

ENGLAND AND WALES / JUDGMENT

Voltaire Capital Holdings Limited & Ors v Eric Watson & Ors

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Neutral Citation Number: [2026] EWHC 1103 (Comm) Case No: CL-2022-000699 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES COMMERCIAL COURT (KBD) Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: Friday, 24 April 2026 Before: The Hon. Mr Justice Bryan

- ----- Between:

- 1) VOLTAIRE CAPITAL HOLDINGS LIMITED
- 2) GEMINI INVESTMENT HOLDING LIMITED
- 3) MARCHMONT LIMITED (in its own capacity and as assignee of the VCUK Claims)
- 4) MARCH CP LIMITED
- 5) OS CAPITAL HOLDING LTD

- and -

- 1) ERIC WATSON
- 2) KRISHAN RATTAN
- 3) MILES LEAHY
- 4) STARTRADER PRO LIMITED
- 5) SBL HOLDINGS LIMITED
- 6) TIM CONNELL
- 7) WILLIAM GIBSON
- 8) SHAMYL MALIK
- 9) RAMY SOLIMAN
- 10) SAM WATSON
- 11) NOTESCO FINANCIAL SERVICES LIMITED

12) NOTESCO UK LIMITED

13) DANIEL FIELDS

14) GREEN FIELDS MANAGEMENT LLP

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- ----- Claimants/ Respondents Applicant Defendants Mr A Barden KC
(instructed by Jenner & Block) for the Claimants/Respondents The Seventh Defendant/
Applicant appeared In Person Hearing dates: 24/04/2026

- ----- APPROVED JUDGMENT MR JUSTICE BRYAN: A.

INTRODUCTION

1. The parties appeared before the Court on the hearing of an application pursuant to an application notice dated 26 February 2026 made by the seventh defendant (“Mr Gibson”) for permission to bring counterclaims in these Proceedings (the “Counterclaim Application”).
2. As will be seen, the Counterclaim Application is made, on any view, at a very late stage in the proceedings, which were commenced in January 2023. The Proceedings concern US\$100 million civil fraud claims which are to be tried in a 10-week trial which commences on 12 October 2026. There are nine active parties/group of parties in the Proceedings. Disclosure was substantially completed in June 2025. Witness statements and reply witness statements have been served. The Claimants have served their expert evidence and the trial bundle index has even been served. The reality is that the parties have now entered into the phase of active trial preparation. There is no slack in the timetable to trial, and indeed, at the second CMC on 24 October 2025, when the Claimants were granted permission to serve Amended Particulars of Claim, and revised directions were given to the present trial date, the judge hearing such second CMC, Robin Knowles J, emphasised that: “All of the dates that have been discussed should be treated as firm. They are all, in my view, critical to retaining the trial date and the trial date being retained is critical.”
3. Mr Gibson is now a litigant in person and the content of the various iterations of the Draft Part 20 Counterclaim are of his own drafting. Mr Gibson is not a lawyer. Mr Gibson has not always been a litigant in person. Indeed, at the time of his Defence, which is at the time at which the Claimants say any counterclaims could, and should, have been brought, he was represented by Clyde & Co, and leading and junior counsel, who settled his Defence. The Claimants assert that Mr Gibson’s decision to represent himself is a deliberate one and not due to impecuniosity, in circumstances in which Mr Gibson claims to have substantial independent wealth and has at times given indications that he would re-instruct legal representation (as he was urged to do by Robin Knowles J at the second CMC). I am not in a position, however, to assess whether that is so or not.

4. What is indisputable is that the proposed counterclaims are all Mr Gibson's own work. The original draft Part 20 Counterclaim (dated 26 February 2026), accompanying the Application Notice, ran to 11 pages. On 1 April 2026, Mr Gibson served an Amended Draft Part 20 Counterclaim, which ran to 19 pages. On 13 April 2026, Mr Gibson served a further Amended Draft Part 20 Counterclaim which runs to no less than 31 pages.
5. The Application Notice has not been amended, and accordingly the actual position is that the Counterclaim Application as issued is in respect of the Draft Part 20 Counterclaim. Despite this, it is the Further Amended Draft Part 20 Counterclaim which Mr Gibson invites the Court to grant permission in respect of. A trebling in size of the proposed counterclaims within a matter of weeks might be thought to be a less than auspicious backdrop to such an application, not least in circumstances in which (if the Claimants are right) the further iterations have compounded (rather than cured) the Claimants' objections to such proposed counterclaims.
6. The proposed counterclaims raise no less than six new causes of action, including accusations of dishonesty, including against non-parties, and involve allegations of unlawful means conspiracy, knowing receipt, three forms of estoppel, unjust enrichment and a claim under s.423 of the Insolvency Act. The Claimants submit that even if the causes of action were properly pleaded (which they submit they are not) they would require further (responsive) statements of case, significant new disclosure, additional witness evidence and additional expert evidence, none of which are catered for in the draft order provided by Mr Gibson in seeking permission, and which the Claimants say cannot properly be accommodated in advance of trial, and which it is said would prejudice proper trial preparation, quite apart from the impact upon the trial itself, and the time fixed for that trial. 7. In such circumstances, the Claimants submit that the balance of prejudice in this case clearly weighs against giving permission on the basis that:
 - (1) The Application is very late, in that any provision which might allow for fair resolution of the proposed counterclaims would seriously threaten the integrity of the October 2026 trial.
 - (2) No good reason has been presented by Mr Gibson, which could justify his delay in advancing a counterclaim, which relates to matters he was aware of as long ago as 2017 and which were not advanced in his Defence or even in his Amended Defence.
 - (3) The proposed counterclaims are (at best) extremely weak for, amongst other reasons, that they:
 - (i) appear with one exception to be time barred; (ii) depend on what is characterised as a fundamentally implausible case theory; (iii) seek to recover reflective loss, and; (iv) do not identify any realistic causation and loss at all.

- (4) The grant of the Application would cause serious prejudice to the Claimants, other parties and the Court, in that it would be extremely difficult if not impossible for the Claimants, the other parties and the Court to accommodate all the new steps which would be required in conjunction with the existing trial preparation and timetable, whilst it is submitted that the refusal of the application would not cause any real prejudice to Mr Gibson and/or to the extent that any prejudice would arise, such prejudice is the result of his own delay.
8. The Counterclaim Application is supported by the witness statements of Mr Gibson (in particular in Gibson 2, 4 and 5) and opposed in the witness statements of Mr Yardley (Yardley 12 and 14). The parties have also exchanged Skeleton Arguments, and there is also a timeline that accompanies Mr Gibson's Skeleton, to all of which I have had careful regard. B. BACKGROUND 9. I take the background to the claims from the Case Memorandum. These claims relate to investments of approximately USD \$101 million made between 2014 and 2019 by the Gemini Group, of which the Claimants are members, in connection with their involvement in a group of companies known as the Voltaire Group. C1 also claims as the assignee of the claims of VCUK, which was the main trading company in the Voltaire Group.
10. In essence, the Claimants contend that they were led to believe that Voltaire was a legitimate business, controlled principally by D2 (Mr Rattan) and intending to develop and operate a legitimate FX business.
11. However, it is the Claimants' case that in fact:
- (i) Voltaire was owned and controlled in large part by (D1, Mr Watson), who they say was an established fraudster; (ii) The Defendants caused Voltaire's FX business principally to trade on uneconomic terms with Stater (D4/5) and IronFX (D11/12) which were held out as independent counterparties but in which Mr Watson, Mr Rattan and others were also interested; (iii) The Defendants induced Gemini to make further investments to fund this, including by producing forecasts which had no basis in reality, and; (iv) The Defendants caused Voltaire to make payments for the benefit of themselves and their associates, including remuneration expenses and payments to associated companies.
12. The claims include claims for fraudulent misrepresentation, breaches of fiduciary duty and duties of good faith owed to Voltaire and to Gemini, and in conspiracy and accessory liability.
13. D1 (Mr Watson) is a New Zealand businessman. In prior proceedings ([2018] EWHC 2016) brought by Sir Owen Glenn, Nugee J found that Mr Watson, together with D3 and D7, had entered into deliberate deception to defraud Sir Owen. D2 (Mr Rattan) is a former Soc-Gen banker and founder of Voltaire. D3 (Mr Leahy) is a businessman and was an associate of Mr Watson and COO of Voltaire. D4, and its parent D5, (together, Stater) were the FX companies. D4 entered into arrangements to provide flow to VCUK.

