Case No: PT-2020-LDS-000028

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY TRUSTS AND PROBATE LIST (ChD)

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Date: 11th October 2022

Before:

HIS HONOUR JUDGE DAVIS-WHITE KC
(sitting as a Judge of the High Court)

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Between:

IAN BALL

Claimant

- and -

(1) MR HENRY NEIL BALL
(2) MRS JANET LILIAN BALL
(3) N & J BALL GROUP LIMITED
(4) HANDLESBANKEN PLC

Defendant

- -

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MR. DUNCAN KYNOCH (instructed by **Irwin Mitchell LLP**) appeared on behalf of the **Claimant**
MS. ELEANOR TEMPLE (instructed by **Harwood & Co.**) appeared on behalf of the **First, Second and Third Defendants**
The **Fourth Defendant** was not represented

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APPROVED JUDGMENT

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

HIS HONOUR JUDGE DAVIS-WHITE KC:

1. I have to deal with an application by the 1st to 3 defendants for relief from sanction in relation to documents that were disclosed late but were disclosed in May of this year. There were some 72 documents of which about 18 were photographs, the rest were various letters, memos, e-mail exchanges, and the like. Some of the documents were letters from Yorkshire Bank, which were handed to the solicitors by a witness who discovered them in a box of papers received from an accountant; the others were found by the second defendant during the course of preparing and finalising her witness statement, she undertook a search of boxes kept in her loft and the other documents then came to light.

2. The claimant does not resist the grant of relief from sanctions, and therefore has no relevant submissions to make. I apply the principles set out in *Denton v TH White Limited* [2014] EWCA Civ 906; [2014] 1 WLR 3296.

3. As regards the seriousness and significance of the breach, it clearly was serious and significant. This is accepted.

4. There is an explanation put forward which is understandable, at least to some extent; but the most important consideration now is the third limb of the *Denton* test, the consideration of all the circumstances of the case. These do not show a widespread failure to disclose. There is no suggestion that disclosure did not happen as quickly as could be once the matter had come to light and, most importantly of all, the disclosure being in May for a trial beginning in October, and at a stage where witness statements had yet to be exchanged, it seems to me that the case of relief from sanctions is obvious and accordingly I grant relief from sanctions and extend the time for compliance with the order for disclosure in respect of such documents.

(After further submissions)

HIS HONOUR JUDGE DAVIS-WHITE KC:

5. It is now 16.40 at a resumed PTR that commenced at 10 o'clock this morning with a time estimate of half a day. There was only a very short break of about 20 minutes in total over lunch. The hearing bundle comprised over 2,800 pages.

6. This hearing had to be fixed at short notice, and at inconvenience to the court and listing of other cases, because, at the time of the PTR at which the matter was to be raised (28 September 2022), there had only been service of the witness statements for trial shortly before that hearing and no time for the parties or the court to consider their significance. This was likely to be of importance in considering all the circumstances of the case under the third limb of the *Denton* test (*Denton v TH White Limited* [2014] EWCA Civ 906; [2014] 1 WLR 3296) in relation to an application for relief from sanctions as a result of late service of witness statements.

7. The main applications before me are, first of all, relief from sanctions in relation to disclosure of documents by the defendants. Those documents were disclosed in May. I have already given a short judgment, and given relief from sanctions in that respect.

8. The next applications are the claimant's applications. They are applications for, first of all, extensions of time and/or relief from sanctions regarding a failure to serve witness statements in this case until the end of September. Secondly, for relief from sanctions regarding a failure to serve a further list of documents in respect of documents coming to light late in the day. The majority of these documents came to light in June but were not disclosed until the end of September. Thirdly and finally, relief from the sanctions in the form that I imposed on 28 September 2022, requiring a trial bundle to be prepared and lodged by 4 p.m. yesterday, Monday 10th October. It is now Tuesday 11th October. It is proposed that the trial bundle will be ready by close of play on Thursday 13th October.

9. For reasons that will become clear, I am totally unsatisfied that the new proposed deadline for the trial bundle will be met. In that respect, I refer to the continued promises by the claimant to the court and to the other party regarding the time at which witness statements for the claimant would be ready. There were a series of promises that they would be ready in seven days or 14 days, over an extended period from about May onwards. I asked the parties to seek to agree a trial timetable by the 5th, and to use their best endeavours to do so. In fact, neither counsel was able to do very much until they had a bundle. Mr. Kynoch, for the claimant, sent a draft timetable to Ms. Temple, counsel for the 1st to 3rd defendants, on Sunday 9 October, and I eventually got, with some pushing, a draft timetable on Monday 10 October. The pleaded need of Counsel for bundles in this respect puts into context the claimant's lawyers' suggestion that counsel can start preparing for trial without proper trial bundles and that this will not impede or unduly lengthen such preparation.

10. The proceedings as against the fourth defendant are compromised and I therefore refer to the 1st to 3rd defendants as the "defendants" unless the context otherwise requires.

11. Also before me is an application by the defendants to strike out the particulars of claim, based largely on the matters the subject of the Claimant's applications regarding late service of witness statements and late disclosure.

12. The circumstances in which these matters come to be heard by me on 11 October are, as I have indicated, that a PTR on 28 September had to be adjourned because the relevant evidence was not in a satisfactory state before the court. The unsatisfactory nature of the position was not only that I did not have the trial witness statements in relation to which relief from sanctions was sought (and the defednants had not had time to consider then in any meaningful way either) but that the claimant's evidence was sorely lacking in detail.

13. At that stage, I gave a chance for the action to proceed to trial, and set down a number of detailed directions, nearly all of which were backed by sanctions. I made it very clear that if the directions were not met then the trial would be in jeopardy and that was why the unless orders were made by me. Those directions were given on the basis that this was the last chance saloon, if I can put it like that.

14. The context to the applications now before me is that the trial of the Part 7 claim and counterclaim is listed for a 15 day trial (split over various days) and commencing on 31 October 2022. The dates set were 31 October 2022 to 4 November, 10-11 November, 14-18 November and 21-23 November. At the Business and Property Courts in Leeds it is not possible to run a "rolling list" so that all dates given are fixtures and if a case

overruns it is necessary to re-fix new dates which may be some weeks or months later. In this case, the option of starting the trial later but then running it continuously into succeeding days not currently reserved for this trial is not available.

