



Neutral Citation Number: [2024] EWHC 1246 (Comm)

Case No: CL-2017-000458 / CL-2018-000030

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**COMMERCIAL COURT**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 3 May 2024

**Before :**

**Mr Justice Jacobs**

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**Between :**

**Palмали Shipping SA**

**Claimant**

**- and -**

**Litasco SA**

**Defendant**

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**Nicholas Vineall KC** (instructed by **Rosling King LLP**) for the **Claimant**  
**Craig Morrison KC and Geoffrey Kuehne** (instructed by **Hogan Lovells**) for the **Defendant**

Hearing dates: **3<sup>rd</sup> May 2024**  
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**Approved Judgment**

This judgment was handed down on 3<sup>rd</sup> May 2024. Transcribed from the official recording by Opus.

**Mr Justice Jacobs****Judgment by MR JUSTICE JACOBS**

1. The contested application with which I am dealing is an application by the claimant for relief against sanctions in connection with the claimant's failure to serve expert evidence, in accordance with directions which were made by Foxton J on 7 July 2023.
2. The background to these proceedings is that there is a claim for damages by the claimant in a significant sum, albeit much less than originally claimed, for breach of a contract of affreightment, which was allegedly concluded between the claimant and the defendant in 2017. It is not necessary to describe the details of the claim, which now stands at some USD 172 million. The claimant had originally quantified its damage at USD 1.9 billion, but this was substantially reduced in consequence of the defendant's successful reverse summary judgment application which was granted by Foxton J: see [2020] EWHC 2581 (Comm).
3. The case was proceeding towards a trial due to take place in October 2022. It was then affected in early 2022 by the impact of the Russian invasion of Ukraine and the imposition of sanctions on various persons and entities. There was a possibility that the defendant was impacted by sanctions, and both the defendant and its advisers were concerned that this might be the case. That meant that there was uncertainty as to whether the defendant's advisers could continue to defend the case in the way that they had previously done.
4. There was also, at around that time, a potential application by the claimant to amend its particulars of claim. However, the main driver for what happened - which was the adjournment of the October 2022 trial - was the sanctions concern of the defendant and its advisers. This concern appears to some extent to have been shared by the claimant. Ultimately, there was agreement between the parties that the October 2022 trial should be adjourned. In June 2022, the parties agreed a consent order which adjourned the trial. At that point, no fresh trial date was put in place. That was because of the uncertainty which existed as to whether and when the potential problems in relation to sanctions would be resolved.
5. By July 2023, it appeared that the problems with the sanctions were superable and that the parties were in a position to agree on a timetable which could be put in place, leading to a trial commencing in January 2025. The position by that time was that the parties had, prior to the adjournment, served on each other a considerable amount of expert evidence in relation to various issues in the case. There had been permission for expert evidence on Swiss law, Russian law, shipping market rates and practice, forensic accountancy, Maltese law, and accounting and auditing. A large number of reports had been served in the course of 2022. The expert processes had reached the stage, by May 2022, where the experts had served their reports and then agreed joint memoranda on the following issues: Swiss Law; 6 of the 8 agreed expert issues of shipping market rates and practice; forensic accountancy; Maltese law; and accounting and auditing. There were, however, two expert areas where the defendant had served its initial expert report, but where the claimant's response was awaited, and therefore there was as yet no joint report. These were on the two remaining issues of shipping market rates and practice (known as issues C4 and C6), and Russian law.