14. D6 (Mr Connell) is a New Zealand businessman, associate of Mr Watson, and was registered as the majority shareholder of Stater. D7 (Mr Gibson himself) was a New Zealand chartered accountant, as he told me during the course of his submissions, and was an associate of Mr Watson (as addressed further below).
15. D8 (Mr Malik) was head of FX and Index trading at VCUK. D9 (Mr Ramy Solimon) was a director of Stater. D10 (Sam Watson) is the son of Mr Watson and was involved in the affairs of Voltaire and Stater. D11 and 12 (IronFX) ran an FX business which traded with VCUK via Stater.
16. D13 (Mr Fields) was a Soc-Gen employee until April 2016 and had personally, or through D14 (Green Fields), acted as a consultant to VCUK from late 2016. Mr Fields was a registered director of D4 from July to December 2017 and a minority shareholder of D4 from July 2017 to January 2018.
17. Stepping back from the detail of that and in summary terms, the Claimants' case is essentially that they were the victim of a fraud, led by D1 (Mr Watson), who they characterise as an established fraudster who has been jailed for contempt, and his self-styled "team".
18. The Claimants, who are members of the Gemini Group, have said that they were induced to invest in and on the advice of "Voltaire", a group of companies presented as having been established by D2 (Mr Rattan) to identify investment opportunities. Voltaire's main purported business was an FX trading venture, and Gemini invested circa US\$132 million, including capital injections (of which circa US\$ 101 million was lost). In fact, Voltaire was a vehicle over which Mr Watson had undisclosed ownership and control and was run by and for the personal benefit of Mr Watson and his team, per the Claimants' case.
19. For present purposes, it is relevant to note that the Claimants assert that that "team" included Mr Gibson, and they point out that Mr Gibson in previous fraud proceedings before the English Court has accepted that he was Mr Watson's "righthand man". He was found by Nugee J to have been drawn into "deliberate deception" by Mr Watson, and it is said that he played a central role in structuring the ownership of various entities to obscure Mr Watson's interest and took a similar role in relation to Voltaire.
20. That point has some potential relevance in the context of the proposed counterclaim because aspects of that counterclaim are predicated upon Mr Gibson acting through Ivory Castle paying some £3 million to Munil on 6 January 2015, in circumstances where that is a partial basis for the counterclaims which are developed.
21. The Claimants say that if the counterclaims were to proceed, it would be necessary to investigate, as to who those interests under investigations are, it being their case that, in fact, Mr Gibson was simply the righthand man for Mr Watson and that any investments that were held were held for Mr Watson who was merely rooting money in a particular direction.

22. The Claimants assert that the underlying business was then run for the purposes of enriching the Defendants at Voltaire's expense, including by causing Voltaire to trade with entities in which the Defendants had concealed interests, eliciting further funding based on false forecasts and reporting and extracting money in other ways, including payments to connected parties. C. THE PROCEDURAL HISTORY
23. On 27 January 2023, Bright J gave permission to bring the claims and made a Notification Order against the various Defendants, including Mr Gibson. Mr Gibson's Defence was served on 15 June 2023 and, as I have already noted, was settled by leading and junior counsel, instructed by Clyde & Co. It is notable that at that time, and at no time thereafter, did Mr Gibson advance any counterclaims. The Claimants' Reply was served on 7 February 2024.
24. On 11 April 2024, in the lead-up to the first CMC, Clyde & Co gave notice that it had ceased to act for Mr Gibson. Christopher Hancock KC (sitting as a Deputy Judge of the High Court) heard the first CMC on 8 July 2024. He set down the timetable for a 10-week trial, which was listed for 12 October 2026.
25. The deadline for disclosure of 31 January 2025 was ultimately extended to 13 June 2025, and a large majority of the parties' disclosure was given by that date. There are approximately 125,000 disclosed documents in total.
26. At the second CMC, on 24 October 2025, Robin Knowles J granted the Claimants permission to file and serve Amended Particulars of Claim and set revised directions to a trial commencing on 12 October 2026, emphasising, as I have already noted above, that: "... all of the dates that have been discussed should be treated as firm. They are all, in my view, critical to retaining the trial date and the trial date being retained is critical." Sentiments which I can understand, and with which I agree, in the context of proper trial management, and ensuring the current trial date is maintained.
27. Mr Gibson served his Amended Defence on 16 December 2025. It did not include (and nor had he sought permission for) any counterclaim(s).
28. The parties, including Mr Gibson, exchanged witness statements for trial on 3 February 2026.
29. Mr Gibson first sought consent to file a counterclaim on 19 February 2026, having previously attempted to introduce some of these issues into the Amended List of Issues, an attempt which was rebuffed on the basis that the same were not pleaded issues, which was true. The Claimants (rightly) indicated that the Court's permission would be required for any counterclaim, and made clear that the Claimants would resist any application for such permission.
30. On 26 February 2026, and as already foreshadowed, Mr Gibson issued the Counterclaim Application seeking permission for the 11-page Draft Counterclaim (the "Original Draft Counterclaim").

31. Since then, there have been further substantive and significant developments towards trial. Specifically, the Claimants and certain of the Defendants, including Mr Gibson, exchanged reply witness statements for trial on 9 March 2026. The Claimants also filed and served expert reports from their FX industry expert on 11 March 2026 and their forensic accounting expert on 18 March 2026. The stage has now been reached where even the draft index to the trial bundle has been provided to the Defendants (on 17 April 2026).
32. The Counterclaim Application itself has been something of a moving target, and one in relation to which Mr Gibson has not liaised with the Claimants in advance of making modifications to the same. For example, in the days immediately after issue, Mr Gibson twice sought to list the Counterclaim Application on an urgent basis for one hour (an unrealistic estimate) without any proper consultation with the Claimants. Then, on 1 April 2026, the day before the Claimants' evidence in response was due, Mr Gibson served a supplemental witness statement and amended draft counterclaim which ran to 20 pages (the Amended Draft Counterclaim). This was served without prior notice and, as already noted, also without any formal application to amend the Counterclaim Application.
33. Then, on 13 April 2026, Mr Gibson served his evidence in reply and (despite objections on the part of the Claimants) a yet further amended draft counterclaim, now running to 31 pages (the Further Amended Draft Counterclaim), was served. Yet further, Mr Gibson's evidence was initially served in "draft" and subsequently "updated" after the deadline, and the exhibit to which it referred was not provided at that stage. It was only on 20 April 2026 that Mr Gibson served the exhibit to his reply evidence, and a revised version of his witness statement with associated references to this. D. THE COUNTERCLAIM APPLICATION D.1. Summary of the Proposed Counterclaims
34. Mr Gibson seeks permission to bring counterclaims as an (alleged) equitable assignee of the assets of a BVI company, Ivory Castle. The claims are based on Ivory Castle's historic beneficial interest (through a trust) in a 10% shareholding in VCL, which was the holding company for part of Voltaire's business in the early days of the venture.
35. Mr Gibson's proposed counterclaims relate to what is referred to by the parties as the "2016 Restructuring". The background to this is somewhat complex and is addressed in detail in Yardley 12 at paras.51 to 71. It suffices for present purposes to give the following summary:
- (1) The Voltaire Group would in due course have two operating companies, VCUK and VCUS. Immediately prior to the 2016 Restructuring. The Claimants held interest in each of these under two separate structures:
- (a) VCUK (which was not at the time carrying on any substantial business) was a 100% subsidiary of VCL. VCL was held 25% by C2 ("GIHL") and 75% by Comnia Group AG ("Comnia") as trustee of the Benkelton Trust. Under the Benkelton Trust, a 65% interest was held for the benefit of the original beneficiaries (understood at the time to be Mr Rattan and his families) with 10% of the share capital of VCL held for the benefit of Ivory Castle.

