

ENGLAND AND WALES / JUDGMENT

Jacqueline Frances Gomes & Anor v AMG Financial Management Limited & Ors

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[2026] EWHC 2284 (Comm) IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY
COURTS OF ENGLAND AND WALES LONDON CIRCUIT COMMERCIAL COURT (KBD)
Claim No: LM-2022-000050 Rolls Building Fetter Lane, London, EC4A 1NL Date: 4
September 2026 Before: STUART RITCHIE KC (sitting as a Deputy High Court Judge)

- ----- Between:

(1) JACQUELINE FRANCES GOMES

(2) VASCO DE OLIVEIRA GOMES

- and - Claimants

(1) AMG FINANCIAL MANAGEMENT Defendants LIMITED

(2) MARTIN LESTER GREY

(3) MARCO MANDELLI

(4) RAE JONATHAN BOWDERY

- ----- John Robertson (MacKenzie Friend) for the Second Claimant Mark
Warwick KC (instructed by Judge Sykes Frixou Limited) for the Third Defendant Hearing
dates: 8 May 2026 Further written submissions received on 24, 29 July and 3 August 2026

- ----- Approved Judgment This judgment was handed down remotely at
10.00 am on Friday 4th September, 2026 by circulation to the parties or their representatives
by e-mail and by release to the National Archives. Approved Judgment
Stuart Ritchie KC (sitting as a Deputy High Court Judge) A. Introduction: applications and
summary of conclusions 1. 2. 3. 4. 5. 6. 7. 8. This is the judgment on the application of the
Third Defendant (“Mr Mandelli”) to strike out all claims against him. The Claimants resist
those applications and apply to extend time to serve Particulars of Claim. The Claimants
(individually referred to below as “Mrs Gomes” and “Mr Gomes” respectively) were, at the
material time, wife and husband. The claims in this action arise out of contractual loans
made by Mrs Gomes to the Fourth Defendant, (“Mr Bowdery”), a property developer. The
loans were unsecured and were not repaid. In addition to the claims for repayment/damages

against Mr Bowdery, the Claimants seek to hold their financial advisor (the First Defendant “AMG”), its managing director (the Second Defendant “Mr Grey”) and Mr Mandelli, AMG’s in-house solicitor, who is alleged to have had relevant involvement in the loans, liable for the loss incurred in connection with the loan agreements. The Claimants say that AMG, Mr Grey and Mr Mandelli each owed them a duty of care to advise them in connection with the loans and that their failure to do so (adequately or at all) has caused the Claimants loss. The procedural history is complicated and is set out in Section C below. In outline, the claim proceeded to judgment against Mr Bowdery, the borrower, while being stayed as against the other Defendants, pursuant to a series of Court Orders made by consent, on the basis that if the borrower could be required to repay what was owed under the loan agreements, the claims against the alleged advisers did not need to be determined. In the event, judgment having been obtained against Mr Bowdery, but steps to enforce that judgment having proved unsuccessful, attention turned to the claims against the other Defendants, in particular, for present purposes, the claim against Mr Mandelli. The following applications as between the Claimants and Mr Mandelli were before the Court: i) ii) On the part of the Claimants, an application dated 1 December 2025 seeking extensions of time to serve Particulars of Claim, and so to extend time limits as provided in a Consent Order of HHJ Pelling KC dated 30th October 2024 (“the extension application”); On the part of Mr Mandelli, cross-applications dated 4 February 2026 seeking summary disposal of the claim on the following grounds: a) b) Strike out of the claim under CPR 3.4 because no reasonable grounds for the claim exist (“the no reasonable grounds application”); Dismissal under CPR 3.4 for: Approved Judgment i) ii) abuse of process (“the abuse application”); the Claimants’ failure to comply with the CPR/Court Orders (“the failure to comply application”); c) Reverse summary judgment under CPR 24 on the basis that the Claimants do not have any real prospect of succeeding on the claim against Mr Mandelli (“the summary judgment application”). 9. 10. 11. 12. 13. At the hearing, Mr Gomes was not legally represented. Mr Gomes, acting in person for himself and claiming to be an assignee of the rights of Mrs Gomes, was ultimately represented by Mr John Robertson as a MacKenzie friend following an application by the Second Claimant to be so represented, which I determined at the hearing having considered the relevant Practice Guidance. Mr Robertson advanced the Claimants’ case with clarity and economy. Mr Mandelli was represented by Mark Warwick KC. It was Mr Gomes’ position at the hearing that the most significant application was the summary judgment application. I agree, and I have therefore dealt below with the applications which go to the underlying viability of the claims first. For the reasons explained in section G of the judgment my conclusions on the applications are as follows: i) ii) The “no reasonable grounds” and summary judgment applications succeed; The “abuse” application fails. iii) The “failure to comply” application fails. On the basis of my conclusion on the summary judgment application, the “extension application” is not engaged. Had it been, in light of my conclusions on the no reasonable grounds and summary judgment application I would have refused to extend time. Accordingly, the claim against Mr Mandelli should be dismissed. For the avoidance of doubt, nothing which I conclude or say in this judgment should be understood as pre-judging the claims against AMG or Mr Grey. 14. The balance of the judgment is structured as follows: i)

ii) iii) iv) v) vi) B: Factual Background; C: Procedure: (i) the claim; (ii) the applications; D: Legal principles applicable to the applications; E: The claim and legal principles relevant to duty of care; F: Summary of the parties' arguments G: Discussion and analysis vii) H: Disposal Approved Judgment B. Factual Background 15. 16. 17. 18. 19. 20. 21. 22. 23. The underlying facts were not the subject of much evidence or analysis by either side, either prior to, or at the hearing, principally because of the way the case developed procedurally as set out in section C. In this section I have set out facts that either appear uncontroversial (in the sense that they have not been contradicted) or which are clearly apparent from contemporaneous documents from a combination of (i) the Particulars of Claim and enclosures provided by the Claimants on the morning of the hearing and (ii) the witness statement of Mr Mandelli dated 3rd February 2026. By a loan agreement dated 24 September 2015 (entitled Facility Agreement) Mrs Gomes (the Lender) agreed to provide an unsecured loan facility to Mr Bowdery (the Borrower) of £500,000. The document itself recited under the heading "Background" that: "The Lender has agreed to provide the Borrower with an unsecured loan facility of £500,000". By clauses 1.1, 2 and 8 Mrs Gomes granted Mr Bowdery a total facility of £500,000, subject to the terms of the agreement, available to be drawn down between 24 September 2015 and 30 October 2016, to be repaid on demand but in any event not later than 24 months from the date the loan was made. The purpose of the loans was said to be "for the acquisition of a property for development purposes". The agreement made provision for the payment of interest (clause 6), costs (Clause 7), repayment (clauses 8-9), Representations and Warranties (clause 10) Covenants (clause 11), Events of Default (clause 12). In particular, Clause 11.2 provided that "[the Borrower] will procure that any of his unsecured and unsubordinated obligations and liabilities under this agreement rank, and will rank, *pari passu* in right and priority of payments with all his other unsecured and unsubordinated obligations and liabilities, present or future, actual or contingent, except for those obligations and liabilities mandatorily preferred by law." The sum of £500,000 was drawn down by Mr Bowdery in two tranches: £450,000 on 28 September 2015 and £50,000 on 29 September 2015. In addition, further sums were made available by Mrs Gomes to Mr Bowdery between 1 October 2015 and 20 April 2016 in four tranches totalling £600,000. The same parties entered into a further loan agreement (entitled Facility Agreement). The document containing the agreement is undated, but the parties agree that it was made on 20 April 2016. The effect of this document was to bring within one, updated and restated agreement, the rights and obligations of the parties in respect of the entirety of the lending, and thus, to supersede the agreement of 24 September 2015. This agreement tracks the structure and, to a large degree, the content of the September 2015 agreement. 24. Accordingly, Mrs Gomes (the Lender) agreed to provide an unsecured loan facility to Mr Bowdery (the Borrower) in the sum of £1.1million. The document itself recited Approved Judgment under the heading "Background" that: "The Lender has agreed to provide the Borrower with an unsecured loan facility of £1,100,000. The Lender has already made various loans to the Borrower and now wishes to consolidate all the loans under one agreement." 25. That agreement was broadly reflected at clause 2 which stated that: "The Lender grants to the Borrower an on-demand loan facility of a total principal amount not

exceeding £1,100,000 on the terms, and subject to the conditions, of this agreement.” As set out in schedule 1 to the agreement, £1million of that sum had been advanced prior to 20 April 2016 in 5 tranches, with the final tranche of £100,000 on 20 April

2016. The purpose of the agreement was (again) stated at clause 3 to be for the acquisition of development property. The Claimants were intending to invest in development property through the provision of loan finance. Again, the agreement made provision for the payment of interest (clause 6), costs (Clause 7), repayment (clauses 8-9), Representations and Warranties (clause 10) Covenants (clause 11), Events of Default (clause 12). 26. 27. 28. Two clauses repay specific attention in light of the claims made: i) Clause 7, which provided materially that “The Borrower shall pay, on demand, all costs and expenses that the Lender incurs in connection with the preservation and enforcement of the Loan and/or this agreement and agrees to fully indemnify the Lender in respect of these costs and expenses. The Borrower will also pay the sum of £3000 to cover the Lenders legal costs in respect of preparing this agreement. The Borrower agrees that the Lender may deduct this cost from the last tranche of the Loan.” The first part of this clause reflects the wording of clause 7 as included in the September 2015 agreement. The text in bold (my emphasis) was new. It is the Claimants’ case that this provision referred to the fee for legal work undertaken by Mr Mandelli in connection with the loan agreement. I return to the significance of the provision in sections E to G below. ii) Clause 11.2 which was in the same terms as provided in the September 2015 agreement. 29. 30. Payment was made by Mr Gomes to Mr Mandelli in the sum of £3,000 on 9 May 2016. In April and May of 2018 and May of 2019 there was correspondence conducted through Mr Grey of AMG about the terms of an extension to the loans, no repayment having been made by April 2018. That correspondence included an e-mail of 9 May 2019 in which Mr Grey recorded: (i) the redemption figure (including interest) under the loan agreement, as it then stood, of £1,441,000; (ii) agreement to an extension for 2 years to April 2020 with further provisions as to interest; (iii) that the Loan was secured against Mr Bowdery’s “Personal Guarantee” which was said to have been attached and Approved Judgment which comprised a list of assets attributable to Mr and Mrs R J Bowdery, which, net of mortgages, were valued, in the total sum of at £10,192,500. 31. A final facility agreement was agreed between the parties dated 13 August 2020. The nature and effect of this agreement is adequately summarised, for present purposes, in the “Background” provision: 32. 33. “1) the Lender agreed to provide the Borrower a loan facility of £1,100,000 on 20th April 2016 for a term of 2 years (the “First Loan”). At the end of the term of the First Loan, the Borrower requested and the Lender agreed to provide an extension of the term of the First Loan for a further two years bringing the total agreed term for the First Loan to 4 years. The term for the First Loan will end on 20 th April 2020 and the total redemption figure for the First Loan at the end the term [sic] will be £1,959,760 (“Redemption Amount”).