6. The timetable which the parties then agreed was put before Foxton J in July 2023 in the form of an agreed consent order. This was approved by the judge and was dated 7 July 2023. It provided for the completion of the expert process. This involved supplemental reports in all of the disciplines which had reached the stage of joint memoranda, as well as completion of the processes in relation to the outstanding issues of shipping market rates and practice and Russian law which had not yet reached that stage. It also set out other directions leading to trial.
7. In relation to the expert process, there were two reports which the claimant was required to file and serve on 17 November 2023. First, there was its report of an expert on Russian law, responsive to the defendant's report served back in April 2022. There had been an order for sequential exchange, because it was the defendant which had raised the point on Russian law. Secondly, there was its report on shipping market rates and practice issues C4 and C6, where the defendant had served its initial report in March 2022. As previously discussed, these were the two outstanding shipping market issues. Reports on the 6 other shipping market issues had been served, and a joint memo had been agreed in May 2022. As described below, the claimant failed to comply with this order: neither of the two expert reports was served on time, and indeed they had not yet been served at the date of the hearing of the claimant's present application.
8. The 7 July 2023 order also required the claimant to provide further disclosure of documents which were likely to support or adversely affect its claim as set out in its re-re-amended pleading which had been served prior to the adjournment. This order recognised that, potentially, there was additional disclosure to be provided in consequence of the re-re-amendment. That disclosure was due to be provided by the claimant on 27 October 2023, and the order provided for a responsive re-re-re amended defence by the defendant and for further possible disclosure by the defendant in relation to that defence. As at the date of the hearing of the present application, these processes have not been accomplished. The claimant did not provide its additional disclosure on 27 October 2023, as required by the order.
9. There were also various other aspects of the order, but it is not necessary to describe these in detail.
10. The position as it then developed, following the 7 July 2023 order of Foxton J, was affected by the fact that the claimant changed its solicitors. Up until July 2023, the claimant was represented by Rosling King LLP. The partner with the conduct of the matter, Robert Pollock-Hill, had left for another firm in around September 2023. The claimant decided, for reasons which they have not been addressed in the evidence, that they would switch firms of solicitors to Waterson Hicks, and in particular to an individual called Mr Julian Morgan. Mr Julian Morgan is a solicitor with long experience in shipping law. According to the Waterson Hicks website, he did pupillage at a leading commercial law set of chambers back in the 1970s, and he had then spent his career both in a P&I Club and as a solicitor with various shipping law firms. So, he was not a young man by the time that he took over the case in September 2023, but he had considerable experience of shipping law cases.
11. The position as it then developed in late 2023 and early 2024 has been explained in a witness statement of Hannah Sharp, a solicitor with Rosling King. The case has now returned to that firm. The claimant's evidence covers events when Waterson Hicks was acting, and in that context the claimant has decided to waive privilege in relation to communications which it

and one of its experts had with Mr Morgan during that time-frame. Those communications reveal, in summary, that Mr Morgan was asked from time to time, both by the expert and by individuals within the claimant company, what the position was in relation to the service of the expert evidence and compliance more generally with Foxton J's order. On the claimant side, a number of individuals were party to the various e-mails on those matters, including Ms Aytan Farajova, whose title was Deputy Chairman and Executive Assistant. The expert was the claimant's shipping market expert, Mr Rajash Raman.

12. It is clear from that correspondence that, regrettably, the claimant received extremely poor advice concerning compliance with Foxton J's order. In his oral submissions, Mr Morrison KC, on behalf of the defendant, described the advice as serially negligent. I think that that is a fair description on the basis of the materials which I have seen, although I bear in mind that I have not had any evidence from Mr Morgan to explain what was happening from his perspective.
13. The first deadlines for service of expert evidence were 17 November 2023. In the lead up to that date, Mr Raman took the initiative and e-mailed Mr Morgan (on 9 November and again 13 November) enquiring as to what the position was, and indicating that he could not meet the deadline, and that he needed some more time for his expert report. Mr Morgan's response to the 9 November e-mail was to state that he had not received all the documents on the case, that he was still getting to grips with it, and that he would be in touch in due course. There does not appear to have been a response to Mr Raman's 13 November e-mail.
14. On 16 November 2023, the client started to raise questions. Ms Farajova asked for an update regarding the CMC timetable, and enclosed earlier e-mails concerning Foxton J's July 2023 order. She asked whether they would be able to serve expert reports on the following day.
15. Mr Morgan's response to Ms Farajova, also on 16 November 2023, was that he was aware that the timetable was agreed earlier this year, he was aware of the deadline, that he was not able to meet the deadlines, that he had expected that he would be able to extend the deadlines and it would not result in any change in the trial dates. There can be little doubt that this was a very casual attitude to a deadline which was about to expire, in circumstances where the court no longer takes the same view that it used to take about the expiry of such deadlines.
16. The response prompted an e-mail from Ms Farajova on 17 November 2023. She asked various questions, including for elaboration on Mr Morgan's statement that the expiry of the deadlines would not change the fixed trial dates. She acknowledged that he was still reviewing substantial documents, but said that "time is of essence for all of us".
17. Mr Morgan responded on 22 November 2023. His email included the following:

