Neutral Citation Number: [2015] EWHC 3503 (Ch)

Case No: HC-2012-000149

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2015

Before :

Mr John Male QC
(sitting as a Deputy Judge)

- -

Between :

RICHARD LEWIS AND OTHERS	**Claimants**
- and -	
WARD HADAWAY (A Firm)	**Defendant**

- -
- -

Mr Hugh Evans (instructed by **Robinson Murphy**) for the **Claimants**
Mr Charles Phipps (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing date: 23rd October 2015

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Judgment Approved by the court for handing down (subject to editorial corrections)

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Mr John Male QC (sitting as a Deputy Judge):

Introduction

1. This is an application by the Defendant, Ward Hadaway, that the claims by the Claimants, Mr Richard Lewis and 30 others, be struck out under CPR 3.4(2)(b) on the ground of the Claimants' alleged abuse of process in seeking improperly to avoid payment of the correct Court fees. Alternatively, the Defendant seeks summary judgment in some of those claims on the ground that they are barred by limitation.

2. The Defendant was represented by Mr Charles Phipps. The Claimants were represented by Mr Hugh Evans.

The claims

3. The claims are for damages for alleged negligence by the Defendant firm of Solicitors. The Claimants acquired various buy-to-let properties from a company or group of companies known as Morris Property Group. They obtained loan offers from mortgage lending companies. The Defendant was retained in each transaction to act for both the relevant Claimant and their mortgagee. A feature of each transaction was that the Morris Property Group apparently provided a "gifted deposit" to the relevant Claimant. The result was that the purchase price of the property was effectively reduced. The mortgage lenders were not informed of this aspect of the transaction.

4. The Claimants contend that the Defendant knew of the "gifted deposits" and should have warned both the Claimants and their mortgagees of the potential consequences. The Defendant denies knowing of the "gifted deposits" and says that it understood that each of the Claimants had paid substantial deposits directly to the Morris Property Group at the outset. If, on the other hand, there were "gifted deposits", the Defendant says that was something of which the Claimants themselves were obviously aware, and the Claimants themselves were responsible for any consequent deception of their mortgage lenders. The Defendant also contends that there is no connection between the Claimants' allegations of breach of duty and the heads of loss identified by the Claimants.

5. The relevant transactions took place in 2006 and 2007. In July 2008 the Claimants' solicitors, Robinson Murphy, sent pre-action protocol letters of claim to the Defendant. In each case, the letter of claim claimed substantial sums, running into hundreds of thousands of pounds. During the course of the oral argument, I was told that the total amount claimed in all the actions with which I am concerned is in the region of £9 million.

6. On 31 July 2012 Robinson Murphy wrote to the Defendant's solicitors, DAC Beachcroft ("DACB"), suggesting a limitation standstill agreement. That suggestion was rejected by DACB.

7. The claims were then issued by the Court at the request of Robinson Murphy on various dates between 7 August 2012 and 4 April 2013. Robinson Murphy delivered the claim forms to Newcastle-upon-Tyne County Court a few days before the date of actual issue. All the claims were issued very near to the end of the relevant limitation period, if not actually beyond it. In eleven cases the claim form was delivered to the Court before the

limitation period had expired, but was not issued by the Court until after the expiry of the limitation period. In the remaining cases, the claim forms were issued by the Court before the limitation period had expired.

8. As mentioned earlier, in each case the letters of claim claimed substantial sums, running into hundreds of thousands of pounds. However, despite the substantial sums claimed in those letters of claim, the fees paid on the Claimants' behalf on issue of the claim forms reflected very much lower claims. The fees paid were between £35 (appropriate for a claim limited to £300 or less), through to £240 (appropriate for a claim limited to £15,000 or less), and, in just one instance, £1,475 (appropriate for a claim limited to £300,000 or less). However, it would appear that the Claimants never intended to limit their claims to these lower sums, but always intended to amend their claims to the hundreds of thousands of pounds mentioned in the letters of claim. In every case the claim forms were actually subsequently amended just before service to claim the larger sums and the balance of the appropriate larger fees was paid. This course of action was taken deliberately by the Claimants so as to reduce the fees paid initially to the Court when the claims were issued to stop time running. In the course of argument the Claimants' conduct was variously described as a "scheme" or a "dance" so as to avoid paying the correct fees at the outset of the claims. It is this conduct which gives rise to the application to strike out.

9. Having described in general terms the claims and what the Claimants did on issue and service of the claim forms, it is convenient next to set out the relevant provisions of the CPR and the Fees Order regarding Court fees and statements of value. I will then describe in a little more detail what the Claimants did on issue and service of the claim forms and relate what they did to those provisions.

Court fees and statements of value

10. At the material time, the Court fees payable by the Claimants were as set out in the Civil Proceedings Fees Order 2008 ("the CPFO 2008").

11. Paragraph 2 of the CPFO 2008 provided that:

> **"The fees set out in column 2 of Schedule 1 are payable in the Supreme Court and in county courts in respect of the items described in column 1 in accordance with and subject to the directions specified in that column."**

12. Column 1 of Schedule 1 of the CPFO 2008 began:

> **"1. Starting proceedings (High Court and county court)**
>
> **1.1 On starting proceedings...to recover a sum of money where the sum claimed..."**

13. Column 1 then set out 14 categories of size of claim, ranging from "does not exceed £300" to "exceeds £300,000 or is not limited", with corresponding fees in column 2 which ranged from £35 to £1,670.

14. CPR 16.3 applies where a claimant is making a claim for money. At the material time, CPR 16.3(2) provided that:

> **"The claimant must, in the claim form, state-**
>
> **(a) the amount of money claimed;**
>
> **(b) that the claimant expects to recover-**
>
> **(i) not more than £5,000;**
>
> **(ii) more than £5,000 but not more than £25,000; or**
> **(iii) more than £25,000; or**
>
> **(c) that the claimant cannot say how much is likely to be recovered."**

15. CPR 16.3(7) provides that:

> **"The statement of value in the claim form does not limit the power of the court to give judgment for the amount which it finds the claimant is entitled to."**

16. The amounts identified in CPR 16.3 are an allocation tool. They relate to the boundaries between the small claims track, the fast track and the multi-track and not to the categories in the CPFO 2008.

