Neutral Citation Number: [2022] EWHC 1621 (QB)
Appeal Nos: QB-2021-000180, QA-2021-000222, QA-2021-000223, QA-2021-000231, QA-2021-000240, QA-2021-000258, QA-2021-000270, QA-2021-000292, QA-2022-000027 And QA-2022-000041 & QA-2022-000051

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE COUNTY COURT AT LUTON & OXFORD
DECISIONS OF HHJ BLOOM & HHJ CLARKE
CLAIMS F00LU431 & G01LU395

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/06/2022

Before:

MR JUSTICE COTTER

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Between:

(1) Scott Halborg **(2) Halborg Limited**	**Claimants/ Appellants**
- and –	
(1) Albert Halborg **(2) Eileen May Halborg** **(3) More 2 Life Limited**	**Defendants/ Respondents in Claim F00LU431**
(1) Scott Halborg **(2) Halborg Limited**	**Claimants/ Appellants**
- and –	
(1) Hollingsworths Solicitors Limited **(2) Gregory Hollingsworth** **(3) Stephen Taylor**	**Defendants/ Respondents in Claim G01LU395**

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Michael Ashdown (instructed by **Deals & Disputes Solicitors**) for **Claimant/Appellant 1 & 2**
Stephen Taylor (instructed by **Hollingsworth Solicitors**) for **Defendant/Respondent 1 &2 Claim F00LU431**

Michael Ashdown (instructed by **Deals & Disputes Solicitors**) for **Claimant/Appellant 1 & 2**
Benjamin Wood (instructed by **Reynolds Porter Chamberlain LLP**) for
Defendant/Respondent 1 &2
Andrew Nicol (instructed by **Mills & Reeve)** for **Defendant/Respondent (3)**
Claim: G01LU395

Hearing dates: 09-10 June 2022

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Approved Judgment

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

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MR JUSTICE COTTER

Mr Justice Cotter:

Introduction

1. This is the application for permission hearing within what was a combined group of 19 appeals in eight (formerly nine) notices and is now 24 appeals in 11 appeals notices. The applications mainly relate to case management decisions in two county court actions.

2. Originally there were some 169 grounds of appeal. After a process of reflection as required by my order and the paring down of the prolix and obviously unmeritorious grounds by the Appellant, there are now 86 grounds of appeal in respect of 17 orders. Appellant Notice 9 was not pursued.

3. On behalf of the Appellants, Mr Ashdown filed a 66 page skeleton argument dated 11th of March 2022. He has also filed a 13-page, supplementary skeleton argument dated 31st May 2022, which deals with their 10th and 11th Appellant's Notices; thus there are 79 pages of skeleton argument on behalf of the Appellant. There are 8 volumes within the appeal bundle running to some 2,527 pages; excluding two lever arch files of authorities. As Mr Wood correctly observed

> "*the sheer volume of material before the Court – and the number and extent of the issues sought to be raised by the applications – makes it impossible to identify what is strictly necessary to have pre-read and what else can safely be disregarded unless it is referred to during the course of submissions.*"

4. Given the task faced by the Court in dealing with these permission applications; their sheer breadth meant they could not be dealt with efficiently on paper. As a result, I listed them initially for an oral hearing of one day for the first nine appeal notices and took the unusual step of ordering the attendance of the Respondents. When the final two appeal notices were filed, I ordered that they be determined immediately after the first nine on the following day.

5. The applications for permission to appeal, even after they have been cut down by half, are out of all possible proportion to the issues in the claims. That is not to suggest any criticism of Mr Ashdown; quite the reverse. I am very greatly indebted to him for the clarity and presentation of his most helpful written and oral submissions. He has also helped by paring down the original grounds. What the Court would have faced without his assistance does not bear much thought. The taking of a wide range of points accompanied by a large amount of documentation is, I have formed the view, undoubtedly part of an established pattern of behaviour of the Appellant, Mr Halborg. Over the last three years the parties and the Court have faced multiple applications with prolix statements accompanied by voluminous documentation.

6. Each and every element of the appeals in respect of which permission is sought relates to procedural, rather than substantive, aspects of County Court claims, principally F00LU431 which was issued as long ago as March 2019 (so well over three years ago), and which has become known as the "Trust Claim" and the case of G01LU395 what has become known as the "Lawyers' Claim", issued in December 2020; so, one and half years ago. These claims have spawned a whole constellation of satellite issues that

have occupied a large amount of Court time. I have lost count of the number of applications and hearings in both claims. The Trust Claim itself has not even progressed as far as completion of disclosure and the Lawyers' Claim not as far as a strike out application before a defence is filed.

7. Just these bare facts lead inexorably to the conclusion that something has gone very badly wrong with the conduct of the litigation. I have never experienced anything remotely like the failures in these two cases to progress a county court claim despite nearly 12 years as a Designated Civil Judge across two regions. After careful consideration of these appeals and what has taken place on the tortured path to this point I have been driven to the conclusion that Mr Halborg, a solicitor, indeed a solicitor advocate, has long forgotten the requirement on all parties to litigation to help the Court further the overriding objective.

8. It is not without very good reason that the overriding objective of dealing with claims justly and at proportionate cost (that second element having been long since lost in the progress of this litigation as has the requirement to progress expeditiously) requires ensuring, so far as is practicable, that a claim has allotted to it an appropriate share of the Court's resources whilst taking into account the need to allot resources to other cases. This litigation has already taken very far more of the Court's valuable and finite resources than it was properly entitled to take and, as I have indicated, in the Trust Claim it is not even far down the normal path to a final hearing.

9. These matters having been set out it is necessary to state that each appeal, and each ground, required to be, and has been, considered in terms of its individual merits. There can be no broad-brush approach. However, that does not mean the overall history of the litigation was not relevant as a legitimate factor which could be taken into account in the exercise of discretion in respect of some of the orders made and also as regards the making of a civil restraint order.

History of the underlying disputes

10. The Appellants are Mr Halborg (who is a solicitor) the son of Mr and Mrs Halborg (the Defendants in the Trust Claim), and his company, Halborg Limited. They are represented by Deals & Disputes Solicitors, of which Mr Halborg is a partner and majority owner. In an email of 14th of May 2020 sent by Deals & Disputes Solicitors to the County Court at Luton Mr. Halborg is described as "*our fee earner (who is also the principal witness and instructing client)*". Mr Halborg also acted as the advocate at certain of the hearings, the orders made at which are the subject of some of the applications for permission to appeal.

11. Mr Halborg has brought an action against his parents within which he alleges that there was an "express shared understanding", that some of the fruits of a professional negligence action brought by his parents and Halborg Ltd (the second Claimant in the Trust Claim) were to be held on trust for him or Halborg Ltd. His parents deny this. They have brought a counterclaim. This is the action that has become known as the Trust Claim. The matters are not unduly complex but consistent with his approach to

most aspects of the litigation, Mr Halborg's reply and defence to counterclaim alone runs to some 45 pages.

12. The First and Second Defendants in the Lawyers' Claim are Hollingsworths Solicitors Limited and its director, Gregory Hollingsworth. They act for Mr and Mrs Halborg in their defence of the Trust Claim. They are described as the "Solicitor Defendants". The Third Defendant in the Lawyers' Claim is Mr Stephen Taylor, who (as a self-employed barrister) has represented Mr and Mrs Halborg in the Trust Claim. Mr Taylor is described as the "Barrister Defendant" within the Lawyers' claim. In what at first blush seems an unusual claim, Mr Halborg alleges that the Solicitor Defendants and Barrister Defendant are liable in knowing receipt of sums paid to them by Mr and Mrs Halborg for their fees in connection with their defence of the Trust Claim. The Solicitor Defendants and the Barrister Defendant have an outstanding application to strike out the claim against them.

13. There is a third action in which Mr Halborg has brought a claim against his mother for the return of documentation left at her house in happier times. Her Honour Judge Bloom reserved case management of the Trust Claim and the Lawyers' Claim to herself.

14. As I have already stated, the Trust Claim is not ready for trial; but it was, somewhat optimistically, listed for 4 days before Her Honour Judge Walden-Smith. I do not know on whose order or instruction this was listed (and I cannot properly enquire of the Judges likely to be concerned) but it was an obviously sensible decision. Her Honour Judge Bloom had faced an application for recusal on the grounds of bias and apparent bias, which she had dismissed. There are permission to appeal applications against the relevant orders. In my judgment, it is overwhelmingly likely that if she presides over the trial the allegations will re-surface to a greater or lesser degree, with more applications for permission to appeal inevitable. Even if wholly unmeritorious, they would be a costly distraction to what has already become disproportionate litigation which can be easily avoided by another Judge hearing the strike out application in the Lawyers Claim and the trial in the Trust Claim. As a very experienced Designated Civil Judge who has also has extensive Chancery experience Her Honour Judge Walden-Smith would be an ideal judge if her busy lists permit her to hear these claims. I shall return to this issue.

Orders being appealed:

15. The following orders are the subject of the applications for permission to appeal;

Appellant Notice 1 – QA-2021-000180

1. Order of Her Honour Judge Bloom made on 6th July 2021 in the Lawyers' Claim and 7th July 2021 in the Trust Claim.

2. Limited Civil Restraint Orders made by Her Honour Judge Bloom on 6th July 2021 and issued by the Court on 12th July 2021 ("LCRO") against the two Claimants in both claims.

Appellant Notice 2 – QA-2021-000222

3. Order of Her Honour Judge Bloom made on 9th September 2021 in the Trust Claim.

4. Order of Her Honour Judge Bloom made on 9th September 2021 in the Lawyers' Claim.

Appellant Notice 3 – QA-2021-000223

5. General Civil Restraint Order made by Her Honour Judge Clarke on 14th September 2021 ("GCRO") against the First Claimant in both claims.

Appellant Notice 4 – QA-2021-000231

6. Order of Her Honour Judge Bloom made on 4th October 2021 in both claims.

7. Order of Her Honour Judge Bloom made on 29th September 2021 in the Trust Claim.

Appellant Notice 5 – QA-2021-000240

8. Order of Her Honour Judge Bloom made on 11th October 2021 in the Trust Claim.

9. Order of Her Honour Judge Bloom made on 12th October 2021 in the Lawyers' Claim.

Appellant Notice 6 – QA-2021-000270

10. Order of Her Honour Judge Bloom made on 26th October 2021 in both claims.

11. Order of Her Honour Judge Bloom made on 2nd November 2021 in the Trust Claim.

12. Order of Her Honour Judge Bloom made on 11th November 2021 in both claims.

13. Order of Her Honour Judge Bloom made on 12th November 2021 in both claims.

Appellant Notice 7 – QA-2021-000258

14. Order of Her Honour Judge Clarke made on 20th October 2021 in both claims.

Appellant Notice 8 – QA-2021-000292

15. Order of Her Honour Judge Bloom made on 3rd December 2021 in both claims.

Appellant Notice 10 – QA-2022-000041

16. Order of Her Honour Judge Bloom made on 27th January 2022 in the Trust Claim.

Appellant Notice 11 – QA-2022-000051

17. Order of Her Honour Judge Bloom made on 10th February 2022 in the Trust Claim.

16. Appeals are against orders not judgments. That being said, these permission applications have required detailed consideration of Her Honour Judge Bloom's judgments of 6th and 7th July 2021, 4th October 2021, 11th October 2021, 3rd December 2021, and 10th February 2022.