"We have not written to Hogan Lovells or to the Court. It would be a mistake to do so. Were we to make such an approach at this time we would risk coming under immediate pressure to fix new dates and we would expose Palmali to the risk that the Court may make an order. For the time being we should say nothing. First of all we must concentrate on getting to grips with the details in the case in order that we may make recommendations to Palmali that will enable Palmali to take informed decisions"

18. That advice was plainly wrong and appears to have been advice that a reasonably competent solicitor should not have given. The position, as at 22 November 2023, was that there had been a failure to serve expert evidence and that if an extension was to be obtained, even at that stage, an application for relief from sanctions would need to be made. A competent solicitor would understand that such applications are not straightforward in situations where there is significant delay.
19. The defendant's solicitors, Hogan Lovells, wrote a letter to Waterson Hicks on 11 December 2023. They pointed out that the 17 November 2023 deadline had passed. They stated that they were proceeding on the basis that no further expert reports were to be served by the claimant. They also referred to the fact that the claimant had not provided additional disclosure, as required by the 27 October 2023 deadline. They asked that Waterson Hicks should attend to the disclosure straightaway, by 13 December 2023.
20. Mr Morgan replied to Hogan Lovells, on 14 December 2023, indicating that both the disclosure and the further expert evidence would be served as soon as practicable. He stated that he regretted that the change of solicitors had caused delay, whilst Waterson Hicks were getting to grips with the long-running complex case. This letter provoked a stiff but fair reaction from Hogan Lovells in a letter of 21 December 2023. They (correctly in my view) described Mr Morgan's 14 December 2023 letter as displaying a cavalier attitude to compliance with court orders.
21. Hogan Lovells' letter of 21 December 2023 was passed to the claimant. In his covering e-mail, Mr Morgan did not provide any advice in relation to the letter, but simply passed it on. He did say, however, that he had recently met with London Legal (a company which provides litigation support services) and that in order to respond to the disclosure obligations it would be necessary to reactivate the London Legal database.
22. A prompt e-mailed response was then sent by Sabahattin Su of the claimant to Mr Morgan on 22 December 2023. The response confirmed the claimant's willingness to meet the cost of reactivating the database. It also asked to be sent "the reply that you are planning to be sent to Hogan Lovells in respect of their attached letter, as we should not be facing unnecessary difficulties due to delay occurred already".
23. No reply was received to that e-mail. On 4 January 2023, Isenbike Bilgili – whose job description was "Legal Advisor" – sent a chaser to Mr Morgan asking: "Have you been able to prepare a response to the Hogan Lovells letter?" Mr Morgan was also asked whether, since the London Legal database was reactivated, he had been able to locate the documents for the additional disclosure.
24. On the same day, 4 January 2024, Mr Morgan replied. He said that they did not yet have access to the London Legal database, but expected to gain access in the next few days. In relation to Hogan Lovells, he said:

"We have not yet responded to Hogan Lovells. We should defer sending a response until we have been able to review the London Legal database and to understand what it holds and whether the required further disclosure is on the database."

