Neutral Citation Number: [2025] EWHC 1755 (KB)

Case No: KB-2023-003510

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 July 2025

Before :

RICHARD SPEARMAN K.C.
(Sitting as a Deputy Judge of the King's Bench Division)

- -

Between :

MARK DOWDING	**Claimant**
- and -	
THE CHARACTER GROUP PLC	
	Defendant

- -

The **Claimant** in person
James Laddie KC (instructed by **Wallace LLP**) for the **Defendant**

Hearing date: 25 June 2025

- -

Judgment

This judgment was handed down remotely at 10.30am on 11 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Richard Spearman K.C.:

INTRODUCTION AND NATURE OF THE HEARING

1. Sophocles wrote (in the words of John Moore's translation of the tragedy of Ajax): "It is a painful thing to look at your own trouble and know that you yourself and no one else has made it". That, in my view, is the predicament in which the Claimant ("Mr Dowding") now finds himself. As appears below, essentially as a result of the way in which he chose to plead his case and to contest the efforts of the Defendant ("TCG") to restrict that case to what is properly arguable, a number of substantial orders for costs were made against Mr Dowding in July 2024. Mr Dowding sought, but was refused, permission to appeal against those orders to the Court of Appeal. According to the disclosure Mr Dowding has provided, his only source of income is his personal pension, and his only substantial assets are his personal pension fund and the equity in his home. He now faces losing that fund, and maybe also his home, to meet those costs orders.

2. On this occasion, there are two applications before the Court. The first in time is Mr Dowding's application, made by notice dated 11 October 2024, seeking permission to rely on a draft Amended Claim Form and a draft Amended Particulars of Claim ("the Amendment Application"). The second in time is the application of TCG, made by notice dated 6 June 2025, seeking an order that unless Mr Dowding pays various sums due under previous orders for costs made against him (including interest at the judgment rate of 8%), together with the costs of that application in the event it succeeds, within 14 days of the date of that order, either his claim should be struck out and he should be required to pay TCG its costs of these proceedings, or alternatively his claim should be stayed until those sums have been paid in full ("the Unless Order Application").

3. Both of those applications arise from an Order that I made on 18 July 2024 ("the July 2024 Order"), following the hearing on 19, 20 and 28 June 2024 and 5 and 18 July 2024 of (i) an application by TCG to strike out large parts of Mr Dowding's pleaded case, and for summary judgment against him on a substantial part of that case, (ii) a number of applications made by Mr Dowding, and (iii) ancillary issues which had been left over to be determined at that hearing by a previous order or previous orders of the Court.

4. On the first three of those dates Mr Dowding appeared in person, and on the fourth and fifth of those dates he was represented by John de Waal KC. TCG was represented by James Laddie KC and Ian Helme, and by Mr Helme alone on the fifth of those dates.

5. TCG succeeded on its applications, and Mr Dowding failed on his. Accordingly, so far as immediately material to the applications now before the Court, the July 2024 Order provided:

   (1) At paragraphs 7-12 as follows:

   > "7. By 4pm on 16 August 2024 the Claimant must file and serve a draft amended Claim Form (the "Draft Amended Claim Form") which:
   > (a) Omits any and all reference to the claims which have been struck out or been made the subject of summary judgment under paragraphs 1, 3 and 6A of this Order; and
   > (b) Does not include any new claim that was not pleaded in the Claim Form issued on 12 September 2023.

8. By 4pm on 16 August 2024 the Claimant must file and serve a re-pleaded draft Particulars of Claim (the "Draft Amended Particulars of Claim"), which:
(a) Complies with:
(i) CPR 16.4(1)(a);
(ii) the King's Bench Guide, §§5.30-5.33; and
(iii) Practice Direction 53B, paragraph 2.1.
(b) Omits any and all reference to the claims and contentions which have been struck out or been made the subject of summary judgment under paragraphs 2, 4, 5, 6 and 6A of this Order; and
(c) Does not include any new claim or factual contention that was not pleaded in the Particulars of Claim issued on 12 September 2023.
9. By 4pm on 13 September 2024, the First Defendant must notify the Claimant whether or not it consents to the Draft Amended Claim Form and Draft Amended Particulars of Claim.
10. If it consents to the Draft Amended Claim Form and Draft Amended Particulars of Claim, the First Defendant must within 28 days of the date of notification file and serve a Defence to the Claimant's Amended Particulars of Claim.
11. If the First Defendant does not consent to the Draft Amended Claim Form and Draft Amended Particulars of Claim, the Claimant may, if so advised, within 28 days of notification pursuant to paragraph 9 of this Order, issue, file and serve an application supported by evidence for permission to rely on the Draft Amended Claim Form and Draft Amended Particulars of Claim (the "Amendment Application").
12. The Amendment Application will be listed for hearing before a Judge of the Media and Communications List with a time estimate of 1 day. The parties are to contact the Clerk of the Lists within 21 days of the date of service of the Amendment Application to fix the Hearing as directed by this paragraph."

(2) At paragraphs 14-26 as follows:

"14. The Claimant shall pay the Defendants' costs of and occasioned by the SO/SJ Application on the indemnity basis, all such costs to be subject to immediate detailed assessment under CPR r. 47.1 if not agreed.
15. The Claimant shall pay the Defendants £221,500 as an interim payment on account of his liability for the Defendants' costs as set out in paragraph 14 above by 4pm on 2 August 2024.
16. The Claimant's Application, the 15 June Application and the 28 June Application are dismissed.
17. The Claimant shall pay the Defendants' costs of and occasioned by the Extension of Time Application summarily assessed in the amount of £6,000 by 4pm on 2 August 2024.
18. The Claimant shall pay the Defendants' costs of and occasioned by the Claimant's Application summarily assessed in the amount of £22,000 by 4pm on 2 August 2024.
19. The Claimant shall pay the Defendants' costs of and occasioned by the Set Aside, Variation and Witness Summons Application summarily assessed in the amount of £11,000 by 4pm on 2 August 2024.
20. The Claimant shall pay the Defendants' costs of and occasioned by the 15 June Application and the 28 June Application, all such costs to be subject to detailed assessment under CPR r. 47.1 if not agreed.

…
25. The Claimant's oral application for a stay of paragraphs 15, 17, 18, and 19 pending determination of any application for permission to appeal to the Court of Appeal is refused.
26. The Claimant shall pay the Defendants' costs of and occasioned by the dispute as to the terms of the draft order following the substantive hearing ending on 5 July 2024 and the hearing on 18 July 2024, summarily assessed in the amount of £27,500, by 4pm on 2 August 2024."

6. The reference in the July 2024 Order to the "SO/SJ Application" is to TCG's application to strike out parts of Mr Dowding's Particulars of Claim, and for summary judgment in respect of part of that pleaded case. The explanation for the references in the July 2024 Order to TCG as "the First Defendant" and to "the Defendants" is that the proceedings were brought not only against TCG but also against three individuals. One of the consequences of the "SO/SJ Application" is that they were removed from the claim.

7. The Amendment Application has its origins in paragraphs 7-12 of the July 2024 Order. As set out in earlier paragraphs of the July 2024 Order, a large number of paragraphs of Mr Dowding's Particulars of Claim were struck out or made the subject of summary judgment against him. In those circumstances, it became necessary for his Claim Form and Particulars of Claim to be amended to take account of the Orders made in those earlier paragraphs. Because Mr Dowding had been acting in person, at the conclusion of the substantive hearing on 5 July 2024, I was initially not minded to make a detailed or proscriptive order about the form of those amendments, as I thought that might place an undue burden on him. However, Mr Laddie was seeking such an order, and I was told by Mr de Waal that Mr Dowding intended to instruct Junior Counsel to draft the amended texts and (as Mr de Waal put it at the hearing on 18 July 2024) he "thought it probably would help Mr Dowding to have his pleading professionally drafted".

8. Accordingly, as the transcript shows, I expressed the view that if both sides considered an Order dealing with the re-pleading of the claim to be appropriate, it was not for me to stand in their way. In fact, the case had to come back for a further hearing on 18 July 2024 because, although I was told by Mr de Waal on 5 July 2024 that the form of Order proposed by TCG was agreed or substantially agreed, it subsequently emerged that, in fact, Mr Dowding had a variety of disagreements with TCG's proposals. The upshot of the hearing on 18 July 2024 was that Mr Dowding made no or little headway in seeking to reargue points that, as I was told on 5 July 2024, had been agreed. Also, I took the view that Mr Dowding should be ordered to pay the costs of that hearing, essentially on the footing that it had only been made necessary due to his change of stance, and, moreover, to the extent that he succeeded in revisiting points he achieved little success.

9. This explains the level of detail in paragraphs 7-12 of the July 2024 Order. In fact, the only change that was made to those paragraphs was that I extended by 14 days the dates which had originally been agreed on 5 July 2024. To complete the history of the Amendment Application, Mr Dowding did not, in fact, instruct Junior Counsel to assist him with the amendments, but instead served a draft Amended Claim Form and a draft Amended Particulars of Claim on 16 August 2024, each in a form drafted by him. By letter dated 13 September 2024, TCG's solicitors wrote to Mr Dowding explaining why TCG contended that this draft Amended Particulars of Claim did not comply with what Mr Dowding had been ordered to do and was defective. They also stated "In an attempt

to find a reasonable and pragmatic way forward without troubling the Court further at this stage, and pursuant to the Overriding Objective, TCG is willing to grant you a further opportunity to produce a new version of the DAPOC that complies with paragraph 8 of the Order", and proposed that extensions should be agreed to the dates set out in the July 2024 Order. Mr Dowding responded by issuing the Amendment Application. In due course, the Amendment Application and the Unless Order Application were listed for hearing before me on the same day. In light of the history, and having regard to the contents of the applications, I heard the latter application first.

10. The Unless Order Application has its origins in paragraphs 14-26 of the July 2024 Order. As appears below, Mr Dowding has not paid, or offered to pay, any of the sums that he was ordered to pay by those paragraphs of the July 2024 Order, nor made any proposals with regard to payment of any of those sums, or any part of the same. This is in spite of the fact that (1) his application for permission to appeal against the costs orders contained in paragraphs 17, 18, 19 and 26 of the July 2024 Order (amounting in total to £66,500) was refused by Nugee LJ on consideration of the papers on 10 October 2024 and (2) his application for permission to appeal against the costs order contained in paragraph 15 of the July 2024 Order (in the sum of £221,500) was refused by Nugee LJ on consideration of the papers on 6 January 2025. In the meantime, as detailed below, Mr Dowding has not only been expending sums on other proceedings brought by him, but has also been drawing down substantial monies from his personal pension. This was identified by Mr de Waal on 5 July 2024 (when asking for time to pay) as the source from which Mr Dowding was going to make payment of the costs ordered by the July 2024 Order: "He has to break into his pension to get the money". To similar effect, on 18 July 2024 I said to Mr de Waal "I think you told me that he needed time to release money from his pension. Is that right?", and Mr de Waal replied "Yes".

11. Mr Dowding made or intimated a number of further applications at or in the run up to the hearing. At the conclusion of the hearing, I informed the parties that I had decided to grant the Unless Order Application (save that I would allow Mr Dowding 28 days rather than 14 days to make payment), and not to accede to any of Mr Dowding's applications. I allowed 28 days for payment because Mr Dowding explained during the course of the hearing that he had been withdrawing sums on a monthly basis from his pension fund. He confirmed that he should be able to withdraw the sums he was liable to pay within 28 days. The form of Order agreed following the hearing is as follows:

> "**UPON** the Order of Richard Spearman KC (sitting as a Deputy High Court Judge) dated 18 July 2024 (the "**July Order**") which, inter alia, (i) struck out and/or granted reverse summary judgment on various of the Claimants' claims against the First Defendant; (ii) struck out the Claimants' claims against the Second, Third and Fourth Defendants in their entirety; and (iii) required the Claimant to make payment of the sum of £288,000 to the Defendants (the "**Judgment Debt**") by 4pm on 2 August 2024
>
> **AND UPON** the Claimant having failed to pay the Judgment Debt (or any part of it) to the Defendants
>
> **AND UPON** the Claimant's application by notice dated 11 October 2024 seeking permission to rely on a draft amended Claim Form and draft amended Particulars

of Claim as served on the First Defendant on 16 August 2024, pursuant to paragraph 11 of the July Order (the "**Amendment Application**")

AND UPON the Court listing the Amendment Application to be heard on 25 June 2025 over one day.

AND UPON the First Defendant's application by notice dated 6 June 2025 (the **"Unless Order Application**") supported by the Third Witness Statement of Alexander Weinberg dated 6 June 2025 and Exhibit AW3 thereto (together, "**Weinberg 3**")

AND UPON the Court listing the Unless Order Application to be heard on 25 June 2025 together with the Amendment Application.

AND UPON the Court recording having read (i) Weinberg 3; (ii) the Fourth Witness Statement of Alexander Weinberg dated 20 June 2025 and Exhibit AW4 thereto; (iii) the Fifth Witness Statement of Mark Dowding dated 23 June 2025 and Exhibit MD5 thereto ("**Dowding 5**") in response to the Unless Order Application; and (iv) the Witness Statement of Daniel Stanbury dated 24 June 2025 and Exhibit DS1 thereto ("**Stanbury 1**") adduced by the First Defendant in reply to Dowding 5

AND UPON the Claimant's oral application for an adjournment to consider Stanbury 1 (the "**Claimant's Adjournment Application**").

AND UPON the Claimant's oral application pursuant to CPR Part 44.11(1)(b) (the **"Claimant's Costs Application**")

AND UPON the Claimant's application at the hearing of the Unless Order Application requesting that the Court defer making an unless order pending the determination of separate proceedings issued by the Claimant and seeking set aside of the July Order as having been obtained by fraud ("**the Set Aside for Fraud Application**").

AND UPON hearing Leading Counsel for the First Defendant and the Claimant appearing in person

IT IS ORDERED THAT:

1. Unless the Claimant pays the totality of (a) the Judgment Debt (plus accrued interest to the date of payment at the judgment rate of 8% per annum) in full to the Defendants; and (b) the sum ordered in paragraph 4 below to the First Defendant, by 4pm on 23 July 2025:

    (i) these proceedings shall be struck out without further order of the Court;

    (ii) the First Defendant shall be entitled to file a request for judgment pursuant to CPR 3.5(2)(a); and

(iii) the Claimant shall be liable to pay the First Defendant its costs of and occasioned by the claim to be subject to detailed assessment on the standard basis if they cannot be agreed.

2. The Amendment Application (and for the avoidance of doubt, the claim generally) is stayed. If the Claimant timeously complies with his obligation to pay in full the sums set out in paragraph 1 above, he shall have liberty to apply to restore the Amendment Application.

3. The Claimant shall pay the First Defendant its costs of and occasioned by the Unless Order Application on the indemnity basis to be subject to immediate detailed assessment under CPR 47.1 if they cannot be agreed.

4. The Claimant shall pay the First Defendant £45,000 as an interim payment on account of his liability for the First Defendant's costs as set out in paragraph 3 above.

5. The Claimant's Adjournment Application is refused.

6. The Claimant's Costs Application is refused.

7. The Set Aside for Fraud Application is refused.

8. This Order shall be served by the First Defendant on the Claimant."

12. My reasons for making an Order in those terms are set out below.

THE PARTIES

13. Mr Dowding was employed by TCG from 1 August 2012 to 14 September 2017, when he was summarily dismissed by TCG on the basis of a breakdown of trust and confidence. By the time of his dismissal he was TCG's Group Finance Director.

14. TCG is an AIM-listed company incorporated and based in the United Kingdom. The business of TCG was established in 1991. It has developed over the years from that of a UK distributor of imported third party toy products to that of being a designer, producer, manufacturer and distributor of ranges of toys, games and playthings, many of which TCG markets and distributes throughout many territories around the world. TCG employs approximately 200 staff around the world and operates from its three premises in the UK as well as office premises in Copenhagen, Los Angeles, Hong Kong and Shenzhen in China, and contract warehousing facilities in Sweden.

THE EMPLOYMENT TRIBUNAL PROCEEDINGS

15. Mr Dowding commenced proceedings against TCG in the Employment Tribunal ("the ET Proceedings") claiming, in substance: (i) that he had not been provided with written particulars of his contractual terms and conditions, (ii) that he was a "whistleblower" and had been subjected to various acts of victimisation on the ground that he was a whistleblower and suffered detriment, and (iii) that he was unfairly dismissed, either because he was a whistleblower or on the basis that he was the victim of an "ordinary" unfair dismissal. The ET Proceedings were tried in September 2020. By a judgment dated 2 November 2020, all of Mr Dowding's claims were dismissed.

16. Further, following a hearing on 4 and 5 November 2021, by a judgment dated 18 January 2022 Mr Dowding was ordered by the Employment Tribunal ("ET") to pay 21% of TCG's overall costs (of £600,000) capped at £127,563.70 subject to detailed assessment, plus £20,000 in respect of TCG's costs of the costs hearing itself.

17. On 24 December 2020 and 22 March 2022 respectively, Mr Dowding appealed to the Employment Appeal Tribunal ("EAT") against the substantive and costs decisions of the ET. On 7 February 2023, HHJ Auerbach granted permission to appeal against both decisions on limited grounds. Mr Dowding renewed his permission application to the Court of Appeal in respect of all liability and costs grounds on which the EAT had not granted permission. Permission to appeal was refused by Falk LJ on 7 September 2023.

18. The limited matters on which the EAT granted permission to appeal on the papers were the subject of an appeal hearing on 30 and 31 July 2024 before HHJ Auerbach. By an Order and judgment dated 24 September 2024, the EAT dismissed both appeals, save that the ET's decisions (i) to award TCG its costs on the indemnity basis and (ii) to award TCG £20,000 in respect of its application for costs were remitted back to the ET for fresh consideration. Those two issues were listed for a hearing before the ET on 27 January 2025, and by a judgment dated 7 February 2025 the ET reached the same decisions on them as it had originally reached. Mr Dowding asked the ET to reconsider that judgment and, when that request was refused, again appealed to the EAT. It seems that (i) this appeal is ongoing, (ii) the EAT has already dismissed it other than in respect of two grounds, and (ii) these two grounds have been stayed pending consideration by the EAT of further information and comments received from the ET Judge.

THESE PROCEEDINGS

19. The Claim Form in the present proceedings was issued on 12 September 2023, just two days before the expiry of the six year limitation period starting with the date of Mr Dowding's dismissal by TCG. The Claim Form and Particulars of Claim were served on 10 January 2024, just within four months of that date. In addition to TCG, these documents named as Defendants Mr Kirankumar ("Kiran") Shah, one of TCG's Joint Group Managing Directors; Mr Joseph Kissane, Managing Director of TCG's UK operations; and Ms Sarah Wells, personal assistant to Jonathan Diver (the other Joint Group Managing Director of TCG). All four are referred to as "the Defendants" below.

20. Some idea of the length and complexity of the Particulars of Claim, as well as TCG's grounds of complaint in respect of the same, can be gleaned from paragraphs 1-6 of the July 2024 Order, which provide as follows:

"**Res Judicata/Issue Estoppel**
1. The Claimant's claims in the following paragraphs of the Claim Form be struck out under CPR r.3.4(2)(b):
a. Paragraph 5;
b. Paragraph 6;
c. Paragraph 7 (insofar as the claim relates to any more than a bonus valued at £55,000 and interest thereon);
d. Paragraph 10; and
e. Paragraph 11.
2. The following paragraphs (or parts of paragraphs) in the Particulars of Claim be struck out under CPR r. 3.4(2)(b):

a. Paragraph 14 insofar as it claims that the Claimant was entitled to a notice period of six months and annual leave of 30 days;
b. Paragraph 15;
c. Paragraphs 34-35;
d. Paragraph 37 insofar as it claims that the Claimant's existing contractual terms included "100% of salary bonus";
e. Paragraph 51 insofar as it contends that the 8 June 2017 Draft was inaccurate where it asserted that the Claimant was entitled to three months' notice and a discretionary bonus at 50% of salary;
…
h. Paragraph 61;
i. Paragraphs 62-63;
j. Paragraph 65;
k. Paragraph 66;
l. Paragraph 67;
m. Paragraph 70;
n. Paragraph 73, limited to strike-out of the words "*...retention of the…*";
o. Paragraph 74, limited to strike-out of the words "*...then peremptorily revoked the offer and…*";
p. Paragraphs 75-77;
q. Paragraphs 78-80;
r. Paragraphs 81-82;
s. Paragraph 84;
t. Paragraphs 85-87;
u. Paragraph 94;
v. Paragraph 95;
w. Paragraphs 96-98;
x. Paragraphs 99-103;
y. Paragraphs 104-106;
z. Paragraph 109;
aa. Paragraph 112, limited to strike-out of the word "*sham*";
bb. Paragraph 116, limited to strike-out of the words "*...without the Claimant's knowledge and…*" and "*...a few hours…*";
cc. Paragraphs 117-120;
dd. Paragraph 124;
ee. Paragraph 130, limited to strike-out of the words "*…the deliberate breach of contract by the Company, as procured by Mr Shah and/or Mr Kissane and Ms Wells through preparing the False Minutes, and also being...*";
ff. Paragraphs 131-132;
gg. Paragraphs 133, 135, 138 and 142-145 insofar as they claim that the Public Announcements were inaccurate;
hh. Paragraph 135, from "*…when in reality...*" to "*…unlawful means conspiracy*.";
ii. Paragraph 137;
jj. Paragraphs 150-154;
kk. Paragraphs 157, 158, 160, 170 and 179;
ll. Paragraphs 167, 170, 171, 214(i) and 214(ii) (insofar as they claim that the Claimant's 31 August 2017 bonus was greater than £55,000);
mm. Paragraphs 174-176, 214(iii) and 214(iv) insofar as they claim that the Claimant's notice period was greater than three months;
nn. Paragraphs 178-180;

oo. Paragraph 187, limited to strike-out of the words "…*did not agree to the Company correcting the inaccurate Public Announcements as had been sought by the Claimant, and further, the offer…*";
pp. Paragraphs 190 and 205, limited to strike-out of the word "…*False…*" in each case;
qq. Paragraphs 196-198;
rr. Paragraphs 214(viii)-(x) insofar as they refer to the torts of unlawful means conspiracy and interference with contractual relations; and
ss. Paragraphs 214(xiii)-(xiv).

No Reasonable Cause of Action/Summary Judgment

3. The Claimant's claims in the following paragraphs of the Claim Form be struck out under CPR r. 3.4(2)(a) and/or that the Defendants be granted reverse summary judgment in respect of such claims:
a. Paragraph 1;
b. Paragraph 2;
c. Paragraph 12;
d. Paragraph 13;
e. Paragraph 14; and
f. Paragraph 15.

