Neutral Citation Number: [2013] EWHC 2993 (Ch)

Case No: HC06C04432

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 October 2013

Before :

THE HON MR JUSTICE ARNOLD

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Between :

(1) MAX COUPER **(2) THE TRUSTEES OF THE COUPER COLLECTION CHARITABLE TRUST**	**Claimants**
- and -	
(1) ALBION PROPERTIES LIMITED **(2) PORT OF LONDON AUTHORITY** **(3) HUTCHISON WHAMPOA PROPERTIES (EUROPE) LIMITED**	**Defendants**

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Lord Thomas of Gresford QC and **Dingle Clark** (instructed by **Irwin Mitchell**) for the **Claimants**
Stephen Jourdan QC and **Ciara Fairley** (instructed by **Hogan Lovells International LLP**) for the **First and Third Defendants**
Jonathan Small QC and **Joseph Ollech** (instructed by **Sally Mashiter**) for the **Second Defendant**

Hearing dates: 18-21, 24-28 June, 1-4, 8-9 July 2013

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Approved Judgment

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

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THE HON MR JUSTICE ARNOLD

MR JUSTICE ARNOLD :

Contents

Introduction

1. The First Claimant, Max Couper, is an artist who has had a long-abiding interest in the River Thames and other waterways. The Second Claimants are the Trustees of the Couper Collection Charitable Trust, also known as the Couper Collection Public Trust, a charitable trust founded and administered by Mr Couper ("the Trust"). Mr Couper and the Trust own a collection of barges, other boats and pontoons, referred to as the Couper Collection, that have for many years been moored off what is nowadays known as Albion Wharf, which is located on the south bank of the Thames between Battersea Bridge and Albert Bridge. The boats house an art collection which is open to the public. They also provide a local amenity in other ways, as described below. The First Defendant ("APL") owns the adjacent land, on which is now located a mixed-use development called Albion Riverside. The Third Defendant ("HWPEL") is a member of the same group of companies as APL, the Hutchison Whampoa Group ("HW"), and acts as APL's agent. The Second Defendant ("the PLA") is a statutory body with responsibility for the River Thames as described below.

2. There are a considerable number of claims and counterclaims in these proceedings. The Claimants' primary claims are four-fold. First, they claim the benefit of "ancient mooring rights" entitling them to moor the boats and pontoons where they are currently moored. Secondly, they claim to have acquired title to part of the riverbed by adverse possession. Thirdly, they claim to have acquired title to a section of river

wall at Albion Wharf referred to in these proceedings as "the Couper Collection Quay" (or CCQ for short) by adverse possession. Fourthly, they claim to have acquired various easements by prescription. In addition, the Claimants have a number of secondary claims: for conspiracy, for harassment, for misfeasance in public office and for slander of title. APL counterclaims for a declaration that it has title to the CCQ and for nuisance. The PLA counterclaims for declarations that it is the owner of the riverbed and that it is entitled to remove the Claimants' works from the river.

The witnesses

The Claimants' witnesses

3. *Max Couper*. Mr Couper was born Max Lovegrove and changed his name by deed poll in 2006. I shall refer to him as Mr Couper throughout. Regrettably, Mr Couper was not a satisfactory or reliable witness. He clearly feels very strongly that he and the Trust have been bullied by HW and by Fosters (as to whom, see below) and that the PLA has become subservient to the interests of these powerful landowners. When he gave evidence he gave vent to this emotion by constantly making speeches and arguing the case rather than giving straight answers to simple questions. I repeatedly had to intervene to try to focus his attention on the need to answer counsel's questions, but despite my interventions he continued in the same manner. Furthermore, some of his evidence was inconsistent. Yet further, I did not believe some of his answers. I will give some examples below. I do not think Mr Couper was being deliberately untruthful in his evidence. Rather, his conviction that he was in the right and that HW, Fosters and the PLA were in the wrong prevented him from giving objective and accurate testimony. Overall, I do not feel able to rely upon his evidence except where it is supported by other reliable evidence.

4. *Albert Lovegrove*. Mr Lovegrove is Mr Couper's father. He is a retired airline director and international transport consultant. He had just turned 86 when he gave evidence. Furthermore, he was not in good health. He was asked to give evidence about events of long ago. Understandably, his recollection was very poor.

5. *Eileen Lovegrove*. Mrs Lovegrove is Mr Couper's mother. Having the advantage of being four years younger and in better health, her recollection was better than that of her husband, but was still poor.

6. *Donald Fergusson*. Mr Fergusson is a retired business man. Despite being 85 when he gave evidence, he was mentally alert and had as good a recall of the events of the 1980s and 1990s as could reasonably be expected. As he fairly accepted, however, he had difficulty in being precise about such events.

7. *Peter Wilder*. Mr Wilder is a graphic designer. He is a long-standing friend of Mr Couper and was a trustee of the Trust from 2002 to 2012. Mr Wilder was a straightforward witness who did his best to assist the court. As he accepted, however, he had difficulty in accurately recalling events in the 1980s and 1990s. On the points that matter, I did not have confidence as to the accuracy of his recollection for the reasons explained below.

8. *Carole Tongue*. Carole Tongue has had a distinguished career in a variety of positions in public life, including serving as Member of the European Parliament for London

East from 1984 to 1999. She has been a trustee of the Trust since 2004, but had some involvement prior to that. Parts of her witness statement were copied from that of Nick Skeens. More importantly, she made it clear both in her witness statement and her oral evidence that she is passionately committed to the Trust and its endeavours, to the extent that she was unable to give objective evidence. Thus she did not shrink from accusing the PLA of "forgery", of behaving in "a dishonest and unaccountable manner" and of using "bullying tactics, deception and chicanery". Little of her evidence was germane to the issues anyway.

9. *Nick Skeens*. Mr Skeens is a journalist, writer and public relations professional. He has been a trustee of the Trust since June 2003 and Chair since September 2003. He has been a friend of Max Couper's since 1988. His witness statement suffered from similar defects to Ms Tongue's, although he was more restrained in his oral evidence. Nevertheless, the upshot is that I do not consider him to have been a reliable witness.

10. *Dean Leslie*. Mr Leslie is a court attorney for New York Supreme Court, an Adjunct Professor of Law at New York Law School and recently qualified as an English solicitor. He has been a trustee of the Trust since 2002. His witness statement, which he drafted himself, was a disgrace. Running to no less than 343 paragraphs, it consisted largely of contentious commentary on documents and events of which he had no personal knowledge, expressions of opinion and argument. The Defendants objected that large swathes of it were inadmissible, and the Claimants conceded that many paragraphs should be struck out. The remainder of the Defendants' objection was resolved by consent by a direction that the Defendants were not required to challenge Mr Leslie's interpretations of documents in cross-examination. Had it not been resolved in that way, I would have struck out those paragraphs as well: compare *J.D. Wetherspoon plc v Harris* [2013] EWHC 1088 (Ch). My confidence in the reliability of Mr Leslie's evidence was further undermined by his claim during cross-examination that the act of putting on gloves could constitute an assault on another person and by the fact that it became apparent that he had confused two different incidents about which the Claimants complain. Accordingly, I place no weight on his evidence save where it is corroborated by other reliable evidence.

11. *Judith Attar*. Ms Attar is a researcher. She was employed as a researcher to Martin Linton MP, who was the local Member of Parliament, from 1999 to 2007. She gave evidence about a meeting she attended at the PLA's offices. Her recollection was that she had met Martin Gartside, the PLA's Corporate Affairs Manager, at the meeting. Mr Gartside gave unchallenged evidence that he did not attend the meeting and had never met Ms Attar. It is therefore clear that Ms Attar's recollection was mistaken. This is of no real consequence to the issues in this case, however.

HW's witnesses

12. *Nicholas Orbell*. Mr Orbell is a chartered surveyor with particular expertise in maritime surveying. From 1 August 1997 to 17 April 2000 he was employed by Hutchison Whampoa (Europe) Ltd ("HWEL"), another company in the HW group, as Development and Marketing Manager. From 18 April 2000 to January 2011 he was employed by Hutchison Ports (UK) Ltd, yet another company in that group. He is now a director of his own corporate real estate consultancy. Mr Orbell was a straightforward witness.

13. *David Beynon*. Mr Beynon is a chartered architect. He has been employed by HWPEL as Senior Project Manager since March 1998. He was also a straightforward witness.

14. *Hugh Fleming*. Mr Fleming is a solicitor employed by HWPEL as its in-house legal counsel. He has held this position since March 2003, although from July 2003 until August 2006 he shared the job with Ceri Roderick who had held the position prior to March 2003. Mr Fleming was a clear and careful witness.

The PLA's witnesses

15. *James Trimmer*. Mr Trimmer joined the PLA in the position of Port Planner at the end of August 1999. Thus at the time he wrote the letter dated 15 October 1999 discussed below, he had only been in post for some six weeks. Subsequently he was promoted to Head of Planning and Partnerships. Mr Trimmer had understandable difficulty in recalling the events of 1999, but subject to that he was a good witness.

16. *John Dillon-Leetch*. Mr Dillon-Leetch has been the PLA's Deputy Port Hydrographer since 2005. Previously he was employed by the PLA as a Field Surveyor. He carried out two surveys of the location in question in May 2004 and June 2005. He was a careful and precise witness.

17. *Robert Bradley*. Mr Bradley has worked for the PLA since 1966. He has been a River Inspector since the early 1990s. Mr Bradley had little personal knowledge of the matters in dispute, but he was able to assist the court with quasi-expert evidence about river practices as well as explaining the PLA's procedures.

18. *Sally Mashiter*. Ms Mashiter is a solicitor who has been employed as the PLA's legal advisor since 1984. She appeared to be somewhat nervous when giving evidence, but nevertheless was clear, direct and candid in her answers.

The statutory context

Background to the Thames Conservancy Act 1857

19. In the late eighteenth and early nineteenth century a dispute arose between the Crown and the Corporation of London as to who owned and controlled the River Thames, and in particular the power to grant mooring rights and embankment rights.

20. In 1799 the Corporation secured the passage of a private Act of Parliament, "An act for rendering more commodious, and for better regulating, the Port of London", 39 Geo III Cap 69, known as "the Wet-Dock Act 1799". Its main purpose was to give statutory authority to the building of the West India Docks at the Isle of Dogs. Section 35 of that Act recited that Lord Gwydir "by virtue of and under certain Letters Patent, granted to him by the King's most excellent Majesty, is entitled to the several Mooring Chains in the River Thames, between London Bridge and Bugby's Hole, therein described or mentioned, for the Term of Years, and subject to the Yearly Rent therein expressed". It went on to require Lord Gwydir to "assign and surrender to the King's Majesty, His Heirs and Successor, all such Mooring Chains, and Rights and Interests relating to or concerning Mooring Chains, as are comprised in and expressed or intended to be granted and demised by the said Letters Patent", in consideration of which he was to be compensated from the Consolidated Fund. Section 36 dedicated

those mooring chains, rights and interests "for the Use, Benefit and Convenience of the Publick, in navigating, mooring, and removing Ships and other Vessels upon the said River, free from all Rents, Dues and other Payments for the Use thereof … but subject nevertheless to the Rules, Orders and Regulations, hereby made and hereafter to be made concerning such Mooring Chains, pursuant to this Act".

21. Matters came to a head in 1844 when the Attorney-General commenced proceedings against the Mayor and Commonalty and Citizens of the City of London in the Court of Chancery "for the Purpose of ascertaining and determining the Rights of Her Majesty and of the Mayor and Commonalty and Citizens in the Ground or Soil or Bed of the River Thames and the Shores thereof, so far as the Tide flows and reflows in the said river".

22. The case was settled by Articles of Agreement dated 18 December 1856. Under the Agreement the Corporation withdrew all claims to the ownership of the bed and soil of the river and admitted that Her Majesty was seised of the fee simple and inheritance in possession of the bed and soil of the River Thames, "subject only to such Grants as may have been heretofore made by Her Majesty or any of Her Royal Predecessors". The Crown for its part covenanted by 1 March 1857 to grant and convey to the Mayor and Commonalty and Citizens, and their successors, "as Conservators of the River Thames, all the Estate, Right, Title, and Interest of Her Majesty in right of her Crown of, in and to the Bed and Soil of River Thames within the Flux and Reflux of the Tides … and all Encroachments, Embankments and Inclosures therefrom or thereupon, except such Parts thereof as are herein-after specified". This grant and conveyance was to be made upon the trusts set out in the fourth article of the Agreement, which required the Corporation to pay the Crown one third of the rents and other proceeds received.

23. By the fifth article, the Corporation covenanted not to "grant, sell, lease, or license any Embankment, Dock, Wharf, Pier, or Landing Place, driving of Piles, laying down Mooring Chains or other Works on any part of the Bed or Shores of the said River, without requiring from the Person to whom such Grant, Sale, Lease, or License shall be given such fair and reasonable pecuniary Compensation as in the judgment of some competent Person … shall be deemed to be the true and fair Worth or Value thereof".

24. By the seventh article, the Corporation was required to deliver to the Attorney General or the Commissioner of Her Majesty's Woods, Forests and Land Revenues "a true and correct Schedule and rental of all Buildings, Docks, Wharves, Piers, Landing Places, Embankments, Piles and other Works, Hereditaments and Things inclosed from or made or being upon the Bed or Shores of the said river" in respect of which the Corporation received any rents or revenues, or which were or purported to be held or maintained under grant or licence from the Corporation or in which the Corporation claimed to have any interest.

25. By an Indenture dated 24 February 1857, the Crown duly conveyed title to the Corporation in accordance with the Agreement. This was subject to a reservation which provided for the bed, soil and shores of the River Thames in front of Crown and Government land to remain vested in the Crown. No plans were annexed to the Indenture to identify the land retained by the Crown, although it is believed that plans were prepared in 1862 and again in about 1887 or 1888.

Thames Conservancy Act 1857

26. Later in 1857, Parliament passed the Thames Conservancy Act 1857. By section 50, all the estate, right, title, and interest of the Corporation and all the estate, right, title and interest of Her Majesty as at the 23 February 1857 (the day before the Indenture) in and to the bed and soil and shores of the River Thames within the flux and reflux of the tides was vested in a new body, the Thames Conservators. This was subject to a reservation contained in section 51, which provided for the bed, soil and shores in front of Crown and Government land to remain vested in the Crown. The obligation of paying the Crown one-third of the revenues was placed upon the Conservators in place of the Corporation.

27. Section 53 empowered the Conservators to grant the owner or occupier of any land adjoining the river a licence to make any dock, basin, pier, jetty, wharf, quay, embankment or other work in front of his land and into the river upon payment of fair and reasonable consideration and subject to the conditions imposed by the Conservators.

28. Section 54 provided:

> "It shall not be lawful for any person whomsoever to erect, build or make any embankment, or any erection, building or work, in or upon the bed or shore of the River Thames, or to drive any piles thereon, or in the said river, without the permission of the Conservators".

29. Under section 55, if an embankment was made under licence and the licence was endorsed with a certificate that the conditions, if any, of the licence had been performed, title to the land reclaimed by the embankment would vest in the riparian landowner of the land adjacent to the embankment for the same estate and interest as the riparian land.

30. Under section 58, the consideration for a licence granted by the Conservators for (inter alia) "laying down any Mooring Chains" was to be such sum as in the judgment of a competent person appointed for the purpose represented the true and fair worth or value to the person obtaining the licence.

31. Sections 90-92 provided as follows:

> "90. It shall be lawful for the Conservators from Time to Time to agree with any Person, being the Owner of any private Mooring Chains, for the Purchase of such Mooring Chains, and to pay to such Persons such Purchase Money or Compensation as may be agreed upon.
>
> 91. From and after the Commencement of this Act, no Mooring Chains shall be put down or placed in any Part of the River without the Permission of the Conservators previously obtained, and every such Mooring Chain which shall be put down or placed shall be so continued only during the Pleasure of the Conservators; and the Conservators may at any Time, by

> giving One Week's Notice in Writing, require such Mooring Chains to be removed; and in case Default shall be made in such Removal beyond the Time to be mentioned in such Notice, such Mooring Chain may be treated by the Conservators as a Nuisance and removed accordingly.
>
> 92. It shall be lawful for the Conservators to remove any private Mooring Chain within the Stream or Tideway of the River Thames, making Compensation to the Owners thereof for any Loss or Damage which they may sustain in consequence of such Removal, such Compensation to be ascertained in the Manner provided for the taking of Land by the Land Clauses Consolidation Act, 1845."

32. Section 179 provided:

> "None of the Powers by this Act conferred or anything in this Act contained shall extend to take away, alter, or abridge any Right, Claim, Privilege, Franchise, Exemption, or Immunity to which any Owner or Occupier of any Lands, Tenements, or Hereditaments on the Banks of the River, including the Banks thereof, or of any Aits or Islands in the River are now by Law entitled, nor to take away or abridge any legal Right of Ferry, but the same shall remain and continue in full Force and Effect as if this Act had never been made."

Later statutes

33. The 1857 Act was repealed and replaced by the Thames Conservancy Act 1894. Section 114 of this Act corresponded to section 91 of the 1857 Act. Section 118 provided:

> "The provisions of this Act relating to licences and permissions for works shall not apply to or affect any works or powers of executing altering or maintaining works before the passing of this Act authorised or conferred under or by virtue of any Act."

34. The Port of London Act 1908 established the PLA as successor to the Thames Conservators. In about 1910 plans were prepared showing the parts of the Thames retained by the Crown. By an agreement dated 12 December 1911 the PLA bought out the Crown's one-third share of the revenues from the land acquired from the Crown in 1857.

35. The Port of London (Consolidation) Act 1920 consolidated and amended the earlier statutes. Section 252 of this Act corresponded to section 91 of the 1857 Act. Section 256 provided:

> "The provisions of this Act relating to licences and permissions for works shall not apply to or affect any works or powers of executing altering or maintaining works authorised or conferred

before the seventeenth day of August 1894 and/or by virtue of any Act."

Port of London Act 1968

36. The current statutory regime is contained in the Port of London Act 1968 (as amended by various later statutes). By section 5(1), it is the duty of the PLA "to take such action as they consider necessary or desirable for or incidental to the improvement and conservancy of the Thames". Section 11(3) empowers the PLA "to dispose of land belonging to them in such manner …, for such period, upon such conditions and for such consideration as they think fit".

37. The key provisions of the 1968 Act for present purposes are sections 63, 66, 70, 72 and 74. These provide, so far as relevant, as follows:

"**63 Removal of private moorings**

(1) Section 66 (Licensing of works) and section 70 (Works not to be constructed, etc, without works licence) of this Act shall not apply to a mooring chain placed in the Thames before 29th September, 1857, but the Port Authority may remove any such mooring chain provided that, unless it is broken, dangerous or useless, they pay compensation to the owner for any loss or damage which he may sustain by the removal.

(2) Unless the owner and the Port Authority agree, the compensation payable under this section shall be assessed by a single arbitrator to be agreed between the parties or, failing agreement to be appointed on the application of either party, after notice to the other, by the President of the Institution of Civil Engineers.

(3) The Port Authority may recover the expenses incurred by them in removing a broken, dangerous or useless mooring chain under subsection (1) of this section, from its owner as a debt in any court of competent jurisdiction.

66 Licensing of works

(1)(a) The Port Authority may for a consideration to be agreed or assessed by arbitration pursuant to section 67 (Consideration for licence) of this Act and on such terms as they think fit, including conditions as to variation and revocation of the licence and reassessment of the consideration from time to time, grant a person a licence to carry out, construct, place, alter, renew, maintain or retain works, notwithstanding that the works interfere with the public right of navigation or any other public right.

(b) A works licence granted under paragraph (a) of this subsection to carry out, construct, place, alter, renew, maintain or retain

works in, under or over land belonging to the Port Authority shall be deemed to confer on the holder of the licence such rights in, under or over land as are necessary to enable the holder of the licence to enjoy the benefit of the licence.

…

(4) For the avoidance of doubt it is hereby declared that works above mean high water level which do not

(a) constitute or form part of an embankment;

(b) project over the Thames; or

(c) involve cutting its banks;

are not subject to the provisions of this Act relating to works licences.

….

70 Works not to be constructed, etc, without works licence

(1) No person shall carry out, construct, place, alter, renew, maintain or retain works unless he is licensed so to do by a subsisting works licence and except upon the terms and conditions, if any, upon which the licence is granted …. in pursuance of section 66 (Licensing of works) of this Act.

(2) A person who contravenes the provisions of this section or who fails to comply with any term or condition upon which a works licence is granted shall be guilty of an offence and liable to a fine not exceeding level 5 on the standard scale and to a daily fine not exceeding £50.

(3) The Port Authority may by notice require a person who contravenes the provisions of this section to remove or abate within a reasonable time specified in the notice any works to which the contravention relates and to restore the site thereof to its former condition and, if the person to whom the notice is given fails to comply with the notice, the Port Authority may carry out the work required by the notice and recover the costs of so doing from that person as a debt in any court of competent jurisdiction.

72 Vesting of embanked land

(1) Where pursuant to a works licence land is reclaimed by embankment and a certificate that the embankment has been completed is endorsed on the works licence by the Port Authority, the land reclaimed by the embankment shall thereupon vest in the owner of the land in front of which the

> embankment has been made (hereinafter in this section referred to as 'the adjoining land') for the like estate or interest as that upon which the adjoining land is then held and subject to, and with the benefit of, the like estates, interests, exceptions, reservations, incumbrances, covenants and conditions (hereinafter in this section referred to as 'incidents') as then attached to the adjoining land and subject to any continuing terms of the works licence.
>
> (2) A certificate under this section may be given under the hand of a duly authorised officer of the Port Authority and may, if the Port Authority and all persons directly affected by any incidents proposed to be modified so agree, contain provisions modifying any incident attaching to the land reclaimed by the embankment.
>
> **74 Crown Property**
>
> A person licensed by the Port Authority under section 66 (Licensing of works) or section 73 (Licensing of dredging, etc.) of this Act to carry out the works or dredging and raising of gravel, sand, ballast and other substances in, upon or from any part of the bed of the Thames belonging to Her Majesty or a government department shall, in addition to the licence of the Port Authority require the consent of the Crown Estate Commissioners on behalf of Her Majesty or of the relevant government department, as the case may be, to carry out the works or to dredge and raise gravel, sand, ballast and other substances."

38. Section 2(1) includes the following definitions:

> "'mooring' includes anchoring;
>
> …
>
> 'works' where used in relation to licensing of works by the Port Authority, means works of any nature whatever in, under or over the Thames or which involve cutting its banks other than those referred to in section 73 (Licensing and dredging, etc.) of this Act and 'work' shall be construed accordingly".

39. If somebody is aggrieved by a refusal to grant a works licence or any term upon which the PLA propose to grant the licence (among other things), that person may appeal to the Secretary of State for Transport under section 69.

40. Section 123 empowers the PLA to require the owner or occupier of a landing place or embankment which it considered to be dangerous or a hindrance to navigation to remedy its condition. Failure to comply with such a notice is an offence. A person aggrieved by the service of a notice can appeal to a Magistrates' Court.

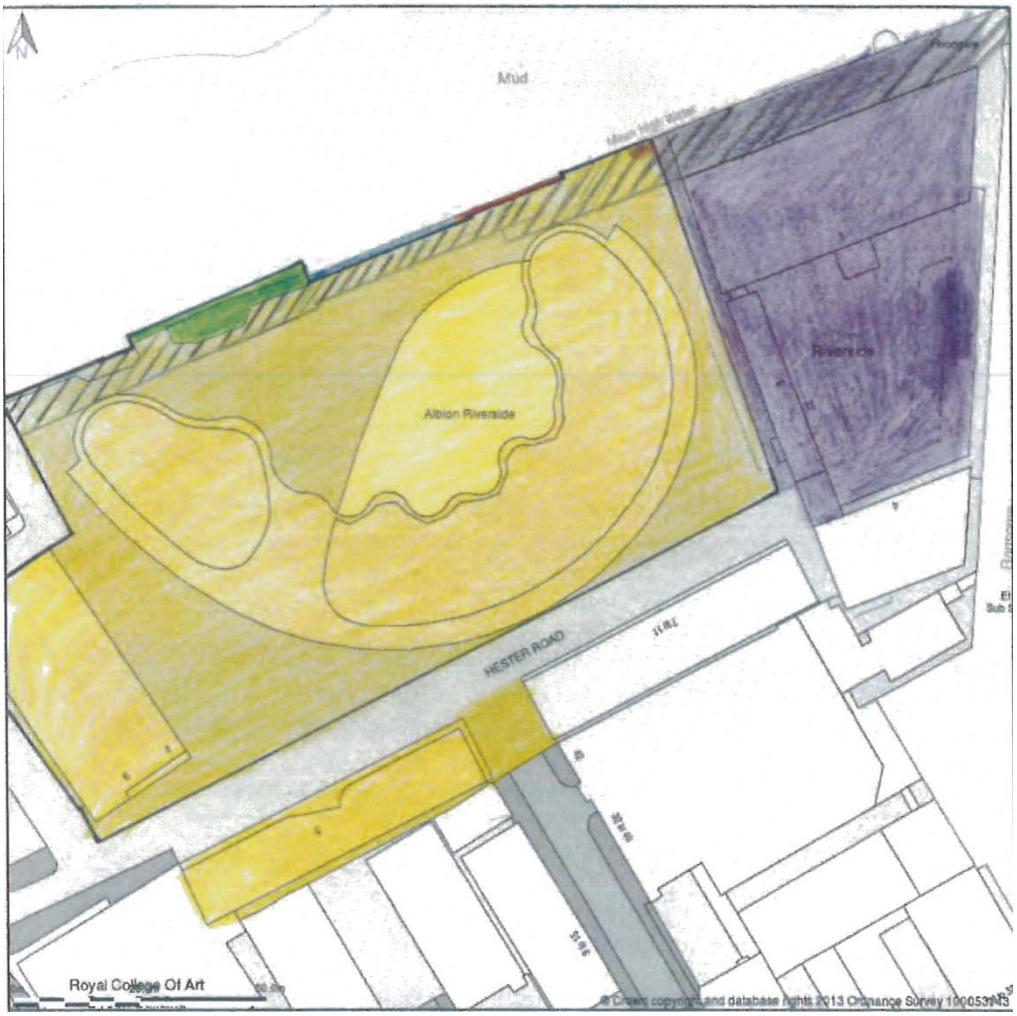
The area in question

41. The area involved in this dispute as it is now is shown in the following satellite image:

42. This image shows Battersea Bridge to the west (left) and Albert Bridge to the east (right). About two-thirds the way between the two, a diagonal feature can be seen. This is Ransome's Dock, which provides a useful orientation point when considering old maps, charts and photographs. The area of interest is to the west (left) of Ransome's Dock. Immediately to the west, one can see a large building which is trapezoidal in plan. This is occupied by the well-known firm of architects Foster and Partners ("Fosters"). It is located on Albert Wharf. Next to it is a large building which is roughly banana-shaped in plan. This is Albion Riverside, owned by APL. It occupies a site which comprises Albion Wharf (to the east), Bridge Wharf and part of Granary Wharf (to the west).

43. Most of the boats moored by the south bank of the river visible in the image are the Claimants' boats. In addition, however, there is a boat called the *Atrato* owned by Rupert Ashmore. This is, and has for many years been, moored by Albion Wharf a short distance to the west of the Claimants' vessels. There is no connection between Mr Ashmore and Mr Couper, but the *Atrato* features in many of the contemporaneous documents. There were proceedings between Mr Ashmore and the PLA concerning the *Atrato* (see *Port of London Authority v Ashmore* [2009] EWHC 954 (Ch) and [2012] EWCA Civ 30) which were ultimately settled.

44. APL has registered title to most of the land occupied by Albion Riverside. There are four areas of land along the side of the river that either are, or have been, disputed. They are shown coloured brown, red, blue and green on the following plan:



45. Going west from Ransome's Dock, the areas in question are as follows:

i) Brown: a small section of river wall at the eastern end of Albion Wharf (the eastern part of the yellow land) by the boundary with Albert Wharf (purple). Mr Couper has accessed the boats via a gangway placed over this section wall since November 1987. (Subsequently other access points have been created further west.) This area is referred to in some of the contemporaneous documents as "Plot A". It forms part of APL's registered title. The Claimants do not claim title to it, although they have in the past.

ii) Red: the CCQ, also referred to in some of the contemporaneous documents as "Plot C". This area is outside the line on APL's title plan. APL claims that the plan is erroneous and that it has title to the CCQ. The Claimants claim title by adverse possession.

iii) Blue: another section of river wall at Albion Wharf which falls outside the line on APL's title plan. This is where the *Atrato* is moored.

iv) Green: a section of river wall at Bridge Wharf (also part of the yellow land) referred to in some of the contemporaneous documents as "Couper Quay" (or sometimes "Couper's Quay"), not to be confused with "Couper Collection

Quay", and in other documents as "Plot D". Mr Couper previously claimed adverse possession of this land, but no longer does so.

The absence of expert evidence

46. As will be apparent from the statutory context set out above, and as is explained more fully below, the Claimants' claim to "ancient mooring rights" depends at least in part on establishing that there were "mooring chains" in the relevant location prior to 29 September 1857. Obviously, no one can give factual evidence about that. To my surprise, none of the parties sought to adduce expert evidence of any kind directed to this issue. As discussed below, the PLA commissioned a lengthy report from an archivist called Robert Baldwin who investigated this question. In his report, he reviewed documentary materials relating to the history of the area from 1743 to the present day. Mr Baldwin was not called as a witness, however, and it is common ground that his report is not evidence. Furthermore, significant parts of the documentation that he reviewed were not put in evidence before me.

47. The Claimants rely upon a series of paintings, engravings and drawings as evidence of the position both before and after September 1857. Some of these documents were located by Mr Baldwin. (Mr Baldwin also reproduced, or referred to, a number of other pictures in his report which the Claimants did not rely upon at trial.)

48. When I raised the question of whether expert evidence was needed to interpret these documents, counsel for the Claimants submitted that expert evidence was not required and that the court could interpret the documents itself. Counsel for APL submitted that, in so far as the Claimants relied on such documents as showing that there were mooring chains in the relevant location, expert evidence was required to interpret them. Neither counsel cited any authority directly bearing on this question.

49. I agree with counsel for APL on this point. In my view, there are two problems with interpreting these documents. The first is that they are artistic works by a variety of different artists. Counsel for the Claimants presented these documents as if they were accurate topographical records of the scenes depicted. As is well known, however, artists vary in their topographical accuracy and even the same artist may accurately record one scene and paint another entirely from his imagination. No evidence from an art historian was adduced as to the practices of any of the artists in question, however. The second is that, even if one is satisfied that a particular picture accurately depicts one or more boats moored in the relevant location, it does not necessarily follow that the boat was moored to a mooring chain anchored in the riverbed as opposed to moored to the quayside. No evidence was adduced from a maritime expert to enable me to distinguish between depictions of these two methods of mooring. (Mr Bradley did give quasi-expert evidence about mooring techniques, which I have summarised below, but he was not asked to interpret most of the pictures and it is not clear to me that he would have had the expertise to do so.) For what it is worth, however, I shall record what appears to me to be shown in these pictures below.

50. In addition to the pictures relied on by the Claimants, both sides relied on various maps and charts and on various photographs. The maps mainly show the topography of the area. Some of the charts also show mooring chains in the river. I understand it to be common ground that the court can interpret these documents without the assistance of expert evidence. The same is true of the photographs, except in so far as

these are relied upon by the Claimants to show mooring chains at Albion Wharf, in which case the second objection mentioned in the preceding paragraph applies.

The facts

51. The factual background to this case is complicated and extends over a long period of time. The issues that arise can only be properly appreciated in their chronological context, however. Accordingly, in this section of the judgment I shall set out the factual background in chronological order by reference to the contemporaneous documents. The result is a regrettably lengthy narrative, even though I have been selective in my reference to the documents, but I have signposted the key events by means of sub-headings.

52. It is important to appreciate that the name "Albion Wharf" in the documents refers to different places at different times. The name does not appear at all on the earliest documents. From about 1894 to about 1931 it appears to have referred to the eastern part of a site occupied for some or all of that time by Anglo-American Oil Co. ("Anglo-American"). By 1931 it appears to have referred to the whole of that site, by then occupied by Thames Wharves & Warehouses Ltd ("Thames Wharves"). From about 1979 it has referred to a site which also includes two additional areas to the east, which at earlier times were referred to as Wellington Works and Ozokerit Works. I shall endeavour to follow the historic usage.

53. Before turning to the narrative, it is convenient to address two general background matters.

Moorings

54. The Thames is a strongly tidal river. The river rises and falls between five and seven meters between low tide and high tide at Albion Wharf (the precise distance depends on the time of year, the weather conditions and so on). Accordingly, it is vital that boats are securely moored in a manner that accommodates this rise and fall.

55. A typical mooring will consist of one or more anchors embedded in the riverbed with one or more chains rising to the surface and a buoy at the end. Vessels moor to the buoy, using chains, ropes or wires. A single mooring can be used by more than one vessel. The PLA owns over 200 moorings. These are periodically overhauled. The PLA's policy is to replace any mooring equipment which has worn down to 70% of its original size, which typically occurs after about 10 years.

56. The majority of the PLA's moorings comprise screw anchors. They consist of a screw like a ship's propeller with a five inch diameter shaft together with a shackle to which a length of chain is attached. A power pack is used to screw the shaft into the riverbed so that all is left above the riverbed is the chain.

57. An alternative to a screw anchor is a sinker (or sinking) anchor. This consists of a lump of metal or concrete which acts as a weight, to which a chain is attached. Although a sinker will typically sit on the riverbed to begin with, the weight of the anchor and the movement of the water will tend gradually to bury the anchor in the riverbed.

58. It is not uncommon to moor a vessel using a screw anchor at one end and a drag anchor at the other end. A drag anchor typically has two flukes running off a central shaft. The flukes are designed to dig into the riverbed when dragged by the vessel attached to the anchor.

59. It is the PLA's policy that anchors should be dug-in i.e. not exposed above the surface of the riverbed. This is particularly true of anchors in the foreshore, since that is visible at low tide.

60. Vessels may also be moored to the quayside, typically by means of ropes or wires attached either to a mooring ring attached to the river wall or a pile driven into the riverbed alongside the river wall. Where a vessel is moored to the quayside in this way, it is common for the vessel also to be moored to an anchor. Mr Couper and the Trust moor their boats and pontoons both by means of chains secured to anchors in the riverbed and by means of ropes and wires fastened to the quayside.

Inspection of the river by the PLA

61. The PLA employs River Inspectors who regularly patrol the river. They act as watchmen: their job is to take note of anything new that happens on the river so that action can be taken where appropriate. The chain of command is as follows. Overall responsibility lies with the Chief Harbour Master. The river is divided into Upper (from Putney to Crossness) and Lower (from Crossness to the Thames estuary) Districts. There are Harbour Masters for each District who report to the Chief Harbour Master. Below each Habour Master is an Assistant Harbour Master. The River Inspectors report to the Assistant Harbour Masters. Currently, five River Inspectors cover the Upper District. All five patrol the entire 23 mile stretch daily, but in addition each one has responsibility for a specific section of the river.

Events prior to September 1857

62. As explained above, the evidence relating to this period consists of a number of pictures, which I will describe in chronological order.

63. *The White House at Chelsea* by Thomas Girtin dates from 1800. It shows a Turner-esque river scene (I assume it is a watercolour, but I may be wrong about that.) Two boats are depicted, but they do not appear to be moored. Even if they are, it is impossible to be sure where they are moored.

64. *The Little Belt, Breaking up at Battersea* is an engraving by W.B. Cooke published on 1 February 1819 from a drawing by L. Francis. It depicts a boat being broken up somewhere on the southern foreshore to the east of Battersea Bridge, but the precise location is unclear. Nor is it clear how the boat is moored, although there are two mooring lines which might be secured to an anchor that is not shown. Mr Baldwin reproduced this picture as Plate 1 on the cover page of the Full Baldwin Report (as to which, see below).

65. *Thames with Battersea Bridge in the far distance, boats and trees in the foreground* is a picture by an unknown artist dated to c1820. This appears to show a boat near the shore near the relevant area, but it is impossible to tell precisely where, nor whether (or if so, how) it is moored.

66. The next document is part of a map showing the Battersea shore to the east of Battersea Bridge. Mr Baldwin reproduced a larger extract in Plate 15. He attributed the map to Greenwood and dated it to 1825. It is difficult to relate the topography shown in this map to later maps, but it shows both a boat yard and a timber dock in the vicinity.

67. The next picture is an untitled engraving by W.B. Cooke dated 1821. This shows boats on the river with a bridge in the background. It appears to show the Chelsea side of the river from a vantage point to the west of Battersea Bridge. It is not clear that it shows the relevant area at all. Even if it does, it does not appear that that any boats are shown moored there.

68. Samuel Leigh's *Panorama of the Thames from Westminster to Richmond* dates from 1829. Mr Baldwin reproduced details from this painting in Plate 16. It shows an iron foundry some distance to the east of Battersea which counsel for the Claimants, following Mr Baldwin, suggested was Chabot's foundry (as to which, see below). This may or may not be correct. It does not show any boats moored in the relevant area.

69. Similar comments to those I have made in relation to the 1821 engraving apply to the next engraving, *Battersea Bridge* by Dugdales. According to the Claimants, this dates from circa 1838. I note, however, that Mr Baldwin says in the caption to Plate 7 that it was published in 1855 and shows the scene in 1775.

70. The next document is the earliest document from the PLA archives which is in evidence (and part of it was reproduced by Mr Baldwin as Plate 8). This is a *Plan of the River Thames at Chelsea and Battersea*, showing proposed alterations to Battersea Bridge, made by William May for the Corporation's Thames Navigation and Port of London Committee in November 1840. This is the earliest map or chart the topography of which can be related to later maps, since it shows an inlet which appears to correspond to Ransome's Dock. It appears to show that the entire area between Battersea Bridge and Ransome's Dock had been embanked by this date.

September 1857 to March 1973

71. Although it is not in evidence, it is common ground that the list drawn up pursuant to article 7 of the agreement dated 18 December 1856 between the Crown and the Corporation (which is preserved in the Public Record Office) does not identify any mooring chains in the relevant location.

72. An untitled picture by Walter Greaves dated 1858 (reproduced by Mr Baldwin in Plate 17) shows a view of Battersea Bridge looking south-east from the western side. There is a boat, which may be a steamer, in front of industrial wharves on the far bank of the river. It is not clear whether it is moored, still less how, but if so, it appears to be moored a short way off shore. The precise location is impossible to discern.

73. An engraving published in the *Illustrated London News* on 9 April 1859 shows an aerial view of the area from Aumonier's Balloon. It appears to show various boats moored offshore in front of industrial buildings along the southern shore east of Battersea Bridge. It is not possible to say precisely where the boats are moored or how.

74. *Boats of the City Steam Boat Co Passing in Review at Chelsea* by Harden Sydney Melville dates from 1859. It appears to show some boats moored by the shore east of Battersea Bridge opposite Chelsea, but the precise location cannot be discerned. One of the boats appears to be moored to a large buoy, but it is unclear how the others are moored.

75. *Brown and Silver* by James McNeil Whistler dates from 1863 shows a similar view to that painted by Walter Greaves (to the extent that I suspect that Whistler used the Greaves picture as a source), and similar comments apply. *Blue and Silver* by Whistler is a nocturne from 1871 and shows nothing of relevance.

76. *View of Battersea Bridge from the Middlesex Shore* is by Charles William Sherborn and dated 1874. I cannot see that it shows anything of relevance.

77. A series of Ordnance Survey ("OS") 1:2500 scale maps shows the development of the land between Battersea Bridge and Ransome's Dock from this period onwards. The earliest is dated 1869-74. Going west from Ransome's Dock, this shows a candle manufactory, then a foundry, then a saltpetre works, then a timber yard and then a white lead works behind a public house and a couple of buildings beside the Bridge. The area that became Albion Wharf is between the saltpetre works and the timber yard, but it would appear that a river wall extended along the whole area. At this date, Albert Bridge had not yet been constructed and the road to the south was called Wellington Lane.

