



Neutral Citation Number: [2022] EWHC 1479 (QB)

Case No: QA-2021-000145

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/06/2022

**Before :**

**THE HONOURABLE MRS JUSTICE COLLINS RICE**

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**Between :**

**MR BENJAMIN BREM**

**Appellant/Second Defendant**

**-and-**

**MS ONEKA MURRAY**

**First Respondent/Claimant**

**MR STEVEN MARCHANT**

**Second Respondent/First Defendant**

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**Mr Daniel Clarke** (instructed by **Chipatiso Associates LLP**) for the **Appellant**  
**Ms Linda Appiah** (instructed by **Jan Towers Solicitors**) for the **First Respondent**  
**The Second Respondent** did not appear and was not represented

Hearing date: 20<sup>th</sup> May 2022  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30am 15<sup>th</sup> June 2022.

## **Mrs Justice Collins Rice:**

### **Introduction**

1. By a decision dated 13<sup>th</sup> May 2021, HHJ Holt, sitting in the County Court at Basildon, ruled that Ms Murray had been unlawfully evicted from her flat. He held Mr Marchant and Mr Brem liable to her in damages and costs.
2. Mr Brem appeals that decision by permission of Sir Stephen Stewart, granted on 3<sup>rd</sup> February 2022. He says the Judge, on his own factual findings, was wrong to hold him liable for what happened, whether jointly and severally or at all. And if the Judge was wrong to hold him liable, he was wrong to order him to pay damages and costs.

### **Factual background**

3. Mr Brem is a hairdresser and runs a salon on the ground floor of a building in Whitmore Way, Basildon. Ms Murray was one of his hairdressing staff. The case was about premises – a room with access to shared facilities – in a first floor flat in the same building. Mr Marchant owns the flat; he had an ‘arrangement’ with Mr Brem allowing him to make some use of the flat.
4. The Judge’s findings of fact, which are not disputed in this appeal, included the following.
5. In the summer of 2016, Mr Brem gave Ms Murray a right to occupy the room in the flat and use the shared facilities. She lived there with her toddler son, paying Mr Brem a rent. Mr Marchant had agreed with Mr Brem that he could do this, and Mr Brem paid Mr Marchant a rent in his turn.
6. The condition of the premises was poor, and dangerous. Ms Murray instructed solicitors, and on 5<sup>th</sup> January 2017, Mr Marchant and Mr Brem were served with a notice before action, complaining of the state of the premises, and alleging that Ms Murray’s son had been injured as a result of their dangerous condition.
7. Mr Marchant’s response to the notice was that he ‘*went “ballistic”*’, and on 10<sup>th</sup> January 2017 he evicted Ms Murray by having the locks changed (it seems that Mr Brem was also locked out of the flat in the process). Some of her possessions were moved downstairs, and others were ‘*trashed*’, it would appear by Mr Marchant and three associates, after the locks were changed. Mr Brem ‘*stood by and allowed this to happen. He probably protested, but was bullied into submission*’.
8. It was not until a fortnight later, on 25<sup>th</sup> January 2017, that Ms Murray was allowed back into her room. By then it was uninhabitable and she moved elsewhere.

### **The determination of liability**

9. The origin of the County Court proceedings was that Ms Murray, finding herself locked out on 10<sup>th</sup> January, applied for an interim injunction to obtain re-entry. At a hearing on 13<sup>th</sup> January, which Mr Marchant and Mr Brem attended, she obtained an order granting her an entitlement to re-entry until a return date (20<sup>th</sup> January). But Mr

Marchant and Mr Brem did not comply with that order (Mr Brem says he was unable to, since he did not have a key himself).

10. At the return date hearing on 20<sup>th</sup> January, they were ordered to permit Ms Murray's return and not to evict her before 24<sup>th</sup> January, and a penal notice was attached. Then at a final hearing on 24<sup>th</sup> January, the injunction was ordered to continue pending the grant of any order for possession under section 3 of the Protection from Eviction Act 1977. The key provisions of s.3 are as follows:

**3. Prohibition of eviction without due process of law**

(1)Where any premises have been let as a dwelling under a tenancy which is neither a statutorily protected tenancy nor an excluded tenancy and—

(a)the tenancy (in this section referred to as the former tenancy) has come to an end, but

(b)the occupier continues to reside in the premises or part of them,

it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.

