



Neutral Citation Number: [2026] EWHC 1575 (Ch)

Case No: CH-2026-BRS-000007

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
CHANCERY APPEALS LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 26 June 2026

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

Between :

OCORIAN PRIVATE TRUSTEES (JERSEY) LTD

Claimant/
Appellant

- and -

JULIA MCGEOCH

Defendant/
Respondent

Nathan Wells (instructed by **Wilsons Solicitors LLP**) for the **Appellant**
Adam Stewart-Wallace (instructed by **Askews Legal LLP**) for the **Respondent**

Hearing dates: 11 May 2026

This judgment was handed down remotely at 2 pm on 26 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archive.

HHJ Paul Matthews :

Introduction

1. This is my judgment on an appeal from the order of HHJ Glen dated 23 February 2026 in the County Court at Southampton. Permission to appeal was given by Michael Green J on 23 March 2026, who also directed that the appeal was fit to be heard by a deputy High Court judge. The litigation concerns possession of a rural property known as Stapleford Farm, Durley, in Hampshire. This is owned by the appellant (which is a company incorporated in Jersey) as trustee of a Jersey law trust. The respondent is a beneficiary of the trust, who has been permitted to occupy it.
2. By his order, Judge Glen dismissed the applications of the appellant (i) to strike out the defence to its possession claim against the defendant (the respondent on this appeal) on the basis that it gave rise to an abuse of process, and (ii), if that application failed, for summary judgment on a discrete aspect of the defence. Judge Glen also allowed, in part, an application by the defendant to amend the defence and to introduce a counterclaim. The appellant seeks to appeal against this decision also. On 7 April 2026, the respondent filed a notice seeking to uphold the order of Judge Glen on additional grounds, but she does not herself seek to appeal against any part of the order.

Background

3. The late Mr Lennie Clark McGeoch was a wealthy Scottish businessman. During his life, he established a number of trusts governed (or now governed) by Jersey law for the benefit of his family and employees of the family business. Four of these trusts are known collectively as the “Family Trusts”. Individually, they are known as the McGeoch Discretionary Trust, the No 3 Trust, the No 4 Trust and the No 5 Trust. The appellant is the current trustee of the No 3 Trust. A related Jersey company, Ocorian Ltd, is the trustee of the others.
4. Mr McGeoch had four children. He died in December 2020. The respondent is one of the four children. She has two sisters of the whole blood, Pamela and Laura, and a brother of the half blood, Angus. During his life, Mr McGeoch expressed the wish that his four children should benefit equally from the trusts and other gifts which he made to them. However, it appears that, over the years, the four children have not benefited equally in the way that their father wished.
5. Three of the family trusts were due to vest on 31 December 2022. The trustees of the Family Trusts decided that they would equalise the benefits between the four children, by distributing trust assets between them so as to achieve such equalisation. The process was complex. The trustees produced a “Distribution Plan”, showing (i) what each child had received and (ii) what each should receive in future to achieve equalisation. They also produced a “Steps Plan”, showing what needed to be done to distribute the assets and wind up the trusts. These plans involved the sale by the trustee of the No 3 Trust of Stapleford Farm, so that liquid funds would be brought into that trust and equalisation payments could be made in accordance with those plans.

6. Stapleford Farm had been acquired in 2008 with the aid of a loan from a company owned by the family trusts (“WTDL”). The then trustee of the No 3 Trust granted the respondent a licence, made by deed dated 24 December 2009, to occupy Stapleford Farm rent-free. Clause 7 of that licence provides:

“This Licence may be ended by the Licensor or the Licensee giving six month’s [sic] notice in writing to the other to expire at any time.”

The deed was executed both by the then trustee of the trust, as licensor, but also by the respondent, as licensee. Further monies were lent by WTDL in relation to the acquisition. As at March 2025, some £5.7 million was owed to WTDL by the appellant as trustee of the No 3 Trust.

7. In 2017, Mr McGeoch gave the respondent some £2.4 million for the purpose of enabling her to purchase the Farm from the trustee (and to pay the stamp duty land tax arising on the purchase). However, instead of buying the Farm, the respondent spent the money on acquiring the Landscape Stud, an equestrian property near Clonmel in Co Tipperary, Ireland. The respondent later sold the Landscape Stud. She lives at Stapleford Farm, with her mother.

Jersey law and practice

8. Because of the connection that these proceedings have with Jersey law and the Jersey legal system, I record here a number of pertinent matters. The first is that as a practising solicitor over about 30 years I did a lot of work with Jersey clients and Jersey law, along the way co-writing two books with Jersey advocates, one on Jersey trust law and one on Jersey property law. For several years I was a visiting professor of trust law at the Institute of Law in Jersey (which teaches the professional advocates’ course). I have been a member of the editorial board of the *Jersey Law Review* (now the *Jersey and Guernsey Law Review*) since its foundation in 1997. Since 2023 I have been an ordinary (part-time) judge of the Jersey Court of Appeal. I therefore have considerable experience of the law and legal system of Jersey. This will be apparent in what follows. But I record that I have been careful not to give expert evidence to myself on contentious matters.

The Jersey litigation

9. The trustees of the Family Trusts were conscious of the impending vesting dates for three of the Trusts. On 11 October 2022, therefore, the trustees of all those trusts applied to the Royal Court of Jersey by way of representation (similar to our old originating summons procedure, and functionally, at least, something like a modern Part 8 claim) under article 51 of the Trusts (Jersey) Law 1984. They sought the court’s approval (or “blessing”) of the proposed equalisation plans. This is a similar jurisdiction to that known in England as category (2) of the *Public Trustee v Cooper* jurisdiction. Indeed, the Jersey courts appear to have borrowed that idea directly from English law: see *Re S Settlement* 2001 JLR N-37, [2001] JRC 154. Given the importance of trusts to the financial services sector of the Jersey economy, it is a jurisdiction that is frequently engaged. In accordance with the usual Jersey practice in the exercise of this jurisdiction, these proceedings were not heard in public, but in private.

10. There was a hearing of the representation in May 2023, at which the trustees of the Family Trusts and the four children were all represented by advocates. At that stage the Royal Court declined to approve the Distribution Plan, but gave directions for the preparation of a further plan by July 2023, with a hearing in September 2023. The new Distribution Plan was prepared, and dated 14 July 2023. At the September hearing, the Court extended the vesting dates for the No 3 Trust, the No 4 Trust and the No 5 Trust to December 2023, and gave liberty to apply. In October 2023 an Amended Representation was filed with the Court, together with the new Distribution Plan.
11. There was a further hearing before the Royal Court (Commissioner William Bailhache, sitting with Jurats Yonge and Austin-Vautier) in November 2023, at which the trustees sought the approval of the Court to the new Distribution Plan, and various ancillary directions, including one that the respondent

“provide the Representors with proof of funds evidencing her ability to purchase Stapleford Farm by 30 November 2023, failing which eviction proceedings will commence in England”.

It appears that there were two main contentious issues. These were (i) the possible write-off (and its allocation among beneficiaries) of loans made by WTDL for the purposes of acquiring a French property, and (ii) the realisation of Stapleford Farm to release funds for the equalisation plan.

12. The trustees and each of the four children were again separately represented by Jersey advocates at the hearing in November 2023, except Laura, who appeared in person. So, the respondent had the opportunity, through her advocate, to put her case on the “blessing” application (including the direction about possible eviction proceedings) to the court. At the conclusion of the hearing, the Royal Court made an order that the vesting date for the trusts be extended to 30 September 2024, and reserved its judgment on the “blessing” application. That reserved (written) judgment was delivered on 18 January 2024.
13. In its January 2024 judgment, the Royal Court stated its conclusions relating to Stapleford Farm as follows:

“40. The Number 3 Trust needs to sell Stapleford Farm even to contain the WTDL loss at that level. Accordingly, if Julia does not proceed to buy it, the Trustees will need to evict her (and her mother) and sell the property on the open market to a third party. The Trustees have been requesting Julia since February 2022 to provide proof of funds, and they now take the view that an urgent decision is needed. As a result of the delay, Julia was served with a notice to quit on 1 February 2022 and a second notice was served on 16 January 2023, without prejudice to the first, but no eviction proceedings have yet been taken. Julia has claimed that the sale of Stapleford Farm will leave her homeless; although it is hard to see how that could possibly be, given that she owns a property in Ireland outright, having purchased that using monies gifted to her by her father to enable her to purchase Stapleford Farm from the Trustee in or about 2018.

[...]

43. It is against that background that we have to consider the Trustees' decision either to sell Stapleford Farm to Julia for £2 million if she comes up with proof of funds by 30 November 2023 (in argument that date was extended by three months) or commence eviction proceedings.

44. Pamela's position in relation to Stapleford Farm has been that the Trustees should give Julia sufficient time to provide proof of funds for her purchase of that property. Pamela's understanding is that Julia needs to sell the Irish property in order to do so and has received an offer from a prospective buyer for it. She objects to the Trustees being given blessing by this Court to commence eviction proceedings against Julia upon the basis that her father would have been very much opposed to the idea of Julia being evicted from her home

45. The skeleton arguments filed by Laura and Angus for the November hearing were silent as to what should take place with Stapleford Farm ...

46. The sale of Stapleford Farm is an essential step in the winding up of the Trusts and distribution of assets to the four siblings following the equalisation programme. The reality is that Julia's procrastination in making arrangements to complete the acquisition of Stapleford Farm acts as a block on any timely distribution. In our judgment, it would be unreasonable for the Trustees not to recognise this and indeed their steps plan and their decisions which they seek to have blessed do recognise that principle. Our difficulty is that it does not seem to us that the mere provision by Julia of proof of funds will provide any certainty that the sale of Stapleford Farm to her will go ahead. If the Court were in the position of the Trustees, it would take the approach that if Julia was not able to complete the purchase of Stapleford Farm by the end of February 2024, the eviction proceedings would be taken and the property placed on the market forthwith. Julia has in our judgment had more than enough time to take the necessary action, and her failure to do so gives one no confidence that she will make any effort in this regard in the future unless put under pressure to do so.

47. However, the principle of non-intervention suggests that the Court should not give this direction to the Trustees. Accordingly, we bless the decision of the Trustees to give Julia until the end of February to come up with proof of funds for her purchase of Stapleford Farm, failing which eviction proceedings should be taken. We add however that it does not seem to us at all unreasonable, even if Julia does come up with proof of funds by the end of February, for the Trustees to insist upon a completion of the sale of Stapleford Farm to her within the following six weeks.

48. We also take the view that if Julia does not come up with proof of funds by 28 February 2024, with eviction proceedings then to be taken, the Trustees should also forthwith place Stapleford Farm on the open market for sale. Julia's activity or lack of it is holding up the process for each of her siblings. The fact that the Trustees have placed the property on the open market does not mean of course that the Trustees cannot still sell the

property to Julia if, after that date, she is in a position to buy it. We add that, on the face of it, if Julia's offer at £2 million is less than any offer received from a third party on the open market, the Trustees would be expected either to take the better offer unless all the adult beneficiaries agree and would be prepared to back that agreement with an appropriate indemnity or to proceed with the sale to Julia and make a further adjustment to the amount of her benefit to reflect the difference between the sale price to her and the sale price foregone by not proceeding with the better offer.

49. For the avoidance of doubt, the fact that Julia lives in Stapleford Farm with her mother does not in our judgment affect the position. If Julia has to be evicted, and naturally her mother too would have to be evicted, there is nothing preventing the two of them from living in other accommodation. We do not see the mother's position as material to the issues involved unless all the adult beneficiaries agree that it should be."

14. The formal Act of Court (equivalent to our Order) recorded the decisions made by the Court on 18 January 2024 as including the following:

First, the Court "noted that there was substantial agreement over the terms of the Distribution Plan but declined to bless the treatment of the French write off in it, having also noted that there was likely to be further change in the Distribution Plan as a result of the enquiry into the costs and management charges claimed by the Trustee".

Second, the Court "blessed the decision of the Trustees to allow Julia to have until the end of February 2024 to provide proof of funds for the purchase of Stapleford Farm, failing which eviction proceedings should be taken."

Third, the Court "directed that the Trustees shall prepare a costs budget for implementation of the Steps Plan, the said costs budget to outline in broad terms the individual expenses likely to be involved in implementing the Steps Plan, including a budget for eviction proceedings should that step be necessary".

15. The respondent did not provide the appellant with proof of funds for the purchase of Stapleford Farm by the end of February 2024 (or, indeed, at any time since). As I say below, possession proceedings were accordingly commenced against the respondent in the County Court at Southampton on 27 March 2024. The matter came back before the Royal Court (differently constituted) on 16 July 2024, when there was further argument. Before the court on that occasion was the respondent's fourth affidavit (in Jersey, all written evidence is normally given by affidavit). In the bundle before me this is reproduced in a form which has been so heavily redacted that not only is all reference to matters other than Stapleford Farm excised, but also most of the context in which the affidavit was made is excised as well.
16. Nevertheless, there is some material which is of assistance:

“112. Eviction proceedings in England have commenced in respect of Stapleford Farm. The outcome of the Eviction proceedings needs to be considered by the Court before it blesses any matters in respect of Stapleford Farm. Although the proceedings are still at pleadings stage, I have made clear in my response to the claim that I am looking at a defence on the grounds of misrepresentation ... and this will mean that I am claiming that due to the money that I have invested and the other detriment that I have suffered, I have an equitable proprietary claim against Stapleford Farm, which will require a determination in quantum ...