78. The earliest photograph in evidence is a view across the Thames from Battersea attributed to Henry Taunt and dated 1878. It shows boats in the foreground, but it is impossible to tell where or how they are moored.

79. *Chelsea Bridge from Battersea Foreshore* by an unidentified artist dated circa 1885 does not appear to show anything of relevance.

80. The next OS map is dated 1896. An extract from this was missdated by Mr Couper in his witness statement to 1865. This is impossible since it shows Albert Bridge, which was not built until 1870-73. Less obviously, it also shows the iron and stone Battersea Bridge designed by Sir Joseph Bazalgette, which was built in 1887-1890, replacing the previous wooden bridge. Going west from Ransome's Dock, it shows Battersea Foundry, an unidentified wharf, Ozokerit Works (Candle), three more unidentified wharves (the middle one with circles presumably representing oil tanks), a Salvation Army Depot and more wharves. By this date, the road to the south was called Wellington Road. The two western unidentified wharves occupy the area which became Albion Wharf.

81. There is also an OS 1:1056 scale map dated 1894-96 which shows a mooring chain on the foreshore to the west of the area claimed by the Claimants, as well as "steamboat moorings" in the channel labelled "Battersea Bridge Barge Roads", but nothing in the area of interest. A copy of this map in the PLA's archive has been amended in manuscript at some point with updated information with regard to the ownership or occupation of the buildings. Going west from Ransome's Dock, it shows Drew, Bear, Parks & Co Ltd (ex Battersea Foundry), unidentified wharf buildings, De Bruyn Ltd (Ozokerit Works), S. Bowley & Son (Wellington Works), Albion Wharf and an unidentified wharf both apparently occupied by Anglo-American, a Salvation Army

Depot and more wharves occupied by London Road Car Co/Phillips Mills & Co Ltd ("Phillips Mills"). The mooring chain also appears to be attributed to Phillips Mills.

82. The PLA's records include a document entitled "Grants: List of old accommodations before 1897 for which no rent was paid". This records that in 1897 the Thames Conservators' Sub-Committee on Assessments "had before them a list of old accommodations for which no rent was paid which existed before 1897, and having taken Counsel's opinion they recommended that no further action be taken in the matter. This was agreed to by the Board 17 – 1 – 1898." This list does not include any mooring chains in the relevant area.

83. A plan marked as approved by the Thames Conservators on 3 December 1906 and 11 March 1907 shows the ground plan and elevations for a building to be erected by S. Bowley & Son at Wellington Works, west of Ozokerit Works and east of Anglo-American. It appears that the reason for seeking the Conservators' approval was that rainwater pipes were to discharge into the Thames over the river wall.

84. A photograph of Battersea Bridge dated 1910 does not show anything helpful.

85. The next OS map is dated 1916. This is not very informative, except that it shows a London General Omnibus Co Car Depot to the south-west of the area. It shows little change in the area that was to become Albion Wharf.

86. *The Waste Paper Wharf, Battersea* by Noel Spence dated circa 1926 shows barges being loaded and unloaded by a wharfside, but not how they were moored. The wharf may be Phillips Mills' premises, but if so, it is not Albion Wharf.

87. There is a PLA chart of the area dated August-October 1931. Going west from Ransome's Dock, this shows Battersea Steel Works (Drew, Bear, Parks & Co Ltd), two wharves occupied by S. Bowley & Sons Ltd, Albion Wharf (Thames Wharves), an unidentified building and then Phillips Mills to the north of "L.G.O.C" (London General Omnibus Co). This chart shows gantries over the river at both the Battersea Steel Works and Phillips Mills sites. No mooring chains or the like are shown on the foreshore, but the Battersea Bridge Barge Roads are shown in the channel.

88. A plan dated 10 December 1936 which was approved by the PLA on 25 February 1937 shows a proposal to replace two mooring piles and add a further mooring pile on the foreshore in front of Phillips Mills' premises (described as Bridge Wharf). These are in very roughly the same position as the ends of the chain shown on the OS 1:1056 scale map.

89. A PLA chart dated 1938 does not show any moorings on the foreshore, but does show the Battersea Bridge Barge Roads in the channel.

90. Mr Baldwin reproduces in his Plate 13 a PLA chart from 1942 which I cannot find anywhere else in the evidence (although there is a similar chart dated 1947). It is similar to the 1931 drawing, but shows two differences. The first is that Battersea Steel Works' premises are now identified as Albert Wharf (Victoria Motor Haulage Co). The second is that a new building is shown at Albion Wharf with a gantry extending over the river. This is the earliest documentary reference to this

overhanging gantry, which is a feature of some significance for reasons that will appear below. Mr Baldwin says that this was used for handling naphtha or petroleum.

91. There are a number of aerial photographs of the area, the first two of which date from August 1945. In terms of the buildings, these correspond closely with the 1942 PLA chart and the 1948-49 OS map (as to which, see paragraph 93 below). Albion Wharf is occupied by a warehouse-type building with three pitched roofs. These extend over the Thames to form the overhanging gantry. These photographs show a number of barges apparently moored in front of Granary Wharf. In addition, there is a barge in front of Bridge Wharf. One of the photographs (dated 27 August 1945) also shows a barge moored under the gantry at Albion Wharf, while the other does not. Neither photograph appears to be show anything moored in front of Wellington Works or the adjacent building. Both photographs also show barges moored out in the channel at various points along the river.

92. Two aerial photographs from May 1948 are quite similar. Neither appears to show anything moored in front of Albion Wharf, Wellington Works or the adjacent building. They do show barges moored in front of Albert Wharf, however.

93. The next OS map is dated 1948-1949. Going west from Ransome's Dock, this shows Albert Wharf (with a crane and an overhanging gantry), an unidentified building, Wellington Works (Paint and Varnish), Albion Wharf, Bridge Wharf and Granary Wharf in front of an Omnibus Depot. A campshed (a low structure on which one or more boats rest at low tide) is shown on the foreshore in front of Granary Wharf. By this date the road to the south was called Hester Road. OS maps dated 1948-49, 1952 and 1967-72 are little different.

94. A painting entitled *Phillips Mills* by an unidentified artist dated 1955 shows barges resting on the foreshore at low tide in front of Phillips Mills' premises. The barges appeared to be moored by ropes to piles on or by the quayside, rather than the riverbed, but this is not very clear.

95. Two aerial photographs from June 1955 show barges moored in front of Granary Wharf and a barge which appears to be moored partly in front of Bridge Wharf and partly in front of Albion Wharf. The same may be true of an aerial photograph dated September 1960, but this is unclear. Equally unclear, if not more so, is a photograph by John Bigell dated 1956 looking across the river through the clock face on Chelsea Old Church.

96. There is a PLA chart of the area dated 18 July 1961. Going west from Ransome's Dock, this shows Albert Wharf (with crane and gantry), S. Bowley & Son (with an overhanging crane), Albion Wharf (with gantry) and then Phillips Mills & Co's premises (with campshed and crane). No mooring chains or piles are shown in the vicinity other than the Battersea Bridge Barge Roads. There are similar PLA charts dated 1957 and 1969, except that they do not show the Battersea Bridge Barge Roads.

97. Mr Couper gave evidence that his ancestors on both his father's and mother's side had connections with the Thames. His mother's father, Robert Jones, worked as an engineer at the Omnibus Depot from shortly after the Second World War until the later 1960s. He had a sideline of repairing diesel tug engines at weekends. When Mr Couper was about 12, which would have been in about 1969, his grandfather used to

take him to the wharves. According to Mr Couper, he remembers being introduced by his grandfather to a Mr (Edward) Boyd, who was the "owner" of the "foreshore moorings".

98. An aerial photograph from May 1971 shows barges moored in front of Granary Wharf. It also shows a barge moored in front of Albion Wharf beneath the gantry apparently slightly off the river wall.

March 1973 - October 1979: Raglan's ownership of Albion Wharf

99. On 9 March 1973 Oswald Hazell and three others acting as trustees transferred to Raglan Property Trust Ltd ("Raglan") "ALL THOSE pieces of land in the London Borough of Wandsworth situate between the River Thames and Hester Road …. shown edged red on the accompanying plan TOGETHER with the buildings and erections thereon now or formerly known as Bridge House Wharf, Granary Wharf and Omnibus Depot, Bridge Wharf, Albion Wharf and Wellington Works … and 21 Hester Road". The plan shows marked in red almost the entire area bounded by Battersea Bridge on the west, the River Thames on the north, Hester Road on the south and Albert Wharf on the east. Importantly, the red line includes the overhanging gantry at Albion Wharf. The deed refers to an earlier indenture and a conveyance both dated 1893, but these are not in evidence. It also refers to various leases, including a lease to Phillips Mills in respect of Albion Wharf and other properties dated 15 March 1962.

100. A photograph dated March 1973 shows Phillips Mills' premises, but does not appear to show any boats in the river.

101. Following the conveyance from Hazell and others, an application was made to register Raglan as proprietor of the land conveyed under title numbers SGL168517/8. On 15 October 1973 the PLA wrote to the Land Registry objecting to the registration of two parts of that land, which were coloured blue on an attached plan. The letter said that the area coloured blue and numbered 1 on that plan:

> "… is an overhanging roof which extends beyond the mean high water line. The PLA have granted a terminable river licence in accordance with section 66 of the Port of London Act 1968.
>
> ….
>
> However there is no objection to the registration of the remaining land subject to the PLA's usual note being entered on the property register. Our usual note is as follows:-
>
> > 'the boundary of the land in this title where it abuts on the River Thames is the line of high water mark of medium tides from time to time'."

102. It is clear both from what the letter says and what it does not say that the PLA's only objection related to the area of foreshore underneath the overhanging gantry. The PLA did not say that it had title to the river wall, still less that the river wall should be

excluded from the registered title. Despite this, the area shaded blue on the attached plan appears to include the river wall.

103. An aerial photograph dated 18 May 1976 and another taken some time in 1977 show that by then several buildings in the area had been demolished, in particular Albion Wharf and the buildings to the south of it, and Granary Wharf. The land was vacant with scrub vegetation growing on it. The 1977 photograph shows a number of lorries and a coach parked on land which appears to be roughly where Bridge Wharf had been. It also shows a chimney bearing the word "BOWLEY" towards the south end of the building to the east (i.e. Wellington Works). Neither photograph shows any boats moored anywhere along the river wall in the relevant area.

104. On 28 February 1977 the PLA wrote to Alastair Thompson & Partners about river works licensed to Raglan. The letter records that most of Raglan's licensed works had been removed during demolition work in 1975, but some remained. It also refers to the fact that part of the site was to be sold. It goes on:

> "With regard to the river wall, this is not in the ownership of, nor the responsibility of the Port Authority. Such walls are normally the responsibility of the riparian owner. – See S.123 of the [1968] Act."

October 1979 - December 1981: Mr Couper erects a sculpture in Battersea Park and Couchmore re-develops Albion Wharf

105. Between 1 October 1979 and 1 January 1980 Mr Couper erected a temporary steel sculpture in Battersea Park with the permission of the Greater London Council. Mr Couper gave evidence that he arranged with a Mr Mardell, who was the proprietor of J.C. Sanders, a firm of iron, steel and metal merchants, to use Sanders' premises at Albert Wharf to fabricate the sculpture. In return, Mr Couper watched over the premises part-time and helped with loading and unloading Sanders' stock.

106. According to Mr Couper, shortly after he started fabricating the sculpture, he met Mr Boyd again. Mr Boyd was quite elderly. He was based in Charlton. Mr Couper's evidence was that Mr Boyd was:

> "… involved with one or two barges that were coming and going in connection with the steel stockholders … I saw steel stock being unloaded from barges under his direction on the overhead gantry which projected over the river at Albert Wharf."

107. On 3 October 1979 Raglan transferred to Couchmore Property Co Ltd ("Couchmore") "all that piece or parcel of freehold land known as Albion Wharf and Numbers 20 20A and 21 Hester Road … shown for identification edged with red edged with blue and edged with green on the plan attached hereto … and being part of the property comprised in title number SGL 168517". The copy of the plan in evidence is poor, but it is common ground that the area edged in red (corresponding to Albion Wharf) does not appear to include the river wall. Couchmore's title was registered under number SGL284231.

108. At some point in 1979, Couchmore obtained planning permission from the London Borough of Wandsworth ("Wandsworth") to re-develop Albion Wharf by building three warehouses, two (Units A and B) on the northern part of the site and one (Unit C) on the southern part. In connection with this, on 5 October 1979 Couchmore entered into an agreement with Wandsworth pursuant to section 52 of the Town and County Planning Act 1971 under which Couchmore covenanted to construct a riverside walk in accordance with drawing number 117/06D and to dedicate it permanently to the public. (This walk, together with the others referred to below, now forms part of the Thames Path, a national trail running from the river's source to the Thames Barrier.) It is clear both from the plan and from other documents that the works included the construction of a pre-cast concrete balustrade with a steel safety rail, embedded in a reinforced concrete edging beam, along the river wall. Clause 4(3) of the agreement provided that Wandsworth would maintain the riverside walk, but would "not be liable to maintain the river wall along any part of the Company's site which wall shall remain the responsibility of the Company".

109. Three aerial photographs from March and April 1980 show the area in much the same condition as it was in 1976 and 1977, except that Raglan's land appears to have been fenced off from the former Bridge Wharf to the west. None of these photographs shows any boats moored in the area.

110. At some point Mr Couper purchased a wooden barge called the *Hope*. He then bought a steel barge called the *Whickham*, and put the *Hope* inside the *Whickham*. Subsequently, part of the wooden barge was removed and the whole thing converted into a living and studio space with a superstructure on top. According to Mr Couper, the conversion work was undertaken at Albert Wharf using the overhead gantry. The resulting craft was called the *Hope*. It has generally been referred to in the contemporaneous documents and in these proceedings as a "houseboat". Mr Couper has lived in it to this day.

111. It is not clear when Mr Couper purchased and converted the *Hope*. In his witness statement and some of this oral evidence he said that this occurred in 1980, but in other evidence he said it occurred in 1982/83. In his reply speech, counsel for the Claimants dated this to 1982-84. I conclude that it probably occurred in 1982/83, but the precise date is unimportant.

112. What is more important is when Mr Couper began to moor the *Hope* at Albert Wharf. Even if the conversion of the *Hope* was undertaken at Albert Wharf in 1980 and the boat was temporarily moored at Albion Wharf for that purpose, I do not accept that it was permanently moored at Albert Wharf prior to May 1985. Mr Couper's evidence that it was moored there from 1980 or 1982/83 is contradicted by the photographic and documentary evidence referred to below.

113. Two aerial photographs dated 13 October 1981 show the area after Counchmore had built the warehouses. These photographs show a boat (which may be the *Atrato*) moored by Granary Wharf, but nowhere else.

114. By leases dated 14 May 1981, 2 September 1981 and 16 October 1981, Couchmore let the warehouses to Majestic Vintners Ltd ("Majestic"), Rainbow Products Ltd ("Rainbow) and John Menzies (Holdings) Ltd ("Menzies") respectively. Majestic leased the eastern part of Unit B (the eastern warehouse on the river side of the site),

Rainbow leased the western part of Unit B and Menzies leased Unit C (the warehouse on the south side of the site). (It is not clear what happened to Unit A.) Each of the leases defined "The Estate" in clause 1(b)(vi) as meaning "the Lessor's Estate or Development of which the Demised Premises forms part" and provided in the First Schedule that "the boundaries [of the Estate] are shown edged red on the Plan" attached to each lease. The Plan consisted of a marked up copy of drawing 117/W1 (as to which, see below), in one case revision N and two cases revision P. In each case the red edging includes the river wall. By clause 3(5) of each lease the lessee covenanted to pay a specified percentage of all costs charges and expenses (together with a management charge) incurred in connection with cleaning, lighting, repairing, maintaining and rebuilding of (among other things) all river banking which belonged to or was capable of being used or enjoyed by the demised premises.

115. On 2 December 1981 Couchmore and Wandsworth entered into a deed of variation of the agreement dated 5 October 1979 under which all references to drawing 117/06D were replaced by references to drawing 117/W1/N. Whereas drawing 117/06D is a general arrangement plan of the proposed development on a scale of 1:200 dated July 1979, drawing 117/W1/N is a general site plan including drains and services on a scale of 1:100 dated 7 April 1981. It appears that the latter reflects the development essentially as built. Both drawings show the river wall as part of the site.

1981-82: London & Manchester acquires Albion Wharf

116. At some point between 2 December 1981 and 1 November 1982, Couchmore sold Albion Wharf to London & Manchester Assurance Co Ltd ("London & Manchester"). The transfer from Couchmore to London & Manchester has not been found, but it must have occurred during this period since there is a PLA licence to London & Manchester for works at Wellington Works dated 1 November 1982 replacing an earlier licence to Couchmore dated 25 February 1981.

September 1982: Mr Couper's first agreement with Mr Boyd

117. On 2 September 1982 Mr Couper entered into an agreement with Mr Boyd under which Mr Boyd sold to Mr Couper "the ancient Victorian MOORING RIGHTS and ANCHORAGES (as shown in green on the attached plan) adjacent to the steel quay, immediately to the east of Granary Wharf" for £3,500. The plan shows a rectangular area marked on the foreshore to the west of Albion Wharf in front of a quayside marked "Steel Quay". The position of the "Steel Quay" corresponds approximately to that of Bridge Wharf on the OS maps. The plan also shows Granary Wharf to the west of the "Steel Quay" and the Bus Depot to the south of Granary Wharf. Mr Boyd also transferred to Mr Couper "the sheetpile wall of the aforesaid quay (as shown in red on the attached plan) of 120 feet in length or thereabouts and one foot in width" for no consideration. The agreement was witnessed by Mr Wilder, but was not executed as a deed.

118. It is unclear why Mr Couper entered into this agreement. Mr Couper said in his statement that it was "for extra security". Even on Mr Couper's account, however, he did not moor the *Hope* to these "anchorages" after entering into the agreement. Nor is it clear, even on Mr Couper's account, why he did not purchase the rights he purchased from Mr Boyd in 1993 (as to which, see below).

1983-1985: construction of Thames Walk Apartments

119. An aerial photograph dated 13 April 1984 shows the *Atrato* moored in front of Couchmore's Unit A warehouse. There are no other boats moored in the area. By the date of this photograph a large L-shaped block of apartments called Thames Walk Apartments had been built beside Battersea Bridge on the site of the former Bridge House Wharf and the western part of Granary Wharf. The eastern part of Granary Wharf and Bridge Wharf had been cleared. The photograph shows a number of buses and coaches parked on the cleared ground. It appears that the developers of Thames Walk Apartments entered into an agreement with Wandsworth to construct a riverside walk along the riverside frontage of Bridge House Wharf, Granary Wharf and Bridge Wharf. These features are also show in an OS map dated 1981-85.

120. A photograph which appears to have been taken from Battersea Bridge some time in 1985 shows the *Atrato* in the same position at near to low tide. It is clear from this photograph that there are no other boats moored in the area.

May 1985: Mr Couper moves the Hope *to Albert Wharf*

121. On 5 May 1985 the PLA's River Inspector Dave Turnbull sent the Assistant Harbour Master (Upper) a note recording that he had noted that day that the *Hope* was now moored alongside "Albion Wharf", with two ground moorings one aft and one forward. Mr Couper accepted that the reference to "Albion Wharf" was a mistake for Albert Wharf. Although Mr Turnbull did not give evidence, this is the best evidence as to the date when Mr Couper moved the *Hope* to this location. It was moored close to the boundary between Albion Wharf and Albert Wharf.

122. Mr Couper also gave evidence that at this time he accessed the *Hope* by stepping on top of a pile by the quayside at the boundary between Albert Wharf and Albion Wharf and shinnying around the wall there and on to the boat. When necessary, for example, if he had visitors, he would lay a gangway down on the river wall at Plot A.

123. At some date between then and 2 June 1985, Captain Bull, the Harbour Master (Upper), sent someone called Roy a memo saying:

> "[Mr Couper] has placed two ground moorings @ Albion Whf Battersea for the above Houseboat. Would you write to him & arrange for them to be licensed.
>
> NB There is no navigational objection to the moorings. "

124. Someone else annotated the memo on 2 June 1985 as follows:

> "'Hope' and 'Atrato' are on the frontage without the owner's consent. We cannot licence (assuming there are 'works' to licence) without consent being given."

125. It seems clear that, as a result, the PLA did not invite Mr Couper to apply for a licence at that time. I infer from this memo and what happened subsequently, however, that Mr Turnbull informally told Mr Couper that the PLA had no navigational objection to his moorings.

June-July 1985: installation of electricity and water supplies to the Hope

126. On 5 July 1985 J.C. Sanders wrote to the London Electricity Board (LEB") consenting to the installation of a mains power cable to the *Hope* and a supply box "onto our outside west wall adjacent to the footpath" along the boundary between Albert Wharf and Albion Wharf. An LEB drawing dated 10 June 1985 shows the *Hope* (identified as "the Wickham houseboat") positioned at the western end of Albert Wharf (identified as "steelyard"). It also shows the service running along a footpath between the two wharves to a junction box on the edge of Hester Road. It appears that a water supply was installed with the consent of J.C. Sanders at around the same time.

1986-1987

127. Two photographs taken in February 1986 from the riverside walk, one from in front of the Majestic unit and one from in front of the Rainbow unit, show the view looking west. The *Atrato* can be seen in both. The former photograph shows part of the CCQ with nothing stored on it.

128. Three aerial photographs dated June 1986, 21 September 1986 and 30 June 1987, show both the *Atrato* and the *Hope*. The *Hope* is moored in front of Albert Wharf.

1987-89: re-development of Albert Wharf for Fosters, Mr Couper moves the Hope *to Albion Wharf*

129. In 1987 Petmoor Developments Ltd ("Petmoor") purchased Albert Wharf and proceeded to re-develop it by demolishing the existing buildings and constructing new premises for Fosters. It appears that Petmoor entered into an agreement with Wandsworth to provide a riverside walk in a similar manner to the other riparian owners.

130. In November 1987 Mr Couper was forced to move the *Hope* a short distance westwards to its present position in front of Albion Wharf as a result of the demolition of the boundary wall of Albert Wharf. He remains intensively aggrieved about this to this day, particularly because of what he says was the lack of notice he was given of the demolition. After the demolition of the wall, the contractors erected a hoarding. According to Mr Couper, this blocked his original acces to the *Hope* (via Plot A). Accordingly, he moved his gangway further west. The *Hope* was moored by means of, among other things, ropes to rings and piles on the CCQ.

131. Shortly afterwards, Rainbow wrote to the PLA on 27 November 1987 saying that a large houseboat had recently been moored directly alongside their property and asking the PLA to look into the matter and confirm that the occupier had mooring rights. It is not clear what, if anything, happened as a result of this.

132. A photograph taken (it would appear from Albert Bridge) in 1988 shows the Fosters building under construction. A hoarding can be seen between the construction site and the warehouse site. The *Hope* and the *Atrato* can both be seen moored at low tide, with the *Hope* moored in front of the warehouse.

133. Some time in 1987 or 1988 a dispute arose between London & Manchester and Petmoor as to the boundary between their respective properties registered under title

numbers SGL284231 and SGL168517. This led to London & Manchester commencing proceedings in the Chancery Division which were rapidly settled by an agreed order dated 22 July 1988, although the settlement was not completed until various deeds were executed on 5 February 1989.

134. On 3 October 1989 Mr Couper purchased a barge called the *Bay Berg* and moored it between the *Hope* and the river wall.

June 1990: London & Manchester's agreement with Wandsworth

135. On 12 June 1990 London & Manchester entered into an agreement with Wandsworth pursuant to section 52 of the Town and County Planning Act 1971 in connection with a proposed development of Albion Wharf which never materialised. Under the agreement London & Manchester covenanted to carry out various works, including improvements to the riverside walk referred to "the Riverside Walk Works". The agreement defined "the Land" in recital (1) as meaning "all that freehold land and premises shown for the purposes of identification edged red on Plan B and in respect of which the Developer is registered as proprietor with absolute title at H.M. Land Registry under title number SGL 284231". The area edged red on Plan B includes the river wall. Clause 5.5 provided that "the Developer and not the Council shall be liable to maintain the River Wall and the Parapet Wall along any part of the Riverside Walk". The River Wall and the Parapet Wall were defined in recital (1) as meaning the existing river wall and parapet wall and any additional such walls which might be constructed from time to time.

136. Two aerial photographs, one dated 14 July 1990 and one dated 16 May 1992, show the *Bay Berg* and *Hope* moored abreast with the *Atrato* moored to the west. By the date of the earlier of these photographs the Fosters building had been completed.

June-November 1992: Mr Couper applies to the PLA for a licence and takes a licence from London & Manchester

137. On 5 June 1992 London & Manchester's in-house solicitors wrote to Mr Couper as follows:

> "We are instructed by the above-named client in respect of the continued mooring of your houseboat to the land and frontage owned by our client known as Albion Wharf.
>
> The mooring is without the consent of our client and your act constitutes both a trespass and a nuisance. In addition you are in contravention of the Port of London Act 1968 in that you are not licensed by the Port Authority to moor your houseboat to our client's land and, as a consequence, you are liable to (i) be convicted of such an offence and (ii) a fine not exceeding £400 and a daily fine not exceeding twenty pounds.
>
> Unless you remove your houseboat from the mooring within 14 days of the date of this letter and, do not return or cause an obstruction to our client's frontage, we have instructions to issue proceedings against you without further notice and, also,

> to notify the Port of London Authority to take proceedings against you for contravention of the Act.
>
> If you are not aware of your legal rights, we strongly advise you to consult a solicitor without delay handing to him a copy of this letter."

It is not clear what prompted this letter.

138. On 12 June 1992 Mr Turnbull sent Captain Bull a note and diagram showing the ground moorings for the *Hope* and *Bay Berg* (not referred to by name, but as "a dumb barge"). The diagram shows the boats moored to four anchors as well as by a number of lines to shore. It also shows the access to the boats from the shore by "platform & four scaffold poles". The note states "All anchors are well dug in & heavy chain has been used for the ground works".

139. On 15 June 1992 Captain Varney, the PLA's Chief Harbour Master, wrote to Mr Couper enclosing an application form for a licence for the mooring anchors for the *Hope* and asking Mr Couper to sign the form and return it together with a plan showing the location of the vessel and its anchors. It appears that Captain Varney wrote to Wandsworth on the same date to enquire whether, assuming that Wandsworth was the riparian land owner, it consented to this; but no copy of the letter has been found.

140. On 16 June 1992 Mr Couper wrote to Captain Bull saying:

> "I assume the reason for the letter [from London & Manchester] is the fact that we moved a third of the boat's length from our original berth up on the border with Albion Wharf, as a result of danger from the demolision [sic] and building work at the new Foster building alongside us. I'm sure I can resolve the problem by relocating the barge back if required. However this letter is very surprising considering the wharf frontage at Albion Wharf was taken over by the council several years ago and they have no objection to our present location.
>
> As a separate issue, as discussed I have arranged with Dave Turnbull the location of the anchors we need to prevent damage from pounding from the riverbuses.
>
> We are presently in dry dock at Blackwall undergoing repairs to damage from recent riverbus pounding. Our insurers Eagle Star have informed us that they will not continue to insure us against wash related damage in any waters on a riverbus route. Therefore we have had to look for other ways of preventing pounding against the wharf, hence the anchors to hold us off the wall a few feet."

141. There is another version of the same letter (perhaps a draft or a copy kept by Mr Couper for his own records) which also includes the statement "As you know we have

been here since 1984 following your endorsement". I think the reference to 1984 is inaccurate, and should be to 1985. Similar comments apply to some of the other documents referred to below.

142. A memo from Bill Woodward, the PLA's River Works Licensing Officer, to Captain Bull dated 22 June 1992 records the submission by Mr Couper of an application for the licensing of anchor moorings for the *Hope* and a barge. On 6 July 1992 Captain Bull replied to Mr Couper's letter dated 16 June 1992 confirming that the application was receiving attention. The application itself does not appear to have survived.

143. On 8 July 1992 Mr Couper wrote to Captain Bull again, asking him to confirm that the PLA's Harbour Master had consented to him mooring "here by Hester Road some 8 years ago".

144. On 9 July 1992 Mr Couper wrote to Peter Smith of Wandsworth's Planning Department:

> "Just to confirm that we have been here at this location for some ten years and the junction of Albion and Albert Wharf.
>
> This is a registered and harbour master approved mooring including houseboat 'Hope' and store barges.
>
> As a result of damage from the new continuous riverbus service we have been forced to lay out fresh anchors to prevent us from drifting or breaking loose. This was done with the knowledge and approval of the P.L.A duty boat who understand the extra wash these riverbuses put out. Most other moorings have had to increase their mooring security as a result of the service also.
>
> The enclosed plan show [sic] the location of the anchors for your information.
>
> The plan has also been sent to the Chief Harbour Masters Office … In due course they will be issuing a license and are writing to yourselves to confirm this.
>
> Please reply to me at the above address. As suggested these sunken anchors are not of concern to yourselves?"

The plan does not appear to have survived.

145. On 21 July 1992 Captain Varney replied to Mr Couper's letter dated 8 July 1992 as follows:

> "The PLA first became aware of the 'Hope' in its present position in May 1985 when it was reported to this office by the PLA harbour service that the craft has recently moved from it former location and was held in position by fore and aft ground moorings.

> These moorings would be subject to a PLA river works licence but it was felt at the time that a licence could not be issued since we had no evidence that you had the permission of the owner of the frontage to moor your craft there. Indeed, the owner of the frontage was not known to us.
>
> It has since become apparent that the owner of the riparian land may be Wandsworth Borough Council since the frontage is occupied by a public footpath. As you know, I have written recently to the council asking for clarification of the position but have so far received no reply.
>
> In the light of the foregoing remarks I regret that I can not confirm that you received the PLA's explicit consent for placing the 'Hope' off Albion Wharf since no licence was issued for its moorings. However, the houseboat was seen to be securely moored and so not a danger to navigation. This being the case you were not asked to move and it might be said that you had the PLA's tacit consent to remain.
>
> I can not be more positive than this but I hope the council will soon confirm their permission for the 'Hope' to lie alongside their frontage which will enable me to recommend the granting of the necessary river works licence."

146. On 24 July 1992 Mr Couper replied to Captain Varney saying:

> "We moved to the junction of Albert/Albion Wharf in 1985 after permission was granted by the then occupiers of the frontage Messrs J.C. Sanders (see enclosed copy of letter from themselves authorizing connection of electricity supply to our boat).
>
> Prior to our moving the craft to here permission was obtained for the move from Capt. Bull in early 1985, who sent Capt. Murray of Salvage down to inspect hull integrity before towage. I believe Capt. Bull is attempting to contact Capt. Murray to confirm this in absence of paperwork to that effect."

He went on to refer to Wandsworth "taking over the frontage" from J.C. Sanders "upon redevelopment in 1989".

147. On 4 August 1992 Mr Couper wrote to Captain Bull saying that, when Captain Bull talked to Captain Murray about visiting Mr Couper in early 1985, it might jog his memory "if you mentioned the fact that we were at the time moored in the old sunken dry dock at Albion Wharf". (This refers to a different Albion Wharf, one some distance to the west of Battersea Bridge.) Captain Bull replied on 12 August 1992 saying that Captain Murray could not recall anything with regard to the *Hope*.

148. On 29 September 1992 London & Manchester's managing agents wrote to Mr Couper offering a licence to moor *Hope*, *Bay Berg* and a pontoon adjacent to Albion Wharf.

The letter made it clear that this would not include access over London & Manchester's land. It also recorded London & Manchester's understanding that some utility services ran down the footpath adjacent to its land.

149. On 19 October 1992 Mr Couper purchased a barge called the *Arctic Sun*.

150. On 27 November 1992 Mr Couper entered into a licence agreement with London & Manchester for a period of five years terminable on 12 months' notice at a fee of £2,500 per annum payable quarterly in advance. The cover sheet of the agreement described it as a "licence relating to Barges 'Hope' and 'Bay Berg' and a collar barge pontoon at Albion Wharf Battersea". The agreement gave Mr Couper's address as "Barges 'Hope' and 'Bay Berg', Thames Embankment, Albion Wharf".

151. Clause 1 was in the following terms:

> "The Owner hereby grants permission to the Licensee for the sole purpose of anchoring or mooring the Barges 'Hope' and 'Bay Berg' together with a collar barge pontoon (hereinafter called 'the Boat') on the River Thames at Battersea in a position to be approved by the Owner from the 1st day of December 1992 to the 30th day of November 1997 upon the terms and conditions hereinafter contained."

152. Clause 2(8) contained a covenant by the licensee "To use the moorings for the Boat...". By clause 3(b) Mr Couper agreed that, on termination of the licence, he would remove the Boat "from the position aforesaid".

January-February 1993

153. On 19 January 1993 Mr Turnbull reported that there were now three barges on the foreshore at Albion Wharf. On 20 or 30 January 1993 he reported that there were "two anchors not dug in" on the foreshore. On 30 January 1993 another inspector made a report to the same effect. On 31 January 1993 Mr Turnbull reported that he had spoken that day to Mr Couper about the build up of barges and ground works at Albion Wharf. Mr Turnbull's note states "ALL GROUND WORK TO BE DUG IN ASAP" and includes a diagram of the vessels present. At that time Mr Couper had *Hope*, *Bay Berg* and *Arctic Sun* moored. A Mr Range had also moored a barge nearby and there was also Mr Ashmore's *Atrato*.

154. On 22 February 1993 Captain Varney wrote to Wandsworth chasing for answer to his letter dated 15 June 1992 and subsequent reminders. Having noted that there were now five vessels moored in the area (i.e. Mr Couper's three, Mr Range's and Mr Ashmore's), he went on:

> "As indicated in my earlier letter there were no navigational objections to the houseboat 'Hope' and another barge being moored against the river wall, provided the consent of the landowner (believed to be your council) had been obtained. …
>
> The other craft which have been moored nearby may be the start of an invasion of the area by residential craft and I feel it is

> essential that a policy is formulated before the situation becomes uncontrollable. …
>
> I should be pleased if you would indicate as soon as possible whether your council are in fact the owners of the river wall at Albion Wharf and if they are, what their attitude is to the mooring of houseboats thereat."

155. On 1 March 1993 Mr Couper purchased a tug called *Showery* which he re-named *Pablo*.

March 1993: Mr Couper's second agreement with Mr Boyd

156. On 19 March 1993 Mr Couper entered into a second agreement with Mr Boyd under which Mr Boyd transferred to Mr Couper "the RIGHT of MOORING to and OWNERSHIP of those Victorian ground-moorings and associated historical berthage (the 'Roads') as shown marked on the attached plan, and the associated chains, cables and anchor tackle AND the historical rights which the property have the benefit of, including the RIGHT of way and movement of goods and materials to the Roads from the bank and Hester Road (formerly Wellington Road), and the RIGHT to land a prow onto the bank ALL by the Thames Embankment, Hester Road" for £5,000. The agreement was executed as a deed and witnessed by Mr Wilder.

157. The plan shows the "berthage area" edged by dotted blue lines. The area has the shape of three rectangles of varying size next to each. The largest rectangle is to the east. This extends from a short distance away from river wall to beyond the extremity of the foreshore at mean low water in front of the western two-thirds of Albert Wharf and the eastern half of Albion Wharf. The smallest rectangle is to the west. Its northern boundary is aligned with the northern boundary of the largest rectangle, but the southern boundary lies further away from the river wall. The third rectangle is to the west again. Again its northern boundary is aligned with the northern boundary of the largest rectangle, but the southern boundary lies an intermediate distance from the river wall. The plan also shows nine "ground-moorings" circled in red. Eight of these are either within the berthage area or on its border line. One is just outside the border line.

July-September 1993: Mr Couper instructs solicitors to investigate Couper Quay

158. By no later than 5 July 1993 Mr Couper had instructed a firm of solicitors called Dawson & Co (whose employee Matthew Rae was a personal friend of Mr Couper's) to investigate the ownership of Albion Wharf, and in particular the sheetpile wall which Mr Couper had purchased from Mr Boyd in 1982 (i.e. Couper Quay). On 5 July 1993 Dawsons obtained an index plan search from the Land Registry which showed that Couper Quay was unregistered. Dawsons billed Mr Couper for obtaining this plan and for advice on 13 September 1993.

1994-1995

159. The catalogue for Mr Couper's exhibition *The Plot: Water, Petroleum, Steel and Mud* (as to which, see below) includes at page 98 an aerial photograph dated 1994 showing *Bay Berg*, *Arctic Sun*, *Hope* and *Pablo* moored abreast at low tide. There is also a

small tender called *Hank* hanging from davits on the stern of the *Hope*. There is nothing visible on the CCQ.

160. The same vessels can be seen in an aerial photograph dated 29 May 1994. Again, nothing is visible on the CCQ. This photograph also shows the *Atrato* moored to the west and a barge which I assume belonged to Mr Couper moored further to the west, by Couper Quay. One or more barges can be seen in the latter position in a number of later photographs, but henceforward I shall ignore this since Couper Quay is no longer in contention. I shall nevertheless have to refer to some of Mr Couper's dealings with this section of the river wall.

161. On 20 July 1994 Mr Couper acquired a barge called *Capricorn* in an exchange.

162. On 13 January 1995 Mr Couper purchased a barge called *Atlantis*.

January 1996 – November 1997: London & Manchester sells Albion Wharf to Belmore and Belmore asks Mr Couper to pay rent

163. On 12 January 1996 London & Manchester sold Albion Wharf to Belmore Ltd. Curiously, although there is a letter evidencing this transaction, no transfer has been found.

164. On 8 February 1996 London Transport wrote to Captain Dickens, the then Harbour Master (Upper), enquiring whether, as owner of the former Battersea Bus Garage (previously the Omnibus Depot), it had any responsibility for the upkeep of the adjoining footpath and who had responsibility for the river, It appears that Belmore subsequently acquired whatever title London Transport has (I assume a leasehold one), and London Transort's enquiry may have been prompted by Belmore's pre-contractual enquiries.

165. During the period from the early summer of 1996 to the late autumn of 1997 Mr Couper's exhibition *The Plot* toured museums in Antwerp, Hannover, Duisberg and Düsseldorf. As part of this, Mr Couper sailed the *Pablo* and a barge to those cities. It is not clear precisely which barge Mr Couper took with him, except that it was a small barge of a kind subsequently referred to by Mr Couper as "opera barges". Thus it was not one of the *Hope*, *Bay Berg* or *Arctic Sun*. Rather, it would appear to have been one of the barges that Mr Couper acquired in 1994-1995 (which it appears that Mr Couper subsequently re-named, as he is in the habit of doing with his boats.)

166. On 27 June 1997 Belmore granted Mr Ashmore a licence to moor the *Atrato* for a year for a fee of £1,400 plus VAT.

167. On 1 September 1997 Julia Turner ARICS, acting on behalf of Belmore, sent Mr Couper a "rent demand" for mooring the *Bay Berg* and *Hope* at Albion Wharf for the period from 29 September 1997 to 30 November 1997 in the sum of £431.51 plus VAT. This was evidently on the basis that Belmore had adopted the licence granted by London & Manchester. It is unclear whether Mr Couper paid this sum.

168. On 13 November 1997 Mr Couper purchased a barge called *Pooh*.

November 1997: sale of Albion Wharf to APL

169. On 20 November 1997 Belmore transferred to APL (then called Burginhall 997 Ltd) "All that freehold property known as: 5 and 6 Hester Road; Bus Depot at Bridge Wharf and part Granary Wharf; Bus Garage on south side of Hester Road; and Albion Wharf and 20, 20A and 21 Hester Road … registered under the title numbers … SGL25633 SGL105454 TGL135974". The transfer included a covenant by APL with Belmore, by way of indemnity only, to observe and perform the covenants on the part of the landlord in several leases and tenancies set out in the schedule. These included the 1992 licence to Mr Couper and the 1997 licence to Mr Ashmore.

November-December 1997: Mr Couper takes a licence from APL

170. On 24 November 1997 Ms Turner, who had been instructed as the managing agent by APL, wrote to Mr Obell saying she had spoken to Mr Couper about the renewal of his existing licence which expired on 30 November 1997. She had advised Mr Couper that APL would only be prepared to offer him a further licence for one year with a mutual break option at any time after six months and that it was unlikely that APL would wish to renew the licence after the year had expired. She asked Mr Orbell to confirm the terms proposed were acceptable.

