Neutral Citation Number: [2022] EWHC 66 (Comm)

Case No: LM-2018-000241

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

THE LONDON CIRCUIT COMMERCIAL COURT (QBD)

Before :

HIS HONOUR JUDGE PEARCE SITTING AS A JUDGE OF THE HIGH COURT

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Between :

Mr ALI FOZAN ALFOZAN	**Claimant**
- and –	
(1) ~~MR HUSAMALDEAN ALRASHEED~~	**Defendants**
(2) QUASTEL MIDGEN LLP	

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Mr DAVID CAVENDER QC and Mr DANIEL DOVAR (instructed by **CHILD & CHILD**) for the **Claimant**

Ms HELEN EVANS and Mr WILL COOK (instructed by **CLYDE & CO LLP**) for the **Second Defendant**

Hearing date: 30 November 2021

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JUDGMENT

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 14 January 2022 at 10:00 am.

His Honour Judge Pearce :

INTRODUCTION

1. This is my judgment on the Second Defendant's application to strike out the claim brought against it by the Claimant as an abuse of process. The claim against the First Defendant has already been struck out on similar grounds. Notwithstanding this, I shall continue to call Quastel Midgen LLP the Second Defendant. Since the claim against Mr Alrasheed is relevant to determining the issues on this application, I shall, for the sake of consistency, call him the First Defendant.

THE BACKGROUND

2. The Claimant is a businessman who lives in Riyadh in Saudi Arabia. One of his businesses, Ali Al Fauzan and Sons Real Estate Co, employed a Mr Al-Gaith as its Chief Executive Officer. In around late 2012, the Claimant was introduced to the First Defendant with a view to the latter assisting the former to invest in the London property market. It appears that the Claimant entrusted to Mr Al-Gaith and the First Defendant the task of identifying relevant properties and transactions for this purpose. The Claimant executed a power of attorney in favour of Mr Al-Gaith to allow this to happen.

3. It is the Claimant's case that, in the course of a series of transactions relating to around 259 properties in the period 2013 to 2015, the First Defendant and Mr Al-Gaith conspired to defraud him. The Claimant, in his Particulars of Claim, identifies six types of transaction:

    a) "Nominee Transactions", in which the Claimant purchased the First Defendant's interest in a property, the First Defendant being paid not only the relevant purchase price (usually the deposit for property) but a significant premium in excess of the market value;

    b) "Double Transactions", in which the Claimant purchased the First Defendant's interest in a property from him, notwithstanding that the Claimant's money had been used to purchase the First Defendant's interest in the property in the first place,

    c) "Gratuitous Cash Transfers", in which transfers of the Claimant's money were made to the First Defendant at the behest of Mr Al-Gaith.

    d) "Gratuitous property transfers", in which the Claimant's properties or the balance due to the Claimant on an exchange of properties were transferred to the First Defendant at the behest of Mr Algaith;

    e) "Al Gaith purchases", in which Mr Al-Gaith purchased an interest in a property using the Claimant's money;

f) "Alrasheed purchases", in which the First Defendant purchased an interest in the property held either in his own name (or, by later draft amendment, the name of a Mr Mohammed Sbitan), such purchase being funded by the Claimant.

4. The Second Defendant is a law firm based in London that acted for the Claimant in the purchase of a series of properties. It avers that the Claimant authorised Mr Al-Gaith to give it instructions on his behalf. The case against the Second Defendant lies in negligence and/or breach of trust in facilitating the fraud and/or failing to prevent it. The claim is hotly contested on the merits.

5. The claim was issued on 21 December 2018. The Claimant's case against the First Defendant was pleaded in conspiracy. It was struck out by Miss Julia Dias QC sitting as a Deputy High Court Judge on 21 May 2021 on the grounds that the proceedings were an abuse of process due to the inaction of the Claimant, leaving only the claim against the Second Defendant.

THE SECOND DEFENDANT'S APPLICATION

6. The Second Defendant's application was issued on 21 May 2021. It is supported by witness statements from Mr David Rees Smith (solicitor of the Senior Courts and Senior Associate at Clyde & Co LLP who at that time had day to day conduct of the claim on behalf of the Second Defendant) dated 21 May 2021, and from Ms Lesia Marie MacCormack (Mr Rees Smith's successor with day to day conduct of the claim at Clyde & Co LLP) dated 8 November 2021.

7. The Second Defendant contends that the proceedings should be struck out as an abuse of process because:

a) The Claimant brought the claim without any intention of pursuing it, at least in the short to medium term;

b) The Claimant has been in breach of Rules and/or Practice Directions.

8. In response to the application, the Claimant relies on a statement from Mr Cedric Jude Mascarenhas, solicitor at Child & Child, dated 24 November 2021. As the Second Defendant points out, this was served well outside of the 14 day time limit for the service of responsive evidence to an application provided for at paragraph 9.1 of PD59.

THE RELEVANT LAW

9. It is not in dispute that the commencement of litigation with no intention to bring matters to a conclusion can amount to an abuse of process. A claimant's inactivity may demonstrate the lack of intention to pursue the claim. Once it is possible to show that the intention to pursue does not exist, it is not necessary for the defendant to show that it is no longer possible to have a fair trial or that the defendant has otherwise suffered prejudice – see Grovit v Doctor [1997] 1 WLR 640.

As Lord Woolf put it at p.647G-H of his judgment in that case, "*the courts exist to enable parties to have their disputes resolved."*

10. Lord Woolf expanded upon both why such conduct is an abuse of process and why the courts would not tolerate it in Arbuthnot Latham v Trafalgar [1998] 1 WLR 1426:

> *"Whereas hitherto it may have been arguable that for a party on its own initiative to, in effect, "warehouse" proceedings until it is convenient to pursue them does not constitute an abuse of process, when hereafter this happens this will no longer be the practice. It leads to stale proceedings which bring the litigation process into disrespect. As case flow management is introduced, it will involve the courts becoming involved in order to find out why the action is not being progressed. If the claimant has for the time being no intention to pursue the action this will be a wasted effort. Finding out the reasons for the lack of activity and proceedings will unnecessarily take up the time of the court. If, subject to any directions of the court, proceedings are not intended to be pursued in accordance with the rules they should not be brought…"* (p.1437C-E).