17. At the material time, Civil Procedure Form N1A ("Notes for claimant on completing a claim form") provided the following guidance:

> **"Value**
>
> **If you are claiming a fixed amount of money (a 'specified amount') write the amount in the box at the bottom right-hand corner of the claim form against 'amount claimed'.**
>
> **If you are not claiming a fixed amount of money (an 'unspecified amount') under 'Value' write "I expect to recover" followed by whichever of the following applies to your claim:**
> - **'not more than £5,000' or**
> - **'more than £5,000 but not more than £25,000' or**
> - **'more than £25,000'**
>
> **If you are not able to put a value on your claim, write 'I cannot say how much I expect to recover'."**

18. So, in the case of a claim for more than three hundred thousand pounds, as was foreshadowed in many of the letters of claim, the appropriate Court fee under the CPFO 2008 was £1,670. In the case of such a claim, the appropriate statement of value was that under CPR 16.3(2)(b)(iii), i.e. that the claimant expected to recover more than £25,000.

What the Claimants did in the claim forms

19. It is convenient next to describe what the Claimants, acting by Robinson Murphy, actually did in the claim forms and to relate what they did to the above provisions. I do so by reference to the case of Mr Lewis, although it is common ground that the same thing was done in each action. In the case of Mr Lewis, "Others" are joined in the action.

20. Although the letters before claim on behalf of Mr Lewis and "Others" claimed many hundreds of thousands of pounds in each case, under the heading "Value" in the claim form, it was stated:

> **"The Claimants expect to recover damages limited to £15,000.00".**

21. Although this was prior to any quantification of damages and although no fixed amount of money was in fact claimed by Mr Lewis, in the claim form it was stated in the box "Amount claimed":

> **"Limited to £15,000".**

22. In the case of Mr Lewis, the Court fee paid on issue was £245.

23. When the claim forms were issued, the Claimants did not intend so to limit their claims. So, in the case of Mr Lewis, he did not intend to limit his claim to £15,000. Nor did he expect to receive damages limited to £15,000. As Mr Phipps, who appeared on behalf of the Defendant, pointed out, the statement of value with its limit to damages of £15,000 and the limitation of the amount claimed to £15,000 were all the more remarkable because Mr Lewis was not the only Claimant in his action. There were also "Others" who are identified in the Schedule annexed to the claim form. Those "Others" were also each claiming hundreds of thousands of pounds. So, effectively, each claimant in the action by Mr Lewis stated that they expected to receive damages limited to a proportion of £15,000 and the total amount of all their claims was limited to £15,000. This was done deliberately so as to reduce the fee paid to the Court on issue.

24. As required by CPR 22.1, each claim form contained a statement of truth. In the case of Mr Lewis, it was Mr Probert, a partner in Robinson Murphy, who signed the statement of truth.

25. The claim forms had to be, and were, served within four months of issue. Shortly before service, the claim forms were amended. In the case of Mr Lewis, the claim form was amended so that, under the heading "Value", it was stated "The Claimants expect to recover damages [of] more than £300,000". Against the box "Amount claimed", it was stated "More than £300,000".

26. In these circumstances, the Defendant contends that none of the Claimants paid the appropriate court fee on issuing their claim. The Defendant contends that the Claimants deliberately understated their estimate of the value of their claim so as to pay a lower fee for a claim of lesser value which they did not genuinely intend to pursue and so as to stop time running. It was not until after issue, and after expiry of the relevant limitation period, that the Claimants sought to amend their claim forms and to pay the balance of the higher fees which the Defendant says should all have been paid on issue.

27. The Defendant further contends that Robinson Murphy adopted this course of action on the Claimants' behalf not just deliberately so as to ensure that the claim forms were issued before the expiry of the limitation period on paying reduced fees, but also fully aware that that firm's conduct in adopting this course of action had been disapproved of, and found to be an abuse of process, by the Court on previous occasions. This disapproval and the findings were by District Judges in a series of decisions to which I now turn.

The District Judges' decisions

28. I have been provided with copies of four decisions by District Judges in which Robinson Murphy acted in the same way as described above. In chronological order the decisions are as follows.

29. First, there is Modhvadia and another v. Bannister Bates Solicitors, District Judge Atherton, 14 March 2012. In that case, the claim was initially limited to £5,000 when, as the District Judge found, the claimants knew full well that the claim was never going to be on the small claims track. The District Judge assumed this was done so as to avoid limitation and held (obiter) that the conduct was an abuse of process. The claim was struck out on other grounds.

30. Secondly, there is Partridge and Others v. Blacks Solicitors LLP, District Judge Troy, 24 October 2012. In that case, the claim was initially limited to £5,000 and a fee of £120 only was paid, even though each claim was for £200,000 to £300,000 and was subsequently amended to claim in excess of £300,000. The District Judge found that the claimant had deliberately played the system and had signed a false statement of truth and that there was an abuse of process, but that it was not right to strike out the claim.

31. Thirdly, there is Rogers-Holmes v. Blacks Solicitors LLP, District Judge Goldberg, 11 October 2014. In that case, the claim was initially limited to £300 and the fee paid was £35. Subsequently, and just before service, the claim was amended to seek damages of more than £300,000 and the increased fee of £1,670 was paid. The District Judge concluded that there was an abuse of process and struck out the claim.

32. Fourthly, there is Tsioupra-Lewis v. Blacks Solicitors, District Judge Pescod, 21 January 2015. In that case the initial claim form was limited to £5,000 and the fee paid was £120. In due course, shortly before service, the claim was amended and the statement of value altered to up to £200,000 and the balance of the increased fee was paid. The District Judge concluded that this conduct was an abuse of process, the object being to issue protective proceedings at an artificially low value, but declined to strike out the case as this would be disproportionate, unjust and not in compliance with the overriding objective.

33. Robinson Murphy acted for the claimants in all of the above cases. The last two cases post-date the issue of the claims in the present case. The first case pre-dates the issue of the claims in the present case. The second case falls within the period when the claims in the present case were being issued. So, when Robinson Murphy issued the claims in the present case and acted as it did in relation to the payment of Court fees, it knew that the Court, in the form of one and then a second District Judge, had criticised the system of paying fees used by that firm and had found it to be an abuse of process. Despite that criticism and the findings in those first two cases, Robinson Murphy continued to act in the same way.