The claims in this case

15. The Part 7 claim in this case goes back over many years and involves, by way of broad summary, claims asserting:

    (1) The establishment of a partnership in 1993 between the claimant ("Ian") and his father, the first defendant ("Neil) and the claimant's uncle and Ian's brother "Geoff", regarding an industrial estate known as Ash Holt Industrial Estate, Finningley, Doncaster, (Ash Holt"). Ash Holt was acquired by Neil, his wife ("Janet") the second defendant, and Neil's brother, Geoff, now deceased. Geoff's interest in the partnership is said to have been transferred to Janet upon the transfer of Geoff's interest in the freehold of Ash Holt to her upon his death in December 1995. Ash Holt has since been transferred to the third defendant. Ian asserts that this transfer was effected to defeat his claim. Any partnership is strenuously denied by the defendants.

    (2) A claim in proprietary estoppel based on promises to Ian from 1992 onwards until 2015 that Ash Holt would be left to him in the wills of Janet and Neil. Ian says that since 1992 to the present day, and in reliance on such promises, he has committed many hours of labour and substantial funds to investing in and improving Ash Holt. Again, this case is strenuously denied by the defendants.

    (3) A claim to beneficial ownership of and/or undue influence and/or misrepresentations of his father causing him to entrust monies to his father in connection with the purchase of four properties in Doncaster between 1995 and 1997. Again, this case is denied.

16. The relief sought includes orders for dissolution and winding up of the partnership, declaratory relief and/or orders for transfer of ownership of Ash Holt and the four Doncaster Properties to Ian and declaratory relief that the interests of Ian take priority to subsequent charges in favour of the fourth defendant. Some 23 trial witness statements are relied upon by the claimant, and some 13 by the 1st to 3rd defendants (the position having been compromised as regards the 4th defendant).

The trial bundle

17. The breach of the direction about the trial bundle is, perhaps, the most serious immediate matter in that it crucially affects the trial going ahead. On 28 September 2022, I gave directions, with sanctions, laying down a procedure for agreeing trial bundle indices and for service of the trial bundle. The latter direction was that the main trial bundle had to be served by 4pm on Monday 10 October 2022 and that in default the claim was struck out. This was prompted by two considerations: first, the imminence of the trial. The date was set on the basis that this was the last possible date for service of a trial bundle allowing for enough time for trial preparation so that the trial could go ahead efficiently and fairly. There was simply no room for slippage. Secondly, there had been a series of repeated failures by the claimant to meet deadlines either imposed by the court or by agreement with the other parties or which he had

promised to meet. Indeed, the skeleton argument of counsel for the claimants dated 10 October 2022 and sent to me at 13:42 that day itself asserted in paragraph 7:

> *"There is no reason why the trial cannot proceed. C's Counsel indicated at the 28/9/22 PTR that she would require the trial bundle by 10/10/22 (today) in order to properly prepare for trial. She will have the trial bundle by 4pm on 10/10/22, as ordered. The Ds therefore have no reason not to properly prepare for trial."*

18. However, this paragraph does not reveal the full position. Paragraph 3 of the skeleton argument also said:

> *"It is understood that the trial bundle will be served today in time. Therefore, the case is ready for trial, subject to skeletons being prepared by Counsel. The only remaining issue is that it is understood that the annotated cross-referencing in the trial bundle has not been completed - in part because the Ds' solicitor has not (as required by the Chancery Guide) provided the Ds' witnesses statements with cross-referencing. The point about the 10/10/22 deadline for the trial bundle was so that Counsel can prepare their skeletons, as Counsel for the Ds pointed out at the 29/8/22 hearing. With the service of the trial bundle today Counsel should be in a position to prepare for the trial. It is anticipated that, by 14/10/22, a fully cross-referenced bundle can be provided to Counsel, assuming there is co-operation between solicitors – and if an order is needed to substitute the trial bundle for one with cross references then that is sought.*"

19. The allegation that the defendants were in part to blame for the non- preparation of a proper trial bundle was subsequently withdrawn. In fact, the defendants had not been provided with the draft bundles to enable them to do that.

20. By email sent at 16:11 on 10 October 2022, I received an application notice and draft order from the claimant's solicitors seeking relief from sanction and an extension of time to serve properly cross- referenced and indexed trial bundles by 4pm on 13 October 2022.

21. As the evidence in support was fairly brief and set out in the application notice, it is quickest and easiest if I set it out in full (so far as relevant):

> "2. *…..I and my team at Irwin Mitchell have been hard at work since the last hearing on 28 September 2022 ("Hearing") to comply with the terms of the 28 September 2022 order ("Order"). I can confirm that, with the exception of the trial bundle, I have served all of the documents on the Defendants as required by the Order.*
> *3. Shortly after the Hearing I assembled a team of junior lawyers to assist me in complying with the deadlines in the Order. I was also assisted by a senior lawyer (my supervisor) who assisted me with some of the court applications required by the Order. I had anticipated that the Claimant would be in a position to comply with all of the deadlines before 4pm on 10 October 2022.*

4. By 7 October 2022 I had received back 4 of the 6 trial bundles marked "A", "B", "C" and "D" (comprising the relevant court documents, the parties' witness statements and the relevant correspondence). I was expecting to receive the remaining two bundles by 9pm on 7 October 2022. These bundles contain the key financial documents in the case (one bundle marked "E") and the other relevant documents (another bundle, marked "F"). Our document production team (a team of support staff trained in the production of court bundles) was working on the two remaining bundles. Unfortunately due to work pressures on that team and them misreading my instructions the bundles were not prepared by 9pm as I had anticipated, and I was informed that neither bundle was ready. Neither the document production team nor any of our junior lawyers work over the weekend.
5. As a result, I have been forced to prepare the two remaining bundles myself. I have worked long hours over the weekend on the bundles. I have experienced some IT problems in that my Adobe DC application has not been working correctly, and it has taken a lot longer to create the bundle as a result. The application normally allows me to turn any number of PDFs into a bundle, however for some reason I had to collate around 15 to 20 documents at a time, and this has made the process take a lot longer.
6. Notwithstanding these issues I have now completed the bundles except for the cross-referencing and some of the bookmarks, hyperlinks and (with respect to bundle F only) the page numbering the file index.
7. Today I served the trial bundles on the Defendants via 7WeTransfer links. I am informed by the Defendants' solicitor that he has received all of the documents. While the bundles do still need cross-referencing (and the other points mentioned above), Counsel are now in a position to prepare for trial and start drafting their skeleton arguments. I suggest that the Claimant is directed to serve an updated bundle with cross-referencing by 13 October 2022.
8. I anticipate that it will take 2-3 days to cross-reference the trial bundles. I had hoped to do this over the weekend, and had I received the trial bundles on Friday I would most likely have been able to do this.
9. I have asked the Defendants to cross-reference bundle C (the Defendants' witness statements) because the Chancery Guide (Appendix X, para. 14.(b)) provides that it is "<u>the responsibility of the party that served the statement of case or witness statement to provide a cross-referenced copy for this purpose as part of its co-operation in the preparation of the hearing bundles</u>". Mr Addlestone has confirmed to me today that he will arrange for this to be done."