11. In this passage, Lord Woolf identified a different type of "warehousing" than that in Grovit v Doctor. The first instance Judge and the Court of Appeal in that case had concluded that the Claimant had no interest in having the case heard. Lord Woolf considered this to be a conclusion that they were entitled to come to. But in the passage from Arbuthnot Latham v Trafalgar cited above, he expressly acknowledged that the principles relating to "warehousing" might apply also to the situation where the Claimant had no intention for the time being of pursuing the claim, albeit that they might do so in the future.

12. This type of case was considered by Arnold LJ in two cases from which the following principles can be drawn:

    a) It may be an abuse of process for the Claimant to "warehouse" a claim by taking a decision not to pursue it for a substantial period of time, even if the Claimant subsequently decides to pursue it (Solland International Limited v Clifford Harris [2015] EWHC 3295 or even is intent on pursuing the claim, albeit at some later time (Asturion Fondation v Alibrahim [2021] 1 WLR 617);

    b) However, mere delay in pursuing a claim, however inordinate and inexcusable, does not, without more, constitute an abuse of process (Asturion Fondation v Alibrahim);

    c) In deciding whether to strike out a claim for "warehousing" as an abuse of the court's process, it is necessary for the court to undertake a two-stage analysis, considering first whether the conduct is an abuse of process and second whether, if it is, it is proportionate to strike out on the basis (Asturion Fondation v Alibrahim).

13. In considering the issue of proportionality, the court should have regard to the various powers in its armoury to avoid unnecessary delay. In Quaradeghini v Mishcon de Reya [2019] EWHC 3523, Mr Philip Marshall QC, sitting as a deputy High Court Judge put it this way:

> *"[17] … under the present procedural regime, it will be a relatively rare case in which the court will strike out proceedings for abuse of process based on delay in the first instance. The much more likely remedy is relief of a lesser form proportionate to the default. Cases of striking out are more likely to follow only after an "unless" order has been sought and obtained and breached. Although 'warehousing' of claims or the bringing of proceedings without an intention to prosecute will constitute an abuse of process that may warrant the striking out of a claim, it seems to me likely that in many cases the court will wish to test the lack of any intention to prosecute by, for example, making a peremptory order or imposing conditions rather than proceeding to rely on inferences drawn from an absence of activity. Such an approach is in line with observations of the Court of Appeal in cases such as Walsh v Misseldine, where Brooke LJ, at para 69, viewed the court's jurisdiction to protect its process from abuse as 'a residual long-stop jurisdiction' and noted that 'The main tools the courts have now been given to exterminate unnecessary delays are to be found in the rules and practice directions and in orders they may make from time to time.' It is also in line with the need to recognise the right of access to the court under article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (a point made in Annodeus, The Times, 3 March 2000) and with the approach taken in decisions such as that of Olatawura v Abiloye [2002] EWCA Civ 998; [2003] 1 WLR 275, para 25, in which the Court of Appeal considered in order for the provision of security for costs to be a potentially suitable order in cases where a lack of good faith was suspected, 'good faith for this purpose consisting of a will to litigate a genuine claim or defence as economically and expeditiously as is reasonably possible in accordance with the overriding objective'."*

14. The Second Defendant contended that the decision of Mr Marshall QC in Quaradeghini is something of an outlier and that it suggests amore restricted approach to abuse of process applications that is appropriate having regard to the earlier cases, especially the judgments of Arnold LJ in Solland International Limited v Clifford Harris and Asturion Fondation v Alibrahim. The Claimant responded by pointing to the judgment of Nicklin J in London Borough of Havering v Persons Unknown [2021] EWHC 2648, where at paragraph 84 he said, "*As Arnold LJ noted in Asturion Foundation, "abuse of process can take many forms" ([44]). Grovit is an example of one type of abuse. It is not the only form. Following the advent of the CPR, the ability of a claimant to delay prosecuting a claim was much reduced. Modern case management means that the Court should set a case management timetable towards an ultimate trial. In multi-track cases, any significant departure from that timetable (and always in respect of any adjustment that might*

jeopardise key dates) must be sanctioned by the Court: CPR 29.5. It should therefore not now be possible for a claimant to 'warehouse' a civil claim. In addition, in normal inter partes litigation, if a claimant delays prosecuting the claim, the defendant can obtain orders from the Court to ensure that the claim is properly progressed."

15. It is clear from both the judgment of Mr Marshall QC in Quaradeghini and that of Nicklin J in London Borough of Havering v Persons Unknown that it is important to bear in mind the court's powers to take steps short of striking out the claim when considering the exercise of the power to strike out once an abuse of process is established. But the availability of such powers is not relevant to the prior issue identified by Arnold LJ in Asturion Fondation v Alibrahim as to whether the conduct amounts to abuse of process. Establishing whether the conduct is an abuse involves examining the state of mind of the Claimant, not the powers available to the court to change that state of mind.

16. Further, even in respect of the exercise of the judgment as to whether to strike out the claim, the availability of alternative powers can only be one factor. As Lord Woolf noted in the passage from Arbuthnot Latham v Trafalgar cited above, the investigation of why a party has not prosecuted the claim is itself a drain on the court's resources. It would be inconsistent with the overriding objective to disregard the diversion of resources that arises when the court needs to investigate a party's procedural failings in particular if the evidence suggests a continuing reluctance by that party to comply with the norms of litigation. I accept that the power to strike out is a long-stop jurisdiction, only to be invoked where other powers appear insufficient to achieve the purpose of progressing the claim, but where the court is satisfied that a claimant has no intention at all to progress the litigation I would not see the doctrine of proportionality or the need to consider alternative less draconian orders first as necessarily a bar to striking out the claim.

17. The court must also bear in mind that the obligation is on all parties to progress litigation, not simply the claimant. As Clarke LJ put it in Asiansky Television plc v Bayer-Rosin [2001] EWCA Civ 1792:

> "*[48] It is no longer appropriate for defendants to let sleeping dogs lie: cf Allen v McAlpine (Sir Alfred) & Sons [1968] 2 QB 229. Thus a defendant cannot let time go by without taking action and then later rely upon the subsequent delay as amounting to prejudice and say the prejudice caused by the delay is entirely the fault of the claimant. Such an approach would in my judgment be contrary to the ethos underlying the CPR, quite apart from being contrary to paragraph 2.7 of the Part 23 Practice Direction. One of the principles underlying the CPR is co-operation between the parties."*

18. The Claimant says that this is of particular significance in the context of this case because of the failure of the Second Defendant to exercise its undoubted right to request a Case and Costs Management Conference. I deal with that point below, but would simply note again that the focus of the type of abuse of process with which we are here concerned focusses on the state of mind of the Claimant. Whether the Second Defendant has suffered prejudice is a matter that is likely to go to the proportionality of striking out, but does not affect the prior question as to whether the Claimant is guilty of issuing the claim with no (or at least no present) intention to litigate it to conclusion.

