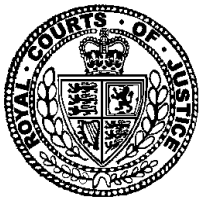

Neutral Citation Number: [2025] EWHC 157 (Comm)

Case No: CL-2024-000085

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

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

Date: 29/01/2025

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between:

(1) JOHN WYLLIE **(2) WYLLIE FINANCIAL SERVICES LIMITED** **(3) A ' SCOTTISH NEWS LIMITED**	**Claimants**
- and -	
(1) DR SANDRADEE THERESA JOSEPH **(2) MR DAVID FOREMAN** **(3) BAR MUTUAL INDEMNITY FUND**	**Defendants**

- -
- -

The First Claimant in person for the **Claimants**
Scott Allen (instructed by **Clyde & Co LLP**) for the **Defendants**

Hearing date: 23 October 2024
Draft judgment circulated to parties: 13 January 2025

- -

Approved Judgment

- -

Mr Justice Henshaw:

(A) INTRODUCTION

1. The Defendants apply by notice dated 13 May 2024 to strike out the claim, brought by the First Claimant, Mr John Wyllie ("***Mr Wyllie***") and two of his companies, which is advanced in the sum of £292,806,729,326,976,872,097,543,994.24, alternatively £377,594,620,661.41, as at 29 March 2024. The claim is made against (1) the First Defendant, a direct access barrister who unsuccessfully attempted to plead (by amendment) a complete and sustainable cause of action for the Claimants in previous proceedings ("***Dr Joseph***"); (2) the Second Defendant, her clerk ("***Mr Foreman***"), and (3) the Third Defendant, Dr Joseph's professional indemnity insurer ("***BMIF***").

2. The Defendants contend that the Particulars of Claim (a) disclose no reasonable grounds for bringing the claim, (b) are an abuse of the court's process or are otherwise likely to obstruct the just disposal of the proceedings, and (c) fail to comply with relevant court rules. They further submit that in all the circumstances, the claim as a whole should be struck out.

3. After considering the evidence and written submissions, and hearing from the parties, I have come to the conclusion that the Defendants' applications are well founded, and that both the Particulars of Claim and the claim itself should be struck out.

4. I record at this point certain recent events following circulation of the draft judgment. I released the judgment for circulation to the parties on 13 January 2025, requesting suggested corrections by 4pm on 15 January. My clerk on that date sent the judgment

to the parties by separate emails. The message for the Claimants was sent to an email address from which my clerk had previously received communications on behalf of the Claimants. On 15 January 2025 Mr Wyllie contacted my clerk to say that that email address was not monitored, and requesting a few days to respond to the draft judgment. I therefore extended the Claimants' time for suggested corrections to 4pm on Friday 17 January 2025.

5. However, later the same day Mr Wyllie sent an email (headed *"Request for Extension to Address Significant Errors and Omissions in Draft Judgment Affecting 45 Million UK Life, Critical Illness, Income Protection, and Medical Insurance Policyholders"*) requesting more time to respond to the draft judgment *"particularly in light of Claimant 1's dyslexia and the court's duty to make reasonable adjustments to requests"*. The email went on say that the Claimants had *"identified several significant errors/omissions that necessitate correction for purposes of reconsideration, appeal, and ensuring the accuracy of Mr. justice Henshaw KC Judgement for the public record"*, and requesting until 12 noon on Friday 24 January *"to provide their comprehensive response"*.

6. I sent a response through my clerk, the substance of which said:

> "In the light of Mr Wyllie's dyslexia, I am willing to give him until 12 noon on Friday 24 January 2025 to provide his suggested corrections.
>
> However, I remind Mr Wyllie that what is requested is suggested "typographical corrections and other obvious errors". Circulation of the draft judgment is not an opportunity to provide "observations", to seek reconsideration, or otherwise to attempt to reargue the case. In addition, it is not strictly necessary for any application for permission to appeal to be made at the same time as providing suggested corrections. The application can be made in advance of or at the 'consequentials' hearing that will follow in the very near future."

7. On Friday 24 January 2025 Mr Wyllie sent an email with nine attachments, one of which was a 132-page document containing a 125-page table inaptly entitled *"Corrections and Obvious Errors Table".* I spent a proportionate amount of time looking through to the document to see whether it included any typographical corrections and other obvious errors properly so called. It begins with some suggested corrections to party names, two of which I have accepted. However, the vast bulk of the document is an extremely lengthy attempt to reargue the case point by point. I consider it to provide further confirmation of comments I make in §§ 94-96 below about the Claimants' conduct of this litigation, and that it underlines the need to bring this saga to a definitive end: in the interests of justice and to avoid the further waste of resources of the court and the Defendants.

(B) SERVICE OF THE APPLICATION

8. The Claimants raised a point about service of the Defendants' application. Mr Wyllie indicated that he was "*all over*" the matter and ready to proceed with the hearing, but

maintained that the application should be dismissed on the ground that it was not validly served.

9. The Claimants gave an address for service of documents upon them in the Claim Form, as required by CPR 16.2(e) read with PD16 § 2.1). However, it was the address of a firm of accountants and therefore not a proper service address for a non-corporate claimants such as Mr Wyllie, who must give an address for service where he resides (CPR 6.23).

10. Mr Wyllie then served a written notice pursuant to CPR 6.24 that the address for service of all three Claimants was a particular address in Paisley, Renfrewshire, Scotland ("***the Paisley Address***").

11. The Claimants did not consent to service of documents by email, so the strike out application was posted by first class post on 14 May 2024 to the Paisley Address using the Royal Mail *"signed for"* service. It was also emailed to and received by Mr Wyllie on the same day, and CE-filed with the court, enabling the Claimants to access it electronically immediately.

12. The Paisley Address is in fact the address of a number of flats, with an external security door and no external letter box. Royal Mail was unable to deliver the envelope containing the hard copy of the strike out application: nobody answered the buzzer on the occasions when Royal Mail attempted delivery, on 15 May and 1 June 2024. Mr Wyllie did not take up an attempt by the Defendants to arrange a time when it would be convenient for him to be in to receive the documents. It appears that the Royal Mail package was subsequently returned to Clyde & Co. undelivered.

13. However, the application was deemed served on the Claimants by post at the Paisley Address on 16 May 2024, pursuant to CPR 6.26. The Court of Appeal in *Diriye v Bojaj* [2020] EWCA Civ 1400 §§ 35-41 held that deemed service under rule 6.26 applies equally to the first class "*signed for*" service. The provisions of section 7 of the Interpretation Act 1978 considered in *Calladine-Smith v Saveorder Ltd* [2011] EWHC 2501 (Ch), to which Mr Wyllie referred, are in my view not relevant in this context.

14. Further, there is no doubt that Mr Wyllie has accessed and read the strike out application, because his own email of 4 June 2024 said that he had downloaded it from the court's CE file, and in numerous communications with Clyde & Co he has complained that he does not agree with the witness statement of Mr Preece in support of the application (one example being his letter of 16 July 2024 alleging that the witness statement was *"highly misleading, factually inaccurate, and blatantly contravenes the statement of truth obligations outlined in the Civil Procedure Rules"*, and another being an email of 23 July 2024 indicating that the Claimants would *"respond substantively"* and that their response would *"address and correct the misleading statements in your witness statement, supported by evidence in support of ("the claimants")' witness statements and a possible contempt of court application against [Mr Preece] and your clients"*). Mr Wyllie made reference to, and cited parts of, Mr Preece's witness statement in the Claimants' 32-page skeleton argument in response to the Defendants' present application.

15. In these circumstances, I am satisfied that the application was validly served on the Claimants on 16 May 2024. I would, in the circumstances outlined above, in any event

have been prepared to direct retrospectively, pursuant to CPR 6.15(2)/6.27, that the actual provision of the documents by email and CE file constituted valid service.