- 2) the Borrower wishes the Redemption Amount of £1,959,760 to be rolled into a new loan facility and the Lender has agreed to provide the Borrower with a new loan facility on the terms set out in this loan document.” By clauses 1.1, 2 and 7, this agreement provided for a renewed facility in the sum of £1,959,760 with a final repayment date of 20 April 2021 absent mutual earlier agreement. As regards Mr Mandelli’s role, he explained, in overview, his employment situation in his witness statement of 3 February 2026. No evidence contradicting or seeking to challenge this information was adduced by the Claimants. i) ii) iii) iv) He undertook his legal training with Clifford Chance between 1993 and 1995. Upon qualification in 1995, he was employed at that firm as a solicitor between 1995 and 1999. Between 2000 and 2012 he was an employed consultant solicitor and later partner with Keppe & Partners. Following sale of that firm in 2012, and from 2013 he has undertaken various roles as an employed consultant, locum and in-house solicitor, and is currently engaged in two in-house solicitor roles. At the same time, from 2013 to 2020 he was engaged on an intermittent, part- time consultancy basis, by AMG. 34. I deal in more detail below with Mr Mandelli’s alleged involvement in the loan arrangements. He accepts that he was engaged by AMG in relation to the 13 August 2020 loan agreement. He says in his witness statement that he was employed by AMG and took instructions directly (and solely) from Mr Grey in his capacity as Managing Director; that he never met, spoke with or otherwise communicated with either of the Claimants or with Mr Bowdery about the loan and that the loan files were established, administered, and maintained by Mr Grey, and held by AMG. 35. His evidence is that “all communications and any advice concerning the Loan were made and provided to the Claimants through AMG via Mr Grey while AMG was authorised and regulated by the Financial Conduct Authority.” Approved Judgment 36. 37. He says that he “prepared a draft loan agreement documenting the transaction using the information supplied to me by Mr Grey. I e-mailed the draft to Mr Grey who approved it based on the information he had provided, which was recorded in AMG’s files relating to the Loan and the underlying transaction. The above facts are not contradicted by the Claimants, and, as to the general scheme - that all dealings with the Claimants were with AMG acting by Mr Grey - appear consistent with the Claimants’ own case and the contemporaneous documentation which they have adduced. C. Procedure 38. 39. 40. This claim has had a complex procedural history. That complexity extends beyond the claim itself to the procedural context of the applications themselves. Given the nature of the applications and the reliance placed by Mr Mandelli on the Claimants’ alleged defaults, it is relevant, at this stage, to set out a summary of the procedural context. Procedural context – the claims An amended claim form was issued on 24 June 2022 following brief correspondence between the Claimants (at that time represented by Charles Russell Speechlys “CRS”) giving the address of CRS as the addressee for the Claimants. On 10 August 2022 HHJ Pelling KC ordered that that the claims against the First to Third Defendants should be stayed until 6 February 2023. 41. Further orders were made extending that stay: i) ii) iii) iv) On 20 January 2023, by Foxton J, to 4 August 2023; On 2 August 2023, by HHJ Pelling KC, to 3 November 2023; On 9 November 2023, by HHJ Pelling KC, to 1 November 2024; On 30 October 2024, by HHJ Pelling KC, to 3 November 2025. 42. 43. 44. The final Order of 30 October 2024 further provided (by paragraph 3) that “If the stay in

paragraph 1 of this Order is not extended, the Claimants are to file and serve Particulars of Claim as against the First, Second and Third Defendants by 4 p.m. on 1 December 2025.” That Order further provided for consequential service of Defences from those Defendants by 12 January 2026. In the interim, on 13 January 2024 a Notice of Change of Solicitors was filed, with the effect that CRS ceased to act for the Claimants who thereafter acted in person. On 24 October 2024 CRS wrote to Mr Mandelli proposing a further 12-month stay given the Claimants’ stated desire to engage in pre-action correspondence, and updated Mr Mandelli on the state of proceedings against Mr Bowdery, in summary as follows: i) Having failed to comply with the terms of an interim unless order made in February 2024, the Claimants had been entitled to judgment in the sum of £4,545,438.36 with interest continuing to accrue; Approved Judgment ii) iii) iv) v) However, by February 2024, Mr Bowdery was insolvent and had filed evidence of debts in excess of £21million and no assets of any value. In July 2024 Mr Bowdery failed to set aside a statutory demand served by Mrs Gomes and subsequently failed to satisfy the statutory demand or the associated costs order. Independently, Mr Bowdery was being petitioned for bankruptcy by a creditor seeking payment of £34.7m. Accordingly, the Claimants had exhausted all attempts to recover their losses from Mr Bowdery and now intended to pursue claims against the Mr Mandelli. This correspondence gave rise to the final Order of HHJ Pelling KC of 30 October 2024. On 3 November 2024 a further notice of change of representation was filed by the Claimants signifying their instruction of William Sturges LLP. The Claimants, through William Sturges LLP, requested a further extension of the stay of the claim against the First to Third Defendants on 30 October 2025. By e-mail response of 3 November 2025 Mr Mandelli refused that request for an extension pointing out: i) ii) The extensions (by way of stay) granted to date, totalling approximately two and a half years; The fact that the extension through to 3 November 2025 was intended to permit engagement between the parties, but that there had been no engagement. iii) What were said to be serious procedural failings, including a failure to engage in proper pre-action correspondence, an invalid claim form (by reason of its containing wrong addresses) and an absence of merit in the claim; iv) His intention to make an application for summary judgment in due course. 45. 46. 47. This led to further correspondence between the parties concerning extensions of time. In the result, AMG and Mr Grey agreed, by way of a Consent Order, to a further stay of the claims against them. Mr Mandelli did not agree. This led to the issue by the Claimants of the extension application by way of an application notice dated 1 December 2025 seeking extensions of time to the timetable set out in the Order of HHJ Pelling KC of 30 October 2024 as follows: i) ii) Stay to be continued to 2 February 2026; Time for service of Particulars of Claim to be extended to 2 March 2026 iii) Time for service of Defence to be extended to 13 April 2026. 48. Thus, the extension application was issued on the same day (1 December 2025) that Particulars of Claim were (at the latest) due to be served under the terms of the Order of HHJ Pelling KC dated 30 October 2024. Thus, albeit close to the twelfth hour, the Approved Judgment extension application was issued prior to expiry of the deadline for service of the Particulars of Claim. This is an important feature in the context of the failure to comply application. 49. The extension application was accompanied by a witness statement from Mr Nicholas

Davies, a partner in William Sturges, dated 28 November 2025 who set out a brief background to the application and addressed (a) the Claimants' failure to comply with the pre-action protocol and (b) the validity of the claim form: i) ii) As to (non) compliance with the pre-action protocol, Mr Davies explained that the Claimants (who had been wife and husband) had been engaged in contentious divorce proceedings requiring their sustained personal involvement and that they had been unable to dedicate the time necessary to address the issues arising in the proceedings or to provide instructions to CRS who had then been disinstructed due to a dispute about costs. Mr Davies stated that the Claimants, having now instructed William Sturges in late October 2025 were in a position to provide coherent and timely instructions, but that additional time was required to review the matter before engaging in relation to the professional negligence pre-action protocol with a view to the claim proceeding efficiently and proportionately. As to alleged non-validity of the claim form, the issue concerned the fact that (contrary to CPR PD 16.2.3) the claim form provided the address of CRS and not the Claimants' address where they lived or worked. This was said by Mr Mandelli to cause the claim form to be invalid. Mr Davies briefly addressed the rule and his understanding of the case law in support of the contention that any defect should be rectified, and the Court should hold that the Claim Form was validly served. 50. On 4 February 2026 Mr Mandelli issued an application for strike out in the terms summarised above. This was accompanied and supported by a witness statement dated 3 February 2026 which responded to Mr Davies' witness statement and the application made by the Claimants. 51. On about 28 April 2026 William Sturges LLP ceased to act, and Mr Gomes continued to act in person. Procedural context - the applications 52. The applications were heard, as listed, in the afternoon of 8 May 2026. The period immediately before the hearing saw a flurry of late activity: i) ii) Mr Mandelli submitted a hearing bundle (165 pages) and skeletons were filed and exchanged by the parties on 7 May 2026 in the usual way. Mr Gomes's skeleton made reference (at paragraph 71) to the fact that the Claimants had "now served Particulars of Claim". In fact, Particulars of Claim had not been served at that time and were not served until 8 May 2026. iii) Mr Gomes e-mailed the Court in the afternoon of 7 May intimating that he would apply at the hearing for representation by a MacKenzie friend and that he Approved Judgment intended shortly to file a "short, supplementary bundle". This was said to be in circumstances in which he had, in the previous week, disinstructed his solicitors and had had to familiarise himself with the case and underlying documents at short notice. iv) Particulars of Claim (against AMG, Mr Grey and Mr Mandelli) were, in the event, filed on the morning of 8 May 2026 together with a bundle of documents (to which the Particulars of Claim were cross-referenced) running to 167 pages and comprising: a) b) c) d) e) f) Material to support the MacKenzie Friends application (p. 4). A deed of assignment bearing the date of 7 May 2026 (pp. 5-11), assigning the First Claimant's rights of action in connection with the loan arrangement to the Second Claimant¹. Loan documentation (pp. 12-87). Bank statements (pp. 88-97). Contemporaneous e-mails (pp. 98-143). Particulars of Claim (pp 144-168). v) vi) In light of the intimated application for representation by a MacKenzie friend, at my request, the parties were circulated, on the morning of 8 May 2026, with the relevant Practice Guidance in order that submissions should be appropriately