17. Her Honour Judge Bloom's extemporary judgment on 6 July 2021, sets out much of the procedural background to that date and puts in context much of what followed.

Relevant legal principles to be applied to the permission applications

18. I shall set out the relevant legal matrix applicable to all the applications.

The test for permission

19. CPR 52.6 provides:

> "(1) Except where rule 52.7 applies, permission to appeal may be given only where—
> (a) the court considers that the appeal would have a real prospect of success; or
> (b) there is some other compelling reason for the appeal to be heard.
>
> (2) An order giving permission under this rule or under rule 52.7 may—
> (a) limit the issues to be heard; and
> (b) be made subject to conditions.
> (Rule 3.1(3) also provides that the court may make an order subject to conditions.)"

20. For the purposes of this judgment I shall use the word unarguable as shorthand for the proposition that there is no ground/argument with a real prospect of success. If not otherwise expressly stated it can be implied that I see no other compelling reason for an appeal to be heard.

Case management appeals

21. CPR PD 52A is as follows:

> "Appeal in relation to case management decision
>
> 4.6 Where the application is for permission to appeal from a case management decision, the court dealing with the application may take into account whether –
> (a) the issue is of sufficient significance to justify the costs of an appeal;
> (b) the procedural consequences of an appeal (e.g. loss of trial date) outweigh the significance of the case management decision;
> (c) it would be more convenient to determine the issue at or after trial."

22. Case management decisions include decisions made under rule 3.1(2) and decisions about the progression of a case such as in relation to disclosure or the filing of witness statements.

23. It is a well-established rule that the scope for appeals against case management decisions is limited and a party applying for permission to appeal to overturn a case management decision made within the Judge's discretion must cross a high threshold. In **Royal & Sun Alliance Insurance plc v T&N Ltd** [2002] EWCA Civ 734, Lord Justice Chadwick stated at [38]:

> "*I accept without reservation, that this Court should not interfere with case management decisions made by a judge who has applied the correct principles, and who has taken into account the matters which should be taken into account and left out of account matters which are irrelevant, unless satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.*"

24. See also Lawrence Collins LJ in **Walbrook Trustees (Jersey) Ltd v Fattal** [2008] EWCA Civ 427 at [33], and more recently Coulson LJ in **Diriye v Bojaj** [2020] EWCA Civ 1400; [2021] 1 WLR 1277, at [18].

Totally without merit ("TWM") orders

25. As Mr Ashdown sets out, the term TWM can be applied to an application or claim for which there is no rational basis on which the claim or application could succeed. In my experience a commonly applied threshold is that the application or claim is "*hopeless*" or "*bound to fail*". In **R, on the application of Wasif v. Secretary of State for the Home Office** [2016] EWCA Civ 812 which was a claim for Judicial Review, the Court said, at paragraph 17:

> "*The scope for general guidance is limited: adjectives and phrases of the kind "bound to fail", "hopeless" and "no rational basis" are, we hope, helpful, but they are necessarily imprecise…*"

26. CPR 23.12 states as follows:

> "23.12 If the court dismisses an application (including an application for permission to appeal or for permission to apply for judicial review) and it considers that the application is totally without merit –
>
> (a) the court's order must record that fact; and
>
> (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

Civil restraint orders ("CROs")

27. The case of **Bhamjee v. Forsdick** [2004] 1 WLR 88 is often seen as the starting point for the current CRO regime. It was most recently applied in the High Court in **Howell v. Evans** [2020] EWHC 2729 (QB). These two cases, together with the CPR, provide authority for the following propositions of law. They are set out conveniently in paragraphs 10 to 16 of **Howell v. Evans** (*et seq*).

> "(a) The court's jurisdiction for making civil restraint orders (CROs) is well established. Any Judge can make a limited civil restraint order in circumstances where the party against whom the order is made persists in issuing claims or making applications which are totally without merit.
>
> (b) In the case of a considering whether to make a civil restraint order and, if so, what form of order to make, there are three questions for the court;
>
> (i) whether the litigant has persistently issued claims or made applications which are totally without merit (the Threshold Issue);
>
> (ii) whether an objective assessment of the risk which the litigant poses demonstrates that he will, if unrestrained, issue further claims or make further applications which are an abuse of the court's process (the Exercise of Discretion); and
>
> (iii) what order, if any, it is just and proportionate to make to address the risk identified (the Appropriate Order)."

28. Importantly, when considering the second and third questions the Court is not solely limited to considering the claims or applications that were certified as TWM. The Court may explore the wider context of the litigation within which the TWM's have been made and other relevant litigation. CROs are tools available to the Court to stop a

persistent litigant from wasting (or at least to curtail his/her ability to waste) the Court's (and the other parties') resources in time and expense, by abusing the court's process, and causing the Court (and others) constantly to have to deal with unmeritorious claims and/or applications. Sometimes it is necessary to step back and consider the wider picture to assess a litigant's likely future conduct if unrestrained.

29. References within the rules to "making" an application means issuing and pursuing the application. So if an application had or may have had some arguable merit when issued but subsequently such merit fell away, the continued pursuit of the application means that it can properly be marked as totally without merit.

Limited Civil restraint Order ("LCRO")

30. A limited civil restraint order and an extended civil restraint order can only restrain a litigant in the context of the litigation he is currently conducting, and other related litigation.

31. CPR PD 3C states:

> "2.1 A limited civil restraint order may be made by a judge of any court where a party has made 2 or more applications which are totally without merit.
>
> 2.2 Where the court makes a limited civil restraint order, the party against whom the order is made –
>
> (1) will be restrained from making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
>
> (2) may apply for amendment or discharge of the order provided he has first obtained the permission of a judge identified in the order; and
>
> (3) may apply for permission to appeal the order and if permission is granted, may appeal the order.
>
> …
>
> 2.8 Where a party makes an application for permission under paragraphs 2.2(1) or 2.2(2) and permission is refused, any application for permission to appeal –
>
> …
>
> (2) will be determined without a hearing."

And

> "2.9 A limited civil restraint order –
>
> (1) is limited to the particular proceedings in which it is made;
>
> (2) will remain in effect for the duration of the proceedings in which it is made, unless the court otherwise orders; and
>
> (3) must identify the judge or judges to whom an application for permission under paragraphs 2.2(1), 2.2(2) or 2.8 should be made."

General Civil restraint order ("GCRO")

32. CPR PD 3C states:

> "4.1 A general civil restraint order may be made by –
>
> …
>
> (3) a Designated Civil Judge or their appointed deputy in the County Court,
>
> where the party against whom the order is made persists in issuing claims *or making applications* (emphasis added) which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate."

Fee remission

33. Fee remission provides assistance to those issuing claims or making applications by reducing part or all of the fee payable upon issuing a claim or making an application. Eligibility depends on what income, entitlement to benefits and, to a degree, savings/capital is available to such people. It is a generally accepted proposition that there is a very strong correlation between vexatious litigation and entitlement to fee remission. Put simply, if no fee is required before issue, a limited number of litigants will seek to pursue multiple unmeritorious claims or applications. The potential for adverse costs consequences often does not provide sufficient restraint. Once a litigant is subject to a civil restraint order then entitlement to fee remission is lost in respect of applications for permission.

Chronology

34. I now set out a chronology of the most important steps in the two actions at the heart of these applications;

27th March 2019	Trust Claim issued
21st May 2020	The Claimants apply to adjourn the hearing of the CCMC listed on 8th July 2020 in the Trust Claim by at least 2 months. I was told by the Defendants (Respondents to the current applications for permission) that in breach of CPR 39.8(1), the Claimants did not tell the Defendants that they had so applied. Consequently, the CCMC was adjourned to be heard on 11th September 2020.
4th August 2020	The Claimants applied to adjourn the hearing of the CCMC listed on 11th September 2020 in the Trust Claim by at least two months. I was told that as before, and in another breach of CPR 39.8(1), the Defendants were not told about that second application to adjourn. Consequently, the CCMC was adjourned to be heard on 6th January 2021.
18th December 2020	Lawyers' Claim issued.
31st December 2020	Lawyers' Claim served.
6th January 2021	Hearing of CCMC in the Trust Claim could not go ahead (for lack of a judge at the listed time). At 13:13hrs on 5th January 2021, the Court relisted the CCMC to 28th January 2021 at 2pm, via MS Teams. The first Claimant replied by e-mail, sent some six-minutes later, stating that the Claimants could not attend on 28th January 2021 due to child-care issues and a trial in London on 29th January 2021
28th January 2021	Order made by DDJ Willink including directions. The Claimants did not attend the hearing on 28th January 2021, nor did they appoint an agent to attend (counsel, solicitor or solicitor's agent). There is a dispute as to whether two telephone calls were made by the Judge to the Fust Claimant the beginning of the hearing (the First Claimant does not accept that they were). On the evidence

	before him DDJ Willink came to the conclusion that the Claimants' applications to adjourn were to be dismissed. He also concluded that those applications (in the plural) were TWM. It is submitted by the Respondents that he was clearly and unarguably right to do so. It is also submitted that the Claimants' given reasons for non-attendance on 28th January 2021 were not good reasons for the following reasons: a. The Claimants had three weeks' notice of the hearing on 28th January 2021. That is plenty of time to make arrangements for childcare, or for counsel's or an agent's attendance. b. The home-schooling and childcare responsibilities were obviously being overplayed. This was a two-hour, on-line hearing which could have been attended, at least for the purpose of the applications to adjourn. It was disclosed during the hearings before me that the First Claimant's partner was at home on maternity leave. c. There was no good reason for not appointing counsel or an agent. Deputy District Judge Willink's conclusion, on the evidence before him, was that, as a matter of fact, the Claimants had no good reason for not attending. Permission to appeal was not sought.
1st February 2021	Order of DJ Spink extending time for service of the defence in the Lawyers' Claim.
16th February 2021	Order of DJ Spinks in part an unless order in relation to the payment of fees by the Claimants and extending time.
23rd February 2021	Order made by District Judge Gill consolidating the Trust Claim and Lawyers' Claim and listing all existing applications for 6th July 2021
6h July & 7th July 2021	Order of Her Honour Judge Bloom in both the Trust Claim and Lawyers' Claim. This followed the hearings on 6th July and 7th July.