(C) BACKGROUND FACTS

16. I take the background facts mainly from the first witness statement dated 13 May 2024 of Mr Preece, a partner in Clyde & Co LLP, filed in support of the application. They are to a large extent matters of record. Mr Wyllie served a witness statement very late, on 21 October 2024 (two days before the hearing, the lateness apparently being due to recent surgery), which in places refers to Mr Preece's first witness statement. However, the points Mr Wyllie makes about it are essentially matters of law rather than fact.

(1) The arrangements between the Claimants and Arc

17. Mr Wyllie formed a relationship in 2017 with a company called Arc Finance Group Limited ("***Arc***"), whose business was as insurance brokers. This led to an agreement dated 19 July 2017 by which Arc agreed to pay to Mr Wyllie 50% of the commission it received on insurance policies entered into in Mr Wyllie's name or in respect of clients introduced to Arc by Mr Wyllie, subject to a proviso that Arc could claw back any commission payments which were clawed back by insurers from Arc.

18. Mr Wyllie incorporated the Second Claimant, Wyllie Financial Services Ltd ("***WFS***"), on 3 July 2017. It was registered as an Authorised Representative of Arc for insurance business. An introducer agreement was drawn up in October 2017 between WFS and Arc, but the Claimants say that was never signed by WFS and never came into effect; instead the operative agreement between WFS and Arc was dated 16 January 2018. By that agreement – which Mr Wyllie has always accepted superseded the earlier agreement with him personally – WFS was to "*act as an introducer of protection business*" to Arc, and Arc agreed to pay WFS 60% of the net commission it received from insurers in respect of business introduced by WFS, subject again to a proviso that Arc could claw back any commission that was clawed back by insurers.

19. The Third Claimant, A 'Scottish News Limited, ("***ASN***") was incorporated on 29 November 2017. In a pre-action letter dated 2 February 2024, Mr Wyllie has said that if he had received the money he should have done, then he would have:

> "launch(ed) the Your News platform into 195 countries, 44 dependency countries and 65,000 states, cities, towns, villages, hamlets, islands and streets, encompassing 3.2 billion residential and domestic addresses globally. This platform would provide a voice for the voiceless and eradicate misinformation, disinformation, and teen suicides and self-harm by 90%. Additionally [this] would have led to eradicating global fraud by 90% and supporting law enforcement at local, regional, national, global, and helicopter levels. Such an endeavour would revolutionise the media landscape, becoming the ultimate one-stop media authority and shop while upholding accountability for those in power, as and when required, while respecting local and international laws and cultures. This platform would serve as a beacon of education for the world, enlightening those who may be ignorant and unaware, fostering a safer, cleaner

> environment for future generations. Furthermore the claimants would have established funds to seed startup companies, charities and local philanthropic initiatives on a global scale, igniting a ripple effect of positivity and change across communities worldwide. They would have pursued their aspirations of acquiring target companies spanning various sectors, driving innovation and progress…"

20. Mr Wyllie appears to have planned to fund ASN through the commission payments to be received from placing insurance – predominantly life insurance but also critical illness and other similar policies – which payments Arc had agreed to pay to the WFS.

21. Mr Wyllie planned to take advantage of a feature of life insurance practice, by which life insurers can pay out large commissions to brokers on new life insurance policies before they have received much by way of actual commissions on those policies; on the basis that they can claw back those commissions if the policies are cancelled or lapse for non-payment of premiums. Mr Wyllie – apparently encouraged by Arc – intended to take out multiple, very large, life insurance policies on the employees of WFS and ASN, receive his share of the up-front commission on those policies, and use those commissions to fund the start-up and business of ASN.

22. For a while this approach appeared to be working: 484 policies of insurance were placed with various insurers for 44 individuals – an average of 11 polices per individual. WFS received around £688,000 by way of commission share from Arc in respect of these policies. In December 2017 Mr Wyllie was searching for office space in Glasgow for ASN. Adverts were placed for a variety of roles in ASN, and some employment contracts were entered into.

23. The policies required substantial monthly premia to be paid. The Claimants planned for monthly payments of around £2,000 per individual, according to a letter from Mr Wyllie to the CEO of the insurer AIG and a witness statement from Mr Jim Hamilton (the Claimants' accountant) dated 28 January 2020. The documents indicated that the monthly premia for the policies taken out in respect of one individual, Mr Adrian McCallum, totalled £2,176.06. Naturally, over the terms of the insurance policies, the premium payments to insurers would far outweigh the commissions which insurers paid out in respect of those policies. Thus the arrangement at most could be used to provide temporary financing, which would in substance have to be repaid via monthly premium payments which in the long run would exceed the sums advanced.

(2) Cancellation of the policies

24. In about March 2018 insurers began to realise that multiple policies had been set up for various individuals, and (at least on the Defendants' case) that insurance had been taken out for those individuals in sums which far exceeded the value which those individuals could possibly have to WFS or ASN as the case might be – insurance of several million pounds (for example £7.25 million in respect of Mr McCallum) was being taken out in respect of each individual. Insurers therefore began cancelling the policies. Some insurers returned premium payments when the policies were cancelled; others did not, arguing that cover had been in place when the relevant premia had been paid and that therefore no return of premium payments was appropriate.

25. Insurers then sought to claw back the commissions which had been paid to Arc in respect of the policies. Arc was unable to repay insurers the clawback sums demanded, as a large proportion of the commissions had been paid over to WFS. Arc was put into liquidation and its directors were also declared bankrupt.

26. Mistakes appear to have been made by Arc when submitting the applications to insurers for some or all of the policies, in failing to declare to insurers that other policies had been applied for in respect of the same individuals, and in some respects in relation to the information provided to insurers about the individuals in question. In addition, Mr Wyllie contended that Arc had been negligent in failing to request that the policies be written on a group basis and held in some kind of trust for WFS and/or ASN.

27. Mr Wyllie contacted some or all of the insurers but could not persuade any of them to reinstate any of the policies. With no funding, ASN was unable to afford to employ anyone, and those who had signed employment contracts were made redundant.

(3) The compensation claim made to the FSCS

28. Mr Wyllie believed that Arc had been negligent in its dealings with him and WFS and ASN. He sought compensation from the Financial Services Compensation Scheme ("***FSCS***") in respect of Arc's conduct. The Claimants contended to the FSCS that Arc's negligence had caused him loss in respect of commission payments that would not now be received, both (a) £160,508 which was owed by Arc on policies that did incept, and (b) shares of commissions relating to the future employees of ASN whom the Claimants intended to employ and to take out insurance policies on. The Claimants also alleged that the Claimants had lost the benefit of payouts under those insurance policies.

29. The Claimants initially put their losses at just over £2 million. However, the claim evolved into a contention that the lost commission and policy benefits amounted to billions of pounds. The losses claimed included £7.25m in respect of Mr McCallum, who by then had died, a sum which the Claimants said they would have been entitled to had the 11 life insurance policies taken out over Mr McCallum's life not been cancelled by insurers.

30. The FSCS rejected the claim. In a letter dated 22 November 2018 the FSCS said it could not offer any compensation to the Claimants, but asked for further information. There was protracted correspondence and voluminous documentation was provided to the FSCS, which retained Dentons LLP to advise it about the claim. The FSCS concluded, in letters dated 6 November 2019, 17 January 2020 and 4 February 2020 that there was no good claim for compensation. The letter of 6 November 2019 included this:

> "…FSCS is of the view that, irrespective of the basis on which [Arc] applied for these policies, they would still not have been valid. A business only has an insurable interest in the life of an employee if that employee is a "key" person. Not all employees can be "key". Further, on the information provided to FSCS, only one of the relevant individuals had actually started work at the time the application for their life insurance was submitted to the relevant insurer and the premium paid. On the evidence

> available, we consider that neither ASN nor WFS had an insurable interest in the lives of the relevant individuals."