(2)In this section “the occupier”, in relation to any premises, means any person lawfully residing in the premises or part of them at the termination of the former tenancy.

(2A)Subsections (1) and (2) above apply in relation to any restricted contract (within the meaning of the Rent Act 1977) which—

(a)creates a licence; and

(b)is entered into after the commencement of section 69 of the Housing Act 1980;

as they apply in relation to a restricted contract which creates a tenancy.

(2B)Subsections (1) and (2) above apply in relation to any premises occupied as a dwelling under a licence, other than an excluded licence, as they apply in relation to premises let as a dwelling under a tenancy, and in those subsections the expressions “let” and “tenancy” shall be construed accordingly.

...

11. Ms Murray's claim against Mr Marchant and Mr Brem followed. She alleged breach of s.3 and failure to comply with the orders of the Court. She claimed general damages,

and special damages relating to the damage, loss or destruction of a list of her possessions.

12. The Judge accepted Ms Murray's evidence and allowed her claim for £19,510 in special damages. He said this:

It will be paid by both defendants jointly and severally. The first defendant, because he organised the removal and trashing; the second defendant, because he was in breach of his covenant for quiet enjoyment and ignored his legal obligations by siding with the first defendant, and allowing him into the premises, despite being entitled to exclude him.

13. The pleaded claim for general damages had asked for '*damages to be determined by the Honourable Court under the common law provisions and pursuant to sections 27 and 28 Housing Act 1988*'. Section 27 provides as follows:

***27. Damages for unlawful eviction***

(1) This section applies if, at any time after 9th June 1988, a landlord (in this section referred to as "the landlord in default") or any person acting on behalf of the landlord in default unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.

(2) This section also applies if, at any time after 9th June 1988, a landlord (in this section referred to as "the landlord in default") or any person acting on behalf of the landlord in default—

(a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises, or

(b) knowing or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises—

(i) to give up his occupation of the premises or any part thereof, or

(ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or any part thereof,

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,

and, as a result, the residential occupier gives up his occupation of the premises as a residence.

(3) Subject to the following provisions of this section, where this section applies, the landlord in default shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 28 below.

(4) Any liability arising by virtue of subsection (3) above—

(a) shall be in the nature of a liability in tort; and

(b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in tort, contract or otherwise).

(5) Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.

(6) No liability shall arise by virtue of subsection (3) above if—

(a) before the date on which proceedings to enforce the liability are finally disposed of, the former residential occupier is reinstated in the premises in question in such circumstances that he becomes again the residential occupier of them; or

(b) at the request of the former residential occupier, a court makes an order (whether in the nature of an injunction or otherwise) as a result of which he is reinstated as mentioned in paragraph (a) above;

and, for the purposes of paragraph (a) above, proceedings to enforce a liability are finally disposed of on the earliest date by which the proceedings (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if any appeal is abandoned, the proceedings shall be taken to be disposed of on the date of the abandonment.

(7) If, in proceedings to enforce a liability arising by virtue of subsection (3) above, it appears to the court—

(a) that, prior to the event which gave rise to the liability, the conduct of the former residential occupier or any person living with him in the premises concerned was such that it is reasonable to mitigate the damages for which the landlord in default would otherwise be liable, or

(b)that, before the proceedings were begun, the landlord in default offered to reinstate the former residential occupier in the premises in question and either it was unreasonable of the former residential occupier to refuse that offer or, if he had obtained alternative accommodation before the offer was made, it would have been unreasonable of him to refuse that offer if he had not obtained that accommodation,

the court may reduce the amount of damages which would otherwise be payable to such amount as it thinks appropriate.