113. In the section below, I have set out more detail about the works that I have undertaken on Stapleford Farm, which was to my detriment.

114. In respect of Landscape Stud, my Irish property, the sale was completed on 31 May 2024. I received net proceeds of €2,095,000 ...

115. Notwithstanding the eviction proceedings, there are two issues that arise in respect of the purchase of Stapleford Farm, that I wish to address in this affidavit, as follows:

- i) the value of Stapleford Farm; and
- ii) the distribution/allocation to me to fund the purchase.

I address these two issues below.

116. Over the years Stapleford Farm has required more and more maintenance and there has been significant storm damage, which has involved insurance cover to complete the works.

117. The value given to Stapleford Farm by the Representors in these proceedings is £2 million, based on a valuation from Ian Judd and Partners LLP dated 22 September 2022. I did not dispute this valuation previously; however, it is now in dispute given the age of the valuation and further deterioration of Stapleford Farm due to a lack of maintenance/storm damage. There are also additional structural issues due to neglect and unwillingness to fund repairs from the Representors that will need to be taken into account ...

118. I have commissioned two reports now on the state of Stapleford Farm, which I urge the reader to review. They show the poor state the property is. [sic]

- i) Trinity Rose ... ; and
- ii) Eddisons ... (note this is a draft Report and I will circulate the final version when it arrives, however, it is to be noted that the value given is circa **£1,250,000** which will appear in the final report I am advised).

119. That being said, there are capital sums that I have spent in respect of Stapleford Farm, which I raise above, as well as the payment of Stamp

Duty. These sums need to be considered and added back to my distribution. Some of these capital expenditures were made by distributions to me, or by loans that are then also being allocated and indexed to me in the Amended Distribution Plan.

120. Further there is an outstanding insurance claim worth £100,000 due to leaks ...

121. Since 2017 I have been notified that there were no funds to repair Stapleford Farm ...

122. By way of example of detriment to me, it also now clear that to repair an urgent roof leak, I had to contact the Representors to get estimates and get funds from my share of the Trust Fund ...

123. I have also spent significant capital of my own funds from the Trust Funds on Stapleford Farm, with the Representors approval prior to, after, and inspection. Clearly now to my detriment. The works I have done have increased the value of Stapleford Farm and I have invested my own money into what is essentially a Trust owned property where I am a deemed to be a licensee. Not only that but that capital and funds from my share of the trust fund is now forever lost if I leave the property.

[Paragraphs 124-141 set out further examples of improvements which the respondent says she has made at her expense, details of flooding to the property, and valuations commissioned of it.]

142. The issue that I have at this stage is not being able to make an informed decision on whether it is commercially viable or affordable to purchase Stapleford Farm ...

[Paragraphs 143-166 were redacted in Jersey on the basis of being irrelevant to the possession proceedings.]

167. Since 2017 there has been a significant loss to the house due to a series of leaks. One from the roof and one from copper plumbing pipe work. The valuations performed recently states the house is unrentable in its current condition at a value of £0.”

17. The respondent’s skeleton argument dated 8 July 2024 for the hearing before the Royal Court included the following material:

“55. The Trustees have recognised that it has always been the intention for Julia to own Stapleford Farm. It was decided that the best option was for her to purchase Stapleford Farm from the No. 3 Trust at market value. Stapleford Farm is Julia’s residential home ...

56. In order to fund the purchase of Stapleford Farm, Julia has sold her property in Ireland, known as Landscape Stud, and on the assurances that she would not be left homeless, Landscape Stud was sold for €2,300,000,

the estimated net proceed of sale amounting to €2,094,496.16 (£1,773,043.39 as at 4 July 2024).

[...]

61. ... there is a major issue with the valuation of Stapleford Farm, which has since these proceedings commenced been £2 million. Julia commissioned a report from Eddison ... (Nb. The final Report has been circulated to the parties), who provided the final report during the last week of June 2024. The valuation given for Stapleford Farm, was **£1,200,000** and there is significant work to be carried out if the value is to be increased.

62. It is submitted that the Trustees cannot make a decision regards the sale of Stapleford Farm until this issue of the valuation has been determined, and if the Trustees are still considering going after Julia for the difference in the purchase and sale price, then the loss and who fault the losses are will need to be determined, as after all Stapleford Farm is a Trust asset.

[...]

64. The Trustees had blessed their decision to commence eviction proceedings in England against Julia, which has now commenced, however, there is a defence and counterclaim that will be raised, which includes an equitable interest/estoppel [sic], which will need to be determined in England, as it will have an impact on the Trustees' title of Stapleford Farm ... ”

18. In its judgment of September 2024, the Royal Court (Commissioner Binnington, sitting with Jurats Averty and Le Cornu) said this:

“29. Notwithstanding the comments made by the Court in the January 2024 Judgment, Stapleford Farm remains unsold. In the absence of Julia providing the required proof of funds, eviction proceedings have been commenced in England (‘the Eviction Proceedings’). The Trustees advised us that Stapleford Farm has to be sold in order to enable them to repay some of the WTDL Loan and write off the remainder and to contain the loss in the No.3 Trust. The lack of sale was a block to the implementation of the Distribution Plan and the Amended Distribution Plan. However, Julia is now defending the Eviction Proceedings (at increased cost to the Family Trusts) and the Trustees find themselves unable to sell to a third party whilst those proceedings are ongoing, particularly as Julia appears to be claiming estoppel (although the Trustees are apparently advised that her claim is not properly pleaded and is without merit).

30. At the beginning of the hearing before us on 16 July 2024, Advocate Mistry, on behalf of Julia, sought an adjournment of the hearing on the basis that the Court should not bless the Trustees' decision without final figures being available, the final figures being dependent on the result of an enquiry as to the quantum of the Trustees' legal and administration costs ordered by the Court in the January 2024 Judgment. He argued that the provision of final figures was essential for Julia to be able to assess whether or not she

could afford to purchase Stapleford Farm and further suggested that the Court had indicated in the January 2024 Judgment that a blessing of the Trustees' decisions could not take place until the quantum of costs was determined."

After hearing argument, the court dismissed the application for an adjournment.

19. The Royal Court went on in its judgment to say this:

"43. As we have already noted, the Trustees did not [in the latest application] seek any order from the Court in relation to Stapleford Farm, the Court having already provided its blessing to the Trustees' decision as to how to proceed in its January 2024 Judgment. However, Julia, in her skeleton argument, sought an order that the Court refuse its blessing of the Trustees' decision that it be sold for £2 million either to Julia or a third party and sought further orders relating to its value and the apportionment of any difference between its sale price and its *'current value'*."

44. It is clear that the continued delay in the sale of Stapleford Farm is a block to the implementation of the 2022 Equalisation. The delay appears to be largely attributable to Julia's failure to engage with the Trustees in relation to her desire to purchase it. In relation to her ability to purchase the property, it would appear that she has now sold her property in Ireland, and we note that at the hearing before us Pamela indicated that she had offered Julia financial assistance to purchase it given her concern for her mother, who also lives in the property. Julia's defence of the Eviction Proceedings appears to be yet a further attempt on her part to delay a decision as to whether or not to purchase it. Further delay is likely to have a financial impact on her siblings. As the Trustees have pointed out, Julia is not being forced to purchase the property: if she does not wish, or is unable, to purchase it she clearly has sufficient funds from the sale of her Irish property to purchase an alternative.

45. For the above reasons we blessed the Trustees' decision to allocate the WTDL French Loans 50/50 between Laura and Julia and implement the 2022 Equalisation by way of the Amended Distribution Plan."

Possession proceedings

20. The appellant served what it said was a notice to quit and a notice to determine the 2009 licence on the respondent on 1 February 2022, requiring possession to be given up by 2 August 2022. A further notice intended by the appellant to determine the licence was served on 16 January 2023, requiring possession forthwith. Possession was not given in response to any of the notices. As stated above, in the light of the respondent's failure to provide proof of funds to buy Stapleford Farm, possession proceedings were accordingly commenced against her in the County Court at Southampton on 27 March 2024. In accordance with CPR rule 55.5(1), upon issue of the claim a first hearing was fixed, for 7 May 2024. CPR rule 55.8(1) provides:

“At the hearing fixed in accordance with rule 55.5(1) or at any adjournment of that hearing, the court may –

(a) decide the claim; or

(b) give case management directions.”

21. On 1 May 2024, the respondent made a witness statement. This is the usual witness statement which a defendant to possession proceedings needs to make in order to persuade the court at the first hearing *not* to decide the claim for possession summarily (under rule 55.8(1)(a)), but instead to give directions for a trial (under rule 55.8(1)(b)). Indeed, the respondent says as much at paragraph 36 of the witness statement. In this regard, CPR rule 55.8(2) provides:

“Where the claim is genuinely disputed on grounds which appear to be substantial, case management directions given under paragraph (1)(b) will include the allocation of the claim to a track or directions to enable it to be allocated.”

22. This witness statement runs to 13 pages, though 2 of these comprise the backsheet. It deals with a number of the matters later pleaded by the defence. These include:

(1) the respondent’s obtaining funds to assist in the purchase by way of gift from the settlor and engaging solicitors (paragraph 21);

(2) her deferring the acquisition until outstanding title issues were resolved (paragraph 22);

(3) her using the gifted funds in the meantime to purchase an Irish stud farm, though that has now been sold (paragraph 23);

(4) her obtaining confirmation from her sister Pamela that she would provide any additional funds required for the purchase of the Farm (paragraph 24);

(5) an order of the Jersey court requiring the trustee to remit 50% of its legal fees of £1.5 million (paragraph 25);

(6) the claimant trustee’s continued assumption that a valuation of £2 million still applies to the Farm (paragraph 26);

(7) her view that the “realistic present market valuation is likely in the range of £1.2 to £1.4 million”, taking into account (inter alia) a flood in January 2024 (paragraph 27);

(8) the inability of the claimant to accept the respondent’s proof of funds (paragraph 28);

(9) the claimant’s awareness of (i) the present value’s being substantially below £2 million, (ii) the claimant’s control over the release of trust funds to the respondent, (iii) her “longstanding desire to purchase the Property, having sold my Ireland [sic] to release funds to facilitate the same”, (iv) the cost of

relocating the livestock to an alternative location, (v) the likelihood of the vacated property remaining unoccupied, (vi) the unlikelihood of finding an outside buyer before the end of May 2024 (when the respondent's own funds would become available) (paragraph 29);

(10) an assertion that the possession proceedings are an attempt to resile from "clear and unequivocal representations" on which the respondent "detrimentally relied" over a period of years, which would lead to a "gross injustice" if the claimant were able to "reverse their [sic] stance and deprive [her] of this legitimately anticipated acquisition – which is in fact imminent. I understand that estoppel squarely prohibits the Claimant from resiling from the multifaceted representations of ownership and intended purchase they engendered through years of consistent words and conduct" (paragraphs 32-34).

23. It will be noted that this witness statement deals largely with questions of valuation, and how much the respondent should pay for the property. The respondent's status is represented as that of an intending purchaser. The witness statement does not suggest that the respondent has any kind of tenancy or licence which cannot be brought to an end without her consent.
24. At the hearing on 7 May, the court gave directions for the trial of the claim. Pursuant to these directions, the respondent's defence (running to 12 pages, though one of these is the backsheet) was filed on 1 July 2024, and the appellant's reply was filed on 16 August 2024.
25. The defence as filed pleads a number of matters. For present purposes, the most important are the following:

“1. ...

[...]

c. There has been a longstanding agreement/understanding between the Claimant/its predecessor trustees and the Defendant that the Defendant may exclusively occupy the Property until it is transferred to the Defendant absolutely, the further details of which are follows:

[...]

iii. In or around April 2007, the trustees instructed the Defendant to locate a property in England for the Defendant and her household to move into ... The trustees assured the Defendant that they would purchase a property in the United Kingdom for the Defendant, her mother, grandmother, and animals including horses. They assured the Defendant that the Property would be owned by the Defendant ...

iv. The Defendant identified the Property as suitable in or around October 2007.

v. The Defendant made an offer of £2.4m for the Property, on the understanding that the trustees would provide the purchase monies. The Defendant's understanding at that time was that the Property was to be conveyed to the Defendant directly.

vi. In an email dated 28 March 2008 the trustee wrote to the Defendant stating that the Trust would purchase the Property, stating that it would be doing so "for her benefit" and that it was 'highly unlikely that the trustees are going to deny you occupation'. The Defendant was upset by this but it was stated to the Defendant by the trustees at the time and their legal representatives that the Property was to be hers and so she accepted this.

vii. The Defendant's understanding remained at that time that the Property would eventually be conveyed into her own name ...

[...]

xi. On 24 December 2009, the Defendant entered into a written Licence to Occupy with P&L Trust Company Limited as Trustees of the Trust with regard to the Property (the "Licence Document").

xii. Notwithstanding the above and in particular paragraph 7 of the Licence Document, the trustee assured the Defendant that she would be able to occupy the Property for as long as she wished and that it would be conveyed to her absolutely at some future date ...