31. Further, the FSCS said in its letter of 4 February 2020 that it was not clear what trust structure the Claimants contended should have been put in place for the insurance policies or why this would have been necessary, but that *"In any event, we do not consider that putting in place a trust would have prevented cancellation by the relevant insurers."*

32. As to Mr McCallum, the FSCS concluded that there was no evidence that he was a key person in either WFS or ASN's business or that those companies had an insurable interest in his life; and said that if he had been a key person then appropriate insurance could have been obtained for his life in the more than 12 months between the cancellation of the previous policies and Mr McCallum's death. The FSCS also noted that there was no basis upon which it could be said that WFS, by whom Mr McCallum had been employed and which had a net asset value of only £103,702, could have had an insurable interest worth £7.25 million in the event of Mr McCallum's death. The FSCS further noted that it had seen no evidence that Mr McCallum had actually been employed by either WFS or ASN at the time of his death.

(4) Application for judicial review of the FSCS's decision

33. WFS and ASN on 18 February 2020 applied for permission to apply for judicial review of the FSCS's decision. Garnham J refused permission on 6 April 2020, noting in brief reasons that the claim was not properly arguable.

34. The application was renewed orally before Fordham J on 6 May 2020, who also refused permission. In relation to the largest category of claimed loss, Fordham J said:

> "That leaves the third and broadest category of loss and damage relied on by the claimants. This was what I suggested was a category of 'expectation' loss. By that I mean the claimants have painted the picture of the income that would have been in place, and the insurance cover that would have been in place, had the policies been operative. The problem with that lies in the fact that the defendant has already lawfully concluded that these were not valid policies. Therefore, even if there were a duty to advise an act and assist the claimants in relation to taking appropriate steps, those steps could not logically possibly have involved the establishing of the set of 'expectations' as to income and cover on which reliance is placed. Ultimately, the defendant was not satisfied that there was any loss or damage in relation to income or cover that had been sustained, even if some duty had been breached. The defendant emphasised that no "insured act" had arisen in relation to any of these individuals or policies, except for the death of Mr McCallum with which I have already dealt."

35. The Court of Appeal on 12 August 2020 refused permission to appeal from Fordham J's decision. Carr LJ concluded that "*having considered carefully the (very voluminous) material submitted by the applicant*" there was no arguable basis upon which it could be said that the judge erred in refusing permission for judicial review.

She added that she considered the application to be totally without merit, but did not consider it appropriate to make a civil restraint order at that time.

36. Mr Wyllie then corresponded with the Supreme Court, leading ultimately to a letter dated 21 January 2022 indicating that Lord Leggatt had considered the position and confirmed that there was no jurisdiction to appeal to the Supreme Court.

(5) The Claimants' claim against Arc

37. The Claimants then on 1 July 2022 commenced civil proceedings against Arc in the Commercial Court. The Claimants filed Particulars of Claim and Arc applied to strike out. The matter came before His Honour Judge Pelling KC on 16 March 2023. He granted an application by Liberty Mutual Insurance Europe SE ("***Liberty***"), Arc's professional indemnity insurer, that it replace Arc as def to the claim, Arc having by that stage been dissolved. HHJ Pelling then struck out the Particulars of Claim but declined to strike out the claim, giving the Claimants one further chance to try to set out a coherent and sustainable case in respect of what HHJ Pelling identified as being certain potentially sustainable claims which Judge Pelling identified ([2023] EWHC 718 (Comm)).

38. On the topic of insurable interests in life policies, HHJ Pelling said:

> "8. Following the introduction of the third claimant by the second claimant to Arc, Arc applied for various forms of insurance policies, including principally life policies on the lives of individuals who were ostensibly employees mainly of the third claimant. The beneficiary of the policies was intended to be the third claimant. A feature of the presentation was that the claimant sought life insurance on a so-called "key man" basis for all the third claimant's apparent employees and did so for very substantial sums.
>
> 9. Liberty's solicitor, Mr Briggs, says …, and Mr Wyllie does not dispute, that he intended to fund the set up costs of the third claimant on the basis of the commissions paid to the first and/or second claimant under the arrangements set out above. Aside from the treatment of all employees of the second claimant as "key" employees, multiple applications for cover were made on behalf of the second claimant in respect of the same employees. The effect of this was in some cases to generate multiple commissions in respect of the same employee. I should make clear that it was said by Arc's directors that some or all of these events were the result of processing errors on the part of Arc.
>
> 10. It is now necessary I say something about insurable interest under life policies. Although regarded by some commentators at least as outmoded, the issue is one that remains governed by the Life Assurance Act 1774, section 1 of which provides that:
>
> > "… no business shall be made by any person… on the life or lives of any person or persons… wherein the person… on

> whose account such policy… shall be made shall have no interest…"
>
> 11. Although Mr Wyllie maintained in the course of his submissions that there was some mystery around the degree to which an employer might have an interest in the life of an employee which justified insuring employees for substantial sums, in my judgment that is wrong. An employer has an insurable interest in the life of his employee to the extent of the value of the employee's services during such time as he is under a legal obligation to serve his employer - see *MacGillivray on Insurance Law* (15th edn) at paragraph 1-071, the Scottish cases of *Simcock v Scottish Imperial Insurance* [1902] 10 SLT 286 at 288 and *Turnbull v Scottish Provident Institution* [1896] 34 SLR 146 and by analogy *Hebdon v West* [1863] 3 B&S 559, which concerned the insurable interest an employee had in the life of an employer.
>
> 12. It follows that an employer has no insurable interest in the life of an employee beyond the value of the services which can be provided by that employee in the notice period leading to the termination of any contract of employment. It follows, for example, that if someone is employed and has a notice period of one week, that will, at any rate, provide a strong prima facie guide as to what the insurable interest in that employee is. Although this might be thought inconsistent with modern business practice, it is difficult to see how a different result can be achieved as long as the 1774 Act applies - see *MacGillivray* ibid at paragraph 1-072."

39. The judge found that the Particulars of Claim were "*so defective that there is no sensible course open other than to strike it out in its entirety*" (§ 25); the document was "*over lengthy, discursive, largely incoherent and contains significant amounts of entirely irrelevant material*" (§ 26). The judge found that the Claimants were attempting to mount an abusive collateral attack on the decision of the Administrative Court in the judicial review proceedings, and that the material in the Particulars of Claim which then followed "*is a lengthy, discursive and prolix narrative that in almost all cases however fails to provide relevant particularisation where obviously that is required and fails in any way at all to set out the basic ingredients of the causes of action on which the claimants apparently rely"* (§ 31). HHJ Pelling KC concluded on this part of the application:

> "32. What was required in relation to each claimant separately was to set out: (1) whether the claim was brought under a contract or for breach of a tortious duty; (2) to plead the contract or facts and matters said to give rise to the duty relied upon; (3) in each case the facts and matters said to constitute a breach of whatever contractual or other duty was relied upon; (4) how the alleged breaches allegedly caused whatever loss it is alleged the relevant claimant has suffered; and (5) in each case a properly particularised summary of the loss and damage which is alleged

