Neutral Citation Number: [2020] EWHC 2903 (Comm)

Case No: CL-2020-000094

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/11/2020

Before :

MR CHRISTOPHER HANCOCK QC
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

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Between :

SEBASTIAN TOWNSEND UKEGHESON	**Claimant**
- and -	
(1) GRESHAM INSURANCE COMPANY LIMITED	**Defendants**
(2) ARC LEGAL ASSISTANCE LIMITED	
(3) RUSSELL KENT	

- -
- -

Mr Ukegheson (representing himself) for the **Claimant**
Ms Hannah Daly (instructed by **Trowers and Hamlins LLP**) for the **Defendants**

Hearing dates: 09 October 2020

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Approved Judgment

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MR CHRISTOPHER HANCOCK QC
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

"Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed 09 November 2020 at 10:00am"

MR CHRISTOPHER HANCOCK QC :

Introduction.

1. This is an application for summary judgment made by the Defendants, who seek, in effect, to strike out all but one limb of the Claimant's claim, and to reduce the amount of that claim very substantially. The First Defendant provided home insurance to the Claimant, which included legal expenses insurance, the Second Defendant administered that insurance on behalf of the First Defendant, and the Third Defendant was an employee of the Second Defendant. The Claimant, who was the insured under the policy and who is, I understand a member of the Chartered Institute of Legal Executives, a qualified Nigerian barrister and in the process of becoming qualified as a barrister in England, as well as being a registered foreign lawyer represented himself.

Relevant background.

2. I can set out the history of the matter relatively briefly.

   a. The Claimant took out a home insurance policy with the First Defendant in relation to the relevant period. That policy provided cover, inter alia, for legal expenses insurances.

   b. The relevant clauses of the policy are to be found in Section 10. That section includes the following clauses:

      *"**Appointed representative***

      The lawyer or other suitably qualified person appointed by us to act on your behalf

      Costs and expenses – up to the limit of indemnity:

      *a) All reasonable and necessary legal costs charged by the **appointed representative** and agreed by us…*

      Legal proceedings

      Legal proceedings:

      a) for the pursuit or defence of a claim for damages…

      dealt with by:

      - *Negotiation*
      - *A civil court*
      - *A tribunal…*

      Which we have agreed to or authorised

      Prospects of success

> *In respect of all claim it is always more likely than not that you will:*
>
> *a) recover damages or obtain any other legal remedy which we have agreed to*
>
> *b) make a successful defence*
>
> *c) make a successful appeal or defence of an appeal*
>
> *Prospects of success will be assessed by us or an appointed representative on our behalf*
>
> ***Cover***
>
> *We will insure our for any costs and expenses incurred in respect of legal proceedings following an insured event provided that:…*
>
> *… Prospects of success exist for the duration of the claim…*

c. The limit of indemnity under the policy was £50,000. The policy (a copy of the relevant part of which is appended to this judgment) also contained provisions relating to the choice of an appointed representative, arbitration and other methods of dispute resolution. There was no suggestion of any limitation on the Claimant's right to come to Court.

d. The Claimant was employed by Haringey Council until 18 January 2013, when he resigned.

e. Following that resignation, the Claimant brought proceedings in the Employment Tribunal for various claims, alleging (amongst other things) unfair (constructive) dismissal, and discrimination (on grounds of race, sex and disability).

f. The Claimant applied to the Defendant for payment of the expenses of this claim. The Defendant refused to make such payment, on the grounds that its legal advisers, Irwin Mitchell and Mr Peter Starcevic, took the view that the action did not have a greater than 50% chance of success, as the policy required. The date on which this first assessment was made was 11 March 2013, (the assessment being made by Irwin Mitchell) and the reason given was that insufficient evidence had been provided.

g. In addition, Mr Starcevic, of Counsel, advised on 8 April 2013, 18 April and 26 April 2013. On each occasion he concluded that the claim did not have sufficient prospect of success, i.e. more than 50%.

