



Neutral Citation Number: [2019] EWHC 1040 (Ch)

Case No: HC-2014-002276

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
BUSINESS LIST

Rolls Building
London. EC4A 1NL

Date: 26 April 2019

Before :

MASTER SHUMAN

Between :

AMANDA STEPHANIE CLUTTERBUCK

Claimant

- and -

(1) BROOK MARTIN & Co (A Firm)

Defendants

(2) STEPHEN OLIVER BROOK

Richard Owen-Thomas (direct access) for the **Claimant**
David Halpern QC and Amanda Savage (instructed by **Mills Reeve LLP**) for the **Defendants**

Hearing dates:
11, 12 and 25 June 2018

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.

.....
MASTER SHUMAN

MASTER SHUMAN :

1. There are three applications before me.
 - i) The first is the defendants' application dated 7 August 2017 to strike out the claim pursuant to CPR 3.4.2 or for reverse summary judgment pursuant to CPR part 24 on the grounds that: (1) the Particulars of Claim ("the POC") which run to 58 pages with 2 appendices are impossible to understand and plead to; (2) for the same reason there has been a failure to comply with CPR 16 and practice direction 16; (3) the claim is an abuse of process because it seeks to impugn previous decisions and makes contentions which are inconsistent with the decisions made previously; (4) limitation, the relevant periods under the Limitation Act 1980 (the 1980 Act) having expired before the claim form was issued.
 - a. This is supported by the witness statement of David Gooding, a partner at Mills and Reeve LLP, dated 7 August 2017.
 - b. The application was listed for hearing on 29 and 30 November 2017 but on 22 November the defendants solicitors were notified that the claimant had instructed counsel on a direct access basis. On 23 November 2017 the defendants' then counsel, Simon Monty QC and Amanda Savage, filed a skeleton argument attaching a 26 page schedule providing a detailed critique of the POC. The defendants agreed to adjourn the hearing to enable the claimant to re-plead her case.
 - c. The claimant filed a 16 page witness statement in response dated 6 June 2018, with exhibits running to 443 pages. No explanation was given for the late service of this statement, some 7 months after the hearing was adjourned, and it follows a pattern by the claimant of serving documents either just before the hearing or sometimes after the hearing informing the court that it must take those documents into account. As Mr Halpern QC observed in his supplemental skeleton argument if the claimant "has only just prepared this statement, it does not sit easily with her claim that she is too ill to be able to deal with the strike-out application".
 - ii) The claimant's application notice dated 13 February 2018 seeks the following orders: to "grant the claimant permission to: (1) amend particulars of claim; (2) rely on expert witness evidence to support her claim; (3) rely on documents in other proceedings which have been concealed from the claimant for over 11 years".
 - a) The claimant relies on her witness statement dated 13 February 2018 which exhibited a 24 page draft amended particulars of claim ("APOC") and an appendix comprising an 81 page chronology which is an integral document.
 - iii) The claimant's application notice dated 7 June 2018 seeks an order staying the proceedings until the outcome of the ongoing Solicitors Regulation Authority investigation and an adjournment of the defendants' application and the claimant's application.

- a) The claimant relies on her witness statement dated 7 June 2018 in which she stated that the grounds for seeking an adjournment or stay was that her health was being adversely effected by the pressures that she was dealing with, the 5 day trial window had resulted in an unforeseen timetable clash and the claim should be stayed until the conclusion of the on-going SRA investigation.
- b) At the hearing on 11 June 2018 Mr Owen-Thomas submitted that there should be an adjournment of the hearing on the ground that the claimant was preparing for a 13 day trial, she had a medical appointment and was ill-prepared for the application. He accepted that the POC and draft APOC were susceptible to being struck out as non-compliant with CPR 16 and confirmed he held instructions to settle a compliant particulars of claim.
- c) Mr Martin, solicitor, filed a witness statement dated 7 June 2018 in opposition to the claimant's letter to the court dated 1 June 2018.
- d) I asked Mr Owen-Thomas at the hearing on 12 June 2018 to effectively pin his colours to the mast and say whether he was still seeking permission to rely on the APOC. At the hearing on 25 June 2018 Mr Owen-Thomas proposed that a further APOC would be drafted, they would be drafted by counsel and these could be filed and served within 21 days. This submission could only have been made on instructions. He did not seek to pursue the claimant's applications but rather sought an "indulgence from the court" to permit further time for the claimant to plead her claim. He had used the APOC as a foundation to tease out the facts in support of a claim that he submitted existed, albeit not pleaded in compliance with the CPR. At my direction he went on to address his submissions in the context of the POC as well, which he based on a further skeleton arguments filed minutes before the hearing on 25 June 2018 commenced.
- e) No further APOC have been filed, even in draft form. No explanation has ever been proffered by the claimant as to this failure.

THE PROCEDURAL LABYRINTH

2. After the hearing of the applications the claimant started sending emails to the court trying to raise further matters and rely on additional evidence. I directed that the claimant must seek orders by way of application notice supported by evidence, the court would not consider matters via correspondence. On 30 July 2018 the claimant made an application for a stay of the determination of the applications pending disclosure of a Solicitors Regulation Authority report into the conduct of the defendants. The stay application was supported by the claimant's witness statement dated 30 July 2018. I do not know why but that application did not come before me. There was nothing new raised in this application that had not been argued by Mr Owen-Thomas save that the SRA's investigation was further along.
3. On 10 August 2018 HHJ Pelling QC handed down judgment in the claim brought by the Claimant and Mr Paton against William Cleghorn, sued as judicial factor to the estate of EN deceased (the EN claim). That is reported at [2018] EWHC 2125. It had been the claimant's case that the trial and the findings of fact to be made by the trial judge would have a significant impact on the applications before me. I directed that

the parties were to file any written submissions in respect of that judgment. The claimant sought an extension of time to do so for medical reasons, which was granted by Deputy Master Hansen. The claimant then filed submissions which sought to introduce new allegations of fact, principally her communications with the SRA investigation and her understanding of what it will consider; although she made no application for permission to re-open her case. In so far as the claimant seeks to introduce new material, without application, I disregard those submissions.

4. There are on-going proceedings in the Insolvency and Companies Court under petition numbers BR-2018-001092, BR-2018-001080, BR-2018-001134 and BR-2018-001135 against the claimant (the bankruptcy proceedings). Additionally the claimant and Mr Paton separately sought permission to issue a witness summons against Adrian Davies and Andrew Jeavons of the Solicitors Regulation Authority to produce a redacted SRA letter, the SRA's forensic investigative report ("the SRA report")¹ and appendices sent to the first defendant on 4 October 2018. I presume the summons was not issued.
5. By application notice dated 11 November 2018 the claimant applied for an order for disclosure of certain documents including the SRA report. The application was supported by the claimant's witness statement dated 11 November 2018. On 19 February 2019 applications in the bankruptcy proceedings came before ICC Judge Mullen, the claimant was represented by leading and junior counsel. ICC Judge Mullen stayed the applications pending the determination of the claimant's disclosure application. I do not know why the disclosure application was not listed until 25 February 2019; it should have been listed earlier. I also do not know why the application was only given a 30 minute time estimate when it was always likely to be opposed. I extended the time of the hearing on 25 February 2019 to 2 hours. On the day of hearing the claimant filed a further witness statement which itself exhibited a witness statement that she had made in the bankruptcy proceedings and other extracts of documents. They had been served at 6.27pm and 6.43pm on Friday 22 February 2019. I handed down judgment on 19 March 2019. ([2019] EWHC 661) I dismissed the claimant's application. Both before and after that judgment was formally handed down the claimant sought to raise new matters and introduce further evidence by way of emails.
6. I had listed the consequential hearing following the disclosure application judgment on 5 April 2019, it was moved from an earlier date as the defendants' counsel had pre-existing commitments. That also had to be moved as the claimant is now in hospital, her prognosis is uncertain. Her sister, Lisa Clutterbuck, and a solicitor, who is not on the record but has assisted the claimant from time to time, Mr Swead, have been in contact with the court. Miss Clutterbuck has stated that she has contacted the claimant's barrister, which I assume is a reference to counsel instructed on a direct access basis as no notice of acting has been filed at court, yet.
7. I indicated to the parties at the hearing of the disclosure application that the applications that I heard in 2018 must be determined. Through my clerk the parties have been notified that I intended to hand down this judgment on the date listed for consequential. I will now hand down judgment, if necessary, in the absence of the

¹ From the evidence before me on the disclosure application I am not satisfied that the investigation, which has been on-going since 2015, has concluded.

parties. Not only is the position unfair to the defendants but the claimant has taken up a disproportionate amount of the court's resources. In writing this judgment I have re-read the voluminous files of documents in this case, 7 lever arch files and 1 lever arch bundle of authorities, and my notes of the hearings. The overriding objective is the guiding principle in civil proceedings in court and its application enables the court to deal with cases justly and at proportionate cost. In dealing with a case CPR 1.1(2)(e) specifically refers to the need to allot "to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases". Importantly under CPR 1.3 the parties are required to help the court to further the overriding objective. I do not consider that the claimant has complied with her duty to the court and to date her case and cases have taken up a disproportionate amount of the court's resources.

8. The procedural labyrinth I have set out above is only the tip of the ice-berg. The claimant is no stranger to litigation. Sometimes she is represented by counsel, both leading and junior, from time to time solicitors act for the claimant. Regardless of her status at any given time the defendants' counsel remind me of Lord Sumption's observations in Barton v Wright Hassall LLP [2018] UKSC 12, about litigants in person at paragraph 18,

"18. ... Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR r 1.1(1)(f) . The rules do not in any relevant respect distinguish between represented and unrepresented parties. ... The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take. "

9. This claim is another claim in a sequence of cases whose factual heart lies in the property dealings in Knightsbridge, Belgravia, Chelsea and Westminster, by four protagonists, the claimant, Ian Paton (Mr Paton), Elliott Nichol (EN) and Sarah Al-Amoudi (SAA). Mr Paton whilst in a relationship with the claimant commenced a relationship with SAA. EN was a Scottish businessman, who died on 29 December 2009.
10. The facts and the arguments advanced are derived from previous judgments, principally the judgment of Asplin J in the SAA claim [2014] EWHC 383 and her

findings therein and the helpful summary by Kitchin LJ in the EN claim [2017] EWCA Civ 137.