171. On 16 December 1997 Mr Couper entered into a licence agreement with APL for a period of a period of one year terminable on one months' notice after six months. Otherwise, the terms were essentially the same as the terms of the licence agreement with London & Manchester (paragraph 150 above).

February-April 1998: APL proposes to de-redevelop Albion Wharf and Mr Couper proposes to open the barges to the public

172. APL acquired Albion Wharf and the surrounding land with a view to re-developing it. The scheme ultimately comprised 190 flats together with a fitness centre, offices and retail units, 45 affordable flats in a separate building and a basement car park. APL instructed Fosters to design the new buildings. On 5 February 1998 a visualisation of Fosters' scheme for the site was published in *The Times* which included a pier but not Mr Couper's boats. It appears that Mr Couper felt threatened by this, and he quickly contacted Mr Linton, as well as Councillor Vanessa Graham of Wandsworth. By this time, Mr Couper was in discussions with Wandsworth about a proposal to open the barges to the public as an art collection and local amenity.

173. On 12 February 1998 Mr Orbell and Mr Couper met on the barges. Mr Couper outlined his idea to Mr Orbell, and Mr Orbell expressed interest. Later the same day, Mr Couper wrote to Mr Linton saying that he had met Mr Orbell and that Mr Orbell:

> "… supports in principle the idea of matching my handing over of the barges as an artwork to the public via the Council, with Hutchison Whampoa handing over the mooring within the scheme."

174. On 20 February 1998 Mr Couper prepared a memo for discussion with Paul Henry of Montagu Evans, APL's planning consultants, in which he described his proposal as follows:

> "Preservation of a permanent collection of art in the place of its creation, with artist in residence, in the Borough of Wandsworth at Albion Wharf - involving the permanent donation of the art and barges and the associated in-river ground-moorings (the Couper Barge Roads) for public access by the artist to the Borough of Wandsworth, matched by donation of the developers to the Borough of Wandsworth of incorporating the immediate bank-side mooring of the collection as another permanent public amenity within their scheme for Albion Wharf."

175. On 5 March 1998 Mr Couper wrote to Mr Orbell explaining that he was proposing to turn the collection of boats and the art into a public amenity through the creation of a charitable trust.

176. On 9 March 1998 Mr Orbell and Mr Couper met at HWPEL's offices. Mr Orbell made a note of the meeting which he copied to Mr Couper under cover of a letter dated 10 March 1998. According to Mr Orbell's note, Mr Couper explained that he wanted "a statement of recognition by the developer that the whole collection would be respected by the new scheme". Mr Orbell said that at that stage of the planning process it would not be possible to consider a binding commitment. Mr Couper referred to his discussions with Wandsworth and the possibility of a charitable trust. The note goes on:

> "Max Couper raised a concern over the proposals for the river wall, based on historic knowledge through his family's involvement at the wharf since the 1870's. He stated that he had ownership rights to mooring in the 'Roads' (referred to by him as Couper's Roads) with ownerships extending only so far as the river bank with allowance for an access for maintenance in accordance with historic statute. NIO asked for better information as this was not known to him, which Max Couper agreed to provide.
>
> NIO explained that corporate approval would be needed which required the evaluation of considerable detail. He will try and gather information over the next week or so, with Max Couper's assistance on the river moorings, and will then be able to respond to Mr Couper's concerns. Further action was also dependant on resolution of other issues in respect of the proposed development. Meanwhile, Max Couper will telephone at the end of the week to monitor progress."

177. On 9 March 1998 Mr Woodward wrote to Dawsons in reply to a letter from Dawsons dated 29 January 1998. Dawsons' letter is not in evidence, but it appears that it concerned a claim by Mr Couper to adverse possession of Couper Quay. Mr Woodward's letter stated that the Thames Conservators had granted an embankment licence dated 13 June 1887 to J. Draper which had not been endorsed under section 72 of the 1968 Act. In addition the PLA had granted Phillips Mills a licence dated 18 September 1958 to reconstruct the wharf frontage by driving steel sheet-piling in front of the existing wall and filling the gap with concrete. The letter concluded:

> "I would point out, however, that your client's moorings are river works which need to be licensed by the PLA. If and when the legitimacy of your client's occupancy of this frontage has been established we would expect these moorings to be duly licensed."

178. On 11 March 1998 Mr Couper met Captain Dickens at the PLA's offices. Captain Dickens made a note of the meeting, according to which Mr Couper expressed concern that developers were claiming ownership of a short stretch of river frontage at Albion Wharf and that he was in danger of having his moorings compromised. Mr Couper claimed that the frontage was his. He explained that he used the two barges as galleries open to the public. The PLA had been in correspondence with Mr Couper's solicitors and according to its records Mr Couper's ownership was in dispute. Accordingly,

> "PLA suggested that as his right to be on the site and his ownership of what he described as 'ancient' moorings which were unregistered were doubtful, he might take this opportunity to put his presence on a legal basis by properly registering the craft in their new capacity and taking a river works licence to cover his moorings."

179. On 20 March 1998 Mr Couper wrote to Mr Woodward following a telephone conversation the previous day. In his letter Mr Couper expressed concern that APL should be aware of "the ancient ground moorings off Albion Wharf I purchased in 1993 from ECJ Boyd".

180. Also on 20 March 1998 Mr Couper wrote to Councillor Graham saying:

> "The legal position is extremely clear. I own some in-river ancient ground moorings and the developers own part of the bank. However a bombshell has dropped – on obtaining all the documents and transfer plans of sale of the wharf since its creation in the 1890's we have discovered the following!
>
> The developers only actually own a tiny part of the frontage. (This is absolutely top secret, please.)
>
> Which means in effect that the Council actually own most of it, and or myself on account of occupying part of it in excess of 15 years."

He went on to refer to "Land Registry plans from 10 March".

181. On 23 March 1998 Mr Couper wrote to Mr Orbell saying:

> "Simply, all I am offering is to hand over my ownership, barges and roads for public access and suggesting that you may want to match this by making the landside accommodation."

182. On 6 April 1998 Mr Couper wrote to Wandsworth's Planning Committee saying:

> "My intention, as discussed with Councillor Graham and Leisure and Amenity is to go ahead with the project of the collection on the barges as a permanent public amenity.
>
> As far as the developers Hutchison Whampoa Europe are concerned, we will simply move out the barges from their sea wall at Albion Wharf and finish the temporary contract of convenience for its use. I shall move the barges out onto the moorings I own and have occupied for two decades, and put a longer gangway out. This will be exactly the same position the boats were in for many years in the past.
>
> It is impossible for them to object to this legally as I am the beneficial owner of the ancient in-river moorings, and not them. They have the historic right of access to their wall which I shall give back to them, but no ownership of the river. In addition I have absolute historic right of access for the gangway to the riverside walk."

March-July 1998: Couper's Quay Ltd applies to register Couper Quay and Mr Boyd executes a confirmatory transfer

183. On 24 March 1998 Mr Couper transferred to Couper's Quay Ltd ("CQL") the property and rights he had acquired from Mr Boyd under the 1982 agreement (paragraph 117 above). It appears that not long afterwards Dawsons on behalf of CQL applied to the Land Registry to register title to (a) Couper Quay and (b) the riverbed in front of Couper Quay relying on the chain of title from Mr Boyd.

184. On 23 April 1998 Mr Couper on behalf of CQL and Ray Pigott on behalf of Thames Walk Residents Association Ltd ("TWRA"), which it appears owned the riverside walk, agreed an ownership plan in respect of the riverside walk, showing the CCQ as owned by CQL.

185. On 29 April 1998 Dawsons wrote on behalf of TWRA to the PLA saying that TWRA did not object to CQL's application and requesting endorsement of the licences.

186. On 7 May 1998 the PLA endorsed the licences dated 13 June 1887 and 18 September 1958 (see paragraph 177 above) under section 72 of the 1968 Act, thereby vesting the freehold of Couper Quay in the riparian owner, namely TWRA. The PLA notified Dawsons of this by letter dated 13 May 1998 and stated that it would not object to a transfer from TWRA to CQL.

187. On 16 May 1998 Mr Boyd and Mr Couper executed as a deed a confirmatory transfer of the sheetpile wall the subject of the 1982 agreement (i.e. Couper Quay). Mr Boyd's signature was again witnessed by Mr Wilder.

188. A photograph of the riverside walk outside the Rainbow warehouse looking west dated 19 June 1998 shows two bicycles on the CCQ and a small object which may be a piece of wood, but nothing else.

189. On 26 June 1998 APL granted a further licence to Mr Ashmore to moor the *Atrato* at Albion Wharf

190. Telford District Land Registry gave the PLA notice that it proposed to register Couper Quay and the riverbed on 10 and 14 July 1998. The PLA's River Works Licensing Officer advised Ms Mashiter that there was no objection to registration of Couper Quay, but that strong objection should be made to registration of the riverbed. On 24 July 2008 Ms Mashiter duly wrote to the Land Registry informing it of the endorsement of the licences and stating that the PLA did not object to registration of Couper Quay, but did object to the registration of the riverbed which it owned.

191. On about 6 August 1998 CQL withdrew its application. There is no evidence of any transfer from CQL back to Mr Couper of the rights transferred on 24 March 1998, but the Claimants appear to have proceeded as if one was executed. At all events, it appears that, following the withdrawal of CQL's application, TWRA was registered as owner of Couper Quay.

July 1998: APL applies for planning permission and the Trust is created

192. On about 8 July 1998 APL applied for permission for its scheme to re-develop Albion Wharf and the surrounding land.

193. On 23 July 1998 the initial trustees of the Trust (Andrew Hepburn, Linda Strudwick and Cllr Graham), executed a declaration of trust establishing the Trust and Mr Couper executed a Deed of Gift of the *Bay Berg*, *Artic Sun*, associated artworks, mooring rights and access rights. The deed of gift transferred some items to the Trust outright and others, including the moorings, to Mr Couper and the Trust jointly as tenants in common.

194. At about the same time, Mr Couper moved the site of the gangway by which the boats were accessed back to its original position at Plot A. A marine grade aluminium gangway protected by a steel door in the landward side was installed at this location.

195. On 8 December 1998 the Reverend Canon Ivor Smith-Cameron, the then Chaplain to Her Majesty the Queen, was appointed as an additional trustee of the Trust.

November 1998 - October 1999: APL offers a new licence to Mr Couper and the Trust

196. On 11 November 1998 Houston Lawrence, who had replaced Ms Turner, wrote to Mr Couper on behalf of APL noting that his licence to moor *Hope* and *Bay Berg* at Albion Wharf was about to expire and offering him a new licence for one year on the same terms. On 19 November 1998 Denton Hall, APL's solicitors, sent Mr Couper a new licence for signature. On 2 December 1998 and 22 December 1998 Denton Hall sent chasing letters to Mr Couper. It does not appear that Mr Couper replied to any of these letters.

197. On 4 January 1999 the Trust wrote to Lord Derwent, the Managing Director of HWEL, asking for financial support. In this letter, which was probably drafted by Mr Couper, the Trust stated:

> "We would also like to let you know that we have taken measures to relocate our gangway access to its original historic location. As such we are now moored independently, as in former times, within the historic barge-roads anchorages that we own. We anticipate that this will be mutually advantageous, and in particular will allow you full access to repair the sea-wall, which we understand will probably be required prior to redevelopment.
>
> We would also like to inform you and your surveyors of the existence of our services which run directly under public footpath from Hester Road to our moorings, which would need to be protected during any excavations."

198. By this point in time, Mr Couper had enlisted a considerable level of political support for the Trust and its work. Thus on 6 January 1999 Ms Tongue and two other London MEPs wrote to the Deputy Prime Minister and others to express support.

199. On 24 February 1999 Denton Hall wrote to Mr Couper saying that, although the gangway might have been moved, the *Hope* and *Bay Berg* were still moored in the same position and accordingly a licence from APL was still required. The letter also acknowledged receipt of the Trust's letter dated 4 October 1999 and asked Mr Couper to clarify who was in occupation of the boats. Again, it does not appear that Mr Couper replied.

200. On 25 February 1999 Lord Derwent replied to the letter dated 4 January 1999 saying that "our present corporate policy is restricted to supporting activities and events which have a strong connection with our Chinese heritage". This is clearly a statement which rankled deeply with Mr Couper, since he has repeatedly referred to it on subsequent occasions, including several times in cross-examination.

201. On 14 May 1999 the Couper Collection was opened to the public by the Mayor of Wandsworth. On 24 May 1999 the Trust was formally registered as a charity and was designated as part of the London String of Pearls Millennium Festival.

202. On 8 July 1999 Mr Couper on behalf of the Trust entered into a Beneficiary Agreement with Inner London Probation Service regarding the provision of Community Service. Since then offenders have been regularly engaged in Community Service on and around the boats.

203. On 3 August 1999 Denton Hall wrote to Mr Couper reminding him that the licence dated 16 December 1997 had expired and not renewed. It asked him to confirm whether the ownership of the barges had been transferred to the Trust. Having referred to Mr Couper's letter dated 4 January 1999, the letter continued:

> "Since your meeting with Mr Orbell of our client on 9 March 1998, we and our client have sought from you evidence in support of your claim to the right to moor the barges and to cross our client's land without licence from our client.

> We have advised our client that the barges are currently moored or anchored illegally to our client's land, and of the steps necessary to secure possession of the [land]. However, our client is concerned to ensure that where legal rights exist that are binding on our client, these rights are respected and no step is taken contrary to those rights.
>
> In the circumstances, please would you let us have copies of all evidence (documentary or otherwise) on which you and/or The Trust rely in support of the assertion of any such rights. Our client is anxious to regularise the position as soon as possible, and we therefore look forward to receiving that evidence within 28 days of the date hereof.
>
> We have forwarded a copy of this letter to The Trust."

204. Denton Hall wrote again on 5 August 1999 noting that they had not received a response to their letter dated 24 February 1999.

205. On 1 September 1999 Canon Smith-Cameron replied on behalf of the Trust to Lord Derwent's letter dated 25 February 1999, again seeking APL's support and expressing concern that there had no response to the matters raised in the letter dated 4 January 1999. Lord Derwent replied on 14 September 1999 saying that he had passed the matter to HWEL's Executive Director Dr Edmund Ho.

206. On 17 September 1999 Mr Couper replied to Denton Hall's letter dated 5 August 1999 saying that the barges, art collection and moorings had been transferred from his ownership to the Trust. "Therefore I cannot help you in this matter." Mr Couper did not respond to the letter dated 3 August 1999.

207. On 5 October 1999 Mr Beynon wrote to Canon Smith-Cameron in response to the latter's letter dated 1 September 1999. Having assured Canon Smith-Cameron that HWEL's policy was to co-operate with adjoining owners and residents, he went on to note that the licence dated 16 December 1997 had expired and not been renewed. He said that, if the barges had been transferred to the Trust, then the Trust would need to renew the licence and pay the arrears and that HWEL could only discuss access and servicing of the barges once that had been done.

October-December 1999: the Trust objects to APL's planning application, the PLA makes representations and Wandsworth grants planning permission

208. On 6 October 1999 the Trust wrote to Wandsworth's Planning Committee and others objecting to APL's planning application.

209. On 8 October 1999 Mr Couper agreed to purchase a barge called *Wendy*, the purchase to be completed by 15 December 1999.

210. On 15 October 1999 Mr Trimmer wrote on behalf of the PLA to Ms M. Foster of Wandsworth's Technical Services Department (with a copy to Montagu Evans) concerning APL's application for planning permission. In this letter he stated:

> "The PLA is pleased to note that the 'river platform' proposed as part of previous schemes has now been deleted from the scheme and would confirm that there appear to be navigational consequences arising from the proposals. The Council should, however, be aware that ancient mooring rights (defined under section 63 of the Port of London Act 1968 as moorings existing before 29 September 1857) are situated at Albion Wharf. Accordingly, the PLA strongly believe that the views of the trust owning these moorings should be sought and fully considered as a part of the Council's deliberations.
>
> I also note that a report on the existing river walls has been submitted by Ove Arup and Partners as part of the application for this site, although I confirm that the PLA has not been contacted to discuss any proposed works in detail following the submission of the application. I am accordingly copying this letter to the developer's agents for their information."

211. The letter was also copied to Captain Cartlidge, the PLA's Harbour Master (Upper). Evidently he spotted that there was a word missing from the first sentence I have quoted and drew this to Mr Trimmer's attention. Accordingly Mr Trimmer wrote to Ms Foster on 20 October 1999 to say that that sentence should read "there appear to be *no* navigational consequences". He also enclosed a corrected copy of the letter with the date of 20 October 1999 and asked that it be substituted for the earlier version.

212. It appears that the Claimants quickly obtained a copy of the letter dated 15 October 1999, presumably from Wandsworth. Ever since they discovered its existence, the Claimants have placed great store on the statement by the PLA in the letter that "ancient mooring rights … are situated at Albion Wharf". Mr Trimmer was unable to recall his source for this information. It seems probable that he was relying on Mr Couper's own claims to this effect.

213. On 25 October 1999 Mr Orbell wrote to Mr Trimmer saying he had received a copy of the letter dated 15 October 1999. He quoted the statement that "ancient mooring rights … are situated at Albion Wharf" and said it would be extremely helpful if Mr Trimmer could provide more details about the location and extent of these moorings and any records which evidenced their presence in 1857.

214. On 27 October 1999 Alison Manning, the PLA's Assistant Port Planner, who was junior to Mr Trimmer but nevertheless more experienced, sent a copy of the letter dated 25 October 1999 to Mr Woodward asking him if he could assist in answering Mr Orbell's queries. Mr Woodward replied on 29 October 1999 as follows:

> "1. With reference to your memorandum of 27 October 1999 and enclosure, what is commonly known as 'ancient moorings' is defined under Section 63 of the Port of London Act 1968 (as amended) as 'mooring chain placed in the Thames before 29 September 1857'. Such mooring chain is not subject to the PLA's licensing powers deriving from Sections 66 and 70 of the PL Act.

> 2. There are a number of barges moored at this frontage. Three of these, at lease one of which I believe is used residentially, belong to a Max Couper Lovegrove.
>
> 3. There is no mention in our records of ancient moorings at the river frontage of the above mentioned premises. However in a letter to me dated 20 March 1998 Lovegrove mentions 'the ancient ground moorings off Albion Wharf I purchased in 1993 from ECJ Boyd'. I can find no reference to Mr Boyd in our records. Hutchison should ask the owner of the 'ancient moorings' for documentary evidence as to the status and ownership of the moorings.
>
> 4. Application was made last year to the Land Registry to register title to the strip of land at this location. Land Registry does not disclose the name of the applicant but from other correspondence on file I suspect this to have been Couper's Quay Limited (Lovegrove). The PLA indicated that it had no objection to registration of this title. A copy of the Land Registry plan is enclosed.
>
> 5. If Couper's Quay/Lovegrove are the owners of this land then they have the riparian rights which come with ownership of riverside land. In fact, Lovegrove has placed ground moorings which are definitely not 'ancient' and would be subject to the PLA's licensing powers. These moorings and the permanently moored vessels would have been licensed if it were not for the doubts (which continue) regarding Lovegrove's rights of tenure.
>
> 6. I consider that this is a property dispute and the PLA should be very wary about becoming involved."

215. Also on 27 October 1999 Canon Smith-Cameron wrote on behalf of the Trust to Dr Ho, with copies to other executives, in reply to Mr Beynon letter's dated 5 October 1999. The letter, which was somewhat aggressive in tone, stated that the Trust "will not under any circumstances sign permits with you or pay you money". It went on to assert that "We own the ancient mooring rights in the river as recognised by the authorities to be [sic], The Port of London Authority (see enclosed PLA support for this)", as well as other rights. It proceeded to accuse APL's development of "threatening the Collection by not recognising it as a permanent attraction and amenity for London". It expressed the hope that Dr Ho would reply swiftly in person "and that we may be able to avoid this becoming a public affair".

216. On 5 November 1999 Ms Manning replied to Mr Orbell's letter dated 15 October 1990 as follows:

> "As you are aware, ancient moorings are defined in Section 63 of the Port of London Act 1968 (as amended) as 'mooring chain placed in the Thames before 29 September 1857'. Such

> mooring chain is not subject to the PLA's licensing powers deriving from Sections 66 and 70 of the Act.
>
> A number of barges are moored at Albion Wharf, three of which belong to Max Couper Lovegrove. After further investigations, there does not appear to be any official PLA record of ancient moorings along this river frontage. However, in a letter to the PLA dated 20th March 1998, Mr Couper mentions 'the ancient ground moorings off Albion Wharf I purchased in 1993 from ECJ Boyd'. We therefore suggest that you contact Mr Couper … for documentary evidence as to the status and ownership of these moorings."

217. On 11 November 1999 Mr Couper completed the purchase of the *Wendy*.

218. On 12 November 1999 Dr Ho replied to Canon Smith-Cameron's letter dated 27 October 1999 saying:

> "I am sorry to learn that you feel frightened by our letter to you dated 5 October 1999. I would however like to clarify that we have no intention to affect either the access and/or services of your collection.
>
> If you have no objection, we would like to arrange a meeting with you so that some of your concerns could be addressed more directly. We are also pleased to take the opportunity to re-address our consideration, on the possible charitable work support with you."

219. On 15 November 1999 Mr Couper agreed to purchase a pontoon known as *Z6*.

220. The PLA has disclosed from its files a facsimile cover sheet completed in manuscript by Ms Manning. The fax is addressed to Ms Foster, dated 1 December 1999, timed at 3 pm and stated to consist of three pages. The message on the cover sheet reads:

> "Re <u>Battersea Bus Garage</u>
>
> Letter sent to developers regarding ancient mooring plus extract from PLA chart, as requested."

It appears from both the message and the PLA's file that the enclosures to the fax consisted of the latter dated 5 November 1999 and a PLA chart of the area marked up in manuscript to show the approximate position of the bus garage.

221. There is a dispute as to whether this fax was sent. Ms Manning did not give evidence. The PLA's file does not include any fax transmission receipt for this fax. Thus there is no direct evidence that the fax was sent. On the other hand, it is not clear that the PLA had a policy of filing transmission receipts. Thus the absence of receipt does not necessarily show that the fax was not sent. Ms Mashiter gave evidence that she believed that the cover sheet had been placed on the file by Ms Manning as an

indication that she had sent the fax. I conclude on the balance of probabilities that the fax was sent.

222. On 14 December 1999 there was a meeting between Dr Ho and Mr Beynon on the one hand and Mr Couper and the trustees of the Trust on the other. Minutes of the meeting were prepared by Mr Couper, which included the following:

> "4. Dr Ho also said that Hutchison Whampoa were not 'big bad' developers and had absolutely no intention to 'get rid' of us, rather that they saw the Couper Collection as an asset to their plans in maintaining the unique character of the Riverside.
>
> 5. In response to a question from Councillor Graham, David Beynon explained that, should planning permission be granted, the developers would hope to start exploratory work on the site in January. The developers are anxious to minimise inconvenience to, and maintain good relations with, all their neighbours throughout the development process. They will include in the building contracts an obligation to keep us fully informed of any work which might affect us.
>
> 6. Councillor Graham explained our relationship with the Council and suggested that the developers might be interested in working with the Trust and our resident artist on a sculpture for the riverside walk. Dr Ho responded positively to this idea and suggested that we should send him detailed proposals at the earliest opportunity.
>
> 7. Councillor Graham explained that a key part of the Trusts activities is to open the barges for the education of the local community, especially schoolchildren, and that the developers could help us achieve this aim if they were able to make a n [sic] endowment to allow us to fund the part time staffing needs of the Collection. Dr Ho also responded very positively to this suggestion and asked to send more detailed proposals.
>
> 8. The Trustees thanked Dr Ho and Mr Beynon for taking the time to come and see the collection, for his interest in our activities and for his positive response to our suggestions.
>
> 9. Dr Ho said he looked forward to receiving our proposals and to being neighbours for many, many years."

223. Mr Hepburn wrote to Dr Ho in a similar tenor on the same day, and at some point thereafter it was agreed that APL would commission Mr Couper to undertake preparatory work for the design and manufacture of a sculpture for Albion Wharf.

224. Mr Couper claimed in his evidence that he had purchased the *Wendy* in reliance upon Dr Ho's assurance at the meeting on 14 December 1999; but as the chronology set out above shows, this claim was simply untrue. Indeed, he completed the purchase even before receiving Dr Ho's letter dated 12 November 1999.

225. On 16 December 1999 Wandsworth's Planning Committee decided to grant APL's application for planning permission in respect of Albion Wharf. Paper No. 99/816 dated 10 December 1999 prepared by council officer Mr. I. Thompson for the meeting summarised the responses of objectors and other interested parties to the proposal. The summary of the PLA's response stated "Council should be aware that ancient mooring rights are situated at Albion Wharf and the views of the Trust owning these moorings should be sought". This obviously comes from Mr Trimmer's letter dated 15/20 October 1999. Thus it does not appear that Ms Manning's fax dated 1 December 1999 had reached the author of the paper by the date the author prepared it. There are a number of possible explanations for that, however.

226. The paper also recorded that the Trust "would wish to see the following made conditions of any legal agreement: continuous and uninterrupted public access to the collection from the riverside walk in the present location; the non-interruption of services; recognition of the permanent independent existence of the collection as an amenity asset in its present location".

227. In January 2000 preliminary works started on site for Albion Riverside.

228. On 2 March 2000 Mr Couper completed the purchase of the *Z6*.

June 2000: Ove Arup's appraisal of the river wall

229. In June 2000 Ove Arup & Partners prepared a report containing an appraisal the river wall at Albion Wharf of behalf of APL. Paragraph 3.1 of the report set out the position with regard to ownership the river wall, stating that the western section was owned by "Thames Walk Apartments" and the eastern section by APL while a 47 m section in the middle was outside the site and its owner was unknown.

July 2000 – February 2001

230. On 26 and 27 July 2000 the Trust in association with the Royal Opera and Royal Ballet staged *Fleeting Opera*, a "contemporary floating opera on the River Thames" by Mr Couper and three others narrated by Dame Judi Dench and featuring Deborah Bull.

231. In late August 2000 APL arranged for British Telecom to re-lay Mr Couper's telephone lines along the footpath on the boundary between Albert Wharf and Albion Wharf. Both Fosters and APL signed wayleaves for this work. Since it was a consequence of APL's development, APL paid for it.

232. On 6 Sept 2000 Mr Couper staged a piece of performance art called the *Shrinking Beach* conference on the foreshore.

233. On 22 September 2000 there was an incident which led to Mr Couper making allegations of assault by a person employed by Griffiths McGee, demolition contractors engaged by APL, as well as damage from dust. Mr Couper sent letters of claim to Griffiths McGee's insurers and complained by telephone to Mr Beynon. On 25 September 1990 Mr Beynon wrote to record Griffiths McGee's rejection of the allegations, but accepting that some dust was inevitable.

234. On 19 October 2000 Mr Couper sent Mr Beynon a report on the progress of the sculpture project and an invoice for stage 2 of the work.

235. In January 2001 the main construction works for Albion Riverside started.

236. In about February 2001 APL's contractors Exterior International plc ("Exterior") discovered that it was necessary to move the electricity junction box which served the Mr Couper's boats. Following the re-location, Mr Couper complained that he was experiencing disruption to his electricity supply. Exterior investigated and concluded that the problem was due to the poor state of the junction box. As a gesture of goodwill, Exterior replaced the box with a properly engineered and weather-protected stainless steel enclosure at its own expense.

March 2001: APL's section 106 agreement with Wandsworth

237. On 9 March 2001 APL entered into an agreement with Wandsworth pursuant to section 106 of the Town and Country Planning Act 1990. Clause 29 provided:

> "Nothing in this Agreement shall be taken to interfere with such rights (if any) as may exist of the Couper Collection Public Trust to run services from Hester Road to the barges and associated historical anchorages owned by the Trust or the right (if any) for those services to lay below the Hester Road Link East or such existing rights (if any) of the Trust to pedestrian and vehicular access to the barges including the use of a gangway accessed from the riverside walk stretching from Ransomes Dock to Battersea Bridge Road."

July–August 2001

238. A photograph of the riverside walk looking west from outside the construction roughly where the Rainbow warehouse had been dated 7 July 2001 shows what appear to be a couple of timber spars on the CCQ, but nothing else.

239. On 9 July 2001 Mr Couper agreed to purchase a barge called *Lin*. He completed the purchase on 6 September 2001.

240. On 15 August 2001 a tower crane on the construction site leaked a quantity of hydraulic brake fluid some of which was sprayed by the wind over the barges. Mr Couper wrote to Mr Beynon to complain on 17 August 2001, although as he acknowledged in his letter "accidents happen". On 30 August 2001 the contractor John Doyle Construction Ltd offered Mr Couper £2000 in full and final settlement, which he accepted. Nevertheless, this is another incident Mr Couper continues to feel strongly about, as he made clear during cross-examination.

September 2001: TWRA sells Couper Quay to APL

241. On 19 September 2001 TWRA transferred Couper Quay title number SGL256333 to APL in consideration of the payment of £60,000.

242. On 28 September 2001 David Foster (the PLA's Deputy Habour Master (Upper)) sent Captain Cartlidge (Habour Master (Upper)) a memo referring to Mr Woodward's

memo dated 29 October 1999 (see paragraph 214 above) and saying that the PLA needed to establish whether the area was an "ancient mooring" and decide on a strategy accordingly.

October 2001: the sculpture is put on hold

243. On 22 October 2001 Mr Beynon met Mr Couper to tell him, and confirmed in a letter the same day, that a decision had been made that work on the proposed sculpture was to be put on hold on further notice. He said that the decision had been taken following a review of the financial situation after the events of 11 September 2001. He expressed the hope that the sculpture could be incorporated into the public space alongside the River at some future date. This appears to be another source of Mr Couper's grievance against HW.

244. On 1 November 2001 Mr Couper replied to Mr Beynon on behalf of the Trust expressing disappointment that the sculpture had been put on hold, seeking support for the Trust in other ways and complaining about various aspects of the demolition work, in particular the hydraulic fluid spillage and disruption to the electricity supply. By this date the Trust had been designated as part of the London String of Pearls Golden Jubilee Festival planned for the summer of 2002, Patron HRH the Prince of Wales.

245. A photograph of the riverside walk looking west from outside the construction site roughly where the Rainbow warehouse had been dated 1 November 2001 shows nothing on the CCQ.

November 2001: APL offers Mr Couper a licence again

246. On 20 November 2001 APL's solicitors Denton Wilde Sapte ("DWS") wrote to Mr Couper in the following terms:

> "We have seen the copy correspondence relating to the history of this matter and know that you claim to have a historic right to moor your boat at this location. However, despite the extensive correspondence, you gave supplied absolutely no evidence to support your position that these historic rights exist.
>
> We would invite you now to supply any evidence which you have in support of your claim for a historic right to moor. As no such evidence has been supplied to date we presume that there is none and that, accordingly, there is no historic right as you suggest.
>
> Our client advises that despite previous requests you have failed to pay any Licence fee or renew the Licence for mooring your boats against our client's property. On behalf our client we enclose a formal demand for payment against the arrears for Licence fee for the period 1 December 1998 to 30 November 2001. The amount due is £8,812.50.

> Our client is prepared to offer to grant to you a new Licence which will run from 1 December 2001 to 30 November 2002. The Licence fee payable will be £2,500 and, as you can see, the Licence allows a maximum of four boats or pontoons only.
>
> The offer of a Licence remains open for three weeks from the date that you received it. It is conditional on payment of the Licence fee and the arrears and is not negotiable. If, within the next three weeks, we have not received the executed Licence and arrears, then our instructions are to immediately proceed to Court and for an Order removing your mooring, the telephone, electricity and water services and the entrance leading to the boats from trespassing on our client's land. We will be asking the Court for an Order that your moorings/services/entranced be removed."

247. Enclosed with the letter was an invoice from APL for mooring fees for the three years from 1 December 1998 to 30 November 2001.

248. On 22 November 2001 Mr Couper telephoned Ms Mashiter about the letter he received from DWS. Ms Mashiter made a note of the call in an email to Mr Trimmer the same day. Mr Couper referred to Mr Trimmer's letter to Wandsworth dated 20 October 1999 letter and asked for a statement to use in his argument with APL. Ms Mashiter told Mr Couper to write to her with a plan and she would get the moorings which the PLA accepted were ancient checked and plotted. She went on to say that rights to mooring did not give rights to connect to the shore, or to run services ashore, and suggested that the Trust obtain legal advice.

249. On 25 November 2001 Mr Couper wrote to Mr Trimmer enclosing a plan showing the ancient moorings as Ms Mashiter had suggested. The plan enclosed was a copy of the plan attached to the 1993 agreement with Mr Boyd marked up to show the position of the boats and pontoons that were then *in situ* and which of the ground moorings was in use.

250. On 26 November 2001 Mr Beynon replied to Mr Couper's letter dated 1 November 2001 saying that Mr Couper had been paid in full for his work on the design of the sculpture, that the contractor had paid him compensation for the leakage and that as a gesture of goodwill Exterior had replaced Mr Couper's junction box. He went on:

> "I have however been prompted by our legal department to remind you that since you have not responded to demands for payment of your licence free, you have no rights to take utility services across the property of [APL] or across their river wall."

251. On 30 November 2001 Canon Smith-Cameron wrote on behalf of the Trust to Mr Beynon (with copies to the Mayor of London and three Cabinet ministers) in reply to DWS's letter dated 20 November 2001 and Mr Beynon's letter dated 26 November 2001 asserting:

> "The charity does not need your licence to be where we are and ask you to cease making demands that have no validity in law. Our mooring rights devolve to us by title to ancient moorings that the [PLA] can confirm supercede any rights you claim to have, which we deny so far as the mooring and their access and services are concerned.
>
> The charity have the legal right to all the services and access they use and it would be unlawful for you to interfere with these."

December 2001: the PLA instructs Mr Baldwin

252. On 3 December 2001 Mr Couper's solicitors Irwin Mitchell wrote to DWS asking for documentary evidence of APL's title to the river wall.

253. On 5 December 2001 Mr Trimmer sent Captain Cartlidge a copy of the plan enclosed with Mr Couper's letter dated 25 November 2001 together with a note stating:

> "Re: 'Max' Max Couper & the Albion saga
>
> This is the Ancient Mooring arrangement claimed by MC …
>
> Could you arrange for the relevant extract from the PLA 'Book of the Dead (moorings)' to be whisked up here – we can then work out what we can pull!"

254. Mr Trimmer's evidence was that, by the words "what we can pull", he meant which anchors the PLA could pull up. I accept that evidence.

255. On 7 December 2001 Mr Trimmer wrote to Mr Couper stating that the PLA was "researching the authenticity of your claimed right of ancient moorings". He undertook that the PLA would "provide you with our conclusions as soon as they are available".

256. It appears that it was around this time that the PLA instructed Mr Baldwin to research the matter. Surprisingly, it is not clear which individual instructed Mr Baldwin, although Mr Trimmer appears to be the most likely candidate, nor what instructions Mr Baldwin was given. Nor is it entirely clear what qualifications Mr Baldwin had for this work. In his reports Mr Baldwin gave his qualifications as "BA (Hons), MLitt, MRIN, FLS". There is no evidence as to the subjects of his BA or M Litt. I presume that "MRIN" means Member of the Royal Institute of Navigation. It is not clear to me what "FLS" means (it does not appear that he is a Fellow of the Linnean Society of London). Ms Mashiter's understanding was that he had gained experience in archives while employed by the National Maritime Museum. It was also her evidence that the reason he was chosen to carry out this work was that he was already working in the PLA's archives, having been commissioned by the PLA's Civil Engineer to create an index of all the engineering drawings in the archives.

257. On 9 December 2001 the Honourable Alexandra Foley, a public relations consultant, wrote on behalf of the Trust to Li Ka-Shing, HW's Chief Executive, complaining that

APL was "fast destroying this charity". This was the prelude to a letter-writing and publicity campaign which resulted in (among other things) articles being published in *The Daily Telegraph* on 7 January 2002 and 4 February 2002.

258. On 10 December 2001 Canon Smith-Cameron wrote on behalf of the Trust wrote to Mr Trimmer and others at the PLA saying:

> "I should just like to point out that there are two separate interests here. That of the charity and of Max Couper. These two interests own different parts of the barge-roads ancient moorings and anchor points, including some in common. Please could you address your letters to the charity to myself Canon Smith-Cameron at the above address.
>
> Can I also take this opportunity to inform you that we have replaced many of the chains and anchors of the moorings at considerable expense over the last two years. This we did on the basis of your letter to Wandsworth Council of 20 October 1999 confirming your recognition of the existence of our owned rights.
>
> Over the years we have sent various documentary materials to The Port of London Authority regarding the ancient moorings, including a copy of our 'root' deed of 1993, sent in early 1999. As and when you have no further use for them we would appreciate if you could return the materials to us for our archives."

259. On 12 December 2001 Mr Couper wrote to Mr Beynon saying:

> "You have instructed your lawyers Denton Wilde Sapte to write a letter to me of 20 November 2001 (copy attached), that states 'Our client (you) advises that despite previous requests you have failed to pay any Licence fee or renew the Licence for mooring your boats against our client's property.', and enclosing a demand for monies.
>
> This is clearly not the case and is in fact total fiction. In at least six meetings and thirty phone calls during the last two years you have never once mentioned the subject or sent a single written demand to me. The latest was a two hour meeting with you on 22 October 2001. Furthermore I have also in that period on several occasions spoken to your accountant Mr Wong about other matters, and met your boss Dr Ho on four separate occasions, neither on any of these occasions raised the matter either.
>
> …
>
> You do not have and never had any rights over the current moorings, services and access. The original licence related to

> when access, services, some mooring attachments, and a part of the barge's location, had to be moved under the physical intimidation of a wall being taken down during the actions of constructing the Norman Foster building next door to you, whose owner was unknown at the time. When it eventually became possible these things were relocated by the charity back to their original ancient locations and to the ancient ground-moorings (a tidal roadstead with its independent ancient and normal arteries of existence) over which you have no interest."

260. There was other correspondence and discussions between HW and Mr Couper/the Trust around this time and into the following year, but for present purposes much of this can be ignored.

Late 2001/early 2002: APL starts marketing Albion Riverside

261. In around late 2001 or early 2002 APL started marketing the Albion Riverside development. Some of the marketing materials included images of Albion Wharf showing just one barge moored by Couper Quay, although others showed all of Mr Couper's and the Trust's boats.

December 2001 - April 2002: APL and the Claimants both apply to register the CCQ

262. On 18 December 2001 DWS wrote to Telford District Land Registry concerning APL's land at Albion Wharf title number TGL135974 arguing that the river wall (i.e. the CCQ) "should properly be included in the registered title under the principal usque ad medium filum, or otherwise" and asking for the filed plan to be amended accordingly. The Land Registry treated this as an application for rectification and notified the Crown Estate and the PLA. It also appears that the application quickly came to the attention of Mr Couper in one way or another.

263. On 28 December 2001 Ceri Roderick of HWPEL replied to Alexandra Foley's letter dated 9 December 2001 saying:

> "Whilst you claim to have 'ancient mooring rights', despite our previous requests you have not, to date, produced any proper evidence of this. Can we repeat our lawyer's request for Mr Couper to provide that evidence, if any exists.
>
> In any event, any ancient mooring rights that may or may not exist relate to mooring in the riverbed itself. The right to attach a pontoon or gangplank to the river wall and to take services over our property is an entirely different matter."

264. On 2 January 2002 Mr Couper wrote to Telford District Land Registry claiming adverse possession of part of title SGL256333, immediately to the west of title TGL135974. On 4 January 2002 Mr Couper and the Trust wrote to Telford District Land Registry claiming adverse possession of the eastern half of the unregistered strip of river wall (i.e. the CCQ) forming part of title TGL135974.