22. The position as at about 15:00 on 10 October as confirmed by email from the claimant's solicitors to the defendants' solicitors at about that time was as follows:

"We refer to paragraph 17 of the Order of HHJ Davis-White KC dated 28 September 2022

Please see below by way of service two WeTransfer links to File F of the Trial Bundle. We have had to s document in two for the purpose of transmitting is it you today, you can easily reassemble the document software on your end.
Part 1: [Link]
Part 2: [Link]

Please confirm receipt of File F. You have now been served with the entire trial bundle.

To confirm, all of the trial bundles will need to be cross-referenced. We will deal with Files A and Band ye with File C. With respect to the bundles more generally:

1. *File D is in its final form.*
2. *Save for cross referencing Files A, B, C are in their final form.*
3. *File E needs hyperlinks and bookmarks adding.*
4. *File F needs page numbers for the index, hyperlinks and bookmarks adding.*
5. *The audio and videos files which are referred to in the index of File F have not been imbedded wit bundle, and will be sent as separate files to the court when we file the court's copy of the bundle. ' previously said that your clients do not object to the recordings so long as the full recordings will b the court. Please be advised that we are instructed that the files we have served on you previously copies of the recordings that our client possesses - there are no longer versions (at least, not with possession). He has previously asked the authors of the recordings (where he is not the author) fc*

but the ones we have sent you are all that he has."

23. As can be seen, it has been suggested that counsel can start preparing from the trial bundles put forward, which bundles are in certain respects totally inadequate. It is implicitly suggested that the absence of properly prepared bundles will not unduly eat into the preparation time that had been allowed for. The idea that it will take two to three days to cross reference the contemporaneous documents to the witness statements but that in the meantime Counsel could prepare for trial (which involved a lot more than simply preparing a skeleton argument) without a full and properly indexed and cross referenced bundle and still have ample time to do so was a ridiculous suggestion, and should never have been seriously put forward. In those circumstances, where I had already effectively made the trial timetable as tight as could be, there was and is no room for slack.

24. I deal in more detail with the application of the *Denton* principles when dealing with the other applications for relief from sanctions but have well in mind the relevant law and cases that I was referred to. Looking at the *Denton* principles, the breach in context is serious and significant. As regards the reasons for it, the claimant's solicitor explains there has been miscommunication, confusion, people have not been available to work at the weekend, other than himself, and "there you are". Those reasons may to a limited extent be good reasons, but they demonstrate that it is not appropriate and indeed dangerous to leave matters to the last minute and expect everything to run smoothly at the very last minute. Indeed, the optimistic assumption that the bundles would be ready by Monday, with the benefit of hindsight, was clearly a very optimistic one leaving no slack for things to go wrong. Things have gone wrong. The real reason for all of this is the failure of the claimant to have served the witness statements and given the recent disclosure on time in the very, very first place. That and the associated resulting applications have hampered and distracted the parties from proper trial preparation. The position has not been assisted by the late service of evidence on the applications and the perceived need to reply to accusations or submissions that, at least in some

cases, were clearly mistaken (such as the attribution of some fault for non-preparation of bundles to the defendants and seeking to shift the focus of non-compliance from the claimant to the defendants through the course of the proceedings to date). That background is a major reason why I imposed a sanction regarding trial bundles. Furthermore, it is difficult to see how the bundles would have been ready on the basis of the timetable for preparation set out by the claimant's solicitor. The key bundles to which witness statements would need to be cross referenced would only seem to have become available (if things had gone to plan) by 9pm on Friday.

25. There is no evidence of prior agreement that the defendant's solicitors would cross reference the witness statements for the defendant over the weekend. In this event, it seems to me unlikely that they would necessarily have been ready by 4pm on Monday. I do however note that Mr Addlestone of the defendant's solicitors explains in his 13th witness statement (itself served the evening before this hearing and largely to correct the assertion, now withdrawn, that the defendants were to in part to blame for the position) as follows:

> *"7. On Friday 07 October 2022 an email was sent to my office saying that the Claimant's solicitors expected "to have the paginated trial bundles sometime this evening. I will send them to you once ready."*
> *8. I was out of the office but the content of that email was passed on to me. In my absence my assistant arranged for a team to be ready this morning to cross-reference the Defendants' witness statements. Furthermore, I came into the office on Sunday evening to start this process. When I arrived at the office the paginated bundle had not arrived.*
> *9. In the morning a team of 3 people was assembled but there was still no sign of the paginated bundle and I sent an email, a copy of which is at page 1 to the Claimant's solicitors. I was unable to cross reference the documents without a completed paginated trial bundle and index.*
> *10. I was then telephoned by Mr Walters who explained there was a problem with his IT department and he had not been able to provide a paginated bundle on Friday. He said he was going to send me a bundle with all the documents and make an application to Court suggesting an amended timetable to complete the bundles. He told me he had not cross-referenced his witness statements and we would not be able to do so by the 4.00pm deadline."*

26. There is in no suggestion by the solicitor for the claimant that the cross referencing of witness statements (and other documents) could have occurred earlier, that is before preparation of the bundles that he was expecting on the Friday night. If it could, there is no reason why that could not have been done without the existence and availability of the "E" and "F" Bundles. Indeed, the claimant's solicitors' evidence proceeds on the basis that cross referencing by them was not possible until the "E" and "F" bundles were completed.

27. As far as I am concerned, looking at the matter in all the circumstances, it is not appropriate to lift the sanction that I imposed and, accordingly, the claim is struck out. Quite simply, the trial date is now in jeopardy and indeed, in my assessment, the trial cannot now fairly proceed without an adjournment. Although this result flows from the failure to prepare the trial bundles this is in reality a knock-on effect of the delay in serving witness statements and to give disclosure of documents that came to light late. I turn to the service of witness statements.