11. In 2010 the claimant brought a claim with Mr Paton against SAA for fraudulent misrepresentation, deceit and breach of trust (the SAA claim). It was said that SAA had been introduced to Mr Paton by EN as a potential joint venturer who represented very substantial Saudi Arabian and other Middle Eastern investors and who was said to be a Saudi Arabian princess. The claimant and Mr Paton contended that they entered into a series of joint venture agreements (JVAs) with SAA and EN from 2003. Under the JVAs the claimant and Mr Paton would provide the know-how experience and contacts necessary to locate and acquire suitable properties and carry out any necessary refurbishment; SAA, EN and the claimant and Mr Paton would secure the necessary finance. Upon realisation of a joint venture the profits derived from it would be divided equally between the claimant and Mr Paton on one hand and SAA and EN on the other.
12. The claimant and Mr Paton contended that in or about July 2004 they entered into a JVA with EN and SAA to purchase and develop 66 Pont Street, SW1 and also 62 and 64 Pont Street.
13. They also alleged that in or about September 2005 the claimant and Mr Paton met EN at the Oriol restaurant in Sloane Square and orally agreed that they would find suitable properties and offer these properties to EN and a consortium of investors including SAA (the Oriol agreement). EN and the consortium would then either agree to enter into a JVA in respect of the property or not. The profits would be split between the claimant and Mr Paton on one hand and EN and the consortium on the other hand. The claimant and Mr Paton asserted that the parties entered into JVAs for the development of 6 properties in SW1 and SW3, only one of which was in writing, 9 Cliveden Place.
14. The Cliveden Place JVA was entered into on 3 August 2006 between (1) Westbrooke Properties Limited (Westbrooke), an spv owned by EN, (2) the claimant and Mr Paton and (3) EN as guarantor.
15. As a result of the JVAs the claimant and Mr Paton contended that they had transferred £2.282 million to SAA or her agents in relation to the purchase of properties and also paid refurbishment costs in respect of properties registered in SAA's sole name. In relation to a project described as the Hans Place JVA and in reliance on representations by SAA that she had secured Sharia mezzanine financing through a Middle Eastern consortium in the sum of £46 million Mr Paton transferred 6 properties to SAA at an undervalue (the Security Properties). The first defendant carried out conveyancing work for Mr Paton. The second defendant had a close business relationship with Mr Paton between 2004 and 2009. An offshore company, known as Sator Properties Limited (Sator), of which the second defendant's wife was a director, loaned large sums of money to Mr Paton to help finance his property dealings and the interest charged on the loans was extremely high. The second defendant also acted on behalf of Sator and Westbrooke. He gave evidence on behalf of the claimant and Mr Paton at the trial of the SAA claim.
16. SAA defended the claim, denying that she was a party to any JVA and arguing that the involvement that Mr Paton had with her business and property dealings was as her

trusted adviser in the context of their personal relationship. In a detailed 107 page judgment following a long trial Asplin J, as she then was, dismissed the SAA claim. ([2014] EWHC 383). She found that: Mr Paton was in a clandestine romantic relationship with SAA; the suggestion that the Security Properties were transferred in reliance upon representations made by SAA could not be sustained; Mr Paton did pay SAA £2.282 million and a further £800,000 to SAA but this was by way of repayment of sums loaned to Mr Paton by SAA. There was no Oriel agreement giving SAA and EN a right of first refusal to enter into a JVA. In fact there was no evidence that connected SAA with the Oriel agreement or that EN was acting on her behalf. There were no JVAs whether with or without EN. There was no Pont Street JVA, nor a Hans Place JVA.

17. The judge found Mr Paton to be a very unreliable and unsatisfactory witness. He was generally evasive and unless his evidence was supported by contemporaneous documents she preferred the oral evidence of others. Whilst the claimant had no direct dealings with SAA the judge found her evidence to be repetitious, guarded and she was also an unsatisfactory witness. At paragraphs 14 to 19 of the judgment the judge noted that the claimant had produced her own particulars of claim which alleged that she was unaware of the loss she had suffered and SAA's deceit until after the death of EN. She described him as her business partner. SAA applied to set aside judgment entered in default. No mention was made of any joint venture until the claimant swore a witness statement the day before the hearing. Further the claimant emailed SAA's solicitor stating that Mr Paton was subject to a court order preventing him from contacting the claimant. That was untrue. In cross-examination she alleged that this was done to protect her family from harassment. In March 2010 a Ms Osborne applied for planning permission certifying that she was the owner of a property, although she knew it was owned by SAA. She admitted in cross-examination that the claimant had asked her complete the application and make the false declaration. It was only in April 2014 that the claimant made the allegations concerning the identity of SAA which she said had induced her to make payments of £2.28 million and to pay for refurbishments. The judge also found that the claimant and Mr Paton relied on documents which were forgeries. As to the second defendant she found him to be argumentative and aggressive in style and evasive.
18. The claimant and Mr Paton then sought permission to appeal seeking to introduce new evidence to the effect that the judgment was procured by fraud. Permission was refused. ([2015] EWCA Civ 1593) On 28 September 2016 the claimant and Mr Paton sought an order revoking the order of Asplin J requiring that they pay costs to SAA and repayment of part of their costs and the discharge of a freezing injunction. On 15 February 2017 Mr Rosen QC sitting as a Deputy High Court Judge gave judgment ([2017] EWHC 1127). He dismissed the applications, considering them to be misconceived and wholly without merit.
19. In 2013 the claimant and Mr Paton brought the EN claim against William Cleghorn, as judicial factor for the estate of EN deceased, in respect of three of the JVAs described as the Pont Street claim, the Oriel claim and the Cliveden claim. On 11 September 2015 Edward Murray sitting as a deputy high court judge struck out the EN claim as an abuse of process: the Pont Street claim and Oriel claim were struck out as an abusive collateral attack on the SAA judgment; those claims and the Cliveden claim as an abuse on Aldi Stores Ltd v WSP Group [2007] EWCA Civ 1260

(Aldi Stores) principles. The claimant and Mr Paton appealed that decision, but not that the claim was an abusive collateral attack, and also sought to adduce new evidence. The Court of Appeal refused permission to adduce further evidence, dismissed the appeal in respect of the Pont Street Claim and the Oriel claim determining that they were abusive on broader grounds but allowed the Cliveden claim appeal. ([2017] EWCA Civ 137)

20. The Cliveden part of the EN claim was tried by HHJ Pelling QC sitting as a Judge of the High Court in 2018. The claimant and Mr Paton sought: damages for fraudulent alternatively negligent misrepresentation by EN which they say induced them to enter into the Cliveden Place JVA; monies said to be due under the JVA; and damages for breaches of the JVA. The claim was dismissed. ([2018] EWHC 2125)
21. The judge at paragraph 73 referring to the misrepresentation claim stated, *“Their evidence on this issue cannot be dismissed as the result of misrecollection or misunderstanding. The claimants advanced a positive case alleging fraud against the Deceased [EN] that was untrue”*. In relation to the case that there was an agreement or understanding between the claimant and Mr Paton on one hand and EN on the other as to the value of the undeveloped Cliveden Place, an assertion that again directly feeds into the claim against the defendants, the judge said at paragraph 61, *“the claimants’ case on the issue ... could not and did not result from mere misrecollection due to the passing of the years. It was quite simply an untrue assertion.”*
22. Mr Halpern QC and Ms Savage also referred me to extracts from the judgment which give further examples of the abusive and vexatious manner in which the claimant conducts litigation:
 - i) Adding further allegations of concealment and fraud at the trial which had not been pleaded; [paragraphs 23 and 116]
 - ii) Making allegations of fraud against EN which were held to be unfounded; [paragraph 27]
 - iii) Making serious allegations against various professionals without joining them as parties to the proceedings; [paragraphs 27, 47 and 144]
 - iv) Failing to adduce the necessary evidence to establish quantum, should the claimant have succeeded on liability, and therefore putting the defendant to the expense of a trial; [paragraphs 28 and 29]
 - v) Repeating allegations that had been made (and failed) in previous proceedings; [paragraph 34]
 - vi) Failing to provide proper particularisation, despite court orders to this effect over a significant period of time. [paragraphs 151, 189 and 199]

These show an all too familiar pattern of conduct by the claimant, conduct that also infects how the claim before me is being litigated.

23. In the claimant's submissions in respect of the impact of this judgment on the applications before me, she asserts that she has been advised to set aside the judgment of HHJ Pelling QC on the grounds it had been obtained by fraud. She does not explain how it can be said that significant planks of her claim can survive the findings of the judge. I will deal with these points later.
24. There were separate proceedings between Rosesilver Group Corp (Rosesilver) and Mr Paton. Rosesilver had sought specific performance of an agreement for the sale by Mr Paton of a flat in Belgravia. Mr Paton defended the claim, in broad terms, on the basis that the contract was intended to be security for loans made to Mr Paton and the claimant to fund the SAA claim and that the second defendant had acted for both sides in the transaction. The claimant filed a witness statement in support of Mr Paton's case. Specific performance was ordered by Mann J. ([2015] EWHC 1758) Mr Paton appealed that order and sought to adduce further evidence. Permission to adduce further evidence and to appeal were refused. ([2017] EWCA Civ 158).
25. In 2014 the claimant and Mr Paton brought proceedings against HSBC plc and 14 other named defendants again arising out of the matters involving SAA. They sought damages in tort for deceit and/or negligence. They discontinued the claim against the 11th defendant who successfully sought an order that costs be paid on an indemnity basis. ([2015] EWHC 3233. The claim was also discontinued against all of the other parties.

THE APPLICATIONS

The Law

Statements of Claim

26. Counsel for the defendants referred to a range of case law in support of the applications.
27. It is the essential role of the particulars of claim to set out, succinctly, what the claimant relies on factually to establish his or her cause of action. CPR 16.4(1) provides that,

 "Particulars of claim must include—

 (a) a concise statement of the facts on which the claimant relies"
28. The Practice Direction sets out certain matters that must be pleaded. In particular PD 8.2 includes the matters that a claimant must specifically set out: (1) any allegation of fraud, (3) details of any misrepresentation, (4) details of all breaches of trust, (5) notice or knowledge of a fact, (7) details of wilful default.
29. Mr Halpern QC and Ms Savage also referred me to the practice in the Chancery Guide and the approach in the Commercial court in respect of pleadings. They cited a raft of authorities in connection with the matters a statement of case should set out and how they should be pleaded. Although I was not referred to Towler v Wills

[2010] EWHC 1209 (Comm). Teare J's analysis of the purpose of pleadings is helpful and uncontroversial.

“18. The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. If the case which is brought against him is vague or incoherent he will not, or may not, be able to do any of those things. Time and costs will, or may, be wasted if the defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies; ...

19. It is not fair and just that the Defendant cannot be sure of the case he has to meet. It may well be that, with appropriate legal advice, the Claimant could have pleaded a concise, clear and particularised case against the Defendant but that has not been done. If the Amended Particulars of Claim are not struck out there is a very real risk that unnecessary expense will be incurred by the Defendant in preparing to defend allegations which are not pursued, that he will be impeded in his defence of allegations which are pursued and that the Court will not be sure of the case which it must decide.”

