Case Nos. 033DC409, 030DC688, 031DC919, 029DC804

IN THE COUNTY COURT AT LEEDS

Leeds Combined Court Centre
The Courthouse, 1 Oxford Row, Leeds LS1 3BG

Date:

Before :

DISTRICT JUDGE DAWSON

- -

Between :

Ms DENISE JAGGER (033DC409)
Mr MOHAMMED AMIN and (2) Ms FEREZA AMIN (030DC688)
Ms JESMIN TINA (031DC919)
MR KHALID MAHMOOD (029DC804)

Claimants

– and –

AXA INSURANCE UK PLC

Defendant

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Mr Ali Reza Sinai instructed by SSB Law for the Claimants
Mr Lucas Fear-Segal instructed by Kennedys for the Defendant

Hearing dates: 11th May 2023 and 18th May 2023
Judgment handed down 13th July 2023

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JUDGMENT

……..

District Judge Dawson:

This is an application on behalf of the Defendant AXA Insurance UK PLC. It relates to claims involving defective or inappropriate installation of cavity wall insulation ("CWI claims"). The hearing took place over two days and I had the advantage of a lengthy bundle. I have sought to refer to documents by page numbers relating to that bundle where it would be helpful.

Background

There are a relatively large number of such claims[1] in the North East of England. I am aware of a lesser amount in the North West of England. Given the increase in the number of such claims, the Designated Civil Judge ordered that all such claims in the North-East would be transferred to and case managed in Leeds County Court which has, with a few exceptions due to administrative oversight, occurred. Within Leeds, a small number of District Judges, of which I am one, have been case managing all such claims.

It is my understanding that currently in all such claims in the North-East where the Claimant is represented, SSB Law act for the Claimant. I have received a number of witness statements from two persons who work for SSB Law. Ms Allen is a Director of SSB Law who oversaw the CWI department from October 2019 until early 2021 and thereafter from August 2022 to date. Mr Toyn has acted as the Technical Manager of the CWI department since January 2022. Both are qualified solicitors. The statement of Mr Toyn sets out that the firm has a department dedicated to CWI claims which currently consists of 11 litigators supported by 22 litigation assistants. Both solicitors were present throughout the two-day hearing of this application although they did not give oral evidence.

In Ms Allen's evidence she confirms that the firm issued some 143 cases within a new pilot portal (limited to £10,000 and subsequently the value was amended in the four-month period) from 1st July 2022 to 3rd November 2022 and the four claims before me are within those 143 claims. These involved installations by 26 different firms (a large number of which are now in liquidation). Her evidence is that these are represented by 7 different Defendant solicitors, albeit in fact in the vast majority of cases where there are solicitors on record those are acting for insurers rather than the firms themselves. These claims are very rarely settled (such judgments which have been obtained prior to trial being default judgments against firms which have not responded to the proceedings or are discontinued).

[1] As at 12th April 2023 the Claimants' solicitors state they were on record for 1,428 litigated claims.

1. The scope of the applications

2. The applications before me are made in respect of four claims. At the time when I listed these applications this was because these four claims were the only ones identified by the Defendant's solicitors which had completed the somewhat lengthy route to Leeds (being firstly dealt with centrally, then transferred to the Claimant's home Court then being transferred to Leeds). By the time I heard the application I had received a number of applications by the Defendant's solicitors to stay cases which had belatedly reached Leeds upon which the same issues arose, and I have been granting such stays. At the time of making the last application in time the Defendant's solicitors had identified 19 cases involving their firm that had been served upon them between 30th November 2022 and 19th January 2023 (a relatively short period including the Christmas break). The Defendant solicitors are only one of seven solicitors' firms dealing with this litigation and at least some of the issues are likely to arise in other CWI cases.

3. The factual basis where common to each of the four cases

4. In the four cases before the Court, each involve the alleged defective installation of cavity wall insulation by Heatwave Energy Solutions Limited ("Heatwave") in July or August 2016 with the relevant claims being issued in July or August 2022. Heatwave entered liquidation on 20th March 2019 and the claim is against the Defendant insurer in each of the four cases, based on a policy of insurance which ended on 27th July 2017, pursuant to the Third Party (Rights against Insurers) Act 2010[2].

5. The following factual matrix is not disputed in relation to the four claims before the Court.

6. The Claimant's solicitors sought to issue each claim by using the Damage Claims Portal ("the DCP") pursuant to CPR Practice Direction 51ZB, an on-line pilot system.

7. When uploading the relevant details in to the Portal, the section "Expected claim value up to and including" was met with the response "up to £10,000.00" that being supported by a Statement of Truth; "The Claimant believes that the facts on this claim are true. I am duly authorised by the Claimant to sign this statement". In each case this was signed by an employee of SSB Law describing themselves as a "litigation executive". The Court Fee was then set out as £455 which is the correct Court Fee for a claim of that value. This was paid (as it had to be in order for the claim to be issued) within the DCP.

8. The claims were issued on the very cusp of the primary limitation period[3].

9. Thereafter an "Amended Claim Form" was produced by printing off the electronic Claim Form produced by the DCP, and making handwritten amendments to the same including

[2] The issue as to the liability of the insurers pursuant to the Act is not as simple as that summary suggests but I do not intend to deal with this matter in this judgment

[3] The Claimants' solicitors are currently engaged in an appeal to the Court of Appeal in relation to limitation, but the period described being that which the case being appealed currently dictates

"Amended under CPR 17.1" and amending the value of the claim and the level of the issue fee). In terms of the individual cases;

10. On 030DC688 ("Amin") to £104,000 with the issue fee stated on the Claim Form being amended to £5,169.97 (in fact the relevant fee should have been £5,200);

11. On 033DC409 ("Jagger") to £83,562.38 with the stated issue fee being amended to £4,478.12 (should have been £4,178.12);

12. On 031DC919 ("Tina") to £98,235.31 with the fee being correctly amended to £4,911.77;

13. On 029DC804 ("Mahmood") to £84,934 with the issue fee being amended to state £3,307.36 (should have been £4,246.70)[4].

14. No other substantive amendments were made.

15. The Amended Claim Forms were purportedly served close or very close to the expiry of the four-month period in which the Claim Form had to be served by sending them by post to the address on the Amended Claim Form.

16. None of these Amended Claim Forms were in fact verified by a Statement of Truth, each amendment being handwritten onto the original Claim Form with no amendment to the original Statement of Truth.[5]

17. None of these Amended Claim Forms complied with Practice Direction 17 2.1(2) as the date of amendment was not endorsed[6]

18. None of the increased issue fees in the four cases before me were paid to the Court upon such amendment (either by way of sending a cheque or by way of asking for the monies to be taken from the solicitors PBA Account nor were any (updated) Help With fees remission forms completed at this time). It is not disputed that increased issue fees should have been paid[7].

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[4] The fact that these amended issue fees stated on the Amended Claim Forms were incorrect was not raised in either parties' evidence but raised by myself (having undertaken the relatively simple calculation of 5% of the new value); after it was raised, Counsel for SSB Law stated that his instructions were that the firm had become aware of the issue and that the increased issue fees paid to the Court pursuant to my Unless Order of 17th March 2023 had been the correctly calculated fees. I am provided with no explanation as to why the (simple) calculation of 5% of the new value was wrong on 3 out of 4 claims and the evidence before me does not indicate whether these errors were widespread.

[5] Again, this matter was not dealt with in the parties' evidence as it appeared neither had noticed that the Amended Claim Forms had not been properly signed by a Statement of Truth. Upon it being raised by the Court, the Claimants made a further application which I will deal with later.

[6] PD 17 2.1 "The amended statement of case and the court copy of it should be endorsed as follows;
(2) Where the Court's permission was not required: "Amended [Particulars of Claim *or as may be*] under CPR rule 17.1(1) dated"

[7] Schedule 1 of the Civil Proceedings Fees Order 2008 as substituted by the Civil Proceedings Fees (Amendment) Order 2014

19. The fact that the increased fees had not been paid was discovered by the Defendant's solicitors telephoning the Court on 20th January 2023 and asking the Court staff to interrogate the Court records to see if the increased issue fees had been paid. It is not immediately obvious from the Court record whether the increased issue fee has been paid and it involves a relatively time-consuming interrogation of the electronic file, more so as there were three different Court centres to check.

20. Ms Allen asserts in her witness statements that following further investigation, of the 144 cases that have been checked (restricted to CWI cases issued in the DCP after 1st July 2022, limited to £10,000 and then subsequently amended) there are 46 cases where the increased issue fee was not paid (31%).

21. She further asserts that the fault lies with one fee-earner, Yasmean Ashraf, who was the fee-earner with conduct **at the time of the amendment**. The Defendant initially challenged that she was the relevant fee-earner, based on the assumption that the Statement of Truth on the Amended Claim Form would have been signed by the relevant fee-earner. As I have already set out, it became evident during the course of the hearing that the Statement of Truth contained on the Amended Claim Form was actually the original Statement of Truth from the fee-earner at the time of the uploading of the Claim to the DCP. Whilst the Defendant cannot be criticised for initially challenging the evidence, I therefore proceed on the basis that the fee-earner on each of the four claims before me at the time of the amendment of the claim was Yasmean Ashraf. SSB Law state that it was her responsibility to ensure the increased fee was paid.

22. Ms Allen has produced a witness statement with a Statement of Truth thereon[8] in which she has attached a "case list of all claims issued by SSB Law in the Damage Claims Portal since 1st July 2022 where the value of the claim was amended to more than £10,000 prior to service" (and thus would attract the payment of the increased issue fee). This amounts to 144 cases. She states "All of the cases on the list have been checked by the Head of the CWI Department David Toyn who has confirmed to me that that on 101 cases the increased court fee has already been paid from SSB Laws PBA account or payment was tendered at the point of service and a request made to the court to deduct the relevant fee from SSB Law's PBA account". She goes on to say "There are 46 cases …..where the claim value was amended and the increased court fee not tendered to the Court. All 46 cases are in the conduct of the same file handler, Yasmean Ashraf".

23. I have some concerns that somewhat inexplicably the statements of Mr Toyn do not confirm that he made the checks that Ms Allen said he did; he refers to some checks on a random basis that Ms Allen undertook for cases outwith those dealt with in the table rather than any he undertook. I also note the concern raised by the Defendant in this case that the statement of Ms Allen does not make clear when the increased Court issue fee was paid/proffered (ie whether it had been paid at the time of amendment/service or significantly thereafter when this issue was brought to the attention of SSB Law).

[8] [304], first statement dated 13th March 2023

24. These concerns are somewhat magnified by closer consideration of Miss Allen's second statement[9] in which she asserts that the statement of Miss De Asha is factually incorrect and appends details of five further cases (different to the four before me) on which Ms Ashraf was the fee-earner. In relation to Claim Ref 039DC595 which is marked in her table appended to her first statement as being one of the cases in which the increased fee had been tendered[10], she states in her second statement table "Amended Claim Form filed at Court plus Fee remission forms. Court requested to deduct fee from SSB PBA Account".

25. The letters appended to her statement show that on 23rd December 2022 the certificate of service plus amended claim form was filed at Court. No fee or remission form accompanied such letter, nor any suggestion in the covering letter that an increased fee was payable. This was on this occasion identified (much later) by a member of the Court staff who sent an email noting that no payment had been tendered (the monies owed being £7,469.15) on 25th January 2023. Only then and in response to that email was the Court asked to deduct the fee from the PBA account.

26. Ms Allen has also appended a letter enclosing fee remission forms from the Claimant which references the fact that the claim was issued on the DCP on 30th August 2022 and appears to be asking that the initial claim fee paid should be reimbursed; there appears to be no reference to the new fee to be paid. However this letter was not filed at the same time as the amended claim form in any event but on 20th January 2023 almost a month later.

27. This simple analysis of the first of the five claims highlighted by Ms Allen would suggest that the table produced by the Claimants (and the figures that only 46 of the 144 increased fees were unpaid) is based on what fees have been paid/proffered by the date that the statements were compiled (March 2023). It does not provide me with any <u>further</u> evidence as to whether other fee-earners were in fact tendering fees/fee remission forms at the correct time or in fact afterwards (if and when the Court staff requested them or after a delay and the Claimants' representatives becoming aware of the issue due to the Defendant's application).

28. Given the ambiguity of the statement filed, the fact that detailed analysis of the evidence appended to that first claim set out in the relevant paragraph of the statement showed it to be incorrect and the fact that it was recorded in the table produced by Ms Allen as a case in which an increased fee was tendered despite the fact that it was not tendered at the appropriate time, I have decided this application on the following basis;

29. Yasmean Ashraf was the fee-earner on the four cases that I have before me. I cannot and do not make any finding of fact that she was the only fee-earner involved in this practice/making this error (non-payment of increased issue fees).

30. I have based my judgment and the exercise of my discretion in these four cases on the basis that Ms Ashraf was not tendering or facilitating the payment of increased issue fees at the time of amendment in multiple cases (at least 47 of the 53 cases upon which she appeared

[9] [328, para 6], second statement dated 19th April 2024
[10] [310]

to be the fee-earner at the time of amendment). In deciding these applications I do so on the basis that this was not a practice/error that was more wide-spread throughout the firm or adopted by other fee-earners; at this time I do not have evidence of that before me.

31. I record further that the application made in relation to 030DC688 ("Amin") made on 23rd January 2023 and accompanied by the witness statement of Mr Dickinson dated on the same date was the first application from the Defendant which raised the increased Court Fees not having been paid (the Defendant having discovered the same by telephoning the Court on 20th January 2023). I can conclude that by 30th January 2023, SSB Law should have been on notice that there was a serious issue that Court Fees had not been paid upon amendment. SSB Law's own evidence supports this in that exhibit "DJA4" [352] includes an email from the Court sent on 25th January 2023 noting that no increased issue fee had been tendered on claim number 039DC595 despite the claim having been amended prior to 23rd December 2022 (when a certificate of service had been sent to the Court).

32. At the directions hearing on 17th March 2023 (in response to a specific question by the Court) the Claimants' representatives could not confirm that the unpaid increased issue fees identified in their own table had been paid but stated that the unpaid issue fees in relation to all the cases identified in Ms Allen's witness statement would be paid by 21st March 2023 and I made an unless order in relation to the four cases before the Court that they would stand struck out if such fees were not paid by 22nd March 2023. I am told that the increased issue fee was tendered to the Court on each of the four cases before me on 21st March 2023.