The 6th/7th July hearings

35. The 6th July hearing was in the Lawyers' Claim and the Trust Claims and the Claimants were represented by Counsel. The Court was considering 17 applications (as set out in the order). Her Honour Judge Bloom dealt with eight applications made by the First

Claimant , and in respect of some also by the Second Claimant, which were not proceeded with. The first Claimant was contacted in May 2021 about the July hearing and he did not point out that he did not intend to proceed with 8 of the then 10 outstanding applications. The Judge spent 3 hours reading the bundles which stretched to a wholly unnecessary 1000 pages and tried to understand the applications. She said in her judgment at paragraph 23:

> *"I said earlier that in 40 years of both being at the bar and being a full-time judge for a number of these years, I do not think I have ever come across a claimant, particularly a claimant who is a lawyer, making eight applications, all of which are withdrawn or not proceeded with on the day of the hearing. Four of them were made within the space of ten days in February and four of them were made in the space of about the same time in March. All of them were listed today and, as I say, none of them proceeded with."*

36. Seven of the Claimants applications were dismissed by Her Honour Judge Bloom as TWM.

1. 9th February (Lawyers' Claim) – Application for judgment in default against the Solicitor Defendants with costs. Her Honour Judge Bloom dealt with this application at paragraphs 24-27 of her judgment.

2. 15th February (Lawyers' Claim) - This was an application to set aside DJ Spinks' order of 1st February and to give judgment in default of defence.

3. 18th February (Lawyers' Claim) - Application to set aside DJ Spinks order of 16th February although the first Claimant had paid the outstanding fees.

4. 19th February (in respect of fees) - This application was to set aside an order made by an unnamed "Court officer" dated 12th February 2021. This application initially may have had some merit but when the first Claimant continued to pursue it had lost all merit.

5. 4th March 2021 - An application to set aside part of the order dated 23 February 2021 made by District Judge Gill so that two applications were decided immediately. At paragraphs 70 and 71 of her judgment Her Honour Judge Bloom noted at the hearing on 6th July 2021 the first Claimant wanted these applications put back.

6. 12th March 2021 – An application to set aside the order made by an unnamed "Court officer" dated 3rd March 2021.

7. 19th March 2021 - This application was to set aside the order dated 11th March 2021 which purportedly listed the 4th March application for hearing on 6th July 2021.

37. The applications in March 2021 related to listing. Her Honour Judge Bloom was very critical of the first Claimant's approach. She said at paragraphs 44-46 of her judgment that:

> *"44. He is also a solicitor of the court and he knows the pressure that courts are under, particularly during the Covid pandemic, and the idea that he generally believed that all these applications were going to be listed before six July is, it seems to me, unrealistic. There is an element of abuse of process here and it is extremely concerning to see a solicitor doing this and Mr Halborg needs to be very careful about the applications he makes.*
>
> *45. This is the sort of behaviour that one sees from litigants in person. Mr Halborg is an officer of the court and I would expect him to recognise that in the applications he makes and to be more measured. But more importantly having made applications on 4th, 12th, 15th and 19th to relist everything and to move it, it was obvious, that the court was simply going to list it for today. Therefore, to keep making applications as he did on the 15th and 19th served no purpose.*
>
> *46. Even more so, again, none of the applications were withdrawn. They were all technically before the court and it was only when counsel notified the court threw his skeleton argument that it became aware that these other four applications, of course, had become otiose. I do not consider that any of those applications would have had merit."*

38. At paragraph 50 of her judgment and on invitation from Mr Wood Her Honour Judge Bloom said that the applications made by both Claimants should be marked as TWM against both Claimants and if the application has only been made by one of them, then against that one it is marked TWM.

39. Her Honour Judge Bloom made a LCRO against both Claimants. In doing so the Judge recognised the demands on the Court and that as at that time the claims had been consolidated, the LCRO was made in both the Trust Claim and the Lawyers' Claim.

40. The Judge heard and dismissed an application by the first Claimant for inspection of documents mentioned in the Barrister Defendant's Defence which was also dated 19th February. The Judge said at paragraph 75 of her judgment that the Defence only made reference to bank accounts and at paragraph 77 suggested that the bank accounts could be obtained by disclosure in the Trust Claim.

41. The Judge then deconsolidated the Trust Claim and Lawyers' Claim for the reasons set out in her judgment at paragraphs 13-18. The Judge also made an order regarding communication by e-mail (paragraph 6 of the order dated 6th July 2021). Her Honour Judge Bloom also ordered costs on an indemnity basis as she considered the conduct to be unreasonable. The Claimants were ordered to pay the Solicitor Defendants £13,000.00 on account by 27th July 2021, the Barrister Defendant £8,000.00 on account by 27th July.

42. The 7th July hearing was in the Trust Claim. Again, the Claimants were represented by Counsel. The Court considered two applications concerning the set aside of Deputy District Judge Willink's order of 28th January 2021. The first challenge was in respect of the Claimants non-attendance at the hearing on 28th January 2021. Her Honour Judge Bloom described the approach of the first Claimant as "incredibly arrogant" considering the CCMC had been adjourned twice. The Judge said that the first Claimant could and should have arranged cover and clearly could work as he did on the statement and was able to make multiple applications. The application was dismissed.

43. In respect of the second challenge the Judge did not deprive the Claimants of being able to rely upon the costs budget. The Judge set aside paragraph 3 of order of 28th January 2021. The Judge also ordered costs on the indemnity basis with the provision that the Claimants pay 80%. The Claimants were ordered to pay the Defendants £8,000.00 on account by 28th July 2021.

2nd August 2021	The application of the Solicitor Defendants and Barrister Defendant for an Unless Order following the failure of the Claimants to pay the costs on account by 27th July 2021.
21st August 2021	An application by the first Claimant seeking permission under the CRO to make an application for extension of time for payment of costs ordered on 6th July 2021. The application was made in each claim. The first Claimant lodged a further application for permission seeking an order that the CRO did not apply to the Trust Claim.

24th August 2021	Permission granted by Her Honour Judge Bloom for the first Claimant to make an application for extension of time for payment of costs only. Hearing set down for 15th September 2021 along with the Solicitor Defendants' and Barrister Defendant's application of 2nd August 2021.
8th September 2021	Application by the first Claimant seeking permission under the CRO to make an application to discharge the CRO in the Trust Claim to be heard on 15th September 2021.
9th September 2021	Order of Her Honour Judge Bloom in the Trust Claim refusing permission to challenge the effect of the LCRO noting that there was a right of appeal. The application was marked as TWM.
9th September 2021	Order of Her Honour Judge Bloom in the Lawyers' Claim refusing permission to discharge the CRO.
14th September 2021	GCRO made by the Designated Civil Judge Her Honour Judge Clarke.
15th September 2021	Hearing before Her Honour Judge Bloom in respect of costs orders made on 6th and 7th July. Judgment to be handed down on 4th October 2021.
29th September 2021	Order of Her Honour Judge Bloom in the Trust Claim refusing permission to the Claimants for (1) an application to amend/stay costs orders made on 7th July 2021; (2) an application to increase the costs budget; (3) an application for separate trial of the counterclaim; and (4) an application for extension of time to file witness statements.
4th October 2021	Order made by Her Honour Judge Bloom and the handing down of judgment.

Hearing of 4th October

44. The first Claimant had fully paid the costs as ordered in the Lawyers' Claim but had not paid the costs on account ordered in the Trust Claim. Both the unless order applications of the Solicitor Defendants and Barrister Defendant together with the extension of time application of the first Claimant were dismissed. Both Claimants were ordered to pay 50% of the costs of the Solicitor Defendants only in the unless order application. Following the dismissal of the extension of time application, the first Claimant was ordered to pay all the Defendants' costs of the extension of time application. The first Claimant was ordered to file a statement of means by 11th October 2021 and in the Trust Claim the Claimants were ordered to pay the Defendants £5,500.00 in respect of costs for the extension of time application. The Claimants were

permitted to make an application under the CRO for the recusal of Her Honour Judge Bloom. There was insufficient time for the summary assessment of costs in the Lawyers' Claim and a further hearing was listed for 12th October 2021.

12th October 2021	Order of Her Honour Judge Bloom. The Claimants ordered to pay £18,400.00 to the Solicitor Defendants and £7,200.00 to the Barrister Defendant.
25th October 2021	Application for recusal of Her Honour Judge Bloom in both the Trust Claim and Lawyers' Claim.
3rd December 2021	Hearing before Her Honour Judge Bloom of the recusal application.

Hearing of 3rd December

45. The first Claimant requested an adjournment which was refused. The first Claimant also wanted a different judge to hear the recusal application. This request was also refused. The application made allegations of actual and unconscious bias. The allegations included that the Judge:

1. favoured barristers;
2. was hostile towards the first Claimant because he had brought a claim against his parents;
3. had already concluded a view as to first Claimant's credibility;
4. was rude;
5. awarded indemnity costs against him;
6. chose and reserved the case to herself;
7. was hostile towards the first Claimant because of help with fees;
8. employed the improper use of CROs;
9. was acting in concert with the DCJ;
10. gave an unreasonably short time (3 weeks) to prepare an application;
11. had weaponised the recusal application;
12. was procedurally unfair;
13. was unduly upset by criticisms of Court staff;
14. was using costs to stifle a claim; and
15. was rushing the Claimants

46. In a detailed judgment Her Honour Judge Bloom dismissed the application for recusal with no order as to costs.

10th February 2022	Hearing before Her Honour Judge Bloom in the Trust Claim of the Defendants' application for an unless order.

47. The Judge made, inter alia, the following orders:

1. The Claimant must, by 4.00pm on 24 February 2022, comply with paragraph 2(b) of the Order dated 11th October 2021.

2. In default of paragraph 1 above, the 1st and 2nd Defendants may make an application, on short notice, to apply to strike out the Claim; for the avoidance of doubt such application will be listed for a hearing.

3. Paragraph 4 of the Order dated 11 October 2021 is varied to say that the Claimants must, by 4.00pm on 24 February 2022, pay the principal sum of £11,248, plus interest calculated at the rate of 8% per annum from 11 October 2021 to 10 February 2022 (90 days), being the sum of £225.43, a total of £11,473.43.

4. In default of paragraph 3 above, the Claimants must, by 4.00pm on 10 March 2022, file and serve a detailed witness statement of means.

………

8. The Claimants shall, by 4.00pm on 10 March 2022, pay the 1st and 2nd Defendants' costs of their application dated 24 November 2021, summarily assessed in the sum of £6,375.90.

9. The Claimant's application for permission to appeal is refused

Appellant’s Notice 1

48. The Claimants seek permission to appeal the orders of Her Honour Judge Bloom dated 6th July 2021 and 7th July 2021; and the four LCRO issued on 12th July 2021 following the hearing on 6th July. This appellant’s notice contained 6 appeals. Originally there were 58 pleaded grounds of appeal. 35 grounds of appeal remained (7, 12-14, 16, 19-20, 23-24, 26-35, 37, 40-47, 51-53, 55-56).