4. The following paragraphs (or parts of paragraphs) in the Particulars of Claim be struck out under CPR pt.3.4(2)(a) and/or be the subject of reverse summary judgment:

Re Processing Personal Data in July 2017

a. Paragraphs 20-26 and 67-69;
b. Prayer, paragraphs (5) and (6) (as applicable);

Re Preparation and Circulation of the Minutes

c. Paragraphs 118 and 131-132 insofar as they allege a breach of the Data Protection Act 1998;
d. Paragraph 120 insofar as it alleges a breach of the Data Protection Act 1998;
e. Paragraph 120 insofar as it alleges a fraudulent misrepresentation;
f. Paragraphs 120 and 137 insofar as they allege an unlawful means conspiracy;
g. Prayer, paragraphs (5) and (6) (as applicable);

Re the Public Announcements

h. Paragraphs 140-141, 181 and 214(xi) insofar as they claim breach of confidence;
i. Paragraphs 140-141, 181 and 214(xi) insofar as they claim misuse of private information;
j. Paragraphs 141 and 214(xi) insofar as they claim a breach of contract;
k. Paragraphs 142, 144, 181 and 214 (viii) and (xii) insofar as they claim a breach of the Data Protection Act 1998;
l. Paragraphs 143, 144 181 and 214(xi) insofar as they claim negligent misstatement;
m. Paragraph 214 (xi) insofar as it claims a breach of the European Convention on Human Rights, Article 8;
n. Prayer, paragraph (3);

Re Inducement/Procurement of Breach of Contract Claims as against the Second Defendant

o. Paragraphs 146, 158, 159, 165, 170, 171, 179, 180, 214 (introduction) and 214 (viii-x) insofar as they claim that the Second Defendant induced or procured a breach of contract;
p. Paragraph 170 insofar as it alleges a breach of the Data Protection Act 1998;

and
Re "Bad Faith"
q. Paragraph 136.
5. The following paragraphs of the Particulars of Claim be the subject of reverse summary judgment:
Re the DSAR claims
a. Paragraphs 188 and 193-204
b. Prayer, paragraph (4)
Abuse of Process/Scurrilous and/or Vexatious Material
6. The following paragraphs in the Particulars of Claim be struck out under CPR pt.3.4(2)(b):
a. Paragraphs 43-45;
b. Paragraphs 46 and 48;
c. Paragraph 47;
d. Paragraph 91; and
e. Paragraphs 206-208."

21. As appears from these paragraphs of the July 2024 Order, TCG sought strike out or summary judgment on the following principal grounds: (1) substantial elements of the Particulars of Claim were the subject of conclusive findings by the ET adverse to Mr Dowding such that there was an issue estoppel or that litigating them afresh would otherwise be an abuse of process, (2) other elements including Mr Dowding's claims under the Data Protection Act 1998 were properly susceptible to summary judgment in favour of TCG, and (3) further elements contained irrelevant and vexatious material.

22. As set out above, TCG's application resulted in the July 2024 Order. The rulings which gave rise to the July 2024 Order are annexed to this Judgment.

23. On 19 and 26 July 2024, Mr Dowding applied to the Court of Appeal for permission to appeal both the costs order elements and the substantive elements of the July 2024 Order and for a stay of execution of the costs order elements pending the outcome of his application for permission to appeal. Grounds 2, 3 and 4 of his applications challenged the exercise of my discretion as to costs, and permission to appeal on those Grounds was refused by Nugee LJ on 10 October 2024. At the same time, Nugee LJ adjourned the consideration of Ground 1 of those applications, which related to my substantive rulings, and reasoned that the order for costs referrable to those rulings should follow the result of the substantive appeal. He therefore ordered a stay of execution of the costs order at paragraph 15 of the July 2024 Order (but not those at paragraphs 17, 18 or 19 of the same) "pending determination of the application for permission to appeal on Ground 1, subject to the proviso that nothing in the stay shall prevent the Court hearing, and, if it thinks fit, granting, the pending application for the interim charging order to be made final [a reference to the charging order identified below]". (There was no reference to paragraph 26 of the July 2024 Order, but the only stay that was granted appears to have been in respect of paragraph 15 of that Order.)

24. On 6 January 2025, Nugee LJ made an Order dealing with the substantive appeal. He divided the points into four topics (1) my ruling on the 6 months' notice period; (2) my ruling on the 100% bonus claim; (3) my rulings striking out various claims; and (4) my ruling granting summary judgment on the DPA claims. He held that (for the detailed reasons that he had given) "I consider that none of the Grounds put forward have any

real prospect of success" and "For completeness, I do not consider that there is any other compelling reason for the appeal to be heard". The stay on paragraph 15 of the July 2024 Order contained in Nugee LJ's Order dated 10 October 2024 thus expired.

ENFORCEMENT PROCEEDINGS

25. In the meantime, on 13 September 2024, TCG and the other original Defendants obtained an interim charging order over Mr Dowding's beneficial interest in the leasehold property at Flat 7, New Archers Court, 99 Rotherhithe Street, London SE16 4AD ("the Property"), in respect of which he is the sole registered proprietor. This was obtained so as to secure the monies owing under the costs orders contained in the July 2024 Order. A final charging order was made at a return date hearing on 3 December 2024. On 17 April 2025, the Defendants commenced proceedings in the High Court seeking an order for sale of the Property. Mr Dowding filed an acknowledgment of service in that claim on 15 May 2025 and (taking into account an agreed extension of time) his substantive response was due to be filed and served on 29 May 2025.

26. In fact, however, Mr Dowding filed no substantive response. Instead, on 29 May 2025, Mr Dowding applied to stay the proceedings seeking an order for sale of the Property pending determination of fresh High Court proceedings that he had issued the previous day against the original four Defendants to the present proceedings ("the Fraud Proceedings"). That application for a stay exhibited a sealed Claim Form and Particulars of Claim each dated 28 May 2025. The Claim Form states "The Claimant alleges that judgments and orders obtained by the Defendants in High Court Kings Bench Division applications in claim number KB-2023-003510 and dealt with in an order of that court dated 18 July 2024 were obtained by fraud. The Claimant seeks an order that those judgments and orders in case KB-2023-003510 be set aside for fraud". To like effect, paragraph 65 of the Particulars of Claim pleads: "The Claimant seeks an order that the High Court's application Judgments and all the Orders of 18 July 2024 in case KB-2023-003510 be set aside as having been obtained by fraud".

27. The substance of the allegations of fraud is a rehearsal of various arguments that Mr Dowding put forward in the ET Proceedings and repeated before me in July 2024. In particular, it is alleged that a number of emails referred to in my rulings in July 2024 as "the Tosca emails" are forged or not authentic, essentially on the basis that the versions put forward by TCG (and various witnesses) do not show Mr Dowding as an addressee, whereas Mr Dowding contends that, in truth and in fact, he was one of the addressees.

28. Also, in particular, allegations are made about a report dated 8 November 2023 produced by an IT company called Fitzrovia I.T. Limited ("Fitzrovia") addressed to TCG's joint brokers, Allenby Capital Limited ("Allenby") which is said to be "purportedly signed by Daniel Stanbury, director at Fitzrovia" and to have "alleged in substance an investigation had taken place on behalf of Allenby confirming in effect that attached paper copies of the alleged underlying metadata of the four Tosca Emails sent on 2 August 2017 showed that the four emails were sent on 2 August 2017 between Ms Nahal and Mr Shah only". It is pleaded that Mr Dowding now has reports from two experts, that of Ms Margaret Webb dated 11 March 2025 and that of Mr Paul Craddock dated 27 February 2025, to the effect that "based on the evidence to hand from a comparison of the alleged signature of Mr Stanbury to known signatures of Mr Stanbury there is evidence that the signature on the Fitzrovia Report is not genuine".

29. In these regards, paragraphs 48 and 49 of the new Particulars of Claim plead as follows:

> "48. The Defendants are responsible for putting a forged copy of the first 2 August 2017 Tosca Email … before the Court in the Original Action/SO/SJ Application Hearing; the version presented does not include the Claimant's email address on its face, when the fact is he was an email recipient of the original email sent at the time on 2 August 2017.
>
> 49. The Defendants are responsible for putting a forged Fitzrovia Report before the Court, Allenby has acted as agent for TCG in the production and deployment of Fitzrovia Report which contains an inauthentic signature and attachments purported to be metadata copies of the four 2 August 2017 Tosca Emails but which do not show the Claimant as an email recipient when the Defendants know the Claimant was an email recipient and the Defendants know the Fitzrovia Report's attachments are not authentic documents and the conclusions on Fitzrovia Report are fraudulent and there has been a misleading of the Court by way of deliberate fraud by Allenby as agent of Defendants and by the Defendants."

30. The thrust of Mr Dowding's argument based on the existence of the Fraud Proceedings is that the July 2024 Order is liable to be set aside because it was obtained by fraud, and accordingly that (i) no order should be made on the Unless Order Application, or (ii) the Unless Order Application should be stayed pending determination of the new claim.

31. Mr Dowding served the Fraud Proceedings on the Defendants on 11 June 2025. By that time, it would appear that Mr Dowding was hoping or intending to replace the Particulars of Claim with an Amended Particulars of Claim dated 9 June 2025, in a form which appears as part of exhibit MD5 to his 5th witness statement dated 23 June 2025, although no application for permission to amend appears to have been made. Further, the extent to which text has been amended is not apparent (by changes of numbering, tracking of changes, and so forth) on the face of those Amended Particulars of Claim.

32. The text of paragraph 65 of the original Particulars of Claim is replicated in paragraph 71 of the Amended Particulars of Claim (so the relief claimed remains the same), and the text of paragraphs 48 and 49 of the Particulars of Claim are replicated, although in slightly different words, in paragraphs 52 and 53 of the Amended Particulars of Claim. Some new allegations appear to be contained in the Amended Particulars of Claim – hence their increased length – but none of them appear to relate to any matter that has not already been raised and addressed in the ET Proceedings and in my earlier rulings.

33. The Defendants intend (i) to oppose the application for a stay of the proceedings seeking an order for sale of the Property and (ii) to apply to strike out the Fraud Proceedings in their entirety on the basis that they are vexatious and an abuse of process - and to invite the Court to certify that the Fraud Proceedings are "totally without merit".

34. In the meantime, the Defendants' proceedings seeking an order for sale of the Property are progressing slowly. It appeared to be common ground before me that a directions hearing in those proceedings is unlikely to take place until the Autumn of 2025. This is irrespective of the emergence of the Fraud Proceedings, which may cause further delay.

35. In addition to seeking to enforce the costs orders contained in the July 2024 Order by obtaining an order for sale of the Property, the Defendants have availed themselves of the liberty to apply for detailed assessment forthwith that is contained in that Order.

36. On 13 March 2025, the Defendants served on Mr Dowding notice of intention to commence detailed assessment proceedings in respect of their costs of and occasioned by the SO/SJ Application, together with their bill of costs in the total sum of £445,220.79. On 7 April 2025, Mr Dowding served points of dispute. On 24 April 2025, the Defendants served replies to Mr Dowding's points of dispute. On 30 May 2025, the Defendants filed a request for a detailed assessment hearing. This is awaiting a listing.

OTHER PROCEEDINGS

37. By Claim Form dated 10 March 2023 Mr Dowding commenced proceedings against Allenby for breach of data subject rights (essentially relating to production and rectification of his personal data). The Tosca emails loom large in that claim, as do allegations of fraudulent conduct against (among others) Ms Nahal (an employee of Allenby). This appears from the following paragraphs of the Particulars of Claim:

> "18. Tosca were considering investing in Character through one of its funds managed by Matthew Siebert ("Mr Siebert"). Tosca wanted to meet the Character executive director presentation team, as recommended by the Defendant.
>
> 19. On 2.8.17 Ms Nahal, emailed Mr Shah and the Claimant requesting "Dates for Tosca please xxx" or words to that effect ("Tosca Email 1").
>
> 20. Mr Shah responded to Tosca Email 1 on 2.8.17, copying in the Claimant ("Tosca Email 2").
>
> 21. Ms Nahal responded to Tosca Email 2, 2.8.17 copying in the Claimant ("Tosca Email 3").
>
> 22. Ms Nahal followed Tosca Emails 1,2 and 3, at 13. 29 on 2.8.17 with a new email chain titled: "Maybe just you and Mark" ("Tosca Email 4").
>
> 23. Ms Nahal sent Tosca Email 4 to Mr Shah and the Claimant.
>
> …
>
> 43. Mr Shah and or Character submitted into disclosure in the ET Claim, documents, in a materially adjusted form compared to the authentic original documents.
>
> 44. Included within these false / fake documents were adjusted copies of: 2.8.17 Tosca Email 1 showing a false time of 13.05, 2.8.17 Tosca Email 2 showing a false time of 13.35 and 2.8.17 Tosca Email 3 showing a false time of 13.36 ("Fake Tosca Emails 1,2 and 3").
>
> 45. Fake Tosca Emails 1, 2 and 3, inaccurately do not show the Claimant's email address as him being a recipient despite him receiving the original emails.

46. Fake Tosca Emails 1, 2 and 3, show inaccurate time stamps of 13.05, 13.35 and 13.36.

47. Mr Shah and or Character did not disclose any of the authentic original Tosca Emails 1,2,3,4 in the ET Claim; this was known at all material times by the Defendant.

48. On 18 December 2018 Ms Nahal sent Mr Shah an email attaching a pdf of what she purported to be a (true) copy of 2.8.17 Tosca Email 1 showing a time of 13.05 ("Fake Allenby Tosca Email 1").

49. Fake Allenby Tosca Email 1 inaccurately does not show the Claimant's email address in the sent to box despite the fact he was sent the original email Tosca Email 1.

50. Fake Allenby Tosca Email 1 is not an accurate copy of the original email document, it is a forgery, and this was known at all material times by Ms Nahal, Allenby, Mr Shah and Character.

51. Fake Allenby Tosca Email 1 was manufactured from the original Tosca Email 1 by Ms Nahal and or by Allenby and or by Mr Shah and or by Character.

52. The Defendant has refused to divulge whether it was Ms Nahal and or Allenby who manufactured Fake Allenby Tosca Email 1 or whether it was manufactured by Mr Shah and or Character.

53. The creation of Fake Allenby Tosca Email 1 constitutes an unfair and unlawful processing of the Claimant's personal data.

54. The sending of Fake Allenby Tosca Email 1 by Ms Nahal/Allenby to Mr Shah/Character constitutes an unfair and unlawful processing of the Claimant's personal data.

55. The Claimant's email address appears on the four authentic original unaltered Tosca 2.8.17 emails 1, 2, 3 and 4, ("Original Unaltered Tosca Emails"). Those emails are about the Claimant and his email address appears on them, the information therein constitutes Personal Data of the Claimant as defined by GDPR and or DPA 2018."

38. Leaving aside altogether considerations of whether and to what extent these allegations have already been considered and determined in the ET Proceedings, and, in addition, whether and to what extent a claim that is cast as relying on data subject rights constitutes an appropriate vehicle for airing wide-ranging allegations of fraudulent conduct of this kind, it is a curious feature of this claim by Mr Dowding that, if his allegations are right, he was "kept in the loop" about the meeting with Tosca to a greater extent than would be true if the Tosca emails were not, in fact, sent to him. That is curious because the thrust of this part of Mr Dowding's employment-rights based case against TCG is that he was excluded from the meeting with Tosca, when it in fact took place on 16 August 2017, and that this exclusion was wrongful. If he was "kept in the loop" up to the time of the Tosca emails, TCG would have been asking for trouble by excluding him from the meeting, as he would have known that a meeting was planned

and would (presumably) be alert if communications to him about it dried up. If, on the other hand, he was not "kept in the loop", that supports his case that he was being shut out of the interaction with Tosca (although whether wrongfully or not remains in issue).

39. On 22 March 2024, Allenby applied to strike out this claim as an abuse of process. Following a hearing on 24 July 2024 at which both sides were represented by Junior Counsel, by Order dated 5 September 2024, District Judge Le Bas in the Central London County Court struck out the claim and ordered Mr Dowding to pay Allenby's costs, summarily assessed on the indemnity basis in the sum of £60,000.

40. On 4 November 2024, Mr Dowding was granted permission to appeal, and the Order of the District Judge was stayed pending the appeal. TCG's evidence before me is that Mr Dowding's appeal was heard on 27 March 2025, and that on that occasion the Judge noted that Mr Dowding had made an application on 19 March 2025 seeking to introduce new expert evidence challenging the authenticity of a report prepared by Allenby's IT service provider, Fitzrovia, and refused that application. It would appear that judgment on the appeal is due to be handed down on 28 August 2025.

41. During the course of the hearing which resulted in the July 2024 Order, reference was made to a further data subject access request contained in a letter from Mr Dowding dated 24 April 2024. I alluded to this in [37] and [47] of my ruling granting summary judgment to the Defendants on Mr Dowding's data subject claims:

> "The matter is not made any better, from Mr Dowding's point of view, by the consideration that the nature of the documents that he seeks - and it is mostly documents that he is pressing for - has changed over time and seems to be under a process of continuous evolution and indeed amplification. His most recent letter of 24 April 2024, I think probably, even on its face, flags up a yet further data subject access request, and has within it under the headings "Personal data contained in specific documents that are believed to exist" and "Personal data believed to be contained in the following classes of documents" a list of 48 categories of documents.
>
> The Defendants submit that it is quite clear that the Claimant's motivation is all to do with complaints about the dismissal process, which has already been dealt with, and a refusal to accept the findings of the Employment Tribunal. The Defendants submit - and I agree – that this is exemplified by the language of the Claimant's letter dated 24 April 2024. For reasons that I have already indicated, it seems to me not only that this is right, but also that in all the circumstances this is not an appropriate or desirable exercise of the Claimant's data subject access rights."

42. In fact, although I have no recollection of being informed of this at that hearing, Mr Dowding had issued a Claim Form in the King's Bench Division of the High Court on 27 June 2024, making further data subject claims against TCG. That Claim Form was served on TCG on 2 October 2024, together with an Order transferring the claim to the Central London County Court. TCG has applied to strike out this claim on the grounds (among others) that it is an abuse of process. That application is listed on 23 July 2025.

43. In his 3rd Witness Statement, TCG's solicitor, Mr Weinberg, details a number of other claims, threatened claims, and applications made by Mr Dowding, which are said to

illustrate Mr Dowding's unreasonable and "scorched earth" approach to litigation. I do not consider it necessary to refer to any of them, with the sole exception which follows.

44. On 1 March 2023, the Claimant commenced a High Court claim against Mr Laddie, TCG's Leading Counsel in both the ET Proceedings and the present claim. The thrust of the complaint concerned alleged inaccurate processing of Mr Dowding's personal data by Mr Laddie in two documents prepared during the course of the ET Proceedings: (1) Mr Laddie's Opening Note, and (2) a letter written by Mr Laddie to Allenby relating to what was said at the time to be Mr Dowding's withdrawal of the forgery allegation against Ms Nahal. In due course, Deputy Master Marzec granted strike out/summary judgment in Mr Laddie's favour on the grounds (among others) of abuse of process. In paragraphs 21 and 67 of her Judgment, the Deputy Master noted that the allegations against Mr Laddie were "baseless and scurrilous"; made with "no evidential basis"; "based on nothing at all" and "ought not to have been made and would not have been made if the Claimant were professionally represented". The Deputy Master also certified the claim in respect of the Opening Note as being Completely Without Merit.

THE UNLESS ORDER APPLICATION

(1) The applicable legal principles

45. Mr Laddie submitted that the applicable principles relating to unless orders of the kind sought by TCG could be traced back to the decision of Sir John Chadwick made on an application for permission to appeal against an Order of Patten J in *Crystal Decisions (UK) Limited v Vedatech* [2008] EWCA Civ 848. Sir John Chadwick said at [17]:

> "…the court's ability to make interlocutory costs orders following, in particular, the Access to Justice reforms in 1998, is a sanction which is available to it in order to encourage responsible litigation. The court marks what it regards as an irresponsible application by an immediate order for the payment of costs. That is intended to bring home to a party – when considering whether to make an application – that an unsuccessful application may carry a price which will have to be paid at once. If the court is not in a position to enforce immediate interlocutory orders for the payment of costs which it was thought right to make, then the force of that sanction is seriously undermined. It is important that, in cases where the court thinks it right to make an order for immediate payment on an interlocutory application, that it does have the power – and can exercise the power – to ensure that order is met. For the reasons which Patten J explained, the only effective sanction in a case of this nature is to require payment of interlocutory costs as the price of being allowed to continue to contest the proceedings. Unless the party against whom an order for costs is made is prepared to, or can be compelled to, comply with, that order, the order might just as well not be made."

46. At first instance, in *Crystal Decisions UK Ltd* v *Vedatech Corp* [2006] EWHC 3500 (Ch) Patten J had said at [16]:

> "In any event I take the view that orders of the court, even in relation to interim costs, require to be complied with and that, unless there is some overwhelming consideration falling within Article 6 [ECHR] that compels the court to take a different view, the normal consequence of a failure to comply with such an order, is that the court, in order to protect its own procedure, should make compliance

with that order a condition of the party in question being able to continue with the litigation."

47. With regard to those observations, Sir John Chadwick said at [18]:

> "For my part, I would hold that – whether or not a statement in such general terms can be supported – the proposition can be supported in a case (such as the present) where there is no other effective way of ensuring that the interim costs order is satisfied. That, of course, is always subject to what the judge referred to as the overwhelming consideration falling within Article 6: that orders requiring payment of costs as a condition of proceeding with litigation are not made in circumstances where to enforce such an order would drive a party from access to justice. But, for the reasons that the judge explained and to which I have already referred, this was not such a case."

48. Mr Laddie relied on the statement of Saini J in *Siddiqi v Aidiniantz* [2020] EWHC 699 (QB), at [30(ii)], that "the 'working' or 'default rule' is that a litigant should not be able to continue with his or her claim without satisfying an existing and non-appealed final costs order, and the court should impose a condition requiring compliance".

49. Mr Laddie drew my attention to the fact that although orders were made in the following cases (i) *Peak Hotels and Resorts Limited v Tarek and others* [2016] EWHC 690 (Ch), where Asplin J granted an unless order, and (ii) *Michael Wilson & Partners v Sinclair & Ors* [2017] EWHC 2424 (Comm), where Sir Richard Field made an unless order, breach of which would lead to the defendants being debarred from participating in the litigation, as well as (iii) *Siddiqi v Aidiniantz* [2020] EWHC 699 (QB), where Saini J made an unless order breach of which would mean that the proceedings were stayed, nevertheless in (iv) *J Robbins Capital Partners Ltd v Zamsort & Ors* [2024] EWHC 1990 (Comm), Mr Paul Stanley KC declined to order a stay. Mr Laddie informed me that this last case was the only case of which TCG's legal team were aware in which the Court had declined to make an unless order in the face of non-compliance with an interim costs order. He submitted that the explanation for the refusal of an order in that case was as follows: (a) it was not in dispute that the claimant company had provided cogent, detailed and frank evidence that it was not in a position to pay the sums that had been ordered, as well as evidence to like effect that funds were not available from third parties, and (b) the Court was struck by the disparity between the unpaid costs orders (c.£60,000) and the pleaded value of the claims (c.£24 million), which led to concerns about the disproportionality of striking out (see *Robbins* at [18]).