- (b) VCUS (which had a prior trading business, and had been purchased in part for its platform which was to be adapted for use by VCUK) was held by March CP Holdings LP (“March CP Holdings”), which was in turn held 87.06% by C4, (“March CP”), and 12.94% by employees or former owners of VCUS.
- (2) As addressed by Mr Yardley, in Yardley 12 at para.69, as part of the 2016 Restructuring:
 - (a) GIHL paid £1.55 million to VCL to allow VCL to pay off an outstanding loan to Munil (a Watson entity, which Mr Gibson oversaw as protector of the relevant trust) and the remaining payments due to VCL were forgiven.
 - (b) VCL transferred VCUK to March CP holdings for £1.
 - (c) IP associated with (i) VCUS was assigned/licensed by March CP Holdings and (ii) VCL/VCUK was assigned/licensed by VCL/VCUK to C1 (“VCHL”).
 - (d) the shareholders in March CP Holdings exchanged their interests therein for equivalent interests in VCHL, which became the sole shareholder in March CP Holdings. March CP Holdings then assigned all of its interests to VCHL.
- (3) The effect as of April 2016 (with 20 April 2016 being the date of completion), was to bring VCUK and VCUS into common ownership under VCHL (in turn owned largely by Gemini with a small interest for VCUS’s former owners and employees). VCL had been put in funds to discharge its liability under the Munil loan but had given up its shareholding in VCUK. VCL was then dissolved on 26 August 2016.
- 36. The Claimants’ case is that this was a commercial deal agreed with Mr Rattan, who was believed to be the main beneficiary of the Benkelton Trust and by Comnia, its professional trustee. The Claimants’ position is that they considered it was in their interests -- likely because VCL had no other way of paying Munil and VCUK had not begun substantial operations, required IP from VCUS to do so and was reliant on further capital injections from GIHL, which GIHL could cancel on notice (see generally Yardley 12 at para.52(iii) and 97(iii)(b)).
- 37. Mr Gibson’s case is, it would appear, that, though its interests were aligned with Mr Rattan as a beneficiary through the Benkelton Trust of a shareholding in VCL, Ivory Castle was somehow harmed by this arrangement, which Mr Gibson asserts took place without the knowledge or consent of Ivory Castle.
- 38. As the Claimants (rightly) point out, and as I was taken to during the course of the Claimants’ oral submissions, Mr Gibson’s position in relation to Comnia, which was trustee of the Benkelton Trust and holder of the 10% interest in VCL on behalf of Ivory Castle, would appear to be entirely inconsistent. It is suggested at one point that the restructuring was “slipped through” without Comnia’s knowledge (see in this regard Gibson 5 at paras.27 and 36(b)), and the Further Amended Draft Counterclaim at para.23H to 23I, and 30(iv)(c) to 30(iv) to (h)). But inconsistently, it is also alleged that Comnia breached its fiduciary duties

(see the Further Amended Draft Counterclaim at para.23G, 30(iv)(b), 37, 52(vi) and 59(ii)).

39. I would only observe at this point that it will be seen that such allegations against Comnia are not only inconsistent with each other, but also raise serious allegations against an independent trustee who is not a party to this litigation and who, therefore, it is perfectly possible one or more party might wish to call evidence from in the event that the counterclaims were to proceed. In particular, an individual, Mr Waldvogel, might potentially be called to give evidence in relation to such matters.
40. Turning to the proposed counterclaim, Mr Gibson now seeks to advance claims for:
- (1) Estoppel: Proprietary estoppel, estoppel by representation and estoppel by convention on the basis that, since the Claimants acknowledged/consented to Ivory Castle having an interest in VCL, they cannot resile from that (see the Further Amended Draft Counterclaim at paras.39 to 50 and 61).
 - (2) Unlawful means conspiracy: Premised on an alleged conspiracy between Naguib Sawiris of Gemini and Mr Rattan, pursuant to which (alleged) unlawful means were used, including: (i) transfer of assets and undervalue and associated breach of duty by VCL's directors, (ii) diversion of corporate opportunity, (iii) elimination of (the value of) Ivory Castle's interest without consent, (iv) action which (but for variation of a contract) would have constituted breach of the contract, and (v) breach of fiduciary duty by Comnia as Trustee (see the Further Amended Draft Counterclaim at paras.51 to 54).
 - (3) Transaction defrauding creditors: It is said that the 2016 Restructuring constituted a transaction defrauding creditors, as Mr Gibson asserts (based on GIHL's original investment), that VCL had previously held value and the "purpose of the transaction, or one of its purposes, was to put assets beyond the reach of persons who might make a claim against VCL or its shareholders, including Ivory Castle" (see the Further Amended Draft Counterclaim at paras.55 to 57).
 - (4) Unjust enrichment: It is said that the Claimants were enriched in that they acquired, in effect, control of the operating business of VCL, at Ivory Castle's expense as it lost the value of its purported investment (or allegedly its beneficial interest in 10% of VCL), and there was an unjust factor, being failure of a basis, "ignorance" or "wrongdoing" (Further Amended Draft Counterclaim at para.58).
 - (5) Knowing receipt: The 10% interest in VCL was held on trust for Ivory Castle and there was a disposal in the breach of trust in that there was "disposal of the value of that trust property [...] by stripping the underlying value from VCL's shares", and that the Claimants had receipt of that trust property with knowledge (Further Amended Draft Counterclaim at para.59).
 - (6) A constructive trust: Such a claim would appear to rely on the same basis as the claim in knowing receipt, framing a knowing recipient as a constructive trustee (see the Further Amended Draft Gibson Counterclaim at para.60).

41. Mr Gibson acknowledges that (with the exception of claim (3)), the primary limitation period applicable to these had expired by 31 January 2023 (when the Proceedings were commenced). However, he alleges there was deliberate concealment by the Claimants, relying on the actions of the corporate service provider, Elian, and Mr Leahy, an associate of Mr Watson and Mr Gibson. In particular, Mr Gibson alleges that he did not discover the loss or dissolution of VCL until September 2017 and was not then told this was linked to a restructuring, but was misled by Mr Leahy, who suggested VCL had simply failed commercially (see the Further Amended Draft Counterclaim at para 63).
42. In relation to this, I simply note, as I was referred to during the course of the Claimants' oral submissions, that on an earlier date (17 March 2017) Mr Gibson himself in his first witness statement in petition number 3224/2015 and claim number HC-2014-000608 said something rather different at para.237 as follows: "At the time, I considered Voltaire Capital Limited a good investment for Ivory Castle which would require little active involvement. However, Ivory Castle has not to date received any distributed profits from Voltaire Capital Limited and does not expect to do so because Voltaire has since been restructured and Voltaire Capital Limited has been dissolved." (Emphasis added)
43. The Claimants therefore say, and submit, that this is impossible to square with Mr Gibson's own sworn evidence that I have just quoted from March 2017 in the prior civil fraud proceedings (the "Glenn Proceedings"), to which I have already referred. In particular, the Claimants point out that Mr Gibson does not appear to have regarded that as new information or a cause for complaint, and it also appears that Mr Gibson was involved in at least some of the discussions preceding the restructuring in early 2016 itself, (see the Amended Particulars of Claim at paras.115(a)-116).
44. Mr Gibson seeks, amongst other matters, compensatory damages, restitution or disgorgement in respect of the alleged unjust enrichment, proprietary remedies, and various declarations, including with respect to whether he acted, or the Claimants are entitled to allege he acted, as Mr Watson's nominee (see the Further Amended Draft Counterclaim at paras.65-69). He also seeks damages for "loss of earnings and earning capacity", in respect of which he asserts that further particulars will be provided in due course (the Further Amended Draft Counterclaim at paras.50 and 65). E. APPLICABLE LEGAL PRINCIPLES
45. Pursuant to CPR 20.4(2)(b), a defendant requires the Court's permission to make a counterclaim at any time other than with its Defence.
46. Where a defendant applies for permission, the Court's approach is the same as in relation to an application for permission to amend under CPR 17.3 (see *Bank of Scotland PLC v Hoskins* [2023] EWHC 306 (Ch) at [28-29]). In this regard, it will consider: (1) whether the counterclaim as pleaded stands a real prospect of success and (2) whether the introduction of the counterclaim ought to be permitted in the exercise of the Court's discretion, having regard to the overriding objective.