> has been caused to the relevant claimant by the alleged breach of contract or duty relied on. No attempt has been made to address any of these basic points.
>
> 33. In those circumstances, the pleading fails to achieve its primary purpose which is to inform the defendant of the case it must meet - see *King v Steifel* [2021] EWHC 1045 (Comm) per Cockerill J at 145. In consequence, it fails also to achieve the secondary purpose of a pleading, which is to ensure the parties can properly prepare for trial and avoid incurring unnecessary costs - see *King v Steifel ibid* at 146. The result of the claimants' approach to the pleading has been to defeat also the tertiary purpose of the pleading, which is to act as a checklist for the pleader to ensure that each claimant has pleaded a complete cause of action. If the pleading focuses only on the essential facts and addresses them in the order that I have set them out above, then that purpose will be achieved. Plainly it has not been here for the reasons I have attempted to summarise.
>
> 34. Mr Wyllie has set out in the pleading a summary of the effect which dyslexia has had on him. I understand the difficulty and I hope I have taken that into account when considering the allegations of prolixity and discursiveness made by Liberty. However, the point is not so much that what is set out is prolix and discursive, but that it is either irrelevant or fails to set out coherently each cause of action that each claimant asserts against Arc, and therefore Liberty, and therefore fails to inform Liberty of the case it must meet and therefore prevents it from identifying answers it has to deploy if it is to defend the claim and the evidence it has to adduce if it is to defend the claims made against it.
>
> 35. All these factors lead me to conclude that the particulars of claim as a whole must be struck out under CPR rule 3.4(2)(b) . It must also be struck out under CPR rule 3.4(2)(c) because the particulars of claim as drawn do not constitute a concise statement of the facts on which the claimant relies contrary to CPR rule 16.4 . The real issue that remains is whether the claim should also be dismissed. That depends on Liberty's case that not merely should the pleading be struck out on the grounds so far considered but should also be struck out on the basis that the claimants have no realistically arguable claim available to them, however these claims might be pleaded."

40. Turning then to the types of potential claim that it was possible to identify, HHJ Pelling reasoned as follows:

    i) The maximum value of the claim for commission owed but not paid by Arc was £160,508, and it was clear that more than this sum (around £462,000) was owed back to Arc by way of clawback. However, it was possible that, because the three Claimants were different entities with different entitlements to the

commission, that one of them might be owed more by Arc than was owed back to Arc by way of clawback. The Claimants should therefore be given an opportunity to plead out their individual entitlements to see if there was a sustainable claim by one or more of them (§§ 37 to 39).

ii) In respect of the claim for the insurance payout that was not received on the death of Mr McCallum, the judge said *"I am satisfied that on the information currently available that claim is entirely irrecoverable"*, as there was nothing to suggest that WFS could have had an insurable interest in Mr McCallum's life of anything like the £7.25 million claimed, and nothing to suggest that insurance in that sum or anything like it could ever have been obtained by WFS (§ 40).

iii) In respect of the claim for future commissions, it was inherently improbable that sums of the sort referred to in the Particulars of Claim could ever have become payable to any of the Claimants, and the claim for the policy benefits assumed that all employees would die while in the service of WFS and ASN (§ 41).

iv) If the Claimants could show that they were actionably misled by Arc into thinking that insurance could be achieved as per the scheme which was entered into, then it might be that in principle the Claimants could recover expenditure which they had wasted in reliance upon this advice, which might include items of the type set out at paragraphs 69(10) to 69(23) of the Particulars of Claim before HHJ Pelling.

41. HHJ Pelling KC accordingly gave the Claimants until 14 April 2023 to produce a Particulars of Claim which complied with court rules and made out a sustainable claim; and the Defendant was given leave to issue a further strike out application within 14 days of any new Particulars of Claim being served. The Claimants were ordered to pay the Defendant's costs of the application, with an interim payment of £100,000 to be made by 14 April 2023.

(6) The retainer of the First Defendant and the Dias J decision

42. Dr Joseph is a barrister who carries out Direct Access work. As noted earlier, Mr Foreman is her clerk and BMIF is her professional indemnity insurer.

43. Dr Joseph accepted instructions from the Claimants to draft new Particulars of Claim in the action against Arc, and to draft an application for a stay of execution of the costs order which had been made against the Claimants. Her retainer letter was dated 23 March 2023.

44. Mr Wyllie provided various, voluminous, materials to Dr Joseph the First Defendant, and she drafted Particulars of Claim and an application. The Defendants have already accepted that the Particulars of Claim Dr Joseph produced did not set out any complete cause of action or sustainable claim.

45. The Particulars of Claim were served on Liberty in accordance with the deadline in the court's order, and it applied to strike out the claim.

46. The matter came before Mrs Justice Dias on 13 July 2023, and on 28 July 2023 she handed down judgment striking out the claim ([2023] EWHC 1970 (Comm)).

47. Dias J concluded that there was no valid claim for unpaid commission, because ASN had no entitlement to be paid commission by Arc, and Mr Wyllie and WFS both owed more to Arc by way of clawback than was owed to them by Arc; she said "*I am satisfied that the new Particulars of Claim disclose no reasonable grounds for bringing the claim for wasted premium since it would be bound to fail by reason of Liberty's set off defence."* (§§ 57 to 60).

48. As for the claim in respect of Mr McCallum's death, Dias J noted that:

> "62. … HHJ Pelling concluded at paragraph 40 of his judgment that the claim was entirely irrecoverable. He assumed in the Claimants' favour that Mr McCallum was indeed employed by the Second Claimant at £300,000 per annum as a business consultant (itself open to some doubt given his previous career as a professional wrestler) but even so held there was no pleaded basis for asserting that the Second Claimant had an interest in his life to the extent of £7.25 million, even as a keyman. Moreover, as he pointed out, the policies on Mr McCallum's life were all cancelled more than 12 months before his death. The Claimants had said that it was impossible to take out alternative insurance because they had been blacklisted as a result of AIG's concerns. However, even if that were true, they would have needed to plead (i) that they could have secured alternative cover if there had been no blacklisting and (ii) the amount of cover that could have been procured.
>
> 63. Regrettably, the new Particulars of Claim do nothing to address this point. Instead, they plead that insurable interest only has to exist at the date of inception of the policy. This is not in dispute. But if there is no insurable interest at all, then the date at which it must exist hardly matters.
>
> 64. This claim has therefore not advanced since its previous iteration and remains as misconceived now as it was previously." (§§ 62-64)

49. Dias J also held the claim for 'expectation losses' to be hopeless:

> "65. This claim relates to more than £71 billion in commissions and payouts that the Claimants anticipated receiving on policies to be written in the future. HHJ Pelling considered it wholly improbable that sums of this magnitude would ever become payable and I agree. The pleading suggests that the Claimants expected to take out policies on the lives of a further 6000 employees of the Third Claimant. However, the Third Claimant had only been incorporated in November 2017 and while Mr Wyllie no doubt hoped that its business would grow, it is completely speculative that it would have grown to anything like

> this extent. Quite apart from anything else, it would almost certainly have been severely affected by the Covid pandemic. Further, as the judge pointed out, the claim assumes that every life assured would have died within the life of the policy, which itself is inherently improbable. Finally, the new Particulars of Claim simply replead the original claim in identical terms without any attempt to set out the basis on which the figures claimed have been calculated."

50. Finally, Dias J found that there had been no attempt to identify expenditure that had been wasted as the result of any misrepresentation by Arc as to the validity of the scheme. Instead, the pleaded losses related entirely to benefits that the Claimants hoped to obtain if the policies were valid (§§ 67-68).

51. Dias J therefore struck out the claim, and certified it to be totally without merit. She did not make a civil restraint order because the threshold had not been met of there being two or more applications in the same proceedings certified as totally without merit (§§ 69-71). Costs orders were made in Arc's favour in respect of the strike out application and the stay application.

(7) The Defendants' position regarding the present proceedings

52. Mr Preece states in his witness statement that he is not aware of any basis for a claim against either Mr Foreman or BMIF, and has made this point in correspondence to the Claimants.