33. Ms Allen notes that in 12 of the cases in her initial list of 46 in which increased issue fees have not been paid and Ms Ashraf was the relevant fee-earner "the amended claim form is not evident on the file"[11]. She remarks that "the Certificate of Service filed at Court refers to an Amended Claim Form in all of these cases and it appears that Kennedys do not dispute that an Amended Claim Form was served upon them".

34. Having consulted the Court files I can confirm that on one of the four Court files before me ("Amin" 030DC688) the only pleading filed at Court by the Claimant appears to be the initial Claim Form (in its unamended version). The certificate of service refers to "the Amended online N1 Claim Form, Particulars of Claim, Schedule of Loss, Certificate of Translation, Certificate of Service and Response Pack" but despite the fact that the certificate of service states "Please attach copies of the documents you have not already filed with the Court", no documents were appended. This is relevant because not only is it not the duty of the Court to identify and chase any increased issue fee, the Court would not be able to identify in any event that any increased issue fee was due if it did not have the Amended Claim Form.

35. The Damage Claims Portal – issues arising

36. For each of the four claims before me, the Claimant's solicitors used the DCP. This is a pilot scheme pursuant to CPR Practice Direction 51ZB. The pilot scheme ran from 28th

[11] Para 9 [p305]

May 2021. During the course of the pilot changes were made to the Practice Direction. This is a pilot scheme and I have not been appraised of any relevant case law dealing with its operation or the issues raised in this case other than my own research identifying a reference to an Oxford County Court judgment by a Deputy District Judge on a legal website (civil litigation brief). It is not binding on me nor do I find the reasoning as reported (there is no transcript) persuasive. It was not referred to during the course of the hearing.

37. The relevant provisions in force at the time were as follows;

38. PD51ZB

39. 1.4 This Practice Direction sets out the procedure to be followed when using the DCP. The Civil Procedure Rules ("CPR") will apply to Damages Claims save that where provisions in this Practice Direction conflict with other provisions in the CPR…… this Practice Direction takes precedent until the claim is transferred out of the DCP. Once the Claim is transferred out of the DCP, this Practice Direction will no longer apply. The transfer of a claim out of the DCP does not affect the validity of any step taken prior to transfer.

40. 1.6(1) The conditions for using the pilot are set out in sub-paragraph (3)-

41. (3) The conditions referred to in sub-paragraph (1) are-

i. the claim is for damages only;

42. 2.1(1) To request the issue of a claim form the Claimant must –

i. complete the claim form using the DCP's screens;

ii. pay, through the DCP, the appropriate fee that is prescribed in the Civil Proceedings Fees Order 2008; and;

iii. submit the claim form using the DCP by selecting the "submit" button.

43. 2.1(2) By selecting the "submit" button the user thereby

i. verifies the brief details of claim by a statement of truth for the purposes of CPR Part 22 and CPR 32.14; and

ii. requests that the Court issues a claim form.

44. 2.2(3) The Court must issue the claim form when payment of the appropriate fee is confirmed.

45. 2.2(4) the claim is brought for the purpose of the Limitation Act 1980 ….. at the point at which the claim is issued and not before. CPR PD 7A paragraph 5.1 does not apply.

46. 2.2(6) If the Defendant is not represented by a legal representatives who is registered with myHMCTS and who has confirmed authorisation to accept notifications on behalf of the

defendant (including notification of the Claim Form) from the DCP, the claim will be automatically transferred out of the DCP, immediately after it is issued, to the CCMCC.

47. 2.2(7) If the claim is transferred out of the DCP pursuant to paragraph (6) then paragraph 8.4 and CPR 7.5(1) will apply.

48. 3.1(1) the Claimant must notify the defendant of the claim through the portal.

49. 8.4 A claim which is transferred out of the DCP continues as if it had been started under CPR Part 7.

50. <u>Should CWI claims against insurers be started on the Damage Claims Portal? (51ZBPD 6.1(a))</u>

51. It has been contended on behalf of the Defendant that the claims should not have been started in the Portal. The Defendant relies on paragraph 1.6(3)(a) and contends that these claims are not for "damages only".

52. The four claims which are before me are all claims which have been brought solely against the Defendant, AXA Insurance UK PLC. Each arises out of alleged defective installation of cavity wall insulation by Heatwave Energy Solutions Limited. The Claimants do not bring claims against Heatwave because it is insolvent. Instead they seek to bring claims against the Defendant based on the Third Party (Rights Against Insurers) Act 2010.

53. Unlike the position with motor insurers where the European Communities (Rights Against Insurers) Regulations 2002 provide Claimants injured in road traffic accidents a direct cause of action for damages against the relevant insurer of the tortfeasor, the 2010 Act does not provide such a direct cause of action;

54. Section 2(2) [A Claimant] may bring proceedings against the insurer for either or both of the following—

55. a declaration as to the insured's liability to [the Claimant];

56. a declaration as to the insurer's potential liability to [the Claimant].

57. Section 2 (6) Where the court makes a declaration under this section, the effect of which is that the insurer is liable to [the Claimant], the court may give the appropriate judgment against the insurer.

58. It seems to me therefore that in order to obtain judgment against the Defendant, the Claimant in each of these applications had to obtain a declaration. In such circumstances, it would be wrong to categorise the claim as being for "damages only" and it therefore falls foul of section 1.6(3)(a) of the Practice Direction.

59. I have been urged by Counsel for the Claimants to apply a more liberal interpretation and deem these claims as falling within section 1.6(3)(a) as the remedy which the Claimants

want is damages and the declaration is merely a tool to achieve that. Furthermore he seeks to persuade me that in drafting this Practice Direction, it was never the intention to disqualify claims such as these and I should take that into account and apply a more purposive interpretation looking at the intention of the Rules Committee to provide an efficient digital option for litigants.

60. I cannot accede to that request. This is a pilot and if the Rules Committee have inadvertently prevented a class of claim that they wished to include within the Portal by their manner of expressing CPR 51ZBPD 1.6(3)(a) then they can amend the wording to provide clarification. Until they do so, Judges must apply the wording set out in the Practice Direction. It is not in my view ambiguous and it is not a question of interpreting it. The DCP is limited to claims for "damages only" and these claims are not for damages only.

61. I note that Mr Toyn, Technical Manager for the CWI Litigation Department relies on the fact that on 15th February 2022 he sent an email to DamagesClaims@justice.gov.uk "explaining the background and requesting advice" and that he received a response from a Digital Product Support Manager at HMCTS "the content of which confirmed that as the remedy sought was damages the DCP was the correct way in which the cases should be issued"[12]. I have taken into account that;

62. The response to the email is sent some 7 months after the firm issued the claims before me on the DCP and at least 1 month after this Defendant had strenuously objected to that practice;

63. "the background" included that "we have notified the Defendants of our intention to issue legal proceedings on the DCP" (which had not occurred in any of the cases with which I am dealing) and thereafter the email failed to state that the use of the Portal was a matter of significant opposition by this Defendant, giving the misleading impression that the Defendants had not raised any objection;

64. A "Digital Product Support Manager" for the HMCTS should not be expected to give legal advice and his email made very clear his job title.

65. His email in response went on to say "If the Defendant has any issues with how it was issued, they would be able to make the relevant application later on down the line".

66. I therefore regard this evidence as unpersuasive as to the correct interpretation of the Portal requirement that the claim is for damages only.

67. Was it wrong for the Claimant to upload to the Portal that the Defendant was "unrepresented"

68. At this stage I will also address the contention on behalf of the Defendant that for the Claimant to upload to the Portal that the Defendant was "unrepresented" raises a separate issue.

[12] [p377-378], paragraph 37, [400-401], exhibit DT4.

69. I can deal with this relatively briefly. In the four applications before me, the Claimant had sent the Defendant a letter of claim and/or some pre-litigation correspondence. In none of the four applications before me had the Defendant nominated solicitors to accept service (either themselves or by way of solicitors contacting the Claimant stating they were so nominated).

70. The Defendant states that the Claimants' solicitors are fully aware that in all CWI cases where claims are issued, the Defendant instructs Kennedys to represent them and therefore to complete the portal stating that they were "unrepresented" was actively misleading.

71. The Practice Direction provides a clear route within the Portal for uploading the Defendant's representatives' details, such details being used to effect service (51ZBPD 2.2(6)). The Practice Direction states that the representatives must have confirmed authorisation to accept notification of the Claim Form from the DCP (ie to accept service). In those circumstances, it was correct for SSB Law to state that there were no such representatives – had they uploaded Kennedys' details to the Portal and then the Claim Form had been served upon Kennedys, the Defendant could (correctly in my view) have stated that it was not good service.

72. I make it quite clear that this is fact specific in the case of these four cases where the Defendant's representatives had not been nominated to accept service. It is right to say that at the time there was somewhat of a lacuna in the DCP as it expected the Defendant's representatives to *"confirm authorisation to accept notifications in the DCP"* despite there being no requirement at the time for the Claimant to inform the Defendant that they were going to issue a claim in the DCP. This has now been corrected by way of amendments to the DCP which came into effect for claims issued after 15th September 2022.

73. I am invited by both Counsel for the Claimant in general terms and Ms Allen, Director of SSB Law in more specific terms, to forward the overriding objective by giving indications that will apply to the (large) number of cases which may be affected by this ruling. It cannot be right that the Claimants' solicitors be allowed to make submissions in the absence of other parties represented by solicitors who are unaware of these applications and who would be affected in different circumstances to those which arise in these applications and those parties thereafter be presented with a judgment dealing with that point having heard submissions from only one side. I balance this with the desire to further the overriding objective and therefore will set out reasoning which may assist parties in other cases where I feel it would be fair to do so.

74. I have been specifically asked to deal with the admitted (systemic) breaches of the notification requirements which came into force on 15th September 2022 (150th Amendment of the CPR dated 8th September 2022). This added the following requirements;

75. CPR51ZBPD

76. 1.6 (2)(b) the claimant must give the defendant the notice referred to in paragraph 1.9(2)(a) unless it is impractical to do so;

77. 1.9(2)(a) the claimant gives the defendant at least 14 days notice of their intention to bring a claim using the DCP

78. 50. Ms Allen has admitted in her witness statement that "in September 2022 internal processes were created to ensure compliance with the DCP but due to an oversight, the 14-day notification letter was not built in respect of CWI claims, although it was set up for other business areas. This oversight meant that the 14 day notification letter was not sent on CWI claims and cases issued after the amendment coming into force continued to exit the DCP. The issue was identified on the 25th January 2023 and steps were taken immediately to address this. Guidance explaining the issue, the steps to be taken on new claims pending the system fixes and the actions needed to address existing claims was issued on 1st February 2023. A template letter was shared with the legal teams to send to any Defendants who raised this issue. I have attached marked as Exhibit DJA2 a copy of this letter"[13].

79. What follows thereafter in Ms Allen's witness statement are detailed submissions to convince the Court that the Court should give a ruling in the Claimant's favour "in respect of all future cases as regards the Defendant's argument that any claim where a 14 day notice was not issued be struck out on grounds of abuse of process, obstruction of the just disposal of proceedings; or failure to comply with a rule, practice direction or court order". The Defendant's argument was made within the original application notice but I did not hear further submissions as it had become apparent that the rule was not in force at the time when the claims before me were issued.

80. Furthermore both the draft letter that was appended (not to be sent in all cases where the Claimants' solicitors had realised that they had made an error but only in cases where the Defendant raised it), and also her witness statement suggested that any future Defendant taking this point would be seeking opportunistic advantage and should be penalised in costs. I make it quite clear that I in no way endorse the contents of the letter as the correct method of dealing with it or a correct exposition of the law, and I certainly do not endorse the suggestion by the solicitors that any Defendant who raised the point in an application would be penalised in costs.

81. I am not prepared to provide a judgment in relation to this point. These are fact-specific matters and there are significant, differing combination of breaches and non-compliance by the Claimant's solicitors. The failure to provide notification (leading to a lack of opportunity to nominate solicitors and therefore the automatic transfer of claims out of the portal) on a significant number of claims over a five month period, is not something upon which I am prepared to provide a ruling upon without hearing submissions from those affected. The point does not arise in the cases before me.

82. <u>The Damages Claim Portal – jurisdiction</u>

[13] [323] paragraph 37

83. The Defendant has challenged the jurisdiction of the Court in the four claims before the Court on the basis that having been issued in the DCP PD51ZB 3.1 applies;

84. 3.1(1) The Claimant must notify the defendant of the claim through the DCP.

85. (2) Notification of the claim constitutes service of the claim form in accordance with CPR 7.5(1).

86. As the Claimant did not notify the Defendant through the DCP, the Defendant contends that the claim forms have never been properly served (and would have now expired). However PD51ZB 2.2 states;

87. 2.2(6) If the defendant is not represented by a legal representative …… the claim will be automatically transferred out of the DCP, immediately after it is issued, to the CCMCC.

88. 2.2(7) If the claim is transferred out of the DCP pursuant to paragraph (6), then paragraph 8.4 and CPR 7.5(1) will apply.

89. And PD51ZB 8.4 states

90. 8.4 A claim which is transferred out of the DCP continues as if it had been started under CPR Part 7.

91. The Claimant (correctly) identified to the Portal that the Defendant was not represented by a legal representative (and certainly not one who had confirmed authorisation to accept notifications in the DCP on behalf of the Defendant). I cannot interpret the words "automatically" and "immediately" in 2.2(6) as meaning anything other than that the claim was transferred to the CCMCC with immediate effect such that the requirement that the Claimant notified the Defendant of the claim within the DCP ended and the provisions of the Civil Procedure Rules in relation to service then applied.

92. In those circumstances, I dismiss the Defendant's application in terms of the jurisdictional issue based on the failure to serve the claim form through the DCP on these four claims.

93. Whilst this part of my judgment is obiter, given the invitations by those acting for the Claimant to give a wider judgment and the fact that this matter was raised by the Defendant (on the erroneous basis that the Claimant should have stated that the Defendant was represented);

94. Pursuant to PD51ZB paragraph 2.2(6), the claim would not be transferred out of the DCP if in fact the Defendant did have legal representatives who

95. for cases issued prior to 15th September 2022 had complied with the procedural requirements pursuant to the original 2.2(6) which included notifying the Claimant's solicitors that they would accept notifications from the DCP;

96. for cases issued after 15th September 2022 the requirements in paragraph 1.9(a) which required the Defendant's representatives to have registered with HMCTS, notify the

Claimant that they were instructed; and provide the Claimant with their email for claim notifications.