30. Rose J, as she was then was, in *Kaplan v Super PCS LLP* [2017] EWHC 1165 (Ch) at paragraph 37 made the apposite observation that,

“ ... it is the Claimants' obligation to put the case forward in a manner which does not involve the Defendants having to chase back through multiple cross-references to other paragraphs in the pleading which may then say something different leading to a lack of clarity about what the allegation actually is. I agree with the Defendants that the proposed amended Particulars of Claim are properly described as unnecessarily prolix and embarrassing. They fail fairly to identify the claims being pursued in a way which can be reasonably understood or responded to by the Defendants.”

31. The claimant also makes specific allegations of fraud against the defendants albeit with no particulars given. In *Three Rivers District Council v Bank of England* [2001] UKHL 16 the House of Lords restated the principles on when fraud can be pleaded. Lord Hope of Craighead at paragraph 55 said,

“... A party is not entitled to a finding of fraud if the pleader does not allege fraud directly and the facts on which he relies

are equivocal. So too with dishonesty. If there is no specific allegation of dishonesty, it is not open to the court to make a finding to that effect if the facts pleaded are consistent with conduct which is not dishonest such as negligence. As Millett LJ said in *Armitage v Nurse* [1998] Ch 241, 256G, it is not necessary to use the word "fraud" or "dishonesty" if the facts which make the conduct fraudulent are pleaded. But this will not do if language used is equivocal: *Belmont Finance Corporation Ltd v Williams Furniture Ltd* [1979] Ch 250, 268 per Buckley LJ. In that case it was unclear from the pleadings whether dishonesty was being alleged. As the facts referred to might have inferred dishonesty but were consistent with innocence, it was not to be presumed that the defendant had been dishonest. Of course, the allegation of fraud, dishonesty or bad faith must be supported by particulars. The other party is entitled to notice of the particulars on which the allegation is based. If they are not capable of supporting the allegation, the allegation itself may be struck out. But it is not a proper ground for striking out the allegation that the particulars may be found, after trial, to amount not to fraud, dishonesty or bad faith but to negligence."

32. Further at paragraph 160 Lord Hobhouse of Woodborough,

"...Where an allegation of dishonesty is being made as part of the cause of action of the plaintiff, there is no reason why the rule should not apply that the plaintiff must have a proper basis for making an allegation of dishonesty in his pleading. The hope that something may turn up during the cross-examination of a witness at the trial does not suffice. It is of course different if the admissible material available discloses a reasonable prima facie case which the other party will have to answer at the trial."

33. Lord Millett at paragraphs 184 to 186,

"184. ... This means that a plaintiff who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and that facts, matters and circumstances which are consistent with negligence do not do so.

185. It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means "dishonestly" or "fraudulently", it may not be enough to say "wilfully" or "recklessly". Such language is equivocal. A similar requirement applies, in my opinion, in a case like the present, but the requirement is satisfied by the present

pleadings. It is perfectly clear that the depositors are alleging an intentional tort.

186. The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.”

Strike Out

34. Pursuant to CPR 3.4(2),

“3.4(2) The court may strike out a statement of case if it appears to the court—

....

(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order.”

35. A pleading needs to comply with the CPR; be clear, concise and comprehensible. Only those facts which are necessary to plead the cause of action should be set out, otherwise a party runs the risk of producing a prolix and incomprehensible pleading.

36. The defendants also rely on abuse of process to strike out the claim. Lord Bingham of Cornhill in Johnson v Gore-Wood [2002] 2 AC 1 analysed the main principles of the law at page 31A to E,

“But Henderson v Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the

current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not.”

37. There is also a helpful review of the law on abuse of process by Flaux J in *Kamoka v The Security Service* [2017] EWCA Civ 1665, paragraphs 42 to 80.
38. Here the defendants argue abuse of process in the context of the claim seeking “to relitigate or amounts to a collateral attack on issues which have already been decided in previous proceedings [and] ... to put forward contentions or allegations which are inconsistent with findings made in previous proceedings.” Although the parties in this case are not the same as in previous cases in *Aldi Stores Ltd v WSP Group plc* [2007] EWCA Civ 1260 the court emphasised the need for a broad merits-based approach when considering strike out on the basis of abuse of process. The fact that the defendants in the other claims were different to the defendants in this claim might be a powerful factor but did not of itself bar such an application.
39. Where a statement of case is found to be defective the court should consider whether the defect may be cured by amendment and allow a party an opportunity to amend: *Kim v Park* [2011] EWHC 1781 (QB) Tugendhat J at paragraphs 40 to 41.

Summary Judgment

40. Pursuant to CPR 24.2 a court may give summary judgment on the whole of a claim or on a particular issue if:

“(a) it considers that—

(i) the claimant has no real prospect of succeeding on the claim or issue; ... and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

41. In Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch), Lewison J, as he then was, granted reverse summary judgment on part of the claim, allowing the account and inquiry to go to trial. At paragraph 15 he sets out a useful précis of the principles to be applied on a summary judgment application brought by a defendant.

“15. ... The correct approach on applications by defendants is, in my judgment, as follows:

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

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

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

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

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

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

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.”

The Applications

42. Given Mr Owen-Thomas’ concession as to the state of the POC and the APOC and that new particulars of claim needed to be drafted I heard both the adjournment application and went on to hear the defendants’ application for strike out or reverse summary judgment. My decision of whether to grant an adjournment inevitably involved consideration of the claimant’s statements of case and the defendants’ application. Although the defendants’ primary position was that no adjournment should be granted Mr Halpern QC also made submissions on the terms of any adjournment and whether, in any event, they would be fair to the defendants.
43. At the outset Mr Owen-Thomas accepted that it was an unattractive position for the claimant to seek a further opportunity to properly plead her claim. He submitted that although delay was regrettable the defendants’ position could be preserved with appropriate costs orders. It is unclear to me how costs will achieve that. The claim was issued on 2 September 2014 and contains serious allegations against the defendants that have yet to be formulated, even now, into a concise, clear and comprehensible particulars of claim that enable the defendants to understand and plead a defence.
44. Mr Owen-Thomas argued that more time was necessary: (1) for the claimant to obtain the SRA report, due to be released on 15 June 2018, although the SRA report is still awaited; (2) allow the claimant’s legal team to prepare further APOC, although the claimant instructed Royds Withy King between February and June 2018 and instructed direct access counsel from time to time, and that has not led to a CPR compliant or comprehensible pleading; (3) allow the claimant to recover from medical treatment; and (4) allow the claimant to prepare and attend a separate 13 day trial. Mr Owen-Thomas in making his application for an adjournment sought to identify where it could be said that there was an intelligible claim that the claimant was advancing.

45. Mr Owen-Thomas submitted that the SRA investigation and future report will go to the Cash Transfers claim. He accepted there was a large degree of speculation in his submission and that the report itself was not essential. However he argued the forensic examination by the SRA would assist the claimant in pleading her claim; it would instil greater confidence that the new pleading would be CPR compliant. He said that the report would be released on 15 June 2018 and that was within the time frame for the claimant settling, through counsel, a further particulars of claim. The report was not released and furthermore no new particulars of claim has been filed.

46. Paragraph 74 of the APOC asserts that,

“The said breaches of trust by Brook Martin were dishonest on the basis that Mr Brook was recklessly careless as to the Claimant’s interest in effecting the Cash Transfers. The reckless carelessness of Mr Brook as regards the Claimant’s interest is evident inter alia from the from the oral evidence given by Mr Brook under cross-examination at the SAA trial in July 2013, as set out in the schedule attached.”

This involves allegations of fraud without any particulars, an unintelligible assertion of “reckless carelessness” and a generic reference to the schedule. In answer to my question about whether he was advancing a claim based on fraud Mr Owen-Thomas frankly stated that he had not seen evidence to support this and could not “sit here and say fraud”. He submitted that if the SRA corroborated what the claimant said then she would be entitled to bring such a claim. That is not how fraud is to be pleaded. The claimant must have a proper basis for making an allegation of dishonesty against the defendants and she cannot simply see if something emerges perhaps in disclosure, during cross-examination or, in previous claims, after the trial.

47. The claimant made an application dated 11 November 2018 for disclosure of certain documents, including the report. The report was said to be imminent. The claimant represented herself at that hearing. I dismissed the application, the claimant failed to satisfy me as to the issues that the documents including the report were said to go to and why it was necessary to disclose the documents at that stage, specifically before particulars of claim that were CPR compliant were filed. The application could be rightly categorised as a fishing expedition. The judgment is reported at [2019] EWHC 661.

48. I will deal with the second ground in more general terms when I turn to consider the defendants’ application. Mr Halpern QC and Ms Savage made apposite observations in respect of the third and fourth grounds relied on by Mr Owen-Thomas. The claimant served a 16 page statement with exhibits running to 443 pages on the Wednesday preceding the hearing commencing on Monday 11 June 2018. There was no explanation given as to why this witness statement was served some 7 months after the original hearing was adjourned and 10 months after Mr Gooding’s witness statement was served. The claimant’s witness statement is dated 6 June 2018, it does not suggest that it was made at a much earlier stage. On the face of it the claimant has been able to prepare and file a witness statement shortly before the June hearing, notwithstanding Mr Owen-Thomas’ submission that she needed time to recover from medical treatment. I do not accept his submission. As to the alleged timetable clash, Mr Halpern QC submitted that the EN claim trial window was fixed in June 2017 and

was floating in a 5 day window starting on 11 June 2018; it started on 13 June 2018. This hearing was fixed on 26 February 2018 on a date convenient to the claimant. I consider that the claimant was fully aware of the timing and there is no merit in this ground either.

