Neutral Citation Number: [2025] EWHC 301 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Case No: QB-2019-002530

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/01/2025

Before:

HIS HONOUR JUDGE TINDAL
(Sitting as a Judge of the High Court)

- -

Between:

ANNA CHRISTIE

Claimant

- and –

(1) MARY WARD LEGAL CENTRE
(2) ANDREW DYMOND

Defendants

- -

The Claimant represented herself
Mr P Petts, Mr Lipson and Mr Erridge
(instructed by Eversheds Sutherland) for the **First Defendant**
Mr P Maxwell (Instructed by Browne Jacobsen) for the **Second Defendant**

Hearing dates: 14th, 15th 16th, 17th 20th and 21st January 2025

- -

Approved Judgment

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

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HHJ TINDAL :

Issues

1. This is a professional negligence claim by Claimant-in-person ('C') against Mary Ward Law Centre (D1) and Mr Dymond, a barrister (D2) about possession proceedings. It raises questions about: a barrister's duty to plead weak arguments; reliance on counsel by a Law Centre in a Legal Aid context; causation of damage where a defence is argued unsuccessfully by a litigant-in-person after disinstructing the lawyers; limitation and valuation of a lost asset. There have already been two interlocutory appeals – on reliance on counsel in *Christie v Mary Ward Legal Centre (No.1)* [2023] EWHC 1814 (KB) and on limitation: (No.2) in [2023] EWHC 1994 (KB) (reported [2024] PNLR 2).

2. The dispute arises from possession proceedings in 2012-13 by Southwark LBC against C as leaseholder of Flat 28, Pallant House, Tabard Street, Southwark, London ('The Flat'). Southwark claimed forfeiture for non-payment by C of a judgment of £7,815.09 for service-charges plus interests and costs. C claims she was negligently advised by the Defendants to sell her Flat and did on 30th July 2013 after a possession order was made on 28th June 2013, when she claims she actually had good defences to possession, including that Southwark had waived its right to forfeit the lease on various grounds. She says that if she had been advised properly, she never would have sold her Flat. Whilst the parties' expert surveyors agree the actual sale price of £290,000 was its market value in July 2013, C has not found an appropriate alternative property. She claims for the lost value on the basis she would have kept the Flat: her expert Mr Dunsin values it now at £440,000 but the Defendants' expert Mr Harris values it at £425,000. There is also a pending application for permission to appeal on quantum evidence.

3. This claim was issued on 15th July 2019 (a fortnight short of six years after sale) with self-drafted Particulars which Turner J described in *Christie (No.1)* at [53(i)]:

> "The Particulars of Claim is badly drafted. It contains a hotch-potch of allegations many of which appear to be of dubious relevance. Others are very broadly and vaguely drafted and would benefit substantially from further particularisation. I indicated to the claimant that there is a limit to the extent to which 'catch-all' drafting can be deployed as a vehicle through which otherwise unparticularised allegations may later be introduced. Obviously, any application to amend must be judged upon its merits and it would be premature for me to comment on the prospects of success."

4. A list of issues was endorsed by HHJ Roberts at PTR on 13/12/24 (which I re-order):

(a) D2 Negligence: was D2 negligent in not advising C:

i. C eligible for loan from Southwark in Service Charge Regs ?

ii. C entitled to ESA rent contribution from Southwark ?

iii. C could transfer claim for Judicial Review ?

iv. C had defence that Southwark's Notice of Forfeiture invalid ?

v. C had defence that Southwark had waived right to forfeit as it: (1) accepted her £20 weekly payments from Jan 2012; or (2) discontinued a previous forfeiture claim ('Waiver Argument')

(b) D1 Negligence:

i. Did D1 reasonably rely on D2's advice ?

ii. If not, did D1 negligently fail to advise C to defend Forfeiture Claim on following bases: (i) a loan from Southwark under SCR; (ii) rent contribution under EASR or (iii) Judicial Review ?

(c) Causation

i. If C so advised, would she have defended on those bases and run those arguments for relief from forfeiture ?

ii. If so, are her counterfactual prospects of success to be assessed on balance of probabilities or loss of a chance ?

iii. If balance of probability, has C proved she would have kept Flat

iv. If loss of chance, was there a real and substantial chance of her defending the forfeiture claim and/or obtaining relief ?

(d) Limitation:

i. Did C's cause of action against D1 accrue prior to 15/07/13 ?

ii. Did C's cause of action against D2 accrue prior to 15/07/13 ?

(e) Damage and Loss

i. Did C suffer any loss by sale of Flat at market value ?

ii. Is C entitled to damages by reference to increase of value in Flat from 2013 to 2024 ? If so, what ?

iii. Is C entitled to other miscellaneous costs ?:

iv. Permission to Appeal Master Armstrong on Quantum Evidence.

(f) Apportionment of any damages as between Ds.

5. Prior to trial, in May-June 2024, C disclosed some invoices from Southwark which are highly relevant to this case. The first is dated 1st April 2011 and covers the service charge for April 2011 to March 2012 of £1,014.57, but also levies ground rent at the annual rate in the lease of £10 ('the 2011 Rent Invoice'). The second is dated 8th March 2012 and covers the service charge for April 2012 to March 2013 of £1,190.79 and again levies ground rent of £10 (the '2012 Rent Invoice'). The third is dated 12th February 2013 and similarly levies a service charge for 2013-2014 of £1,173.12 and £10 ground rent (the '2013 Rent Invoice'). (Fourthly, there is also a 'major works' invoice for £2,465.13 dated 12/02/13 but that is less critical). The relevance of the three Rent Invoices (especially the 2012 one) is that – as I shall explain below – they arguably gave C a defence to Southwark's forfeiture claim on the basis it had waived the right to forfeit by charging *rent* (as opposed to service charges) after C's breach of covenant for which it sought forfeiture. That breach was C's failure to pay the service charges of £7,815.09 once confirmed by the Leasehold Valuation Tribunal ('LVT') in April 2011 (*after* the 2011 Rent Invoice: which is why the 2012 and 2013 Rent Invoices are more important) - as ordered with interest and costs by the County Court in January 2012. Moreover, C paid Southwark £3,000 on 22nd April 2013, but that appears to have been attributed to the existing debt on the service charges, rather than being allocated to rent.

6. This argument is not on list of issues approved by HHJ Roberts at Pre-Trial Review, but Mr Petts (who is lead Counsel for D1 assisted by Mr Lipson and Mr Erridge) and Mr Maxwell (Counsel for Mr Dymond) concede that C pleaded this point in part. Paragraph 15 of C's Particulars of Claim allege the Defendants were negligent in their: *"Failure of D1/D2 to determine and advise the Landlord waived its right to forfeit in accordance with the Lease… it served demands for ground rent / service charges ….continuously from 24/04/2005"*. That paragraph went on to a separate point about the validity of notice of forfeiture (which is on the List of Issues at (a)(iv)). However, C pleaded that the Defendants 'failed to *determine and advise*' about waiver due to the Invoices, not that they failed to *investigate* those invoices. However, I permitted that point to be added as a late but minor amendment which did not unfairly prejudice Ds, particularly as they said the argument lacked merit (although I considered it had realistic as opposed to fanciful prospects of success). So, I add the following issues: were the Defendants negligent in failing to investigate or determine and advise whether waiver of right to forfeit on grounds of levying ground rent in the 2011-2013 Rent Invoices ?

Procedural History

7. I can set out the procedural history with this helpful table in the Skeleton of Mr Petts:

21/08/2013	C accuses D1 of gross negligence in a complaint
23/10/2013	C's complaint rejected by D1
02/05/2014	C granted relief form forfeiture to pay off debt by DJ Kelly
09/05/2014	C's second complaint against D1
15/05/2014	C complains to D2's Head of Chambers
27/05/2014	D1's trustees reject C's complaints
06/06/2014	D2's Head of Chambers rejects C's complaint
25/06/2014	D1 sends C's file to Mark Eaton, solicitor
10/10/2014	Permission to appeal costs order of 02/05/2014 refused on papers
13/02/2015	Oral permission to appeal possession order refused, certified Totally Without Merit ('TWM') by HHJ Taylor
14/10/2015	Master Rowley dismisses costs applications (certified TWM)
05/01/2016	Dismissal of bankruptcy petition (appealed costs, refused)
27/06/2016	C's issues QBD claim against Southwark
21/07/2016	HHJ Luba QC amends claim number
22/07/2016	Southwark's Defence to C's claim (C01CL745) and applies for GCRO
22/08/2016	HHJ Dight dismisses PTA Master Rowley (certified TWM)
13/09/2016	Knowles J certifies appeal of HHJ Luba's order (certified TWM)
02/02/2017	HHJ Dight makes General Civil Restraint Order ('GCRO') against C until 01/02/2019

21/08/2018	C sends ‘Preliminary Notice’ to D2
15/03/2019	C Letter of Claim
13/06/2019	D2 Letter of Response
15/07/2019	C issues proceedings against D1/D2
21/08/2019	D2 Defence
11/09/2019	D1 Defence
13/11/2019	D2 application for summary judgment and witness statement
30/01/2020	D1 application for summary judgment
12/02/2020	C response to D1/D2 applications
07/04/2021	Decision of Master McCloud to dismiss C’s claim against D1
15/07/2022	C’s application for permission to appeal Order of Master McCloud
16/02/2023	Ritchie J grants C permission to appeal Master McCloud’s decision dismissing claim against D1
05/07/2023	Appeal hearing against Master McCloud’s decision to grant summary judgment in favour of D1
18/07/2023	Reserved judgment by Turner J, in respect of C appealing Master McCloud’s decision to grant summary judgment in favour of D1
31/07/2023	D2’s appeal against Master McCloud’s decision on summary judgment dismissed by Soole J
31/07/2023	Reserved judgment by Soole J in respect of D2’s appeal
10/11/2023	Directions Order of Master McCloud
08/01/2024	C’s List of Documents
15/01/2024	C application to set aside paragraph 6(a)-(i) of Master McCloud’s Order dated 10/01/2024

06/02/2024	C application to amend heads of loss
24/04/2024	Inspection application hearing before Master Armstrong, refusing C's applications, granting D1/D2 applications and refusing C permission to appeal
04/06/2024	Trial Witness Statement of C
21/06/2024	C's appellant's notice / grounds of appeal re Master Armstrong's decision of 03/05/2024
03/07/2024	Updated Schedule of Loss
25/07/2024	Trial Witness Statement of D2
29/07/2024	Witness Statement of Paula Twigg on behalf of D1
04/09/2024	Order of Master Armstrong (a) permitting D1 to rely on evidence of Paula Twigg (b) extending time for service of Counter Schedule of Loss (c) requiring C to confirm instructing an expert and (d) additional directions for trial
04/10/2024	Master Armstrong reasons for refusing C permission to appeal
28/10/2024	Wilson Dunsin Expert Report on behalf of C
30/10/2024	D2 Amended Defence
15/11/2024	Joint Statement of Experts signed by Experts

Evidence

8. As I shall detail later, that is only the second half of C's litigation arising out of the same underlying dispute about service charges and forfeiture. She was enmeshed in that with Southwark relating to service charges since 2004, around the time she paid her mortgage off on the Flat which she had occupied since 1999. She was involved in a serious assault at work in 2007, causing a psychological disability for which she receives Industrial Injuries Disablement Benefit and has not worked since. She was candid that at least since then, in the two phases of this dispute – for the first decade or so with Southwark directly; and the last decade with Ds - she had spent over 10 hours a day working on it. This has three consequences relevant to this case.

9. The first is a practical consequence. The two decades of this dispute have generated a huge volume of documentation. I have a bundle consisting of two large boxes of lever arch files of over 1000 pages. As typical in a trial, I was only referred to some of those. I have relied on the Claimant – who knows this case better than anyone – and Counsel to refer me to all relevant documents. However, as I had a reading day, I was able to go beyond the reading list and at least skim read every page of the whole bundle. So, I believe I have identified most of the relevant documents in my 'working bundle', although I supplemented it with all the relevant documents I was referred to in evidence. However, in this judgment, I will not refer to every single document I have read, but I confirm that I have taken them all into account in reaching my findings and conclusions.

10. The second consequence of the Claimant's long immersion in this case is relevant to her perspective on the dispute. She bristled when she was asked about the GCRO in 2017 and said whilst Southwark obtained it, she now has a good relationship with them. Ironically, C has come to forgive the authority who effectively forced her out her home with whom she was embroiled in litigation almost non-stop from 2009 to 2017. Instead, she has come to blame the lawyers who advised her for less than a year, albeit the crucial time when she lost her Flat: from Summer 2012 to Summer 2013. It is clear C has never really recovered from losing her Flat. She told me she ruled out another leasehold property as she could not bear to go through forfeiture again and she has not found an appropriate freehold. So, she is now a tenant of the authority that evicted her.

11. The third – and related - consequence of C's entrenched perspective is that it has plainly affected her recollection of events. I have no doubt whatsoever that she was an honest witness – she clearly believed the truth of what she was telling me. Indeed, on several topics - including the key Rent Invoices issue, she candidly accepted she did not really remember key information – such as whether she had given the 2011-2013 Rent Invoices to D1. However, that did not stop her making assertions in evidence that contradicted contemporary documentation – e.g. D1's attendance notes and letters in January 2013 that C refused to agree for Southwark to have a charge on Flat pending sale. Her recollection also shifted in cross-examination. Initially, she claimed she had 'agreed' with Southwark to pay £20 a week to the service charge arrears throughout 2012, but later accepted Southwark had never actually agreed (indeed, letters at time suggest they actively rejected it). Therefore, I do not find parts of C's evidence reliable.

12. That said, I would not wish to criticise C herself or indeed her presentation of the case. Judges may have preconceptions of a litigant-in-person who has previously had a GCRO, but whatever those preconceptions, Ms Christie confounded them. She gave evidence in a courteous and measured way. I gave her the chance after her evidence had finished to reflect overnight and to ask to give further evidence the next day on anything she had missed, that she took in a limited and fair manner. Her recall of some detail (consistent with contemporaneous evidence but without needing to be reminded of it) was impressive. This is particularly true of the earliest stages of the dispute, well before the Defendants became involved. Yet C said herself that by the time of the forfeiture proceedings in 2012-2013, she was under immense stress, which is borne out in contemporary notes of her emotional state, affecting her ability to listen to advice. Whilst C no longer pursues her pleaded argument that she lacked litigation capacity at the time, her stress plainly affected her *judgement at* the time as well as her *recollection of* the time. Therefore, if C's evidence disagrees with contemporary documents or the evidence of Mr Dymond or Ms Twigg, I will prefer their evidence to hers.

13. By contrast, Ms Twigg's evidence was straightforward – if limited. She was not involved in advising C but investigated the complaint later. As Ms Twigg explained, C was actually represented by two solicitors working in 2012-13 for D1: Susan Holman (who has retired) and Sarah Talboys, who now works elsewhere. Ms Twigg has spoken to them and more than a decade on, neither have any recollection of C's case independent of D1's file, so Ms Twigg gave evidence on behalf of D1. She clearly had some familiarity with C's case from investigating her complaint. Ms Twigg made appropriate concessions, including about Ms Holman's expertise in debt (if not in leasehold) and struck me as a straightforward reliable witness. She was responsible for providing D1's file to C in 2016 (and took copies) and affirmed it did not include the 2011, 2012 or 2013 Rent Invoices. I also heard briefly from D1's solicitor Mrs Oldfield who confirmed her firm had also checked D1's file for the 2011 and 2012 Rent Invoices (they had not checked for the 2013 one) and could not find them. This is not so surprising when – as D1's briefs to Mr Dymond said at the time – at the time C was not opening all her post because she was so stressed by the forfeiture proceedings. C herself could not remember whether she handed over the 2011-2013 Rent Invoices. I will find C never handed them over to D1, which is why they are not on its file. It therefore follows that Mr Dymond would never have seen the Rent Invoices either, as he said.

14. I found Mr Dymond a straightforward and fair witness. He readily accepted the 2012 Rent Invoice would have provided a complete defence – without trying to avoid that conclusion, but insisted he had not seen it, otherwise he would have run that argument, which I accept. He explained his advice and view on other issues fairly and in detail. Mr Dymond's expertise in the field was evident in his evidence, but what was also evident was his patience and courtesy to C, who in turn was courteous, although did not stop her from asking searching questions, which I developed with him. Mr Dymond fairly accepted several points Ms Christie put to him without trying to avoid them or bog them down in legal technicalities. As well as his commendably straightforward concession that had he seen the 2012 Rent Invoice, he would have advised it gave C a defence, he accepted his view of the £20 payments had been different from the view of a District Judge who had directed evidence about it before his instruction; and that the first notice of forfeiture from Southwark was technically invalid. Moreover, he accepted that Southwark had agreed generous loans with other leaseholders secured by land charges for them to repay loans in excess of £30,000 over several years. Yet he also clearly explained why he had not advised seeking relief from forfeiture on that basis as C had wanted to enable her to keep the Flat. As he pointed out, Southwark had been much more aggressive in its determination to repossess C's Flat. Mr Dymond believed Southwark would never have agreed to such a loan, or even time to pay (and indeed contemporary evidence he had not seen at the time proves that it had already refused C such a loan). Therefore, Mr Dymond explained his view that had C sought relief from forfeiture in the form of a loan from Southwark allowing her to keep the Flat in the face of Southwark opposition to it, the Court would never have granted it – as he said – in all his experience he had never known a Court make such an order. I will have to evaluate later whether Mr Dymond's advice was negligent, but I have no doubt at all that his honest and fair evidence was factually reliable and I have no hesitation in accepting it in preference to C's more coloured perspective where they disagree.

15. Against that background, I turn to my findings of fact. Strictly speaking the burden of proof is on C, but I am able to make the following findings on the balance of probabilities without resort to the burden of proof, although I do take into account my conclusion that where C's evidence is contradicted by other evidence, I will prefer that other evidence for the reasons I have just explained. However, this is less of an issue for the earlier stages of the dispute – before the forfeiture proceedings began in 2012.

Findings of Fact

16. It is convenient to divide up the findings of fact into five sections: (i) the service charge dispute; (ii) Southwark's first possession proceedings; (ii) instruction of the First Defendant and the second forfeiture proceedings; (iv) the instruction and advices of the Second Defendant; and (v) the possession order and sale. This division aids clarity because sections (i) and (ii) predate the instruction of either Defendant; (iii) predates the instruction of the Second Defendant; (iv) involves both Defendants; and finally (v) post-dates involvement of both Defendants (but is relevant to causation and value).

The Service Charge Dispute (2003 – 2012)

17. Flat 28, Pallant House, Tabard Street, London SE1 4YD ('the Flat') is a two-bedroom flat with a large lounge and balcony overlooking a lawn. Pallant House is in a desirable location for professionals, near Waterloo in London. The Claimant moved into the Flat in 1992 as a secure tenant after major orthopaedic surgery. She acquired the right to buy it for a premium of £26,400 she secured by mortgage.

18. On 20/09/1999, Southwark granted C a 125-year lease of the Flat. In it, C covenanted:

    (1) to pay the reserved rent of £10.00 p.a. in advance on 20 September each year (clause 2(1)); and

    (2) to make quarterly payments of the service charge, in advance (clause 2 & Third Schedule). Clause 2(3) stated: "*Before the commencement of each year …the Council shall make a reasonable estimate of the amount which will be payable by the Lessee by way of Service Charge…in that year and shall notify the Lessee of that estimate.*" Paragraph 2(2) Sch.3 stated: *"The Lessee shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal payments* [quarterly]." Paragraph 6(1) stated: *"The Service Charge payable by the Lessee shall be a fair proportion of the costs and expenses set out in paragraph 7…incurred in the year."* Paragraph 7 read with the rest of the Lease defined costs and expenses as including the costs of carrying out repairs and painting to structure and exterior and common parts of the building, of insurance of the building and liabilities; taxes and duties; management agent fees; and installation of double-glazed windows and an entry phone.

19. Clause 5(1) of the Lease provides for forfeiture in the event of the breach of covenant:

> *"If the rent hereby reserved or any part there of shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the part of the Lessee herein contained shall not be observed or performed then and in such case it shall be lawful for the Council at any time thereafter to re-enter the flat or any part thereof in the name of the whole and thereupon this lease shall absolutely determine…"*

20. In 2003, C represented several tenants from Pallant House in a complaint about the quality of services provided by Southwark under their tenancies (different from C's Lease). The essential complaint was that since the caretaker had left, Pallant House had not been properly cleaned and its condition had deteriorated. Southwark Arbitration Tribunal upheld this complaint and found Southwark in breach of the Lease and ordered it to paint the tenants' external doors, windows and balconies, to investigate whether asbestos existed on the balconies and to pay compensation of £500 each. However, the Arbitration Tribunal specifically stated it had no jurisdiction to reduce rent.

21. Emboldened by that, in January 2004, C applied to the Leasehold Valuation Tribunal ('LVT') to challenge the reasonableness of the service charges given those issues. But in September, the LVT took a different view than the Arbitration decision and held that with a couple of minor concessions by Southwark, the service charges were reasonable. Despite that, C did not pay the service charge – she only offered half which Southwark did not accept. She paid nothing towards it even after she paid off her mortgage in 2004. Indeed, that stand-off remained, so the service charge arrears started building up.

22. However, that did not stop Southwark in April 2006 offering C payment options for £3,222.45 outstanding in its 'major works works' for the work it was doing on asbestos, tank replacement and window renewal (which C had sought in 2003). Three options were offered: (i) spreading payments over up to 3 years interest-free; (ii) a service charge loan by monthly instalments at interest of 1.5% above base over up to 25 years for fee of £430; or (iii) a voluntary charge against her property with interest at 2% above base if financial criteria were met with the same fee (in effect, there was no requirement to repay each month but the interest would build up until sale of the property). However, C took none of those options and continued not to pay ordinary service charges.