The application to strike out

34. As a preliminary procedural matter, I should mention that a number of the claims the subject of this application are presently stayed while a group of lead or test cases proceeds to trial. However, Counsel agree that I can properly deal with both this application and the application for summary judgment, notwithstanding the stay.

35. The application to strike out is made under CPR 3.4(2)(b) which provides as follows:

> **"(2) The court may strike out a statement of case if it appears to the court –**
>
> **...**
>
> **(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings."**

36. In his submissions on behalf of the Defendant, Mr Phipps described the alleged abuse of process in this case as follows:

> **"The Claimants had claims which they valued at over £300,000. In circumstances where they always intended to recover the full value of those claims, and for reasons of their own convenience, they engaged in a scheme under which they paid on issue a much lower fee than the fee that was appropriate to their claims, and for that purpose made factual misrepresentations on the face of their claim forms.**
>
> **The fees paid were inappropriate because (i) they were not the fees required by the CPFO 2008; and/or (ii) because the claimants had artificially and temporarily reduced the value of their claims, with the pre-formed intention of subsequently increasing that value by amendment.**
>
> **The Claimants continued to pursue this scheme in the full knowledge that it had been condemned as an abuse by two district judges."**

37. In Attorney-General v. Barker [2000] 1 FLR 759 at p.764, Lord Bingham described an abuse of process as:

> **"a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."**

38. In Johnson v. Gore Wood & Co [2002] AC 1 at 22C/D, Lord Bingham stated in relation to applications to strike out that:

> **"Litigants are not without scrupulous examination of all the circumstances to be denied the right to bring a genuine subject of litigation before the court".**

39. But, Lord Bingham then went on to say that:

> **"This does not however mean that the court must hear in full and rule on the merits of any claim or defence which a party to litigation may choose to put forward. For there is, as Lord Diplock said at the outset of his speech in *Hunter v. Chief Constable of the West Midlands Police* [1982] AC 529, 536, an**
>
> > **"inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."**

40. A little later in his speech, Lord Bingham referred, at p.31E, to the need for:

> **"...a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court..."**

41. While these two cases concerned vexatious proceedings and abuse of process by re-litigation respectively, I consider, and I understood both Counsel to agree, that the above passages provide me with the necessary guidance to decide whether the Claimants' conduct in this case was an abuse of process.

42. Earlier in this judgment, I described Robinson Murphy's system for issuing claim forms. I consider that the Claimants, through Robinson Murphy, deliberately underestimated the value of their claims in order either to avoid, or to defer, the payment of the full and correct fees for the claims which they always intended to make.

43. I say "to avoid" as well as to defer because, as Mr Phipps argued and as I accept, if the claims were issued purely as a protective step due to the imminent expiry of the limitation period and if, within the four months for service, a decision had been taken not to pursue any particular claim, then the claim form need not have been served and the relevant Claimant would only have paid the lower fee. In this way, the relevant Claimant would have secured an extra four months within which to consider its position on its claim and would have stopped time running, but would only have paid the lower fee and would have avoided paying the higher fee.

44. It seems clear to me that the Claimants always intended to amend their claims at a later stage by increasing considerably the amount of the claim. I say this because the protocol letters evinced an intention to make claims running into hundreds of thousands of pounds. There was no good reason for the Claimants to reduce the amount of those claims to a few hundred or a few thousand pounds, apart from a desire to pay a reduced fee. In acting as the Claimant did there were two consequences.

45. The first consequence is that, as Mr Phipps argued and I accept, 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, as Mr Evans on behalf of the Claimants pointed out, 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 (i.e. the initial form and the amended form) 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.

46. As Mr Phipps said, correctly in my judgment, there is a public interest in claimants not behaving in this way in that they should pay the fees due for their claim at the time of issuing their claim. Also, as Mr Phipps said in his reply, again correctly in my judgment, if I was to condone Robinson Murphy's conduct then their system would very likely be adopted by other claimants and their solicitors to the detriment of the flow of Court fees, and with the need for increased administration by the Court and also dealing with unnecessary amendments.

47. The second consequence is that the Claimants may possibly have gained an advantage over the Defendant in some, and possibly all, of the cases in that they were able to stop time running by paying a lower fee in circumstances where the Claimants might not have been able at the outset to pay the full fee due for their claims. Whether or not that possible advantage was gained in some of, or all of, the cases will depend on how I deal with the application for summary judgment.

48. Applying what Lord Bingham said in Barker, I consider that what the Claimants did was to use the Court process for a purpose or in a way which was significantly different from the ordinary and proper use of that process. The ordinary and proper use of that process would be that the Claimants would state at the outset the amount at which they genuinely valued their claim and would also state what they genuinely expected to recover and would pay the necessary Court fees accordingly.

49. In reaching this conclusion, I am reassured by the fact that experienced District Judges have reached the same conclusion. The fact that two of those District Judges had reached the same conclusion and that Robinson Murphy knew of it, but acted as they did in the present case reinforces me in my conclusion that there was an abuse of process. I am further reinforced in this conclusion by the fact that, as I explore in more detail a little later in this judgment, Mr Probert's statement of truth was in some respects suspect.

50. On behalf of the Claimants Mr. Evans sought to persuade me, first, that the Claimants' conduct was not an abuse of process, and, secondly, even if it was an abuse of process, that I should not strike out the claims.

51. So far as the first part of his submissions is concerned, Mr Evans relied heavily upon the decision of the Court of Appeal in Khiaban v. Beard [2003] EWCA Civ 358; [2003] 1 WLR 1626. In that case the parties were involved in a road traffic accident resulting in damage to both their vehicles. Both parties were covered by insurance. The claimant paid his insurance excess of £125. Subject to that payment, his repair costs totalling £755 were borne by his insurer. With a view to keeping costs to a minimum, the parties' insurers entered into a memorandum of understanding by which they agreed to abide by the Court's decision as to liability in relation to the excess to determine which of them would be responsible for the full repair costs.

52. The claimant's insurers issued a claim against the defendant in the claimant's name seeking damages for the amount of the excess. The District Judge, having been made aware of the memorandum of understanding, took the view that the claim was for more than the amount of the excess and ordered the claimant to amend his particulars of claim to include the full cost of the repairs, in default of which the claim would be struck out. Part of the District Judge's reasoning was that, if the proceedings had been brought to determine whether a sum of money, that is the full repair costs, should be paid, the full court fee should be paid. The claimant's application to set aside that order failed and the ensuing appeal was transferred to the Court of Appeal.