50. Both Mr Laddie and Mr Dowding relied upon the following summary of the applicable principles contained in the judgment of Sir Richard Field in *Michael Wilson & Partners v Sinclair & Ors* [2017] EWHC 2424 (Comm), [2017] 5 Costs LR 877 at [29]:

> "(1) The imposition of a sanction for non-payment of a costs order involves the exercise of a discretion pursuant to the court's inherent jurisdiction.
>
> (2) The court should keep carefully in mind the policy behind the imposition of costs orders made payable within a specified period of time before the end of the litigation, namely, that they serve to discourage irresponsible interlocutory applications or resistance to successful interlocutory applications.

(3) Consideration must be given to all the relevant circumstances including: (a) the potential applicability of Article 6 ECHR; (b) the availability of alternative means of enforcing the costs order through the different mechanisms of execution; (c) whether the court making the costs order did so notwithstanding a submission that it was inappropriate to make a costs order payable before the conclusion of the proceedings in question; and where no such submission was made whether it ought to have been made or there is no good reason for it not having been made.

(4) A submission by the party in default that he lacks the means to pay and that therefore a debarring order would be a denial of justice and/or in breach of Article 6 of ECHR should be supported by detailed, cogent and proper evidence which gives full and frank disclosure of the witness's financial position including his or her prospects of raising the necessary funds where his or her cash resources are insufficient to meet the liability.

(5) Where the defaulting party appears to have no or markedly insufficient assets in the jurisdiction and has not adduced proper and sufficient evidence of impecuniosity, the court ought generally to require payment of the costs order as the price for being allowed to continue to contest the proceedings unless there are strong reasons for not so ordering.

(6) If the court decides that a debarring order should be made, the order ought to be an unless order except where there are strong reasons for imposing an immediate order."

(2) TCG's submissions

51. Mr Laddie submitted that the case for making an unless order is overwhelming, for the following principal reasons: (1) Mr Dowding has been in breach of the material costs orders for many months, (2) the sums owing are very substantial (i.e. £288,000 plus interest), (3) Mr Dowding has not paid any of the monies owing (in spite of TCG's invitation to him contained in a letter dated 10 March 2025 to make sensible proposals in terms of the debt); and (4) he has provided no explanation for non-payment.

52. Anticipating (at the time of drafting of TCG's Skeleton Argument) that Mr Dowding "will plead impecuniosity and Article 6", Mr Laddie submitted that (1) Mr Dowding had served no responsive evidence at all and (2) far from raising an impecuniosity argument before now, the plain implication of Mr de Waal's statement at the hearing on 5 July 2024 that Mr Dowding "has to break into his pension to get the money" was that Mr Dowding was in a position to find the necessary funds from that source.

53. Mr Laddie further submitted that Mr Dowding had a history of failing to provide detailed, frank and cogent evidence of his means when called upon to do so, relying in particular on the costs proceedings before the ET, where (i) Mr Dowding had ignored the ET's order that he should provide a statement of his means, and (ii) the ET concluded at [53] of its costs judgment that Mr Dowding's "evidence on his share sale proceeds and the amount and use of his savings was evasive and unconvincing".

54. In addition, Mr Laddie submitted that Mr Dowding was plainly in a position to fund litigation when it suited him. Among other things, (i) in the space of a few weeks in

2024, he had instructed Mr de Waal KC in this claim, Mr Imran Benson (Hailsham Chambers) in the EAT, and Ms Katherine Ratcliffe (Essex Court Chambers) in his claim against Allenby, (ii) in support of the recent proceedings for fraud, Mr Dowding had instructed two expert handwriting reports, each of whom must have been paid, and (iii) in correspondence relating to the proceedings for an order for sale of the Property, he had made reference to his Leading Counsel's time estimate for a directions hearing.

55. For these reasons, Mr Laddie submitted that any evidence of impecuniosity that Mr Dowding might adduce "should be scrutinised with the utmost rigour".

56. When evidence of means was produced by Mr Dowding shortly before the hearing, Mr Laddie said it was manifestly deficient and fell far short of "full and frank disclosure".

57. Finally, Mr Laddie submitted that even if Mr Dowding is impecunious, that is not necessarily a determinative factor.

58. Mr Laddie submitted that "all the relevant circumstances" in this case include:

    (1) Whether enforcement proceedings are an adequate substitute for obtaining payment of the outstanding sums. Leaving aside altogether Mr Dowding's obvious resistance to those proceedings, even assuming that his efforts at staying or delaying them fail, TCG's best estimate is that it is only likely to realise £180,000-£200,000 if and when it manages to sell the Property, which is itself only likely to happen many months into the future at best. So the proceedings are <u>not</u> an adequate substitute.

    (2) Although the Unless Order Application is founded on the sums that were ordered to be paid by the July 2024 Order, the Defendants' total costs bill in respect of the SO/SJ Application was £445,220.79 and they expect to recover substantially more upon detailed assessment than the amount of £221,500 that is payable on account.

    (3) This is not a case, like *Robbins*, where there is any disproportionality between the value of the debt and the value of the claim. On the contrary, even leaving aside the immediately preceding point, the two are broadly equivalent: the value of the claim in the draft amended Particulars of Claim is £342,471.46, which is little more than the <u>current</u> value of the sums owed under the July 2024 Order costs orders.

    (4) The manner in which Mr Dowding has litigated the claim to date.

    (5) The fact that this litigation is only one front in a "war" being waged by Mr Dowding not only against TCG but also those whom he perceives as TCG's affiliates (including its external lawyers, its brokers (Allenby) and even its brokers' IT suppliers (Fitzrovia)). Further, Mr Dowding's recent Fraud Proceedings are "absurd" and "a transparent attempt to [further] muddy the waters".

    (6) Finally, Mr Dowding's underlying claim is exceptionally stale, and relates to events in September 2017. Mr Dowding decided to issue this claim at the last minute; and it is his fault that the claim has not progressed further than it has since then.

(3) Mr Dowding's case

59. Mr Dowding filed a 5th witness statement, dated 23 June 2025, in support of the Amendment Application and in opposition to the Unless Order Application. He also

served a Skeleton Argument, in almost identical terms to that witness statement. It is therefore sufficient to refer to the witness statement alone. It makes the following principal points with regard to the Unless Order Application:

(1) On his case, the current proceedings have a value of around £390,000, including interest at the rate of 8% since service of the claim, and the court fee of £10,000.

(2) TCG had not provided any particularised details of any defence or prospective defence, nor any Letter of Response in compliance with the applicable CPR Practice Direction Pre-Action Protocol.

(3) The Defendants are seeking to enforce by obtaining an order for sale of the Property and are budgeting a realisation before costs of some £180,000 from a sale.

(4) The Fraud Proceedings are new proceedings and have yet to be the subject of any application to strike them out, which is any event not going to succeed.

(5) The punch line of Mr Dowding's analysis, which proceeds on the basis that the Defendants have not shown any reason why their intended strike out application should succeed, is set out in [34] of the witness statement as follows:

> "I ask the Court to infer from the Defendant's (sic) failure to deny any single allegation that the reason for that can only be they are unable to deny the allegations and there is agreement to the facts as alleged and that the Court has been misled and that includes the use of known to be forged documents in the SO/SJ Application evidence."

(6) Steps on the route to that conclusion include the following:

- The Supreme Court decision in *Takhar v Gracefield Ltd and others* [2019] UKSC 13 establishes the relevant principles to be applied in the Fraud Proceedings which, in summary, support the maxim "fraud unravels all".

- Decisions such as *Takhar* and *Salekipour & Anor v Parmar & Others* [2016] EWHC (QB) establish that claims for set aside for fraud are claims dealing with the misleading of the court in a different original action, and therefore any application for strike out as an abuse of process will fail.

- *Freshacre Properties Limited v Kang* [2025] EWHC 487 (Ch) establishes that for there to be valid judgment on the point of whether a document is or is not a forgery requires a trial with pleadings. Without pleadings and/or a pleaded response, any finding on the question of forgery is therefore unsustainable.

- The decision of the Court of Appeal in *Rawding v Seaga UK Limited* [2015] EWCA Civ 113 considered evidence which showed it to be implausible that four emails were sent or received, as the case might be, by a Mr Rawding. Further it was noted: "Apart from the oral, highly contested, evidence of Mr Chesney and his personal assistant as to the circumstances and manner in which the emails purportedly emanating from him were sent, Seaga relies on upon paper copies of the four emails, having disclosed no hardware or backup material from which they can be reproduced electronically. It is common ground

that it would be "childishly easy" to forge those paper copies with a word processor and leave no trace that they were not authentic." This case illustrates under trial conditions with disclosure, witness evidence, but without the correct expert evidence how easily the Court can be misled by relying on paper copies of documents when there are allegations of fraud which are best tested at trial.

- In *Broomhead v National Westminster Bank plc* [2020] EWHC 1005 (Ch) the Claimant had been ordered to make a payment on account of £871,157.60. No payments were made, and the Defendant served a bankruptcy petition. The Claimant made a new claim to set aside the original action as having been obtained by fraud. The Defendant made an application to strike out the set aside claim. The Bankruptcy Petition was stayed by the County Court pending resolution of the Defendant's application to strike out the set aside claim.

60. So far as concerns legal principles, the witness statement makes the point that in *Crystal Decisions (UK) Limited and Others v Vedatech Corporation and Another* [2008] EWCA Civ 848 "it is clearly stated that the use of a debarring order or unless order, to ensure that a costs order is satisfied, is subject to ensuring access to justice under Article 6 of the Human Rights Convention", and "an order requiring payment of costs as a condition of proceeding with litigation should not be where to enforce such an order would drive a party from access to justice". As indicated above, reliance is then placed on the judgment of Sir Richard Field in the *Michael Wilson & Partners* case.

61. At [37] of the witness statement, Mr Dowding states:

> "My evidence as to inability to pay down the Judgment Debt now without having the benefit of the proceeds of the breach of contract damages claim of £390,000 is as follows:
>
> I have a property valued at £600,000 fully charged including in favour of HSBC Bank and the Defendants with outstanding mortgage of £440,000. The Defendant's, I believe have obtained a valuation of £620,000. A copy of my mortgage details can be seen at **MD5/35-40**.
>
> I have a pension fund of circa £550,000 (please see **MD5/47**) which on an annuity basis is capable of providing an annual income, for a 60-year-old, according to The Times of between £35,283.16 and £37,207.99 per annum (please see **MD5/54**). If I liquidated the fund in full now I would have no income and post-tax the realisation would be circa £302,500, however that would leave me with no source of income and is therefore untenable as a strategy to settle the Judgment Debt now as I would have no means to live. I am 60 years old and cannot claim state pension until age 67.
>
> My girlfriend contributes £800 towards bills each month.
>
> Monthly living expenses are circa £2,750 including Rates £188, water £50, electric £180, service charge £340, food and general £2,000.
>
> Fixed monthly mortgage payments are £1,775.58 see **MD5/38-40**.

> Fixed monthly loan repayments are £1,217.55 (Zopa Bank, and Santander see **MD5/41 and MD5/44**).
>
> I do not have a further source of family or friends finance."

62. At [38] of the witness statement, Mr Dowding states:

> "I do not have the means to settle the Judgment Debt now, and if the Court makes the unless order in the terms sought by the Defendants that will completely stifle the current claim for breach of contract, which is undefended and has a value in excess of the Judgment Debt. The Defendant has said nothing about any prospective defence and that indicates without more that the claim should succeed and yield damages in excess of the Judgment Debt and thus could provide the necessary funds to settle the Judgment Debt. I believe that an unless order now in the terms sought will result in an infringement of my human rights to pursue the breach of contract claims."

63. At [42] and [49] respectively (omitting the intervening paragraphs, which make points about the suggested merits of Mr Dowding's new fraud proceedings) it is stated:

> "In terms of pragmatism and being mindful of the relevant authorities cited above including *Broomhead v National Westminster Bank plc* [2020] EWHC 1005 (Ch) I respectfully ask the Court to defer the making of any unless order until after there is a resolution of the Set Aside Claim, or at least until after there is a decision pursuant to any strike out application relating thereto.
> …
> I ask the Court to exercise its discretion to defer the making of an unless order so that the Breach of Contract claim defence can be presented, (if there is a defence), and damages may become available in short time which the Defendants can seek then seek to enforce settlement of the Judgment debt from the damages, further, I also ask for a stay on enforcement of the Judgment Debt pending resolution of the undefended Sat Aside Claim. I believe such action would be within the overriding objective."

64. The first of these quoted paragraphs formed the basis of Mr Dowding's contention that he had made an application that the hearing of the Unless Order Application should be stayed or adjourned until after determination of the Fraud Proceedings. The second of these quoted paragraphs makes clear, in my view, that if the Court is not minded to grant that application, Mr Dowding is nevertheless arguing that there should be no enforcement of the costs orders contained in the July 2024 Order until after trial of the substantive claim in these proceedings (at which time he suggests that the Defendants can seek to enforce payment of those orders against any damages he may be awarded).

65. The contents of exhibit MD5 include some screenshots relating to Mr Dowding's accounts with HSBC. These appear to show a mortgage with a balance of almost exactly £300,000, a second mortgage with a balance of almost exactly £100,000, and a third mortgage with a balance of a little over £40,000. A Zopa screenshot appears to relate to a loan of £25,000, with a little more than that outstanding, and a copy of an agreement with Santander relates to a loan of £20,000. A summary of Mr Dowding's account with AJ Bell shows that his pension fund was worth £547,737.52 on or about 20 June 2025.

66. It is immediately apparent that Mr Dowding's evidence does not explain how he is funding his lifestyle, to say nothing of legal advice and representation and associated expenses such as payment for the reports of forensic handwriting experts. However, in answer to questions from me, Mr Dowding said the following:

    (1) He had expended £2,000 on handwriting experts, and that he had funded that "on a credit card, basically" and by drawing down pension monies.

    (2) He had made an application for pre-action disclosure against Fitzrovia, which had been refused, and that he was appealing against that decision, but none of that involved any legal costs as he was acting in person. (Details of this yet further set of proceedings are given in the witness statement of Mr Stanbury – see below.)

    (3) He had expended £13,000 on lawyers for the claim against Allenby and a further £10,000 for advice in connection with the appeal against dismissal of that claim.

    (4) He incurred no legal costs at all in connection with the appeals against my rulings.

    (5) Mr de Waal had agreed to act for him in the sale of the Property proceedings for £1.

    (6) He has been drawing about £8,000 per month from his pension, upon which he has to pay income tax, leaving him with around "upper £5,000" or £6,000 net per month.

    (7) He has already fully drawn down the 25% tax free allowance from his pension.

    (8) He has a prospective interest in a property under the will of his late mother, but his stepfather has a life interest and the property is only fit for demolition in any event.

(4) TCG's riposte

67. Mr Laddie's principal submission in reply amounted to criticism of the way in which Mr Dowding had supplemented and expanded his evidence about his means and his assets in answer to questions from the Court. The main points made by Mr Laddie were (1) that, both from his researches into the case law and because he is an experienced senior financial executive, Mr Dowding plainly knew and understood the requirement for "detailed, cogent and proper evidence which gives full and frank disclosure of [his] financial position", (2) that although it would have been very easy for Mr Dowding to provide documentary evidence of the facts and matters that he had not included in his witness statement, not least by disclosing a bank statement or bank statements, Mr Dowding had not done this, and (3) in light of these points, the Court should not accept or should be slow to accept the explanations and figures that Mr Dowding had given.

68. TCG also produced evidence in rebuttal, in the form of the 1st witness statement of Daniel Stanbury, a Sales Director employed by Fitzrovia, dated 24 June 2025.

69. The first principal matter addressed in that witness statement concerns proceedings that Mr Dowding has intimated against Mr Stanbury and others. Mr Stanbury explains:

    (1) On 3 September 2024, Fitzrovia and he received separate letters from Mr Dowding which were both titled "Letter of Claim – Unlawful Means Conspiracy".

(2) In those letters, Mr Dowding alleged, amongst other things, that Fitzrovia and Mr Stanbury were co-conspirators as they had "made and circulated false and misleading copies of 4 emails originally circulated on 2 August 2017 between its client Allenby Capital Limited, Mr Kiran Shah and the Claimant and relating to the arrangement of a meeting with Toscafund". Mr Dowding further stated that these copies were attached to a letter dated 8 November 2023 (which was from Mr Stanbury to an individual at Allenby).

(3) Mr Dowding stated that he would seek: (i) a declaration that Fitzrovia and Mr Stanbury were co-conspirators in an unlawful means conspiracy against him, (ii) damages, (iii) compensation, and (iv) costs and interest.

(4) Mr Dowding also requested pre-action disclosure of a number of documents, including (i) an email and its attachments sent by Mr Stanbury to Allenby on 20 June 2022 and (ii) the 8 November 2023 letter and its attachments.

(5) Pinsent Masons LLP corresponded with Mr Dowding on behalf of Mr Stanbury and Fitzrovia denying Mr Dowding's allegations.

(6) Mr Dowding filed a pre-action disclosure application on 8 October 2024 against Mr Stanbury and Fitzrovia seeking disclosure of the attachments to the 20 June 2022 email and the 8 November 2023 letter and its attachments.

(7) Mr Dowding refused to withdraw his application despite the fact that he had a copy of the 8 November 2023 letter and its attachments as he had sent this to Mr Stanbury, Fitzrovia and Pinsent Masons on multiple occasions, and despite the fact that Pinsent Masons provided him with copies of the 20 June 2022 email and its attachments and the .doc version of the 8 November 2023 letter held on Fitzrovia's systems. The .doc version of the 8 November 2023 letter was an unsigned version of the letter, without the attachments, as neither Mr Stanbury nor Fitzrovia have a copy of the signed version of the 8 November letter and its attachments, other than the copies sent to them by Mr Dowding.

(8) Prior to the hearing, by an Application Notice dated 28 January 2025, Mr Dowding sought to amend his pre-action disclosure application.

(9) These applications were heard on 29 January 2025 and the matter was adjourned until 21 May 2025 for the handing down of the decision and submissions on consequentials. On 21 May 2025, Deputy Master Alleyne ordered, amongst other things, that (i) Mr Dowding's two applications be dismissed and certified to be totally without merit; and (ii) Mr Dowding should pay Mr Stanbury and Fitzrovia's costs, which were summarily assessed on the indemnity basis, by 18 June 2025.

(10) By an Appellant's Notice dated 9 June 2025, apparently filed with the Court on 10 June 2025, Mr Dowding sought to appeal against the above parts of that Order, and also made further applications. Should Mr Dowding be granted permission to appeal, Mr Stanbury and Fitzrovia intend to defend the appeal.

70. The second principal matter addressed in that witness statement concerns the issue of whether, as alleged by Mr Dowding in the Fraud Proceedings, Mr Stanbury's signature

on the Fitzrovia Report (in other words, the 8 November 2023 letter) is "not genuine". Mr Stanbury states at [6] of his witness statement:

> "6.1 I understand that Mr Dowding is casting doubt on whether I signed and initialled the 8 November 2023 letter and its attachments. I understand that Mr Dowding has sought expert evidence from two separate experts to ascertain whether the signature on this letter was forged. I exhibit at pages 13 - 40 of **DS1** the two expert reports which Mr Dowding provided to The Character Group. Mr Dowding has separately provided copies of these same reports, albeit without the cover page shown at page 26 of Exhibit **DS1** and with a different case name and court name and number, to Pinsent Masons on 2 April 2025. The first page of the 8 November 2023 letter can be seen on pages 23 and page 38 of Exhibit **DS1**. I exhibit at pages 1 - 12 of **DS1** the full version of the 8 November 2023 letter and its attachments as sent to Pinsent Masons on 2 April 2025.
>
> 6.2 I have previously confirmed to Mr Dowding … my recollection of how and when I signed the 8 November 2023 letter and initialled its attachments. However, for the avoidance of doubt, I have set out below, once again, the process by which the 8 November 2023 letter and its attachments came to be initialled and signed:
>
> 6.2.1 On 8 November 2023 I attended Allenby's offices as part of our usual monthly IT update. Allenby had printed a copy of the 8 November 2023 letter (which had been settled through an exchange of drafts between me and Allenby) and had printed the attachments to my 20 June 2022 email, which were the SMTP headers of four emails dated 2 August 2017 between Amrit Nahal of Allenby and Kiran Shah of the Character Group. I did not have access to a printer at Fitzrovia's offices which is why Allenby printed it for me.
> 6.2.2 During the meeting, I signed the printed letter and initialled the printed attachments to confirm their authenticity and provided these copies to Allenby.
> 6.2.3 I did not keep a copy of the signed letter as Allenby retained this.
>
> 6.3 For the avoidance of doubt, I remember that I signed the 8 November 2023 letter and initialled its attachments. I confirm that I recognise my signature and my initials on the 8 November 2023 letter and its attachments, as exhibited at pages 1 - 12 of **DS1**. I have no reason to believe that the signature or initials on this letter are inauthentic."

(5) Discussion and conclusions

71. The costs orders contained in the July 2024 Order were made almost exactly 12 months ago, they have been upheld by the Court of Appeal, and even making allowance for the time occupied by the process of seeking permission to appeal from the Court of Appeal have been confirmed as regards £66,500 since 10 October 2024 and as regards a further £221,500 since 9 January 2025. The starting point is that they ought to be complied with.

72. However, Mr Dowding has made no effort whatsoever to comply with those orders. He has not paid any part of the sums ordered to be paid, or made proposals to pay anything.

73. Accordingly, bearing in mind the policy considerations identified by Sir John Chadwick in *Crystal Decisions* and Sir Richard Field in *Michael Wilson*, the "normal consequence" in the words of Patten J in *Crystal Decisions* or the "working" or "default" position in

the words of Saini J in *Siddiqi* is that a sanction should be imposed which has the effect that Mr Dowding is not able to proceed with his claim without satisfying those costs orders. Further, unless there are strong reasons for making an immediate order, any debarring order that the Court decides to make in the exercise of its discretion should take the form of an unless order, stating either that the proceedings should be stayed or that the proceedings should be struck out in the event that the order is not complied with.