[...]

xiv. Between 2008 and 2012 the Defendant invested approximately £450,000 to £700,000 on renovations to the Property, of which the trustees were aware.

xv. During the course of these renovations, the trustee communicated to the Defendant on numerous occasions that the Defendant was the moral owner and in particular that the Property had been allocated to the Defendant's share under the Trust's distribution plan.

xvi. From 2012 until 2017 the Defendant ensured all upkeep as necessary and where possible maintained all aspects of the property on the premise that the property was eventually to be hers. She also added and improved aspects of the property including upgrading the lodge in garden to an annex ...

[...]

xxi. In 2017, the trustee advised the Defendant that purchasing the Property from the Trust would be the most prudent means of conveying it to her because it would avoid ancient capital gains tax liabilities, and that the trustee would facilitate such purchase (the ‘Option’).

xxii. The trustee at that time proposed a figure of £2m as a purchase price. This was never contractually agreed in writing, but was a figure arrived at based on the valuation of the Property at that time. The understanding between the trustees and the Defendant was that the purchase when it occurred would be based on a RICS established market value.

xxiii. Acting in reliance on the above, the Defendant obtained funds to assist in the purchase of the Property and engaged solicitors to commence the conveyancing process.

xxiv. However, there were delays in the conveyancing owing to, inter alia, defects in title including a boundary dispute and a disagreement as to the assignment of an insurance claim following damage to the Property.

xxv. In 2018, while these difficulties were being dealt with the Defendant temporarily invested the funds she had obtained to purchase the Property in a different property in Ireland (the ‘Ireland Property’). The Defendant understood from the trustees at that time that she would receive money at the termination of the trusts of which she was a beneficiary which would allow her to purchase the Property or she would be distributed it out of the Trust outright. In the alternative, she would sell the Ireland Property and use those funds.

xxvi. As a result, the Defendant deferred the purchase until these matters could be resolved but continued to make the expenditures as described above [1(c)(xviii-xix)] in reliance on the understanding that the purchase would eventually be made or she would otherwise be conveyed the Property.

xxvii. As a result of the above difficulties new RICS valuations were obtained, and the Property has been revealed to be worth in all likelihood less than previously thought, i.e. less than £2m.

xxviii. The Defendant has subsequently sold the Ireland Property in order to release the funds required for the purchase of the Property, in reasonable reliance on the assurances offered by the Claimant and predecessor trustees including but not limited to the Option.

xxix. It is only recently, being approximately the prior 18 months, that the trustee has stated that there was a possibility of them attempting to sell the Property to a third party as opposed

to conveying it to the Defendant and the present dispute has arisen.

2. The first clause of the first sentence is denied. The second clause, viz, that the Defendant is in occupation of the land is admitted. The third clause, that she occupies the land pursuant to a terminated licence is denied. It is further averred that:

a. The Defendant's right to occupy the Property is not limited to any rights she may have under the Licence Document.

b. The Defendant has enjoyed exclusive possession since her initial occupation of the Property and pays rent and outgoings for the Property and thus enjoys a tenancy which is to last until the Claimant conveys the Property to the Defendant absolutely.

c. Further or alternatively, the Defendant enjoys a licence until the Property is conveyed to her absolutely.

d. Further or alternatively, the Claimant is estopped from terminating any tenancy or licence the Defendant enjoys because:

i. The trustees have made express representations/representations by conduct which the Claimant as present trustee has made and adopted that the Defendant would be allowed to occupy the Property until such time as it was conveyed to the Defendant absolutely.

ii. Further or alternatively, the trustees and Claimant have acquiesced in the Defendant's understanding of the same.

iii. The Defendant reasonably relied to her detriment on the above representations, conduct and/or acquiescence.”

The emphasis on the enjoyment of a tenancy or a licence which cannot be ended without her consent will be noted.

26. The appellant’s Reply at the outset referred to the earlier Jersey proceedings, and the matters dealt with by them, including the possible need to take proceedings to recover possession of the Farm. It stated that “against that background” the Reply was filed and served

“without prejudice to the [appellant's] right to apply to strike out the Defence in these proceedings, whether on the basis of abuse of process or otherwise.”

27. The Reply went on to take issue in detail with a number of factual allegations made in the Defence. In particular, it was denied that there was any agreement that the respondent could exclusively occupy the Farm until it was conveyed to her. It also set out some aspects of the Jersey proceedings and the decisions of the Jersey court. It is not necessary at this stage to say more than this.

28. Neither the witness statement nor the defence was in existence at the time of the hearing in Jersey in November 2023. But at an earlier stage in these proceedings there was a question as to whether either of them was before the Jersey court at the further hearing in July 2024. The judgment of the Royal Court in September 2024 does not refer to either of them. It does mention “further affidavit evidence” filed by the respondent after the January 2024 judgment, but, in light of the redactions made to the affidavits, it is not possible to say which of her affidavits is being referred to. There is certainly no mention in that judgment of the formal defence or of the respondent’s witness statement. As set out below, HHJ Glen drew an inference about this, to which I shall have to return, and which the parties now agree was incorrect. It appears now to be common ground between the parties that *the witness statement* was formally before the court, but not *the defence*.

The applications before the judge

The appellant’s application to strike out the defence

29. Before the appellant could make the strike-out application foreshadowed by the opening statement in the Reply, the appellant needed to obtain permission from the Jersey Royal Court to release certain relevant documents for use in the application. So there was a delay. But, on 31 October 2025, the appellant filed and served an application notice in Form N244 seeking:

“(i) an order striking out the Defence under CPR r 3.4 and/or the Court’s inherent jurisdiction on the basis that the Defence is an abuse of the Court’s process and (ii) if and so far as necessary, summary judgment against [the respondent] on sub-para.6e of the Defence on the basis that it has no real prospect of success or an order striking out sub-para.6e under r 3.4 on the basis that it discloses no reasonable ground of defence”,

30. Paragraph 6e of the Defence reads as follows:

“The fifth subsentence [of the fifth paragraph of the Particulars of Claim] is denied and it is further averred that even if (which is denied) the Claimant is able to terminate the alleged licence by way of the 1 February notice, the notice did not offer the Defendant reasonable time to vacate. The Defendant further puts the Claimant to proof generally as to the validity of the notices to terminate.”

31. The application was supported by the witness statement of Peter Bourke, the appellant’s solicitor, dated 31 October 2025. Exhibited to that statement was a letter dated 28 October 2025 written to Mr Bourke by Collas Crill, the firm of Jersey advocates retained by the trustees in the Jersey proceedings. Part of that letter reads as follows:

“We understand that Julia has chosen to defend the Eviction Proceedings and has sought to argue that she has a right not to be evicted from Stapleford Farm either because she has a tenancy or licence which is to last until the property is conveyed to her or in the alternative, because the Trustees are estopped from terminating any tenancy or licence. Such arguments were

not raised in the Jersey proceedings; indeed, throughout the proceedings before the Royal Court in Jersey, Julia maintained the position that she would purchase Stapleford Farm.

In our view, had Julia raised a potential right not to be removed and/or evicted from Stapleford Farm in the Jersey Proceedings, the Royal Court would have granted an appropriate stay in order to allow Julia a period of time within which to bring such a claim before the English Courts. In our view, if Julia failed to take appropriate action within the relevant period absent good and proper reason, the Royal Court would have resumed its consideration of the Distribution Plan. By extension, if Julia did bring an estoppel (or similar) claim within the relevant period, we consider it likely that the Royal Court would have granted a further stay to allow the issue to be determined by the English Courts.”

32. The respondent made a witness statement (her third) in opposition, dated 12 February 2026. It is not clear why this witness statement took so long to prepare. No documents are exhibited to it. But in part it reads as follows;

“12. ... At paragraph 2 of the Royal Court Order dated 18 January 2024, it was directed as follows:

‘blessed the decision of the Trustees to allow Julia to have until the end of February 2024 to provide proof of funds for the purchase of Stapleford Farm, failing which eviction proceedings should be taken’.

13. I am advised (now and at the time) that all the Royal Court did on 18 January 2024 was to bless the decision of the Trustee to issue proceedings for possession of the Property in England. There was no determination of the merits of such an application, as the blessing is based on ‘reasonableness’ of the Trustees to commence such proceedings. It is for the County Court in Southampton to decide on the merits of the application under English law.

[...]

16. I explain below my understanding of the Jersey Proceedings, as the Claimant has tried to do in its Witness Statement supporting its application. However, from the outset I am advised that given that Jersey is a separate legal jurisdiction, in order to understand the Jersey Proceedings, the Court will require an Expert’s Opinion, which can only be used and relied on with the Court’s permission. There has been no application by either party to adduce Expert’s Opinion.

17. Further, as I understand it, the Claimant is basing its arguments on abuse of process by reference to the Jersey Proceedings, selecting redacted Skeleton Arguments provided by my Jersey Advocate, cherry-picking quotes from the Affidavits that I have filed in the Jersey Proceedings and relying on a letter from the Trustees’ Jersey Advocates on how the Royal Court would deal with aspects of English law. The Court has not had the benefit of reviewing the full set of documents and arguments put forwards

by all parties, and nor has it had the benefit of an Expert's Opinion on Jersey law, thus cannot rely on what is said by the Claimant ...

[...]

24. The relief being sought by the Trustees in the Jersey Proceedings is very straightforward:

24.1 it is asking the Royal Court for its blessing to exercise the Trustees powers of appointment under the No 3 Trust (the Property is an asset of the No 3 Trust);

24.2 it is asking for the Royal Court's blessing to sell the Property on the open market, and ancillary to this, the Trustees subsequently, and outside of the relief sought in the Amended Representation sought to commence eviction proceedings against me;

24.3 it is asking, if necessary, for the Royal Court's blessing to commence eviction proceedings in England, to evict me from the Property in the event that I have not produced evidence of my ability to purchase the Property by 30 November 2023.

25. The relief sought is to do the exercise of power to sell the Property and to commence eviction proceedings, and there is no other way that the relief sought can be interpreted, which is what the Claimant is now suggesting i.e. to ask the Royal Court to take jurisdiction over the eviction proceedings. I was never asked to defend or raise counterclaims with regards to eviction, which was always considered, including by the Trustees, to be a matter for the English Courts."

33. Mr Bourke made a further witness statement (his second), replying to that of the respondent, dated 16 February 2026. For present purposes, I do not think it is necessary to set out any extracts from this.

The respondent's application to amend the defence

34. In the meantime, on 27 January 2026, the respondent issued an application notice in Form N244 seeking permission to amend her defence and to include a counterclaim, with associated orders for costs and directions for the progression of the proceedings. This was supported by a witness statement (her second) from the respondent, also dated 27 January 2026. Mr Bourke made a witness statement (his third) in opposition, dated 17 February 2026. It is not necessary for present purposes to summarise the amendments or the counterclaim.

HHJ Glen's judgment

35. HHJ Glen heard the applications on Friday 20 February 2026. He gave judgment orally on Monday 23 February 2026, of which I have read the transcript. By the court's order, sealed on 27 February 2026, (i) the appellant's application to strike out or for summary judgment was dismissed, and (ii) the respondent was permitted to amend her defence and include her counterclaim, subject to (iii)

four points, which were not permitted. Two of these four points related to the defence and two to the counterclaim. The judge then went on to give further directions for the prosecution of the claim. However, the progress of the litigation was interrupted by the present appeal against HHJ Glen's order. So that the grounds of appeal are better understood, here I set out some details of the judgment below.

36. HHJ Glen's judgment as subsequently transcribed runs to some 39 paragraphs, spread over nine pages of single-spaced A4. It is detailed, but I can summarise it in this way. The first five paragraphs deal with introductory and background matters. The next six (6-11) deal with the Jersey proceedings. It is important that I set out paragraph 10, as follows:

"10. That, unfortunately, was not the end of the story as a final blessing was not forthcoming. There was therefore a further hearing on 16 July 2024. I note that this was just under four months after the issue of these proceedings, and importantly, also after the service of the defence in this claim. There has been no direct evidence about whether or not that defence was before the Jersey Royal Court, but as part of those proceedings, the Defendant swore an affidavit which said this:

'Eviction proceedings in England have commenced in respect of Stapleford Farm. The outcome of the eviction proceedings needs to be considered by the court before it blesses any matters in respect of Stapleford Farm. Although the proceedings are still at pleading stage I have made clear in my response to the claim that I am looking at a defence on the grounds of misrepresentation [there is at this point reference to an exhibit JTM4, 167 to 192]¹ and this will mean that I am claiming that due to the money I have invested and the other detriment that I have suffered, that I have an equitable proprietary claim against Stapleford Farm, which will require a determination in quantum.'

The affidavit goes on to argue that the final blessing should not be given and the matter should be adjourned until the final figure has crystallised. I infer, in the absence of any evidence either one way or the other, that the exhibit was in fact the defence."

