left to the trial judge.

38. Mr Scher reminds the court that a number of lead claimants have already been selected collaboratively so that a '*spread*' of claimants, with individual characteristics, will lead to findings which can guide the settlement of the remaining claims. He says that the new Appendix 1 to the proposed amended particulars of claim expands on some of those individual characteristics; but this does not require any change to the lead claimant selection. Although correspondence from Vincents' solicitors indicates that it no longer considers the '*lead claimant*' model to be appropriate, Mr Scher observes that Vincents has not applied to vary that case management model; and he submits that there is no reason to do so. The '*lead claimant*' model will still produce significant costs savings at the disclosure, witness evidence, and trial stages; and it is overwhelmingly likely to result in the settlement of the cases of non-lead claimants one way or another. The fact that the characteristics of some non-lead claimants have (at Vincents' instigation) been expounded in the amended particulars of claim does not imply that the lead claimant model has been, or should be, abandoned. Indeed, that is the very point of the lead claimant regime: to resolve specific issues that arise in claims made by some claimants and not by others. Taking all of the claims to trial would not deal with this litigation justly and at proportionate cost.

39. Mr Scher acknowledges that my earlier judgment includes a number of criticisms of the claimants' originally pleaded case. He says that the draft amended particulars of claim were prepared with those points firmly in mind, as also with many of the issues raised by Vincents in correspondence. The earlier hearing was adjourned specifically to give the claimants an opportunity to amend their pleadings in the light of my judgment. It is for that reason, and with the parties' consent, that paragraph 4 of the court's order expressly directed that the court would *"consider whether to give permission for the claimants' amendments to their Particulars of Claim without the need for a further application and give such consequential directions as may be needed in that regard"*.

40. Mr Scher submits that the proposed amendments now provide further particulars of the following issues, which he proceeds to address in his written skeleton argument by reference to particular paragraphs of my earlier judgment:

(1) Vulnerability/lack of financial sophistication

At [69-70], the court held that the level of a particular client's vulnerability or sophistication should be set out in the statement of case. Appendix 1 to the Amended Particulars of Claim sets out these details in respect of each claimant. It is introduced by amendments to paragraphs 26.6 and 26.8. Paragraph 26.6 emphasises that (as originally pleaded) Vincents' duty to advise on risks included

(1) a duty to ensure (alternatively, to take reasonable steps to ensure) that the claimants fully understood the advice, and (2) a duty to advise the claimants against entering into the transaction. Paragraph 26.6 explains that these duties arose, and were particularly onerous, for reasons connected with the transaction and its surrounding circumstances (the SRA Warning Notice and the various '*red flags*'), and for reasons connected to particular characteristics of the claimants (financial naivety). The '*red flags*' are set out in paragraph 26.7. The particular characteristics of the claimants are introduced in paragraph 26.8, and are set out in Appendix 1. This now contains full particulars of each claimant's work, income, financial experience, other property (if any), and level of familiarity with development financing. Paragraph 44A adds that Vincents knew, or should reasonably have known or ascertained, the financial naivety of its clients. Mr Scher emphasises that the claimants were Vincents' clients, and Vincents must have acquired some knowledge of their clients' particular individual circumstances. This is a matter that will become apparent on disclosure of Vincents' files. He submits that there is a duty to ascertain the client's level of financial sophistication in this kind of transaction. This is all part of the duty to take reasonable steps to ensure that the solicitor's advice is understood by the client. Mr Scher invites the court to peruse Appendix 1. He points out that much of this information had already been provided to Vincents (in an agreed format) through the claimant questionnaires, which had been used by the parties to select the lead claimants. These details have now been pleaded out in full.

(2) "Red flags"

At [73], the court noted that the '*red flags*' (the nature and characteristics of the transaction, and the surrounding circumstances) were not sufficiently pleaded. Those '*red flags*' are said to support the claimants' case that Vincents' duty to advise on risks included a duty to ensure (alternatively, to take reasonable steps to ensure) that the claimants fully understood the advice, and a duty to advise them against entering into the transaction. Paragraph 26.7, which is introduced by paragraph 26.6, sets out in detail the nature and characteristics of the transaction and the surrounding circumstances which gave rise (together with the claimants' lack of financial sophistication) to those unusually onerous duties.

(3) *Failure to ensure, or to take reasonable steps to ensure, that the claimants fully understood Vincents' advice*

At [73], the court indicated that further detail should be included of Vincents' alleged failure to ensure, or to take reasonable steps to ensure, that the claimants fully understood Vincents' advice. At [75], the court added that *"If it is to be alleged that particular claimants misunderstood Vincents' advice, then this should be properly pleaded, with full particulars."* This is dealt with in four ways:

(a) The duty (to ensure, or take reasonable steps to ensure, that the claimants fully understood the advice) arises from the nature and circumstances of the transaction (including the SRA Notice and the '*red flags*' pleaded in paragraph 26.7) and the vulnerability/financial naivety of the claimants (pleaded in paragraph 26.8 and Appendix 1).

(b) Paragraphs 29.10.4-6 are expanded to show why the advice which was given was obscure, and easy to misunderstand.

(c) Paragraph 45.5 is expanded to state what should have satisfied the obligation to take reasonable steps to ensure that the claimants fully understood the advice, including, for example, a typographically emphasised warning in the covering letter, and a conclusion to the effect that the client was paying an extremely high proportion of the purchase price into a high-risk property development scheme, with no meaningful security or protection, that investors in similar schemes had suffered substantial losses, and that the claimants incurred a substantial risk of losing their entire investment.

(d) Paragraph 46B avers that certain claimants (set out in Appendix 3) did not fully understand the correct, but not emphasised, advice; and would not have suffered loss if Vincents had complied with its duty to ensure that they had fully understood the advice.

(4) Failure to advise the Claimants against entering into the transaction

The allegation of breach of duty in paragraph 45.7 expressly refers back to paragraph 26.6, which introduces the nature and circumstances of the transaction (e.g. the SRA Notice and the '*red flags*' pleaded in paragraph 26.7), and the vulnerability/financial naivety of the claimants (pleaded in paragraph 26.8 and Appendix 1). Mr Scher notes, with apologies, that this same cross-reference should appear in paragraph 45.8.

(5) Failure to advise that the deposits had no meaningful security or protection

At [73], the court indicated that further detail should be included on Vincents' alleged failure to advise that the terms on which the '*deposits*' were to be held, and then released, offered no meaningful security or protection. Further detail now appears at paragraph 29.10.3, and details of the alarming nature of the terms of the transaction are set out in paragraph 26.7.2.

(6) The duty-nexus issue

The court has already indicated (at [78]) the preliminary, and provisional, view that any consideration of the scope of duty-nexus arguments should be a matter for the trial judge. Vincents has nevertheless indicated that it intends to resume this argument at this hearing. Paragraphs 46A and 46B of the draft amended particulars of claim are therefore introduced to address the duty-nexus defence. Vincents' argument is that the loss complained of by the claimants is not sufficiently closely connected with the alleged breach of its duty to advise the claimants of the lack of meaningful security or protection for their deposits. These additional paragraphs (which speak for themselves) are intended to place this argument beyond doubt: the claimants have (at least) a real prospect of success on the duty-nexus issue. Mr Scher points out that, in any event, the duty-nexus argument does not apply to Vincents' breach of duty in failing to advise the claimants against entering into the transaction, or the breach of Vincents' duty to ensure that the claimants fully understood Vincents' advice.

(7) Individual advice

At [70] the court noted that the claimants' solicitor had suggested in evidence that two of the claimants had received unsatisfactory individual advice from representatives of Vincents. It pointed out that no such case had been pleaded. Mr Scher observes that paragraph 45 of the original statement of case pleads that breaches of duty occurred when providing the reports on title *"and in any event"*; and (at paragraph 45.6) that *"wrong advice"* had been given. This has now been pleaded out in more detail, at paragraphs 29A and 45, and in Appendix 2. I note that Appendix 2 details specific communications involving nine of the claimants. This is considerably greater in number than the two clients previously referred to in the witness evidence. Mr Scher notes that Vincents has indicated that it intends to take a limitation point in relation to this part of the amended statement of case. However, he submits that it amounts to no more than the further particularisation of the existing pleaded cause of action.