23. So, C did not pay Southwark service charges even when affordable for her: when working and mortgage-free. She adopted a position of principle, despite the 2004 LVT decision, contending service charges were excessive and continued to offer half, but that was rejected and she paid nothing (save a contribution towards window renewal).

24. However, on 12th January 2007, C was injured at work in a horrific incident where she was assaulted. She sustained both physical injuries (severe chest and back injuries) and chronic Post Traumatic Stress Disorder ('PTSD') with symptoms of hypervigilance, hyperarousal, intrusive ideation, panic attacks and moderately serve mood disorder, confirmed by a Psychologist in a report dated 27th November 2010. She also developed hip problems requiring surgery by 2013. C never returned to work and lost her income, becoming reliant on benefits: Income Support, Industrial Injuries Disablement Benefit ('IIDB'), Employment and Support Allowance ('ESA'), Housing Benefit ('HB') and a Personal Independence Payment ('PIP'). What had been a decision in principle not to pay service charges became unaffordable for her anyway. Whilst C did later issue a claim for personal injury against her former employers, by 2012 it was stayed and she did not have legal advice about it (according to the Duty Solicitor in June 2012).

25. On 7th December 2009, Southwark finally lost patience with C's outstanding service charge debt, which was by then £7,837.97. It issued proceedings in Lambeth CC ('the service charge claim'). According to its Particulars of Claim, C's only payment since 2005 was contribution to windows of about £1,350, leaving arrears of £7,837.97. On 4th October 2010, Lambeth CC transferred Southwark's claim to the LVT (as I will explain, statute provides service charges for domestic properties only enforceable in Court if agreed, or by Court or LVT decision). On 8th and 9th March 2011, C attended the LVT hearing and represented herself, raising several points, including a failure to consult along with issues over major works and recurring service charges, raising several technical points about compliance with statutory requirements. However, in its decision of 20th April 2011, the LVT rejected all C's complaints, save determining that there was an over-charge of £22.88. That meant C owed Southwark £7,815.09 in service charge arrears. Notably, LVT said at paragraph 38 (when ordering C pay a £150 fee):

> *"The Tribunal noted that the Respondent [C] had almost entirely failed to prove her case in this application. That was not conclusive, but many issues had arisen from her misunderstanding of the law relating to the procedures under s.20.*

> *Notwithstanding that she was a lay person, she should have ensured that she had sufficient understanding of the legal issues to be able to evaluate the strength of her own case."*

I can only say this was a prescient observation by the LVT about C. It is an observation that seems to have grown in relevance with her dogged pursuit of Southwark in litigation between 2013 and 2017 culminating in the GCRO. Moreover, as I shall find, it also applies to many – but in fairness not all – of her complaints in the present case.

26. Between the hearing in the LVT on 8-9th March 2011 and its decision of 20th April 2011, Southwark issued a demand to C on 1st April 2011 relating to the financial year April 2011 to March 2012 for ground rent of £10 and a service charge of £1,014.57. As I noted above, this was the first of three relevant 'Rent Invoices' (as I shall call them), although I accept it was in a similar form to previous annual 'Rent Invoices' sent to C at a similar time of year every year. However, this 2011 Rent Invoice (and the 2010 one I have not seen) were sent to C when Southwark had an outstanding claim for the service charge arrears which had not yet been adjudicated by the LVT (and so C's liability to pay, which she was disputing – almost entirely incorrectly as the LVT found – was not yet established). This is relevant to whether C had a 'waiver' defence to the subsequent forfeiture proceedings – and I will return to that legal issue in detail later.

27. However, for the moment, it is important to find how C responded – or rather did not respond. By this stage, C accepted she was starting to become very stressed about the service charge dispute with Southwark – and perhaps starting to realise that it could put her beloved Flat at risk. As C accepts, around this time, she started to leave unopened post which seemed to come from Southwark. Receipt of these Rent Invoices – and whether she handed them over to D1 – was the one key aspect of her evidence where C did not claim to have a clear recollection. For reasons I will elaborate upon in my conclusions later, on balance of probabilities, I find C did not open the 2011 Rent Invoice until she remembered seeing it – shortly before the hearing at which the possession order was made in June 2013: *after* she had de-instructed the Defendants.

28. Be that as it may, the LVT's decision upholding £7,815.09 of the service charge arrears meant that on 11th August 2011, DJ Pearce in Lambeth CC entered interim judgment against C in favour of Southwark in the sum of £7815.09 plus costs of £575 with interest to be calculated. That did not include the sums in the 2011 Rent Invoice just mentioned.

29. In December 2011, C spoke to Mr Orlando Strauss in the Income Enforcement team in Southwark. Initially in her evidence to me, C suggested Mr Strauss agreed she could pay £20 pw but she later accepted she had just offered to pay that. Mr Strauss' statement states he explicitly rejected £20 pw and C's letter to Court on 23rd January 2012 mentioning the £20 pw does not mention 'agreement'. I find on balance of probabilities that C spoke to Mr Strauss and offered to pay £20pw towards arrears, that he did not agree to accept that, but she set up that standing order anyway from 31st January 2012.

30. That letter and payment arrangement was prompted by two developments. Firstly, on 3rd January 2012, in C's absence as she did not attend the hearing, DJ Pearce struck out C's Defence and Counterclaim which sought to re-litigate issues adjudicated by the LVT and entered final judgment for £7,815.09 in service charge arrears and interest of £3,000, making a total judgment debt of £10,815.09. Secondly, on 18th January 2012 (strictly too early as I explain later), Southwark issued its first notice of forfeiture for breach of the lease by C for non-payment of the judgment debt plus additional costs, requiring C to repay the sum in full within 21 days. In her letter of 23rd January 2012, C asked the Court for a stay of proceedings on grounds of her health and explained she had set up the standing order for £20 pw. Ironically, as Mr Dymond observed in evidence, the fact C had already paid off the mortgage left her in a worse position on this point than if she still had a mortgage, because she could not simply seek additional lending from her mortgage company as other leaseholders could. Moreover, whilst as C later discovered, Southwark had agreed to other leaseholders servicing much higher debts with voluntary charges (in a couple of cases, even in excess of £30,000), or with long-term loans (in two cases, higher debts with repayments of only £12 and £15 per week), Southwark was showing no such indulgence to C, possibly because she had on principle not made any service charge payments, or asked for loans, from 2005 to 2012.

The First Possession Proceedings (January – June 2012)

31. From 31st January 2012, C started making a weekly payment of £20 to Southwark, but Southwark immediately rejected them on 7th February 2012. The payment account records the next payments as May, but it appears that payments went to the wrong account. On 1st May 2012, Southwark allocated all intervening payments to the service charge arrears. The balance began to reduce from £7,832.81 on 11th May to £7,492.81 on 11th June. None were allocated to ground rent, or the current service charge.

32. Speaking of which, on 28th March 2012, Southwark issued C with the 2012 Rent Invoice, again demanding £10 in ground rent and this time £1,190.79 in service charges for the April 2012 to March 2013 financial year. By this stage, C herself accepts she was extremely stressed by the proceedings and was not opening post from Southwark – as she admitted to D1 when she instructed them a couple of months later. Again, for reasons I expand on later, I find on the balance of probabilities that she did not open the 2012 Rent Invoice until she recalls seeing it for the first time before she represented herself at the possession hearing in June 2013 - after she disinstructed the Defendants.

33. Whilst C insists the 2012 Rent Invoice would have been one of the unopened letters she handed over to D1 when she instructed them in June 2012, she accepted that was only her assumption not her recollection. Moreover, her own statement does not include the Rent Invoices in the documents she lists that she handed over. Ms Twigg and Mrs Oldfield both said that the 2011 and 2012 Rent Invoices were not on D1's file. I find on the balance pf probabilities that – stressed by the proceedings as she was – C in fact did not hand over to D1 either the 2011 or 2012 Rent Invoices, which she had not yet opened herself. This was fateful because, as I shall explain later, at least the 2012 Rent Invoice could have afforded her a defence to the possession proceedings.

34. Southwark first issued possession proceedings on 4th April 2012 with the hearing date for possession being given as 18th June 2012. Around the same time in an attendance note dated 19th April 2012, Mr Strauss recorded a telephone call where C had offered £20 a week which he had refused and insisted on full payment (as he had in an earlier letter of 7th February 2012). He said the same in a letter to C dated 26th April 2012. He also said he saw no record of payments. C contacted her bank and Southwark allocated the weekly payments of £20 since January to her arrears account on 1st May 2012.

35. However, it was clear that there was no prospect of C paying off the whole of the judgment debt and interest which was by then c.£11,000. Her overdraft had grown from £2,764.59 on 10th April 2012 to £2,958.01 on 10th May 2012, despite starting to receive from 27th April 2012 an additional £31.62 per week in Industrial Injuries Disablement Benefit, which the DWP on 11th May 2012 confirmed would be for life. Yet C tried to get a loan from her former mortgage company and other banks, but all refused. (She was later sent information about equity release by D1, but as I heard no evidence on that from C, so I do not know whether she made an application for equity release).

36. On 18th May 2012 Southwark notified C of further major works to the building and that her contribution due by March 2013 would be £2,465.13. Southwark included its standard information sheet explaining its service charge loans or voluntary charge. C must have opened this letter, as she wrote back on 26th May 2012, marking it 'extremely urgent', asking 'to take up the Council's offer of a 25-year loan on the charge' (it was not an offer), saying she had equity in the Flat of £250,000. She also noted she had an outstanding debt of £11,000 and asked for a 25-year loan or voluntary charge on that.

37. However, it appears that Southwark never answered C directly with her application. She attended an office several times but was rebuffed. She involved a Councillor, who wrote to Southwark. It replied to him on 8th June 2012 pointing out that C made no payments from 2005 until the £20 payments started in January 2012, totalling £320. The letter explained why Southwark refused to give C either a loan or a charge:

> *"No major works invoice has been raised at this stage and no monies are due. Therefore, the Council is not in a position to grant a loan for future charges. Furthermore, we are not in a position to grant such a loan to cover the current liabilities as detailed under the judgment and those that became due after the legal action was initially taken. Voluntary service charges loans are discretionary payment options for major works invoices only and exercised only when applied for promptly after the major works invoices and issued AND when no other extended payment options are viable. As mentioned before, Ms Christie did not apply for this option when the three major works invoices that form part of the claim were issued in 2005 and 2006. Quite to the contrary, the matter was fully contested and to date no payments were received towards any of these invoices…..I can confirm that we will continue with the action as taken."*

38. The impression is that Southwark had little sympathy with C's predicament as it had considered her challenges to the service charges in litigation a considerable irritant for some time. That appears to have been the view in the statement of 6th June 2012 for the upcoming possession hearing of the Income Enforcement Officer, Ms Sorbjan:

> *"[C] has failed to pay the service charges due despite repeated request to do so and [Southwark] commenced proceedings and obtained judgment…[for] £10,815.09….[C] has failed to pay the Judgment obtained. Subsequently [Southwark] issued a notice [of forfeiture]…*

> *[C] has acknowledged receipt of the notice and has made contact to make unreasonable proposal to pay off the debt….The debts owing…has increased by £3,196.11…making the total monies owing…£14,011.20. Between the period of 31st January 2012 and 28th May 2012, [C] made 16 payments of £20 each, making a total of £320. These payments are not accepted in settlement of the forfeiture claim by [Southwark]. I assert that because of [C's] continued failure to pay the judgment debt and further sums due to [Southwark] in respect of the service charges…the lease… is forfeited so that [Southwark] is entitled to possession of the premises."*

39. However, at the hearing on 18th June 2012, C (represented by the duty solicitor, called Ms Pearce) received an unexpected reprieve from DJ Pearce (presumably no relation). Having entered the judgment debt in January 2012, DJ Pearce considered C's payments towards it appeared to have changed the position and gave C an arguable defence to possession on the basis that forfeiture had been waived by acceptance of payments. As DJ Pearce trenchantly told the rather out-of-their-depth representative from Southwark:

> *"It seems to me that there is a genuine issue that needs to be tried. You have got your judgment. You send the judgment to her. You give her the notice of forfeiture and immediately she starts paying £20 per week. It is a default waiver. You are not entitled to forfeit if you have accepted them….If you have not accepted them, and if you have written to her before you pay the first one in to say that you accept them without prejudice to your right to forfeit….[U]nless you can produce [such] a letter today, that seems to me a genuine issue……You waive a forfeiture if you go and do something which is inconsistent with it and maybe you need to do a bit of research about what seems to me an inconsistent [act]….If you have waived that forfeiture you need to serve another notice."*

However, it is far from clear from the transcript that DJ Pearce was shown by Southwark's own representative Mr Strauss' letters to C dated 7th February and 26th April 2012 making it clear Southwark did not accept the £20 a week payments. Moreover, as I will explain later, there is a legal difference between demands and payments towards a service charge and those towards rent that DJ Pearce overlooked. Nevertheless, whilst C interpreted DJ Pearce's comments as having found that Southwark had waived its right to forfeiture, all DJ Pearce said was that was *arguable*.

40. Whilst DJ Pearce made directions enabling Southwark and C to file further evidence on waiver, later the same day as the hearing, Southwark discontinued the proceedings and did indeed serve another notice of forfeiture (presumably thinking that would cure any defect DJ Pearce had found and consistent with her suggestion to do so). It was clear that Southwark did not want any time to reflect on their objective to get full payment or possession of C's flat. As Ms Sorbjian told C in a letter after the hearing:

> *"I confirm that it is the Council's intention to forfeit the lease. I would like to reiterate that we do not accept your payments in settlement of your forfeiture claim. [A]ny such payments are being received without prejudice to the Council's right to forfeit. In order to further stress the Council's position in this matter, I have therefore arranged for the sum of £360 as received to date to be refunded to you….All monies, if any, received within the intervening periods will be treated as payments on a without prejudice basis. You are requested to cancel your standing order. I attach a copy of the Notice [of Forfeiture]…."*

Mr Strauss' attached letter suggested he had made clear in April 2012 that Southwark expected C to pay off the whole debt. He noted C had mentioned her medical condition and he had asked for details but she had not replied. It is clear from this correspondence that Southwark were determined to continue with a possession claim and were not in the mood to compromise with C, still less to loan her money to pay the service charge debt that it had ruled out as doing only days earlier in the letter to the Councillor.

The Instruction of D1 and the Second Possession Proceedings (June – October 2012)

41. On 19th June 2012, the Duty Solicitor who had assisted C at Court, who may not have been aware that Southwark had discontinued the claim, wrote to C to suggest she get advice from a debt specialist. I accept C's recollection the Duty Solicitor recommended her former colleague Mrs Holman at the Mary Ward Legal Centre ('D1'). According to information C found at the time, both Ms Holman and her colleague Ms Talboys (later Mrs Gogus) were solicitors specialising in debt and 'landlord and tenant residential'; indeed, Ms Holman also specialised in welfare benefits. That is just as one might expect from a Law Centre like D1, where the majority of cases will relate to those fields where there remains the availability of Legal Aid, although Ms Twigg explained that D1 then (and still now) also provided a pro bono service by volunteer lawyers for employment, family, consumer and general civil litigation.

42. However, as Ms Trigg explained in her evidence, neither Ms Holman nor Ms Talboys specialised in Leasehold law or forfeiture. That was not work which typically came the way of D1 as a Law Centre, which tended to specialise in debt and housing law on behalf of secure, assured or assured shorthold tenants, not long leaseholders. Ms Twigg's research suggested that between January 2010 and December 2013, D1 opened 1,250 files relating to debt, but only 16 cases (1.3%) concerned service charge arrears and forfeiture. Having said that, it is clear this was an increasing area of demand, as D1 arranged for training on leasehold law and forfeiture from Mr Dymond and a colleague. But, as he accepted, this was to give them a foundation, not make them into experts.

43. C first instructed and attended D1 on 28th June 2012 and saw Ms Holman. C insisted to me that she brought with her all relevant documentation, but she accepted that some of it was unopened post, which Ms Holman opened and copied. Yet the Claimant accepted the 2011 and 2012 Rent Invoices were not among the documents she got back from D1 in 2016 and both Ms Twigg and D1's solicitor Mrs Oldfield separately stated D1 never received the 2011 and 2012 Rent Invoices which I accept (as I said and will return to).

44. Mrs Holman undertook a means assessment to triage C for legal aid eligibility. That recorded that as at the end of June 2012, C had outstanding service charge arrears of £11,000 and no other debts, but no savings, premium bonds etc and income of £110 a week and expenses of about £96 a week, although she was continuing to make payments of £20 a week to Southwark (despite its insistence on refunding them). The only asset C had was equity in the Flat of £255,000. So, C was 'asset rich, but cash poor'.

45. On 9th July 2012, Ms Holman wrote a client care letter to C summarising her instructions and noting that C had not provided DJ Pearce's order but had provided unopened post which Ms Holman opened: it was the letters from Southwark dated 18th and 19th June 2012 including the notice of discontinuance and fresh notice of forfeiture.

46. Also on 9th July, Ms Holman wrote to Southwark and contended that it had waived its right to forfeit by accepting the £20 payments and discontinuing. However, Southwark was in no mood to compromise and replied on 12th July rejecting waiver on the basis it never agreed to the payments. Moreover, on 20th August, it returned all C's payments. The Income Enforcement Team was entirely clear about its position, even if other departments continued to send out standard letters e.g. for electrical works on 24th July.

47. Following the formal dismissal of the first possession claim by the Court on 5th September 2012, on 1st October 2012, Southwark issued its second possession claim. It included two statements from Mr Strauss and Ms Sorbjian dated 28th September 2012. Mr Strauss set out the history and his conversations with C, attaching the file note of 19th April 2012 and his letters of 7th February and 26th April which made clear Southwark did not accept her payments of £20 a week. Mr Strauss said in his statement he was clear with C that forfeiture action would continue unless full payment was made. Even if C recalled telephone calls differently, Mr Strauss' letters were unequivocal. Whilst C later became rather bogged down with Mr Dymond at Court not disputing Mr Strauss' evidence and whether it meant she was a 'liar', as she accepted in evidence before me, she had never agreed £20 a week with him, so there was little to dispute.

48. However, C could have had more justifiable complaint about Ms Sorbjian's statement. It set out what was in her previous statement noted and the history (including confusion over the allocation of the £20 payments and their return on 20th August 2012 and that C continued to make £20 payments despite being told to stop). However, Ms Sorbjian's statement (and indeed the second Particulars of Claim) incorrectly stated that:

> *"[Southwark] has not demanded any rent since it became apparent that the Defendant was in breach of the terms of the Lease, nor has the Defendant made any attempt to pay any rent to the Claimant."*

49. In fact, this was wrong because the Rent Invoices 2011 and 2012 (both of which post-dated C's failure to pay the service charges, albeit only the 2012 Invoice postdated the LVT decision confirming they were payable) demanded ground rent of £10. However, as I have found, C had not opened those letters and did not give them to D1. Indeed, that finding is consistent with the fact that neither C nor D1 challenged Southwark's assertion that it had not demanded rent, which as Mr Dymond said, would be standard practice for a landlord pursuing forfeiture – to avoid waiving it. The waiver raised by DJ Pearce and C's instructions and squarely alleged by D1 to Southwark which it rejected was not waiver based on demand for rent, but alleged acceptance of the £20 payments. Therefore, because C had not opened the Rent Invoices or given them to D1 to open, there was a missed opportunity to raise a defence based on waiver by Southwark, at least in relation to the 2012 Rent Invoice, as I shall explain later.

The instruction, advice and conduct of D2 and D1 (October 2012 to June 2013)

50. This is the critical period in this case. On 9th October 2012, faced with the second proceedings, C saw Mrs Talboys and handed over more documents (although I find not the 2011 and 2012 Rent Invoices, which were never on D1's file, or indeed DJ Pearce's order or the transcript from 18th June 2012). Whilst C complains about a delay in D1 applying for Legal Aid and the fact a Defence could not be filed before the hearing of the new proceedings on 6th November 2012, as Mr Dymond said – entirely consistent with my own experience – it was unnecessary to prepare a Defence to possession claims until that hearing and commonplace not to do so. It was hardly as if it would have affected Southwark's intransigent and determined stance to seek possession.

51. On 18th October 2012, after Ms Holman returned from annual leave, she exercised devolved powers under D1's Legal Aid contract to authorise the instruction of Counsel. Ms Twigg explains – again consistent with my own experience – that the Legal Services Commission would have required Counsel's Advice on the merits of C's defence to possession before authorising representation at the hearing. As it was, Mr Dymond was instructed and did advise in early November and Legal Aid for representation was granted on 5th November 2012, the day before the hearing. This was sufficient for him to advise C in conference and prepare a draft defence and claim or relief should it be needed at the hearing. So, even if this all felt rather last minute to C, it was normal.

52. Having regularised the funding position, Ms Holman decided to instruct Mr Dymond as Counsel to advise. This was entirely appropriate. Whilst I will have to consider the allegations against him, his reputation and expertise was (and remains) unquestionable. Mr Dymond was called to the Bar in 1991 and practiced from the start in Landlord and Tenant Law. Indeed in 1993, he joined the specialist Housing set, Arden Chambers, under Andrew Arden QC. Mr Dymond then assisted Mr Arden with what I am aware from my own experience of Housing Law is the leading law report in the field, the Housing Law Reports (of which they are now co-editors). Mr Dymond and Mr Arden also co-wrote textbooks on Housing Law, including Manual of Housing Law, published in 2012 (latest edition 2020). Mr Dymond was recognised by Chambers and Partners as a Leading Junior and is a member of all relevant professional associations. Mr Dymond was an appropriate choice of Counsel by Ms Holman. Doubtless he was in her mind due to the training he and a colleague gave on forfeiture earlier in 2012.