74. That typical starting point is subject to the need to consider all the circumstances of the case. For example, if the magnitude of the costs in question is small and the consequence for the party in default may be an inability to pursue a genuine claim which has, on the face of it, a far higher value, that may militate against the making of a debarring order.

75. The first, and potentially "overwhelming", consideration is whether the making of a debarring order may, in the words of Sir John Chadwick, "drive a party from access to justice". In the present case, however, that factor has not been made out by Mr Dowding.

76. At the time the July 2024 Order was made, in keeping with what was said to the Court by Mr de Waal on his behalf, Mr Dowding had sufficient monies in his pension fund to meet the material costs orders in full. Even by the time of the hearing of the Unless Order Application, by when (according to what he told the Court) he had drawn down £8,000 per month for nearly 12 months, his pension fund was worth almost £550,000. That sum is more than sufficient to meet not only all the costs orders contained in the July 2024 Order but also to pay the costs of and occasioned by the Unless Order Application.

77. Mr Dowding's evidence that, on draw down, this sum of £550,000 would be reduced by tax to around £302,500 is not supported by any documents. If tax were payable at 45% on the entire withdrawal, that would produce a net figure of £302,500. However, for that to be correct, Mr Dowding would need to be paying tax at the highest rate on any sum that he withdraws from his pension fund at this stage of the current tax year, which (a) would only make sense if he had other income (which he has not admitted to having) and (b) does not accord with the tax that he says that he has paid on the £8,000 per month he says he has been withdrawing in recent months. In addition, this would only be correct if he has used up his 25% tax free allowance, and he has produced no evidence of that.

78. For these reasons, I am unable to accept that only £302,500 is now available to Mr Dowding from his pension fund. In any event, even if that is correct, the reason why Mr Dowding has no more than that available from that source is that he has chosen to expend monies not only on living expenses but also on pursuing various legal proceedings, which, moreover, all appear to have been determined by a number of other tribunals as lacking in merit. On his own figures, provided to the Court during the course of the hearing, that legal expenditure amounts to at least £25,000 - although here, again, Mr Dowding has provided no evidence to show that this figure is correct. None of the cases to which I was referred address circumstances where the party in default is unable to meet a costs order at the time that a debarring order is sought as a result of that party's expenditure on matters other than meeting the costs order, between the time when the costs order was made and the time that the debarring order is sought. As a matter of general principle, however, I cannot think that it would be right, or would accord with the policy considerations identified in the decided cases, to allow any party to take advantage of that party's deliberate decision to ignore a costs order and instead spend monies in other ways to say that no sanction for non-payment of costs should be imposed.

79. If I had thought it right to accept that the monies available from the pension fund would be insufficient to meet the material costs orders, and to leave to one side the question of whether that state of affairs had only come about because Mr Dowding had chosen to delay paying those costs (or any part of them) while drawing down that fund for other purposes, I would still have made an unless order as sought by TCG, albeit in different terms. In those circumstances, I would have been minded to order that the claim should be struck out unless Mr Dowding paid some amount (on the figures that he has given, £302,500) within 28 days and the balance within, say, 28 days of sale of the Property.

80. In my view, the fact that there appear to be only limited resources available to meet the costs orders that have been made in favour of TCG is a highly relevant consideration, as is the fact that, left to his own devices, Mr Dowding clearly has a propensity for pursuing multiple claims, some of which at least involve him incurring legal expenses, and all of which, to date, appear to have resulted in him incurring costs liabilities to third parties. In these circumstances, in the absence of a debarring order, there is a clear risk that there will be insufficient funds available to meet the costs orders in favour of TCG by the time those orders can be enforced by TCG, while in the meantime, in the absence of an order, Mr Dowding can continue not only running up his own legal costs, but also causing TCG to run up further costs in defending the claim, some or all of which may never be paid.

81. The next major consideration identified in the authorities is whether the receiving party has alternative means of enforcing the material costs orders. In the present case, the only alternative course that has been suggested consists of obtaining an order for sale of the Property. However, (i) Mr Dowding is not amenable to that order for sale, (ii) it appears that there is no prospect that it will be made for many months, and (iii) in any event, it will not produce by a very substantial shortfall (at least £150,000) sufficient funds to satisfy the costs orders (which continue to grow in amount due to the accrual of interest). In my judgment, TCG does not have alternative means of enforcement for these reasons. In fact, it would seem that TCG only decided to apply for a debarring order (on 6 June 2025) after it became apparent (on 29 May 2025) that the proceedings seeking an order for sale of the Property were being met by an application for a stay pending resolution of the Fraud Proceedings. If that is right, Mr Dowding has prompted TCG to act as it has.

82. A further point mentioned by Sir Richard Field relates to the circumstances in which the costs orders in question were made. In the present case, it was not submitted on Mr Dowding's behalf that it was not appropriate to make those orders before the conclusion of the proceedings, and nor am I able to identify any ground(s) on which such a submission could or should have been made. The submissions that were made concerned the quantum of the orders, and the need for time to pay because payment was to be made out of Mr Dowding's pension. This consideration cannot assist Mr Dowding in this case.

83. In my opinion, on the facts of the present case, that leaves only the existence of the Fraud Proceedings as a material consideration standing between Mr Dowding and the making of the unless order sought by TCG. In my judgment, however, the Fraud Proceedings provide no sufficient reason for the Unless Order Application to be refused or stayed for the following principal reasons:

    (1) In so far as the Fraud Proceedings are based on the suggestion that the Fitzrovia letter/report dated 8 November 2023 was not, in truth and in fact, signed by Mr Stanbury (i) the evidence of the two handwriting experts relied upon by Mr Dowding is significantly (and inevitably) qualified having regard to the limited

"evidence to hand" which they were able to consider, which did not include Mr Stanbury's evidence that the signature on the document is his own, genuine signature and (ii) on the material currently available to the Court, appear untenable.

(2) In so far as the Fraud Proceedings rest on wider allegations concerning the Fitzrovia letter/report dated 8 November 2023, (i) they appear to relate, in substance, to allegations concerning the authenticity of the Tosca emails (as to which, see further below), and (ii) it is impossible to ignore the similarity between these allegations and the allegations made in the unlawful means conspiracy proceedings intimated by Mr Dowding against Mr Stanbury and Fitzrovia, to which Mr Stanbury makes reference, together with the fact that Mr Dowding's application for pre-action disclosure in connection with those proceedings has been forcefully dismissed.

(3) Mr Dowding's allegations concerning the Tosca emails were addressed in my ruling made on 20 June 2024, which is annexed to this Judgment and which I do not propose to repeat or to attempt to paraphrase here. The principal salient points for the purposes of the Unless Order Application are (i) my decision to strike out various allegations concerning the Tosca meeting and associated communications that were made in the present proceedings on the basis that they were an abuse of process because those same issues had already been decided in the ET Proceedings included a finding that the ET had accepted Ms Nahal's evidence about these matters (including that the emails produced by or on behalf of TCG had not been doctored, and her evidence that she self-reported to the FCA and that there had been a subsequent investigation into the allegation of doctoring and that as a result she had been exonerated), and (ii) the Fitzrovia letter/report dated 8 November 2023 was only a confirmatory point with regard to that ruling, as [34] makes clear:

> "All this was supplemented by further material placed in front of me this morning including a letter dated 8 November 2023 from IT experts commissioned by Allenby which found: "There is no evidence of email tampering as emails were directly received securely by Mimecast servers. There is no evidence of man in the middle alterations as all the emails were protected by TLS (transport layer security) meaning they were protected by encryption in transit. All emails were protected by encryption, using storage level encryption so they cannot be altered. This is a key feature of Mimecast". All of that was said after these experts had explored the email system of Allenby. Also, there is the fact that Mr Dowding was offered the chance himself through his own IT expert to look for the relevant emails on Allenby's server. A letter from Allenby of 17 August 2023 rehearses the making of the offer to permit Mr Dowding's appointed IT expert to inspect on Allenby's Mimecast servers, and repeats that offer on an open basis, and suggests there is no good reason for rejecting it."

(4) In essence, my rulings which resulted in the July 2024 Order were based on an analysis of what the ET had decided in the ET Proceedings. Accordingly, in order to disturb those rulings, it would be necessary for Mr Dowding to upset the decision(s) in those earlier proceedings, which the Fraud Proceedings do not attempt to do. The only additional (new) material to which I had regard was the Fitzrovia letter/report dated 8 November 2023, but (i) not only does Mr Dowding's attack on that document seem unpromising (to put it very mildly) on all the evidence currently available to the Court, but (ii) also, that material was not even

central to or necessary for my rulings with regard to the abusive nature of the material allegations concerning the doctoring of documents. Still further, as is apparent on their face, my rulings which resulted in the July 2024 Order and the costs orders contained within the same extended into multiple areas which had nothing whatsoever to do with the Tosca emails and allegations concerning them. Accordingly, there would be no direct or immediate basis for revisiting those orders even if allegations of doctoring of documents were one day to be made out. Nor am I persuaded by Mr Dowding's argument that in the event that the Defendants were shown to have relied on forged material, whether in the form of the Tosca emails or in the form of the Fitzrovia letter/report dated 8 November 2023, this would be relevant to the Court's exercise of its discretion as to costs even if that had no effect on the substantive conclusions concerning strike out or summary judgment, such that the material costs orders might fall to be revisited in that event and ought not to be enforced pending determination of the Fraud Proceedings. While that is correct in principle, in the real world it seems to me that the concrete facts of Mr Dowding's manifestly unreasonable and even obsessive pursuit of allegations of serious wrongdoing against the Defendants and others in the teeth of overwhelming evidence to the contrary so far outweighs the featherweight prospect that the Fraud Proceedings will succeed as to mean that it is right to disregard it.

84. In identifying the above considerations as being those that are of relevance I have not overlooked the fact that both sides suggested that other factors were, or might be relevant. I do not propose to address all those other arguments, as I have not been swayed by them.

85. They include Mr Dowding's argument that TCG has not suggested that it has any substantive defence to his claim. As to that, and as I indicated during the course of the hearing, it is undeniable that TCG's case is that it does have a defence, and I am in no position to say that its defence lacks merit. They also include Mr Dowding's reliance on a series of cases which are said to support propositions such as (i) allegations of forgery cannot be disposed of summarily and need to be tried and (ii) where a claim is made that a judgment has been obtained by fraud, proceedings to enforce that judgment should be stayed until the validity of that claim has been resolved. Quite apart from the fact that I do not accept that the cases he cited necessarily support the propositions that he sought to extract from them, in my judgment it is clear that each case turns on its own particular facts, and, in my opinion, these propositions do not apply to the facts of the present case.

86. The reasons why I refused Mr Dowding's application for an adjournment to enable him to consider Mr Stanbury's witness statement are (i) that it was produced late (on 24 June 2025) because it was produced in answer to Mr Dowding's evidence which was itself produced late (on 23 June 2025) and (ii) I was unable to see that any consideration by Mr Dowding would enable him to counter the factual content of that witness statement.

87. I refused Mr Dowding's application pursuant to CPR Part 44.11(1)(b) because his argument that TCG's costs should be disallowed on the basis that "the conduct of a party or that party's representative before or during the proceedings" was "unreasonable or improper" was based on the same allegations as form the basis of the Fraud Proceedings, and everything that I have said about the strength of those proceedings applies here also.

88. Finally, my reasons for ordering (i) that the sanction to be inserted in the debarring order should be strike out rather than stay, (ii) that the costs of the Unless Order Application should be added to the costs that were ordered to be paid by the July 2024 Order for the

purposes of the debarring order, and (iii) that those costs should be paid on the indemnity basis, were essentially the same as the reasons I gave orally for making this last order:

> "The reason for making the indemnity costs order, as it seems to me and as will appear more fully in the judgment, is that this has been an absolutely flagrant, prolonged and consistent ignoring of the court's orders which were made last year, were made on the basis that time was needed for monies to be taken out of the pension fund (which is why I gave time in the original order), have been appealed unsuccessfully, and have been in place, having gone through the permission to appeal process, since October last year in respect of some orders, and at the latest 6 January this year in respect of another.
>
> During that period, not only has the claimant paid nothing, nor offered to pay anything, or made any proposals at all, but he has been spending money, obviously on his living expenses and so forth, but also on more and more litigation, all of which seems to me to be ill-conceived and none of which has to date met with any measure of success at all. The claim against Allenby Capital Limited failed at first instance on 24 July 2024. There has been an appeal, the outcome is not known yet, but as matters stand that has failed. Further matters that I will go over in more detail in the judgment seem to me to be equally baseless. And this is all against a background of litigation which other judges have seen and condemned as being totally lacking in merit, as I understand it on at least three occasions.
>
> The background is, in my view, condemnatory of Mr Dowding, but the foreground, which is his attitude to these orders and his complete ignoring of these liabilities and failure to make any payment or proposal of payment, in my judgment is very serious and well out of the norm.
>
> There is validity also in the criticism of the material he has put forward explaining his assets and his means, but I do not attach a special weight to that because it does seem to me he has put in some documents showing what his capital assets are and he has explained, albeit it is not satisfactory, how he is living mainly by drawing down his pension.
>
> However, lastly, I would just comment that the fact he can draw down his pension as and when he feels like it to meet living expenses and the expense of other litigation certainly demonstrates how easy it is, or would have been, for him to resort to that to meet these liabilities.
>
> He could instead, of course, have allowed the defendants to proceed to enforce against the property that he has, but he has resisted that, forcing them really, as I see it, to have recourse in reality to his pension fund.
>
> He is in a very unhappy position because on the disclosure he has made he can ill-afford to meet these costs liabilities: either his home may be forfeit or his pension may be forfeit - possibly, if things go on the way they have, both. That is a consequence of bringing and pursuing expensive litigation which has all been unsuccessful, resulting in the costs orders which the defendants have had to come to court and make an application to enforce.

All of that, in my judgment, is well out of the norm, even for cases where such orders are asked to be made to enforce compliance with previous costs orders.

This is, in my judgment, a very bad case indeed of failing to comply with the court's previous orders or making any effort to do so, and that is why I consider an order for indemnity costs to be appropriate."

APPENDIX

DAY 1

RULING

JUDGE SPEARMAN:

1. The first matter that I have to deal with concerns items 1 and 2 in the Schedule, relating, respectively, to the claims that the Claimant had contractual entitlements (i) to 6 months' notice and (ii) to 30 days annual leave. In my judgment, the Defendants' contentions in relation to both of these items are plainly right. These two issues of the Claimant's contractual notice period and his holiday entitlement were both plainly raised in front of the Employment Tribunal and fully addressed by the Employment Tribunal. They made a clear finding on both of these matters at paragraph 113 of their reserved judgment. These matters have been resolved and should not be litigated again in these proceedings. That reserved judgment has conclusively dealt with them.

RULING

JUDGE SPEARMAN:

2. The next matter that I have to deal with concerns item 3 in the Schedule. So far as this issue is concerned, in my judgment the Employment Tribunal dealt with it at paragraphs 45 and 46 of their detailed reserved judgment. Paragraph 45 starts off by stating that the Claimant asserts that he agreed a permanent variation to his bonus terms orally with Mr Shah from 50 per cent to 100 per cent and this is what the bonus payment agreed in December 2016 was for. The Claimant's case before the Tribunal was that this was not a one-off discretionary bonus but an agreed increase to his bonus percentage. The Tribunal goes on to consider the evidence in front of the Tribunal in relation to that matter and says at the end of paragraph 46:

> "The Tribunal found on the basis of the Claimant's own assertions that the bonus terms were not revised to 100 per cent on a permanent basis but remained at 50 per cent. The election to pay an additional 50 per cent in December 2016 was discretionary, based on the support for the legal case."

3. The reference in those sentences to the Claimant's own assertions is a reference, as I understand it, to contemporary documents that are referred to in paragraph 46 of the

Tribunal's judgment. The explanation for such a reference is that that was not the Claimant's case in front of the Tribunal in other respects which I will come on to.

4. So the issue between the parties on this before me is: was this a matter that was properly before the Tribunal and was dealt with by the Tribunal in such a way that it would be wrong and an abuse for the Claimant to ask the High Court to revisit the same topic; or is it, as Mr Dowding, the Claimant, contends, something that was not in front of the Tribunal for decision, that they should not have embarked on deciding, and in any event, as he would suggest, to the extent, that they did decide it, they did not apply the correct legal principles, and particularly principles of contract law?

5. In determining that issue, it seems to me that one has to look at the material documents. The Particulars of Claim in front of the Tribunal, which again, were very detailed, contained at paragraphs 4 and 5, under the heading "Subsequent variations", a claim that the bonus was agreed orally between Mr Shah and the Claimant to be increased to £110,000 and that his bonus would be increased to 100 per cent of his salary. At paragraph 11 of the Particulars of Claim, there is a complaint made about a statement of terms of employment provided to the Claimant by Mr Shah on 14 July 2017 and the Particulars of Claim allege: "This document incorrectly stated the Claimant's terms at £100,000 salary. 50 per cent of salary for a profit target is related bonus". Then in paragraph 23, there is a claim that the employer company failed to provide the Claimant with a written statement of employment particulars as required by section 1 of the Employment Rights Act 1996. There is a request for a determination as to what should have been included in that written statement of employment particulars.

6. The Claimant's evidence in front of the Tribunal included a witness statement which in the version that I have in the papers before me is not dated, either at the top or at the end, as far as I can see. In paragraph 15 of that statement the Claimant said:

> "In November 2016 (I believe during the second week), Kiran Shah asked me for my thoughts on a remuneration packet to be effective from 1 January 2016. He said we also need to think about bonus arrangements. Mr Shah then said without a prompt from me that "Without telling me, Joe has increased Jerry Healy and David Bramford's bonuses from 50 per cent to 100 per cent; will do the same for you". I responded by saying "Okay, that is fine", and that I would come back to him with thoughts on the suitable package from 1 January 2017. The variation in bonus terms was duly brought into effect, starting with my bonus for the year ended 31 August 2016."

7. That was the evidence of the Claimant in front of the Tribunal. Following the decision of the Tribunal, the Claimant has appealed their decision, and his grounds of appeal settled by Counsel and dated 1 April 2022 include a ground 12 headed:

> "In deciding that the Claimant's contractual bonus was to be calculated based on 50 per cent of his salary and that his notice period was three months, the ET:1 adopted a legally erroneously approach; and/or 2, took into account irrelevant considerations; and/or 3, failed to give adequate reasons for its decision."

8. Then at paragraph 40, those grounds of appeal state:

> "At paragraphs 46 and 113 of the judgment, the ET determined for the purposes of sections 11 and 12 of the ERA that the claimant was entitled to a bonus based on 50 per cent of his salary, rejecting his case that this was varied to 100 per cent in 2016 by agreement."

9. The Defendants submit, based on those materials, that this issue of the variation of bonus was plainly an issue that was in front of the Tribunal, and that the Tribunal rightly addressed it and that they have made a finding which is conclusive and ought not to be sought to be revisited in these High Court proceedings. Mr Dowding, on the other hand, contends that, in reality, his claim was limited to a claim under section 1 of the Employment Rights Act relating to the terms of employment that he ought to have been given at the start of his employment and not a claim under section 4 as to what notice of variation of terms his employer ought to have provided to him, and that he limited his claim in front of the tribunal to a claim based on section 1.

10. It seems to me absolutely clear that this was an issue that was raised in front of the Tribunal. It was raised in the Particulars of Claim. It was ventilated in Mr Dowding's witness statement. I am told and I accept that there was evidence given by the now Defendants in the High Court to the contrary, and that the Tribunal resolved the issue, having regard to all the evidence, including the contemporary documents.

11. If, contrary to that finding, it was an issue that was not raised by Mr Dowding, it seems to me absolutely clear that it is an issue that could and should have been raised by him, as section 11 of the Employment Rights Act deals with circumstances where an employer does not give a worker a statement as required by either section 1 or 4 and provides that the worker has a right to require reference to an employment tribunal to determine what particulars ought to have been included or referred to in a statement, so as to comply with the requirements of the sections concerned. It would be deeply unsatisfactory, in my judgment, if a Claimant in proceedings before the Employment Tribunal, such as Mr Dowding, could initiate one claim before the Tribunal, raising contentions that section 1 had not been complied with, and then (provided he was in time to do so) issue a second claim asking the Tribunal on some different occasion to determine whether the requirements of section 4 had not been complied with.

12. The fact that the Claimant has appealed the matter in grounds of appeal settled by Counsel seems to me to be entirely consistent with the conclusion that his legal advisers at least accept the position that the Tribunal has resolved the issue. Mr Dowding suggests in the table of the parties' submissions contained in the Schedule that Counsel was in error on this but I do not find that a very convincing suggestion. These grounds of appeal seem to me to be very skilfully drafted and with great care and attention to detail, and I think it is unlikely that Counsel would have ventured into formulating a ground of appeal in that degree of detail when, in truth, that was simply a matter of error. But that is very much a confirmatory point. The main points are that it seems to be that (1) this plainly was an issue in front of the Tribunal which the Tribunal resolved and (2) if, for some reason, that first finding was wrong, I consider that it is an issue which ought to have been placed in front of the Tribunal, and the

Claimant should not be permitted to raise it now, having (on his case) not done so in front of the Tribunal, when he could and should have done so, in my judgment.

13. For those reasons, I accept the Defendants' submissions in relation to this third topic.

RULING

JUDGE SPEARMAN:

14. I now have to deal with items 6 and 7 in the Schedule summarised, I think fairly, in the Schedule as being complaints that (i) the Claimant was excluded from news of a Pokemon distribution deal and (ii) Mr Shah planned to defer making an announcement about that deal, effectively until after the Claimant's dismissal.

15. The relevant paragraphs of the Particulars of Claim in the present claim to which these allegations relate are paragraphs 62 and 63, 65, and 104 to 106.

16. One can get some idea of the thrust of the allegations by looking at parts of paragraphs 62 to 65. Paragraph 62 starts off by saying that, in short, a binding agreement was executed on 3 July 2017, and that very document has been shown to me in the bundle by Mr Dowding. Paragraph 63 then says that news of that deal was then unlawfully withheld from various entities and that there should have been an immediate public announcement of it. Paragraph 65 ends by saying that the timing of the release that was eventually made was designed to counteract the likely negative effect on the employer company's share price of the announcement that was made simultaneously of the termination of Mr Dowding's employment.

17. The substance of paragraphs 104 to 106 is effectively a rehearsal of those matters. It is alleged in paragraph 104 that the Claimant was - and, indeed, that other directors were - informed about the deal on the evening of 5 September 2017 for the first time, and at paragraph 106, that the way in which the employer company went about announcing and disclosing this deal was contrary to law and regulation. Ending at paragraph 106: "This is another example of Mr Shah and the company disregarding legal obligation [I think it should be in the plural: s] and the basic requirements of good corporate governance."