25. Again, that advice at that stage is (to say the least) difficult to understand, and it appears to be such as no reasonably competent solicitor should have given. By this stage, approximately six weeks had expired since expert evidence should have been served, and a longer period since the further disclosure was due. It seems to me that Mr Morgan should have recognised that there was a need to respond to Hogan Lovells and to deal with the points which they had raised.
26. On the disclosed material which (on the claimant's evidence) is all of the relevant material passing between the claimant and Waterson Hicks on this question, there was then an absence of any further correspondence between them before another significant event occurred in February 2024: Mr Morgan had a stroke and was hospitalised. This occurred in the first half of February 2024. Hogan Lovells were told, on 15 February 2024, that Waterson Hicks' "case handler" had been taken ill. The evidence is that he has still not returned to work.
27. It is not entirely clear, on the evidence of Ms Sharp, exactly what prompted the next relevant event, namely a decision on the part of the client to reinstruct Rosling King. I infer, however, that a significant factor was the fact that Mr Morgan had had a stroke and was no longer able to act. At all events, the position was that Rosling King were reinstructed on 21 March 2024.
28. By that time, the defendant itself had issued an application (dated 11 March 2024) which sought to extend various deadlines in Foxton J's order. One reason for the application was that the defendant did not wish to be in breach of any of the orders which required it to serve various materials. Within a period of three and a half weeks after having been instructed, the claimant's new solicitors, Rosling King, issued the present application on 16 April 2024, having given notice that that was what they intended to do on the previous day. The application was supported by the witness statement of Ms Sharp to which I have referred. By the time the application was made in April 2024, the hearing had already been fixed (on 3 May 2024) for the application which Hogan Lovells had issued.
29. The parties sensibly agreed that the 3 May 2024 hearing date should be used for both the original application by the defendant and the application for relief against sanctions by the claimant. The parties have taken a very responsible approach to the application, and the defendant and its advisers are in my view to be commended for not seeking to overstate the potential difficulties that would result from an adjusted timetable. The parties have therefore agreed two sets of directions. One set of directions provides for various further stages of the litigation if relief from sanctions is not granted. A separate set of directions identifies the deadlines if relief from sanctions is granted.
30. The position overall is that the trial is still around 8 ½ months away. Although there is a degree of pressure on the timetable, there is in my view (and this is reflected in the agreed draft order applying to the case where relief from sanctions is granted) sufficient time to enable the various outstanding steps to be accomplished, even if relief from sanctions were to be granted.
31. That is the background to the application which is before me, and it is common ground that this requires the court to decide the claimant's application in accordance with a well-known test laid down in *Denton v TH White* [2014] EWCA Civ 906 at [24]. The starting point is CPR 3.9, which enables the court to extend time by way of giving relief against sanctions:

"On an application for relief from any sanctions imposed for a failure to comply with any rule, practice direction, or court order, the court will consider all the circumstances of the case so as to enable it to deal justly with the application, including the need –

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions, and orders."

32. The principles in *Denton* are very well-known and are as follows.

"A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction, or court order" which engages rule 3.9 (1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable the court to deal justly with the application, including [factors (a) and (b)]."

33. It is clear from that case that factors (a) and (b) remain very important, but they are not decisive factors and one must always consider all the circumstances of the case.

34. It is common ground that there has been a serious and significant delay in this case in relation to the service of expert evidence. The relevant evidence should have been served by the claimant back in November 2023. If relief from sanctions were to be granted, then, in accordance with the parties' agreement, the report on Russian law would be provided next week, on 10 May 2024, and the report on shipping market rates, issues C4 and C6, on 24 May 2024.

35. Mr Vineall on behalf of the claimant accepts, and there is no scope for argument, that this involves a lengthy delay. Mr Morrison has said that it is difficult to find cases where the court has countenanced delays of anything like that length. Relief has been refused in cases which have involved much shorter delays.

36. The second stage is to consider the reason is for the delay and why the default occurred. The authorities indicate that, when considering that matter, the position of the client and the solicitor are, in effect, equated; so that the client is not in a position to say that there was a good reason for the delay in circumstances where the delay is the responsibility of its solicitor. That proposition is clear from the well-known decision in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537, which preceded *Denton v White*. In *Mitchell*, the relevant default was the failure of the claimant's solicitors to file a cost budget. This was entirely the fault of the solicitor, but it led to the claimant being refused relief from sanctions. There has been some debate in the argument before me as to whether the present case is one where the solicitor was entirely to blame, or whether the claimant bears some measure of responsibility for the delay which occurred. I will come back to that question in the context of considering all the circumstances of the case.