37. A point arises on this paragraph of the judgment, with which I should deal straight away. To judge from the numbering, the exhibit JTM4 appears to have been 26 pages long. As I have already said, the defence, including backsheet, was 12 pages long, and the respondent's witness statement, again including backsheet, was 13 pages long. The defence was dated 1 July 2024, and the witness statement was dated 1 May 2024. The hearing took place on 16 July 2024. The parties are agreed that HHJ Glen was in error in inferring that the Jersey court had the defence before it. The exhibit JTM4 was checked after the judgment had been given, and was found to contain the witness statement, but

¹ The words in square brackets appear to have been inserted by HHJ Glen.

not the defence. However, the parties are not agreed as to the significance of the error, and I shall have to come back to this.

38. The next three paragraphs of the judgment (12-14) summarise the defence and the applications to amend the defence and to strike it out. Then six paragraphs (15-20) summarise the relevant law as set out in various cases. On the law, I should add that, as to *Henderson v Henderson* abuse, the judge referred to *Johnson v Gore Wood & Co* [2002] 2 AC 1, and *State Bank of India v Mallya* [2025] EWHC 858 (Ch). I observe in passing that the judge does not refer to *Aldi Stores Ltd v WSP Group plc* [2008] 1 WLR 748, CA, although it was referred to in the skeleton arguments before him, and also is recorded in the transcript of the argument at the hearing. As to collateral attack abuse, the judge referred to *Harrington and Charles Trading Company Ltd v Mehta* [2023] EWHC 2420 (Ch). In relation to estoppel by conduct, the judge referred to *LA Micro Group UK Ltd v LA Micro Group Inc* [2021] EWCA Civ 1429, which itself referred to the so-called “Ginsberg” principles in a case from New Hampshire in the United States. Finally, on summary judgment, the judge referred to CPR Part 24, and *Anan Kasei Co Ltd v Neo Chemicals & Oxides (Europe) Ltd* [2021] EWHC 1035 (Ch).
39. The next 11 paragraphs (21-31) summarise the parties’ submissions, six for the claimant (appellant) and five for the defendant (respondent). The judge then discusses the issues over four paragraphs (32-35), before setting out his conclusions over another four (36-39). Two of these (36-37) deal with abuse of process and estoppel by conduct. One (38) deals with summary judgment, and the last (39) deals with the amendment application.
40. I can summarise the judge’s discussion of the issues in paragraphs 32-35 in this way. First, he directed himself that the heart of *Henderson* abuse was that a party should bring its whole case forward in one set of proceedings, so that they could be determined in those proceedings, and not saved up to be determined later. But the Jersey court was never in a position to resolve issues of the kind raised in the defence. And the claimant could not definitively show what would have happened, or how the Jersey court would have regarded the defendant’s contentions, if they had been put forward to it at an earlier stage. The Jersey court was well aware of the defendant’s position in November 2023, and certainly by July 2024. It knew that the defendant would not automatically be evicted as a result of the notice to quit. The Jersey court gave its final blessing to the equalisation and distribution plan, which suggested that it needed only to be satisfied that the trustees did not reasonably believe that they would be able to recover possession.
41. However, even if the Jersey court would have acted as the claimant’s Jersey lawyers suggested, the only thing that would have changed would have been the timing. There would have been interim blessing hearings in Jersey, litigation in England, and then further blessing hearings in relation to the outstanding issues (the French write-off and costs). The only thing that has changed is that the English litigation has come after rather than before. The judge recognised the force of the argument that the defendant’s position had crystallised late. He also recognised that there was an element of the defendant “stringing things along”.

But it was her home of 16 years. Although she was not the only person with an interest in the proceeds of the trusts, there was nothing in principle to prevent an interim distribution with a suitable reserve in relation to the Farm.

42. For clarity, I think I should set out the last four paragraphs of the judgment in full. The judge said this:

“36. Taking all those matters into account, I am not persuaded that this is a case where it would be right to strike out the defence as being an abuse of process on a *Henderson v Henderson* basis. Similarly, this is clearly not a collateral attack. It does not strike at the central decision of the Jersey Royal Court to approve the Trustees’ plan as not being unreasonable. As I say, the Jersey Royal Court was not itself stipulating a plan.

37. Finally, in my judgment, there is no viable estoppel here. It cannot be said that the final blessing was obtained because of the Defendant’s stance in the Jersey Royal Court proceedings, or that somehow the Defendant misled the Jersey Royal Court into taking that view. In fact the position is quite the opposite; the Jersey Royal Court appears to have given its final blessing despite the Defendant’s position. There is no unfair detriment or advantage in raising the issues identified in the defence, other than of course the necessarily attendant costs of litigation. Using the same broad based merits approach that I have already identified, it would not in my judgment be appropriate to find the Defendant estopped from raising these matters.

38. Lastly, we come to the question of summary judgment. This is precisely the kind of issue which Fancourt J identified in *Anan*. It is not the kind of issue in which it is appropriate to give a summary judgment, however weak the Defendant’s case appears to be. Accordingly, the application to strike out and for summary judgment will be dismissed.

39. So far as the application to amend is concerned, the primary objection, which is that it is in itself is abuse of process, falls away. We are left with the individual objections so helpfully identified by Mr Wells in his skeleton argument. As far as the contested ones are concerned, I have no difficulty with the second of those. This seeks to establish precisely what detriment the Defendant has incurred as part and parcel of her estoppel/constructive trust claims. She must plainly be entitled to raise that. However, I am with Mr Wells and against Mr Stewart-Wallace as far as the other two matters are concerned. The proposed declaration as to depreciation is entirely speculative and it is a matter which the Court can resolve as part of doing broad justice to satisfy any equity that it decides the Defendant has established. What I will call the Page 480 counterclaim quite plainly relates to issues which fall solely within the jurisdiction of the Jersey courts. This court has no jurisdiction over the trusts and the way in which manage and distribute the trust monies. Those two proposed amendments will not be permitted.”

Grounds of appeal

43. As I have said, the appellant filed an appellant's notice in relation to the judge's order on 13 March 2026, together with grounds of appeal. There were ten such grounds in all. And, as I have also said, Michael Green J on 23 March 2026 gave permission to appeal, and on all ten grounds put forward in the appellant's notice. Six of them related to abuse under the well-known principle in *Henderson v Henderson* (1843) 3 Hare 100. Two more related to "collateral attack" abuse of process. One related to summary judgment, and one to the amendment application. (There is no appeal against the judge's decision on estoppel by conduct.) In my own summary, they are as follows:
- (1) the judge misinterpreted or misapplied the guidelines set out in *Aldi Stores Ltd v WSP Group plc* [2008] 1 WLR 748, CA, meaning that he gave no, or no sufficient, weight to the respondent's failure to comply with the *Aldi* guidelines in assessing whether or not the Defence gave rise to an abuse of process;
 - (2) the judge drew an erroneous inference of fact (that the respondent's defence in these proceedings had been before the Jersey court in July 2024) and relied on it, concluding that the Jersey court was well aware of the respondent's position in these proceedings;
 - (3) in any event the judge was not entitled to take that matter into account in assessing whether there was an abuse of process, as the *Aldi* guidelines required the respondent to raise the matter long before July 2024;
 - (4) the judge was wrong to conclude that, if the respondent had raised these matters at the appropriate time, it would have made no difference except to timings of the English and Jersey hearings; he did not take into account the potential saving in time and money;
 - (5) the judge was wrong to conclude that, if the respondent were able to continue with her defence, there would be nothing to stop the trustees making interim distributions to other beneficiaries, as the Jersey court had confirmed that the ongoing delay in realising the Farm blocked or delayed the making of such distributions;
 - (6) the judge was wrong to conclude that the defence did not give rise to *Henderson v Henderson* abuse and to fail to strike it out;
 - (7) the judge applied the wrong test for collateral attack abuse (whether the defence struck at the central decision of the earlier court) instead of the correct one (the defence invited the court to reach a decision inconsistent with the earlier decision);
 - (8) the judge was wrong in failing to conclude that the defence sought a decision inconsistent with the earlier Jersey decision;
 - (9) the judge was wrong to conclude that the issue raised by paragraph 6e of the defence was one that would have no other consequence than to reduce the issues for trial by one, whereas if the remainder had been struck out as an

abuse it would have been the only outstanding issue and therefore could be the subject of a summary judgment application;

- (10) the judge was wrong not to conclude that the proposed Amended Defence and Counterclaim would also give rise to *Henderson v Henderson* and/or collateral attack abuse, and should have been refused permission.

Additional grounds for upholding decision

44. In her respondent's notice, the respondent sets out five additional grounds for upholding the judgment of HHJ Glen. One relates to the counterfactual enquiry if the respondent had raised or further raised her defence with the Jersey court. Three relate to the *Aldi* Guidelines. Lastly, one relates to the question what the Jersey court knew of the respondent's defence. They are quite short. Set out in full, they are as follows:

“1. The Claimant did not/cannot show what the Jersey Court is likely to have done if the Defendant had taken further steps to further raise her defence or counterclaim with the Jersey Royal Court.

2. The Aldi Guidelines are not applicable at all or alternatively are not mandatory with respect to the Jersey Article 51 procedure.

3. The Defendant was not in breach of the Aldi guidelines.

4. If the Defendant was in breach of the Aldi guidelines, the Defendant's Amended Defence and Counterclaim are nonetheless not an abuse of process and specifically the Claimant has failed to demonstrate vexation, oppression and harassment.

5. The witness statement exhibited to the Defendant's fourth affidavit (as opposed to the Defendant's Defence) would have been sufficient for the Jersey Royal Court to be aware of the Defendant's defence and then-intimated counterclaim.”

The hearing of the appeal

45. The appeal was heard by me sitting in Bristol (as the appeal centre for the Western Circuit) on 11 May 2026, when Nathan Wells of counsel appeared for the appellant and Adam Stewart-Wallace of counsel appeared for the respondent. I record my thanks to both of them for their detailed and interesting arguments. At the outset of the hearing a point was raised as to whether I should permit argument on what was said to be a new point. This was whether the so-called *Aldi* Guidelines (explained below) applied at all to this case. I gave an *ex tempore* judgment permitting the new point to be taken, and it was argued before me. The hearing of the appeal lasted the whole day, and at the end I reserved my judgment.

The law

Appeals generally

46. The lawyers involved in this case will know this, but for the benefit of the lay clients I set out here a few basic points about appeals in civil cases. The first point is that such an appeal is limited to a review of the decision of the court below, unless the court considers that in the circumstances of a particular appeal it would be in the interests of justice to rehear the case: see CPR rule 52.21(1), and *Audergon v La Baguette Ltd* [2002] EWCA Civ 10, [83]. No-one has suggested that it is necessary to rehear this case, and therefore this appeal is a review.
47. A second point is that rule 52.21(3) provides that the appeal court will allow the appeal where the decision was (a) wrong, or (b) unjust, because of *serious* procedural or other irregularity in the proceedings below. But the appeal court will overturn a judge's findings of *fact* or *evaluative judgment* only if it is satisfied that the judge was plainly wrong: see *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA 5, [114], and *Volpi v Volpi* [2022] 4 WLR 48, [2].
48. Thirdly, the court below must give reasons for its decisions: *Bassano v Battista* [2007] EWCA Civ 370. But on an appeal such reasons are to be read on the assumption that the judge knew how to perform the judicial functions and the matters which had to be taken into account: *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372. This is particularly the case when, as here, a judgment is given in effect *ex tempore*, on the next working day. Moreover, the judge at first instance has no duty, in giving reasons, to deal with every argument presented by counsel in support of his case: see *eg Eagil Trust Co Ltd v Pigggott-Brown* [1985] 3 All ER 119, 122; *English v Emery Reimbold & Strick Ltd* [2002] 1 WLR 2409, [19].
49. Fourthly, the appeal court does not easily allow a new point to be raised which was not raised below. In *Singh v Dass* [2019] EWCA Civ 360, Haddon-Cave LJ (with whom McCombe and Moylan LJ agreed) said:
- “16. First, an appellate court will be cautious about allowing a new point to be raised on appeal that was not raised before the first instance court.
17. Second, an appellate court will not, generally, permit a new point to be raised on appeal if that point is such that either (a) it would necessitate new evidence or (b), had it been run below, it would have resulted in the trial being conducted differently with regards to the evidence at the trial ...
18. Third, even where the point might be considered a 'pure point of law', the appellate court will only allow it to be raised if three criteria are satisfied: (a) the other party has had adequate time to deal with the point; (b) the other party has not acted to his detriment on the faith of the earlier omission to raise it; and (c) the other party can be adequately protected in costs ...”
50. Fifthly, the effect of an error by the court below in assessing abuse of process which vitiates its decision is to confer power on the appellate court to take the decision again. In *Stuart v Goldberg Linde* [2008] 1 WLR 823, Lloyd LJ said:

“43. ... On a question of abuse of process of this kind raised at a preliminary stage such as this, with no oral evidence, it seems to me that the appellate court is often likely to be, and in the present case is, in as good a position as the court below to assess whether the proceedings are or are not an abuse of the process.”