19. CPR 3.4(2)(c) provides, *"The court may strike out a statement of case if it appears to the court…that there has been a failure to comply with a rule, practice direction or court order."* In respect of this power, my attention is drawn to paragraph 3.4.18 of the White Book, which states:

> *"Rule 3.4(2)(c) gives the court an unqualified discretion to strike out a claim or defence where a party has failed to comply with a rule, practice direction or court order…In Walsham Chalet Park Ltd v Tallington Lakes Ltd [2014] EWCA Civ 1607, the Court of Appeal held that, in exercising its discretion under r.3.4(2)(c), the court is entitled to have regard to the Mitchell/Denton principles (which apply to applications under.3.9, as to which, see para.3.9.2). However, in that case, the Court of Appeal stressed that the ultimate question for the court in deciding whether to impose the sanction of strike-out is materially different from that in deciding whether to grant relief from a sanction that has already been imposed. In a strike-out application under r.3.4 the proportionality of the sanction itself is in issue, whereas an application under r.3.9 for relief from sanction has to proceed on the basis that the sanction was properly imposed…."*

THE PROCEDURAL HISTORY IN GREATER DETAIL

20. The following chronology is taken from Mr Rees Smith's statement of 21 May 2021, and Ms MacCormack's statement of 8 November 2021, with the addition of reference to the court file for the purpose of identifying the date of the stay. It should be noted that not all correspondence is referred to in this chronology and that not all of the letters referred to are annexed to the statements.

21.12.18	Claim issued against Mr Alrasheed (First Defendant) and Quastel Midgen LLP (Second Defendant).
18.4.19	Claim Form and Particulars of Claim served on Second Defendant under cover of a letter stating: *"proceedings have been served today to ensure our Client is not barred from bringing the claim by reason of the pending limitation period. We appreciate that there has not been a great deal of pre-action correspondence between the parties, however our leading counsel is currently away on annual leave*

and therefore could not advise on the matter before the Claim Form and Particulars of Claim had to be served."

26.4.19 Second Defendant's solicitors write to Claimant's solicitors raising various procedural defaults (including failure to comply with the Pre Action Protocol for Professional Negligence) and inviting a stay for five months to allow for compliance with the Protocol.

30.4.19 Claimant's solicitors respond agreeing to the stay and saying they will revert on other matters.

3.5.19 Consent order imposing stay.

28.5.19 Second Defendant's solicitors write to Claimant's solicitors chasing a substantive response to the letter of 26.4.19.

21.6.19 Second Defendant's solicitors write to Claimant's solicitors further chasing a substantive response.

11.7.19 Second Defendant's solicitors write to Claimant's solicitors again chasing a substantive response, pointing out that no progress had been made since the letter of 26.4.19, seeking confirmation as to steps taken to recover losses against Mr Algaith and details of the procedural position in the claim against Mr Alrasheed and identifying other issues including the failure to provide initial disclosure and alleged errors in the Particulars of Claim. The Second Defendant's solicitors also ask about Claimant's proposal for providing security for costs.

30.7.19 Claimant's solicitors wrote to Second Defendant's solicitors providing initial disclosure and dealing with some issues but not amongst other things the alleged defects in the Particulars of Claim and the question of security for costs.

6.8.19 Second Defendant's solicitors write to Claimant's solicitors chasing up other matters referred to in letter of 11.7.19.

8.8.19 Claimant's solicitors write to Second Defendant's solicitors providing copies of documents referred to in initial disclosure but not dealing with other issues.

25.8.19 Second Defendant's solicitors write to Claimant's solicitors asserting that initial disclosure was incomplete, noting that issues referred to in the letter of 11.7.19 had still not been addressed and stating, "*Having now had the opportunity to consider your client's claim in detail, and given his persistent failure to address in a timely fashion the issues raised and requests made in correspondence, we consider that providing a Letter of Response is unlikely to assist in furthering the overriding objective. Specifically, the failure to engage with our letter of 30 July 2019 combined with the substantial additional disclosure that we require from your client suggests that the need to serve a Defence is unavoidable. In the circumstances, particularly where that Defence is currently due in less than a month, preparing a Letter of Response is likely only to result in substantial duplication of effort and costs. As such, following the expiry of the stay, our client intends to serve its Defence."*

30.9.19 Stay imposed by consent order of 3.5.19 expires.

1.10.19 Second Defendant files Acknowledgement of Service.

23.10.19 Second Defendant files its defence.

5.12.19 Second Defendant sends Part 18 Request and Notice to Admit Facts to Claimant's solicitors.

9.12.19 Second Defendant writes to Claimant again to chase up letter of 11.7.19, in particular as to the position in respect of the Claimants' claims against Mr Al-Gaith and Mr Alrasheed and the position on security for costs.

18.12.19 Claimant's solicitors respond to Second Defendant's solicitors, apologising for the delay and stating, "W*e have been taking steps to effect service of the claim on Mr Al Rasheed which has taken some time and thought it better to wait until that process had completed before responding*."

17.1.20 Claimant responds to Second Defendant's Part 18 Request, acknowledging errors in the Particulars of Claim, in particular in that "nominee transactions" are wrongly described as "double transactions" and purchases said to be in the name of the First Defendant were in some cases in fact in the name of one Mohammed Sbitan. In the covering letter, the Claimant's solicitors assert that a security for costs application is unlikely to succeed.

25.2.20 Second Defendant's solicitors wrote to Claimant's solicitors dealing with security for costs and raising issues on the response to the Part 18 Request. (The issue of security for costs was subsequently resolved by agreement between the parties, leading to a consent order dated 25 September 2020.)

23.5.20 Second Defendant's solicitors chase up response to letter of 25.2.20.

28.5.20 Second Defendant's solicitors chase up response to letter of 25.2.20.

29.6.20 Claimant's solicitors write to Second Defendant's solicitors stating that security for costs will be provided and stating, "*It is our client's intention to amend his Particulars of Claim. Before doing so, we are shortly expecting the First Defendant's Defence and will consider that before undertaking amendments in one go*."