53. The Court of Appeal allowed the claimant's appeal. It held that there was nothing in the CPR to suggest that the Court was in any way concerned with the question whether a claimant should be claiming more than he was in fact claiming. The parties were entitled to simplify the claim and limit it to the amount of the excess. The District Judge was, therefore, wrong to strike out the claim on the basis that the claim form and the particulars of claim did not include the full costs of the repairs.

54. Mr Evans relied particularly on a passage in the judgment of Dyson LJ at para. 13 to justify the Claimants' conduct in this case. Dyson LJ said this:

> "**13. A claimant may have various reasons for not including in his claim heads of damages to which he would arguably be entitled, if he**

> **established liability. He may decide that the cost of proving a head of loss is disproportionate to the sum that he thinks he is likely to recover. Or he may decide that the evidence that would have to be adduced in order to prove a head of loss would cause him embarrassment which he wishes to avoid. Or he may decide not to seek to recover a head of loss because he is confident that it will be made good to him by a third party. A claimant is fully entitled to decide what to include in his claim. If he excludes a head of loss from his claim, and he is awarded judgment on his pleaded claim, he will normally be precluded as a matter of law from subsequently starting proceedings to recover the excluded head of loss: see *Henderson v Henderson* (1843) 3 Hare 100. That is the chance that a claimant must take if he excludes from his claim sums which he could claim from the defendant. But there is nothing in the general law which positively obliges a claimant to include in his pleaded case all the claims which he could arguably advance against a defendant."**

55. In reliance upon this passage, Mr Evans argued that a party is permitted to limit his claim to less than he considers its full worth. For instance, he said, this often happens if a party with a claim slightly above the small claims or fast track limit wishes to bring proceedings within that track so as to limit his exposure to costs if he loses. Mr Evans said that there is nothing in the CPR which suggests that the Court should be concerned with whether a claimant should be claiming more. The motive for limiting the amount claimed is irrelevant but, in this case, it was because there was no disbursement funding in place to pay a larger fee. Therefore, he argued, the Claimants were entitled to limit their claims as they did in the present case.

56. In my judgment, Dyson LJ was addressing a different situation to that with which I am concerned. In Khiaban the parties' insurers had entered into an agreement by which they agreed to abide by the Court's decision as to liability. Here, there is no agreement between the parties. Also, in this case the Claimants were always intending to amend their claims to claim in order to make the increased claim. In Khiaban the claimant had no such intention. In this case, the limitation of the claim and of the statement of value had nothing to do with the sort of matters mentioned by Dyson LJ, but was, as Mr Phipps put it, a scheme or a device to reduce the initial fees payable to the Court.

57. Next, Mr Evans argued that that could be a spectrum of cases where claims and fees might be limited, with the spectrum ranging from acceptable conduct to unacceptable conduct. This case, he said, was at the acceptable conduct end of the spectrum.

58. I agree that, as Mr Evans argued, there could be a spectrum of cases where claims and fees might be limited and where a lesser fee was paid at the outset and where conduct might be acceptable. So, at one end of the spectrum there might be an example like that given by Mr Evans in oral argument of, say, a financially strapped litigant who knows that he will soon receive a substantial legacy, who informs the defendant of his parlous financial position and of the imminent legacy, who seeks the defendant's agreement to his paying the fees in the way in which Robinson Murphy paid them and who also informs the Court of what he is doing. In other words, there would be complete transparency in what was done and the agreement of both the defendant and the Court

would be sought. It may well be that, in that sort of case, there would be no abuse of process.

59. However, Mr Evans' example is, in my judgment, at the opposite end of the spectrum to what Robinson Murphy did in this case. In this regard, it is noteworthy that Robinson Murphy did not inform DACB of what they intended to do. Nor did Robinson Murphy seek DACB's agreement to it. Nor did Robinson Murphy inform the Court of what they were intending to do. Robinson Murphy knew, when they issued the claim forms in these cases in the way in which they did, that their system had previously been criticised by two District Judges and held to be an abuse of process, but despite that they did not seek the Court's guidance, or DACB's agreement, as to whether they could do what they did.

60. Next, Mr Evans suggested that all that had happened here was that there was a misinterpretation of the claim form. He relied upon what Mr Probert said in his first witness statement at paras. 3 to 5, namely:

> **"3. Abuse of process. Mr Murrin [of DACB] alleges that there was a scheme to avoid paying the appropriate fee. This is not quite correct. In each case, this firm decided to pay the Court fee in relation to each Claim Form because there was no disbursement funding in place to pay any Court fee. We intended to pay an increased Court fee when disbursement funding was in place, and at the same time increasing the amount claimed. However, ATE insurance for the Claimants had not been obtained by the date of service in any of these claims, so in each case my firm provided from its own resources the increased Court fee in order to increase the amount which could be claimed.**
>
> **4. While the Court fee paid was £245 or £30, the amount claimed had to be limited to £15,000 or £300, and similarly for the other court fees and limits set out in PJM1 p.147. Therefore while this continued the Claimant expected to recover damages limited to £15,000, £300 or other amount in the statement of value. I therefore thought that the Statement of Truth was correct. In any event, in relation to the claims by Mr Gill, the limit to £300,000 at that time appeared correct on any view.**
>
> **5. I realise that this interpretation of the Claim Form may be wrong, and the Statement of Truth may therefore be wrong. However, the judgment of District Judge Pescod in *Tsioupra-Lewis v Blacks* of 23 February 2015 at [33], see PJM1 p.125 at p135, concludes that our interpretation was not wrong, albeit that three other District Judges have reached opposite conclusions."**

61. Mr Probert was not cross-examined and I therefore take these paragraphs as they stand. However, even proceeding on that basis, it seems to me that the witness statement fails to address the fact that the Claimants always planned to amend their claim forms from the outset and that, therefore, the Claimants cannot genuinely have held the expectation which their claim forms declared them to hold, i.e. in the case of Mr Lewis "The

Claimants expect to recover damages limited to £15,000.00". The statement of this expectation is more suspect when I bear in mind that, in the case of the claim by Mr Lewis, "Others" were joined in as joint claimants and therefore the £15,000 was expected to be recovered in total by Mr Lewis and those Others.