directed. In response, both parties sent further material to the Court in the course of the morning of 8 May 2026 which included a formal application by Mr Gomes for representation by a MacKenzie friend and a short bundle of further documents from Mr Warwick KC, responding in part to the MacKenzie friend application and, in part to Mr Gomes's skeleton argument and recently served Particulars of Claim, by way of further authorities. 53. Having ruled on the MacKenzie friends application, giving permission, by reason of exceptional circumstances, to Mr Gomes to be represented by Mr Robertson - for the purposes of the hearing only - I raised with the parties the practicability of the hearing proceeding fairly where: (a) there had been very limited opportunity for Mr Mandelli and his representatives to consider the pleaded case and substantial materials put forward for the first time in the course of the morning by the Claimants; (b) I had had very limited opportunity to read the materials and (c) as it appeared to me, the factual and procedural issues raised points of law which had not been addressed by the parties. 1 At the hearing I raised an issue as to whether the document complied with all of the formalities of a deed. However, Mr Warwick KC did not make any submissions distinguishing the position of the First from Second Claimant or challenging the standing of Mr Gomes to make submissions and, in those circumstances, I say no more about this document. Approved Judgment 54. 55. 56. I indicated that the Court would, in those circumstances, be receptive to an application to adjourn the hearing. The invitation underlying that indication was not taken up by Mr Mandelli, Mr Warwick KC indicating that adjournment would lead to further delay and, likely, further irrecoverable cost in circumstances in which there was no assurance that the Claimants would pay such costs, if ordered. His instructions were to proceed. I therefore heard submissions from both parties on all applications on the basis of all materials before the Court. In light of the unusual circumstances summarised above and the fact that Mr Gomes, though with the advantage of representation from Mr Robertson at the hearing, was without the benefit of qualified legal representation, I canvassed with the parties at the end of the hearing that I would intend, in light of the submissions made and the arguments raised, to read the Claimants' bundle of supplementary documents, said to support the pleaded claim, and to indicate to the parties, post- hearing, but pre-judgment, any legal points on which the Court may require assistance and on which they should have the opportunity to make further submission. No objection was taken to that course, which has been followed. By memorandum to the parties dated 22 July 2026 I specifically asked for assistance as to the legal principles relevant to assumption of responsibility in tort in this context, which neither party had materially addressed at the hearing, and any brief submissions as to application to the facts. I received helpful and focused submissions from the parties: on behalf of Mr Mandelli on 24 July and from Mr Gomes on 29th July. On 3rd August I was provided with an e-mail from Mr Warwick KC enclosing a short memorandum from Mr Mandelli. This contained, in part, submissions responsive to the submissions made by Mr Gomes on 29 July and in part further evidence. Insofar as the document contains evidence which had not previously been adduced I have disregarded it except where it confirms matters advanced by the Claimants: (a) the document was not signed with a statement of truth; (b) in my memo of 22 July I had made clear that no further factual material should be adduced, and (c) it came

too late and would be unfair to the Claimants for Mr Mandelli now to rely on it. D. Legal principles relevant to the applications 57. The tests for strike out and summary judgment are familiar. I summarise the principles below. Strike-out under CPR 3.4 58. 59. 60. CPR 3.4(2) provides that the Court may strike out a statement of case if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim; (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; (c) that there has been a failure to comply with a rule, practice direction or court order; The application, as issued, was brought under limbs (b) and (c), but (without objection) all three limbs were advanced in the skeleton and in oral submissions. In support of his case, Mr Mandelli relied upon the summary of the law set out in the Notes to the White Book starting at pages 91. For present purposes it is sufficient to summarise the principles as follows. Approved Judgment No reasonable grounds – ground (a) 61. 62. 63. 64. 65. 66. As regards ground (a) (no reasonable grounds) Practice Direction 3A (at 1.2) gives examples of claims which the Court may conclude fall within this ground, namely: claims which (a) set out no facts indicating what the claim is about; (b) claims which are incoherent and make no sense and (c) claims which contain a coherent set of facts but where those facts, even if true, do not disclose any legally recognisable claim against the defendant. Caution is required, given the draconian effect of strike-out. It is not appropriate to strike out a claim: (a) in a developing area of law; (b) where the claim raises serious live issues of fact which can only properly be determined by hearing oral evidence; (c) unless the Court is certain that the claim is bound to fail – see *Hughes v Colin Richards & Co* [2004] EWCA Civ 266 in particular at [22] - [23] per Peter Gibson LJ. There is some tension in the case law, reflected in the Notes to the White Book as to whether CPR 3.4(2)(a) permits consideration of facts outside the scope of the pleaded case, and whether the Court's function is limited to appraising the viability of the case as pleaded, assuming that basis to be true, in distinction to the approach under CPR 24.3. In support of a restrictive approach - see *MF Tel Sarl v Visa Europe Limited*

[2023] EWHC 1336 (Ch) (noted in the White Book) and to similar effect, dicta of Arnold LJ in *Libyan Investment Authority v King* [2021] 1 WLR 265. That is to be contrasted with the approach of the Court of Appeal in *Begum v. Maran (UK) Ltd*

[2021] EWCA Civ 326 per Coulson LJ at [21] under which the test in 3.4(2)(a) and 24.3 is, in effect, unified: “In a case of this kind, the rules [that is r.24.2 and r.3.4(2)(a)] should be taken together and a common test applied. If a defendant is entitled to summary judgment because the claimant has no realistic prospects of success, then the statement of claim discloses no reasonable grounds for bringing the claim and should be struck out.” The tension in the two approaches was considered by HHJ Keyser, sitting as a Judge of the High Court, in *Maranello Rosso Ltd v Lohomij BV* [2021] EWHC 2452 (Ch) at [23]-[25] and by Nigel Cooper KC, sitting in the same capacity, in *Cancrie Investments Limited v Haider* [2024] EWHC 1876 (Comm). They preferred and adopted the approach in *Begum* which I, accordingly, follow. This is consistent with the note at the White Book to the effect that where a claim is obviously factually hopeless, it has been held that there is nothing wrong

with bringing applications under both CPR 3.4 and 24.2 (referring to Maranello and the (dissenting) dicta of Nugee LJ in *Libyan Investment Authority v King*). Abuse – ground (b) As regards ground (b) (abuse of process or obstruction of the just disposal of the proceedings) it is recognised by the editors of the White Book that there is no exact dividing line between ground (a) and ground (b) (see final note to 3.4.2 at White Book). However, if one understands abuse of the Court’s process as “using that process for a purpose or in a way significantly different from its ordinary and proper use”, the majority of categories or instances illustrated by case law do not fit the facts of this case (e.g. *res judicata*, issue estoppel, collateral attack on earlier criminal or civil decisions, Approved Judgment vexatious proceedings, re-litigation or multiple similar proceedings, pointless or wasteful proceedings which are not worth the candle). 67. Either this case falls within the “no reasonable grounds” category or, if not, it must be brought within the recognised approach to abuse by reference to delay. As the editors of the White Book note at 3.4.16 (p. 106) “Rule 3.4(2)(b) is not strictly relevant where the complaint is one of delay rather than a complaint as to the form or content of a statement of case.” However, delay, where accompanied by an additional factor which transforms the delay into an abuse has been held to give rise to a ground for strike-out within CPR 3.4(2)(b): *Icebird Ltd v Winegardner* [2009] UKPC 24, for example: i) ii) iii) Delay caused by a claimant acting in wholesale disregard of the norms of conducting serious litigation and doing so with full awareness of the consequences (*Grovit v Doctor* [1997] 1 WLR 640). Delay evidencing no real intention of progressing the claim to trial (e.g. *Alibrahim v Asturion Fondation* [2020] EWCA Civ 32 at [55] per Arnold LJ; Delay through acting with wholesale disregard for Court orders (e.g. *Wearn v HNH International Holdings Limited* [2014] EWHC 3542 (Ch)). As the case law makes clear the court should always examine all of the circumstances, including the length of the delay, the degree of the claimant’s responsibility for it and the reasons given for it. Failure to comply with a rule, practice direction or court order – ground (c) 68. 69. 70. As submitted by Mr Warwick KC, the editors of the White Book note that the Court has an unqualified discretion to strike out a claim or defence where a party has failed to comply with a rule, practice direction or court order (see 3.4.18). However, that discretion must be exercised in a principled way. The case law highlights the importance of the Court adopting a just and proportionate response to the breach in question. In the absence of factors pointing (additionally) to strike out or summary disposal on other grounds there may well be alternatives to strike out which are more appropriate, such as costs orders or “unless” (or other case management) orders. Again, the need to consider the particular circumstances of the case is paramount.

71. While the Court is entitled to have regard to the principles concerning relief from sanctions under CPR 3.9, the ultimate question for the Court in deciding whether to impose the sanction of strike-out under CPR 3.4(2) is materially different from that in deciding whether to give relief from a sanction that has already been imposed. In a strike-out application under 3.4 the proportionality of the sanction itself is in issue, whereas an application under CPR 3.9 for relief from sanctions has to proceed on the basis that the sanction was properly

imposed: *Walsham Calt Park Ltd v Tallington Lakes Ltd* [2014] EWCA Civ 1607. Effect of failure to serve Particulars of Claim on time Approved Judgment 72. Two issues arose in submission in relation to the (acknowledged) failure by the Claimants to serve Particulars of Claim by 1 December 2025. The first is whether, in principle, a failure to do so would give rise to a sanction, such that the relief from sanctions regime under CPR 3.9 is triggered. The second concerns the position if an application for an extension of time for service of Particulars is made before expiry of the deadline for service: does the relief from sanctions regime under CPR 3.8 and 3.9 apply or the less stringent regime applicable under 3.1(2)(a) by reference to the overriding objective (in the absence of sanctions). Does failure to serve Particulars of Claim in time give rise to sanctions requiring relief under CPR 3.8-3.9? 73. The Court of Appeal has recently clarified the law as to the application and operation of the relief from sanctions regime under CPR 3.8 and 3.9. For present purposes, I consider that the following principles apply: i) ii) iii) iv) v) The starting point is to identify a breach of a rule, practice direction or order (see *Yess Electrical v Warren* [2024] EWCA Civ 14 (“Yess”) at para 25); CPR Rules 3.8 and 3.9 do not create sanctions. They apply when a sanction exists. In such circumstances, the onus is on the party seeking relief to come to Court: (see *Yess* at para 26); There are three categories of case giving rise to sanctions for which relief (under CPR 3.9) will be required: (i) cases where the rule or order expressly provides for the sanction that will apply on non-compliance, (ii) cases where the rule does not expressly state the sanction which applies for non-compliance, but permission of the court is needed to proceed, and (iii) cases where a further step is taken in consequence of the non-compliance, such as the entry of a default judgment or the striking out of a claim for non-attendance at trial. (*FXF v English Karate Federation Limited & Others* [2023] EWCA Civ 891 [2024] 1 WLR 1097 (“FXF”) at para 59 per Sir Geoffrey Vos MR). Just because a rule, Practice Direction or order provides that a party needs permission to take a step, does not connote that the requirement for permission has been imposed as a sanction for breach [*Yess* at para. 34]. If there is no express sanction, then outside FXF category (iii) above, and specific recognised instances of implied sanction (i.e. notices of appeal and respondents’ notices) there is no relevant sanction and the rule in CPR 3.9 does not apply [*Yess* at para 33]. 74. In the light of the above principles it appears to me that in the absence of a step being taken in consequence of a failure to serve particulars of claim in breach of the rules so as to engage the third category of case requiring relief from sanctions (see FXF category (iii) above) such a failure does not engage CPR 3.8-3.9 as there is no express sanction provided – see in support of this analysis *Kevin Brown v The Chief Constable of Approved Judgment* 75. 76. 77. *Greater Manchester Police* [2024] WL05047238 per HHJ Bird at paras 21-242 and *Bangs v FM Conway Limited* [2024] EWCA Civ 1461 at para 26. What is the effect of an application for an extension of time before expiry of the deadline for service? As to the second question, if an application for an extension of time to serve particulars of claim is made prior to expiry of the deadline for service, even where the original deadline is then not met, and even where the application is determined after expiry of that deadline, such that permission is required retrospectively: (a) the Court will treat the application as an “in-time” application for an extension; (b) the CPR 3.9 regime will not apply, and, accordingly (c) the court’s discretion to

vary a time limit or deadline is to be exercised having regard to the overriding objective. Notwithstanding the provisions of CPR 1.1(2)(f) (“enforcing compliance with rules, practice directions and orders”) the Court is not required to refuse extensions of time, which neither imperil hearing dates nor otherwise disrupt the proceedings – see *Hallam Estates v Baker*