97. If the claim was not transferred out of the DCP, service of the Claim Form would have to be pursuant to paragraph 3.1, irrespective of whether the Claimant has incorrectly failed to upload details of the legal representatives.

98. Service by post of the printed on-Line Claim Form in those circumstances would not be good service pursuant to PD51ZB section 3 so once the four-month period expired, the jurisdictional objection taken by the Defendant would be valid.

99. The situation for claims issued after 15th September 2022 is that if in fact the Defendant had legal representatives who had complied with PD51ZB 1.9(a) and the Claimants' representatives did not upload such details, the jurisdictional objection initially suggested by the Defendant would be in my judgment valid.

100. A more complex situation would arise if the Defendant had not got legal representatives who had compiled with 1.9(a) because the Defendant had not been notified that the Claimant was intending to start a claim using the DCP (in breach of 1.9(2)(a)). From a careful interpretation of the Practice Direction, it would seem that the claim would have been issued and then transferred out of the Portal pursuant to 2.2(6) so the jurisdictional objection would not be valid but it would certainly be arguable that this was an abuse of the Court's process and a future Court would need to determine the appropriate sanction in any particular case.

101. <u>Use of Damage Claims Portal – abuse of process?</u>

102. The issuing of the four CWI claims against the Defendant using the DCP was in my judgment incorrect – the Portal is restricted to claims for "damages only" and the remedy sought by the Claimant included a declaration against the Defendant, without which the judgment could not be obtained.

103. In relation to the effect of this, the Defendant contends that this was an abuse of the process of the Court. There is no dispute that misusing a pilot established pursuant to a Practice Direction could constitute an abuse of process[14].

104. The definition of an abuse of process has been set out by Lord Bingham in *Attorney-General v Barker [2000] 1 FLR 759* as "*using that process for a purpose or in a way significantly different from its ordinary and proper use"*. If the Damage Claims Portal is restricted to be used for cases where the claim is for "damages only" (and I note that that is the first pre-condition for its use set out in the Rules), its use where the claim is not for damages only is using the process for a purpose different from its ordinary and proper use. It seems to me however that, while it is a relatively finely balanced judgment in this particular case, and it was certainly "misused" given the time it was being misused in this way (in July and August 2022) and in the absence (as far as I am aware) of any objection

[14] *Cable v Liverpool Victoria [2020] 4WLR 110*

made by any Defendant[15], the conduct was such that, whilst misguided, it is not significant enough to properly be termed an "abuse of process".

105. Limiting the initial value of the Claim Form to £10,000 where the correct fee is thereafter proffered to the Court at four months after issue.

106. In each of the four cases before me, and in the 144 cases identified by SSB law issued after 11th July 2022[16], CWI claims were issued in which the statement of value was said to be "limited to £10,000". This was however a practice which affected far more claims over a far longer period than those 144 cases (not least because it also affects claims which were issued outwith the DCP).

107. Ms Allen has filed a detailed witness statement in respect of the reasons for this[17] and I do not intend to reproduce it all herein. She prays in aid difficulties with obtaining expert evidence that the Claimants in these CWI cases have encountered and the fact that on receipt of new expert evidence (certainly from one expert) the value of the rectification costs dropped significantly. She therefore states that the firm decided to adopt what she terms "the adapted approach".

108. To put it as neutrally as I can – the Claimants had obtained expert evidence in the claims before me (and a number of other claims) which by the time of the issue of these claims, they knew they would not be able to rely upon because the experts were no longer available. They had not obtained any further expert evidence by the date of issue. The case put forward by SSB Law is that as far as they were aware, there was nothing affecting the credibility of those experts (a matter which is disputed by those acting for the Defendant).

109. At paragraphs 24 – 25 of the statement [319] Ms Allen states

110. "instructions were issued to the teams to issue the Claim Form for a value of £10,000 and, as and when the formal Part 35 report was received, to review the value, and, where necessary, to ensure the Claim Form was amended to reflect the amount stated by the Part 35 expert……

111. These decisions ….. were reached after taking into consideration a number of points including:

112. The wish to protect the client's position by ensuring proceedings were issued within limitation where a favourable Inspection Report was on file

[15] I am conscious that there may have been no objection because the Defendant (at least in these claims) was unaware of this practice; in taking the lack of objection into account it is on the basis merely that the Claimant had not been put on specific notice of an objection such that it should have reviewed its practice and the rules.
[16] The evidence is limited to those claims issued in the DCP; I am unclear as to whether other claims were issued outside the DCP so there were more claims or not.
[17] [p315 onwards] 2nd statement dated 19th April 2023.

113. The wish to avoid and/or mitigate defendant arguments that the claim value was exaggerated at the date of issue in the event that the value as set out in the Inspection Report was not agreed by the expert carrying out the Part 35 report.

114. The interests of saving costs for all parties. Were claims issued for the value set out in the Inspection Report and the Part 35 report to come in at a reduced amount, the defendant would no doubt resist paying the full value of the issue fee at settlement. In the event that the claim was unsuccessful, the ATE provider would also potentially refuse to pay out the full issue fee on the same grounds.

115. The intention to ensure clients met their obligations under the ATE policy by limiting the amount of disbursements which may have to be claimed under the policy at the lowest possible level.

116. I would respectfully submit that the Statement of Truth signed at the point of issue has been signed in the honest belief that the value of the claim could be less than £10,000 and with the intention of being in a position to confirm the actual value by the time proceedings were served based on the content of the new expert's findings".

117. "I would respectfully submit to the Court that the approach adopted was the most appropriate in all the circumstances and the most equitable approach for all the parties concerned".

118. "Where it was not possible to obtain a new report prior to service, and in order to prevent any argument that the claim had been understated so as to reduce or avoid paying the full issue fee, the Particulars of Claim and the Claim value was amended to show the full value set out in the original Inspection Report being the only evidence then available".

119. The Statement of Truth is exactly that; a statement of the true belief of the Claimant in the contents of the Claim Form. Such Claim Form included the words "Expected claim value up to and including".

120. The word "expected" is not an ambiguous word. It denotes a form of probability or strong possibility. Ms Allen's statement where she appears to have interchanged the words "expected….to be up to" with "could be less than"[18] is in my view misconceived. Even if the belief was that the value of the claim was anywhere between £5,000 and £200,000 depending on future evidence, in a case where the only evidence currently obtained as to the value suggested £100,000 (and the Claimant/their legal representatives regarded that as credible evidence), that claim cannot be said to be "expected to be up to and including" £10,000.

121. It is significant that Ms Allen does not suggest that any of the claims were "expected to be up to £10,000" (as pleaded) in her statement only that the value of the claims "could be less than £10,000". That is not the relevant wording used in the Claim Form and to which the Statement of Truth attests. The Claimants have not adduced any evidence that they or their legal representatives "expected the value of the claim to be up to £10,000" in

[18] [p320] paragraph 26

an application that has at its centre the question of whether or not they had an honest belief that it was.

122. The value of any claim "could be less than £10,000"; any litigation is uncertain, these were cases where there would undoubtedly be expert evidence from the Defendant in the future which could be preferred by the Court, or the Claimant could completely change his instructions without warning. That is precisely why the word "expected" is used.

123. The word "expected" is also not used in isolation. The words are "expected to be up to and including". Claimants are not to be expected to be able to precisely calculate what their claim is worth at the outset; they are effectively asked to give a realistic maximum. In the case of personal injury cases, there is always a bracket of general damages and the figure will usually encompass the maximum realistic figure.

124. These claims are not limited to rectification costs. Every CWI claim issued by the Claimants' solicitors contained a claim for general damages for "damages for distress and inconvenience" which was pleaded at the rate of £3,000 per annum for the period from when the alleged damage became evident to the date of issue. In each of the cases before the Court this is for a minimum of five years (and therefore a minimum sum of £15,000).[19] Even if a new expert disagreed with the rectification costs, this would not ordinarily be affected.

125. Ms Allen's evidence in her witness statement[20] is that "other than in terms of rectification costs, the replacement expert reports continue to validate the evidence contained in the inspection reports and any Part 35 report prepared by previous experts… on circa 80% of cases". If the position was that there was a report in the Claimant's possession which had an 80% likelihood of being endorsed on liability/causation which would lead to a claim for at least £15,000 in terms of general damages alone, it cannot be right to say in any case that the Claimant "expected" the claim value to be "up to and including £10,000". Paragraph 77(c) of Ms Allen's 2nd statement wrongly conflates "damage" (as in the rectification cost) with "damages" (as in the entire claim including general damages).[21]

126. There is however a further difficulty with the Claimants' witness evidence. It is their case that the claims were issued with the expected value being up to and including £10,000 in the hope that within the four month period prior to service, further expert evidence would be obtained and the claim value would then be amended.

127. Ms Allen has set out in considerable detail difficulties that were had in sourcing experts. Her evidence states that by the end of 2021 three experts who had been instructed on the majority of their cases had withdrawn from any further involvement. (These

[19] Amin, £21,000; Tina £18,000.

[20] [p334, para 92(h)]

[21] Ms Allen has not produced evidence but relies on the table produced by Mr Matthew Dickinson [416] which relates only to AXA cases. In fact only the case of Rafiq would be relevant as it was the only one where the new expert had provided their opinion at the relevant time of issue. This shows that rectification costs had fallen to £9,550; general damages would have been in addition.

included the two experts who had provided reports in the four claims before me). She sets out that a further three experts were identified after some significant problems but quickly reached full capacity. There were then significant difficulties with at least one of the new experts and the case of *Din and Bashir v Aran Services (G7YJ577)* came before HHJ Gosnell on 9th September 2022. The transcript of the short oral judgment is within the bundle of authorities with which I have been provided [535 onwards]. Ms Allen was in Court for that hearing[22]. At that hearing, in relation to a litigated case in which there were directions already given through to trial in about early 2023, SSB Law were asking for a 6 month stay to obtain a new expert, stating that they needed that time before they could obtain one.

128. It is therefore evident that by early September 2022 the Claimant solicitors were well aware that they were having very significant difficulties getting new experts and that this had been a significant problem since September 2021. In respect of the claims before me, it is the Claimants' representatives' evidence that they had known since at the latest September 2021 that the two experts that had provided reports for these four claims were going to be unable to give evidence.

129. These claims were issued between 20th July and 2nd August 2022. At that time the Claimants' solicitors were well aware of very significant difficulties in obtaining expert reports. No evidence has been put before the Court in relation to any of these four claims in terms of a new expert being identified as being able to inspect or report, or even be instructed, despite there having been at least 10 months from knowing the cases needed a new expert to issue. No evidence has been put before me to support any contention that an expert would be identified, instructed and be able to produce a report within the four-month period given the lack of progress in the previous ten months and the contentions relied upon by SSB Law in the *Din* case. What the evidence does say is that up until 5th December 2022 there were no new experts who were even able to be sent instructions by SSB Law[23] and that "cases which that litigated ***and were subject to Direction deadlines***"[24] were being prioritised. To put this in context, it is stated that by 12th April 2023 "instructions had been issued" (not reports obtained) on 728 (litigated) cases and there were still 700 litigated cases on which an expert has not even been instructed)[25].

130. I therefore do not have any credible evidence before me to support the contention by the Claimants' representatives that there was any realistic expectation that in the four months between issue and service of the four claims before me that an expert would be

[22] Ms Allen states "HHJ Gosnell accepted SSB Law's evidence on this point and recorded a finding that he is "acutely aware of the difficulties in obtaining experts and this is a systematic problem in that although there may be 100's if not 1000's of surveyors no-one wants to do these reports" and then in her third witness statement [added to the bundle at the hearing] at paragraph 12 "the position that the Claimants and SSB Law have found themselves in "is not the individual fault of any lawyer or party"". HHJ Gosnell in fact commenced that paragraph by stating "My view, and I have expressed this view in other cases, is that there is a systemic problem with the way these cases are being managed". The failure to attribute blame to any individual lawyer or party was not meant in my judgment to condone or excuse from blame any actions by SSB Law.

[23] [318 para17]

[24] [318, para 9]

[25] [318 para 18]

identified, allocated to any of these cases rather than litigated cases in which direction deadlines were looming, would have the opportunity to inspect the report, and then would be able to produce a report.

131. Even if there was a realistic hope that expert evidence would be obtained prior to service, this does not mean that a statement of value can be submitted that is not what the Claimant reasonably expects to recover up to, on the basis that he/she intends to amend it prior to service upon receipt of further evidence.

132. It is in my view unnecessary in any event to analyse the evidence in this detailed manner. The position advanced by the Claimants' solicitor (that the statement of truth on the original Claim Form was properly signed) is untenable for three significant reasons.

133. The Claimants' position is that ***based on the evidence that they had before them on the date of issue*** the claim was issued with a statement of value saying that the "expected claim value" was "up to and including" £10,000. The Claimants' position is then that ***based on exactly the same evidence at some point before four months had expired*** the statement of value was amended to say that the expected claim value was "up to and including" figures between £83,562.38 and £104,000; each one at least 8 times the original value (these values being identical to those set out in letters of claim sent prior to issue). To put it bluntly, they cannot both be properly put forward as honest beliefs.

134. Second, Ms Allen's statement lists four factors that influenced the decision to originally issue the claims at £10,000 (see paragraph 68 above). None of these factors affect the Claimant's belief in the expected value of the claim. None of them should have been taken into account by any fee-earner signing the Statement of Truth on behalf of the Claimant to endorse a statement of the expected value of the claim. The suggestion that a statement of the expected value of the claim supported by a statement of truth should be influenced by the need to keep the disbursements to the lowest possible level shows at best a concerning lack of understanding of the proper conduct of proceedings.

135. The latter paragraph records that it was the relevant fee-earner that signed the Statement of Truth on the initial Claim Form. In these cases it was Amandeep Sehmbi on two of the claims, Millie Graham, and Sarah Khan. Each are described as "Litigation Executive". I have been provided with no evidence from them but instead a statement from Ms Allen that *"instructions were issued to the teams to issue the Claim Form for a value of £10,000"*.