62. Also, I agree with Mr Phipps that Mr Probert's approach puts matters the wrong way around because it suggests that the amount recoverable by a claimant is determined by the level of the fee which the claimant pays, rather than (as the CPFO states) that the level of the fee depends on the value of a claimant's claim. I also agree with Mr Phipps that Mr Probert's approach elevates form over substance in that it suggests that the value of a claim, for the purposes of the payment of fees, is determined by a claimant's estimate of its value for allocation purposes.

63. Furthermore, although it is mentioned very briefly at the end of para. 5, Mr Probert's witness statement fails to address the criticism of his firm's conduct by District Judge Atherton in his judgment in the case of Modhvadia on 14 March 2012, i.e. before any of the Claimants' claim forms were sent to the Court for issue in this case. The District Judge was critical of the practice adopted by Robinson Murphy, describing it as an abuse of process because the claim was limited to £5,000 when the claimant knew full well that that was never going to be a small claims track case. Mr Probert does not explain why, despite this criticism and finding of abuse of process, he still used the same system in this case.

64. Nor, apart from that same very brief mention, does Mr Probert's witness statement address the fact that District Judge Troy had given his main judgment in Partridge on 24 October 2012, before claim forms in this case were sent to the Court for issue. In that case, the District Judge found that the claimant had deliberately played the system and had signed a false statement of truth, and that there had been an abuse of process but declined to strike out. Again, Mr Probert does not explain why, despite this criticism, the finding of abuse of process and the finding of signing a false statement of truth, he still used the same system in this case.

65. In these circumstances, I do not accept Mr Evans' argument that all that happened here was a misinterpretation of the claim form by Robinson Murphy. There may have been a misinterpretation of the claim form by Robinson Murphy on the first occasion when they acted as they did, i.e. in the Modhvadia case. Perhaps there may also have been a misinterpretation on the second occasion, i.e. in the Partridge case. However, I cannot accept that that is what happened in this case, which is the third occasion when they acted as they did, knowing this time of the criticisms made by the two District Judges.

66. I also have difficulty in understanding how Mr Probert could sign a statement of truth in the claim form containing the statement "The Claimants expect to recover damages, limited to £15,000", when, in the case of Mr Lewis and "Others", his firm had sent out letters of claim for claims of more than £300,000 and he knew that the claim forms were going to be amended to claim damages of more than £300,000. In order to counter this, Mr Evans argued that the statement of truth given by Mr Probert related only to parts of the claim form and not to the entire claim form. As I understand his argument, Mr Evans argued that the statement of truth did not relate to the statement of expectation under the heading "Value" and the statement of the amount claimed. I reject this argument. I consider that the statement of truth relates to the statement of expectation in the claim form and also to the amount claimed. I accept Mr Phipps' argument that

this is the case because CPR 22.1(a) requires a "statement of case" to be verified by a statement of truth. And, by CPR 2.3(1), a "statement of case" includes a claim form.

67. Accordingly, I reject the first part of Mr Evans' submissions. I conclude that there was an abuse of process as described by Mr Phipps and as set out in para. 36 of this judgment.

68. However, this conclusion is not an end to this first application because I still have to deal with the second part of Mr Evans' submissions. Specifically, I have to decide whether to strike out the 31 claims because of the Claimants' abuse of process.

69. Although it refers to a somewhat different situation, i.e. the Court's power to strike out after a trial, I was referred to what Lord Clarke said about CPR 3.4(2)(b) in Summers v. Fairclough Homes Ltd [2012] HKSC 26; [2012] 1 WLR 2021 at paras. [41], [42] and [49]:

> **"41. The language of the CPR supports the existence of a jurisdiction to strike a claim out for abuse of process even where to do so would defeat a substantive claim. The express words of CPR 3.4(2)(b) give the court power to strike out a statement of case on the ground that it is an abuse of the court's process. It is common ground that deliberately to make a false claim and to adduce false evidence is an abuse of process. It follows from the language of the rule that in such a case the court has power to strike out the statement of case. There is nothing in the rule itself to qualify the power. It does not limit the time when an application for such an order must be made. Nor does it restrict the circumstances in which it can be made. The only restriction is that contained in CPR 1.1 and 1.2 that the court must decide cases in accordance with the overriding objective, which is to determine cases justly.**
>
> **42. Under the CPR the court has a wide discretion as to how its powers should be exercised: see eg *Biguzzi v Rank Leisure Plc* [1999] 1 WLR 1926. So the position is that the court has the power to strike out a statement of case for abuse of process but at the same time has a wide discretion as to which of its many powers to exercise…..**
>
> **.....**
>
> **49. As noted at para 42 above, the court has a wide discretion as to how to exercise its case management powers. These include the power to strike out the whole or any part of a statement of case at whatever stage it is made, even if it is made at the end of the trial. However the cases stress the flexibility of the CPR: see eg *Biguzzi* per Lord Woolf MR at p 1933B, *Asiansky Television v Bayer-Rosin* [2001] EWCA Civ 1792; [2002] CPLR 111 per Clarke LJ at para 49 and *Aktas v Adepta* [2010] EWCA Civ 1170, [2011] QB 894, where Rix LJ said at para 92: "Moreover, it should not be forgotten that one of the great virtues of the CPR is that, by providing more flexible remedies for breaches of rules as well as a stricter regulatory environment, the courts are given the powers and the opportunities to make the sanction fit the breach. That is the teaching of one of the most important early decisions on the**

> **CPR to be found in *Biguzzi v Rank Leisure plc*." The draconian step of striking a claim out is always a last resort, *a fortiori* where to do so would deprive the claimant of a substantive right to which the court had held that he was entitled after a fair trial."**

70. On behalf of the Defendant, Mr Phipps accepted both in his skeleton argument and in his oral submissions that, as appears from the above citations, striking out these 31 claims for abuse of process would be a draconian remedy and that it was incumbent on the Defendant to justify it as appropriate on the particular facts of the case. For the reasons set out below, the Defendant has not persuaded me that I should strike out these claims.

71. Counsel drew my attention to a number of factors which they said were relevant to this second stage of the application to strike out. I will consider these factors below, more or less in the order in which Counsel addressed me upon them.