37. I now turn to that question, which seems to me to be the most important question in this case, but bearing in mind that I have concluded already that the first two stages of the *Denton* test are to be answered in favour of the defendant. I have to approach it as well by bearing in mind the factors in CPR 3.9 (1) (a) and (b). Mr Vineall submits that this is, nevertheless, quite a plain case for the exercise of discretion in his client's favour. Mr Morrison has made the contrary submission and says that there could not be a clearer case where relief against sanctions should be refused.
38. In my view, this is not a case which is in the normal run of cases. There are here a number of factors, some of them unusual, which are relevant in the context of "all the circumstances of the case" and to the outcome of the claimant's application.
39. The first factor is that this is a case has a very unusual background. The problems which arose, through Waterson Hicks being (as Mr Morrison said) serially negligent, would never have arisen but for the unfortunate fact that case was adjourned in mid-2022, following the Russian invasion of Ukraine and the resulting potential problems for the defendant and its advisers in relation to sanctions. The claimant bears no responsibility for that adjournment. Prior to that adjournment, the case had been proceeding – satisfactorily – towards trial. There had been orders for service of expert evidence, and the majority of expert evidence was indeed served by both parties. The reason why the trial could not take place in October 2022, as planned, was the problem which affected the defendant. It is true that one cannot look infinitely back in time when considering causation, and also that (as Mr Morrison submitted) the immediate cause of the claimant's default was the way in which matters were conducted after the case was revived in July 2023 and after Waterson Hicks and Mr Morgan took over the case. But, in my view, it is not right, when looking at all the circumstances of the case, to ignore the fact that the claimant lost its trial date through no fault of its own, and also that the problems subsequently encountered would not have arisen if there had not been that loss of the trial date occasioned by the problem which affected the defendant and its advisers.
40. I also consider that the length of the delay to the original trial, occasioned by the problems which potentially affected the defendant, is of significance when considering all the circumstances of the case. But for those problems, the claimant would have had its case heard at trial in October 2022, and so there has been a delay of some 27 months in bringing this case to fruition, as far as the claimant is concerned. On the defendant's side, it is ultimately accepted that the trial can still take place in January 2025, albeit with some adjustment to the timetable. There will be a certain amount of additional pressure on the timetable and the work which the defendant has to carry out, and to that extent there is a degree of prejudice. However, in my view this is a comparatively modest degree, and I do not consider that it can be equated with prejudice suffered by the claimant in losing some 27 months (between October 2022 and January 2025) in the prosecution of its claim, allied to the fact that the present difficulties faced by the claimant would not have arisen but for the defendant's problems.
41. The second factor of importance is a point to which I have already referred. The parties have sensibly agreed, and Mr Morrison has not overstated his client's case in this regard, that the overall case can be dealt with in the time available before the trial. This is plainly a substantial piece of litigation, and it seems that the defendant has a substantial team working



on it. There are various experts who have already been instructed on various disciplines. Furthermore, the question of shipping market rates and practice is one which has been substantially addressed in expert evidence already served. The defendant's expert on the shipping market, who has already served a report on most of the issues, is the same expert as on issues C4 and C6. This is a case where, prior to the adjournment, most of the expert phase of the proceedings had been completed. It is also a case where, with the adjustments in the timetable, the remaining aspects of the expert evidence phase can be satisfactorily completed in the time available and a fair trial of this case can still take place. The fact that the trial can still take place is not decisive in the *Denton* context, and the authorities make that clear. But it is a factor, nevertheless, which I take into account.