265. On 7 January 2002 Mr Trimmer telephoned Canon Smith-Cameron. It appears that Mr Trimmer was understood by Canon Smith-Cameron to suggest that the PLA could grant the Trust a licence for "no extra financial cost". Canon Smith-Cameron wrote to Mr Trimmer the same day to record this, going on to say:

> "As mentioned, part of the embankment, which we own jointly through adverse possession, used for storage of materials and for mooring to since 1980, is subject to an unendorsed PLA Works Licence issued in the late nineteenth century, and as such is unregistered with Land Registry. …
>
> Following advice … we would formally ask for the transfer of that Licence to our joint interests. … In due course we would then apply to you for endorsement, of a Licence issued, by the Chief Harbourmaster.
>
> This will then enable us to permanently register our riparian land …. "

266. On 8 January 2002 DWS wrote to Irwin Mitchell asking about the rights claimed by Mr Couper.

267. On 9 January 2002 the Trust wrote to Telford District Land Registry, objecting to APL's application to include the CCQ in its title TGL135974.

268. On 10 January 2002 Mr Trimmer replied to Canon Smith-Cameron, saying:

> "Your letter raises two distinct issues. Firstly, the claim of a right of ancient moorings. This claim is still under investigation within the Port of London archives, although a formalisation of the existing position may, as you note, be beneficial. The consideration for any licence that may be granted will be subject to further discussion in due course. However, it is clear that the presence, or otherwise, of ancient moorings in the River Thames is not the main issue in your continuing dispute with the owners of the riparian frontage.
>
> I will discuss your claim to the area of embankment over which the services to the Trust's vessels run with the PLA's Legal Advisor, who will advise me of the appropriate course of action the PLA should take in due course. I will, of course, write further on this and on the licensing position when I have received her advice."

269. Also on 10 January 2002 Irwin Mitchell replied to DWS. This letter is not in evidence.

270. On 17 January 2002 Canon Smith-Cameron wrote on behalf of the Trust to Mr Trimmer and others as the PLA about the dispute with HW, asking for clarification of the PLA's position. He explained that the Trust wanted to secure its position in good

time for the forthcoming Golden Jubilee celebrations in which the Trust intended to participate.

271. On 22 January 2002 the PLA's Licensing Committee met. The meeting was attended by (among others) Captain Cartlidge, Mr Trimmer and Ms Mashiter. Among the matters considered were the disputed ownership of the CCQ and "ancient moorings". So far as the CCQ was concerned, it was noted that both APL and the Trust claimed ownership of the river wall, but it was possible that the PLA was the owner of the land. The Committee concluded:

> "… whereas [APL] as successors to the owner fronting the riverwall would appear to have a strong claim to ownership, if the Trust succeeded in establishing a claim for adverse possession, then the PLA would be in difficulty if it endorsed ownership by [APL]. Questions to be answered were 'does the PLA own the land?' and 'does the claim of the Trust to adverse possession have validity?' If necessary, PLA should seek an independent legal opinion before reaching a view on this. "

The discussion of "ancient moorings" mainly related to another dispute, but as a general matter, the Committee agreed that "ancient moorings" should be checked during a scheduled survey of the middle river and broken, dangerous and useless moorings removed.

272. On 23 January 2002 the Assistant Land Registrar wrote to DWS rejecting APL's application for rectification of title TGL135974 to include the CCQ. He said that in his view the principle usque ad medum filum did not apply and there was no evidence that the CCQ was the subject of an endorsed embankment licence, but APL could apply for first registration on the basis of adverse possession. The letter was copied to Mr Couper since he had indicated that he had a claim to ownership.

273. Also on 23 January 2002 DWS wrote to Irwin Mitchell saying that the latter's letter dated 10 January 2002 had not answered the questions raised on 8 January 20002. DWS acknowledged that part of the river wall was unregistered and that APL was seeking registration of that part, but said that in any event APL was the freehold owner of the part of the river wall over which Mr Couper's gangway and services trespassed.

274. On the same day DWS wrote on behalf of APL to the Trust referring to their correspondence with Mr Couper and requesting that the Trust enter into a licence with respect of the mooring of the boats "or alternatively removes the moorings, service pipes and entrance which are presently trespassing on our client's land".

275. On 24 January 2002 Mr Couper and the Trust applied to Telford District Land Registry for first registration of the CCQ on the basis of adverse possession. Mr Couper completed section 11 of the FR1 form as follows:

> "No other person has claimed title for more than 20 years. Our adjacent neighbour has asked to be given the land on no legal basis."

276. On 28 January 2002 Mr Trimmer replied to Canon Smith-Cameron saying that he had received the instructions of the Licensing Committee and could respond as follows:

> "Firstly, the status of the moorings occupied by the Trust and Mr Couper. PLA Officers have investigated the position (albeit that our searches have yet to be concluded by determining the exact extent of moorings present at this location on 29 September 1857) and must report that we have found no justification for the contention that the moorings are, in fact, 'ancient moorings'. As such, and dependent on the conclusions of further investigation, these moorings must be defined as unlicensed works, in contravention of S. 70 of the Port of London Act 1968 (as amended).
>
> I would therefore recommend that the Trust and Mr Couper either await the completion of the PLA's investigation or immediately submit a Rover Works Licence application for all the vessels and moorings in this location. My investigations to date lead me to believe that the PLA has discussed these moorings and the submission of an application for a PLA River Works Licence with Mr Couper on a number of occasions in the past. Any such application would be determined, following local consultation and notification, by the PLA's Licensing Committee.
>
> However, it is agreed that without the provision of services to the moorings, it would be impossible for the vessels to continue the current activity at this location and hence difficult for the Trust to continue in its present form. Services provided to the moorings require the consent of the riparian landowner over whose land they pass, in this case equating with the owner of the embankment. The ownership of this embankment is the second issue on which the advice of the PLA is being sought.
>
> I understand that two embankment licences have been granted at Albion Wharf, firstly in June 1887 and more recently in September 1958. Enquiries into these licences are ongoing in the PLA archives, although I have seen evidence that both licences may subsequently have been endorsed. Until these investigations have been complete, I am afraid I can provide no further advice to you, either in relation to the PLA's position towards Mr Couper's claim for adverse possession or indeed the claim of any other party to the embankment."

277. On 29 January 2002 Canon Smith-Cameron replied to Mr Trimmer asking why he had confirmed the existence of the Trust's ancient rights in his letter to Wandsworth dated 20 October 1999. Canon Smith-Cameron went on:

> "We received a copy of this letter … from the Council and have relied upon and continue to rely upon this document to our cost.
> …

> All the ancient mooring roots and chains we currently use were replaced new after the above letter was sent."

278. On 31 January 2002 Ms Mashiter wrote to Telford District Land Registry in response to the notice concerning APL's application for rectification of title TGL135974 saying that the PLA had no record of a river works licence for an embankment at Albion Wharf. If the embankment was carried out without a licence, it would have been done long ago and it seemed likely that the occupier would have acquired title. She went on to set out information she had gleaned from correspondence dating between 1987 and 1996, and concluded:

> "In the light of the above, as the PLA granted no embankment licence and was aware of the user of the land embanked, it can make no objection to the registration of whoever is able to establish title."

She copied the letter to both DWS and Mr Couper.

279. On 1 February 2002 Mr Trimmer wrote again to Canon Smith-Cameron enclosing a copy of Ms Mashiter's letter dated 31 January 2002 saying that this set out the PLA's understanding of the matter now that she had concluded her researches within the PLA's archives.

280. On 4 February 2002 the Trust wrote to Telford District Land Registry in response to Ms Mashiter's letter dated 31 January 2002 enclosing and relying on Mr Trimmer's letter to Wandsworth dated 20 October 1999.

281. On 5 February 2002 DWS replied to the Assistant Land Registrar's letter dated 23 January 2002 saying that APL had always regarded the CCQ as being part of its land at title TGL135974 and would object to any third party application for registration.

282. On 27 February 2002 Mr Trimmer, Ms Mashiter and possibly another representative of the PLA met Mr Couper, who was accompanied by Gary Jacobs, a newspaper columnist and broadcaster who had qualified as a solicitor and who was assisting the Trust during this period, at the PLA's offices. Ms Mashiter's note of the meeting on 27 February 2002 includes the following paragraph which evidently records statements made by Mr Couper:

> "Sols Dawsons – sale of mooring agreement. 1980 started using site. 1850's used for timber – great grandfather worked there. Happy knew the history. No documents produced. Boyd gave confirmatory deed."

283. The next day Mr Trimmer wrote to the Trust concerning the claim of "ancient moorings" as follows:

> "I am writing to confirm that, as agreed, the Port of London Authority will fully investigate the claim of rights under S.63(1) of the Port of London Act 1968 (as amended) at Albion Wharf by reference to the evidence provided by Mr Couper and other archive sources available to it. The PLA's ultimate

> decision as to the existence of any rights attributable to the extant moorings, based on the balance of probabilities, will be provided to the Trustees in due course.
>
> You will of course appreciate and understand that any subsequent regularising of the mooring arrangement through the River Works Licence process will be subject to the consideration of the Harbour Master (Upper) as to navigational safety and other matters which the PLA has a duty to consider."

284. On 1 March 2002 Mr Couper wrote to Mr Trimmer setting out his understanding of the history of the area.

285. On 1 March 2002 DWS on behalf of APL applied for first registration of the CCQ on basis of adverse possession.

286. On 8 April 2002 Ms Roderick wrote to Mr Couper following earlier correspondence and in advance of a meeting which had been arranged for 25 April 2002. In this letter she stated:

> "… The right to moor these barges at our development also needs to be addressed and I look forward to hearing from you with details of your purported right to moor these boats, as previously requested.
>
> The purpose of our meeting on 25 April 2002 is for you to explain in detail the historical position in relation to the barges and to outline your claims in relation to the land. Despite a number of requests, you have not provided sufficient details of your claims for this company to give them proper consideration. As we continue to stress, if you do have legal rights then we will honour them, however, to date, you have failed to provide us with any proper evidence to establish these claims. I trust that our meeting will address this situation. It would therefore be premature to discuss the effect (if any) of the development at Albion Riverside on the Trust."

287. It is unclear whether the proposed meeting actually took place.

288. It was around this time that APL's representatives, and in particular Mr Beynon, noticed that Mr Couper had begun placing items such as ropes, timber and buoys on the CCQ. A photograph of the riverside walk looking west from outside the Albion Riverside site roughly where the Rainbow warehouse had been 19 April 2002 a considerable quantity of such materials on wooden slats on top of the CCQ. The contrast with the photograph dated 1 November 2001 (see paragraph 245 above) is striking.

289. As a result, on 25 April 2002 Ms Roderick wrote to Mr Couper saying:

> "I understand that you are displaying some river artefacts (timer, ships bars, buoys etc) on the river and that these

> artefacts have been chained and padlocked to the railings of the river wall.
>
> These items must be removed and I would be grateful if you could do so as soon as possible."

Mr Couper did not comply with this request.

290. Also on 25 April 2002 the Assistant Land Registrar wrote to Mr Couper and the Trust notifying them of DWS's letter dated 5 February 2002 and APL's application dated 1 March 2002 and declaring that there was a dispute between the parties. The letter went on to make comments on the evidence filed by the parties to date and to ask how the applicants wished to proceed. He also wrote to DWS in similar terms. He asked for a response by 25 May 2002, although that period was subsequently extended as a result of further submissions from the parties and settlement discussions.

March-July 2002: Mr Couper's discussions with Seasons

291. In mid March 2002 Mr Couper met with Michael Foundly and other representatives of Seasons Holidays plc ("Seasons") to discuss a proposal for the development of a "floating timeshare hotel" off Albion Wharf. As a first stage, one of the Trust's barges was to be converted into a Jubilee "Clubhouse Barge", which would incorporate a Seasons sales and presentation facility, the conversion to be financed by Seasons at a cost of nearly £250,000. On 25 March 2002 Mr Foundly wrote to Mr Couper to express interest in this proposal.

292. On 1 April 2002 Mr Couper replied on behalf of the Trust. This letter stated that the project would be developed through a new company, The Battersea Beach Company Ltd, of which Mr Couper and Mr Jacobs would be directors and the Trust a shareholder.

293. On 9 April 2002 Mr Foundly sent Mr Jacobs a fax enclosing proposed Heads of Terms between Mr Couper and Seasons. Paragraph 8 of the proposed Heads was as follows:

> "MC's solicitors shall provide a certificate of title confirming the ancient mooring rights and land occupied by MC by adverse possession, before any payments are made by SH."

294. On 11 April 2002 Mr Foundly sent a fax to Mr Jacobs saying that he was anxious to make progress. He went on:

> "Given that the certificate of title is crucial to this matter proceeding, perhaps your lawyers could prepare a draft for me to look at … next week in order that we keep matters moving."

295. On 18 April 2002 a firm of solicitors called DKLL who its appears were acting for Battersea Beach Co Ltd sent Mr Couper and Mr Jacobs some draft documents including a draft assignment from Mr Couper to Battersea Beach Co Ltd of certain rights.

296. On 26 April 2002 Mr Foundly sent by fax Mr Jacobs a draft Heads of Terms between Battersea Beach Co Ltd and Seasons and a draft tenancy agreement marked up with his amendments. In the cover sheet he said that he looked forward to receiving a draft of the certificate of title.

297. On 6 June 2002 Mr Foundly sent a fax to Mr Couper and Mr Jacobs enclosing Heads of Terms "as agreed". The Heads of Terms were expressed to be between Battersea Beach Co Ltd and Seasons. They provided for Seasons to pay £90,000 towards conversion costs and £25,000 towards development costs. Provision was also made for the purchase of 40 pontoons. No mention was made of a certificate of title.

298. On 19 June 2002 Mr Foundly sent a fax to Mr Couper and Mr Jacobs enclosing revised Heads of Terms. This recorded that £12,500 had been contributed by Seasons to cover development costs and provided that a further £12,500 would be paid on signature. It does not appear that the Heads were ever signed.

299. On 1 July 2002 Battersea Beach Co Ltd paid a deposit of £5,000 for pontoons.

300. On 2 July 2002 Mr Couper wrote to Mr Foundly on Battersea Beach Co Ltd notepaper enclosing a cost breakdown.

301. On 19 July 2002 Mr Couper wrote to Mr Foundly on Battersea Beach Co Ltd notepaper enclosing unspecified paperwork and saying that he needed the first instalment of funds to be loaned by Seasons to be paid in order to fulfil an agreement to pay for the pontoons on 29 July 2002. That appears to have been the end of the correspondence.

June-October 2002: Mr Couper and the Trust make three further applications for registration

302. On 19 June 2002 Mr Couper and the Trust made three further applications for first registration in respect of land referred to as Plots A, B and D respectively (for some reason Mr Couper and the Trust had referred to the CCQ as Plot C when making their application on 24 January 2002) on the basis of adverse possession. Plot A was the section of the river wall by the boundary between Albion Wharf and Albert Wharf over which the gangway and services ran. Plot B was the land on which the electricity supply box stood. Plot D was Couper Quay. Each of these three plots formed part of APL's title number TGL193839.

303. The Assistant Land Registrar wrote to Mr Couper about these applications on 28 October 2002. For the reasons he explained, he directed that the applications in respect of Plots A and B be cancelled. He also raised certain points that Mr Couper would need to be deal with if he wished to pursue the application in respect of Plot D. Finally, he reminded Mr Couper that he was waiting to hear from Mr Couper as to how Mr Couper wanted the dispute in relation to Plot C (i.e. the CCQ) dealt with.

304. It is not necessary for the purposes of this judgment to trace all the subsequent history of these applications, but I shall have to return to them at intervals below.

June 2002 - January 2003: Mr Baldwin's reports

305. On 7 May 2002 there was a telephone conversation between Captain Cartlidge of the PLA and Mr Jacobs which was overheard by Mr Leslie. According to Mr Leslie, Captain Cartlidge said that the PLA's archivist's research was almost complete and that on the balance of probabilities there were ancient moorings at Albion Wharf. I am sceptical about this evidence, but it does not matter whether or not Mr Leslie is correct.

306. *The Preliminary Baldwin Report*. In late June 2002 the PLA received a preliminary version of Mr Baldwin's report ("the Preliminary Baldwin Report"). This consists of 21 numbered pages. Page 1 is a combined title and contents page. The title is as follows:

> "A history of Albion Wharf, Hester Road, Battersea and its adjacent riverside usage and operational context since 1743.
>
> A research report by Robert Baldwin BA (Hons), MLitt, MRIN, FLS,
>
> prepared for the Port of London Authority in June 2002."

307. The remaining 20 pages appear to correspond to Part 1 of five Parts listed in the contents page, namely a summary of findings and a chronological table.

308. On 28 June 2002 Mr Trimmer sent Captain Cartlidge and Ms Mashiter a memo saying

> "1. I attach, for your information, a copy of Robert Baldwin's work to date on the above site. You will recall that we instructed him to investigate whether the claims of Max Couper to possession of 'ancient moorings' at Albion Wharf were correct. It would appear, from my initial consideration of his research (of which only the summary is currently provided), that the claim is, on the balance of probabilities, correct.
>
> 2. I understand that RB would like to undertake more research to complete all parts of the work detailed on the front page of the attached document. This will, entail, a search through numerous archives for rare an [sic] interesting engravings.
>
> 3. It is clear that RB has spent considerable efforts to date undertaking this work. It would seem appropriate that further work on the issue of 'ancient moorings' more generally should be undertaken by him. We will discuss this work with him next Thursday, 4 July."

309. On 5 July 2002 Mr Trimmer wrote to Mr Couper saying:

> "The archivist employed by the PLA has unearthed substantial information pertinent to the case dated back to at least the 18th Century. At the presentations of his investigations to date at our

> meeting yesterday he raised additional concerns as to the veracity of your claim. These have required the commissioning of additional research. As such, I do not expect to receive the report until next month when, following consideration, I will write again."

It is unclear what "concerns" Mr Baldwin expressed at the meeting on 4 July 2002.

310. *The Full Baldwin Report*. In early November 2002 the PLA received a complete and signed version of Mr Baldwin's report ("the Full Baldwin Report"). This runs to 72 numbered pages. It is clearly the product of considerable research on the part of Mr Baldwin, who unearthed information which was not previously known to the PLA, or indeed anyone else connected with this case. On the other hand, with all due respect to Mr Baldwin, who I bear in mind has not had the opportunity to defend himself, the report is a somewhat densely-written and discursive document which is not easy to read or understand. Nevertheless, since it is a central document in the case, I must attempt to describe its contents as best I can.

311. Page 1 is a cover page bearing the following title (above a Plate which reproduces an engraving from 1819):

> "A history of Albion Wharf, Hester Road, Battersea and its adjacent riverside usage and operational context since 1743.
>
> A research report by Robert Baldwin BA (Hons), MLitt, MRIN, FLS,
>
> prepared for the Port of London Authority in October 2002."

312. Page 2 is a contents page headed "An indicative guide to the contents and subject coverage" which references the remaining 70 pages. As this shows, the report is divided into six Parts as follows:

> "Part 1. Summary 4-8
>
> …
>
> Part 2. Legal and practical issues in the creation of rights to ancient moorings 9-24
>
> …
>
> Part 3. Relevance of the historical use of the area 25-37 [actually 44]
>
> ….
>
> Part 4. A Possible resolution via environmental improvement at and near the riverside at Albion Wharf 44-47
>
> …

> Part 5. Conclusions and recommendations validated by historical evidence 47-52
>
> …
>
> Part 6. Appendices of summary evidence [53-72]
>
> …."

313. Page 5 is headed "A brief summary of the historical evidence about the foreshore and associated ancient rights on the foreshore in the vicinity of Albion Wharf". Although this summary is one of the easier parts of the report to read and understand, it lacks focus. For present purposes, it is sufficient to quote the two key sentences:

> "The evidence is therefore that the area does have a sustained and traditional usage based on the availability of moorings."
>
> "This research shows the PLA have a sound claim to ownership [of the embankment] as the heirs of the Corporation of London's earlier claim."

314. Page 6 is headed "An outline chronology (refer to Part 6 for a much more detailed one)".

315. Part 2 of the report begins at pages 9-11 (page 10 is a Plate) by recounting what is shown by the Corporation of London's Navigation Committee minutes for 1788. The minutes themselves are not in evidence before me, so I only have Mr Baldwin's account, which is not very clear, although it does include some quotations. Summarising in my own words, as I understand it, what these show is that in June 1788 one Peter Banner, a timber merchant petitioned the Corporation for permission to repair, amend and extend the embankment by his premises at Battersea. Later that year, he was given permission to drive piles "on payment of a yearly acknowledgement". Mr Banner appears to have died between these two events, and Mr Baldwin appears to consider that the premises were acquired first by a Charles Barrow, who used them for an oil warehouse, and then a Thomas Fowler. Mr Baldwin says at page 9 that:

> "These events are clearly the origin of the area known as the 'Battersea Moorings' on many later river charts."

It appears to me that Mr Baldwin is referring here to the Battersea Bridge Barge Roads.

316. Mr Baldwin goes on at pages 11-13 (page 12 is a Plate) to say that the minutes also record that a Mr Chabot was permitted to continue the embankment before his premises at Battersea (for which he claimed he had previously obtained permission from the Crown's water bailiff Mr Sax) for an annual payment. Mr Chabot operated an iron foundry at his premises.

317. Mr Baldwin then goes on to discuss some of the subsequent history, referring to both the "West India Dock Act 1799" (i.e. the Wet-Dock Act) and the "Port of London Act

1972 [sic]", before coming on to discuss the 1993 agreement between Mr Boyd and Mr Couper at pages 19-20, where he says this:

> "These Victorian moorings (like piles for the 1898 chain mooring) would have little value without a related embankment licence from the PLA or its predecessors. Sally Mashiter located two embanking licences in this vicinity. The two related not to the property in question but to Draper's Wharf, one being a licence to reconstruct its embankment given in 1887. While it must be true that a man of about 70 would be unlikely to want to use the moorings after the concrete campshed and gantry at Albion Wharf was built in the 1940s, there must be a doubt as to whether a waterman would want the legal costs of proving he really had that asset to sell as that would take him into the difficult sources examined in his study. Had he searched he would not find an endorsed PLA Licence or one from the Thames Conservators. Further back to Queen Victoria's reign and to 1837, he would still not find one. One's suspicion is that that his use of 'Victorian' was a canny way to convey something old rather than provide absolute veracity for the claims he was to make in having them to sell at all.
>
> One's suspicion about that sale is that it took place largely because the buyer found it of value when held in conjunction with congenial owners of the riverside wharf who had offered him ready access to the shore. As the wharf's landowner did not seem to be actively denying such access, or related access to shore based facilities, the real riparian owner was overlooked. Retrospectively the PLA seems to have been rather too indulgent. …
>
> Thus it seems that Boyd's terms were convenient just an offer for sale couched in terms designed to appeal to the buyer as almost exactly meeting his needs. …
>
> It also seems clear now that the Corporation of London had long ago identified its sustained interest in encroachment at Albion Wharf. … All this corresponds with what is still to be seen at Battersea, suggesting that the PLA is the real heir to the site of the controversial but discontinuous embanking of 1987-88. ….
>
> Set alongside the relative strength of the PLA historical claim to inherit the Corporation's interest is the corresponding weakness of the Couper Trustees' position. They see their interest as the old fashioned type of claim to own an ancient mooring. Yet their claim is not traced all the way back to the private owned and originated Banner/Barrow moorings of 1778 [sic], or to the Phillips and Hanks tenure of the nearby timber wharves or to the relationship, less difficult to research, with barge repair and ship breaking on the shoal ground nearby.

> Although that business had ceased by 1856, traditional use of the moorings did continue. The PLA hold drawings of the moorings used there after investigating a chain mooring failure in 1932. This suggests moorings in Couper's survey of 2001 are unlikely to be over 200 years old.
>
> Respectfully, the Couper Trustees try to show that they are not asserting ownership of anything resembling the PLA moorings provided in the 1930s, but 'Victorian' ones but without showing their use in the course of mid-nineteenth century shipbreaking. But they have the generic difficulty that they hold a scanty description of the provenance of the moorings insofar as it features in the terms of the sale concluded in 1993. Thus they have tried to add [to] Boyd's map of the area a brief history of their own usage of the site as congruent with an alleged traditional usage.
>
> While their point about traditional use is strong, the ancient principle of Caveat emptor must apply in particular to their purchase of mooring rights from Boyd, especially if the buyer now asserts they are eighteenth century moorings. But the buyer's ground is strong if he claims that he is only pursuing the traditionally indulged activity on this the [sic] reach, namely traditional sailing barge accommodation, barge repair and/or barge and ship breaking. …. "

318. Part 3 of the report discusses the history of the area generally up to 1856, with particular reference to various pictures and engravings, and then after 1858. At page 32 Mr Baldwin states:

> "Thus there is evidence to prove a traditional usership at associated moorings equivalent to those of 'Ancient Moorings'; and that they were continuously exercised here prior to September 1856 and also well past 1883 when the old Battersea Bridge was condemned as unsafe for vehicles. The evidence is that the Corporation had to accept and eventually approve the creation of embanking and use of the ground which later fronted Albion Wharf and Albion wharf [sic – presumably Albert Wharf] in 1787, for it faced the prior approval of the Office of Woods and the Corporation's Water Bailiff."

Although Mr Baldwin refers here to the Corporation's water bailiff, he had earlier said, I believe correctly, that this was a Crown official.

319. On page 40 there is a sub-heading "Was the ancient mooring in continuous use past 1890?" At the end of this section on page 42, Mr Baldwin states:

> "My research to date shows that there was an established or ancient pre-1856 usage of this site and that the use of the foreshore from 1878 to 1856 remained much the same. Beyond that up to the 1930s barges and boats stayed there for extended

> durations, sometimes until they were broken up there. Although petroleum regulations imposed change, the evidence is tantamount to a historical justification of the claim to 'ancient moorings rights' if not exactly to the established rights of free mooring determined to deserve compensation if suppressed by the legal case over Lord Gwydyr's moorings in 1803 all of which were below London Bridge."

320. At the end of Part 3 on page 44 there is a confusing paragraph which includes the following passage:

> "… Indeed, it is more than likely the first timber stacks were built on firm ground to facilitate the bridge's construction. They were to be the first industrial users site [sic] of Albion Wharf. The adjacent Chabot foundry was on the site of Wellington Wharf and the later Bridge Wharf on the site on another. …"

321. In Part 4 Mr Baldwin discusses a possible resolution of the situation.

322. In Part 5 Mr Baldwin sets out his conclusions and recommendations. This Part begins at page 47-48 as follows:

> "Resolution of these disputes between the parties is now inherently possible because the PLA have inherited the Corporation's rights over the encroaching embankments, and gained progressively more authority in this respect under statutes passed between 1856 and 1968. In most respects they are also successors to the Thames Conservators powers. The first use of these moorings seems to be about 1775. It is a happy prospect that the PLA could itself resolve the matter, rather than dragged into dispute as 'piggy in the middle', because of the discovery through this research that it is both the owner and the tenant in tail with obligations to respect the uses which its predecessors before 1856 had accepted as ones of 'ancient right'.
>
> The PLA have the power to uphold customary use from the era of the Corporation's authority. Even though there is doubt over whether physically the moorings now being used near Albion Riverside are of eighteenth century form, it can be shown the site was continuously used in that way. It can also be shown that the Corporation never gave up their landed interest in the encroachments in 1878-88."

323. Part 6 consists of four appendices, the second of which is an extended chronological table covering pages 55-71.

324. Overall, it seems to me that two things emerge from the Full Baldwin Report. First, Mr Baldwin is strongly supportive of the PLA's claim to ownership of the embankment. Secondly, he is equivocal about Mr Couper and the Trust's claim to

"ancient moorings". Thus he is supportive of a tradition of mooring at in this general vicinity (although not necessarily at the precise location of interest) in the eighteenth and nineteenth centuries, but he is less supportive of the continuation of that tradition after about 1930. Still less does he support the survival of pre-29 September 1857 mooring chains.

325. On 12 November 2002 Mr Trimmer sent Captain Cartlidge and Ms Mashiter a memo saying:

> "1. I attach, in advance of our meeting next Monday, 18 November to meet Max Couper and one of his trustees, a copy of Robert Baldwin's 'magnum opus' on the above site's history. I haven't yet had an opportunity to read it myself yet …
>
> 2. We clearly need to discuss our approach prior to the meetings and I would suggest an informal chat at the margins of the London Gateway meeting on Friday. The main issue still appears to be the PLA's acceptance of 'ancient moorings' in representations to Wandsworth Council on the development of Albion Wharf (to which Couper places great store), and then a denial of 'ancient moorings' (following further advice I believe from Bill W) addressed to Hutchison, the developers of Albion Wharf. You will appreciate therefore we appear to have covered all bases on this issue but satisfied no one."

326. On 18 November 2002 there was a meeting between Mr Couper and Ms Tongue on the one hand and Captain Cartlidge, Mr Trimmer and Ms Mashiter on the other hand. Part of the meeting was recorded by Mr Couper and there is a very poor quality transcript of the recordings (perhaps attributable to the poor quality of the recording). A brief note was made by Ms Mashiter. There was discussion of both Mr Couper and the Trust's claim to 'ancient moorings' and of the ownership of the CCQ. The Claimants contend that Captain Cartlidge stated at the meeting Mr Baldwin's report was in draft form. In the transcript, however, the words "its in draft form" are attributed to Mr Couper and appear to relate to the second topic, not the first. Captain Cartlidge did acknowledge that there had been a history of moorings on the site for a variety of purposes, but he went on to say that "it seems quite clear that Mr Boyd had nothing to sell … he described them in his bill of sale as Victorian and if they were Victorian then they were not 'ancient moorings' cause they have they have to be older than Victorian". Captain Cartlidge also said that the PLA had "as a strong a case as anybody else" to ownership of the CCQ. He suggested that the PLA might transfer it to Wandsworth which could then grant the Trust a licence. It is common ground that the PLA did not disclose the Full Baldwin Report to the Claimants at this meeting.

327. *The Summary Baldwin Report.* Ms Mashiter gave evidence that she found Mr Baldwin's report to be lacking in clarity and concision, and therefore she asked Mr Baldwin to prepare a summary. She received this in late December 2002 or early January 2003 ("the Summary Baldwin Report"). This is not in fact a summary of the Full Baldwin Report. It would be more accurately described as a shortened version of the Full Baldwin Report. It is not paginated, but it runs to 53 pages. It does not include a contents page. It omits some of the Plates from the Full Baldwin Report, but does not re-number those that remain. It is entitled on the first, cover page:

> "A history of Albion Wharf, Hester Road, Battersea and its adjacent riverside usage and operational context since 1743.
>
> Part of a research report by Robert Baldwin BA (Hons), MLitt, MRIN, FLS,
>
> prepared for the Port of London Authority in 2002."

328. The fourth page appears to be almost identical in content to page 5 of the Full Baldwin Report (the summary), although there a couple of minor differences in wording. Likewise the fifth page appears to be identical in content to page 6 of the Full Baldwin Report (the outline chronology). Similarly, the sixth to fourteenth pages appear to be identical in content to pages 7-15 of the Full Baldwin Report. There is some editing and re-writing from the fifteenth page onwards, the extent of which of which progressively increases, so as to amalgamate Parts 2-5 of the Full Baldwin Report.

329. On the twenty-eighth page, two sentences from page 32 of Full Baldwin Report are slightly re-worded, put into a separate paragraph and emboldened:

> "Thus, for lack of a sustainable Crown claim the likelihood is, as the Corporation of Navigation and London's Port of London Committee [sic] minutes record, that the Corporation laid its claim more effectively over a foreshore encroachment during its embanking in 1787-88 and did not relinquish it prior to 1857. It knew the land was in use as timber yard and for an iron foundry and wanted to promote those trades."

330. The main text finishes on the thirty-fifth page. There are then two appendices, which are essentially identical in content to the first two appendices in the Full Baldwin Report.

331. *The Mashiter Précis*. Ms Mashiter took the view that the Summary Baldwin Report was as "indigestible" as the Full Baldwin Report. Accordingly, she prepared her own précis of the Summary Baldwin Report. She extracted 16 pages from the Summary Baldwin Report, ignoring the majority of the illustrations and the appendices. She then worked through those 16 pages, crossing out many passages. The remaining text was re-typed, slightly revised, divided into numbered paragraphs and a new heading "Part 3. Possible alternative owners" inserted. In addition, she altered the first, cover page by inserting the words "Extracts from" above the title. The result was a document of 14 pages (of which five, including the cover page, consist mainly of illustrations) ("the Mashiter Précis"). The eleventh page (numbered 10) consists of Mr Baldwin's outline chronology reproduced from the fifth page of the Summary Baldwin Report, but omitting the reference to Part 6 for a more detailed chronological table.

332. Most of Ms Mashiter's revisions to Mr Baldwin's text were consequential upon the deletions, rather than substantive. Ms Mashiter did make one substantive change, however. Whereas the twentieth page of the Summary Baldwin Report (like page 20 of the Full Baldwin Report quoted in paragraph 317 above) contained a sentence reading "This suggests moorings in Couper's survey of 2001 are unlikely to be over

200 years old", Ms Mashiter changed the figure of 200 to 150 in paragraph 2.25 of the Mashiter Précis. Ms Mashiter frankly accepted in cross-examination that she should not have made this change. Her explanation for having done so was that to the effect that she did not think that "200 years" made sense, given that the crucial date was September 1857, and she presumed that Mr Baldwin must have meant "150 years". Counsel for the Claimants invited me to disbelieve that explanation as incredible, and to conclude that Ms Mashiter had deliberately slanted the Mashiter Précis to make it more favourable to the PLA. I am not persuaded that Ms Mashiter's evidence on this point was untruthful, however.

333. The preparation of the Mashiter Précis is not the end of the story concerning Mr Baldwin's report, as I shall explain later.

January-May 2003: Correspondence with the Land Registry

334. On 21 January 2003 Ms Mashiter wrote to Telford District Land Registry in connection with title TGL135974, enclosing a copy of the Mashiter Précis, as follows:

> "I refer to my telephone call just before Christmas to say that the PLA has employed a professional researcher to look into the history of the Albion Wharf frontage and the claim to ancient moorings. Because of the length of the original report and the interesting, but not directly related history of the area, I explained that we had asked Mr Baldwin to do a summary of the relevant material. Unfortunately, when it arrived it was still extremely long. I have attempted to reduce it to a more readable length and I now attach this précis for your consideration. Should you wish sight of either or both fuller versions, I should be happy to supply them.
>
> The main information which Mr Baldwin unearthed was that the Corporation of London's Navigation Committee had authorised embanking at this wharf in the past. This embanking authorisation is not shown in the PLA's records.
>
> The Thames Conservancy Act 1857 gave the Conservators the bed and soil, and all powers and authorities, rights and privileges vested in or exercised by the Crown and the City of London (LII) together with powers to licence embankments and vest them on completion.
>
> This title has passed down by statute to the PLA. It would appear, therefore, that the PLA is in a position to claim a 3 foot strip along the river frontage.
>
> With regard to the moorings, under section 63 of the Port of London Act, 1968, it is only mooring chains placed in the river before 29th September 1857 which do not have to be licensed. Aerial photos over the years do not show that the moorings claimed by the Couper Trustees were in place, only the barge moorings owned by the PLA had barges on them. In addition

> when the gantry was in use vessels would have come alongside and some of the moorings claimed could not have been there at that time. The chart of 1937 which shows the gantry shows no mooring here at that the date, other than the Battersea Barge Roads
>
> This being the case it is unlikely that any old mooring chains survive because they would have deteriorated through lack of attention. The PLA does not accept on the evidence unearthed that the Couper Trust's moorings date from 29 September 1857.
>
> In addition to the notes, I attach a copy of an outline chronology. There is in existence a much longer one, should you wish to see it, and the following copy illustrations/plans …"

335. On 31 January 2003 Mr Couper wrote to Telford District Land Registry advancing further arguments in favour of his and the Trust's application for registration of Plots A, B and D. He asked that the Assistant District Registrar's decision in respect of Plots A and B be reviewed by the District Land Registrar.

336. On 7 February 2003 the District Land Registrar wrote to Mr Couper to say that he had received the letter dated 31 January 2003 and had reviewed the Assistant Land Registrar's decision to reject the applications to register Plots A and B. He agreed with the Assistant Land Registrar in relation to Plot A. In relation to Plot B, he considered that Mr Couper had produced an arguable case of adverse possession and asked Mr Couper to confirm that he wished formal notice of the application to be served on the registered proprietor of that land, namely APL.

337. Also on 7 February 2003 Telford District Land Registry wrote to Mr Couper enclosing a copy of Ms Mashiter's letter dated 21 January 2003 and the Mashiter Précis. The Registry also sent a copy to DWS.

338. On 13 February 2003 Telford District Land Registry wrote to the PLA asking it to clarify whether it had any objection with regard to Plots C and D.

339. On 20 February 2003 Ms Mashiter replied to the Registry, saying:

> "I have looked back at my letter of 31 January 2003 [sic – this should be 2002] to Ms Corbett at the Registry which related to the land coloured blue and yellow on the Notice Plan, and that reflected the extent of the PLA's knowledge, taken from its records, at that time. Subsequently, due to the need to resolve the claim that there were 'ancient moorings' adjacent to the site, the PLA employed an archivist to research the position and asked as part of the project to also look at use of the site. It is as a result of his findings that my letter of 21 January 2003 was sent to Ms Corbett.

> My original statement on behalf of the PLA that it could make no objection to the registration of whoever was able to established title, was based on the belief that no embankment licence had been granted. Now it is clear from the research that one was granted by a predecessor in title of the PLA, I confirm that the PLA does object to any current applications to register title to the lands along the river frontage coloured blue and yellow on the Notice Plan [i.e. the Plot C].
>
> I was not aware that an application had been made for registration of the pink land on the Notice Plan, but it appears on careful consideration of the old plans that this was the frontage to the former Draper's Wharf where there was a river works licence for embanking dated 13th June 1887 and [a] later one for reconstruction of the embankment, both of which were subsequently endorsed. The embanked land would then have vested in the adjacent landowner. I see that I gave details of these endorsed licences to Ms Corbett. I confirm, therefore, that as the land vested in the adjacent landowner, the PLA's objection does not apply to the land coloured pink on the Notice Plan [i.e. Plot D]."

340. On 25 April 2003 the Assistant District Registrar wrote to Mr Couper concerning Plots A, B, C and D. The letter confused Plots A and B. In relation to "Plot A [actually B]", he noted that the Registry was waiting for Mr Couper's agreement that formal notice be served on APL. In relation to "Plot B [actually A]", he noted that the application remained cancelled. In relation to Plot C, he said that he would defer consideration of this pending Plots A and D being dealt with. In relation to Plot D, he requested a response to the objection lodged by APL by 7 May 2003.

341. On 2 May 2003 the Trust wrote to the Assistant District Registrar commenting on Ms Mashiter's letter dated 21 January 2003 and the Mashiter Précis.

342. On 12 May 2003 Mr Couper wrote to Telford District Land Registry regarding Plot D. This letter is not in evidence.

April 2003: the PLA complains about new mooring chains

343. On 16 April 2003 Mr Foster sent Mr Trimmer an email saying:

> "Recently the Masters of HSL(M) have been reporting that they thought Mr Max Couper's floating estate appears to be expanding.
>
> On PM 25 Apr 02 I asked the HSL(M) to do a mini-survey; the attached files show the results. As you can see there has been a significant expansion and we believe that more chains have been laid recently. It appears that he preparing to pay yet more (see photo of unifloat).

> At present the collection of boats off Albion Wharf do not create navigational hazard however they are a time bomb waiting to explode when the residents start moving into the new development and look out of their windows."

Among the attachments to this email was a photograph annotated "anchor and cable aboard unifloat ready for laying".

344. This prompted Mr Trimmer to write to Mr Couper on 28 April 2003 saying:

> "I have received a report from the Harbour Master (Upper) regarding the above, and more particularly a recent and expansion of the number of vessels moored at this site.
>
> The Port of London Authority has reason to believe that a number of new mooring chains have been laid, including one secured to the campshed adjacent to Ransomes Dock. It is an offence under Section 70 of the Port of London Act 1968 (as amended) to place works in the River Thames without the grant of a River Works Licence. Notwithstanding your claim of owning moorings exempt from Sections 66 and 70 of the 1968 Act in this area, any new works placed in the tideway in this location must be licensed or removed. The PLA has powers, and will use them, to remove unlicensed works."