(8) Minor amendments

Finally, Mr Scher points to minor amendments to paragraph 7 (setting out the scope of the amendments), paragraph 25.7.2 (clarifying the definition of '*Valuation Certificate*') and paragraph 45.5 (cross-referring to paragraphs 29 and 29A).

Oral submissions

41. In oral submissions, Mr Scher emphasised that the parties have already been addressing the level of the claimants' financial sophistication for some months. It formed part of the criteria, and the process, for the selection of lead claimants, through the claimant questionnaires. Mr Scher submitted that the amendments will cause no relevant prejudice to Vincents, which has already been addressing the issue which they raise. The risks involved in the transactions are already in issue between the parties. The amendments will have no impact on case management decisions previously taken. The amendments were settled some time ago, and any further delay in bringing the matter back before the court has been due to listing difficulties. Mr Scher claims that Vincents' opposition to the amendments is entirely opportunistic.

42. Mr Scher also took me through the originally pleaded allegations in support of his submission that the proposed amendments merely provide further particularisation of existing pleaded causes of action. They are said to raise no new cause of action; but if they do, this arises out of the same, or substantially the same, facts as are already in issue in the action. Mr Scher pointed to: (1) the pleading of the SRA Warning Notice at paragraph 17; (2) the opening words of paragraph 26, referring to the *"abnormally high risks"* to which the terms of the contracts are alleged to have exposed the claimants; (3) the specific duties already pleaded in sub-paragraphs 42.3 (adequately to draw to the claimants' attention any risks associated with the purchase), 42.5 (to carry out their work in compliance with SRA warning notices), and 42.6 (to consider whether it was necessary to advise the claimants against entering into the transaction, and if so, to give such advice); (4) the specific breaches of duty already alleged in paragraphs 45.5 (if and to the extent that appropriate advice was given, failing to ensure, alternatively failing to take reasonable steps to ensure, that the claimants fully understood the advice), 45.6 (giving wrong advice, incomplete advice, or no advice at

all), 45.7 (failing to consider whether it was necessary to advise the claimants against entering into the transaction), and 45.8 (failing to advise the claimants against entering into the transaction); and (5) the existing pleas of causation and loss and damage in paragraphs 46 and 47.

43. Mr Scher emphasised that there should be no need for Vincents to investigate any further facts which they would not previously have been concerned to investigate. He told me that one of the issues for disclosure in the disclosure review document is the level of the claimants' sophistication (although I have been unable to verify this because the DRD does not appear to be included within the hearing bundle; and I have been unable to locate a copy amongst the 215 case events recorded on the CE-File for this claim). Mr Scher also took me to the terms of paragraph 32 of the defence (which follows on from detailed references to the contents of Vincents' report on title). This paragraph reads:

> *Further, in those (relatively few) individual cases where D10 Claimants sought individual advice from the Tenth Defendant in respect of the risks being undertaken the Tenth Defendant will rely in respect of those individual Claimants on the advice given which drew further attention to the risks highlighted in the report on title.*

In his very short oral reply, Mr Scher reiterated that this series of transactions always had such alarmingly high levels of legal risk that Vincents should have advised their clients not to enter into them.

Vincents' submissions

44. Mr Wilton's submissions fall under three main heads: (1) Jurisdiction; (2) Discretion; and (3) Overview.

Jurisdiction

45. Mr Wilton submits that the proposed amendments include new claims which are time-barred, and which do not arise out of the same, or substantially the same, facts as are already in issue in this claim.

46. The first category of amendments comprises the new claims (in paragraph 26.6) that Vincents owed, and was in breach of, duties to ensure that the claimants understood Vincents' advice. That duty was not pleaded in the unamended particulars of claim. It is premised upon facts in respect of the transaction, and the characteristics of individual claimants, most of which are now set out for the first time in paragraphs 26.7 and 26.8 and Appendix 1. It also depends upon the claimants establishing the new plea (at paragraph 44A) that Vincents knew, or should have discovered, the characteristics of the claimants set out in Appendix 1. It is further dependent upon the new plea that the claimants did not in fact understand what they were told, as detailed in Appendix 3; and upon what appears to be intended as a combined causation and scope of duty/duty-nexus plea in paragraph 46B. Mr Wilton acknowledges that the claimants had already pleaded (at paragraph 45.5) the generic allegation that the defendants (including Vincents) had failed to ensure, or take reasonable steps to ensure, that the claimants fully understood the advice given; but that bare particular of breach was unsupported by any plea as to a corresponding duty, or any material facts

to support the novel duties in issue (to discover the claimants' salient characteristics, and to take further steps to ensure that Vincents' advice was understood); and nor was it accompanied by any explanation of what was not understood, or any specific causation or scope of duty/duty-nexus plea. Mr Wilton submits that, taken in the round, and having regard to what must now be pleaded (including scope of duty/duty-nexus) in order to establish a cause of action in professional liability, the new plea comprises a new claim, and not just further particulars of an existing claim.

47. The second category of amendments comprises the claim (at paragraph 26.6) that Vincents owed, and was in breach of, a duty to advise the claimants against entering into the transaction. Much the same points apply. That duty was not pleaded in the unamended particulars of claim. It is premised upon facts in respect of the transaction, and the characteristics of individual claimants, most of which are set out for the first time at paragraphs 26.7 and 26.8 of the amended particulars of claim, and in Appendix 1. It depends also upon the claimants establishing the new plea (at paragraph 44A) that Vincents knew, or should have discovered, the characteristics of the claimants set out in Appendix 1. It depends also upon the new plea that the claimants did not in fact understand what they were told, as detailed in Appendix 3; and upon what appears to be intended as a combined causation and scope of duty/duty-nexus plea in paragraph 46B. Mr Wilton acknowledges that the claimants had already pleaded (at paragraph 45.8) the generic allegation that the defendants, including Vincents, failed to advise the claimants against entering into the transaction; but that bare particular of breach was unsupported by any plea as to any corresponding duty, or any material facts supporting the basis for an exceptional duty of such a kind. Nor was it accompanied by any explanation of precisely what was not understood, or any specific causation or scope of duty/duty-nexus plea. Mr Wilton submits that, taken in the round, and having regard to what must now be pleaded (including in respect of scope of duty/duty-nexus) to establish a cause of action in professional liability, the new plea comprises a new claim, and not just further particulars of an existing claim.

48. The third category of amendments comprises the claims by individual claimants detailed in paragraph 29A and Appendix 2, and paragraphs 45 and 45.6, that Vincents gave negligent advice on specific occasions unique to those individual claimants in the course of telephone or email communications. No such claims had previously been pleaded, as the focus was solely upon Vincents' report on title, and what it did, and did not, say. Paragraph 45.6 contained a generic allegation that all the defendants gave the claimants "*wrong advice, incomplete advice, or no advice at all*"; but on any fair construction that did not encompass the new pleas. There was nothing in the unamended particulars of claim which even hinted that there were individual occasions of negligent advice; and it cannot be right for a claimant to maintain that a later claim was already in issue simply by pointing to the most broadly drafted formulation of an overall breach of duty. Furthermore, when one examines the individual complaints in Appendix 2, they concern matters which range very widely, with varying degrees of connection (or lack thereof) with the generic complaints which were the sole subject of the claim previously.

49. For all these reasons, Mr Wilton submits that these are all '*new claims*' within the meaning of s. 35 and CPR 17.4.

50. Further, they do not arise out of the same, or substantially the same, facts. The first and second categories depend upon new assertions of actual or constructive

knowledge on the part of Vincents; upon extensive new particulars concerning the characteristics of the transactions, and the individual claimants; and upon new factual matters prayed in aid in respect of causation and scope of duty/duty-nexus. None of that featured in the unamended particulars of claim. The third category is self-evidently entirely new. There was not a whisper previously of the facts and matters relied upon in respect of the individual claimants' claims of breach of duty.