49. The claimant achieved her adjournment as a result of the events that I have referred to in paragraphs 2 to 5 above, albeit no amended pleading has been filed and no explanation has been given for this failure.
50. I will now go on to consider the claim itself and specifically the defendants' application. The current claim was issued on 2 September 2014, initially against the first defendant and Sator. The claimant then served an amended claim form removing Sator as defendant but adding the second defendant.
51. It is alleged in the details of claim that the claim arises out of "*breach of contract, professional negligence and/or breach of fiduciary duty on the part of the defendant and/or its servants or agents in connection with property transactions completing between September 2008 to March 2009 in which the first defendant conveyed to a woman purporting to be named Sarah Al Amoudi real property namely a number of flats in central London the beneficial interest in which was with the claimant.*" There then followed 5 alleged breaches:
 - i) transferring valuable properties to SAA without informing or consulting the claimant;
 - ii) failing (negligently and/or owing to conflict-of-interest) to keep the claimant and/or her partner Mr Paton properly informed as to the activities of EN with regard to 9 Cliveden Place;
 - iii) negligently or fraudulently misrepresenting to Mr Paton that 9 Cliveden Place was about to be sold with the intention of inducing him to charge his interest therein to Sator at high rates of interest;
 - iv) wrongfully applying sale proceeds from other properties, 7 Sloane Gate Mansions and 86 Marsham Court, to reduce Mr Paton's liabilities to Sator;
 - v) telling the claimant that she was party to JVAs with SAA while, unbeknown to the claimant, telling associates of SAA that this was not the case and therefore undermining the SAA claim.
52. It is readily apparent that some of these allegations do not concern the claimant but instead relate to Mr Paton's relationship with the first defendant. Similarly, as to the claim against Sator, it was said that the claimant sought damages "for the undue pressure it applied to Mr Paton for repayment of the said loans, as a result of which he transferred properties to SAA."
53. The claimant was given a number of extensions by the defendants to serve her claim form and POC, 3 years in total. During this period the claimant served a letter of claim and draft particulars of claim. The defendants' solicitors explained in correspondence why the draft particulars of claim were defective, in particular in its

detailed letter dated 27 October 2016. The amended claim form now asserted that the claimant's claim was for:

- i) damages for losses arising out of breach of fiduciary duty, breach of contract, breach of tortious duties to the claimant and breach of trust in relation to acts and omissions by the defendants in and after 2006 while retained by the claimant and Mr Paton to act in connection with the project in respect of 9 Cliveden Place, additionally damages for fraudulent misrepresentation by the second defendant as to the valuation placed upon 9 Cliveden Place by the bank which was providing finance to EN;
- ii) damages for losses arising out of breach of fiduciary duty and/or negligence in failing to disclose to the claimant during 2007 and 2009 information of which the defendants became aware as to EN and his financial affairs and failing to take proper steps to protect the claimant's interests;
- iii) damages for losses arising out of breach of trust for transferring away, during January to October 2007, from the claimant's monies held in the first defendant's client account, the sum of £2.32 million, without any authority from the claimant to a woman going by the name of SAA;
- iv) damages for losses for breach of trust and/or negligence for transferring without any authority from the claimant, during October 2008 and January 2009, 5 properties which the defendants knew to be beneficially owned by the claimant to SAA;
- v) damages for breach of fiduciary duty, breach of contract and/or breach of tortious duties of care for losses arising out of the advancing, during 2010 and 2014, by the defendants to the claimant of monies said by the second defendant to be by way of loans to the claimant from Sator, which the claimant now believes were actually her own monies.

54. The claimant also served the POC which ran to 58 pages with 2 appendices. Mr Halpern QC submits that the defendants have not waived any arguments that they wish to advance in respect of the amended claim form which seeks to advance claims not contained in the claim form and are purported to be added after the expiry of limitation periods. In particular he refers to the Funding Claim, which was not included in the claim form.

55. A solicitor's primary duty is owed in contract, the scope of which will depend on the express and implied terms of the retainer. The nature of the relationship is also one in which a client reposes trust and confidence in the solicitor: it is a fiduciary relationship. A solicitor's single-minded duty to his or her client and his or her duty to respect the client's confidences arise from the nature of the fiduciary relationship but may be shaped by the terms of the contractual relationship. There is no general rule that a solicitor may never act for both sides in a transaction but it may be professionally imprudent to act in this way or a breach of his or her duty to act for more than one client who has conflicting interests. Here the claimant sets out 4 terms of the retainer and of those 2 are pleaded as co-existent and co-extensive duties in tort. The claimant includes the duty to act in good faith in all dealings with the claimant

and that they would not put themselves in a position of conflict with their interest to act in the best interests of the claimant.

56. The claimant includes a fiduciary duty to act with loyalty in the claimant's best interests. Also that the defendants were trustees of any funds belonging to the claimant that were held in their client account.
57. The claimant asserts that "a retainer was informally agreed by means of and as evidenced by informal communications and conduct beginning in 2004 and ongoing until the last direct dealings that the claimant had with the defendants in 2014": paragraph 5.4 of the POC.
58. Thereafter the claimant purports to plead a series of claims under the following headings: the Cliveden Place Claim; Non-disclosure Claim; the Funding Claim; Cash Transfers Claim; and Transfer of Properties Claim. It is difficult to even summarise how these claims are formulated.
59. In Mr Gooding's witness statement at paragraphs 14 and 15 he makes the following valid overarching criticisms of the POC,

"14. ... [they] are prolix, yet lacking in important particulars, confusing and difficult to follow.

15. One general respect in which the Particulars of Claim in this matter are flawed is the prevalence of long and discursive paragraphs dealing with factual matters, often including statements made by, or dealing with the conduct of persons other than, the defendants, which do not set out why or how such matters are alleged to be relevant to any claim against the defendants. Paragraphs which do contain allegations against the defendants seek to refer back to matters "above", without specific cross-references or other explanation as to which parts of the preceding narrative are relied on. This may seem like an unduly technical 'pleading point', but it is not. A defendant, and particularly a professional accused of serious and improper behaviour, is entitled to know exactly what is alleged against him, and a claimant making such allegations is obliged to set out the allegations out clearly and properly. In accordance with the rules and practice directions. The absence of specific, directed or easy to follow cross references does not 'work' where the pleading is unduly prolix (as this one is). The claim becomes impossible to properly plead to."

60. Mr Gooding then goes on to set out detailed criticism of the POC in paragraphs 19 to 36 of his witness statement. For example, the claimant alleges at paragraph 3.5.1(1) of the POC that she "*refused to be pressured by the second defendant to waive her rights in relation to 47 Belgravia Court*" and at paragraph 12.6.1(2) "*in reliance on Mr Brook's advice and under pressure from him, the claimant sold properties at 7 Sloane Gate Mansions on or about 18 October 2009 and at 86 Marsham Court on or about 25 November 2009, in order to help 'repay' the Defendant's alleged client Sator.*" "Pressure" usually means to strongly persuade someone to do something that they do

not want to do, it can even include force or threats. At no stage does the claimant particularise or explain what this pressure is and when and how it was said to have been applied.

61. Mr Gooding also uses by way of example the claimant's stance that the defendants failed to disclose to, or concealed certain matters from her. He notes that the claimant appears to use the terms "nondisclosure", "concealment" and "withheld" interchangeably. He properly observes that concealment and nondisclosure are not the same thing. Concealment is a serious allegation and the claimant should set out a proper basis for making this allegation. At paragraph 8.10.1 of the POC the claimant alleges that the defendants concealed certain communications from her. Mr Gooding at paragraph 22.1 observes "this paragraph is discursive, and very difficult to follow as a whole, but the basis on which it is contended that communications were "concealed " from the claimant (by the defendants) is simply not set out at all". I agree. Further at paragraph 8.12 the claimant alleges that matters were wrongfully not disclosed to and/or concealed from the claimant. Yet the basis on which it is alleged the defendant's knew of the matters relied on is not set out and the basis for the allegation of concealment is not set out. At paragraph 11.3.1(9) the claimant alleges that she has "incurred wasted costs in defending various (legal) proceedings because key facts have been concealed by the first and second defendants". The claimant fails to set out what those key facts are and fails to set out the basis on which it is said they were concealed.
62. It is not simply the claimant's case on breach that is defective and not CPR compliant but it is also her case both on causation and on loss and damage.
63. The examples given by Mr Gooding in paragraphs 29 to 36 of his witness statement, and as expanded upon by the defendants' counsel are sound criticisms of the POC. They entirely support the defendants' application that the POC should be struck out under CPR 3.4(2)(b) or (c).
64. The claimant then sought by her application notice dated 13 February 2018 to amend the POC by replacing it with an entirely new pleading, the APOC. Although the APOC is only 24 pages long it includes an integral schedule which runs to 81 pages and is a chronology of events. Mr Halpern QC submits that the APOC suffers from the same defects as the POC but are even less comprehensible, Mr Owen-Thomas agrees. As do I.
65. The APOC again sets out generic obligations that a solicitor owes to a client, in the same terms as in the POC. The claimant sets out 4 terms of the retainer and of those 2 are pleaded as co-existent and co-extensive duties in tort. The fourth is more extensive than that pleaded in the POC in that it includes the duty not to put themselves in a position of conflict with their interest to act in the best interests of the claimant with "*duties of transparency and confidentiality in all legal advice carried out for the claimant*". The fiduciary duty repeats the original fourth contractual duty. The same trust is pleaded.
66. In a detailed analysis the defendants' counsel have produced a coloured copy of the APOC with a 6 colour key as follows: (i) "as set out in the schedule" where references to the 81 page schedule cannot be readily identified (yellow); (ii) "as set out above" or "below" or "herein" where the cross-reference cannot be identified and "to be

expanded in due course” and nothing further has been provided (pink); (iii) allegations of fraud where the required particulars are not included (orange); (iv) other allegation which are ambiguous or unintelligible because they are not particularised (cyan); (v) abusive allegations which attempt to relitigate previous proceedings or make allegations contrary to previous allegations or findings (blue); (vi) limitation issues where the claim pre-dates the claim form by more than 6 years (green). Under each of the claim headings there is very little of the APOC that is not coloured. The abuse of process allegations directly concern the Cash Transfers Claim and Transfer of Properties Claim but also undermine the other claims too.

67. I was taken through the APOC in some detail and I accept the submissions made by the defendants’ counsel in respect of the parts of the APOC colour coded yellow, pink, orange and cyan. For example, in respect of the Cliveden Place claim paragraphs 26 and 27,

“26. For example, on 7 February 2008, Elliott Nichol withdrew a further £1,000,000 from 9 Cliveden Place and refinanced his Scottish care home, as a consequence of the Bank of Ireland being falsely led to believe by Peter McCormick, acting on behalf of Elliott Nichol, that he had £6,400,000 of equity in 9 Cliveden Place. (Peter McCormick was forced to admit in cross-examination in July 2013, in the SAA proceedings, that Elliott Nichol had no other assets against which to borrow at the time; which was at the height of the credit crunch and the Irish banks, in particular, were foreclosing on their less solvent clients)

27. If the second defendant had not concealed these facts from the claimant, she would have dis-instructed the defendants, and had no further dealings with Elliott Nichol. As set out in the schedule, the second defendant has deliberately concealed the matters set out herein to the present day, the claimant believes, in collusion with Elliott Nichol, Peter McCormick, the directors of Westbrooke (after they became aware in 2009 that Elliott Nichol had introduced no monies into Westbrooke in October 2006 apart from bank finance in breach of the terms of the facility) and latterly Elliott Nichol’s estate.”

68. These paragraphs include: an unspecified reference to the schedule, allegations of fraud without the necessary particulars, a generic reference to the matters set out herein to the present day without any specificity and references which are ambiguous or unintelligible because they are not anchored into a clearly pleaded claim.