[2014] EWCA Civ 661 per Jackson LJ at [26] to [31] adopting and approving the Court of Appeal decision in *Robert v Momentum Services Limited* [2003] EWCA Civ 299;

[2003] 1 WLR 1577 at [33]. See also the notes in the White Book at 3.1.2.1 and 3.9.11. Summary judgment – CPR 24.2(a) provides that the Court may give summary judgment against a claimant in any type of proceedings. CPR 24.3 provides that the Court may give summary judgment against a claimant on the whole of a claim or on an issue if – (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial. Principles applicable to applications for summary judgment (now familiar) were formulated by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]. They were relied upon by the Claimants and were not in dispute at the hearing. Omitting the seventh principle as it is not engaged in this case, they can be summarised as follows: i) ii) iii) iv) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success; A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable; In reaching its conclusion the court must not conduct a “mini-trial”; This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents; 2 Which interpreted the decision of Henshaw J in *Excotek Ltd v City Air Express Ltd* (in liquidation) [2021] EWHC 2615 (Comm) at [37] as being consistent with this approach, notwithstanding dicta in that decision which might indicate that failure to service Particulars of Claim gave rise to an “implied” sanction – FXF category (ii). Approved Judgment v) vi) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial; Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case. 78. Given the nature of the dispute in this case, and submissions advanced by the parties it is appropriate to elaborate on three principles raised above: i) First, as to the requirement that the claim is more than merely arguable and carries some degree of conviction, Asplin LJ explained the position as follows (in the context of amendment, where the same threshold test applies) in *Elite Property Holdings*

Ltd v Barclays Bank Plc [2019] EWCA Civ 204 at [41]- [42]: “41..... A claim does not have such a [real] prospect [of success] where (a) it is possible to say with confidence that the factual basis is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a prima facie case that the allegations are correct; and/or (c) the claimant has pleaded insufficient facts in support of their case to entitle the Court to draw the necessary inferences: *Three Rivers District Council v Bank of England* (No. 3) [2003] 2 AC 1.

42. The Court is entitled to reject a version of the facts which is implausible, self-contradictory or not supported by the contemporaneous documents and it is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action relied upon”. ii) Secondly, as to what is meant by the inappropriateness of conducting a mini- trial it is relevant to keep in mind the need for judicial restraint in accordance with Lord Hamblen JSC’s suggested approach in paragraphs 94-95 of his judgment in *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3. However, as observed by Nugee LJ in *Giwa v JNFX Ltd* [2025] EWCA Civ 961 at [33]: “The exhortation to avoid a mini-trial ... is directed at the situation where there is a conflict of evidence on some factual issue”... “[T]he court is by no means barred from evaluating the evidence. Indeed the Court is not only entitled but obliged to do this, not with a view to resolving disputed versions of events, but with a view to assessing whether there is any real substance in the suggested defence (or claim, as the case may be), or whether on the other hand it is fanciful. For this purpose it is well established that the Court is not obliged to take all factual assertions at face value, as it may be clear, particularly from contemporaneous documents, that there is no real substance in them: *Easyair v Approved Judgment Opal* at [15 iv)], *ED & F Man v Patel* at [10]. The question is always whether it has been shown by the applicant that there is no real prospect of success in the defence (or claim), and for this purpose the Court necessarily needs to examine the evidence to see if there is, or may be, any substance in it.” (iii) Thirdly, as to whether further evidence can reasonably be expected to be available at trial and to what effect, the question is whether there are reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the claim has a real prospect of success: per Lord Hamblen JSC in *Okpabi* at [127] – [128]. In that context, and as set out in the White Book at 24.3.2.3, in *Duchess of Sussex v Associated Newspapers Ltd* [2021] EWHC 273 (Ch) Warby LJ said this: “14. *Easyair* principles (vi) and (vii) contain echoes of the law’s traditional disapproval of ‘a desire to investigate alleged obscurities and a hope that something will turn up...’ as a basis for defending a summary judgment application; a case that is ‘all surmise and Micawberism’ will not do: see *The Lady Anne Tennant v Associated Newspapers Ltd* [1979] FSR 298, 303 (Sir Robert Megarry V-C). The focus is not just on whether something more might emerge, but also – and crucially – on whether, if so, it might ‘affect the outcome of the case’; and the court’s task is to assess whether there are ‘reasonable grounds’ for believing that both these things would occur: see *Doncaster Pharmaceuticals Group Ltd v The Bolton Pharmaceutical Company 100 Ltd*

- [2006] EWCA Civ 661; [2007] FSR 63, [18] (Mummery LJ).” A respondent to a summary judgment application who claims that further evidence will be available at trial must substantiate that assertion by describing the nature of the evidence, its source and its relevance to the issues before the court. It is not sufficient simply to say that further evidence will or may be available: *Korea National Insurance Corp v Allianz Global Corporate & Specialty AG* (formerly *Allianz Marine & Aviation Versicherungs AG*) [2007] EWCA Civ 1066; [2007] 2 C. L. C. 748 (see [14] per Moore-Bick LJ). E. The Claim 79. The amended claim form under “Brief details of claim” materially provides as follows: i) ii) Para 1: “The Claimants advance claims against the Defendants for professional negligence..... breach of duty”. Para 2: “The Claimants’ claim arises in the context of the provision of services by and/or the performance of duties of the First, Second and/or Third Defendants which caused and/or procured and/or induced and/or advised the Claimants to lend substantial sums to and/or for the benefit of the Fourth Defendant and/or to advance such sums without appropriate security and/or delayed the Claimants in seeking to recover the sums in question with applicable interest”. iii) Para 3 states the general effect of the April 2016 facility and pleads that it was restated and amended from time to time including by a loan facility dated 13 Approved Judgment August 2020 and pleads non re-payment despite demand. 80. 81. 82. iv) Para. 4: “But for the advice.... breaches of duty, errors or omissions of the Defendants, the Claimants (or either of them) would not have suffered loss”. Sensibly, no objection was taken by Mr Warwick KC to my reading and taking into account, so far as appropriate for the purposes of evaluating the grounds/prospects of the claim, the case disclosed by the Claimants in the Particulars of Claim served on 8 May 2026 and accompanying materials. The claim identifies Mrs. Gomes as the lender under the loan agreements of 24 September 2015, 20 April 2016 and 13 August 2020 (paras. 3-5), and identifies Mr Gomes as having dealt “directly” with Mr Grey “in relation to the private lending arrangements pleaded below” (para 6). AMG is identified as a private limited company incorporated on 16 October 2009 with a registered office at Regal House, 70 London Rd Twickenham Middlesex TW1 3QS (para. 8-9). Mr Grey is pleaded as having been at all material times a director of AMG, and having communicated with the Claimants in relation to the matters pleaded below using AMG e-mail communications (paras. 10-11).
83. Mr Mandelli is pleaded as having been, at all material times, a solicitor of the Senior Courts of England and Wales (para. 9) and it is alleged that “[a]t the material time in April 2016, Mr Mandelli was contacted by Ascot Lawyers at AMG Legal Limited, Regal House, 70 London Rd. Twickenham, TW1 3QS in relation to the 20 April 2016 Loan Facility” (para 10). Ascot Lawyers were the firm who, at the time, were acting for Mr Bowdery. 84. Section C commencing at paragraph 15 characterises the nature of the claim as a claim for damages from AMG, Mr Grey and Mr Mandelli arising out of their respective involvement in private lending to Mr Bowdery. A summary of matters relied on is set out at paragraphs 17 to 26: i) ii) iii) iv) v) Mr Grey, acting personally and/or through AMG introduced Mr Gomes to private bridging finance by e-mail dated 16 September 2011; In that e-mail Mr Grey stated that the

opportunity would be “straightforward and no hassle” because he would “run everything”, that the Claimants would be used as the “Bank/Lender”, that he would complete due diligence, and that the most important protection was first charge security over property. Thereafter, Mr Grey arranged private lending transactions involving the Claimant’s funds and represented that such lending was low risk and protected by first charge security. Between September 2015 and April 2016, funds were advanced to Mr Bowdery under arrangements subsequently recorded in the written loan facility agreement dated 20 April 2016. Mr Mandelli documented the 20 April 2016 loan facility agreement and, on the Claimants’ case, received a payment of £3,000 connected with the lender’s legal costs of preparing that agreement. Approved Judgment vi) vii) The 20 April 2016 loan was extended and/or restated, including by the written facility agreement dated 13 August 2020. The Claimants’ case is that the loan was extended and/or maintained without adequate security, adequate advice or adequate protection. viii) Mr Bowdery failed to repay the sums due and judgment against him remains wholly unsatisfied. ix) The Claimants seek to recover from AMG, Mr Grey and Mr Mandelli the loss said to have been caused by their respective breaches of duty. 85. Section D pleads the Bridging Finance Arrangements introduced by AMG and Mr Grey. Paragraph 32.7 (repeated in substance in paragraph 33.4) pleads that Mr Grey stated in an e-mail of 16 September 2011 that “legal work would be handled so that the Claimants were “covered”. In fact, the e-mail in question states that “Also, George Keppe [a solicitor in an independent firm] will handle the legal side of things for us so you know you are covered”. 86. At paragraph 39 the Claimants plead that, before the Bowdery lending: i) ii) iii) iv) Mr Grey had introduced and arranged private bridging finance transactions involving the Claimants’ funds; Mr Grey understood and stated that first charge security was central to the protection of the Claimants’ funds; Mr Grey represented that he would undertake due diligence; and Mr Grey represented that the Claimants would be protected by legal documentation and security. 87. 88. Section E pleads the Bowdery Loan and the Advances made pursuant to it and pleads that, in fact, Mr Gomes made payments connected with the Bowdery lending, notwithstanding that Mrs Gomes was identified as lender. Section F pleads Mr Mandelli’s involvement in the First Loan at paragraphs 53 to 58 in the following terms. This section, together with section O “duties owed by Mr Mandelli” sets out the crux of the Claimants’ claim against Mr Mandelli. “53. By letter dated 20 April 2016 from Ascot Lawyers (acting for Mr Bowdery) to Mr Mandelli at AMG Legal Ltd regal house, 70 London Road, Twickenham, TW1 3QS (sent by e-mail to mm@amglegal.co.uk), Ascot lawyers enclosed a signed copy of the Loan Facility Agreement dated 20 April 2016 (“the First Loan”) and confirmed that Mr Bowdery had signed it following advice from them.