51. For all these reasons, Mr Wilton submits that the court does not have the necessary jurisdiction to allow any of these categories of amendment; and that the claimants' remedy, if they wish to pursue any such claims, notwithstanding the limitation obstacle, is to issue new proceedings.

Discretion

52. If, contrary to Vincents' primary position, the court does have jurisdiction to allow all the amendments, including those opposed on jurisdictional grounds, Mr Wilton submits that there are numerous reasons why the court should refuse permission to amend, as follows:

(1) No relevant supporting evidence

53. There is no evidence filed to support the amendments tending to confirm that the claimants do in fact possess the characteristics asserted in Appendix 1, or that Vincents had any actual knowledge of such characteristics, or as to the individual claimants having been advised as alleged in Appendix 2, or as to the individual claimants having misunderstood what they were advised, or as to their having harboured the other misunderstandings alleged in Appendix 3. Nor is there any evidence put before the court to demonstrate, as represented in paragraph 46A.1, that the value of the development was less than the monies released at any material time, or indeed to give any kind of explanation as to precisely why it was that the development failed, so as to show that the reasons for failure had anything to do with risks that Vincents did not advise upon competently. Nor is any explanation given as to why the claimants did not bring forward any case of the kind now pleaded from the outset (as on the face of things they could so easily have done).

(2) Inadequate pleading

54. The new claims (at paragraph 26.6) of a duty to ensure that the claimants understood advice, and to advise against entering into the transaction depend, amongst other things, upon Vincents knowing, or having a duty to discover, the characteristics of the claimants (essentially their lack of financial sophistication) as detailed in Appendix 1. Yet the claimants' pleas of actual knowledge (at paragraphs 44A and 46B) are unaccompanied by any particulars demonstrating that such characteristics were in fact known to Vincents (as required by PD16 paragraph 8.2 (5)). Nor do the claimants plead that Vincents knew anything else which should have caused it to appreciate that the claimants, or some of them, might need additional help in understanding the plain wording of the reports on title that Vincents had produced. Furthermore, as to constructive knowledge, the claimants do not plead any basis for a logically anterior duty (for that is what it would have to be) to have discovered characteristics of the claimants which, it is said, would have triggered any duty to ensure that advice was understood, or to have advised the claimants against proceeding. Nowhere in the

amended particulars of claim is anything pleaded to justify a duty on the part of Vincents to discover the extraordinarily wide-ranging, and detailed, characteristics of its clients, or (in some cases) persons associated with its clients, as set out in Appendix 1.

55. There is said to be a related problem with sub-paragraph 26.7.2.5. This is that it does not plead that Vincents had any knowledge of the marketing material which allegedly painted an unjustifiably favourable picture of this property investment, and of the steps which would be taken to secure the investment monies. That is all the more surprising given that Vincents has specifically denied that it knew of any such matters (in paragraph 12 of its defence).

56. Mr Wilton emphasises that these are not mere technical objections. If it is being said that material facts were known to Vincents which triggered the exceptional duties in question, then the basis for that assertion must be pleaded, as must the basis for another (again wholly exceptional) duty to discover the allegedly salient characteristics of the individual claimants.

57. Mr Wilton invites the court to examine the characteristics pleaded in Appendix 1 to see what Vincents "*knew, or should reasonably have known or ascertained*". The extent of what it is said that Vincents knew, or should have discovered, is remarkable. Thus, for instance, in relation to the 60th claimant, Niprose Investments Limited, it is being asserted that Vincents knew, or should have discovered, all kinds of information in respect, not of that particular company as such, but rather of its principal shareholder and sole director, Mrs Ruth Nickoll.

58. More generally, nothing is pleaded to support the implication that Vincents had assumed any kind of all-encompassing duty to advise on all material matters, and, in effect, to take the investment decision for the claimants. Nothing is said to suggest that Vincents' role was not the ordinary role of a conveyancing solicitor, or that Vincents was not perfectly entitled to set out, as it did, the boundaries of what it could, and could not, advise about. The claimants allege that there were concerning features of the particular transaction; but nothing is pleaded of a kind that could plausibly entail that the only advice which could competently be given by a conveyancing solicitor was that the claimants should not proceed at all.

59. As to the new pleas of individual breaches of duty at paragraph 29A and Appendix 2, Mr Wilton says that it is concerning that they conflict with the body of the amended particulars of claim. For example, the exclusion of Vincents from the focus of the allegations at paragraphs 45.2 to 45.4 would suggest that Vincents is not being criticised for failing to give sufficient advice about the high level of deposits, or for failing to advise that the deposits were being used to finance the development, or that there was a substantial risk that the claimants could lose all their money; but Appendix 2 now imports allegations, in individual cases, that Vincents *did* fail to give proper advice about the level of deposits and the risk of losing all the monies invested in the development.

60. Mr Wilton also criticises the scope of duty and duty-nexus pleas at paragraphs 46A.1, 46A.2 and 46B as unsatisfactory. It remains the obligation of a claimant to plead, and to prove, that the losses sustained were within the scope of a professional's duty, and attributable to what it was that that professional got wrong. Where a claimant *does*

understand a risk, and is content to bear that risk, and where *that* risk does then mature into loss, there can be no claim, even if the claimant would not have proceeded if competent advice about other risks had been given. In support of that submission, Mr Wilton cites the Court of Appeal's decision in *Petersen v Personal Representatives of Cyril B. Rivlin* [2002] EWCA Civ 194, [2002] Lloyd's Rep (PN) 386. Notably, in the instant case, the claimants do not in terms plead, whether in Appendix 3 or otherwise, that they did not understand the relevant risk, so clearly communicated by Vincents in its report on title, that the developer could fail between exchange and completion, for instance if it was unable to complete or became insolvent, whereupon there was a substantial risk that the deposits would be lost. Instead, the claimants make various unsustainable attempts to establish the necessary scope of duty and duty-nexus.

61. I note that in his leading judgment in *Petersen* (at [27]), May LJ cites the celebrated passage from Lord Hoffmann's speech in *South Australia Asset Management Corporation v York Montague Limited* [1997] AC 191 ('*SAAMCO*') at page 214C, distinguishing between the duty to provide information and the duty to advise:

> *I think that one can to some extent generalise the principle upon which this response depends. It is that a person under a duty to take reasonable care to provide information upon which someone else will decide upon a course of action is, if negligent, not generally regarded as responsible for all the consequences of that course of action. He is responsible only for the consequences of the information being wrong. A duty of care which imposes upon the informant responsibility for losses which would have occurred even if the information he gave had been correct is not in my view fair and reasonable as between the parties. It is therefore inappropriate either as an implied term of a contract or as a tortious duty arising from the relationship between them.*
>
> *The principle thus stated distinguishes between a duty to provide information for the purpose of enabling someone else to decide on a course of action and a duty to advise someone as to what course of action he should take. If the duty is to advise whether or not a course of action should be taken, the advisor must take reasonable care to consider all the potential consequences of that course of action. If he is negligent, he will therefore be responsible for all the foreseeable loss which is a consequence of that course of action having been taken. If his duty is only to supply information, he must take reasonable care to ensure that the information is correct and, if he is negligent, he will be responsible for all the foreseeable consequences of the information being wrong.*

62. Mr Wilton submits that the assertion (at paragraph 46A.1) that the value of the development was below the expenditure of the deposits, and that the further release of monies was therefore not adding corresponding value to the development, is an obvious *non-sequitur*: that suggested conclusion plainly does not follow merely from the fact that the development was sold, as an unfinished construction site, and at a much later date, for £4 million, whereas the sums passing through MSB's account totalled over £6 million. That kind of plea should never have been made absent any evidence that the claimants' funds had been used for an illegitimate purpose, or any

expert evidence pertaining to the value of the development at the time monies were released which might tend to show that this was less than the amounts released. Mr Wilton says that the claimants evidently have no such evidence. They have made no attempt to verify what the true factual position was: there is no evidence, or any plea, that any deposit moneys were misapplied, or misused, in any way, or that they went astray, whether in relation to the marketing of the development or otherwise. There is no proper basis for the plea that is sought to be advanced at paragraph 46A.1; and what little is pleaded plainly does not establish what it seeks to establish: that is, that the failure of the development had anything to do with any risk about which Vincents gave inadequate advice.