345. The Trust replied on 30 April 2003 saying:

> "Please note we have laid no chains in any new location. But as normal we replace chains as they wear and this includes the chain we have always had on the campshed you refer to which was recently partly replaced with a somewhat longer chain. This, as with all our chains, is essentially for the stability, safety and security of our moorings.
>
> No new vessels other than a 10ft rowing boat have been moored here recently.
>
> The 'vessels' you may be referring to are the ex US Government floats that have been donated to us, which are for fire-safety access. … "

May-September 2003: Correspondence and discussions between the Claimants, HW, the PLA and Wandsworth

346. Correspondence between the Claimants and HW had been continuing since 25 April 2002 (paragraph 289 above). I can pick it up again on 16 May 2003, when Mr Fleming wrote to the Trust in reply to a letter dated 7 April 2003 sent to various directors of APL. In his letter Mr Fleming stated:

> "I have read your 'proposal' but can see no justification for the demands you make. I cannot see that this might form any basis

> for negotiation without some substantiation and specific details of what you envisage as regards actions to be taken, covenants to be entered into and sums to be paid. In particular I would need to see evidence of your ownership of the mooring rights you claim. If you would care to elaborate I would be pleased to consider this further."

347. The Trust replied on 7 June 2003 in a letter addressed to the directors of APL (and copied to people ranging from HRH the Prince of Wales and the Foreign Secretary to the Ward Officer at Battersea Police Station) requesting a meeting to discuss a settlement, but without providing any further evidence.

348. On 12 June 2003 the Trust wrote to the Chairman of the PLA expressing concern that:

> "… a deal may be brokered by the PLA against our interest with this Chinese company, to vest this land to them as adjacent land owners. Should this be the case we shall have no option but to take legal action against the PLA, as we are in possession with overriding interests at law in that land."

349. On 19 June 2003 Canon Smith-Cameron, Mr Wilder and Mr Skeens wrote to Mr Fleming in reply to his letter dated 16 May 2003 proposing a meeting.

350. Also on 19 June 2003 there was a meeting between Mr Fleming and Ms Mashiter to discuss Mr Couper and the Trust's applications for registration and the PLA's and APL's respective claims.

351. Also on 19 June 2003 Captain Cartlidge, who was by now the Secretary of the PLA, wrote to Mr Couper as follows:

> "As you are aware, the Port of London Authority has been investigating the veracity of your claim to possess mooring chains exempt from Sections 66 and 70 of the above Act. To assist in these considerations, you provided evidence purporting to substantiate your claims. As you are also aware, the PLA engaged an archivist to research the history of this particular part of the River Thames from the middle to the 18th Century onwards, utilising numerous sources both within and external to the PLA. This research has been completed and its conclusions considered by the PLA.
>
> It is clear that the Battersea shore in Chelsea Reach has been used commercially for centuries for the mooring of vessels, barge repair and ship breaking, as well as wharfage for the handling of timber. These trades gave way and by the 20th Century wharves were primarily handling naphtha and oil. However, in the view of the PLA, there is no overwhelming evidence to substantiate any claim you may have that mooring chains, which you were sold in 1993, were placed in the River Thames before 29 September 1857. As such, it is the PLA's contention that the works placed on the foreshore of the Rover

> Thames in Chelsea Reach and which you claim to own are in clear breach of Section 70 of the Port of London Act 1968 (as amended).
>
> Notwithstanding the above, the PLA is required by statute to consider any new application you may wish to make for a licence under Section 66 of The Act for works at this site. The granting of any such licence however may be subject to agreement being reached on the various issues relating to land ownership in the area, we are endeavouring to resolve these matters."

352. On 20 June 2003 Mr Fleming sent Ms Mashiter an email asking her clarify "what land the PLA is laying claim to".

353. On 26 June 2003 Captain Cartlidge prepared a paper on the subject of Albion Wharf for consideration by the PLA's Licensing Committee at a meeting on 30 June 2003. In this paper Captain Cartlidge summarised the current position as follows:

> "2. To date Couper's occupancy of the site has been tolerated because:
>
> (a) Couper applied for a licence for the moorings in the early 1990s, which was agreed but never granted as the ownership of the land in front of which he was moored, could not be determined
>
> (b) The site now being developed was derelict and Couper had a licence agreement for access with the owner
>
> (c) The Couper collection was established as a charitable trust, on the fringe of royal patronage and enjoying the support (as trustees) of a number of locally prominent people
>
> (d) Couper claimed to have purchased moorings which were exempt from the provisions of section 66 of the PLA Act
>
> 3. When Hutchinson [sic] Whampoa first acquired the site, the principals were content to allow Couper to remain under the licence agreement made with their predecessors in title. However over the more recent past, Couper had refused to pay the consideration, made claims, considered spurious, to various pieces of land in the vicinity, has increased the number of vessels moored and has allowed the vessels to deteriorate in condition and appearance. He also appears to have ceased any pretence of continuing the declared the activities of the charity. In short he has become a bad neighbour. Other residents in the area, who tolerated Couper's presence heretofore have also objected to his conduct and activities."

354. Captain Cartlidge went on to summarise Mr Baldwin's key findings as follows:

> "(a) The strips of land subject to Couper's claims, are likely to belong to the PLA as the embanking (at the end of the 18th century) was approved, but the licence never endorsed.
>
> (b) There was no evidence to support Couper's claim for moorings that are exempt the provisions of section 66 of the Act."

355. He then said that the following has been proposed as a way ahead following meetings with HW and Wandsworth:

> "(a) Couper will be served notice, by the PLA, to lodge a river works licence application for vessels and moorings limited in extent to those subject to the previous application and the grant of the licence by the land owner.
>
> (b) The grant of the licence will be subject, amongst other conditions, to Couper and the Trust giving up all claims to land and exempted moorings.
>
> (c) The landowner will agree to grant a licence for access as before, subject to the premises and any trust workers being licensed, by the local authority, for the declared activities of the Trust.
>
> (d) Should Couper refuse to accept these proposals, then all three parties, acting separately but keeping each other informed, will take appropriate enforcement action. "

356. On 27 June 2003 the Chairman of the PLA wrote to the Trust in reply to the trustees' letter dated 12 June 2003 saying that the PLA was keen that the matter should be resolved and to that end had met with Wandsworth and HW to discuss the matter.

357. Also on 30 June 2003 Mr Fleming sent Captain Cartlidge an email saying that APL:

> "… would be willing, subject to contract, to take a transfer of such part of the riverbank in the vicinity as the PLA owns or claims. This would of course relieve the PLA of maintenance responsibility so we would not expect there to be further consideration. This offer is of course made without prejudice to Albion's ownership claims."

358. On 10 July 2003 Captain Cartlidge wrote to Mr Couper inviting as many trustees of the Trust as possible to attend a meeting with the PLA, HW and Wandsworth on 23 July 2003. He also replied to the letter dated 12 June 2003 as follows:

> "The PLA's claim to certain embanked land stems from the evidence that it was embanked with approval, but without the land subsequently being transferred from the PLA's predecessors in title to the embanker. The title to the land,

> therefore, passed to the PLA. This was explained during the course of our previous meeting.
>
> As you are now aware, by virtue of my letter of 19 June 2003, the PLA no longer accepted that sections 66 and 70 of the Port of London Act ref 68 [sic] (as amended) do not apply to your moorings."

In a manuscript postscript Captain Cartlidge noted that the meeting on 23 July had been postponed at Mr Couper's request.

359. On 14 July 2003 the Assistant Land Registrar wrote to Mr Couper and to DWS declaring a dispute in relation to Plot D.

360. On 22 July 2003 the Mayor of Wandsworth opened the Couper Collection Golden Jubilee Extension, Museum of First Art and Sky Garden. The Extension was an improved access to the boats, with steps on landward side. The Museum of First Art is a collection of children's art. The Sky Garden is a floating garden within one of the barges.

361. On 27 August 2003 the Assistant Land Registrar wrote to Mr Couper and to DWS declaring a dispute in relation to Plot B.

362. On 1 September 2003 Mr Trimmer wrote to Wandsworth saying that discussions between Wandsworth, HW and the PLA were ongoing, but:

> "… Hutchison clearly want both the Council and the PLA to use their respective powers to enforce against Mr Couper. I am writing in the spirit of partnership fostered with the Council in order that you should be aware of the adjacent landowner's wishes and can consider your position accordingly.
>
> Whilst the PLA is considering future action to remove some or all of the vessels and works from the foreshore in this location, in order to assist in your deliberations I am pleased to attach a range of photographs dating from June 1987 to October 1998 indicating the extent of the operations in the area. …."

363. On 4 September 2003 the Trust wrote to the Chairman of the PLA (with a copy to the Chief Secretary to the Treasury). In the course of this letter the Trust referred to the PLA's letter to the Land Registry dated 21 January 2003 and asked for copies of the Corporation of London minutes relied on by the PLA. It does not appear that there was an immediate response to this letter.

364. Also on 4 September 2003 Mr Couper and the Trust asked for the District Registrar's decision in relation to Plot A to be reviewed by the Land Registry's Agency Case Review Team.

365. On 8 September 2003 Ms Roderick sent Captain Cartlidge and a representative of Wandsworth a list of issues to be discussed with the Trust's trustees at the meeting

which by now had been re-arranged for 29 September 2003. This list included the following:

"1. LAND ISSUES

* Trespass on land owned by [APL]

Couper is occupying 4 areas of land

(i) his gangplank and moorings on and over the river wall at the junction of Albion Riverside and Fosters building

(ii) his gangplank, moorings, canoes, wood and debris on the north western river front (near Thames Walk Apartments)

(iii) his moorings and debris on the unregistered part of the river wall (between the Atrato and his boats)

(iv) the electricity supply box

Couper has made applications to the Land Registry for adverse possession of these areas of land. HW and will continue to object to such claims which we believe are groundless.

* Encroachment on to the public highway

Couper has items and debris along the river walkway preventing public access and has damaged planted amenity. In addition, this is preventing completion of the installation of railings and landscaping works under the section 106 Agreement.

* Ownership and repair and maintenance responsibilities of the unregistered part of the river wall

Couper has claimed ownership of part of the river wall and PLA and HW have raised objections. Land Registry considers PLA have shown the best evidence of title. If Couper continues with his claim, repair and maintenance of the river wall will be an issue.

2. WATER ISSUES

* No ancient mooring roads

Couper has insisted that he has ancient rights to moor in the river. This is NOT the case and needs to be made clear to the trustees.

* Licences for vessels and gangways required from PLA

> PLA will grant licences for some vessels but not all of those there at present.
>
> * Uncontrolled expansion of number of vessels
>
> Barges other than those housing the Couper Collection and Couper's houseboat to be removed and no further barges added
>
> * Access to moorings
>
> Couper requires consent from [APL] to access his moorings over our land. Couper does not accept this point and has made unreasonable demands … for settlement of the issue."

366. On 23 September 2003 the Land Registry's Case Review officer wrote to Mr Couper upholding the decision in relation to Plot A.

367. On 26 September 2003 Wandsworth's Legal Services Department wrote to Mr Couper raising a number of issues which were of concern to the council.

368. On 29 September 2003 there was a meeting between Mr Couper and representatives of the Trust, HW, the PLA and Wandsworth. Minutes of the meeting were prepared by Wandsworth. It appears that the main focus of the discussion was on trying to find a way forward that would be acceptable to all parties.

369. On 1 October 2003 Telford District Land Registry wrote to Mr Couper and to DWS in relation to Plots B, C and D asking whether the parties had been able to reach agreement.

October 2003: Mr Couper and the Trust make HW an offer which HW reject

370. On 8 October 2003 George Bridge, a "legal consultant" acting on behalf of Mr Couper and the Trust, wrote to Ms Roderick proposing that HW purchase their interest in the CCQ, Couper Quay and associated mooring rights for a consideration of £1.5 million plus £12,500 annually, as well as providing access to the Couper Collection and Mr Couper's private accommodation.

371. On 10 October 2003 Mr Couper notified Telford District Land Registry that an offer had been made to APL and requesting a stay of the applications in relation to Plots B, C and D until 15 December 2003.

372. On 17 November 2003 Ms Roderick replied to Mr Bridge saying:

> "Notwithstanding that [APL] does not consider that Mr Couper and the Trust's claim has any merit, it was prepared to give due and proper consideration to any reasonable settlement proposal by Mr Couper and the Trust in order to amicably resolve the matter. However, in the light of the excessive and unreasonable demands made in your letter of 8 October, you leave [APL] with no alternative but to request that the matter be determined by formal legal proceedings"

November-December 2003: Mr Couper and the Trust erect a fence, the PLA gives notice and APL makes an offer

373. Over the weekend of 8/9 November 2003 Mr Couper and the Trust erected a wooden fence on top of the CCQ. Mr Beynon tooks photographs of this on 10 November 2003. On the same date Ms Roderick notified the PLA and Wandsworth by email. She followed this up with a letter to Wandsworth requesting enforcement action by the council on 11 November 2003. On 12 November 2003 she wrote to Mr Couper and the Trust to object. The fence was subsequently taken down.

374. On 14 November 2003 Ms Mashiter wrote to the Trust as follows:

> "I refer to the meeting on 29 September 2003 at the Council offices, during which Mr David Cartlidge of the PLA made it clear to the Trustees that the works owned by the Trust, in the river at Albion Wharf, Battersea were unlicensed, and that under Section 70 of the Port of London Act 1968 a criminal offence was committed if they were not licensed under Section 66 of that Act. The Trustees were required to fill in an application form for the existing works and it was pointed out that as they had been in the river for some time, unlicensed, despite requests for applications to be made, if no application was made in the very near future, the PLA would have no alternative but to take action to have the unlicensed works removed.
>
> It is now one and half months since that meeting and I understand that no application for a licence for any of the works, has been received by the Trust.
>
> I, therefore, give you formal notice that the works described below are retained in the river in breach of section 70 of the Port of London Act 1969 (a copy of which is attached) and that unless all of the unlicensed works, and any craft moored thereto, are removed by the end of November 2003, and any damage caused to the riverbed by such removal is made good, the PLA proposes to take action to remove them under its powers in sub-section 70(3)."

375. There does not appear to have been any response to this letter. On 11 December 2003 Ms Mashiter wrote to both Mr Couper and the Trust in similar terms. On 12 December 2003 Mr Couper telephoned Ms Mashiter and the Trust replied to the letter dated 11 December 2003 as follows:

> "As discussed we are in negotiation with Hutchison to resolve the land ownership question ….
>
> In our conversation you agreed that it was not possible to make applications for any possible licenses without the riparian ownership clear and approved.

> Thank you for your agreement to send us the items we asked for in writing to your chairman, in particular the historical survey and a copy of the Corporation of London minutes in question.
>
> We look forward to solving this amicably with the PLA but we were of the opinion that this was not possible until we had resolved out differences with Hutchison Whampoa which is as we speak under way. …. "

376. Mr Couper also wrote to Captain Cartlidge in similar terms on the same day. In addition, Mr Skeens telephoned Captain Cartlidge and said that the Trust was expecting HW to make an offer of settlement by the end of the month. As a result, Captain Cartlidge sent Mr Fleming and Ms Roderick an email informing them that the PLA had served notice on Mr Couper and the Trust and asking them whether HW was going to make an offer which involved Mr Couper and the Trust remaining on site. On 15 December 2003 Ms Roderick replied outlining the offer which APL intended to make, and saying:

> "We felt it was necessary to respond to the Trust with some form of proposal in order to show that we are willing to be reasonable and at least attempt to reach a settlement. However, we still consider that Couper and the Trust do not have any legal rights in respect of the land they claim and we will not be held to ransom by them.
>
> ….
>
> [The offer] is obviously substantially less than Couper and the Trust are expecting so I cannot see them accepting. …
>
> If this proposal is not accepted then we will leave the matter in the hands of the courts to determine the issue.
>
> In any event, it would be a term of our allowing Couper to remain that he obtained all necessary licences and planning approvals so even in the unlikely event that they do accept the offer, they will still need to make the application to the PLA. Accordingly, I do not think our discussions with Couper should stop or delay the PLA from taking action."

377. On 17 December 2003 Ms Roderick wrote to Canon Smith-Cameron (without prejudice save as to costs, a restriction later waived by agreement) to set out a settlement proposal on behalf of APL as follows:

> "1. [APL] will grant as licence for 5 years for Max Couper and the … Trust to moor up to 3 barges against the rover wall and to gain access to such barges over the river wall at Plot A.
>
> 2. The barges can only be used for displaying the Couper Collection art collection and for Max Couper's houseboat.

3. The licence will be subject to Max Couper and the Trust obtaining all necessary consents from the PLA andWansworth Council.

4. The licence and access over the river wall will be terminated if more than 3 barges are moored and/or their use is for purposes other than as stated in (2) above.

5. Max Couper and the Trust will withdraw their claims from the land registry for adverse possession of the 4 plots of land and will remove the barge at Plot D and the additional barges moored at Plot A and the materials at Plots C and D.

6. [APL] will pay to the Trust an ex-gratia payment of (1) £10,000 to be used in connections with the Trusts' [sic] charitable activities and (iii) £5,000 to be used in manner to be agreed between the parties to enhance the appearance of the barges permitted to remain at Plot A

7. Each party to pay its own legal costs."

378. On 18 December 2003 Irwin Mitchell write to PLA asking them to confirm the outcome of their research into the authenticity of Mr Couper's claim to ancient mooring rights.

379. On 19 December 2003 Ms Mashiter wrote to the Trust and to Irwin Mitchell saying that the PLA had been informed by HW that a proposal would be made in the very near future and accordingly the PLA was deferring the date by which unlicensed works had to be removed from the end of December 2003 to the end of February 2004. She also promised to send Mr Couper and Irwin Mitchell "a copy of the Report on Title which the PLA's Archivist produced and which was forwarded to HM Land Registry", adding that "our research into this matter will continue and therefore, our view remains subject to further findings".

380. On 9 January 2004 Mr Skeens replied to Ms Roderick's letter dated 17 December 2004 with initial comments on APL's offer. Ms Roderick replied on 27 January 2004.

381. One 12 January 2004 Mr Couper and the Trust wrote to the Secretary of State for Transport and the Attorney-General complaining about the PLA's actions. The letter to the Secretary of State is not in evidence, but evidently it raised 18 points. In consequence an official in the Department of Transport wrote to the Chief Executive of the PLA, Steve Cuthbert, to enquire about the matter on 26 January 2004 enclosing a copy of Mr Couper and the Trust's letter. This letter is not in evidence either.

382. On 4 February 2004 the Assistant Land Registrar referred to the disputes concerning Plots B, C and D to the Solicitor to the Land Registry for determination.

February 2004: Ms Mashiter sends Mr Couper the Altered Mashiter Précis

383. On 9 February 2004 Ms Mashiter sent Mr Couper copies of (i) her letter to Telford District Land Registry dated 21 January 2003 and (ii) a document purporting to be the

Mashiter Précis enclosed with that letter but which in fact differed from it in the respects set out below ("the Altered Mashiter Précis").

384. Paragraphs 1.4 and 1.5 of the Mashiter Précis read as follows:

> "1.4 Barge repairs continued until the opening of Sir Joseph Bazalgette's Bridge in 1890. By 1989 a mooring chain is apparent on a PLA survey added to an OS map. It lay inside the traditional steamboat moorings which had become barge moorings. Thereafter the emergence of an enhanced specialism in the oil trades (a trade practised nearby since 1787) sustained the wharves until the 1970s, with a naphtha gantry being added at Albion Wharf in 1942. The evidence is therefore that the area does have a sustained and traditional usage based on the availability of moorings.
>
> 1.5 This research shows the PLA have a sound claim to ownership of the embankment giving access to them as the heirs of the Corporation of London's earlier claim."

385. Paragraph 1.4 of the Altered Mashiter Précis reads as follows:

> "1.4 Barge repairs continued until the opening of Sir Joseph Bazalgette's Bridge in 1890. By 1989 a mooring chain is apparent on a PLA survey added to an OS map. It lay inside the traditional steamboat moorings which had become barge moorings. Thereafter the emergence of an enhanced specialism in the oil trades (a trade practised nearby since 1787) sustained the wharves until the 1970s, with a naphtha gantry being added at Albion Wharf in 1942. [Additional comment: The map showing the naphtha gantry does not show the mooring chain, although it does show the barge moorings. The use of the gantry would not have been possible if all the moorings claimed by the Couper Trustees were then in place, as when it was operating boats would have come alongside the wharf.]
>
> This research shows the PLA have a sound claim to ownership of the embankment giving access to them as the heirs of the Corporation of London's earlier claim."

386. The changes are as follows. First, the omission of the sentence at the end of paragraph 1.4 which read "The evidence is therefore that the area does have a sustained and traditional usage based on the availability of moorings". Secondly, the addition of the passage in square brackets at the end of paragraph 1.4. This passage does not derive from the Summary Baldwin Report. Thirdly, the omission of the number of paragraph 1.5.

387. Ms Mashiter's explanation for this was as follows. In her file the letter dated 21 January 2003 had been filed, but not the enclosure. Accordingly, when she was asked to supply it, she went to her computer to print off a copy. There were two versions of the document on the computer i.e. the Mashiter Précis and the Altered Mashiter

Précis. The Altered Mashiter Précis was a version which she had made for her own use, which was why it included her own comments in the passage in square brackets. By mistake, she printed and sent the wrong version. I have no hesitation in accepting this explanation.

388. What this explanation does not address is why Ms Mashiter only sent Mr Couper the Mashiter Précis rather than the Full Baldwin Report. As Ms Mashiter herself pointed out during cross-examination, she was aware from the Land Registry's letter dated 13 February 2003 that the Land Registry had already copied that document to Mr Couper (under cover of its letter dated 7 February 2003). What Mr Couper and the Trust had asked for was "the historical survey". Ms Mashiter was not able to explain why she sent the Mashiter Précis. Having regard to Ms Mashiter's letter dated 10 February 2004 quoted below, however, it seems to me that the most likely explanation was that Ms Mashiter was under impression that that Mr Couper either had not received, or had mislaid, the Mashiter Précis, and therefore sent it again. In any event, I see nothing sinister in this.

389. Also on 9 February 2004 Mr Cuthbert replied to the Department of Transport's letter dated 26 January 2004. His letter enclosed an Appendix containing a response to the 18 points set out in the Trust's letter dated 12 January 2004. The Appendix as sent is not in evidence, but there is a draft. Paragraph 4 of the draft stated:

> "Two matters, in particular, at Albion Wharf have been subject to archival research, that concerning ownership of a strip of embanked land and the claim to moorings exempt [from] section 66 of the Port of London Act. The PLA's proff [sic] of its claim to own the embanked land claimed in part by Mr Couper and in part by the Couper Collection had been forwarded to HM Land Registry. The PLA believes that a embankment licence that has been located related to this frontage and it is on this basis that it has made a claim to a small part of it. However, a plan is still being sought and in this regard the research is incomplete. However, similar research continues relating to other sites and is liable to uncover matters relating to the general or other specific cases. Hence it is appropriate to notify whomsoever it might concern that a view at any specific time remains subject to further findings."

It is probable that paragraph 4 as sent was in substantially the same terms, subject to correction of the typographical errors.

390. On 10 February 2004 Ms Mashiter wrote to Irwin Mitchell at some length setting out the PLA's position. The letter is too long to quote in full, but I must set out the salient parts:

> "The PLA accepts that its letter of 20 October 1999, addressed to the local authority and Messrs Montagu Evans (planning consultants to Hutchison Whampoa), mistakenly gave the view that moorings at this site were exempt from licensing under Section 66 of the Port of London Act. However, on 5 November 1999, this mistake was corrected, in a further letter

sent to Hutchison Whampoa and copied to the local authority. There error was thus corrected within sixteen days. The letter of 20 October 1999 referred to, was addressed neither to Mr Couper nor the Trust …

Mr Couper was well aware of the requirement to apply for a river works licence for these works. He did so … in June 1992, some seven years before the letters of October and November 1999 …. A licence was not granted in 1992 due to the uncertainty over ownership of the adjacent river frontage, and therefore the impracticality of gaining the owner's consent for the suppression for the suppression private riparian rights. The PLA wrote to Messrs Dawson & Co … on 9 March 1998 pointing out, inter alia, that their client's moorings need[ed] to be licensed by the PLA.

Because of the dispute which arose over the ownership of the adjacent embanked land, the PLA engaged an archivist to research the history of this frontage, including the moorings. All the material he has examined is in public archives available to the general public. The PLA's proof of its claim to own one section of the embanked land claimed in part by Mr Couper in his personal capacity and in part by [the Trust] has been forwarded to HM Land Registry. I attach a copy of the note sent on behalf of the PLA to HM Land Registry, together with a copy of the accompanying letter dated 21 January 2003. From experience in other cases, these documents would normally have been copied to you, as the applicant, by HM Land Registry and so I was surprised when Mr Couper mentioned that he did not have a copy. ….

The PLA believes that an unendorsed embankment licence that has been located relates to this frontage and it is on this basis that it has made a claim to a part of it as successor in title to the Corporation of London's Navigation Committee, the original licensor …. However, a related plan drawing is still being sought which is why in the interests of good faith it was considered appropriate to notify those concerned that it view remained subject to further findings. …

The research also demonstrated that there is historical evidence that the foreshore in the area was used extensively as a mooring ground in the nineteenth century and that the possibility of moorings which might have been exempt under section 66 of the Port of London Act clearly existed. However, the OS Map of 1894-96 show that Phillips Mills & Co Limited had a licensed chain for barges which was partially in front of Albion Wharf, and there were steamboat moorings further out, which later became the PLA's Battersea Barge Roads. Further, any such rights which may have existed in 1942 would have been extinguished when a gantry for the discharge of naphtha was

> installed along the front of Albion Wharf. (The wharves along this part of the river were used for oil and fuel distribution during this period). Naphtha is a highly inflammable liquid and all mooring chains would have had to be cleared from the area to provide unobstructed access for the fuel carrying coasters using Albion Wharf. Indeed this is supported by a contemporary PLA chart. The naphtha gantry remained in use at least until 1971, and was removed in 1974.
>
> So far as the PLA is concerned, it is clear from the research that 'ancient private moorings' i.e. those exempt from licence by virtue of Section 63 of the Port of London Act will not now exist in the vicinity of Albion Wharf. … Any mooring which is not exempt must be licensed. …
>
> The matter of the unlicensed works had been outstanding too long. … Your client has had the period from 1992 to the present day to resolve the landing rights. Your client currently accesses vessels over land which is undisputedly in the ownership of Hutchison Whampoa (i.e. not claimed by your client or the PLA), who indicated that it was not willing for this to continue and so the notices were served on your client and the Trust.
>
> …
>
> To summarise, it is the view of the PLA that neither Mr Couper nor the Trust has any right to maintain works on the River Thames without a works licence granted by the PLA which, without the consent of the adjacent riparian land owner, it would be unwilling to grant. In the PLA's view, the only way out of the impasse, without resorting to the courts, is for your client and the Trustees to use their best endeavours to effect a settlement with all the parties to the dispute, including the PLA. The PLA is prepared to delay the implementation of its enforcement notice providing Mr Couper and the Trustees undertake in writing to use all reasonable endeavours to effect a settlement within a reasonable length of time in negotiations with Hutchison Whampoa, the PLA and Wandsworth Council, and make the appropriate river works licence application."

391. On 11 February 2004 the Mayor of London (who had also been lobbied by Mr Couper and the Trust) wrote to the PLA about the matter. On 16 February 2004 Captain Cartlidge replied, saying that "Evidence which demonstrates that neither Mr Couper nor the Trust have any legitimate claim to 'ancient rights' has been provided to them."

392. In April 2004 completion of the main building at Albion Riverside was certified.

May 2004: the PLA discloses the Incomplete Baldwin Report and Mr Dillon-Leetch carries out a survey

393. On 5 May 2004 Irwin Mitchell wrote to Ms Mashiter. This letter is not evidence. On 6 May 2004 Ms Mashiter replied (in a letter marked "without prejudice", but put in evidence by agreement) in the following terms:

> "I enclose the full report headed 'A history of Albion Wharf, Hester Road, Battersea and its adjacent riverside usage and operational context since 1743 - A research report by Robert Baldwin BA (Hons), MLitt, MRIN, FLS prepared for the Port of London Authority in October 2002'.
>
> This was, of course, produced for and paid for by the PLA and in supplied to you in connection with the arguments over title in this matter only, and is not to be used for any other purpose, or reproduced without the written permission of the PLA. You will see that in fact it is the history of the areas and a vast amount of information, although very interesting, is not relevant to this river wall or adjacent riverbed. The opinions expressed on various matters are those of the Archivist and not the PLA's, and whilst accepting his findings of fact, the PLA does not endorse all the opinions that the Archivist has expressed nor all the conclusion he has drawn.
>
> Having examined this evidence, and compared it with the evidence provided by Mr Couper, the PLA's conclusion is that Mr Couper's claim is not established. See my letter to the Land Registry in this regard.
>
> May I take this opportunity to advise that the PLA's Hydrographic Department will be undertaking a detailed survey of the riverbed, including anchors, chains, wires, gangways, vessels, utility supplies and other works, in the vicinity of Albion Wharf at low water in or about the week commencing 17th May 2004. … "

394. Regrettably, what was enclosed with this letter was not a copy of the Full Baldwin Report, but yet another version of Mr Baldwin's report. This consists of 39 numbered pages, every one of which has been marked "Confidential" during printing ("the Incomplete Baldwin Report"). Leaving that aside, pages 1, 3-5 and 7-39 of the Incomplete Baldwin Report are identical to pages 1, 3-5 and 7-39 of the Full Baldwin Report (save that there are a couple of small differences in wording on pages 5 and 38). The differences between the two versions are as follows.

395. First, there are two obvious differences between page 2 of the Incomplete Baldwin Report and page 2 of the Full Baldwin Report (i.e. the contents page). The first is presentational: page 2 of the Full Baldwin Report is presented in a tabular format, whereas page 2 of the Incomplete Baldwin Report is not. The second is that page 2 of the Full Baldwin Report gives the page references for each Part of the report, whereas page of the Incomplete Baldwin Report does not. Nevertheless, page 2 does clearly

indicate to the reader that the report should consist of Parts 1-6. There are also less obvious differences in content, including the fact that the heading does not include the word "an".

396. Secondly, there are certain differences between page 6 of the Incomplete Baldwin Report and page 6 of the Full Baldwin Report (i.e. the outline chronology). Most obviously, the list of sources in page 6 of the Incomplete Baldwin Report is significantly incomplete, whereas in page 6 of the Full Baldwin Report it is complete.

397. Thirdly, pages 40-72 of the Full Baldwin Report are simply missing from the Incomplete Baldwin Report.

398. The reader can see that the Incomplete Baldwin Report contains sections entitled, and fitting the description given on page 2 of, Parts 1-3, but not Parts 4-6. This is so even if the reader only access to the Incomplete Baldwin Report and has never seen the Full Baldwin Report.

399. Ms Mashiter's explanation for this was as follows. It was her normal practice to leave it to her secretary to add the relevant attachment to a letter like this. She believed that that was what she had done in this case. At some point Mr Baldwin had loaded his report, which he originally prepared on his own laptop, on to the PLA's computer. She thought that her secretary would have printed off a copy of the Full Baldwin Report from the computer. At the time Ms Mashiter had no reason to think that her secretary had not enclosed a complete and correct copy of the Full Baldwin Report with her letter.

400. The absence of pages 40-72 of the Full Baldwin Report from the Incomplete Baldwin Report is easily understood. Most people who are accustomed to printing lengthy documents from computers have sometimes made the mistake of thinking that an entire document has been printed when, for one reason or another, part of it has not been, and have only discovered the mistake later. On 10 June 2013 the PLA disclosed in these proceedings a complete electronic copy of the document of which the Incomplete Baldwin Report is an incomplete copy. This includes the missing pages 40-72, which are identical to pages 40-72 of the Full Baldwin Report.

401. The reason for the differences between pages 2 and 6 of the respective documents is less obvious. Ms Mashiter gave evidence that she had discovered that Mr Baldwin had continued to make changes to the document even after October 2002. To complicate matters still further, the PLA had upgraded its computer systems several times since November 2002, making it difficult to trace the evolution of the document electronically. Ms Mashiter could only surmise that her secretary had printed off (an incomplete copy of) a slightly different version of the report to that which Mr Baldwin had signed.

402. In my view the most likely explanation is that the version of Mr Baldwin's report which Ms Mashiter's secretary printed an incomplete copy of on 6 May 2004, and which the PLA disclosed a complete copy of on 10 June 2013, was in fact a slightly earlier version than the Full Baldwin Report. The reasons I say this are that (i) the description of the contents on page 2 of the Full Baldwin Report is more accurate than the description of the contents on page 2 of the Incomplete Baldwin Report and (ii) as noted above, the list of sources on page 6 of the Full Baldwin Report is more

complete than that on page 6 of the Incomplete Baldwin Report. I infer that Mr Baldwin finished the body of the report and saved that version. (I was informed by counsel that the metadata in the electronic file show that the document disclosed by the PLA on 10 June 2013 was revision number 33 created on 8 November 2002 and printed on 10 November 2002.) He then realised that the contents page was slightly inaccurate (and lacking page numbers) and that the list of sources in the outline chronology was incomplete. He therefore revised those pages (and made a couple of small changes to pages 5 and 38 while he was at it), saved that version, printed it and signed it. I suspect that at some point between November 2002 and May 2004 these two versions got confused, and it may even be the case that the Full Baldwin Report was accidentally deleted from the PLA's system at some point. I do not think subsequent revisions to his report by Mr Baldwin have any bearing on the matter.

403. The discovery by the Claimants of differences (a) between the Altered Mashiter Précis and the Mashiter Précis and (b) between the Incomplete Baldwin Report and the Full Baldwin Report led the Claimants to view the PLA in general, and Ms Mashiter in particular, with great suspicion. This is one of the factors which underlies the Claimants' claims for conspiracy and misfeasance in public office. I shall consider those claims below. At this juncture, I merely observe that the existence of the various documents and the differences between them are explicable without recourse to malign motives on the part of Ms Mashiter or anyone else at the PLA.

404. On 19 May 2004 Mr Dillon-Leetch and a colleague carried out a very detailed and accurate survey of the riverbed off Albion Wharf, including all of the Claimants' boats, moorings and other works. Mr Dillon-Leetch subsequently produced a 25 page report set out the findings, including a detailed chart. This shows that the boats were moored by chains secured to a number of anchors in the riverbed and by ropes and wires to a number of anchoring points on the shore extending along Albert Wharf and Albion Wharf.

405. On 28 May 2004 Mr Skeens wrote to the Chairman repeating the request made in the Trust's letter dated 3 September 2003 for copies of the Corporation of London minutes relied on by the PLA. Captain Cartlidge replied in 15 June 2004 saying:

> "The PLA does not have copies of the minutes, which are in bound books in the Museum of Docklands archive library, but the text of the relevant parts has been reproduced verbatim in the report by Mr Baldwin where indicated."

September-October 2004: disclosure by the PLA of the Full Baldwin Report

406. On 27 Sept 2004 the Mayor of London wrote to the Chairman of the PLA expressing support for the Trust and concern about the actions of the PLA. In the course of this letter he said that he had been assured that "only a part of the research work commissioned by the PLA has been handed over and the evidence is far from conclusive." He went on to say that "the alleged failure to make full research findings available to the Trust calls into question the strength of the evidence and, it could be argued, raises Freedom of Information issues".

407. On 13 October 2004 there was a meeting between Mr Couper, Mr Skeens and Simon Smith of Irwin Mitchell on the one hand and four representatives of the PLA

including Captain Cartlidge and Ms Mashiter on the other hand at the PLA's London office. The meeting was recorded and there are three different transcripts of the recording of varying quality, two of which include interpolations and emphases added by Mr Couper. At an early point during the meeting Mr Smith complained that the PLA had not received a complete copy of Mr Baldwin's report, since the version disclosed on 6 May 2004 was missing Parts 4-6. Captain Cartlidge replied that that was a mistake. A little later Ms Mashiter said that the Baldwin report "doesn't print very well – if you call it up on screen you only get half of it". During the course of the meeting the PLA's representatives handed to the Claimants a complete copy of the Full Baldwin Report. It is not clear to me whether this had been made in preparation for meeting or as a result of Mr Smith's complaint, but it does not matter.

408. On 15 October 2004 Ms Mashiter wrote to Mr Smith saying that the PLA looked forward to receiving a draft application for a river works licence addressing the matter discussed at the meeting on 13 October. She went on to say:

> "With regard to the other matters discussed and for the avoidance of doubt, you will find the PLA's case partly set out in the letter to the Land Registry of 31 January 2002 (copy attached) which was copied to Mr Couper (subsequently we did find an embankment licence of part of the frontage, but that is relevant to the land claim not to the moorings) and partly it is based on documents in the PLA's possession consisting of charts and river works licences granted for river works at Albion Wharf in the past, as well as evidence of its own barge moorings in this vicinity. The PLA has found no evidence that there are any moorings at this frontage which consist of a mooring chain or chains placed in the river Thames before 29 September 1857 and used every since, which is what is covered by Section 63 of the Port of London Act 1968. We do have drawings to show what chain moorings looked like and they are swinging moorings in the river. From the evidence unearthed it seems clear that there could have been no such moorings at this site when the PLA's barge moorings were in operation and later when there was a gantry overhanging the wharf edge at Albion Wharf and petroleum/naphtha was being loaded and unloaded. Moored vessels would not only have prevented petroleum vessels coming alongside but they would not have been permitted to moor there, for safety reasons.
>
> Your clients have not shown which moorings they consider are chain moorings, used as swing moorings on the 29 September 1857, and continually ever since. … Based on the evidence we have, as stated above, the balance of probability would appear to be that such moorings are not present in the vicinity of Albion Wharf …."

She then went on the address various other matters, including the allegation that parts of Mr Baldwin's report had not been disclosed and Mr Trimmer's letter dated 15 October 1999.

October 2004 - February 2005: the Land Registry issues directions

409. On 20 October 2004 the Solicitor to the Land Registry directed Mr Couper and the Trust to issue proceedings in this Court on or before 10 January 2005 for the purpose of determining whether:

> "1. The strip of land known as plot 'C' and shown tinted blue on Plan 1 attached [i.e. the CCQ] should be registered in the name of either the First and Second Applicants [i.e. Mr Couper and the Trust] or the First Respondents [i.e. APL].
>
> 2. The strip of land known as plot 'D' and shown tinted yellow on Plan 2 attached should be removed from title TGL193839 and registered in the name of the First or Fourth Applicants [the reference to the Fourth Applicant was a mistake and should have been to the Third Applicant i.e. Couper's Quay Ltd – this was corrected on 11 November 2004].
>
> 3. The electricity supply box plot on Hester Road Link East and shown tinted pink on Plant 3 attached [i.e. Plot B] should be removed from title TGL19389 and registered the name of the First and Second Applicants."

410. On 10 January 2005 Mr Couper and Trust wrote to the Land Registry (with a copy to the Attorney General) saying that, due to lack of funds, they were unable to commence proceedings in this Court as directed by the Solicitors. The letter also stated:

> "However, we remain, as notified to the local police, in actual occupation of the above land and will not relinquish that fact."

411. On 3 February 2005 the Solicitor to the Land Registry issued a direction cancelling Mr Couper and the Trust's applications in respect of Plots B, C and D on the ground that they had not complied with the direction to commence proceedings. APL was notified of this direction. On the same date the Solicitor directed APL to commence proceedings in this Court on or before 4 April 2005 for the purpose of determining whether the CCQ should be registered in the name of APL. This direction named Mr Couper and the Trust as first and second respondents, Mr Ashmore as third respondent and the PLA as fourth respondent.

February-April 2005: the PLA transfers its interest in the CCQ to APL for £1

412. By February 2005 the PLA had decided to agree to APL's proposal for a transfer of the PLA's interest in the CCQ to APL (see paragraph 357 above).

413. On 5 February 2005 Irwin Mitchell wrote to Dr Ho without prejudice to request another meeting to discuss settlement.