42. The third factor is that there is a degree of overlap in relation to one of the expert disciplines, shipping market rates and practice, between the evidence already served and the evidence that remains to be served. That area of expert evidence feeds into issues of accounting and auditing, where expert evidence has also already been served by both parties. As Mr Morison explained in his skeleton argument, a key issue in the case as repleaded, is the quantification of the claimant's losses. This turns on the correct 'counterfactual' to apply if the contract had not been breached. This, in turn, depends on the validity of a series of rival factual assumptions put forward by both parties. These relate (amongst other things) to the number of cargoes that would have been transported, the size of the cargoes that would have been carried in each shipment, the ports that the cargo would have been shipped from, and the vessels that would have been engaged by the claimant to carry the cargoes.
43. The parties were agreed that, if the claimant's present application failed, the trial will still take place. However, it would take place with some aspects of the expert evidence being incomplete, at least from the claimant's perspective. It would in my view make for a somewhat strange and unsatisfactory trial on the above issues if evidence on certain points could not be called by the claimant, but evidence on those points could be called by the defendant, but where both parties were still permitted to call all of their evidence on the related points where expert evidence has already been served and relief from sanctions is not required.
44. It is true that this point does not apply to Russian law, which is more self-contained. The defendant has, however, already served its expert report on that topic, and therefore much of its work on Russian law has been done. I have been told that particular report is not unduly lengthy; it is around 38 pages.
45. Ultimately, the position is not only that there is a degree of overlap between some of the experts, in terms of the evidence which they have given and will give, but there is nothing which indicates that the experts themselves would be in any particular difficulty in meeting the revised deadlines which the parties have been able to agree on. There was at one stage a suggestion that the defendant's shipping law expert, the well-known expert Miss Jean Richards, would have some difficulty in meeting the adjusted timetable, due to prior commitments in the summer. However, that particular problem no longer seems to exist.
46. The fourth factor, on which Mr Vineall placed considerable emphasis, is that the responsibility for what happened is very much the responsibility of the claimant's solicitor rather than the client. It seems to me that that submission is made out on the basis of the privileged material which has been presented to me. The advice which Mr Morgan gave, and

failed to give, during that period between early November 2023 and the time when he had his stroke in February 2024, appears on the present material to be such as no reasonable solicitor should have given or failed to give. The advice should have been that it was essential to comply with court deadlines, or to make an application to the court for an extension, ideally in advance of the deadline in order to avoid the need to apply for relief against sanctions. That advice was not given. There is nothing in the documents which indicates that the claimant appreciated, or should have appreciated, that the advice that it was receiving was incorrect. The claimant obviously had some concerns because it had seen at least some of what Hogan Lovells had written. But there is nothing to suggest that the claimant is an experienced litigator, who would have understood, without advice from the experienced solicitor that they had instructed, the precise impact of the failure to comply with deadlines, the principles which emerge from the *Denton* case, or the need to apply for relief against sanctions.

47. Mr Morrison submitted that the claimant had some responsibility for the delay which occurred. He did not make that point emphatically in relation to the period between November and early January, but he submits that the claimant itself shares at least some responsibility for the delay thereafter. I did not think that that was a powerful submission. One has to remember that one is dealing here with a foreign client, involved in English litigation, who has been looking for and receiving advice from an experienced English solicitor. At no stage was the client told of the serious difficulties which the solicitor's conduct and advice was potentially creating for it.
48. Matters changed, in some ways fortuitously for the client, when Mr Morgan had a stroke and consideration had to be given to changing solicitors. The change of solicitor was made in March 2024. Some criticism was directed at the speed with which the change occurred. However, I am not persuaded that the claimant, who was not given appropriate advice during this period, and did not appreciate the problems that it was facing, can be blamed for not having changed solicitors earlier.
49. Mr Morrison also submitted that there was an unexplained period between the time when Rosling King were instructed, which was 21 March 2024, and the time when the application for relief against sanctions was made in mid-April. I again did not think that that was a powerful point. Whilst Rosling King had previously been instructed in the case, they had to put together a new team. The new team had to understand what had been going on. If an application for relief against sanctions were to be made, that would require careful consideration, even if it was reasonably apparent quite quickly that such an application would be required. In particular, careful consideration would be needed in relation to the question of whether privilege should be waived, and what could therefore be said in a witness statement in support of the application, such evidence being required under CPR 3.9 (2) in a relief from sanctions application.
50. It does not seem to me that a period of some three and a half weeks, with Easter intervening, with new solicitors getting up to speed on the case, is something which can be attributed to the client. Nor, indeed, was it material in terms of the delay which has taken place in this case. The material delay really occurred before then. By the time Rosling King were instructed, there was already in the offing the present hearing date, because of the defendant's own application. Furthermore, as I have indicated, the parties agreed that this hearing date could be used for the relief against sanctions application. As Mr Vineall said, the present

application would not have come on any more quickly, even if the Rosling King had moved more quickly than they did.