The witness statements

28. In all the circumstances, I have been addressed at great length by both parties, understandably, in relation to the question of the timetabling, when witness statements were ready, why they were not filed on time and whether it makes a difference.

29. So far as the *Denton* test is concerned, it is accepted that that test applies. Originally, it was suggested that each of the applications was made within time so that, it was said, the *Denton* principles did not apply. However, of the applications for an extension, 5 of them were on any view out of time as the first application had not been granted. Further, by the time that I was considering the applications the trial was imminent. I was referred to a number of authorities, but most relevantly in this context to *Jalla v Shell International Trading Shipping* [2021] EWHC 2, 118 TTC and *Various Airfinancing Leasing Companies v Saudi Arabian Airlines Group Corp*, a decision of His Honour Judge Pelling QC, sitting as a judge of the High Court [2021] EWHC 3509 (Comm). Although each case turns on its precise facts, I do note that in the latter case, although an extension of time to serve witness statements was granted it was only just granted. Further, that was in circumstances where service would still be about 3 months prior to the trial date rather than the situation here where service took place about a month before the start of the trial.

30. As regards *Jalla,* there was in that case no relevant sanction imposed, either by court order or by court rule regarding the requirement to serve what was described as a "Date of Damage Pleading". In this case there is a sanction both under CPR r32.10 and as repeated in the relevant original order itself. However, even if no sanction applied automatically because the application was in time, that does not seem to me to mean that the useful analytical approach laid down in *Denton* is to be ignored. Even in *Jalla,* the court still considered in the particular circumstances that the Denton principles were relevant by analogy. By the time of this resumed hearing Mr Kynoch accepted that the *Denton* principles should be applied by me.

31. Mr Kynoch, for the claimant, has explained that if relief from sanctions is not granted in relation to the witness statements then his client would be unable to proceed with his claim. In reality, therefore a refusal of relief amounts to the same as a striking out of the claim unless the trial is adjourned.

32. As regards this, I accept that this is a weighty factor in the balance when considering the third limb of the *Denton* test. However, as Coulson LJ said in the *Jalla* case at paragraph 29:

> "The fact that a refusal to extend time would in practice mean the end of the claim is a factor to be weighed in the balance, but it cannot of itself warrant the grant of relief: see *Chartwell Estate Agents Ltd v Fergies Properties SA* [2014] 3 Costs LR 588 (CA). The need to comply with court orders was there said to be "of paramount importance". That approach ties in with the long-standing principle that a claimant's entitlement to sue a defendant is not an absolute right, and does not permit that claimant to fail to comply with court orders, or delay and disrupt the administration of justice: see *Leizert and Anr v Kent Structural Engineering Ltd* [2002] EWHC 942 (QB)."

33. I would add that one sees similar principles applying when the question is whether late amendments to pleadings should be permitted (see e.g. *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm)). In short, the considerations of justice which are to be applied under the overriding objective are likely to be similar whether the application is for late amendment (with no precise sanction) or to allow witness statements in late (where there is a sanction).

34. I turn to outline the relevant facts.

35. The claim form was issued on 26 February 2020. By order dated 4 August 2020, the first CCMC was set for 14 September 2020. By further consent order dated 9 August 2020, the CCMC on 14 September 2020 was vacated and ordered to be relisted after 10 December 2020. A date of 15 December 2020 was subsequently set. On 9 September 2020, the claimant's application for a stay was refused. By order dated 11 December 2020, the CCMC was adjourned by consent to be listed on the first available date after 31 January 2021. On 17 December 2020, the CCMC was re-listed for hearing on 5 March 2021.

36. By order sealed on 12 March 2021, the application of the fourth defendant to be joined as a defendant was granted by consent and, also by consent, various consequential directions were made. One of the agreed directions was that the original parties were to give extended disclosure by 4pm on 16 June 2021 by reference to an agreed Disclosure Review Document. The balance of the CCMC issues were adjourned to be dealt with at a hearing on 26 July 2021.

37. On 26 July 2021, additional extended disclosure by the claimant and 1st to 3rd defendants was ordered to take place by 24 September 2021. The court order also states that the parties were reminded of their duties as to disclosure, including the preservation of documents and that of the then amended disclosure review document dated 2 August 2021, the claimant and the 1st to 3rd defendants had already provided extended disclosure on the issues numbered 1 to 27 in accordance with the earlier order of 5 March 2021. As regards evidence of fact, witness statements and all notices relating to evidence, were to be served by 4 pm on 17 November 2021. The order recited and incorporated the sanction contained within CPR 32.10 that:

> "*oral evidence will not be permitted at trial from a witness who statement has not been served in accordance with this order or has been served late, except with permission from the court*".

The witness statements to be served, as the order reminded the parties, had to comply with PD 57 AC, CPR 32 and PD 32 paragraphs 17-20.

38. The proceedings against the fourth defendant were compromised by order in Tomlin form dated 2 September 2021.

39. The trial was listed to commence on 31 October 2022. A hearing notice to this effect is dated 29 December 2021.

40. An extension of time for the service of witness statements from 17 November 2021 to 14 January 2022 was then agreed in writing. As explained by the witness statement

dated 22 September 2022 of Mr Allen, solicitor with conduct of the case on behalf of the defendants:

> "*9.1 On 15 November 2021 the Claimant requested an extension of time to exchange witness statements to 21 January 2022. The reason given was "The number of statements that have been put forward to support our client (which may be in excess of 12 statements previous quoted) and the amount of time required for our client's own statement.". The Defendants agreed to an extension to 14 January 2022.*"

41. In the bundle before me there is an application notice of the claimant dated 14 December 2021 seeking a further extension for the serving of witness statements from 14 January 2022 to 31 March 2022. The reasons given are as follows:

> "The Claimant had hoped to be able to meet the current deadline of 14 January 2022 however this has not proved possible in the circumstances. This is due to the following reasons:-
>
> a. The number of witnesses who need to be interviewed and for whom statements need to be prepared. The Claimant has made good progress with this, but due to the number of people wishing to support the Claimant (and who have relevant evidence in relation to the disputed facts in this case) it is taking time to complete this exercise. The Claimant may serve more than the 12 witness statements planned for, although some of them will be fairly short and deal with quite specific factual issues.
>
> b. The Claimant is experiencing difficulties in making available sufficient time to be interviewed for his statement and for him to approve the statement due to his many business commitments. The Claimant is currently subject to an extremely high workload, with him, his wife, children and contractors working 6 to 7 days a week at present. We are instructed that the Claimant expects this busy period to last until around March 2022. However notwithstanding this he is keen to progress this case, and believes that by spreading out the further work between now and 31 March 2022 he will be able to meet this new deadline."