414. On 10 February 2005 Mr Fleming sent Ms Mashiter an email saying that she had mentioned that she would prepare a draft transfer and would deduce title and that he would be grateful to receive this as soon as possible.

415. On 14 February 2005 Ms Mashiter sent Mr Fleming a draft transfer of "such rights and title as [the PLA] has" in the CCQ to APL. The draft contained ten recitals setting out the background to the transfer.

416. On 15 February 2005 Mr Fleming replied saying that APL would prefer the PLA to apply voluntary for first registration and then transfer title to APL after registration, because the Land Registry were likely to raise requisitions which only the PLA would be able to answer.

417. On 18 February 2005 Mr Fleming telephoned Ms Mashiter. It was agreed that Ms Mashiter would prepare an agreement for the PLA to transfer title to APL subject to it being registered. She would then apply to the Land Registry. Mr Fleming recorded in his note of the conversation that Ms Mashiter was "concerned re PLA responsibility for river wall".

418. On 24 February 2005 Mr Fleming sent Ms Mashiter an email saying that he was under some pressure to move this along in view of current developments. Later the same day Ms Mashiter sent Mr Fleming a draft letter to the Land Registry Head Office for his comments and he made some comments. As sent that day, the letter stated:

> " … I write to confirm that the PLA has agreed with [APL] that the PLA will transfer such interest as it has to [APL] subject to contract.
>
> Mr Hugh Fleming, the solicitor acting for [APL], and I would be grateful for your solicitor's advice on how the Land Registry would view the following courses:
>
> 1. The PLA withdrawing its objection to APL's application for registration. …
>
> 2. The PLA registering title and then passing the land to [APL].
>
> 3. The PLA transferring such interest as it has to [APL] who then registers the land. In this case the PLA would undertake to deal with any requisitions the Land Registry might have."

419. On 4 March 2005 the Land Registry Head Office replied:

> "As to your first suggested course of action, the Solicitoir has confirmed that you may withdraw your objection to the application made by [APL] if you are so advised. He does point out, however, that there are still outstanding objections in respect of [APL's] application and would refer you to Recitals (1), (2), (5) and (6) of his latest direction dated 3 February 2005 [referring to objections by Mr Couper and the Trust and by Mr Ashmore].

> As to your second and third suggested courses of action, he doubts if there would be any point in taking action along the lines suggested, in the light of his direction dated 3 February 2005. The proceedings in the High Court of Justice are for the purpose of determining whether [APL] should be registered as proprietors of the two strips of land in question."

420. On 7 March 2005 Irwin Mitchell wrote to Ms Mashiter without prejudice saying that they had written to Dr Ho and suggesting mediation. In this letter Irwin Mitchell complained about the "parlous state of the sea wall".

421. On 24 March 2005 Mr Fleming sent Ms Mashiter an email saying that APL had decided to take up APL's offer of a transfer and would be grateful if this could be completed before 4 April 2005, the deadline for APL to commence proceedings. He approved her draft transfer as drawn save that he said that, in view of the timescale, he would prefer APL not to have to execute it.

422. On 29 March 2005 Mr Fleming wrote to the Land Registry Head Office asking for a four month extension of time to commence proceedings since APL was in discussion with the PLA and were endeavouring to meet Mr Couper, the Trust and Mr Ashmore to discuss an amicable resolution.

423. On the same day HWPEL wrote to Irwin Mitchell saying that APL would be prepared to meet Mr Couper and the Trust to explore an amicable resolution.

424. On 1 April 2005 Ms Mashiter sent Mr Fleming a revised draft transfer with an extra recital and a note on the history of the relevant land. Mr Fleming replied the same day with some proposed amendments to the draft transfer. He also said:

> "Do you intend that we should also give the LR the background note? If so, I would like to give it a more positive slant. I will let you have my suggested amendments shortly. Would it be OK to frame this as a Stat Dec? "

425. On 4 April 2005 Ms Roderick sent Ms Mashiter a fax asking that the transfer plan be amended so that the property to be transferred extended to where APL's registered title started.

426. On 8 April 2005 the Land Registry granted APL an extension of time until 23 May 2005.

427. On 11 April 2005 Ms Mashiter emailed Mr Fleming a revised draft transfer and plan. In her email she said:

> "With regard to the background note, I am happy to discuss this further, and revise it so that it can be submitted as Replies to Requisitions on Title."

428. Also on 11 April 2005 Irwin Mitchell replied to HWPEL saying that Mr Couper and the Trust would be prepared to attend a meeting.

429. On 14 April 2005 Mr Fleming sent Ms Mashiter an email complaining that the latest draft transfer did not incorporate his amendments of 1 April.

430. On 19 April 2005 Ms Mashiter apologised saying that an old version had been attached to the email not the current one and attaching an updated draft. She went on:

> "With regard to the notes I made, may I have your suggestions for how you would like the wording improved."

431. On 22 April 2005 Mr Fleming sent Ms Mashiter an email approving the draft transfer and asking for it to be engrossed and executed as soon as possible. He did not reply to her question about the wording of the note.

432. On 27 April 2005 the PLA executed the transfer. As executed, this states:

> "1. WHEREAS
>
> 1.1 Samuel Leigh's Panorama of the south bank of the river Thames dated 1829 at the Guildhall Library shows that the part of the river bank at the location of the Property was embanked by this date.
>
> 1.2 Up until 23 February 1857 the Crown claimed the ownership of the foreshore of the tidal Thames and employed a Water Bailiff to inspect its land holdings.
>
> 1.3 The records deposited by the Crown at the National Archives in Kew show that in 1788 Mr. Sax its Water Bailiff was giving leave for embankments to be created into the river at Battersea. There is no evidence of any transfer of this embanked Property by the Crown to any of the licensees.
>
> 1.4 At the same time the City of London also claimed jurisdiction to licence embankments through its Port of London and Navigation Sub-committee.
>
> 1.5 The deposited records show that in 1788 the City of London granted various embankment licenses along the Battersea frontage including embankments to a Mr. Chabot, a Mr Charles Barrow and a Mr. Webster. There are no plans extant showing exactly where these embankments were located but as they relate to the Battersea frontage where the property is located it is thought likely that one of these related to the Property.
>
> 1.6 Other licenses were granted for embankments in this area over the years and it is clear that inspections were made regularly by both and Crown and the City of London and embankments were not permitted without licenses from both parties.
>
> 1.7 By an Indenture of 24 February 1857, which is recited in full in the preamble to the Thames Conservancy Act 1857 (1) Her Majesty Queen Victoria and (2) Her Majesty's Commissioners

for Woods Forests and Land Revenues granted and conveyed to the City of London and their successors as Conservators of the River Thames

> 'all the estates right title and interest of Her Majesty in right of the Crown of in and to the bed soil and shores of the River Thames within the flux and reflux of the tides bounded eastward by an imaginary line to be drawn from the entrance to Yanklet Creek Kent on the southern shore of the river to the City Stone opposite to Canvey Island Essex on the northern shore of the river and all Encroachments, Embankments and Inclosures therefrom or thereupon, except such parts thereof as were thereinafter to be specified to hold the bed soil and shores expressed to be thereby conveyed unto and to the use of the City of London and their successors as Conservators of the River Thames upon the Trusts thereinafter expressed.'

1.8 The land forming the riverbed at Battersea adjacent to Albion Wharf was included in the Indenture of 24 February 1857 and as the wording of the Conveyance included all embankments owned by the Crown, it would have included any land upon which embankments had been built whether or not under license.

1.9 By section L of the Thames Conservancy Act 1857 as from 29 September 1857 the land passed from the City of London to the Conservators of the River Thames.

1.10 By section Llll of the Thames Conservancy Act 1857 any embankments was required to be licensed by the Conservators of the River Thames. The records of the City of London and of the Conservators of the River Thames relating to the conservancy of the tidal Thames are deposited at the museum in Docklands which forms part of the Museum of London. No record has been found there of any license to embank being granted in respect of the property.

1.11 The Thames Conservancy Act 1857 and subsequent acts provided that land embanked by license under those acts would vest in the riparian landowner of the land adjacent to the embankment if the license was endorsed following completion of the embankment in accordance with the requirements of the relevant legislation. As no records have been found of any embankment license for the Property after 1857 there is no evidence that the property ever vested in the adjacent riparian landowner.

1.12 The Port of London Authority is the successor in title to the Conservators of the River Thames.

> 2 TRANSFER
>
> 2.1 In consideration of the sum of One Pound (£1.00) (the receipt whereof is hereby acknowledged) the Port of London Authority whose principal office is at 7 Harp Lane, London, EC3R 6LB hereby transfers all such rights and title as it has in the Property to Albion Properties Limited (Company number 03440582) whose registered office is at Hutchison House, 5 Hester Road, Battersea, London, SW11 4AN
>
> 2.2 The Property is transferred subject to such rights as the local highway authority may have in respect of any part of the public footpath which is sited on the Property."

433. On 28 April 2005 APL duly paid the PLA £1.

434. In her evidence Ms Mashiter was frank that the reason why the transfer was only expressed to be of such interest as the PLA had in the CCQ was that she did not think that the PLA would be able to succeed in an application for registration. Although Mr Baldwin had supported the PLA's claim, no plan was ever found which sufficiently identified the embanking works approved by the Corporation in 1788. (There was also another problem, as I shall discus below.)

May-July 2005: APL applies to register the CCQ pursuant to the transfer from the PLA and withdraws its original application

435. APL and HWPEL have waived privilege over their instructions to DWS with regard to registration of the transfer. On 28 April 2005 Mr Fleming wrote to Carole Peet of DWS enclosing the transfer and instructing DWS to apply for registration. He said that he gathered that it had been suggested that it be treated as a separate title and not amalgamated with APL's existing one. Mr Fleming gave evidence that the letter was the totality of the instructions given. He also gave evidence that Ms Peet was the litigator acting in relation to the existing Land Registry applications and was fully familiar with the background.

436. On 4 May 2005 Irwin Mitchell wrote to HWPEL proposing a meeting on 16 June 2005.

437. On 10 May 2005 Ms Peet wrote to Mr Fleming saying that she had passed his letter dated 28 April 2005 to Rob Wyatt of DWS's Commercial Property group. It appears that he in turn passed the matter to a more junior colleague, Richard Harkness.

438. On 17 May 2005 Mr Harkness wrote to Telford District Land Registry enclosing an application by APL for first registration of the CCQ by virtue of the transfer from the PLA. Mr Harkness completed section 13 of the form FR1 by crossing the box which stated:

> "All rights, interests and claims affecting the estate know to the applicant are disclosed in the title documents and Form DI if accompanying this application. There is no-one in adverse possession of the property or any part of it."

439. No mention was made of Mr Couper and the Trust's claim to adverse possession of the CCQ. APL and HWPEL accept this should have been mentioned. They contend that the failure to disclose it was an oversight attributable to a breakdown in communications within DWS. The Claimants contend that the information was deliberately suppressed. As counsel for the Claimants pointed out, none of the relevant persons from DWS was called to give evidence. I decline to draw any inference adverse to APL and HWPEL from this, however. As counsel for APL and HWPEL submitted, it is unlikely that anyone of them would be able to remember what happened, and why this information was not conveyed, at this distance in time. Furthermore, it is much more probable that the failure to disclose the information was an oversight than that it was deliberately suppressed.

440. On 19 May 2005 Mr Fleming sent Mr Smith an email saying that HWPEL had pencilled in 16 June 2005 for a meeting and asking for an outline of Mr Couper and the Trust's proposals.

441. On the same day Mr Fleming wrote to Land Registry Head Office asking for a further extension of time from 23 May 2005 to 31 July 2005 on the grounds that there had been fruitful discussions with the PLA, there was ongoing correspondence with Mr Ashmore and a meeting with Mr Couper and the Trust was proposed for 16 June 2005. Mr Fleming did not mention the application which APL had just lodged at Telford in his letter.

442. On 31 May 2005 Land Registry Head Office granted APL an extension of time to 31 July 2005, but asked APL to contact it by 30 June 2005 to let it know the outcome of the proposed meeting of 16 June 2005.

443. On 9 June 2005 Mr Fleming sent Ms Mashiter an email further to some earlier email correspondence in which he had asked her for an indication as to what the PLA's requirements with regard to licensing Mr Couper and Mr Ashmore were likely. Ms Mashiter had replied by asking how many boats HW were likely to permit. Mr Fleming had responded by saying three in the case of Mr Couper. Ms Mashiter had said that on navigational grounds the PLA would be happy for the Hope and two dumb barges to remain. It is was in this context that Mr Fleming enquired:

> "Can you give me a better idea of what hoops you want Couper and Ashmore to jump through. Specimen form applications and licences would be useful. Obviously they will have to apply direct and you have the final decision but it would be greatly help our discussions if we know what the usual requirements are."

444. On 10 June 2005 Irwin Mitchell wrote to HWPEL without prejudice outlining their client's settlement proposals in preparation for the meeting on 16 June 2005. On 15 June 2005 Mr Fleming replied saying that it appeared from the letter dated 10 June 2005 that there was still a great distance between the parties, and hence a meeting would be premature. There was further without prejudice correspondence subsequently, but the parties remained as far apart as ever.

445. On 16 June 2005 Land Registry Head Office wrote to APL saying that the Telford office had referred to it APL's new application to register the CCQ pursuant to the

transfer from the PLA and that it appeared from this that APL's original application could not be sustained and should be withdrawn. On the same day the Office wrote to the PLA asking for its confirmation that it had withdrawn its objection to APL's application.

446. On 21 June 2005 Mr Fleming wrote to Wandsworth in advance of a Planning Applications Committee meeting that day to consider complaints made against Mr Couper and the Trust, saying that APL supported enforcement action and that residents of Albion Riverside were complaining about their activities. In the event the Committee deferred consideration of the complaints until 25 August 2005.

447. On 22 June 2005 Ms Mashiter replied saying that the PLA maintained its objection to APL's original application, but had no objection to the new application.

448. On 23 June 2005 APL wrote to Land Registry Head Office withdrawing APL's original application to register the CCQ. The Land Registry informed Mr Couper and the Trust of this.

449. Also on 23 June 2005 Mr Dillon-Leetch and a colleague carried out a further survey. They found a new anchor and three new ropes, but otherwise few changes since the previous survey.

450. On 24 June 2005 Land Registry Head Office wrote to Mr Couper and the Trust to inform them of APL's application to register the CCQ pursuant to the transfer from the PLA. On 30 June 2005 Telford District Land Registry gave Mr Couper and the Trust formal notice of the application.

451. On 14 July 2005 Mr Couper and the Trust lodged an objection to APL's application running to 29 paragraphs.

452. Also on 14 July 2005 Irwin Mitchell sent a without prejudice letter to HWPEL.

453. On 27 July 2005 Ms Mashiter wrote to Mr Fleming with her comments on Mr Couper and the Trust's objection.

August – December 2005: the PLA contemplates prosecution, Mr Couper objects to APL's contractors

454. On 18 August 2005 Mr Fleming sent Captain Cartlidge and Ms Mashiter an email saying:

> "I gather that a degree of enforcement action is being recommended by Wandsworth Council's development control officer and will be considered at the planning meeting on 25 Aug. Rumour has it that Couper has mustered some support so it would be very useful if the PLA could confirm to the Council before this date its views and its intention to take criminal proceedings."

455. On 25 August 2005 contractors instructed by APL commenced trimming and tidying overgrown vegetation on the CCQ and the adjoining quay. Mr Couper treated this as an attempted eviction. He went to HWPEL's offices at 5 Hester Road to object and

was aggressive and abusive, including making racist remarks. He only left when the building manager threatened to call the police.

456. On 23 September 2005 Mr Fleming sent Ms Mashiter an email in which he asked whether she could "give us an update on the issue of proceedings".

457. On 21 October 2005 Mr Couper and the Trust lodged a planning application for use of the barges as an educational artistic institution and associated works. Part of the application was for the provision of improved access for disabled visitors.

458. On 1 November 2005 Mr Fleming sent Ms Mashiter an email asking whether she could "give me an update on the state of proceedings against Mr Couper and [the Trust]".

459. On 8 December 2005 Mr Fleming sent Ms Mashiter an email in which he asking for an update on "progress re … criminal proceedings against Couper". Ms Mashiter replied the same day saying that Mr Baldwin had found some more information while researching another site and she was awaiting a report, which had delayed things. In the event no proceedings were commenced.

December 2006: the Claimants commence proceedings

460. On 20 December 2006 the Claimants commenced the present proceedings. To begin with, Captain Cartlidge and Ms Mashiter were joined as defendants, but subsequently the claims against them were discontinued. I do not know why the proceedings took about 6½ years to reach trial.

January-August 2007: the PLA applies to register the riverbed in front of Albion Wharf, Mr Couper objects and then files his own application

461. On 22 January 2007 the PLA applied to register title to the riverbed in front of Albion Wharf and west down to Battersea Bridge. In the FR1 form, which signed by Ms Mashiter's assistant Joanne Dowson, the box saying "No disclosable overriding interests" was ticked in section 12. In section 13 the following statement was made:

> "Some owners of house boats have claimed a right to moor to the southern bank of the river at Albion Wharf. As they do not own any land which could benefit from such a right, that right can not exist as an easement or any other legal right."

462. On 17 March 2007 Wandsworth granted Mr Couper and the Trust planning permission.

463. On 27 June 2007 APL wrote to Canon Smith-Cameron, Mr Skeens and Ms Tongue saying:

> "Our solicitors … have sought from … Irwin Mitchell confirmation that the Trust has obtained a Beddoes order. As you may be aware, this is a court order which can protect trustees from being held personally liable for the costs of litigation. Irwin Mitchell have failed to answer this enquiry. We have therefore conclude that no such order has been obtained.

> You are therefore potentially personally liable for the costs of these proceedings, which will be considerable.
>
> We assume you are aware of this potential personal liability, but decided to warn you in case you are unaware of it."

464. As Mr Skeens and Ms Tongue made clear in their evidence, the trustees regarded this letter as an attempt at intimidation.

465. On 2 August 2007 Mr Couper objected to the PLA's application to register the riverbed. Ultimately he withdrew this objection on 7 March 2008.

The 2007 action

466. In July 2007 Mr Couper through Irwin Mitchell started demanding assurances from APL that it would not "interfere" with various items belonging to him on Couper Quay. On 3 August 2005 APL's then solictors gave an undertaking that it would not remove the items without giving seven days' notice. On 3 December 2007 they wrote giving seven days' notice. On 12 December 2007 bailiffs instructed by APL removed a couple of items which were obstructing the Couper Quay. On the same day Mr Couper obtained a without notice interim injunction preventing the removal of further items. He subsequently started a second action claming possession of the Couper Quay. This was subsequently settled by a Tomlin order dated 5 March 2009 on terms that Mr Couper abandoned all claims made by him to Couper Quay and acknowledged APL's ownership of it.

January 2009: Compromise agreement between the Crown and the PLA

467. On 26 January 2009 Her Majesty the Queen, the Crown Estate Commissioners and the PLA entered into a deed of compromise under which the Crown renounced any claim which it might have in the bed, soil and shore of the Thames, and any encroachment, embankment or inclosure thereupon, except the land specified in the agreement. This confirms that the riverbed in front of Albert Wharf belongs to the PLA, whereas the southern half (from mid-channel) of the riverbed in front of Albert Wharf and eastwards past Albert Bridge is owned by the Crown. The Crown also consented to any application by PLA to the Land Registry to register title to any part of the riverbed not owned by the Crown.

May 2009: Mr Couper applies to register the river bed

468. On 26 May 2009 Mr Couper made his own application for registration of the riverbed.

June 2012-June 2013: Mr Couper and the Trust install a new access

469. On 4 June 2012 Canon Smith-Cameron dedicated the Trust's Diamond Jubilee bridge, a new metal bridge to provide access to the boats, on the occasion of the Diamond Jubilee pageant on the Thames. On 10 June 2013 contractors engaged by Mr Couper and the Trust cut away part of the railings on the CCQ and attached the Diamond Jubilee bridge to the CCQ, together with a large wooden door. On 13 June 2013 the contractors installed a wooden staircase and ramp with a handrail against the wall on the landward side (i.e. on the riverside walk). Mr Couper's explanation for these

installations was that they were required as a condition of the planning permission granted by Wandsworth in order to provide improved disabled access. Since the trial, the wooden staircase and ramp have been replaced with concrete ones.

APL's counterclaim that it has title to the CCQ (subject to the Claimants' adverse possession claim)

470. If one looks at the title plan to APL's registered title, one sees a line that apparently excludes the CCQ (and the river wall where the *Atrato* is moored). The description of the property in the property register, however, states that "The boundary of the land in this title where it abuts on the River Thames is the mean high water mark from time to time". APL contends that this means that its title runs along the outer face of the river wall.

471. APL claims title to the CCQ (subject to the Claimants' adverse possession claim) in three alternative ways: first, as successor in title to the previous owners of Albion Wharf ("the Wharf Owners"); secondly, as successor in title to the PLA and the PLA's predecessors ("the River Owners"); and thirdly, based on its own possession, manifested by the grant of licences to moor to the CCQ.

472. The Claimants make no claim to the CCQ otherwise than by adverse possession, but they deny that APL owns it. Counsel for the Claimants said very little about APL's claim in his submissions, but since it remains in issue I must deal with it.

The origins of the river wall

473. As counsel for APL submitted, it is not clear when the river wall was first built, although it was certainly there by 1906 (see paragraph 83 above). Notwithstanding Mr Baldwin's researches, none of the parties before me relied upon the Corporation of London Navigation Committee minutes from 1787-88 as showing the origin of the river wall at this particular location.

474. As counsel for APL submitted, in principle there are five possible origins of the river wall.

475. The first is that that the wall was built just to the south of the boundary of the river, on land belonging to the Wharf Owner for the time being. In that case, it would belong to the Wharf Owners. That would be so whether it was built before or after 29 September 1857 (when the 1857 Act came into force).

476. The second is that the wall was built on land forming part of the river with the licence of the River Owner for the time being, and title was not transferred to the Wharf Owner. In that case, title to the wall would remain with the River Owners. Again, that would be so whether it was built before or after 29 September 1857. So far as the period before 29 September 1857 is concerned, it is worth pointing out that there does not appear to have been any statutory provision corresponding to section 55 of the 1857 Act in place.

477. The third is that the wall was built on land forming part of the river by the Wharf Owner without the licence of the River Owner before 29 September 1857. In that case, the Wharf Owners would have been in adverse possession of the wall, would

have acquired title by virtue of their possession, and would in due course have extinguished the River Owners' title to it under the Real Property Limitation Acts 1833 and 1874.

478. The fourth is that the wall was built on land forming part of the river by the Wharf Owner with the licence of the River Owner on or after 29 September 1857, and vested in the Wharf Owner by virtue of the licence bring endorsed under section 55 of the 1857 Act. There is no evidence there was any such licence, but the possibility that there was one cannot be ruled out.

479. The fifth is that the wall was built on land forming part of the river by the Wharf Owner without the licence of the River Owner on or after 29 September 1857. Section 54 of the 1857 Act made this unlawful, but did not make it a criminal offence. Where an Act of Parliament declares something to be unlawful, but not a criminal offence, it is uncertain whether a person who does that thing can rely on it to found a claim to adverse possession: see the discussion in Jourdan and Radley-Gardner, *Adverse Possession* (2nd ed) §§7-130 to 7-140. If that is possible, then the Wharf Owners would have acquired title to the wall by adverse possession. If that is not possible, it would have remained vested in the River Owners.

480. In considering which of the above alternatives is correct, it is legitimate to consider the evidence available as to possession of the river wall. The court will presume, in the absence of evidence to the contrary, that persons who have long enjoyed the possession of property have title to it. This is one aspect of the general presumption of regularity: see *Halsbury's Laws* volume 12 §1103. As Fletcher Moulton LJ said in *Foster v Warblington UDC* [1906] 1 KB 648 at 679:

> "It is an unquestionable principle of our law that, where there has been long-continued enjoyment of an exclusive character of a right or a property, the law presumes that such enjoyment is rightful, if the property or right is of such a nature that it can have a legal origin".

481. The application of this principle would suggest that the Wharf Owners had title to the CCQ, since the evidence indicates possession of the CCQ by the Wharf Owners, and use of it for their businesses, probably since 1869-74 (the date of the earliest OS map: see paragraph 77 above) and certainly since 1896 (see the next OS map: see paragraph 81 above). It is not necessary to decide whether this is correct, however, for two reasons. First, given that there is no evidence of any transfer to any third category of person, the CCQ must either have belonged to the River Owners or to the Wharf Owners. Either way, APL would have title, in the first case via the PLA and in the second case via its predecessor Wharf Owners. Secondly, and in any event, for the reasons explained below, I consider that APL can deduce title from the Wharf Owners.

APL's claim to title from the Wharf Owners

482. APL relies on the following chain of title:

i) Hazell and others to Raglan dated 9 March 1973 (see paragraph 99 above);

ii) Raglan to Couchmore date 5 October 1979 (see paragraph 107 above);

iii) Couchmore to London & Manchester in 1981-82 (see paragraph 116 above);

iv) London & Manchester to Belmore dated 12 January 1996 (see paragraph 163 above);

v) Belmore to APL dated 20 November 1997 (see paragraph 169 above).

483. APL has not been able to trace its title back beyond the 9 March 1973 transfer, although as noted above the transfer refers to an 1893 conveyance, but there is nothing particularly surprising or unusual about that. Nor does that itself indicate any flaw in APL's title for the reason given above.

484. *The transfer to Raglan*. In 1973 the CCQ formed part of Albion Wharf. As can be seen from the OS maps, the CCQ lay underneath the gantry which protruded out over the river. Albion Wharf was clearly conveyed to Raglan, including the overhanging gantry. The PLA objected to the inclusion in the registered title of the part of the land underneath the overhanging roof (see paragraph 101 above). The area coloured blue on the PLA's plan appeared to include the river wall. This was a mistake, since the PLA made no claim to the river wall, as it made clear in its letter dated 28 February 1977 (see paragraph 104 above).

485. The title plan that the Land Registry created pursuant to the registration of the 1973 transfer is not in evidence, but it is clear from later title plans what happened: the Land Registry transposed onto the title plan the exact line of the blue colouring on the PLA's plan, which gave the impression that the river wall underneath the roof was excluded from the title. No other explanation for the apparent exclusion of the CCQ from the title has been suggested.

486. The function of the red line on a Land Registry filed plan under the Land Registration Act 1925 was to indicate only the general boundaries of the land: see rule 278 of the Land Registration Rules 1925. It left undetermined the exact line of the boundary, "as for instance whether it includes a … wall". The same is true now of a title plan under section 60 of the Land Registration Act 2002. If such a line is inaccurate, the court can order that it be corrected: Schedule 4 paragraph 2(1)(a) to the 2002 Act. Furthermore, the court must do so unless there are exceptional circumstances which justify not doing so: Schedule 4 paragraph 3(3). Such an alteration does not affect the title to the land in question – it merely produces "another general boundary in a more accurate position than the current general boundary": see *Strachey v Ramage* [2008] EWCA Civ 384, [2008] 2 P&CR 8 at [47] (Rimer LJ). I am satisfied that the lines shown on the title plans are inaccurate, and that the true boundary of the land conveyed to Raglan included the CCQ.

487. *The transfer to Couchmore*. The red line on the plan annexed to the transfer from Raglan to Couchmore appears to omit the CCQ, but it was "for identification purposes only". It would make no sense to interpret the transfer plan as excluding Raglan's title to that land. There is no conceivable reason for Raglan to have wished to retain title to that particular stretch of the river wall. The transfer plan was based on the filed plan and similarly indicated only the general boundaries of the land transferred.

488. Under the agreement between Couchmore and Wandsworth (see paragraph 108 above), Couchmore built the concrete balustrade and safety rail on the river wall, including the CCQ, and retained responsibility for the repair of the river wall. The deed of variation dated 2 December 1982 did not affect this.

489. It is clear both from the agreement between Couchmore and Wandsworth and from the leases granted by Couchmore to Majestic, Rainbow and Menzies (see paragraph 114 above) that Couchmore was in possession of the river wall, including the CCQ. This is relevant in two ways. First, it supports APL's case on the interpretation of the transfer to Couchmore. It is legitimate, when considering the precise extent of land which is conveyed to a purchaser by a conveyance, which is unclear or ambiguous, to consider what land the purchaser took possession of: see Lewison, *The Interpretation of Contracts* (5th ed) §11.05.

490. Secondly, it provides an independent basis for APL to assert ownership by Couchmore. Possession of land is both title and evidence of title, giving Couchmore an estate in fee simple good against the world, except as against someone with a better title: see *Adverse Possession* §§20-16 to 20-26.

491. *The transfer to London & Manchester*. After the transfer from Couchmore to London & Manchester, it is again clear from the agreement between London & Manchester and Wandsworth that London & Manchester was in possession of the river wall, including the CCQ (see paragraph 135 above). Furthermore, London & Manchester treated Mr Couper as a trespasser when he moored boats to the CCQ and insisted that he enter into the licence dated 27 November 1992 (see paragraphs 137 and 150 above). This is another clear indication that London & Manchester was in possession of the river wall as part of its title to Albion Wharf. It is also relied upon by APL to found an estoppel (as to which, see below).

492. *The transfer to Belmore*. After the transfer from London & Manchester Belmore adopted the London & Manchester licence granted to Mr Couper and Belmore granted a licence to Mr Ashmore to moor to the river wall (see paragraphs 166-167 above). Those were again clear acts of possession by Belmore.

493. *The transfer to APL*. Following the transfer from Belmore to APL, APL granted new licences to Mr Couper and Mr Ashmore (see paragraphs 171 and 189 above). Again, these are clear acts of possession by APL. Again, APL also relies on the licence to Mr Couper as founding an estoppel.

494. *Conclusion*. For about 28 years, from 1973 to 2001, the successive owners of Albion Wharf were in peaceful and undisputed possession of the river wall, including the CCQ, and were treated by everybody, including the Claimants, as the owners of it. The only reason that the Claimants now dispute this is because of the error made by the Land Registry in 1973, when it drew the file plan in a way which suggested that the CCQ was omitted. It is clear that this was simply a mistake, and should be corrected under Schedule 4 of the 2002 Act. In any event, the successive possession of the CCQ by Couchmore, London & Manchester, Belmore and APL constitutes both title and evidence of title. Subject to the Claimants' adverse possession claim, there is no one with a better title.

APL's claim to title from the River Owners

495. It is common ground that (subject to the Claimants' claim for adverse possession) title to the riverbed in front of Albion Wharf devolved from the Crown to the Thames Conservators to the PLA. Even if, contrary to the conclusion I have reached, the CCQ was owned by the River Owners, the PLA transferred its title to APL on 27 April 2005 (see paragraph 432 above). Counsel for the Claimants sought to rely upon Ms Mashiter's admission that she did not think that the PLA would have succeeded in an application for registration and the nominal consideration as in some way casting doubt on the validity of this transfer. But there was some doubt about the position at the time, and both parties had perfectly legitimate reasons for entering into the transaction. As Ms Mashiter explained, and is confirmed by the contemporaneous documents, the PLA wished to divest itself of a potential liability to maintain the river wall, and APL wished to improve the security of its title. There can be no suggestion that the PLA did not have power to enter into the transaction, or that it can be impugned on any other grounds.

Estoppel due to the 1992 and 1997 licences

496. APL also contends that, even if it cannot positively establish title to the CCQ, the Claimants are estopped from denying that title by virtue of the licences dated 27 November 1992 and 16 December 1997.

497. It is well established that a licensee is estopped from denying his licensor's title: see *Terunnanse v Terunnanse* [1968] AC 1086. As Lord Devlin made clear at 1093G-1094A, the estoppel relates to the title claimed by the licensor, not to the title he actually has. It follows that anyone accepting a licence is estopped from denying the title of the licensor to grant the licence, and that the licensee then occupies on behalf of the licensor: see *Sze v Kung* [1997] 1 WLR 1232 at 1235C-E (Lord Hoffmann). It is clear from those authorities that the issue of whether there is an estoppel, and if so, the extent of it, is to be determined objectively.

498. The Claimants contend that Mr Couper knew, when he signed the 1992 licence, that the red line on London & Manchester's title plan excluded the CCQ. Even if correct, this is irrelevant for the reason I have just given. In any event, however, I do not accept it. In his evidence Mr Couper relied on Dawsons' letter dated 13 September 1993 billing Mr Couper for the dated 5 July 1993 (see paragraph 158 above) as supporting this claim. That is over six months after the 1992 licence. Furthermore, the search was exhibited by Mr Couper to a statutory declaration relating to Plot D (Couper's Quay), in which he correctly said that it showed that Couper's Quay was unregistered, not that the CCQ was unregistered. Mr Couper's letter to Councillor Graham of 20 March 1998 (see paragraph 180 above) makes it clear that he had then only recently discovered that the CCQ lay outside the red line on the title plan.

499. Considered objectively, the position is as follows. The background to the 1992 licence was that, since November 1987, Mr Couper had had ropes mooring his boats to the CCQ. In their letter dated 5 June 1992 (see paragraph 137 above), London & Manchester complained that this was a trespass to the land to which the boats were moored. As a consequence, Mr Couper agreed to take a licence. Read against that background, the licence plainly granted Mr Couper permission to moor the three boats where they were then moored.

500. The Claimants point out that the licence did not have a plan and simply granted permission to moor "in a position to be approved by the Owner". They contend that this wording is uncertain. It is clear from the cover sheet and Mr Couper's address, however, that the licence related to Albion Wharf. Furthermore, it is clear from the circumstances that London & Manchester approved the mooring of the boats in the position in which they were already moored. Yet further, clause 2(8) and 3(b) of the licence support that interpretation. Indeed, when I asked counsel for the Claimants during his closing speech whether it was his submission that I should construe the licence as a licence to moor otherwise than in the position where they were in fact moored during this period, he replied no.

501. The position with regard to the 1997 licence is essentially the same.

502. Accordingly, I conclude that Mr Couper is estopped from denying APL's title. As Mr Couper's successor in title, the Trust is in no better position.

The Claimants' claim for adverse possession of the CCQ

The law

503. In relation to unregistered land, time will run in favour of a squatter under section 15 and Schedule 1 of the Limitation Act 1980 if he is in possession without the owner's permission, and after 12 years the owner's title will be extinguished under section 17. In relation to registered land, the 12 years must end no later than 13 October 2001, 12 years before section 96 of the Land Registration Act 2002 came into force.

504. There are two elements necessary for legal possession by a squatter: factual possession, and the intention to possess: see *JA Pye (Oxford) Ltd v Graham* [2003] UKHL 30, [2003] 1 AC 419 approving the decision of Slade J in *Powell v McFarlane* (1977) 38 P & CR 452.

505. Factual possession requires a sufficient degree of physical custody and control. It must be a single and exclusive possession, so that if a squatter shares control of the disputed land with others, he will not be in possession. The squatter must deal with the land as an occupying owner might have been expected to deal with it and no-one else must do so: see *Powell* at 477-8, *Pye* at [41].

506. The intention to possess is the "intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow": see *Pye* at [43] (Lord Browne-Wilkinson). The intention to possess must be made manifest by the possessor's actions and is normally inferred from the possessor's actions. If it is unclear whether the squatter has demonstrated the intention to possess, rather than merely intending to make use of the disputed land without exercising exclusive control, his claim will fail. If his acts are open to more than one interpretation and he has not made it perfectly clear to the world at large by his actions or words that he has intended to exercise exclusive control as best he can, he will be treated as not having had the requisite intention. Clear and affirmative evidence is required to prove that the squatter, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world: see *Powell* at 472 and 476.

507. The distinction between the exclusive control which is essential to possession, and simply using land, without controlling it, which can constitute an easement, was emphasised by Lord Scott in *Moncrieff v Jaimeson* [2007] 1 WLR 2620 at [55]. As Lord Scott said, a right to store things can be an easement: see, for example, *Wright v Macadam* [1949] 2 KB 744 at 752 (Jenkins LJ). So can a right to moor boats (as to which, see below). A person with the benefit of an easement over land is entitled to do works to the land to the extent needed to enable him to enjoy his easement such as maintenance and repair: see *Gale on Easements* (19th ed) §1-91. A person who exercises exclusive control over land, but does so in the assertion of an easement, does not have the necessary intention to possess: see *Convey v Regan* [1952] 1 IR 56 at 59-61 (Black J), *George Wimpey & Co Ltd v Sohn* [1967] Ch 487 at 506E-509A (Harman LJ) and 510G-511F (Russell LJ) and *William Sindall plc v Cambridgeshire County Council* [1994] 1 WLR 1016 at 1024F-H (Hoffmann LJ).

508. As the term "adverse possession" implies, it is clear from the authorities that it is essential that the claimant's occupation was without the consent of the owner of the paper title.

The claim

509. The claim form was issued on 20 December 2006, and APL's counterclaim for possession is treated as having been issued then: see section 35 of the Limitation Act 1980. Thus, if the CCQ is treated as unregistered land, the Claimants would have to prove that they were in adverse possession for a continuous period of 12 years starting no later than 20 December 1994. If the CCQ is treated as registered land, then the 12 years would have to have started no later than 13 October 1991. If my conclusion above with regard to APL's title is correct, the second period is the applicable one.

510. The Claimants' pleaded case is that Mr Couper took possession of the northern half of the CCQ in 1983 and took possession of the whole of it in 1985. The acts relied on are storage, large-scale artistic fabrication, servicing his barges, depositing refuse for collection, and maintenance.

Factual possession

511. Some uses of the CCQ are not in issue:

i) It was used by Mr Couper for mooring boats to from November 1987 on.

ii) From about July 1999 onwards, maintenance works were done to the wall by young offenders. But this is irrelevant as it post-dates the relevant date.

iii) From April 2002 onwards, Mr Couper and the Trust made ever increasing use of it, culminating in laying the new access onto it in June 2013. Again, this long post-dates the relevant date.

512. Counsel for APL submitted that that the evidence showed that neither Mr Couper nor the Trust had made any significant use of the CCQ prior to April 2002, except for mooring. I agree with this. The evidence may be summarised as follows.

513. *Photographic evidence*. The photographs from February 1986 and 1994 (see paragraphs 128 and 159-160 above) show nothing on the CCQ. The photographs from 19 June 1998, 7 July 2001 and 1 November 2001 (see paragraphs 188, 238 and 246 above) show little or nothing on the wall, certainly nothing that could amount to possession of the wall.

514. *APL's evidence*. Mr Orbell gave unchallenged evidence that the only use that he saw Mr Couper making of the CCQ prior to April 2002 was to moor his boats. Mr Beynon gave similar evidence. When it was put to him that he might not have noticed things stored on the wall, Mr Beynon firmly disagreed with that suggestion. Mr Beynon's recollection is corroborated by Ms Roderick's letter dated 25 April 2002 (see paragraph 289 above).

515. *The Claimant' evidence*. The pleaded two-stage possession claim was wholly unsupported by the evidence. Mr Wilder did support it in a statutory declaration which he said in his witness statement was true. In cross-examination, however, he said he had no memory of the use of the wall being commenced in two stages or at any particular time.

516. Mr Lovegrove was unable to remember anything relevant. Mrs Lovegrove could not remember Mr Couper using the CCQ for anything other than to tie up the boats. Mr Skeens, who went to the site for the first time in 1988, said he remembered things being stored on the wall in front of the boats, not on the CCQ. That just leaves the evidence of Mr Couper and Mr Wilder.

517. Mr Couper claimed that he started using the CCQ for storage in 1981. That is deeply implausible for a number of reasons. In particular, Couchmore was undertaking works there at that time. Furthermore, as I have said, the evidence indicates that Mr Couper did not moor the *Hope* at Albion Wharf until May 1985. Even when he did, it is implausible that he would have used the CCQ, which lay somewhat to the west, for storage.

518. Mr Wilder's evidence was both internally inconsistent and inconsistent with Mr Couper's in respects. Not only did he have difficulty in remembering dates, but also such memory as he did have was unreliable, as shown for example by his recollection that the re-development by Couchmore was several years after 1980. In any event, although he maintained that materials were stored on the river wall in the early 1980s, he was not sure whether this was on Albert Wharf or Albion Wharf.