72. The starting point is that, as the Defendant accepts I must assume on this application to strike out, these are all arguable claims. The potential liability of the Defendant in damages is £9 million. While the Claimants must bear responsibility for the conduct of Robinson Murphy in this case and while that conduct flew in the face of what the District Judges had said and which Robinson Murphy knew of, I consider that it would be disproportionate for me to strike out these claims. The Claimants would be deprived of the opportunity to have their arguable claims for substantial sums of money tried and the Defendant would avoid those claims entirely without a trial on the merits. The prejudice to the Claimants would be substantial as all the claims would now be barred by limitation.

73. In contrast, the prejudice to the Defendant is limited. The position was corrected before the claim forms were served when the full fees were paid. And, in at least eleven cases, the Defendant is still able to argue limitation. I say "at least eleven" because, as I understand matters, the Defendant reserves its position to argue limitation in cases other than those the subject of the application for summary judgment, when it knows more about how the claims came to be issued.

74. As Mr Evans pointed out, and I agree, the duration of the abuse of process was limited and only deferred the time for payment of the correct fees for about four months. Also, as Mr Evans pointed out, and again I agree, Mr Probert's conduct was not concealed in any way. What he did was apparent from comparing the protocol letters with the claim forms. Also, as Mr. Evans put it, and again I agree, the abuse does not go to the root of the claim.

75. Also, it is not suggested, and indeed in the absence of cross-examination of Mr Probert, it could not be suggested, that the Claimants' conduct, and Mr Probert's conduct in particular, was fraudulent or dishonest. In this regard, I note that in other cases where fraud was alleged and actually established the Court declined to strike out the claims as an abuse on the grounds of the fraud, albeit in those cases the trial had concluded: see Summers v. Fairclough and Masood v. Zahoor [2009] EWCA Civ. 650, [2010] 1 WLR 746. If the Court did not strike out those cases on the grounds of fraud, albeit that in

those cases the trial had concluded, it would be a strong thing for me to strike out these claims when there is no suggestion here of fraud or dishonesty.

76. I note also that in Adams v. Ford [2012] EWCA Civ 544; [2012] 1 WLR 3211 the Court declined to strike out the claim form where there was a breach of the rules and a false statement of truth. In that case the Court concluded that there was a serious shortcoming which was not to be condoned, but that the Judge at first instance was entitled to conclude that he should not strike out the claim form. I agree with Mr Evans that if in that case the Court declined to strike out it would be a strong thing for me to strike out these claims.

77. However, I was not impressed by Mr Evans' suggestion that there was an obvious course of action open to the Defendant, i.e. to apply to set aside the amendment under CPR 17.2 because that would have had to have been done within 14 days. I therefore place little weight on that suggestion.

78. Likewise, I place little weight on Mr Phipps' suggestion that the Claimants would have a remedy against Robinson Murphy.

79. But, as Mr Evans himself accepted, there are other sanctions open to the Court apart from striking out. So, for example, although Mr Evans made no concession, the Claimants may, and I am conscious that I have yet to hear argument on costs, find themselves penalised in costs in this application because, it may be argued, they brought it upon themselves by their conduct.

80. I place no weight on Mr Evans' suggestion that the strike out application is a tactical ploy by the Defendant, or their insurers, following an unsuccessful mediation. There is no evidence to support Mr. Evans' suggestion. However, I am concerned about the comparatively late stage at which the application has been made and this factor weighs against the Defendant. It seems to me that, on any basis, significant steps have been taken in the actions on the footing that the claims had been validly issued and in circumstances where the disparity between the initial claim form, the amended claim form and the letters of claim should have been apparent to the Defendant soon after service of the amended claim.

81. I have only taken account of the steps which have been taken in the actions up to late January 2015 and not subsequently because I consider that the Claimants should have been aware from DACB's letters dated 22 December 2014 and 27 January 2015 that the Defendant was enquiring into matters that might lead to an application to strike out. In the former letter DACB raised the question of when the appropriate fee was paid and also referred to Page v. Hewetts which I consider below. The reference to Page v. Hewetts should have been a warning to the Claimants that an application to strike out was being considered by the Defendant. In the latter letter DACB expressly mentioned the possibility of the claims being struck out as an abuse of process.

82. It seems to me that, in the light of these two letters, the Claimants were on notice of the possibility of a summary application such as a strike out from no later than receipt of the letter dated 27 January 2015. This factor reduces the weight which I attach to the suggested delay and the lateness of the application but, even making allowance for this reduced weight, it seems to me that the steps which were taken in the litigation between

the occurrence of the abuse of process and late January 2015 weigh in the balance against a strike out.

83. While I accept Mr Phipps' point that I do not have any details of the costs incurred by the Claimants in taking these steps in this period and I also accept his point that some of the costs would have been incurred in any event in the group of lead actions, I do consider that significant steps involving additional costs were taken after the events giving rise to the abuse of process and up to about late January 2015. Those significant steps include the consolidation of the actions by the order of Deputy Master Bartlett on 3 March 2014 and the work which must have gone into that order; the parties attending a mediation on 4 December 2014; the updating of the Schedules of Loss in respect of all claims and not just the group of lead cases; and also the drafting of letters of instruction for valuers to provide valuation evidence.

84. Having considered the various factors mentioned by Counsel as set out above, I come back to the approach which I have to apply. In Masood v. Zahoor the Court of Appeal held, relying on Arrow Nominees Inc. v. Blackledge [2000] 2 BCLC 167, that "where a claimant [was] guilty of misconduct in relation to 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 for that reason." However, I must bear in mind that, as Vos LJ said in Alpha Rocks Solicitors v. Alade [2015] EWCA Civ 685 at para. 22, "the Court is not easily affronted".

85. Taking account of all the various factors mentioned by Counsel, and having regard to the overriding objective, I consider that it would be disproportionate to strike out these claims. Applying the approach in Masood, in my judgment it would not be an affront to the Court to permit the Claimants to continue to prosecute their claims. I therefore reject the application to strike out.

86. Before I turn to the application for summary judgment, I should just mention the case of Mr Gill which was the subject of some separate submissions by Counsel. It was suggested that, if I was minded to strike out, his case raised special considerations which meant that a strike out was unjustified. In view of my decision above, I do not need to consider Mr Gill's case separately.