136. Thus on the Claimants' representatives' own evidence, in every single case, irrespective of what damage was alleged to have been caused by the alleged defective cavity wall insulation, what effect the Claimant had stated that it had had upon him/her, for how long the damage (and effects on the Claimant) had allegedly lasted, what the evidence obtained by the Claimant stated as to the likely cost of rectification, the fee-earner was instructed to sign a Statement of Truth stating that the Claimant believed that the expected value of the claim was up to and including £10,000.

137. The indication that statements of the expected value of the claim were being dictated without any reference to the circumstances of the claim, and the evidence thus far obtained but on a blanket instruction which removed any discretion from the fee-earner who was instructed to sign a Statement of Truth again shows at best a concerning lack of understanding of the proper conduct of proceedings.

138. I note the judgment of Mr John Male QC, sitting as a Deputy High Court Judge, in *Lewis & Others v Ward Hadaway (A Firm) [2015] EWHC 3503 (Ch)* in which the Claimants had intimated claims worth in the hundreds of thousands, then issued claim forms stating that the claims' values were very considerably lower, then amended each one prior to issue back to the original intimated value. The relevant part of the Defendant's subsequent application was to strike out the claims for abuse of process due to the deliberate understatement of court fees to delay paying the much larger court fees. Whilst the difference in the claim values were much larger (the *Lewis* claim being issued limited to £15,000, and then subsequently amended to "more than £300,000" (20 times the value)), due to the changes in Court Fees payable since that time, whilst in the *Lewis* case the difference in the court fee was £1,430 (the initial fee being £245, the subsequent fee being £1,675), the difference in the fees payable in the four cases before me range from £3,723.12 (initial fee £455, subsequent fee £4178.12) to £4,745 (initial fee £455, subsequent fee £5200).

139. In the *Lewis* case the Claimants always intended to amend the Claim Form just before service to the originally intimated claim. In the four cases before me, there was no realistic expectation that new expert evidence would become available – even if an expert had been identified there were more pressing cases facing deadlines and the four month period mitigated against any realistic hope that an expert would be identified, terms of instruction would be agreed, an inspection could be arranged and a report produced. In reality therefore the same situation arose – the Claimants intended at some stage prior to the expiry of the four month period to amend the value to the much higher one intimated in the letter of claim (which is what happened) or at the very least, in the highly unlikely event that new expert evidence became available, to a significantly higher one (given the minimum amount of general damages being claimed in each case).

140. The consequence of this is set out in *Lewis* thus. "*The Claimants deprived the Court system of fees which should have been paid at the outset and also involved the court in additional work in considering and processing the amended form. It is correct…. that the full fees were eventually paid. However the consequence for the court system was a reduction in, and a disruption to, cash flow and the administrative need to process two sets of claim fees and two sets of claim forms rather than one set of fees and one claim, and also for the court to deal with amendments that would not otherwise have been needed".*

141. Had the appropriate new fees been correctly tendered to the Court along with the Amended Claim Form correctly stating the new increased fee, then a broadly similar situation would have occurred. Whilst the DCP provides an automated system for both calculating and taking payment of the claim fee, the actions of the Claimants' representatives in these cases would have involved the Court receiving a paper copy of the Amended Claim Form with the new issue fee stated thereon, together with either a cheque

for the new amount or (more commonly) a letter asking for the Court to take the amount set out from the Solicitors PBA account. That second step, of having to activate the system to take the money from the PBA account, is necessarily a manual step which involves a member of court staff having to read and action the letter, access the account, and input the relevant data and amount. The letter should also be scanned and uploaded to the electronic file.

142. In a court system under considerable strain, this is an extra burden on the Court staff and would be a very considerable strain if adopted widely by all solicitors. It is noted that in period of just under 4 months commencing 11th July 2022 the Claimants' solicitors have identified 143 cases which they issued within the DCP and then amended to increase the issue fee. This represents a significant extra burden on Court resources which was wholly unnecessary.

143. Further it significantly disrupts the flow of Court fees. As a rough calculation and assuming the four cases before me are reflective of the cases as a whole, there was an average underpayment of £4,179[26]. On 143 cases this would amount to £597,597 which was delayed by at least 4 months. I say at least four months for this reason. It appears where the Claimant solicitor wrote to the Court asking it to take the increased issue fee it did so at the time that the certificate of service was sent to the Court (by necessity on or after service which, it is accepted, was almost always on the four month deadline). It is well-known that letters sent to the CCMCC are very rarely actioned the same day and they may have fallen to be actioned a considerable time later due to the amount of correspondence received and the backlog that has built up.[27]

144. I therefore have little difficulty in concluding that the issue of these claims with the value of the claims expected to be up to £10,000 is an abuse of the process of the Court, even if the Claimants' representatives had within four months of issue amended the Claim Form to the amount originally intimated in the letter of claim **and** paid (or proffered for payment by asking the fee to be taken from their PBA account) the **correct** issue fee.

145. <u>Limiting the Claim Form to £10,000 when an incorrect fee is thereafter proffered to the Court</u>

146. I have highlighted "correct" fee in the paragraph above because it has become evident for reasons which I cannot fathom that in some cases (three out of the four before me) that the amount of the amended issue fee stated on the Amended Claim Forms are

[26] The only other information as to the difference between the initial and amended court fees that can be gleaned is by looking at exhibit DJA4 from which three amended court fees can be ascertained. If these are included the average underpayment over the seven fees would rise to £4,983.84 such that the figure would rise over the 143 cases to £712,689.12. It may be that that figure is an overestimate due to some Claimants being entitled to Help With Fees Remission Forms; I have not been provided with any evidence in relation to that.

[27] [p328]; as of 19th April 2023 the fees had not been taken by the Court from the PBA account in cases where the correspondence requesting this had been sent in January 2023

incorrect. The correct fee will be ascertained by the simple calculation of dividing the value by 20.

147. It seems to me that where an erroneous fee is thereafter proffered to the Court, the abuse of process is more serious. It will involve a further use of the Court resources to either check each and every fee which is proffered if the Court Staff are be expected to work on the basis that the amended issue fee written on the claim form (purportedly supported by a Statement of Truth) is inaccurate, to check every calculation, and then to contact the party and to request a new fee, for that new party to then send in a new request which also had to be processed. Alternatively if the fee is not identified as inaccurate at the time it is paid it would necessitate further remedial action, a further (third) fee being taken (if there is a shortfall), with the Court having to further divert further scarce Court staff resources to the case necessitated by the initial limitation and amendment, and then further to deal with the incorrect fee.

148. Whilst when I raised this discrepancy in the hearing I was informed that the Claimants' solicitors had realised that three out of the four amended fees had been wrongly calculated and amended on the Amended Claim Form, and the correct fee had been proffered to the Court when the fee had been paid on 21st March 2023, that was only in reply to my direct questioning and I was presented with no evidence in relation to this matter. The only evidence before me is that in three out of four of the cases at which I have looked, the incorrect increased fee is on the face of the Amended Claim Form.

149. <u>Limiting the Court Fee to £10,000 when the Amended Claim fee is not proffered at the time of amendment</u>

150. In the four cases before me (and on at least 47 cases of the 144 which were issued in the DCP limited to £10,000 and then significantly amended) the Amended Claim Fee was not proffered at the time of the amendment. This amounted to almost a third of the cases that had been issued by the Claimants' solicitors within the Portal within the limited time period under consideration[28]

151. The Claimants' evidence/submissions in relation to this is as follows (and I summarise);

152. All the cases in which the increased issue fees were not tendered were "in the conduct of the same file handler, Yasmean Ashraf".[29]

153. The actions "are not consistent with the business approach and do not represent or arise from a SSB Law policy decision".[30]

[28] It is noted that the Claimants' evidence suggests that Ms Ashraf was one of a department of 33 fee-earners and one of 11 litigators. It would appear that she was the relevant fee-earner on over a third of the claims that had reached that stage at that time however.

[29] [305, para 7]

[30] [305, para 10]

154. That because it is only Miss Ashraf involved this does not amount to a deliberate or systematic abuse of process by SSB Law.

155. They had a system in place for auditing cases and training their litigators and they are confident that this would have been identified by them within a short space of time.

156. Miss Ashraf commenced working in the department in August 2022. She was unqualified but had experience of working at other solicitor's firms. (There is no evidence as to whether this had ever included the rare practice of amending claim form values within four months of issue). In the relevant period she was the fee-handler with conduct of the file at the time of amendment on 53 out of the 144 relevant files (36% - over a third). SSB Law's evidence states that the fee had been paid by the date of the statement on 7 of those files, and they further specifically state that the fee was proffered at date of amendment on 5 files, appending evidence of letters either sent by her or by a litigation assistant on her behalf. The evidence in relation to one of those files (not one before me on this application) is that in fact she did not proffer the fee at the time of amendment.

157. Between 18th November 2022 and 27th February 2023 she failed to pay or proffer the increase issue fee in at least 47 out of 53 cases (over 88%). There is no explanation provided by her in relation to this and the Claimants' evidence does not contain any explanation that has been provided to them by her but merely states that after an investigation they terminated her employment. It was not picked up within a reasonable period of time by a supervising solicitor, or by way of any check or audit on how this relatively new member of the department (who appears to have been given the responsibility of amending the value on over a third of the cases being amended despite not having been the file handler at the date of issue in all of the cases where I can ascertain this) was carrying out such practice. It may not be relevant to these four cases but it is extremely concerning that the practice continued after the Defendant had identified the fact that increased issue fees were not being paid upon amendment and notified SSB Law of it by way of the last application (in 030DC688)[31].

158. It is not disputed that at the time of the amendment an amended issue fee became payable; as LJ Jackson giving the judgment of the Court of Appeal in *Butters and Hayes v Hayes [2021] EWCA Civ 252* stated *"Where a claim or counterclaim is amended, and the fee paid before amendment is less than that which would have been payable if the document, as amended, had been so drawn in the first instance, the party amending the document must pay the difference: Schedule 1 to the Fees Order"*.

159. Where the Claimant wishes to amend the claim value after service, he/she must obtain permission from the Court. Such orders (often made by consent) contain either an order that the Claimant is given permission to amend the Claim Form on payment of the appropriate increased issue fee or an order that payment of the increased issue fee is made within a (very) short period of time.

[31] After the relevant application was made on 23rd January 2023, Ms Ashraf appears to have served a further 18 claims without paying the amended issue fee in February 2023, including on 27th February 2023.

160. CPR 17.1(1) enables a party to amend their Claim Form prior to service without the Court's permission. This creates a lack of overview by the Court. It would be relatively rare that a Claim form is issued and then within four months the expected value of the claim changes significantly such that it needs to be amended. It cannot be right that either the Court (or the Defendant's legal representative[32]) should have to expect that the Claimant will not pay the increased court issue fee and that scarce resources should be utilised to check up on legal representatives that they have acted properly.[33]

161. The onus on the Claimant to ensure that the increased court issue fee is paid to the Court is heightened in these claims where the very fact of the need for the increased Court issue fee is due to the abuse of process being perpetuated by the Claimant at the outset. These are not fees that should be paid at the time of amendment; these are in fact fees which should have been paid four months earlier at the issue of the case within the systems set up by the Court which ensure that claims are not issued until the appropriate court fee is paid.

162. The abuse of process perpetuated by the Claimants in not paying the proper Court fee at the issue of each of the four claims before me by misstating the expected value of the claim, is very significantly increased in terms of seriousness given the consequence that the appropriate Court fee was not tendered at the time of the amendment (unlike in *Lewis*). This has had significant ramifications both in terms of the significant delay in paying the fees and also the amount of Court resources that have additionally had to be utilised.

163. This in itself is increased in terms of seriousness in that it would appear that even having had knowledge of the allegation that the increased issue fees had not been paid/tendered to the Court, the Claimants solicitors did not send the relevant emails to the Court proffering the correct fees until 21st March 2023 (and then only after an Unless Order had been made).

164. Expert evidence – abuse of process

165. The Defendant in this case raises a number of issues in respect of expert evidence.

166. Issues arising in respect of Mr Charles Millar

167. In terms of the four cases before me, the first witness statement of Mr Toyn sets out that in three of the claims before me[34] the Claimant had obtained what is described as an "initial report" from Mr Charles Millar in the Autumn of 2019. (In fact I note that the report disclosed in "Amin" is stated to be a "Final Report for the Court".) The satellite litigation surrounding Mr Millar's withdrawal from being the expert in terms of applications in numerous cases has been significant. Mr Toyn's evidence is that certainly by September

[32] In this case the Defendants legal representative for some reason suspected that the increased issue fees were not being paid and therefore telephoned the Court to check. The lack of trust between parties' representatives in this respect is alarming however in this instance it proved to be justified.

[33] In fact this would have been impossible for the Court to have achieved in any event on at least one of the cases before it and it appears 11 others; in relation to 033DC409 the Amended Claim Form identifying both the need for and the amount of the increased issue fee was never sent to the Court.

[34] 031DC919 "Tina", 030DC688 "Amin" and 029DC804 "Mahmood".

2021 SSB Law knew that the report of Mr Millar would not be able to be relied upon as he would not be able to participate in proceedings further (so comply with inevitable directions in relation to joint statements and Part 35 questions or to attend at trial). Ms Allen and he attribute that to medical issues.

168. The Defendant's case in respect of Mr Millar is that the Claimant cannot rely on his reports to assert the matters necessarily pleaded in the Particulars of Claim and necessary to be believed by the Claimant to enable a Statement of Truth on such pleading to be properly signed.

169. To properly analyse this point, one first has to decide whether some form of expert evidence is necessary for the claim to be properly issued with a Statement of Truth. This is not disputed by SSB Law in that Ms Allen states[35] that she does not dispute the assertion on behalf of the Defendant that "claims of this type are heavily reliant on expert evidence to the degree that legal representatives are reliant on that evidence to assess the merits of the claim and determine liability". It was canvassed before me in submissions from Counsel for the Claimant that this was not necessary; if the Claimant knew that cavity wall insulation had been installed, and thereafter after some time became aware of damp, that would be sufficient for the Claimant to believe that inappropriate/defective cavity wall insulation had been installed and caused the damp and therefore a claim could be properly issued.

170. I note Ms Allen's evidence in her third statement at paragraph 2. She states that a field agent investigation of the property is carried out which is subsequently signed off by an RICS qualified expert, and this is all carried out before SSB Law's involvement. She states that the firm "rejects 70% of claims at this vetting stage, taking on only those claims where we believe there is a sound basis for the claim".