519. *Conclusion*. I conclude that Mr Couper and the Trust made no significant use of the CCQ for anything other than mooring to prior to April 2002, and certainly not prior to 20 December 1994. Even if some use was made for storage, it was slight and intermittent.

Intention to possess

520. Counsel for APL submitted that it was clear from the evidence that, until January 2002, when they applied to register title to the CCQ based on adverse possession, Mr Couper and the Trust did not have, and certainly did not manifest, the intention to possess the CCQ. I agree.

521. Mr Orbell said in his witness statement that in 1998 Mr Couper had made no suggestion that he was in possession of any part of the river wall or had any right to possession of it: "his claim made at that time, as I understood it, was that he owned part of the river bed with a right of access over the river wall, and I understood from our conversations … that he regarded the river wall itself as owned by [APL]". Mr Orbell was not challenged on that evidence.

522. Furthermore, the documentary evidence from 1998-1999 makes it clear that Mr Orbell's impression of Mr Couper's state of mind was correct and that the Trust shared it: see in particular the documents dated 12 February 1998, 20 February 1998, 9 March 1998, 23 March 1998, 6 April 1998 and 4 January 1999 (paragraphs 173, 177, 181, 182 and 197 above). As the documents show, Mr Couper and the Trust recognised APL's title to Albion Wharf, but asserted that they had "ancient mooring rights" and a right of way over Plot A.

523. Accordingly, I conclude that neither Mr Couper nor the Trust had any intention to possess the CCQ until January 2002.

Conclusion

524. I conclude that the Claimants' claim to adverse possession of the CCQ is not made out.

APL's counterclaim for nuisance

525. Whatever may be the position regarding the CCQ, it is common ground that APL owns the part of the river wall forming part of APL's registered title to the east of the CCQ, up to and including Plot A. It is indisputable that the permanent mooring of the Claimants' boats and pontoons prevents APL from gaining access to the river from that part of the river wall. APL contends that this amounts to both private nuisance and public nuisance actionable at the suit of APL.

Private nuisance

526. The Thames is subject to the private right of all riparian owners to free access to and from the water in contact with their frontage: see *Halsbury's Laws* volume 101 §81, 82, 84, and 103 and *Lyon v Fishmongers' Company* (1876) 1 App Cas 662 at 670-676 (Lord Cairns LC). This right is different to the public right of navigation: see *Lyon* at 675, citing with approval *Attorney-General v Thames Conservators* (1862) 71 ER 1 at 14-15 (Page Wood V-C, later Lord Hatherley LC, which is why he was referred to by that name by his successor Lord Cairns).

527. Because this is a private proprietary right, it is unnecessary to prove special damage if the right is interfered with: see *Nicholls v Ely Beet Sugar Factory Ltd* [1936] 1 Ch 343 at 348-50 (Lord Wright MR). If someone uses my land without my permission, I can sue even though I made no use of the land myself and had no wish to do so. The measure of damages is the price which would be agreed in a hypothetical negotiation between two reasonable persons for the use of the land. The gist of the action is the interference with my proprietary right, not whether the interference causes me special damage. The same is equally true of an interference with an easement – obstruction of

a right to light by building, for example. The same principle applies in cases of infringement of intellectual property rights.

528. Counsel for the Claimants had no answer to this claim. I conclude that the Claimants are liable to APL for private nuisance.

Public nuisance

529. The Thames is a navigable river, and is therefore subject to a public right of navigation. This right extends over the whole of the river: see Lord Denman CJ in *Williams v Wilcox* (1838) 112 ER 857 at 862 ("all and every part of the channel"), Fletcher Moulton LJ in *Denaby and Cadeby Main Collieries v Anson* [1911] 1 KB 171at 199 ("any portion") and 205 ("the whole space afforded by the river") and Lord Templeman in *Tate & Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509 at 537B ("the whole width and depth of water in the river Thames"). In *Williams v Wilcox* Lord Denman said that there was a close analogy between the right of free passage on a navigable river and the right of a free passage on a highway on land.

530. The public, including the Claimants, are entitled, as part of the public right of navigation, to moor vessels to the bed of the Thames temporarily from time to time in the ordinary course of navigation: see *Halsbury's Laws* volume 101 §§72, 688-691. On the other hand, the Claimants are not entitled, in pursuance of the public right of navigation, to obstruct the river: see *Halsbury's Laws* volume 101 §692.

531. With highways on land, any permanent obstruction is a nuisance: see *East Hertfordshire District Council v Isabel Hospice Trading Ltd* [2001] JPL 597 (Jack Beatson QC sitting as a Deputy High Court Judge, as he then was) at [15]. The position as to the obstruction of a navigable river appears to be a little more relaxed, but not much. In *Attorney-General v Terry* (1874) 9 Ch App 423, a case about the construction of a platform on piles in the River Stour, Lord Cairns LC said at 431:

> "It was argued before us that this was no real obstruction, and that therefore the Court should not interfere; but this appears to me to be exactly one of those cases in which the obstruction should be at the outset be challenged by those who are conservators of the river. If three feet be taken at one time unchallenged, then six feet might be taken at another time. I cannot say that there might not be an encroachment of so trifling a nature that this Court would not interfere, but a subtraction of three feet from sixty feet is a tangible and substantial interference with the navigation, and is a subtraction which ought to be challenged, and which ought to be restrained by this Court."

532. In *Denaby and Cadeby* Fletcher Moulton LJ said at 206 that erections on the bed of a river can be justified if they improve the navigation of the river e.g. "a groyne which prevents the silting up of a useful channel or the erection of a pier which gives shelter in rough weather which may benefit and not injure navigation".

533. In *Crown Estate Commissioners v Fairlie Yacht Slip Ltd* [1979] SC 156 at 178 Emslie LP said:

> "The true view appears to me to be that the right of navigation is not to be regarded as a right to sail in every square inch of the surface of the sea or to use for casting anchor every square inch of the sea-bed. The public right is undoubtedly wide but it should not be regarded as having been infringed save in circumstances in which what is done … constitutes or is likely to constitute a material interference with its exercise by members of the public exercising their right reasonably."

This statement was made with regard to the sea, but would appear to be equally applicable to a river.

534. Counsel for the Claimants submitted that (i) the test to be applied was whether the Claimants' use of the river was reasonable and (ii) Wandsworth's grant of planning permission demonstrated that it was reasonable. I do not accept either of these submissions.

535. In support of the first submission, counsel for the Claimants relied on *Original Hartlepool Collieries Co v Gibb* (1877) 5 Ch D 713. In that case the plaintiffs were coal merchants who occupied a wharf on the Thames with a frontage of 125 feet. On the west side of the plaintiffs' wharf was a wharf occupied by the defendant. On the east side was a public landing place projecting into the river which prevented any vessel lying alongside the plaintiffs' wharf from overlapping on that side. In the ordinary course of their business, the plaintiffs periodically unloaded coal from a steam collier 175 feet long onto their wharf. Because it could not overlap on the east side, the collier had to overlap the defendant's wharf. The defendant had moored a large wooden roof at the extremity of his wharf next to the plaintiffs' wharf which prevented the plaintiffs from bringing the collier alongside their wharf. The plaintiffs brought a claim for public nuisance. The defendant counterclaimed that the plaintiffs' collier obstructed access to his wharf while it was moored by the plaintiffs' wharf. The defendant did not use his wharf as a wharf, however, but as a kind of dry dock for repairing vessels. The case was heard by the Master of the Rolls sitting at first instance in the Chancery Division.

536. It was in this context that Sir George Jessel MR began his judgment at 720 by asking himself whether the *plaintiffs* were navigating the Thames "in a reasonable manner and for reasonable purposes". He said that delivering coal to a wharf where it had been delivered for 23 years or more was perfectly reasonable, and it did not matter that the plaintiffs' vessel temporarily overlapped the defendant's wharf when it was delivering coal. As he put it at 721, the plaintiffs had "a reasonable right of stopping". But he went on to say that what was reasonable depended on the circumstances:

> "It would clearly be reasonable, for instances, if a wheel came off an omnibus in the middle of the highway, for a blacksmith to be sent for to put the wheel on the omnibus … and the omnibus might lawfully stop there until the wheel was put on … Nobody would deny that if the blacksmith chose to carry on his trade of repairing omnibuses immediately opposite his own house, and for that purpose, not keeping any one omnibus more than a reasonable time for his work, he kept omnibuses

> opposite his house or shop … for that purpose, that would be an obstruction of the highway, and would be a nuisance."

537. It can be seen that Jessel MR was distinguishing between exercising the pubic right of free passage, which includes reasonable stopping, on the one hand, and obstruction of the highway or river on the other hand.

538. He then held at 722-724 that in the instant case the reasonableness of the plaintiffs' user depended on what use the defendant was making of his wharf. If the defendant had been using his wharf for carrying on the business of a wharfinger, with vessels coming and going regularly, the plaintiffs would have had no right to impede his access. But in fact the defendant only required access to his wharf for 2½ -3 hours a day on 100 days of the year. The rest of the time he did not require access and so there could be no objection to the presence of the plaintiffs' collier. If the plaintiffs' collier was in the way when the defendant required access, the defendant was entitled to demand that it be moved out of the way. But what the defendant had done was to put an obstruction in the river which prevented the collier from getting to her berth at all. That was clearly an illegal obstruction of the public highway. Accordingly, he upheld the plaintiffs' claim and dismissed the defendant's counterclaim.

539. The conclusion which I draw from the authorities is that it is necessary to distinguish between the exercise of the public right of navigation, which includes a reasonable right to stop and moor temporarily, and obstruction of the river. If there is a permanent and material interference with navigation on the river, that amounts to obstruction and a public nuisance.

540. As for counsel's second submission, even if the test were one of reasonableness, I do not accept that Wandsworth's grant of planning permission is proof, or even evidence, of reasonableness. In considering whether to grant planning permission, Wandsworth was exercising its powers and duties as a planning authority and only as a planning authority. Its remit did not extend to considering the impact of the Claimants' boats and pontoons on the public right of navigation.

541. Counsel for the Claimants also argued that it was a question of fact as to whether there was an obstruction amounting to a public nuisance, relying on *Attorney-General v Burridge* (1822) 147 ER 335 and *Crown v Fairlie*. That I accept. He went on to argue that, in order to establish this, it was necessary for APL to adduce evidence that the boats and pontoons were obstructing the river, such as complaints by other river users. He pointed out that there was no such evidence before the court, and therefore submitted that nuisance was not established. I have, however, had the advantage of viewing the site for myself. The Claimants' installation presently comprises 10 boats arranged in two columns and connected by a series of pontoons. It is on any view a substantial installation. As counsel for APL submitted, by no stretch of the English language could the extent to which the installation encroaches on the river be described as "trifling". It is manifest from inspection that the installation prevents navigation both across the river and along the river over the area which it occupies. No further evidence is required. It cannot be argued that the installation benefits navigation of the river.

542. I therefore conclude that the permanent mooring of the Claimants' boats and pontoons at Albion Wharf constitutes a public nuisance. Furthermore, they obstruct the free

access of APL from its riparian land on to the Thames, and so are causing special damage to APL. Albion can, therefore, claim in respect of that public nuisance: see *Tate & Lyle v GLC*. It is no defence that the obstruction may be of benefit to the public generally: see *Halsbury's Laws* volume 101 §698.

The effect of a licence from the PLA, were one to be granted

543. It was not possible for the Crown acting in pursuance of its rights as landowner or under the Royal prerogative to obstruct, or to grant to someone else the right to obstruct, the public right of navigation; that could only be done by legislation: see *Williams v Wilcox* at 862-864 (Lord Denman CJ). The 1857 Act authorised the Thames Conservators to permit obstructions: see *Attorney-General v Thames Conservators* at 11-12. That power is now vested in the PLA under section 66(1) of the 1968 Act. If the PLA were to grant such a licence, it would authorise interference with the public right of navigation, and hence be a defence to the claim for public nuisance, but it would not authorise interference with the private rights of the riparian land owner: see *Lyon v Fishmongers* at 680-681 (Lord Chelmsford) and *Tate & Lyle v GLC* at 533G-534C (Lord Templeman).

544. Counsel for the PLA informed me that, in the light of these authorities, it had long been the PLA's understanding of the law that, if the PLA were to grant a licence to carry out works (such as moorings) which interfered with the riparian owner's private rights, then the PLA itself would be liable in nuisance. That is why the PLA declined to grant the Claimants a licence unless the Claimants obtain a licence from the riparian owner, whoever that might be. That view of the law might well be correct if the licence purported to grant the licensee an unqualified right to act in a manner which interfered with the riparian owner's rights. I venture to suggest, however, that it would be different if the PLA granted a licence which was conditional upon the licensee obtaining the consent of the riparian owner: compare *Grower v British Broadcasting Corp* [1990] FSR 595. In this regard, I note that it was Ms Mashiter's evidence that, from the end of June 2003 onwards, the PLA was prepared to grant a licence on precisely that basis, as evidenced by Captain Cartlidge's paper for the Licensing Committee on 30 June 2003 (see paragraph 355 above).

545. As it is, however, the Claimants have not applied for, and the PLA has not granted, a licence authorising the mooring of the Claimants' boats and pontoons. Thus the Claimants cannot rely upon such a licence as an answer to the claim for public nuisance, let alone private nuisance.

<u>The Claimants' claim to "ancient mooring rights"</u>

546. I have not found it easy to understand precisely how the Claimants put their claim to "ancient mooring rights". As I understand it, however, there are three strands to the claim. First, the Claimants say that prior to 29 September 1857 the Crown could and did grant private rights to moor in the River Thames. These rights were franchises. They were preserved by section 179 of the 1857 Act and by section 63(1) of the 1968 Act. The Claimants admit that there is no evidence of any grant of a right to moor at Albion Wharf, but they rely upon the doctrine of "lost modern grant". If I understand it correctly, the Claimants invoke this doctrine primarily by relying upon evidence of mooring prior to 1857 and in the alternative by relying on evidence of mooring in modern times. The Claimants contend that it is not necessary for this purpose for them

to show that mooring chains have survived since before 1857. Secondly, the Claimants contend that the anchors which they use were placed in the Thames before 1857, so as to fall within section 63(1) of the 1968 Act. The Claimants admit that they have replaced at least some of the chains (as distinct from anchors) which they use since 1985, but say that this is immaterial. Thirdly, the Claimants rely on the transfer from Mr Boyd, and contend that he should be presumed to have had the title he conveyed. As will appear, these strands, and the Defendants' responses to them, are somewhat intertwined.

Legal basis of the right to moor in a tidal river

547. As counsel for the PLA submitted, it is important to begin by considering the legal basis for a right to moor in a tidal river such as the Thames. The public have a right to moor which is incidental to the right of navigation. This is not a right to moor permanently. Accordingly, the Claimants cannot, and do not, claim to be moored at Albion Wharf pursuant to a public right to moor.

548. A riparian owner may have a private right to moor permanently on a river by his riparian land. The nature of this right is an easement: see *Lancaster v Eve* (1859) 141 ER 288 at 292-293 (Cockburn CJ, Williams and Crowder JJ) and *P & S Platt Ltd v Crouch* [2004] EWCA Civ 1110, [2004] 1 P&CR 242 at [43] (Peter Gibson LJ). As can be seen from *Lancaster v Eve*, such an easement may be granted by the Crown.

549. An essential feature of an easement is that it accommodates dominant land. The owner of an easement cannot simply divest himself of his easement, independently of his dominant land. That would be the purported grant or transfer of a so-called "easement in gross". In English law, there is no such thing: see *Gale on Easements* (19th ed) §§1.08-1.09.

550. In this case the Claimants are claiming a private right to moor independently of the riparian land. Counsel for the PLA submitted, and I agree, that the only way they can claim such a right is to claim a franchise i.e. a grant by the Crown of a private right to moor in a tidal river owned by the Crown to someone other than the owner of the riparian land. A franchise is a different legal right to an easement granted by the Crown. It is still more different to an easement granted by a riparian owner other than the Crown.

Franchises to moor

551. A franchise is a grant out of the Royal prerogative, typically something giving rise to an income stream: see Megarry & Wade, *The Law of Real Property* (8th ed) §31.013. Formerly, there were many kinds of franchises, such as fairs, markets, free fisheries and patents. Another example is a right of ferry (i.e. the right to charge third parties for transportation across the river): see *Earl of Dysart v Hammerton* [1914] 1 Ch 822.

552. A number of points are common ground. First, the Crown could and did grant franchises of mooring on the Thames. Shaw's *Calendar of Treasury Books 1681-1685* volume VII (1916) records the grant on 15 April 1681 to the Earl of Dorset and Middlesex for 99 years of "all the chains placed in the river of Thames between the place called Bugby's Hole and London Bridge, whereunto ships riding in the said river were usually meered or fastened, with all fess or profits due or payable for the

meering or fastening of ships thereto". This right was later acquired by Hannah Bailey, who by her will left the income to charity. In a case about the will, *Negus v Coulter* (1759) 27 ER 244, Sir Thomas Clarke MR said "This is clearly a franchise". It appears the franchise was subsequently acquired by Lord Gwydir, who then obtained a new grant, but was bought out under the 1799 Act. (Contrary to what Mr Baldwin appears to have supposed, however, *Ex parte Lord Gwydir* (1819) 4 Mad 281 did not concern this franchise.)

553. Secondly, unlike an easement, a franchise may exist independently of dominant land.

554. Thirdly, a franchise to moor exists independently of the physical chains or anchors which may be in place at any give time.

555. Fourthly, a franchise is an incorporeal hereditament which can only be conveyed by deed.

556. Fifthly, the doctrine of "lost modern grant" applies to incorporeal hereditaments, including franchises to moor: see *Attorney-General v Wright* [1897] 2 QB 318.

557. Sixthly, a franchise affecting unregistered land is a legal interest which binds the whole world, including a squatter, both during the limitation period and after its expiry.

558. The Claimants contend that section 179 of the 1857 Act preserved any franchises to moor on the Thames granted by the Crown prior to 29 September 1857. Although counsel for the PLA suggested that section 179 only preserved franchises appurtenant to riparian land, this was not strongly argued. Given that the rubric to section 179 reads "General Saving of Rights", I am disinclined to construe it so narrowly. The Claimants also contend that such franchises have been preserved by section 63 of the 1968 Act. I shall address that contention below.

559. The Claimants admit that there is no evidence of the Crown having granted a franchise to moor at Albion Wharf. On the contrary, as noted above, neither the list drawn up pursuant to clause 7 of the 1856 agreement, nor the list of grants in 1897, identifies any mooring chains in this location. Instead, the Claimants invite the court to infer a Crown franchise under the doctrine of lost modern grant. They also rely upon section 63(1) of the 1968 Act and the transfer from Mr Boyd in 1993.

Lost modern grant (prescription)

560. Proof of the enjoyment of an easement or an incorporeal hereditament for an uninterrupted period of 20 years or more as of right, that is say, without permission, contention or secrecy, gives rise to a presumption that a grant of the right has been made: see Megarry & Wade §§28-043, 28-048 to 28-052. This is a legal fiction which cannot be displaced by direct or circumstantial evidence that no such grant was made, although it can be displaced by showing that there was no grantor with the capacity to have made such a grant: see *Tehiddy Minerals Ltd v Norman* [1971] 2 QB 528 at 552A-B (Buckley LJ).

561. As noted above, I understand the Claimants to put their case on lost modern grant in two ways, which I will consider separately.

562. *Based on evidence of mooring prior to 29 September 1857*. The Claimants rely upon the pictorial evidence described above (see paragraphs 63-70). In my judgment, there are three fundamental problems with this evidence. First, it is not clear from the evidence that boats were moored at Albion Wharf, and in particular at the precise location where the Claimants' boats and pontoons are moored now. Secondly, it is not clear from this evidence how any boats moored in this location were moored, and in particular whether they were moored to chains anchored in the riverbed or to the quayside or both. Thirdly and most fundamentally, there is no evidence whatsoever that the mooring took place independently of the riparian land even if the mooring was to chains anchored in the riverbed. It does appear from the pictorial evidence that there was some industrial activity in this general area prior to 29 September 1857. It is probable that this will have involved the owners of the riparian land mooring boats by their land to load and unload timber, iron and other cargoes. But that would support the existence of an easement, not a franchise.

563. Counsel for the Claimants sought to meet the third point by contending that, if a franchise to moor on the foreshore had been granted to the owner of one of the wharves before 1857, it could subsequently have been transferred to someone who did not own any of the riparian land (such as Mr Boyd, not that there is any evidence of such a transfer). In support of this contention, counsel for the Claimants relied on *Earl Beauchamp v Winn* (1873) 6 LR HL 223. Counsel for APL pointed out that that case concerned a profit à prendre (a right to go on to someone else's land and take profitable things away from it such as gravel, turf, fish or, in that case, rabbits). I do not think that this in itself detracts from the Claimants' argument. Profits à prendre and franchises are both incorporeal hereditaments, and both can exist independently of dominant land i.e. "in gross". Accordingly, if a franchise of mooring had been granted to a riparian owner, it would have been legally possible for it to have been transferred to a non-riparian owner.

564. The real question is whether the court should infer a franchise of mooring, as opposed to an easement of mooring, in the first place. As to that, I agree with counsel for the Defendants that the Claimants cannot claim the right they claim on the basis of use of the foreshore for mooring by the wharf owners in connection with the use of the wharves unless the court is prepared to ascribe the use of the foreshore to a severable franchise rather than a non-severable easement. As I have said, there is no evidence to support such an inference. On the contrary, the use of any mooring chains by the owners and occupiers of the quayside (or with their permission) is by far the most natural inference.

565. *Based on evidence of mooring in modern times*. The cartographical evidence shows the existence of a mooring chain in front of Phillips Mills' premises in 1894-96 and mooring piles in the same vicinity in 1936/37. The latter was certainly PLA-approved, and it seems likely that the former was as well. None of the maps and charts shows any mooring chains in the relevant location at any time prior to Mr Couper's arrival. Given that chains are shown elsewhere, this is evidence that there weren't any here. There is photographic evidence of boats mooring by Albion Wharf in the period 1945-55, but it is unclear how they were moored. In any event, the evidence does not support the inference of a franchise, as opposed to an easement.

566. Nor does the evidence of the Claimants' witnesses. Mr Couper gave no such evidence. His evidence about Mr Boyd's activities does not support the inference of a

franchise, and in any event relates to Albert Wharf. Mrs Lovegrove's evidence did not even go that far. Mr Fergusson gave evidence that in the later 1950s and 1960s a Max Seagrave moored up to half a dozen barges by Ransome's Dock using chains on the foreshore. His evidence does not show that Mr Seagrave moored boats by Albion Wharf, as opposed to Albert Wharf. Nor does it show that Mr Seagrave had no interest in the riparian land. As for Mr Boyd, Mr Fergusson said that he was aware of Mr Boyd using the same moorings after Mr Seagrave, but he did not know Mr Boyd personally. Again, this does not assist the Claimants.

567. Accordingly, I conclude that the Claimants' claim to a franchise based on prescription is not made out.

Section 63(1)

568. The Claimants rely upon section 63(1) of the 1968 Act both offensively (as supporting their claim to mooring rights) and defensively (as an answer to the PLA's counterclaim). I shall deal with the latter aspect below. So far as the former aspect is concerned, I found it very difficult to understand from the submissions of counsel for the Claimants precisely how the Claimants rely on section 63(1) and how this relates to their prescriptive claim. I think, however, that the Claimants rely upon it in two ways, as indicated above.

569. First, the Claimants contend that section 63(1) preserves franchises to moor granted prior to 29 September 1857. As counsel for the Claimants accepted, it does not state this in terms. It does, however, exempt pre-1857 mooring chains from the licensing requirement (which was first introduced by section 91 of the 1857 Act). Furthermore, the 1968 Act contains no counterpart to section 179 of the 1857 Act, nor does it contain anything which extinguishes any pre-existing franchise.

570. So far as this point is concerned, if the Crown had granted a franchise in respect of a particular mooring chain placed in the river prior to 29 September 1857, then I am prepared to accept that, by necessary implication, section 63(1) would preserve that proprietary right as well as exempting the chain from the requirement of being licensed.

571. Secondly, the Claimants rely on section 63(1) as reinforcing their prescriptive claim to a franchise. In short, the Claimants say that (i) the anchors they use must have been present in the riverbed since prior to 29 September 1857 and (ii) this lends support to the claim that the moorings have been openly used for over 20 years.

572. I do not accept either limb of this contention. As to (i), I do not accept that the anchors have been in the riverbed since 1857 for the reasons explained below. As to (ii), it would not assist the Claimants to show that the anchors had been present since 1857 without evidence that they had been used for mooring. I have already dealt with the evidence of mooring, or lack of it.

The transfer from Mr Boyd

573. By the deed dated 19 March 1993 Mr Boyd transferred to Mr Couper the right of mooring to and ownership of the "Victorian ground-moorings and associated historical berthage … as shown marked on the attached plan, and the associated

chains, cables and anchor tackle" (see paragraphs 156-157 above). No covenant for title was given.

574. The deed does not recite any prior documentary title. Nor is there any evidence that Mr Boyd ever produced any transfer to Mr Boyd of the rights. On the contrary, it appears from Ms Mashiter's note of the meeting on 27 February 2002 (see paragraph 283 above) that Mr Couper admitted to her that Mr Boyd had not produced any documents. It therefore seems clear that Mr Boyd did not claim that he had bought the moorings from someone else who had title to them.

575. The Claimants rely on the presumption that "where a person had dealt in land by conveying an interest in it to another person there is a presumption, unless the contrary is proved, that he was entitled to the estate in the land he purported to convey": see *Ocean Estates Ltd v Pinder* [1969] 2 AC 19 at 25C-D (Lord Diplock). Counsel for the Claimants submitted that same principle was applicable to the conveyance of an incorporeal hereditament.

576. Counsel for APL, whose submission was adopted by counsel for the PLA, submitted that the presumption did not apply, or at least was of no weight, in the circumstances of the present case. The question in *Ocean v Pinder* was what a person who claims a paper title needs to prove in order to bring a claim to possession against a person whose only claim is based on adverse possession. In the present case, however, the PLA has established title to the riverbed and APL has established title to Albion Wharf including the CCQ (assuming, for this purpose, that my conclusions in relation to those matters are correct). The question is whether the Claimants own a franchise of mooring.

577. The presumption is based on the decisions of the House of Lords in *Bristow v Cormican* (1878) 3 App Cas 641, *Malcolmson v O'Dea* (1863) LR 10 HL 592 and *Johnston v O'Neill* [1911] AC 552. Counsel for APL submitted that these decisions (and that in *Dysart v Hammerton*) made it clear that, where there is a dispute as to title, all the evidence must be considered.

578. As counsel for APL submitted, the clearest discussion of the issue is in the speech of Lord Cairns LC in *Bristow v Cormican*. In that case, the plaintiffs sued the defendants for trespassing on the plaintiffs' fishery. The defendants put the plaintiffs' title in issue, but the trial judge directed the jury to find a verdict for the plaintiffs based on the plaintiffs' paper title. On appeal, the House of Lords held that the judge's direction had been wrong. The plaintiffs had a paper title deriving from a Crown grant in 1661 subject to a prior 99 year lease dating from 1660, and they relied upon two subsequent leases and the payment of rent thereunder, but there was no clear evidence of actual possession. In those circumstances, it was a question of fact for the jury whether the plaintiffs did have title. Lord Cairns LC said that there was no direct evidence of the proprietorship of the Crown beyond the statement of that proprietorship in its own deeds, and given that title was in dispute, the question was what evidence there was of the Crown's title (see 652-653). The grant of a lease was evidence that the lessor had title, because a landlord would be unlikely to claim title and a tenant to admit it without, at least, an honest belief that there was such title. The payment of rent was further evidence on the principle. But in the instant case there were contrary indications in the 1660 lease, and it was a matter for consideration by the jury (see 653-4). The same was true of the later leases (see 654-655). As Lord

Cairns makes clear, the presumption derives from the fact that a person is unlikely to pay money for a title without being satisfied that the vendor has title to sell, but the force of the presumption depends on the circumstances.

579. In the present case I agree with counsel for APL that the presumption is inapplicable, or at least of no weight, for the following reasons. First, in so far as the Claimants claim the benefit of a franchise granted prior to 29 September 1857, even taken entirely at face value, the 1993 deed does not support the existence of such a franchise. It refers to "Victorian ground-moorings"; but Queen Victoria reigned for over 40 years after 29 September 1857.

580. Secondly, as I have explained, the 1993 deed does not contain any substantiation of Mr Boyd's claim to the rights he transferred. Nor is any earlier documentary title known to have existed. In those circumstances, it may be inferred that Mr Boyd must have based his claim on his own use of the moorings i.e. a claim based on prescription. But such a claim cannot of itself provide evidence of a pre-1857 franchise. Furthermore, it invites the question of what evidence there is of use of the moorings by Mr Boyd.

581. Thirdly, Mr Couper gave no evidence that he had investigated Mr Boyd's title. Rather, the tenor of Mr Couper's evidence was that he took it on trust.

582. Fourthly, the Claimants failed to give APL the opportunity of investigating Mr Boyd's claim when Mr Boyd was still available to be asked about it. In particular, we know that Mr Boyd was still contactable in May 1998, when he signed the confirmatory transfer (see paragraph 187 above). This was three months after Mr Orbell had asked for information about Mr Couper's claim to mooring rights, and Mr Couper had agreed to provide it (see paragraph 176 above). Yet Mr Couper did not put Mr Orbell in touch with Mr Boyd, or even disclose his agreements with Mr Boyd to APL at that stage. Indeed, when Denton Hall asked Mr Couper for copies of the evidence relied upon in August 1999, Mr Couper declined to provide it (see paragraphs 203-204 and 206 above). When DWS asked the Trust in November 2001, the Trust's response was the same (see paragraphs 246 and 251 above). Further requests from DWS and HWPEL in December 2001 and January 2002 also fell on deaf ears (see paragraphs 263, 266 and 273 above). As I understand it, it is common ground that Mr Boyd is no longer contactable. It is probable that he has passed away since 1998.

583. Fifthly, Mr Boyd purported to transfer title to Couper Quay to Mr Couper in 1982 and 1998, but Mr Boyd did not have the title he purported to convey.

584. For these reasons, I conclude that the 1993 deed adds nothing to the Claimants' case based on lost modern grant.

585. In any event, there are three related problems with the 1993 deed from the Claimants' perspective. The first is that the "berthage area" shown in the plan does not extend to the river wall. On the contrary, even at the closest point of approach, it is shown quite clearly as being some distance away from the river wall. Furthermore, the deed does not suggest that the rights sold include any right to moor to the river wall at any point. The second is that, as I shall explain below, the anchors which the Claimants are using are not confined to anchors located in the positions shown in the plan. Thus the

rights transferred by the deed are not sufficient to entitle the Claimants to moor in the manner they that they are presently moored.

586. Thirdly, the right of way and the right to land a prow (i.e. a gangway) on the bank referred to in the 1993 deed are not stated to be over land forming part of Albion Wharf. Nor does the 1993 deed suggest that Mr Boyd had any right to moor boats so as to obstruct access from the river to any part of Albion Wharf. Thus the 1993 deed neither provides any foundation for the rights that the Claimants assert against APL, nor provides any defence to APL's claims in nuisance.

587. Finally, it is convenient to mention at this point that the Claimants also rely on the 1993 deed in a similar manner as supporting their claim to title to the anchors discussed below. In my judgment, it is of no assistance to that claim either.

Other objections raised by the Defendants

588. The Defendants also raised a series of other objections to the Claimants' prescriptive claim which I shall deal with for completeness.

589. *No competent grantor*. A prescriptive claim can only be made if there was a competent grantor during the period of use: see *Tehiddy v Norman* and *Bakewell Management Ltd v Brandwood* [2004] UKHL 14, [2004] 2 AC 519 at [49]-[55] (Lord Walker of Gestingthorpe). This objection does not apply to the first way in which the Claimants put their claim (use prior to September 1857), but it does apply to the second way (use in modern times). By World War II, the Crown had long ceased to own the relevant part of the river. The PLA had and has no power to grant a franchise of mooring. Counsel for the Claimants' only answer to this point was to say that it begged the question as to when the grant was made. I disagree. In my judgment, it means that the only way in which the Claimants could establish a prescriptive claim to a franchise is by adducing evidence of user prior to 29 September 1857 (the first way in which the Claimants put their case).

590. *Franchise limited to the use of the mooring chain*. The Defendants contend that a franchise to moor, even if established, would give the Claimants the right to use the mooring chain(s) to which it related, and to charge others for mooring to them, but would not authorise any interference with either (a) riparian rights or (b) the public right of navigation. I agree with point (a). This would not in itself be an answer to the Claimants' franchise claim; but it again means that the Claimants could not rely upon the franchise as a sword or shield against APL. I do not agree with point (b). It seems to me that the grant of a franchise to moor necessarily involves, *pro tanto*, an interference with the public right of navigation.

591. *Franchise would not authorise current use*. The Defendants contend that a franchise to moor, even if established, would not authorise the current extent and nature of the Claimants' use of the moorings. In the case of a right acquired by prescription, the right acquired is measured by the type of the user: see *Dewan v Lewis* [2010] EWCA Civ 1382, [2011] 1 P&CR DG22 at [21] (Carnwath LJ). Counsel for APL, whose submission was adopted by counsel for the PLA, submitted that there was a big difference between the sort of activities which appear to have been carried out by Messrs Seagrave and Boyd (and earlier users of moorings in this general area) and what the Claimants were doing now. I agree. The difference is both qualitative and

quantitative. Historically, the moorings were used for loading and unloading cargoes from and into small numbers of boats which were coming and going from and onto the wharves. The Claimants are using their moorings for a permanent installation of a considerable number of boats and pontoons forming an art gallery, garden and public amenity as well as Mr Couper's residence.

592. *Based on criminal conduct – public nuisance*. Obstruction of a public highway amounting to a public nuisance is a criminal offence: see *Halsbury's Laws* volume 101 §697. Generally speaking, the court will not recognise a prescriptive right as having been created by criminal activity. This includes a public nuisance: see *Bakewell v Brandwood* at [41]-[42] (Lord Scott of Foscote). The Defendants therefore contend that the Claimants cannot establish a franchise by prescription, because the activities of the Claimants amount to a public nuisance for the reasons given above and for prescription to work the same must apply to their predecessors. In my view this argument adds nothing to the points considered above. First, it only applies to the second way in which the Claimants put their case. Secondly, if the franchise was established, it would be an answer to the claim for public nuisance; but only to the extent that the interference with the public right of navigation accorded with the historic user.

593. *Based on criminal conduct – section 70*. The Defendants also contend that the Claimants cannot establish a franchise by prescription because their conduct is a criminal offence under section 70 of the 1968 Act. I shall consider whether the Claimants' conduct does offend section 70 below. Even assuming that it does, there are two problems with the Defendants' contention. First, it can only apply to conduct since the 1968 Act came into force. It is no answer to the first way in which the Claimants put their case.

594. Secondly, it leads to a similar problem to that considered by the House of Lords in *Bakewell v Brandwood*. In that case the owner of a common had declared by deed deposited on 3 January 1928 that section 193 of the Law of Property Act 1925 should apply to the common. Section 193 empowered the landowner to impose conditions for use of the common, and subsection (4) made it a criminal offence for the common to be used without his consent. For many years after 1928 the owners of adjoining properties gained access to their properties by driving vehicles on tracks over the common without the consent of the owner. In 1986 the common was sold to the claimant, which sought a declaration that the defendant property owners were not entitled to do this and an injunction. The defendants claimed to have acquired an easement by prescription. The claimant argued that the defendants could not have acquired an easement because the conduct relied on was criminal. The House of Lords rejected that argument. The House held that, while a lost modern grant could not be presumed where an actual grant by the landowner would have been unlawful, there was no reason why an easement could not acquired by user in breach of a statutory prohibition where it would been lawful for the landowner to make a grant and such a grant who have removed the criminality of the user.

595. In the present case, the PLA could grant a licence and has at all times been willing in principle to do so, subject to (a) agreement on the terms and conditions and (b) the Claimants obtaining the consent of the riparian owner. If the PLA were to grant a licence, the Claimants' conduct would not be criminal. The Claimants have declined to take a licence, contending that they do not need one by virtue of section 63(1). As

this stage in the analysis, one must assume that the Claimants cannot rely upon section 63 (e.g. because they cannot establish pre-1857 mooring), but can demonstrate open and uninterrupted user for 20 years after 1968. Can their reliance upon such user be defeated by section 70? This is a difficult question, and I venture an opinion on it with considerable diffidence, particularly since it is not necessary to do so for my decision. For that reason, I will do so briefly.

596. In my view, point (b) should not defeat the Claimants. As I have explained, I consider that it would be open to the PLA to grant a licence conditional upon the riparia owner's consent being obtained. That would remove the criminality under section 70. I do not see why the PLA's policy of not doing so should prevent the Claimants from establishing a prescriptive right that they would otherwise be able to establish.

597. If point (a) stood on its own, that would be different. As Lord Walker made clear in *Bakewell* at [56], that case was concerned with a private landowner which was not obliged to exercise its dispensing power in the public interest, but could exercise it in its private interest. The PLA stands in a different position. Although counsel for the PLA was careful not to concede that it was public authority or amenable to judicial review, it is clearly exercises public functions at least for some purposes: see *Port of London Authority v Information Commissioner* (Information Tribunal, 31 May 2007) at [48]-[53]. Assuming that the terms and conditions which it had sought to impose were in accordance with its statutory objectives, but the Claimants had declined to accept those terms and conditions (for example, because they declined to pay any fee and/or wished to moor boats than the PLA was prepared to permit), I consider that section 70 would defeat the Claimants' claim.

Conclusion

598. I conclude that the Claimants have not established their claim to "ancient mooring rights".

<u>The Claimants' claim for adverse possession of the riverbed and anchors</u>

599. The Claimants claim to have acquired title by adverse possession to: (a) the riverbed over which their boats and pontoons are moored; (b) the anchors in the riverbed; and (c) a triangular area of riverbed in front of the CCQ.

600. So far as claim (a) is concerned, it was held by Stephen Smith QC sitting as a Deputy High Court Judge in *PLA v Ashmore* [2009] EWHC 954 (Ch) at [31] that it is possible to obtain adverse possession of the riverbed by means of a vessel which sits on the riverbed at low tide and rises with the tide. The PLA accepts that I should follow this decision, but reserves the right to challenge it on appeal.

601. So far as claim (b) is concerned, the Claimants contend that anchors embedded in the riverbed are part of the soil, and not chattels, relying on *Forrest v Borough of Greenwich* (1858) 120 ER 332 at 336 (Lord Campbell CJ), *Cory v Bristow* (1877) 2 App Cas 271 at 269-271 (Lord Cairns LC) and *Holland v Hodgson* (1872) LR 7 CP 328 at 334-335 (Blackburn J). The Defendants did not take issue with this proposition.

602. Since the riverbed is unregistered land, although the PLA has applied to register it, the relevant date is 20 December 1994.

Factual possession

603. *Riverbed under the boats.* It is common ground that the only boats which were at Albion Wharf on 20 December 1994 were the *Hope*, *Bay Berg*, *Arctic Sun* and *Pablo* (see paragraphs 159-160 above). It is also common ground that the *Pablo* did not remain in this location until 20 December 2006, since Mr Couper sailed it to continental Europe for an 18 month period in 1996-97 (see paragraph 165 above). It follows that the Claimants' claim to the riverbed under all the boats other than the *Hope*, *Bay Berg* and *Arctic Sun* must fail. Counsel for the PLA pointed out that it was Mr Couper's evidence that "there were vessels coming and going all the time"; but I think it is reasonably clear that those three boats were *in situ* continuously. Thus I find that the Claimants have established factual possession of the riverbed under those three boats, but not of the riverbed under any of the other boats or pontoons.