The application for summary judgment

87. In the alternative to the application to strike out, the Defendant applies for summary judgment in twelve of the claims on the grounds that they are barred by limitation. In one of those cases, that of Mr and Mrs Burns, the parties now agree that the claim is barred by limitation. So, this application now relates to eleven of the claims.

88. As a preliminary procedural matter, I should mention that limitation is not presently pleaded by the Defendant in all of the claims. However, Counsel agree that I can and should deal with the summary judgment application.

89. This application arises out of essentially the same matters as those I have been considering in dealing with the abuse of process application. Before I explain the grounds for this application, I will first set out the relevant provisions of the Limitation Act 1980 ("the 1980 Act") and of the CPR and deal with the authorities relied upon in argument.

90. Section 2 of the 1980 Act provides that:

> **"An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued."**

91. Section 5 of the 1980 Act provides that:

> **"An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued."**

92. CPR 7.2 provides that:

> **"(1) Proceedings are started when the court issues a claim form at the request of the claimant.**
>
> **(2) A claim form is issued on the date entered on the form by the court."**

93. Paragraph 5.1 of Practice Direction 7A provides that:

> **"Proceedings are started when the court issues a claim form at the request of the claimant (see rule 7.2) but where the claim form as issued was received in the court office on a date earlier than the date on which it was issued by the court, the claim is "brought" for the purposes of the Limitation Act 1980 and any other relevant statute on that earlier date."**

94. The issue of when an action is "brought" for the purposes of the 1980 Act is a question of construction of that Act and is not a question of construction of the CPR or the Practice Direction: see Page v. Hewetts [2012] EWCA Civ 805; [2012] C.P. Rep. 40, Lewison LJ at para. 29. The CPR, and perhaps the Practice Direction, may inform the construction, but the question is what does the Act mean: see, again, Lewison LJ at para. 29.

95. In Page v. Hewetts, Lewison LJ went on to answer that question as follows in paragraphs 30 to 35:

> **"30. In *Barnes v St Helens Metropolitan Borough Council* [2006] EWCA Civ 1372 [2007] 1 WLR 879 Tuckey LJ (with whom Arden and Lloyd LJJ agreed) said:**
>
> > **"I start simply by looking at the words used in the statute and the Rules. I approach them by expecting to find the**

> **expiry of a limitation period fixed by reference to something which the claimant has to do, rather than something which someone else such as the court has to do. The time at which a claimant "brings" his claim form to the court with a request that it be issued is something he has to do; the time at which his request is complied with is not because it is done by the court and is something over which he has no real control. Put another way one act is unilateral and the other is transactional. Looked at in this way I do not agree with the judge or Mr Norman that in this context the verb "to bring" has the same meaning as the verb "to start". The 1980 Act can perfectly properly be construed so that in the context of the CPR *a claim is brought when the claimant's request for the issue of a claim form (together with the court fee) is delivered to the court office*. Paragraph 5 of the Practice Direction gives sensible guidance to ensure that the actual date of delivery is readily ascertainable by recording the date of receipt." (Emphasis added)**

31. **Tuckey LJ makes it clear that the legal question is the meaning of the word "brought" in the Limitation Act. The Practice Direction is no more than sensible guidance. In addition one must not forget that proceedings can be started on line, and that the Practice Direction cannot apply to such cases.**

32. **Taken literally, the ratio of *Barnes v St Helens Metropolitan Borough Council* is that once the claimant has delivered his request for the issue of a claim form to the court office, he has "brought" his action. If Mr Last's evidence is correct, Messrs Page did that in the present case.**

33. **However, literalism is not fashionable, so it is also necessary to consider the policy that underpins the decision. Tuckey LJ dealt with this too. He pointed out that this meant that a claimant had the full period of limitation within which to "bring" his claim; and that it would be unjust if he had to take the risk that the court would fail to process it in time. It does not seem to me that the reason why the court fails to process the request in time alters the justice of the case. If it is unjust for the claimant to take the risk that the court staff are on strike, it seems to me to be equally unjust for him to have to take the risk that a member of the court staff might erroneously put his request in the shredder or the confidential waste, or that his request is destroyed by flood or fire in the court office, or is taken in a burglary. Each of these might be reasons why the court failed to process the request in time. Essentially the construction of the Act that this court favoured in *Barnes v St Helens Metropolitan Borough Council* is based on risk allocation. The claimant's risk stops once he has delivered his request (accompanied by the**

> **claim form and fee) to the court office. PD 7 cannot, in my judgment, alter the correct construction of the Act.**

34. **This is not a new approach. In *Aly v Aly* (1 January 1984), which also concerned time limits in the context of limitation periods, Eveleigh LJ said:**

> **"It would be indeed surprising and harsh if a party who had done all that was required of him, should find himself unable to obtain the assistance of the court because the court itself had failed in some matter of procedure. Furthermore, when the rules lay down a time limit which has to be observed by a party to the litigation, their aim is to achieve whatever particular purpose is in mind by controlling the action of the party, and where on the reading of the appropriate rule that seems to be its intention it would be quite ridiculous, as I see it, to make the party responsible for anything that has subsequently to be done by the court. "**

35. **Thus the Court of Appeal held that:**

> **"… one can only treat the words "apply to the Court" as meaning doing all that is in your power to do to set the wheels of justice in motion according to the procedure that is laid down for the pursuit of the relief which you are asking**."

96. Lewison LJ concluded that, in the case before the Court of Appeal, the position was as follows:

> **"38. If, therefore, the claimants establish that the claim form was delivered in due time to the court office, accompanied by a request to issue and the appropriate fee, the action would not, in my judgment, be statute barred."**

97. The Court of Appeal remitted the matter to the Chancery Division for further factual investigation. A preliminary issue on limitation was subsequently determined by Hildyard J: see Page v. Hewetts [2013] EWHC 2845 (Ch). Hildyard J held that the claimant had not brought his proceedings in time because the claim form which had been received by the court on 6 February 2003 had been accompanied by a fee of £990, rather than the proper fee of £1,390.