42. I have not found an order covering this extension in the bundle (it may be that I have overlooked it) but the extension appears to have been agreed and/or ordered because the next application was for an extension from 14 January 2022. As I understand it from Mr Allen's witness statement of 22 September 2022, extensions were agreed between the parties first to 11 February 2022 and then to 31 March 2022.

43. There then followed four consent orders further extending the time for service of witness statements:

Date of order	**Extension to**
08.02.22	31.03.22
29.04.22	22.05.22

23.05.22	27.05.22
16.06.22	24.06.22

44. The application to extend time to 4pm on 24 June was made by application notice dated 26 May 2022. The supporting evidence was a witness statement of Mr Thomas Freeman dated 26 May 2022. It explained that an extension of time was needed to deal with a number of matters.

45. First, witness statements of those where the claimant's solicitors were waiting for the witnesses to approve, sign and return their statements. The witnesses in question were:

(1) Mr Andrew Fussey: the statement was sent to him on 11 May but despite being chased by phone and email he had not returned it.

(2) Ms Joanne Clark and Mr Robert Burden, whose statements were sent to them on 11 May and 13 May but, despite chasing, had not been returned.

(3) Ms Creighton, whose statement had been sent on 11 May 2022 but not returned because she was away and does not return until next week.

(4) Mr Latham who it had only been possible for the solicitors to speak to and interview recently and whose statement had been sent out o 20 May 2022 but not returned.

(5) Mr Khan, whose statement had been sent to him on 11 May 2022 but which had not been returned.

46. Secondly, there were witnesses whom I had not yet been possible to contact, Mr Gulzaar and Mr Robinson.

47. Finally, Mr Walter the solicitor with conduct of the case and who was then away, was going to make a witness statement about admissions made to him by the first defendant. It was not explained why such witness statement had not yet been made nor why it was appropriate for a solicitor acting for the claimant to give evidence at trial.

48. No point was made about the non-completion of witness statements by the claimant and his wife.

49. A further six applications were made to further extend time and these were all before me, no substantive orders having been made upon them. The applications in question were as follows:

Application	**Extension sought to**	**Reasons given**
24.06.22	15.07.22	1. Mr Morgan: statement prepared and sent but final signed copy awaited. 2. Ms Clark and Mr Burden: signed statements awaited 3. Mr Gulzaar: spoken to on 20.06 and 23.06 and interview planned to be completed on 24.06 4. Mr Robinson: no contact possible yet. 5. Ian and Jayne Ball: not completed because of recent disclosure by the defednants and also because the claimant recently discovered further disclosure which may be relevant and will be disclosed to the defendants "in due course".
15.07.22	05.08.22	1. "Several witnesses" have not approved or returned their statements 2. A "small number" of witness statements require more work before they can be signed.
04.08.22	12.08.22	Solicitor "confident" claimant will be in a position to exchange by 12 August but: 1. "small number" of witnesses have still to return their signed statements; 2. Further disclosure has come to light which needs consideration and potentially amendments to the claimant's witness statements
11.08.22	26.08.22	1. Mr Burden and Mr Gulzaar had bot returned their witness statements which are in "an advanced stage of preparation" (i.e. not finalised). Mr Gulzaar has to comment on his draft. Mr Burden had a heart attack on 8 August whilst in Romania but expects to be able to speak about his WS in week commencing 15 August. Witness summaries will be put in for Gulzar and/or Burden if necessary.

Application	**Extension sought to**	**Reasons given**
		2. C and Cs wife WS not completed due to "a series of IT failures" experienced by the solicitor during the week which included part of a WS which needed to be re-drafted. They should be completed "shortly".
26.08.22	02.09.22	Defs have refused to exchange until extension applications are determined. A further week for discussions requested.
02.09.22	27.09.22	C was ready to exchange by 26.08.22. C then decided to amend his Ws AND ws UPDATED TO 31.08.22.

50. The first application of 24.06.22 was originally listed for hearing before a district judge on 17 August 2022. That hearing was vacated by order of 3 August 2022, the court determining that there was insufficient time for the hearing to proceed. I am not clear whether the application of July was also listed for then but in any event, the next day a further application for an extension was listed. I assume that the matters then came to be listed at the PTR because there was not time to hear the ever-multiplying applications that were issued prior to that date. The claimant could have course have served witness statements to hand and relied upon seeking relief from sanction and/or an extension in relation to others as they were available and/or applied in the application's list before a circuit judge sitting as a Judge of the High Court given the urgency of the situation.

51. By application notice dated 22 September 2022, the defendants applied for an order striking out the claimant's particulars of claim pursuant to CPR r3.4(2)(c). By application notice of the same date the claimant applied (among other things) for relief from sanctions and/or an extension of time to permit reliance on witness statements.

52. Witness statements were subsequently exchanged on 26 September 2022, just prior to the PTR, without prejudice to the outcome of the applications. As explained to me by Ms Temple, Counsel for the Defendants, the delay in agreement on the Defendants' side was in effect caused by intervention of non-overlapping (or at least not completely overlapping) holidays of the key persons needed to advise and take a decision. I accept that explanation by her.

53. The dates of the witness statements in relation to which the claimant seeks relief from sanctions and an extension of time to serve are as follows:

Date signed	**Date ready to exchange**	**Witness and comments of C's sol**
21.06.22	30.06.22	Fussey Returned signed but undated 21.06.22.
10.08.22	10.08.22	Jefferson C first asked for W to be interviewed on 04.04.22. Sol thereafter on paternity leave. W 1st interviewed 06.06.22. Witness has dyslexia and dyspraxia which delayed matters. WS signed 10.08.22
23.06.22	23.06.22	Thompson
14.06.22	22.06.22	Gaunt
13.07.22	13.07.22	Bristowe Draft sent to W on 11.05.22. Amends received 29.06.22. Returned same day. Signed statement received 13.07.22.
28.07.22		Latham Draft WS sent to W on 20.05. W requested amendments. WS re-sent 15.07.22. Signed WS received 28.07.22
21.06.22	22.06.22	Glover
10.06.22	22.06.22	Crichton
31.08.22	31.08.22	Ian Delay from earlier in the proceedings (work pressures) Dec 21 to April 2022; ill health and on 29.03.22 death of mother
24.06.22	08.08.22	Walters (solicitor)