h. Mr Starcevic advised again on 11 July 2013, in relation to the original claims and a claim for whistleblowing. Again, he concluded that the claim did not have a more than 50% chance of success.

i. The Defendant therefore issued a decision to the Claimant to the effect that it would not be providing cover in respect of the claim.

j. On 25 September 2013, in the absence of the Claimant, who was, I understand, abroad completing his studies to become a Nigerian qualified barrister, Employment Judge Manley struck his claim out as having no real prospect of success.

k. The Claimant sought permission to appeal to the EAT and that permission was granted by Mrs Justice Slade on 21 January 2015. The Claimant thereupon made an application for cover for the permission application and the appeal. The matter was assessed again on 20 March 2015 by Mr Starcevic, who concluded that although there were good arguments in support of the appeal against the striking out, it remained the case that the prospects of the claim as a whole succeeding were less than 50%. Following the provision of further material by the Claimant, Mr Starcevic reiterated that view, on 25 March 2015.

l. On 19 May 2015, Mr Starcevic carried out a further assessment. He concluded that the appeal was likely to succeed but that the claim as a whole did not have greater than 50% prospects of success.

m. On that appeal to the EAT, on 21 May 2015, Langstaff P held that the first tier judge should not have struck out all of the Claimant's claims, but upheld the first tier judge's decision in relation to the claims for victimisation and religious and disability discrimination. Other claims were remitted to a different ET.

n. The Defendant then wrote to the Claimant stating that it would consider paying his costs of the appeal to the EAT and asking what costs had been incurred. This was then the subject of prolonged correspondence.

o. Going back to the chronology, the Claimant appealed from the decision of the EAT to the Court of Appeal, seeking to have all the claims remitted to the ET, including those for victimisation and religious and disability discrimination.

p. At this stage, the Defendant, having failed to agree with the Claimant on the choice of a counsel to assess the claim, obtained an assessment from Mr Ghazan Mahmood of Counsel, who again concluded that the prospects of success on the claim were less than 50%.

q. Although the CA gave permission to appeal, the appeal was unsuccessful.

r. The Claimant sought and was refused permission to appeal to the Supreme Court.

s. The claims that had been remitted to the ET were then settled with Haringey. The Defendant had determined that those claims had a less than 50% chance of success. However, as I understand it, those claims were not the subject of a further assessment over and above those already obtained and set out above.

The causes of action alleged.

3. This being the history of the matter, I turn to the suggested causes of action put forward by the Claimant. These are not always easy to follow.

a. The first is a breach of contract, in refusing to fund the claim despite the fact that it was a claim with good prospects.

b. The second is a more far reaching accusation of fraudulent misrepresentation.

Loss and damage.

4. Next, it is necessary to outline the loss and damage claimed by the Claimant.

a. First, the costs of the appeal to the EAT are claimed. The Defendants accept liability for these; their defence is simply that the costs are overstated. The claim amount is £62,847.60 (subject to assessment); the Defendants maintain that the costs should be £1,278.60. The major reason for the dispute is that the Claimant claims on the basis that he was not a litigant in person, and so is entitled to claim the costs that he would have paid to another lawyer, and not merely on the basis of costs payable to a litigant in person.

b. Second, a claim relating to the costs incurred in running the (unsuccessful) claims to the CA and permission to appeal to the SC is put forward. This claim totals £40,000.

c. Thirdly, there is a claim for £35,000 for loss of the ability to earn monies doing other cases.

d. Fourthly, there is a claim for distress due to the alleged breaches of duty by the Defendants in the sum of £250,000.

5. In view of the disputes as to the matters in fact pleaded, I annex to this judgment a full copy of the Particulars of Claim. Paragraphs 5-8, 13, and 25-27 are of particular relevance.

The approach on an application for summary judgment.