18. The Defendants' principal ground for seeking to strike-out these allegations is that they have been dealt with by the Employment Tribunal, and it appears to me absolutely clear that that is the case. In light of the time that it would take, I do not propose to read out all the relevant passages of the judgment of the Tribunal. But paragraphs 62 and 63 find in terms that the Claimant was told about the deal -- as I read it, as a prospective deal -- at a board meeting on 22 June 2017 and as an actual concluded deal at a board meeting on 17 and 18 July 2017. The Tribunal went on later in its ruling to consider this topic and picks up the matter at paragraph 126. Again, because of the time that it would take, I do not propose to read all of that out. The Tribunal rejected an allegation that this was a high risk and highly irregular deal, and repeated at paragraph 126, with regard to knowledge, that: "The Tribunal has found that the

claimant did have knowledge, at least at the meeting on 17 and 18 July 2020. This was not withheld from him."

19. The reason why these matters were relevant in the Employment Tribunal proceedings was because the Claimant was bringing claims that as a result of his whistle blowing activities he had been subjected to detrimental treatment by his employer and also that he had been unfairly dismissed on the same basis and he was seeking relief under both heads. It is because of the nature of those claims that the Tribunal was required to consider the saga relating to the Pokemon deal. That is made clear, in my judgment, by the first bullet point in paragraph 15 of the Tribunal's judgment.

20. Mr Dowding, as I understand his position before me, is not able directly to confront that situation and to deny that that was the nature of the claim he was bringing and that was the nature of the Tribunal's rulings. He has suggested in front of me that this result was procured by misleading the Tribunal, both as to the nature of the transaction or whether it was something that required a regulatory announcement or not, and I think perhaps as to whether the board minutes had been tampered with in some way.

21. Those allegations appear to me to be without any foundation and, in any event, as far as I can see, on the regulatory front, not directly relevant.

22. The Tribunal made a clear finding of fact that Mr Dowding was not misled and that information was not withheld from him and, in my judgment, it would plainly be an abuse for him to seek to revisit that very issue in these High Court proceedings.

23. But, although possibly as a matter of logic it should have come first, secondly, and in any event, I am wholly unpersuaded that any of these allegations are of any relevance to any of the causes of action that Mr Dowding seeks to bring. He has listed those causes of action in paragraph 1 of his skeleton argument and they amount to approximately a dozen causes of action. Put shortly, neither (i) bad corporate governance nor (ii) withholding information which is positive, so that it coincides with the announcement of information which is negative, with a view to protecting or enhancing the Company's share price would, in my judgment -- even if the allegations are right -- have any bearing on any of Mr Dowding's causes of action.

24. If there is any basis for complaint about such matters, and I am not for one moment suggesting that there is or ever was, it lies far outside a claim for breach of contract and indeed any of the other claims that Mr Dowding now seeks to bring.

25. In the course of asking Mr Dowding to explain the relevance of these allegations, he repeatedly referred to allegations about procuring breach of contract and the like. As far as I can see, these matters - even if they (i) were factually correct and (ii) have not been disposed of by the Employment Tribunal - would have no relevance to procuring a breach of a contract. The only relevant contract that I can see is Mr Dowding's contract of employment, and this, in my judgment, plainly was not procured to be breached by any of these activities, even if they took place and even if they had the unsatisfactory characteristics with which he seeks to stigmatise them.

26. For those reasons, in my judgment, these two items should be decided in the Defendants' favour and the relevant paragraphs of the Particulars of Claim should be struck out accordingly.

RULING

JUDGE SPEARMAN:

27. I now have to give a ruling on item 8 in the Schedule, which relates to paragraphs 66 to 67 and paragraphs 78 to 80 of the Particulars of Claim.

28. Paragraph 66 alleges that Mr Shah began building a case against the Claimant using alleged misconduct and/or alleged non-performance factors. This is termed for the purposes of the Particulars of Claim "the Fishing Expedition", and it is said that it was without any lawful or fair purpose.

29. Paragraph 67 says that ancillary to that, and for that purpose, there was unlawful access to the Claimant's personal data, which was processed, in short, unlawfully and was distributed to some solicitors, using Mr Shah's personal e-mail address.

30. Paragraphs 78 to 80 allege that documents were prepared from 3rd July 2017 onwards containing allegations of misconduct and allegations of non-performance. There was a plan to ambush the Claimant on 8 August 2017 with these allegations although, as things turned out, the plan to ambush the Claimant failed, because the Claimant was not available on 8 August 2017, the alleged date of the "ambush".

31. The ground upon which I am invited to strike out these allegations follows what is now becoming a fairly familiar path to tread, namely that they were the subject of consideration by the Employment Tribunal and have been conclusively disposed of.

32. These allegations arose again in the context of Mr Dowding's claim in front of the Tribunal for being discriminated against because of his whistleblowing activities, and the fourth bullet point in paragraph 15 of the judgment of the Tribunal reads:

> "Mr Shah subjecting the claimant to closer monitoring, for example, Mr Shah demanded e-mails relating to day-to-day matters which came under the claimant's job role and had hitherto been dealt with exclusively by the claimant and carried out a 'fishing exercise' designed with the objective of discrediting the claimant."

33. That is the Tribunal's summary of Mr Dowding's case in front of the Tribunal in relation to this topic.

34. The Tribunal dealt with these allegations, first of all, at paragraph 93, by summarising what is the issue in front of the Tribunal, saying that Mr Dowding was placed on a performance improvement plan in relation to three matters, which are explained in

paragraph 93; and then from paragraph 130 onwards, the Tribunal proceeds to deal with those three matters.

35. The first, relating to Barclays, is dealt with at paragraph 130. Another aspect of the Barclays matter is dealt with at paragraph 131.

36. At paragraph 132, the Tribunal move on to the second topic, the so-called NAV/EVO project.

37. Then, at paragraph 133, the Tribunal move on to the third topic, which relates to a corporation tax return of the employer company. Paragraph 133 ends with these words: "There was no closer monitoring; the claimant was not subjected to a detriment. Alternatively, Mr Shah's 'closer' monitoring was entirely for reasonable and proper cause and unconnected to any disclosures entirely."

38. Finally, at 137, the Tribunal returns to the topic of the PIP and says that it has already reached findings and conclusions about the PIP above, points out that putting someone on a PIP is not necessarily an act of detrimental treatment, and ends with these words: "The tribunal also concluded there was nothing irregular and certainly no causal link with the respondent's reference to the claimant having purchased IRIS software."

39. At paragraph 138, the Tribunal deals with the disciplinary hearing that the Claimant was notified about on 4 September 2017 and which took place on 11 September. This is a paragraph which has already arisen in relation to other aspects on the schedule. In the middle of that paragraph, the tribunal says this:

> "There was a proper basis for the instigation of process. It was a key part of the Claimant's evidence he was being 'set up'. He said this more than once in relation to the requests made of him during the contract negotiations and the S&W e-mails. This troubled the Tribunal." [They go on to explain why.]

40. Once again it appears to me that the Defendants' submissions on these issues are well founded. It seems clear to me that (1) these matters were raised before the Tribunal, because they were part of the Claimant's claim before the Tribunal relating to detrimental treatment in response to him being, on his case, a whistleblower and (2) the Tribunal not only dealt with them but dealt with them in some considerable detail.

41. So in my judgment, it would be an abuse for the claimant to be permitted to revive and go over that same ground again in these proceedings in the High Court.

42. The other aspect of the matter is that it is not really clear, and certainly not to a level to resist a strike-out, what relevance these allegations have to any of the Claimant's causes of action. The one topic that the Claimant has identified in his oral submissions to me is the potential relevance of these matters to his data subject access request.

43. In my judgment, however, that is not a sound argument. The territory the data subject access request refers to relates to the Claimant's data being processed by the Defendant

company, which was his employer, and in my view, to the extent that any documents on any topic processed by the company, the data controller, contained the claimant's personal data, the data contained in those documents would be responsive to a data subject access request, regardless of whether these particular paragraphs remained in the Particulars of Claim in these proceedings. It would be responsive in the sense that, as a starting point, the data would need to be produced. But, of course, the data controller may have answers in accordance with the data processing legislation as to why these documents or, indeed any other documents, should not be produced (as it is by production of documents that data controllers often elect to provide the data contained in them) or why data should not be produced in response to the request.

44. The final matter I just mention is it is quite clear to me from the documents that I have referred to and, indeed, the Claimant's submissions, that a significant part of this body of documentation, whether drawn up for proper purposes, as the Defendants say, or for allegedly improper purposes (rejected by the Tribunal), as the Claimant says, related to seeking and obtaining legal advice, and on the face of it, all that material will be subject to legal professional privilege in any event.

45. I am not pre-judging that issue, because it may arise under the data subject access aspects of the Claimant's claim, but I am far from convinced at the moment that much documentation relating to these matters would be susceptible to disclosure in these proceedings, even if these allegations remained in.

46. However, the primary consideration is that the very same allegations of, basically, a cooked-up case against the Claimant, were raised before and were clearly rejected by the Employment Tribunal, and in my judgment, as I have already said, it would be an abuse to attempt to relitigate those matters in these High Court proceedings.

RULING

JUDGE SPEARMAN:

47. I now have to deal with item 9 on the Schedule. This relates to paragraph 74 of the Particulars of Claim and it relates to an alleged peremptory revoking of an offer for increased salary and bonus. The Defendants' case is that this allegation was made to and was considered by the Employment Tribunal and was rejected.

48. The Defendants rely, first of all, on the sixth bullet point under paragraph 15 of the Tribunal's judgment, which reads:

> " ... on 14th July 2017, Mr Shah giving the Claimant a purported statement of the terms of his employment on 14th July 2017, that he knew was contrary to what had been agreed and peremptorily revoking the Respondent's proposal of the Claimant's outstanding January 2017 pay review, before the Claimant had been able to properly consider the proposal."

49. That, again, is the Tribunal's summary of the nature of the Claimant's case before the Tribunal under the topic of detrimental treatment in relation to the Claimant's whistleblowing claim before the Tribunal.

50. The Defendants submit that that was an issue in front of Tribunal and, moreover, that it was dealt with at paragraph 136 of the Tribunal's judgment. I do not propose to read all of that text, but the Tribunal, in that paragraph, started by considering a process which it said had started with Mr Shah providing draft terms on 8th June 2017, and the Tribunal then went over, amongst other things, documents in July and August, ending with an 8th August 2017 e-mail. The Tribunal concluded at the end of paragraph 136: "The offer was not peremptorily revoked. The claimant was not subjected to a detriment."

51. One of the e-mails considered by the Tribunal, which Mr Dowding has drawn to my attention, is an e-mail dated 8 August 2017, and he says that the Tribunal did not deal with that correctly. His submissions appear to me to be contradictory, because, on the one hand, he is saying that this was not something that the Tribunal was called on to deal with at all, and, on the other hand, he is criticising the way they did deal with it. However, I suppose that it is possible to say although the Tribunal shouldn't have dealt with it at all, they nevertheless went on to do so and then got it wrong.

52. But be that as it may, in my judgment it is absolutely clear this is an attempt to relitigate a matter that has already been decided by the Tribunal.

53. If there is a suggestion the Tribunal made an error in its approach or, indeed, as at present advised I should have thought a suggestion that it exceeded its proper remit in dealing with an issue that wasn't properly in front of it, then, in my view, that is a matter that is appropriately addressed by an appeal from the Tribunal's decision. That appeal will either fail or succeed, but the one thing that is plainly, in my judgment, impermissible and an abuse of process, is to seek to revisit the topic in these proceedings, contending that the Tribunal's decision is wrong. That appears to me to be a classic example of seeking to relitigate the same issue in a manner which both case law and principle plainly set their face against.

54. So I have little hesitation in ruling in favour of the Defendants on issue 9 in the Schedule. Paragraph 74 of the Particulars of Claim must be struck out.

DAY 2

RULING

JUDGE SPEARMAN:

1. I now have to rule on items 10 and 21 in the Schedule, which have been taken together because they relate to one another. They are summarised in the Schedule as follows: "Mr Shah excluded the Claimant from a meeting with Allenby and Tosca taking place in August 2017" and "[The Defendant company], Mr Shah, Duane Morris (who are a

firm of solicitors) introduced "doctored evidence" into the ET proceedings, including an allegedly doctored version of an email dated 2 August 2017". Item 10 relates to paragraphs 75-77 and 81-82 of the Particulars of Claim, and item 21 relates to paragraphs 196-198 and 214(xiii)-(xiv) of the Particulars of Claim.

2. As will be seen in a moment, the relevance of the 2 August 2017 email (also referred to as "the Tosca email") to the factual issue that was germane to the Employment Tribunal proceedings related to the extent to which Mr Dowding had been excluded from what ultimately became a meeting later in August. That was the factual issue.

3. But the issue which assumed greater significance was not what part the 2 August 2017 email played in the factual jigsaw relating to that allegedly detrimental conduct towards Mr Dowding, but the question of whether there had been a deliberate forgery or fabrication of evidence. This became relevant to the question of credibility, and particularly, had the allegation been made out, to the overall reliability of the employer company's evidence in the Employment Tribunal proceedings.

4. Before one gets drawn into the detail, it is vital to bear in mind that the Defendants' basis for seeking to strike-out the material paragraphs in the Particulars of Claim that I am about to address, as a starting point, is confined to the simple proposition that the issues raised by those paragraphs were raised in front of the Employment Tribunal and have been ruled upon by the Tribunal, and that it is accordingly wrong to seek to revisit those matters again in these High Court proceedings. That is the fundamental, principled basis upon which the application for strike-out is founded.

5. But, because of the complexity of allegations relating to the alleged doctoring of this document, the paper trail extends a lot further than that. The Defendants' fundamental submission here is that when one examines the history of how Mr Dowding's case relating to the alleged doctoring or forgery has unfolded, it is thoroughly unsatisfactory from beginning to end. It is made without any proper basis at all. It has been pursued in the face of clear and incontrovertible evidence to the contrary. Mr Dowding's own position, for example in terms of what he has sought to appeal from the Employment Tribunal's ruling, and whether he has abandoned issues, has vacillated; and at times he has said that he is not accusing anyone of forgery, while at other times he has said, as he did to me just a moment ago, in concluding his further response submissions, that he has been the victim of fraud (i.e. fraud in the fabrication of this document).

6. What the Defendants invite me to do, although hopefully not falling into the trap of attempting to try any issues, is to look at the paper history of this matter, and condemn the approach that Mr Dowding is adopting in the strongest possible terms.

7. Mr Dowding, for his part, effectively, and certainly towards the end of his submissions both yesterday and today, is throwing himself on the mercy of the Court and begging the Court not to strike out these paragraphs, on the grounds that although on one view the issues, as he himself said a moment ago, are peripheral, nevertheless he considers that they are very important to him, and perhaps the financial consequences of these allegations being struck out would be serious. So that is why this issue has taken as much time as it has to deal with. By this issue, I mean items 10 and 21 together.

8. So the logical starting point is to look at the pleaded case that I am invited to strike out. It starts at paragraph 75 of the Particulars of Claim and it refers to Ms Amrit Nahal, who was a director at Allenby which was a broker, emailing Mr Shah and, according to the Claimant's case, the Claimant as well, requesting dates for a meeting. This was all to do with a possible investment by an institutional investor known for short as Tosca.

9. Paragraph 75 pleads that that request for a meeting was sent by email to both Mr Shah and the Claimant. Paragraph 76 pleads that on 2 August 2017, Mr Shah responded and copied the Claimant in, and that Ms Nahal responded and also copied in the Claimant. Then paragraphs 77 pleads the crucial allegation (emphasis added): "… following this exchange of emails re Tosca, Ms Nahal sent a further email to Mr Shah and the Claimant entitled "Re Tosca - Maybe just you and Mark", or words to this effect".

10. Paragraphs 81 and 82 plead what happened after that and in short, they say that there was a follow-up to the emails on 10 August, and then further emails on 10 and 11 August, and eventually there was a meeting on 16 August. The allegation to which all this is relevant is clear from the end of paragraph 82: "This is further evidence the Claimant was being ostracised by Mr Shah". That is the material matter of fact that is said to be relevant to substantive issues, both in front of the Employment Tribunal and in front of this court.

11. The other paragraphs where these allegations are raised are, first of all, paragraphs 196 to paragraph 198. At this stage the pleaded case is moving on from the allegations that relate to the substance of any complaint into the allegations of doctoring or forgery of evidence. Paragraph 196 pleads that the defendants or their agents "submitted into ET evidence a number of documents in an altered form compared to the original documents ("the Altered Evidence")". Paragraph 197 pleads that the Altered Evidence was a result of a breach of the Claimant's data rights and involved unlawful processing of his personal data, contrary to the Data Protection Act and the General Data Protection Regulation. Paragraph 198 pleads that as a result of that allegedly unlawful, unfair and inaccurate processing, the Claimant has suffered direct losses which are put at £220,000 or thereabouts. Pausing there, it is not really clear from the pleading why those losses are said to flow from the alleged altering of documents, if indeed that had happened. I think that what perhaps is being suggested, in light of the reference in paragraph 198 to legal costs incurred by and to legal costs being awarded against the Claimant, is that the Employment Tribunal proceedings went against the Claimant entirely because of this doctored evidence and so he has sustained costs consequences as a result of losing the Employment Tribunal proceedings which he would not otherwise have sustained. That is doing the best I can to see how losses of that magnitude could be said to be attributable to the alleged altering of these emails.

12. Finally, in the pleaded case, the allegations are picked up at paragraph 214 under the particulars of special damage at items (xiii) and (xiv). They claim damages arising from unlawful, unfair and inaccurate processing of the "fake 2 August 2017 Tosca email", in breach of data protection principles, in the sum of £220,000, and then damages for distress arising from the same cause (unlawful, unfair and inaccurate processing of the "fake 2 August 2017 Tosca email") in the sum of £56,200. So the claims that are said to flow from the "fakery" are of a substantial order of magnitude.

13. I think that perhaps the next logical step is to deal with the primary way the Defendants put their case, which is that this matter has been disposed of by the Employment Tribunal. I will go back and, so to speak, backfill how this all came about in a moment. But for now it is important not to lose sight of the wood for the trees.

14. The relevant parts of the Employment Tribunal's detailed reserved judgment start at paragraph 15, dealing with the question of the Claimant's claim for detriment occasioned to him as a result of being a whistle blower. The fifth bullet point, relevant to whether he suffered such detriment, identifies the following issue: "Mr Shah ostracising the Claimant from the Respondent's business by excluding him from the important meeting with potential investors in August 2017 …".

15. Then the Tribunal's findings move on to the second aspect to which this email is relevant, namely the issue of who is to be believed and not believed. The Claimant's case in front to the Tribunal was, as I will flesh out in a moment, that the Tosca email had been doctored and, therefore, that, amongst other people, Ms Nahal was not to be believed; while the Defendant company's case in front of the Tribunal was exactly the reverse, namely that, in fact, it was the Claimant who lacked credibility, and that his whole case relating to this doctoring was unbelievable and redounded to his significant discredit. The Tribunal picks this up under the heading "Credibility findings", at paragraph 26 of the Tribunal's judgment. In order to save time, I will not read all of that paragraph, but it can be taken as being read into this ruling in its entirety.

16. As part of that consideration, the Tribunal made a specific reference to the question of whether, in fact, the Claimant had retained emails, and perhaps other documents, (which on the face it would have contained the employer company's confidential information) or whether, as he said in front of the Tribunal, he had not, but had instead kept notes and had used those notes to compile his witness statement before the Tribunal. A specific reference is made to an extract of an email at paragraph 43 of his witness statement which contains a verbatim quote of an email dated 10 July 2017 or thereabouts. The quote it as follows: "Unfortunately, I'm in sunny Majorca. Mmmmm, conference call or sunny Majorca? See you on the 17th, hee, hee". In this regard, one point made by Mr Laddie before me is that the number of m's in the quoted "mmmm" are exactly the same as the number of m's in the actual email.

17. The Tribunal rejected that evidence and concluded in paragraph 26:

> "The Tribunal's conclusion in this regard was unanimous and emphatic. The Tribunal concludes the Claimant had always had all of the emails he had requested of the Respondent."

18. Further, in relation to his evidence before the Tribunal or a statement that the Claimant apparently made, that he had not realised his disclosure obligations extended to electronic emails, as opposed to physical copies, the Tribunal said:

> "… it was unbelievable he would draw a distinction between his obligation to disclose, or his entitlement to receive, physical not electronic documents. He was a Group Financial Director of a PLC, working in an electronic age".

19. The Tribunal then went on to deal with an allegation that the Claimant had raised in his witness statement. Now I will attempt a brief excursion into the background, before I deal with how this arose in front of the Tribunal.

20. The position is that the Tosca email was not relied upon, as I understand it, in the Claimant's pleaded case before the Tribunal. The exclusion from the Tosca meeting later in August was relied on, but not the Tosca email specifically. Neither party disclosed any version of the Tosca email in disclosure. There was no reference to the Tosca email in the Claimant's first witness statement in front of the Tribunal, although there was evidence about him being excluded from the meeting.

21. The Tosca email was then disclosed by the employer company in or about February 2019. On 24 September 2019, Ms Nahal gave a statement, responding to the Claimant's statement concerning his exclusion from the meeting. The thrust of the evidence, and this was the thrust of the employer company's case in the Tribunal, was that the exclusion was instigated by Tosca and not by Mr Shah. That was crucial, of course, to whether the exclusion was part of detriment occasioned to the Claimant and, therefore, supportive of his case that he had been wrongfully treated as a whistleblower. There was no reference to the Tosca email in that witness statement.

22. Then came the event which drew the Tosca email into the proceedings. That was a witness statement of the Claimant, undated in the bundle in front of me, and indeed unsigned, but the date given on the unsigned version is 5 January 2020. That contains in an unnumbered paragraph on page 2 of the witness statement, the following words (in which "Amrit" refers to Ms Nahal and "Kiran" refers to Mr Shah):

> "The document page 1441 purported to be an email invitation re Tosca, 2 August, from Amrit and which is evidence in this case as being presented in a form materially inconsistent with the original document and Amrit must know that. The authentic original document will show the invitation was made to both Kiran and I, not Kiran alone."

23. That is an allegation that was made by the Claimant in those proceedings. It is self-evidently an extremely serious allegation, and in consequence of it, as the evidence in front of the Tribunal showed, what happened was that Ms Nahal felt that she needed to report the matter to her professional regulatory body, the Financial Conduct Authority, and also her conduct was subjected to an internal investigation by her employers, Allenby, to determine whether in fact she had indeed doctored or forged the email, which procedure in due course, on the evidence, acquitted her completely.