8.9.20 In response to a letter from the Second Defendant's solicitors, the Claimant's solicitor states, "*We apologise for the delay in our response. Our client has been heavily pre-occupied with matters in Saudi. We are liaising with our client again this week to obtain his further instructions. We anticipate providing you with our signed part of the Consent Order early next week*." (The reference to the consent order appears to relate to the agreed order for security for costs.)

6.11.20 Second Defendant's solicitors write to Claimant's solicitors stating *"The First Defendant's Defence was served approximately four months ago, but we have not heard further from you in that regard. Please confirm by return whether it remains your client's intention to amend his claim, and if so when you anticipate providing us with draft Amended Particulars of Claim.*"

26.1.21 Second Defendant's solicitors write to Claimant's solicitors noting that no answer has been received to the letter of 6 November 2020 and stating, "*Our client is not prepared to allow the claim to continue to draft and in the continued absence of a draft amended pleading we are instructed to have the matter listed for a case management hearing."*

2.2.21 Claimant's solicitors write to Second Defendant's solicitors stating, "*Draft Amended Particulars of Claim will be provided to you within 28 days for your consideration before we apply to formally amend our client's current pleading*."

24.3.21 Claimant's solicitors write to Second Defendant's solicitors stating, *"Counsel will shortly be finalising the draft Amended Particulars of Claim and we will be making an Application to court next week."*

26.3.21 First Defendant applies to strike out claim against him as an abuse of process.

30.3.21 Claimant's solicitors write to Second Defendant's solicitors stating, *"On the basis of initial disclosure and analysis of those documents we have prepared an Amended Particulars of Claim (settled by Counsel). We are obtaining final instructions from the client on Amended Particulars of Claim, which we anticipate will be finalised this week, and we are making an Application to seek permission to amend in that regard in any event."*

15.4.21 Second Defendant's solicitors write to Claimant's solicitors noting that, notwithstanding the assertion that there would be an application to amend the Particulars of Claim, neither a draft amended statement of case nor an application to amend had been made. The letter stated, *"It is increasingly clear that your client's refusal to progress matters is the result of impermissible warehousing which is an abuse of process, and that as such his claim ought to be struck out pursuant to CPR 3.4. We are seeking our client's instructions in relation to such an application and reserve the right to issue this without further reference to you."*

21.5.21 Miss Julia Dias QC strikes out claim against First Defendant as an abuse of process.

21.5.21 Second Defendant issues application to strike out the claim against it.

22.6.21 Court emails the Claimant and the Second Defendant's lawyers to confirm that the Second Defendant's application to strike out as an abuse of process is listed on 30.11.21.

17.8.21 Males LJ refuses permission to appeal the order of Miss Julia Dias QC striking out the claim against the First Defendant.

4.11.21 Claimant's solicitors write to court applying for the listing of a CCMC and to Second Defendant's solicitors, stating, "*The claim requires directions to be set in order to progress the claim. We have therefore drafted an application to list a CCMC as soon as possible, which we will file in due course. We are suggesting a time estimate of 1 hour 30 minutes but would be grateful for your input in relation to the time estimate and dates to avoid when listing the CCMC."*

22.11.21 Claimant's solicitors wrote to Second Defendant's solicitors enclosing a copy of draft amended Particulars of Claim and amended Schedule. The letter contains a

> suggested time scale for the issue to be dealt: "*Please confirm your client's consent to our amending the Particulars of Claim. Please confirm in 7 days that this is agreed, so we may prepare a draft consent order failing which we will make an application to court*.

21. In her judgment striking out the claim against the First Defendant, Miss Dias QC concluded that the claim "*was commenced without any present intention at that time of progressing it or bringing it to trial."* In coming to that conclusion, she relied on the following:

    a) That there was a delay of 15 months between the letter before action and the issue of proceedings, with no attempt to comply with the pre-action protocol process;

    b) Once the claim had been issued, the First Defendant was not put on notice and the claim was not even purportedly served until the very last minute;

    c) Thereafter it took 12 months before the proceedings were effectively and correctly served;

    d) The evidence in response to the application was served late and was wholly inadequate to explain the Claimant's position;

    e) In particular, the Claimant failed to explain why it had not answered the legitimate concerns and queries raised by the First Defendant.

22. In refusing permission to appeal, Males LJ stated:

> *"1. There was ample reason for the judge to conclude that the claimant did not have a genuine intention to progress this claim and that it therefore constituted an abuse. The failure to take any steps once the proceedings had been served while giving no explanation for this course speaks for itself.*
>
> *2. The judge was entitled to conclude that the appropriate sanction was to strike out the claim. She considered lesser alternatives, but was entitled to conclude in the circumstances that these were not appropriate.*
>
> *3. Accordingly her judgment contains no error of principle and an appeal would not have a real prospect of success."*

THE SECOND DEFENDANT'S SUBMISSIONS

23. The Second Defendant makes the following points in support of the contention that the Claimant is guilty of an abuse of process.

    a) The Claimant appears to have explored the possibility of litigation in correspondence with Mr Alrasheed from 2017 but engaged in no pre-action correspondence with the Second Defendant.

b) The Claimant issued the claim without notifying the Second Defendant of it. It follows that there was no engagement with the Pre Action Protocol before issue.

c) The first notification that the Second Defendant received of the claim was the service of the Claim Form and Particulars of Claim on it. Service took place at the very end of the period of validity of the Claim Form and the claim itself appears to have been issued towards the end of the limitation period (at least in respect of some parts of the claim), given that it was issued in December 2018 and related to a retainer entered into in early 2013 and relates to allegations in respect of transactions in the period 2013 to 2015.

d) The parties agreed a stay for 5 months in order to permit compliance with the Pre-Action Protocol before service of the Defence but no meaningful progress was made in the claim during this period, the Claimant failing to respond adequately to the Second Defendant's correspondence as summarised above.

e) The Second Defendant raised issues with the accuracy of the Particulars of Claim in July 2019. In summary, the Claimant's response in correspondence was:

   (i) On 17 January 2020, to acknowledge the errors;

   (ii) On 29 June 2020, to assert that he "*intended*" (sic – amendment in fact would have required consent or permission and was not available as of right) to amend the Particulars of Claim;

   (iii) On 2 February 2021, to assert that draft amended Particulars of Claim would be provided within 28 days;

   (iv) On 24 March 2021 (50 days after the previous letter), to assert that an application to amend would be made the following week;