54. Clause 7.1 of the First Loan provided that Mr Bowdery would pay the sum of £3,000 “to cover the Lender’s legal costs in respect of preparing this agreement.”
55. On 9 May 2016 the Second Claimant paid £3,000 to “MR M MANDELLI.” The Claimants’ case is that this was the sum referred to in clause 7.1. Approved Judgment

56. The Claimants had no direct meeting, conversation or written communication with Mr Mandelli at any time in relation to the First Loan or any subsequent extension or restatement. All communications concerning the lending were conducted through AMG and Mr Grey.
57. Mr Mandelli did not provide the Claimants (or either of them) with any client-care letter, engagement letter, terms of business, advice note, limitation of retainer letter or any written warning that he was not acting for them.
58. Mr Mandelli has stated in his witness statement dated 3 February 2026 that his involvement was limited to taking instructions from AMG/Mr Grey and documenting the transaction. To the extent that this is correct, the Claimants rely on the following matters as giving rise to a duty on his part: 58.1 He prepared documentation for substantial loan facility in which the First Claimant was identified as a lender; 58.2 The documentation expressly provided for payment of £3,000 to cover “the Lender’s legal costs”; 58.3 He knew or ought reasonably to have known that the document was to be used by and for the benefit of the Lender; 58.4 He did not at any stage clarify in writing the identity of his client(s) or warn that the Claimants should obtain independent legal advice.
59. In the premises, even if Mr Mandelli was not directly retained by the Claimants, he owed a duty to make his position clear in writing and to advise the Claimants to obtain independent legal advice before they entered into or relied upon the First Loan”. 89. 90. 91. 92. 93. Sections G and H plead the facts relied upon in connection with extensions to the Loan Agreements made in 2018, 2019 and May 2020. Section I pleads the 13 August 2020 Facility Agreement and Mr Grey’s statements to the Claimants following execution. Section J pleads events before default on the loans and alleged security concerns expressed by the Claimants at this time. Section K pleads events of default and non- recovery of the loans from Mr Bowdery. Section L pleads duties owed by AMG and Mr Grey breach of which are pleaded at section M. Section N pleads negligent misstatements by AMG and Mr Grey. Section O at para. 159 describes the claim against Mr Mandelli as being on alternative bases: i) ii) Professional negligence arising from an assumption of responsibility; Negligent failure to warn and/or to clarify his position. 94. The primary case is further pleaded at paragraph 160, alleging that Mr Mandelli owed Mrs Gomes (and/or both Claimants) a duty to exercise reasonable skill and care in Approved Judgment respect of the documentation of the First Loan (pleaded as being the April 2016 Loan) and/or to make clear that he was not acting for the Claimants and to warn them to obtain independent legal advice. The duty (or duties) are alleged (at paragraph 161) to have arisen by reason of the following matters: i) ii) iii) iv) v) vi) Mr Mandelli is and was at all material times a solicitor of the Senior Courts of England and Wales; He was instructed (via AMG) to document the First Loan, a substantial facility in which the First Claimant was identified as lender. Ascot Lawyers’ Letter dated 20 April 2016 was sent to him and enclosed the signed agreement for his attention; Clause 7.1 of the 20 April Facility Agreement expressly provided for payment of £3,000 to cover the Lender’s legal costs; The Second Claimant paid that sum to Mr Mandelli on 9 May 2016. The

documentation was prepared for use in connection with the First Claimant's lending to Mr Bowdery; vii) The Claimants had no direct contact or communication with Mr Mandelli at any time; viii) Mr Mandelli did not provide any client-care letter, engagement letter or written clarification of the identity of his client(s). 95. 96. 97. 98. It is alleged (para. 162) that, in the premises, "Mr Mandelli assumed responsibility to the First Claimant (and/or both Claimants) to exercise reasonable skill and care in relation to the documentation of the 20 April 2016 Loan facility and/or to make his position clear and warn the Claimants to obtain independent advice". The alternative (negligent failure to warn) case pleaded at paragraph 159(ii) is picked up further in para. 163: "if, as Mr Mandelli contends) he was taking instructions only from AMG and was not acting for the Claimants, he owed a duty, once he knew or ought reasonably to have known that the document was to be used by and for the benefit of the lender and that he was to be paid the lender's legal costs, to make that position clear in writing and to advise the Claimants to obtain independent legal advice before entering into or relying upon the First Loan". Section P pleads breaches of duty against Mr Mandelli including failure to advise: (a) that the First Loan was not protected by first charge security; (b) that first charge security should be obtained before the First Loan was entered into; (c) not to enter into the First Loan without effective security. Paragraph 173 pleads (in support of the case that Mr Mandelli was acting for the Claimants) the fact of his receipt and retention of £3,000 in connection with the 20 April Loan Facility. Had he not been acting for the Claimants, it is said, he would have returned that sum as having been paid in error. 99. Section Q pleads causation at paragraphs 177-179. Approved Judgment "177. If Mr Mandelli had exercised reasonable skill and care (whether by advising on the absence of security or by making his position clear and recommending independent legal advice) the Claimants would not have entered into the 20 April 2016 Loan facility without adequate security and/or without the benefit of independent legal advice on its terms and risks.

178. The loss suffered by the Claimants was the result of the risk against which AMG, Mr Grey and Mr Mandelli were required to advise and/or protect, namely the risk that: 178.1 Mr Bowdery would fail to repay; 178.2 The Claimants would not have first charge security or adequate equivalent security; and 178.3 The Claimants would be unable to recover the sums due from Mr Bowdery in full.
179. In the premises, the breaches of duty pleaded above caused the Claimants loss and damage". Section R pleads loss in terms of the advances made under the 20 April 2016 Facility Agreement as incrementally increased by interest over time. That summary sets out the claim in some detail, from which two principal themes emerge: 100. 101. i) ii) The principal claim is plainly directed against AMG and Mr Grey; The claim against Mr Mandelli is limited to a claim in connection with the April 2016 Loan agreement. Legal principles relevant to duty of care 102. Three issues arise on the pleaded case: i) ii) Whether Mr Mandelli owed either Claimant a duty of care; If so, the scope of any such duty; iii) The relevance of Mr Mandelli having been engaged by AMG.

103. As explained above, following the hearing, I asked the parties for assistance as to the identification and application of the legal principles relevant to those three issues, and asked them to consider the cases of *Spire Property Development & another v Withers LLP* [2022] EWCA Civ 970 [2023] 4 WLR 56 (“Spire”) and *Williams v Natural Life Health Foods Ltd* [1998] 1 WLR 830 (“Williams”).
104. As a result of the further submissions I received it was common ground that these cases set out relevant applicable principles. Approved Judgment 105. In *Spire* Carr LJ (as she then was) analysed the approach to the incidence and extent of a solicitor’s duty both in contract, under a retainer [56]-[58], and in tort, where there is no retainer [59] – [71].
106. As to the duties owed under a contractual retainer (which would be the subject of a concurrent and independent duty in tort): i) ii) iii) The solicitor’s duty is limited to carrying out the tasks which the client has instructed, and the solicitor has agreed to, undertake. The court must be aware of imposing on solicitors duties which go beyond the scope of what they are requested and undertake to do. The duty is directly related to the confines of the retainer. However, it is implicit in the retainer that the solicitor will proffer advice which is “reasonably incidental” to the work that they have agreed to carry out; In determining what advice is “reasonably incidental”, regard should be had to all the circumstances of the case, including the character, sophistication and experience of the client. The extent of the burden that the allegedly incidental task places on the solicitor will be relevant. In determining what is “reasonably incidental” to the solicitor’s engagement, regard may be had to the level of fee charged.
107. Carr LJ elaborated on what “reasonably incidental” advice means at [57]: in summary: i) The concept is elastic and matters which fairly and reasonably arise in the course of carrying out instructions are to be regarded as coming within the scope of the retainer; ii) However, the concept has limits: a) b) Where a solicitor becomes aware of a risk to the client in the course of doing that for which they are retained, it is the solicitors’ duty to inform the client. However, an extended duty to advise of this nature would only arise in “obvious” cases where there was a “close and strong nexus” between the retainer and the matter upon which it is said that the professional should have advised and would not extend to investigative tasks in areas they had not been asked to deal with.
108. Where there is no retainer, different considerations arise: i) ii) iii) The concept of assumption of responsibility remains the foundation of tortious liability. [59] The doing of the act or undertaking of responsibility for a task implies a voluntary undertaking to assume responsibility. [59] The fact that information or advice is provided gratuitously negates neither the assumption of responsibility nor the requirement to perform the tasks so Approved Judgment assumed with reasonable skill and care. [59] iv) Whether any responsibility is assumed and the extent of any assumption, is to be judged objectively in context and without the benefit of hindsight. [60] v) The test is objective and the primary focus must be on exchanges which have crossed the line between the solicitor and the claimant (referring to *Williams*). vi) A fact-sensitive enquiry in each case is required. [60] vii)

The solicitor's own view (and thus state of mind) as a reasonably competent solicitor as to the scope of the task which they accepted (by reference to the Bolam test) is not relevant: a) b) The state of mind of the defendant is not the touchstone of liability (see Williams). The Bolam principle is directed at the separate (and subsequent) enquiry as to the standard of care to be exercised, once the scope of the duty/retainer has been established [63]-[64]. 109. 110. The Court, having ventilated brief argument, did not express a concluded view on whether there could be scope for an extended duty in tort analogous to that in contract by reference to matters "reasonably incidental" to the scope of duty assumed by a solicitor [65]-[69]. In Williams the House of Lords had to consider whether the owner and director ("M") of a "one-man" franchisor company had assumed a personal duty of care to a franchisee who claimed to have relied upon statements as to M's personal experience and competence in a company brochure.

111. At p. 835 A – C Lord Steyn said the following: "a company is a separate entity, distinct from its directors, servants or other agents. The trader who incorporates a company to which he transfers his business creates a legal person on whose behalf he may afterwards act as director. For present purposes, his position is the same as if he had sold his business to another individual and agreed to act on his behalf. Thus, the issue in this case is not peculiar to companies. Whether the principal is a company or a natural person, someone acting on his behalf may incur personal liability in tort as well as imposing vicarious or attributed liability upon his principal. But in order to establish personal liability under the principle of Hedley Byrne, which requires the existence of a special relationship between plaintiff and tortfeasor, it is not sufficient that there should have been a special relationship with the principal. There must have been an assumption of responsibility such as to create a special relationship with the director or employee himself". (emphasis added)
112. At p. 835G-H Lord Steyn explained the touchstone of liability in such circumstances and how the objective test (referred to above in the analysis of Spire) would be satisfied in the context of a special relationship between client and agent of the principal. "The touchstone of liability is not the state of mind of the defendant. An objective test means that the primary focus must be on things said or done by the defendant or on his Approved Judgment behalf in dealings with the plaintiff. Obviously, the impact of what a defendant says or does must be judged in the light of the relevant contextual scene. Subject to this qualification the primary focus must be on exchanges (in which term I include statements and conduct) which cross the line between the defendant and the plaintiff. Sometimes such an issue arises in a simple bilateral relationship. In the present case a triangular position is under consideration: the prospective franchisees, the franchisor company, and the director. In such a case where the personal liability of the director is in question the internal arrangements between a director and his company cannot be the foundation of a director's personal liability in tort. The inquiry must be whether the director, or anybody on his behalf, conveyed directly or indirectly to the prospective franchisees that the director assumed personal responsibility towards the prospective franchisees". F. Summary of the parties' arguments