24. The Tribunal dealt with those matters in paragraph 29 and again, in light of the time that it would take, I will not read the whole of that paragraph. It includes the findings in the middle: "The Claimant maintained the version he had seen was different yet he confirmed to the Tribunal he had copies of all emails and failed to provide his version of the original to the Tribunal or to clearly explain why this could not be done". It goes on to say that the Claimant maintained that the evidence had been tampered with, and then it rehearses Ms Nahal's evidence that she self-reported to the FCA and that there had been a subsequent investigation into the allegation, and that as a result she had

been exonerated as the original email was found to have been unaltered. It records that this evidence was not challenged and was accepted by the Tribunal.

25. The Tribunal further referred to this matter at paragraph 77 when it rehearsed the history in the context of a factual narrative, starting off by saying that Ms Nahal sent an email invitation for a meeting with Tosca on 2 August. That is page 1441, the very document that Mr Dowding had referred to his witness as being doctored.

26. Paragraph 77 rehearses Mr Dowding's allegations that the document was fake and his levelling of blame against Ms Nahal for that and her denials of it. Again, the full paragraph can be taken as being read into this ruling. It ends up with these words: "The Tribunal accepted the evidence of Ms Nahal in this regard … Her explanation was clear and consistent with the email trail and otherwise innocuous".

27. Finally, the Tribunal again alluded to this at paragraph 134 of its judgment, beginning with the words "The evidence of Ms Nahal was believed over the Claimant in relation to the Tosca meeting", and ending with the words "The claimant was not subjected to a detriment, the claimant was not ostracised". That is the Tribunal's finding on the fundamental issue of whether the Claimant was occasioned detriment.

28. Just briefly to complete the narrative of how these matters have unfolded, the Claimant then made an appeal against the rulings of the Tribunal, and in support of that appeal he made an application to admit fresh evidence dated 24 December 2020. That, essentially, I think, relies on the fruits of data subject access requests that the Claimant had by this time made which he sought to say was evidence that satisfied the *Ladd v Marshall* tests to the effect that it could not have been obtained with reasonable diligence for use at the Employment Tribunal hearing, was relevant and would probably have had an important influence on the hearing, and was apparently credible.

29. However, the Claimant expressly withdrew that application. That is recorded in an email dated 18 January 2023 from, if my understanding is correct, his then solicitors including the words "The application to admit fresh evidence with witness statements … will not be pursued at the hearing" - that being a hearing, I infer, for permission to appeal, although it is possible that it is a reference to the substantive appeal itself.

30. Finally, when counsel produced detailed amended grounds of appeal, which I have referred to in the course of a previous ruling, that item does not appear as one of the grounds.

31. Mr Laddie submits, and I accept, that if was anything in this point about the Tribunal having been misled or doctored evidence having been put in front to the Tribunal on the basis of what other (i.e. data subject access request) material now demonstrates, and the Tribunal having reached incorrect findings on that basis, the proper way to raise that complaint is by way of appeal against the Tribunal's ruling supported, in this particular instance, by an application to adduce further evidence. The fact that has been withdrawn demonstrates that the Claimant has elected not to pursue the only available route to him if there was any substance in these allegations. Mr Laddie invites me to reject the Claimant's statement made in court yesterday that the reason

why that was withdrawn was for costs considerations. Although I understand Mr Laddie's submission that this is implausible in light of the costs that would need to be incurred in pursuing other aspects of the appeal in any event, I am not going to make any finding about that. However, the simple fact remains that it has been withdrawn.

32. Not only are the Tribunal's findings clear, but, to the extent that this is relevant, from looking at the documents that I have been invited to look at it appears to me that the foundation for their findings is manifestly sound. The suggestion that a lot of emails would have been manually transcribed including down to repetition of the very last "m" in a long list of "mms" in an email seems to me to be one that the Tribunal was fully entitled to reject as implausible.

33. Mr Dowding's evidence before the Tribunal is also contradicted, although I suppose there would also be a contradiction if he had retained emails, by a statement that he made in 2017 in connection with a dispute about the extent to which he had delivered back electronic equipment and copy documents which the employer company said contained its confidential information, as to whether he retained any of that confidential information. In that witness statement, he said that he retained nothing. It is a witness statement of 27 November 2017, and includes the statement: "I do not have in my possession or under my control any confidential information or other property belonging to the company". The Claimant goes on to say that he hasn't passed such information to anybody else except a memory stick he had sent to Blake Morgan, who were as I understand it his then solicitors. If, in fact, he had transcribed a number of emails (he suggested today in answer to a question from me perhaps 25 or so) verbatim before he returned the electronic or hard copies of them, he could not possibly, honestly, have made that statement. It is a manifestly ridiculous suggestion to suppose that if somebody has in their possession an email containing confidential information and they copy it, whether by a photocopy or by writing out a verbatim note, that somehow the copy does not contain the same information as the original document. As I said to him, quite frankly in the course of his submissions, it does him no credit whatsoever, whether he retained the emails as the Tribunal found and as it is not my function to second guess, or whether he retained verbatim notes, that he made a witness statement in those terms.

34. All this was supplemented by further material placed in front of me this morning including a letter dated 8 November 2023 from IT experts commissioned by Allenby which found: "There is no evidence of email tampering as emails were directly received securely by Mimecast servers. There is no evidence of man in the middle alterations as all the emails were protected by TLS (transport layer security) meaning they were protected by encryption in transit. All emails were protected by encryption, using storage level encryption so they cannot be altered. This is a key feature of Mimecast". All of that was said after these experts had explored the email system of Allenby. Also, there is the fact that Mr Dowding was offered the chance himself through his own IT expert to look for the relevant emails on Allenby's server. A letter from Allenby of 17 August 2023 rehearses the making of the offer to permit Mr Dowding's appointed IT expert to inspect on Allenby's Mimecast servers, and repeats that offer on an open basis, and suggests there is no good reason for rejecting it.

35. Mr Dowding tells me that the reason that this offer was rejected was because it was an offer for his appointed IT expert to inspect and that was regarded by him as unsatisfactory because what he wants is a joint expert to be appointed by the court to inspect on grounds that if his expert carries out an inspection it would be said that the inspection is somehow invalid or tainted. I find that a very surprising stance for him to adopt, especially given that he showed me himself letters from his solicitors at a much earlier stage in which they had asked for inspection. The suggestion that an IT expert should not take the opportunity to go in because of the fear that such IT expert's views would later said to be suspect strikes me as a deeply unsatisfactory answer to that offer.

36. Finally, I just want to touch on some of the points that Mr Dowding made in suggesting that the new matters have come to light which show that there are grounds to question the ruling of the Tribunal. I do not propose to attempt to deal with every point Mr Dowding made, but I hope that I can deal with one or two by way of illustration.

37. Mr Dowding referred to a transcript of part of a telephone call which took place on 11 August 2017 between Ms Nahal and Mr Matt Siebert of Tosca and which, as I understand it, was produced in response to a data subject request made of Allenby. That rehearses that Ms Nahal was saying that she had spoken to Mr Dowding the previous day and that he had said "Look Amrit you know I don't want Matt to come here. There's no one here". Ms Amrit goes on to say, on the phone call: "Let's just, I'm just, I'm telling you that because we know each other well" and then later: "So basically he [that, I think, is Mr Dowding] is going to get back to me. He should be coming back to me today. I gave him the dates when, you, know suited you".

38. Mr Dowding submitted this narrative was to be contrasted with an email sent on 11 August (the same day) just after 10 o'clock from Ms Nahal to Mr Shah in which she says: "As promised Tosca is available on the following dates next weeks", It then sets out four dates in the week, and ends with the words "Looks forward hearing from you".

39. The problem with this is that all that the data subject access request produced, perhaps, in my view, over generously, was documents relating to Mr Dowding's personal data. It is completely unsafe to assume that this phone call and that email comprise the entire narrative of what was going on between Ms Nahal and Mr Siebert. The phone call does indeed suggest that Ms Nahal was expecting Mr Dowding to come back with dates, but it does not follow that, effectively, an email saying Tosca is available on certain dates sent to Mr Shah is somehow inconsistent with that. It is perfectly possible that further discussions took place and that this led to generation of the email. It is not something obviously that is in front of me to decide, but it is simply an unsound proposition to say that any difference or tension between these two is in some way suspicious or sinister.

40. Another point that the Mr Dowding made related to a letter from Mr Laddie dated 4 September 2020 written to Mr Naylor at Allenby. In summary, it is saying that the allegation of forgery made against Ms Nahal has been abandoned. The letter is a long letter. The crucial sentence on the second page is: "I'm pleased to report that yesterday on the third day of the trial, Mr Dowding's counsel, Mr Declan O'Dempsey, informed the Tribunal that the allegation of forgery is no longer being pursued, i.e it is being abandoned". The letter also goes on to rehearse really what has happened with

Ms Nahal. It talks about the fact of her reporting matters to the FCA and it raises the hope that the FCA can be shown that the allegation has now been withdrawn and it is no longer a live matter. Mr Dowding's complaint about this letter is that it was not disclosed. Ms Nahal gave the evidence, which the Tribunal accepted, about her not being involved in any forgery, I think approximately four days later on 8 September.

41. That complaint, in my judgment, is completely unfounded. This was not a disclosable document in the proceedings. It was a letter written by Counsel for the opposing party to Mr Dowding reporting to the employer of a witness or prospective witness for that opposing party that (as Counsel at that time apparently believed) a serious allegation of impropriety against that witness had been abandoned. If there was some material in it which later emerged in evidence (e.g. as to the history of Ms Nahal's response to the allegation) and somehow Mr Dowding felt disadvantaged by that late emergence, he was represented by counsel. If there was a question of an adjournment to deal with Ms Nahal's evidence or a question of obtaining third party disclosure relating to whether the investigation carried out by her employer had indeed exonerated her, those are matters that could and should have been ventilated in front of the Tribunal. They certainly do not provide any basis at all for a High Court action revisiting all this ground in what would otherwise plainly be a very clear abuse of process.

42. I do not propose to say anything more about the points Mr Dowding raised because, in my judgment, they are all of a similar weight and calibre to those points, i.e they are misguided. They do not address the fundamental grievance of the Defendants. This matter has already been fully investigated by the Tribunal. If there was an available avenue for complaint it lay by way of appeal, which has been abandoned, and what is sought to do here is to go over again extremely serious allegations with no proper basis whatsoever against somebody who isn't even a party to this litigation or employed by Mr Dowding's former employer. It does seem to me to be a transparent and highly regrettable instance of Mr Dowding pursuing, remorselessly, and without any consideration for the offence and upset that these allegations cause to other people, allegations which he must know by now are utterly baseless.

43. I think that is a matter that reflects extremely badly upon Mr Dowding and certainly bolsters me in the clear view I have that the material issues have been resolved already, and that this is not a matter that should be allowed to be raised again in these proceedings, and that it would be a very plain abuse if it was to be.

44. Those are my reasons for upholding the Defendants' strike out application in respect of all the above paragraphs in the Particulars of Claim.

RULING

JUDGE SPEARMAN:

45. I now turn to deal with item 12 in the Schedule. The Defendants' case in short is that the allegations in paragraphs 85 to 87 inclusive of the Particulars of Claim were fairly and squarely in front of the Tribunal and have already been ruled upon. They rely upon the third bullet point in paragraph 15, the Tribunal's rehearsal of facts in

paragraph 85, and then the Tribunal's dealing with the issue in a lengthy paragraph at paragraph 129 starting with the words: "The Tribunal is left to conclude what happened on 24 August 2017 between Mr Shah and the claimant during their meeting".

46. Mr Dowding has made some submissions to me about the details of the emails and whether the timings are reliable and whether one of them may or may not have been drafted for the assistance of lawyers. I do not consider that those matters are actually very germane to the pleaded issues, but in any event I am absolutely clear that the matters which form the subject of the paragraphs that the Defendants seek to strike out were indeed raised in front of the Tribunal and have been ruled on by the Tribunal. It would be quite wrong and an abuse of process and a failure to recognise the estoppel that has arisen from the matters having already been decided to allow them to be re-litigated in this High Court claim and they must all be struck out accordingly.

RULING

JUDGE SPEARMAN:

47. Once again, in respect of the next item, item 13 in the Schedule, the Defendants' case is based on the contention that the matters raised in paragraphs 94 and then 96 to 98, and separately 95 of the Particulars of Claim, were in front of the Tribunal and have been disposed of by the Tribunal. The relevant paragraphs for these purposes are paragraphs 28 and 141 of the judgment of the Tribunal in respect of paragraphs 94 and 96 to 98 of the Particulars of Claim, and paragraph 132 of that judgment in respect of paragraph 95 of the Particulars of Claim. It seems to me absolutely clear that the Tribunal was asked to consider these self-same matters and has dealt with them.

48. The nub of the complaints in paragraphs 94, 96 and 97 of the Particulars of Claim is that there was a sham comprising fabricated allegations and the PIP and a sham disciplinary process, and there was no evidence to support the allegations in question. All of those matters were dealt with by the Tribunal, and they found to the contrary. Paragraph 98 stands or falls with earlier paragraphs, as it alleges complicity by Mr Kissane in sham and unlawful conduct, which depends on the same existing.

49. The allegation in paragraph 95 of the Particulars of Claim is to do with the NAV/EVO project and whether the Claimant was improperly blamed for that. The Tribunal found that there was no detriment to the Claimant, that being the context in which the issue arose in respect of the NAV/EVO project, in paragraph 132 of the judgment.

50. So yet again, in my judgment, this is an example of Mr Dowding seeking to relitigate in this High Court claim, matters that have already been disposed of by the ruling of the Tribunal. I am reminded by Mr Laddie that permission to appeal has been given in respect of some aspects of the Tribunal's ruling on these matters. That does not mean, of course, that the appeal will succeed, and at the moment, in my judgment, that is not a relevant consideration. The relevant consideration is what is alive at the moment, when I am asked to deal with the application. If, subsequently, the appeal Tribunal reverses the Tribunal ruling one way or another, it may or may not be appropriate for Mr Dowding to seek to reinstate some of these allegations, but at the moment, in my

judgment, they are the subject of conclusive rulings by the Tribunal, and it is an abuse to relitigate them in these proceedings. So these paragraphs must be struck out.

RULING

JUDGE SPEARMAN:

51. I now have to deal with item 14 in the Schedule, summarised there as "Attempts made by [the employer company] to settle the dispute with the Claimant were "intended to intimidate the Claimant"". I consider, for reasons that I have already indicated, that the Defendants' case on these paragraphs is right as well.

52. Paragraphs 99 to 103 essentially are complaining about events from 4 September 2017 onwards, to put pressure on the claimant to resign, and those are exactly the self-same allegations as the Tribunal considered.

53. The penultimate bullet point in paragraph 15 of the judgment of the Tribunal refers to: "The respondent subjecting the claimant on multiple occasions to pressure to resign from his position at the respondent".

54. That being one of the detriment complaints, the Tribunal then addressed these very matters, essentially at paragraph 139 of the judgment. Paragraph 92 of the judgment refers to what happened before the disciplinary process commenced, with a settlement offer being presented to the Claimant. Paragraphs 100 to 103 deal with a point of law.

55. But the central paragraph is paragraph 139, which does go over this ground, including the offer on 4 September 2017, and ends with the words "It was not evidence of unfair pressure to resign. The claimant was not subjected to a detriment".

56. In my judgment, a plain estoppel arises in respect of these allegations and they cannot be relitigated on the current state of the Employment Tribunal's judgment. As I have said more than once, in the event that the Claimant succeeds in appealing against any aspect of that judgment, then it is possible that the landscape will change and certain allegations may be capable of being revived, but at the moment, they are covered by those paragraphs of the Tribunal judgment, and it is an abuse to relitigate them here.

RULING

JUDGE SPEARMAN:

57. I now turn to item 16 in the Schedule. I consider that for the reasons that I have already indicated, the Defendants' attack on the assertions in paragraphs 116 and 124 of the Particulars of Claim, that the Claimant did not know of the board meeting on 14 September 2017, that they seek to strike out, on the basis that that very point was in

front of the Tribunal, and they reached a finding that the Claimant did know of it, and that is set out in paragraph 96 of the Tribunal's judgment, is clearly well founded.

58. Mr Dowding has addressed me on the basis that, in fact, his case in front of the Tribunal was quite different to that which is rehearsed in paragraph 96 of the judgment: it was not that he had not picked up Mr Harris' voicemail message of 13 September 2017, timed at 9.11 am, but was instead, that he had picked that message up, but it did not give notice of the board meeting on 14 September, but instead, just gave notice that a board meeting was going to be called. In other words, Mr Dowding says that it suggested there would be notice of a board meeting given at some unspecified date.

59. It is remarkable that the Tribunal should have reached the findings that it did, if indeed that was not Mr Dowding's case in front of it, but that is not a matter that arises today, in my judgment. The position is that the finding is clear. It covers the same ground as the assertion of lack of knowledge of the board meeting on 14 September 2017 in paragraphs 116 and 124 of the Particulars of Claim , and they cannot be permitted to go forward relitigating that issue, while paragraph 96 of the judgment stands.

60. Were paragraph 96 of the Tribunal's judgment to be reversed on appeal, different considerations might apply, but at the moment, in my judgment, it presents an insuperable obstacle for Mr Dowding in trying to persist with these paragraphs.

RULING

JUDGE SPEARMAN:

61. I now have to give a ruling on item 17 in the Schedule, which, in summary, relates to an allegation that minutes of the disciplinary meeting on 6 September 2017 were inaccurate and false. The Defendants have two lines of argument in seeking to remove from the Particulars of Claim what turn out to be a large number of paragraphs, or parts of paragraphs, that refer to this allegation about false or inaccurate minutes. They are paragraphs 117 to 120, 124, 130, 131 to 132, 135, 137, 152, 190 and 205. The two grounds upon which the defendants seek to get these paragraphs removed from this case are, first of all, a strike out ground, based on estoppel, on the basis that the issue has been resolved by the Employment Tribunal, and that is conclusive; and, second, if that is not successful, a more elaborate ground giving rise to summary judgment.

62. Mr Dowding's main argument in opposition is, I believe, that the issue as to whether these minutes were accurate or not is not an issue that was before the Tribunal, and Mr Dowding also said that his evidence on it was not challenged.

63. Dealing first of all with Mr Dowding's case, in paragraph 125 of a witness statement which I believe is undated but is his first witness statement in front of the Employment Tribunal, he said, with regard to these minutes, having made a number of points on the text:

> "These fabricated inaccuracies (amongst others) led me to believe that the minutes have been altered from their original form by the respondent as a deliberate attempt to shore up the sham disciplinary case against me. The respondents have been asked to provide copies of any earlier drafts of these draft minutes."

64. It seems to me that in these circumstances the question of whether these minutes are accurate or not, and particularly whether they contain deliberately fabricated inaccuracies, was raised in the plainest possible it terms by Mr Dowding in his evidence. That evidence was answered by a witness statement of Mr Kissane at paragraph 27, in which Mr Kissane says:

> "I believe that Sarah Wells' minutes are accurate and full. I do not agree with the changes made by the claimant on the notes themselves or on the additional page provided by the claimant. I have no recollection of saying 'bollocks to this' at any time in the disciplinary hearing."

65. That evidence, in turn, was answered by a supplemental witness statement that Mr Dowding made in the Employment Tribunal proceedings, in which he deals with paragraph 27 of Mr Kissane's witness statement, by commenting as follows:

> "The minutes that Sarah Wells took at the disciplinary hearing may well be accurate, but it is impossible to confirm that because that record has not been given to me or disclosed by the respondent (despite a number of specific requests) or been included as part of the bundle of documentary evidence in this case."

66. Some aspects of that last quote require explanation. The consistent case of Mr Dowding is that the typed version of the minutes produced by Sarah Wells is not, in fact, an accurate record of what took place, and at one stage he received that document and made a large number of manuscript amendments to it, which is what Mr Kissane is referring to as being changes that he did not agree. Mr Dowding founds that assertion about inaccuracy partly on a rubric at the head of the minutes which reads:

> "These notes are not a verbatim record of the disciplinary hearing but record, as far as possible, the discussions that took place during the disciplinary hearing."

67. Mr Dowding says that this rubric is not right, because if you look at them, they are a verbatim record.

68. This whole point seems to me to be utterly hopeless. The minutes are detailed. They do, as far as one can see, have the appearance of coming very close to being a word for word account, but it is perfectly understandable that the person who took them does not profess to have actually produced a word for word account, because that is typically a difficult task to achieve.

69. The main point, however, is that the issue was raised before the Tribunal. Further, it is crystal clear that the Tribunal dealt with it, because paragraph 95 of the Tribunal's judgment says (amongst other things):

> "The Tribunal concluded that the minutes were a fair and accurate summary. The claimant had made changes to the notes, some of which were not decipherable. In some places large volumes had simply been struck through. The job of a notetaker is to take notes, and the Tribunal did not accept that save for a few inaccuracies, they could be changes of the kind inserted/deleted by the Claimant. The Claimant's changes were rejected."

70. That is a finding made by the Tribunal on the material in front of the Tribunal, and moreover one which it seems to me, from what I have gone over, the Tribunal was fully entitled to make. But be that as it may, that is what the Tribunal did.

71. There is a further question as to whether and to what extent these minutes were circulated to members of the board at the time of a board meeting which took place shortly afterwards and which, in effect, ratified or made the decision that the Claimant should be dismissed. If the minutes are fair and accurate, it does not seem to me to matter how widely they were disseminated. If they were inaccurate, the Claimant's case would only seem to me to have legs if they were, in fact, disseminated to board members and were operative in taking a decision to dismiss him that would or might otherwise not have been made, and, obviously, the more members to whom they were disseminated, the stronger that case would be if they are inaccurate. But if they are accurate, the extent of dissemination does not take matters any further, because they cannot have had an improper effect upon the decision to terminate his employment.

72. Had the issue of inaccuracy not been raised, and if and to the extent that the issue of circulation to the board members was not raised, both those issues, in my judgment, were plainly matters that could and should have been raised in front of the Tribunal. As I say, it seems to me the question of accuracy was plainly raised and dealt with, but if and to the extent it was not raised, or if and to the extent the degree of circulation or the influence on the board wasn't raised, then in my judgment, it plainly ought to have been raised, as it was all germane to the case that the dismissal process was unfair.