53. On 18th October 2012, Ms Holman sent Mr Dymond's clerks his Brief to Counsel. In the list of enclosures, there were the new Claim Form, Particulars and statements from Southwark, along with a copy of the Lease and the Notice of Forfeiture. Also included were the Duty Solicitor's letter to C and correspondence D1 and C and between C and Southwark, including on the valuation of the Flat as c.£250,000, together with a Medical Report on C. There were also the previous set of possession proceedings (but not DJ Pearce's order of 18th June nor the transcript of her comments), the LVT decision from 2004 and Arbitration Tribunal dated 2003, but not the most recent LVT decision from 2011 affirming the service charges, although a copy of the final Judgment Debt from January 2012 was included. However, also conspicuous by their absence were the 2011 and 2012 Rent Invoices, which underlines my finding that C had not yet even opened them, still less handed them over to D1. On 29th October 2012, C also provided D1 with evidence of the £20 payments and Court letters.

54. Indeed, in the Brief itself, Ms Holman in setting out the history noted that:

> *"The client suffers from mental and physical illness. She is prescribed Ibuprofen for the back pain and Diazepam for anxiety. She tells us she is unable to deal with her post and leaves this unopened for several months….The client is unable to open her post and only opened the Judgment made in October 2011 last week. This indicates there was a further hearing in January this year which the client did not attend*." [i.e. the final judgment of DJ Pearce on 3rd January].

Mr Dymond observed it was common in housing cases for clients under stress not to open post and ordinarily indicated further existing documentation would be unlikely to be forthcoming unless it came to the solicitors from the landlord. Mr Dymond therefore accepted he would have to advise without the 2011 LVT decision referred to in Southwark's claim. That was a 'Rumsfeldian' 'known unknown'. However, the 2011 and 2012 Rent Invoices were 'unknown unknowns' because Southwark had said (it now transpires wrongly) there had been no demand for rent since forfeiture had arisen.

55. Moreover, since the Claimant did not have (or at least hand over) a copy of DJ Pearce's order from 18th June 2012 (still less the transcript, which may well not yet have been produced), Ms Holman was reliant for her account of that hearing on C's recollection. That did not suggest, as C now does, that DJ Pearce 'made the statement the Council had waived their right to forfeiture', but it did include the broad shape of what she said:

> *"At the hearing of the first claim on 18th June the client was represented by a duty solicitor who notified the court that the client had been making payments towards service charge arrears. The client says that the District Judge asked the Council if a letter saying that the payments were being accepted without prejudice to their right to forfeit the lease had been sent to the client. The Council was unable to answer this question. The case was adjourned with directions, but [Southwark] filed a notice of discontinuance and immediately served a fresh s.146 notice and a letter stating that the payments she had been making has been paid back to her account. The client continues to make payments and these have been returned intermittently. The Council has now served a fresh claim for Possession based on forfeiture of the lease."*

56. Finally in the Brief, Ms Holman set out Mr Dymond's instructions to advise:

> *"Please would Counsel advise as to whether the client has a defence to these proceedings based on the fact that [the Council] accepted payments and they have waived their right to forfeit the lease. In addition, please would Counsel advise as to whether [the] client has a defence in as much as the present claim is brought on the exact same grounds and they had already filed a Notice of Discontinuance in the previous proceedings, or on any other grounds. If the lease is forfeited, the [Council] would receive a large windfall which would seem totally disproportionate to the sum claimed."*

57. This last observation by Ms Holman is a crucial aspect of forfeiture, which Mr Dymond aptly described as 'medieval', which from a legal-historical perspective, it is. Unlike mortgage repossession of freehold or leasehold property where the mortgage company repossesses the property, sells it and accounts to the former owner for any balance, with forfeiture of a long lease, the leaseholder can lose a valuable asset (especially if mortgage free as C was) which is worth far more than the debt they owe. This is why it is so imperative to avoid forfeiture – whether by a defence to it, an application for relief from it, or otherwise by selling the property at least to retain the equity less the debt.

58. That last option was what Mr Dymond advised. In his Advice dated 1st November 2012, (as he confirmed in conference with C on 5th November 2012), having set out the history as related by the Brief and its enclosures, Mr Dymond advised that waiver of forfeiture was not arguable on C's behalf against the possession claim (original emphasis):

"14. [I]n the context of residential property, a landlord can only forfeit for service charge arrears is he has a judgment for the arrears…[T]he Council has such a judgment..15 On the face of it, it is therefore entitled to forfeit the Lease..

16. Once a landlord becomes entitled to forfeit a lease, he is put on election to treat the lease as at an end by taking forfeiture proceedings. If, however, he treats the lease as continuing he is affirming the lease and is said to have waived his right to forfeit/ The landlord will be treated as having waived his right to forfeit if there is an unequivocal act on his part which recognises the continued existence of the lease….

17. By far the most common act of waiver is the demand of or acceptance of rent due after the right to forfeit has arisen. I emphasise, however, that it is demand or acceptance of rent due after the right to forfeit has arisen which amounts to waiver because that act is only consistent with the continued existence of the lease. Acceptance of rent due before the right to forfeit arose but paid after the right to forfeit does not amount to waiver: Re Debtors Nos.13A10 and 14A10 of 1995 [1995] 1 WLR 1127….

20. It follows that, in my view, the acceptance of the installments of £20 which were in relation to service charge arrears do not amount to a waiver of the right to forfeit. They are payments of sums due before the right to forfeit the lease arose and cannot amount to recognition that the lease continues.

21. I regret to say that is sufficient to defeat the argument that there has been waiver in this case. In addition, however, I note that in the foregoing analysis I have been considering demands for and payments of 'rent'. In this case, we are not concerned with payments of rent because the service charges were not reserved as rent. The acceptance of rent falls into a special category. If there has been payment of rent, the courts do not look at the circumstances to see if there can be another explanation for payment. In the context of payment of service charges, however, the court is free to look at all the circumstances to consider whether it was so unequivocal that it can only be regarded as having been done consistently with the continued existence of the lease: Yorkshire Metropolitan Properties v Co-Operative Retail Services (1997)….

In this case, given that the payments were accepted by way of standing order at a time when the Council had served notice under s.146, I do not consider that a court would find that there had been waiver.

22. I recognise that my analysis suggests that the Council have been wrong to be concerned with accepting these payments. We do not know exactly why the Council discontinued the first forfeiture proceedings but it is obvious they were concerned that they could have been said to have waived the right to forfeit. It follows that I consider they were wrong to be so concerned. The confusion on the Council's part does not surprise me. Many landlords, through fear of waiving the right to forfeit refuse payments they are entitled to accept as a matter of law.

...24 CPR 38.2 provides that a claimant may discontinue all or part of a claim at any time. In order to do so, a claimant must file a notice of discontinuance and serve a copy of it on every other party to the proceedings: CPR 38.3. Where, as here, a claimant has previously discontinued a claim and subsequently seeks to bring another claim against the same defendant, the claimant needs the permission of the court to do so if the first claim was discontinued after the defendant had filed a defence and the second claim arises out of the same (or substantially the same) facts: CPR 38.7.

25. It does not appear that a defence was filed in [the first possession proceedings]. It follows that there was no need for the Council to obtain permission before commencing the second forfeiture proceedings. Even if a defence had been filed, I consider that the Council would almost [certainly – this must mean] have been granted permission.

26. In my opinion, Ms Christie does not have a defence to the claim for forfeiture. She can, of course, apply for relief under s.146 Law of Property Act 1925. For relief to be granted, she would have to pay the sum due. According to Ms Sorbjian, further service charges have become due and the total now owed is £14,011.20. To obtain relief, [C] would have to pay that sum. Although the Court has a wide discretion as to the terms of relief under s.146(2), I do not believe that repayment at the rate of £20 per week would be accepted.

> *27. The sad reality in this case is that Ms Christie cannot afford to pay off the arrears within a reasonable time. As I understand the position, her only real asset is the Flat. If the Lease is forfeit, she will lose her only asset and the Council will obtain a large windfall. Unfortunately, it is difficult to see how she can avoid losing the value of the equity in the Flat without selling it and moving to a cheaper property. I recognise that this will be extremely distressing for her, but on my knowledge of her financial position, I can see no other way forward."*
>
> *"28. Unless there is any other option, I advise that contact be made with the Council as soon as possible to see if they will adjourn the claim for a period of time to allow [C] to sell the Flat. If they are not agreeable to this, given [her] circumstances, I consider that a Court would grant such an adjournment..."*

59. In his advice Mr Dymond did not explicitly consider the possibility of a loan from Southwark covering the service charge debt under the Housing (Service Charge Loans) Regulations 1992 ('the Service Charge Loan Regs'). However, he said in evidence he did briefly consider it but ruled it out so did not consider it necessary to mention. I will have to consider whether that view was negligent below, but I accept Mr Dymond did consider it in the way he describes. It was an obvious question given C had acquired the Flat with a Right to Buy, but Mr Dymond ruled it out because he did not consider C qualified for a mandatory loan under the Regs or that a discretionary loan was viable.

60. On the same day as the Advice, 1st November 2012, C saw it and rang Ms Holman. She was very upset saying she could not believe Mr Dymond advised she had no defence when DJ Pearce said the Council had waived forfeiture. C said she did not believe the barrister was trying to help her and she could not lose her home – she was very ill and could not think logically about her case. Ms Holman advised Mr Dymond suggested DJ Pearce was wrong and asked whether she could raise a lump sum any other way. Notably, C herself did not raise the possibility of a loan from Southwark, despite the fact in May 2012 she had requested one – I find because she knew it had been refused.

61. Before me, C also criticises the absence in Mr Dymond's advice of consideration of the Rent Invoices. However, I have found she had not provided them to D1 or D2. C appears to mix that up with the (very brief) discussion of them by DDJ Couch several months later. There is no evidence – even despite Mr Dymond specifically flagging up in his advice about the importance of a rent demand – that C ever produced them.

62. Indeed, C in submissions (for the first time) said in conference on 5th November 2012 with D1 and Mr Dymond that she queried with him why he was talking about rent (to explain how waiver worked in his Advice) when she was a leaseholder not paying rent, only service charges. Mr Maxwell understandably objected this was new and not put to Mr Dymond. But if C did say that in conference, that would have steered him and D1 away from asking C whether she had any invoices where rent was claimed since the right to forfeit arose. Not only were Southwark saying there were none, C was saying she did not pay rent. Whether or not this was said, the contemporary notes of that conference (taken in manuscript by Ms Holman and typed-up later by Mr Dymond) and communications from C around this time do not suggest she had any Rent Invoices.

63. Indeed, from the conference notes, C did not raise the possibility of a loan from Southwark (let alone Rent Invoices) either. Instead, her focus was her concern that DJ Pearce had said there was waiver. C was clearly unhappy with Mr Dymond's opinion that there was not. However, whilst he did not have the advantage of seeing from the transcript that DJ Pearce had not gone as far as to say there had been waiver, only that it was arguable, he explained as he had in his Advice why neither proved waiver. Indeed, I accept Mr Dymond's recollection that his advice to sell the Flat to save the equity was confirmed because C told him in conference that she had significant other debts (hardly surprising given her climbing overdraft). He explained to C it was his job to advise her realistically that her only option was to sell the Flat or find a loan some other way soon – so he suggested a financial adviser. C was unhappy, but she did accept Mr Dymond's advice and instructed him to seek an adjournment for a loan or a sale.

64. Indeed, in the Brief to Mr Dymond that day to instruct him for the hearing on 6th November, Ms Holman stressed that C wanted to keep the property or at least her equity and she had written to C to see if she could increase her offer of payment by lump sum or higher instalments and sent information about 'equity release'. Ms Holman noted:

> *"The client has re-emphasised her inability to cope with the situation she finds herself in. She is in receipt of Industrial Injuries Disablement Benefit and prescribed Diazepam for Anxiety. [We] understand that she feels let down because she has campaigned for better living conditions on the estate on which she lives; she feels confused because the District Judge at the last hearing led her to believe that the Council had waived its right to forfeit the lease.*

> *When discussing his advice with [us], Counsel referred to the Equality Act. Would this be of assistance to the client ?"*

On this subject, Mr Dymond later advised that the Equality Act 2010 would not assist, which has not been challenged. Whilst C may well have been disabled under the Act, there appears to have been no arguable discrimination, or breach of duty, by Southwark.

65. By the time of the conference with C on 5th November 2012, Mr Dymond was aware that Southwark had instructed a colleague in Chambers, Robert Brown (an expert in the field and indeed now a Judge of the Property Chamber). Indeed, in response to C's assertion that DJ Pearce in the June 2012 hearing said Southwark had waived forfeiture, Mr Dymond had said that was wrong and Mr Brown would know there was no waiver. However, whilst Mr Dymond had thought Southwark would agree to an adjournment, Mr Brown told him informally he had been instructed to oppose it. Therefore, Mr Dymond did draft a Defence admitting that Southwark were entitled to forfeit the lease, but explaining C's medical condition, financial circumstances (including that the Flat was mortgage-free) and attempts to pay what she could afford and setting out a counterclaim for relief from forfeiture seeking either time to sell or raising a loan.

66. Mr Dymond did not need to use the Defence and Counterclaim at the hearing on 6th November as DJ Worthington granted an adjournment. But he took convincing, saying:

> *"The problem…is the intention to sell on the day of the hearing is not sufficient to avoid there being a possession order or that is suspended….At the moment, there is no tangible prospect of this money coming in at any particular time, is there ?.* [He added at a later stage]*.....If I were to adjourn [the case] to some time at the end of January, I would give consequential directions so that we know that if it comes back and it has not been sold, we would be coming back… I would need or whoever hears it would need to be convinced that there is going to be a sale imminently. It may well be that forfeiture is the right order to make then. It is a question of deciding what period to give for relief."*

Therefore, DJ Worthington expressed the view that Southwark had a right to forfeit. Indeed, Mr Brown asked DJ Worthington to say so in a recital and the DJ was happy to

> *"I am certainly satisfied you have a right to forfeiture. The question is whether I give you that right today or adjourn it...I will bring it back before myself"*

67. DJ Worthington checked that Mr Dymond had no objection to a recital that 'it appearing to the court the Claimant has a right to forfeiture of the lease' and hardly surprisingly given what DJ Worthington had said, Mr Dymond raised no objection. Even if that was a concession of the waiver point as C complains, it simply reflected DJ Worthington's view he had already expressed in any event. Having expressed that view (and recorded it in a recital to the order), DJ Worthington adjourned the case before himself on 30th January 2013 and directed a statement from C about the progress of a sale or a loan.

68. C did find a buyer before Christmas for £270,000, but the sale was not ready to complete by the end of January, so D1 sought Southwark's agreement to a further adjournment. On 21st January 2013, Southwark agreed to an adjournment on four onerous conditions, namely that: (i) D1 gave an undertaking to pay the sums due (which D1 as a charity could not offer); (ii) C be responsible for the costs of the whole proceedings; (iii) C execute a voluntary charge in relation to the sums due; (iv) the hearing be adjourned for 56 days to complete the sale of the Flat. Southwark explained the conditions as protecting Southwark's debt and costs, which were not yet protected by a charge.

69. C's evidence is that she wanted a voluntary charge of all the debts, but only as an alternative to sale. She had discovered Southwark had agreed much larger voluntary charges with leaseholders and her objection was to the charge limited to Southwark's costs. However, its letter does not suggest that – but does presuppose a sale C did not want. I find C's recollection is wrong and I prefer Ms Holman's contemporary notes.

70. On 21st January, Ms Holman called C to explain Southwark's stance and C was angry and insisting that she was being victimised for challenging service charges previously and that she was too ill to deal with the case, but too ill to find somewhere else to live. Ms Holman prepared another Brief to Mr Dymond to advise and draft a consent order on the adjournment, explaining C's concerns. On 23rd January, Mr Dymond called Ms Holman and endorsed the idea of a voluntary charge and said C needed to realise sale was necessary to avoid disaster. Mrs Holman called C, who would not agree to a charge and even said the Court had only ordered her to sell the Flat, not to pay the money to Southwark (which was plainly wrong). C then complained about the agreement of Mr Strauss' evidence (which was supported by contemporary letters). Ms Holman again warned C of the risk of losing her equity, but C's response was to say she would sue Southwark because service charges increased as its employee was stealing money.

71. Ms Holman, doubtless now very concerned, called Mr Dymond again. He pointed out C already had a County Court Judgment and that if there was a hearing the DJ could forfeit the lease and suggested Ms Holman think about discharging the Legal Aid Certificate. He rejected any suggestion of an Equality Act defence (which has not been pursued by C and would have been hopeless). Mr Dymond suggested getting C's conveyancing solicitors' instructions to pay over money to Southwark as alternative to a charge. However, when Ms Holman put that C in a follow-up call that same day, Ms Holman recorded C as being 'adamant' that she would not agree to a charge or even for Ms Holman to contact her conveyancing solicitors and despite being advised yet again about the risks of losing her equity, C said she was 'willing to chance this' and that 'she was willing to go to the hearing herself and face the consequences' and was very anxious and upset. Ms Holman had to warn C that she may have discharge Legal Aid. Therefore, the same day, Ms Holman wrote to C to explain the realities of the position:

> *"You have instructed me that you will not agree to Southwark putting a charge on your property. You explained that you will not agree to do it until the Court orders you to do so….It is…Andrew Dymond's opinion that if the hearing goes ahead on 30th January, the consequences could be disastrous for you. If you do not agree to the charge (or some other mechanism that guarantees the Council it's money) this may be construed as a refusal to pay Southwark once the property is sold. This being the case the judge may order that your lease be forfeited so that Southwark are paid the money that you have already been ordered to pay under the terms of the County Court judgment. If your lease is forfeit on 30th January, you will not be able to sell your property. You will be evicted from [it] and you will lose all the equity you have in the property."*

72. C must have relented and allowed Ms Holman to contact her conveyancing solicitors as on 24th January they confirmed, as Mr Dymond had suggested, that they could give an undertaking to pay Southwark what it was owed from the proceeds. The same day, Southwark were unhappy even with this and insisted on a consent order confirming the sums due and costs. Ms Holman finally persuaded C to accept this on 28th January 2013, two days before the hearing. It seems that part of the reason was some research a colleague of Ms Holman did into welfare benefits, to the effect that where someone sells their home, the capital proceeds are ignored for welfare benefits for up to 26 weeks and potentially longer, provided that the funds are intended to buy another home.

73. Doubtless, Ms Holman conveyed this information to C seeking to reassure her that if she sold her Flat, she would not lose her benefits whilst looking for another home, but C seems to have taken this as a way of persuading Southwark not to forfeit. However, she agreed a consent order adjourning possession proceedings for 56 days, that she would pay £11,223.09 to Southwark from the proceeds of sale (without a charge) and also pay the costs of the proceedings. On 30th January 2013, DJ Worthington approved that and set the new date of 19th April 2013. Having worked extremely hard to save C's equity in her property which C was putting at risk, Ms Holman left D1 around this time.

74. Ms Talboys took over conduct of C's case. However, I find that she was not informed by C (because C in her stress was still not opening post) that on 12th February 2013, a different department in Southwark sent out another Rent Invoice – again for £10 ground rent and a service charge for £1,173.12. Moreover, on the same date, Southwark also sent out a service charge invoice (as it had said on 18th May 2012 it would) for major works for which C's contribution was £2,465.13. As with the 2011 and 2012 Rent Invoices, the 2013 invoices were not amongst the documents found on D1's file and C had no recollection that she handed them over, only an assumption. As with the 2011 and 2012 Rent Invoices, for reasons I expand on below, I find on balance of probabilities she did not hand them over to D1 and so neither they nor Mr Dymond saw them. However, this time, they were put on notice that there were fresh service charges (if not a demand) as the service charge for the current year 2013-2014 became a dispute between C and Southwark about adjourning the next hearing on 19th April 2013.

75. In the run-up to that hearing, on 9th April, C called Mrs Talboys to explain her buyer would not be ready for another three weeks and asked for the hearing to be adjourned. On 15th April, Southwark agreed one final adjournment for 8 weeks. However, on 16th April, Southwark insisted that C should have to pay the sums accrued in the current service charge year as well as the judgment debt and all the costs, because whilst the lease was forfeit 'she is obtaining the benefit of the services'. Mrs Talboys called C, who refused to agree to that saying 'the electricity bills had risen greatly (which given the figure was only £41.63 on the annual service charge may have referred to the major works invoice). C said she wanted to challenge it at the LVT and did not want to prejudice that by signing the consent order. In her Brief to Mr Dymond, Ms Talboys did not enclose the 2013 Rent Invoice or the 2013 major works invoice, but instructed:

"Please would Counsel advise as to whether or not this year's service charges can be included at this stage and the best way forward…"

76. On 17th April, Mr Dymond advised by email (which was his last involvement with the case), where he advised C to agree to pay the current service charge subject to her right to challenge them, which was preserved by the order. Mr Dymond said:

"The fundamental point is that the Council have the right to forfeit the lease. That is not an issue. All that Ms Christie can do is obtain relief from forfeiture. Relief will only be granted where a leaseholder pays: (i) the arrears which form the basis of the forfeiture proceedings (i.e. the arrears in the s.146 notice); (ii) all the landlord's costs; and (iii) any arrears which have accrued subsequent to the s.146 notice. This includes the current year's service charges. (For a clear case on this, see Martin v Maryland Estates (2000) 32 HLR 116 (CA)).

The only way in which Ms Christie can afford to pay off the arrears (whether or not the current service charge year is included) is to sell the flat. If she does not sell it, then the Council will get a possession order and she will lose her only asset, which is a very substantial one. It is crucial this is avoided at all costs. That does not mean that, by paying the sums due, Ms Christie loses her rights in respect of them. Paragraph 2 of the draft order records that if she pays them, the sums are not agreed or admitted by her. This was included specifically to protect her rights to challenge the amount of the service charge. She can, therefore pay the service charges but later challenge them in the LVT. She can even do this after the property has been sold. I have no details at all as to what arguments she has about the current service charges and so cannot comment on the strength of any application. I do observe however that some service charges are bound to be payable. The only issue will be the amount…..