Appeal 1

49. This appeal concerned the making of the LCROs. Mr Ashdown identified five key arguments:

i. The seven applications (in February and March 2021) were not TWM and the requirement for two TWM applications was not met;

ii. Even if there were two TWM applications then that did not justify a LCRO;

iii. There was serious procedural irregularity;

iv. There was no basis for one against the second Claimant; and

v. It was wrong to make the LCRO in wide terms.

The seven applications

50. Seven of the Claimants' applications were dismissed as TWM. The application of 9th February (made in the Lawyers' Clam) was dealt with by Her Honour Judge Bloom at paragraphs 24-27 of her judgment. She noted that at the time the application was made (which was with the benefit of fee remission) an application had been made for an extension of time (the first Claimant had agreed to an extension to 8th February 2021). In fact on 1st February 2021, District Judge Spinks had already made an order extending time on an application, made on 26th January 2021, to 15th February 2021. As Her Honour Judge Bloom recorded the Claimants would have received that order on 10th February 2021 (the first Claimant says 12th February in a subsequent application but the difference is of no significance). As the Judge stated, as soon as the first Claimant became aware that an extension of time had been granted the application should have been withdrawn. It remained effective and live nearly five months later. It was only abandoned (along with six other applications) in a skeleton argument sent the day before the hearing.

51. It was unarguably wrong and unreasonable not to withdraw the application and thereby allow others to believe that it was still pursued. Paragraph 25 of Mr Ashdown's skeleton underplays the position; it is clearly far more than discourteous or "*less than ideal*" to continue with this plainly unmeritorious application. It was listed to be determined, took up court time and prevented the listing of other matters. Parties have a duty to further the overriding objective, which includes saving expense and ensuring matters are dealt with expeditiously and fairly and allotted a fair share of the Court's resources.

52. It is to be noted that on the 14th May 2021, the Solicitor Defendants made an application that there be an urgent directions hearing as there were ten live applications listed for 6th July 2021 and the combined time estimate was such that there was likely to be inadequate time. This application should have been unnecessary as the Claimants should have already indicated the applications that were no longer pursued. In any event, this prompt required the first Claimant to confirm what remained as live applications. He did not do so. He continued to pursue wholly unmeritorious applications. The bundle ran to over a thousand pages and the Judge spent 3 hours

preparing the applications. This was, in at least a significant part, a wholly avoidable waste of valuable judicial time.

53. The second application dated 15th February 2021 (also in the Lawyers' Claim) was to set aside District Judge Spinks' order extending time for the defence and to give judgment in default of defence. This was made after the strike out application was filed on 10th February 2021; a fact the first Claimant was aware of by, at the latest, 25th February 2021. Again he continued with the application. For the reasons I set out in relation to the first application the failure to abandon this application meant that Her Honour Judge Bloom was unarguably correct when she found that he was pursuing a totally without merit application.

54. The third application was made on 18th February 2021; again with the benefit of fee remission. This was to set aside District Judge Spinks' order of 16th February 2021. The order required that the Claimants pay a fee (or provide sufficient evidence that he was entitled to fee remission) in default of which the claim be automatically struck out. The first Claimant said within the application that the order had been made despite a want of jurisdiction and was entirely invalid (as it was made pursuant to CPR 3.7). This argument was unarguably wrong. CPR 3.7 was not mentioned in the order and such orders (or stays) are routinely made in County Court centres up and down the land as staff have been told that they should issue even if a fee has not been paid or proper evidence of fee remission given. The Claimant's Counsel subsequently conceded that the Judge had these case management powers. In any event the fee was paid; so again the issue became academic and should have been withdrawn. Her Honour Judge Bloom was plainly entitled to find that this application was totally without merit. The contrary is unarguable.

55. As set out at paragraph 35 of her judgment, Her Honour Judge Bloom saw some initial merit in the Claimant's application of 19th February 2021, which had stayed the proceedings. However, it ceased to have any merit (or as the Judge stated "relevance") once the fee was paid. The Judge was perfectly entitled to mark the application as TWM given that it was pursued and only abandoned at the hearing.

56. As I have now set out, the Judge was entitled to find the four applications (made with the benefit of fee remission) in February 2021 to be TWM. The contrary is unarguable. As Her Honour Judge Bloom noted the first Claimant made four applications within 10 days. This gave a flavour of how the first Claimant conducted, and was likely to continue to conduct, litigation; likely due in part, to the fact that he had the benefit of fee remission.

57. Three more applications were made in March 2021 on 4th, 12th and 19th (and an informal application by e-mail on 15th March 2021).

58. The application of 4th March 2021 sought to set aside part of the order of District Judge Gill made on 23rd February 2021 which consolidated the actions and listed the applications for 6th July 2021. The Claimant wanted the 19th February 2021 application (in relation to the Trust Claim) and a disclosure application in the Lawyers' Claim, dealt with first and immediately. As Her Honour Judge Bloom stated there could be no confusion as to what was listed when; the applications were all listed on the 6th July. The Claimant should have notified the Court which applications were no longer pursed but he did not do so. As for the suggestion that the applications be listed earlier than the listing on 6th July, the Judge described this as unrealistic and that "*there is an element of abuse here and it is extremely concerning to see a solicitor doing this and Mr Halborg needs to be careful about the applications he makes*". She stated that it was obvious that the applications were going to be listed for 6th July and to make applications on the 15th and 19th served no purpose. Also none of the applications were subsequently withdrawn until the day before the hearing. The Judge was unarguably able to mark these application as TWM.

59. So the argument that the seven applications could not be marked TWM itself has no merit.

The Applications did not justify a LCRO

60. It is also unarguable that the threshold for making a LCRO had not been met. Mr Ashdown submitted that even if two or more TWM applications had been made it was not necessary to make an order. He submitted that it was not part of a pattern of conduct which would justify restricting the access of the Claimants to the court. In my judgement this argument has no merit. The Judge properly considered a pattern of conduct in which the first Claimant had issued a plethora of applications and then pursued them even when he knew they were devoid of merit. Given that the first Claimant was entitled to claim fee remission the cost of the applications did not act as any restraint. Unless the court made an order limiting the ability to issue applications, this behaviour was likely to continue. As Mr Justice Warby (as he then was) stated in the **Chief Constable of Avon and Somerset Constabulary-v-Gray** [2016] EWHC 2998 (QB) restrictions should be imposed only if and to the extent that they are necessary in the pursuit of a legitimate aim. Here the Judge was considering the least onerous of civil restraint orders and was unarguably correct in viewing the legitimate aims of the protection of the rights of others from unfounded applications and ensuring that the courts limited and valuable resources were not wasted, fully justifying the order.

Serious procedural irregularity; procedurally unfair

61. As for the argument that there was serious procedural irregularity in that the Judge raised the issue of a restraint order of her own motion and only gave the first Claimant and his Counsel the time afforded by the lunchtime adjournment to consider the matter; this also lacks any merit. Judges frequently make orders imposing limited and other civil restraint orders on the papers i.e. of the court's own motion. The Judge carefully dealt with the seven applications and the threshold for the making of an order was unarguably met. An opportunity was given to argue that an order should not be made notwithstanding that it could properly be made. The time afforded was ample for any arguments to be marshalled. The reality is there were no real arguments with any merit as to why they order should not be made. There was no serious procedural irregularity, and the contrary is unarguable.

The second Claimant

62. Mr Ashdown argued that the order should not have been made against the second Claimant. However, as he concedes, the 7th and 8th applications were made by the Second Claimant; the relevant threshold was therefore met. Given that the second Claimant is the first Claimant's corporate vehicle, had the order not been made against both Claimants the obvious would have happened. The Judge was clearly entitled to make the order against both Claimants and the contrary is unarguable.

LCRO too wide in its terms

63. Mr Ashdown argued that the Judge was wrong to order the LCRO in such wide terms and also for the entire duration of the claims. Taking the second point first, I cannot see the logic in making an LCRO for a matter of months only when what would transpire within those months would be uncertain and at the end of the period the action would almost certainly not have been determined. As I have set out the parties had not even completed disclosure and there was plenty of road ahead. The Court would be likely face further unmeritorious applications as soon as the order expired. The Judge was obviously able to make an order as she did for the duration of the actions.

64. As for the orders that any claims commenced in other court centres (such as the one commenced in the County Court at Watford) by the Claimants against these Defendants must be notified to the Judge, this was a sensible use of her case management powers. There is only one County Court with different hearing centres and it clearly made sense for all actions brought by the Claimants against the Defendants to be managed together. There could be no legitimate criticism of this order. Contrary to Mr Ashdown's submission the orders were not part of the LCRO; rather free-standing orders made on the 6th of July 2021.

65. For the reasons which I have now set out Appeal one is unarguable and permission is refused.

Appeal 2

66. The second appeal relates to the Judge's dismissal of an application dated the 19th of February 2021 that Mr Taylor, the Barrister Defendant in the Lawyers' Claim, provide inspection of bank statements of Mr and Mrs Halborg on the basis that he made reference to the documents within his defence. In fact the references made in the defence were to money being in the accounts and there was no direct reference to any bank statements. As I pointed out to Mr Ashdown, it may very well be the case that the limit of the instructions given to Mr Taylor was simply that the money was kept securely in accounts. Further, if the first Claimant wanted bank statements in relation to these accounts he could have sought them by disclosure in the Trust Claim. However, the most obvious and compelling reason why the judge was able to exercise her discretion as she did is that Mr Taylor did not have possession of any bank statements; a point Her Honour Judge Bloom made plain at paragraph 76 of her judgement. This appeal is a paradigm one; in that it should have been recognised it could not come remotely close to clearing the hurdle for appealing a discretionary case management order. It is clearly unarguable and permission is refused.

Appeal 3

67. The third appeal is that the Judge erred in ordering the claimants to pay indemnity costs of, occasioned and thrown away by:

(i) the seven applications held to be TWM;

(ii) the informal (e-mail) application of the 15th of March 2021;

(iii) the application for inspection of the bank statements;

(iv) the Claimant's application of 5th July 2021;

(v) Mr and Mrs Halborg's application of the 8th April;

(vi) the Solicitor Defendants applications of the 26th January, 2nd March, and 14th May 2021;

(vii) The costs of the 6th July hearing; and

(viii) The costs reserved by the order of the 16th of February 2021.

and further that any payments on account ordered were excessive in any event.

68. As Mr Ashdown correctly set out in his skeleton argument, indemnity costs are penal in nature. The weakness of a legal argument does not, without more, justify indemnity costs but they may be justified where a case or application is plainly hopeless (or the steps taken were motivated by an ulterior or tactical purpose). He submitted that the mere fact of having made unmeritorious applications does not of itself satisfy the necessary high threshold for the making of an order for indemnity costs. I deal with the various applications in turn.

69. The Judge was plainly able as a matter of the exercise of her discretion to order indemnity costs in relation to the seven applications which were totally without merit. The applications were plainly hopeless and costs were incurred because they were pursued when they should not have been. She was entitled to find that it was unreasonable not to withdraw them or indicate they were no longer pursued. The contrary is unarguable.