53. Mr Preece states that it is accepted that Dr Joseph breached a contractual and common law duty of reasonable skill and care to the Claimants in producing Particulars of Claim which did not set out a sustainable claim against Arc in any respect. In pre-action correspondence an offer was made to the Claimants, via a Letter of Settlement, to pay a sum to compensate the Claimants for the costs order made against them in respect of the strike out application at which the Particulars of Claim drafted by the First Defendant were found not to set out any sustainable claim (i.e. the hearing before Dias J). Mr Preece says:

> "This offer was made on the basis that if the First Defendant had advised the Claimants that there was no sustainable claim to be put forward on the information provided to her, and that advice was accepted, the costs of the strike out application could have been avoided."

54. The offer was not accepted and has subsequently been withdrawn, on the basis that subsequent correspondence and the present claim show that the Claimants would never have abandoned the claim against Arc. The present claim is to the effect that, but for Dr Joseph's breach, the Claimants would have pursued Arc and succeeded in being awarded a 27-figure sum.

55. Mr Preece states:

> "The only case advanced is that the First Defendant should have produced a pleading which set out a sustainable case against Arc. I am not however able to understand from the Particulars of Claim how it is said that the First Defendant should have pleaded a sustainable claim against Arc, i.e. what causes of action it is said she should have pleaded or pursuant to which factual allegations, what loss and damage it should have been alleged had been caused to the Claimants by Arc, or what factual material or instructions provided to the First Defendant it is said that she should have based any such pleading upon."

He deposes that he does not believe there to be any reason to expect that the Claimants – who are aware from the judgments of HHJ Pelling KC and Dias J of what has to be produced in order to set out a sustainable claim – could produce a sustainable claim if they were to be given another opportunity to do so. As to whether they should be given such an opportunity, Mr Preece states that there would be the following implications:

> "59. … very significant costs would likely have to be incurred to consider and respond to a further lengthy document (and its inevitable multitude of attachments) and in making a further application to strike out; further court time would then have to be devoted to the hearing of that application, and to litigants who have already taken up a significant amount of that resource. There is a real question mark about whether my clients would be able to recover any further expenditure, as the Claimants are – according to Mr Wyllie – of extremely limited means and unable to meet any costs orders made against them. In that regard, we have investigated the financial position of the Second and Third Claimants and they do appear to be of very limited means. If the Court does not agree to strike out the claims at this stage, then, depending on the outcome of further enquiries, we are likely to be instructed to apply for security for costs in due course.
>
> 60. Further, I did give the Claimants fair warning in correspondence that the Particulars of Claim were not adequate, and that a strike out application would be made if they were maintained in their current form …; Mr Wyllie's response on behalf of the Claimants was to threaten to bring unspecified claims against further members of the Bar and to issue an explicit personal threat against me and my clients …, although Mr Wyllie has now sought to explain those threats were not of a personal nature …. I respectfully suggest that this is not the sort of behaviour and conduct which should be rewarded by the court allowing the Claimants a further opportunity to attempt to formulate a claim against the First Defendant. …"

(D) PRINCIPLES

56. CPR 16.4(1)(a) states that "*Particulars of Claim must include a concise statement of the facts on which the claimant relies*". All the facts necessary to comprise a complete cause of action must be pleaded.

57. CPR 3.4(2) provides that:

> "(2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.
>
> (3) When the court strikes out a statement of case it may make any consequential order it considers appropriate."

58. Note 3.4.1 to the White Book states:

> "Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence… Ground (c) covers cases where the abuse lies not in the statement of case itself but in the way the claim or defence (as the case may be) has been conducted. The strike-out can be made even where there was nothing in the rule, practice direction or court order breached which specified that this might happen as a consequence of breach."

and:

> "An unreasonably vague and incoherent statement of case which is likely to obstruct the just disposal of the case is liable to be struck out: see *Ashraf v Dominic Lester Solicitors* [2023] EWHC 2800 Ch (Smith J) at [71] (see too [72] in respect of inconsistent cases). As Teare J observed in *Towler v Wills* [2010] EWHC 1209 (Comm) at [18]:
>
> > "The purpose of a pleading or statement of case is to inform the other party what the case is that is being brought against him. It is necessary that the other party understands the case which is being brought against him so that he may plead to it in response, disclose those of his documents which are relevant to that case and prepare witness statements which support his defence. If the case which is brought against him is vague or incoherent he will not, or may not, be able to do any of those things. Time and costs will, or may, be wasted if the defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which

> is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies…""

59. As both HHJ Pelling KC and Dias J noted, Cockerill J in *King v Stiefel* [2021] EWHC 1045 (Comm) at [143]-[150] stated that a statement of case should serve three purposes:

    i) to enable the other side to know the case it has to meet;

    ii) to ensure that the parties can properly prepare for trial without the expenditure of unnecessary time and costs on points which are not in issue or which lead nowhere; and

    iii) to operate as a critical audit for the pleading party and its legal team that it has a complete cause of action or defence as the case may be.

60. Note 3.4.2 of the White Book includes the following passage:

> "Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend (*In Soo Kim v Youg* [2011] EWHC 1781 (QB))."

In Soo Kim was a case where the defect in the particulars of claim – in a libel case – was a failure to plead proper particulars about to whom the allegedly defamatory article was published. After the strike out hearing but before judgment was given, the claimant told the judge that he could name the persons to whom the articles were published, and provided 13 witness statements to this effect, but the Master declined to look at them, and struck out the claim. On appeal, Tugendhat J held that the Master should have taken account of the additional evidence and should have given the claimant a chance to remedy the defect in his pleading by setting out details of publication. There was thus, in that case, a very clear reason for believing that the defect in the statement of case could be remedied.

61. I agree with the Defendants in the present case that, non-exhaustively, the factors likely to be relevant to the court's decision include:

    i) whether the party can amend or replead the claim so as to plead a sustainable case (and one which is consistent with the averments of fact made in the existing pleading: CPR PD 16 §§ 9.2 indicates that a subsequent statement of case cannot contradict or be inconsistent with an earlier one; see also *Ashraf* § 77);

    ii) whether it is proportionate to the quantum of the potential claim to allow the claimant a further attempt at pleading the case;

    iii) what amount of court resources has the claimant absorbed to date in respect of the matters in question, what further court resources would likely be consumed

if an attempt were made at repleading, and whether it would be an appropriate allocation of the court's resources;

iv) what prejudice the defendant would suffer if the claimant were allowed a further attempt at pleading the case (including whether the claimant is able to meet any costs orders brought against them); and

v) whether the claimant's conduct renders it just to allow them a further attempt at pleading the case.

(E) THE PARTICULARS OF CLAIM

62. The Particulars of Claim in the present case run to some 217 paragraphs set out over 50 pages of small type. Broadly speaking, the first 30 paragraphs give details of the parties, the Claimants' contract with Dr Joseph, the Defendants' acceptance that Dr Joseph breached her duty (but that loss and damage are disputed and that the Claimants must explain what might have happened in Dr Joseph had acted correctly), and the hearing before Dias J.

63. Paragraphs 31-57 then address Dr Joseph's breach of duty, formulating it in terms of twelve alleged breaches along with various failures to comply with Core Duties set out in the BSB Handbook and the implied term about care and skill in section 13 of the Supply of Goods and Services Act 1982. None of these particulars, however, indicates precisely what it is alleged Dr Joseph should have pleaded in the particulars of claim against Arc/Liberty.

64. Paragraph 58 sets out an irrelevant allegation of negligence by Dr Joseph on other occasions.

65. Paragraphs 60-66 pleaded loss, in hyperbolic but obscure and unspecific terms, though seemingly proceeding on the basis that the Claimants had a viable claim against Arc/Liberty for £187 billion plus interest.