Accordingly, my firm advice is the proposed consent order should be agreed to. It removes the real risk that the Court may order possession. In principle, the Council are entitled to the current service charges as a term of relief. In any event, the current service charges need to be paid to enable a sale. Ms Christie can always challenge the service charges in the LVT at a later date (even after the property has been sold). If there is a hearing on Friday, her equity in the flat will reduce still further. In my view the position could not be clearer."

77. Despite Mr Dymond's advice and a further warning by Mr Talboys by email on 18th April 2013, C refused to authorise the consent order. Indeed, in a telephone call noted by Ms Talboys, C said she no longer wanted Mr Dymond or indeed D1 to act for her. However, Ms Talboys explained that it was too close to the hearing and they had a duty to attend and instruct Counsel. It appears that C started shouting at Ms Talboys who had to put the phone down on her. I recognise of course at the time C was under huge stress, but sadly she seems to have taken this out on the lawyers just trying to help her. However, it appears that C relented and called back Ms Talboys to explain that she had paid £3,000 to Southwark that afternoon. (I interpose to say C's evidence was that she had received a back-payment in benefits enabling her to do this, although she then changed her account in her submissions to suggest that benefits specifically covered her service charges. However, this was not evidence, not put to D's witnesses and had no written evidence to support it and I do not accept it). C did not explain the source of the funds to Ms Talboys in the call and yet again it became fraught with C shouting and Ms Talboys ended it. Nevertheless, she patiently emailed C to explain her advice and that she was not being 'forced to sign the consent order' as she alleged. C did not respond and so Ms Talboys advised her to attend Court the next day, 19th April 2013, that Mr Dymond was unavailable and his colleague Ms Roberts would represent her.

78. In the end, Ms Roberts attended Court and gave C essentially the same advice to sign the consent order as Mr Dymond and Ms Talboys had done, but C then agreed. The one query DJ Worthington raised about the now-agreed consent order was indeed about the inclusion of the current service charge, but Southwark's barrister gave him a similar explanation as My Dymond had given C; and the judge agreed and adjourned until 28th June 2013. D1's trainee noted that C was 'incredibly impressed' by Ms Roberts. Most lawyers will have had clients who rejected advice before court but then accepted exactly the same advice at court when given in that different context by a different person.

79. However, after D1 and Ms Roberts obtained that adjournment for C, she undertook yet another volte-face. On 21st May Ms Talboys asked C for an update on the sale. C responded that day but did not update Ms Talboys about the sale, but yet again raised her grievances about why Mr Strauss' evidence had not been disputed back in November 2012 (despite the fact it was realistically indisputable). Moreover, when Ms Talboys asked for C's instructions on the sale on 11th June, C wrote back on 15th June:

> *"I am writing to confirm that you are no longer acting for me as a solicitor. You may recall this was a mutually agreed decision on the night before the last hearing at the Lambeth County Court. Please do not contact the Council with reference to my cases at all, save for the matter of your costs and the costs of the Barristers. Please do not enter into any correspondence with the Council concerning my cases.* [Having repeated again her request for clarification on the acceptance of Mr Strauss' evidence, C finished by saying]: *Please confirm that you will notify the Court that you are no longer acting as my solicitor and please provide me with a copy of the Order confirming the June hearing date."*

On 26th June 2013, Ms Talboys confirmed she had received that letter and asked C to sign the notice of change of solicitors, which C did. That was the end of D1's retainer, although Ms Talboys did have a brief involvement shortly afterwards.

The Possession Order and Sale

80. Since this phase post-dates the involvement of both Defendants (save on that one minor point), I deal with it briefly. It appears that one factor behind C's decision to disinstruct D1 was her discovery of another case involving a Southwark leaseholder. In November 2011, Mr Woelke succeeded before the LVT on the technical point that Southwark's separate 'major works invoices' in 2005, 2009 and 2010 were not consistent with Schedule 3 of the standard lease that simply provided for an obligation to pay the annual service charges, rather than a separate obligation to pay 'major works invoices'. On 27th June 2013, the Upper Tribunal (reported as *Southwark LBC v Woelke* [2013] UKUT 349 (LC)) upheld this decision, albeit stressing that this was a technical defect which could be corrected by the issuing of a revised invoice compliant with Schedule 3.

81. However, having discovered the LVT decision in *Woelke,* C had plainly looked again at her service charge invoices - and I find on balance of probabilities that having appreciated their potential significance, opened or properly read and digested for the first time Southwark's Rent Invoices for 2011, 2012 and 2013. In May 2013, C had written to Southwark to ask them to agree for her to appeal to the Upper Tribunal out of time, which Southwark refused (as did the Upper Tribunal in July). In its letter of 4th June, Southwark refused to discontinue possession proceedings and indeed insisted that if the full amount were not paid by the hearing on 28th June, it would forfeit the lease.

82. Undeterred, on 24th June 2013, C submitted a lengthy Defence, which comprised three parts. The first part was a request for an adjournment of the possession proceedings to allow an (out of time) appeal to the Upper Tribunal relying on *Woelke*. In the second part, C alleged waiver of forfeiture, asserting that DJ Pearce in June 2012 had decided that Southwark's acceptance of her £20 payments had waived its right to forfeit. The third part returned to *Woelke,* suggesting that the judgment debt in her own proceedings wrongly relied on service charge invoices which were unlawful as declared in *Woelke* and Southwark had failed to 'subtract' those unlawful sums from the judgment debt. As Mr Petts pointed out, there was no reliance by C on the 2011 – 2013 Rent Invoices as waiving forfeiture, despite C being told this rule in Mr Dymond's November advice.

83. On 28th June 2013, C attended Court before DDJ Couch. It was a long hearing, with the transcript of proceedings running to 39 pages. Mr Walsh, Counsel for Southwark, set out the history. Notably, DDJ Couch had some experience in Property Law and asked Mr Walsh whether there had been any new rent demands and was told (presumably as Mr Walsh had been told by Southwark) that there were not, which was wrong. Indeed, a few minutes later, C interrupted to say that new sums had been demanded. However, C did not develop any argument based on waiver through new rent demands. Her point was still waiver through the £20 payments, as DJ Pearce considered in June 2012. Mr Walsh for Southwark directly said DJ Pearce had been wrong, but in any event had not determined that there had been waiver (and the latter was correct). Just before DDJ Couch gave judgment, there was discussion of the possibility of a loan from Southwark, which Mr Walsh said 'was not for consideration' and which C said had been refused.

84. DDJ Couch then gave his judgment. He noted that on 6th November 2012, before DJ Worthington, it had been conceded that no objection was taken to Mr Strauss' evidence. DDJ Couch mentioned C's *Woelke* argument in passing, but pointed out there was an extant judgment debt in respect of the service charges. He reminded himself he had to consider whether the claim for possession was genuinely disputed (which it was) on grounds which appeared to be substantial. He expressed some uncertainty on the latter and placed some reliance on DJ Worthington's recital on 6th November that Southwark had a right to forfeit the lease and it was too late to go behind that, but that was only his second reason. DDJ Couch's main reason was that actions after issue of proceedings did not have the same effect as before and he noted the payments had been returned:

> *"[T]here is not enough there to get home on a claim for waiver of the right to forfeit. The existence of the judgment debt and the acceptance of the payment of the judgment debt and the fact the payments appear to have been made in discharge of the judgment debt, do not appear to me, in all the circumstances, to be an unequivocal recognition of the continued existence of the lease."*

Therefore, DDJ Couch's main reason was consistent with Mr Dymond's earlier advice.

85. DDJ Couch made a six-week possession order to expire on 9th August 2013, but also specifically permitted C to make an application for relief from forfeiture by then. Indeed, earlier in the hearing, before making the possession order, DDJ Couch had said:

> *"If* [Southwark] *were just an ordinary judgment creditor you would get a charging order 'slam dunk', over this property, [But] you would struggle mightily to get an order for sale provided she was paying…Why should this be hugely different because it is a relationship between landlord and tenant ?.....[If] there was an application for an instalment order and the tenant…The Court does often make [charging orders] for judgment debts of this amount."*

Whilst Mr Walsh said relief from forfeiture was different, there was plainly an analogy.

86. On 9th July 2013, despite disinstructing D1, C asked for Ms Talboys' help to make an application for relief from forfeiture. Ms Talboys said they could provide one-off advice, but that C would have to make the application herself. C did not take up that offer by Ms Talboys. C has explained she was concerned that if she made the wrong application, it could stop the sale going through. Indeed, on 30th July 2013, C sold the Flat for £290,000.00. The same day, C's conveyancing solicitors sent a cheque for £24,120.79 to Southwark, to cover the service charge arrears, interest and costs.

87. Whilst C did not seek relief from forfeiture by the time of the sale, she later did so – essentially and very fairly to 'tidy up' the title of her purchaser. It was granted by consent in May 2014 by DJ Kelly, although C had to pay Southwark's costs. C then appealed the possession order substantially out of time, but she was refused permission to appeal by HHJ Taylor in October 2014. Mr Walsh, again representing Southwark, suggested that it may have taken a charge or loan on the property but that was never asked for. Clearly, he had forgotten that the year before he had told DDJ Couch that a loan was 'not for consideration' and C had said a loan had been specifically refused.

88. In the meantime, about a month after the sale on 30th July 2013, C made a complaint about D1, which Ms Twigg investigated and rejected on 23rd October 2013. C complained again in May 2014, again rejected. Around the same time, C complained about Mr Dymond and that complaint was rejected by his Chambers in June 2014. As I detailed above, C then pursued Southwark until 2017, culminating in the GCRO, which expired in February 2019. The present claim against the Defendants was issued on 15th July 2019, months after the GCRO expired, within 6 years of the sale of the Flat on 30th July 2019, but not within 6 years of the possession order on 28th June 2013.

89. I should finally note that whilst C received c.£250,000 in proceeds of sale, she was so shocked and upset by losing her Flat through forfeiture that she effectively ruled out trying to find alternative leasehold properties and focussed on freehold. Whilst she found a couple within her price-range (which is consistent with the search her own expert Mr Dunsin undertook suggesting several freehold properties in late 2013 for c.£250,000) she suggested they were in poor condition and she could not afford to renovate them. Whilst she might have looked outside central London, her disability meant she gets ill when she travels in and therefore ruled out looking elsewhere. Instead, she obtained a tenancy (as opposed to a long lease) from Southwark.

Was Mr Dymond Negligent ?

Mr Dymond's Duty of Care

90. I start with this, as the main argument for D1 is it was entitled to rely on Mr Dymond's advice and therefore it makes more sense to consider his liability first before D1's liability. Barrister's negligence is a relatively recent cause of action recognised in the common law. Until *Rondel v Worsley* [1967] 3 WLR 1666 (HL) it was thought that because barristers could not contract with or sue clients for their fees (which did not change until 1990), clients could not sue barristers in negligence. However, in *Rondel,* the Lords did recognise barristers could be sued for negligent advice only. Barristers' immunity was reduced in *Saif Ali v Sydney Mitchell* [1980] AC 198 (HL) to advocacy and other work intimately connected with Court. Even that immunity was finally jettisoned in *Hall v Simons* [2002] 1 AC 615 (HL), where Lord Hobhouse stressed the ordinary rules of professional negligence applied to barristers (and indeed solicitors acting as advocates) and there was no longer any special rule for barristers at pg.737:

> *"The standard of care to be applied in negligence actions against an advocate is the same as that applicable to any other skilled professional who has to work in an environment where decisions and exercises of judgment have to be made in often difficult and time-constrained circumstances. It requires a plaintiff to show that the error was one which no reasonably competent member of the relevant profession would have made."*

91. However, in those cases, while expanding the scope of barristers' potential duty of care, judges (many of whom traditionally have been former barristers, although increasingly many are former solicitors) have stressed the distinction in the barristers' standard of care between error and negligence. For example, Lord Salmon said in *Saif Ali* at pg.231:

> *"Lawyers are often faced with finely balanced problems. Diametrically opposed views may [be] and not infrequently are taken by barristers and indeed by judges, each of whom has exercised reasonable, and sometimes far more than reasonable, care and competence. The fact that one of them turns out to be wrong certainly does not mean that he had been negligent."…*

Another factor to be weighed-up was highlighted in *Hall* by Lord Hope at pg.726:

> *"While the advocate owes a duty to his client, he is also under a duty to assist the administration of justice. The measure of his duty to his client is that which applies in every case where a departure from ordinary professional practice is alleged. His duty in the conduct of his professional duties is to do that which an advocate of ordinary skill would have done if he had been acting with ordinary care. On the other hand, his duty to the court and to the public requires that he must be free, in the conduct of his client's case at all times, to exercise his independent judgment as to what is required to serve the interests of justice. <u>He is not bound by the wishes of his client in that respect and the mere fact that he has declined to do what his client wishes will not expose him to any kind of liability. In the exercise of that judgment it is no longer enough for him to say that he has acted in good faith….He must also exercise that judgment with the care which an advocate of ordinary skill would take in the circumstances</u>. <u>It cannot be stressed too strongly that a mere error of judgment on his part will not expose him to liability for negligence</u>."*

(I will return to that passage which I have underlined below).

92. I referred the parties to *Moy v Pettman Smith* [2005] 1 WLR 581 (HL) because it was the first Lords case after *Hall* where the duty of care was settled and the Lords were simply focussing on the *standard* of care for barristers' advice. Lord Hope explained at [19] that unlike other professional negligence cases where there is independent liability expert evidence, judges could rely on their own expertise to evaluate the conduct of lawyers, but '*need to be careful lest the decision…depends on the standard they would set for themselves….[I]t would vary from judge to judge and become arbitrary'.* On the barristers' standard of care generally, Lord Carswell observed at [59], [60] and [65]:

> *"59….[The public] interest does require that the [standard of care] should not stifle advocates' independence of mind and action in the manner in which they conduct litigation and advise their clients. That also accords with common justice in a case like the present….*
>
> *60….[T]he difficulties faced by an advocate who is advising on acceptance or rejection of a settlement are manifold and the pressures, especially if the advice has to be given at the door of the court, can be heavy. In such circumstances it would be surprising if every such piece of advice were reasoned with as much comprehensive precision as may be applied in hindsight by an appellate tribunal which has had the benefit of extensive argument and leisurely reflection. Since the decision in Hall, advocates have been liable to their clients for negligence in the same way as other professional persons. It would not be in the interests of those clients if they were compelled by the effect of over-prescriptive decisions to adopt a practice of defensive advocacy in the conduct of litigation or advising litigants about the course to be taken…[I]t would be unfortunate if [barristers] felt they had to hedge their opinions about with qualifications. It would be equally unfortunate if another effect of the same syndrome were to be an abdication of responsibility for decisions relating to the conduct of litigation and a reluctance to give clients the advice which they require in their own best interests. Nor do I consider that to give clients a catalogue of every factor which might affect the course of action to be adopted... would be a productive discharge of advocates' duty to give them proper advice.*
>
> *65…[I]t was not incumbent upon [the barrister] to spell out all her reasoning, so was not in breach of her duty…Brooke LJ adverted…to the unfortunate results that follow if advocates felt compelled always to hedge their opinions.*

> *They are, as he stated, paid to express their opinions, but not necessarily their full reasons. Naturally one cannot lay down a hard and fast rule, for circumstances will vary infinitely, but I should be slow to hold advocates to blame in cases such as the present if they concentrated on giving clear and readily understood advice to their clients about the course they recommended."*

93. In *Pritchard, Joyce & Hinds v Batcup* [2009] PNLR 29 (CA), in finding a barrister had not been negligent in failing to advise about settlement, Sedley LJ said pithily at [103]

> *"[I]n a system which populates its senior bench from the practising profession, an outside observer might discern equal and opposite risks of excessively sympathetic and excessively critical appraisals of the conduct of legal practitioners. In holding, as this court does, that [the judge below] has erred in the latter of these directions, we ought also to recognise his desire to maintain a high standard of professional trustworthiness. The law does not, however, demand either omniscience or infallibility in lawyers any more than it does in doctors or architects. The law's standard of reasonable competence means not only that there will be errors which are not compensable but that legal advisers are not expected to divine every claim that a client may theoretically have. The barrister said: 'You are suggesting that it was my obligation to tell [my client] that he might have an action against somebody who I thought had not been negligent for losing something which I never thought he had. I don't think that was my obligation.'' I consider that…to have been legally and factually sound."*

Jackson & Powell on Professional Liability (2024 9th Ed) states at p.12-038:

> *"If the barrister is asked to advise on certain specific points only, it seems unlikely that he will be held liable for failing to advise on other matters…. Presumably, however, if it is obvious from the instructions that instructing solicitors are under a misapprehension about some relevant matter on which the barrister's opinion is not specifically sought, or perhaps even that they have overlooked a point of critical importance, he would be held negligent for failing to correct that misapprehension."*

Ultimately, as *Jackson & Powell* suggest at p.12-040, it is a matter of the standard of care, citing *McFarlane v Williams* [1997] 2 Lloyds Rep 259 (CA) when Brooke LJ said:

> *"[I]f a barrister omits to plead a cause of action in a situation where no other reasonably competent barrister, acting with ordinary care, would have failed to plead that cause of action, then he or she will be liable to compensate the client if loss flows foreseeable from that negligence. If on the other hand other reasonably competent barristers holding themselves out as competent to practise in the relevant field and acting with ordinary care might also have decided not to plead that cause of action, then there will be no question of professional negligence."*

94. In the present case, on the list of issues as amended at the start of trial, Mr Dymond faces five different strands of alleged negligence, although the most important now splits into three. I repeat and reorder the issues: was he negligent in not advising C that:

(1) C could transfer her claim to the Administrative Court to claim Judicial Review;

(2) C was entitled to ESA rent contribution from Southwark;

(3) C was eligible for loan from Southwark in Service Charge Regs;

(4) C had a defence that Southwark's Notice of Forfeiture invalid;

(5) C had a defence that Southwark had waived right to forfeit as it: (1) accepted her £20 weekly payments from Jan 2012; or (2) discontinued a previous claim for forfeiture; or (3) had issued Rent Invoices in 2011, 2012 and 2013 after the right to forfeit had arisen in 2009/10.

I agree with Mr Petts for D1 that for the purposes of evaluating negligence, it is sensible to differentiate between (1), (2) and (3) which were ways of 'leveraging' Southwark into a loan or a charge or might have been the subject of an application for *relief* against forfeiture; and (4) and (5) which were potential legal *defences* to possession. However, before turning two each of those groups, it is helpful to consider some basic principles of the law of Landlord and Tenant and the concept of forfeiture and relief from it.

Relief Against Forfeiture

95. As Mr Dymond described it, forfeiture is a medieval remedy for landlords to take back control of ('re-enter') property they have demised under a lease. Unlike a mortgage repossession, the leaseholder loses the value of the asset (subject to the mortgage) itself. So, the Law has also developed the mitigating concept of 'relief against forfeiture'. As the leading textbook, *Woodfall on Landlord and Tenant* (2024) explains at p.17.057:

> *"Forfeiture is a unilateral remedy available to the [landlord] of the right to forfeit only. It is subject to numerous statutory restrictions and in particular to waiver and the tenant's right to apply for relief. Forfeiture is in the nature of a penalty and it has been said that the courts always lean against a forfeiture. In broad terms, a right of forfeiture may be defined as "a right to determine a lease by a landlord if (a) when exercised, it operates to bring the lease to an end earlier than it would 'naturally' terminate; and (b) it is exercisable in the event of some default by the tenant".*

Woodfall explains the limit on forfeiture in s.146 Law of Property Act 1925 at p.17.121:

> *"The most important restrictions on the landlord's right to forfeit the lease for breach of covenant or condition other than for non-payment of rent are contained in s.146….[It] requires the landlord to serve a formal warning notice on the tenant before exercising his right to forfeit, and also gives the court extensive jurisdiction to grant the tenant relief against forfeiture."*

96. In relation to forfeiture for failure to pay service charges under a lease of a dwelling, there is additional statutory protection in s.61 Housing Act 1996:

> *"(1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge …unless— (a) it is finally determined by…the appropriate tribunal or by a court..that the amount of the service charge…is payable by him, or (b) the tenant has admitted that it is so payable.*
>
> *(2) The landlord may not exercise a right of re-entry or forfeiture by virtue of subsection (1)(a) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.*
>
> *(3) [That] is finally determined…(a) if a decision it is payable is not appealed against or otherwise challenged, at the end of the time for bringing an appeal…*

Therefore, a landlord cannot forfeit for failure to pay a service charge unless it is agreed or determined as reasonable by a Court or (now) First-Tier Tribunal (previously – and in the present case in 2004 and 2011 a Leasehold Valuation Tribunal); and even then, not until 14 days after appeal (or appeal rights expire). Moreover, with the lease of a dwelling, to effect forfeiture itself, a landlord cannot simply physically re-enter as with a business lease, he needs a Court Order under s.2 Protection from Eviction Act 1977.