6. The Claimant reminded me, justifiably, of the fact that to strike out or give summary judgment on a claim for fraud was a "draconian" step, relying on the statements of principle in *Palladian Partners LP and others v The Republic of Argentina and another* [2020] EWHC 1946 (Comm). I have also in mind the statements of the House of Lords in *Three Rivers DC v Bank of England (No 3)* [2001] 2 AC 1, at paragraphs 185-186 and the statement of Flaux J (as he then was) in *JSC Bank Moscow v Kekhman* [2015] EWHC (Comm) 3173, at paragraph 20, as to the pleading of fraud. I bear these statements very much in mind in relation to the fraud pleading.

7. However, in my judgment, the overall test for summary judgment is aptly set out in the often cited decision of Lewison J, as he then was, in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at 15:

> *"15. As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:*

i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 2 All ER 91 ;

ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]

iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550 ;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63 ;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that

> *would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725 ."*

The claim for the costs of claim prior to the appeal to the EAT.

8. I deal with the case chronologically in this judgment, beginning with the costs of the claim prior to the appeal to the EAT. I can deal with this briefly.

9. Dealing first with breach of contract:

   a. The obligation imposed on the First Defendant is to provide funds to cover legal actions which, in the opinion of the First Defendant, are likely to succeed. I accept the submission that the First Defendant must act honestly, rationally and not arbitrarily: see for example, Braganza v BP Shipping [2015] UKSC 17. In my judgment, the question of breach must be determined as at the time of the decision to fund or not to fund, by reference to the material then available.

   b. The decision not to fund the ET proceedings was based on advice taken from specialist solicitors and Counsel. The dates on which advice was sought and given prior to the strike out of the claim are set out above. In each case, the advice of solicitors and Counsel was that the case did not have adequate prospects of success. I do not think that it can be said that following this advice involved any breach of contract on the part of the Defendant. The dates on which that advice was sought and obtained have been set out above. At each stage, the decision was that the claim did not have good enough prospects of success – i.e. more than 50%.

   c. In fairness to the Claimant, I did not understand him to be contending that there was a breach at this stage. He concentrated his submissions on the period between leave being given to go to the EAT and the appeal in front of the EAT. I deal with this below.

10. Turning to the claim for fraudulent misrepresentation, or deceit:

   a. As it is put in Clerk and Lindsell on Torts, 23rd ed, "where a defendant makes a false representation, knowing it to be untrue, or being reckless as to whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable."

   b. Here, therefore, it is necessary to ask, by reference to the pleaded facts:

      a) Was there a statement and if so, when was it made and by whom?

      b) Was that statement false?

c) Did the maker of the statement know that it was false or was he reckless as to its truth?

d) Did the maker of the statement intend the Claimant to rely on it?

e) Did the Claimant rely on that statement?

f) Has the Claimant suffered loss by reason of such reliance?

11. As I have already mentioned, I have taken into account the decision of Cockerill J in *Palladian Partners LP and Others v The Republic of Argentina and another* [2020] EWHC 1946 (Comm), to which the Claimant referred me, and the decision of Flaux J, as he then was, in *JSC Bank of Moscow v Kekhman* [2015] EWHC 3073 (Comm), to which the Defendants referred me. These authorities go to the requirements for pleading fraud.

12. In my judgment, the problem here is not merely that the plea of fraud is not adequately particularised, but that there is no tenable cause of action pleaded. I say this for the following reasons.

a. The statement pleaded, at paragraph 8 of the Particulars of Claim, is simply the policy definition of "Prospects of success". That forms part of the contractual promise of cover; it is not a statement of fact at all.

b. It cannot, in my judgment, possibly be said that such a promise is a false statement, still less that the maker of the statement (which would be the promisor, here the insurers) knew that it was false.

c. In fact, in his oral submissions, the Claimant put the case in a wholly different way. I deal with this later in the judgment, by reference to the period of which he made oral complaint, i.e. the period between the grant of permission to appeal to the EAT by Slade J and the appeal itself before Langstaff P.

13. Accordingly, I hold that the claim for deceit has no reasonable prospect of success in relation to this period (insofar as any such claim is made) and would dismiss that claim.

The claim for the costs of the appeal to the EAT.