And Sir Anthony Clarke MR said:

“86. In these circumstances, applying the principles identified by Thomas LJ in the Aldi Stores Ltd case [2008] 1 WLR 748, it is as I see it for us to consider afresh whether this action is an abuse of process ... ”

Henderson v Henderson abuse - generally

51. In *Henderson v Henderson* (1843) 3 Hare 100, two brothers, Bethel and Jordan, carried on business in partnership in Bristol and in Newfoundland. Jordan died intestate, and the next of kin of the deceased filed a bill in equity against Bethel in the Supreme Court of Newfoundland for an account of the partnership transactions and of the dealings of Bethel with the estate since the death of Jordan. The Supreme Court decreed that sums found by the master on a reference to be due should be paid by Bethel to the next of kin. They were not paid, and the next of kin brought proceedings at law in England on the Newfoundland decree. Bethel then filed a bill in the Court of Chancery in England, stating that Jordan’s estate was indebted to him on other matters, and seeking an order for the administration of Jordan’s estate and an injunction to restrain the next of kin from proceeding with their English action against him. The next of kin demurred to the bill for want of equity. The court agreed and granted the demurrer.

52. Wigram V-C said (at 114):

“In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

53. This statement of the law has been applied in many cases. But I can jump straight to the decision of the House of Lords in *Johnson v Gore Wood & Co* [2002] 2 AC 1, and to the speech of Lord Bingham (with whom the majority of their Lordships expressly agreed on this point). In that case, Lord Bingham said (at 31):

“*Henderson v. Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in early [sic] proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.”

54. In *Dexter v Vlieland-Boddy* [2003] EWCA Civ 14, Clarke LJ (as he then was, with whom Scott Baker LJ agreed) summarised the principles to be derived from the authorities, including *Johnson v Gore-Wood* as follows:

“49. ...

- i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process.
- ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C.
- iii) The burden of establishing abuse of process is on B or C or as the case may be.
- iv) It is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive.
- v) The question in every case is whether, applying a broad merits based approach, A's conduct is in all the circumstances an abuse of process.

vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C.

50. Proposition ii) above seems to me to be of importance because it is one thing to say that A should bring all his claims against B in one action, whereas it is quite another thing to say that he should bring all his claims against B and C (let alone against B, C, D, E, F and G) in one action. There may be many entirely legitimate reasons for a claimant deciding to bring an action against B first and, only later (and if necessary) against others.

51. Those reasons include, for example, the cost of proceeding against more than one defendant, especially where B is apparently solvent and the case against B seems stronger than against others. More defendants mean more lawyers, more time and more expense. This is especially so in large commercial disputes. It by no means follows that either the public interest in efficiency and economy in litigation or the interests of the parties, including in particular the interests of C, D and E, is or are best served by one action against them all.

52. It seems to me that the courts should be astute to ensure that it is only in a case where C can establish oppression or an abuse of process that a later action against C should be struck out. I could not help wondering whether the defendants in this case would have given their lawyers the same instructions on the question whether they should have been sued in the first action if they had been asked before that action began as they have given now that a later action has been begun.

53. It is clear from the speeches of both Lord Bingham and Lord Millett that all depends upon the circumstances of the particular case and that the court should adopt a broad merits based approach, but it is likely that the most important question in any case will be whether C, D, E or any other new defendant in a later action can persuade the court that the action against him is oppressive. It seems to me to be likely to be a rare case in which he will succeed in doing so.”

55. In the subsequent case of *Aldi Stores Ltd v WSP Group plc* [2008] 1 WLR 748, Aldi agreed to take a lease of a building to be constructed by the landlord. The building once constructed suffered from settlement damage, and Aldi sued the builder. The builder had retained specialist consultancies (WSP and Aspinwall) for engineering and environmental services, and joined them in Part 20 proceedings. Aldi did not sue them directly. Aldi obtained judgment against the builder, by now in administration. Aldi tried to recover from the builder’s insurers, but ultimately failed to obtain any substantive relief. Aldi therefore issued its own proceedings against the specialist consultancies. They applied to strike out the claim against them as an abuse of the process. At first instance, Jackson J allowed the application, and struck out the claim. The Court of Appeal, however, allowed Aldi’s appeal.

56. Thomas LJ (as he then was, with whom Longmore and Wall LJJs agreed) cited the passage set out above from Lord Bingham in *Johnson*, and that from Clarke LJ in *Dexter*, and said this:

“16. In considering the approach to be taken by this court to the decision of the judge, it was rightly accepted by Aspinwall that the decision to be made is not the exercise of a discretion; WSP were wrong in contending otherwise. It was a decision involving the assessment of a large number of factors to which there can, in such a case, only be one correct answer to whether there is or is not an abuse of process. Nonetheless an appellate court will be reluctant to interfere with the decision of the judge where the decision rests upon balancing such a number of factors ... The types of case where a judge has to balance factors are very varied and the judgments of the courts as to the tests to be applied are expressed in different terms. However, it is sufficient for the purposes of this appeal to state that an appellate court will be reluctant to interfere with the decision of the judge in the judgment he reaches on abuse of process by the balance of the factors; it will generally only interfere where the judge has taken into account immaterial factors, omitted to take account of material factors, erred in principle or come to a conclusion that was impermissible or not open to him ...

[...]

27. In circumstances such as these where Aldi had not brought a claim against WSP and Aspinwall and there are good reasons why Aldi acted as it did, I have come to the conclusion, weighing all the factors I have set out, that bringing this action was not a misuse or abuse of the process of the court. The burden was on WSP and Aspinwall to prove that it was and they failed to do so.

[...]

29. I also wish to add a word as to the approach that should be adopted if a similar problem arises in the future. In circumstances such as those that arose in this case, the proper course is to raise the issue with the court. Aldi did write to the court, as I have set out at paragraph 2.xiii), but not in terms that made it clear what the court was being invited to do. WSP and Aspinwall knew of Aldi's position and were before the court on numerous occasions; they did nothing to raise it.

30. Parties are sometimes faced with the issue of wishing to pursue other proceedings whilst reserving a right in existing proceedings. Often, no problem arises; in this case, Aldi, WSP and Aspinwall each in truth knew at one time or another between August 2003 and the settlement of the original action in January 2004 that there was a potential problem, but it was never raised with the court. I have already expressed the view that it should have been. The court would, at the very least, have been able to express its view as to the proper use of its resources and on the efficient and economical conduct of the litigation. It may have seen if a way could have

been found to determine the issues applicable to Aldi in a manner proportionate to the size of Aldi's claim and without the very large expenditure that would have been necessary if Aldi had to participate in the trial of the actions. It may be that the court would have said that it was for Aldi to elect whether it wished to pursue its claim in the proceedings, but if it did not, that would be the end of the matter. It might have enquired whether the action against excess underwriters could have been expedited. Whatever might have happened in this case is a matter of speculation.

31. However, for the future, if a similar issue arises in complex commercial multi-party litigation, it must be referred to the court seized of the proceedings. It is plainly not only in the interest of the parties, but also in the public interest and in the interest of the efficient use of court resources that this is done. There can be no excuse for failure to do so in the future."

Thomas LJ's advice set out for the future, in paragraphs 29-31, has since become known (and referred to in later cases) as "the *Aldi* guidelines". I draw attention to his use of the phrase "complex commercial multi-party litigation" in the first two lines of paragraph 31, whilst noting that it was a perfectly apt description of the litigation before the court in that case.

57. In *Stuart v Goldberg Linde* [2008] 1 WLR 823, the Court of Appeal discussed the *Aldi* Guidelines. Sir Anthony Clarke MR (as he then was, with whom Sedley LJ on this point in substance agreed) said this:

"96. For my part, I do not think that parties should keep future claims secret merely because a second claim might involve other issues. The proper course is for parties to put their cards on the table so that no one is taken by surprise and the appropriate course in case management terms can be considered by the judge. In particular parties should not keep quiet in the hope of improving their position in respect of a claim arising out of similar facts or evidence in the future. Nor should they do so simply because a second claim may involve other complex issues. On the contrary they should come clean so that the court can decide whether one or more trials is required and when. The time for such a decision to be taken is before there is a trial of any of the issues. In this way the underlying approach of the CPR, namely that of co-operation between the parties, robust case management and disposing of cases, including particular issues, justly can be forwarded and not frustrated.

97. While these considerations have been highlighted in *Aldi*, they have been relevant considerations at least since the CPR came into force in 1999 ..."

It will be seen that Sir Anthony Clarke MR does not refer (as Thomas LJ did) to "complex commercial multi-party litigation", but instead to "the underlying approach of the CPR" and "relevant considerations at least since the CPR came into force".

58. In *Gladman Commercial Properties v Fisher Hargreaves Proctor* [2013] EWCA Civ 1466, [2014] PNLR 11, the *Aldi* Guidelines were discussed again. Briggs LJ (as he then was, with whom Longmore and Ryder LJ agreed) said:

“63. ... Thomas LJ [at [24]] begins by recognising the public interest in the avoidance of multiplicity and achieving economy and efficiency in litigation. He qualified this only by his observation that the ‘mere fact’ that a second action might require a trial could not on its own make it impermissible and that a ‘properly brought’ action could not be denied a trial on the ground of limited state resources, or because it might have been more efficiently brought.

64. By contrast, his observations about avoiding these difficulties by a prompt application for pro-active case management were directed mainly at the future rather than the past. He plainly regarded the requirement to refer a contemplated future claim for case management directions in the earlier claim as mandatory, and as serving the public interest in the efficient use of court resources. He described a failure to do so as inexcusable ...

65. As has been repeatedly stated, the conduct of civil proceedings is a process in which the stakeholders include not merely the parties, but also other litigants waiting for their cases to be tried, and the public at large, who have an interest in the efficient and economic conduct of litigation. I consider that Arnold J was correct to treat a failure by the Appellant to follow guidelines laid down as mandatory future conduct in two successive reported decisions of this court as relevant matters pointing to a conclusion that the Second Claim constituted an abuse of the process of civil litigation ...”

Once again, Briggs LJ does not refer to “complex commercial multi-party litigation”, but instead to “the conduct of civil proceedings” and “abuse of the process of civil litigation”. It is perfectly general.

59. In *Clutterbuck v Cleghorn* [2017] EWCA Civ 137, the claimants had entered into a series of property development joint ventures with Mr Elliot Nichol, a Scottish businessman now deceased, whose estate was being administered by the defendant Mr Cleghorn as judicial factor under Scottish law. They claimed that Mr Nichol had breached the joint venture agreements. The claimants had earlier been involved in litigation arising out of some of these joint ventures with a lady called Sarah Al-Amoudi, whom they claimed was a party to them. This litigation was tried by Asplin J and failed. Mr Nichol’s factor now claimed that the claimants had breached the *Aldi* Guidelines, and that the present proceedings were an abuse of process. One question which arose was whether the *Aldi* Guidelines were engaged at all.
60. Kitchen LJ (as he then was, with whom Floyd LJ agreed) said:

“74. The claimants contend first, that the Al Amoudi proceedings and the present proceedings do not constitute complex multi-party litigation of the kind that Thomas LJ had in mind in the *Aldi Stores*; and secondly, that

the *Aldi Stores* guidelines were not applicable in any event given the minimal factual overlap between the proceedings.

75. In assessing this submission it is important to have in mind the relevant passage of the judgment of Thomas LJ in *Aldi Stores*. He said this at [29]-[30]:

[In fact, the judgment sets out [30]-[31], which were set out earlier.]

76. It is clear that Thomas LJ was concerned to ensure that, in future, a party to commercial litigation who wishes to pursue a claim at a later date against the same or other parties in relation to the same commercial matter should put his cards on the table in the first claim so as to give the court an opportunity to consider whether and, if so, how, by appropriate case management directions, the resources of the court may [be] utilised in the most cost effective and efficient way.”

61. Kitchen LJ then referred to passages from *Gladman Commercial Properties v Fisher Hargreaves Proctor*, and from *Stuart v Goldberg Linde*, both of which have been set out above, and continued:

“81. In light of these statements of principle the deputy judge was, in my view, right to say that the *Aldi Stores* guidelines are mandatory and that an inexcusable failure to comply with them is a relevant factor to be taken into account in assessing whether, having regard to the relevant private and public rights and in light of all of the facts of the case, a party is abusing the process of the court by seeking to raise before the court an issue that it could have raised in prior proceedings.

82. Further, it seems to me to be plain that the *Aldi Stores* guidelines were and are indeed applicable to the proceedings with which this court is now concerned. They relate to complex dealings by the claimants with various parties over a number of years. All those dealings arose in relation to the claimants' property development business and are interrelated to some degree. In my judgment it would have made obvious good sense for the claims arising from them to be case managed by Asplin J or another judge in the course of the Al Amoudi proceedings.”

62. In *Otkritie Capital International Ltd v Threadneedle Asset Management Ltd* [2017] EWCA Civ 274, Arden LJ (as she then was, with whom Henderson LJ and Sir Christopher Clarke agreed) referred expressly at paragraph 6 to the *Aldi* Guidelines in paragraphs 30 and 31 of Thomas LJ's judgment. Later in her judgment, she said this:

“47. In my judgment, when Thomas LJ held at the end of the passage set out in paragraph 6 above that there could be no excuse, he meant that there was no exception. It would not be open afterwards to a party to claim that it was not bound to seek management directions about a proposal not to join a party against which it might subsequently allege liability arising out of substantially the same facts. This appears to be the way in which this phrase has been interpreted in the four decisions of this Court summarised above.