63. Similarly, Mr Wilton says that it is noteworthy that it is nowhere pleaded that the developer failed to attract sufficient purchasers or deposits to finance the building, even though paragraph 29.7.2.6 pleads that there was such a risk, and paragraph 29.3.10 pleads that Vincents should have highlighted that risk. There is no plea, and no evidence, that this risk ever eventuated, or that it was anything to do with what went wrong with the development. This appears to be (yet another) risk that leads nowhere because it has nothing to do with what caused the development to fail.

64. Mr Wilton suggests that the plea at paragraph 46A.2 must be intended as a general plea that a loss of more than 10% of the purchase price was within the scope of duty/duty-nexus because of Vincents' failure to ensure that the claimants understood that the deposit was extremely high; but there is no attempt to relate that to the circumstances of individual claimants (whose understanding as to the deposits is inherently likely to have differed). Appendix 3 does not plead that any of the claimants misunderstood Vincents' advice about the size of the deposits; indeed, the 83rd claimant asserts that: "*They did not think that a 50% deposit was unusual"*.

65. Mr Wilton observes that, at first sight, the plea at paragraph 46B is intended to be a general plea that the losses were all within Vincents' scope of duty, and the duty-nexus, because the claimants did not understand salient matters identified, but not sufficiently emphasised, in paragraphs 3.6 and 3.7 of Vincents' report on title (which contained advice concerning the unusual size of the deposit, the unavailability of deposit protection, and the risk of loss of the deposits if the development were to fail). This new plea suggests that the claimants had a deficient understanding of such matters, as set out in Appendix 3. However, Appendix 3 contains particulars of all sorts of matters, many of which have nothing to do with paragraphs 3.6 and 3.7 of the report on title, or with what the body of the amended particulars of claim alleges that Vincents failed properly to advise about. Thus, for instance, in respect of the 61st and 62nd claimants, it is said that they believed that registration at the Land Registry would provide them with some financial protection; in the case of the 85th and 86th claimants, that Vincents would not let them sign up to the development if it was a scam or a bad investment; and, in the case of the 92nd claimant, that monies would be returned, with interest, if the development was not completed by the long stop date, and that Vincents' advice that purchasers would get a good and marketable title meant that this was a good investment opportunity. There is said to be a total disconnect between the ostensible purpose of Appendix 3 and what one finds within it: a series of free-wheeling, and far-reaching, allegations of individual misunderstandings, ranging far and wide, often having little to do with the body of the pleaded case, raising as many questions as they answer, and not involving any meaningful connection with what

actually caused the development to fail, which was the insolvency of the developer. It was this that was to result in the uncompleted development being sold on, some years later, at a loss. This was the very risk that Vincents had advised about. The loss of the deposits was not caused by any breach of any pleaded duty on the part of Vincents. The deposits proved to be irrecoverable because the development failed as a result of the developer's insolvency, which was a risk to which Vincents had alerted the claimants in its report on title. Since the claimants understood, or should be taken to have understood, that risk, they have no valid claim. There is no plea that the risk which eventuated is one the claimants did not understand. The only way the claimants could get around the duty-nexus difficulty would be to establish the existence of an extraordinary duty on Vincents, as solicitors, actually to take the decision for the claimants to withdraw from the transactions.

66. Mr Wilton objects that there is no attempt of any kind in Appendix 2 to plead any scope of duty/duty-nexus case in respect of the individual allegations of breach of duty.

67. For these reasons, Mr Wilton submits that it remains the case that the claimants have not pleaded any sustainable scope of duty/duty-nexus case. There is no satisfactory plea that what caused the failure of the development was the fruition of any risk that Vincents had any duty to guard against.

(3) The merits

68. Mr Wilton submits that, in any event, the new claims are not properly arguable. They are premised upon a duty to establish the characteristics of the claimants, and duties to ensure that advice was understood, and to advise the claimants not to go ahead. They implicitly treat Vincents as a financial advisor, or as some other form of guardian of the claimants' financial interests, under an obligation to elicit information relevant to the claimants' investment decision-making, and then to advise them on the financial merits of their investment, and, in effect, to take the investment decision for the claimants. Mr Wilton submits that that goes much further than any duty previously recognised by the courts. The ordinary duties of a conveyancing solicitor are essentially to advise upon matters of contract, title and legal risk, and not as to the commercial merits of a transaction or an investment. Mr Wilton submits that there is no authority that recognises any duty upon a conveyancing solicitor to elicit information, and to give advice, of the kind now asserted in this case. Where a client is known to be vulnerable, and it is plain to the solicitor that that client is intent upon a disastrous, or an unwise, transaction, then there may be an exceptional duty to step in, and to advise against proceeding; but nothing is pleaded that is sufficient to warrant the imposition of such a duty here.

69. Mr Wilton further submits that the allegation of a failure to ensure that advice was understood is also hopeless when one has regard to the simple and straightforward explanation which Vincents gave of material matters in its report on title, given the absence of any pleading that Vincents had actual knowledge that its advice was not understood, and given the absence of any legally tenable basis for asserting any duty to discover the various individual circumstances of particular claimants.

70. Mr Wilton accepts that the court quite rightly afforded the claimants the opportunity to plead facts which might support such claims if they could; but he says that what has

come forth does not come anywhere near articulating a sustainable claim.

71. Furthermore, if there is no real prospect of establishing any duty to ensure that advice was understood, and to advise the claimants not to go ahead, then the claimants face insuperable obstacles as to scope of duty and duty-nexus. Notwithstanding the valiant, but ineffective, attempt in paragraph 46A.1 to suggest that monies were misapplied, there is, still, no evidence to suggest that any of the deposits were in fact misapplied, or that there was any shortage of purchasers, or that the failure of the development came about for any such reasons. On the contrary, all one can say is that the developer was insolvent, and that the development failed in consequence. That was a risk that Vincents clearly identified in its advice to the claimants, which was imparted in what was obviously an important document, namely the report on title.

(4) Delay in bringing forward a new case and case management implications

72. Mr Wilton further submits that there is no reason why a case of the kind now raised could not have been advanced from the outset, i.e. when proceedings were issued on 20 April 2022. That was already some 4-5 years after contracts were exchanged. The new case has therefore come very late; and then only in response to Vincents' application to strike out and for summary judgment.

73. The extent of the new case is said to be remarkable. If permitted, it would indeed be transformational. Whereas the existing case was based upon wholly generic allegations, directed (with some exceptions) at Vincents, just as it was directed at the other nine defendants, it has now metamorphosed into a case premised upon Vincents having owed novel, and exceptional, duties, referable to the individual circumstances of the claimants, as well as including, in respect of some claimants, individual allegations of negligent advice. Previously the focus was upon the report on title, and what it did (and did not) say. Now the focus is on the claimants' individual circumstances, and what Vincents knew, or should have discovered, about them, such as might have triggered exceptional duties owed by Vincents; upon the alleged misunderstandings of individual claimants; and upon specific instances of negligent advice given to individual claimants.

74. This is said to be highly prejudicial to Vincents. If the amendments are permitted, the time and effort spent in responding to a very different kind of case will, in considerable part, have been wasted. Vincents will now have to investigate individual factual matters pertaining to the conduct of numerous individual retainers, including in respect of what Vincents knew or, it might be said, had reason to discover, about alleged individual characteristics of the claimants, and in respect of individual misunderstandings. They will have to do so seven or eight years after the underlying events, and over two years into the life of this action. Vincents will have to review all the underlying material, and attempt to address the claimants' new, and multifarious, assertions about their own characteristics and (mis-)understandings, proceeding from a standing-start. Vincents will have to put together a detailed, and lengthy, response to the detailed and lengthy new elements of the pleading. The approach to disclosure and witness evidence will be radically altered, given the granular nature of the issues. Vincents will face a very different kind of trial from that formerly envisaged.