171. My judgment is that I agree with the assertion by both the Defendant and Ms Allen, solicitor for the Claimants. These are not cases where a Claimant can honestly assert that he/she (reasonably) believes that defective or inappropriate cavity wall installation has led to damage to property without some form of expert assessment save in very specific circumstances which do not exist in any of the claims before me. That does not equate to an assertion that such expert evidence must be disclosed at issue or shortly thereafter however; that is an obiter point in relation to this judgment and I do not intend to deal with that herein.

172. I will deal briefly with the submission made by Counsel for the Claimant. This is not a case where expert evidence is only necessary to assess the quantum of the claim. If a lorry was to drive into a house and partially demolish a wall, it may well be that the property owner would need expert evidence to assess the degree of rectification work required and the cost of the same, but expert evidence would not be necessary to issue the claim and assert that the lorry driver was negligent and that he had caused damage. In CWI cases expert evidence would be necessary to establish liability and causation, as well as quantum. The term "expert" can however be given a far wider interpretation than "expert evidence

[35] [333 para 89]

that can be relied upon at trial". There must be something which evidences liability and causation which can reasonably found a belief to enable the claim to be properly issued and pleaded. In my judgment a Claimant cannot properly be said to have an honest belief in a claim that historic cavity wall insulation has been defectively or inappropriately installed and that such defective or inappropriate installation has led to damage unless and until he has some form of expert evidence to that effect. Even if I am wrong about that, in these claims against insurers, there also needs to be some form of expert evidence to establish that any such damage occurred within the period of the policy. At the time of issue of these claims, the judgment of HHJ Gosnell in *Amin v QIC [2021] 11 WLUK 295* had been handed down (and not appealed by the Claimant's solicitors).

173. Having decided that some expert evidence is needed before a claim can be properly issued, the question arises whether the reports of Mr Millar, even in circumstances where it is accepted that a new expert would need to be instructed, were sufficient.

174. The Defendant puts its case thus (from Counsel's skeleton argument); "Mr Millar is not an independent expert upon whose evidence reliance can properly be placed as to liability or quantum" and the Claimants' solicitors knew that (it being suggested that the Claimants' solicitor had admitted that fact in a previous case).

175. This is hotly disputed by the Claimants' solicitors (both the fact that the evidence cannot be relied upon and the fact that they knew about it).

176. I have not heard any oral evidence in relation to this however from the witness statements adduced before me;

177. Mr Millar was the Director of a company called Eco Serv Surveyors Limited, at all material times (he resigned in June 2022, the reports in these cases were compiled in 2019).

178. That company purported to provide independent expert reports for cavity wall insulation cases from Mr Millar. It would appear from the evidence that Eco Serv Surveyors Limited were responsible for initially approaching the Claimants (by way of a "field agent"), of advising them that if they have damp problems it could be due to defective cavity wall insulation, that they may have a claim, and for conducting and producing the initial Inspection Report which was then sent to the expert to verify.

179. In the course of CWI litigation which did not involve SSB Law, there was disclosure of a form of authority signed by the relevant Claimant which stated "I ….. hereby authorise my solicitors "TBC" to instruct and pay my damages for cavity wall extraction (removal from cavity) only arising from my cavity wall claim to ECO Serv Surveys Ltd" (the latter a non-existent legal entity at the time). The "inspection report" was carried out by their agent (non-qualified) and then the expert report was subsequently provided by Mr Millar (before a replacement expert was utilised). The Form of Authority was (probably inadvertently) disclosed; the fact of such an agreement was neither disclosed in Mr Millar's report nor in the Claimant's witness statement (the case being discontinued before trial).

180. Mr Toyn deals with this in his evidence thus "There is simply no basis for assuming all the evidence given by Mr Millar is tainted by a lack of independence on the basis of one finding made in a case where Mr Millar was not actually giving evidence and in which the circumstances of the finding are unclear".

181. I am afraid this is either erroneous or disingenuous. The Form of Authority (from that case, disclosed in these proceedings) raises real and significant concerns about Mr Millar as an expert. At the very least, the prima facie evidence before the Court suggests that he was either totally unaware of or ignoring his duties as an expert if he was the Director of a company which had a significant financial interest in the case at the same time as producing expert evidence purporting to be independent. Once such evidence had (inadvertently) come to light it is correct to say there has been no finding of fact in relation to this and that Mr Millar has not addressed the matter in any evidence. Mr Millar has never been relied upon as the expert in a case since and no Court has therefore had any opportunity to deal with the matter.

182. The Defendant is right to say that there are significant concerns about the evidence of Mr Millar and reports produced by him.

183. The issue in relation to the three claims before this Court however is whether the Claimants knew or should have known at the date of the issue of the claim that his evidence was potentially tainted, and if so whether it was so tainted that the claim should not have been issued without receipt of further expert evidence.

184. The Defendant relies on what occurred in another case, namely *Zaheer v AXA Insurance UK PLC*, G74YJ652. In this case SSB Law acted for the Claimant. On 18th May 2022 the Defendant issued an application supported by a witness statement by Matthew Dickinson (the same solicitor who acts for the same Defendant in the incident claims) which set out the concerns relating to Mr Millar and Eco Serv in considerable detail[36]. Such application was for a wasted costs order against SSB Law. By the time of the application the Claimant was relying on a different expert at trial.

185. Such application was listed to be heard at the conclusion of the trial on 24th May 2022. After hearing at least some of the Claimant's (new) expert's evidence at such trial, the Claimant agreed that the claim should be dismissed and the hearing of the wasted costs application was adjourned to 19th August 2022 initially for a directions hearing and then thereafter for a hearing on 28th October 2022.

186. I have been provided with the transcript of judgment given by HHJ Gosnell[37]. It says this;

187. "it is accepted at this stage that in instructing Charles Millar as Part 35 expert to support this claim, the solicitors who acted on behalf of the claimant have engaged in conduct which was improper, unreasonable or negligent. It is conceded that it was for the reasons set out in the sixth witness statement of Mr Dickinson.

[36] [618 onwards]

[37] [32 onwards]

188. Essentially, what he says in that statement is that Mr Millar was never independent; he was a director of a company called Eco Serv, who were connected with a claims management company. He had a financial interest not only in the claim succeeding to a significant sum because his claims management company were on a percentage of the compensation.

189. SSB Law have not put in any evidence themselves to deny that, and counsel on their behalf has essentially conceded that those factual assertions are not disputed".

190. HHJ Gosnell was therefore presented with evidence from the Defendant and (as it is accepted) there was no contrary evidence from SSB Law. It was unsurprising therefore that he reached the conclusions he did. He did not hear any evidence and he did not therefore make findings of fact which can be relied upon in subsequent proceedings.

191. The question as to whether an abuse of process has occurred appears to me is what knowledge SSB Law had when they issued these three claims, relying on Mr Millar's reports.

192. The evidence presented by SSB Law raises concerning issues. *Zaheer* was a CWI claim which ended with not only it being discontinued mid-way through the trial but with an application for wasted costs against SSB Law. Wasted costs orders necessitate a finding that the solicitors have engaged in negligent, improper or unreasonable conduct. One would have expected therefore from the moment that there is any indication of such conduct being alleged, the senior management level and certainly the relevant supervising partner would be involved.

193. In this case, the application was unusually made in advance of the trial by way of a written application supported by a (detailed) witness statement. The allegation made in that, that an expert witness who had been instructed in many cases by SSB Law had acted with complete disregard to his professional obligations as an expert witness to the extent that he had a personal financial interest in a claim, would be one which would have been expected to excite much professional curiosity at the very least. Such witness statement appended the relevant Form of Authority. DJ Goldberg had ordered on 18th May 2022 (such order also being sent to SSB Law) for the papers in claim F09YM874 to be disclosed limited to evidence as to the activities and practices of Evo Serv Surveyors Limited, Mr Charles Millar and the Claimant's representatives – again an unusual order that would be expected to lead to investigation by the firm.

194. The fact that this led on to an allegation that this firm had acted in an unreasonable, improper or negligent manner would have usually led to the matter being dealt with at the highest level and careful consideration being given to what evidence should be adduced. I am aware that SSB Law effectively contend that the wasted costs order was made on the basis that their negligent, improper and unreasonable conduct related to the fact that they should not have continued to rely on Mr Millar after they were or should have become aware that he was unavailable to continue as an expert (this is not explicitly stated but that is what their evidence amounts to). The suggestion that they reasonably chose to ignore evidence of the far more serious allegation is not however credible.

195. Mr Toyn states "Neither I nor to the best of my knowledge and belief no one else at SSB Law had any reason to believe that the reports prepared by Mr Charles Millar were anything other than entirely independent and honest….

196. The allegations made by Mr Dickinson regarding Mr Charles Millar's independence and SSB Law's understanding of it in the passages of his witness statements I refer to at paragraph 46 above are wholly and expressly denied……"

197. [in relation to HHJ Gosnell's statement that Counsel for the Claimant had essentially concluded that these factual assertions are not disputed]

198. "any such concession made by Counsel in that hearing was made without instruction from SSB Law and without authority from SSB Law, Any such concession was made incorrectly and should never have been made.

199. I do not understand HHJ Gosnell to have been saying in the Zaheer case that Mr Millar would not be a suitable expert in any case".

200. I am concerned that the position of SSB Law remains that, in the face of unchallenged documentary evidence that Mr Millar has purported to act as an independent expert whilst having a direct financial interest in the outcome of the same case (by way of an agreement signed by a Claimant that the entirety of the rectification costs, the significant majority of the damages likely to be received in the event of a successful claim must be paid to a company of which he is a Director) they do not accept that his understanding of his expert duties appears on a prima facie basis to be so deficient that he would not be a suitable expert. Further that, as long as they have not been provided with direct evidence of a similar agreement in respect of their cases, the fact that there is documentary evidence that he has acted in such a way in a previous case (in the absence of any evidence of even a bare denial from him) can and indeed should be ignored.

201. It cannot be right in my view to state that the Claimants' legal representative could rely on the statement of truth on the expert report of the expert's understanding of his duties in the light of evidence that in a previous case such statement had been signed when such circumstances had arisen. I am not making a finding of fact that Mr Millar has acted wrongly. He is not a party to these proceedings. The question before the Court is whether the evidence that was adduced was such that his evidence should not be relied as evidence upon which it was proper to base the issue of a claim.

202. This is not an allegation made in total isolation nor can it be contended that the Inspection Reports produced by Eco Serv are not affected (if Eco Serv operated by way of ensuring they had a financial interest in a claim at one time, producing Inspection Reports which directly affected that financial interest, it would be contradictory to state that whilst Mr Millar's report could not be relied upon, their inspection reports could be; those producing those were not qualified or subject to the expert's duties to the Court). I have also noted the specific warning by the Solicitors Regulation Authority in July 2020 which alerts solicitors to the possibility that "some homeowners have apparently been contacted by claims management companies and law firms and been told that they cavity wall

insulation was either fitted incorrectly, unsuitable for the property or that it should never have been offered/fitted at all" and that firms were advised to "be careful to verify the source of any referral. This will help law firms make sure that the claim did not come from cold calling or other poor practices". That warning puts the Claimants' solicitors on sufficient notice to at least critically appraise the source and motivation of reports before it; together with the evidence disclosed in the *Zaheer* case, there should have at least a detailed investigation as to what had occurred.

203. I am also concerned about the evidence of Mr Toyn that "The conclusions that Mr Millar reaches in the reports in the cases now before the Court, along with other reports prepared on behalf of SSB Law's clients did not seem to be radically different to or out of step with the conclusions reached by the firm in other cases" when in one of the (rare) cases which had actually proceeded to trial (a number being adjourned or discontinued either on the morning of hearing or very shortly before), SSB Law had discontinued the claim because the Claimant's new surveyor had reached very different conclusions in his report and subsequently in his evidence at trial. The decision to discontinue (mid-way through trial, after hearing at least some of their own expert's evidence and having incurred almost all of the costs) must have been reached on the basis that they were (highly) unlikely to succeed on liability. This occurred before the Defendant's expert started to give evidence.

204. The evidence of Mr Toyn is that any concession made by Counsel in the *Zaheer* case was not upon instructions. Even without such concession however, Counsel (and the Court) appears to have been left with the unchallenged documentary evidence of the Form of Authority and therefore the assertion that in a previous case the expert had apparently acted in a manner which was at odds with his duties to the Court.

205. It is not SSB Law's position that they have made investigations into the Form of Authority and then reached a decision that, as a result of such investigations, Mr Millar had acted in a proper manner. It is their position that they have reached a position that as they have not been provided with evidence of any such agreements *in subsequent cases* they can safely conclude that there were no such agreements (Mr Toyn states that he is satisfied that no such agreements exist in any cases in which SSB Law are instructed). It is an obvious omission that they present no evidence that they have in fact taken any instructions from any of their clients (in particular the Claimants in this matter) as to whether such agreements have been entered into or have asked Eco Serv to confirm whether any such agreements had been entered into. This concerns an agreement which was allegedly made ***before*** solicitors became involved and to which the solicitors were not a party. Furthermore it involves an agreement which would only be necessary for Eco Serv to send to the solicitors ***after*** the conclusion of a successful claim for damages. Having been provided with evidence that such an agreement had been made in a previous case, I find it extraordinary that the solicitors have failed to adduce any evidence that they have even taken instructions from the Claimants about this matter. Even if they had had such evidence though, it would not have dissipated the concerns about the expert's understanding of his duties to the Court.

206. Notwithstanding all of those concerns it is correct to record that I do not agree with Mr Dickinson that SSB Law were aware of "**compelling** evidence" that Mr Millar "had been fabricating and/or exaggerating claims".[38] That significantly overstates the position.

207. Given the contentions made on behalf of the Claimants that reliance on the expert reports of Mr Millar was justified, there were no specific submissions before me in relation to reliance on Inspection Reports (in the absence of any expert evidence). Ms Allen specifically states that the cases before the Court have been so pleaded after input from the Inspection Report is signed off by a RICS qualified expert[39] . I am therefore not asked to decide the position if the Claimant only relied upon an Inspection Report; insofar as I am, I note the concerns about the Inspection Reports produced by Eco Serv and the fact that the same considerations arise as to these (produced by a direct employee of Eco Serv which had a direct interest in the claim) as the reports of Mr Millar.