48. If there is a view among commercial practitioners that the *Aldi* guidelines are subject to exceptions or optional, I would remind them that (following this decision) there will be at least five decisions of this Court when this Court has been asked to strike out proceedings because the *Aldi* guidelines have not been followed. Those who do not observe the practice cannot hereafter complain that they thought that it was a practice to which there were exceptions. The fact that the *Aldi* guidelines have not been translated into a rule of procedure in the CPR or been made the subject of a Practice Direction does not matter.

49. As to Mr Malek's submission that, once the judge found that Otkritie had acted in breach of the *Aldi* guidelines in Action 1, Action 2 was an abuse of process and should be struck out, in my judgment, that approach is clearly not consistent with *Johnson v Gore Wood* and its adherence to a broad merits-based assessment of whether a second action was an abuse of the process of the court. In my judgment, it is clear that this Court in *Aldi* did not intend to depart from the decision in *Johnson v Gore Wood*. So there is no hard-edged rule of law that a claim, which a party could have raised in one set of proceedings, will be struck out if that party seeks to bring it in another set of proceedings. The *Aldi* guidelines are a facet of the principle of a "broad merits-based judgment" as to whether this is the just outcome, which was established in *Johnson v Gore Wood*.

[...]

55. ... from the passage set out in paragraph 6 of this judgment, it appears that one of the matters which this Court contemplated in *Aldi* was that through discussion the judge would be able to make some helpful proposal as to how the trial might proceed in order to reduce the complexity of a separate trial. The solution could be quite case-specific and creative. The fundamental point in *Aldi* was clearly that to allow a separate trial of a claim arising out of the same facts is in general undesirable and a potential waste of the finite resources of the justice system. It may also cause undesirable delay. Hence this Court in *Aldi* attached such considerable importance to the application for management directions.”

63. Once more, the judge does not use the phrase “complex commercial multi-party litigation”. Instead, Arden LJ says the *Aldi* Guidelines are a facet of the principle of the broad merits-based judgment established in *Johnson v Gore Wood*. But this is not a principle confined to complex commercial multi-party litigation.
64. Next, in *Outotec (USA) Inc v MW High Tech Projects UK Ltd* [2024] 4 WLR 85, CA, Coulson LJ (with whom Arnold and Stuart-Smith LJ agreed) reviewed all the cases, and said:

“53. The applicable principles of law relating to an application to strike out for abuse of process can, therefore, be summarised as follows:

1 Although historically it was said that, absent special circumstances, a second claim could not be brought if it could have been brought in earlier

proceedings (*Henderson v Henderson*), that is too dogmatic an approach (*Johnson v Gore Wood*).

2 Instead, what is required is "a broad merits-based judgment which takes account of the public and private interests involved and all the facts of the case, focussing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before" (*Johnson v Gore Wood*).

3 The burden rests on the defendant to establish that it is an abuse of process for them to be subjected to the second action (*Johnson v Gore Wood, Michael Wilson*). Because the focus is on abuse, it will be rare for a court to find that a subsequent action is an abuse unless it involves "unjust harassment or oppression" (Lord Clarke MR in *Dexter* and Lloyd LJ in *Stuart v Goldberg Linde*). Putting the same point another way, the courts will not lightly shut out a genuine claim unless abuse of process can clearly be made out (Lloyd LJ in *Stuart v Goldberg Linde*, and Simon LJ in *Michael Wilson*).

4 In ongoing litigation, a party who realises that he may have connected claims which are not currently pleaded must follow the *Aldi* guidelines, and at least raise with the court the existence of such new claims. A breach of those guidelines will give rise to a "high risk" that the second action will be found to be an abuse of process (*Stuart v Goldberg Linde*) and will always be a relevant factor to be taken into account in any application to strike out (*Gladman*).

5 However, a breach of the *Aldi* guidelines does not automatically mean that the second action is an abuse of process and will be struck out. The *Aldi* guidelines are simply one facet of the broad merits-based evaluation (*Otkritie*).

6 A decision as to whether a claim is an abuse of process is not a matter of discretion, but the decision will turn on an evaluation which is 'very similar' to the balancing exercise undertaken when a judge exercises his or her discretion (*Aldi, Stuart v Goldberg Linde*).

7 That evaluation must consider, not only whether there has been a misuse of the court's process, oppression or harassment (*Dexter*), but also the causative effect of the failure to follow the *Aldi* guidelines (*Otkritie*). This may involve, for example, consideration of hypothetical consequences and possible case management outcomes (*Barrow, Otkritie*).

8 The evaluation will also consider the public interest, as set out in *Johnson v Gore Wood* and *Aldi*, which is unchanging from case to case (the efficient use of court resources, the needs of other users, finality etc.), and the legitimate private interests involved, which will always vary, depending on the particular facts. This may therefore involve a consideration of the consequences of striking out or not, in a broadly similar way to the third part of the test in *Denton*.

9 This court will be reluctant to interfere in the evaluation carried out by the judge at first instance, and will only do so if the judge took account of something he or she should not have done, failed to take into account something he or she should have done, erred in principle, or reached a conclusion that was so perverse as to be "plainly wrong" (*Aldi, Stuart v Goldberg Linde*)."

65. Unlike the judges in most of the other decisions of the Court of Appeal to which I have referred, Coulson LJ does remind us that what Thomas LJ said in *Aldi* at paragraph 31 was said in reference to "complex commercial multi-party litigation" (as indeed that case was). But the summary which Coulson LJ makes from all the cases and presents to the reader does not confine itself to such litigation. Indeed point 4 of the summary refers to the need to follow the Guidelines in "ongoing litigation".

66. Finally, in *Réseau de Transport d'Électricité v Costain Ltd* [2025] EWHC 73 (Adm), Cockerill J (as she then was) considered the *Aldi* guidelines, and the decisions in *Gladman Commercial Properties v Fisher Hargreaves Proctor*, *Stuart v Goldberg Linde*, and *Outotec (USA) Inc v MW High Tech Projects UK Ltd*. She then said this:

"102. ... the *Aldi* case does not impose a requirement, but rather provides guidelines. As to the submission that those guidelines apply only in limited circumstances, that is not how the authorities have developed. *Outotec* suggests no such limitation, but does however warn against a rigid application different from the broad merits-based evaluation of whether conduct is abuse."

67. The respondent contended that the *Aldi* guidelines did not extend beyond complex commercial multi-party litigation, and pointed out that, whatever the judges in them said, all the cases which I have cited were indeed commercial cases, with degrees of complexity, and involving several parties. I do not accept this submission. Although in *Aldi* Thomas LJ prefaced his guidance for the future with the words "in complex commercial multi-party litigation", subsequent decisions have not confined it to such cases. Indeed, Cockerill J expressly remarked on this phenomenon in *Réseau de Transport d'Électricité*. Of course, in our system, judges give judgment on particular cases. What they say has to be understood in the context of each such case. And I can see that, the greater the complexity, and the more parties that are involved, the greater the need to enable the court to take stock of the situation. But that does not mean that the need does not exist at all in cases with less complexity or fewer parties.

68. For my part, it is hard to see why the *Aldi* advice should be confined to complex commercial multi-party litigation alone, when the problem can potentially arise in any kind of litigation. Indeed, if it *were* so confined, there would be the additional problem of establishing where exactly the line was to be drawn: how complex is "complex", what makes a case "commercial", and how many parties are "multi"? Any kind of bright-line confinement would not fit well with the principle of *Johnson v Gore Wood*, that there should be "a broad, merits-based

judgment”. My conclusion is that, whatever Thomas LJ meant in *Aldi* (and he may simply have been describing the particular case that he was deciding), the law has indeed moved on, and the *Aldi* Guidelines are potentially applicable in all kinds of litigation.

69. Before leaving this part of the law, I need to mention one other point about the *Aldi* Guidelines. In *Outotec (USA) Inc v MW High Tech Projects UK Ltd*, the Court of Appeal considered how far it was necessary to establish what would have happened if, contrary to the fact, the respondent to the strike out application *had* complied with the *Aldi* Guidelines. Coulson LJ said:

“82. In a case of this kind, it is impossible to state precisely what would have happened if MW had raised the misrepresentation claims in accordance with the *Aldi* guidelines: as Thomas LJ noted at [30] of his judgment in that case, such things are ‘a matter of speculation’. The most important thing is that, if MW had done what they should have done, and raised the matter with the court, everyone would have known where they stood.

83. That said, a consideration of the hypothetical case management outcomes is not an entirely academic task, because it can serve as a comparator with what has actually happened ... ”

Henderson v Henderson abuse – Public Trustee v Cooper “blessings”

70. The respondent says that category (2) *Public Trustee v Cooper* litigation is different from the kind of litigation to which the *Aldi* Guidelines apply. The claim is one brought under CPR Part 8, rather than Part 7. There typically are no “pleadings” of the kind found in Part 7 claims, no disclosure and no cross-examination at trial. Case management will be limited, if there is any at all. The trial of a Part 8 claim is not at all like the trial of a Part 7 claim. The respondent further says that these differences are even more important in this case, because the earlier proceedings were in Jersey, whereas the possession proceedings are in England. The Jersey court could not have case-managed the possession proceedings at all.
71. There are two aspects to deal with. The first is the position of the *Aldi* Guidelines in relation to Part 8 claims generally. The second is the specific position of Part 8 claims in category (2) *Public Trustee v Cooper* litigation. As to the first aspect, I do not accept that the *Aldi* Guidelines cannot apply where the earlier litigation involved a Part 8 claim. Whether a claim is begun under Part 7 or Part 8 of the CPR, the court’s case management powers extend to adding in features of Part 7 litigation (such as pleadings, disclosure and cross-examination) to a Part 8 claim if appropriate, or even directing that the litigation be transferred completely from one procedural pathway to the other. So, whether the litigation starts under Part 7 or Part 8 cannot be determinative as to whether the *Aldi* Guidelines can apply. Nor can it matter if the earlier proceedings conclude without ever being changed from Part 8 to Part 7. What matters is whether the claimant in the subsequent proceedings *could* and *should* have raised the prospect of the later claim with the court as part of the first proceedings.

72. As to the second aspect of the matter, in a category (2) *Public Trustee v Cooper* claim, the claimant asks the court to approve the decision of the trustees (or other office-holders) to exercise a power in a particular way which they have decided to do, but which is sufficiently “momentous” for them to seek the court’s protection from action by disgruntled beneficiaries in future. The question which the court must answer is whether, if implemented, the decision would be a proper exercise of the power in question, in the circumstances explained to the court. The effect of the court’s approval has always been understood to be to prevent beneficiaries from complaining thereafter that the decision was not a proper exercise of the power. One question arising from that would be, why?

73. In *Denaxe Ltd v Cooper* [2024] Ch 65, the Court of Appeal answered that question by holding that the juridical basis underlying the *Public Trustee v Cooper* “blessings” jurisdiction was issue estoppel. Accordingly, it was necessary to join appropriate parties to the claim to supply the necessary issue and decision between the parties. Snowden LJ (with whom Asplin and Falk LJ agreed) said:

“127. In my judgment, the concept of ‘immunity’ flowing from an approval decision is most easily understood as judicial shorthand for the bar on subsequent proceedings that results from an issue estoppel ...”

How far this explanation was historically true may be open to question (see *Cator v Thynn* [2026] EWHC 209 (Ch)), but there can be no doubt that this decision represents the current English law.

74. The close relationship between issue estoppel and *Henderson v Henderson* abuse was demonstrated in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 1601, SC. In his judgment, Lord Sumption (with whom all the other Justices agreed), said:

“24. ... The principle in *Henderson v Henderson* has always been thought to be directed against the abuse of process involved in seeking to raise in subsequent litigation points which could and should have been raised before. There was nothing controversial or new about this notion when it was expressed by Lord Kilbrandon in *Yat Tung*. The point has been taken up in a large number of subsequent decisions, but for present purposes it is enough to refer to the most important of them, *Johnson v Gore-Wood & Co* [2002] 2 AC 1, in which the House of Lords considered their effect ...

25. ... Res judicata and abuse of process are juridically very different. Res judicata is a rule of substantive law, while abuse of process is a concept which informs the exercise of the court's procedural powers. In my view, they are distinct although overlapping legal principles with the common underlying purpose of limiting abusive and duplicative litigation ...”

75. Accordingly, in my judgment, *Public Trustee v Cooper* “blessing” litigation involves the determination by the court of an issue between the parties, and thus the *Aldi* Guidelines can apply just as much to such litigation as they do to any other civil litigation.

Henderson v Henderson abuse - foreign proceedings

76. A feature of the present case is that, although the present proceedings are English court proceedings, the earlier litigation between the parties took place in Jersey, which has its own independent legal system. It is difficult to see why this should make any difference for the purposes of *Henderson* abuse. The abuse of the English legal process would be the same whether the earlier court were English or foreign. Indeed, the earlier proceedings in *Henderson v Henderson* itself were not in England, but in Newfoundland. Recent authority confirms this.
77. Thus, in *Banner Universal Motion Pictures Ltd v Endemol Shine Group Ltd* [2017] EWHC 2600 (Ch), the defendant to a breach of confidence claim relied on earlier proceedings before a Swedish court to establish a cause of action estoppel barring the new claim in England. Snowden J referred to cause of action estoppel, issue estoppel, and abuse of process, and said this:

“66. It is clear that each of these three doctrines can apply following a judgment given in foreign proceedings as well as in earlier English proceedings ...