66. Under the heading "*Negligence*", paragraphs 67 to 112 frame the alleged breaches of duty as a series of 41 alleged negligent acts or omissions. These paragraphs are prolix and include numerous references to peripheral matters. It is again impossible to understand precisely what sustainable claim against Arc/Liberty it is alleged that Dr Joseph should have pleaded. For example, paragraph 86 pleads that:

> "[Dr Joseph] egregiously neglected to include essential claims for ("the claimants") in her inadequate particulars of claim, such as negligent misstatement, estoppel due to AIG blacklisting, and aggravated damages. This failure not only fell short of legal standards but also disregarded FCA regulations for fair treatment of customers. Consequently, countless individuals are left with worthless insurance policies, facing significant financial harm without any accountability. (**This is perversion on steroids**)" (emphasis in original)

However, the basis on which it is said that those claims should have been formulated or could be made out is left unspecified. Similarly, paragraph 88 alleges that:

> "[Dr Joseph] egregiously neglected to adequately plead that all ''invalid'' life, critical illness, income protection and medical insurance policies sold to (''the claimants'') were sold on an advised and arranged basis in accordance with ICOBS 5.3, 5.3.1, 5.3.2."

However, no explanation is given as to how that could translate into a claim against Arc/Liberty for loss of the benefits which the Claimants claim they would have realised from the policies (including commissions and claim payments).

67. There are further examples of inadequate or incomprehensible allegations in the negligence section of the Particulars. Paragraph 89 states:

> "Negligent act/omission nineteen: (''Dr. Sandy'') egregiously neglected to adequately plead facts and law on insurable interest or lack thereof, incorporating the ruling of Lady Justice Carr (now Lady Chief Justice Carr of England and Wales), where it was found in her judgment that life, critical illness, income protection, and medical insurance policies (referred to as "pure protection policies") Claim No. CL-2024-000085 were invalidated due to the absence of insurable interest. Furthermore, (''Dr. Sandy'') failed to plead the FCA compensation limits at 10.2.3, section (4) where the claim is in respect of: (a) a relevant omission; and (b) a pure protection contract, or would be in respect of a pure protection contract if the insurance contract had been effected: 100% of claim which states that in cases concerning a relevant omission and a pure protection contract, or would-be pure protection contract, the compensation is 100% of the claim with ''unlimited compensation' 'payable to (''the claimants''). This neglect to set out every conceivable scenario encompassed a wide spectrum, covering all aspects of (''the claimants'') claim, including individuals, employees https://pdf.ac/PRI6F, secured employees - https://pdf.ac/PRI6F with allocated start dates and deferred start dates with shaped and/or executed contracts (a common practice among insurers), covering 6000 prospective employees in a scale-up operation, employers, trustees, children, adopted children, beneficiaries, executors of estates, directors, managers, officers, (every rank and paygrade within a business), individuals of diverse racial and sexual orientations (Black, White, Asian, Heterosexual, Bisexual, LGBTQI), man, woman, non-binary, transgender, advised sale personal and business customers, Appointed Representatives, Introducer Appointed Representatives and Keyman/person. In short, every citizen in Great Britain, irrespective of rank or position in society (**binding the full cross-section of society**), has had their life declared ''invalid'', akin to worthless for lack of insurable interest in a life, Critical Illness, Income Protection and Medical insurance. **In summary, this represents an affront to justice, the judiciary, the crown operating system, legislators, adjudicators, banks, insurers,**

> **FSCS, 90,000 FCA regulated advisory firms - brokers/intermediaries, MPs, MSPs, MLA's, MSs, ASs, UK Lords, and all legal representatives in Great Britain and other Crown dependencies. This is further exacerbated by the fact that much of the system and interconnected systems have/are publicly funded, by the taxpayer, making an utter mockery out of the institutions in question.**" (emphasis in original)

In my view, that plea is incomprehensible.

68. Likewise, paragraphs 102, 106 and 111 contain the elliptical allegations that:

> "[Dr Joseph] negligently failed to include (''the claimants'') submissions regarding why the defendants' baseless allegations concerning the premium claim should be offset against commissions received." (§ 102)
>
> "[Dr Joseph] negligently failed to particularise consumer protections owed to (''the claimants'') and all breaches of duties by Arc Financial Group Ltd, including duties independent of contract, duties to third parties, duties to insurers, duties to disclose, tortious duties, skill and care as outlined in Jackson and Powell, ninth edition…" (§ 106)
>
> "[Dr Joseph] negligently failed to plead all grounds, why (''the claimants'') premium claim of £157,168.67 should not be offset against received commissions of £688,000.000, effectively dismantling the former defendants' proposed legal submission." (§ 111)

None of those paragraphs actually formulates or identifies the basis of any tangible claim against Arc/Liberty.

69. Paragraphs 113 to 119 of the Particulars of Claim list the Core and other duties already referred to in §§ 51-57.

70. Paragraph 120 states the proposition of law that if a barrister omits to plead a cause of action, where no other reasonably competent barrister acting with ordinary care would have failed to plead it, then he/she will be liable if loss flows foreseeably from that negligence.

71. Paragraphs 121-124 appear to be intended to give particulars of Dr Joseph's alleged breach. However, in substance they merely assert that, as a result of the breach, the Claimants have suffered *"all losses related to the underlying claim"* (§ 123), and the loss and damage set out in the Claimants 'loss table' under the heading "*Particulars of Loss*". The loss table, later in the Particulars, sets out 44 heads of alleged damage, which after the addition of 25% by way of *"aggravated damages"* but before applying interest, total £326,539,670.01 for Mr Wyllie, £398,667,060.23 for WFS and £170,442,933,154 for ASN.

72. Paragraphs 125 to 152 set out allegations which are said to concern misrepresentations or misstatements. These in part merely replicate the allegations of breach of duty. Others add nothing to those allegations. For example, § 127 alleges a misrepresentation by Dr Joseph about her experience and competence to undertake the work. None of these paragraphs explains what particular case the Claimants allege Dr Joseph should have pleaded against Arc/Liberty.

73. Paragraphs 153 to 159 contain another list of Core Duties and other duties, followed in §§ 160 and 161 by allegations that the Claimants have, as a result of Dr Joseph's breaches, suffered the extravagantly quantified losses claimed.

74. Paragraphs 162 and 163 allege reputational damage. Paragraphs 164 to 170 contain yet another list of duties, and §§ 171 to 173 claim damages for loss of reputation quantified at £11,078,646.81 including interest.

75. Paragraphs 174 to 187 deal with estoppel. Paragraphs 174 to 176 read as follows:

> "174. **Estoppel act/omission one**: (''Dr. Sandy'') negligently failed to identify and plead **estoppel** within her professionally drafted particulars of claim, pertaining to (''the claimants'') underlying claim, which have subsequently been found and acknowledged to be manifestly deficient, embarrassed, and non-compliant. This omission includes the purported blacklisting of Arc Finance Group Ltd and (''the claimants'') by AIG, thus, breaching the 5-year superseded commercial agreement between (''the claimants'') and Liberty Mutual Insurance Europe Ltd, formerly Arc Finance Group Ltd (''Arc''). This breach prematurely terminated the contract after only 3 months into the 5-year term, scheduled to expire around 18 January 2023. Arc's directors stated, ''it doesn't matter if we have a commercial binding agreement in place,'' citing pressure from insurers' risk compliance departments, despite the broker's **absolute obligation** to procure life, critical illness, income protection and medical insurance policies for 6000 recruited and onboarded employees from 18 January 2018 to 18 January 2023, (pre insurers sales and business development teams approving (''the claimants'') business model ''floats and moats'', business proposal, and plans, duly signed off by (''Arc's'') internal, external audit compliance and legal advisors, as per the ratchet mechanism, and onboarding programme, with a premium of circa £2,000 per month, per employee, scheduled to generate £144,000,000.00 million over the five years, (for every £50 premium underwritten, (''the claimants'') achieved £40,000 gross commission, leaving (''the claimants'') £24,000 net commission) with an extended trail commission for an additional 35 years to whole of life. This situation contradicts the principles outlined in paragraph 16-055 on page 1174 of Jackson and Powell. Furthermore, (''Dr. Sandy'') failed to plead relevant case law regarding The Financial Services Compensation Scheme (FSCS) evaluations and submissions to the court, as indicated on page 1104, paragraph 14-142, Chapter 14 –