69. Another example can be shown in the Non-Disclosure Claim under paragraphs 38 and 39:

“38. As set out above and in the schedule attached, the 2nd defendant concealed from the claimant the following facts:

(a) that the contract for the sale of the property at 9 Cliveden Place to Westbrooke had not been exchanged in 2006;

(b) the Bank of Ireland facility which was drawn down on 4 October 2006, was drawn down as a consequence of fraudulent misrepresentations made by the second defendant to DWF (acting for Bank of Ireland) on 4 October 2006;

(c) that false representations had been made to the claimant from August 2006-October 2006 in relation to the Cliveden JVA;

(d) that the £50,000 loan the claimant and Mr Paton made to Westbrooke was induced by false representations made to them by the second defendant;

39. These facts been concealed by the second defendant from the claimant for over 11 ¼ years. (Indeed the second defendant is still concealing the true situation from the claimant despite her own and her solicitors repeated requests for transparency and disclosure). The second defendant's concealment and strategies to "contain" the claimant and to deny the claimant's repeated requests for information are set out in the schedule."

Here there is a failure to properly cross-reference what "as set out above" refers to, references to the attached schedule without any specificity and numerous allegations of fraud without the necessary particulars.

70. The defendants' solicitors tried in correspondence to flush out from the claimant whether she would be seeking to rely on the POC or the APOC at the hearing, with no success. It was only in an email dated 7 June 2018 timed at 18:55 from Mr Owen-Thomas to Mr Halpern QC he confirmed, "*I view neither document as being currently in an appropriate format so as to comply with the rules and put forward a claim to which a response can be made. The claim needs to properly pleaded out (as I know I do not need to tell you).*" To his credit he was frank during the hearing that the claim needed to be properly pleaded. He did, however, use the APOC, and upon prompting the POC, as the basis for submitting that the court should permit the claimant to have yet another opportunity to plead her case so that it was compliant with the CPR.
71. I now look at each claim specifically before returning to the claim more generally.

The Cliveden Place Claim

72. Mr Owen-Thomas submits that this claim is "in essence" set out by the claimant. He suggests that it is summarised in paragraph 16 of his skeleton argument as a failure by the defendants to ensure that the claimant's interest under the Cliveden Place JVA was secured, a failure to advise on the limits of an unregistered charge, a failure to advise that the title to properties owned by Westbrooke were unencumbered by a first charge in favour of Citibank and that the defendants drafted the JVA in a manner incompatible with the Bank of Ireland (BOI) facility letter. The latter relates to funding to Westbrooke not the claimant. He was unable to articulate whether these issues were the subject of the trial before HHJ Pelling QC: given the factual foundation it is difficult to see how they were not interwoven with the EN claim. He submitted that had the claimant been advised of the 'shaky foundation' of the

Cliveden Place JVA she would not have carried on with the transaction. Whilst accepting that the claim was clothed in narrative nevertheless he said that the complaint was that as a result of the defendants breaches of duty she suffered loss, the Cliveden Place JVA led to a worthless investment.

73. Mr Owen-Thomas also submitted that the allegation of a conflict of duty was not a free standing cause of action and needed to be recast. He suggested that as the defendants were advising EN that gave rise to a duty to advise the claimant to obtain independent legal advice. I put to Mr Owen-Thomas that the claimant's case was that she did not know if the first defendant was acting for EN. I had no satisfactory response.
74. Mr Owen-Thomas, despite his position in relation to the fraud allegations, went on to submit that the particulars of fraudulent misrepresentation in paragraph 8.9.2 of the POC were set out clearly: the second defendant knew that EN represented to the claimant that Cliveden Place was valued at £3 million; the second defendant was aware that the value ascribed to Cliveden Place by the BOI was a different value; and the second defendant failed to correct that impression. He went on to explain in relation to the dishonest breach of trust at paragraph 10.1.5.5 in the POC that again they are properly set out: the sum of £2,322,000 had been transferred to solicitors acting for SAA², the claimant did not give authority for the transfer, paragraph 10.15.5; the defendants were aware this was to discharge debts owed by Mr Paton to SAA; and the second defendant knew this was the claimant's money, paragraph 10.15.6. Indeed notwithstanding his submissions Mr Owen-Thomas said in his second skeleton argument that "*while as counsel I have yet to see material that supports these contentions, on the face of it the complaint is compelling.*" These submissions reveal that the claimant even with the assistance of counsel has been unable or unwilling to appreciate that fraudulent misrepresentation and dishonest breach of trust are serious allegations, they require a proper basis before they are pleaded. These submissions do not directly allege fraud. It is quite common for fraud allegations to be inferential but the primary facts must be set out upon which 'tilts the balance' in favour of fraud. These 'primary facts' do not 'tilt the balance' and are simply not unequivocal in supporting a case of fraud.
75. Mr Halpern QC quite properly submitted that Mr Owen-Thomas was straying into the realms of giving evidence. He also took me to the letter dated 2 June 2017 from Oliver Dykes at Strafford Law Limited, solicitors who act for the claimant from time to time, to the SRA setting out over the course of some 65 pages the allegations against the defendants and other firms, particularly the allegations made therein about the Cliveden Place JVA. The defendants had only seen this letter when it was exhibited to the claimant's statement dated 6 June 2018, served a few days before the hearing. He said what was telling was that Mr Owen-Thomas had not referred to these allegations. For example at paragraph 33 of the letter Mr Dykes asserted that, "*We believe Mr Brook did this to maintain the illusion under which our clients were that the purported Cliveden JVA was a real joint venture, rather than a fraudulent device to enable (and which did enable) Mr Nicol to acquire most of our clients' equity in 9 Cliveden Place, and to forestall their issuing proceedings against the estate of the late Mr Nichol.*" Further at paragraph 87d) "*What appears to be Mr Brook's fraudulently*

² There is an error in the claimant's table and one of the figures transferred on 19.1.07 should be £120,000 not £150,000.

depriving our clients of their property". Mr Halpern QC submitted that these allegations were abusive and being "dragged into this claim" by the claimant.

76. I have already set out above the defective nature of the POC and APOC. Mr Halpern QC also submitted that the POC are not easy to follow. For example, paragraph 8.13.3 pleads that "as set out in paragraph 8.9.2" the second defendant and through him the first defendant's failure to correct the fraudulent misrepresentations EN made about the content of the BOI facility letter amounted to an implied dishonest misrepresentation. However paragraph 8.9.2 alleges that the second defendant had received a copy of the said BOI facility letter either before or shortly after the Cliveden Place JVA was signed. His silence about the value assigned to Cliveden Place by the BOI was said to amount to an implied representation that he knew of no fact to contradict them, and an implied representation that was dishonest because the second defendant knew it to be untrue.
77. Mr Halpern QC and Ms Savage in summary submit that the POC and APOC are prolix, discursive, full of evidence rather than material facts, contain incorrect and/or vague references many of which appear to be irrelevant, and are lacking in proper particularity and difficult to follow. The POC are of disproportionate length, 58 pages with appendices, and it is impossible or it is nigh on impossible to identify the points which could amount to a coherent claim against the defendants. Allegations of fraud pepper the statements of case without a proper basis and lacking in adequate particularisation. The APOC at 24 pages in length includes an integral 81 page schedule and are also of disproportionate length. They are even worse than the POC. These are all valid criticisms of the Cliveden Place Claim and indeed all of the claims. I accept the defendants' submission that it would be impossible for them to plead a defence.
78. I accept the defendants' arguments that the POC should be struck out under CPR 3.4(b) and (c).

Non-disclosure Claim

79. Mr Owen-Thomas submitted that this was an improper claim and should be removed from the particulars of claim as it duplicates the Cliveden Place Claim. This means that paragraphs 8.12 to 8.15 of the POC should be struck out.

The Funding Claim

80. This claim is pleaded under paragraph 12 of the POC. The claimant alleges that she "has reason to suspect that Mr Brook may have a personal interest in the company Sator". She goes on to say at 12.3.3, "*it is now unclear as to what extent Loans came from money that originated from Sator, Mr Brook and Mr Martin personally, the claimant and Mr Paton's own funds held with Brook Martin, funds held by Brook Martin on behalf of companies related to the Claimant or other clients of Brook Martin to which Mr Brook has access.*" She asserts that the second defendant arranged a series of loans from Sator to Mr Paton at extremely high rates of interest. Mr Owen-Thomas also referred me to paragraphs 57 to 67 of the APOC and offered his distillation of this claim. The defendants offered to assist the claimant to obtain litigation funding, they did not inform her that she had sufficient money in the client account without the need for borrowing money, the litigation funder was an alter-ego

of the defendant (the second defendant on the APOC) and that the money lent to her was in fact her own money. He submitted that in so far as there was an allegation of dishonesty he was not able to advance such a case. I questioned the basis of the claimant's assertion in paragraph 61 of the APOC that she "now believes" the funds "were her own": the basis is not pleaded. It certainly suggests a change in her position and normally one would assume that was as a result of recent knowledge. Mr Owen-Thomas said that the claimant's belief was formed from unaccountable dissipation of monies that she thinks should have been on the client account and a forensic accountant's analysis. No expert evidence was served with the APOC and no report has been filed at court or served on the defendants separately.

81. Mr Owen-Thomas' first skeleton argument puts the case in a different way, which would presumably have formed the basis of the new version of the particulars of claim that he said he has instructions to draft. At paragraph 21 he submitted that the defendants acted for the claimant, no reference is made to Mr Paton, and that the money loaned to Mr Paton was in fact the claimant's own money. At paragraph 22 he asserts that she was led to believe by the second defendant that she was liable for Mr Paton's debts. Mr Halpern QC submits that this is a new claim and does not arise out of the existing POC. I agree with that submission.
82. At paragraph 13.5.1 it is alleged that "on the basis of the matters set out in paragraph 9" (which is the Cliveden Place Claim) "the claimant claims common law damages and/or equitable damages reflecting her loss in an amount to be quantified in due course". I do not know what the claimant's case is and how she is said to calculate her purported loss. There are said to be 5 categories of loss set out in paragraph 12.6.1(1) to (6). This appears to be principally a loss of opportunity claim.
83. The claimant has not set out a proper foundation for alleging that the monies lent to her were in fact hers. As to the allegation that Sator was the alter-ego of the second defendant this contention has been raised before by Mr Paton in the Rosesilver claim and rejected by the judge. I refer to this in more detail below at paragraph 92. This claim is not included in the claim form, only in the amended claim form. It is by no means clear to me from the pleaded case whether the claimant alleges that the breach occurred at the outset or every time a new loan was made. If it is the latter then of the 61 loans set out in Appendix 1 to the POC the first 49 are statute barred, having been advanced more than 6 years before the issue of the claim form. In any event the Funding Claim should be struck out under CPR 3.4 under grounds (b) and (c).

Cash Transfers Claim

84. Mr Owen-Thomas, whilst accepting that in the SAA claim findings were made by the trial judge about the payment of monies to SAA, submits that the bank transfers were from sums held on account by the defendants on behalf of the claimant. Her case simply put is that before the monies were used to settle a debt owed by Mr Paton the defendants should have asked for her consent or informed her of what they were doing. At paragraph 71 of the APOC she pleads that at no time did she give blanket authority to Mr Paton to deal with her funds in the first defendant's account as he saw fit. The transfer between January and October 2007 of £2,322,000 from the first defendant's account to solicitors acting for SAA were in breach of trust.