97. Because forfeiture is such a draconian remedy, over the centuries the common law itself developed restrictions on it, in particular waiver, as *Woodfall* explains at p.17-092:

> *"The occurrence of a breach of covenant or other event giving rise to a right to forfeit puts the landlord to his election. He may either choose to enforce his right of forfeiture, and to treat the lease as being at an end; or he may choose not to enforce his right of forfeiture and to treat the lease as continuing to exist. In this respect the landlord is in no different position from that of a party to a contract who, faced with a repudiatory breach of contract, may choose either to accept the repudiation or to affirm the contract. 'Waiver' of forfeiture takes place where the landlord chooses to treat the lease as continuing to exist or, in other words, where the landlord affirms the contract. It is based on the doctrine of election. It is possible for a landlord to waive the right to forfeit even before the landlord is in a position to exercise the right, for example, because the landlord has yet to comply with the requirements of s.146 of the Law of Property Act 1925 or s.81 of the Housing Act 1996 or s.168 of the Commonhold and Leasehold Reform Act 2002: Stemp v 6 Ladbroke Grove Management [2019] L & TR 10 (UT)…. Waiver of the right to forfeit is not the same as waiver of a breach of covenant. The former depends on the principle of election and only bars one remedy, leaving the landlord's right to damages intact. The latter depends upon the inference of consent, and bars all the landlord's remedies in respect of the breach in question. Neither of these kinds of waiver will prevent the landlord from relying on the covenant in respect of subsequent breaches. Furthermore, waiver in respect of continuing as opposed to once for all breaches of covenant will not prevent a subsequent forfeiture."*

98. However, to waive the right to forfeit, a landlord's conduct must be *so unequivocal* that, when considered objectively, it could *only* be regarded as having been done consistently with the continued existence of a tenancy: *Expert Clothing* v *Hillgate House Ltd* [1986] 1 Ch 340 at 360E. Whilst a landlord can waive the right to forfeit by such an act before statute allows it to forfeit, a landlord's compliance with statutory consultation does not of itself waive the right to forfeit: *Stemp*. Moreover, whilst service of proceedings effects forfeiture of a lease, it is not complete until determined by the court or admitted. If proceedings are discontinued before that, the lease is restored, as if no action had been commenced: *Mount Cook Land v Media* [2004] 2 P. & C.R. 25.

99. The landlord's acceptance of rent falling due after a breach, of which the landlord has knowledge, has long been considered as only referable to the continuation of the lease, thus waiving the right to forfeit in respect of that breach, going back to Elizabethan times: *Harvey* v *Oswold* Cro Eliz 553 (*sub nom Pennant's Case*). A demand for rent has the same effect: *Doe d. Nash* v. *Birch* 150 ER 490, which is binding on the County Court; as is the point demands for sums reserved as a rent have the same effect: *Stemp*.

100. However, payment and/or demand of service charges does not fall into the same category as payments and demands for rent and must be assessed on the more general approach in *Expert Clothing*: as Neuberger J (as he then was) observed in *Yorkshire Metropolitan Properties Ltd. v Co-Operative Retail* [2001] L. & T.R. 26 at [89].

101. However, the position with rent payments and demands was recently clarified by the Court of Appeal in *Faiz v Burnley CC* [2021] 2 WLR 1115 (CA) (approving *Re Debtors Nos.13A10 and 14A10 of 1995 [1995] 1 WLR 1127* to which Mr Dymond referred in his Advice). *Faiz* confirms a landlord only waives its right of forfeiture by demanding or accepting rent which had accrued due *after* the date of a breach of covenant known to the landlord which gave rise to the right to forfeit the lease; and that it does not matter whether the rent had accrued due before or after the date of the landlord's *knowledge* of the breach – what matters is whether the rent *had fallen due* before or after *the actual breach*. Moreover, if at the time of payment of money, a tenant does not appropriate the same to a specific debt, the tenant loses the right so to do and this right devolves to the landlord who may allocate it to whatever debt it wishes: *Cory Bros & Co. Ltd* v *Owners of Turkish Steamship 'Mecca'* [1897] AC 286 at 293.

102. Even if a right to forfeit is not waived, in relation to breaches other than rent, the tenant can apply for relief against forfeiture under s.146(2) Law of Property Act 1925:

> *"Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action…or in any action brought by himself, apply to the court for relief; and [it] may grant or refuse relief, as [it], having regard to the proceedings and conduct of the parties…and to all other circumstances, thinks fit; and in case of relief may grant it on such terms if any as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit."*

103. As DDJ Couch noted during the possession hearing on 28th June 2023, Lord Templeman said in *Billson v Residential Ltd* [1992] 2 WLR 15 (HL) at pgs.23-24:

> *"A tenant may apply for appropriate declarations and for relief from forfeiture under section 146(2) after the issue of a s.146 notice, but he is not prejudiced if he does not do so. [Except that a] tenant cannot apply for relief after a landlord has forfeited a lease by issuing and serving a writ, has recovered judgment and has entered into possession pursuant to that judgment."*

As *Woodfall* explains at p.17.165, s.146(2) gives a very wide discretion on relief that should not be fettered, but so far as possible, relief against forfeiture should remedy the breaches. As Patten LJ stressed in *Magnic v Ul-Hassan* [2015] EWCA Civ 224 at [50]:

> *"The purpose of the reservation of a right of re-entry in the event of unpaid rent or a breach of covenant is to provide the landlord with some security for the performance of the tenant's covenants….There may, of course, be breaches which are so serious and irremediable as to justify the refusal of relief: for example, an unlawful sub-letting. But in most cases relief will be granted on the breach being remedied and on terms as to costs."*

104. There is an analogy between relief for non-payment of service charges and rent cases. In *Bland v Ingrams Estates (No.2)* [2002] 2 WLR 361 (CA), Chadwick LJ explained relief will normally require not just payment of arrears of rent, but also the landlord's costs of forfeiture; and indeed the benefit of any rent review increases. Indeed, s.138 County Courts Act 1984 in rent cases requires payment of 'all the rent in arrear' up to the date of the hearing for relief: *Maryland Estates v Joseph* [1999] 1 WLR 83 (CA). As Arden J (as she was) said in *Inntrepeneur Pubs v Langton* (2000) 79 P & CR D7:

> *"... [T]he discretion to grant relief is based on solid principle and not simply to be exercised in a manner which the court considers fair on the particular facts before it.….The future is uncertain; the more distant the future, yet more uncertain. So the period fixed for the payment of arrears must be one within the immediately foreseeable future so that the court can say with a sufficient degree of certainty that the rent outstanding will be paid. Even then, the tenant has no right to relief…There has to be evidence that she will be able to pay the arrears within a fixed time. It is not enough to produce evidence that she will be able to pay the arrears if she wins [other litigation]. "*

The 'Relief from Forfeiture' Allegations against Mr Dymond

105. Strictly, Mr Dymond was not instructed to advise initially about the scope for a claim for *relief from* forfeiture, only a *potential defence* to forfeiture. Ms Holman's Brief said:

> *"Please would Counsel advise whether the client has a defence…to proceedings based on the fact that [the Council]…accepted payments and have waived their right to forfeit the lease… a defence as the present claim is brought on the exact same grounds and….they had already filed a Notice of Discontinuance in the previous proceedings, or on any other grounds.."* (my underline)

106. However, while barristers are 'not expected to divine every claim a client may theoretically have' (as Sedley LJ said in *Pritchard*), as *Jackson & Powell* said at p.12-038, a barrister will sometimes need to address issues they have not been asked to advise about. Ultimately, as explained in *McFarlane* (entirely consistently with *Saif Ali, Hall and Moy*) the issue is whether 'no other reasonably competent barrister acting with reasonable care' would have failed to consider an issue or plead a cause of action. Whilst it is one thing to say that in the ordinary way that a barrister instructed to advise X about suing Y in negligence need not advise X about suing Z in contract, it is another thing to say a barrister advising X whether they have a defence of waiver to forfeiture need not advise X whether they have an arguable claim for relief from forfeiture. If not two sides of the same coin, waiver and relief are two coins in the same wallet. In my view, Mr Dymond's duty of care extended to advising on potential relief arguments.

107. The more difficult question is whether Mr Dymond's duty extended to advising or pleading points he did not consider were properly arguable. Mr Maxwell submitted it did not - but did not refer me to cases on this and in fairness to C as a litigant-in-person I have considered cases to which her advocate (had she instructed one) might have referred me. For example, it is not 'improper, unreasonable or negligent' in the Wasted Costs jurisdiction for a barrister to pursue a hopeless case for a client and Legal Aid does not change that: *Ridehalgh v Horsefield* [1994] 3 WLR 462 (CA) at pgs.479-480. Latham LJ developed this point in *Dempsey v Johnstone* [2004] PNLR 2 (CA) at [28]:

> *"In cases where the allegation is that the [lawyer] pursued a hopeless case, the question was correctly identified by the judge as whether no reasonably competent legal representative would have continued with the action….."*

108. However, it is one thing to say a barrister is *not negligent to plead* a hopeless case on client's instructions (at least without something akin to abuse of process, as Latham LJ went on to say in *Dempsey*). It is quite another thing to say that a barrister *is negligent to refuse to plead* a hopeless case their client wants to be pleaded. In the passage from *Hall* which I underlined above, Lord Hope said emphatically that a barrister or other advocate: *'is not bound by the wishes of his client…and the mere fact that he has declined to do what his client wishes will not expose him to any kind of liability'*. Indeed, the Bar Standards Board Code of Conduct at RC9 makes clear that (my underline):

> *"Your duty to act with honesty and with integrity under CD3 includes the following requirements…2…you must not draft any statement of case, witness statement, affidavit or other document containing: a) any statement of fact or contention which is not supported by your client or by your instructions; .b) any contention which you do not consider to be properly arguable; c any allegation of fraud, unless you have clear instructions to allege fraud and you have reasonably credible material which establishes an arguable case of fraud."*

In *Richard Buxton v Mills-Owen* [2010] 1 WLR 1997 (CA), Dyson LJ (as he was) discussed this requirement in the (then) Bar Council and Law Society Codes and said:

> *"43 The particular question that arises on this appeal is whether a solicitor has good reason for terminating a retainer if a client insists on his putting forward a case and instructing counsel to argue a case… which the solicitor believes 'is bound to fail'…[I]t may be difficult to draw the line between an argument which can properly be articulated and put forward (but which has little, if any, prospect of success) and an argument which cannot properly be articulated and which is believed to be bound to fail. The Bar Code of Conduct puts the matter very clearly. Counsel may not draft any document…containing a contention which he does not consider to be properly arguable; and he may not make any submission in court which does not consider to be properly arguable…*
>
> *45…In my judgment, if an advocate considers that a point is properly arguable, he should argue it without reservation. If he does not consider it to be properly arguable, he should refuse to argue it. He should not advance a submission but signal to the judge that he thinks that it is weak or hopeless by using the coded language 'I am instructed that'. Such coded language…should be avoided."*

109. Again, ultimately it seems to me that in the context of an allegation of negligence by refusing to plead a point, the real question is whether no reasonably competent barrister practising in the field would have failed to plead it, as opposed to simply asking whether that was an error of judgment. That is consistent with all the authorities on the barrister's standard of care in both advice and advocacy, including *Saif Ali*, *Hall* and *Moy* (and *Pritchard, McFarlane*, *Ridehalgh*, *Dempsey* and *Buxton*). Moreover, to anticipate the discussion of causation below, if a point is 'not properly arguable' and so is 'bound to fail' it cannot have 'real and substantial as opposed to only negligible' prospects of success: so, losing it is not actionable 'damage' (see *Edwards v Hugh James* [2018] PNLR 30 (CA) at [30] and Supreme Court [2019] 1 WLR 6549 [23] discussed below).

110. The three allegations which could be described as 'relief' (or at least 'leverage') arguments are (i) the possibility of transfer for Judicial Review; (ii) the alleged 'right to rent contribution' under paragraph 3 of Schedule 9 of the Employment and Support Allowance Regulations 2008; and (iii) what C calls 'automatic relief from forfeiture' under the Service Charge Loans Regulations 1992. I will be brief with them all, as they were all bound to fail and Mr Dymond rightly did not specifically address them.

111. Of course, it is theoretically possible to transfer County Court proceedings to the High Court to be treated as a claim for Judicial Review under Civil Procedure Rule 54. However, it is entirely unnecessary because if there is a public law defence against a local authority landlord, then it can be raised as a tenant as a defence to possession proceedings in the County Court: *Wandsworth LBC v Winder* [1985] AC 461 (HL). The real question was whether there was any public law defence available to C. The only one Mr Dymond specifically considered was a defence under the Equality Act 2010, but rightly there is no criticism by C of his rejection of such a defence. Whilst C is clearly 'disabled' for the purposes of s.6 of the 2010 Act, there was no arguable disability discrimination or failure to comply with the public sector equality duty under s.149. Moreover, C was not clear on what her suggested public law defence might be, other than to suggest Southwark's decision to seek forfeiture was irrational. However, given that it had a Court judgment for outstanding service charge arrears, forfeiture was plainly a rational option, even if it was pursued with more zeal against C than others. Even if this was motivated by her previous challenges to service charges, she had not paid a judgment. Given that, it was not even arguably irrational or unlawful to forfeit.

112. With C's argument under the ESA Regulations, Mr Erridge delicately said that his understanding of what this claim was about had been in flux during the trial. I would go further. I am not even convinced that C understood what she was alleging. It started out as a complaint (as stated in the List of Issues) that there was a 'right to a rent contribution' under p.3 schedule 9 of the ESA Regulations. That is plainly wrong: p.3 simply sets out a capital disregard for 26 weeks after sale of a property – which is why Ms Holman mentioned it to C in January 2013 - it had nothing to do with her suggesting a 'rent contribution'. Indeed, C appeared to acknowledge this in evidence and instead suggested that because of the capital disregard, she would be entitled to Housing Benefit which Southwark would have had to pay, it could have been used as 'leverage'. However, the problem with that, as Mr Dymond rightly said, is that Southwark were taking a very hard line with C, to the point of re-starting possession proceedings. It is unlikely they would have been dissuaded by the risk of having to pay Housing Benefit because (i) it was primarily funded by central government; (ii) came out of a different departmental budget (and as this case shows, the left hand in Southwark often did not appreciate what the right hand was doing); and most importantly: (iii) Southwark would be getting a valuable asset – a flat in a good location which they could in due course sell and in the meantime use as valuable stock for emergency or homeless housing. Therefore, it is entirely unsurprising (and certainly not negligent) that Mr Dymond did not consider raising this argument, which again would have been bound to fail.

113. However, Mr Dymond did consider (although he ruled it out and he did not mention in his Advice) the possibility of a loan or voluntary charge from Southwark under the Service Charge Regs. Rather more time at trial was spent on this than it merited, for the simple reason that the Claimant had already requested this of Southwark before the Defendants were instructed in May 2012 and Southwark had refused – repeatedly in person and then in the June 2012 letter to C's Councillor. Certainly, the suggestion that Southwark could have been persuaded to change its mind is totally untenable. The only loan or charge Southwark was prepared to accept was one to protect itself pending the sale, on which Mr Dymond advised and D1 agreed an alternative with Southwark. Trying to persuade Southwark to agree a long-term loan or voluntary charge for C's debts *enabling her to stay in the Flat* was unquestionably 'bound to fail' and it was not in any way negligent of Mr Dymond not to recommend it. Indeed, had he been told that such a loan and charge had been refused, that would only have strengthened his view.

114. Instead, C argues that the possibility of such a long-term loan or even a voluntary charge from Southwark could have based an application for relief from forfeiture. She relies on *Vision Golf v Weightmans* [2006] 1 P&CR DG13, but that was an entirely different case where solicitors failed to pursue an application for relief which was not opposed and negligence was admitted (I return to it on causation and valuation). C has developed the idea of a 'lost relief application' because DDJ Couch suggested on 28th June 2013 after making the possession order that she could make an application for relief against forfeiture and had earlier commented a charging order could have been an alternative if C could continue to pay (as she had not for years until the £20 payments in 2012). But DDJ Couch was not taking about a service charge loan from Southwark, not least as Mr Walsh said it was 'not for consideration' and C said it had already been refused.

115. As Mr Erridge summarised, by sections 450A to 450D of the Housing Act 1985 and the Housing (Service Charge Loans) Regulations 1992 ('the Loan Regulations'), housing authorities may offer loans to long leaseholders to assist with payment of service charges demanded for repairs or improvements. The Loan Regulations distinguish between mandatory and discretionary loans, each subject to differing eligibility rules.

(1) A lessee may be entitled to a *mandatory* loan under s.450A(2) and reg.2 Loan Regulations where certain statutory criteria are fulfilled. They must be the long leaseholder of a flat granted under a Right to Buy (reg.2(1)(a)); the service charges must be due in respect of repairs or improvements payable within 10 years of the grant of lease (reg.2(1)(a)); the amount attributable must fall within a specified range (reg.3(3)); the leaseholder must notify the housing authority in writing they intend to make a claim for a mandatory loan within six weeks of the service charge demand (reg.4(2)); and accept it within four weeks (reg.4(4)).

(2) Secondly, a housing authority may make a *discretionary* loan to a lessee in respect of service charges for repairs under s.450B(1) and reg.5. The criteria depend on the policy of each authority. Southwark's policy was titled 'Leasehold Service Charge Loans' and dated 4 May 2004. This indicated that: Southwark was a '*lender of last resort*', applicants would need to satisfy income requirements, Southwark would adopt a vigorous approach to the collection of service charges within the same financial year and may limit loan availability to cases where the leaseholder could demonstrate they could finance the loan.

116. The basic problem with a potential mandatory loan from Southwark under the Loan Regulations, as Mr Dymond identified, was that such a request had to have been made within 6 weeks of the relevant service charge demands. The most recent demand subject to the judgment debt was in 2009 – three years before. (As I found and I discuss below, Mr Dymond did not know about the 2011, 2012 and 2013 invoices). Therefore, the argument was bound to fail and Mr Dymond was not at all negligent not to raise it.

117. Whilst technically an application for relief could theoretically have been made on the basis C could have applied for a discretionary loan, in my judgment it would have been bound to fail for the reasons Mr Dymond considered at the time and Mr Erridge stated, even aside from the fact that (as Mr Dymond did not know) C had been refused a loan:

(1) Firstly, it is true Southwark was lax with the eligibility criteria with other applicants. But there is no evidence any successful applicant had a loan to pay off a judgment debt Southwark obtained for non-payment of challenged service charges. Quite aside from that, C had no saving or income to pay more than £20 a week and indeed, in conference, Mr Dymond discovered C had other significant debts too.

(2) Secondly, the judgment debt changed the legal position anyway, because C would not have been seeking to pay *service charges* as such as required by Reg.5 Loan Regulations, but a *judgment debt*. So, the Court (even the Administrative Court, let alone the County Court) would not have been able to order Southwark to loan to C.

(3) Thirdly, such an application for relief from forfeiture on the basis of a long-term low-interest loan or even charge from the landlord judgment creditor would be flatly inconsistent with principles of relief from forfeiture requiring payment within a reasonable period of all sums due to the landlord: *Maryland* and *Langton*. This is presumably why Mr Dymond said in evidence (which I accept) that in all his experience he has never come across a Court making such an order for relief.

So, a loan or a charge either agreed with Southwark, or by relief application, was bound to fail and it was *not* negligent - indeed it *was* proper - of Mr Dymond to rule them out.

118. There is of course the separate point whether Mr Dymond was negligent in failing to explain to C why the loan/charge point was a non-starter. But as Lord Carswell said in *Moy* at [65], Courts should be 'slow to blame advocates if they concentrate on giving clear and readily-understood advice to clients on the course of action they recommend'.

119. Indeed, in *Moy* itself, the Court of Appeal held whilst a barrister's advice not to settle was not negligent, her lack of explanation why was, but the Lords disagreed. As Lord Hope said at [21], it is difficult to see how wording of advice was given can be negligent if the assessment in substance of the advice was not. Exactly the same is true here – if it was not negligent not to run a relief argument for a loan that was bound to fail, it was also not negligent not to mention that hopeless argument. In any event, as Lord Carswell added in *Moy* at [64], a client must show that had the barrister explained their advice more, they would have instructed the barrister differently. On that counterfactual, surely it would have come out that C had recently had a loan application refused in June 2012. That would have entirely reinforced Mr Dymond's decision not to plead the loan point.

The Defence (specifically Waiver) Allegations against Mr Dymond

120. The four allegations that could have been the subject of a defence to forfeiture were: (i) the notice of forfeiture was invalid; (ii) Southwark had waived its right to forfeit as it discontinued the previous claim; (iii) Southwark had waived it by accepting her £20 weekly payments from Jan 2012; and (iv) Southwark had waived because of the Rent Invoices in 2011, 2012 and 2013. The latter allegation is sub-divided into two: either that Mr Dymond had seen one or more of the invoices; or he failed to investigate them.

121. It is true that Southwark's initial notice of forfeiture dated 18th January 2012 was invalid because under s.61 Housing Act 1996, the 'final determination' was not the LVT in April 2011, but DJ Pearce's final judgment on 3rd January 2012. Since the 14 days under s.61(2) only started running from the expiry of the time to appeal DJ Pearce's order (after 21 days under CPR 52), the first notice was premature. Therefore, the first possession proceedings were flawed, but that was not picked up by anyone, including DJ Pearce. However, as Mr Dymond observed, that breach was rendered academic by discontinuance of the first forfeiture proceedings and another notice of forfeiture all on that same day: 18th June 2012. While C suggested that the second notice of forfeiture of 18th June 2012 was 'out of time' that is wrong: there is a 6-month limitation period after re-entry for *relief* under s.139(2) County Courts Act 1984 and by analogy in the High Court: *Vision Golf ,* but there is no limitation period under s.146 of the 1925 Act for a notice of forfeiture as such. Invalidity of an earlier notice of forfeiture does not arguably impugn validity of a later notice of forfeiture, so subject to the discontinuance point I deal with next, Mr Dymond was not negligent not to plead an 'invalid notice'.

122. Indeed, the discontinuance point was also hopeless for the reasons Mr Dymond gave and his analysis was plainly not negligent, indeed was entirely sound. CPR 38.2 gave Southwark the right to discontinue one forfeiture claim but start another, subject to CPR 38.7: *Mount Cook*. Even though the second forfeiture claim was based on the same facts, the requirement of the Court's permission under CPR 38.7 was not engaged because C had never filed a defence to the first forfeiture claim. I also consider unimpeachable Mr Dymond's view that even if CPR 38.7 was engaged, the Court would have given permission for the second forfeiture proceedings. As explained by Briggs LJ (as he then was) in *Hague Plant v Hague* [2015] C.P. Rep. 14 (CA) at [60]-[61], the test for the Court's permission under CPR 38.7 is not an estoppel or abuse of process test, or even 'exceptional circumstances'. It is simply whether the party seeking permission could give 'a sufficient explanation to overcome the court's natural disinclination to permit a party to re-introduce a claim which it had after careful consideration decided to abandon'. Whilst Mr Dymond did not have the transcript of the hearing on 18th June 2012, DJ Pearce had specifically told Southwark (due to the '£20 payments' point considered next) that there was a triable (or genuine) issue of waiver and if Southwark had waived its right to forfeit 'it needed to serve another notice'. That is precisely what Southwark did, the very same day. It is difficult to see any Court refusing permission under CPR 38.7 in those circumstances. So, Mr Dymond was entirely right – and certainly not negligent – to advise as he did on this issue too.