Date signed	**Date ready to exchange**	**Witness and comments of C's sol**
		WS drafted but not signed until 08.08 as other statements were not ready until then
26.08.22		Jayne Ball See Ian above
03.08.22		Clarke Draft WS sent on 11.05.22. Amended statements sent. Signed statement only received 03.08.22.
26.08.22		Burden Draft WS sent to w on 18.05.22. Amended version sent to W 08.07.22. W suffered heart attack 08.08.22. W seeks further amends on 22.08. Signed version received 26.08.22.
24.06.22		Khan W interviewed 22., 23 and 30.06.22. Draft WS sent 29.07.22. 25.08.22 updated statement and sent to W. Received by sols on 26.08 (after 4pm).
25.07.22		Middlebrook Draft sent to W on 22.06. Amended WS sent to w ON 08.07.22. Signed version received 25.07.22
01.07.22		Davies WS sent to W on 11.05.22. Amended version sent to W 13.05. Signed version received 01.07.22
03.08.22		Burden Draft sent to W on 1105.232. Amended version requested. Received back on 03.08.22.

Date signed	Date ready to exchange	Witness and comments of C's sol
21.06.22	30.06.22	Hollender Draft WS sent to W on 11.05.22. Amends requested. Amended version sent to W on 10.06.22. Signed version received 30.06.22.
05.08.22		Matthews 23.05.22 C asks sol to interview W. Interview on 14.06 and draft ws sent that day to W. Some amends requested Csl's advice requested. Final was sent out on 01.08.22. Final version received back signed on 05.08.22.

54. I should add that an application was made to court serve a witness summary in respect of a Mr Fulwood given his apparent change of mind in being prepared to make a witness statement. The relevant summary was served pursuant to the court order on 26 August 2022 and I need consider it no further.

55. Looking at the *Denton* requirements as regards seriousness and the significant nature of the breach, it is accepted by the claimant (through counsel) that indeed the breach is serious and substantial. The original order of the court was that witness statements should be served by November 2021. There were then agreed extensions up until I think May. The matter went before the court on an application which gave a short further extension into June. That was not complied with. An application was made before expiry of the relevant time and, thereafter, as I have indicated, when the original time asked for but not ordered was near to expiry, a further application was issued. In all, as I have said, I think there were six applications in all. That in itself has disrupted the court's process, it has resulted in six applications that could not be listed, because as soon as one is got ready another one would come in and everything was therefore effectively left until right at the end, just before the trial.

56. So far as explanations of the delay are given, they are not in my judgment satisfactory. In some cases potential witnesses have not been identified until far too late. The evidence of why more could not have been done to chase witnesses is unsatisfactory and incomplete. The evidence as to the leisurely approach of the claimant and his wife to their evidence is unsatisfactory. Further, the explanations given to the court over time have been far from complete and satisfactory. The inference that I draw is that the culture was one where it was considered extensions of time would be granted as long as the evidence was in before the trial itself though, as I explain, not necessarily in time for the evidence properly to be considered against for example, the requirements of

what is now PD 57AC nor indeed for the timely preparation of trial bundles and the like nor for disputed matters about any extension to be dealt with by the court.

57. So far as all the circumstances are concerned, there is clear prejudice to the claimant. This is because the first defendant has undergone, unfortunately, a medical change which makes it highly likely that he cannot now deal effectively with witness statements from the other side. This may have been by making a supplemental witness statement, that could have been relied upon as hearsay had his health decline ot the point where he could not give oral evidence at the trial, and even if not able to give evidence at trial would have been able to have give instructions as to the factual position. It is clear from the witness evidence that I have seen, first of all, that the claimant was aware of the first defendant's relevant potential decline of health on an ongoing basis, this being a risk identified some considerable time ago and, in particular, that his position was of concern, and potentially deteriorating. Secondly, it is clear to me from the medical evidence that it has been a downward path. I appointed a litigation friend for the first defendant last Friday on the basis of the current medical evidence. As pointed out by Ms Temple, in his report dated 4 October 2022, Dr Green says "*Indications are that there has been a significant deterioration in Mr Ball's mental state and cognitive abilities since I previously interviewed him in April 2022*". I accept that inability to conduct proceedings does not necessarily equate to inability to give or react to factual evidence but on the facts in this case there is veery likelihood of that. I have considered all the medical evidence carefully and I reject the claimant's submission that there is no evidence that the decline in mental health occurred during the period of the continued failure to serve witness statements after June 2022.

58. What seems fairly clear is that there is a very real prospect, and if I was forced to decide it on the evidence as it stands before me I would decide that in fact it was the case, that had the witness statements come in in, let us say, June, when they were ordered, or even early July, the circumstances would have been such that the first defendant would have been in a position to comment on the witness statements and to deal with matters in them.

59. One of the particular difficulties in this case is that it is a family proprietary estoppel case. The facts in issue go back over many, many years. Although his wife is his litigation friend and the second defendant, it is far from certain that she and the third defendant (which is, in any event a company) would be able to deal with, as having knowledge of, all the relevant incidents that have been raised in the copious witness statements put in by, at the least, the claimant. Further, even the identity of the claimant's witnesses has only been revealed over time in a far from complete manner until service of the trial witness statements. The claimant's own witness evidence, as I understand it, extends to something like 80 or 90 pages, somewhere between the two. As regards that witness statement itself, I have serious concerns about it as to whether it properly complies with CPR PD 57AC and I suspect there are concerns about other passages in other witness statements.

60. Ms. Temple submits that the defendants had been considering whether or not it was appropriate under the court's case management powers to apply, effectively, to redact or at least get something done about the witness statements on the grounds that they simply failed to comply with the practice direction regarding witness statements applicable in the Business and Property Courts.

61. I cannot come to any view on that, other than an impression that there is certainly a real prospect that such an application would be properly launched, but a further problem with the witness statements having been served so late is that that exercise cannot even be considered, let alone be brought before the court. If the trial goes ahead with the current witness statements, therefore, it is likely to be unwieldy and totally unsatisfactory in terms of the content of the witness statements.

62. I accept, of course, that if I do not allow the witness statements in, then the claimant's case will essentially fail. Mr. Kynoch has suggested that I should take an arbitrary date and say witness statements that were ready then but not provided to the defendants should be allowed in. The difficulty with that is that he then has to make a large exception in relation to the witness statement of the claimant himself and, I think it is, his wife which he accepts are cruial to the claimant's case. Those witness statements were not even ready until the end of August.