47. On the first limb, the Court applies the summary judgment standard, but will consider whether the counterclaim is coherent and contains properly particularised elements of the cause of action relied upon (see *CNM Estates (Tolworth Tower) Ltd v Carvill-Biggs* [2023] EWCA Civ 480; [2023] 1 WLR 4335 (“CNM Estates”) at [48]) and the Court may reject a counterclaim which seeks “to raise a version of the facts of the case which is inherently implausible, self-contradictory, or is not supported by contemporary documentation” (see *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm) (“Quah”) at [36]).
48. On the second limb on any application, the Court must seek to strike a balance between the injustice to the applicant if the application is refused, and the injustice to the opposing party and other litigants in general if the application is permitted: see *Quah* at [38(a)]. In seeking to strike this balance, the Court may have regard to (1) the reason for the delay,
- (2) the prejudice to the applicant, (3) the prejudice to the respondent, and (4) the clarity of the pleading, recognising that the later the application, the greater the importance of the clarity of the pleading - see the recent decision of *Cohen v Co-operative Group Ltd* [2025] EWHC 1892 (Ch) (“Cohen”) at [24], a decision of HHJ Hodge KC, to which I will return.
49. In *Steenbok Newco 10 SARL & Anor v Formal Holdings Limited & Ors* [2024] EWHC 1160 (Comm) at [8]-[30] (and in a further decision, namely *Invest Bank PSC v El- Hussein* [2024] EWHC 1235 (Comm) at [24]-[25]), I summarised the applicable principles on applications to amend under CPR 17.3. In the context of the counterclaims sought to be advanced in the present case, the following points, in particular, are of relevance.
50. The issue of whether to allow amendments involves the exercise of the Court’s discretion (see *Quah* at [38(a)]). The circumstances in which amendments may be put forward are, as it has been put, “infinitely variable” and each application requires the Court to take into account the particular facts of the case. Accordingly, whilst previous decisions may be illustrative, they are seldom compelling (see *Vilca v Xstrata Limited* [2017] EWAC 2096 at [22] and [25(v)]). As was stated in that case, “it is always a question of striking a balance and weighing all relevant factors”.
51. In exercising the discretion, the overriding objective is of the greatest importance (see *Quah* at [38(a)]). In this regard, the Court should have regard to the list of matters in CPR 1.1(2) (see *Scipion Active Trading Fund v Vallis Group Limited* [2020] EWHC 795 (Comm) at [63]). Principles under CPR 3.9 do not apply (see *Vilca* at [20]-[22]).
52. Furthering the overriding objective includes “dealing with the case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party” (CPR 1.1(2)(c)). This principle was applied in *Scipion* at [92].

53. Thus, CPR 1.1(2), provides that dealing with the case justly and at proportionate cost includes “ensuring the parties are on equal footing” (CPR 1.1(2)(a)) and “ensuring that the case is dealt with expeditiously and fairly” (CPR 1.1(2)(2)), and one aspect of this is the need to take into account the impact on a party’s trial preparation. The parties need to be “on an equal footing and can participate fully in proceedings, and that parties and witnesses can give their best evidence”.
54. This is relevant from the position of the party that has to respond to the amendments. The equal footing principle was applied in *Scipion* at [91]. The Claimants submit this would not be the case here if the amendments in the form of the new counterclaims were allowed as the consequence would be to deny the Claimants’ legal team the time they require to prepare properly for trial. In this regard, I have had drawn to my attention the decision in *Cohen of HHJ Hodge KC* to which I have already referred. That case involved amendments in the context of a s.423 undervalue claim and which involved an expansion of the claim to embrace the sale of the business as well as properties, including the sale as a growing concern of the food retail and petrol sales businesses then being carried out from those properties. Thus, whilst it was a substantial amendment, it did not involve entirely new claims in contrast to the present case.
55. As is clear from [10] of that judgment, there are certain timing similarities between that case and the present. That case was due to commence for a seven-week trial on 12 January 2026, in circumstances where the application was made in July 2025, about six months out, which is a similar period to that in the present case. After quoting from various passages from the *Invest Bank* case with approval, HHJ Hodge KC quoted (at [23]) further passages from *Invest Bank*, including [47] and [48(c)], in these terms: “Lateness is important and, potentially, determinative, particularly for what are termed ‘very late’ amendments, being amendments which threaten the trial date. But even if an amendment is merely ‘late’ rather than ‘very late’, there is a ‘heavy burden’ on an applicant to justify it: see *Invest Bank* at [46]. An amendment can threaten the trial date even if it ‘is still some way off’: see *Invest Bank* at [47]. The history of the amendment, together with an explanation for its lateness, is a matter for the amending party, and is an important factor in the necessary balancing exercise. In essence, there must be a good reason for the delay: see *Invest Bank* at [48(c)]. When considering the impact on a trial fixture, the court is concerned not just with the ability to complete all the necessary steps consequential on the amendments, but also with the impact on the overall ability to prepare for the trial. Where there would be additional pressure on a party in the run-up to trial, that is a substantial reason why amendments should not be permitted. The need to revisit previous trial steps ‘in conjunction with the intense preparation already required even if there is no amendment’ may constitute ‘substantial prejudice’: see *Invest Bank* at [49].”
56. I was also referred to the conclusions of HHJ Hodge KC in that case, where he stated as follows at [80], expressing sentiments which contain parallels with the present case, as I shall come on to: “I am not satisfied that permitting these amendments will certainly cause

the existing trial window to be lost. With some six months still left until the trial window, I consider that such a degree of absolute assurance is impossible of attainment. With a spirit of co-operation, goodwill, and collaborative working on both sides, involving the application of considerable additional legal and financial resources, the existing trial window might still just be achievable. However, permitting the amendments now will undoubtedly impact seriously, and adversely, upon the respondents' preparations for trial; and may well imperil the forensic practicability of the existing trial window. I am entirely satisfied, therefore, that permitting these amendments will certainly 'threaten' the existing trial window. It would create a real, and appreciable, risk that the existing trial dates will be lost. Indeed, for the following reasons, I consider this to be more likely than not." (emphasis added)