113. Mr Mandelli's principal contentions were as follows: i) ii) iii) iv) v) vi) vii) The claim form discloses no coherent case against him; He had no communication of any issues with the Loan until, out of the blue, he received a letter from CRS requesting clarification of his involvement with the Loan, purporting to be a letter issued under the pre-action protocol; Once properly addressed and received, he provided a full response, after which there was no engagement in any pre-action protocol. He waited 3 ½ years from issue of the claim to ascertain what case was being advanced against him with (until the day of the hearing) no service of Particulars of Claim, no communication of the basis of any claim and no compliance with the pre-action protocol for professional negligence at any stage, despite promises to do so, and with no explanation as to why not. He contends that the service of Particulars of Claim on the day of the hearing was a late "ambush". The explanation provided in Mr Davis's statement as to the diversion of time and resource due to marital difficulties is said to come for the first time, late and without adequate basis – he points to the Claimants' ability to litigate their divorce. He did not agree any further stay following expiry of the stay imposed by the Order of HHJ Pelling KC dated 30 October 2024 (see correspondence of 3 and 10 November 2025) and did and does not consent to any further extension of time for service of particulars of claim. The Claimants were in ongoing breach of the Order, including by failing to serve Particulars of Claim even by the date which they themselves had sought in their application notice to extend time for service of Particulars of Claim. The background to the bringing of this case, coupled with enormous delay, renders the claim an abuse of the Court's process. As to the substance of the claim, he had a very limited role in the loan transactions involving the Claimants; he was, in essence, a bystander in limited Approved Judgment respects; viii) ix) x) In the course of his intermittent role as part-time consultant engaged by AMG he had never met, spoken with, or otherwise communicated with, either of the Claimants or with Mr Bowdery about the Loan. The Claimants were at all material times clients of AMG, and all communications and any advice concerning the Loan were made and provided to the Claimants through AMG via Mr Grey while AMG was authorised and regulated by the Financial Conduct Authority. In the specific context of the August 2020 Loan (which Mr Mandelli was directly addressing in evidence on the basis that he had no notice of the nature of the claim against him and that this had formed the basis of the Particulars of Claim against Mr Bowdery) he says he was employed by AMG and took instructions directly from Mr Grey in his capacity as Managing Director. He describes attending a meeting in January 2020 at AMG's offices at which Mr Grey requested him to document the Loan transaction and provided him with the details and lender's identity. He says he prepared a draft loan agreement using the information supplied to him. He e-mailed the draft to Mr Grey who approved it and put it on file - all files having been set up, administered and maintained by Mr Grey in accordance with Financial Conduct Authority regulations. Mr Mandelli recalled that the Loan was previously (i.e. prior to 2020) restated on multiple occasions. Mr Mandelli says that he was not aware, nor was he involved in, a loan advance being transferred between lender and borrower. There were no complaints raised by the Claimants following any re-statement raised with him and Mr Grey did not inform him that there was any issue with the Loan. Mr Grey told him that AMG has

written confirmation from the First Claimant that they obtained independent legal advice from an independent third- party solicitor before executing the Loan agreement in August 2020.

114. On the three particular legal issues relevant to the existence or extent of a duty of care, he says the following: i) ii) No duty of care was owed. There were no exchanges (statements or conduct) “crossing the line” between Claimant and Defendant (adopting the language and approach of Williams). Mr Warwick KC drew specific attention to para 56 of the Particulars of Claim in support of this proposition. If the question arises as to extent/scope of duty (advanced only as a fall-back argument) any duty was confined to the work undertaken by Mr Mandelli. In this respect Mr Warwick KC drew attention to the decision of the Court of Appeal in *Miller v Irwin Mitchell* [2024] 4 WLR 27 (“Miller”). This was a personal injury case, arising from a holiday accident. The victim consulted a helpline operated by the law firm, Irwin Mitchell, staffed by law graduates. The Court of Appeal held (and there was little, if any dispute) that there was a voluntary assumption of responsibility by Irwin Mitchell for the limited task which they undertook via the helpline service, namely providing preliminary legal advice of a limited and general “high level” nature to prospective clients (para. 43). The Court of Appeal rejected the argument that a legal advisor Approved Judgment having, of their own motion, given advice about limitation on a helpline call, Irwin Mitchell had thereby voluntarily assumed responsibility for advising on the general topic of what the claimant victim needed to do to protect her position. Mr Warwick KC submits that, if any duty was owed, Mr Mandelli’s work was limited to preparing legal documentation, the scope of any duty is so confined, and no complaint is made about the drafting work, so no breach could be established. iii) Mr Mandelli was engaged by AMG. The Claimants’ dealings were with AMG and Mr Grey and not Mr Mandelli. The facts of the case reveal no assumption of personal responsibility by Mr Mandelli. To find a duty owed by Mr Mandelli in this case, which Mr Warwick KC characterised as a subordinate preparing paperwork, would be intuitively wrong and would cast liability on a vast array of those carrying out administrative work in the field of professional services. 115. Finally, Mr Mandelli states that he has suffered prejudice from the continuing existence of these claims: in the job market and reputationally. His requirement to disclose this claim has had a chilling effect on his ability to secure new work. The Claimants’ arguments 116. 117. The Claimants say that the Court should not accept Mr Mandelli’s version of events and dispose of the claims on that basis – that is not the proper approach under CPR 3.4 or CPR 24. They say that taking the Claimants’ case at its highest (as the Court should), it is plainly arguable - it cannot be said that there is no real prospect of success, nor that there is no compelling reason for trial. 118. Taking the case at its highest, the elements which render it inappropriate for summary disposal are as follows: i) ii) iii) iv) v) vi) Mr Mandelli was a solicitor involved in preparing documentation for a substantial private loan transaction; He took instructions within the AMG/Martin Grey structure; He drafted or materially contributed to the loan documentation; He knew or ought reasonably to have known that the lender required proper legal protection, advice and security; He was paid £3,000 shortly

after the relevant loan documentation; He failed to ensure adequate advice, protection, warnings and/or security vii) Loss followed. 119. The Claimants say that Mr Mandelli's account is incomplete: i) It does not explain the £3,000 payment to Mr Mandelli on 9 May 2016. That omission is material and raises obvious factual questions concerning the nature Approved Judgment of the work undertaken, whether the payment related to legal services connected with the loan, whether his role was wider than the limited role now described in his evidence. The Claimants' case was that Mr Grey asked Mr Gomes to pay the £3,000 to Mr Mandelli's bank account and this matter requires disclosure. The submission was that you would expect that a lender or borrower would pay the firm and the firm would pay the draftsman – the fact that a direct payment was made to Mr Mandelli suggests that he performed a service. This is supported by the fact that Mr Mandelli never repaid the money. He was fully involved, and was more than a bystander as he claims. ii) These issues require disclosure, documentary investigation and, if necessary, cross-examination. The payment is said to be an unexplained discrepancy which is, itself, sufficient to demonstrate that the matter is unsuitable for summary disposal, which would be unsafe and unjust.

120. As regards Mr Mandelli's case that the claim is statute-barred, they say: i) ii) Limitation is fact-sensitive and unsuitable for summary determination; The Court would need to consider: a) b) c) d) e) f) When the cause of action accrued; When actionable loss was suffered; When the claimants first had the necessary knowledge for the purposes of section 14A of the Limitation Act 1980; Whether any relevant facts were concealed for the purposes of section 32 of the Limitation Act 1980; The true nature and extent of Mr Mandelli's involvement; The significance of the £3,000. iii) They say that they did not know, and could not reasonably have known, the full extent of Mr Mandelli's role until much later, when the transaction failed and when the advisory/legal structure became clearer. Those issues require evidence and disclosure.
121. As to the procedural issues, the Claimants adduced no evidence dealing with the points relied upon by Mandelli in his witness statement beyond the limited information in Mr Davis's (prior) witness statement. Mr Robertson was candid in explaining to the Court that, faced with the imminent hearing of the applications, the Claimants prioritised the preparation of Particulars of Claim and supporting materials - and thus their case on the substance of the claim - over responses to procedural issues. As to the conduct of the claim to date, the Claimants say: i) ii) It is inaccurate to characterise the claim as dormant, inactive or abusive; They actively pursued Mr Bowdery to judgment. Approved Judgment iii) iv) v) vi) The professional negligence claims were stayed while recovery efforts against the borrower were pursued which was a rational and proportionate mitigation strategy; Mr Mandelli had previously consented to the stays, and it is unfair for him to rely on the period of the stays as if this amounted to abandonment of the litigation. The litigation history demonstrates ongoing attempts to recover losses and regularise the proceedings, not abuse of process. Any defect in the claim form is curable and otherwise the court should if and as necessary grant relief from sanctions, validate service of the Particulars of Claim, so extending time, and direct a timetable for service of a defence. vii) Mr Robertson did not seek to minimise

the default in not previously serving Particulars of Claim but referred to the provisions of 3.1(2)(a) and to CPR 23.5 (“where an application must be made within a specified time, it is made in time if the application notice is received by the Court within that time.”) It would follow, on that approach, that there was no breach entailing sanction within the meaning of CPR 3.9 because the application for extension was made prior to expiry of the deadline for service of particulars.

122. On the specific legal issues concerning assumption of responsibility, the Claimants’ position was as follows: i) ii) iii) Generally, the foundation of liability in the absence of a retainer is the extended Hedley Byrne principle. A professional may assume responsibility for the provision of services even where there is no contract with the claimant. In common with Mr Mandelli they accept that the test is objective and directs attention on the professional’s words and conduct which cross the line (citing from Lord Steyn in Williams). They also identify that, in a triangular relationship, the question is whether responsibility was conveyed “directly or indirectly” to the claimant. They submit that the absence of direct dealings is important but direct communication is not an inflexible legal requirement. The Court must identify the professional act said to have been undertaken and assess it in its full objective context. The relevant enquiry is not conclusively answered merely by the absence of a formal retainer or direct correspondence. They accept that any duty must be confined to the task objectively undertaken. Where a solicitor elects to undertake a limited task, reasonable skill and care is required in performing that task. They emphasise that the question of the scope of the assumed task is separate from the subsequent question whether the applicable standard was breached, drawing on Spire at [64] As to the application of principle on the facts of this case, and in particular the existence of a duty of care through assumption of responsibility, they say that the pleaded matters referred to above are capable, in combination, of amounting to conduct which indirectly conveyed that Mr Mandelli had undertaken a limited responsibility in relation to the lender-facing legal documentation. They do not claim that the £3,000 payment was conclusive proof of a retainer. It is relied on Approved Judgment as a significant contextual matter, in particular because the agreement itself described the sum as the lender’s legal costs. Absence of direct communication does not end the objective enquiry and does not necessarily mean that no duty can be owed. Undertaking the professional act may itself imply responsibility – the enquiry is fact-sensitive. iv) As to the extent/scope of duty, they say that Mr Mandelli undertook responsibility in relation to the preparation of the lender-facing legal documentation. That required either: v) a) b) To exercise reasonable skill and care in relation to the fundamental legal protection provided by the agreement, including absence of first-charge security; or If Mr Mandelli was not acting to protect the lender’s interests, to make that limitation clear and to warn that the Claimants should obtain independent legal advice before relying on the document. Whether either obligation fell within the limited task undertaken is an objective and fact-sensitive question. It is not answered merely by Mr Mandelli’s assertion that he received instructions from AMG or Mr Grey. They say that the Court of Appeal decision in Miller decision supports the existence of a limited (rather than