   (v) On 22 November 2021 (very nearly 35 weeks after the previous letter, around 17 months after the Claimant had initially indicated an intention to seek to amend the statement of case and just short of 3 years after the proceedings were issued), to provide draft Particulars of Claim and to invite consent to the amendment within 1 week. (The suggestion that the Second Defendant should agree the amendment or face an application to court within a period of one week of the provision of the draft is quite astonishing, not least given the dilatory manner in which the Claimant had approached the issue up until this point. However, this astonishment plays no part in the decision on this application.)

f) In the event, the draft amended Particulars of Claim themselves raise unanswered questions about the Claimant's case, as is noted in more detail below.

g) In December 2019, the Claimant sought to explain its delay in responding to queries from the Second Defendant by pointing to the issues that had arisen in serving Mr Alrasheed. However, the Second Defendant relies on the statement from Mr Armstrong dated 26 March 2021 served by the First Defendant in respect of his striking out application, at paragraphs 13 to 24, in support of the contention that the problems of service of the Claim Form on the First Defendant were of the Claimant's own making.

h) In September 2020, the Claimant sought to explain its continuing delay in dealing with the Second Defendant's solicitors by the Claimant's pre-occupation with "*matters in Saudi."* This is not further explained, and has not been proffered as an explanation in response to this application, though it is to be noted that, at paragraph 7 of her judgment, Miss Dias QC refers to it having been said "*that the claimant has had great difficulties in taking legal advice in Saudi Arabia on the impact of these long-promised amendments on a settlement he reached there in arbitration against Mr Algaith[?]."*

i) Following service of the Defence in October 2019, the Claimant did not apply for a first Costs and Case Management Conference until November 2021, notwithstanding that paragraph 7.2 of CPR PD59 requires that, in Part 7 proceedings commenced in the Circuit Commercial Court, "*The Claimant must apply for a case management conference… within 14 days of the date when all defendants who intend to file and serve a defence have done so."*

j) The Claimant failed to serve any evidence in response to this application until the statement of Mr Mascarenhas dated 24 November 2021. That statement refers to the Claimant's recent actions in applying for a CCMC and serving draft Amended Particulars of Claim. However, it does not in any way explain the delay that had occurred in taking these steps.

24. As to the proportionality of striking out the claim, if it is found to be an abuse of process by reason of warehousing, the Second Defendant draws attention to the following points in particular;

a) The allegations against the Second Defendant are serious in nature. Although no allegation of fraud or dishonesty is made against Quastels, allegations of professional negligence themselves are inherently significant given their potential for causing damage to reputation;

b) The allegations are old, relating to a retainer entered into in early 2013 and transactions in the period 2012 to 2015.

25. The Second Defendant identified in all 21 alleged breaches of the Pre Action Protocol for Professional Negligence Claims (PAPPN) and/or the Civil Procedure Rules (CPR) and its Practice Directions (PD):

Failure to send Preliminary Notice to Quastels prior to issuing proceedings	PAPPN, para. 5
Failure to send Letter of Claim to Quastels prior to issuing proceedings	PAPPN, para. 6
Failure to provide key documents to Quastels prior to issuing proceedings	PAPPN, para. 10
Failure to make any attempt to engage in ADR with Quastels prior to issuing proceedings	PAPPN, para. 12
Failure to provide a Response Pack when serving the Claim Form and Particulars of Claim	CPR7.8(1)
Failure to include the Claimant's address on the Claim Form	CPR PD16.2.2
Failure to include a certificate made by an authorised person certifying the Particulars of Claim had been read to the Claimant and he understood and approved their content, even though on his own pleaded case the Claimant cannot read documents in English	CPR PD22.3A
Failure to provide Initial Disclosure with the Particulars of Claim	CPR PD51U.5
Failure to include a claim for interest in the Particulars of Claim despite apparently seeking interest	CPR16.4(1)(b); CPR16.4(2)
Failure accurately to include in the Particulars of Claim a concise statement of the facts on which the Claimant relied	CPR16.4(1)(a)
Failure specifically to set out details of all alleged breaches of trust in the Particulars of Claim	CPR PD16.8.2(4)
Failure to engage properly with the requirements of the PAPPN during the stay following issue of proceedings	PAPPN
Providing materially incomplete Initial Disclosure following service of the Particulars of Claim	CPR PD51U.5
Failing to apply for stay and unilaterally behaving as though a stay was in place	CPR3.2(f)

Failure to file and serve a Reply within 21 days of service of Quastels' Defence	CPR59.9(1)
Failure to apply for a case management conference within 14 days of service of Mr Alrasheed's Defence	CPR PD59.7.2
Failure to file and serve evidence in answer within 14 days after service of the Application to strike out	CPR PD59.9.1(2)
Failure to seek consent to amend timeously/make application to amend Particulars of Claim	CPR17.1, CPR19.4 and/or CPR23
Failure to make any proposal to pay Quastels' costs of and arising from the amendments to the Particulars of Claim	CPR PD17
Failure to re-verify draft Amended Particulars of Claim with a statement of truth	CPR PD17.1.4
Failure to include in the draft Amended Particulars of Claim a concise statement of the facts on which the Claimant now relies (in that the facts alleged are vague and appear to conflict with the prior draft without proper explanation)	CPR16.4(1)(a)

26. The last of these bears closer examination since the alleged inadequacy of the draft amended pleading may lead to a situation in which, even if the claim is allowed to continue, it is in fact fatally flawed or at least requires further case management to make it tenable. Either of these would be a powerful argument for exercising any discretion against allowing the claim to continue.

27. The Second Defendant in its skeleton argument for the application, draws attention to the following:

a) Paragraph 13 of the Particulars of Claim states "…*Mr Al-Gaith informed the Claimant that it had been necessary to employ the First Defendant as he was not making any money from the developers and so that* (sic) *he could be paid to manage the properties that had been purchased*." This paragraph is deleted in the draft amended Particulars of Claim but the new paragraph 10 states, "*At none of the meetings between Mr Alrasheed and the Claimant (whether with or without Mr Al-Gaith) was it ever suggested that Mr Alrasheed would receive any remuneration or commission from the Claimant directly*." On the face of it these two passages are contradictory yet there is no explanation of the deletion of one and the insertion of the other.

b) Paragraph 18 of the original Particulars of Claim states, "*Further Mr Al-Gaith and/or the First Defendant informed the Claimant that some of the properties would have to be put in their names as on some developments there was a limit on the number of units that could be purchased by one individual. They therefore represented that it was necessary to put the properties into their own names*." In the draft amendment, this passage is deleted and the following appear:

(i) "*…none of the transactions set out below were authorised by the Claimant"* (paragraph 12);

(ii) "*Mr Al-Rasheed and/or Mr Al-Gaith told the Claimant to sign documents to purchase property on the basis that it was a good investment for him. The Claimant trusted both and accordingly signed the documents at their request without understanding what the transaction involved or whether they represented market value. The Claimant is unable to recall the precise dates of signing the said documents but recalls that there were many. He is also unable to recall the specific properties as he was unable to understand the documents, which were all in English"* (paragraph 17).