208. The question before me is whether it was an abuse of process to issue proceedings in these three claims based on an expert report produced by Mr Millar in cases where limitation was fast approaching and they could not realistically obtain further expert evidence, given that the firm had both been in receipt of the statement of Mr Matthew Dickinson in the *Zaheer* case from May 2022 disclosing the Form of Authority and the knowledge that in the *Zaheer* trial (also in May 2022), Mr Ben Dickinson's evidence ***on liability*** had cast considerable doubt on the initial expert evidence of Mr Millar. (It is noted that the issue of the proceedings with which I am involved pre-dated the hearing before HHJ Gosnell and therefore whether concessions were made, rightly or wrongly, at that hearing or whether the Claimants' solicitors should have taken into account the judgment of HHJ Gosnell are irrelevant to the issues arising out of these claims).

209. In my judgment it was an abuse of the Court's process to issue these claims based on expert evidence from Mr Millar when those representing the Claimant had been informed that there were significant concerns, supported by a disclosed document, as to his independence in a previous case and therefore his understanding of his duty to the Court as an expert; **and** between two and three months before issue of each of these claims, the Claimants' solicitors had had conduct of a case which had been discontinued by them after their replacement expert had given evidence as to liability which meant that they had no realistic prospect of success on a case where Mr Millar has previously provided contrary evidence. It is the combination of those two matters which draw me to that conclusion.

210. For the sake of completeness I have to raise concerns about the third statement of Ms Allen and in particular the final sentence of paragraph 7 which utilises the word "apparently" in the context of "comments apparently made in that hearing". I am unsure whether she is intending to cast doubt on the accuracy of the transcript (noting that the same has been certified by the transcription company and approved by HHJ Gosnell) or the accuracy of HHJ Gosnell's record of the comments made by their Counsel but this is a somewhat misconceived statement given that she was not present, her own evidence is that

[38] [410 paragraph 18 e]

[39] [331 para 80(b)]

there was no proper record of the hearing kept by anybody in the firm or acting for them, and she has not sought fit to obtain a transcript of the hearing.

211. Issues arising out of Mr Muir's evidence

212. In the final claim (030DC688 "Jagger") the expert report obtained by the Claimant was from Robert Muir. The Defendant has raised concerns as to the reliance on his reports at the issue of the claim. I do not intend to go through that evidence in detail for the purposes of this judgment. Unlike in the case of Mr Millar, the Defendant cannot point to any significant evidence that raises a significant concern that the statement of truth signed by Mr Muir should be doubted. I am aware that they have raised concerns that a different expert has stated that the same agency has misused his signature in relation to amended reports. There is no suggestion that Mr Muir has ever raised these concerns. Further (and unlike in the case of Mr Millar), the Defendant cannot point to any significant evidence that raises the significant concern that Mr Muir's evidence may be doubted in terms of liability/causation. Their evidence in relation to this is at its highest is that replacement experts have reduced rectification costs (albeit not to a highly significant extent and at the time of the issue of this claim (which is the relevant time), there were both decreases and increases in rectification costs).

213. I do not find that at the time the "Jagger" claim was issued it was an abuse of process to issue given the expert evidence of Mr Muir, irrespective of the fact that the Claimant knew that they would have to obtain new expert evidence to proceed with the case. Nor do I find that to amend the claim to the value claimed given that the only value the Claimant realistically had before her was that in Mr Muir's report was an abuse of process.

214. Sanctions

215. *CPR 3.4(2) The Court may strike out a statement of case if it appears to the Court -*

216. *that the statement of case is an abuse of the court's process.*

217. As set out in *Biguzzi v Rank Leisure PLC [1999] 1 WLR 1926,* the draconian step of striking a claim out is always a last resort, and the Court has a wide discretion and power to make the sanction(s) fit the breach. The proportionality of the sanction is of primary importance and if a proportionate sanction short of strike out is available then strike out would be inappropriate. I have considered at length the judgment of Mr John Male QC in *Lewis* (and the decision that the Court came to in that case) and I note and adopt the dicta of the Court of Appeal in *Masood v Zahoor [2009] EWCA Civ 650* that where a Claimant is guilty of misconduct in proceedings which is so serious that it would be an affront to the Court to permit him to continue to prosecute the claim then the claim may be struck out, albeit I also bear in mind that the Court is not easily affronted (as per Vos LJ in *Alpha Rocks Solicitors v Alade [2015] EWCA Civ 685).*

218. I am conscious that I have a wide discretion in this matter and I have carefully considered how that discretion should be exercised. I bear in mind (as I must) that each

Claimant may well have a valid claim and the Court should be slow to take away his or her access to the Court to have the same determined.

219. In relation to each of the four claims before me I have already set out that I find that the issue of the same supported by a Statement of Truth stating that the value of the claim was "expected to be up to and including £10,000" was an abuse of the process of the Court. The same led to the issue fee being limited to £455 instead of a figure at least six times as much. Had the Claim Form been properly amended to the appropriate figure within the four month period and the fee proffered to the Court at that time, it would have led to the unnecessary use of Court resources in taking that fee and further it would have led to the flow of due Court fees being disrupted, for in my judgment at least 5 months.

220. That scenario would be an abuse of the process of the Court and an appropriate sanction would need to determined. In my view in a case such as this the appropriate sanction would be that the Claimant should be penalised by the following;

221. The Claimant would be expected to pay the costs of an application based on such abuse of process by the Defendant;

222. The Claimant should be debarred from recovering any costs incurred at the date when the claim was issued (the start of the period in which the Claimant was abusing the process of the Court) until the abuse of process ended. This latter date should in my view be either the date when the fee was taken by the Court from the solicitor's PBA account or 28 days from the date the fee was proffered whichever is earliest. It seems to me that it would be wrong for a party who had subjected the Court to having to undertake extra work and contributed to the backlog of work that the Court had to undertake to be able to contend that when he/she chose to comply with their duties, the Court should have been expected to be able to immediately facilitate such payment. However, it would seem wrong for the party to be significantly further penalised beyond 28 days when the fee was proffered at amendment if the Court service could not facilitate the payment in that time and the correct fee had been proffered upon amendment.

223. I do not judge that in this scenario it would be right to further penalise the Claimant by making them pay the costs that the Defendant incurred during this period; that would be disproportionate.

224. For the avoidance of doubt, the costs incurred that the Claimant would be debarred from recovering would not include the original issue fee (£455) but would include the amended issue fee.

225. In three of the four claims before me the Claim Form was amended (albeit not signed or dated), but the amended issue fee (based on the amended Statement of Value) was incorrect (albeit in one of the claims - Jagger – the stated fee was more than was in fact required). It seems to me that where such a miscalculation had occurred (accepting that such was an inadvertent miscalculation) the Claimant should be debarred from recovering incurred costs up to and including the date at which a fee at least equal to the correct amount was taken by the Court or 28 days after the same was proffered to the Court.

It is not for the Court to have to check the issue fee (which should be verified by a Statement of Truth) in the circumstances that the Claimant has already necessitated an unnecessary second payment being paid.

226. As I have already set out, in all four claims before me no attempt was made to proffer any fee (calculated correctly or otherwise) at the time that the Claimant served the amended Claim Form. This in my view considerably increases the gravity of the abuse of process as rather than delaying the payment of the correct fee by 4 or 5 months, it instead delays the payment by a significantly longer period (in these cases, the correct issue fee which was due in July or August 2022 was only proffered to the Court on 21st March 2023 some 6 or 7 months later). Moreover, having set in train a process of events whereby the Court's usual process to ensure payment of the correct fee was abrogated due to the Claimant's abuse of process, the failure to thereafter ensure payment at the time when even on the Claimant's case such increased fee became payable significantly increases the affront such action causes to the Court.

227. I have carefully considered the appropriate sanction that the Court should put in place in terms of the more serious nature of this abuse of process given the practical outcomes and whether the sanctions already set out above remain proportionate. The effect of the sanction set out above involving the debarring of the Claimant from recovering any costs expended in the period until the fee is taken would at first blush appear to be more draconian as the period would be increased, however in fact in practical terms it makes no difference as no significant additional costs were incurred in these claims in any event over that time period.

228. In my judgment this is very finely balanced. This was a serious abuse of the Court's process which was made significantly more serious due to the non-payment of Court fees even after the Claimant accepted that such were due. In each of the claims the Amended Claim Forms were unsigned and undated (in breach of the CPR) and in the case of *Mahmood* the Amended Claim Form (and the Particulars of Claim) was not filed at Court. Even when the problem was specifically brought to the attention of the Claimants' solicitors, there was still a significant delay before the fees were tendered to the Court. The process has led to a significant waste of the Court resources (and indeed the Defendant's resources) in that the Defendant solicitor has had to telephone the Court and thereafter a member of the Defendant's solicitors and a member of the Court staff had to spend considerable time checking the electronic filing system for each of the cases and exchanging the information. For the purposes of this application (which took a day and a half of Court time within the hearing plus significant pre-reading) I had to unravel a number of different incorrect procedures such as checking all the amended issue fees and alerting the parties to the incorrect calculations of the same, interrogating the Court files to establish whether or not the Amended Claim Form had been served (because on one of them it had not been), and checking the Amended Claim Forms to identify that none of them had been correctly supported by a Statement of Truth (and then dealing with an application made between the first and second hearing dates to purportedly correct that). Had the claim been issued with the statement of value that each Claimant asserts was supported by the evidence at the time of issue (by the very fact that it was amended to that value with no new evidence) none of this would have been necessary. All the various complexities and problems that

have subsequently arisen stem from the initial abuse of process and increase the seriousness of it.

229. In those circumstances, as I have said, the judgment is very finely balanced. The Court is not easily affronted but the combination of all of these factors leave it very close to concluding that it would be an affront to enable such claims to continue. In weighing up all of the circumstances, the abuse of the process of the Court and the consequences thereof, I have concluded thus; without any further factors, the Court can (just) impose a sanction which proportionately meets the abuse, namely;

230. The Claimant pays the costs of any application based on such abuse of process by the Defendant;

231. The Claimant should be debarred from recovering any costs incurred at the date when the claim was issued (the start of the period in which the Claimant was abusing the process of the Court) until the abuse of process ended, that latter date being the date when the fee was taken by the Court from the solicitor's PBA account. Given the significant and serious nature of the abuse of process and the fact that no fee was proffered until the matter was raised by the Court or the Defendant, it would seem proportionate that the Claimants' solicitor should be debarred from recovering costs until such time as the monies were taken from the account, notwithstanding the fact that part of the delay may have been caused by the Court Service. Because the payments were made at the point where the cases started to be transferred between the courts there is likely to have been significant extra delay through no fault of the Court. The Claimants' solicitors were well aware that there were such significant delays as the same is set out in their own evidence and there is no evidence before me that they sought to chase such payments or alert the Court service to the fact that the fees had not been taken.

232. However there is one further matter that has arisen in at least two and possibly three of the claims before me. That is where the Claimants' legal representative, having issued the claim for a significant undervalue, thereafter having amended the Claim Form without signing the relevant Statement of Truth (or in fact dating it), and having not paid the increased issue fee to the Court (in the amount of at least £3,000), has then made an application for default judgment within a couple of days of the acknowledgment of service or defence became due. These are cases the Claimant's solicitors are very much aware will be robustly defended by the insurers. They are effectively utilising the rules for a tactical/costs advantage knowing that there will be an application to set judgment aside (it appears that indeed what happened in these cases were that judgments were wrongly entered by the Court which was processing the default judgment applications faster than they were processing the acknowledgment of services). It seems to me that where a legal representative has perpetuated an abuse of process of this significance which continues at the point where default judgement is applied for (relying on a certificate of service which states that an "Amended Claim Form" has been served even though such is not supported by a Statement of Truth nor is it CPR complaint as undated), that use of the Court rules to procure such an advantage whilst they remain abusing the process of the Court and their own position is fraught with procedural errors, renders their conduct so offensive that the only proportionate sanction is to strike out the claim.

233. I am conscious that it could be contended that the application for default judgment was in fact an application that they were entitled to make. It seems to me however that there should be at least a cursory check before such an application was made that the Claimant had properly conducted the issue, amendment and service of the claim. To make such an application to the Court is a draconian one – to remove the right of the Defendant to defend the claim - it involves a draconian use of the Court's powers arising out of the Defendant's failure to abide in the strictest sense (where the application is made at the earliest possible opportunity) with the Civil Procedure Rules. To make such an application whilst having abused the power of the court and remaining in default in the ways set out above, based on an application that states the Amended Claim Form has been served, when the same has not been signed or dated, does cause significant affront and in a case which is so finely balanced as this, it may be a somewhat light further straw but stepping back and looking at the balance as a whole, this is the straw that breaks the camel's back.

234. I have therefore dealt with the sanctions for the abuse of process surrounding the statement of value/Court fees.

235. I have also determined that the reliance on Mr Millar's reports to plead the case and to enable the Statement of Truth to be signed at least 2 months after the *Zaheer* trial was also an abuse of the process of the Court.

236. I do not base that fact on a conclusion that the Claimants' solicitors were actively participating in any form of fraudulent conduct or were positively aware of any proved wrong-doing by Mr Millar. However they had more than enough material before them to have put them on notice that his evidence (and that of an Inspection Report from Eco Serv) should not be relied upon to plead and issue a claim; it may well be that this arose from a lack of a review of the evidence sent to the firm concerning Mr Millar combined with a lack of a review of the issues that had arisen from Mr Dickinson giving evidence in court on a claim upon which Mr Millar had previously produced a report, and whether that is indicative of a systematic and significant mismanagement is a question which the Claimants' solicitors need to consider.

237. I am conscious that the Defendant contends that as the Claimant should not have issued the claim at all without credible expert evidence to support it on causation and liability, (and at least the primary limitation expired at the point the claims were issued), the only proportionate sanction would be to strike out the claim; I cannot fail to see the force of that argument. It seems to me that if such an argument was to be advanced in a case issued certainly after this judgment has been handed down, it would be very difficult indeed for the Claimants' solicitors to oppose such a submission.