> ‘’Regulation of Financial Services’’. Additionally, she omitted to identify and plead FSCS duties and obligations concerning the fulfilment/re-direction of insurance policies and contract requirements with insurers or reinsurers. (‘’Dr. Sandy’’) neglected to include estoppel in relation to Judicial Review proceedings by not referencing Lord Leggatt’s review of Lady Justice Carr's final order, particularly Section 54 of the Access to Justice Act 1999, which bars any appeal against the refusal of permission. (**This is perversion on steroids**)
>
> 175. **Estoppel act/omission two**: (‘’Dr. Sandy’’) has once again created an **estoppel** situation, depriving her clients (‘’the claimants’’) of the opportunity to pursue or defend proceedings. Despite HHJ Pelling KC granting (‘’the claimants’’) a final chance to amend their particulars of claim, as per his sealed order dated 16 March 2023, the inadequate presentation of (‘’Dr. Sandy’s’’) non-compliant and manifestly deficient particulars of claim, **as pleaded**, along with Mrs. Justice Dias KC's refusal to allow (‘’the claimants’’), another opportunity for the third time, to submit a professionally drafted particulars of claim, and further dismissed the case, and struck out (‘’the claimants’’) professionally drafted particulars of claim, due to (‘’Dr Sandy’s’’) conduct and deficiencies within her pleadings, has left (‘’the claimants’’) unable to recover the significant financial debts and losses owed to them, with no means to now rectify the situation.
>
> 176. **Estoppel act/omission three**: Legal time constraints prevent (‘’the claimants’’) from suing Liberty Mutual Insurance Europe SE, Liberty Mutual Insurance SE, Liberty Mutual Insurance Europe Limited (‘’Liberty’’), formerly Arc Finance Group Limited (‘’Arc’’), affecting numerous individuals and businesses sold invalid insurance policies by Arc, rendering them worthless due to lack of insurable interest and now being time barred by statute. This contradicts FCA rules against forcing customers to change products or make claims. This blame falls on (‘’Dr. Sandy’’) for negligence and manifestly deficient pleadings, **as pleaded**, hindering legal action. This injustice extends to a broad spectrum of policyholders, affecting all citizens regardless of social status, dating back to 1774. Such actions breach FCA fairness principles and legal broker duties.”

76. Paragraph 174, as quoted above, appears to suggest that Arc had an “*absolute obligation*” to procure valid insurance cover for every policy the Claimants had purported to place or in future planned to place, regardless of any objections that insurers might have on ground of insurable interest or the placement of multiple insurances in respect of the same employees. The Particulars do not explain how any such duty could have arisen, nor how any estoppel could have arisen, and §§ 174 to 176 as a whole are incomprehensible.

77. Those paragraphs are followed by the, by now familiar, recitation of duties and assertion of vast losses (§§ 177 to 187). Notable among these is § 184, which alleges that:

> "If [Dr Joseph] had fulfilled her agreed obligations and undertakings as outlined in the Barrister/Client care letter dated 23 March 2023, then [''the claimants"] would have secured the largest court award in history against the defendants, pertaining to their underlying claim."

78. Paragraphs 188 to 202 claim aggravated damages.

79. Paragraph 204 states the proposition of law that, where a barrister has deprived the client of the chance of bringing proceedings, the court must assess the value of the chance. These paragraphs are followed by the loss table already mentioned, claims for interest, some paragraphs of "*Observations*" (which shed no light on any of the foregoing pleas) and the prayer for relief.

(F) ANALYSIS

(1) The Particulars of Claim

80. The Particulars of Claim fail to fulfil any of the requirement imposed for, and purposes to be served by, particulars of claim. They do not disclose reasonable grounds for bringing the claim, nor include a concise statement of the facts necessary to comprise a complete cause of action. They do not explain what specific allegations Dr Joseph should have pleaded against Arc/Liberty that would have amounted to a viable claim. As a result, the Particulars of Claim do not enable the Defendants to know the case they have to meet, nor enable them to prepare for trial without spending unnecessary time and costs on points which lead nowhere.

81. As the Defendants point out, the Claimants' case must be that if Dr Joseph had pleaded the claim differently against Arc/Liberty, it would not have been struck out and would have succeeded at trial. A coherent plea would therefore include a clear explanation of how and when Dr Joseph had material placed before her by the Claimants to enable her to draft such a plea, or an explanation of what questions she should have asked to elicit such material and what would have been provided in response; and then particularisation of how Dr Joseph could have pleaded out a coherent and sustainable claim against Arc. As part of the causation aspect of the case, the Particulars of Claim would need to state – verified by a signed statement of truth – what case the Claimants would then have advanced against Arc/Liberty based on the pleading Dr Joseph ought to have prepared. The actual Particulars of Claim, fail to do any of these things. It is impossible to understand from them what it is alleged that Dr Joseph should have pleaded, or on the basis of what material she should have pleaded it, in order to set out a coherent and sustainable case for the Claimants against Arc/Liberty.

82. The Particulars of Claim also fail to plead any comprehensible case against Mr Foreman or BMIF.

83. Moreover, I consider the Particulars of Claim to be abuse of the court's process and likely to obstruct the just disposal of the proceedings. They are highly prolix, repetitive,

argumentative and difficult or impossible to understand. Further, the decisions of HHJ Pelling KC and Dias J made clear why the Claimants' existing pleaded cases against Arc/Liberty were deficient. The current Particulars of Claim fail to rectify those deficiencies. Especially in those circumstances, the Particulars of Claim are abusive.

84. The Particulars of Claim must accordingly be struck out.

(2) The claim as a whole

85. It is therefore necessary to consider whether the claim as a whole should be struck out, or the Claimants should have a further opportunity to set forth a case against the Defendants: including, necessarily, details of a viable case which they say Dr Joseph should have pleaded against Arc/Liberty.

86. In my view, they should not. There is no reason to believe that the Claimants can or will, on a yet further attempt, formulate any such case.

87. The Claimants' mooted claims against Arc/Liberty had four elements.

88. The first and largest was the claim that, but for Arc's breaches of duty, the Claimants would have secured valuable life and other insurance cover on multiple current and future employees, leading to very large aggregate shared commissions and claim payouts, and by reason of Arc's breaches have lost very large sums of money running into billions. HHJ Pelling KC and Dias J have already given reasons why that case was a bad one. It assumes that the Claimants:

i) could and would have profited hugely from shares of commissions on the placement of insurances, even though such commission payments would over time inevitably have to be outweighed by premium payments by the Claimants' relevant employees, ultimately funded by the Claimants themselves;

ii) could and would have profited, again hugely, from claim payments arising from the death in service of (or other events pertaining to) their employees exceeding, on an aggregate basis, the necessary premium payments ultimately funded by the Claimants themselves;

iii) could have achieved this on a scale requiring individual employees to be insured for very large sums, using multiple policies, despite the almost inevitable objections based on lack of insurable interest; and

iv) could have achieved the above despite WFS and ASN being start-up companies with no track record, no proven substantial net assets and only a handful of existing employees.

Such a claim seeks to defy the laws of economic gravity. It would be wholly speculative and unrealistic.