63. As I have said what the evidence demonstrates, going through all the facts put before me: in short form, going through the correspondence and witness statements, is that the way in which the matter has been handled is a belief that as long as the witness statements come in before the trial in what the solicitor regards as a long enough time for the trial to be prepared, then it does not matter. Well, it does matter. Apart from anything else, enforcing court rules and orders which is an important part of the overriding objective, and which under the *Denton* principles the court has to particularly take in mind and apply in the context of relief from sanctions applications, bears a particular resonance on the facts of this case.

64. There is a further matter which I take into account, which is this: the evidence, it seems to me, seeking an extension and/or relief from sanctions has been prepared in a manner that fails to be full and frank with the court and also fails really to do very much other than sling a lot of material at the court and expect the court and, indeed, unfairly the claimant's counsel to try and make something of it. A stunning example of this is that the original witness statements seeking relief from sanctions before me, leaving aside all the interim witness statements on the individual applications, was a witness statement which exhibited a schedule dealing with problems that had been incurred in respect of particular witnesses, but not identifying the witnesses. It then exhibited a large number of e-mails and documents, letters, not all of them, it was said, just some of them, trying to demonstrate that the problem lay outside the hands of the claimant, in that particular witnesses had been slow or inept or unavailable to sign off their witness statements or return them. The problem was that the large cache of documents included had all been completely redacted, one could not even tell which of the numbered witnesses each one related to.

65. As I say, however, the real nub of the point at the end of the day is this: the claimant and his wife were in a position where they could put their witness statements and get them ready in time. They failed to do so and indeed only signed off at the end of August 2022. The suspicion must be that the witness statements were in part held back so they could be tailored to the evidence of other witnesses as the latter came in. That would not be compliant with PD57AC. For the avoidance of doubt, however, I do not make that finding on the evidence before me.

66. In properly conducted litigation, the manner in which witness statements should be dealt with in the circumstances that arose in this case is that the party who has a problem

should serve, by way of exchange an exchange, if that is the position that applies, those witness statements which are available, taking as much effort to get them ready as possible. Then, if necessary, apply for relief from sanctions in relation to witness statements which come in later. Instead of that, all the witness statements were held back until, as I have said, September and, in those circumstances, the claimant has taken the risk that it had left matters too late in the day.

67. As I have explained, and I have well in mind, I have referred to the end of September, which is when the documents physically went over to the defendants. The problem was that, by the end of August, there was a possibility that the witness statements could have been exchanged, even on a without prejudice basis, pending the determination of the applications then for extensions of time. However, the difficulty was that the defendants, who did eventually accept that they could be exchanged on that basis, were not immediately prepared to do so. Over time, Counsel was away on holiday, the clients were away on holiday and the solicitor was then away on holiday. So it took some weeks before the defendants made the sensible decision that the witness statements could be exchanged, and they were exchanged, on a without prejudice basis but only a matter a day or so before the PTR held before me at the end of September. Hence, I had to adjourn the PTR and the applications, because a key question was the nature of the witness statements and their content. In my judgment, the claimant has to live with the position that if he leaves everything to the last minute (the end of August) and in the holiday period, he runs the risk that the other side may not be able to react to a proposal as quickly as might be desirable in an ideal world.

68. The decision to adjourn on 28 September has been shown to be correct, in my view, because further evidence was filed in accordance with my order which identifies in more detail the relevant facts and has therefore given the claimant the advantage of being able to put forward more evidence to explain the position. Unfortunately, that evidence only makes things worse in some respects. What one can say is that the claimant's own evidence and his wife's evidence, as I have said, was left until the last minute.

69. In all those circumstances, but also taking into account what I am about to say about the disclosure but also taking into account what I have said about the trial bundle, I would not grant relief from sanctions in relation to the witness statements. This is so even though the practical effect will be that the claimant’s case cannot be put forward and the claim will fail.

70. I would also not apply a date bar to give relief from sanction and extend time for serving witness statements which were ready before that date. This was canvassed in argument in response to a suggestion by me. The reasons that I do not adopt that course is first that the defendants have been prejudiced, from the perspective of the first defendant’s decline in mental health and in not having time to consider and make an application under PD 57AC, in relation to all the witness evidence whenever completed. Secondly, there is no reason to exempt the crucial witness evidence of the claimant and his wife from such a bar and that evidence would fall on the wrong side of any date bar. This is whether the date bar would be say the end of June or the end of July. If their witness statements do not get relief from sanctions, then Mr Kynoch confirms effectively the case folds, because their witness evidence is key. In short, however, the claimant’s failure was to serve the witness statements not to prepare them, even though a failure to prepare some of them in time may be part of the reason why they were not served.

A date bar is therefore wrong in principle and in any event does not work because of the lateness of the claimant's own crucial witness statement and that of his wife.

71. I would add that I consider the trial will be lost in large part because of the failure of the claimant to serve his witness statements at a much earlier stage which has had a knock-on effect on trial preparation and the preparation of the trial bundles.

72. I should also say that I consider the failures have also had the effect of unduly disrupting the court's business given the number of applications and the amount of evidence filed. These matters demonstrate that the conduct of the claimant has resulted in this litigation not being conducted efficiently and at proportionate cost.

73. Finally, I should confirm that I have taken into account (in relation to all three subject matters of the applications for relief from sanctions) of counter allegations that the defendants too have not kept to deadlines during the proceedings. Such allegations do not change my view that relief from sanctions should not be granted.

Disclosure

74. The defendants say that disclosure had been ordered to take place by 16 June 2021 and that an extension was agreed to 23 June 2021. The sanction is provided for by what is now CPR PD 57AD paragraph 12.5.

75. For some time (even after an application for relief from sanctions had been ordered by me to be made by 30 September), the claimant's solicitor continued to assert that there was no sanction for a failure to comply with an order for extended disclosure and that the issue before me was whether not to impose a sanction (see e.g. his witness statement of 30 September 2022) paragraph 3). This was an unfortunate misconception which may go some way to support the view that the approach taken was tactical.