57. Amendments should be "properly formulated", i.e. appropriately particularised and not an abuse of process and, "clearly formulated", i.e. readily understandable (see Various Airfinance Leasing Companies ("VALC") v Saudi Arabian Airlines Corporation [2021] EWHC 2330 (Comm) at [15.2] and CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd & Ors [2015] EWHC 134 at [19(d)]).
58. However, as was said in *Rose & Ors v Creativityetc Ltd & Ors* [2019] EWHC 1043 at [50]: "The test is comprehensibility and not elegance. The drafting of almost any pleading could be improved with hindsight, and the task of the judge in assessing whether this precondition has been satisfied is not to assess the stylistic quality of the draft, but see if it sets out the amending party's case in such a way that the other party knows the allegations it has to meet."
59. However, particular considerations arise in relation to the making of allegations of fraud, which are equally applicable to allegations of improper and/or unlawful conduct generally. There are stringent requirements in relation to the pleading of fraud, see CPR r.6.4(1), which requires particulars of claim to include, "(a) a concise statement of the facts on which the claimant relies" together with the matter set out in PD 16 (see r.16.4(1) (e)). These matters include, at para.8.2 of Practice Direction 16, "(1) any allegation of fraud" and "(5) notice of knowledge of any fact".
60. As is well established, and as I stated in *National Bank Trust v Yurov & Others* [2020] EWHC 100, at [50]: "Fraud or dishonesty must be distinctly alleged and distinctly proved; it must be sufficiently particularised and it is not sufficiently particularised if the facts pleaded are consistent with innocence. This means that the claimant who alleges dishonesty must plead the facts, matters and circumstances relied on to show that the defendant was dishonest and not merely negligent, and facts, matters and circumstances which are consistent with negligence do not do so ..."
61. These points summarise what was said by Lord Millett in *Three Rivers District Council v Bank of England* [2003] 2 AC 1 at [185]-[186]. He went on to set out the importance of pleading the primary facts relied upon in support of an allegation of fraud or dishonesty, including importantly, because the Defendant is entitled to know the case he has to meet.

62. Likewise, Lord Hope stated at [55] that: “Of course, the allegation of fraud, dishonesty or bad faith must be supported by particulars. The other party is entitled to notice [of] the particulars on which the allegation is based. If they are not capable of supporting the allegation, the allegation itself may be struck out.”
63. If a proposed amendment raises a new claim (as each of the counterclaims does) it will be refused if it does not have, “a real prospect of success” (see *Toucan Energy Holdings Ltd v Wirsol Energy Ltd* [2021] EWHC 895 (Comm) Annex at [5(ii)]; *Quah* at [36]; and *Rose* at [56]). It was common ground between the parties before me, and indeed is well established that, “real prospects of success” has the same meaning as in summary judgment cases (see *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472).
64. Whilst this is a relatively low threshold, it is still a threshold that must be met, and there will be some contexts where this consideration is in play, for example, if a claim is sought to be advanced in an amendment is obviously time barred, as it is said it is in the present case. In this regard, it is contrary to the overriding objective to allow amendments to be made which have no real prospect of success (not least as they would be liable to be struck out, see *Gerko v Seal & Ors* [2023] EWHC 63 (KB) at [190]), and so should not be allowed in the first place.
65. Also, as was said in *Toucan* at [10]: “... the mere fact that an issue has received some attention in the preparation of the case, and the experts’ reports is not necessarily sufficient to make permission to amend appropriate.”
66. A consideration of whether or not amendments are permissible is one that takes place at the date of the hearing of the amendment application. The question is not when the amendments were first foreshadowed or applied for, see *ADVA Optical Networking Ltd & Anor v Optron Holding Ltd & Ors* [2018] EWHC 852 (TCC) at [41(3)]: “Even after the application was made ... where it was being opposed, there was no reason in my judgment then for the claimant to take steps to meet the case that was being advanced in a proposed amended pleading in respect of which no consent had been given and no permission provided by the Court.” That makes clear that the correct position as a matter of law is that a responding party is not obliged to divert themselves from their trial preparation to prepare to meet a case which is the subject of a contested application for permission to amend.
67. Lateness of an amendment is a relevant factor which should be weighed in the balance. Lateness is a relative concept; an amendment is late if it could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the opposing party to revisit any of the significant steps in the litigation (e.g. disclosure, witness statements, and expert reports), see *CIP Properties* at [19(a)]. An application to make substantive amendments to a statement of case in the immediate lead up to a trial is at the very least a late amendment, and if it threatens the trial date itself, it is a very late amendment (this is so even if, in contrast to the present case, the trial is still some way off). The Claimants submit that this is an a fortiori case as the proposed counterclaims are actually new claims made shortly before trial and after disclosure, witness statements and expert reports and during the trial

preparation phase.

68. A useful statement of the applicable principles in this regard was set out by Coulson J (as he then was) in *CIP Properties*, in a passage at [19], which I also quote in *Steenbok and Invest Bank*. That paragraph is as follows: “(a) ... an amendment is late if it could have been advanced earlier or involves the duplication of cost and effort, or if it requires the resisting party to revisit any of the significant steps in the litigation (such as disclosure or the provision of witness statements in experts’ reports) ...
- (b) an amendment, can be regarded as ‘very late’ if permission to amend threatens the trial date, even if the application is made some months before the trial is due to start. Parties have a legitimate expectation that trial dates will be met and not adjourned without good reason.
 - (c) the history of the amendment, together with an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise. In essence, there must be good reason for the delay ...
 - (e) the prejudice to the resisting parties, if the amendments are allowed, will incorporate, at the one end of the spectrum, the simple fact of being ‘mucked around’ to the disruption of an additional pressure on their lawyers in the run-up to trial and the duplication of cost and effort at the other. If allowing the amendments would necessitate the adjournment of the trial, that may be a reason to refuse the amendments.
 - (f) prejudice to the amending party if the amendments are not allowed will obviously include its inability to advance its amended claim, but that is just one factor to be considered. Moreover, if that prejudice has come about by the amending party’s own conduct, that is a much less an important element of the balancing exercise.”
69. I note that both that passage, and what I said in *Invest Bank* at [47], were quoted with approval by HHJ Hodge KC in the *Cohen* case at [79], which he considered was the appropriate approach provided the threat of losing the trial date was a real one. He stated that is because there may often be uncertainty about the effect of the proposed amendment on the progression of the case to trial, the underlying principle being that the parties have a legitimate expectation that trial dates will be met and not adjourned without good reason. I agree with the sentiments expressed by HHJ Hodge KC in that regard.
70. Accordingly, in considering the impact on a trial fixture, the Court is concerned not just with the ability to complete all the necessary steps consequential on the amendments (here the introduction of new claims), but also with the impact on the overall ability to prepare for trial. Where there would be additional pressure on a party in a run-up to trial, that is a substantial reason why amendments should not be permitted. In this regard, in *Donovan & Anor v Grainmarket Asset Management LLP* [2019] EWHC 1023 (QB) at [27], it was stated that the need to revisit previous trial steps: “... in conjunction with the intense preparation already required, even if there is no amendments [constituted] ... substantial prejudice ...”