Again the amended Particulars of Claim appears inconsistent with the original, without any explanation for the inconsistency being proffered.

c) Paragraph 14 of the draft amendment pleads that some properties were purchased in the name of Mr Sbitan, without identifying which those properties are.

d) The draft amendment does not deal with the settlement of proceedings against Mr Al-Gaith in Saudi Arabi, notwithstanding the fact that Miss Dias QC's judgment refers to such a settlement having occurred. Given that Mr Al-Gaith is said to have been a co-conspirator with Mr Alrasheed, it is obvious that the Claimant will need to give particulars of the resolution of his dispute with Mr Al-Gaith yet he fails to do so.

e) There is a further criticism that the Claimant now only maintains against the Second Defendant (at paragraph 25 of the draft amended Particulars of Claim) an assertion that certain instructions were not given, whereas precisely that assertion was made in respect of both Mr Al-Gaith and the Second Defendant. I do not read this change as amounting to an implied assertion that such instructions had in fact been given to Mr Al-Gaith, but rather merely tidying up a pleading in respect of the case against the Second Defendant. I am not convinced that this minor change in the pleading calls for an explanation in the manner that some of the other points made by the Second Defendant might.

28. In oral submissions, counsel for the Second Defendant made the point that there is a change in valuation of the claim between the original Particulars of Claim (£5,542,652) and the amended claim (£5,836,652), the latter figure not corresponding with the sum of the individual items of loss pleaded at paragraph 31 of the amended Particulars of Claim. She conceded that this error may be the consequence of the omission of one transaction from paragraph 31. It would appear that this is indeed the case and that the matter could be put right with a simple correction.

29. The Second Defendant contends that these various errors and omissions in the Amended Particulars of Claim suggest that it is a document put together in haste which does not demonstrate a true intention to pursue the claim but rather simply meets the immediate need to have a document to put before the court, given the Claimant's earlier concession that the Particulars of Claim required amendment.

30. On the exercise of the discretion, the Second Defendant contends that it will suffer prejudice from the claim against the First Defendant having been struck out. The First Defendant contended that he was entitled to the remuneration received from the Claimant and that there was no illegality in his receiving it. The Claimant itself has had difficulty serving him in Saudi Arabia. Now that the claim against him has been struck out, it is unlikely that the Second Defendant will be able to secure his cooperation so as to assist in their defence of the claim or in the alternative to bring contribution proceedings against him. Thus the Claimant's warehousing of the claim against the First Defendant, with the result that the claim is struck out, has caused the Second Defendant prejudice.

THE CLAIMANT'S SUBMISSIONS

31. The Claimant submits that his genuine intention to continue this litigation is demonstrated by the following:

    a) Resisting this application;

    b) Paying money into court by way of security for costs;

    c) Providing responses to queries and requests raised by the Defendant;

    d) Requesting a CCMC;

    e) Providing draft Particulars of Claim;

32. In respect of the failure to apply for a Case Management Conference, the Claimant draws attention to paragraph 7.4 of CPR PD59, which provides, "*If the claimant does not make an application in accordance with paragraphs 7.2 or 7.3, any other party may apply for a case management conference."* Given that it was open to the Second Defendant to apply for a Case Management Conference (as the Second Defendant itself acknowledged in the letter of 26 January 2021) and

in light of the principle referred to by Clarke LJ in the passage from Asiansky Television plc v Bayer-Rosin cited above, it is argued that it does not lie well in the mouth of the Second Defendant to criticise the Claimant for not having made the relevant application.

33. In any event, the Claimant contends that the Second Defendant has not identified any significant period of delay in this litigation at all. Once the claim had been issued, the Claimant could not have been expected to progress the case until Defences had been served. This was not achieved until July 2020, but at the same time the issue of security for costs was outstanding, this not being resolved until October 2020. In March 2021 the first strike out application was made and thereafter the proceedings were in effect in limbo till the applications were resolved. Thus the only relevant delay is the failure to apply to amend the Particulars of Claim and/or seek the listing to a case management conference between October 2020 and March 2021, a period which it is said is nowhere near long enough to justify a finding of warehousing.

34. If the threshold criterion for the warehousing application is made out, namely that the proceedings were issued without an intention to progress them at least at that time, the Claimant contends that the draconian remedy of striking out should not follow:

a) Lesser sanctions, such as unless order to address outstanding defaults, are available;

b) The Second Defendant already has the protection of a payment into court or security for costs;

c) The Second Defendant has provided little evidence that it has suffered prejudice.

35. As to the alternative application to strike out for breaches of court orders/rules/practice directions, the Claimant contends that the breaches averred by the Second Defendant are minor in nature and have been put right.

DISCUSSION

36. It is a striking feature of the chronology in this case that the Claimant has throughout done little more than the minimum necessary to keep the claim alive. Thus:

a) The claim was issued late on, close to the expiry of the limitation period;

b) There was no pre-action correspondence;

c) The claim was served at the very end of the period of the validity of the Claim Form;

d) The claim as pleaded contained inconsistencies which led the Claimant to concede that amendment was required, yet draft Amended Particulars of Claim were not supplied until about 17 months after the Claimant originally conceded the need to amend, the Claimant having in the meantime having failed to meet his own stated times within which draft

Amended Particulars of Claim would be provided and an application to amend would be made.

e) The Claimant failed to request a CCMC after service of the Defence;

f) The Claimant failed to respond with evidence to the Second Defendant's application until very shortly before it was heard.

37. It is true to say that, if one looks only at delay after the service of the Defences (the Second Defendant's Defence having been served in October 2019 and the First Defendant's in July 2020), it might be difficult to criticise the Claimant for any delay other than that between resolving the issue of security for costs in October 2020 and the First Defendant's application to strike out in March 2021. I accept that there is a reasonable explanation for the failure to request a CCMC once the Defendants had issued applications to strike out in March and May 2021 and the delay in requesting a CCMC after those application had been issued and until they were resolved cannot be criticised.