14. The decision in relation to the EAT proceedings is potentially different. That is because the appeal was based on the error at first instance, and it is the Claimant's case that what should have been assessed is the prospect of success on the appeal, not the prospects of the claim as a whole. As I have said, this was considered twice. First, Counsel said that the claim did not have reasonable prospects of success. On the second occasion, Counsel indicated that the appeal would succeed but that the claim would still fail. The Defendant has now accepted liability for these proceedings. However, the Claimant argues that liability should have been accepted earlier, on the footing that the Defendant should have assessed the merits of the appeal earlier, and instead continued to assess the merits of the claim as a whole. It is his case that this was a breach of the contract, and indeed it is his case (addressed below) that this breach involved fraud on the part of Mr Kent, and the First and Second Defendants. The relevance of this lies not so much in relation to the claim for the costs of the EAT, since this claim has been

accepted, subject to quantification issues. Instead, the issue is relevant to the other claims and in particular the Claimant's claim for damages for mental distress and stress, which he bases on the fact that he had to conduct the appeal himself without the legal assistance that he says he was entitled to.

15. Whether the Claimant is correct in his contention that the failure to assess the merits of the appeal to the EAT was a breach of the insurance contract depends, in my judgment, on the proper construction of the policy. As such, this is, in my view, a case in which it is appropriate to consider summary judgment. I bear in mind, of course, that summary judgment is a draconian measure since it deprives a party of a full trial. Nevertheless, it is desirable, where the real issue is an issue of construction, to grasp the nettle and determine that issue, as Lewison J (as he then was) indicated in the *Easyair* case, cited above.

16. In this instance, the question is simply stated. Does the Defendant have to fund the costs of an interlocutory appeal which is more likely to succeed than not, in the context of an overall claim which is unlikely to succeed? This depends on the meaning of the *Prospects of success* definition, which I have set out above.

    a. The Claimant pointed to the words of subparagraph c) of the definition, with its reference to making a successful appeal. He contended that this made it clear that where any appeal was more likely than not to succeed, the Claimant was entitled to be funded in respect of that appeal, and that this issue had be looked at separately from the prospects of success on the claim as a whole.

    b. The Defendants, for their part, suggested that this was a wholly uncommercial reading of the clause, which was ambiguous at best. This construction would mean that an insurer would be coming on and off risk depending on what was happening in the litigation, even though that insurer had perfectly reasonably disclaimed any responsibility for the litigation as a whole. In addition, they pointed out that the clause related to appeals in respect of claims.

17. I have concluded that the Defendants' contentions are to be preferred. I can state the reasons for my conclusion briefly.

    a. I start with the insuring clause itself. That states that cover will be provided provided that "prospects of success exist *for the duration of the claim*" (my emphasis). This in turn suggests that the policy is looking to the prospects of the claim as a whole succeeding, not a particular application in what is otherwise an unmeritorious claim.

    b. This construction is, in my view, reinforced when one looks to the definition of "prospects of success". There, the clause provides that "in respect of all claims it is always more likely than not that you will… make a successful appeal or defence of an appeal". This again suggests that the appeal referred to is an appeal in respect of a decision on the claim – not an appeal in respect of an interlocutory decision during the course of the claim.

    c. I also regard this construction as much more commercially likely. The alternative construction would involve the necessity for insurers to continually

reevaluate individual applications in the context of unmeritorious claims. That is a profoundly unattractive suggestion, in my judgment.

18. It follows from the above that, in my judgment, there was no breach of contract on the part of insurers in declining to provide cover in respect of the costs of the appeal.

19. I should also mention one further argument that the Claimant made much of, which was in reliance on the judgment of Slade J giving permission to appeal to the EAT. The Claimant argued that insurers could not override the decision of Slade J. In my judgment, this contention is clearly misplaced. The question before Slade J was whether the appeal had a real prospect of success. The question for the insurers would either have been whether the appeal was likely to succeed; or, as I have held, whether the claim was likely to succeed. On either basis, the test which Slade J was applying was a different and lower test to that applicable under the policy, so that there could be no question of insurers being in any way bound by the decision of Slade J.