85. Mr Owen-Thomas frankly accepted that how the claimant is putting her case in respect of these sums does not accord with what she told the court in the SAA claim, by this I assume he means gave evidence under oath. However he submits she genuinely believed that she was entering into a JVA. If Mr Paton misled the claimant then that would be consistent with the judgment in the SAA claim.
86. The factual basis relied on by the claimant is an abuse of process in that it is a collateral attack on the judgment in the SAA claim or adopts an inconsistent position to that advanced previously. In the SAA claim the claimant and Mr Paton asserted that they held the funds jointly and these were transferred pursuant to the JVAs. The judge found that the sum of £2.28 million and the sums spent on refurbishment of properties owned by SAA were repayments of sums loaned to Mr Paton by SAA. The judge went on at paragraph 442 in the judgment to say that if she was wrong about the £2.28million then she did not consider the evidence sufficiently clear to form the basis of any kind of Quistclose or other trust. I will go on to deal with abuse more generally below.

Transfer of Properties Claim

87. Mr Owen-Thomas made the same point in respect of the 5 Security Properties transferred to SAA. He argued that they had been beneficially owned by the claimant and were unquestionably transferred to SAA. Again he suggests that the claimant was hoodwinked by Mr Paton into believing that she had entered into various JVAs.
88. The same point as arises in the Cash Transfer Claim also arises here. The claimant is seeking to advance an inconsistent case to that relied upon in the SAA claim. She averred that the Properties were transferred by the claimant and Mr Paton pursuant to the JVAs that they entered into with EN and SAA. I will go on to deal with abuse more generally below.

The defendants' application in respect of the claims generally

89. As to the defendants' case on abuse of process in the context of a collateral attack. The claimant pleads at paragraph 8.2.4 of the POC that there was an oral agreement and/or business arrangement to pursue joint ventures with EN. This appears to be a reference to the Oriel agreement said by the claimant and Mr Paton to have been an oral agreement entered into whereby the claimant and Mr Paton agreed to find suitable properties and offer these to EN and a consortium of investors including SAA. If EN and the consortium agreed then the parties would enter into a JVA in respect of that property. However in the SAA claim the judge found that it was unlikely that the Oriel agreement was concluded and expressly rejected the evidence of the claimant and Mr Paton. She found that there was no joint ventures involving SAA with or without EN. Further that there was no evidence of EN's involvement in the specific properties which the claimant and Mr Paton contended were subject to JVAs with SAA.
90. The claimant seeks to circumvent this problem by stating at paragraph 8.2.4 that "*if the contents of the oral agreement were not legally binding then they reflected a business arrangement that was supplemented by specific enforceable agreements*". Further that "*for the avoidance of doubt the claimant does not seek relief or advance any claim against the defendant on the basis of the oral and/or business arrangements*

to pursue joint projects. It is referred to in order to provide a complete picture of the factual background...” At paragraph 38 of the claimant’s witness statement dated 6 June 2018 she says,

“I accept that I cannot circumvent the findings in the Al Amoudi claim by a collateral attack. This is not, however, what I am doing. The business arrangements to which I plead form the factual background to my claim. They may well not have had any legal effect but that does not mean they did not happen or that they have no relevance to the present claim.”

91. It is not open to the claimant to present her claim in this manner. If they are not relevant, as she suggests in the POC, the claimant should not include this. However contrary to her averment that she does not rely on this, she plainly does. At paragraph 9.16.1(6) the claimant refers to 8 Walton Place, *“another joint venture property”*. Indeed this property forms part of the JVAs that the claimant and Mr Paton said were entered into by them together with EN and the consortium including SAA. So does the property at 5 Herbert Crescent described as part of *“the wider Hans Place/Herbert Crescent development scheme”*, paragraph 9.16.1(8). The judge in the SAA claim did not accept the claimant and Mr Paton’s case in respect of the JVAs and the Oriel agreement. Mr Paton in cross-examination accepted that neither he nor the claimant had provided any funding in respect of 8 Walton Place and that it had been purchased by EN. The judge did not accept that 5 Herbert Crescent had been offered to EN under the terms of the alleged Oriel agreement. Although Mr Paton has stated in cross-examination that it had been discussed the judge rejected his evidence in the absence of any other corroborative evidence. The claimant’s assertions in the POC form part of the Non-Disclosure claim, although Mr Owen-Thomas now accepts that this duplicates the Cliveden Place claim.
92. In the context of the Funding Claim the claimant alleges at paragraph 12.1.1. of the POC that she *“has reason to suspect that Mr Brook may have a personal interest in the company Sator.”* No basis for this suspicion is set out. This contention was also advanced by Mr Paton in the Rosesilver claim and adjudicated upon. The most helpful summary of the findings in respect of this are set out in Henderson LJ’s judgment in Paton v Rosesilver [2017] EWCA Civ 158, which dismissed an appeal from Mann J’s decision to grant specific performance. At paragraphs 38 to 39,

“38. The only documentary evidence upon which Mr Paton was able to rely before the judge, as providing some support for this allegation, was an email dated 20 June 2014 from Mr Brook to Mr Paton and Ms Clutterbuck, in which Mr Brook said:

“My strategy, as you know, has been to try and so agree things with Martin [i.e. Mr Forrester] that we wait for the outcome of the Nicholl case before he completes the contract to buy in the hope that you will be able to repay your debt to him (for which, as you know, I am now 50% responsible) and the contract can be mutually rescinded.”

39. Since it was Sator which had made the extensive loans to Mr Paton and Ms Clutterbuck, which they apparently hoped to be able to repay from the proceeds of the litigation involving Mr Nichol's estate, Mr Brook's statement that he was now 50% responsible for the debt could perhaps be read as suggesting that he had some kind of interest in the creditor, Sator. Without elucidation, however – and none was provided in the evidence of Ms Clutterbuck – the meaning of the statement is obscure. If anything, it appears to suggest that Mr Brook had undertaken personal responsibility for repayment of 50% of the debt, possibly by incurring some form of secondary liability for it. Moreover, the statement cannot provide support for the proposition that Mr Brook was “50% responsible” for the Sator loans at the time of the 2011 Contract, more than three years earlier. On the contrary, the word “now” implies that Mr Brook's personal involvement was a recent development. Finally, the words “as you know” imply that Mr Paton and Ms Clutterbuck already knew of Mr Brook's 50% responsibility, which would be inconsistent with any suggestion of an undisclosed personal interest. This email therefore provides no intelligible support for the allegation of an undisclosed personal interest in Sator, and the judge was fully entitled to say (in [43]) that:

“The material for supposing that Mr Brook had an undisclosed interest in the transaction is no more than a passing supposition.””

93. In respect of the Cash Transfers and the Transfer of Properties Claims, the claimant's case is that the sums and properties were owned by her and Mr Paton had no authority to instruct the defendants to transfer them to SAA's solicitors. However in the EN claim, the claimant and Mr Paton alleged that the sums were transferred via the defendants on the instructions of the claimant and Mr Paton pursuant to the JVA's. Further there was no suggestion in the SAA claim that Mr Paton was not entitled to or authorised to transfer the cash sums. Indeed it was her claim that these transfers were consistent with the JVAs entered into by her and Mr Paton on one side and EN and the consortium of which SAA was a member on the other side. Similarly in the SAA claim the claimant and Mr Paton asserted that Mr Paton acquired and transferred to SAA the short lease and then the long lease in flat 7, 50 Hans Place and other properties “pursuant to and in order to effectuate the Hans Place Joint Venture”. The claimant does not suggest that the properties were transferred in breach of trust but rather that this was done in accordance with the JVA. The JVA that the judge did not accept existed.
94. In the POC the claimant fails to explain the basis on which Mr Paton transferred the Properties to SAA. She simply asserts that he was her nominee. However in the SAA claim she maintained that they were held pursuant to the Clutterbuck Trust, said to have been evidenced in letters including a letter dated 1 June 2007 from Mr Paton to the claimant headed “LETTER OF TRUST: PROPERTY PORTFOLIO”. The judge in the SAA claim, at paragraph 199 of her judgment, noted that the letter referred to a

list of properties and specifically Drayton Court in respect of which it was said that building costs had been incurred. However that property was not purchased until 29 June 2007. It also referred to the Hans Place JVA but it was pleaded in the claimant's and Mr Paton's re-re-amended particulars of claim, and accepted in evidence by Mr Paton that that JVA was not agreed until April 2008. Despite being ordered to do so the claimant and Mr Paton failed to provide electronic copies of the 1 June 2007 letters. The judge found that "these documents were produced after they were dated in an attempt to bolster the claim and that they were neither produced nor sent at the time."

95. Mr Gooding analyses the claimant's position in paragraph 54 as follows: either the claimant is maintaining existence of the Clutterbuck Trust, which is a collateral attack on the judge's findings in the SAA, or she is advancing, without any particularity, another trust or ownership case that is different to her position in the SAA claim. Those points are well made and yet a further example of the claimant's abuse of process.
96. The claimant's position becomes worse following the findings of fact made by the trial judge in the EN claim. In written submissions on that judgment Mr Halpern QC and Ms Savage made the following cogent points, which I accept.
97. In so far as the claimant alleges misrepresentation, fraudulent or otherwise, in relation to the value of 9 Cliveden Place, the judge held that:
 - i) There was no agreement or understanding between EN and the claimant and Mr Paton concerning the undeveloped value of Cliveden Place or their interest therein prior to the Cliveden Place JVA on 3 August 2006, whether £3.45 million as opposed to £3 million or otherwise. The contemporaneous documents and the conduct of the claimant and Mr Paton on 3 August 2006 were inconsistent with or contradicted such an agreement or understanding. [paragraphs 54 to 61]
 - ii) The claimant and Mr Paton saw the BOI facility letter before signing the Cliveden Place JVA. It was highly likely that the second defendant showed them this letter before they signed. [paragraph 69]
98. In so far as the claimant alleges that the first defendant failed to advise her that the properties owned by Westbrook were encumbered by a charge in favour of Citibank, the judge held that:
 - i) The Citibank loan reduced, but did not eliminate, Westbrooke's equity in the properties, and the sum paid out following the drawdown of the BOI loan simply substituted the Bank as lender for the amount initially lent by Citibank. To suggest that EN received in effect two payments, the sums received from Citibank and the BOI loan and that these sums exceeded £832,500 was unarguable and disingenuous. [paragraph 111]
 - ii) The claimant and Mr Paton expressly agreed to take the risk that more money might need to be borrowed from the Bank in order to fund the amount payable to Westbrooke. [paragraph 117]