123. I move on to the vexed issue of waiver of forfeiture due to the £20 payments. I have considerable sympathy for C on this issue, because having understood DJ Pearce in the June 2012 hearing to say that Southwark *had* waived its right to forfeit by accepting the £20 payments (although DJ Pearce only decided that was a genuine triable issue), C was then told by Mr Dymond that Southwark in his view *had not* waived its right to forfeit. This was made more difficult by Mr Dymond not having the transcript which he could have used to explain that DJ Pearce had only said the point was 'arguable'. Nevertheless, the real issue here is (i) whether his view was itself negligent; or indeed (ii) whether he was negligent not to plead the point anyway given what DJ Pearce said.

124. It is regrettable that the hearing on 18th June 2012 unfolded as it did. DJ Pearce rather 'shot from the hip' - inevitably in a busy possession list when making a determination of whether there was a genuine defence based on substantial grounds in a complex case.

However, responsibility lay squarely with Southwark itself for not preparing for the hearing properly. Its in-house advocate on 18th June 2012 barely spoke. He was plainly assuming DJ Pearce would grant an adjournment to enable C to instruct a regular rather than duty solicitor and did not take DJ Pearce to the letters from Mr Strauss or other evidence of Southwark rejecting C's payments. Nor did the advocate address DJ Pearce on the law – she ruefully observed the Court's copy of *Woodfall* was in the Circuit Judge's room - but it should not have been for her to have to research the law herself.

125. By contrast, Mr Dymond's advice – with the benefit of the time and opportunity to research that DJ Pearce did not have - was in my judgment entirely sound and certainly not negligent. It was entirely consistent with the case of *Re Debtors* (which Mr Dymond cited and which was later approved in *Faiz*) that payments of sums accruing *before* the right to forfeit could be accepted without waiving that right. In this case, C's £20 payments were all allocated to the judgment debt, as was Southwark's right (he did not refer to authority for it, but it is *Cory Bros*). The right to forfeit had not arisen (or at least could not be exercised given s.61 and see *Stemp* although that came later) until that judgment debt. Even if that is incorrect, as Mr Maxwell submitted, even if service charge demands in 2005-2008 were waived by later ones, failure to pay the 2009 demand was a new breach which was not waived, indeed led immediately to the service charge proceedings and judgment debt (see *Woodfall* at p.17-092). Also, as Mr Dymond said, this was a service charge to which the strict 'rent rule' does not apply as confirmed by *Co-Operative*; and there was no unequivocal waiver by accepting the £20 given the terms of letters and comments by Mr Strauss at the time. Whilst Mr Dymond did not at the time have the benefit of the transcript of DJ Pearce's comments at the hearing on 18th June 2012, that transcript has since rightly reinforced his view at the time because DJ Pearce only decided the point was arguable - even then on incomplete information.

126. So, I consider that Mr Dymond's assessment of the '£20 payments waiver' defence was not itself negligent – and indeed was legally sound. However, there is a distinct question whether he was negligent not to raise and plead the £20 payments waiver point anyway (and not to contest a recital by DJ Worthington at the hearing on 6th November that Southwark had a right to forfeit) given DJ Pearce's view that waiver was arguable and C's reluctance to accept his advice (although she eventually did). However, in my view Mr Dymond was not negligent in that respect either, for three alternative reasons:

(1) Firstly, as already discussed, whilst DJ Pearce had expressed the view in June 2012 the '£20 payments waiver' defence was arguable, that was on incomplete information and without being referred to the law by Southwark. Mr Dymond knew that Mr Brown would take DJ Worthington to the same legal principles as Mr Dymond had discussed in his Advice at the hearing on 6th November and explain why there was no waiver defence. (C rightly did not argue DJ Pearce's decision created an issue estoppel that waiver was 'arguable': circumstances had since totally changed given the refund of the payments, new notice etc). So, Mr Dymond was entitled to advise C in conference the waiver defence would not succeed. Given the true legal analysis and Southwark's evidence including Mr Strauss' letters, whether or not Mr Dymond said it, the defence was bound to fail, so would have been contrary to his professional duties to plead: *Buxton*.

(2) Secondly, even if that is wrong and the '£20 payments waiver' defence could have been pleaded and C wanted it pleaded given DJ Pearce's views, it cannot be said that no reasonably competent barrister practising in the field would have failed to plead or raise the point. After all, Mr Dymond did not have the transcript of DJ Pearce's comments (or even her order), so could not have shown the Judge what DJ Pearce had said. The stakes were simply too high: if waiver was rejected by the Judge (as Mr Dymond believed it would be and as it was in the end by DDJ Couch), a possession order would almost certainly follow and the chance for C to have time to sell could be lost, along with her only asset (since Mr Dymond – rightly – did not consider any other relief application to be arguable as it stood). Indeed, that course might have been negligent. It was certainly not negligent to advise C to seek an adjournment to sell the Flat (or find a third-party loan). Notably, DJ Worthington took some persuasion even to adjourn and agreed Southwark had a right to forfeiture before he even checked whether Mr Dymond objected to that recital (to which he could not realistically).

(3) Thirdly, even if I am wrong and Mr Dymond was himself wrong in the sense of making an error of judgement not to plead or raise the '£20 payment waiver' defence relying on DJ Pearce's views, that does not mean he was *negligent*, as repeatedly said by the House of Lords in *Saif Ali*, *Hall* and *Moy*. I have found Mr Dymond's assessment of the merits of the defence to be not negligent and DJ Pearce's views to be undermined, so if there was error it was non-negligent.

127. I turn to the alternative Rent Invoice allegations. This issue is more straightforwardly factual, as Mr Dymond accepts the 2012 Rent Invoice would have afforded a complete defence of waiver to forfeiture as it contained a demand for rent (i.e. ground rent of £10) on 28th March 2012 between the judgment debt on 3rd January 2012 and first forfeiture proceedings on 4th April 2012. As he said in his November 2012 Advice:

> *"By far the most common act of waiver is the demand of or acceptance of rent due after the right to forfeit has arisen. I emphasise, however, that it is demand or acceptance of rent <u>due after</u> the right to forfeit has arisen which amounts to waiver because that act is only consistent with the <u>continued existence</u> of the lease. Acceptance of rent due before the right to forfeit arose but paid after the right to forfeit does not amount to waiver: Re Debtors Nos.13A10 and 14A10…"*

As Mr Dymond readily accepted, unlike the £20 payments for and allocated to the judgment debt itself, the new demand after the judgment debt (indeed, after the first – premature - notice of forfeiture on 18th January 2012) was a demand for rent *after* the right to forfeit arose which was only consistent with the continued existence of the lease. The 2011 invoice was more complex, because it was issued in April 2011, just before the LVT decision, before the right to forfeit had arisen and certainly before forfeiture proceedings were permissible under s.61 Housing Act 1996. (Whilst *Stemp* has now decided waiver can still occur even at that stage, it was decided in 2018. Mr Dymond said in 2012/2013 the point would have been arguable and likely appealed either way). By contrast, the 2013 Rent Invoice was issued in February 2013 during the second forfeiture proceedings and therefore would not waive forfeiture. However, as Mr Dymond also readily accepted, if he had known about the 2012 Rent Invoice, he would have pleaded waiver – indeed it would have been negligent not to have done so.

128. However, as stated in my findings of fact, on balance of probabilities I find Mr Dymond did not know about the 2011, 2012 or 2013 Rent Invoices. I do so for three reasons:

(1) Firstly, I have found Mr Dymond to be an entirely reliable witness and he was adamant that he never knew about the 2011, 2012 and 2013 Rent Invoices. That is entirely credible because of his candid admission – without hiding in legal technicality or 'fallback arguments' - that had he done so, he would have pleaded waiver - and it would be negligent not to do so. Indeed, he specifically addressed the defence in his Advice. Had he seen them, we would not be here.

(2) Secondly, the finding of fact that Mr Dymond did not know about the 2011, 2012 and 2013 Rent Invoices is corroborated by the contemporaneous evidence not just of his own Advices, but D1's file. As I discuss further below, none of them were found on the file, none of them were referred to in the Briefs to Mr Dymond and none of the *invoices* were referred to in any of the notes on D1s file (though as discussed below, the 2013 *service charge* was plainly mentioned)

(3) Thirdly, there is no evidence that Mr Dymond was shown or told about the three Rent Invoices. As discussed below, Ms Twigg and Ms Oldfield's evidence is that no-one at D1 was told about or shown them. Moreover, C's own evidence is that she cannot remember whether she handed over the 2011, 2012 or 2013 Rent Invoices but she 'must have done'. Yet, as I have found, her first memory of them seems to be preparing for the possession hearing in June 2013, around the time she started raising the significance of the format of service charge demands based on the *Woelke* case. Indeed, I have found that was the first time she found them or read them properly and did not give them to the Defendants.

I expand on that for D1 below, but I positively find on the balance or probability that Mr Dymond did <u>not</u> see the 2011, 2013 or 2013 Rent Invoices any stage between his first involvement with C's case in October 2012 and his last involvement in April 2013.

129. Finally for Mr Dymond, I turn to the late-amended allegation he negligently failed to 'investigate' and discover the 2011, 2012 and 2013 (particularly 2012) Rent Invoices. Whilst this is an evaluative issue of negligence not a simple issue of fact, I equally have no hesitation in deciding Mr Dymond was not at all negligent in failing to investigate and discover any of the Rent Invoices (including the 2012 one) for five reasons, one overarching and others spanning the four points in time when he was instructed to act:

(1) Firstly, it flows from my finding of fact that Mr Dymond never knew about any of the 2011, 2012 or 2013 Rent Invoices, that he was not put on enquiry in relation to any of them, or certainly the 2011 and 2012 ones (since he was told about a 2013 service charge, but not a demand for it). Indeed, Southwark's case in its second Particulars of Claim and in Ms Sorbjian's statement was that it *'had not demanded any rent since it became apparent [C] was in breach of the terms of the lease, nor has [C] made any attempt to pay rent to [Southwark]'*. Indeed, C never told Mr Dymond or D1 there had been a new demand for rent.

(2) Secondly, focussing on what Mr Dymond should have investigated when first instructed and advising in October 2012, not only do I find was he not told about the 2011 and 2012 Rent Invoices (the 2013 one did not yet exist), Southwark's evidence was there had been no new rent demands. And while he knew the Lease required rent to be paid, it was common practice for landlords to pause rent (and service charge) demands when pursuing forfeiture. Given Mr Dymond was advising that rent demands waived forfeiture, he was entitled to proceed on the basis that he would be told if there had been rent demands. But in those circumstances, it was not negligent (on the usual standard of care in *Moy*) for him not to advise C to undertake a search of unopened post for rent demands.

(3) Thirdly, focussing on what Mr Dymond should have investigated in conference on 5th November and at and following the hearing on 6th November 2012, the position had not changed: he was not shown any rent demands or told about any by C. Indeed, if C is right in what she asserted for the first time in submissions (that was never put to Mr Dymond and does not reflect the notes of conference) that she queried why he was talking about rent demands when she did not pay rent, it would have confirmed his understanding there had been no new rent demands. Yet even if C had not said what she now claims, she said nothing to suggest she received new rent demands. Moreover, Mr Dymond was also entitled to rely on the fact Southwark were saying there had been none and to trust in the duties to the Court owed by his opponent Counsel Mr Brown that he would have said if he had known that Southwark's statements were wrong. In fairness to (now Judge) Brown, I find as a fact he did not know about the 2011-2012 Rent Invoices. It may well be even Ms Sorbjian did not know – because in Southwark, the left hand plainly did not know what the right hand was doing.

(4) Fourthly, focussing on Mr Dymond's instruction and telephone advice on 23rd January 2013 about the terms of the consent order to adjourn the proceedings to extend time for C to sell her property, again there was no change in information. He was not told anything further about rent demands in 2011/2012 (again it pre-dated the 2013 one) or anything else to change his understanding there had been no such demands. Mr Dymond was given the information and asked to advise on a specific point – the terms of the adjournment and a charge on the judgment and costs pending sale; and he did so. It was not negligent not to raise rent issues.

(5) The final time Mr Dymond was instructed was in April 2013. By that time, the 2013 Rent Invoice had been issued and whilst I accept he was not told about that – still less provided with it – he was told Southwark were insisting on including 'the current service charge'. Had Mr Dymond asked to see it and C had provided it, he would have seen the demand for Ground Rent and whilst the 2013 Rent Invoice would not waive forfeiture, that could well have prompted him to ask about the 2012 Rent Invoice which he might have discovered did so. I pressed both Mr Dymond in evidence and Mr Maxwell in submissions about this point (which really lay behind my decision at the start of trial to grant C permission to amend to allege negligent 'non-investigation' of Rent Invoices). However, Mr Dymond was being asked to advise about adding *service charges* to the debt not rent; and demand of service charges (especially during current proceedings) does not constitute waiver in the same way as rent (*Co-Operative*). In any event, as Mr Dymond explained, not only was it standard for current service charges to be included in an application for relief from forfeiture (as he advised in April 2013 citing *Martin v Maryland*), it would be standard for service charges to continue to accrue (and to be demanded of other leaseholders) even if not demanded of a leaseholder facing forfeiture. Therefore, Mr Maxwell was justified in submitting that even in April 2013 Mr Dymond was not told anything that would have put him on notice that C had been *sent* a service charge demand in 2013, let alone a rent one (or even less obviously previous rent ones). There was no 'chain of enquiry' from the existence of the 2013 service charge back to previous Rent Invoices which would have revealed waiver. I accept that submission and I find Mr Dymond was not negligent not to investigate whether there had been any demands for rent, even when advising in April 2013.

Therefore, I dismiss the allegation that Mr Dymond negligently failed to investigate at any point when he was instructed from October 2012 to April 2013 whether there had been any rent demands in 2011-2013 when he was positively told by Southwark's evidence there had not been any rent demands, with which C had never disagreed. As Sedley LJ said in *Pritchard*, a barrister cannot be expected to divine every claim a client might have. Indeed, by analogy to the barrister in *Pritchard*, Mr Dymond is entitled to say that it was not his obligation to advise C she might have a defence due to rent demands she never told him about and that Southwark had said they had not demanded.

130. Therefore, I acquit Mr Dymond of all the pleaded (and amended) allegations of negligence and dismiss the claim against him. Indeed, I go further. I have set out what I hope are detailed findings of fact which exonerate Mr Dymond from any criticism whatsoever. He was not given crucial information and gave exemplary advice on the information he had. If C had not followed his initial advice to put the Flat up for sale, there is every chance it would have been forfeited in November 2012 by DJ Worthington, who had to be persuaded to adjourn it to allow a sale and was more than willing to recite he was satisfied there was a right to forfeit before asking Mr Dymond. If it had been forfeited in November 2012 not June 2013, C would have been left with nothing and no prospect of a sale, still less any sort of realistic application for relief. As it is, because of Mr Dymond, she saved the equity in her Flat, if not sadly the Flat itself. I can entirely understand why C may have felt bitter for a long time towards Southwark (even if that cannot excuse her conduct which led to the GCRO). But I struggle to understand why she ever came to blame Mr Dymond for trying to help her as he did. In fairness to C, to the extent her blame of him was fuelled by her misunderstandings about potential arguments that could have been run (which were in truth hopeless); and why his view was different from DJ Pearce's months earlier; and why he never advised her to run a defence on the Rent Invoices, I have spent as long as I have in explaining this to her in the hope, which may be forlorn, that she will come to accept it. However, even if she does not, I can take the opportunity to say clearly Mr Dymond has been waiting over a decade to clear his name of these allegations and he has emphatically done so.

Was the Mary Ward Centre Negligent ?

131. Whilst this question is no less important to the Mary Ward Centre (whom I have been calling D1 but should acknowledge that importance and the same wait with its name), I can deal with this more briefly, because its principal argument was that it was entitled to rely on Mr Dymond's advice and opinion. Having found that Mr Dymond was not negligent, to the extent that D1 could rely on his opinion, it too is not negligent. Likewise, just as I have found the complaints of negligence against Mr Dymond relating to the £20 Payment waiver, Service Charge Loan, ESA Regulation and Judicial Review fail against him, I will also find they fail against D1. However, before I explore the 'reliance principle' considered at the summary judgment stage by Turner J in *Christie (No.1)* on which D1 relies, I will first address the Rent Invoice argument against D1.

The Rent Invoice Allegations against the Mary Ward Centre

132. In my view, C's Rent Invoice argument does not really engage the 'reliance principle' I discuss below for three reasons in rising order of importance. Firstly, as I shall explain, the reliance principle is that in certain circumstances, solicitors are entitled to rely on a barrister's advice. However, with the Rent Invoices issue, Mr Dymond's advice of 1st November 2012 was that rent demands waived forfeiture. From that time (even if not earlier) D1 were aware of that principle and the critical significance of any new demands for rent C may have given it or told it about. Secondly, the primary way C puts the Rent Invoice allegation against D1 is that she gave the 2011, 2012 and 2013 Rent Invoices to D1. Just because I have found Mr Dymond was not given them and did not know (nor ought to have known) about them, it does not follow that D1 itself did not know nor ought to have known about them. D1 may simply – but itself negligently - not have told or shown them to Mr Dymond. Thirdly, when the issue is the factual one of whether lawyers were told about a particular 'smoking gun' document such as the 2012 Rent Invoice here – it is the solicitors who are primarily in the frame, not the barrister. If anything, the barrister is generally (subject to the 'investigation' point I have already considered) entitled to rely on what she is given or told about by the solicitor. If anything, the 'reliance principle' works rather the other way around.

133. Therefore, I will consider the Rent Invoice allegations against D1 – that they knew or ought to have known about the Rent Invoices, especially the crucial 2012 one – without reference to the principle that solicitors can rely on barristers, but on the ordinary solicitor's duty of care. As Mr Petts said, the general duty of care on a solicitor was summarised by Jackson LJ (the original co-author of *Jackson & Powell on Professional Liability* now 9th Ed (2024)) in *Minkin v Landsberg* [2016] 1 WLR 1489 (CA) at [38]:

> *"(i) A solicitor's contractual duty is to carry out the tasks which the client has instructed and the solicitor has agreed to undertake.*
> *(ii) It is implicit in the solicitor's retainer that he/she will proper advice which is reasonably incidental to the work that he/she is carrying out.*
> *(iii) In determining what advice is reasonably incidental, it is necessary to have regard to all the circumstances of the case, including the character and experience of the client.*

> *(iv) In relation to (iii)…one can give fairly bland illustrations. An experienced businessman will not wish to pay for being told that which he/she already knows. An impoverished client will not wish to pay for advice which he/she cannot afford. An inexperienced client will expect to be warned of risks which are (or should be) apparent to the solicitor but not to the client.*
> *(v) The solicitor and client may, by agreement, limit the duties which would otherwise form part of the solicitor's retainer. As a matter of good practice the solicitor should confirm such agreement in writing. If the solicitor does not do so, the court may not accept that any such restriction was agreed."*

134. On Jackson LJ's first point in *Minkin* of the scope of a solicitor's retainer, as Sir Peter Gibson emphasised in *Regent Leisuretime v Skerrett* [2007] PNLR 9 (CA) at [34]:

> *"[T]here is no such thing as a general retainer imposing a duty to consider all aspects of the client's interests whenever the solicitor is consulted. Oliver J. in Midland Bank Trust v Hett, Stubbs & Kemp [1979] Ch 384 said of a solicitor: "The extent of his duties depends upon the terms and limits of that retainer and any duty of care to be implied must be related to what he is instructed to do."*

In the present case, the scope of D1's retainer was to advise and represent C in the conduct of the County Court forfeiture proceedings against her (as opposed to any potential appeal of the 2011 LVT decision to the Upper Tribunal, for example). But those County Court proceedings also encompassed any application for relief from forfeiture and indeed 'to keep her property at all costs or at least the equity in it', as indeed Ms Holman told Mr Dymond in her Brief to him for the 6th November hearing.

134. However, the real question about D1's duty of care on the Rent Invoices issue is whether it knew about the 2011, 2012 and 2013 Rent Invoices (especially the 2012 one) or was negligent in not knowing about them and/or obtaining them from C. That raises a question about the extent of a solicitor's duty to investigate relevant instructions and documents with a vulnerable client exhibiting considerable stress. Indeed, it weighs against the point (to which I will return under 'reliance') made by Brooke LJ in *Balamoan v Holden* (1999) 149 NLJ 898 (CA) that the Court should not apply too rigorous a standard of care with a generalist solicitor acting on Legal Aid (although in *Balamoan*, a solicitor was held to be negligent in not instructing a barrister to advise on a point). Solicitors who regularly do are specialists in dealing with vulnerable clients.