(8)In proceedings to enforce a liability arising by virtue of subsection (3) above, it shall be a defence for the defendant to prove that he believed, and had reasonable cause to believe—

(a)that the residential occupier had ceased to reside in the premises in question at the time when he was deprived of occupation as mentioned in subsection (1) above or, as the case may be, when the attempt was made or the acts were done as a result of which he gave up his occupation of those premises; or

(b)that, where the liability would otherwise arise by virtue only of the doing of acts or the withdrawal or withholding of services, he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(9)In this section—

(a) “residential occupier”, in relation to any premises, has the same meaning as in section 1 of the 1977 Act;

(b) “the right to occupy”, in relation to a residential occupier, includes any restriction on the right of another person to recover possession of the premises in question;

(c) “landlord”, in relation to a residential occupier, means the person who, but for the occupier’s right to occupy, would be entitled to occupation of the premises and any superior landlord under whom that person derives title;

(d) “former residential occupier”, in relation to any premises, means the person who was the residential occupier until he was deprived of or gave up his occupation as mentioned in subsection (1) or subsection (2) above (and, in relation to a former residential occupier, “the right to occupy” and “landlord” shall be construed accordingly).

14. Section 28 provides for the measure or quantum of damages for the statutory tort in the following terms:

## 28. *The measure of damages*

(1)The basis for the assessment of damages referred to in section 27(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—

(a)the value of the interest of the landlord in default determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and

(b)the value of that interest determined on the assumption that the residential occupier has ceased to have that right.

...

15. Ms Murray had pleaded that she had been of no fixed abode from 10<sup>th</sup> January to the date of the claim (13<sup>th</sup> March 2017), that she had suffered detriment, and that she had been ‘*unlawfully denied of her home the total effect upon her has been traumatic and highly stressful*’.

16. The Judge commented that:

The common law provisions are for exemplary and punitive damages. They are an alternative to section 27 and 28 of the Housing Act. Section 28 sets out the valuation required, before the statutory damages can be assessed. I have been given no evidence of valuation. The claimant invites me to use the rent paid as a yardstick. This will not do, and I make no order for statutory damages. However I can order common law damages.

17. He directed himself on this to the decision of the Court of Appeal in *Drane v Evangelou* [1978] 1 WLR 455, setting out the headnote to that case. The headnote is as follows:

In 1974 the landlord let a furnished maisonette to the tenant who lived there with his common law wife. The tenant applied for a revision of the rent and, on October 8, 1975, a rent officer reduced the rent. On October 14, the tenant, having taken his wife to college, returned to the premises to find that in their absence their home had been forcefully entered and bolted on the inside with several people within, and that all their belongings had been put in the back yard. On October 31, 1975, the tenant applied in the county court and was granted an interim injunction restraining the landlord from refusing admission into the maisonette to the tenant and his wife. The landlord’s appeal to the Court of Appeal was dismissed on November 27, 1975. After two applications to the county court, the tenant, who had slept on the floor of a friend’s house for 10 weeks, was eventually able to return to the maisonette on December 23, 1975, to find the premises dirty and in disorder.

By particulars of claim of October 28, 1975, the tenant claimed damages limited to £1,000 and alleged that the landlord had interfered with his right to quiet enjoyment of the premises by the unlawful eviction and particularised the circumstances of the eviction.

Judge Lonsdale held that the landlord had arranged the eviction, that “monstrous behaviour called for exemplary damages of £1,000” and gave judgment for that sum with costs on scale 4 and full discretion to the registrar, the costs to be paid within three days of taxation.

On the landlord’s appeal:-

*Held*, dismissing the appeal, that although the particulars of claim referred to breach of the right to quiet enjoyment of the premises, the facts particularised constituted an allegation of trespass; that exemplary damages could be awarded for the unlawful eviction of a tenant by harassment; that the County Court Rules (unlike RSC Ord.18 r.8(3)) did not require a claim for exemplary damages to be specifically pleaded; and that the defendant’s conduct justified the judge’s award of £1,000 exemplary damages and his order for costs should stand.

18. What the Judge drew from this was that:

For the purpose of assessing the amount in this case, it seems that the circumstances of *Drane v Evangelou* and this case are broadly similar: that £1,000 in 1978 is worth approximately £5,000, and this seems to be, in any event, an appropriate sum.

It is clear that the first defendant was the instigator of this unlawful eviction and should pay the greater part of this sum. I order the first defendant to pay £4,000 general damages and the second defendant to pay £1,000.