20. For these reasons, I conclude that there was no breach of contract on the part of the Defendants in failing to pay the Claimant's costs of the appeal to the EAT.

21. However, I also take the view that insurers having now accepted that they should pay the costs of the appeal, they must stand by this agreement. The quantum of such costs should then be determined by a costs judge, who will also have to bear in mind the policy limit of £50,000. In this regard, the Claimant has suggested, in his later submissions, that that limit can be multiplied by the number of years that the cover was in place. Again, in my judgment, this contention is misplaced. The limit applies to the insured event. In this case, the insured event was the loss of employment which lead to the employment claim. The limit then applied to all loss flowing from that insured event. Limits under earlier or later policy years, in which no relevant insured event occurred, are in my judgment irrelevant.

22. I turn to the allegation of fraud. In view of my findings on breach of contract, I can deal with this briefly.

23. As I have already indicated, the allegation of fraud must, in my view, be based on an allegation of deceit. There is no question of a fraudulent representation inducing a contract, since the relevant contract was entered into before the allegedly fraudulent acts.

24. I have already found that the pleaded claim has no prospect of success, and my reasons for so holding apply equally to the claim in respect of the costs of the appeal to the EAT. However, in the course of oral argument the Claimant sought to put his case on a different basis, effectively arguing that the Defendants deliberately chose to deny cover in circumstances where they knew that they was not entitled to do so. This claim was based, not on any fraudulent misstatement (since there was no statement to the Claimant) but on a deliberate failure not to provide cover in circumstances where the Defendants knew that they were obliged to provide cover. The case was thus based on fraud by omission.

25. The first point I would make is that this claim is nowhere pleaded. However, even if it had been pleaded, I would have found it had no reasonable prospect of success. I have already found that the Defendants were in fact entitled to deny cover. It must

follow, in my judgment, that there was no fraud in refusing to provide cover. Certainly, there is no tenable pleaded basis for such an allegation, and nothing that the Claimant said in argument indicated that there could be such a basis put forward. I would therefore dismiss this claim in deceit. However, as I have already indicated, in my judgment the Defendants must live up to their agreement to provide cover in respect of the costs of the appeal to the EAT, subject to assessment.

26. Finally, I should mention one last point, which is that at times the Claimant sought to suggest that he had a claim in negligence, which required a full trial to determine. However, there is no pleaded claim in negligence, other than a passing reference to professional negligence as part of the fraudulent misrepresentation claim. In the absence of any pleaded claim, the matter should not be allowed to go further; and in my judgment, this cannot be put right by way of amendment, because the only allegation of negligence put forward orally was a failure to properly apply the policy wording. For the reasons I have set out earlier in this judgment, it is my view that the Claimant's assertion as to the policy wording is incorrect, so that there was no failure (let alone a negligent one) to apply the wording correctly on the part of the Defendants.

The claim for costs of the appeal to the Court of Appeal and Supreme Court.

Costs of the appeal to the Court of Appeal.

27. I have set out above the further assessments which were made in relation to the merits of the appeal to the Court of Appeal, which were to the effect that the appeal had less than a 50% chance of success, which turned out to be a correct assessment. Again, I think that there is no question of breach of contract on the part of the Defendants. I do not understand there to be any allegation of fraud in relation to this period (since the pleaded allegation relates to the period between February and May 2015, as the Claimant emphasised); but if there is such an allegation, it has no real prospect of success.

Inability to earn on other cases.

28. The basis for this claim would seem to be, as I understand it, that if the Claimant had not been involved in correspondence with the Defendants in connection with his claim, he would have been free to perform work on other cases. There is little if any evidence put forward in support of this claim; but I would accept that this was the only objection to the claim, then it would not be suitable for summary determination.