76. Further, for some time the claimant asserted through his lawyers that there was no failure to comply with the PD 57AD arising from the late disclosure because although CPR r31.11(2) (which does not apply) stresses the ongoing nature of the duty of disclosure and the need "immediately" to notify the other parties of late disclosure, that rule did not apply under what is now PD57AD. In my view the same ongoing duty is contained within what is now PD57AD. I decry the claimant's solicitor's position that there is a continuing duty of disclosure under what is now PD57AD but that the duty to disclose, once the time for doing so has expired, is not "immediate". On any view, the submissions made in this respect clearly do not coincide with the overriding objective.

77. On 5 September 2022, the defendants' solicitor received an email which had been sent on Saturday 3 September 2022, This enclosed a link to a "Supplemental Extended Disclosure List". This was a link to a bundle containing (a) over 1,400 pages of documents; (b) 3 videos and (c) 3 audio files. These had apparently been discovered in June 2022 or shortly thereafter as confirmed by an email dated 22 June 2022 from the claimant's solicitors to the defendants' solicitors.

78. As regards this further disclosure, the position is clear, which is simply that further documents came to light while the claimant and his wife were preparing their witness statements. That was in June. The documents were provided to the solicitor in June or very soon thereafter at the beginning of July, and the documents were simply held back

until September. One can speculate as to the reasons for that. The reasons are not really explained in the evidence other than that was what the solicitor was doing, apparently on "convenience" grounds. At best it may be said that this just represents an entirely misconceived approach to giving disclosure during proceedings, not least when trial is coming up. The explanation to hold them back, that it was just convenient, makes little sense because the vast majority of the documents were available, as I have said, in June and, therefore, at worst -- I have talked about at best -- it may be said that what was being done was a cynical attempt to gain a litigation advantage by holding the documents back until witness statements had been served on both sides.

79. I make no finding that was the case, but the suspicion is one that Ms. Temple I think is justified in putting forward.

80. When the matter came before me on 28 September 2022, I had a witness statement from the claimant's solicitor dated 27 September suggesting that late disclosure caused no problems for the following reasons:

(1) 811 of the 1,442 pages were photographs and some were duplicates of photographs already disclosed;

(2) The remaining 631 were documents of which about 400 had already been disclosed (though in some cases what seems to have been disclosed was some pages of one document).

81. It is notable that although it had been suggested by the claimant's solicitor that the extra documents disclosed were not substantial given the disclosure already provided, the disclosure already provided by the claimant apparently amounted to some 3,340 pages in length. The extra disclosure in page terms was over a third of that again.

82. Given the apparent duplication in disclosure as given, I therefore ordered that (among other things):

> *"The Claimant shall file and serve an updated Supplemental Disclosure List (with appropriate descriptions and removing any duplicate disclosure) in relation to all documents sent to the Defendants on 3rd September 2022 and 27th September 2022, such updated Supplemental Disclosure List to be served by 4pm on 29th September 2022, in default of service of the same by such date and time the Claimant is debarred from relying on any such documents at trial."*

83. The claimant had already had several months to refine and properly prepare a proper disclosure list.

84. I also ordered that any application for relief from sanctions in relation to late disclosure by the claimant was to be issued by a certain date which application (dated 30 September 2022) was later issued.

85. So far as concerns the supplemental disclosure list provided pursuant to my order of 28 September 2022, there are in effect two sanctions: one under the rules, one by my order. I am satisfied that the supplemental disclosure list subsequently provided failed to comply with my order in that Mr. Kynoch himself accepts that it still contains items of duplication and the like as well as some irrelevant documents which he says he would

withdraw. That causes further problems and, as I say, has a knock on effect when one considers the question of relief from sanctions in relation to the trial bundle and whether it can be prepared in time for the trial to continue. If documents which Mr. Kynoch now accepts should be "withdrawn" are to be withdrawn, then effectively the bundles have to be gone through all over again, they have to be reprepared, and that just adds to the job going ahead.

86. I should add that the sanction, that the claimant is not entitled to rely upon the lately disclosed document, does not end the work that the late disclosure causes. The defendants would no doubt have to consider whether they would want to rely upon any of the documents at trial, whether in cross examination or in chief.

87. In all these circumstances, I conclude as regards the late disclosure that the breaches are serious and significant, that the explanations are inadequate and that in all the circumstances relief from sanctions should not be given.

88. One of the difficulties to some extent with the *Denton* test is that although it is a very convenient analytical tool, many considerations may fall under one or more heads of the three-headed test, and I particularly have in mind in this case that is so. This case is also complicated, as I have indicated, because I am looking at effectively three breaches or three applications for relief from sanction or possibly four if you take there being two in relation to the disclosure exercise, and I have to consider the other matters on each case in the round.

89. Looking holistically at the matter, as I have said, it seems to me: first of all, the way in which the witness statement matter was dealt with was unsatisfactory for all the reasons I have given; and, furthermore, that it causes prejudice to the defendants which cannot now be remedied; and thirdly, that it has had the knock-on effect of disrupting these proceedings both in terms of the hearing of this application and the PTR and today. I should make clear that I am not scheduled to be hearing these applications, which were fitted in as an emergency and has now resulted in me not being able to do cases while I am sitting in London, which again is unsatisfactory, in disrupting the court's process for other litigants and for the court itself.

90. For all those reasons, which as I say I am giving in a very much summary form, it now being 5.05, on an application that was supposed to be the morning and has taken effectively the whole day but had to be dealt with, I decline as I have said relief from sanctions in each respect.

91. So far as Ms. Temple's application for striking out of the proceedings is concerned, she accepted that the pragmatic approach was to look at the matter in terms of relief from sanctions, as she put it the test might be slightly easier for her than on a strike-out. This is on the basis that on a relief from sanctions application one assumes that the sanction is proportionate and appropriate, and the only question is relief. Whereas, on a strike-out one is really looking at the (for example) the proportionality and justice of striking out, the new sanction. In my view, on the facts of this particular case, no different answer would be applied whichever test one applied, given the glaring nature of the facts in this case.

92. I should make one final comment which concerns both the manner in which witness statements and applications have seemed to cascade across my computer in the hours

or days before the hearings in this case and the conduct which has led to sanctions being applied in this case. I hope that this case will bring home yet again that the old way of simply assuming that, provided the solicitor gets everything and the clients get everything off their desks, at least a couple of days or even a week before a trial or hearing that somehow the judge and advocates will just muddle along and do the best they can, have long gone. Cases need to be prepared properly. Court orders need to be obeyed. That is why, and the assumption on which, orders are made in the first place.

This Judgment has been approved by HHJ Davis-White KC.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com