51. Accordingly, I agree with Mr Vineall's submission that the responsibility for what happened is the responsibility of the claimant's solicitor rather than the client. There is, however, an important issue which Mr Morrison raises as to whether it is relevant to look, in any way, at the fact that the responsibility for the problems and the delay is the responsibility of a party's solicitor rather than the client. In my view, the authorities to which I was referred indicate that that is a factor which can be taken into account in the context of considering all the circumstances in the case. The point is addressed in paragraph 3.9.19 of The White Book, and there is authority both prior to and subsequent to the rule change (i.e. the reformulation of CPR 3.9 discussed in that paragraph) that it is a factor. I agree that it is not a decisive factor but, in the present case, it seems to me to be a significant factor.
52. Fifth, I consider that a refusal of relief would ultimately punish the claimant for the conduct of a solicitor who let them down extremely badly and failed to give proper advice over an extended period of time. In theory, the claimant would have a remedy against the solicitor but, in a case of the present kind, that remedy would be a difficult one to pursue. As Mr Vineall says, it is relatively easy to see a client's remedy where the effect of the failure to obtain relief against sanctions is that the client's case can effectively no longer be pursued. In that situation, it is relatively easy to see that the client will have a claim against the solicitor. The court may in such a case consider that the client is not really suffering, because it has a solid claim against the solicitor even if it has lost its claim or defence against the opposing party. I accept that even in those sorts of cases the client is, to some extent, worse off because it has to prove what the loss of the chance would be.
53. In the present case, it would seem much more difficult for the claimant to pursue a potential remedy against Waterson Hicks. The parties were agreed that this litigation would carry on, whether or not relief from sanctions were granted. Expert evidence is going to be given from a variety of witnesses in the course of a 10-week trial. The expert evidence, where an extension is sought, is expert evidence which essentially goes to quantum, although there are aspects which affect the liability issues. The evidence, which the claimant may potentially be prevented from calling (if relief against sanctions is refused) interrelates with other experts who are giving evidence, for example, the accounting evidence. If the claimant were to be precluded from calling its expert evidence on the areas where it needs an extension, it could cross-examine the defendant's witnesses on aspects of Russian law or shipping market rates and practice. It could put documents, and legal treatises and cases, to one or other expert and they will give their answers based upon those materials. But the claimant would be handicapped by reason of the fact that it did not have any expert evidence of its own.
54. If the claimant succeeded on liability at trial, but its recovery of damages was lower than its claim or reasonable expectations, then there would be the potential for a subsequent professional negligence case against Waterson Hicks. There would be potential for an argument that the recovery would have been greater if the claimant had not been prevented from calling expert evidence on the issues where it currently needs relief against sanctions. However, it is obvious that, in a case of this nature, with interrelated expert evidence that will be given at the trial, such a case would be far from straightforward. The claimant would have to work out and prove what the difference would have been as a result of having, versus not having, the relevant expert evidence. That would create, clearly, a very difficult situation for

all parties at the trial of the professional negligence case. It is difficult to see how that sort of exercise could be addressed, at least with any ease.

55. In my view, it is a relevant factor in this case that the effect of refusing the application for relief against sanctions would result in depriving the claimant of its ability to call expert evidence in circumstances where the problems were not of its making, and to leave it with a potentially very complex professional negligence action which involves the sort of questions to which I have referred. This would be very prejudicial to the claimant, and it is difficult to see that the claimant deserves that, against the background of the matters to which I have already referred.
56. I appreciate Mr Morrison's submission that I must not simply consider whether the claimant deserves that and I have to consider the prejudice to the defendant, as well as the important other matters which are identified in CPR 3.9. But this is a case where, in my view, there is not really a significant prejudice to the defendant. As I have indicated, the parties have been able to work out a timetable. The trial is going to take place. One of the experts who has to address issues C4 and C6 is going to be addressing other issues anyway. When I look at all the circumstances of this case, I conclude that I should grant the relief against sanctions which has been requested by the claimant. I will hear the parties on the question of consequential orders and costs.