70. In relation to the order that the Claimant pay the costs of the informal application of the 15th of March 2021 on an indemnity basis, it is to be noted that the Judge made no order on this application. To the extent that there were any costs referrable to dealing with this informal application, it is arguable that the Judge exceeded her discretion in awarding that they be paid on indemnity basis. During the hearing it was stated by Mr Wood that it was hard to see what costs could be referrable to this application, as a result of which I took the view that as there were no costs referrable to the application the grant of permission would be wholly academic. I intended, on this basis alone, to refuse permission as a wholly academic issue in relation to a case management order is not of sufficient significance to justify the costs of an appeal. However I have been informed post hearing that there may be some costs referrable to it. Whilst I have very serious doubts about the proportionality of an appeal hearing, I will grant permission on this ground. I will take a view as to how any appeal should proceed in due course.

71. In relation to the application for inspection of the documents referred to in the Barrister Defendant's defence, the Judge found the application to be "wholly misconceived" for the reason she sets out at paragraph 76 and 77 of her judgment. Further it could properly have been made in the Trust Claim; a perfectly legitimate way of accessing the documents but the Claimant chose to issue it in the lawyer action. Mr Ashdown conceded that if the Judge was properly able to dismiss the application (as in my Judgment she unarguably was) then an order for standard costs was properly within her discretion. However, he argued that the Judge went too far and exceeded the generous discretion that was available to her when considering the costs of a case management order. It is arguable that the issue of costs of this application became swept up with other elements, such as in relation to the seven TWM applications that did warrant an order for indemnity costs. After careful consideration, there is sufficient merit in this argument to warrant the grant of permission to appeal. The respondents should reflect

on whether they wish to make a concession that only standard costs were properly awardable.

72. As for the applications of 5th of July 2021, the Judge made no order on the application which was overtaken by events. Again, to the extent that there were costs claimed in respect of this application, I would accept that it is arguable that the judge exceeded her generous discretion in ordering that they be paid by the Claimants on an indemnity basis. During the hearing it was confirmed that, cost schedules had been submitted before this application. I assumed that there were no costs claimed in respect of it. As a result it was my preliminary view that the matter was academic and on that basis proposed to refuse permission as the issue is not of sufficient significance to justify the costs of the appeal. However, as with the costs of the application of 15th March I have been informed post hearing that there may be some costs referrable to this application. Again whilst I have very serious doubts about the proportionality of an appeal hearing, I will grant permission on this ground. I will take a view as to how any appeal should proceed in due course.

73. With regard to the Defendant's (Mr & Mrs Halborg) application of 8th April 2021, the Claimants objected to deconsolidation. The Claimants had an argument that the Defendants in the Lawyers' Claim would not axiomatically be bound by the factual findings in the Trust Claim. Mr Ashdown conceded that an order for standard costs against the Claimant could not be the subject of any challenge; however an indemnity order exceeded the boundaries of the exercise of discretion. In my judgement, there is sufficient merit in this argument to warrant permission to appeal. Again the Respondents should reflect on whether they wish to make a concession that only standard costs were properly awardable

74. As for the Defendant's application of 26th January 2021, District Judge Spinks made the order for an extension and reserved the costs to the next hearing. Her Honour Judge Bloom was entitled within the exercise of her discretion to find that the Claimant's conduct in refusing to agree to an adequate extension justified an award on the indemnity basis.

75. The application of 2nd March 2021 is the mirror image application in the Lawyers' Claim to that made on 8th April by the Defendants in the Trust Claim. I would grant permission for the same reasons as are applicable to that application. Again the Respondents in the Lawyers claim should reflect on whether they wish to make a concession that only standard costs were properly awardable

76. The 14th May 2021 application should not have been necessary and resulted from the conduct of the Claimant in failing to withdraw or discontinue the TWM applications.

The Judge was unarguably able as an exercise of her discretion to award indemnity costs.

77. As for the costs reserved on 16th February 2021 to set aside the order to pay the issue fee this was plainly hopeless and Her Honour Judge Bloom was entitled to order costs on an indemnity basis.

78. As regards the balance of the costs of the 6th July 2021, Mr Ashdown submitted that, to the extent the costs were not already covered by the various applications to which I have referred (which I would have thought would be the case) they would fall to be reconsidered once the appeal court has determined the disposal of the substantive appeals. I do not agree and believe it is necessary to consider whether or not this element of the order can be realistically and properly challenged i.e. whether there is an argument with a realistic prospect of success that the Judge could not have made the order that she did and then whether permission should be granted given the content of paragraph 4.6 and that this is an appeal against a case management order.

79. For the avoidance of doubt these costs do not appear to relate to the Applications of 12th February 2021 by the Solicitor Defendants and of the 16th February 2021 by the Barrister Defendant for a strike out which were listed for determination although the Defendants were prepared for a contested hearing. Those costs were reserved. As for the costs of the Claimant's application made on 5th February for "set aside/relief from sanctions" which was dismissed (this related to his non-attendance at the CCMC hearing on 28th January 2021). The costs are dealt with separately within the order and challenged under the fourth appeal

80. Accordingly it is difficult to see what this costs order relates to. As Mr Wood submitted the cost issues were dealt with at the end of a long day and were not the subject of the degree of close forensic analysis undertaken by Mr Ashdown. This may have meant that some individual elements did not receive the degree of close scrutiny that they have had before me. I should not grant permission for a totally academic point. I wish the parties to reflect further on what this aspect of the order could potentially cover. If the Respondents confirm that there are no costs other than covered by the separate applications to which I have referred then permission will be refused. However, if there are other costs I will allow further short (and I stress that word) written submissions given the other content of this judgment. I will then address the issue in due course.

81. The Claimant also seeks permission to challenge the interim costs orders made under CPR 44.2(8) in the sums of:

(a) £8,000 on account to Mr and Mrs Halborg in the Trust Claim.

(b) £13,000.00 in relation to the Solicitor Defendants; and

(c) £8,000.00 in relation to the Barrister Defendant.

82. I do not have all the costs schedules within the bundle. The difference between a standard assessment of costs and costs on the indemnity basis may be very limited (if any) in respect of orders on case management issues, and issues of the quantum of costs, a fortiori interim awards on account of costs, are a paradigm of the exercise of a generous discretion. The orders would have to be outside the boundaries of that discretion to be capable of realistic challenge.

83. Significantly the interim payments in respect of the lawyer claims have been paid. Mr Ashdown argued that the interim payments were excessive as much of the costs of the preparation for the hearing must have related to the strike out issue and those costs were specifically reserved (this cannot have been the case for the Defendants in the Trust action).

84. However the Judge considered the schedules and expressly stated that she knew that she should not order costs on account of the strike out issues (see paragraph 85 of her judgment). The requests made for interim payments in the Lawyers' claim were in the sums of £25,000 and £10,000 in respect of the large number of applications which had been made; which she did not accede to. Rather, as she stated, she stood back and considered matters and ordered a lesser amount. The grounds contain no detailed challenge to the schedule figures and in my judgment there can be no realistic challenge to the approach taken or the result on the basis of the cumulative effect of the individual costs orders, including those on an indemnity basis.

85. Mr Ashdown submitted that the proper size of the interim payments must necessarily depend on what the Appeal Court concludes on the substantive appeals. However, the likely difference to an interim award based on the difference between indemnity cost and standard costs on the matters upon which I have given permission would not justify the costs of an appeal particularly given the issue in the lawyers claim is now academic. As the other challenges to the costs orders have failed to gain permission it is highly unlikely that the interim costs orders made would fall outside the Judge's proper exercise of discretion even if some of the underlying individual orders were to be on a standard as opposed to an indemnity basis. Accordingly I refuse permission for the appeals against the interim orders.

86. There is no merit in the argument that there should have been a division of costs between the Claimants as the Second Claimant had only made two of the without merit applications.

87. Save to the extent that I have expressly stated permission to appeal is refused in respect of Appeal 3.

Appeal 4

88. Mr Ashdown did not proceed with an argument that the Judge was wrong not to hold that the Claimant should have proceeded by appeal. He submitted that Her Honour Judge Bloom was wrong to dismiss the application to set aside the CCMC order made in the Trust Claim (of 28th January 2021) which was made in the absence of the Claimants. The Judge dealt with the issue of the Claimant's non-attendance at some length. She also dealt with the issues at considerable length.

89. The Judge, who had considerable experience of litigation and court attendance through the pandemic (which she expressly stated that she took into account) was clearly entitled to find that a solicitors firm could arrange attendance at a hearing or childcare with three weeks' notice (as for funds it had not prevented representation on 6th and 7th July through Counsel as the Judge noted). As a CCMC is not an overly complex matter, instructions could easily have been given to an agent or Counsel in advance (bearing in mind there was a very lengthy witness statement and a skeleton argument). Having heard all the arguments the Judge stated that she was:

> "*absolutely satisfied that had he wanted to, and I say wanted to, he could have arranged it (child care) and if it was absolutely necessary he could have instructed counsel. He has got multiple other cases where it is apparent that he has also had counsel attending. Therefore, it does not ring true to me*."

90. Had the Judge known, as became apparent at the hearing before me, that the first Claimant's partner was at home on maternity leave at the material time; I think it very highly unlikely that the Judge would have spent as much time as she did considering the matter. There are no arguable grounds of challenge in respect of this aspect of the order. I refuse permission.

91. In any event even if there had been merit in the grounds, it is not of sufficient significance to justify an appeal. Matters have moved on as acknowledged at paragraph 78 of Mr Ashdown's skeleton.

Appeal 5

92. As for the costs of the application, the Claimant's success in setting aside paragraph 3 in relation to the costs budget was reflected in the twenty percent deduction. This was an assessment that was plainly within the Judge's discretion and there can be no arguable challenge to it. I refuse permission

Appeal 6

93. This appeal concerns other aspects of the 6th July 2021 order. The first aspect concerns communication by e-mail. The first Claimant, who was and remains a relatively prolific communicator by e-mail, seeks permission to challenge a case management order that there be communication by e-mail and that service could be effected by this method. The Claimants' solicitor, of which the first Claimant is the majority owner and partner, has an automatic message that refuses to accept service by e-mail, although the first Claimant uses it to send messages. The difficulties faced by the Defendants' Solicitors in contacting the Claimants' solicitor were set out in a letter of 25th January 2021. It is noteworthy that this was during the pandemic and post could be unreliable. As stated, an open channel was required. There are no arguable grounds that the Judge exceeded the generous discretion afforded to her when making this case management order. I refuse permission

94. The Claimant also seeks to challenge the orders that:

(a) the Claimants only issue County Court claims against the Defendants in either the Trust Claim or the Lawyers' Claim, in the County Court at Luton (and to notify proceedings in other courts/tribunals to Her Honour Judge Bloom); and

(b) to have the Delivery Up Claim transferred to the County Court at Luton.