71. Where an application is “very late”, i.e. if the integrity of the trial date would be seriously threatened (see *Invest Bank* at [47] and *Cohen* at [78]-[79]) or, “the quality of the delay is unclear”, the Court may also have regard to the relative strength/weakness of the counterclaim (see *CNM Estates* at [76] and [79]).
72. The principles applicable in relation to very late applications were also considered by Carr J DBE (as she then was) in *Quah* at [38] in which it was identified:
 - (1) “[A] heavy burden lies on a party seeking a very late amendment to show the strength of a new case and why justice to him, his opponent and other court users requires him to be able to pursue it ...” (at [38(b)])
 - (2) “It is incumbent on a party seeking the indulgence of the court to be allowed to raise a late claim to provide a good explanation for the delay...” (at [38(f)]) Although the absence of good reason alone is not fatal, but a factor to be weighed in the balance: *PJSC Tatneft v Gennady Bogolyubov and Others* [2020] EWHC 623 (Comm) at [15], and; The applicant’s failure to comply with procedural obligations also adversely affects the wider public interest (at [38(g)]).
73. There is a particular onus on a party seeking to make a very late amendment to ensure it satisfies to the full the requirements of a proper pleading. As was stated in *Swain Mason v Mills & Reeve* [2011] ICLR 2735 at [73]: “... if a very late amendment is to be made, it is a matter of obligation on the party amending to put forward an amended text, which itself satisfies to the full the requirements of proper pleading. It should not be acceptable for the party to say that deficiencies in the pleading can be made good from the evidence to be adduced in due course, or by way of further information if requested, or as volunteered without any request. The opponent must know from the moment that the amendment is made what is the amended case that he has to meet, with as much clarity and detail as he is entitled to under the rules.”
74. In that case, the court refused permission to amend because the pleading was, “not in proper form”, which was said by the court to be “fatal” (at [107]). See also *Galliford* at [16], referring approvingly to *Swain Mason*: “It was also stressed that a late amendment cannot be insufficient or deficient,” and *Rijckaert v El-Khoury* [2023] EWHC 409 (KB) at [20]: “It is an elementary principle that the later the amendment, the greater the need for particularity ... it is not for the Defendants to seek further particulars. At every stage a properly pleaded case must be set out; and particularly so when the application is made at this very late date.”
75. The reason for this is obvious. Quite apart from the need for matter to be properly and sufficiently pleaded in the first place any need for further elucidation would itself give rise to further delay and actual potential prejudice to the other party. That a defective pleading can be cured later is misguided approach in the case of late amendments. Such sentiments are, as shall be seen, apposite in the present case.

76. The existence, or absence, of a good explanation for any delay is one of the factors to be considered, although there is no rule that the absence of a good explanation is fatal (see Vilca at [29], Scipion at [77]). Even if the situation is one which would not result in the adjournment of the trial if the amendment was allowed, an amendment may still be refused merely because it is late in the sense that it could have been advanced before, or requires the revisiting of pre-trial concepts. It is for this reason that lateness is a relative concept. For example, in *Hague Plant Ltd v Hague & Ors* [2015] CP Rep at [14], there was a new pleading over 65 pages where: “... those parts of the original Particulars of Claim which had not been crossed out appear only intermittently.”
77. In the present case, of course, and as the Claimants point out, the six counterclaims are entirely new. In *Hague*, no trial date had even been set, but the amendments were still considered to be late. As the Court of Appeal went on to state at [33], “Lateness is not an absolute but a relative concept,” and at [42] it was noted that: “The judge’s main reason for refusing permission to amend upon proportionality grounds was, as I have sought to explain, mainly based upon his apprehensions about the further, duplicative and otherwise unnecessary work to which they would expose the defendants, and the knock-on consequences in terms of increasing the weight, cost and duration of the trial, and of further case management ahead of it.”
78. Briggs LJ then concluded that: “Furthermore, it strikes me as obvious that a quintupling in the length of Particulars of Claim, all of which would need to be pleaded to in Re-Re-Amended Defences, would threaten just such increases in work, length and cost, even if significant parts of the re-pleaded material could be found within Part 18 exchanges, existing Defences, or statements and transcripts in earlier proceedings.”
79. As already noted, it is always a question of striking a balance between injustice to the applicant if the amendment is refused and injustice to the opposing party if it is permitted (Swain Mason at [72], Quah at [38(a)]). Prejudice to the amending party will include the inability to advance its amended case (see CIP at [(19)(f)], as already quoted above). Prejudice to the opposing party will include being “mucked around”, disruption/additional pressure before trial, or the duplication of cost and effect (see CIP at [19(e)]).
80. As noted in Vilca (at [26]), there is a “broad spectrum of impacts”, which “may fall somewhere between the negligible to the devastating”. F. DISCUSSION: APPLICATION OF THE PRINCIPLES TO THE FACTS
81. There can be no doubt that the proposed counterclaims in the Counterclaim Application are made very late and could and should (if they were ever to have been made) have been made very much earlier, and not after pleadings have long since closed, disclosure has been given, witness and expert evidence has been served, and actual trial preparations are underway. In this regard, and as the evidence before me establishes (see in particular Yardley 12 at para.91 and following):

- (1) The fact and mechanics of the 2016 Restructuring were expressly pleaded in the original Particulars of Claim dated 31 January 2023 (see the Particulars of Claim at para.102) and were explained in more detail with the key documents in the first affidavit of Mr Yardley at the same time.
- (2) Mr Rattan admitted that the Claimants' summary of the mechanics of the 2016 Restructuring were broadly accurate (if incomplete) in his defence dated 23 June 2023 (see the Rattan Defence at paras.129 to 130). I am satisfied that it was therefore apparent at that point that the substance of the Restructuring was, as between the key parties to it, uncontentious in these Proceedings.
- (3) Mr Gibson could have pursued the proposed counterclaims in his Defence dated 15 June 2023 (nearly three years ago) and that was the time at which he should have done so if he was going to seek to advance any such claims. This was at a time when he had both city solicitors (Clyde & Co) and leading and junior counsel advising him and settling his Defence. Given that any counterclaims could have been advanced at that time without leave and that the making of any counterclaims would no doubt have been actively considered, the obvious inference is that it was not considered at the time that any counterclaims were properly pleadable and sustainable. That in itself makes the claims late and, as appears below, even when now advanced at this very late stage (and in ever-moving iterations) they are neither properly pleaded nor properly particularised, as is further addressed below. Notably, Mr Gibson did plead in his Defence that the effect of the 2016 Restructuring was that "Mr Gibson's interest via Ivory Castle was ultimately rendered worthless" (see the Gibson Defence at paras.11 and 104.2). This was relied on to support Mr Gibson's denial that he participated in the conspiracy alleged by the Claimants, but had he had any valid counterclaim, that was the time (and the context) in which to make any such counterclaims.
82. I am satisfied that the Counterclaim Application is not only very late, but it could and should have been made much earlier. I have also foreshadowed to the fact that the allegations that Mr Gibson makes as to when he first had knowledge are not necessarily consistent with prior statements of Mr Gibson himself. In particular, I have in mind what he said himself in Gibson 1 on 17 March 2017 at para.237.
83. It is very late in important and fundamental respects, namely because I am satisfied that it imperils the October trial (which could not accommodate the expanded issues), would involve numerous further steps, which also cannot be accommodated between now and trial, and which would place an unrealistic and inappropriate burden on the Claimants at a time when they are (and should be) undertaking their preparations for the trial itself.
84. In this regard:
 - (1) On any view, the Proceedings are very close to trial. Disclosure based on existing pleaded issues is complete (no less than 125,000 documents have been disclosed). Factual witness statements (and supplemental reply witness statements) are complete, again, addressing the existing pleaded issues (and running to some 879 pages). The Claimants have served their

expert reports and the Defendants are due to serve their reports on 19 May 2026, with meetings by 2 June 2026, joint memoranda by 16 June 2026; and reply reports (if any) by 30 June 2026. The PTR is listed for one day on 17 July 2026, and the reality is that the trial is then at the start of the next Term (commencing on 12 October 2026, with a week's pre-reading time for the Court itself a reflection of the complexity the proceedings and the existing issues that arise). The impending trial is, on any view, a large and complex trial, even by Commercial Court standards.