29. However, in my judgment it is not a good claim in principle, for a number of reasons:

    a. First, no clear cause of action is put forward as justifying the claim. If and insofar as it is dependent on the assertions of breach of contract and fraud, I have already found that these assertions are ill founded.

    b. If and insofar as it relates to time spent in correspondence in relation to the current claim against the Defendants, then it would appear to me to be recoverable only in costs, if at all. It should therefore be dealt with by a costs judge.

Damages for mental distress.

30. I can deal with this head of claim briefly.

a. First, and once again most importantly, for the reasons that I have given, there was in my judgment no breach of contract or fraud.

b. Secondly, even if there had been a breach, then in my judgment, no claim for mental distress damages is recoverable for breach of a contract of this type. I accept the submission by the Defendants that damages for mental distress are generally not recoverable: see Watts v Morrow [1991] 1 WLR 1421, 1445. In that case, Bingham LJ, as he then was, said:

> *"As to the law, it is, in my judgment, clear that Mr. and Mrs. Watts were not entitled to recover general damages for mental distress not caused by physical discomfort or inconvenience resulting from the breach of contract. It is true that in Perry v. Sidney Philips & Son [1982] 1 W.L.R. 1297 , Lord Denning M.R. justified the award of damages for anxiety, worry and distress, i.e. "modest compensation," by reference to the holiday cases of Jarvis v. Swans Tours Ltd. [1973] Q.B. 233 and Jackson v. Horizon Holidays Ltd. [1975] 1 W.L.R. 1468 and to Heywood v. Wellers [1976] Q.B. 446 , a solicitor's case. I do not, however, accept that Perry's case is authority for that proposition. It is, I think, clear that, in that case, the award of damages, which was upheld, was for*
>
> *"vexation, that is the discomfort and so on suffered by the plaintiff as a result of having to live for a lengthy period in a defective house which for one reason or another was not repaired over the period between the acquisition by the plaintiff and the date of the trial:" see Oliver L.J., at p. 1304H.*
>
> *Further, in Perry Kerr L.J. said, at p. 1307:*
>
> *"it should be noted that the judge has awarded these [damages for vexation and inconvenience] not for the tension or frustration of a person who is involved in a legal dispute in which the other party refuses to meet its liabilities. If he had done so, it would have been wrong, because such aggravation is experienced by almost all litigants. He has awarded these damages because of the physical consequences of the breach which were all foreseeable at the time."*

c. I note the distinction in that case between, on the one hand, actual physical consequences of the breach – i.e. living in a defective house – and the stress involved as a result of being involved in litigation by reason of the failure of the other party to meet their obligations. Here, it seems to me that the Claimant's case falls quite clearly on the wrong side of the line. His claim relates to the stress that he says he suffered by reason of the need to conduct the EAT appeal himself in 2015.

d. Finally, I accept that the claim is, on the face of it, time barred, since the principal damage, on the face of the evidence, occurred more than 3 years before the issue of the writ in this action (which took place on 19 February 2020). The alleged breach and fraud took place in between February and May 2015. The stress which the Claimant relies on is the stress of conducting the EAT appeal himself rather than having other lawyers do it for him. Any claim in relation to such stress would relate to personal injuries suffered more than 3 years ago, and would thus be time barred under s.11 of the 1980 Limitation Act. The Claimant contended that his condition had worsened over time. However, in relation to the claim in contract, this does not matter, since the three year limit runs from the accrual of the cause of action – i.e. the date of breach in 2015. In relation to the fraud claim, then, if I had found that any claim for fraud did lie, then it would have been arguable that continuing damage would have given rise to a right to claim in respect of that part of the loss which had occurred within the last three years. However, in view of my other conclusions, I do not need to lengthen this judgment further by a consideration of a question that is entirely academic.

Conclusion.

31. In summary, I hold that all of the claims made in this action fail except for the claim for costs of the appeal to the EAT. Whilst, strictly speaking, I take the view that the Defendants had no liability under the policy for such costs, I also take the view that the Defendants must stand by their agreement to meet such costs, and I so hold. The quantum of such costs is to be determined by a costs judge, to whom I refer the matter for an assessment.