19. Costs were awarded against both defendants jointly and severally.

### **Basis of appeal**

20. Mr Clarke, Counsel for Mr Brem, noted that the sole identification of a legal basis for Mr Brem’s liability was the reference by the Judge to breach of covenant for quiet enjoyment. From that, and the various references to rent, it was to be inferred that the Judge had found that Mr Marchant had granted Mr Brem a tenancy of the flat, and Mr Brem had granted Ms Murray a tenancy of the room with access to shared facilities. The parties agree in any event that a covenant for quiet enjoyment, and exclusive occupation, were to be implied into the contract between Mr Brem and Ms Murray.
21. But Mr Clarke says the Judge was wrong to conclude on the facts found that Mr Brem was in breach of that duty. He relies on the decision of the Court of Appeal in *Kenny v Preen* [1962] 1 QB 499 as authority that the covenant in law for quiet enjoyment entitles



the tenant to enjoy his lease against otherwise *lawful* entry, eviction or interruption, *but not against tortious entries, evictions or interruptions*. The tenant has other remedies at common law against tortious acts by third parties. Pearson LJ said this (at page 511):

The implied covenant for quiet enjoyment is *not* an absolute covenant protecting a tenant against eviction or interference by *anybody*, but is a qualified covenant protecting the tenant against interference with the tenant's quiet possession and enjoyment of the premises *by the landlord or persons claiming under the landlord*. The basis of it is that the landlord, by letting the premises, confers on the tenant the right of possession during the term and impliedly promises not to interfere with the tenant's exercise and use of the right to possession during the term. (emphasis added).

22. So, he says, *Mr Brem* cannot be liable for the interference which happened with Ms Murray's quiet enjoyment – her unlawful eviction – because the Judge had found that it was *Mr Marchant* who evicted Ms Murray. It was *Mr Marchant* who 'went ballistic', caused the locks to be changed and was responsible for the 'trashing'. All Mr Brem was found to have done himself was to stand by and let it happen. But an *omission* can only amount to a breach of the covenant for quiet enjoyment where it is a breach of (*another*) positive legal duty owed to a tenant – *Hafton Properties Ltd v Camp* [1995] 1 EGLR 67. None was identified here. And there was nothing Mr Brem could have done in practice to stop the eviction anyway, even had he put himself in harm's way by trying to do so, in the face of Mr Marchant's ballistic reaction and three determined associates, not to mention having been bullied into submission and locked out himself.
23. That is Mr Clarke's principal challenge. But he offers a more thorough-going critique of the award of damages made against Mr Brem in any event.
24. First, he says that breach of a covenant for quiet enjoyment is of course a contractual, and not a tortious, basis of liability. Special damages for breach of the covenant for quiet enjoyment can only include losses consequent on the interference with the enjoyment of possession itself, rather than every loss occurring during the period of the interference as a result of intervening tortious conduct, so could not have been awarded against Mr Brem on the basis identified by the Judge. They certainly could not have been awarded 'jointly and severally' since Mr Marchant's liability was (apparently) in tort and Mr Brem's in contract – two distinct bases. Punitive or exemplary damages cannot be awarded in contract claims (and were not claimed in this case in any event) so the Judge's reliance on *Drane v Evangelou* (scaling up to an equivalent modern value) was misconceived. And on the authority of *Branchett v Beaney* [1992] 3 All ER 910, the covenant for quiet enjoyment is not a contract of the kind for which (general) damages for distress could be awarded in any event.

## **Analysis**

25. Breach of the implied covenant between Mr Brem and Ms Murray for the latter's quiet enjoyment of her room was never pleaded as such in this case. Ms Murray brought her case as a statutory claim under the provisions set out above, and a remedy was sought

in statutory, and/or common-law, tortious damages. But as Mr Clarke says, the only basis the Judge identified for fixing Mr Brem with legal liability to Ms Murray for the wrongs done to her was breach of the implied covenant between them for quiet enjoyment. And the only thing the Judge found Mr Brem had done to breach the covenant was stand by while others, who were not acting on his behalf or under the agreement between him and Ms Murray, evicted her.