- (2) Crucially, there is no slack in the existing trial timetable to accommodate even minor amendments, still less the introduction of no less than six entirely new causes of action. The reality is that the remaining steps in the timetable to trial are both compressed and (in the words of Robin Knowles J) “critical” to maintaining the trial. There is simply no time to undertake the steps that would need to be taken to ensure that the new allegations could be properly and fairly prepared for trial in the time remaining.
- (3) As I am satisfied is rightly identified in *Yardley* 12 at paras.77 to 82 and *Yardley* 14 at paras. 21 to 26, the proposed counterclaims would require a very considerable amount of new work and at a time when the Claimants (and for that matter the Defendants) need to be finalising preparations for trial. It is a gross oversimplification to suggest that the counterclaims could be accommodated simply because they relate (in a broad sense) to events which form part of the factual background to the proceedings. The reality is that they raise a very considerable number of new matters which have not previously been in issue and which raise serious accusations of dishonesty (most obviously in the context of knowing receipt and the alleged unlawful means conspiracy). Mr Gibson himself has failed to recognise, still less engage with or cater for all the steps that would be necessary before such allegations (even if they had been properly pleaded) could be tried, as reflected in the draft order he proposes, which does not address or attempt to deal with all the necessary steps that would be required. Indeed, when I asked Mr Gibson again about this during the course of his oral submissions, he was unable to identify how such steps could be accommodated or even to suggest a timetable which would illustrate that. I consider the reason that it is not possible to identify such a timetable is because any attempt at such timetable would show that it is not possible to do all those steps before the trial date.
- (4) Turning then to those necessary steps that would be required, specifically:
 - (a) The counterclaims are not properly drafted and particularised (as addressed below), as they should have been, given the serious allegations that are advanced. There is not the time available for them to be revised, amended or further particularised (which would be the wrong approach on the authorities identified above in any event), and the two further iterations of the drafts attempting to remedy previous defects have merely tripled the draft in size (to 31 pages) without increased clarity or coherence. On any view, there would need to be Defences to Counterclaim (and no doubt a Reply thereto). That would take weeks and cannot be accommodated in the trial timetable.

- (b) Once the issues had been crystallised (weeks hence, even assuming the clarity that is currently lacking), there would then need to be further disclosure on numerous issues and involving numerous parties (including potentially third parties), for the reasons addressed by Mr Yardley in Yardley 12 at paras.18(iii) and Yardley 14 at para.25(iii). In this regard, I have already referred to the issue that arises on the draft proposed amendments in relation to the trustee, Comnia, who might have relevant documents and whose witnesses might need to be called. In fact, Mr Gibson candidly acknowledges that there may need to be disclosure when he refers to the need for various categories of what he describes as “specific” disclosure. This is a matter which Mr Yardley addresses himself at Yardley 14 at para.25(iii)(C)(3), although Mr Gibson also asserts that the proposed counterclaims only rely on disclosed documents (see Gibson 5 at para.56(b), which is not, however, the case, given that the Further Amended Draft Counterclaim relies on undisclosed documents on standing (and on 20 April 2026, Mr Gibson asked for another undisclosed document to be added to the bundle, as is addressed in Yardley 14 at para.25(iii)(c)(2)). There is simply not the time available for the disclosure exercise that would need to be undertaken (which itself would be an unwarranted burden and a diversion of resources from trial preparation to the detriment of the claimants and potentially other parties as well).
- (c) Then, after that there would be a need for further factual witness evidence disclosure (taking account of such disclosure). It appears that this would involve not only existing factual witnesses (placing an additional burden upon them in the limited time before trial) but also new witnesses as well. I have already foreshadowed one example, the fact that Mr Gibson refers to potential evidence from Mr Waldvogel of Comnia (see the Further Amended Draft Counterclaim at para.30(iv)(e)). There is simply not time for all of this in advance of trial (still less in tandem with proper trial preparation).
- (d) I am satisfied that there would also need to be further (and new) expert evidence, given that at the very heart of the proposed counterclaims is a plea that VCL’s subsidiary (i.e. VCUK) and its IP was of real value at the date of the 2016 Restructuring, and this therefore involved a transaction at an undervalue. Even Mr Gibson candidly acknowledges that “the valuation of VCUK at the date transfer is a matter for expert evidence at trial” (see Gibson 5 at para.13). This is also acknowledged in the Further Amended Draft Gibson Counterclaim at para.27, which provides: “The full extent of the simultaneously transferred assets and the terms of those transfers are matters for further disclosure and expert evidence at trial.” Again, given the other stages identified above, that would also need completing before trial, and it is unrealistic to expect that to be completed before trial, given the need for service of reports followed by experts’ meetings, provision of an experts’ memorandum, and supplemental experts’ reports), quite apart from the distraction and the time that will be required on the part of the solicitor and counsel teams. In addition, and whilst Mr Gibson suggested that some aspects of expert evidence could be put off to a quantum stage, there has been no order for a bifurcated trial in this case. In any event, the valuation issues would go to liability given Mr Gibson’s allegations about transactions at an undervalue.

- (e) As is readily apparent, the counterclaims, if admitted, would raise a mass of new issues on complex legal issues (including Mr Gibson's standing, reflective loss, various constituent elements of the causes of action, limitation and attribution). Addressing such matters would increase the burden at trial. Again, it is unrealistic for all such matters to be advanced before trial, still less without prejudicing the Claimants in other aspects of their trial preparation.
 - (f) There is then the trial itself. The introduction of six new causes of action, the associated documentation, factual witness evidence, expert evidence (each of which would have to be given at trial) could not, I am satisfied, be accommodated in the existing trial fixture, and in all likelihood would lead to the loss of the trial fixture, which is itself contrary to the overriding objective, and would be wasteful of Court resources and result in lengthy delay before any further trial could be fixed. As the authorities recognise, that in of itself is a reason to refuse to admit such counterclaims.
 - (g) Sight should also not be lost of the fact that all of the above assumes that all such stages would take place efficiently and without further obstacle. In this regard, Mr Gibson has form for producing disclosure as and when it suits him (for example, on 20 April 2026 providing numerous previously undisclosed documents), and ominously he continues to reserve the right to provide further particulars (which is not the right approach in any event on the authorities).
85. If one stands back and takes stock of such matters, it is readily apparent that the proposed counterclaim simply cannot be accommodated before trial, still less fairly and without prejudice to Claimants, potentially other Defendants, and the trial process itself. Such factors in of themselves mean that permission ought not to be granted.
86. Importantly (and as the authorities show), there is a burden on a party seeking to make late amendments (here the introduction of entirely new claims) to explain and justify the delay in bringing such amendments forward and in not bringing forward such amendments until a late stage in the proceedings. I am satisfied that Mr Gibson's explanation for the delay does not bear examination. The only reason which Mr Gibson has advanced to justify the delay in bringing the Counterclaim Application is to assert that he understood he could "not responsibly" plead the counterclaims: "... until [he] possessed concrete evidence regarding the mechanics of the restructuring, the extent of the Claimants' institutional knowledge of it, and direct proof of a combinational agreement to effect the asset transfer at an undervalue." He alleges that this only occurred when the witness statements were served (see Gibson 2 at para.708).
87. However, such explanation does not bear examination and does not begin to justify the delay. In this regard, this is only presented by Mr Gibson as a reason for the delay in bringing his claim in unlawful means conspiracy (Claim (2)), as is clear from the face of the Application Notice and supporting evidence (see Application Notice Extension, Box 3, and Gibson 2 at para.5). No reason is given for the delay in bringing the other claims. I also explored this with Mr Gibson during the course of his oral submissions and again no

satisfactory explanation for the delay was given. I am satisfied that this is because there is no good reason for the delay. The reality is that such claims could have been pleaded long ago, and should have been pleaded long ago.