75. There are also said to be serious case management implications if the amendments are allowed. There is not just a question of the further delay and expense involved in

dealing with the pleadings stage, and the need for disclosure and witness evidence of a much wider scope. One also has a situation where the claimants are now pleading a very different form of claim against Vincents as compared with the claim against the second defendant. That defendant has rightly raised serious concerns about that state of affairs; but Vincents has yet to see any practical proposals from the claimants as to how the difficulties are going to be addressed. The claimants have not yet made any attempt to amend so far as the second defendant is concerned. If the claimants do plan to amend, then the consequence will be further delay whilst that process is under way, with, potentially, a different outcome at the end. If the claimants do not intend to amend in relation to the second defendant, then Vincents do not understand how the court can sensibly be expected to try such incommensurable claims as are now maintained and proposed against the second defendant and Vincents at a single trial. Nor is severance the answer because the claimants may decide (or be compelled) to amend against the second defendant so as to bring their case against that defendant into line with that against Vincents, whereupon one would end up, once again, with claims it would make sense to try together. In any event, severance would run the risk of conflicting judgments.

76. Yet further, Mr Wilton suggests that the previously agreed case management procedure for the trial of claims of representative lead claimants, as directed by DDJ Walthall on 10 July 2023, makes little sense when one is not dealing with generic allegations of the kind the claimants were previously advancing, and when, instead, the specific facts of individual retainers and claimants move centre stage. The time and effort devoted to that case management initiative will all have been wasted.

Overview

77. Mr Wilton suggests that the fundamental problem with the presentation of these claims is that the claimants set out in the wrong direction at the outset, seeking to establish a case founded upon entirely generic allegations of breach of duty, applicable to a number of different defendants, without any proper attention being paid to the specific features of the advice given by Vincents, or the individual circumstances of individual claimants who had instructed it. The unsustainability of such an approach having been established by way of my earlier judgment, the claimants are now seeking to reverse mid-litigation, and, in effect, to re-commence their claims as if they had from the start pleaded claims rooted in the individual circumstances of the claimants and their individual claims; and to do so at a time when the limitation period has now expired. The court was entirely right to give the claimants the chance to try and plead a sustainable claim. Yet the attempt to do so has demonstrated that there are, in reality, insuperable obstacles, both in terms of limitation, and the lack of any proper factual foundation or merit in the proposed amended pleading of extraordinary duties, which the claimants must overcome if this claim is to have any real prospect of success. The delay and the wasted expense, and the serious implications for case management, are further reasons why the court should not permit the amendments.

78. If the amendments are not permitted, then, so Mr Wilton submits, the claimants cannot overcome the objections identified in Vincents' application, not least by reason of the failure to plead any sustainable case for the expansive duties now contended for, and thus by reason of the lack of any legally recognisable connection between the alleged breaches of duty and the eventuation of loss. Mr Wilton submits that that remains the

fundamental difficulty: Vincents advised clearly as to the very risk - of the failure to complete the development upon the insolvency of the developer, and of the loss of the deposit monies in consequence - which in fact transpired, and which occasioned the claimants' losses. Whether or not the claimants could ever have crafted a claim at the outset to overcome that problem, they cannot do so now; and this claim should therefore fall to be summarily dismissed.

Oral submissions

79. In his oral submissions, Mr Wilton urged the court against looking at this case through the wrong end of the forensic telescope. Prior to the formulation of the proposed amendments, the claim against all ten defendants had been advanced on a generic basis, founded upon their individual reports on title. The claimants are now seeking to install both new foundations and a new super-structure. They seek to do so by moving the focus of the claim to the individual characteristics and circumstances of particular claimants. However, that shift runs into problems, not least that of limitation. This goes to the issue of the court's jurisdiction to allow the amendments. Mr Wilton took me through section 2 and paragraphs 3.4 to 3.7 of Vincents' comprehensive report on title. There, in three pages at the start of the substantive, 13 page report, Vincents had thrown down clear markers, by identifying highly pertinent risks to the claimants. The amendments have three main strands, although the first two are closely inter-related: the duty to ensure that the claimants understood Vincents' advice, the duty to advise against entering into the transactions at all, and allegations of individual negligence. There is an extensive factual under-pinning of all three strands. Mr Wilton accepts that some of these new matters are already in issue. But all of them raise new claims, involving new causes of action, which do not arise out of the same, or substantially the same, facts as are already in issue in this litigation.

80. Mr Wilton points out that there is no assertion (in paragraph 26.7.2.5) that Vincents was aware of the marketing material. There is no pleaded basis for the new allegation (in paragraph 44A) that Vincents knew, or should reasonably have known, or ascertained, the characteristics of the individual claimants which tended to show that they were financially unsophisticated. The factual basis underpinning and explaining the basis for this alleged duty is not pleaded. The claimants are said to be asserting the existence of a duty on the part of solicitors akin to that owed by a financial adviser, who must take reasonable steps to ensure that they are in possession of sufficient personal and financial information concerning their customer to enable them to meet their responsibility to give suitable investment advice. To illustrate the nature of this duty, Mr Wilton referred me to observations of Rix LJ in his leading judgment in *Rubenstein v HSBC Bank Plc* [2012] EWCA Civ 1184, [2013] PNLR 9, beginning at [43]. This plea is said to be *"a cuckoo in the nest"*. There are now some 30 individual claims against Vincents, all premised upon the existence of a duty, in each individual case, to ascertain particular characteristics of the individual claimant which might tend to show that they were financially unsophisticated.

81. Mr Wilton invites the court to stand back and look at the case through the prism of the existing allegations of breach of duty. One then has to look at what the claimants are now seeking to do. They are seeking to change dramatically the focus of the existing inquiry. Mr Wilton acknowledges that paragraph 45.6 of the existing particulars of claim alleges that Vincents gave the claimants *"wrong advice, incomplete advice, or*

no advice at all". But one needs to consider how the claimants have pursued that allegation. Mr Wilton took me to paragraph 45.3 of the defence. This pleads that:

> *... sub-paragraph 45.6 is embarrassing and an abuse of process because the D10 claimants have not identified what was wrong or incomplete about [Vincents'] advice and because it is plain (even on the D10 claimants' pleaded case) that advice was in fact given: if any specific criticism is intended it is denied because the advice given by [Vincents] was correct and as full and complete as could be expected of a reasonably competent solicitor in the circumstances.*

The claimants respond to this plea in paragraph 14 of the Reply, as follows:

> *As to paragraph 45.3, the claimants have set out in paragraph 29.10 of the particulars of claim what was wrong and incomplete about [Vincents'] advice. As is clear from Column L of the Schedule to the particulars of claim, the claimants do not allege that [Vincents] gave no advice at all.*

This is said to be wholly at odds with the wider case now sought to be advanced at paragraph 29A (headed *'Individual Advice'*) that *"Some claimants received further advice by email and/or telephone from [Vincents], as particularised in Appendix 2, which was wrong for the reasons set out there."*

Discussion and conclusions

82. I have already set out the legal principles which govern applications to amend a statement of case. It is these principles which I will apply to the determination of this amendment application. I have also set out the respective submissions of counsel. I bear these firmly in mind without addressing them individually.

83. I must first consider issues of jurisdiction. It is convenient to do so separately in relation to each of the three categories of proposed amendments that Mr Wilton submits constitute new claims. I will then turn to consider issues going to the court's discretion.