95. The Judge was trying to manage litigation efficiently and these were plainly orders that she could make under her case management powers in the furtherance of the overriding objective. When pressed as to what the mischief in the order was from the Claimants perspective (given that there is now a single County Court with different hearing centres), Mr Ashdown explained that it was a desire to avoid further litigation coming before Her Honour Judge Bloom. This was not a legitimate basis upon which to base objections to the order which sought to ensure all relevant and connected disputes were before the same Judge and/or to ensure that she had an adequate oversight of what was fast becoming a war between the parties. There is no arguable ground of appeal in respect of these orders. I refuse permission.

Appellant's Notice 2

96. This notice concerns appeals against orders of Her Honour Judge Bloom made on 9th September in the Trust Claim and the Lawyers' Claim. There are two appeals within this notice and originally there were 16 pleaded grounds of appeal. Five grounds of appeal remain (2, 4, 5 and 7-8).

Appeal 7

97. By her order of 9th September 2021 in the Trust Claim Her Honour Judge Bloom refused permission in respect of an application made by the First Claimant (dated 21st August 2021) to challenge the LCRO. She also recorded the application as TWM. The Judge pointed out that, at an attended hearing on 6th July 2021, the Court was satisfied that there had been two totally without merit applications (there had been an order of Deputy District Judge Willink made on 28th January 2021 and also the Judge's own order on 6th July in relation to the application of 19th March 2021). The argument that there had only been one order is incorrect. Further the Lawyers' Claim and the Trust Claim were consolidated prior to the March applications being made; which the Court subsequently certified as totally without merit. Indeed, Mr Wood had expressly submitted that the CRO should be dealt with before deconsolidation for this very reason. The Judge was plainly entitled to find the application to be TWM and to refuse permission. She was also correct to point out that the Claimants had a right of appeal which would be the proper procedure if they wished to challenge the order. There are no arguable grounds of challenge to this order. I refuse permission.

Appeal 8

98. The order of Her Honour Judge Bloom of 9th September 2021 in the Lawyers' Claim is in respect of an application dated 8th September 2021 for discharge of the LCRO on the basis that it was being operated in an unreasonable, unacceptable and unfair manner. The Judge pointed out that the application for permission made on 21st August resulted in a speedy grant of permission on 24th August for part of the application. The application of the 8th of September set out no realistic argument for discharge and the comment made within it that the CRO unduly prejudiced "the ability of the Claimants and their solicitors to manage this litigation in a normal and proper manner" showed a lack of insight as to how abnormal the conduct of the litigation had been (and as it has continued to be) fully warranting a CRO. The reference within the application that there would shortly be further "numerous applications" of itself speaks volumes. The Judge was also fully entitled to mark the application as TWM. There are no arguable grounds of appeal against this order. I refuse permission.

Appellant's Notice 3 and 7

99. These notices relate to the GCRO.

100. Appellant's notice 3 originally contained ten pleaded grounds of appeal of which five grounds of appeal now remain (3, and 5-8). Appellant's notice 7 originally contained seven pleaded grounds of appeal of which three now remain (4-5, and 7). There is one appeal within both notices.

Appeal 9

101. The first Claimant seeks permission to appeal against the GCRO made on 14th September 2021 by Her Honour Judge Clarke and her order of 20th October 2021 dismissing an application made on 14th September 2021 to set the order aside.

102. The first ground is that the order was made without a hearing. This ground has no merit. GCRO's are often made of the Court's own motion on the papers (sometimes after referral to a Judge of the appropriate level) with the liberty to set aside provision. There are obvious reasons why such a step, rather than simply listing a hearing, is appropriate. Some litigants will not contest the order, thus saving valuable court time. In my experience some litigants are happy to use fee remission to issue unmeritorious claims but will not actually attend at a court for any hearing. Indeed, when offered an oral hearing of his application to set aside the GCRO the first Claimant made it clear by e-mail of 20th October 2021 that he preferred the matter to be determined on paper given the proposed date for the hearing. An order without a hearing also gives a litigant in person the chance to digest the reasons why Court has made an order before considering their position which results in a shorter hearing if one subsequently becomes necessary.

103. The second ground of appeal is that the TWM orders which had been made against the Claimants did not provide a proper basis for the making of the GCRO. Mr Ashdown relied on **Re Ludlam** [2009] EWHC 2067 for the proposition that a history of three unmeritorious applications was the bare minimum for establishing persistence which is a pre-requisite of an order under CPR PD 3C4.1.

104. Her Honour Judge Clarke referred to twelve orders (there was at least one other order of DDJ Willink of 28th January 2021)

(a) the seven TWM orders made by Her Honour Judge Bloom on 6th July 2021;

(b) the two TWM orders made by Her Honour Judge Bloom on 6th July 2021;

(c) the two TWM orders made by Deputy District Judge Brown on 18th February 2021 in claim G5QZ82K7 and 10th May 2021 by Deputy District Judge Fowler in claim F7QZ3D82 both brought by the First Claimant (as a landlord) against Ms. Jessica Adams; and

(d) the TWM order made by His Honour Judge Mithani QC (another Designated Civil Judge) on 2nd August 2021 in claim F7QZ3D82.

105. On any objective assessment this is a most unfortunate and worrying history of unmeritorious applications in four separate cases (I suspect all made with fee remission). That they were made by a solicitor is all the more remarkable. There are no arguable grounds that these orders did not fully justify the making of a GCRO. Further there was no requirement for Her Honour Judge Clarke to seek further information about (c) and (d) above; His Honour Judge Mithani QC having made an order in relation to the application to appeal DDJ Fowler's order. She clearly had sufficient information of unmeritorious applications in wholly separate actions.

106. Mr Ashdown also submitted that the Judge had failed to consider if the making of a GCRO was justified in all the circumstances. He referred to the second and third limbs of the test set out by Mrs Justice Stacey in **London Underground Ltd-v- Mighton** [2020] EWHC 3099 concerning the objective assessment of risk in the issuing of further abusive claims/applications and whether it was just and proportionate to make the order. Within detailed written submissions Mr Ashdown relied, inter alia, on the existence of the LCRO and submitted that it had worked and only the orders at (b) and (d) above were made after it came into effect. Further that His Honour Judge Mithani QC had not made a LCRO in either of the landlord and tenant actions (or an extended civil restraint order). He also argued that there had been a "ratcheting effect" by virtue of the orders at (b) which mean that these orders should not be taken as providing any justification for imposing a more severe CRO.

107. I have carefully considered the grounds and submissions and can see no arguable basis for challenge of the order. The existence of the LCRO did not prevent further unmeritorious applications made in relation to it. There is no reason why orders on applications challenging it could not be considered together with orders in other actions when evaluating if a GCRO was necessary in light of the risk of yet more applications. It was plainly open to the Judge to conclude that it was just and proportionate to make the order. Her Honour Judge Clarke was in a position to see across the landscape of the four claims (unlike His Honour Judge Mithani QC) and the range of TWM applications made within a period of months in 2021. Any objective assessment would result in a conclusion that a GCRO was justified and proportionate. These unmeritorious applications were leading to a huge waste of court time and expense and unless restrained more unmeritorious applications with the benefit of fee remission were likely

if not inevitable. That the Claimant was a solicitor was not a point against making the order as argued. Any Judge considering Mr Halborg's applications would be likely to consider them prolix, discursive and usually containing a range of grievances. The Claimant seems to take issue with virtually every order that he considers to be in any way adverse to his interests. Mr Ashdown says that the Claimant could not be categorised as someone who brings a claim at the drop of a hat. In respect of applications within claims (assuming that the claims have merit) the history before the Judge was otherwise and it is unarguable that the Judge was not entitled to make the order.

108. As for timeframe there can be no arguable challenge to a two-year period. The Trust Claim and Lawyers' Claim had been in progress for two years and half a year respectively; and protection for an extended period was clearly needed given the potential for them to take significantly more time to resolve. Add in the two landlord and tenant actions and other claims, I can see no basis upon which it can be argued that a shorter period was all that was properly appropriate.

109. I refuse permission in respect of the grounds of appeal against the GCRO.

Appellant's notice 4

110. The Claimant seeks permission to challenge:

(a) the order of Her Honour Judge Bloom of 4th October 2021 (dealing with the application of 15th Sept 2021); and

(b) the order of Her Honour Judge Bloom of 29th September 2021 refusing permission for various applications.

111. There are four appeals within this notice and originally there were 36 pleaded grounds of appeal. Prior to the hearing before me 16 grounds of appeal remained (4-11, 13, 17, 21, 24, 26 and 28-30). During the course of the hearing, appeal 12 was not pursued, which meant ground 26 fell away.

112. I deal first with the applications in relation to the order of 4th October. A transcript of the judgment following the hearing is in the bundle.

Appeal 10

113. The first appeal is that the Judge was wrong to dismiss the extension of time application and to order costs against the Claimant.

114. Her Honour Judge Bloom held in a judgment that:

(a) the correct form (form N245) had not been used (for an application under CPR 40.9A); and

(b) insufficient evidence had been provided to justify the grant of an extension.

115. The argument that a request for variation of a payment by instalments under CPR 40. 9A *must* be considered by a court officer as opposed to a Judge plainly had and has no merit. A Judge has wide case management powers including that under CPR 3.1(2)(m). The first Claimant's means and ability to satisfy interim costs made against him were potentially important in the context of the progression of the litigation as a whole.

116. Paragraph 40.9A(9) states that an application under (8)(a) must be in the appropriate form. Form N245 is, as the Judge stated, the form used for such an application. It requires means to be detailed i.e. income and expenditure. In my experience court staff are fastidious in ensuring this form is used and carefully considered; so a Judge should be expected to follow suit. The Judge would also doubtless have known and taken into account that a number of litigants are very reluctant to provide such information for a number of reasons**.** As for the evidence provided the first Claimant stated that he was "asset rich and cash poor" but provided no detail as to the rental income received from fourteen British and three German properties which he owned and which he stated provided "millions of pounds of equity". This was obviously important information that should have been provided as the Judge set out at paragraph 22 of her judgment. References at paragraph 46 of his statement to self-employed income fluctuating were clearly inadequate and the Judge was plainly entitled to take this view. The first Claimant also did not address why he could not borrow against the very substantial equity to cover this relatively (for him in terms of overall wealth) modest sum. There are no arguable grounds of appeal against this aspect of the order. I refuse permission

117. As for the argument that the Judge should not have ordered costs against the Claimant, he was unsuccessful and the costs order made was clearly within the Judge's wide discretion. The quantum of costs of the Solicitor Defendants and Barrister Defendant will be dealt with on assessment. Again, there are no arguable grounds. I refuse permission.

Appeal 11

118. The next appeal argues that the Judge was wrong to order costs against the Claimants in relation to the unless order applications. This is because he paid the costs before the hearing.