73. There is correspondence, the full ambit of which I do not propose to go over, which includes a letter from Duane Morris, the Defendants solicitors, i.e. the solicitors for the respondent in the Tribunal, relating to the issue of the extent of circulation and the accuracy of the board minutes, which record that all directors had received the notes. That letter is dated 31 July 2018. At page 7 of what is an extraordinarily long letter, it rehearses, in short, that at the time that the minutes of the board meeting were made, the person making the minutes understood that all directors had received copies of Sarah Wells' notes of the disciplinary meeting. It later appeared that the respondents in the Tribunal took the view that this was wrong, and that the notes had only gone to three directors, Mr Kissane, Mr Diver and Mr Shah. Later, it is my understanding, but whether it is right or not, it may not matter, that in fact the respondents revisited that view and took the view that in fact there had been wider circulation. But whatever the ins and outs of that, an issue as to the extent of circulation was clearly flagged up and

known about in advance of the Tribunal hearing, and if it was germane to the question of dismissal, it was something that should have been raised in the Tribunal.

74. The only other matter that I need to address in dealing with the argument that these paragraphs in the Particulars of Clain and this allegation of fabrication or doctoring of, or inaccuracies in, the board minutes should be struck out on the grounds of res judicata, relates to the question of who was privy to the earlier decision. The Employment Tribunal proceedings were brought by the claimant against the company. Those who are sought to be made liable in respect of the pleaded case of inaccuracies in the board minutes extend beyond the company to individuals. Mr Shah, who was a director; Mr Kissane, who was perhaps also a director; and Ms Wells, who basically had a personal assistant or secretarial role. The question is, does the principle of estoppel by res judicata apply to them as well? The whole topic was discussed in some detail by the Vice Chancellor, Sir Robert Megarry, in Gleeson v Wippell & Co Ltd [1977] 1 WLR 510, and he mentioned, amongst other things, the decision of Zeiss (No 2) [1967] 1 AC 853, of which the Vice Chancellor says at page 515, letter B:

> "Lord Reid suggested that if a plaintiff sued X and established some right in that action, a servant or third party employed by X to infringe the right and so raise the whole question again should be regarded as being a privy of X's in subsequent proceedings, for it would be X who would be "the real defendant". Lord Reid agreed with a statement which applied the rules of res judicata to subsequent proceedings brought or defended 'by another on his account,' that is, on X's account."

75. It seems to me that that approach is manifestly right both in principle, and as a matter of common sense. One of the Defendants on these proceedings is, and the respondent in the Employment Tribunal proceedings was, the employer company. A company is not a natural person, and can only act through the agency of natural persons. The natural persons concerned in this part of the story were Ms Wells and maybe Mr Kissane and maybe Mr Shah, but in any event they were all basically doing whatever they were doing as instruments of the company, acting on its behalf. To allow a Claimant to bring proceedings against a company, necessarily involving actions of officers or employees of the company, and leading, as has happened in this case, to a finding by the court or Tribunal that the officers or employees were not responsible for wrongful acts as alleged by the Claimant, but then allow the claimant to commence fresh proceedings, raising exactly the same issues against the officers or employees as individuals, seems to me to be the plainest possible abuse, and plainly to be covered by an appropriate approach to the principle of estoppel by res judicata.

76. I say no more about the Vice Chancellor's judgment, save to say that it contains an interesting discussion about the concept of the breadth of privity of interest, which he says at page 515 is difficult territory, but I would observe that at 515H, he says this:

> "Thus in relation to trust property, I think there will normally be a sufficient privity between the trustees and the beneficiaries, where a decision that is binding on the trustees is also binding on the beneficiaries and vice versa."

77. In my judgment, an approach which regards a case of that sort brought against trustees as being binding also on beneficiaries and vice versa, is, if anything, wider in concept than the notion of privity of interest existing as between a company and its officers or employees, as arises in this case. And I think it only necessary to add that the Vice Chancellor's judgment in Gleeson v Wippell has been considered and approved, it would appear, on a number of occasions, including in Lemas & Anor v Williams [2013] EWCA Civ 1433.

78. The points that Mr Dowding has made by reference to other authorities, and the question of whether claims for inducing breach of contract and claims for breach of contract have sufficient overlap to make findings in a claim in respect of one determinative in relation to a claim for the other, and whether some findings of Tribunals are binding in respect of some claims for breach of contract in subsequent High Court proceedings, all seem to me to be beside the point.

79. The relevant aspects of the evidence, the findings of the Tribunal, and the law, are those which I have covered.

80. For those reasons, I consider that the Defendants are entitled to succeed on their first and primary ground, namely that these allegations that these minutes were inaccurate, false or fabricated, is one which has been resolved by the Tribunal, and, subject to some reversal on appeal, is binding not only on Mr Dowding and the company, but also on Mr Dowding in respect of claims against the company's officers and employees.

DAY 3

RULING

JUDGE SPEARMAN:

1. This item, numbered 19 in the Schedule, relates to public statements made concerning the circumstances of termination of the directorship and employment of Mr Dowding. It relates to paragraphs 5, 6, 14 and 15 of the Claim Form, and a significant number of paragraphs of the Particulars of Claim.

2. The first of those paragraphs in the Particulars of Claim, paragraph 133, complains about announcements made to the public on 15 September 2017 through the London Stock Exchange and The Times newspaper specifically, but also other media organisations. The complaint is that these statements concerning termination of Mr Dowding's directorship and employment were not only inaccurate but also were released without prior consent from him.

3. Paragraph 135 contains the allegation which appears to me probably be a summary of the heart of Mr Dowding's case concerning these announcements, which is that the public announcements were inaccurate, specifically in saying he had had gone "absent without leave", and stating that the reason for termination was a loss of confidence in Mr Dowding when in reality, it is alleged, that Mr Shah and others had "… overseen

a process designed to bring about the termination of the claimant's employment and/or directorship by the use of iniquitous and/or unlawful means conspiracy".

4. Paragraph 138 complains that the public announcements included details of Mr Dowding's disciplinary process that were inaccurate and misleading.

5. Paragraphs 140 and 141 plead that the information that was released was "self-evidently private or confidential" and that Mr Dowding had a reasonable expectation of privacy in respect of the same, and that the employer company's misuse of the same by (but not necessarily limited to) the public announcements caused him serious damage.

6. Paragraphs 142 to 145 raise complaints that the inaccurate information in the public announcements breached Mr Dowding's rights in accordance with data protection principles, that the announcements were made in breach of the duty of care that was owed to him by his employer, and that the inaccurate and negligent misstated public announcements have caused him considerable damage and distress.

7. Paragraph 187 makes a further reference to these announcements in relation to an offer of settlement dated 5 February 2018, which did not include an offer to correct the same, and which is said to have been unacceptable for this and other reasons.

8. Finally, paragraphs 214(xi) and (xii) make substantial claims for damages which appear relate back to these announcements. There is a claim for £1.26 million or alternatively £260,000 in damages in subparagraph (xi) and a claim for distress that is put in the sum of £56,200 at paragraph (xii). As these damages claims make reference to breach of contract, and issues of misuse of private information, breach of confidence and misuse of personal data, they appear to relate back to these particular claims.

9. The Defendants' primary submission in relation to these allegations is that they have been disposed or largely disposed of by the rulings of the Employment Tribunal.

10. In this regard, the Defendants start with the final bullet point in paragraph 15 of the Tribunal judgment, which identifies one detriment allegation in these terms:

> "Post termination, the Respondent and/or Mr Shah making malicious, false or misleading statements to the media concerning the circumstances of the dismissal which caused the Claimant anxiety, distress and unjust damage to his reputation."

11. The Tribunal dealt with that particular allegation at paragraph 140, in which they concluded that Mr Dowding was not subjected to detriment as a result of communications with the media and particularly false and misleading statements to the media. In that paragraph, the Tribunal only deals in terms with two publications: (1) a publication resulting in an article in the Times newspaper and (2) an announcement made to Bloomberg. One of Mr Dowding's points in this context is that the Tribunal does not deal with the regulatory announcement that was made, although that was specifically made part of the subject of complaint in Paragraphs 18 and onwards of his

Particulars of Claim before the Employment Tribunal, which include reference to "an inaccurate and misleading Regulatory News Announcement made by the Company".

12. The Defendants' primary argument, as I say, is that these allegations are covered by issue estoppel. Their secondary argument is that the claims are, in any event, unsustainable. There is no seriously arguable case for breach of confidence, misuse of private information, negligent misstatement, or breach of data protection principles, or, for that matter, breach of contract, on the basis that, in the briefest summary, the contents of what was made public are accurate, and comprise information that it was lawful for the company to make public. If anything, the announcements underplayed the significance of the events leading up to the termination of Mr Dowding's employment and directorship, and the rubric of "loss of confidence" was, if anything, an understatement of what could properly have been said about those circumstances. As far as the contract is concerned, this had come to an end with Mr Dowding's dismissal on 14 September 2017, which the Defendants point out is his pleaded case, both in front of the Tribunal and in front of this Court in the Particulars of Claim.

13. Dealing first with the regulatory announcement, the AIM rules for companies in the July 2016 edition, promulgated by the London Stock Exchange, provide at paragraph 17 (reading only relevant words): "An AIM company must issue notification without delay of... the resignation, dismissal or appointment of any director, giving the date of such occurrence".

14. The announcement that was made is in these terms:

> "Following a formal meeting of the board held yesterday (14 September 2017) the directors of the company have resolved that because of a loss of confidence in him by the senior executive team, Mr Mark Dowding's contract of employment with the group has been terminated and he has ceased to be a director of the group and company secretary, all with immediate effect."

15. That announcement goes on to say that Mr Shah is going to take over the responsibilities of Group Finance Director, and that the change did not reflect any circumstances relating to the trading of the group or its finances.

16. In my judgment, it is absolutely clear that the company was entitled to make such an announcement and, indeed, in the circumstances, was required to do so, including saying that Mr Dowding had been dismissed. That is what the AIM rules require. It seems to me quite unreal to suggest that a bald statement of dismissal is all that the company was entitled to notify under the AIM rules and also to suggest that using the language "loss of confidence" was in some way more harmful to Mr Dowding than a more detailed announcement that the company could have made in other terms, all of which would have been accurate, and in respect of which he, in my judgment, would have had no complaint, and would have caused him as much reputational harm and harm of all the other sorts that he complains about as this announcement did.

17. Turning to The Times publication, which the Tribunal expressly dealt with, this records (amongst other things) that:

> "The circumstances surrounding the sudden departure of finance director Mark Dowding, who joined The Character Group in 2012, were not immediately clear to investors but it has emerged that a disciplinary hearing was held last week which led to his abrupt exit."

18. Then it goes on to quote Mr Shah saying, first of all, that he refused to comment on the hearing. Mr Shah is then said to have said that the board had not heard from Mr Dowding for about ten days and that he had not been in touch with the company for quite a while. The article states that Mr Shah's response was a carefully weighted response and that he was reluctant to divulge what led to the working relationship breaking down, save to say that trust had been broken with the board.

19. The Tribunal judgment at paragraph 140 states "contrary to being false or misleading, it was reported that Mr Shah had provided a carefully weighted response, further that he had refused to divulge details". It appears to me from this language that the Tribunal may have taken those remarks in the Times article as being a factual statement that Mr Shah was providing a carefully weighted response, as opposed to those words reflecting the appraisal of the journalist, but maybe this is unfair to the Tribunal, as they are careful to say (emphasis added) "it was <u>reported</u> that".

20. I do not consider that it is appropriate for me to seek to go behind the findings of the Tribunal, although I do just voice an element of reservation that the topic of whether Mr Dowding had not been in touch with the company to the extent that Mr Shah is attributed as having told the newspaper and the question of whether the response was carefully weighted do not appear to me to be self-evident from what I have seen.

21. But essentially, the same point remains, that the substance of what was reported in the newspaper is no more than the truth, and the factual description of matters is, if anything, favourable to Mr Dowding in that, in accordance with the findings of the Tribunal, an explanation of the circumstances of his dismissal that was much less sympathetic to him could accurately have been given by the company.

22. The only other publication that I propose to refer to is the Bloomberg publication, and that, again, is to the effect that there was a breakdown of trust and confidence. The relevant quotes are, first of all, some words attributed to Mr Shah in the middle quote: "It was nothing to do with trading or finances. We just sort of felt that there were a few relationships that had broken down." Then, later in the Bloomberg article, these words appear: "There was a "fundamental" deterioration in the trust and confidence between Dowding and the board, as well as other employees of the company, Shah said. "Dowding was not doing anything illegal", he added."

23. In my judgment, all of the causes of action that are sought to be relied upon on the basis of these publications are plainly hopeless. There is no real prospect that any of them would succeed at trial. In substance, this was not a misuse of private information. It was not a breach of confidence. It was not a breach of any data rights that Mr Dowding may have had. It was an announcement of accurate information concerning the circumstances of the termination of his employment and his directorship. If and to the extent that anything was not accurate or not fully accurate, it

was more anodyne that it might have been in his favour. Further, all that was announced was communicated to a public that had, in my judgment, an absolutely clear right to know the substance of what was being announced.

24. He, Mr Dowding, was the Group Finance Director of an AIM listed company. The fact that he had been dismissed from his employment and his directorship, seems to me to be manifestly something which it was appropriate for the company to announce to the public, in a way that did not mislead anybody as to the financial circumstances of the company, did not have an improper effect upon the movement in share prices, and formed part of appropriate transparency about the financial and commercial dealings of companies in which the public invest; and, for that matter, which financial journalists have a perfectly understandable and lawfully recognised interest in reporting.

25. The grievance that misuse of private or confidential information, or announcements in breach of contract or a duty of care occurred here is, in my judgment, quite plainly without any foundation at all. It would be wrong to seek to litigate these issues to trial, when they have no real prospect of success, regardless of the fact that the substance of the matter, although maybe not in terms the regulatory announcement, has plainly been determined already by the Employment Tribunal in the tribunal proceedings.

26. For those reasons, the material paragraphs of the Particulars of Claim will be struck out.

RULING

JUDGE SPEARMAN:

27. I now have to deal with claims to strike out further parts of the Particulars of Claim, or for clarification as to the implications for other parts of the Particulars of Claim, having regard to the paragraphs that have already been struck out. The matters that fall for consideration under this limb of the Defendants' application relate to allegations against the Second, Third and Fourth Defendants.

28. The way in which the matter is argued in respect of the Third Defendant, Mr Kissane, and the Fourth Defendant, Ms Wells, is that upon review and analysis of those paragraphs that have already been struck out on discrete grounds under the various headings that I have dealt with in the rulings that I have given so far, all the substantive allegations against Ms Wells and Mr Kissane have already been resolved and resolved in the Defendants' favour, that is to say they have been struck out.

29. So far as Ms Wells is concerned, Mr Dowding, I think rightly, is prepared to concede that that is so, and he does not pursue resistance to Ms Wells being removed from allegations in the Particulars of Claim and indeed, as a corollary of that, removed as a Defendant in the proceedings, and I so rule in favour of the Defendants.

30. So far as Mr Kissane is concerned, Mr Dowding does oppose the order that the Defendants seek. But having looked at it more than once in the course of counsel's

submissions and having reminded myself of the ambit of what has already been struck out under my earlier rulings, I consider that Mr Laddie is right in his submissions. In fact, when one goes over the Particulars of Claim, all the allegations of substance against Mr Kissane have already been resolved and dealt with in the Defendants' favour, under other heads. In other words, it is not a question now really of striking out anything extra as against Mr Kissane in addition to the paragraphs or parts of paragraphs that have already been struck out, but of taking stock of what has been struck out and confirming, as I think is right, that the effect of that is that there is no substantive claim left in the Particulars of Claim against Mr Kissane, and as a corollary of that, and I agree with this, that Mr Kissane also must be removed as a Defendant.

31. The position so far as the Second Defendant, Mr Shah, is concerned is different, and it is accepted by the Defendants that the rulings on other heads have not produced the result that all the allegations against Mr Shah have already been dealt with. But, in the round, the Defendants' submission is, first of all, that the Employment Tribunal was seized of a wide ranging case of unfair dismissal and complaints of acting to the detriment of Mr Dowding in the employment tribunal hearing. At the heart of all of that was an exploration of the role and actions of Mr Shah, because inevitably the employer company as a fictitious legal person can only act through the agency of individuals, and the prime agent for these purposes was indeed Mr Shah. The way in which the Defendants' argument is put is that, if you look at the Tribunal's far-reaching rulings, they have already effectively dealt with the allegations of misconduct and so forth against Mr Shah, because that was at the heart of the debate and the issues in the employment tribunal, and it is clear from their rulings and their detailed reserved judgment that they rejected both the claims made and the criticisms of Mr Shah.

32. I believe that in some instances Mr Laddie would be inclined to accept that the Tribunal did not in terms deal with some allegations. It might have been open to the Defendants to argue that to the extent there were extra allegations that the Tribunal did not deal with, they are all allegations which could and should have been brought as part of Mr Dowding's unfair dismissal claim and, therefore, the Claimant, Mr Dowding, should not be allowed to bring them afresh in the High Court, when they properly belong to the subject matter of his already disposed of unfair dismissal claim. But that is not a point that has been made, or at least pressed, by the Second Defendant.

33. Rather, the Second defendant invites me have regard to the summary of the law that is contained in Clerk & Lindsell at paragraphs 23-44 and 23-45. Essentially, this is exploring the ambit of the law which flows from what was said in Said v Butt [1923] KB 497. What is stated there as being one of the consequences of the rule generally referred to as the rule in Said v Butt is that where the defendant is an employee or agent of the party who breaks the contract, ie typically the employer, the rule is that:

> "An employee acting bona fide within the scope of his authority is not liable for procuring the breach of contract made between his employer and a third party. He is treated as the alter ego of the employer."

34. The position, therefore, in accordance with that summary of the law, for an employee or an officer to be independently liable for procuring a breach of contract by the

employer company, the employee or director must have acted in bad faith and/or outside the scope of his authority.

35. The broad point that is put in the present case is that there is nowhere pleaded in the Particulars of Claim, and nor could it reasonably be pleaded in light of the findings in particular of the tribunal, that Mr Shah did anything wrong in either of these senses.

36. One can explore some aspects of that debate by looking at paragraph 146 of the particulars of claim which pleads: "Without consulting the Claimant, Mr Shah, during the contractual notice period, cancelled the Claimant's private medical cover in circumstances where he was fully aware that the Claimant might have cancer..." and then these are the words that follow that are sought to be struck out: "... and after he had procured the Company to breach the Claimant's contract by relying on a noncontractual PILON (i.e. Payment in lieu of notice) …"

37. Now, the issue of whether there was a noncontractual payment in lieu of notice does not seem to me, on the material I have seen, to have been raised as a discrete allegation in front of the Tribunal. But what is said by the Defendants is that alleging that Mr Shah procured the company to breach the contract by relying on that is really not an allegation that can be allowed to go forward in light of the history, the findings of the Tribunal and the fact that, looked at more broadly, really it would add nothing to the Claimant's claim in light of the fact that he has a raft of claims against the company, essentially breach of contract claims, which they accept can go forward.

38. Mr Dowding's main argument is that this alleged action by Mr Shah, and, indeed, other actions on his part which are reflected in paragraphs 158, 159, 165, 170, 171, 179, 180 and (under the damages head) in the introduction to paragraph 214 and in sub-paragraphs 214 (viii) to (x), all reflect breaches of duty on the part of Mr Shah, contrary to section 172 of the Companies Act. That is enough, either by itself or in conjunction with the actions of Mr Shah which are said to be relevant to the breaches having arisen, to give rise to arguable claims of procuring a breach of contract.

39. The submission Mr Dowding makes is founded principally on the case of Antuzis v Houghton Catching Services Ltd and Others [2019] BLR 1532, a decision of Lane J.

40. The reference to section 172 of the Companies Act 2006 occurs at paragraph 118, where the learned judge sets out that this section imposes important duties on directors to act in good faith so as to promote the success of the company and in so doing to have regard to various matters. The matters listed in the section include:

> "The likely consequences of any decision in the long-term … the interests of the company's employees … the impact of the company's operations on the community and the environment … the desirability of the company maintaining a reputation for high standards of business conduct."

41. For good measure, I point out that the judge goes on to say that section 174 imposes a duty on directors to exercise reasonable care, skill and diligence.

42. The judge says at paragraph 122:

> "Accordingly, as a general matter, the fact that the breach of contract has such a statutory element may point to there being a failure on the part of the director to comply with his or her duties to the company and, by extension, to the director's liability to a third party for inducing the breach of contract. Whether such a breach has these effects will, however, depend on the circumstances of the particular case."

43. As I read that decision, and in accordance with my understanding of the law, it is not the case that a breach of section 172 gives rise to a right of action by a party injured by a breach of contract on the part of a company. Rather, what is being said is that when one is exploring the issue of whether an officer or employee has or has not acted bona fide and within the scope of his authority, so as to expose him or her to liability in accordance with the rule in Said v Butt for procuring a breach of contract on the part of the company, it is not irrelevant to take account of whether the director in question has or has not complied with section 172. As I understand it, the proposition is that if the director has acted contrary to the duty of good faith imposed by section 172, that is relevant to the issue of whether he or she has not acted bona fide and within the scope of authority and, therefore, is potentially liable for procuring a breach of contract.

44. Mr Dowding, in particular, latches onto the reference in section 172 amongst the matters which have to be considered to "the interests of the company's employees", and to the company's alleged reliance on a noncontractual payment in lieu of notice.

45. Mr Dowding's argument, as I understand it, is to the effect that he should have been allowed to work out his notice period. Had he been allowed to do that, he would have been able, during the continuation of that notice period, to exercise certain rights of an employee, which would have included share option rights. Reliance on a payment in lieu of notice had the effect of giving him significant financial entitlements to which he would otherwise have been entitled if he had worked out his notice, but brought his employment to an end earlier such that he could not exercise those further rights. That was contrary to his interests as one of "the company's employees" and, therefore, that was contrary to the obligation to act in good faith in section 172, and therefore either by itself or as a background matter supports Mr Dowding's case that the director in question, in this case Mr Shah, was not acting bona fide and was not within the scope of his authority and, therefore, can be made liable for inducing breach of contract.

46. In my judgment, that line of argument is not sufficiently plausible to warrant any of these paragraphs in the Particulars of Claim remaining in them. There is no clear allegation in these paragraphs that Mr Shah acted in bad faith or outside the scope of his authority. If there was, there would be a big question mark over the extent to which it would be right to allow that allegation to stand in light of the fact that the Employment Tribunal has covered either all or very much of this ground and has come to a completely contrary conclusion. The idea that steps of the kind complained of, taken by a company, which are contrary to the interests of an individual employee would or even plausibly might place a director in breach of section 172 is, in my judgment, far-fetched. There must be many instances in which the financial interests of a company and the financial interests of an individual employee are at loggerheads.

47. Very broadly, at least in financial terms, the less the employer company pays the employee, the more that is in the interests of the company, and vice versa: the more the company pays him or her, the greater that is in the employee's interests and the less that is in the interests of the company. If every time a director took a step under the umbrella of acting on behalf of the company which an individual employee found financially or in some other way unappealing, the director would be open to an accusation of acting in breach of duty to the company, it would produce, as far as I could see, utter chaos. I think that line of argument is plainly without foundation.