[...]

68. *Henderson v Henderson* was itself a case in which proceedings for an account had first taken place in Newfoundland and in which the claimants sought to reopen that account by raising new points in subsequent proceedings in England.”

And, in *BG Atlantic Inc v Hay Hill Investments Ltd* [2026] EWHC 226 (KB), [140], where the earlier proceedings had been before a New York court, Jonathan Moffett KC, sitting as a deputy judge, made the same point.

78. I was also referred to *State Bank of India v Mallya* [2025] EWHC 858 (Ch), where Sir Anthony Mann was considering the question of issue estoppel arising from the decision of a foreign court. He cited with approval words of Lord Wilberforce in *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853, 967:

“As a matter of principle (and we are really thrown back upon principle), whether the recognition of judgments is based upon a recognition of vested rights, or upon considerations of public interest in limiting relitigation, there seems to be no acceptable reason why the recognition of foreign judgments should not extend to the recognition of issue decisions. From the nature of things (and here it is right to recall Lord Brougham's warning) this, in the case of foreign judgments, may involve difficulties and necessitate caution. The right to ascertain the precise issue decided, by examination of the court's judgment, of the pleadings and possibly of the evidence, may well, in the case of courts whose procedure, decision-making technique, and substantive law is not the same as our own, make it difficult or even impossible to establish the identity of the issue there decided with that attempted here to be raised, or the necessity for the foreign decision. And I think that it would be right for a court in this country, when faced with a

claim of issue estoppel arising out of foreign proceedings, to receive the claim with caution in circumstances where the party against whom the estoppel is raised might not have had occasion to raise the particular issue. The fact that the court can (as I have stated) examine the pleadings, evidence and other material, seems fully consistent with its right to take a broad view of the result of the foreign decision. But with these reservations, where after careful examination there appears to have been a full contestation and a clear decision on an issue, it would in my opinion be unfortunate to exclude estoppel by issue decision from the sphere of recognition.”

79. As Lord Wilberforce said, there is an obvious need for caution when dealing with decisions of a foreign legal system, which may employ concepts and techniques very different from our own. But, if the English court has carefully examined the foreign decision and found that it provides a proper basis for the application of the English principle, then it would indeed be “unfortunate” not to allow it to be applied. That case was about issue estoppel. But I see no reason why the principle should not extend to *Henderson* abuse as well.

Collateral attack abuse

80. In *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529, HL, the plaintiffs in civil proceedings alleged that they had been assaulted by the police. The allegations which they made contradicted detailed findings in earlier criminal proceedings. The civil claim was struck out as an abuse of process. Lord Diplock (with whom all the other law lords agreed) said at 541B-C,

“The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made.”

81. It will be noted that Lord Diplock did not further explain the concept of collateral attack. *Stopford v Chief Constable of Dorset*, unreported, 6 October 1988, CA, was a case where the plaintiff brought a claim against the police for unlawful arrest after being acquitted of the offence of assaulting a police officer in the execution of his duty. Stuart-Smith LJ referred to the decision in *Hunter*, and said:

“The expression ‘collateral attack’ means that the second court -- in this case the County Court -- is invited to reach a decision which is inconsistent with the decision of the previous court.”

82. It will also be noted that in *Hunter* Lord Diplock referred to “a final decision”. In *Harrington & Charles Trading Ltd v Mehta* [2023] EWHC 2420 (Ch), worldwide freezing orders against the defendants had been obtained without notice in May 2022. In October 2022 Edwin Johnson J heard an application to discharge them, on the basis that the claimants had not established a good arguable case. In November 2022 the judge handed down judgment dismissing

the application to discharge the freezing orders. An application for permission to appeal was dismissed by Asplin LJ in August 2023. In the meantime the defendants had also issued applications to strike out the claim and also to challenge the jurisdiction of the English court. The former had been issued but not listed before the hearing in October 2022. The latter was dealt with at a hearing in December 2022, also before Edwin Johnson J, and dismissed by a judgment handed down by him in February 2023.

83. The strike out application was listed for hearing over six days (including two days' pre-reading) in July 2023. The claimants argued that the majority of the points which the defendants put forward in that application "would amount to an abuse of the process of the court and/or a collateral attack on the November judgment. They argued that the orders now sought were inconsistent with, and would serve to undermine, the court's existing decisions about the claims meeting the GAC arguability test".

84. Miles J (as he then was, sitting with Master Kaye) said:

"80. ... the Defendants also submitted that this could not be a case of collateral attack as that applies only where there had been a final decision in separate proceedings. I accept that the issue of whether there has been a collateral attack will often, indeed normally, arise in separate proceedings between different parties. But I do not accept that the principle is so limited. When Popplewell LJ said in *Koza* that the principles in *Hunter* apply to interlocutory proceedings he was, as I read him, referring to collateral attacks (he had just referred to *Hunter* as such a case). The argument in *Koza* was that the same principle could apply where there was a collateral attack on the practical consequences of an order as well as where what was sought was inconsistent with an earlier order. Popplewell LJ did not simply say that the principles of collateral attack had no possible relevance because they did not apply to interlocutory orders between the same parties; he addressed the argument on its merits. Hence in my view the *Hunter* principle can apply where there is a collateral attack on an earlier interlocutory decision in the same proceedings; the test is whether the decision being sought is inconsistent with an earlier one."

85. It will be seen that Miles J's formulation of the relevant test is whether the decision being sought is *inconsistent* with an earlier one. This is the same as the formulation of Stuart-Smith LJ in *Stopford v Chief Constable of Dorset*, referred to above. I respectfully take the same view.

Admissibility of expert evidence

86. Section 3(1) of the Civil Evidence Act 1972 relevantly provides:

"Subject to any rules of court made in pursuance of ... this Act, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence."

CPR Part 35 sets out a number of rules relating to the preparation and admissibility of expert evidence before the court.

87. However, in *Rogers v Hoyle* [2015] 1 QB 265, CA, Christopher Clarke LJ (with whom Arden and Treacy LJ agreed) said:

“62. ... Section 3 of the 1972 Act does not purport to be all embracing or to restrict or alter the position at common law. The expert with whom CPR 35 is concerned is a person ‘*who has been instructed to give or prepare expert evidence for the purpose of proceedings*’. The expert evidence referred to in CPR 35.1 and 35.5 and the expert's report referred to in CPR 35.4 and CPR 35.10 are the evidence and report of such a person ...

63. CPR 35 is not a comprehensive and exclusive code regulating the admission of expert evidence. It regulates the use of a particular category of expert evidence ...

64. The courts have in practice received expert evidence outside the confines of CPR 35 ... If CPR 35 is to be treated as an exclusive code it would appear to render inadmissible as evidence, expert literature exhibited to the report of an expert called under CPR 35 ...”

88. Subsequently, in *FS Cairo (Nile Plaza) LLC v Brownlie* [2022] AC 995, the Supreme Court was dealing with the presumption that unpleaded foreign law was similar to English law. Lord Leggatt (with whom Lords Reed, Lloyd-Jones, Briggs, and Burrows agreed on this point) said:

“148. ... The old notion that foreign legal materials can only ever be brought before the court as part of the evidence of an expert witness is outdated. Whether the court will require evidence from an expert witness should depend on the nature of the issue and of the relevant foreign law. In an age when so much information is readily available through the internet, there may be no need to consult a foreign lawyer in order to find the text of a relevant foreign law.”

89. It is a common enough phenomenon in modern English civil proceedings for expert evidence to be provided in a way which does not comply with Part 35, but which is appropriate to the case at hand: see *eg SwissIndependent Trustees SA v Sofer* [2023] EWHC 12 (Ch), [38]-[41].

Summary judgment

90. CPR rule 24.2 governs summary judgment. It provides:

“The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if—

(a) it considers that—

(i) that claimant has no real prospect of succeeding on the claim or issue; or

(ii) that defendant has no real prospect of successfully defending the claim or issue; and

(b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

On an application for summary judgment, the burden of proof rests on the applicant: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [9].

91. The principles on which the court acts in considering whether to grant summary judgment are well known. They are set out in the well-known decision of Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 329 (Ch), and the decision of Cockrell J in *King v Stiefel* [2021] EWHC 1045 (Comm), which was cited with approval by the Court of Appeal in *National Highways v Persons Unknown* [2023] EWCA Civ 183, [4]. In *King v Stiefel* the judge referred to the decision in *Easyair*, and to other authorities, and said:

“21. The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that – even bearing well in mind all of those points – it would be contrary to principle for a case to proceed to trial.

22. So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up ...

[...].”

92. In *Anan Kasei Co Ltd v Neo Chemicals & Oxides (Europe) Ltd* [2021] EWHC 1035 (Ch), Fancourt J said:

“82. The ‘issue’ to which rule 24.2 (*‘the claimant has no real prospect of defending the claim or issue’*) and PD24 refers is a part of the claim, whether a severable part of the proceedings (e.g. a claim for damages caused by particular acts of infringement or non-payment of several debts) or a component of a single claim (eg the question of infringement, or the existence of a duty, breach of a duty, causation or loss). It is not any factual or legal issue that is one among many that would need to be decided at trial to resolve such a claim or part of a claim. If the determination of an issue before trial has no consequences except that there is one fewer issue for trial then the court has not given summary judgment and the application was not for summary judgment. If it were otherwise, parties would be able to pick and choose the issues on which they thought their cases were strong and seek to have them determined in isolation, in an attempt to achieve a tactical victory and cause the respondent to incur heavy costs liability at an early stage.”

I respectfully agree.

Amendment of statements of case

93. In relation to the amendment of a statement of case, CPR rule 17.1 relevantly provides:

“(1) A party may amend their statement of case, including by removing, adding or substituting a party, at any time before it has been served on any other party.

(2) If his statement of case has been served, a party may amend it only –

- (a) with the written consent of all the other parties; or
- (b) with the permission of the court.

[...].”

94. And rule 17.3 provides that:

“(1) Where the court gives permission for a party to amend their statement of case, it may give directions as to –

- (a) amendments to be made to any other statement of case; and
- (b) service of any amended statement of case.

(2) The power of the court to give permission under this rule is subject to –

- (a) rule 19.2 (change of parties – general);
- (b) rule 19.6 (special provisions about adding or substituting parties after the end of a relevant limitation period); and
- (c) rule 17.4 (amendments of statement of case after the end of a relevant limitation period).”

95. In *Football Dataco Ltd v Stan James (Abingdon) Ltd* [2014] EWHC 504 (Ch), Iain Purvis QC, sitting as a deputy judge, said:

“104. This is an application to amend a pleading under CPR Part 17.3 , which is a matter of discretion. Obviously no amendment which would give rise to a pleading which was an abuse of process could be allowed. However, it is not necessary to go so far in order to refuse an amendment. If a breach of the *Aldi* rule is highly relevant to the question of abuse of process, *a fortiori* to the question of whether to exercise the discretion to permit an amendment.”

Once again, I respectfully agree.

Discussion

Appellant's ground 1

96. I summarised this as “the judge misinterpreted or misapplied the guidelines set out in *Aldi Stores Ltd v WSP Group plc* [2008] 1 WLR 748, CA, meaning that he gave no, or no sufficient, weight to the respondent’s failure to comply with the *Aldi* guidelines in assessing whether or not the Defence gave rise to an abuse of process”.
97. The appellant submitted that the judge was wrong to think that (i) the Aldi Guidelines did not apply because the Jersey court could not resolve the possession proceedings, and (ii) that the appellant had to show definitively what would have happened if the respondent’s contentions had been put to the Jersey court. On the other side the respondent submitted that the judge’s approach was supported by the decision in *Outotech*. I do not agree with the respondent. The judge below thought it a *difficulty* that the Jersey court could not itself hear and determine the new proceedings. In my judgment, it was not a difficulty at all: *Outotech*, [53.1]. The Aldi Guidelines could still apply meaningfully: *Goldberg Linde*, [96]. Similarly in relation to showing what happened. Here this was not a problem: *Outotech*, [82]. In my judgment, this ground is made out.

Appellant's ground 2

98. I summarised this as “the judge drew an erroneous inference of fact (that the respondent’s defence in these proceedings had been before the Jersey court in July 2024) and relied on it, concluding that the Jersey court was well aware of the respondent’s position in these proceedings”.
99. The appellant submitted that the respondent’s defence dated 1 July 2024 was not before the Jersey court at its July 2024 hearing, and that the judge was wrong to infer that it was. What was before the Jersey court was the May witness statement, made in the possession proceedings. But this did not claim the status of irremovability claimed by the later defence. Instead it claimed that the respondent was the effective owner or purchaser of the Farm, and that the appellant was estopped from denying this. So, the judge was wrong to conclude that the Jersey court was well aware of the respondent’s position on the possession proceedings.
100. The respondent accepts that the judge was wrong to make the inference that he did. But she says that the judge’s decision would have been the same if he had inferred that the document was the witness statement (as it appears that it was). So, her submission is that the error was not material. She relies on *Outotec* to say that it was not necessary to plead the defence in detail.
101. In my judgment, it is not possible to say that the judge’s decision must have been the same. We simply do not know. I agree that it is not necessary to plead a detailed defence. But the problem is that the witness statement and the defence are not couched in substantively the same terms. As set out earlier, the witness statement concentrates on the respondent being the intended purchaser of the property, whereas the defence puts forward a case of irremovability through tenancy or equitable licence. So, the Jersey court was not being informed of the

substance of the respondent's case. In my judgment, this ground too is made out.