Jurisdiction

84. First there is the new plea (in paragraph 26.6) that Vincents' duty to advise the claimants of the risks to which they were exposed *"included a duty to ensure (alternatively, to take reasonable steps to ensure) that the claimants fully understood the advice ..."*. Mr Wilton acknowledges that the claimants had already pleaded (at paragraph 45.5) the generic allegation that all of the defendants (including Vincents) *"failed to ensure, alternatively failed to take reasonable steps to ensure, that the claimants fully understood the advice"* given. However, he submits that that bare particular of breach was unsupported by any plea as to any corresponding duty, or any material facts supporting the novel duties in issue (to discover the claimants' salient characteristics, and to take further steps to ensure advice was understood). Nor was it accompanied by any explanation of what was not understood, or any specific causation or scope of duty/duty-nexus plea. He submits that, taken in the round, and having regard to what must now be pleaded (including scope of duty/duty-nexus) to

establish a cause of action in professional liability, the new plea comprises a new claim, and not just further particulars of an existing claim.

85. I reject this submission. In my judgment, this amendment does not seek to introduce any new cause of action. It merely provides particulars of an existing cause of action. The duty is implicit in the breach already pleaded at paragraph 45.5. Insofar as the duty required express articulation, it was encompassed in the duty pleaded at the existing paragraph 42.3 that the defendants (including Vincents) *"would **adequately** draw to the claimants' attention any risks associated with the purchase"* (my emphasis). The adverb *"adequately"* imports a duty to take reasonable steps to ensure a full and proper understanding of the risks associated with each claimants' purchase. In my earlier judgment (at [70]) I accepted the submission that the decision of the Court of Appeal in *Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep PN 48 stands as authority for the proposition that the precise scope of a solicitor's duty to advise depends not just upon the terms of the solicitor's retainer, but also upon the extent to which any individual client appears to need particular advice. I accepted that where a client was financially less sophisticated, the solicitor was under a greater duty to give legal advice. I recognised that the level of the particular client's sophistication, and experience, was a matter for trial, provided the issue had been properly raised and addressed on the pleadings. However, to the extent that such matters were raised as justifying a higher-level duty to explain, I stated they must be fully pleaded, so that Vincents might know the nature of the case they had to meet. That is what this category of Mr Scher's amendments seek to do. In my judgment, they raise no new claim. They provide particulars in support of an existing claim.

86. If I am wrong about this, and this category of amendments does seek to raise a new claim, then I consider that it arises out of the same, or substantially the same, facts as are already in issue between the parties. The existing pleas of duty at paragraphs 26.6 and 42.3, and of breach of duty at paragraph 45.5, clearly raise factual issues as to the level of each claimants' individual understanding, and therefore as to any salient characteristics of particular claimants that might be relevant to that issue. These are factual issues that were going to be litigated between the claimant and Vincents in any event. Subject to issues of discretion, the claimants should therefore be able to rely upon any new cause of action which substantially arises from those facts. They should also be entitled to rely upon the particular characteristics of individual claimants introduced by paragraph 26.8, and set out in Appendix 1, as tending to show their naivety and low level of financial sophistication.

87. Second, there is the plea (also at paragraph 26.6) that Vincents' duty to advise the claimants of the risks to which they were exposed *"included a duty ... to advise the claimants against entering into the transaction"*. Notwithstanding Mr Wilton's submissions, in my judgment this amendment does not seek to introduce any new cause of action. It merely provides particulars of an existing cause of action. The duty is already pleaded at paragraph 42.5 (in generic terms, by reference to the SRA warning notices) and specifically at paragraph 42.6. Breach of that duty is already pleaded at paragraphs 45.7 and 45.8.

88. If I am wrong about this, and this category of amendments does seek to raise a new claim, then I have no doubt that it arises out of the same, or substantially the same, facts as are already in issue between the parties. The nature and characteristics of the transaction, and the surrounding circumstances, set out in paragraph 26.7 are already

live issues between the parties. Paragraph 17 of the particulars of claim already pleads the SRA warning notice. Paragraph 25 already pleads the purchase contracts (with paragraph 25.10 making it clear that each claimant will rely upon their own particular version of Schedule 2 for its full terms and effect). The existing paragraph 26 already identifies the "*abnormally high risks*" to which the claimants were exposed. The factual issues set out in paragraph 26.7 were always going to be litigated between the claimants and Vincents in any event, irrespective of the new amendments. Subject to issues of discretion, the claimants should therefore be able to rely upon any new cause of action which substantially arises from those facts. For completeness, I consider that the same considerations apply to the additional criticisms directed to the report on title that are introduced in paragraph 29 of the particulars of claim. These raise no new matters of evidence or substance but rather matters of legal submission.

89. The third category of amendments comprises the claim that some individual claimants received further advice by email and/or telephone from Vincents that was wrong. This is introduced by paragraph 29A and Appendix 2 (and referenced in the opening of paragraph 25 and in paragraph 45.6). Mr Wilton submits that this is a new claim. He says that no such claim had been pleaded previously, as the focus was solely upon Vincents' report on title and what it did (and did not) say. Mr Wilton acknowledges that paragraph 45.6 did contain a generic allegation that all the defendants gave the claimants "*wrong advice, incomplete advice, or no advice at all*"; but he says that on any fair construction, that did not encompass the new pleas. There was nothing in the unamended particulars of claim which even hinted that there were individual occasions of negligent advice. Any suggestion of that kind is wholly inconsistent with the terms of paragraph 14 of the reply, which confines the allegations of *"wrong"* and *"incomplete"* advice to matters contained within the report on title. It cannot be right, Mr Wilton says, that a claimant can maintain that any later claim was already in issue simply by pointing to the most broadly drafted formulation of an overall breach of duty. Furthermore, when one examines the individual complaints in Appendix 2, they concern matters which range very widely, with varying degrees of connection (or lack thereof) with the generic complaints which were previously the sole subject-matter of the claim.

90. I accept these submissions. I am entirely satisfied that, on a proper analysis of paragraph 45.6, when read in conjunction with paragraph 14 of the reply, this particular proposed amendment is seeking to introduce a new cause of action. The give-away is in the new paragraph heading: *'Individual advice'*. It is confirmed by the terms of paragraph 1 of Appendix 2, which make it clear that what follows is advice received by the Claimants *"in addition to the report on title"*.

91. I must therefore go on to consider whether this amendment arises out of the same, or substantially the same, facts as are already in issue between the parties. If one confines oneself to the terms of the original particulars of claim, the answer is clearly: No. The facts relied upon are entirely new.

92. However, I have already referred to the reliance placed by Mr Scher in his oral submissions upon the terms of paragraph 32 of the defence (which follows on from detailed references to the contents of Vincents' report on title). With apologies for repeating the citation, this paragraph reads:

> *Further, in those (relatively few) individual cases where D10 Claimants sought individual advice from the Tenth Defendant in respect of the risks being undertaken the Tenth Defendant will rely in respect of those individual Claimants on the advice given which drew further attention to the risks highlighted in the report on title.*

93. As I have already indicated when discussing the legal principles governing an application to amend a statement of case at [31] above, in considering what relevant facts are put in issue by the original particulars of claim, a material consideration is the factual matters raised in the defence. It is necessary to consider the extent to which the proposed amendments, if allowed, would require Vincents to embark upon an investigation of facts which they would not previously have been concerned to investigate. At stage 3, the court is concerned at a much less abstract, more granular, level than at stage 2; it is a matter of considering the whole range of facts which are likely to be adduced at trial. Here, Vincents have indicated that in those (relatively few) individual cases where claimants sought individual advice from Vincents in respect of the risks being undertaken, Vincents will rely, in respect of those individual claimants, on the advice given which, they say, drew further attention to the risks highlighted in the report on title. In light of this plea, and not without some hesitation, I conclude that the individual *"wrong"* advice now sought to be alleged does arise out of the same, or substantially the same, facts as are already in issue between the claimants and Vincents, namely the nature of the individual advice (if any) Vincents gave to particular claimants. However, the fact that this was a matter originally put in issue by Vincents, rather than the claimants, may be material, and possibly highly material, to the issue of the exercise of the court's discretion whether or not to allow this proposed amendment.

94. I therefore find that there is no jurisdictional bar to allowing any of these proposed amendments. I turn then to matters of discretion.

Discretion

95. It is convenient to consider each of the categories of amendment in turn. Before doing so, however, it is appropriate to refer to one over-arching consideration: the timing of the amendments.