135. That is relevant to the applicable standard of care, discussed by Douglas Brown J in *Green v Collyer-Bristow* [1999] Lloyd's Rep PN 798 (to which I also return on reliance)

> *"A solicitor should not be judged by the standard of 'a particularly meticulous and conscientious practitioner'. The test is what the reasonably competent practitioner would do having regard to the standards normally adopted in his profession…[T]he correct approach is to judge the solicitor by the standard of the 'reasonably competent practitioner' specialising in whatever area of law the defendant holds himself out as a specialist."*

136. Mr Petts also referred me to *Neighbour v Barker* [1992] 2 EGLR 149, where the Court of Appeal held that a solicitor had not been negligent in advising clients to proceed with a property purchase. The clients had ignored the solicitor's advice to get a survey before exchange, relying on the vendors' representations, which turned out after completion to have been lies. Before discovering that but after exchange, the clients got a survey revealing real problems, but the solicitor advised them to complete as they could not escape from the contract. The Court held the solicitor was not negligent in advising as she did when she did, as she could not have been expected to realise at that stage the vendor had made fraudulent misrepresentations. Scott LJ (as he was) noted Bingham LJ (as he was) had said in *County Personnel v Pulver* [1987] 1 WLR 916 (CA) that:

> *"[L]egal advice…should be in terms appropriate to the comprehension and experience of the particular recipient….[T]he professional man does not necessarily discharge his duty by spelling out what is obvious. The client is entitled to expect the exercise of a reasonable professional judgment. That is why the client seeks advice from the professional man in the first place. If in the exercise of a reasonable professional judgment a solicitor is or should be alerted to risks which might elude even an intelligent layman, then plainly it is his duty to advise the client of these risks or explore the matter further."*

However, as Scott LJ observed:

> *"Whether or not there was negligence must be judged from the standpoint of the time at which the decisions had to be taken. It is not negligent for a solicitor, or any other professional person, to give advice that turns out badly. It is negligent to give advice that fails to come up to the standard of professional competence expected of a practising solicitor."*

137. However, before turning to the allegation of negligence by D1 in failing to investigate whether C had received rent invoices, I will first deal with C's factual allegation that she had actually given the 2011, 2012 and 2013 Rent Invoices to D1. Whilst, as I have said, that is independent of my finding that Mr Dymond did not know about the Rent Invoices, I come to the same conclusion with D1 for three similar reasons:

(1) Firstly, it is true I did not hear evidence from Ms Holman and Ms Talboys because they no longer work for D1 (and Ms Twigg checked with them and after more than a decade have no independent recollection). However, I accept the evidence of Ms Twigg, buttressed by the evidence of Mrs Oldfield at least with the 2011 and 2012 Rent Invoices, that neither these nor the 2013 Rent Invoices were on D1's file which Ms Twigg retained when handing the file to C in 2016. Indeed, it is C's own evidence that the Rent Invoices were not in the papers she received back. Of course, I accept that papers often go missing from solicitors' files, but it is more than a coincidence *none* of these three documents were in D1's file. That supports the conclusion on the balance of probabilities that they were *never* on D1's file because C never actually gave them to D1.

(2) Secondly, that is supported by what is on D1's file – the contemporary file notes prepared by Mrs Holman and Mrs Talboys. As I have explained, those notes are unflinching in detailing the force of C's views, especially in 2013, including the addition to the debt of the 2013 service charge. Yet nowhere is it suggested that C mentioned the 2013 service charge demand itself (other than a passing reference to the electricity costs going up, which as I suggested probably referred to the major works invoice not the 2013 Rent Invoice). Certainly, there is no reference in the file notes to C mentioning at any point that she was being demanded rent by Southwark. So, Ms Holman and Ms Talboys were entitled to assume that was not happening, given what Southwark had said and given C had not corrected that – despite Mr Dymond explaining the significance of rent.

(3) Thirdly, it is not C's actual evidence that she gave any of the Rent Invoices to D1 (or even mentioned them). At its height, she suggests she 'must have' done so. But in evidence, C accepted she had no recollection of handing them over but they 'must have been' in the unopened post she gave Ms Holman. But that is assertion not evidence – C did not know what was in it as she could not bear at the time to open it. She was under stress and that naturally clouds her memory.

138. Therefore, I turn to the allegation that Ms Holman or Ms Talboys (or D1 generally) were negligent in failing to investigate whether there had been demands for rent, by the standards of the reasonably competent solicitor practicing in Legal Aid with expertise in vulnerable clients (*Green*). In short, I reject that allegation too, albeit for rather different reasons as for Mr Dymond, reflecting their different duties/standards of care:

(1) Firstly, whilst it is true that after 1st November 2012, lawyers at D1 understood the significance of rent demands, it is also true that they were entitled to assume that C understood the significance too. Yet C never suggested to anyone at D1 that there were any rent demands and never gave them any reason to doubt what Southwark's evidence said that there had been no new rent demands or payments since the right to forfeit arose. Just like the solicitor in *Neighbour*, Ms Holman, Ms Talboys and the other lawyers at D1 were not on notice that what the third party was saying was wrong and were entitled to advise on that basis. Indeed, as Mr Petts says, the present case is even clearer than *Neighbour*, because in that case the solicitor knew there had been a negative survey. In this case the lawyers at D1 had no reason to believe at all there had been rent demands. C's wrath was focused on Mr Strauss' evidence about '£20 payments' - not Ms Sorbjian's evidence about the absence of rent demands/payments.

(2) Secondly, even though I accept Ms Holman and Ms Talboys were experts in housing, debt and dealing with vulnerable clients, C had already shown in her reaction to Mr Dymond's advice in conference that she was perfectly capable of voicing her concerns and views. She was not the classic inexperienced client Jackson LJ may have contemplated in *Minkin*. Indeed, the lawyers at D1 knew she was experienced in litigation on service charges. They had to deal with many concerns from C – Ms Holman about the consent order in January 2013 and Ms Talboys about the service charge in April. Yet at no point did C raise the existence of rent demands, even when complaining about the 2013 service charge. They could assume C would be forthcoming with information and her views – they had to deal with the robust expression of those views regularly. Yet C never mentioned receiving rent invoices, so they were not put on enquiry.

(3) Thirdly, D1 were never told by Mr Dymond to investigate rent demands. I have found that was not negligent by him, but on this particular aspect, it lends some support to the conclusion that it was not negligent of them not to do so either.

Was the Mary Ward Centre entitled to rely on Mr Dymond's advice ?

139. That last point leads onto 'the reliance principle' which Turner J considered earlier in this case in *Christie (No.1)*. He allowed the appeal against Master McCloud's decision that D1 was entitled to rely Mr Dymond's advice because he held it was inappropriate for summary judgment as further evidence might emerge. Whilst Turner J cited C's evidence about Southwark's loans as an example, that has turned out to go nowhere, not least as C had already been refused a loan (which Turner J does not appear to have been told). However, if I may respectfully say, the wisdom of Turner J's decision is borne out by the fact the 'Rent Invoice' point only emerged recently. Whilst I have rejected it for both defendants, in D1's case it did not turn on 'the reliance principle'.

140. On that principle itself, Turner J endorsed and supplemented Master McCloud's summary of the law, which I shall repeat from Turner J's judgment at [43] and [48]:

> *"[The Master] referred to the relevant passages in Jackson and Powell. They provided [at] 11-119: 'The law has been helpfully summarised in two Court of Appeal decisions. In Locke v Camberwell HA it was stated in these terms: "(1) In general, a solicitor is entitled to rely upon the advice of counsel properly instructed.*
>
> *(2) For a solicitor without specialist experience in a particular field to rely on counsel's advice is to make normal and proper use of the Bar.*
>
> *(3) However, he must not do so blindly, but must exercise his own independent judgment. If he reasonably thinks counsel's advice is obviously or glaringly wrong, it is his duty to reject it."*
>
> *In Ridehalgh v Horsefield the court amplified the last point: "A solicitor does not abdicate his professional responsibility when he seeks the advice of counsel. He must apply his mind to the advice received. But the more specialist the nature of the advice, the more reasonable is it likely to be for a solicitor to accept it and act on it'....As Simon J observed in Regent Leisuretime Ltd v Skerrett [2005] EWHC 2255: Even in a specialist area the court will consider the extent to which it is reasonable to rely on the advice of counsel. For example, the acceptance of poor advice in a specialist field may be reasonable by a solicitor who is inexperienced in the field but unreasonable where the solicitor is also experienced in the specialist field."*

141. It may be helpful to put that legal summary in a little context now that it is to be applied at trial not at summary judgment. *Locke v Camberwell HA* [1991] 2 Med LR 249 (CA) was a Wasted Costs case in the context of a clinical negligence claim on Legal Aid. A (then-common) generalist 'high street solicitor' re-instructed a barrister to advise on medical evidence, who gave a brief advice that the claim was meritorious to enable the Legal Aid certificate to be extended. It later turned out there was a problem with the medical evidence, the claim was discontinued and the defendant Health Authority claimed Wasted Costs against the solicitor and barrister. The High Court Judge made those orders but was overturned by the Court of Appeal. Taylor LJ explained the barrister had not been negligent to briefly advise to extend Legal Aid given he had advises at length previously; and a generalist solicitor was entitled to rely on that. *Ridehalgh* remains the leading case on Wasted Costs, which held amongst other things at pgs.478-479 that 'negligence' for Wasted Costs was no less a hurdle than the lawyer's standard of care in the tort of negligence. In one of the joined cases in *Ridehalgh - Watson v Watson* - solicitors were not negligent in rejecting a proposed settlement in reliance on advice from specialist counsel in matrimonial and property.

142. The principles in *Locke* elaborated in *Ridehalgh* were then applied to a lawyer's negligence claim in *Green*, where Douglas Brown J added a reference to *McFarlane:*

> *"The solicitor goes to counsel at the point when as between possible choices, a choice can only be made on the basis of a judgment which is fallible and may turn out to be wrong."*

Nevertheless, Douglas Brown J in *Green* held that specialist counsel was negligent in advising an application for specific performance of a matrimonial agreement which did not comply with s.2 Law of Property (Miscellaneous Provisions) Act 1989 as required. Moreover, the solicitor himself was a specialist in matrimonial property who had experience in transfers of land and whose idea specific performance had been; and as he had not questioned Counsel's (legally wrong) advice, he was himself negligent. By contrast, in *Skerrett*, at first instance Simon J held that a solicitor who had taken over litigation halfway-through was (i) retained by shareholders not their company and owed it no duty of care, only them; and (ii) was entitled to rely on the advice of a specialist barrister on a complex point ('reflective loss' for shareholders) who had been involved in the case for much longer. Simon J's decision was upheld by the Court of Appeal.

143. Turning to the present case, in *Christie (No.1)*, Turner J said at [46], [48] and [51]:

> *"46. Of central importance to the Master's conclusion was her finding that [D1] were 'generalist solicitors' and 'without specialist experience'.*
>
> *48. In this case, the first defendants at least arguably held themselves out as having specialist expertise in housing and debt. As the first defendants admit.. the claimant attended a County Court hearing on 18 June 201[2]. The duty solicitor, Sarah Pearce assisted her and advised the claimant to contact the first defendants. Ms Pearce could be taken to know of the first defendants' areas of practice having been a former colleague of Susan Holman of the first defendants who went on to represent the claimant in the circumstances which form the basis of the present claim. The extent to which the first defendants' expertise may have extended beyond that of a mere generalist is a matter upon which some evidence may well shed light and is relevant to the reliance defence.*
>
> *51. In my view, the level of expertise of the first defendant was not susceptible to a confident characterisation of 'mere generalist' on the very limited information available to the Master."*

144. In my judgment, Turner J's analysis in *Christie (No.1)* shows 'the reliance principle' should not be applied mechanistically, as perhaps Master McCloud did. This is especially true as the legal marketplace has changed so dramatically in the last 35 years since *Locke*. The 'high street generalist' in that case is an increasingly rare breed, as solicitors now increasingly specialise. That trend was noted by Brooke LJ as long ago as 1999 in *Balamoan*, which is not a 'reliance' case but is highly relevant. He said:

> *"There is a tradition in this country that the courts do not need expert evidence [in lawyers negligence cases] because judges will be familiar with the standard of care which is reasonably required of lawyers and do not need evidence to help them…. As the practice of the law becomes more and more specialised, the existence of this tradition may give rise on occasion to difficulties."*

However, the fact that solicitors and barristers are now more often specialists has not rendered 'the reliance principle' redundant, but it does mean it is not enough simply to ask whether a solicitor is a 'generalist' or a 'specialist'. As Simon J said in *Skerrett*, it is helpful to focus on *the solicitor's personal experience* in the *particular specialist field* addressed in the barrister's advice. It may not always be *that solicitor's specialism*.

145. Indeed, that point seems to me of particular importance when considering solicitors acting on Legal Aid. It is apposite first to note what Brooke LJ then added in *Balamoan*:

> *"In the present case, the court is concerned with the standard of care reasonably to be required of a solicitor in a small country town who is instructed by a legally aided client to pursue what appears to be a comparatively small claim. It is of critical importance for the courts not to apply a too rigorous standard in these circumstances, because when pursuing such a claim a solicitor must always be anxious not to incur costs which he cannot, if successful, recover from the other side, because otherwise the Legal Aid Board's charge will reduce his client's compensation."*

That last point remains true, but with the reduction of Legal Aid over the last 35 years since *Locke*, both in the type of cases it covers and the number of solicitors undertaking it, the work itself has become increasingly specialist. Indeed, I took that into account in C's favour when evaluating D1's conduct in investigating her claim because of Legal Aid solicitors' expertise in dealing with vulnerable clients. However, the position on Legal Aid solicitors' expertise on different fields of Law is rather different. Certainly, in the fields where they regularly act – e.g. common issues of social housing law with an assured or secure tenant – Legal Aid solicitors are unquestionably specialist. Within their specialist field, like the matrimonial property specialist in *Green*, solicitors cannot simply rely on a barrister's advice without exercising their own – expert – independent judgment on a particular point. Moreover, that expert judgment may well enable them to tell more easily whether the barrister's advice is 'obviously or glaringly wrong'.

146. However, to slightly develop what Taylor LJ said in *Locke*, just as it is a normal use of the Bar for a solicitor to get a barrister's advice on a particular field where they have no specialist experience, it is normal for a solicitor to get a barrister's advice on a point outside their specialist experience (assuming that they have sufficient competence and expertise to be handling the case in the first place). That will be a particular issue for specialist Legal Aid solicitors who need a barrister's advice on a technical point that does not commonly occur in the normal run of their caseload, since unlike solicitors in large commercial firms, they cannot simply refer the client to a colleague in the relevant department, as there probably will not be one. Nevertheless, even then the Legal Aid solicitor must still exercise their own independent judgment on the barrister's advice.

147. In my judgement, that is precisely the position in the present case. As C rightly argued, Ms Holman and Ms Talboys were specialists in debt and housing (and Ms Holman in welfare benefits too). As Turner J also noted, the Mary Ward Centre held itself out as having specialism in housing and debt - and I would add, did have that specialism. As he added, this is doubtless why the Duty Solicitor Ms Pearce referred C to Ms Holman, whom she knew as a former colleague. However, whilst I have not heard from Ms Holman and Ms Talboys, I accept Ms Twigg's evidence that they and D1 generally had very little experience in the technicalities of leases and relief against forfeiture. That simply only rarely arose in the more typical social housing cases they conducted. Therefore, it was wise of Ms Holman and Ms Talboys to instruct a true specialist in that field - Mr Dymond - and in my judgement, they were entitled to rely on his advice. It is clear they also exercised their own individual judgment. Ms Holman in November 2012 directed C to equity release schemes with which she was familiar from her specialism in debt and in January 2012 checked with Mr Dymond whether the Equality Act 2010 might afford a defence. Ms Talboys specifically instructed Mr Dymond for the fourth time in April 2013 on the service charge issue but then continued to deal with C herself. However, neither of them had significant experience of forfeiture generally, let alone the technical issue of waiver on which Mr Dymond had advised. As it happens, as I have found, that advice was not only not negligent but entirely sound in any event.

148. However, as I have explained, Mr Dymond did not in fact advise C on the three remaining topics on the List of Issues which face D1: (i) the Service Charge Loan point (although he thought about it, he did not include it in his advice); (ii) the ESA point; and (iii) Judicial Review. Therefore, 'the reliance principle' has no real application to these points (as opposed to the two waiver points on which he did advise and which D1 was entitled to rely: the £20 payment waiver point and the discontinuance waiver point). The focus must therefore simply be on the ordinary solicitor's standard of care, helpfully expressed in the present context of 'specialism' by Douglas Brown J in *Green*:

> *"A solicitor should not be judged by the standard of 'a particularly meticulous and conscientious practitioner'. The test is what the reasonably competent practitioner would do having regard to the standards normally adopted in his profession…[T]he correct approach is to judge the solicitor by the standard of the 'reasonably competent practitioner' specialising in whatever area of law the defendant holds himself out as a specialist."*

149. By this standard, I have no doubt whatsoever that Ms Holman, Ms Talboys and indeed D1 generally fully discharged their duties of care to C on those three points:

(1) On the Service Charge Loan point, Ms Holman, Ms Talboys and D1 generally were not told by C that she had applied for and been refused a service charge loan. She never asked them to follow that up with Southwark. In any event, it was always hopeless for the reasons discussed earlier. A far better source for a loan would have been 'equity release' (since C had plenty of equity) which Ms Holman specifically raised with C but which C has not said that she did anything about. Even if she did explore it and it was refused, that simply underlines that the only realistic option was for C to sell her Flat to avoid forfeiture of it.

(2) On the ESA point, it was Ms Holman who told C about the 26-week capital disregard for ESA in the first place. However, Ms Holman never told C there as a 'rent contribution' because there was not – that was C's misunderstanding. Nevertheless, the ESA rule would have enabled C to sell her Flat but not lose her benefits. This was an example of Ms Holman actively helping C.

(3) On the Judicial Review point little needs to be said. Ironically, as specialist Legal Aid Housing lawyers, I am content to assume in C's favour Ms Holman and Ms Talboys were familiar with Judicial Review. But as discussed earlier, there were no grounds whatsoever to pursue it, which is why it was not pursued.

150. Indeed, I go further. Ms Holman, Ms Talboys and D1 were more than 'reasonably competent' as practitioners in the fields of debt and housing. They recognised when they needed specialist input from Counsel and got it. They patiently took C's instructions (even when intemperately expressed as in January 2013). They dealt efficiently and effectively with Southwark and the Court, skilfully negotiating consent orders (including Ms Talboys drafting the consent order in April which Mr Dymond rightly noted preserved C's rights to challenge the service charge). Indeed, Ms Talboys even offered to assist C with an application for relief from forfeiture after C had dis-instructed D1, which went above and beyond the call of duty. In my judgement, as with Mr Dymond, it is regrettable that C has come to blame the Mary Ward Centre (a legal charity which provides invaluable assistance to vulnerable people such as herself) for Southwark's actions – albeit in response to C's own decision of principle not to pay service charges for several years. I acquit the Mary Ward Centre of any negligence.

151. For that reason, I can take the issues in the remainder of my judgment very shortly – and perhaps not in quite the detail the skill of the submissions – by C as well as Counsel – deserve. But as the remaining issues only matter if I am wrong in the conclusions on liability I have already reached, I will try not to extend an already overlong judgment. I will deal first with causation of damage, then with limitation and finally valuation.

Causation of Damage

Legal Principles

152. I can take the relevant principles gratefully from Mr Petts's contribution to D1's Skeleton Argument – a joint effort with Mr Erridge and Mr Lipson (whose contributions I return to later). However, I will supplement that with points made by Mr Maxwell and C about 'trials within a trial' (but I did have to remind her in submissions that to get to causation, she first had to prove negligence, which I have found she has not done).

153. Following the Supreme Court cases of *Perry v Raleys* [2019] 2 WLR 636 and then *Edwards v Hugh James* [2019] 1 WLR 6549 (the latter upholding the Court of Appeal [2018] PNLR 30 to which I was referred), a claimant has two hurdles on causation:

(1) A claimant must prove, on the balance of probabilities, she would have brought a particular claim or raised a particular defence that she did not raise in time;

(2) If she does so, she must also prove that claim or defence 'had a real and substantial not merely negligible prospect of success'.

As Lord Briggs explained in *Perry* at [15]-[26], as the balance of probabilities applies to stage (1), there is no difficulty having a full trial of that issue after the event. However, that does not apply to Stage 2, which does not turn on what the claimant would have done absent the negligence, but what a third party would have done – i.e. the original other party to the litigation (if the issue is settlement) or the original Court. That issue is ordinarily tried on a 'loss of a chance' basis, where the Court trying the professional negligence claim assesses the chance the claimant would have originally won or settled as a percentage of the total value of their claim rather than 'all or nothing' In those circumstances, Courts are wary of having a 'trial within a trial', as stated by the Court of Appeal in *Hanif v Middleweeks* [2000] Lloyds Rep PN 920, where the trial judge rightly assessed the claimant's 'loss of a chance of success' at the original trial on a factual issue which had been struck out due to his original solicitors' negligence.

154. However, as both the Court of Appeal and Supreme Court (which approved it) stressed in *Edwards*, even if a claimant proves they would have pursued a claim or defence, that does not always mean that they will recover a percentage of their damages reflecting a loss of a chance. As Lord Lloyd-Jones said in the Supreme Court in *Edwards* at [23]:

> *"For the claim by [the claimant] to succeed, however, it is also necessary to prove loss. There is a legal burden on the[m] to prove in losing the opportunity to pursue the claim [they] lost something of value, ie that [the] claim had a real and substantial rather than merely a negligible prospect of success. It is only if the [claimant] can establish [the] chances of success in pursuing [the original claim] were more than negligible that it is appropriate to go on to evaluate those chances on a loss of chance basis by making a realistic assessment of what would have happened had the original claim been pursued."*

As Irwin LJ had explained in the Court of Appeal in *Edwards* at [63], at Stage 2, this requires a trial of that issue (as opposed to a full-blown 'trial within a trial'):

> *"[S]ometimes examination of the original claim will demonstrate that the lost claim, or part claim, was completely hopeless, in which case the professional negligence claim is worthless. Sometimes the lost claim would have been unanswerable, in which case the full value of the original claim should be recovered. In many cases, the value of the original lost claim cannot be assessed as hopeless or cast-iron, and the court must assess a percentage prospect of success as applied to what would have been recovered if the original claim had been recovered in full. It is important to stress that in all three cases the assessment is of the value of the lost claim, not a trial of the original [claim]…"*

155. *Vision Golf*, on which C relied, is an example of a case that would have succeeded were it not for the lawyer's negligence. Part of sub-divided land had been forfeited, but solicitors were instructed to pursue an application for relief promptly, were put in funds to discharge all the liability to the landlord who consents, but negligently failed to apply. Lewison J rejected the solicitors' argument that their negligence caused no damage because an application for relief could have been made later. The client tenant was entitled to the full claim (assessed in a separate judgment I return to later). By contrast, if a claim or defence only had a negligible prospect of success on its merits, its 'nuisance-value' did not give a lost claim value, as Lord Briggs said in *Perry* at [26]:

"In Kitchen v Royal Air Force Association [1958] 1 WLR 563… Lord Evershed MR said…at p 575 "[I]t is not enough for the plaintiff to say: 'Though I had no claim in law, still, I had a nuisance value which I could have so utilised as to extract something from the other side and they would have had to pay something to me in order to persuade me to go away'." If nuisance value claims fall outside the category of lost claims for which damages may be claimed in negligence against professional advisors, then so, a fortiori, must dishonest claims."