26. There is no clear basis in those findings, by themselves, for a conclusion that Mr Brem was liable to Ms Murray for breach of covenant. The authorities on which Mr Clarke relies are clear – and it is well-settled law, not disputed in this appeal – that the covenant protects a tenant from intrusion and disturbance by her immediate *landlord* and those claiming *under* him. If others intrude, including a superior landlord, she has remedies in tort against them, most obviously for trespass. On the Judge’s findings, Mr Brem had not, either himself or by his agents or by anyone claiming title from him, effected Ms Murray’s eviction. Mr Marchant had done that, while Mr Brem stood by. The implied covenant does not import any positive obligation to stop others intruding, much less an *absolute* obligation regardless of the practicalities. So when the Judge said Mr Brem had ‘ignored his legal obligations’ by ‘allowing’ Mr Marchant into the premises, ‘despite being entitled to exclude him’ it is hard to know what he meant.
27. We spent some time at the hearing of this appeal puzzling over that. One clue might have been found in the Judge’s recitation of the headnote of *Drane v Evangelou* – namely that ‘*although the particulars of claim referred to a breach of the right to quiet enjoyment of the premises, the facts particularised constituted an allegation of trespass*’. Was it possible that the Judge had – perhaps struck by some factual similarities – concluded that Mr Brem must share Mr Marchant’s evident *tortious* liability for the trashing of Ms Murray’s room and property, and hence his own liability *at common law* in *tortious* special and general damages would be well-founded?
28. It is not a satisfactory explanation. On the facts as found, all the trashing took place at the hands of others and while Mr Brem had himself been locked out of the premises. The most he himself was said to have done was not to have prevented it, and even then it is not clear that he *could* have prevented it. The facts as found are not on all fours with *Drane*. And in any case the judge in that case had explicitly identified the possibility of (unpleaded) trespass, raised it with Counsel, invited submissions and made a finding of a basis of tortious liability. None of that happened here.
29. Had the Judge, noting that ss.27 and 28 address themselves to imposing liability on the *landlord*, and were put forward more clearly in the claim, intended to imply that there was a basis for Mr Brem to be held liable in tort there? That would of course raise further questions. Had Mr Brem *unlawfully deprived* Ms Murray *of her occupation* of the flat, or caused another to do so? Had Mr Brem *done acts likely to interfere with the peace or comfort* of Ms Murray, or *persistently withdrawn or withheld services reasonably required for her occupation of the premises as a residence*? It is hard to see where those conclusions could come from consistently with the facts as found. Mr Brem was not found to have *done* anything or *caused* anyone else to do anything. The Act is not drafted in terms of failing to prevent another person doing these things, and in any event both the existence and breach of any duty to prevent are not apparent on the facts as found.

30. Ms Appiah, Counsel for Ms Murray, suggested a third possibility. Even if a tortious basis for Mr Brem's liability had not been spelled out by the Judge, and even if the Judge had digressed by referring to breach of covenant instead, it could not on the facts of the case be said to be 'wrong' that the Judge awarded tortious damages against him. Mr Brem's blameworthiness spoke for itself, on the face of the judgment. His original defence and evidence (that there was no sort of renting relationship involving Ms Murray at all) had been, to the extent not withdrawn, roundly rejected and his counterclaim dismissed as 'fanciful'. The Judge found he had 'sided' with Mr Marchant and was plainly fully implicated.
31. I cannot agree that this works either. What the Judge had said about Mr Brem was that he '*clearly had been bullied by the first defendant to support his account, but as cross-examination progressed, he gradually gave an account which had the ring of truth about it, especially: (1) that he rented the flat from the first defendant, (2) that he rented a room to the claimant (3) that when the first defendant was presented with the claimant's solicitors' letter, he, the first defendant, went 'ballistic' and evicted the claimant by changing the locks and putting three 'heavies' in to remove her belongings*'. That is not an account supporting an inference of Mr Brem's full participation and equal blame, but one of bullying and a degree of victimisation himself (including as to his position in the litigation), and of *Mr Marchant's* sole and spontaneous responsibility for what happened.
32. In any event, it is fundamentally unsatisfactory – as this exercise on appeal only highlighted – that Mr Brem should find himself tarred with a broad brush of tortious liability in damages without the basis of that liability being either clearly pleaded, clearly put to him at trial so he could defend it, or identified in the judgment. If the basis of Mr Brem's liability remains opaque to the degree I experienced in this appeal, even with the assistance of Counsel, then it is certainly too opaque to be fair to Mr Brem.
33. Mr Brem does not dispute that Ms Murray suffered a serious wrong in this case and that she is entitled to fair compensation. But he says, *on the facts as the Judge found them*, it is from Mr Marchant and not him that her recompense is due. For the reasons set out above, I agree. The Judge was rightly shocked at what happened to Ms Murray. But he went wrong in not following through the logic of his own findings of fact, or distinguishing clearly between Mr Marchant's responsibilities and Mr Brem's. He clearly thought there was more Mr Brem could and perhaps should have done to help Ms Murray. But his conclusion that he had a *legal* obligation to do so, which he then breached, is not supported by his findings and analysis. The exercise in trying to construct an analysis which is not there in the judgment simply underlines the problem.