238. However it seems to me that, bearing in mind these are claims where the Claimants may have suffered loss through no fault of their own, the relevant test is always whether there is a proportionate sanction which does not involve the nuclear option of strike out. In a case where the Claimant, represented by SSB Law, has relied upon expert evidence from Mr Millar at least a month after the *Zaheer* trial had concluded (so claims issued after the end of June 2022), the appropriate sanction would be that, as well as paying the costs of any application arising out of this, the Claimant should be subject to an Unless Order

striking out the claim unless he/she serves expert evidence (and any amended pleadings including an Amended Claim Form with any amended claim value being accompanied by payment of any increased issue fee) within 3 months of the date of this judgment being handed down. The Claimants have known since at the latest September 2021 that he/she needs to obtain expert evidence to progress this claim; they should have obtained a report prior to issuing proceedings in July/August 2022 and it is proportionate for their claim to be struck out if they have failed to do so within this further 3 month time period. I cannot ignore the evidence in relation to the Court fees point that they submit that they were unsure of how much the claim was worth at issue; they cannot expect the Defendant and Court to proceed for well over a year on the basis that the claim as pleaded, in respect of liability, causation and quantum is not supported by expert evidence and may significantly change.

239. I should make it clear, once this judgment is handed down, it informs all Claimants represented by SSB Law who only have an expert report from Mr Millar/an Inspecton Report from Eco Serv that they need to obtain expert evidence as a matter of urgency and the Court is likely to expect such reports to be obtained by three months from the judgment handing down date. I would not be expecting the Court to allow them a further three months from the date of any applications.

240. I am conscious that the Claimants' representatives may contend that three months does not give them long enough to obtain new expert evidence. They have already been granted considerable indulgence by the Court in not striking out the claim when it was issued without reliance on proper expert evidence, given what they certainly had constructive knowledge about Mr Millar and the difficulties with his reports. They have known that they would need new expert evidence since at the latest 2021 and they are under a duty to properly progress such claims. Furthermore their own evidence is that they intended to obtain expert reports prior to service of these claims (in November/December 2022) and therefore the lack of any evidence of instruction of experts since is concerning. To echo HHJ Gosnell in the case of *Badar Din and Fozia Bashir v Aran Services Limited (Claim no G67YJ5770 [535] "litigation is not a sport"* – and these cases do have to properly progress. It is not for the Claimants' legal representatives to dictate a timetable to suit their business needs – and if they cannot obtain expert reports to support their claims, they are in no different a position to any other Claimant who cannot do so approaching limitation. The Limitation Act gives those wishing to bring claims before the Court a defined period to bring such claims. The Claimants cannot effectively postpone the operation of the Limitation Act by continually citing difficulties with obtaining evidence to support the claim.

241. If the effect of this sanction is that the claims cannot progress, I do not judge that that is disproportionate. These are claims which should not have been issued without some expert evidence being obtained that could be properly relied on in terms of liability and quantum. If the Claimants' representatives have failed to properly procure expert evidence some 18 months after they knew the expert evidence they had obtained would have to be replaced and a year after they should have realised that the expert evidence they had obtained could not be properly relied upon to issue a claim dependent on expert evidence to establish liability and quantum, and they still cannot if given a further three months (well over a year since at least the primary limitation period has expired and they have issued

their claims), then it is not reasonable to expect the Court and the Defendant to expend limited resources on managing and defending these claims.

242. In relation to consequential directions, I will hear submissions. I can indicate at this stage I am minded to extend the time for the service of any Defence to beyond the date at which the Claimant's representatives confirm they have a CPR 35 compliant report and have amended their pleadings and claim value if necessary accordingly.

243. In relation to claims where the expert evidence relied upon was that of Mr Millar and the claim was issued limited to £10,000 I have considered whether the sanctions taken together are proportionate or whether the cumulative nature of the two abuses of the processes of the Court are such that only the striking out of the claim is a proper sanction. Again, it is a finely balanced exercise of my discretion but I have decided that the combined nature of the sanctions do provide a sufficient and proportionate sanction.

244. The decision in relation to claims where in addition to the above, the amended issue fee was not paid at the time of the amendment, is also finely balanced but again, I have decided that the combined nature of the sanctions do provide a sufficient and proportionate sanction.

245. Service of the Claim Form in Jagger v AXA (033DC409)

246. The "Jagger" claim was issued in the damage claims portal ("DCP") on 2nd August 2022. That is evident on the face of the Claim Form and the date is not in dispute. Service of the Claim Form (and the Particulars of Claim) was required by 2nd December 2022.

247. The factual background is not largely in dispute. The original Claim Form (which was verified by a Statement of Truth signed by Amandeep Sehmbi) stated that the Defendant's address was "Axa Corporate Solutions Assurance, 20 Gracechurch Street, London, EC3V 0BG". It is in no way disputed that that is the correct address for service, being the registered office for the Defendant company (and the address at which the Defendant was served by the Claimant's representatives for the other three claims). When the Claim Form was amended, that address was amended to an address of "5 Old Broad Street, London, EC2N 1AD" and it is accepted that that is the address to which the Amended Claim Form was sent.

248. Mr Toyn [173] states "service of the Claim Form was required by 2nd December 2022. In attempted compliance with that…. Mrs Yasmean Ashraf posted the Claim Form along with the Particulars of Claim ….. to the Defendant on 1st December 2022……

249. The service letter….. was addressed to 5 Old Broad Street….. The address was previously the Defendant's registered office address though I understand the address was changed …. on 1st April 2021.

250. The 5 Old Broad Street address was the address stated on the Public Liability insurance policy issued to the Defendant's insured upon which the Claimant was relying". (Pausing there it is noted that that policy was dated July 2016).

251. SSB Law…. use a Case Management System called Proclaim. ….At some time during its existence as an AXA office, the Old Broad Street address was added as an AXA office in SSB's Law proclaim system. When Axa was then linked to Mrs Jagger's file as the Installer's public liability insurer, the 5 Old Broad Street office was used, no doubt because that was the address on the relevant insurance policy.

252. When proceedings were to be served, the service letter created by Proclaim defaulted to the address of the Axa office linked to the file, the Old Broad Street address. Unfortunately the Fee earner with conduct at the time failed to check that it was a live address.

253. Had the 5 Old Broad Street address remained an AXA office on 1st December 2022, there would arguably have been good service of the Claim Form".

254. Ruth De Asha of the Defendant's solicitors [p122] states "The Defendant's……. registered office has been 20 Gracechurch Street…. since 1st April 2021. The proceedings were sent to the Defendant's old address 5 Old Broad Street…"

255. The Claimant additionally relies on the fact that as the Defendant's solicitors responded to the contents of the service letter on 19th December 2022 the Defendant must have had sight of the documents at the very latest on that date.

256. I will deal first with issues on timing. The Defendant points out that there is no direct evidence on how this claim was posted and therefore there is no evidence that it was first class post and therefore that the Claim Form was within time in any event. The Defendant is quite right about that. Counsel for the Claimant stated that the system was that all post was franked by a machine which issued all post as first class. He is right that he cannot give evidence albeit I am mindful that I am dealing with a very lengthy application with senior solicitors from each of the firms involved present in the hearing and where matters are not disputed directly I am minded to consider those submissions. I am also in a position that this is a case where some of the evidence is not within the possession of the Defendant's solicitor (as it concerns dealings between the Claimant's solicitors and the Court) and I am going to accept into evidence for the purpose of this application the letter subsequently sent by Ms Ashraf enclosing the certificate of service with an application for default judgment. I am therefore going to accept for the purposes of this application that the documents were sent was by first class post on 2nd December 2022.

257. The second matter in dispute is whether this was in fact good service. Those acting on behalf of the Claimant have not been consistent as to whether it is conceded or not that this was not good service.

258. It is clear from the evidence that the address utilised was not the Defendant's registered office address and had not been for 1 year and 8 months at the time it was used in this claim. The evidence of Mr Toyn purportedly accepts that it was the wrong address and the fee-earner had made a mistake, he states based upon a case management system which had wrongly attributed that address. He does not seek to explain why;

259. at the time of issue, each of the four claims, including this one, had the correct address with nobody either amending (or relying on) the case management system;

260. the fee-earner specifically amended and handwrote the (wrong) address on the Claim Form knowing that at the time of issue a different address had been used by (one assumes) a colleague but making no further enquiries;

261. if the fee-earner was misled by the case management system in relation to amending this claim at the beginning of December 2021, why it was she made no amendment of the address in relation to the three other claims all of which were dealt with in the space of the same fortnight.

262. 14 days later she applied for default judgment, signing the certificate of service.

263. CPR 6.9 sets out a table and both parties agree that the relevant section is that in the table at CPR 6.9(2) number 6 namely "Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection to the claim".

264. It is not contended by the Claimant that the address to which the Claim Form was sent was the Defendant's principal office. It appears that at least within the statements and skeleton argument it was contended that the office "has a real connection with the claim" by way of the fact that it was the address on the policy. Inasmuch as it is contended that this is enough that is a misinterpretation of the relevant part of the table at CPR 6.9(2).

265. The requirements in relation to the alternative are conjunctive not disjunctive; the address must be a place of business of the company within the jurisdiction AND have a real connection to claim. The satisfaction of "having a real connection to the claim" would not be enough unless the address also is a place of business of the company (at the time of the alleged service).

266. On the balance of probabilities on the evidence before me, the address utilised was not a place of business of the company at the relevant time of posting. The fact that the company received mail at some time in the future which had been sent to the address that used to be their registered office address does not provide any evidence that it continued to be a place of business (it would be surprising in the extreme if a multinational insurance company moving offices had not set up some form of system by which mail was forwarded). Mr Toyn in his witness evidence concedes that it was not a deliberate decision to use this address but an erroneous one due to an inaccurate case management system, and he concedes that the fee-earner did not check whether it was a live address.

267. Given that, I do not have to consider whether or not the address had a real connection to the claim as in any event, it did not come within number 6 of the relevant table.

268. I am therefore satisfied that the Claim Form was not correctly served on the Defendant within the four month time period and therefore that the Claim Form has expired. As a result of this the claim could not proceed without further Court Order.

269. The application in this case was made by the Defendant on 30th December 2022. It came before me in boxwork and on 28th February 2023 the Court sent out an order listing the application for a directions hearing on 17th March 2023. In response Ms Allen filed her statement dated 13th March 2023. There was then an application made by the Claimant on 20th April 2023 to apply pursuant to CPR 6.15(2) for the service effected to be deemed good service or for the time for service to be extended pursuant to CPR 7.6(3) to 7 days from the Court's order (that having the effect of extending the time for service by about 5 months).

270. I can deal with the second point relatively briefly. Pursuant to CPR 7.6 (2) any application had to be made within the period of time for service. That is not contended here so the Claimant would have to rely on the CPR 7.6(3).

271. 7.6(3); "if the Claimant applies for an order to extend the time for compliance after the end of the period specified by rule 7.5 or by an order made under this rule, the Court may only make such an order if;

i. *the Court has failed to serve the Claim Form;* (not applicable here);

ii. the Claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so; and

iii. *in either case the claimant has acted promptly in making the application.*

272. 193. Given the evidence and chronology outlined above, I find that the Claimant did not take all reasonable steps to comply with rule 7.5, the Claimant had not been unable to do so (it being accepted that not only was this due to an error by the fee-earner but that the same fee-earner had been able to serve the Defendant on at least three other claims within the same fortnight), and in any case the Claimant had not acted promptly in making the application. Such was made over 4 months after the time for service of the claim form had expired and a considerable time after the Defendant had brought the error to the Claimant's attention.

273. 194. I now turn to the Claimant's application pursuant to CPR 6.15.

274. 6.15 (1) Where it appears to the Court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.

275. *(2) On an application under this rule, the Court may order that steps already taken to bring the claim form to the attention of the defendant by an alternative method or at an alternative place is good service.*

276. 195. In practical terms the Claimant seeks an order that service at 5 Old Broad Street was good service.

277. 196. The ambit and application of this rule has been helpfully elucidated by the Supreme Court in *Barton v Wright Hassall LLP [2018] UKSC 12,* in the judgment of Lord Sumption. The relevant facts (by the time the case reached the Supreme Court) in that case can be expressed as follows; on the day before service of the Claim Form was due to expire (4 months after issue), the Claimant (who was acting in person) emailed the Claim Form, Particulars of Claim and other associated documentation to the Defendant's solicitor. They were on record to accept service of the Claim Form but had not agreed to accept service by email. The Claimant's case (again briefly summarised) was that, having corresponded with them by email, he believed that he could serve by email. As a litigant in person he was unaware of the precise terms of CPR 6 and/or that service by email was not good service, The Claimant relied upon the contention that there was no prejudice to the Defendant given in particular the fact that the Defendant's solicitors had in fact had full knowledge of the documents within the time for service as they had received them by email the day before the Claim Form had expired.

278. Lord Sumption stated;

279. *The Civil Procedure Rules contain a number of provisions empowering the court to waive compliance with procedural conditions or the ordinary consequences of non-compliance. The most significant is to be found in CPR 3.9, which confers a power to relieve a litigant from any "sanctions" imposed for failure to comply with a rule, practice direction or court order. These powers are conferred in wholly general terms, although there is a substantial body of case law on the manner in which they should be exercised….. The short point to be made about them is that there is a disciplinary factor in the decision whether to impose or relieve from sanctions for non-compliance with rules or orders of the court, which has become increasingly significant in recent years with the growing pressure of business in the courts. CPR rule 6.15 is rather different. It is directed specifically to the rules governing service of a claim form. They give rise to special considerations which do not necessarily apply to other formal documents or to other rules or orders of the court. The main difference is that the disciplinary factor is less important. The rules governing service of a claim form do not impose duties, in the sense in which, say, the rules governing the time for the service of evidence, impose a duty. They are simply conditions on which the court will take cognisance of the matter at all. Although the court may dispense with service altogether or make interlocutory Page 7 orders before it has happened if necessary, as a general rule service of originating process is the act by which the defendant is subjected to the court's jurisdiction.*

280. What constitutes "good reason" for validating the non-compliant service of a claim form is essentially a matter of factual evaluation, which does not lend itself to over-analysis or copious citation of authority. This court recently considered the question in Abela v Baadarani [2013] 1 WLR 2043. That case was very different from the present one. The defendant, who was outside the jurisdiction, had deliberately obstructed service by declining to disclose an address at which service could be effected in accordance with the rules. But the judgment of Lord Clarke of Stone-cum-Ebony JSC, with which the rest of the court agreed, is authority for the following principles of more general application: (1) The test is whether, "in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the defendant is good service" (para 33). (2) Service has a number of purposes, but the most important is to ensure that the contents of the document are brought to the attention of the person to be served (para 37). This is therefore a "critical factor". However, "the mere fact that the defendant learned of the existence and content of the claim form cannot, without more, constitute a good reason to make an order under rule 6.15(2)" (para 36). (3) The question is whether there is good reason for the Court to validate the mode of service used, not whether the claimant had good reason to choose that mode. (4) Endorsing the view of the editors of Civil Procedure (2013), vol i, para 6.15.5, Lord Clarke pointed out that the introduction of a power retrospectively to validate the non-compliant service of a claim form was a response to the decision of the Court of Appeal in Elmes v Hygrade Food Products plc [2001] EWCA Civ 121; (2001) CP Rep 71 that no such power existed under the rules as they then stood. The object was to open up the possibility that in appropriate cases a claimant may be enabled to escape the consequences for limitation when a claim form expires without having been validly served.