89. For completeness I mention one point made by Mr Wyllie in his witness statement. In §§ 165 and 167 he states:

> "Mr. Wyllie and his entities, ASN and WFS, demonstrated clear financial dependency on the success of their business model and

> insurance policies, as part of the staff benefits package, in the case of insurable event. The model had a direct impact on the revenue and profitability of ASN and WFS, as per the terms of the policy. This dependency is a key element of insurable interest, as the economic benefits and liabilities were directly linked to the performance of the insurance product. At this point the claimants wish to clarify that they were not gaming, hedging or waging on anyone's lives, this was a legitimate operation, with development plans and growth, that was going to scale up on a monthly basis.
>
> …
>
> With thousands of interested candidates and a revenue projection backed by substantial figures (e.g., £144 million in commission over five years), the FSCS overlooked how this economic framework translated into an insurable interest and much more. The established legal principle asserts that an insurable interest arises when a person stands to benefit from the preservation of the insured subject matter, life, critical illness income protection, and medical insurance—here, the success of the insurance policies themselves, which were instrumental to ASN and WFS's business success, in the short term, until up and running." (my emphasis)

To my mind, that is not a good answer to the problems about insurable interest. It amounts to saying that the employer had an insurable interest in the employee's life/wellbeing because the employer stood to make large amounts of money from the insurance policy itself. In principle that cannot suffice.

90. Mr Wyllie also relied, at the hearing, on certain letters drafted for him by other counsel. A passages in one letter to the FSCS, dated 21 November 2019, suggested that a business's insurable interest is not confined to 'key' employees, as the legal position is much more nuanced than that (citing *Feasey v Sun Life Assurance Co of Canada* [2003] EWCA Civ 885 § 97), needing to be addressed on a policy by policy basis; and that not all of the existing policies were written on a key person basis. However, a letter to Arc's solicitors prepared by the same counsel, dated 30 November 2019, complained that 484 policies had been placed in which a court subsequently ruled the Claimants lacked an insurable interest. The letter went on to say that the Claimants had approached other insurers to try and identify an alternative way of taking the scheme forward but *"were told that this would not be possible, at least on any significant scale. It was not commercially viable to proceed on a smaller scale as the levels of commission would be insufficient to fund the business model and associated operating costs of ASNL whilst in its infancy."* These points if anything tend to undermine the notion that there could ever have been a viable claim against Arc/Liberty for the expectation losses, i.e. by far the largest part of the Claimants' claim. Rather, they support the view that realistically there could never have been sufficiently great insurable interests to justify policies whose value was large enough to generate commission shares or claim payouts sufficient to fund the business model (even in the short term).

91. The second potential claim in terms of size related to the death of Mr McCallum. However, there is no realistic chance that the Claimants would have been held to have an insurable interest in policies valued at £7.25 million in the life of Mr McCallum, a former professional wrestler apparently employed as a business consultant for a salary (as Mr Wyllie states in his witness statement)of £24,000 a year plus discretionary bonus.

92. Thirdly, there could be no claim for unpaid commissions in respect of policies already placed, in circumstances where (as HHJ Pelling KC described) the outstanding amount of around £160,000 was outweighed by Arc's clawback claim for about £688,000. HHJ Pelling KC gave the Claimants the opportunity to meet this problem if they could show that one or more individual Claimants were owed sums greater than they owed by way of clawback. However, the present Particulars of Claim neither take up that opportunity nor give any reason to believe it would be of any interest to the Claimants. To the contrary, the Particulars of Claim indicate that the Claimants remain wedded to their vast claim for expectation loss. In any event, in the context of the amounts of party and court resources already taken up by this litigation, I would not have considered the possibility of any such modest claim a sufficient reason for giving the Claimants a yet further opportunity to advance it.

93. Fourthly, any claim for wasted expenditure would have to be premised on Arc having failed to advise that the scheme would not work, e.g. because insurers would not accept that the Claimants had sufficient or any insurable interest in the proposed policies. Reliance on any such advice would have entailed the Claimants not proceeding with the policies that were placed. In that event, they would not have received the commission shares of around £688,000 that they did receive. Any wasted expenditure claim would thus require (a) a case against Arc for a relevant failure to advise (or, possibly, a misrepresentation) and (b) a viable claim for wasted expenditure in excess of £688,000. The present Particulars of Claim make no attempt to set out any such case, and suggest that the Claimants' real interest is, as already mentioned, in their vastly greater expectation loss claim. Further, addressing certain possible heads of wasted expenditure mentioned in HHJ Pelling KC's judgment, I accept the Defendants' submissions to the following effect:

    i) It is difficult to see how 'ex gratia' redundancy payments would be recoverable as damages. Given that the 'staff' in question had not actually started work for WFS or ASN, it is not difficult to see why there was no legal obligation to pay them redundancy pay. It is more difficult to see why the alleged voluntary act of the Claimants to make these payments would have sounded in recoverable damages against Arc.

    ii) It is difficult to see how salaries allegedly paid to staff can said to have been wasted. as presumably the staff in question did the jobs for which they were paid.

    iii) It seems inconceivable that a computing hardware contract was entered into by the Claimants and that £397,370 was paid over pursuant to that contract (§§ 69(22) of the Particulars of Claim before HHJ Pelling KC), and it seems similarly inconceivable that a software contract was entered into pursuant to which £250,000 was paid over (§ 69(23)).

iv) More generally, it is very difficult to see how any expenditure that could be said to have been truly wasted was in excess of the sum of around £528,000 (net of premia) which the Claimants received from embarking on the scheme. It difficult to see where the money would have come from for such expenditure, if not from the commission sharing sums received, given the professed lack of other means of these Claimants and the fact that their case is that they would have used the commission sharing sums to build their businesses.

I would in any event not have regarded any such potential claim as a sufficient reason to allow a further attempt at pleading the case. The same considerations as I mention in the last sentence of § 92 above apply.

94. In addition to the matters set out above, the Claimants' conduct of the litigation to date (viewed as a whole) is another factor weighing against allowing them a further chance to try to put their case in order. The pre- and post-claim correspondence from Mr Wyllie has already included some 73 emails from him with well over 6,000 pages of attachments. There have already been hearings before Fordham J, HHJ Pelling KC and Dias J as well as appellate involvement. Mr Wyllie's approach to the service of the present application was obstructive and wasteful. The Defendants seem unlikely to be able to recover these costs in practice.

95. Moreover, Mr Preece states that Mr Wyllie has threatened contempt of court applications against Clyde & Co; threatened to make an application to call Mr Preece to be cross-examined at the present hearing; threatened to make a media application to livestream the hearing; has made DSAR requests and complaints to Clyde & Co, and a subsequent complaint to the Information Commissioner's Office; has apparently written to the FCA, PRA, SRA, BSB and the Legal Ombudsman about the present claim; and has made a complaint about the auditors of BMIF on the basis that allowance has not been made in BMIF's accounts for the Claimants' claim, as well as writing to BMIF's chair with his complaints. Mr Wyllie has said he will be "*seeking the revocation of your clients' licences, among others, or alternatively, regulatory supervision, as a minimum, in response to the discovery and display of unethical, immoral and reprehensible practices, that will be stopped one way or another"*. Mr Wyllie has stated his intention to publish articles about Dr Joseph, Mr Mee of BMIF and Clyde & Co on the internet, and has provided screenshots to show the articles are drafted and ready to publish.

96. The time has come for this abusive, wasteful and meritless litigation to end. I have no hesitation in concluding that the claim should be struck out in its entirety.

(G) CONCLUSIONS

97. The Particulars of Claim, and the claim as a whole, must be struck out. I shall hear the parties at to what, if any, further relief may be appropriate.