96. The relevant chronology is as follows: The claimants all exchanged contracts on various dates between November 2017 and November 2018. Any new claims are therefore now statute-barred. The claimants' solicitors' pre-action protocol letter of claim is dated 28 October 2020. The claim form was issued on 20 April 2022. Case management directions were given by DDJ Walthall on 25 July 2023. Vincents' application to strike out the claim, or seeking summary judgment thereon, was issued on 21 February 2024. The hearing took place on 20 March 2024. My formal judgment was handed down on 17 April 2024. This matter returned to court on 5 December 2024.

97. The claimants' proposed amendments are entirely responsive to my judgment on the claimants' strike out and summary judgment application. I am satisfied that they would not have been made but for the observations I made in the judgment I handed down on that application. The amendments have undoubtedly been made late. They have not led to the loss of any trial date because none had been fixed. They did

however lead to the loss of the costs and case management conference that had been listed for 23 May 2024. That will not now be re-listed to take place until at least six weeks after the formal hand down of this judgment. There may be further delays if other claimants seek to make similar amendments to their claims against the second defendant. The amendments may necessitate adjustments to the existing '*lead claimant*' regime. However, all of that is the product of the timing of Vincents' own application. There is no satisfactory explanation for Vincents' delay in bringing that application until some seven months after the case management hearing before DDJ Walthall. In my judgment, any impact that allowing the amendments may have upon existing case management arrangements should not count against the claimants. The same applies to considerations of the furtherance of the overriding objective, including the need to conduct litigation fairly and justly, and at proportionate cost. Vincents cannot sensibly complain of any such inconvenience since it is their late application that has been responsible for them. I therefore reject Mr Wilton's submissions that Vincents can rely upon the claimants' delay in bringing forward any new case, and any consequent case management implications, as valid and sufficient reasons for refusing to allow the amendments sought.

98. The first category of amendments pleads the duties to ensure that the claimants fully understood Vincents' advice, and to advise the claimants against entering into the transaction. These are set out in the addition to paragraph 26.6, with supporting details in paragraphs 26.7 and 26.8 (introducing Appendix 1). Notwithstanding Mr Wilton's submissions to the contrary, I am satisfied that these amendments are coherent, properly arguable, and have a sufficiently realistic prospect of success. They are adequately particularised, and carry a degree of conviction. Once verified by a statement of truth from the claimants' solicitor, they will be supported by credible material evidencing at least a prima facie case that the amended allegations are correct. They concern matters that these parties have already been addressing. Allowing these amendments will cause no real prejudice to Vincents over and above that caused to any defendant when the court allows an amendment to an existing claim. Refusing the amendments, and leaving the claimants to raise them by way of a fresh claim, on the other hand, would expose the claimants to a limitation defence, or to a plea that pursuing a fresh claim is an abuse of process. In the exercise of the court's discretion, these amendments should be allowed, as should the consequential amendment to paragraph 45.7 (and that intimated to paragraph 45.8).

99. At [76] of my earlier judgment, I indicated, at least on a provisional, and preliminary, basis, that I considered that there might be "*some traction in at least some of the claimants' allegations of duties: (1) to advise that the deposit-holding machinery afforded no meaningful protection to the claimants, (2) to advise against entering into these purchase contracts, and (3) to ensure that individual claimants properly understood Vincents' advice"*. However, I indicated that the factual bases for such duties needed to be properly pleaded out, both at a generic, and also at a granular, and individual, level. Now that they have been, I am satisfied that these amended pleas have a sufficiently realistic prospect of success. Mr Wilton submits that: (1) nothing is pleaded to support the implication that Vincents had assumed any kind of all-encompassing duty to advise on all material matters, and, in effect, to take the decision for the claimants; and (2) although it is alleged that there were concerning features of the particular transaction, nothing is pleaded of a kind that could plausibly entail that the only advice which could competently be given by a conveyancing

solicitor was that the claimants should not proceed at all. Given the nature and characteristics of the transactions, and their surrounding circumstances, as now pleaded in the amended particulars of claim; and in light of the clear statement in the SRA warning notice that: *"You should ensure that clients fully understand the risks and it may well be necessary to strongly advise clients against entering into the transaction"*, I cannot accept Mr Wilton's submissions. I recognise the unusual character of a duty on conveyancing solicitors to advise their client against entering into the relevant transaction. I appreciate that it is a duty that would appear to extend far further than any duty previously recognised by the courts. But it is a duty expressly recognised in the SRA warning notice, issued on 23 June 2017, some five months before the first exchange of contracts. I am satisfied that enough is pleaded to raise a properly arguable case, with a sufficiently realistic prospect of success.

100. Mr Wilton submits that there is a problem with the new sub-paragraph 26.7.2.5 of the proposed amended particulars of claim. This contains no positive averment that Vincents was aware of the marketing material and commendatory emails which are said to have painted an unjustifiably favourable picture of this property investment, and of the protection which would be available to secure the '*deposits*'. Mr Wilton says that this is all the more surprising given that Vincents has specifically denied (in paragraph 12 of the defence) that it was privy to any such matters. Pending disclosure of Vincents' files, I would accept that this is as far as the claimants can presently plead their case against Vincents.

101. I am satisfied that the same considerations apply to the next category of amendments, comprising the additional criticisms directed to the report on title that are sought to be added to paragraph 29 of the particulars of claim. As I have already observed, these raise no new matters of evidence or substance but rather matters of legal submission. The same applies to the addition to paragraph 45.5.

102. Mr Wilton complains that the new plea (in paragraph 44A) that Vincents knew or should reasonably have known, or ascertained, the pleaded characteristics of the individual claimants which tend to show their lack of financial sophistication is inadequately pleaded. The plea of actual knowledge is entirely dependent upon Vincents' disclosure. In my judgment, the plea of constructive knowledge is sufficiently premised upon the role of Vincents' as the claimants' solicitors and the need for them to "*know*" their own clients. It is a matter for evidence at trial. Applying the same criteria to this proposed amendment as I have to the first category of amendments, I am satisfied, in the exercise of the court's discretion, that these amendments should also be allowed.

103. I would also allow the new paragraph 46B and Appendix 3, setting out how individual claimants are said to have misunderstood Vincents' advice. I consider that these allegations follow on from the amendments I have already allowed. They should therefore also be permitted.

104. In my judgment, different considerations apply to the new claim, introduced by paragraph 29A and Appendix 2, and the additions to the opening of paragraph 45 and to paragraph 45.6, that Vincents gave advice to some claimants by email and/or telephone that was wrong. I have already held that this is a new claim, brought out of time; and that the court only has jurisdiction to allow this series of amendments because this was a matter originally put in issue by Vincents (by paragraph 32 of its

defence), rather than the claimants. This series of amendments introduces a wholly new case. If allowed, it would involve a fundamental shift in the claimants' case away from the existing focus, which is exclusively upon Vincents' report in title, to a varied assortment of additional pieces of advice given to nine individual claimants. It would carry potential case management implications, possibly leading to revisions to the lead claimant model, or the need for additional lead claimants. The claimants have not sought to make these amendments of their own initiative, but solely in response to Vincents' application to strike out or for summary judgment. The claimants have proffered no explanation as to why they did not make these allegations at the outset of this claim, or as to why they would wish to do so now, except by way of response to Vincents' application.

105. In my judgment, allowing this series of amendments would be unduly prejudicial to Vincents in circumstances where: (1) the amendments have come about entirely as a result of Vincents' own conduct in bringing the strike out and summary judgment application; and (2) the court only has jurisdiction to entertain the amendments as a result of the terms of Vincents' own pleaded defence. The prejudice to Vincents outweighs the prejudice to the claimants in refusing to allow them to pursue this series of amendments in circumstances where: (1) the claimants elected not to raise these allegations in their original statement of case (settled by their present counsel and solicitors); (2) they have offered no explanation for their recent change of approach; and (3) the new allegations would effect a fundamental, and transformative, change in the character of the claim made against Vincents, at a relatively late stage in the case management of this claim. In short, and in the exercise of the court's discretionary case management powers, I consider that it would not be fair, just, or in accordance with the overriding objective to allow this series of amendments.