281. This is not a complete statement of the principles on which the power under CPR rule 6.15(2) will be exercised. The facts are too varied to permit such a thing, and attempts to codify this jurisdiction are liable to ossify it in a way that is probably undesirable. But so far as they go, I see no reason to modify the view that this court took on any of these points in Abela v Baadarani. Nor have we been invited by the parties to do so. In the generality of cases, the main relevant factors are likely to be (i) whether the claimant has taken reasonable steps to effect service in accordance with the rules and (ii) whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired, and, I would add, (iii) what if any prejudice the defendant would suffer by the retrospective validation of a noncompliant service of the claim form, bearing in mind what he knew about its contents. None of these factors can be regarded as decisive in themselves. The weight to be attached to them will vary with all the circumstances.

282. 197. I pause at this stage to note one important factor. Much weight has been placed by the Claimant in this case in relation to the "critical factor" as set out in the Supreme Court decision of Abela cited above. It has been contended that it is a critical factor which weighs in the favour of the Claimant in this case. I cannot agree with that submission; the critical factor is whether the Defendant was aware of the contents of the claim form ***at the time when it expired***. In this case, the best the Claimant can do is point to the fact that the Defendant was aware some 17 days after the expiry of the Claim Form.

It cannot be right that this Claimant is placed, by reason of CPR 6.15, in a more advantageous position than a Claimant who served the Claim Form on the correct address 17 days after the expiry of the Claim Form.

283. 198. It is noted that whilst every case is fact specific, in the *Wright* case the error of the litigant in person was not to have read and understood CPR 6 in relation to service by email, and that the Defendant's solicitors were aware of the contents of the Claim Form prior to the expiry of the Claim Form. In that case it was held by all four courts who dealt with the matter (from the District Judge up to the Supreme Court) that the Court should not exercise its discretion and grant permission for the defective service to stand as good service.

284. 199. In this case the Claimant has to not only persuade me that I should deem service on the Claim Form at the wrong address as good service but further that I should deem it to have been good service prior to the expiry of the Claim Form on 2nd December 2022. I note the judgment of Lady Justice Carr in *R (Good Law Project) v Secretary of State for Health [2022] EWCA Civ 355* and the principles she set out;

285. The test whether in all the circumstances, there is good reason to order that steps taken to bring the claim form to the attention of the Defendant are good service;

286. ii)Service has a number of purposes, but the most important is to ensure that the contents of the document are brought to the attention of the person to be served. This is a critical factor. But the mere fact that the defendant knew of the existence and content of the claim form cannot, without more, constitute a good reason to make an Order under CPR 6.15(2);

287. iii) The manner in which service is effected is also important. A "bright line" is necessary to determine the precise point at which time runs for subsequent procedural steps. Service of the claim form ***within its period of validity*** *may have significant implications for the operation of any relevant limitation period. It is important that there should be a finite limit on the extension of the limitation period;*

288. iv) In the generality of cases, the main relevant factors are deemed to be:

289. Whether the Claimant has taken reasonable steps to effect service in accordance with the rules;

290. Whether the defendant or his solicitor were aware of the contents of the claim form ***at the time when it expired****;*

291. What if any prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the claim form.

292. Lady Justice Carr further observed that the result may seem harsh but that CPR 6.15 was not a generous provision for Claimants where there were no valid obstacles to service of the claim form in time.

293. 200. In this particular case, the fact that it is necessary to have a "bright line" in relation to the date of service is emphasised; those acting for the Claimant not only applied for but also obtained default judgment against the Defendant because they had not responded to the Claim Form within the relevant time period.

294. 201. Given that there is no evidence of any good reason why the Claim Form was not validly served on time and further there is no evidence that the Defendant was aware of the contents of the claim form at the time it expired, I do not deem the service of the Claim Form to have been good service on 2nd December 2022. The Claim Form has therefore expired in this case, without being served.

295. Effect of the sanctions in terms of individual claims

296. 030DC688 Amin and Amin v AXA Insurance Plc

297. This claim was issued using the DCP on 1st August 2022. It relates to the "negligent installation of cavity wall insulation at the Claimants' property by the now insolvent Heatwave Energy Solutions Limited. It was issued with a value expected to be up to £10,000 with the appropriate court fee being paid of £455.

298. As no Defendant's representatives were inserted into the DCP thereafter it was immediately transferred out. It is not known when it was amended given the date is not on the Amended Claim Form but it was amended to an expected value of £104,000. The appended Particulars of Claim were signed and dated 24th November 2022 and appended a Schedule of Loss pleading rectication works at £81,099.36, alternative accommodation at £1,300 and general damages of £21,000.

299. The Amended Claim Form and Particulars of Claim was served (according to the certificate of service) on 24th November 2022). I note that an acknowledgment of service was filed on 19th December 2022. I am slightly confused as to the contents of page 35 of the bundle which consist of an email from Bradford County Court dated 19th January 2023 which refers to "interlocutory judgment" being "entered in error". I note the contents of the statement of Mr Matthew Dickinson stating that "the Claimant has requested default judgment by form N227". I have not seen such Form at the time of writing this judgment and if there is any dispute about the contention that the Claimants requested default judgment, then I would be grateful if this could be clarified by the parties at the hearing.

300. It is not disputed that the amendment of the Claim Form required the payment of an increased issue fee and the balance required to be paid by 24th November 2022 of £4,745 was not in fact proffered to the Court (by letter requesting the balance be taken from the PBA account) until 21st March 2023. I understand (by checking the electronic file) that because this was sent direct to Leeds it was taken on 22nd March 2023.

301. It is accepted that the expert evidence that the Claimants had obtained in relation to liability and quantum was from Mr Millar.

302. For the reasons set out in my judgment above, given the fact that the claim was issued at a value expected to be up to and including £10,000, then the issue fee was not proffered at the point of amendment or until almost four months later (almost eight months after the full fee should have been paid at issue), and the Claimants requested default judgment despite not having paid or even proffered the increased issue fee at the time, I order that the claim stand struck out.

303. For the avoidance of doubt, if it transpires that the Claimants did not request default judgment, I would not order the claim to be struck out but the Claimants would be debarred from recovering any costs incurred in the period between issuing the claim and 22nd March 2023, and in addition would be subject to an Order that unless they confirmed that they had obtained a Part 35 compliant report and had served and filed amended pleadings, including an Amended Claim Form with an amended claim value, and paid any increased issue fee by 3 months from the date of handing down judgment their claim would be struck out.

304. 033DC409 Jagger v AXA Insurance UK PLC

305. As I have already ruled that this claim was not served within the validity of the claim form, I do not intend to give a judgment in relation to the other applications on this claim. In the event that the parties wish me to give judgment in relation to that and contact me prior to the handing down of the judgment, I will provide the relevant summary.

306. 031DC919 Tina v AXA Insurance UK PLC

307. This claim was issued using the DCP on 27th July 2022. It relates to the "negligent installation of cavity wall insulation at the Claimants' property" by the now insolvent Heatwave Energy Solutions Limited. It was issued with a value expected to be up to £10,000 with the appropriate court fee being paid of £455.

308. As no Defendant's representatives were inserted into the DCP thereafter it was immediately transferred out. It is not known when it was amended given the date is not on the Amended Claim Form but it was amended to an expected value of £98,236. The appended Particulars of Claim were signed and dated 24th November 2022 and appended a Schedule of Loss pleading rectification works at £78,635.31, alternative accommodation at £1,600 and general damages of £18,000.

309. The Amended Claim Form and Particulars of Claim was served (according to Ms Allen's table) on 27th November 2022. I note that an acknowledgment of service was filed on 19th December 2022. I note the (again confusing) email at page 233 of the bundle which consists of an identical email to that in the Amin case from Bradford County Court dated 19th January 2023 which refers to "interlocutory judgment" being "entered in error" and I am confused whether there was an application made in this case for default judgment. That can be rectified either by the Claimant solicitors confirming the position or for me to ask the Court staff to interrogate the electronic file which I will do prior to the hearing at which I hand down this judgment if it remains unclear.

310. It is not disputed that the amendment of the Claim Form required the payment of an increased issue fee and the balance required to be paid by 27th November 2022 of

£4,456.80 was not in fact proffered to the Court (by letter requesting the balance be taken from the PBA account) until 21st March 2023. I understand (by checking the electronic file) that again because the file was before the Leeds County Court and the letter was sent to Leeds, this was also taken on 22nd March 2023,

311. It is accepted that the expert evidence that the Claimant had obtained in relation to liability and quantum was from Mr Millar.

312. For the reasons set out in my judgment above, given the fact that the claim was issued at a value expected to be up to and including £10,000, then the issue fee was not proffered at the point of amendment or until almost four months later (almost eight months after the full fee should have been paid at issue), and the Claimant requested default judgment despite not having paid or even proffered the increased issue fee at the time, I order that the claim stand struck out.

313. For the avoidance of doubt, if it transpires that the Claimant did not request default judgment, I would not order the claim to be struck out but the Claimant would be debarred from recovering any costs incurred in the period between issuing the claim and 22nd March 2023, and in addition would be subject to an Order that unless she confirmed that she had obtained a Part 35 compliant report and had served and filed amended pleadings, including an Amended Claim Form with an amended claim value, and paid any increased issue fee by 3 months from the date of handing down judgment her claim would be struck out.

314. 029DC804 Mahmood v AXA Insurance PLC

315. This claim was issued using the DCP on 20th July 2022. It relates to the "negligent installation of cavity wall insulation at the Claimants' property" by the now insolvent Heatwave Energy Solutions Limited. It was issued with a value expected to be up to £10,000 with the appropriate court fee being paid of £455.

316. As no Defendant's representatives were inserted into the DCP thereafter it was immediately transferred out. It is not known when it was amended given the date is not on the Amended Claim Form but it was amended to an expected value of £84,930. The appended Particulars of Claim were signed and dated 18th November 2022 and appended a Schedule of Loss pleading rectification works at £68,332.97, alternative accommodation at £1,600 and general damages of £15,000.

317. The Amended Claim Form and Particulars of Claim was served (according to Ms Allen's table) on 18th November 2022. It appears that in this case that no application was made for default judgment on behalf of the Claimant.

318. It is not disputed that the amendment of the Claim Form required the payment of an increased issue fee and the balance required to be paid by 18th November 2022 of £3,791.50 was not in fact proffered to the Court (by letter requesting the balance be taken from the PBA account) until 21st March 2023. I understand (by checking the electronic file) that this was again submitted to Leeds and taken on 22nd March 2023.

319. It is accepted that the expert evidence that the Claimants had obtained in relation to liability and quantum was from Mr Millar.

320. For the reasons set out in my judgment above, I am intending to make an Order debarring the Claimant from recovering any costs incurred in the period between issuing the claim and 22nd March 2023, and in addition would be subject to an Order that unless he confirmed that he had obtained a Part 35 compliant report and had served and filed amended pleadings, including an Amended Claim Form with an amended claim value, and paid any increased issue fee by 3 months from the date of handing down judgment his claim would be struck out.

321. Application re signing the Statement of Truth

322. As I have not struck this claim out, I need to deal in addition with the Claimant's application dated 18th May 2023 that "pursuant to CPR 22.1(2) the requirement of the Amended Claim Form to be reverified by a signed Statement of Truth be dispensed with".

323. In each of the four claims before the Court, the Amended Claim Form was neither signed nor dated. This had the effect that the amended statement of value was not verified by a Statement of Truth.

324. The relevant sections are

325. CPR 22.1(2) Where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.

326. CPR 22.2

327. If a party fails to verify his statement of case by a statement of truth –

328. The statement of case shall remain effective unless struck out; but

329. The party may not rely on the statement of case as evidence of any of the matters set out in it.

330. The Court may strike out a statement of case which is not verified by a Statement of truth

331. As I read CPR 22.1(2) it was not intended to give a party the right to make such a retrospective application as in this case. Whilst it may seem to be pedantic, the Amended Claim Form was never verified and therefore it is not a case of "reverifying" it as suggested in the application. I note the White Book commentary at 22.1.8 which similarly does not suggest that these are circumstances in which the Court should make such an Order. As the application by the Defendant in this claim has shown, the amendment in question (the new much increased expected value) was a matter of extreme controversy and it was challenged whether there was a genuine belief in its truth.

332. I do note that the failure to verify the Amended Claim Form with a Statement of Truth was not indicative of any deliberate attempt to obtain a procedural or tactical advantage, it was merely another symptom of lack of supervision and mismanagement, and a cavalier and reckless disregard to the rules by the fee-earner concerned. It is concerning given the spotlight that has been shone on this claim, since the application was made at the beginning of this year, that the lack of signature was only noticed and application made only after I had identified the error in the hearing.

333. It is also right to record that in this case (as in others) the statement of value was however reiterated in a Schedule of Loss which was supported with a Statement of Truth.

334. In fact however the Claimant cannot properly apply for such a dispensation when the Court and parties are aware that the Amended Claim Form is wrong. It currently sets out that the amended issue fee is £3,397.36 and not the correct figure of £4,246.50. Given that the Claimant will have to re-amend the Amended Claim Form in any event, such reamendment will need to be verified by a Statement of Truth so the most up-to-date pleading will be CPR compliant. I will make an order allowing such reamendment (with the Claimant to bear his own costs of such reamendment).