119. The Claimant had failed to pay or make an application for an extension in time and I see no arguable basis for the proposition that the Judge had to approach the issue on the basis that the application "would most likely have failed" had the payments not been made. As the Judge correctly set out there should be a resolute approach to those "who failed to obey costs orders when they could afford to pay them". Also the ability to seek enforcement is not a bar to seeking an unless order; rather it is a relevant factor in the exercise of discretion. She properly identified the pursuance of unmeritorious applications as a factor that weighed in favour of making an unless order (see paragraphs 56 and 57 of the Judgment) and also the lack of detailed evidence of means. She was obviously and unarguably right to find that the application may have been successful and was not bound to fail. The Judge then considered the further and disproportionate pursuance of the application to strike out. The Defendants were not successful but had achieved the objective of getting the costs paid. The Claimant sought his costs as attendance at Court was necessary. The Judge's order, a paradigm of the exercise of discretion, that the Claimant should pay 50% of the Defendants' costs in respect of the unless orders cannot be the subject of realistic challenge and there are no arguable grounds of appeal. I refuse permission.

Appeal 13

120. The Claimants seek permission to challenge the order of 29th September. The grounds argue that the Judge was wrong to refuse permission for proposed applications:

(i) to amend /stay the costs orders made on 7th July 2021 against the second claimant;

(ii) to increase the costs budget;

(iii) to apply for the claim and counterclaim to be tried separately; and

(iv) to extend the time to file witness statements.

121. In respect of permission to apply to amend/stay the costs orders made on 7th July 2021 against the Second Claimant, the Judge correctly stated that the proper approach was to appeal which the Judge stated that she understood had been done. There is no arguable ground of appeal.

122. In relation to the application to increase what had been an agreed costs budget, which had only been formally recorded as recently as the order on 7th July, no detail was given

in the application for permission. All that was stated was that permission was sought to "*increase the costs budget, particularly as regards disclosure and witness statement matters brought about by the Defendants*". Faced with the lack of any figures (save for reference to an extraordinary figure of an extra £20,000 caused by correspondence) or a more detailed rationale and also the response of the Defendants' solicitors dated 6th September 2021, although the threshold for permission under a CRO is a low one, the Judge was clearly and unarguably entitled to refuse permission on the grounds she set out in the order. Had she allowed permission without any relevant detail she would have been opening up the way for an application unrestrained as to its boundaries. In any event it is also relevant to the grant of permission to appeal that time has moved on since the refusal of permission to seek to vary the budget and the Claimant could make a further application with appropriate detail (through a draft revised form H) and up to date information. As a result the issue is not of sufficient significance to justify the costs of an appeal in any event. I refuse permission.

123. As for the application for permission to apply for the claim and counterclaim be tried separately, which gave no reasons as to why this would be appropriate, the Judge stated as follows;

> "*Permission is refused to apply for a separate trial of the claim and counterclaim; the claim has been progressing since 2019, and in the directions questionnaire, filed on 23 July 2019, the claimant did not seek a split trial; the December 2020 costs budget did not suggest the same nor was it raised in the claimant's skeleton argument prepared in January 2021 for the CCMC. Indeed, the claimant wanted this case heard with G00LU395 and never suggested a separate trial of the counterclaim. No good reasons given as to why now, two years later, the claim and counterclaim should be tried separately*."

124. Mr Nicol pointed out that the Judge's comments should be taken in the context of a very lengthy reply and defence to counterclaim i.e. very considerable thought had been given to the course of action and their interaction, particularly as regards credibility. Mr Ashdown stated that "cases develop" and the Claimants accept that they did not envisage separate trials at an earlier stage. He added that if permission were given for the application to be made then doubtless the Claimants would explain this more fully in a witness statement in support. However this last submission ignores the rationale behind the civil restraint regime. A person subject to the order has been made so because they have issued unmeritorious applications. When seeking permission to make an application it is incumbent upon them to show that the application has some prospect of success. If an application is made which provides no relevant detail, particularly one where on its face it is difficult to understand the basis upon which it is made, then a judge is obviously entitled to refuse permission. The grounds challenging this refusal of permission are unarguable. I refuse permission.

Appellant's Notice 6

125. Appellant Notice 5 was not pursued at the hearing. Accordingly, appeals 14-17 were not pursued.

Appeal 18

126. Appellant Notice 6 contains one appeal. Originally there were 10 pleaded grounds of appeal. Grounds 7-9 remain as per Mr Ashdown's skeleton argument. The Claimant seeks permission to appeal against orders of Her Honour Judge Bloom of 26th October 2021, 2nd November 2021, 11th November 2021 and 12th November 2021. Each order dismissed an application that was made pursuant to the provisions in the orders for applications to set aside to be made pursuant to CPR 3.3(5) and (6).

127. Mr Ashdown submitted that there is a point of law in issue, specifically whether there is an exception to the general requirement in place that when there is a CRO applications can only be made with permission; that exception being when the application is made pursuant to CPR3.3(5). He submits firstly that no permission is required because otherwise it would be completely impracticable as it would be highly unlikely to be the case that the permission application would be dealt with in time for the party to lodge the relevant application within the very limited timeframe afforded by the court to apply to set aside or vary the order. Secondly Mr Ashdown submitted it is wrong that barriers should be erected to a prompt application to set aside or vary. Thirdly he submits that the requirement for permission for such an application is not part of the CRO regime and it is not necessary to read the civil procedure rules in that way. Finally, he argues that where the order sets out the application can be made to apply or set aside it should be read as giving permission under the CRO to apply.

128. I have little hesitation in finding that these arguments have no realistic prospect of success. If Mr Ashdown's analysis were right it would provide a large hole in the civil restraint regime and allow an otherwise restrained litigant free rein to make unmeritorious applications every time a court made an order of its own motion. It must be the case that an application for permission to apply to vary or set aside the order made within the relevant timeframe (as either set out in the order or prescribed by the rules), will be deemed in time as the substantive application if it is granted. If necessary, which I strongly doubt, the application for permission could, as a safety net, include an application for an extension of time. Either way there is no prejudice to the restrained applicant and no reason to read and/operate the rule as Mr Ashdown suggests. It is also not arguable that any order which gives a facility to apply to set aside/vary without further comment/specific provision (such as there was in the order of 8th December 2021) should be interpreted as impliedly granting permission for an application regardless of merit. In any event the order of 27th January 2022 makes expressly clear that Her Honour Judge Bloom required permission to bring an application to set aside her orders. I refuse permission.

Recusal

129. Appellant Notice 8 concerns appeals relating to the recusal of Her Honour Judge Bloom. Given the nature and extent of the grounds a significant amount of time would be needed to properly consider the issue of permission. As I indicated during the hearing if Her Honour Judge Bloom is now no longer managing and hearing these cases (which the listing before Her Honour Judge Walden Smith would seem to imply) then the issue is wholly academic (because all orders to date have been the subject of detailed consideration within this judgment). As I stated at the outset of this judgment for obvious reasons I have not contacted the Judges to discuss the future conduct of the cases so I do not know what the thinking behind the trial listing was. Also, the content of this judgment will need to be digested by all concerned including, specifically, the Claimants as it impacts upon some of the arguments made. Given the pressure of time I indicated that I would adjourn the application for permission under this notice until matters are clarified.

130. As I have earlier stated in this judgment, appellant's notice 9 was not pursued.

Appellant's Notice 10

Appeal 20

131. This notice relates to the Order of Her Honour Judge Bloom made on 27th January 2022 in the Trust Claim and specifically:

(i) the refusal to set aside the Court's order dated 8th December 2021 (on the Claimant's application dated 19th January 2022); and

(ii) the refusal of permission for an application to be made (again on the application of 19th January 2022). The Claimant sought permission to apply for inspection of the first and second Defendants supplementary disclosure list and delivery up of stolen or wrongfully detained documents. There is one appeal in this notice (appeal 20) and the three grounds originally pleaded were all pursued at the hearing.

132. In relation to the refusal to set aside the order dated 8th December 2021, the starting point is the order of 11th October 2021 (paragraph 4) which states:

"*The sum due to defendants from the claimants, as a result of previous costs orders, is £14,178.00. That sum, together with interest from the date hereof at a rate of 8% per annum, shall be*

paid by monthly instalments of no less than £2,500.00, with the first payment to be made by 4pm on 1st November 2021, and thereafter on the first Monday of each month after January 2022, when the payment should be made on 5th January 2022. Further, within 14 days of contracts being exchanged in the sale of 18 Sylvan Street, Leicester, the claimants must use whatever sum the first claimant receives as the contract deposit to reduce the sum outstanding to the first and second defendants and/or within 14 days of the completed sale of any other of the first claimant properties, the claimants must pay, in full, the outstanding costs sum and interest."

133. This order was made after the first Claimant proposed the sum of £2.500.00 per month and also payment out of the proceeds of the sale of the property in Leicester. They were his suggestions.

134. On 29th November 2021, the first Claimant made an application for permission to make an application pursuant to CPR40.9A. The order of 8th December 2021 stated as follows;

"*1. There shall be permission for the first claimant to bring an application to vary the order of 11 October 2021 ("the October order") provided that the application has attached to it a detailed witness statement that contains a detailed statement of means containing the information in Form 245 and the precise terms of his proposals and to which they must be exhibited all documents in support showing why he was unable to meet the payment plan set out in paragraph 4 of the October order and documents in support of his proposals.*

2. The application will be heard by her Honour Judge Bloom, not a court officer, and should be listed with a time estimate of 90 minutes."

135. By the application of 19th January 2022, the first Claimant sought:

"*Permission pursuant to PD3C to make an application in terms to be drafted (and which application is intentionally not attached, so that with respect Her Honour Judge Bloom cannot purport to decide the application rather than whether permission is given to bring it)*."

The first Claimant continued:

> "*Despite the terms of the application, the order gave permission for the application to be made (and such permission having been granted is relied on in this application) but also purported:*
>
> *(i) to ignore the fact that the application to be permitted was specified to be made ONLY to a Court official pursuant to CPR rule 40.9A and NOT to HHJ Bloom…;*
>
> *(ii) to attempt to set conditions as to the making of the application permitted, notably as the timescale and accompanying evidence…;*
>
> …
>
> *Accordingly the First Claimant ... repeats the terms of the application for permission and requests in order that reflects the terms of the actual application made, now that permission has been granted for the application. This will include (by omission of any contrary specification) that the application now permitted, and to be lodged: will not have a time limit; will include such supporting evidence as the applicant decides (and not with respect what the judge feels a permission stage would be best ... ; and it will be a decision for a court official and not with respect by the judge (as with respect permission application made abundantly clear on its face).*"

136. By her order of 27th January 2022, the Judge treated the application as one to vary or set aside the order of 8th December 2021 and dismissed the application. She noted that the first Claimant had not notified the Defendants, thus issuing the application prematurely, and had not sought permission to bring it.

137. Mr Ashdown submitted that it was clear that the 19th January permission application was a freestanding/fresh application to vary the order dated 11th October 2021 and not an application to vary the January order. It was not within the scope of paragraph 3 of the December order at all and it was not open to the Court to dismiss it on that basis. He submitted that it should have been considered on its own merits and had the Court done so it would have formed the view that there was a proper and arguable basis for making the application.