98. Hildyard J concluded:

> **"56. It is, in a way, concerning that the fate of a claim should depend upon the miscalculation by such a relatively small amount of a court fee. I have considered whether it is so de minimis that the Court should not take it into account, or make some exception or allowance.**

> **57. However, as I read Lewison LJ's judgment in the Court of Appeal, the rationale of treating the receipt by the court of the required documents as sufficient and as transferring to the court the risk of loss or delay thereafter (see paragraph 31 of Lewison LJ's judgment) is that it is unfair to visit such risk on a claimant after he has done all that he reasonably could do to bring the matter before the court for its process to follow. Lewison LJ expressly described what had to be established by the Claimants: that the claim form was (a) delivered in due time to the court office, accompanied by (b) a request to issue and (c) the appropriate fee. In my judgment, the failure to offer the appropriate fee meant that the Claimants had not done all that was required of them; and they had left it too late to correct the error, which was a risk they unilaterally undertook."**

99. For the purposes of this application, it is common ground between the parties that the claim form was delivered in due time to the court office, accompanied by a request to issue. The only question which I have to determine on this application is whether the claim form and the request were accompanied by the "appropriate fee". In determining that question, bearing in mind what the Court of Appeal said in Page v. Hewetts was the policy underpinning Barnes v. St Helens MBC, and also bearing in mind what the Court of Appeal said in Aly v. Aly, I have to consider whether, in this case, the Claimants did all that was in their power to do to set the wheels of justice in motion according to the procedure that was laid down for the pursuit of the relief which they were seeking. And, as per Hildyard J in Page v. Hewetts, I must also have in mind the underlying rationale, which is whether the Claimants had done all that they reasonably could do to bring the matter before the Court for its process to follow, in order for the Claimants' risk to cease.

100. Earlier in this judgment, I found that the conduct of the Claimants in the manner in which they paid the fees was an abuse of process. In these circumstances, looking at the underlying policy just mentioned, I consider that the Claimants did not do all that was in their power to do to set the wheels of justice in motion. It was within the power of the Claimants to conduct themselves in a manner which was not an abuse of process. They could have done so by paying at the outset the fees properly due for the claims which they always intended to make. Equally, looking at the underlying rationale just mentioned, I consider that the Claimants did not do all that they could reasonably have done to bring the matter before the Court for its process to follow. Again, the Claimants could have acted in a manner which was not an abuse of process. So, at the outset they could have paid the fees properly due for the claims which they always intended to make. Furthermore, they, or more accurately their Solicitors, could have heeded the words of the District Judges in Modhvadia and Partridge.

101. It is correct, as argued by Mr Evans in his oral submissions that the Claimants paid the fees which were technically due. By this, I mean that, in the case of Mr Lewis and Others, the claim was limited to £15,000 and Robinson Murphy paid the fee shown in the CPFO as payable for this claim, i.e. £245. So, as a strictly technical matter, Robinson Murphy paid the fee technically due. However, in doing so, they engaged in conduct which, I have concluded, was an abuse of process. In my judgment, paying

"the appropriate fee" does not cover the payment of a fee in circumstances where the act of payment was an abuse of process.

102. In reaching this conclusion and in addressing Mr Evans' oral arguments, I consider that I am supported by comparing the result reached by Hildyard J in Page v. Hewetts with the result urged on me by Mr Evans on behalf of the Claimant in this case. In Page, the limitation defence succeeded because the Solicitors had innocently miscalculated the court fee by a relatively small amount. Hildyard J found that to be, in a way, concerning. In this case Mr Evans says that, notwithstanding the abuse of process, the Claimants paid the technically correct fee. So, he says, the limitation defence must fail. To my mind it would be inconsistent and wrong if, in Page, the limitation defence succeeded due to an innocent miscalculation by the claimant, whereas in this case the limitation defence failed due to a deliberate abuse of process by the Claimants. This comparison supports me in my conclusion that the Claimants here failed to pay the appropriate fee.

103. In his skeleton argument on behalf of the Claimants, Mr Evans relied upon an example of it being discovered at trial that the wrong issue fee had been paid in a trivial amount. Mr Evans said that it would be quite absurd if the claim would then fail on the grounds that the limitation period had expired because proceedings had still not been brought. So, he argued, the same should apply here. In my judgment, that example does not assist him as the failure to pay a trivial amount might be held to be de minimis. Furthermore, the Court might not allow an amendment at the late stage of a trial to plead the limitation defence, particularly where it related to non-payment of a trivial amount.

104. Also in his skeleton argument, Mr Evans argued that the Defendant's construction allowed no room for the case where the claim form and the correct fee has been paid on date X, rather than an earlier date, and the claim form has been issued on date X as well. Mr Evans argued that, on the Defendant's construction, such a claim is never "brought". He said that the way round this absurdity is to recognise that it is plainly implicit in para. 5.1 of the Practice Direction that the date of issue is the long-stop date on which the claim is "brought" for these purposes. I am not sure if there is actually anything between the parties on this particular point raised by Mr Evans. However, in so far as there is anything between the parties, I consider that I must base my decision on what the 1980 Act means rather than what the Practice Direction says: see Lewison LJ in Page at para. 29. Accordingly, I cannot accept Mr Evans' argument based, as it is, on what is said in the Practice Direction, rather than being based on what is said in the 1980 Act.

105. In summary therefore, I conclude that, applying what was said in Aly v. Aly, the eleven Claimants did not do all that was in their power to do to set the wheels of justice in motion according to the process laid down. Nor, applying what Hildyard J said in Page, did the eleven Claimants do all that they reasonably could do to bring the matter before the Court for its process to follow. The Claimants could have conducted themselves in a way which was not an abuse of process. They could also have heeded the words of the District Judges in the cases I mentioned earlier. In Page, Hildyard J said of the claims in that case, that the claimants did not do all that was required of them in time; and they left it too late to correct the error, which was a risk they unilaterally undertook. In my judgment, in this case, these eleven Claimants did the same in that they undertook the risk and that risk did not cease due to their conduct in acting in abuse of process. I therefore conclude that the appropriate fee was not paid in time.

106. It is common ground between Counsel, and I agree, that if the appropriate fee was not paid in time the application for summary judgment in these eleven cases must succeed. I will therefore grant summary judgment in those cases.

Conclusion

107. For the reasons set out above, I conclude as follows. The application to strike out fails. The application for summary judgment succeeds. I invite Counsel to seek to agree an order to give effect to my conclusions.