604. *The anchors*. Mr Turunbull's diagram dated 12 June 1992 (see paragraph 138 above) shows four anchors. The plan to the 1993 deed (see paragraph 157) deed shows nine anchors. The plan which Mr Couper sent Mr Trimmer in November 2001 (see paragraph 249 above) shows 14 anchors (ignoring two that are no longer in contention). Mr Dillon-Leetch's chart of May 2004 (see paragraph 404 above) shows 10 anchors (ignoring two that are no longer in contention). Mr Dillon-Leetch's chart of June 2005 (see paragraph 449 above) shows 11 anchors (ignoring those no longer in contention). Annex C to the Amended Particular of Claim contains an indicative mooring plan as at July 2010 which shows 14 anchors. During the trial these were labelled A-N for identification.

605. Counsel for the PLA pointed out that it was Mr Couper's evidence that "there were different anchor roots used in different conjunctions at different times". In particular, Mr Couper accepted in cross-examination that he was not using anchors C, D, E or F in December 1994, although he claimed that he was using the other 10. Counsel for the PLA disputed the claimed use of anchor H, but not the remainder. I agree with counsel for the PLA that the photographic evidence suggests that Mr Couper was not using anchor H, but instead a different mooring point on the quayside. Furthermore, the December 2001 plan only showed anchors D, E. F, G, I, J, K and L in use.

606. In my judgment, the fact that a particular anchor was not continuously in use from 20 December 1994 to 20 December 2006 is not fatal to the Claimants' claim. It is sufficient that it was continuously in place in the riverbed and regularly used for mooring to. As counsel for the Claimants submitted, the test depends upon "The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow having regard to his own interest": see *Lord Advocate v Lord Lovat* (1880) 5 App Cas 273 at 288 (Lord O'Hagan). The suitable and natural mode of use of anchors such as these is to use for mooring to regularly, but not necessarily continuously.

607. It is different if anchors are pulled up or put down in different locations during the relevant period. (I do not regard replacement of an anchor at the same location as fatal to this claim.) The best evidence of what anchors were where in December 1994 is the plan to the 1993 deed. This shows anchors A-I inclusive, but not anchors J-N

inclusive. (I note that the Claimants rely on the 1982 transfer from Mr Boyd as supporting their claim to anchors J and K, but the plan to annexed to this does not show any anchors at all.) Accordingly, I find that the Claimants have established factual possession of anchors A-I, but not anchors J-N.

608. *The triangular area*. Mr Couper's evidence did not begin to establish continuous possession of this from 1994-2006. Rather, the evidence was to the effect that he had made occasional and intermittent use of differing parts of this area to store odd items on for varying periods of time.

Intent to possess

609. The PLA contends that such factual possession as had been established was not adverse, because (i) Mr Couper believed that he had the PLA's consent from before 20 December 1994 to December 2001 and (ii) he did in fact have the PLA's consent. I accept both contentions, which are supported by the correspondence between Mr Couper and the PLA from 16 June 1992 to 12 August 1992 (see paragraphs 141-147 above) in which Mr Couper asserted that he had the PLA's consent and Captain Varney said that Mr Couper had "the PLA's tacit consent to remain". Mr Couper had no reason to think that the PLA had changed its stance until Mr Trimmer's letter dated 7 December 2001 (see paragraph 256 above) at the earliest. Accordingly, I find that Mr Couper did not have the requisite intent to possess. The Trust can be in no better position, given that it only came into existence in July 1998.

610. The PLA also contends that the Claimants' acts are more readily referable to an easement of mooring than to a possessory claim (assuming that the Claimants do not establish a franchise). I am inclined to agree with this, but it is not necessary to decide this point.

The PLA's legal objections

611. *Public highway*. Even if factual possession and an intent to possess were established, the PLA contends that it is not possible as a matter of law to establish adverse possession of the riverbed, because the riverbed is vested in the PLA by statute for the purposes of, among other things, regulating the public right of navigation of the river (as to which, see *Cory v Bristow* at 273 (Lord Cairns LC) describing the functions of the Thames Conservators). This is not a point taken by the PLA in the *Ashmore* case.

612. In support of this contention, counsel for the PLA relied on *R (Smith) v Land Registry* [2010] EWCA Civ 200, [2011] QB 413 at [26]-[37] (Arden LJ), [44] and [4] (Elias LJ) and [58] (Mummery LJ). This authority establishes that no title can be acquired by adverse possession of a public highway vested by statute in highway authority. Counsel for the PLA submitted that there was a precise analogy in this respect between a public highway and the Thames.

613. Counsel for the Claimants submitted that the PLA's position was not analogous to that of a highway authority. He argued that, if it were, it would not possible for anyone to acquire an easement. I am not persuaded by this argument. In my judgment, the PLA's position is analogous to that of a highway authority in this respect.

614. *Criminal conduct*. The PLA also relies upon the same arguments regarding criminal conduct as I have already considered in context of the Claimants' prescriptive claim to a franchise of mooring above. It is not necessary to say any more about these points.

Conclusion

615. I conclude that the Claimants' claim to adverse possession of the riverbed and anchors is not made out.

The Claimants' claims to easements

616. The Claimant claim to have acquired the following easements by prescription or necessity: (a) a pedestrian right of way over the CCQ; (b) a pedestrian right of way over Plot A; and (c) a right to moor boats to the CCQ. These claims were barely argued by counsel for the Claimants, so I shall deal with them briefly.

617. As noted above, an easement must accommodate a dominant tenement. Thus if the Claimants' claims to a franchise of mooring and to the riverbed fail, as I have held, then their claims to a right of way over, and a right to moor to, the CCQ must also fail. Nevertheless, I shall consider them on their merits.

Easement of necessity

618. An easement of necessity is one granted by implication when the owner of land conveys property which needs access over land retained by the owner: see Megarry & Wade §28-013. Here, there was no such conveyance. In any event, it is possible to gain access to the Claimants' boats by water, and via the public steps next to Battersea Bridge, and that means there is no necessity: see Megarry & Wade §28-014. Accordingly, I reject this claim.

The claim to a prescriptive right of way over the CCQ

619. There is no evidence that the CCQ was ever used for access until the new access was fitted to it in June 2013. Accordingly, I reject this claim.

The claim to a prescriptive right of way over Plot A

620. On Mr Couper's own evidence, he did not use Plot A to access the boats between November 1987 and July 1998. Accordingly, the Claimants cannot establish 20 years' continuous use of Plot A. I therefore reject this claim.

The claim to a prescriptive right to moor boats to the CCQ

621. There is no dispute that Mr Couper used the CCQ for mooring from November 1987 onwards. APL contends that the 1992 and 1997 licences permitted Mr Couper to moor to the CCQ. As discussed above, I accept that contention. It follows that Mr Couper cannot establish 20 years' user as of right.

622. APL also contends that Mr Couper's use of the CCQ for mooring became contentious as from 11 November 1998 (see paragraph 196 above) or at latest from 20 November 2001 (see paragraph 246 above). I agree with this. User ceases to be user as of right if

the circumstances are such as to indicate to the dominant owner, or to a reasonable man with the dominant owner's knowledge of the circumstances, that the servient owner actually objects and continues to object and will back his objection either by physical obstruction or by legal action: see *Smith v Brudenell-Bruce* [2002] 2 P&CR 4 at [12] (Pumfrey J). Thus for this reason too Mr Couper cannot establish 20 years' user as of right. Accordingly, I reject this claim.

The PLA's counterclaim for a declaration that it is entitled to remove the Claimants' works from the river

623. The PLA contends that: (i) the Claimants' boats, pontoons, chains, anchors, ropes and wires are all "works" within the meaning of section 2(1) of the 1968 Act which require a licence under section 66; and (ii) in the absence of a licence, the PLA is entitled to remove them under section 70(3). The Claimants contend that they do not require a licence by virtue of section 63(1). This part of the case raises two issues (with regard to burden of proof and replacements) which also arose in the case of *Port of London Authority v Tower Bridge Yacht & Boat Co*, which was recently tried before Mann J. I have seen drafts of the relevant sections of his judgment, which is to be handed down shortly after this judgment. I note with regret that we have reached different conclusions on these issues.

Works

624. I have set out the definition of "works" in paragraph 38 above. I do not understand it to be in dispute that mooring chains secured to anchors in the riverbed are within this definition.

625. Counsel for the PLA went further and submitted that the entirety of the Claimants' installation constituted "works". In support of this submission, he emphasised the breadth of the definition: "works of any nature whatever, in, under or over the Thames". He also argued that sections 63 and 66 supported a broad interpretation. He was disposed to accept that a single moored vessel would not comprise a "work", but submitted the Claimants' installation was of such a nature, size and permanency that it did. I accept this submission.

Section 63: burden of proof

626. Who bears the burden of proving that mooring chains were placed in the Thames before 29 September 1857 within section 63? The Claimants contend that the PLA does, relying in particular on the fact that section 63 provides an exception to the criminal offence created by section 70. The PLA contends that the Claimants do, for the same reason.

627. I regret to say that (unlike the rest of the case) this issue was poorly argued on both sides. The only authority cited was *R v Hunt* [1987] AC 353, which was cited by counsel for the PLA as authority for the proposition that the burden of proving an exception to a criminal offence normally lies on the person relying on it. If the matter is approached as a matter of criminal law, it is my understanding that the law has moved on since the coming into force of the Human Rights Act 1998: see *Phipson on Evidence* (17th ed) §§6-13, 6-32 *et seq*. If this were a criminal prosecution under section 70, it would be necessary to consider whether imposing a persuasive burden

on the accused person unjustifiably infringed the presumption of innocence under Article 6(2) of the European Convention on Human Rights. Since that question was not addressed in argument, I shall express no view upon it.

628. This is not a criminal prosecution, however, but a civil claim. It is not infrequently the case that the same acts can constitute both civil torts and criminal offences (for example, under various intellectual property statutes). A civil court dealing with such a matter will apply the civil standard of proof: see *Phipson* §6-55. Even where the allegation is a serious one, the civil standard of proof is proof on the balance of probabilities: see *Re B (Children) (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2009] AC 11. Consistently with this, I do not understand it to be in dispute that the civil standard of proof is applicable to the present issue, not the criminal standard of proof. By parity of reasoning, it seems to me that the ordinary civil approach to ascertaining the burden of proof should apply. After all, the presumption of innocence under Article 6(2) ECHR is not engaged in these proceedings.

629. I note that in *Nimmo v Alexander Cowan & Sons Ltd* [1968] AC 107 both Lord Pearson (who was in the majority) at 134C-D and Lord Reid (who was in the minority) at 115E said that the onus of proof should be the same in a civil claim as in a criminal prosecution. As Lord Reid made clear, however, he was only speaking of "the essential elements of the offence". Furthermore, in *R v Hunt* Lord Griffiths (with whom Lord Keith of Kinkel and Lord Mackay of Clashfern agreed) said at 373G-H:

> "Whatever may have been its genesis I am satisfied that the modern rule was encapsulated by Lord Wilberforce in *Nimmo v Alexander Cowan & Sons Ltd* [1968] AC 107, 130 when speaking of the Scottish section which was then the equivalent of the present section 101 of the Magistrates' Court Act 1980:
>
> > 'I would think, then, that the section merely states the orthodox principle (common to both the criminal and the civil law) that exceptions, etc., are to be set up by those who rely upon them.'"

630. In the civil context, Lord Wilberforce's statement is an application of the normal rule that the burden of proving an allegation rests on the person who asserts it: see *Phipson* §6-06. This is not an inflexible rule, however. Is there any reason for departing from the normal rule in the present case?

631. One possible reason might be the statutory history behind section 63(1) of the 1968 Act. I have set this out above (see paragraphs 31-35). Who would have borne the burden of proof if the Thames Conservators had attempted to enforce their powers under section 91 of the 1857 Act in, say, 1860? It is well arguable that the burden woud have lain upon the Conservators to prove that the mooring chain was placed in the river after 29 September 1857, rather than upon the defendant to prove that it was placed in the river before that date. If so, then there is no reason to think that the position would have been any different under the 1894 Act and 1920 Acts. But I do not think it follows that the position is the same under the 1968 Act. Apart from the sheer passage of time by 1968, the structure of the relevant sections of the 1968 Act is different. Whereas section 91 of the 1857 Act only applied to mooring chains placed

in the river after 29 September 1857, and thus did not require any exception, section 70 of the 1968 Act applies to all works (including mooring chains) in the river, and hence an exception is required.

632. Another possible reason is that it might be easier for the PLA to prove what mooring chains had or had not been placed in the river before 29 September 1857 than the opposing party. As Lord Griffiths said in *R v Hunt* at 374F-H, this may be an important consideration "if the linguistic construction of the statute did not clearly indicate upon whom the burden should lie". I am not persuaded that this is a strong factor in the present case for two reasons. First, I consider that the linguistic construction of the statute is fairly clear. Secondly, the evidence in this case demonstrates that it is not substantially easier for the PLA to prove the negative than it is for the opposing party to prove the positive.

633. As Lord Griffiths makes clear at 375H, in the end the issue is one of statutory construction. In my judgment, subject possibly to the countervailing consideration of the presumption of innocence in a criminal case, both the wording of section 63(1) ("section 70 … shall not apply to a mooring chain placed in the Thames before 29th September 1970") and its structural relationship with section 70 support the conclusion that the burden of proof lies upon the party relying upon section 63(1). In the present context, that means the Claimants.

634. In the present case, however, this conclusion is of little significance for two reasons. First, because in civil cases the Court of Appeal has held that the court should not resort to the burden of proof in order to resolve a disputed issue unless, exceptionally, it cannot reasonably make a finding on that issue despite having striven to do so: see *Stephens v Cannon* [20005] EWCA Civ 222, [2005] CP Rep 31 at [46] (Wilson J, as he then was). In the present case, as will appear, I am not driven to resort to the burden of proof. Secondly, even if the burden of proof was on the PLA, I would reach the same conclusion.

Section 63: replacements

635. Does section 63(1) apply to a mooring chain placed in the Thames after 29 September 1857 as a replacement for a mooring chain placed in the Thames before 29 September 1857? The Claimants say that it does, the PLA says that it does not.

636. Construing section 63(1) purposively in the context of the 1968 Act as a whole, I consider that it does not extend to replacement mooring chains. My reasons are as follows. First, there is the wording of section 63(1): "a mooring chain placed in the Thames before 29th September, 1857". As counsel for the PLA put it, this refers to a "specific physicality".

637. Secondly, section 63(1) expressly contemplates that such a chain may be "broken, dangerous or useless", in which case the PLA does not have to pay compensation to the owner for removing it. If the owner could replace a broken, dangerous or useless chain with a new one, he could circumvent this.

638. Thirdly, section 63(1) is an exception to section 70(1). Section 70(1) expressly prevents acts which "renew" works. Thus the draftsman of the Act, and indeed this

very part of it, expressly contemplated renewal, but made no provision for it in section 63(1).

639. Fourthly, more generally, the whole purpose of the 1968 Act is to give the PLA maximum control over the river and works affecting it. It follows that exceptions to such control should be narrowly construed.

640. Fifthly, this interpretation is supported by the previous history. In particular, section 91 of the 1857 Act specifically prohibited any one from placing a mooring chain in the Thames without the Conservators' consent.

641. Sixthly, I am not persuaded to the contrary by the argument that a chain could be repaired by replacing a link, and so on until the whole chain had been replaced. The distinction between continually repairing a thing which nevertheless remains the same thing and replacing a thing by a different thing of the same kind has exercised philosophers since the Ancient Greeks: see *Schütz (UK) Ltd v Werit UK Ltd* [2010] EWHC 660 (Pat), [2010] FSR 22 at [1] (Floyd J quoting Plutarch). This does not prevent the law from drawing the distinction. Where the line is to be drawn is a question of construction of the relevant provision having regard to its context and purpose: see *Schütz (UK) Ltd v Werit UK Ltd* [2013] UKSC 16, [2013] RPC 16 at [27]-[29] and [48]-[53] (Lord Neuberger). Section 63(1) draws the line in the manner set out above.

Section 63: the facts

642. As noted in paragraph 71 above, no mooring chains are recorded in this location in the list drawn up under the 1857 Act. As counsel for the PLA submitted, that is *prima face* evidence that there were none in 1857. The same goes for the PLA's list of grants in 1897 (see paragraph 82 above). As discussed in relation to the Claimants' franchise claim, the cartographic evidence does not indicate that there were any mooring chains in the relevant location prior to Mr Couper's arrival. Nor does the evidence of the Claimants' witnesses establish this.

643. Counsel for the Claimants contended that the anchors (as distinct from the chains) must have been present since prior to 29 September 1857 because the PLA's River Inspectors could hardly have failed to spot the placement of the anchors, yet there was no record of this. There are a number of obvious problems with this argument. First, to the extent that it has any evidential foundation at all, it is based on Mr Bradley's evidence as to the practices of the River Inspectors. But that evidence only goes back to 1966. Furthermore, the PLA itself only goes back to 1908. There is no evidence at all as the practices of the Thames Conservators. Secondly, it is clear from Mr Bradley's evidence, and common sense, that the River Inspectors cannot watch the whole river the whole time. It would perfectly feasible for an anchor to be placed without this being noticed. Thirdly, it is also clear from Mr Bradley's evidence, and common sense, that anchors would be unlikely to have survived intact in the riverbed since 1857. (There is, of course, no archaeological or forensic evidence either way.) Fourthly, the argument presupposes that the PLA has complete records of all licences granted by the PLA and its predecessors, but it is clear from the evidence that this is not the case. Indeed, since section 66 licences are personal, the PLA has no particular reason to keep copies of old licences.

644. In any event, on the evidence, there is another explanation for the origin of the anchors. Mr Couper admitted in the course of cross-examination that he had put down some anchors himself in addition to those which were there previously. Mr Turnbull's note dated 18 May 1985 and Mr Bull's memo shortly thereafter (see paragraphs 121 and 123 above) indicate that Mr Couper put down new anchors when he moored the *Hope* at Albert Wharf in May 1985. It is probable that he did the same when he moved to Albion Wharf in 1987, and that, as the collection of boats expanded, he put down further anchors: see his letters dated 16 June 1992 and 9 July 1992 (paragraphs 140 and 144 above) and Mr Turnbull's memos dated 20 or 30 and 31 January 1993 (paragraph 153 above) and compare Mr Turnbull's diagram dated 12 June 1992 (paragraph 138) with the plan annexed to the 1993 deed (paragraph 157).

645. Furthermore, the Trust admitted in its letter dated 29 January 2002 (see paragraph 277 above) that "all the ancient mooring roots and chains we currently use were replaced new after [20 October 1999]" (and see also the letter dated 10 December 2001, paragraph 258 above). Mr Couper accepted in cross-examination that this was an accurate statement of what had been done. After that date, Mr Couper and the Trust put down further anchors: see the attachment to Mr Foster's email dated 16 April 2003 (paragraph 343 above) and the plans referred to in paragraph 604 above.

646. Finally, as noted above, it is not in dispute that the Claimants have replaced chains, as distinct from anchors. Nor is it in dispute that the Claimants have added chains, moved chains and removed chains from time to time. (I should perhaps make it clear that we are concerned with substantial and heavy lengths of chain; not mere ropes or wires.) In my judgment, these works require a licence just as much as the placement of an anchor. Furthermore, for the reasons given above, the extent of the Claimants' installation is such as to require the PLA's licence even if certain anchors and/or chains are exempt by virtue of section 63(1).

Conclusion

647. I conclude that the Claimants' works are not protected by section 63(1). The Claimants do not have a licence under section 66. The PLA has given notice requiring removal of the works, but the Claimants have not complied. It follows that the PLA is entitled to exercise its powers under section 70(3) to remove the works.

The Claimants' claim for conspiracy

648. The Claimants claim that APL and/or HWPEL on the one hand and the PLA on the other hand have conspired to injure them by unlawful means. Although counsel for the Claimants opened broad allegations to the effect that HW and the LA had conspired together to force the removal of the Claimants' boats from Albion Wharf and to procure a sham sale of the CCQ from the PLA to APL, the only unlawful means which was ultimately relied upon was the submission by APL of a false FR1 to the Land Registry on 17 May 2005 (see paragraphs 438-439 above). This is said to have constituted an offence under section 123 of the Land Registration Act because APL failed to disclose that the Claimants' were claiming adverse possession of the CCQ. Reliance was also placed, from an evidential perspective, on the fact that APL filed its application at Telford District Land Registry when the Claimants' application was being dealt with by Land Registry Head Office.

Unlawful means conspiracy

649. The ingredients of this tort were discussed by Morgan J in Annex 1 to his judgment in *Digicel (St Lucia) Ltd v Cable & Wireless Plc* [2010] EWHC 774 (Ch). They are as follows: (1) there must be a combination; (2) the combination must be to use unlawful means; (3) there must be an intention to injure a claimant by the use of those unlawful means; and (4) the use of the unlawful means must cause a claimant to suffer loss or damage as a result. The phrase "unlawful means" has two elements. The first is a requirement that the acts involved are "unlawful". The second is a requirement that the unlawful acts were the means of inflicting harm on a claimant.

Relevant provisions of the 2002 Act

650. Sections 75 and 76 provide, so far as relevant, as follows:

> "*Proceedings before the registrar*
>
> **Production of documents**
>
> 75.(1) The registrar may require a person to produce a document for the purposes of proceedings before him.
>
> …
>
> **Costs**
>
> 76.(1) The registrar may make orders about costs in relation to proceedings before him.
>
> …"

651. Section 109(2) provides for rule to regulate "the practice and procedure to be followed with respect to proceedings before the adjudicator".

652. Section 123 provides as follows:

> "**Suppression of information**
>
> (1) A person commits an offence if in the course of proceedings relating to registration under this Act he suppresses information with the intention of—
>
> (a) concealing a person's right or claim, or
>
> (b) substantiating a false claim.
>
> (2) A person guilty of an offence under this section is liable—
>
> (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine;

> (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both."

653. Paragraph 2 of Schedule 1 includes as an overriding interest on first registration:

> "An interest belonging to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for an interest under a settlement under the Settled Land Act 1925 (c.18)."

Assessment

654. *Combination*. The only combination between APL and the PLA was that they agreed that the PLA would transfer whatever title it had to the CCQ (together with the adjoining stretch of river wall) to APL. There was nothing unlawful about that agreement. It was not put to Mr Fleming in cross-examination that the PLA and HW had agreed to suppress information on the application to the Land Registry. It was put to Ms Mashiter, who denied it. She said that, had she been filling in the FR1, she would have disclosed the Claimants' claim to the CCQ. I have no hesitation in accepting Ms Mashiter's evidence.

655. *Unlawful means*. For the reasons given in paragraph 439 above, I am in no doubt that Mr Fleming did not instruct DWS to suppress information about the Claimants' claim.

656. Counsel for APL and HWPEL also submitted that an application to register title is not "proceedings relating to registration" anyway. He argued that the word "proceedings" refers to a situation where a dispute has arisen relating to an application for registration which is being considered by the Registrar under section 73 or by the Adjudicator under sections 107-110. In support of this argument, he relied on sections 75(1), 76(1) and 109(2). I accept this submission. Counsel for the Claimants relied on the fact the current FR1 form contains a warning of criminal liability for providing false information, but as counsel for APL and HWPEL pointed out, the warning is of liability under section 1 of the Fraud Act 2006.

657. *Intention to injure*. There is no basis for suggesting that either HW or the PLA intended to injure the Clamants. As Ms Mashiter pointed out, the failure by APL to reveal the Claimants' claim did not matter, since first registration by APL would not prejudice that claim anyway as it was an overriding interest protected by Schedule 1 paragraph 2. She also pointed out that, as a matter of Land Registry practice, one could not hope to file an application at one office without it becoming known to other offices dealing with related applications.

658. *Damage*. The failure by DWS to inform the Land Registry about the Claimants' claims on 17 May 2005 caused no harm to the Claimants. The Claimants were told of the transfer on 24 June 2005 (see paragraph 450 above) and they objected to the application to register it on 14 July 2005 (see paragraph 451 above). If DWS had disclosed the Claimants' claims, the Claimants would probably have been told a few weeks earlier, and would probably have objected a few weeks earlier, but otherwise everything would have proceeded exactly as it did.

659. The only alleged loss identified in counsel for the Claimants' closing submissions was that the Mr Couper suffered alarm and despondency when he discovered the 27 April 2005 transfer and the application to register it. The supposed alarm and despondency caused by the 2005 transfer is not borne out by any evidence. As is shown by the Trust's letter 12 June 2003 and as Mr Couper accepted in cross-examination, the Claimants were well aware that their rights (if they existed) constituted overriding interests. The Claimants also complain that the 16 June 2005 meeting was cancelled, but that was not their attitude at the time - the settlement negotiations went on after the Claimants found out about the 2005 transfer just as they had before.

660. Furthermore, any alarm and despondency was not caused by the alleged unlawful means. If DWS had disclosed the Claimants' claims, the Claimants would have found out about the 2005 transfer a few weeks earlier, and any alarm and despondency would have commenced then.

661. *Conclusion*. None of the elements of the tort has been established by the Claimants. Accordingly, this claim is dismissed.

The Claimants' claims for slander of title

662. The Claimants complain that the Defendants have wrongly denied their proprietary rights. If my conclusions so far are correct, the Defendants' denials were justified. In case I am wrong, however, I will consider this claim on the assumption that the Claimants have established their proprietary claims. Counsel for the Claimants argued that a false denial of a proprietary right was actionable without proof of malice. Leaving aside the fact that the claim is not pleaded that way, this is an astonishing proposition. Since it is obviously wrong, I shall not lengthen this judgment still further by explaining why. Rather, I shall consider the claim as pleaded, which is for slander of title.

663. The complaints which are pursued under this head are as follows:

i) The PLA denied the Claimants' title to the ancient moorings in (a) Ms Mashiter's letter to Telford District Land Registry dated 21 January 2003 and the Mashiter Précis (see paragraph 334 above), (b) Ms Mashiter's letter to Telford District Land Registry dated 20 February 2003 (see paragraph 339 above), (c) Mr Cuthbert's letter to the Department of Transport dated 9 February 2004 (see paragraph 387 above) and (d) Captain Cartlidge's letter to the Mayor of London dated 16 February 2004 (see paragraph 392 above). It is also alleged that the PLA concealed and distorted the findings of Mr Baldwin, but as I understand it this is only relied upon as evidence of malice.

ii) APL denied the Claimants' title to the CCQ in the FR1 form dated 17 May 2005.

iii) The PLA denies the Claimants' title to the ancient moorings (and possibly their title to the riverbed) in the FR1 form dated 22 January 2007.

The law

664. Slander of title is a species of malicious falsehood. The ingredients of the tort of malicious falsehood were summarised by Glidewell LJ in *Kaye v Robertson* [1991] FSR 62 at 67 as follows:

> "The essentials of this tort are that the defendant has published about the plaintiff words which are false, that they were published maliciously, and that special damage has followed as the direct and natural result of their publication."

"Maliciously" in this context means either knowing that the words were false or being reckless as to whether they were false or not or being actuated by a dishonest or other improper motive: see *Spring v Guardian Assurance plc* [1993] ICR 412 at 429-430 (Glidewell LJ). Special damage need not be pleaded and proved if the words on which the claim is founded are calculated to cause pecuniary damage to the claimant and are published in writing: section 3(1) of the Defamation Act 1952.

Assessment

665. *The PLA's letters and the Mashiter Précis*. Even on the assumption that the Claimants have established a franchise of mooring, it is far from clear to me what statements in most of the PLA's letters are said by the Claimants to have been false. In the letter dated 21 January 2003 Ms Mashiter stated "The PLA does not accept on the evidence unearthed that the Couper Trust's moorings date from 29 September 1857". That was an accurate statement of the PLA's position. A refusal to accept that the existence of a right has been proved is not the same thing as a denial of the right. Nothing in the Mashiter Précis takes the Claimants any further. Ms Mashiter's letter dated 20 February 2003 does not specifically address the claim to ancient mooring rights. Nor does Mr Cuthbert's letter dated 9 February 2004. That leaves Captain Cartlidge's letter dated 16 February 2004, which stands in a different position. I accept that the sentence I have quoted from this letter above does constitute an outright denial of the Claimants' rights.

666. But what evidence of malice is there? It is common ground that Captain Cartlidge was advised by Ms Mashiter. The Claimants rely upon a number of matters as showing that Ms Mashiter was malicious. It was never put to Ms Mashiter in cross-examination, however, that she did not believe the things she wrote (or advised Captain Cartlidge to write) or that she was actuated by an improper motive. It follows that she cannot be convicted of malice. In any event, I do not accept that any of the matters relied upon by the Claimants demonstrate malice.

667. First, the Claimants rely upon the Mashiter Précis, and in particular Ms Mashiter's alteration of 200 to 150. I have already dealt with this above. In any event, I do not consider that this amounts to evidence of malice in the making of the statements complained of.

668. Secondly, the Claimants rely upon the Altered Mashiter Précis. Again, I have dealt with this above. Again, I do not consider that this is evidence of malice.

669. Thirdly, the Claimants complain of the slowness of the PLA in disclosing the Full Baldwin Report to them. It is not clear precisely what period of delay the Claimants complain about, but in any event I do not consider this is evidence of malice. The PLA was no duty to disclose the report more quickly than it did, and the report did little to support to the Claimants' claim. I would add that the complaint is a rather rich one given the Claimants' reluctance to disclose their own title documents to HW.

670. Fourthly, the Claimants complain about the Incomplete Baldwin Report. Again, I have dealt with this above. In any event, this does not begin to amount to evidence of malice in the making of the statements complained of. Firstly it was created after those statements were made, secondly it was sent to the Claimants' own solicitors, thirdly it was obviously incomplete and fourthly those solicitors realised that it was incomplete.

671. Finally, there is the question of damage. The only pleaded claim to special damages relates to the alleged loss of a contract with Seasons in March-July 2002. This is hopeless for a number of reasons. First, this was before any of the PLA's statements complained of, and even before Mr Baldwin delivered the Full Baldwin Report to the PLA. Secondly, the proposed contract was with Battersea Bridge Co Ltd, which is not a claimant (even if it still exists). Thirdly, it is evident that the initial problem with the Seasons deal was that DKLL were (understandably) unwilling to provide a certificate of title. Fourthly, the documentary evidence suggests that the negotiations simply fizzled out and neither Mr Couper nor Mr Leslie were able to explain what happened. Fifthly, there is no evidence from Seasons at all, still less evidence that they would have done a deal but for a denial of the Claimant's title by the PLA. Indeed, there is no evidence of any communication from the PLA to Seasons.

672. *APL's FR1 form*. Even on the assumption that the Claimants have acquired title to the CCQ by adverse possession, APL's FR1 form made no false statement about that title. It simply omitted to mention it. Nor is there any evidence of malice on the part of APL or HWPEL for the reasons discussed above.

673. *The PLA's FR1 form*. Even on the assumption that the Claimants have established a franchise and have acquired title to the riverbed by adverse possession, section 12 the PLA's FR1 form was correct. Section 12 required disclosure of legal rights, not claims. The latter were required to be disclosed by section 13.

674. As for the statement in section 13, the obvious purpose of paragraph 13 is to alert the Land Registry to (i) any third party in occupation of the property and (ii) any third party claims. It does not seek the admission of any claims (in which case they would be entered in section 12), nor a full exposition of such claims. In my judgment, the PLA's short description of the claim in paragraph 13 was a fair one which was sufficient to alert the Land Registry to the need to investigate further. At the time, there was no claim by the Claimants to adverse possession of the riverbed, merely a claim for "ancient moorings". The basis of the claim had not been made clear (and indeed was not made clear until the service of the Claimants' skeleton argument for trial). It was entirely proper for the PLA to indicate that it did not accept the claim. Thus there was no false statement with regard to the Claimants' title either to the riverbed or the franchise. In any event, there is no evidence of malice on the part of the PLA.

675. *Conclusion*. None of the Claimants' allegations is made out. This claim is dismissed.

16. The Claimants' claim against the PLA for misfeasance in public office

676. The Claimants claim that Ms Mashiter is guilty of misfeasance in public office, and that the PLA is vicariously liable for this. Three matters are complained of under this head:

i) concealment and distortion of Mr Baldwin's report;

ii) the drafting of the 27 April 2005 transfer;

iii) the representations in the FR1 form dated 22 January 2007.

The law

677. The ingredients of the tort of misfeasance in public office were identified by Lord Steyn in *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1 at 191B-196E. First, the defendant must be a public officer. Secondly, there must be an exercise of power as a public officer. Thirdly, the defendant must have the requisite the state of mind. There are two different forms of this:

> "First there is the case of targeted malice by a public officer i.e. conduct specifically intended to injure a person or persons. This type of case involves bad faith in the sense of the exercise of public power for an improper or ulterior motive. The second form is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful."

678. Fourthly, the claimant must have a sufficient interest to entitle him to sue. Fifthly, the claimant must prove causation of the damage claimed. Sixthly, the damage must not be too remote. It is not necessary for present purposes to consider the test of remoteness articulated by Lord Steyn.

Assessment

679. The PLA accepts that Ms Mashiter is a public officer for the purposes of this tort and that it would be vicariously liable for her torts. I do not understand it to be in dispute that the matters complained of represented exercises of power by Ms Mashiter as a public officer (in the case of the transfer, I understand it be accepted that Ms Dowson was acting under Ms Mashiter's direction).

680. *Concealment and distortion of Mr Baldwin's report*. I have already dealt with this topic to some extent when addressing the claim for slander of title. The Claimants have not identified anything which Ms Mashiter did with respect to Mr Baldwin's report which was unlawful. It follows that targeted malice must be proved. No coherent case of targeted malice was put to Ms Mashiter in cross-examination, however. The nearest counsel for the Claimants came (and that only after I had raised the question of motive) was to suggest that Ms Mashiter's motive for concealing and distorting Mr Baldwin's reports was that they supported the Claimants' claim to

ancient mooring rights whereas the PLA's policy was to deny such rights. Ms Mashiter denied this. I have no hesitation in accepting her denial. First, as I have explained above, the alterations to the document are explicable without recourse to any malign motive on her part. Secondly, I do not accept that the PLA concealed Mr Baldwin's report at any stage. At worst, the PLA was a little slower than it could have been to disclose it to the Claimants. Thirdly, Mr Baldwin's report does not, upon analysis, lend any real support to the Claimants' claim. Fourthly, there is no evidence that the PLA had a policy of denying the possible existence of ancient mooring rights, as opposed to requiring that they be proved on the balance of probabilities.

681. *The 27 April 2005 transfer*. Again, the Claimants have not identified anything which Ms Mashiter did in drafting the transfer which was unlawful. It follows that targeted malice must be proved; but no case was put to Ms Mashiter; and there is no evidence of malice anyway.

682. *The FR1 dated 22 January 2007*. Again, I have already dealt with this to some extent when addressing the claim for slander of title. Again, the Claimants have not identified anything which Ms Mashiter did in directing Ms Dowson to draft the FR1 which was unlawful. It follows that targeted malice must be proved; but no case was put to Ms Mashiter; and there is no evidence anyway.

683. *Damage*. The Claimants claim exemplary damages. It is clearly established, however, that the tort of misfeasance in public office is only actionable upon proof of material damage: see *Watkins v Secretary of State for the Home Department* [2006] UKHL 17, [2006] 2 AC 395 at [27] (Lord Bingham of Cornhill). Material damage does not include distress, injured feelings, indignation and annoyance: see [7]. The only material damage claimed is the loss of the Seasons deal. But the Claimants face the same difficulties here as in relation to slander of title.

684. *Conclusion*. This claim is dismissed.

<u>The Claimants' claim against APL and HWPEL for harassment</u>

685. The Claimants claim that the Defendants have harassed them by a disparate series of acts. At trial, this claim was mainly pursed against APL and HWPEL.

The law

686. Under section 1(1) of the Protection from Harassment Act 1997, a person must not pursue a course of conduct which amounts to harassment of another and which he knows, or ought to know, amounts to harassment of the other. This does not apply to a course of conduct if the person who pursued it shows that, in the particular circumstances, the pursuit of the course of conduct was reasonable: section 1(3)(c). A breach of this duty is a criminal offence under section 2. It may also be the subject of a claim for damages or injunction under section 3.

687. The Act does not define "harassment", except to say that references to harassing a person include alarming the person or causing the person distress: section 7(2). The courts have held that, in order to constitute "harassment", there must be misconduct of such gravity as would sustain criminal liability under the Act. Conduct which is merely annoying, aggravating, unattractive, unreasonable or regrettable is not enough,

but conduct which is oppressive and unacceptable (e.g. stalking) will suffice. There must be at least two incidents, and each incident must be of sufficient gravity to constitute harassment; it is not enough that the incidents amount to harassment only by virtue of their cumulative effect: see *Halsbury's Laws* volume 97 §557 and *Ferguson v British Gas Trading Ltd* [2009] EWCA Civ 46, [2010] 1 WLR 785 at [14]-[18] (Jacob LJ).

Assessment

688. I shall deal briefly with each of the matters relied on in chronological order.

689. *Damage to the Claimants' electricity supply box in about February 2001* (see paragraph 236 above). APL was not responsible for this, Exterior was. If Exterior had negligently damaged the Claimants' property without compensation, the Claimants would have had a claim against it. In fact, the box was replaced by a new and improved one free of charge. This is not harassment by any stretch of the imagination.

690. *DWS's letter dated 20 November 2001* (see paragraph 247 above). This is a firm but polite letter from a firm of solicitors to an apparent trespasser on their client's property saying that the recipient should either supply evidence of his right to be there, or take a licence, failing which they will commence proceedings. If this constitutes harassment, so would many a letter before action. It plainly does not.

691. *DWS's letter dated 18 December 2001* (see paragraph 262 above). This was addressed to the Land Registry, not the Claimants. It cannot possibly constitute harassment of the Claimants.

692. *APL's marketing materials from late 2001/early 2002* (see paragraph 261 above). These were not addressed to the Claimants either. Mr Beynon's evidence was that the omission of most of the Claimants' boats from some of the images was for compositional reasons. I have no difficulty in accepting that. In any event, I cannot see that this amounts to harassment.

693. *Ms Roderick's letter dated 25 April 2002* (see paragraph 289 above). This is another firm but polite letter from a solicitor asserting her client's rights.

694. *The 27 April 2005 transfer*. This was not a communication to the Claimants. A transfer of any interest in land which the transferor may have cannot possibly constitute harassment of a stranger to the transaction.

695. *APL's FR1*. This was not a communication to the Claimants. A failure to disclose a person's claim on an application to the Land Registry does not amount to harassment of that person.

696. *The 25 August 2005 incident* (see paragraph 455 above). The Claimants allege that APL's conractors trespassed on the Claimants' property and subjected Mr Couper to harassment, alarm and distress. I have set out what I find actually happened above. This did not constitute harassment.

697. *The letter to the trustees dated 27 June 2007* (see paragraph 463 above). While possibly a little heavy handed, I do not consider that this letter can be characterised as oppressive or as amounting to harassment.

698. *Clearance of Couper Quay on 12 December 2007* (see paragraph 465 above). APL was acting within its rights as owner of Couper Quay. Furthemore, this repeats an allegation made in the 2007 action which has been settled. Accordingly, it is not open to the Claimants to revive it now.

699. Counsel for Claimants submitted that these incidents had to be considered cumulatively and that the overall course of conduct amounted to harassment, even if the individual incidents did not. Even considered cumulatively, however, I do not consider that APL's or HWPEL's conduct amounts to harassment. Nor is there is any evidence of harassment of the Claimants by the PLA.

700. *Conclusion*. I dismiss this claim.

Result and comment

701. The Claimants' claims are all dismissed. I shall grant APL a declaration that it has title to the CCQ and relief for nuisance. I shall grant the PLA declarations that it is the owner of the riverbed and that it is entitled to remove the Claimants' works from the river. I shall hear counsel as to the precise form of the relief to be granted.

702. One of the reasons why this judgment is so long is that I have attempted to show in a comprehensive, objective and transparent manner just how little justification there is for the claims advanced by the Claimants. I do not know how much money has been spent on this litigation, but it is likely to run into millions of pounds. Some of that money will have been public money. I do not question the merit of Mr Couper's work as an artist, the historic interest of the collection of barges or the public-spiritedness of much of what he and the Trust have done since July 1998. The fact remains, however, that the money could have been much better spent on other things. The main reason for this state of affairs is that, since about March 1998, Mr Couper and the Trust have defied any attempt by the riparian owners or the PLA to control their activities. This saga must now come to an end.