The Present Case

156. The first question arises if I am wrong on liability and it was indeed negligent of either Mr Dymond and/or the Mary Ward Centre not to make on behalf of C an application for relief from forfeiture to apply for a Service Charge Loan, 'leverage' in securing a loan or charge by the benefits impact of the ESA disregard and/or Housing Benefit; and/or applying for transfer to the Administrative Court to claim Judicial Review. It is not disputed that if advised to run them, C would have done so – at least on the balance of probabilities - so the first stage in *Perry* is satisfied. However, in my judgment, the second stage is not proved. For the reasons I have already given, all those arguments would have been bound to fail, or at least only have a 'negligible prospect of success' (*Edwards*) and so any negligence did not in those respects cause any 'damage'. In my judgment, at best, all these arguments would have been classic 'nuisance claims' as in *Kitchen* (even though not 'dishonest' as in *Perry*). Therefore, even if C 'lost' the chance to argue them (which she could have before DDJ Couch), she lost nothing of value.

157. The '£20 payments waiver' and 'discontinuance' points – raise an interesting issue I mentioned at the start of this judgment about causation when a litigant-in-person runs the point they say their lawyers should have run and it fails. However, I shall deal with that briefly as I find causation of damage not proved here, for three other reasons:

(1) Firstly, as with the 'relief'/'leverage' arguments, whilst again it is not disputed that on the balance of probabilities C would have wanted the '£20 payments' and 'discontinuance' defences run (indeed she was unhappy with Mr Dymond's advice that they could not be run), even if they were not 'bound to fail', for the reasons discussed above, they only had negligible prospects of success on the merits for the reasons Mr Dymond gave in his November 2012 Advice (even ignoring their later dismissal). So, on the *Edwards* test, C lost nothing of value.

(2) Secondly and alternatively, again even ignoring their rejection by DDJ Couch in June 2013, even if the '£20 Payments' and 'discontinuance' points had 'value' as 'leverage' to induce Southwark to agree to a loan or charge for C, that is not 'damage' that is compensable in negligence: *Kitchen*. This principle would be particularly relevant if I was right earlier to find that Mr Dymond's assessment of the merit of the '£20 Payments' point as not arguable was correct, but I should have found it negligent of him not to plead it anyway to lever a loan or charge given DJ Pearce's comments. Whilst of course that would not be 'dishonest' as in *Perry*, it would be an impermissible 'nuisance claim' as noted in *Kitchen*, as it would be to plead an unmeritorious point that would be exposed at a hearing if a judge were taken to the law and evidence DJ Pearce was not.

(3) Thirdly, quite aside from the causation complexities of loss of a chance cases, given a claimant's requirement to prove the claim or defence had a 'real and substantial rather than merely a negligible prospect of success' *(Edwards)*, it must surely be permissible to take into account the known fact that the arguments actually did fail when they were raised later, at least unless the argument failed in part due to that negligence. C relies on the point that DDJ Couch referred to the recital by DJ Worthington in November 2012 that Southwark had a right to forfeit the lease, which she complained Mr Dymond should have contested. I have explained that was not realistic, but wven if he was negligent not to do so, that was only DDJ Couch's second reason for rejecting the waiver defences. His primary reason was the same as Mr Dymond's analysis – that payments towards a pre-existing judgment debt did not unequivocally recognise the continuing existence of the lease. It would be very odd if a judge dismissed an argument for similar reasons as a barrister advised against running it, yet their disgruntled client could still argue the defence had a more than negligible prospect of success even though it failed. That would affront common-sense and justice and so DDJ Couch's decision should be admissible on the principle in *Mulholland v Mitchell* [1971] AC 666, to which Underhill LJ referred in *Edwards* in the Court of Appeal at [78].

158. If I am wrong about that last point, it raises the interesting causation question (to which I will only sketch an answer) – whether a claimant who unsuccessfully runs a point which their lawyer negligently failed to run can prove that negligence caused damage.

In *Edwards* the *Bwllfa* principle (after *Bwllfa v Pontypridd Waterworks* [1903] AC 426) - that a Court should not speculate on damages when it knows what happened - was raised but the Supreme Court decided it did not apply on the particular facts of the case. *Edwards* concerned a statutory compensation scheme for miners with 'Vibration White Finger', rather than ordinary civil litigation. Lord Lloyd-Jones said that if a claim was negligently not made and would have succeeded on the available evidence at the time, the defendant solicitors could not rely on subsequent medical evidence suggesting the injury was not as grave as it first appeared, at least in the absence of dishonesty as in *Perry.* This was because if a claim had been made, the scheme would not have sought such further medical evidence. That is a far cry from the position in the present case. However, in *Edwards* in the Court of Appeal, Irwin LJ accepted at [69] that in lawyers' negligence cases involving ordinary civil litigation, evidence or information post-dating the negligence can be taken into account in assessing causation *if it would have been available by the time of the notional trial date*. By analogy in my judgment so too would the actual result of the actual trial, provided the argument did not fail because of the negligence. This applies as much to a situation where a litigant-in-person ran the point which failed as it would if new solicitors ran the point which failed. Defendant lawyers can justifiably complain of a failure to mitigate if a good point is not run which could have been (unlike in *Vision Golf* when it was too late to run it). It seems to me they can also justify say that even if they were negligent not to run a point, if it failed on its merits not due to their negligence, then causation of damage has not been proved. At least that would be my provisional view, without being taken to all relevant authority.

159. If I am wrong about that as well and the '£20 payments' point was negligently not run and had more than negligible prospects of success, Mr Maxwell submitted that it only just crossed that threshold and the appropriate loss of a chance was 15%. Whilst of course this is a quintessentially impressionistic exercise and the benefit of any doubt should go to the claimant (*Edwards* CA at [64(4)]), I agree. This scenario might arise again if I was right to find that Mr Dymond's assessment of the merit of the '£20 Payments' point as not arguable was correct, but it were considered to be negligent of him not to plead it anyway to lever a loan or charge given DJ Pearce's comments, but it were not a 'nuisance point'. In those circumstances, the prospects of success would depend not on legal merit, but on whether Southwark made the right argument, the chance they might not do so would have been very slim – no more than 15% at most.

160. By contrast, if I am wrong on liability and it was indeed negligent or either Mr Dymond and/or the Mary Ward Centre not to raise the Rent Invoice argument on C's behalf (at least about the 2012 Rent Invoice), Mr Maxwell and Mr Petts fairly conceded both that (i) C would have wanted the defence raised on balance or probabilities; and (ii) that it had more than a negligible prospect of success. Indeed, as Mr Maxwell fairly accepted, Mr Dymond straightforwardly accepted in evidence that the defence had a very good prospect of success and so there should no discount on the basis of a loss of a chance as Irwin LJ also acknowledged in *Edwards* and as was the case in *Vision Golf*. I accept that – indeed that candour and honesty by Mr Dymond – when he could doubtless have tried to hide behind technicality – is one of the main reasons I accepted his evidence. Therefore, on the 'Rent Invoice' argument, I accept causation is proved in full.

Limitation

Legal Principles

161. However, that last conclusion brings me directly onto the limitation issue, which really comes down in the end to whether actionable 'damage' was sustained by C before 15th July 2013 (for example sustained by DDJ Couch's possession order on 28th June 2013). If so, the claim would be out of the six year limitation period for tort when it was issued on 25th July 2019. However, if damage was only sustained after 15th July 2013 (i.e. by the sale of the Flat on 30th July 2013), C's claim would be in time.

162. I am indebted to Soole J in *Christie v Mary Ward Legal Centre (No.2)* [2024] PNLR 2 for focussing the issues on limitation in the present case. Despite Counsel (and C) referring me to numerous authorities on this issue, since it is now academic unless I am wrong on liability, I will deal with it very shortly and by focussing on the principles and points made by Soole J (which did not simply turn on it being an appeal on summary judgment). As Soole J said at [22] and [63], the relevant principles were set out by Clarke LJ (as he was) in *Hatton v Chafes* [2003] PNLR 24 (CA) at [12]:

> *"(i) A cause of action in negligence does not arise until the claimant suffers damage as a result of the defendant's negligent act or omission.*
> *(ii) The damage must be 'real' as distinct from minimal…*
> *(iii) Actual damage is any detriment, liability or loss capable of assessment in money terms and includes liability which may arise on a contingency…*

> *(iv) The loss must be relevant in the sense that it falls within the measure of damages applicable to the wrong in question…*
> *(v) A claimant cannot defeat the statute of limitations by claiming only in respect of damage which occurs within the limitation period if he has suffered damage from the same wrongful act outside that period…"*

163. As Soole J went on to say in *Christie (No.2)* at [62]-[63] and [78], this case (especially given my liability findings) does not require consideration of any supposed tension between *Hopkins v Mackenzie* [1994] PIQR 43 and *Nykredit v Erdman* [1997] 1 WLR 167 (HL), *Khan v Falvey* [2002] EWCA Civ 400 and *Berney v Saul* [2013] EWCA Civ 640; nor *Pegasus Management v Ernst & Young* [2008] EWHC 2720 (Ch), which as Mr Erridge submitted, is related to professionals engaged for transactions, not litigation.

164. The only addition required to the *Hatton* principles is the point echoing *Berney* by McCombe LJ in *Holt v Holley & Steer Solicitors* [2020] PNLR 26 (CA) (to which Soole J was not referred) at [59] (albeit a case about negligence in a matrimonial finance case):

> *"If one party, owing to a solicitor's negligence, loses the opportunity to adduce the expert evidence that puts the case in the best possible light then the value of that party's claim is inevitably diminished. [A]t that stage (as in any other civil claim) an important and identifiable part of that party's 'armoury' has gone."*

The same applies, in my view, to loss of a defence. If that loss is caused by negligence, the damage is suffered when the defence is lost, not on some later consequence of that.

The Present Case

165. As Soole J said in *Christie (No.2)* at [67], not all costs or 'damage' to C were necessarily consequent on Mr Dymond's advice (or indeed D1's conduct) so one cannot necessarily treat all the arguments the same way. Whilst Soole J in *Christie (No.2)* at [79] declined Mr Maxwell's invitation to find that damage to the 'defence' arguments at least was sustained when the possession order was made on 28th June 2013, that was because DDJ Couch permitted an application for relief from forfeiture and Soole J said there was still a live issue whether Mr Dymond was negligent in failing to advise on the loan. However, if I am right that there was no negligence by either Defendant in relation to any potential application for relief (whether the service charge loan, ESA disregard, judicial review or anything else), the basis for that view has obviously been superseded.

166. On my findings of fact, there never was a viable application for relief from forfeiture to avoid sale of the Flat, at least unless C had found a loan provider, such as equity release. I endorse the views in Mr Dymond's November 2012 and April 2013 Advices. Therefore, even if (contrary to my finding) the failure of the defence to forfeiture to avoid a possession order was caused by the negligence of either or both defendants, then as Mr Erridge submits (adopting Mr Maxwell's argument to Soole J), the loss C sustained caused by that negligence was indeed sustained when that defence was rejected by DDJ Couch on 28th June 2013, even though he made provision for a potential application for relief from forfeiture. Once the possession order was made on 28th June 2013, C suffered real damage, detriment and loss, even before she lost the Flat itself and cannot rely on that (perhaps greater) damage within the limitation period to avoid the fact she suffered real damage, detriment and loss outside it: *Hatton*. The value of her claim was not just diminished as in *Holt*, she lost her defence and the only chance of remaining in the Flat given she had no viable application for relief. If so, C lost viable defences to the forfeiture on 28th June 2013 and so her claim is out of time.

167. Indeed, as Mr Erridge submitted, it goes further. Even if there were a viable claim for relief from forfeiture, on the principles discussed in *Magnic, Maryland, Inntrepreneur* (and *Woodfall*), as Mr Dymond advised, any realistic practical application for relief would have required C to pay not only the judgment debt, but up-to-date arrears and costs. That is a measurable cost of the (on this hypothesis contrary to my findings, negligently caused by the Defendants) loss of a waiver defence sustained on 28th June 2013 even if C's potential to make a relief application subsisted afterwards. For that alternative reason (which was not argued before Soole J as far as I can tell), if C lost her defence to forfeiture by the negligence of either or both Defendants, she still sustained damage completing her cause of action on 28th June 2013 when the possession order was made, even if she did have a viable claim for relief from forfeiture. Accordingly, C's claim was issued out of limitation and fails for that reason alone.

168. These conclusions that C's claim is out of time presuppose that she did not lose her right to claim relief from forfeiture due to the Defendants' negligence (whether or not she still had a viable application for relief). If she did lose that application through their negligence, then the position remains as Soole J expressed it and limitation is no defence. For the reasons he gave, I would not have found damage before 28th June 2013:

(1) Any diminution in the value of C's defence or application for relief (as opposed to the value of her Flat) was not sustained until the possession order on 28th June 2013. (All that Soole J concluded in *Christie (No.2)* at [77] was that there was a real prospect of a finding of fact that it was not until after 15th July 2013. However, on the findings of fact I have now made, that has been superseded – as Soole J anticipated it might be at trial in his judgment at [81]).

(2) If an application for relief from forfeiture was lost by negligence, I respectfully agree with Soole J that earlier costs orders do not constitute damage prior to 28th June 2013 as DDJ Couch reserved all the costs to such an application for relief.

(3) Likewise, the fact that C incurred solicitor's conveyancing costs does not mean damage accrued prior to 15th July 2013, as it not clear she incurred that liability until the sale on 30th July 2013 and in any event those costs (£1169) were not 'real measurable damage' caused by the negligence, but the costs of mitigation.

169. Having said that, I find C's claim is out of time. That is unsurprising. Even though C complained about the Defendants in August 2013, she did not issue proceedings until almost six years later. It may be that between February 2017 and February 2019, she was dissuaded by the GCRO, but that was only made after she had pursued Southwark in litigation for over three years. Moreover, if C had issued proceedings in March 2019, just after the GCRO expired, she would have been in time. She has not explained why she did not do so. She does not have to - but cannot say it was anything but her decision.

Valuation

170. Finally, I come to valuation, which I will deal with very briefly given my conclusions on liability, causation and limitation. The expert valuation evidence of Mr Dunsin for C and Mrs Harris for the Defendants agreed that C sold her Flat for the market value in July 2013 of £290,000. Moreover, Dr Dunsin and Mr Harris agreed there were both leasehold and freehold properties available for C to purchase in the Southwark borough of London in 2013-2015 for a price range of £200,000 to £275,000. The only issue of disagreement between the experts was the extent the Flat had risen in value since. On that issue, Mr Dunsin estimated the Flat's value in October 2024 as £450,000 (although he accepted £440,000 would be a reasonable price). Mr Harris considered the value of the Flat would be £410,000 to £425,000. This is not a dramatic differential in price.

171. Whilst it is academic, I accept the evidence of Mr Harris. As Mr Lipson pointed out in cross-examination of Mr Dunsin, both adopted a 'comparable property' methodology (which is appropriate: see *Vision Golf v Weightmans (No.2)* [2007] PNLR 8). However, Mr Harris' reasoning is more detailed and analytical (especially in a schedule), whereas the approach of Mr Dunsin was more impressionistic and slightly more vague. I do not doubt the expertise of either expert, but given the difference between them is so modest, I prefer the more detailed analytical justification of Mr Harris. I find the value of the Flat is £425,000 (which is only £15,000 less than Mr Dunsin's lower estimate anyway).

172. However, in my judgement, that is academic – and not just because of my findings on liability, causation and limitation, but also on the principles of valuation of damage which Mr Maxwell developed in submissions. As he says, there are three separate reasons why C's loss should be limited to the date of sale (so she has avoided her loss - indeed, as of 27th June 2024, she still had £224,365.79 of the proceeds of sale):

(1) As confirmed in *Alywen v Taylor Johnson* [2002] PNLR 1 (CA), damages are generally assessed at the date of breach – realistically no later than April 2013 (although the value of the Flat when sold in July 2013 is a reasonable proxy for that). When a property is lost through lawyers' negligence, the loss is normally assessed by looking at the market value of that property at that point, not its market value at some later date taking into account movement in the market. As Arden LJ (as she was) said, assessing value at some other date of the claimant's choosing would cause uncertainty as there would be no finite date for loss. Therefore, the value of the lost asset in July 2013 was £290,000 and the claimant got £290,000, so she has not suffered a (recoverable) loss of value in the Flat.

(2) Secondly – and to similar effect – as Arden LJ said in *Alywen* at [38], movements in the property market are generally outside the scope of the loss covered by a lawyer's breach of duty. In *Manchester BS v Grant Thornton* [2022] AC 783 (SC) Lords Hodge and Sales explained at [13], the scope of the duty is constrained by the purpose of the duty assessed objectively. D1's retainer was to represent C in the forfeiture proceedings and assist her to keep the Flat or its equity, not advise her about a development opportunity. Moreover, the scope of Mr Dymond's duty was even more focussed on the specific instructions he had. The Flat's 2024 value was simply outside the scope of their duties.

(3) Thirdly, if C had used the proceeds of sale to buy an alternative property (which on the joint expert evidence, she could have done in 2013), then that property could well have increased in value as well as the Flat, reducing or extinguishing her loss. C decided not to purchase an alternative as she could have done. I prefer not to analyse that as an issue of mitigation of loss, nor get into the emotive territory of whether C was reasonable in ruling out leasehold properties as she did. However, as Lords Hodge and Sales explained in *Manchester* at [6], losses are only recoverable if they are caused by the negligence, not some new effective cause and are not too remote. It was not foreseeable for the Defendants that C would not use the proceeds of sale to buy an alternative property – that was the very advice that Mr Dymond gave and which D1 supported. Therefore, C's decision not to use the funds to buy an alternative – understandable or not – broke the chain or causation from any negligence and was too remote.

For those reasons, C cannot recover the lost rise in value of the Flat in any event,

173. C also brought various other claims for consequential losses owing to having to relinquish belongings and furniture because of not getting an alternative property. I need not consider them in detail because those losses are irrecoverable for the same reason and in any event are insufficiently evidenced. Likewise, the costs of sale are accounted for as a necessary cost that would have been borne at some point in any event. Therefore, even had C succeeded, I would not have awarded any more than nominal compensation. However, as it is, I dismiss the claim in its entirety.

Result

174. I have rejected all the allegations of negligence against both Defendants and dismiss the claim. Mr Dymond and D1 gave good advice which enabled C to rescue the equity in her property avoiding C losing her only asset. Whilst these proceedings have been dragging on for over five years, they have resulted in the Defendants exoneration of any wrongdoing. I appreciate that will be bitterly disappointing for C and the loss of her Flat has consumed more than a decade of her life because she loved it as not just a financial investment but as her home. I understand her anger that it was taken from her by Southwark when she actually had a good defence. It was no-one's fault that was not deployed: she was very stressed and so did not tell the Defendants, who were blameless.

175. Finally, I add the following practical (and one personal) observations:

(1) It follows from my decision that it would be academic to give C permission to appeal Master Armstrong's decision refusing her expert evidence on the investment opportunity of the Flat and I refuse it. Indeed, quite aside from the reasons Master Armstrong gave and Stewart J gave in a very detailed refusal of permission on paper, I would also simply add the point that such losses would not be permissible on the principles I have just stated in any event.

(2) If C wishes to seek permission to appeal of my judgment, she should make a written application by 21st February 2025 (to give her time to digest the judgment and bearing in mind I will not be sitting in London after 31st January)

(3) As I am dismissing all C's claims against both Defendants, she is experienced enough to know that generally 'costs follow the event' under CPR 44. There appears to be no realistic basis on which she could resist a costs order that she should pay the Defendants' costs of the whole claim to be subject to detailed assessment if not agreed. It is at that stage of detailed assessment, if C wishes, that she can dispute the reasonableness of particular costs incurred by the Defendants. If C disagrees with that order, she can by 21st February request a remote hearing before me about costs and to seek permission to appeal verbally rather than in writing (it would be impractical to arrange that this week). But that would just lead to the likelihood of her incurring more costs. Likewise, if the Defendants seek a payment on account of those costs under CPR 44.2(8), they can apply in writing by 14th February and C can respond by 25th February.

(4) Accordingly, I invite Mr Maxwell (as he is not *pro bono*) by 14th February to submit written corrections to the judgment and a draft order dismissing the claim and ordering C to pay the Defendants' costs subject to detailed assessment if not agreed. I will make that order and hand down my judgment in the absence of the parties unless either party seeks a further hearing as discussed above.

(5) May I leave the case in paying tribute not just to Mr Maxwell for his advocacy but also to Mr Petts, Mr Lipson and Mr Ettridge who represented the Mary Ward Legal Centre *pro bono* in the finest of all legal traditions, as indeed having dismissed the allegations against it, I can now say that Centre reflects.