138. These arguments are hopeless and there are no arguable grounds with a realistic prospects of success in relation to this aspect of the order. The Judge had made an order

granting permission on terms as she was plainly entitled to do having clearly addressed the application. The application of 19th January 2022 sought to retain the grant of permission but vary the order so that the conditions were removed. It did so in a most unattractive fashion. The Judge was perfectly entitled, through the exercise of her case management powers, to order that she would determine any application and also to require the relevant form be filled in and information and documentation provided. The application to set aside had no merit and the content was entirely misconceived.

139. The second ground of appeal in respect of this order relates to the dismissal of the application;

> "*for permission to issue an application to seek inspection (by way of copy documents and/or in person) of the purported "supplementary" disclosure documents of the first and second defendants (not yet recently provided, despite repeated requests and demands); and for orders that all and any originals and copies of stolen or wrongfully retained documents be delivered up forthwith and such documents (originals and any copies) be deleted forthwith from any purported disclosure list of the first and second defendants, together with costs*."

140. Her Honour Judge Bloom stated within the order that the application had been made prematurely and also that the notice given to the defendants did not comply with the CRO as it did not explain the nature and the grounds of the proposed application. The application sought more relief than was identified in an email of 13th January 2022.

141. It is conceded by Mr Ashdown that the appropriate notice was not given. Notification was given by email on 13th January and the application was issued six days later, when the requirement was for seven days' notice. He submitted that this made no practical difference. As for the email on 13th January to Mr and Mrs Halborg it was admitted that this was brief. It stated

> "*when will we receive these purported disclosures and the revised draft consolidated index? Again, we cannot finalise our clients' witness statements without these. If you do not supply these we will need to apply to the court without further reference to you. Take this as notice under PD 3C for permission application purposes*."

142. It was submitted that this email followed from a much longer letter of 5th January 2022. However, this letter made a number of complaints and did not specifically identify would be covered in a subsequent application.

143. Mr Ashdown submitted that the failure to give full notice should have been waived as there was a serious and genuine dispute between the parties to the Trust Claim in relation to the disclosure and inspection of documents. I see potential force in the argument that the short notice caused no real prejudice. However, I cannot see why an application was needed at all.

144. As I indicated during the hearing I could not determine from the documents before me what the "serious and genuine disputes" actually were. When considering whether permission to appeal from a case management decision should be granted the Court may take into account whether the issues are of such significance as to justify the costs of an appeal. Accordingly I pressed for further information from the parties as to the nature and extent of *any* disputes as to disclosure. I also had a mind to trying to progress the action and give any assistance that I could. I was informed that:

(a) there was no, and never had been, any difficulty as far as the Defendants were concerned with documents on their lists being inspected by the Claimant. This was confirmed in the letter of 20th January 2022; meaning the first part of the Claimants application was unnecessary;

(b) there was an issue from the Defendants' perspective as regards the Claimant's disclosure in that he had not provided relevant copies of the bank statements, the subject of a specific order. However, Mr Ashdown confirmed there was no problem with compliance with this order;

(c) the Defendants would like to see the originals of some handwritten board minutes as there is concern that these are not documents which were prepared at the time that it stated on their face; and

(d) there was an issue between the parties about an attendance note in a file ("the Bailey file") which the Defendants say is relevant to a pleaded point (as regards credibility of the first Claimant) in both the defence and the reply to defence.

145. The Defendant stated that all documents which had been left at their property had been returned ; so the second part of the application fell away. Given the above analysis and save only for the "Bailey attendance note", which formed no part of the Claimant's application there did not appear to be any disclosure issues . I asked to be copied into the relevant correspondence between the parties on the issue with a view to the making of a directions order. I have received copies of the Defendant's letter and a response

from the First Claimant, covering his view of the disclosure issues. The First Claimant's letter also addressed the procedure adopted as regards the appeals. I did not invite comments on the procedure adopted. If submissions are made in due course through Counsel I will consider them; however I will not respond to this part of the letter. I will deal with the disclosure issues in due course. Returning to the appeal issues I refuse permission to appeal as even if Mr Ashdown were correct as regards an obligation to waive the notice defect, the application was unnecessary and did not identify issues of significance still to be determined so lacked any merit.

Appellant's Notice 11

146. Appeals 21 and 23 were not pursued during the course of the hearing.

Appeal 22

147. The Claimant seeks permission to challenge the order of Her Honour Judge Bloom of 10th February 2022 setting aside the order of 11th October 2021 to pay by instalments and in its place requiring the Claimants to pay £11,473.43 (inclusive of interest) to Mr and Mrs Halborg, in default of which the first Claimant must file and serve detailed evidence of means.

148. As I have set out the first Claimant had suggested the payment instalments and the payment from the property sale as set out in the order of 11th October 2021. He then failed to comply, choosing to settle other debts/liabilities in contravention of the order. He was "*plainly in breach of the order*" as the Judge set out at paragraph 18 of her judgment. Indeed he was potentially in contempt. The first Claimant had been given permission to apply to vary and he had "*chosen not to avail himself of that opportunity*". There are no arguable grounds of challenge to this order. I refuse permission.

149. There are also no grounds with any realistic prosect of success that the Judge could not make the order she did in relation to the detailed witness statement of means. The Judge stated (and was plainly entitled to conclude) that she had not received full and frank disclosure of either Claimant's financial position. She stated at paragraph 27:

> "*I order that … (the statement and the provision of relevant details) … because the court takes the view that either Mr Halborg and the company are able to meet this debt, in which case they must pay it. If they are not able to meet it, they must properly demonstrate to this court that they are impecunious or that there is another method of enforcement that should be proceeded with before a strike out takes place. The court simply*

> *does not have the information at this point in time to be able to ascertain whether or not there are other mechanisms of execution to enforce the costs in this case.*"

150. This was unarguably an order that the Judge had the power to make under her general powers of case management (CPR3.1). Part of the rationale was so that the Court, and the Defendants, could consider alternative means of enforcement. The argument that the order should not have been made because it gave information that may lead to the Defendant seeking charging orders has no merit.

151. As for the interest applied to the sums outstanding I accept that there is an arguable point that the Judge was not entitled to award interest at the Judgment Act rate. Mr Taylor indicated that the sum involved is minimal and that the Defendants would not seek the interest. I will formally grant permission but suggest that the matter is dealt with by a consent order.

Appeal 24

152. The Claimants seek permission to appeal the costs order in respect of this hearing. At paragraph 8 of the order, the Judge ordered that the Claimants pay the Defendants' costs summarily assessed in the sum of £6,375.90.

153. Mr Ashdown restricted his argument to paragraph 39(a) of his skeleton argument. He conceded that an adverse cost order could properly have been made against the Claimants but argues that this should not have been an order for 100% of costs, rather than for no more than 75% as the Defendants had not been wholly successful in their application. He submitted that they had not obtained unless orders in relation to both disclosure and costs. This ground has no realistic prospect of success. In relation to the payment order the Defendants achieved what the first Claimant himself argued in the hearing was effectively an unless order. As regards the disclosure order, the Judge provided that the Defendants could make an application to strike out the claim in default of compliance. The Judge was clearly entitled in the exercise of her generous discretion in relation to costs to make the order which she did. Further there was relevant conduct which the Judge took into account and was fully entitled to take into account (paragraph 32):

> "*I just make the point that the combination of the application and Mr Halborg's witness statement make a bundle that runs to I think nearly 470 odd pages which is to some extent or mainly because of how Mr Halborg and Halborg Limited choose to operate in terms of defending and arguing every single point. That is their legal right, they are entitled to do so, but if they do so there are costs consequences because it increases the costs. Mr Halborg filed a very detailed witness statement only this week and the skeleton argument yesterday. They*

had to be considered by the other side and they increase the costs. That is the reality."

154. It is interesting to note that these comments are broadly applicable to the appellant's notices in this appeal.

Conclusion

155. In conclusion I grant permission in relation to the following grounds of appeal:

- Appellant's Notice 1 – Appeal 3 – ground 33(ii) only in relation to the indemnity costs for the inspection of documents in the Barrister Defendant's Defence;

- Appellant's Notice 1 – Appeal 3 – ground 33(iii) only in relation to the indemnity costs for Mr and Mrs Halborg's application dated 8th April 2021;

- Appellant's Notice 1 – Appeal 3 – ground 33(v) only in relation to the indemnity costs of the mirror image application in the Lawyers' claim dated 2nd March 2021;

- Appellant's Notice 1 – Appeal 3 – ground 33 only in relation to the indemnity costs of both the informal application of the 15th of March 2021 and the application of 5th of July 2021; and

- Appellant's Notice 11 – Appeal 22 – ground 5.

156. In relation to the costs of the hearing of 6th July 2021 the Respondents are to confirm in writing whether there are any costs other than those covered by the separate applications. If there are, I will allow further short written submissions.

157. I refuse permission in relation to all other grounds as they do not have a real prospect of success and/or are not of sufficient significance to justify the costs of an appeal

158. There is no reason why the appeals in respect of which permission has been granted should interfere with the progression of the litigation. The stays should be lifted. As I repeatedly said during the hearing it is necessary to get these claims back on track.

159. In the Trust Claim subject to a potential application for permission for expert evidence in relation to the authenticity of the Bailey attendance note (which in my provisional view is that even if the note should be disclosed, expert evidence is unlikely to be reasonably required given the issue is wholly satellite in nature and relates only to

credibility) there will be no expert evidence. What is required is that disclosure and inspection are completed (and as is apparent from the correspondence some issues remain to be determined) and also witness statements exchanged. The Defendants have already prepared their witness statements. Ordinarily I would expect that these matters could be the subject of draft directions by consent achieved with little difficulty. However as this judgment proves this is not ordinary litigation. Little if anything has progressed by agreement so far. There is even a dispute as to which neutral venue should be used for inspection of some documents (why there needs to be a neutral venue I cannot imagine). I make it clear that I expect matters to be different going forward and there to be greater co-operation between the parties to further the overriding objective. I will sit as a County Court Judge to make an appropriate direction's order as soon as is practicable. If the parties cannot agree further directions they should narrow down the issues. For the avoidance of any doubt if there is to be an application on behalf of the Claimant for permission to apply for an amendment of the approved budget given directions issues it should be made to me before the directions hearing. I intend to deal with all interim issues so this matter has a clear path through to trial.

160. As for the Lawyers' Claim, this needs to be set down for a hearing as quickly as possible. I was invited to hear the matter but do not have any availability for a two-day hearing before December 2022 at the earliest due to two forthcoming trials listed for three weeks and two months respectively and sitting in other jurisdictions from which I cannot gain release. It is my view, which I believe is shared by all parties, that the Judge hearing the trial in the Trust Claim should also hear the strike out application in the Lawyers' Claim.

161. The parties should seek to agree any consequential orders resulting from this Judgment. If agreement cannot be reached the parties should indicate the areas of dispute so that an appropriate listing can be given.