open-ended) duty, which is what they submit they are contending for in this case. Finally, the Claimants accept that it is relevant to the question of assumption of personal responsibility that Mr Mandelli was engaged by AMG, but they deny that it is determinative. They submit that the identity of the person transmitting instructions is not always the same as the identity of the person for whose use or benefit the professional task is undertaken. On the pleaded case AMG and Mr Grey were advisers and arrangers in relation to the Claimants' private lending, rather than as adverse counterparties to the Claimants. Instructions passed through AMG are therefore capable of being consistent with a legal task undertaken in connection with the Claimants' lending, rather than necessarily being inconsistent with it. They draw attention to the Court of Appeal decision in *McClean v Thornhill* [2023] EWCA Civ 466 which they say demonstrates that, in certain circumstances, a professional instructed by one person can owe a duty to an identified third party. They say that *Williams* requires the Court to examine whether personal responsibility was conveyed directly or indirectly. It does not make the fact of an internal (principal/agent) engagement arrangement conclusive. The objective context is important. G. Discussion and analysis 123. If one looks at the core facts relied upon by the Claimants in support of the existence of a duty owed to them by way of assumption of responsibility on the part of Mr Mandelli (see paragraph 161 of the Particulars of Claim recited above), there is little (if any) real dispute. I proceed for present purposes on the basis that it is either common ground or (at the least) arguable to any necessary standard that: i) Mr Mandelli was, as alleged, a solicitor; Approved Judgment ii) iii) iv) v) He was involved in drafting documentation for a substantial private loan transaction between Mrs Gomes and Mr Bowdery; The completed loan agreement of April 2016 was sent to him by Mr Bowdery's solicitors; He took instructions within the AMG/Martin Grey structure; He was paid £3,000 shortly after the relevant loan documentation; 124. The other matters specifically relied on in written submission (which are controversial)

- that Mr Mandelli knew or ought reasonably to have known that the lender required proper legal protection, advice and security and that he failed to ensure adequate advice, protection, warnings and/or security, go beyond what is alleged in the Particulars of Claim at paragraphs 58 or 161 (recited above). They cannot, in any event, in my judgment, operate as factors evidencing a personal assumption of responsibility: the knowledge allegation is not an allegation of anything said or done by Mr Mandelli, directly or indirectly, and the allegation of failure to ensure advice etc... is an allegation of an omission, and, in substance, assumes what it seeks to prove – namely the existence of a duty in the first place. 125. The critical question for present purposes is not whether Mr Mandelli provided services in connection with the loan (whether in 2016 or otherwise), which I accept, for present purposes, he did, but whether there is a claim, with the necessary grounds and prospects of success, that any services that he provided were pursuant to a personal assumption of responsibility on his part to the Claimants or either of them. Without such a personal assumption of responsibility, there is no viable basis for a claim against him. 126. In my judgment, the Claimants' claim does not disclose a case as to personal assumption of responsibility on the part of Mr Mandelli which passes the requisite merits thresholds

explained above.

127. Based on the principles in *Spire and Williams*, the touchstone of liability, which must be assessed objectively, is, communication or conduct which “crossed the line” as between claimant and defendant. 128. 129. 130. The Claimants positively aver that there were no direct dealings with Mr Mandelli. Their case is that all of their communications were with AMG and Mr Grey. They rely upon absence of such communications to allege that Mr Mandelli should have explained his position to them including making clear that he was not acting for them. However, allegations as to what he should have explained are directed to the question of extent or scope of duty and, again, presuppose, but do not support, the existence of a duty in the first place. The Claimants emphasise that the conduct or exchanges underlying an assumption of personal responsibility do not need to be direct. I accept that dealings giving rise to an assumption of responsibility can, in principle, be indirect and not direct. However, if dealings are not direct, the question is what was said or done on the defendant’s behalf (see *Williams* at p. 835G) to give rise to that assumption of responsibility. Thus, for a case of assumption of responsibility based on Approved Judgment 131. 132. 133. indirect dealings between the Claimants and Mr Mandelli, the question is whether there are real prospects of showing that an intermediary who did have relevant, direct dealings with the Claimants which “crossed the line”, was acting on behalf of Mr Mandelli in that regard. I do not accept that the Claimants have grounds for, or real prospects of, establishing that proposition. The facts (as the Claimants submit) that (i) AMG and Mr Grey were advisers and arrangers in relation to the Claimants’ private lending, and not adverse counterparties to the Claimants or (ii) instructions passed through AMG which are therefore capable of being consistent with a legal task undertaken in connection with the Claimants’ lending, do not (even arguably) satisfy the requirements in *Williams*. This is not a scenario of adviser A owing duties to client B and the question arising whether duties are owed additionally by A to third party C. This is a scenario in which the client alleges that it was owed duties by advisers A (AMG), B (Mr Grey) and C (Mr Mandelli). In the absence of a retainer between Mr Mandelli personally and the Claimants, the fact that Mr Mandelli was drafting loan documentation for the benefit of Mrs. Gomes as lender (and would have known that) says nothing about whether (as a solicitor engaged by AMG) he owed a personal duty to Mr or Mrs Gomes. Paragraph 161.2 of the Particulars of Claim alleges that Mr Mandelli was instructed (via AMG) to document the April 2016 Loan. It is not realistic or plausible, in my view, to contend – if this is what is intended to be alleged – that he was instructed by the Claimants to document the Loan with AMG acting as intermediaries or agents between him and the Claimants. AMG and Mr Grey were not passing on instructions from the Claimants to Mr Mandelli as his agent. Any such attempted characterisation is contrary to the Claimants’ case – that their relationship was with AMG and Mr Grey (as principals) – and contrary to the evidence which they have put before the Court, which supports that case.

134. Were their argument correct, every time a partner in a law firm passed on client instructions to a junior team member (unknown to the client) to action, the junior associate would assume responsibility personally to the client for the task undertaken. Mr Warwick KC submits that this is not the law, and I agree. I do not accept the Claimants' argument that (in a triangular relationship such as the present) the mere undertaking of a task for an end client can point (even arguably) to the assumption of personal responsibility by the doer of the task to the person for whose ultimate benefit it is carried out, if that is unaccompanied by any specific dealing between them which "crosses the line". 135. The Claimants say that there are real prospects of showing that the payment of £3,000 does so. I disagree.
136. On the Claimants' own case (and leaving to one side anything which Mr Mandelli says in his witness statement): i) The Claimants' arrangements in relation to the loan were all with AMG. Mr Robertson (in my view fairly) characterised the service being offered (by Mr Grey) as a "one stop shop" by reference to the (pleaded) e-mail of 16 September 2011 which, on the Claimants' case, is the trigger for the investments of this type which followed. Approved Judgment ii) iii) iv) v) vi) vii) The £3,000 payment was made in respect of the costs of preparing the written Loan agreement; Prior to Mrs Gomes' entry into the Loan Facility Agreement (on 20 April 2016) there was nothing, objectively, to suggest to the Claimants that Mr Mandelli had assumed any personal responsibility to them in connection with the loan agreement. Clause 7.1 of the Facility Agreement provided, commercially, for the costs incurred by the First Claimant in preparing the loan documentation to be offset against the final instalment of the loan. The bank statements adduced by the Claimants show this happening. That provision says nothing about responsibility for preparing that documentation. If one were to ask the question, in real time (and not in hindsight with knowledge of the subsequent payment on 9 May), "pursuant to which arrangements were the Lender's costs of preparation incurred?" the answer would, on the Claimants' own case, be "the arrangements between the Claimants and AMG and Mr Grey". There had been no arrangement on the part of the Claimants with Mr Mandelli personally, whether directly or indirectly, and no invoice submitted by him to them. None of the above is inconsistent with the ultimate fact of payment of the sum of £3,000 by Mr Gomes to Mr Mandelli. That payment is explained by the request made by Mr Grey to Mr Gomes to make payment to Mr Mandelli. That request is not pleaded, and nor was there strict evidence of it before the Court, but I was told that this was the case by Mr Robertson on behalf of Mr Gomes, and I consider it unrealistic to ignore this, when it is, in any event, the natural and obvious inference from the facts which are pleaded and supported in evidence before the Court, and is consistent with Mr Mandelli's own case. This is not a case where Mr or Mrs Gomes asked Mr Mandelli, directly or indirectly to undertake a task for them which he then did, or where Mr Mandelli, directly or indirectly, wrote to Mr or Mrs Gomes telling them of work he was doing for them and then rendered an invoice to them pursuant to which payment was made to him. In the absence of any pleaded case or evidence that there was some such separate arrangement/assumption of responsibility, Mr Warwick KC is right to submit, as he did at the hearing, that, in substance, this claim is built on the edifice of Mr Grey directing

payment “from x to y”. In so doing, the Claimants discharged obligations to AMG by paying Mr Mandelli at Mr Grey’s direction. The natural inference is that this cut out a link in the payment chain, where, otherwise, Mr Gomes would have paid AMG and AMG would have paid Mr Mandelli. 137. I therefore do not accept the premise or logic of paragraph 173 of the PoC, namely that the failure by Mr Mandelli to return the £3,000, or to provide an explanation is consistent with an acceptance that he was acting for or on behalf of the lender in relation to the preparation of the April 2016 Loan, and otherwise he would have returned it as having been paid under a misapprehension. That argument too is founded on the mistaken premise that, because Mr Mandelli was carrying out work for the benefit of the Claimants, he undertook to act for them personally. Approved Judgment 138. If one looks at the pleaded claim more widely: i) ii) iii) iv) Mr Mandelli’s own evidence (served prior to the drafting of the Particulars of Claim) is that he carried out work on the 2020 loan; However, there is no pleaded fact relied upon to support any assumption of responsibility post-dating the April 2016 Loan and receipt of payment (on 9 May). The limit of the pleaded duty is in connection with this loan. Claims against AMG and Mr Grey are made in connection with the 2020 Loan, but not against Mr Mandelli. The pleading is silent as to Mr Mandelli’s role in the drafting of the 2020 Agreement. In my view, a further factor pointing to there being no real prospect of success is the absence of commercial logic as to why the task undertaken by Mr Mandelli – namely the drafting of loan arrangements – would be pursuant to an assumption of responsibility for the 2016 Loan agreement, but not for the 2020 Loan Agreement. 139. I consider that the claim against Mr Mandelli which is very substantially based on the £3,000 payment is an artificial construct, which has been erected late in the day in an attempt to save a claim without merit. No reliance was placed on that payment in pre-action correspondence or at any time before service of the Particulars of Claim. 140. I consider for these reasons that the claim fails to satisfy the merits tests under either CPR3.4 or 24.