38. But the reality is of inactivity prior to issue of the claim, during the period of the stay and indeed in the failure to serve the First Defendant more quickly, this being the underlying reason for the delay in the service of the Defence of the First Defendant. The picture is of almost complete inactivity by the Claimant beyond the basics of issuing and serving the claim. It is of course implicit in any application to strike out of this kind that the claim has been issued and served. Had it not, either no strike out would be necessary or the application would be brought on different grounds. So those basics provide little assistance to the Claimant where other evidence of inactivity is present.

39. As to the relevance of the Second Defendant not having applied for a Case Management Conference, the Claimant's point has little weight. If the Claimant is in fact guilty of warehousing a claim, it is difficult to see that it is incumbent on a Second Defendant to incur cost so as to try to force the Claimant to change its approach, at risk of the court failing to act on the Claimant's abuse of process. Of course, in any practical case, the court might conclude that the failure of the Second Defendant to take steps that it could have taken to progress the case mean that the inference of warehousing is not a proper inference to be drawn, but if the inference is in fact drawn from other material, the fact that the Second Defendant could have driven matters forward by itself applying for a CMC would go only to the exercise of the discretion and in particular the question as to whether the Second Defendant had acquiesced in the Claimant's inaction so as to make striking out a disproportionate response. But in this case, the Second Defendant has done anything other than acquiesced. It has sought to drive matters forward, arguably doing more than might be expected of the reasonable party in its position to press the Claimant to progress the claim. In those circumstances it would be indeed harsh to penalise the Second Defendant for not

incurring greater cost so as to provoke action in a Claimant who appears to have no desire to progress matters.

40. The Claimant's only positive acts (other than issue and service of the claim itself) appear to have been the provision of some further information and disclosure and the agreement to pay security for costs. Even that followed an initial refusal to provide security and in reality had the effect of simply keeping alive a case that might otherwise have been liable to be stayed because of the non-provision of security.

41. This history cries out for some explanation if the court is not to infer from it that the Claimant issued this case with no real intention of pursuing it. If the true reason for what has gone on here is that the Claimant has been diverted from pursuing this claim by the need to give attention to other matters, one would expect to have seen an explanation of that. Such an explanation might persuade the court that this was not a case of warehousing at all and that the Claimant had merely neglected to pursue the litigation with appropriate dispatch rather than held an intention not to pursue the claim at all (at least for some time). Alternatively, the evidence might not have been sufficient to dissuade the court from the conclusion that the claim had been "warehoused" but at least it might go to support an argument that the delays are in the past and that the Claimant intends to progress the claim now, clearly a relevant factor in deciding whether striking out is proportionate.

42. However the court has no such reassurance in the evidence that has been provided. All that the Claimant's evidence does it to show that he has now taken steps that could and should have been taken a year ago or more.

43. On behalf of the Claimant it is argued that the kind of delays that have arisen in this case are not sufficient for the court to draw an inference of warehousing. But in my judgment that is exactly the appearance of what has gone on. Absent any explanation for the prolonged period of inactivity until the Claimant was spurred into some kind of action by the Defendants' applications to strike out the claim, the most obvious inference is that the Claimant did not for a prolonged period of time intend to pursue this claim.

44. There are two features of the case which provide some assistance to the Claimant on the exercise of the discretion if not on the primary finding of warehousing itself. The first of these is the Claimant's agreement to pay money by way of security for costs. In reality the Claimant may have had little alternative but to agree to this if he wished to pursue the claim, but the very fact that he did agree it to it is evidence that may support the conclusion of an intention to pursue the claim. Moreover, the Claimant can rely on the giving of security on issues relating to the exercise of the discretion both in that it provides an obvious motivation to the Claimant to pursue the claim

and that it provides some protection to the Second Defendant against further default by the Claimant.

45. However, the provision of security cannot provide an overwhelming argument to dismiss this application.

    a) The Claimant has failed to pursue this claim with any diligence notwithstanding the provision of security. This must be an indication that the provision of further security in the future may not act as an incentive to progress the litigation.

    b) Whilst the Second Defendant has some protection against losses caused by delay, it may be difficult for it to obtain adequate costs orders to cover all of the expense that flows from a claim which is not being pursued in an efficient and proportionate manner.

46. The second feature of the case that may assist the Claimant is that he has now, if very belatedly, provided draft amended Particulars of Claim. This points to a desire to pursue the claim, both because it is an indication that he seeks to put his case in order and is intrinsically an act consistent only with an intention of pursuing the claim.

47. In this respect however the Second Defendant draws attention to the inadequacies of the draft amended pleading noted above. Even now, it is said, the Claimant is not properly setting out his case, an indication that he does not hold a true intention to progress the claim. In any event, if this case survives, there will be further cost and delay in dealing with the inadequacies of the amended Particulars of Claim. Thus the provision of the draft amendment cannot be taken as evidence that the Claimant has mended his ways such that, whatever defaults there may have been in the past, he now demonstrates an intention to pursue the claim which should lead to a result other than the striking out of the claim.

48. Again, I do not see the Claimant's action in providing a draft amendment as an overwhelming argument in favour of dismissing the action. There are clear problems with the Particulars of Claim as amended in draft. The Second Defendant would be entitled to better particularisation of parts of the case (for example the identity of the properties original pleaded to have been purchased by the First Defendant but now said to have been purchased by Mr Sbitan) and an explanation for apparent inconsistencies as to the Claimant's understanding and approval of the activities of Messrs Alrasheed and Al-Gaith which are central to the issue as to whether they were conspiring to harm him.

49. In my judgment, the chronology of this litigation strongly points to the conclusion that the Claimant is guilty of warehousing in that this claim was issued at a time when the Claimant had no current intention of pursuing it. This is demonstrated by the fact that it was issued belatedly, that the Claimant then agreed to a stay during which time he took no meaningful steps to progress

the claim and has thereafter only taken steps to do so when pressed by the Second Defendant or (latterly) when threatened with the claim being struck out. It is now more than 3 years since the claim was issued and the Second Defendant is still not in receipt of Particulars of Claim which adequately set out the case against it. The Claimant has not taken the opportunity to explain why the claim has been progressed in such a dilatory fashion and, without some explanation, the natural inference is that there is no good explanation at all.

50. I should add that the judgment of Miss Dias QC is of little significance to the determination of whether the Claimant is guilty of warehousing. Whilst her finding that the Claimant was guilty of warehousing in respect of the claim against the First Defendant on similar (though not identical) facts to those here might be thought to be supportive of a finding of an underlying abuse of process here, in reality, each case must turn on its own facts. It would be perfectly possible for the court to find that the conduct of a claim against one party amounted to warehousing whereas the conduct of a related claim against another did not.