- iii) The Citibank loan was known to all parties prior to the making of the Cliveden Place JVA. [paragraph 122]
 - iv) No allegation had been made in the EN claim that the Citibank loan was in any respect wrongful and an attempt to introduce that by further amendment had been dismissed at a hearing before the trial. [Paragraph 122]
99. In so far as the claimant alleges that the BOI loan required Westbrooke alone to supply the borrower contribution that can no longer be maintained. At paragraph 113 the judge found that Westbrook was a single purpose vehicle formed exclusively for the purposes of carrying out the Cliveden Place development. No one thought it had any money other than what it could drawdown from the loan. The only asset that it owned was 9 Cliveden Place.
100. Insofar as the claimant makes allegations that the defendants failed to secure her interest in Westbrooke the judge found the following:
- i) The extra borrowing by Westbrooke was not a breach of the Cliveden Place JVA. [Paragraph 117]
 - ii) No loss was caused because Westbrooke and EN put more into the Cliveden Place JVA than they took out of it. [Paragraph 121 and 142 to 146]
101. Mr Owen-Thomas' retort that "*the claimant was genuinely misled by Mr Paton into believing the [JVA] position, is not inconsistent with her position now*", provides no answer. For the reasons that I have set above the POC and APOC are an abuse of process in that they either seek a collateral attack on findings made by judges in previous proceedings and/or advance a case that is inconsistent with that advanced by the claimant in previous proceedings. It is necessary for the court to intervene to protect the interests of justice and strike out the POC and APOC. Failing to do so would lead to a manifestly unfair result for the defendants.
102. The defendants' counsel also submits that the claim is an abuse of process by failing to comply with the Aldi Stores guidelines and should be struck out. It is said that the claimant should have sought directions during the EN claim as to whether the claim against the first and/or second defendants should have been combined with it and if so to what extent.
103. In the EN claim, the Judge said at paragraph 44 of his judgment that "*it was common ground that Brook Martin were hopelessly conflicted from the point at which they started to act for WPL [Westbrooke] and the Deceased [EN]*". Mr Halpern QC and Ms Savage submit that it suited Mr Cleghorn's case to characterise the first defendant as "hopelessly conflicted" and given the hostility from the claimant and Mr Paton towards the defendants by this stage they were not likely to defend any criticism of the first defendant. I also note that the first defendant was not a party to that litigation and had no opportunity to defend this allegation. The second defendant was not called as a witness. The judge observed at paragraph 45 of his judgment that "*the claimants' case could have been corroborated in critical respects by Mr. Brook [the second defendant] but he was not called to give evidence.*"
104. In paragraph 35 of the claimant's witness statement dated 6 June 2018 under the heading Elliot Nichol she states,

“... It is a claim against Elliot Nichol’s estate, partly based upon his involvement as a guarantor of Westbrooke Properties Limited, the company carrying out the JVA, and partly against him for fraudulent representation he made in relation to the value put upon the principal claim against the guarantor for breach of contract by Westbrooke Properties Limited in failing to carry out its obligations under the JVA. This claim is mentioned extensively in the particulars of claim in this action. It is important to note, however, that (as set out above) following documentation obtained since the Elliot Nichol action was pleaded, there is now a claim, supported by documentation that Stephen Brook was a party as a joint tortfeasor in the fraudulent misrepresentation and other matters as set out above.”

105. The defendants’ counsel argues that the fraudulent misrepresentation claim in the EN claim forms an integral part of the Cliveden Place claim and clearly engages the Aldi Stores guidelines. The claimant has had more than enough time to make any application to seek the court’s directions; it should have been done at an early case management stage in the EN claim. The claim form in the claim before me was issued on 2 September 2014.
106. When I asked Mr Owen-Thomas as to how he answers this part of the application he informed me that the Citibank charge did not form part of the EN claim and the failure to advise on the compatibility of the Cliveden Place JVA and the BOI facility did not arise in the EN claim. He tells me it was never an option to consolidate the claims, this is a professional negligence claim. He did however concede that the damages may overlap between the claims but that may go to mitigation in this claim.
107. Whilst he is right that the causes of action are constituted differently there is no requirement in claims that engage the Aldi Stores guidelines that the cases are consolidated. What they need to be is case managed together to enable efficient use of court’s resources and to eliminate the risk of the same issue being tried twice. Indeed there are two interwoven bases to the policy underpinning this type of abuse of process: the need for finality of decisions and the use of the court’s resources. Section 49(2) of the Senior Courts Act 1981 provides that “*every court shall so exercise its jurisdiction in every cause or matter before it as to secure that: (a) as far as possible, all matters in dispute between the parties are completely and finally determined, and (b) as far as possible, all multiplicity of legal proceedings with respect to any of those matters is avoided.*”
108. In Clutterbuck v Cleghorn [2017] EWCA Civ 137 Kitchin LJ at paragraph 78 referred to the guidance in Aldi Stores itself and the judgment of Sir Anthony Clarke MR at 96,

"For my part, I do not think that parties should keep future claims secret merely because a second claim might involve other issues. The proper course is for parties to put their cards on the table so that no one is taken by surprise and the appropriate course in case management terms can be considered by the judge. In particular parties should not keep

quiet in the hope of improving their position in respect of a claim arising out of similar facts or evidence in the future. Nor should they do so simply because a second claim may involve other complex issues. On the contrary they should come clean so that the court can decide whether one or more trials is required and when. The time for such a decision to be taken is before there is a trial of any of the issues. In this way the underlying approach of the CPR, namely that of co-operation between the parties, robust case management and disposing of cases, including particular issues, justly can be forwarded and not frustrated. "

109. The principles derived, principally, from Johnson v Gore-Wood were summarised by Clarke LJ in Dexter v Vlieland-Boddy [2003] EWCA Civ 14 at paragraph 49 and also referred with approval by the Court of Appeal in Aldi Stores:

“(i) where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process;

(ii) a later action against B is much more likely to be held to be an abuse of process than a later action against C;

(iii) the burden of establishing abuse of process is on B or C or as the case may be;

(iv) it is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive;

(v) the question in every case is whether, applying a broad merits based approach, A’s conduct is in all the circumstances an abuse of process; and

(vi) the court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C.”

110. What is emphasised throughout the authorities is that the court must conduct “a broad merits-based judgment which takes account of the public and private interests involved and also takes close account of the facts of the case.”³

111. In the EN claim there were in broad terms three claims. (1) The claimant and Mr Paton alleged that they were induced to enter into the Cliveden Place JVA because of the fraudulent alternatively negligent misrepresentation by EN. The agreement and guarantee are contained in a deed made on 3 August 2006. The deed recites that the BOI agreed to lend Westbrooke the sum of £3.94 million towards the cost of purchasing the property and converting it from 4 flats into a single dwelling. The loan is evidenced in the facility letter dated 31 July 2006. It is alleged by the claimant and

³ Clutterbuck v Cleghorn [2017] EWCA Civ 137, paragraph 68.

Mr Paton that EN misrepresented that the BOI had valued the 4 flats collectively at no more than £3 million. It is clear from the facility letter that the BOI had valued the flats at or not less than £3.45 million. The claimant and Mr Paton allege that they were not shown the facility letter at the time when the Cliveden Place JVA was being negotiated or signed and indeed they did not see it for many years. (2) They alleged that the sum of £50,000 became payable by Westbrooke pursuant to clause 1(e) of the Cliveden Place JVA. EN's estate asserted that this was not within the scope of EN's guarantee but rather under a separate loan agreement. (3) The conduct of Westbrooke in borrowing an additional £1 million from BOI and then paying it to EN was a breach of clause 5 of the Cliveden Place JVA for which EN's estate was allegedly liable under the guarantee. EN's estate alleged that Mr Paton acting on behalf of himself and the claimant knew of and consented to the arrangement. During the EN claim trial the claimant and Mr Paton also sought to argue that the increase in the loan was obtained by Westbrooke concealing from the BOI the existence of the Cliveden Park JVA and submitting to the BOI's valuers a forged planning consent. The judge determined that it was not open to them to argue this, it was not pleaded and in any event could not form a cause of action against EN's estate. In the course of the claim the claimant and Mr Paton made serious allegations of fraud against EN and Mr Gonzalez, a project manager for the Cliveden Place development.

112. In the POC, specifically pages 9 to 29, the claimant sets out the alleged background facts and the roles of EN, his assistant Mr McCormick and the defendants. At some length she details the conduct of EN and the first defendant at paragraph 8.11.1 to 8.11.13, over nearly 4 pages. Her case at paragraph 8.11.13 is that the second defendant expressly denied ever seeing the BOI facility letter. Whilst it is difficult to untangle the kernel of the claimant's case from the dense narrative I do accept Mr Halpern QC's submission that the alleged fraudulent misrepresentation by EN is indeed an integral part of her claim against the defendants
113. I bear in mind that this is a commercial dispute which has the same factual heart as the SAA claim, the EN claim, the Rosesilver claim and the claim against HSBC and others. That of itself is not sufficient to engage the Aldi Stores guidelines and I also note that neither of the defendants were parties to previous litigation. However the EN claim and this claim are indeed interwoven: there is undoubtedly an overlap between the pleaded issues and evidence. The Cliveden Place JVA and the development form the vital factual background to the claim, the claimant alleges that the defendants are dishonest and complicit in the alleged deceitful and dishonest behaviour of the EN. I am satisfied that the Aldi Stores guidelines are engaged.
114. The question then is whether in all the circumstances the claimant is misusing or abusing the process of court? Certainly the claimant was acutely aware of the Aldi Stores guidelines. In the EN claim Mr Cleghorn had brought an application dated 24 March 2014 to strike out the proceedings as an abuse of process relying as his first ground on the failure by the claimant and Mr Paton to comply with the Aldi Stores guidelines. This was argued over the course of 4 days in May 2014 and the claimant and Mr Paton were represented by Stuart Cakebread, counsel, and Strafford Law, solicitors.
115. In this claim neither the claimant in her witness statements nor counsel in his written and oral submissions have proffered any adequate explanation as to why the Aldi Stores guidelines were not complied with.

116. I have already concluded that this claim in key parts amounts to a collateral attack on both the judgment of Asplin J and that of HHJ Pelling QC. It does strike me that by running the previous claims in the way that she has, the claimant may have sought to gain an unfair advantage, to rehearse her evidence now twice and to, in theory, refine how she argues her claim in respect of the Cliveden Place JVA and the BOI facility letter. I can put it no higher than that.
117. I do not know what directions would have been given, had this claim been case managed with the EN claim at an early stage. It is difficult to see how part of the EN claim or indeed this claim could have been effectively hived off: not all of this claim overlaps with the EN claim, although the central core of the Cliveden Place JVA does. However by the claimant failing to seek directions she ran the undoubted risk, which has materialised, of the defendants taking this point and the court being rendered impotent to case manage both claims together.
118. It does not automatically follow that because the Aldi Stores guidelines have been engaged and not complied with that the claim will necessarily be struck out as abusive. Ultimately this must be a broad merits based decision. The claimant has plainly not kept this claim 'up her sleeve'. I am not satisfied on the submissions made to me by Mr Halpern QC that by pursuing this claim the claimant is unjustly harassing the defendants. Rather it is the manner in which she has pleaded the claim that is the nub of the defendants' application, not that she should have sought directions in the EN claim. I therefore do not strike out the claim on the standalone ground that the claimant should have sought directions in the EN claim in breach of the Aldi Stores guidelines.