88. Yet, further, I am satisfied that the Claimants are right in their submission that the reason advanced makes no sense. The fact and mechanics of the restructuring (as well as the Claimants' role therein) were clear from the statements of case (supported by Statements of Truth) and were evident on the face of the documents exhibited to Yardley Affidavit 1, as well as those subsequently disclosed as addressed in Yardley 12 at paras.91-92. As the Claimants also rightly note, the only arguably new point arising from the witness evidence is Mr Rattan's recent and disputed suggestion that the 2016 Restructuring was orientated to removing Mr Watson's interest in Voltaire, which is not a point that supports Mr Gibson's case at all.
89. Nor can Mr Gibson pray in aid that he is a litigant in person. Quite apart from the fact that it is well established that litigants in person have to abide by the requirements of the CPR and that the overriding objective applies as much to them as any litigant, this is not a case where Mr Gibson was a litigant in person at the time when he could, and should, have pleaded any counterclaims, namely when he served his Defence. At that time, he was represented by Clyde & Co and his Defence was settled (and I would add properly settled) by counsel.
90. In such circumstances, I am satisfied that permission to introduce the proposed counterclaims should be refused, given that they are very late amendments that should have been brought earlier and which simply cannot be accommodated without prejudicing the Claimants and jeopardising the very trial itself, quite apart from the inadequacy of those pleadings, which is a further reason to refuse permission. To the extent that Mr Gibson would suffer any prejudice as a result of the refusal (and he could, of course, commence separate proceedings to advance the same), I am satisfied that any such prejudice is a result of his own failure to advance such counterclaims promptly.
91. The above conclusion is not dependent on any consideration of the merits (or lack of merit) of the proposed amendments, or indeed, save at a high level, about whether they are properly pleaded. However, upon examination, the claims are neither properly pleaded, nor are they properly particularised (see CNM Estates at [48], Quah at [46], Valk at [15(2)] and CIP Properties at [19(d)]) not least given the serious allegations that are made (which engage the principles on pleading fraud addressed above including CPR PD 16, and NBT v Yurov at [50]) and they should, therefore, be rejected for that further independent, and important reason.
92. In any event, and yet further, they are at best weak, and I am satisfied that they do not stand any reasonable prospect of success (and so stand to be refused for that further reason; see CPR 20.4(2)(b), and ED&F Man v Patel, *supra*).

93. Mr Yardley sets out what he submits are the shortcomings of the proposed counterclaim at Yardley 12 at para.97, where he makes various points under five separate headings, and Yardley 14 at para.31 which picks up upon further pleas made in the Further Draft Amended Counterclaims. I consider that there is considerable force in each of the points he makes, all of which strongly mitigate against granting permission. In particular, I would highlight the following points:
- (1) The counterclaims fail to plead or particularise critical elements of the causes of action and equally egregiously plead matters which could not possibly make out a claim; for example, advancing proprietary claims in respect to the loss of value in property retained by Ivory Castle (see Yardley 12 at para.97(5) and Yardley 14 at para.(32)(ii)). (2) I am satisfied that, as the Claimants rightly submit, the central factual premise of the claims is incoherent and implausible. Mr Gibson's case is that Mr Rattan entered into a conspiracy with the Claimants to strip assets from VCL, but Mr Rattan and his family (as the purported 65% indirect shareholders, via the Benkelton Trust), would themselves have been the main losers from such an arrangement, which therefore makes no sense. Equally, there is no explanation, and no plausible basis for why, the trustee, Comnia, would have gone along with this (and as I have already addressed above, Mr Gibson sets out inconsistent cases in relation to Comnia).
 - (3) It is apparent that any claim is for reflective loss given the complaint is about a diminution in value of the shareholding in VCL, held by Comnia on behalf of Ivory Castle. It would appear that the proper Claimant would be VCL itself, not Mr Gibson.
 - (4) The loss claims are also inherently incoherent. First, Mr Gibson seeks damages in the amount of Ivory Castle's original investment (that is the £3 million paid to Munil). However, in order to show loss, it would be necessary to show that there was value in VCL at the time of the restructuring, not the original investment, which is not addressed. Equally, the claim for alleged loss of earnings/earning capacity is unspecified and unquantified, and such case is, I am satisfied, in any event unmeritorious, given the lack of any causal link to any of the pleaded causes of action.
 - (5) All claims (save for any possible s.423 of the Insolvency Act claim) appear to be time-barred in any event. The agreements for the 2016 Restructuring were completed on 29 January 2016, with the result that Mr Gibson's claims were time- barred on 29 January 2022. Equally, I am satisfied that the deliberate concealment case (for the purposes of s.32(1)(b) of the Limitation Act 1980) stand no prospects of success either for the reasons set out by Mr Yardley in his evidence (see, in particular, Yardley 12 at para.97(iv), Yardley 14 at para.32(i)). It depends on two matters that occurred prior to closure of the 2016 Restructure and otherwise exclusively on the alleged actions of Mr Leahy without any proper basis pleaded to suggest that the Claimants can be fixed with liability for his actions. Yet further, it would appear that the factual premise of this case is contradicted by both the fact and content of Mr Glenn's evidence in the Glenn Proceedings, as I have already foreshadowed. In this regard, it appears that Mr Gibson knew that Voltaire had been restructured and VCL dissolved by (at the latest) March 2017. That is indeed his very evidence in that case that I

have already quoted. The Claimants say that the obvious inference, given his prior evidence, his intimate involvement in the repayment of the Munil loan as part of the 2016 restructuring, and his close cooperation with each of Mr Watson, Mr Rattan, and Mr Leahy, is that the reality is that Mr Gibson was himself aware of the 2016 Restructuring from the outset.

94. The lack of proper particularisation of the proposed counterclaims and lack of any real prospect of success are separately (as well as cumulatively) additional reasons why permission should not be given to introduce such counterclaims.
95. Finally, in turning to prejudice and the balancing exercise to be undertaken, I am satisfied that were the amendments to be allowed -- and quite apart from the impossibility of all the further steps being undertaken prior to trial (with pleadings, disclosure, witness statements, and expert evidence) -- any attempts to undertake such steps would cause obvious and very considerable prejudice to the Claimants and the other Defendants who are all working towards the long-fixed October trial involving the existing and extensive issues and evidence.
96. Such prejudice is not limited to the additional costs and expense that would result (which would itself be substantial), the counterclaims would also unfairly jeopardise their own trial preparation and conduct of the existing case that they are entitled to prepare properly for in advance of trial and without undue and unwarranted distraction. There is also the reality, as I have already addressed, that such preparations could not be fairly or properly undertaken before trial with the spectre, and the very real prospect, of the trial date being lost, which would be contrary to the overriding objective, and which cannot be countenanced.
97. In contrast, and to the extent that Mr Gibson would suffer any prejudice in not being able to advance any counterclaims in these proceedings, that is in reality the consequence of his own delay and failure to advance any such counterclaims expeditiously and in proper terms. He would not be prevented from commencing separate proceedings and, if he has lost the benefit of any relation-back benefit in the present proceedings, that is itself a consequence of his own inaction and delay, and not anything that can be laid at the door of the Claimants.
98. For all those reasons, individually and cumulatively, it would not be appropriate to grant permission to introduce the six new counterclaims and, accordingly, the Counterclaim Application is dismissed. G. COSTS
99. So, the next question that arises is the instance of costs. Mr Barden KC submits that the successful party, as is undoubtedly the case, is the Claimants on this application. The Counterclaim Application has failed, and he invites me to say that the usual rule applies, that costs follow the event.
100. Mr Gibson, whilst acknowledging those principles, invites me to say that it is costs in the case, given that the overall merits of the case have yet to be determined.

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101. It is well established, that where there are discrete applications such as this, it is important that the costs relating to those are addressed by reference to those applications, and I am satisfied that costs should follow the event and that Mr Gibson should pay the costs of and occasioned by his unsuccessful Counterclaim Application to the Claimants. Those costs shall be on the standard basis, and be summarily assessed (if not agreed). 24
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