141. Mr Mandelli additionally relies on limitation as a complete defence to the claim. I was not addressed in detail on this aspect of the claim, the Claimants’ argument, orally, being that the duties owed were continuing (and implicitly that they continued to be breached).
142. However, the pleaded duties are not pleaded as continuing duties and the instances of breach are all alleged in connection with the 20 April 2016 Loan. The argument proceeded on the basis that the relevant date of issue of the claim form was 24 June 2022 which is more than 6 years after the 20 April 2016 Loan was entered into. I was not addressed specifically as to the applicable legal principles and, were this to have been the central ground of the argument I would have wished to have received further assistance. I therefore indicate my views briefly: i) The submissions made appeared to acknowledge the general position in a case such as this, that damage will be suffered where (if the Claimants’ claim as to liability were well-founded) the loan agreement entered into was less valuable than it should have been (e.g. because of the absence of adequate security). The Claimants did not argue, for example, that damage was only suffered when Mr Bowdery defaulted on the loan. ii) On that basis, any damage would be suffered on 20 April 2016. Approved Judgment iii) iv) v) vi) vii)

There is no pleaded case as to any continuing duty or continuing breach; Absent an extension of time under s. 14A or s. 32 of the Limitation Act the claim would accordingly be time-barred. There is no basis in the pleaded case or evidence to allege a deliberate concealment of the facts by Mr Mandelli such as to engage s.32 Limitation Act 1980. The Claimants' positive reasons for saying that the claim was not time-barred appear at paragraph 95 of their skeleton argument, namely that they did not know and could not reasonably have known, the full extent of Mr Mandelli's role until much later, when the transaction failed and the advisory/legal structure became clearer. As to that case: they knew from at least 9 May 2016 that payment had been made to Mr Mandelli and have pleaded a case based very largely on that single fact. It is not clear what further facts about Mr Mandelli's role have emerged thereafter which would justify an extension of time. Further and in any event, it is conceptually difficult to envisage a situation where, objectively, there were contemporaneous dealings amounting to an assumption of responsibility to a claimant which could be unknown to the claimant. 143. 144. 145. I therefore tentatively (in the absence of detailed argument) conclude that, even if a claim based on assumption of responsibility were made out, it would be time-barred. I have considered the submission that (a) Mr Mandelli's account, in his evidence, of his involvement in the loan documentation is incomplete and (b) that the nature and scope of Mr Mandelli's services require disclosure and evidence and examination at trial. I have asked myself, in particular, where it would appear (without binding any subsequent Court) that there are properly arguable claims against at least AMG, whether I should refuse to order the summary disposal of this claim because, as the Claimants argue, disclosure will cast a different light on the facts. I accept that Mr Mandelli's account – provided before he had notice of the detail of the claim being advanced against him - is incomplete. He did not seek an adjournment of the hearing to provide further evidence once he had notice of the detail of the claim against him. In those circumstances, any omission potentially operates to his disadvantage. 146. I also accept that disclosure will cast a fuller light on the facts and also, very likely, on the particular involvement and services rendered by Mr Mandelli.

147. However, in my judgment there is no pleaded case where further disclosure will, as required (see the principles set out in section D) cast a different light on the facts so as to affect the prospects of success of the pleaded case against Mr Mandelli. As the analysis in Williams makes clear, the internal arrangements between AMG and Mr Mandelli cannot found a claim against Mr Mandelli and the details of such arrangements will not, therefore, establish or materially impact a claim based on external dealings crossing the line, if there were any. In the absence of a pleaded claim which establishes a real prospect of success: (i) Mr Mandelli is not required to provide Approved Judgment a full account: (ii) as the case law cited in section D makes clear it is not open to the Claimants to prolong a claim without the requisite prospects of success in the hope that something (which they have not currently identified) will turn up on disclosure.

148. Accordingly, I consider that the claim should be dismissed on the no reasonable grounds basis, and I grant summary judgment in favour of Mr Mandelli. Extent/Scope of duty
149. On my findings above, Mr. Mandelli's alternative submission – that the extent of any duty was limited to drafting the loan documentation, about which there is no complaint, does not arise. 150. If, contrary to the above, I had accepted the Claimants' submission that the claim should be permitted to proceed on the basis that the assumption of responsibility case had a real prospect of success, I would not have been prepared to strike out the claim or give summary judgment for Mr Mandelli on the basis that I could determine, summarily, the limited extent/scope of the duty arising.
151. Had I been persuaded that there was a real prospect of establishing an assumption of personal responsibility based on dealings "crossing the line": i) ii) I would likely have been persuaded that the Court should hear all of the evidence and determine the extent of the assumption following trial; The extent to which a defendant may come under a duty to advise on "incidental" matters connected with the assumption of responsibility is a developing legal issue which the Court of Appeal left undetermined in *Spire and Miller*. I consider that the extent to which a duty to advise as to an alleged requirement for security might arise as a matter "incidental" to the task of drafting loan documentation would not, in the circumstances, be a matter suitable for summary disposal. Other applications 152. In light of my conclusions above, I deal briefly with the other applications. Application to extend time 153. I have reviewed in section D the principles governing applications to extend time. It is clear from those principles that the Court is not concerned with any application for relief from sanctions even though the Claimants sought relief to the extent that it was required. 154. I would therefore be required to apply the principles under CPR 1.1(2).
155. Given my conclusions on the "no reasonable grounds" and "summary judgment" applications this application becomes moot, and, in any event, for the reasons expressed on those applications, I would not be prepared to extend time for service of the Particulars of Claim. Abuse Approved Judgment
156. Mr Mandelli does not come close to establishing circumstances which would justify strike-out on the ground of abuse of process. The ground relied upon is delay. As made clear in the case law cited above, where delay is relied on, typically some factor other than mere delay is required to justify strike-out on grounds of abuse of process. 157. There has been delay in this case, but on the basis of orders for stays made by consent, for legitimate reasons, namely, to pursue Mr Bowdery. Mr Mandelli's refusal to consent to a further stay is what has given rise to the present applications. In short, I do not consider that this ground of strike-out gets off the starting blocks and I consider the submissions of the Claimants in answer to this application (see paragraph 121(i) to (v) above) are well-made and I agree with and accept them. Failure to comply 158. This ground depends upon it being established that there have been breaches of the rules and, secondly, that those breaches warrant strike-out.

159. On the basis that Mr Mandelli relies upon the failure to comply application in the alternative to the summary disposal applications under CPR 3.4 and 24 I do not consider that it is appropriate to determine this application by reference to the outcome of those applications (and the extension application) above, in other words to take into account that I have refused to extend time for service of the Particulars because the claim falls to be summarily dismissed.
160. Having regard to the principles in section D above and given that there was an in-time application for an extension of time (on 1 December 2025) I do not consider that failure to serve particulars of claim by the deadline specified in the October 2024 Order of Judge Pelling KC is to be treated as a breach of the CPR independent of the outcome of the extension application. It is true that by making that application at night on the 12th hour, the Claimants risked breach and sanction if (as happened) the deadline was missed and the Court did not, ultimately, grant the application and extend time retrospectively, but that is a question which arises in the context of determination of the extension application and I am approaching the determination of the failure to comply application separately and in the alternative.
161. Mr Warwick KC had a further submission, that, on the facts of this case, it was significant that the Claimants' failure to plead Particulars of Claim persisted even beyond the date which they had sought (in their extension application) by way of revised deadline. In my judgment that failure does not affect the principle so far as breach of the rules or strike-out is concerned. The revised directions deadline sought by an applicant in an "in-time" application has no status until the Court determines that application. The fact that a litigant fails to undertake a procedural step by the revised date which it specifies in an application cannot therefore, of itself, constitute a breach of a rule or Order.
162. On that basis, the extent of the breaches of the rules is as follows: i) ii) A failure to follow the professional negligence pre-action protocol. A failure to address the claim form correctly; Approved Judgment
163. As regards the failure to comply with the pre-action protocol: i) ii) iii) iv) It is clear from the summary of the procedural background in section C that the tenor of the (limited) pre-action correspondence written on behalf of the Claimants was that they were seeking to establish what Mr Mandelli's role was in the loan arrangements, rather than advancing any detailed positive case; The Claimants indicated in correspondence that they intended to comply with the protocol during the stay imposed by consent, which they then failed to do. The Claimants have provided reasons for failure to comply, including the difficulties arising from break-up of their marriage. While I take these factors into account, I do not consider that they provide a compelling reason why the protocol was not complied with. Rather, I infer from the paucity of material supporting a valid claim – which has resulted in my findings summarily disposing of the claim – that there was little that would or could have been put forward by the Claimants.

164. As regards the (acknowledged) failure to include the Claimants' address in a claim form: i) ii) Having regard to the principles concerning relief from sanctions under CPR 3.8 and 3.9 addressed in section D, such a failure does not give rise to an express (or implied) sanction. Such a claim form is not, for that reason, a nullity and service of a claim form without the requisite addresses is not, for that reason alone, invalid. Any such deficiency is capable of cure pursuant to CPR 3.10: see *Al- Aggad v Al-Aggad*

[2024] EWHC 226 (Comm) per Christopher Hancock KC at para 63.

165. Although not wishing to minimise the seriousness (in particular) of a failure to comply with a pre-action protocol I do not consider that the above identified breaches, whether viewed individually or in combination, justify the draconian response of an order for strike-out. Taking account of the case law reviewed in section D such a step would, in my judgment, be disproportionate.

166. As regards the failure to comply with the protocol, the more appropriate approach in this case would be to visit the failure by an appropriate costs order.

167. As regards the failure to provide correct address information in the claim form, in my judgment it would be unprincipled to permit this technical failure to cause the claim to be struck out (if it were otherwise viable). I regard the failure, at this stage, as water under the bridge. Had I been persuaded that the claim passed the CPR 3.4/24 merits threshold, I would have required provision of the requisite address details pursuant to CPR 3.10. However, in circumstances in which: (a) service of the claim form was effected; (b) an acknowledgment of service was filed by Mr. Mandelli with no challenge to the Court's jurisdiction; (c) the Court made case management directions over a period of 2 years subsequently without objection from Mr. Mandelli, I consider that Mr Mandelli cannot now fairly or proportionately rely on this issue as any basis for strike-out of the claim. In that regard I note the analysis in paragraphs 65 and following Approved Judgment of *Al-Aggad* concerning waiver of objection based on such a failure which I consider relevant by analogy. H. Disposal 168. For the above reasons the claim against Mr Mandelli should be dismissed. In the draft circulated to the parties, I invite them to produce and agree, if possible, an Order giving effect to my judgment, and to indicate whether a consequential hearing was required. Following constructive correspondence between the parties, the only issues giving rise to dispute relate to costs, and the parties have requested that I should resolve those issues on paper with the benefit of submissions which they have exchanged, which I am content to do. I shall therefore give a separate judgment on costs which will, in turn, be the subject of a separate order.

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