48. Within these paragraphs, in any event, there is a revisiting of issues that have already been determined in other contexts. To give but one example, paragraph 158 relates to an allegation of a false assertion about salary and bonus terms which, in fact, is not a false assertion. These are two of the issues which the Tribunal decided and which, in line with the Tribunal's decision, I have struck out in other paragraphs. Therefore, this is an attempt to revisit under the secondary guise of a claim for inducement of breach of contract an allegation of breach of contract which is itself without foundation.

49. I do not consider that it is proportionate, in light of the amount of time that these applications have already taken and the hour of day that has been reached, for me to endeavour to go over each and every one of the remaining paragraphs that are sought to be attacked under this head. I hope and I believe what I have said is enough to dispose of all of them.

50. I do not think it is appropriate for Mr Shah to remain a figure in this particulars of claim in the guise in which he presently is.

51. Further, although this is by no means determinative, it is right to point out that the surviving claims of Mr Dowding will go forward to trial and that his remedies will be available against the company. There is no suggestion that I can see that Mr Dowding will gain anything extra by having Mr Shah in as a further defendant to the company in respect of those claims which will properly be going forward. It is, of course, the law that if somebody has claims against two people, proper viable claims that are appropriate to go to trial, the fact that remedies will be available against either one of them is not a bar, generally speaking, to bringing claims against the other as well. It is also right to say that it is possible that a corporate defendant may at the end of the day not have the resources to meet a claim which it is possible that an individual director defendant may have the means to meet, although there is no evidence in front of me to suggest that is the case in this particular instance. As I say, that is not determinative.

52. The fact is that, on the material I have, as far as I can see, Mr Dowding will lose nothing by not being able to pursue claims against Mr Shah, because all of his properly arguable claims are available against the company and, as far as I am aware, there is no question of the company not having the financial means to meet them if they succeed at trial. So to the extent that any form of discretion or broad considerations of fairness and justice come into play, those factors also militate in favour of the strike-out application.

53. However, the main reasons are those I have already given: there simply is not a proper case to go to trial under any of these paragraphs as against Mr Shah as a defendant.

54. That is my ruling on the issue of the pleaded case against Mr Shah.

DAY 4

RULING

JUDGE SPEARMAN:

1. The next matter that I have to deal with is the Defendants' application for summary judgment pursuant to CPR 24.2 concerning those parts of the Particulars of Claim which relate to the Claimant's data subject access requests. The relevant paragraphs are said by the Defendants' Skeleton Argument to comprise paragraphs 193 to 204.

2. In fact, paragraphs 196, 197 and 198 have already been struck out because they relate to allegations of altered documents which are contrary to the findings of the Employment Tribunal, and which I have also considered and appear to me to be without foundation. So those particular paragraphs do not fall for determination on this summary judgment application in any event.

3. Paragraph 193 of the Particular of Claims refers to the Claimant's data subject access request dated 4 September 2018. That relates to a letter which sets out a request for data relating to 17 classes of documents (15 of which are listed on the first page of the letter and the remaining 2 of which are listed on the second page of the letter).

4. Paragraph 194 just says that that request is referred to, somewhat mysteriously as it was made in September 2018, as the "October 2018 DSAR".

5. Paragraph 195 deals with the response to that request, which is contained in a letter from the Claimant's employer, The Character Group plc, dated 5 October 2018, which is signed by S. Tull. That letter first rehearses the fact that what has been requested is data processed in relation to the 17 topics identified in Mr Dowding's data subject access request. It then explains what has been done by way of searches, and it explains what emails have been searched, what search terms have been used, and that group human resource files have also been searched. Enclosed with the letter were documents amounting to some 200-odd pages in total, I was told by Mr Helme.

6. Obviously, a data subject access request is a request for data rather than documents, but very often the data controller finds it convenient to respond to the request by providing documents containing the data in question, rather than seeking to fillet the data out or describing what personal data is being processed without copying the documents.

7. The letter then describes the classes of personal data that are held in respect of Mr Dowding, starting with payroll information and ending with tax codes. I will not

read out all of the 10 different classes that are set out there, but they include address, date of birth, telephone numbers, bank details and so forth.

8. The letter goes on to confirm that the employer company does not make use of automatic decision-making, including profiling, and set outs a descriptions of other ways in which the data controller - that is the employer company - processes data.

9. The letter explains that not all personal data has been given to Mr Dowding in response to his request, and what has not been provided are records of the company's intentions in respect of negotiations with him and matters that are subject to legal privilege. It further states that information that has already been provided as part of pleadings, correspondence, witness statements and disclosure, has not been provided again.

10. Finally, it explains that the company has done its best to respond to the Claimant's request and asks whether, if there is any dissatisfaction with the response, "please let us know so we can address any concerns". In fact, the Claimant made no response to that letter, and voiced no complaint, until 23 November 2020, more than two years later, and after the Employment Tribunal circulated its judgment on 12 November 2020.

11. Going back to the pleaded case, paragraph 199 says that by late 2020, it was clear that the documents sent in compliance with the data subject access request were inadequate, and paragraph 200 pleads that a supplementary request was made, as I have already mentioned, on 23 November 2020.

12. That supplementary request starts off with a complaint about known missing documents and then goes on to a complaint about missing documents that are now believed to exist, the total number of classes running to 31 classes in all. Plainly, a fundamental deficiency in that approach is the premise that the data subject, in this case Mr Dowding, is entitled to production of documents as opposed to data.

13. As I will consider in a moment, the Defendants' case is in fact that all relevant documents have been disclosed that relate to the Employment Tribunal proceedings and the issues that led up to those proceedings, including concerns about Mr Dowding's conduct, questions of whether he should be subjected to a disciplinary process and later whether his employment should be terminated, and resolutions by the board approving any decision to terminate and so forth. The Defendants' case is that disclosure was given of all of those documents, whether containing his data or not.

14. The pleading goes on at paragraph 201 to say that Mr Tull did not a respond to the supplementary request, that the personal data specifically requested has not been provided, in further violation of Mr Dowding's rights, and at paragraph 202 that a response was received from Mr Shah, containing it is said threatening words.

15. Paragraph 203 pleads that the supplementary request provided "succinct details" of why the October 2018 response was inadequate and of what was still required. Then paragraph 204 lists, it is said, 16 categories of data that are still to be provided. These include, for example, "personal data/information processed and/or accessed and/or received" relating to "the Claimant's conduct/alleged conduct" and "the Claimant's

performance/alleged performance" (sub-paragraphs (iii) and (iv) respectively) and "personal data/information relating to all meetings and/or other consultations with Duane Morris (i.e. the solicitors for the employer company) concerning the Claimant's terms, conduct, performance and/or settlement offers" (sub-paragraph (xiv)).

16. It is quite clear from the scope of the data that is requested that it all relates to Mr Dowding's period of employment, and particularly to the disciplinary process to which he was subjected and the decision to terminate his employment.

17. One question that certainly presents itself to me, apart from the Defendants' case (which is clear that the subject access request has been fully complied with, and that no further material documents remain to be produced, and that reiterations of the request are basically indicative of a misguided and abusive approach), relates to the fact that the real purpose of obtaining any further data, if indeed it existed, would all be, it seems to me, to rehash the history of the disciplinary and termination of employment process. One asks rhetorically what benefit that could possibly have for Mr Dowding.

18. Mr de Waal, who has appeared in front of me today on behalf of Mr Dowding, and for whose submissions and assistance I am most grateful, submits that is not really a relevant consideration. However, as I shall return to in a moment, I consider that it is.

19. The list of factors set out in *Ittihadieh v 5-11 Cheyne Gardens RTM Company Ltd & Ors* [2017] EWCA Civ. 121 (*"Ittihadieh"*) which are to be taken into account when the Court is striking a balance between the *prima facie* right of the data subject to have access to his personal data on the one hand, and the interests of the data controller on the other (see [108]) include the following (see [110]): "the absence of a legitimate reason (i.e. for making the subject access request) has a bearing on the exercise of the court's discretion … even though a collateral purpose of assisting in litigation is not an absolute bar" and "[i]f the personal data are of no real value to the data subject, that too may be a good reason for refusing to exercise the discretion in his favour". Leaving entirely to one side the consideration that this list of factors does not purport to be comprehensive, to my mind these adumbrated factors are plainly potentially in point.

20. Put in the way that I have expressed the question, it does appear to me that this is really a process that relates to going over ground that has already been very well trodden and dealt with by the Employment Tribunal and, further or alternatively, to attempts to relitigate, which in these proceedings have foundered because the relevant paragraphs in the Particulars of Claim have been struck out under orders that I have already made.

21. The availability of the data subject access request procedure has been there all along. It was open to Mr Dowding to invoke it before the Tribunal hearing in September 2020, and he did so. To the extent that he did not do so, or is seeking to enlarge his subject access requests by reiterations at a later date, it all appears to me to be in reality an attempt to try and find some basis for collateral challenge to the Tribunal's findings.

22. While his Counsel says it is a matter for Mr Dowding entirely, if he has a right of access to data, whether he wants to see the data and for what purpose he wants to use the data, I cannot help thinking that the fact that, in practical terms, it would be futile

for him to get this further data (if any exists) is a powerful indicator as to the correct destination for the Defendants' summary judgment application. But I do not base my decision on that but on the more detailed grounds that I am about to come on to.

23. So far as the law is concerned, this has been clearly and helpfully set out in paragraphs 75 to 89 of the Defendants' Skeleton Argument and I do not propose to rehearse those legal principles in this ruling. Those paragraphs of that Skeleton Argument can be appended to the ruling and anybody who is interested can see what is the nature of the legal landscape that has been presented to me, and which I accept.

24. Mr de Waal has helpfully confirmed that he has no criticism of any aspect of that legal analysis, although he made two submissions on the law.

25. First, Mr de Waal reminded me that in the *Dawson-Damer v Taylor Wessing* [2017] 1 WLR 3255, the Court of Appeal, in reversing the judge below, held, as summarised in the third paragraph of the headnote, that there was no rule to the effect that no order should be made under section 7(9) of the 1998 Act if the data subject proposed to use the information obtained for some purpose other than verifying or correcting data held about him. Of course I accept that. However, the fact that there is no rule to the effect that no order should be made if the data subject has some other use in mind does not mean that an order should be made if he has another use in mind. Whether or not an order should be made in any given case all depends upon the facts of that case.

26. The other principle of law to which Mr de Waal helpfully took me is the often-cited summary of the principles applicable to applications for summary judgment contained in the judgment of Lewison J, as he then was, in *Easyair Limited and Opal Telecom Limited* [2009] EWHC 339 (Chancery) at [15]. As the Defendants point out in their Skeleton Argument, this has been approved by the Court of Appeal in (among other cases) *A C Ward & Sons Ltd v Catlin (Five) Ltd* [2010] Lloyd's Rep IR 301.

27. Mr de Waal reminded me in particular that: "a realistic claim is one that carries some degree of conviction, this means a claim that is more than merely arguable"; "[i]n reaching its conclusion, the court must not conduct a 'mini-trial'"; and "[a]lthough a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation of the facts at trial than is possible or permissible on summary judgment". Those propositions are taken from subparagraphs (ii), (iii) and (vi), respectively, of Lewison J's summary of principles in [15].

28. It is clear, as Lewison J said at the beginning of that paragraph, that the court must be careful before giving summary judgment on a claim. The question is whether there is a realistic prospect of success, or whether there is some other compelling reason, not one of probability, and one has to have one's eye very firmly on that at all times.

29. The position in the present case is that the letter of 5 October 2018 explaining what was done in response to the data subject access request is very clear and detailed, and no concrete objection to any part of it has been put forward by Mr Dowding or on his behalf at any time; that includes in the course of Mr de Waal's submissions today.

30. The letter itself is supported and bolstered by a witness statement, verified by a statement of truth, by Mr Peter Michael Blenkinsopp, who says at the beginning that he is "a qualified privacy professional with a background in law, technology and business" and has "over 35 years' industry experience helping organisations to successfully deliver compliance programmes within heavily regulated environments". That witness statement is dated 5 June 2024 and is made in support of the Defendants' application for summary judgment. It goes into some considerable detail about what was done in this case, how The Character Group plc processed and responded to the data subject access request (which was apparently the first such request that it received under the GDPR), the nature of the search that was carried out, the "templates" and legal guidance that were considered and so forth. That is covered in some considerable detail over a total of 38 paragraphs and 12 pages, and again I do not propose to rehearse all of that here. Again, Mr de Waal has not been able to point to any aspect of that evidence which is open to criticism or apparent contradiction or inadequacy.

31. Mr de Waal's broad proposition is that it is unsafe and wrong to judge, or prejudge, a case on incomplete materials, and that in litigation such as this, which is complex, it may well be that disclosure, witness statements and ultimately the process of cross-examination will produce further relevant materials or shed new light on matters.

32. The difficulty about that submission, in my judgment, is that it fails to take account of the difference between circumstances where there is some real ground for concern or where there is a realistic prospect that something germane may emerge if the matter is allowed to go to trial, versus those where, as the Vice Chancellor Sir Robert Megarry said many years ago in a case on summary judgment under the old RSC Order 14, the true position is that the stance of the respondent to the application is really nothing more than "Micawberism and the hope that something may turn up".

33. The position here, it seems to me, is that there is no realistic prospect that disclosure will shed any further light on these matters, because self-evidently, as Mr Dowding is asking for data held by others, he will have no disclosure to give comprising documents containing his data held by others; and the Defendants' firm stance is that they have given all the disclosure that there is to give and that they are able to give. They have said that over and again: they have said it in the Tribunal, they have said it in the letter, they have said it in the evidence, and they have said it in front of me. If there were any properly arguable grounds for believing their stance is wrong, and if the issues that I am not invited to strike out were to go to trial, in due course an application for specific disclosure could be made. But no grounds for making any such application have been identified in front of me, which reflects the fact that no such grounds exist.

34. I see no realistic prospect that disclosure will change anything. Nor witness statements for that matter. There is no realistic basis that I have been shown for supposing that any witness statement will alter or amplify or correct the evidence that I already have, in the form of Mr Blenkinsopp's witness statement and the contemporary documents.

35. When it came to the question of what sort of point might be put by way of cross-examination, by way of concrete attack on the Defendants' documented stance, it appeared to me - and I naturally make no criticism whatsoever of him for this - Mr de Waal was not able to identify anything specific even by way of illustration.

36. There has been in this case a suggestion of other documents that have not been provided, of which the Tosca email is perhaps the most obvious example. But the case relating to specific documents like the Tosca email has already foundered, and apart from a general point that, "Well, there may be other documents, we do not know", there is not anything that I am aware of that could be said by way of concrete demonstration or even suggestion of a deficiency of response from the Defendants.

37. The matter is not made any better, from Mr Dowding's point of view, by the consideration that the nature of the documents that he seeks - and it is mostly documents that he is pressing for - has changed over time and seems to be under a process of continuous evolution and indeed amplification. His most recent letter of 24 April 2024, I think probably, even on its face, flags up a yet further data subject access request, and has within it under the headings "Personal data contained in specific documents that are believed to exist" and "Personal data believed to be contained in the following classes of documents" a list of 48 categories of documents.

38. It would be wholly disproportionate to attempt to go over all of those categories in this ruling. But at the very beginning, one sees this:

> "Duane Morris time ledger/billing support records and invoices 1.1.16 to 4.9.18 (they were not created for the dominant purpose of providing legal advice or for litigation purposes and are therefore not legally privileged)."

39. It is patently obvious to me that that is not an appropriate subject for a data subject access request. It relates to documents, but, even more importantly, it relates to the billing records of the solicitors for an opposing party in litigation. I regard it as utterly fanciful to suggest that such documents will contain Mr Dowding's personal data.

40. When he was addressing me about this personally at an earlier stage of this hearing, Mr Dowding argued that as the litigation related to him, there must be mention of his name in these documents, and that therefore they must contain his personal data. However, I do not consider that is correct: "Mere mention of the data subject in a document held by a data controller does not necessarily amount to his personal data. Whether it does so in any particular instance depends on where it falls in a continuum of relevance or proximity to the data subject as distinct, say, from transactions or matters in which he may have been involved to a greater or lesser degree." (*Durant v Financial Services Authority* [2003] EWCA Civ 1746, Auld LJ at [28], approved in *Ittihadieh* at [63]). Further: "it does not follow that every piece of information in a document in which his name appears is his personal information": *Ittihadieh* at [93]. Although Mr Dowding's name may well be mentioned in such billing records and invoices, their focus is far removed from him, and his privacy rights are simply not engaged by that processing.

41. It is not productive to go over the other 47 classes of document in detail, but those that have been discussed specifically today include classes 12, 13 and 17 in this letter.

42. Two of those, concerning (1) emails, instructions and documents relating to the Claimant's conduct, performance and so forth, and (2) emails in relation to Mr Kissane attending a meeting to present the Claimant with allegations of misconduct, fall within

the ambit of documents that the Defendants have repeatedly said that they have disclosed to the extent that they exist, and in respect of which there is nothing further to provide, whether by way of data or documents. The third refers to an email dated 1 September 2017 from Mr Shah to Mr Kissane containing a dossier of evidence on the Claimant's conduct. That effectively is the same point over again, because although the Tribunal said at paragraph 142 of their judgment "There was no suggestion that the 'dossier' of evidence given to Mr Kissane by Mr Shah was selective or incomplete", there has never been, on the Defendants' evidence, a "dossier" as such. There was, of course, a body of documents relating to the disciplinary proceedings and so forth, but the Defendants' stance is that they have disclosed all of that body of documents.

43. The Defendants say in paragraph 90 of their skeleton argument that they have "three overarching submissions". The first is that: "... there is no realistic prospect of the Court concluding that [The Character Group] has not complied with its obligations imposed [under the data protection legislation]". For reasons that I have attempted to explain, I consider that this submission is well founded. The submission in writing ends with the following words, with which I also agree: "This case falls readily into the category identified in *Rudd v Bridle* at [72]: "If the data controller has acted with reasonable diligence, and there is no reason of substance to doubt the validity of the conclusions arrived at, the Court would be likely to refuse an order under s7(9)"."

44. The Defendants' second overarching submission is that there is no realistic prospect of the court exercising its discretion to make an order pursuant to section 167 of the Data Protection Act 2018 on the grounds that all of the factors identified in *Ittihadieh* are quite clearly in favour of refusing such an order. The Defendant's Skeleton Argument then goes over each of those grounds.

45. As to the first, summarised as "More appropriate route to obtaining documents", the Defendants say there has been extensive disclosure, and indeed full disclosure. To the extent that he seeks documents, the Claimant has already had them. Further, a data subject access request is not an appropriate mechanism for seeking documents. I agree.

46. As to the second, summarised as "Nature and gravity of the breach", they say that it is quite clear that The Character Group has complied with its obligations under the Act; and if there was any failure, it would be one at the periphery. I agree with that also.

47. The third factor relates to the reason for the Claimant having made the data subject access request. The Defendants submit that it is quite clear that the Claimant's motivation is all to do with complaints about the dismissal process, which has already been dealt with, and a refusal to accept the findings of the Employment Tribunal. The Defendants submit - and I agree - that this is exemplified by the language of the Claimant's letter dated 24 April 2024. For reasons that I have already indicated, it seems to me not only that this is right, but also that in all the circumstances this is not an appropriate or desirable exercise of the Claimant's data subject access rights.

48. The next two factors, summarised as "Abuse of rights" and "procedural abuse", I can take together. The Defendants say that effectively what is happening here is a process of constant reformulation of data subject access requests, with long intervals between

the Defendants' detailed explanation as to how and why they have complied with request and further requests being made, and intimations that there may be yet further proceedings based on the most recent request that has been made on top of the present proceedings, all of which is indicative of abuse. I agree with that.

49. The next point is that this is really a quest for documents, and I agree with that.

50. The next point is that there is no real value to the data subject, and I agree with that.

51. The next point is "Prior receipt". This is, in large part, a repetition of other points. The Defendants say the Claimant has already received a vast amount of disclosure; and again, anything else, if there was anything - which they dispute - would be peripheral. For the reasons I have already given, I accept these submissions.

52. The next factor, summarised as "Legitimate wish to check accuracy", is, according to the Defendants, not the motivation for this particular data subject access request, and on the facts of this particular case would not be a proper purpose in any event. I agree. In my judgment, as I have already said, basically what underlies the request is an attempt to traverse again the rights and wrongs of the disciplinary and dismissal process, which has already been gone over in some considerable detail by the Tribunal.

53. Then there are, finally, the Defendants say, an absence of material factors that support a ruling in favour of the Claimant. This is a reference to the statement in *Ittihadieh* that (emphasis added): "If there are no material factors other than a SAR in valid form and a breach of the data controller's obligation to conduct a proportionate search, then the discretion will ordinarily be exercised in favour of the data subject". The Defendants say that the underlined factor is not made out, and that in this case there are numerous material factors which point against the exercise of the discretion in favour of Mr Dowding such that "The Court can be confident at this stage that there is no realistic prospect of coming to a different conclusion". For reasons explained above, I agree.

54. Lastly, and I think partly repetitiously of the grounds that they rely on under their second overarching heading, the Defendants submit that this is essentially an abusive exercise. There was no pre-action letter. The Claimant is seeking to achieve something that is not properly a target of a data subject access request. The constant revisiting of the data issues, alteration and expansion of the categories of documents and so forth, is an abuse and a harassment of the Defendants. And finally, although not specifically by reference to the DSAR heads of claim, the claims are obviously inflated because the sums that are sought to be attributed to them are incredibly (i.e. unbelievably) large, and this is indicative of oppressive or abusive conduct overall. In my judgment, there is substance in all of that.

55. I should add that if, in fairness to Mr Dowding, one does not take into account the magnitude of the financial claims overall when considering whether his pursuit of his data claims is an abuse, that may place him on the horns of a dilemma. This is because that leads to the different question: what is the true value of his data subject access claims? If, as seems to me to correct, the answer to that question is "little or nothing", that points to the conclusion that pursuit of the same is an abuse. Financial value is not

necessarily significant, but where, as I have explained, so many other factors weigh against his claim, a negligible or non-existent financial value is also unhelpful to him.

56. Counsel agreed with me that the central question that I have to ask is: does the Claimant have a realistic prospect of success (1) of persuading the Court at trial that his rights of access to his data have been infringed, and (2) of obtaining an order for compliance with his data subject access rights in wider terms than the compliance that has already been provided? For the reasons that I have given, I would answer both of those questions in the negative, and accordingly, and on the basis that there is no other compelling reason why the data subject access claims should go to trial, I would accede to the Defendants' application for summary judgment under this head.