51. However, her judgment is relevant to the exercise of the discretion. If the proceedings against the Second Defendant have been conducted in a manner that amounts to an abuse of process, the court is entitled to have regard to the fact that a related claim against another Defendant has been struck out on the same grounds for several reasons:

a) A party who shows a pattern of abusing the process of the court is more likely to be one against whom the ultimate power of strike out is exercised because of their tendency to waste the time and resources of others on litigation which is not being properly conducted;

b) On the cases advanced by the Claimant against the Defendants here, the First Defendant is by far the more culpable since he is alleged to have conspired to harm the Claimant, whereas the Second Defendant is alleged to have committed the lesser wrongdoing of failing to protect the Claimant against that conspiracy. Yet the claim against the greater alleged wrongdoer has been lost, leaving the Second Defendant in a position where, if the claim proceeds against it, it must defend itself without the necessary involvement of the First Defendant who might have a strong defence that he was not guilty of wrongdoing at all. Of course, it is relatively frequently the case that professional advisors find themselves the subject of an accusation that they have failed to protect a client against the wrongful acts of third parties and often the fact that the third party is not joined in the action (perhaps because they are untraceable or impecunious) will not avail the professional in defending the claim. But where the absence of the third party from the litigation is itself caused by the Claimant's abuse of the process of the court, the Second Defendant is in my judgment clearly entitled to point to the potential prejudice that flows

from this as a relevant feature to the exercise of the discretion to strike out the claim against it where that claim itself is an abuse of the process of the court.

52. As to the exercise of the discretion and the question of the proportionality of striking out, the difficulty faced by the Claimant is that, even now, the claim is not in an adequate state to proceed. The Second Defendant is entitled to proper particularisation of the claim yet does not have this. In those circumstances, to permit the Second Defendant to continue to be exposed to a liability that requires it to commit time and cost to defending itself is not consistent with the overriding objective.

53. I bear in mind that draconian nature of a striking out order. However it is not immediately obvious what order(s) could adequately ensure that the Claimant now is taking its responsibility to progress this case seriously. It does not appear that the claim would be stifled by ordering the payment of costs and/or further security for costs and accordingly it would be possible to fashion future orders so that the Claimant's continued right to prosecute the case was conditional upon the payment of any costs orders made against it forthwith and the continuing provision of security to meet the Defendant's costs exposure. But the fact that the Claimant has agreed to provide security for costs but still has not progressed the claim with any dispatch is a strong indicator that the ordering of security for costs (or the securing of payment of costs orders) will not act as an incentive to the Claimant to progress the case in an orderly fashion. In this respect the claim is somewhat unusual.

54. I have considered whether the creative use of other case management powers could provide an adequate test of the Claimant's true willingness to litigate and/or adequate protection for the Second Defendant and other court users if it does not. The court might make unless orders to cover further steps in the litigation so that any further default by the Claimant would risk causing the litigation to be brought to a conclusion. But in circumstances where the Claimant has failed to get his case in order notwithstanding an application to strike out his claim as an abuse of process, I can have no confidence that the making of such orders will change the Claimant's attitude to this litigation. The Claimant's neglect of it leads to the conclusion that he has forfeited the usual right to have the court determine his case on the merits.

55. For these reasons I am satisfied that the Claimant's abuse of the process of the court by warehousing this claim should lead to an order that it be struck out.

56. As to the alternative application based on non compliance with Rules and/or Practice Directions, some of the alleged breaches can be dismissed easily:

a) Failure to include a claim for interest in the Particulars of Claim. Neither the Particulars of Claim nor the Claim Form include a claim for interest. The proposed amended

Particulars of Claim do so, but for the moment there is no pleaded claim for interest. This is not a breach of any rule, order or Practice Direction. It simply means that no interest will be awarded.

b) Failure to apply for a stay but behaving as though a stay was in place. In fact, a stay was imposed by order of 3 May 2019, expiring on 30 September 2019.

c) Failure to file and serve a Reply within 21 days of service of the Defence. There is no obligation to serve a Reply, though the failure to do so may bear on what is in issue in the case.

d) Failure to verify the draft Amended Particulars of Claim with a statement of truth. A draft amended statement of case does not need to be verified by a statement of truth.

e) Failure to make any proposal to pay the Claimant's costs of and arising from the amendments to the Particulars of Claim. This is not a breach of any rule, order or Practice Direction.

57. Of the remaining matters, it is convenient to group the various alleged breaches:

a) Failure to engage with the pre-action protocol before issue of the claim.

b) Failings and defects in the original Claim Form and Particulars of Claim in that:

(i) There was no certificate made by an authorised person certifying that the Particulars of Claim had been read to the Claimant and that he understood and approved their content;

(ii) The Claimant's address was not on the Claim Form;

(iii) The Particulars of Claim did not include a concise statement of facts on which the Claimant relied.

(iv) The Particulars of Claim did not set out detail of all alleged breaches of trust.

c) Failure to provide a response pack when serving the Claim Form and Particulars of Claim;

d) Failure to provide initial disclosure with the Particulars of Claim;

e) Failure to engage with the pre-action protocol during the period of the stay.

f) Failing to apply for a case management conference within 14 days of service of the Defence.

g) Failing to serve evidence in response to the application in time.

h) Failing properly to particularise the claim in the draft Amended Particulars of Claim.

58. Some of these criticisms are fairly minor or technical in nature and would not be likely to lead to a finding that the claim should be struck out as an abuse of process. Others, in particular the failure to engage with the Pre Action Protocol either before issue or during the period of the stay, the failure to request a Case Management Conference and the failure timeously to file evidence in response to the application are more substantial. However, given my finding on the primary basis of the application, it is unnecessary to consider them further since they are subsumed by the findings that the Claimant is guilty of warehousing the claim. They do not form an additional reason to strike out the claim - rather they are, in part, the very reason why the finding of warehousing has been made.

CONCLUSION

59. For the reasons set out above, I am satisfied that the Claimant has been guilty of warehousing this claim in that, for a prolonged period from the issue of the claim, the Claimant has held no genuine intention to progress it. In all of the circumstances, it is appropriate to strike the claim out given that the case is still not formulated in a proper way to proceed and that the history of the litigation would suggest that imposition of lesser orders is unlikely to cause the Claimant to conduct the litigation properly.