## **Conclusions**

34. I agree therefore with Mr Clarke that no proper basis is identified or explained in this decision for fixing Mr Brem with liability – either for breach of covenant or in tort. Nor does any such basis suggest itself, consistently with the facts as found. His appeal must therefore be allowed.
35. The effect of that is that the Order made by the Judge must be set aside to the extent that it (a) makes Mr Brem jointly and severally liable with Mr Marchant for the special damages awarded in Ms Murray's favour; and (b) orders Mr Brem to pay Ms Murray

£1,000 by way of general damages. Since that makes Mr Brem a successful defendant to Ms Murray's claim, and no basis is suggested or appears for departing from the 'general rule' that costs follow the event, I also accept that the Order should be further set aside to the extent that (c) it makes Mr Brem jointly and severally liable with Mr Marchant for Ms Murray's costs.

### **The position of the second respondent**

36. Mr Marchant did not attend and was not represented at the hearing before me. There was no sign that he had sought an adjournment or given any reason for not attending. I had a discretionary power to proceed with an appeal in the absence of a party (see the guidance, including that of the authorities cited there, given at paragraph 52.21.6 of the White Book). I adjourned the hearing briefly at the outset to enable Mr Brem's solicitors to provide me with information about the steps that had been taken to ensure Mr Marchant had been put on notice of the hearing date and properly served, whether by hard copy or by email, with all the materials relating to this appeal.
37. What they provided was not of course by way of a sworn witness statement at that stage. I was invited by Counsel none the less to proceed without adjournment on the basis of it. I accepted that on the face of it Mr Marchant was fully on notice of these appeal proceedings but had not, at any stage, chosen to engage with them in any way, including when properly served with the papers at his address and by email, and when telephoned by Mr Brem's solicitors. In these circumstances, and in the absence of any other discernible explanation for his absence, I proceeded on the basis that he was voluntarily absent, that adjournment and relisting would be unlikely to secure his attendance, and that the interests of justice and the public interest in the proper use of court time and resource came down in favour of proceeding with the hearing.
38. Since the hearing, Mr Brem's solicitors have now provided a witness statement confirming the details of steps taken to ensure that Mr Marchant was fully aware of these proceedings, and of his sustained unresponsiveness, which were given at the hearing. I accept that evidence.
39. My conclusions on this appeal affect Mr Marchant to the extent that the liability to Ms Murray in special damages and in costs ordered by the County Court now devolves on him alone. That does not affect the total amount for which he is liable in those respects, but it does affect matters of enforcement and his position in relation to Mr Brem. The fact that this was the extent of Mr Marchant's jeopardy in these proceedings was a factor I also bore in mind in deciding to proceed in his absence.
40. Mr Marchant may, if he considers there was a good reason after all for not engaging with this appeal and attending this hearing, apply to court to have my decision set aside. I reserved judgment so as to set out my decision and reasons in full and in writing, and will order this judgment to be served on him, in case he was minded to consider that.