106. I think that that leaves the new paragraphs 46A.1 and 46A.2 as the only remaining amendments of any substance. These are expressly directed to addressing any need for the claimants to demonstrate that the loss of the claimants' '*deposits*' was within the scope of Vincents' duty. They therefore address the scope of duty and duty-nexus issues.

107. Paragraph 46A.2 would seem to me to raise a coherent and properly arguable case that any loss of more than 10% of the purchase price was within the scope of Vincents' duty. In relation to some at least of the claimants, it would seem to me to have a sufficiently realistic prospect of success. The plea will cause no material prejudice to Vincents, whilst it would be prejudicial to the claimants to refuse to allow them to pursue a case along the lines of this plea. It arises out of the same, or substantially the same, facts as are already in issue between the claimants and Vincents. It will not require Vincents to investigate any additional facts, or to obtain evidence of any additional matters which are outside the ambit of, and unrelated to, those facts which it will already require to investigate for the purposes of defending the existing claims. This proposed amendment does not add to the facts in issue between the claimants and Vincents. It merely lays a proper foundation in the pleadings for what is essentially a matter of legal argument. I would therefore allow this amendment.

108. However, paragraph 46A.1 is far more problematic. It is specifically directed to the duty-nexus issue. The introductory two sentences present no difficulty. They plead that the deposits were supposedly protected by a process in which they were released

only in connection with a '*Valuation Certificate*' or similar, "*implying that money would only be released in connection with the value of the development*". The pleading then reiterates that the advice about such protection was negligent, as previously pleaded. It is the remainder of the sub-paragraph that presents difficulty. With apologies for the repletion, it pleads:

> *Over £7,000,000 was spent on the development, and over £6,000,000 passed through MSB's account, but the land was sold for only £4,000,000. If there had been meaningful security or protection for the claimants' money, it would not have been released, either because a professional owing duties to the claimants would have noticed that the value was so far below expenditure, and/or because such a professional would have identified that the releases of funds were not adding value to the development.*

109. Mr Wilton points out that no evidence is put before the court tending to demonstrate that the value of the development was less than the monies released at any particular time. Nor, indeed, do the claimants seek to give any kind of explanation as to precisely why it was that the development failed, so as to show that the reasons for failure had anything to do with risks that Vincents did not advise upon competently. Mr Wilton submits that the assertion that the value of the development was below the expenditure of the deposits, and that the further release of monies was not adding corresponding value, is an obvious *non-sequitur*: that plainly does not follow from the fact that the land was sold at a much later date for £4 million when the total sums passing through the developer's solicitor's account was over £6 million. That kind of plea should not have been made absent any evidence that the claimants' funds were used for an illegitimate purpose, or expert evidence pertaining to the value of the development at the time monies were released such as might have tended to show that the value of the development was less than the monies released. Mr Wilton suggests that the claimants evidently have no such evidence. As such, there is no proper basis for the plea; and what is pleaded plainly does not establish what it seeks to establish, which is that the failure of the development had anything to do with any risk about which Vincents gave inadequate advice.

110. I accept Mr Wilton's submissions. It is not simply that there is no credible material before the court tending to demonstrate that the value of the development was less than the amount of the deposit moneys released at any material time, The proposed paragraph 46A.1 contains no plea to that effect. I agree with Mr Wilton that it does not logically follow from the fact that the development was sold in an incomplete state, following on from the insolvent failure of both the developer and its funder, for a sum considerably less than the amount spent on the development, and also considerably less than the total value of all the deposits, that the development was worth less than the deposits released to the developer at the time they were released, or that the deposits were not adding value to the development as and when they were released. In my judgment, paragraph 46A.1 does not plead a properly arguable, coherent, sustainable, properly particularised case, supported by credible material, and attended by a reasonable prospect of success, that the loss of their deposits fell within the scope of any duty owed to the claimants and allegedly breached by Vincents. It is not a satisfactory plea that the failure of the development, and consequently the loss of the deposits, was the result of any breach of Vincents' duty referable to the

protection of the claimants' deposits. I would therefore refuse to allow this particular amendment.

111. Having allowed the claimants' other proposed amendments to the extent I have already indicated, I am satisfied, applying the criteria indicated in my earlier judgment, that I should dismiss Vincents' application to strike out the particulars of claim, and refuse its application for summary judgment against the claimants. I am satisfied that, as so amended, the claimants' particulars of claim against Vincents discloses reasonable grounds for bringing a claim which has realistic prospects of success. In particular, and as regards the duty-nexus issue, I adhere to the view I provisionally expressed, on a preliminary basis, at [78] of my earlier judgment, that if the claimants were to succeed at trial in demonstrating that Vincents owed them a duty to advise against entering into these transactions, then that would establish a sufficiently clear nexus between the breach of that duty and the loss of the claimants' deposits. That view is supported by the citation from Lord Hoffmann's seminal speech in *SAAMCO*, distinguishing between the duty to provide information and the duty to advise, that I have cited at [61] above. If that is correct, then this case must go to trial; and (subject to disallowing the amendment proposed at paragraph 46A.1 of the particulars of claim) it would not be right for me to seek to impose any further fetter upon the freedom of the trial judge to determine the duty-nexus question insofar as it may arise in relation to the other alleged breaches of duty.

Disposal

112. For the reasons I have given, I refuse the claimants permission to amend their particulars of claim to introduce the new claim that Vincents gave advice to some claimants by email and/or telephone that was wrong. I therefore disallow the amendments sought to be introduced in paragraph 29A of the particulars of claim and Appendix 2, and the additions to the opening of paragraph 45 and to paragraph 45.6.

113. I also refuse the claimants permission to amend their particulars of claim to introduce the scope of duty and duty-nexus argument pleaded in paragraph 46A.1 of the amended particulars of claim.

114. However, I allow all of the claimants' other proposed amendments. The claimants should prepare, file, and serve amended particulars of claim in accordance with this judgment. Vincents will need to file and serve an amended defence consequential upon the amended particulars of claim. The claimants will then need to serve an amended reply consequential upon that amended defence. The parties will need to agree, or propose to the court, a timetable for these amendments, and for bringing the matter back before the court for the next case management hearing. The parties will also need to consider what further or revised case management directions are required in the light of the amended statements of case. The D2 claimants should also consider whether any, and if so what, amendments are required to their claim against the second defendant. The court's order should include a timetable governing the making of any such amendments; and the timing of the next case management hearing will need to allow time for the relevant parties to effect these amendments. Regrettably, I feel that I should undertake the further case management of the claims concerning this development.

115. I would invite the parties to seek to agree a substantive order to give effect to this judgment. This should include provision for the costs of this application (including the reserved costs of the previous hearing). My present, entirely provisional, view is that some, but not all, of these costs should fall to be borne by the claimants because they have only avoided the striking out of their claims against Vincents, or resisted summary judgment on such claims in Vincents' favour, because of the amendments to their particulars of claim for which I am giving permission. If the parties cannot agree on a suitable form of order, they should provide a draft composite order, together with brief written submissions on the outstanding consequential matters, which should be no longer than necessary, and, in any event, no longer than five pages in length. Unless I direct otherwise, I will proceed to determine the outstanding matters on the papers.

116. I propose formally to hand down this judgment remotely at 10.00 am on Friday 17 January 2025. No attendance is required. I will extend the time for appealing to 42 days after formal hand down (i.e. to 4.00 pm on 28 March 2025). I direct that written submissions in support of any application for permission to appeal, with concise draft grounds of appeal, are to be filed and served within 14 days after hand down (i.e. by 4.00 pm on 31 January 2025). Unless I direct otherwise, I will determine any such application on paper.

117. I conclude by reiterating my thanks to both counsel (and their respective solicitors) for their considerable assistance in facilitating the disposal of this application.

118. That concludes this reserved judgment.