Limitation

119. Turning to the issue of limitation, the claim form was issued on 2 September 2014 but the allegations principally relate to facts pleaded before September 2008. There are two allegations, one relating to April 2010 in paragraph 8.11.12 of the POC and the other relating to December 2010 in paragraph 8.11.14, that post-date this. However the claim is said to arise out of the Cliveden Place JVA dated 3 August 2006. The claimant alleges that she did not know about the terms of the BOI facility letter yet the Cliveden Place JVA refers to it and it is implausible that she was not shown this prior to signing the JVA, as the judge in the EN claim has now found. The defendants have raised limitation both in correspondence and in Mr Gooding's witness statement. Interestingly the claimant alleges in her witness statement dated 11 February 2018 and her letter dated 1 June 2018 that she only became aware of important evidence in November 2017, which she alleges was concealed by the defendants. However the substance of the allegations in the APOC can also be found in the POC, which are dated 7 June 2017.
120. I am unclear what the claimant's position is. Mr Owen-Thomas submitted that it is generally inappropriate to plead matters of putative defence until the defence itself is pleaded. He then went on to set out in his second skeleton argument, at paragraph 11a, that "in circumstances where some of the issues raised are a little time ago, and there are obvious matters of knowledge for the purposes of ss14A and 32 of the Limitation Act 1980, it is correct to plead them."

121. On 27 June 2017 the claimant purported to amend the claim form pursuant to CPR 17.1(1). This substituted the second defendant for Sator, after the expiry of the limitation period. Although the claim form had not been served CPR 19.5 is engaged. The court may add or substitute a party only if CPR 19.5(2) is satisfied: (a) the relevant limitation period was current when the proceedings were started; and (b) the addition or substitution is necessary. The requirement is only satisfied under CPR 19.5(3) if:
- “(3) The addition or substitution of a party is necessary only if the court is satisfied that—
- (a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
- (b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant; or
- (c) the original party has died or had a bankruptcy order made against him and his interest or liability has passed to the new party.”
122. Even if the limitation periods were current, which I do not necessarily accept they were, the claimant has to satisfy one of the requirements set out in CPR 19.5(3). There is no evidence that Sator was named by mistake, indeed the details of claim clearly demonstrate that the claimant intended to bring a claim against it. So (a) does not arise. Similarly it was unnecessary to add the second defendant as he is a partner of the first defendant, so (b) does not arise. (c) is not relevant. Therefore the requirements of CPR 19.5(2) and (3) are not satisfied and the claimant is not permitted to add the second defendant as a party. Therefore the claim against the second defendant fails on this ground and is struck out under CPR 3.4(2)(b) and in the alternative (c). For the avoidance of any doubt that is the entire claim against the second defendant.
123. The Cliveden Place claim is said to arise out of the Cliveden Place JVA, which is dated 2 August 2006, and the BOI facility letter dated 31 July 2006 together with the subsequent draw downs on 4 or 5 October 2006 of £395,092.72 and on 7 February 2008 of £1,000,000. Unless the claimant can bring herself within section 32A or section 14A of the 1980 Act limitation has expired, whether under section 2 (tort), 5 (contract) or 21 (trust property). The claimant has asserted in bald terms that she only discovered in November 2017 facts that had apparently been concealed from her for 11 ¼ years. As I have already stated this does not sit with the facts set out in the claim form and the details therein issued on 2 September 2014, the POC dated 7 June 2017 and the 65 page letter sent to the SRA on her behalf dated 2 June 2017. In her witness statement dated 6 June 2018, paragraph 23, the claimant alleges that she discovered in June 2014 that the second defendant “had actually been working against me for many years” and this led to the letter to the SRA. Although in Mr Owen-Thomas’ first skeleton argument at paragraph 32 he says that it was “in January 2010, the claimant was told of the cash and property had been transferred to SAA. ... It was at this point, that the claimant realised that the defendant had failed to protect her interests.” This is taken from the POC. For example at paragraph 10.15.5 the claimant asserts that “Mr

Paton finally told the claimant about the cash transfers in early 2010.” At paragraph 8.11.13 that the claimant received the BOI facility letter and discovered the drawdown by Westbrooke on 7 February 2008. Mr Halpern QC submits that it is likely that the claimant knew the relevant facts in 2006. There is some force in that submission but this is an interim application and whilst I am not obliged to accept at face value all that is said to me by the claimant I also must not conduct a mini-trial.

124. Under section 14A of the 1980 Act the time limit for negligence actions where facts relevant to the cause of action are not known at the date of accrual of the cause of action is 3 years from the “starting date”. The case set out in the APOC at paragraphs 13 and 14 is inconsistent with the other evidence and the POC. I do not consider that the claimant has a realistic prospect of relying on section 14A.
125. Under section 32 of the 1980 Act the limitation period is postponed where the action is based on the fraud of the defendant or any fact relevant to the claimant’s right of action has been deliberately concealed from him or her by the defendant. Mr Owen-Thomas has conceded that he could not maintain an allegation of fraud per se, as he did not have a proper basis for doing so. The claimant must therefore rely on deliberate concealment. However the claimant does not set out in her POC, APOC or witness statements what facts are said to have been concealed by the defendants, or ones that are easily discernible from the dense narrative. Mr Owen-Thomas suggests that there is a triable issue. However without more I cannot discern that the claimant has any reasonable prospect of relying on section 32 and given the factual matrix and the manner in which this claim and others arising out of the relationship with EN and SAA has been litigated there is no compelling reason for this claim to proceed to trial.
126. For completeness the Non-Disclosure Claim relies on breaches said to have taken place in 2007 or early 2008. The Funding Claim relies on loans advanced more than 6 years before the issue of the claim. Realistically the only way in which these claims are statute barred is if she relies on section 32 of the 1980 Act. The claimant again makes a bald assertion that she was not aware of relevant matters until mid-2013. The POC does not set out what facts have been concealed and the basis on which it is alleged that the defendants concealed such facts.
127. The Cash Transfer Claim relates to transfers that took place in 2007. Mr Owen-Thomas admits that he cannot advance a fraud claim on the evidence before him. This claim is statute barred.
128. The Transfer of Properties Claim relate to properties which are said to have been conveyed less than 6 years before the claim was issued and are not statute barred.

SUMMARY

129. In summary, I am satisfied that the claimant has been given a number of previous opportunities to plead a particulars of claim that is CPR compliant, that is clear, concise and comprehensible. The defendant has explained the deficiencies within the POC and APOC. For example, in the defendants solicitors letter dated 27 October 2016 and its letter to Mr Dykes at Strafford Law Limited dated 17 January 2017. I note that the POC has a statement of truth signed by the claimant but no name of a solicitor or counsel on that statement of case. Yet only 5 days before Strafford Law

Limited sent the long and detailed letter to the SRA. The claimant has admitted that they were drafted with the assistance of counsel.⁴

130. The claimant has elected to access legal advice from time to time. However given her approach in this claim I have no confidence that there is any sign that she wishes to engage with this process properly and produce a compliant pleading, a pleading that is sufficiently intelligible that the defendants can actually plead to it. Mr Gooding's witness statement dated 7 August 2017 sets out in detail the deficiencies in the POC. The claimant applied for permission to amend the POC on 13 February 2018, attaching the APOC to her witness statement dated 11 February 2018. She only filed a witness statement in response to Mr Gooding's witness statement on 6 June 2018. It is striking that the claimant accepts through counsel that she is seeking an indulgence from the court but fails to give any adequate explanation for the long delays in her engaging with the court process notwithstanding the very serious allegations that have hung over the heads of the defendants for many years. The claimant also alleged in her witness statement dated 6 June 2018, at paragraph 35, under the heading 'Elliott Nichol claim' that the second defendant was a party as a joint tortfeasor in the fraudulent misrepresentation and other matters "as set out above". The second defendant was not joined as a party to the EN claim. Mr Halpern QC submitted that the claimant's approach to this litigation was demonstrated in the 'outrageous allegations' made in her witness statement dated 6 June 2018, the day before Mr Owen-Thomas says that he saw the claimant in conference. When Mr Owen-Thomas invites the court to accept that the claimant has had a change of heart, she will take a more measured approach and that she will plead through counsel proper particulars of claim I have no comfort that she will do so. This point is rather amply demonstrated by the claimant even now failing to file a revised particulars of claim. As Mr Owen-Thomas accepted the claimant did not need the report to do so. Even if I accept that the claimant should have awaited the outcome of the judgment in the EN claim she has had many months to formulate a properly drafted particulars of claim. The fact that she has failed to do so makes the submissions of counsel, albeit on instructions, ring hollow.
131. Enough is enough and the prejudice to the defendants in allowing this claim to proceed overwhelmingly militates in favour of granting the defendants' application. The prejudice to the defendants is not simply the invidious position of being served with incomprehensible pleadings for a claim which the claimant apparently regards as being worth multi million pounds. I am also told that Alpha Insurance, who provided the primary layer of indemnity insurance for the defendants, have become insolvent. The defendants are having to fund the defence of these proceedings out of their own pockets. Although by the hearing on 25 June 2018 that position had slightly changed. Mr Halpern QC said that the Financial Services Compensation Scheme has confirmed that in principle they hope to meet indemnities for qualifying firms. So the defendants are hoping to recover an indemnity from the FSCS but they continue to be billed directly by their solicitors.
132. For the reasons that I have set out over the course of this judgment I accede to the defendants' application and strike out the claim pursuant to CPR 3.4(2)(b) and (c): these are the first to third grounds set out in their application notice. I do not however strike out the claim for abuse of process on the standalone ground advanced by the

⁴ The claimant's witness statement dated 6.6.18, paragraph 32.

defendants' counsel that the claimant should have sought directions in the EN claim in breach of the Aldi Stores guidelines. For completeness I also accept the defendants' submissions that it should be entitled to reverse summary judgment as the claimant has no real prospect of succeeding on the claim and there is no other compelling reason why the case should be disposed of at trial. In so far as the defendants relied additionally on the 1980 Act I determine that the Cliveden Place Claim, the Funding Claim and the Cash Transfers Claim are statute barred and the claimant has no realistic prospect of successfully relying on sections 32 or 14A of the 1980 Act and again there is no other compelling reason why the case should be disposed of at trial and the defendants are entitled to reverse summary judgment on this ground as well.