Appellant's ground 3

102. I summarised this as “in any event the judge was not entitled to take that matter [*ie* that the respondent's defence in these proceedings had been before the Jersey court in July 2024] into account in assessing whether there was an abuse of process, as the *Aldi* guidelines required the respondent to raise the matter long before July 2024”.

103. The Jersey court proceedings were issued in October 2022, for the court's approval of the trustees' equalisation plan. This plan included disposing of the Farm, *either* by selling it to the respondent for £2 million (a price that the respondent acknowledged in her Jersey evidence) *or* (if she would not pay that price) to a third party. There were hearings before the Jersey court in May 2023 and November 2023 (postponed from September 2023). So far as I can see, the respondent did not raise before the Jersey court on any of these occasions the point that she had the status of irremovability that might prevent the sale of the Farm to a third party. Everyone appears to have assumed that it would be sold to her for £2 million (or possibly less). In his judgment (at [33]) the judge found that the Jersey court was well aware of the respondent's position by November 2023. By that date, according to the judge, the Jersey court

“knew that this was not a case where one could simply say she would automatically be evicted as a result of the notice to quit. Notwithstanding that, I observe that the Jersey Royal Court felt able to give its final blessing to the equalisation and distribution plan.”

104. I do not think that this can be right. The respondent's skeleton argument prepared for the November 2023 hearing was in the bundle before the court on this appeal, albeit heavily redacted. It contains this passage:

“49. It is also submitted that the Court should not bless the Trustees' relief for eviction proceedings to commence in England, on the basis that this is unreasonable on the following grounds:

i) Landscape Stud is being marketed for sale, and once sold the purchase of Stapleford Farm, can take place;

ii) The Trustees talk above eviction, however, they have failed to provide any detail as to how long the eviction process will take place and how an equitable propriety [*sic*] claim will impact on this, the costs of the eviction and then the time that it would take for Stapleford Farm to be marketed and sold verses the current situation. Also there is no consideration on the Steps Plan; and

iii) The majority of the beneficiaries would not like to see the Third Respondent evicted, including herself.”

105. It will be seen that at paragraph 49 there is a bare reference to an “equitable propriety [sic] claim”. But there is nothing else, and in particular no reasoning is given. The court was evidently unimpressed by this, because there is no mention of it in the judgment. Relevant extracts from the Jersey court’s judgment of January 2024 were set out earlier (at [12]). They show, first of all, that at that time the court was proceeding on the basis that *either* the respondent would buy the property for £2 million *or* she would be evicted so that it could be sold to a third party (see paragraphs 40, 43, 46-48). The court considered the parties’ submissions, including objections by Pamela, and concluded:

“47. ... Accordingly, we bless the decision of the Trustees to give Julia until the end of February to come up with proof of funds for her purchase of Stapleford Farm, failing which eviction proceedings should be taken.”

There is no reference that I can see in that part of the judgment dealing with the Farm which refers to any grounds for the respondent’s being able to resist eviction. I conclude that, despite the bare reference to “equitable propriety claim” in the skeleton argument, there was no consideration of any such grounds by the court. In my judgment, in November 2023 the respondent could and should have given the court a much fuller idea of any claim to resist eviction. In my judgment, this ground is made out.

Appellant’s ground 4

106. I summarised this as “the judge was wrong to conclude that, if the respondent had raised these matters at the appropriate time, it would have made no difference except to timings of the English and Jersey hearings; he did not take into account the potential saving in time and money”.
107. I have already dealt with this point in substance above. This is an evaluative judgment, and I am not entitled merely to say that I would have come to a different conclusion on the same material. But, in my judgment, the judge did not take into account the potential saving in time and money. This was a relevant and indeed an important consideration. That was an error of law, and I am entitled to intervene. The judge’s conclusion was wrong. It was not just a question of timing. In my judgment, this ground is also made out.

Appellant’s ground 5

108. I summarised this as “the judge was wrong to conclude that, if the respondent were able to continue with her defence, there would be nothing to stop the trustees making interim distributions to other beneficiaries, as the Jersey court had confirmed that the ongoing delay in realising the Farm blocked or delayed the making of such distributions”.
109. The appellant submits that the judge’s conclusion was contrary to the actual decision of the Jersey court, *ie* to approve a scheme to make *final* rather than *interim* distributions to beneficiaries. Making interim distributions would therefore be inconsistent with the Jersey court’s decision. It further submits that the judge gave no sufficient weight to the interests of other beneficiaries in not further delaying the approved distributions. On the other side, the respondent

submits that there is no inconsistency, because the trustees had not considered (and rejected) interim distributions.

110. In my judgment, the judge looked at this the wrong way round. The appellant's complaint was that the respondent had abused the process of the court by not telling the Jersey court of the case she intended to advance in any possession proceedings. If (as the appellant says) she did not so inform the court, it does not cure the abuse to say that the Jersey court could have directed something else, with which the putting forward of the respondent's defence would or might not interfere. In any event, we cannot know what the Jersey court's reaction would have been to a suggestion of interim distributions. I conclude that this ground too is made out.

Appellant's ground 6

111. I summarised this as "the judge was wrong to conclude that the defence did not give rise to *Henderson v Henderson* abuse and to fail to strike it out".
112. The appellant submits that, taking grounds 1-5 together, the judge was wrong in coming to his conclusion, which should be set aside. It says it is therefore appropriate for the appellate court to retake the decision, and to produce a broad merits-based judgment taking account of the public and private interests involved. The respondent however says that the court must exercise caution when reviewing decisions of foreign courts (as the Jersey court is for this purpose). She says that there is no expert evidence before this court of Jersey court process, and that the question is as to the reasonableness of the trustees' decision to commence the possession proceedings.
113. I accept that the court must be cautious in considering foreign court judgments. But, following Lord Wilberforce in *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853, 967, if "after careful examination there appears to have been a full contestation and a clear decision on an issue" there is no good reason to reject it on the basis that it was the judgment of a foreign court. On the other hand, I do not accept that there is no expert evidence before me of the Jersey court process, since I have already accepted that I can receive the letter from Collas Crill for this limited purpose.
114. The Jersey court was aware that the respondent was claiming to be entitled to purchase the Farm for £2 million, but was hoping to pay a reduced or even no price for this. The trustees were pressing her to show proof of funds for the purchase. The Jersey court approved the decision of the claimant to bring possession proceedings against the respondent if she did not provide proof of funds by a certain date. However, the Jersey court was *not* told that in any such possession proceedings the respondent would argue that she could not be removed from the property without her consent, by reason of a tenancy or equitable licence. In my judgment, this is a quite different position, which the Jersey court should have been told. For the reasons given above, the judge's decision not to strike out the defence for *Henderson* abuse was legally flawed, and I am entitled to set it aside and to retake that decision. I will come back to this.

Appellant's ground 7

115. I summarised this as “the judge applied the wrong test for collateral attack abuse (whether the defence struck at the central decision of the earlier court) instead of the correct one (the defence invited the court to reach a decision inconsistent with the earlier decision)”.
116. In his judgment, the judge dealt with this point in the following way:
- “36. ... Similarly, this is clearly not a collateral attack. It does not strike at the central decision of the Jersey Royal Court to approve the Trustees’ plan as not being unreasonable. As I say, the Jersey Royal Court was not itself stipulating a plan.”
117. The respondent says that the judge had had the correct authorities cited to him, and so his reasoning was merely “enthymematic”, that is, missing out part of the syllogism which led to the conclusion. I accept that the judge was giving what was effectively an *ex tempore* decision, in a complex case, and with a compressed timetable. Considerable latitude must be given in considering the language actually used by the judge. All judgments (including this one) are capable of being better expressed than they were. But I assume that, in accordance with the usual practice, the judge had the opportunity to approve the transcript of the judgment and to make any necessary corrections so that it reflected his reasoning at the time. Yet the judge’s expression of the reason for his decision on the point is an emphatic one, which he left unchanged. As I read the judgment, he was not starting with a simple observation on the facts and then passing, *sub silentio*, through the actually applicable test to the conclusion. Instead, he was relying on a different test from the beginning.
118. In my judgment, the judge set the bar too high. Instead of asking himself whether the court was being asked to reach a decision *inconsistent* with a previous one (see *Stopford, Harrington & Charles*), he asked whether it was being asked to “strike at the central decision of the Jersey court”. So, he applied the wrong test. This was an error of law. In my judgment, this ground is made out as well.

Appellant's ground 8

119. I summarised this as “the judge was wrong in failing to conclude that the defence sought a decision inconsistent with the earlier Jersey decision”.
120. The appellant says that the respondent was inviting the court to make a decision inconsistent with the decision of the Jersey court to approve the trustees’ equalisation and distribution plan. The respondent says that the decision she sought in the county court *was* consistent with the decision of the Jersey court. I do not agree. As the appellant says, if the respondent were successful in her defence, a new plan would be required. In my judgment, the judge was wrong in failing to see the inconsistency. In my judgment, this ground is made out.

Appellant's ground 9

121. I summarised this as “the judge was wrong to conclude that the issue raised by paragraph 6e of the defence was one that would have no other consequence than to reduce the issues for trial by one, whereas if the remainder had been struck out as an abuse it would have been the only outstanding issue and therefore could be the subject of a summary judgment application”. The issue raised by paragraph 6e of the defence was that, if the appellant was able to terminate the respondent’s licence of the Farm, “the notice did not offer [the respondent] reasonable time to vacate”.
122. The judge declined to give summary judgment on paragraph 6e because he was not striking out the rest of the defence. He referred to the statement of Fancourt J in *Anan Kasei*, set out earlier, and said:

“38. Lastly, we come to the question of summary judgment. This is precisely the kind of issue which Fancourt J identified in *Anan*. It is not the kind of issue in which it is appropriate to give a summary judgment, however weak the Defendant’s case appears to be. Accordingly, the application to strike out and for summary judgment will be dismissed.”

However, if the other issues for trial *had* been struck out as abuse of the process, this would have been the sole point still to be decided at trial, and therefore could not be considered as unsuitable for consideration for summary judgment on the basis set out by Fancourt J in *Anan Kasei*. If the other issues should be struck out for abuse, this ground will be made out as well, and the judge’s decision will have to be set aside. I will have to come back later to the question of remaking the decision.

Appellant’s ground 10

123. I summarised this as “the judge was wrong not to conclude that the proposed Amended Defence and Counterclaim would also give rise to *Henderson v Henderson* and/or collateral attack abuse, and should have been refused permission”.
124. As to the defence, even if the amendments sought by the respondent were permitted, it would not change the substance of the case. The defence would still claim that the respondent was irremovable by reason of a tenancy or an irrevocable licence, with a view to securing the transfer of the Farm to her without any payment at all. As to the proposed counterclaim, this would seek to obtain orders that the respondent was entitled to occupy the property, to an equitable charge over it, to a proprietary estoppel equity in relation to it, and/or to an interest in it under a common intention constructive trust. In oral argument, the respondent said that the counterclaim was a mirror of the defence. In my judgment, all of these matters should have been raised in substance at an early stage before the Royal Court. They are all highly relevant to the trustees’ equalisation and distribution plan. In my judgment, if the existing statement of case fell foul of the rules against *Henderson* and collateral attack abuse, all these proposed amendments would do so too, and therefore should not be allowed. I conclude that this ground is made out.

Respondent’s ground 1

125. I turn now to deal with the respondent's five additional grounds for upholding the judgment of HHJ Glen. The first is that "The Claimant did not/cannot show what the Jersey Court is likely to have done if the Defendant had taken further steps to further raise her defence or counterclaim with the Jersey Royal Court".
126. The appellant relies on the letter from Collas Crill dated 28 October 2025. This says that in that firm's opinion the Royal Court would have granted an appropriate stay in order to allow the respondent a period of time within which to bring her estoppel or other claim, and if she brought it would grant a further stay until it was resolved. The first point is whether this letter is admissible in evidence at all. In my judgment it is. It covers a short and discrete point of Jersey law arising on an interlocutory application. As exemplified by the discussion in *Rogers v Hoyle*, there is no need to go to the trouble of preparing expert reports under CPR Part 35 for such a limited purpose. The respondent had an opportunity to produce a similar letter from her Jersey advocates, but did not trouble to do so.
127. HHJ Glen dealt with this letter by saying that, if this is what the Jersey court would have done, the only thing that would have changed would have been the timing. But, as Coulson LJ said in *Outotec*, that rather misses the point:
- "82. ... The most important thing is that, if MW had done what they should have done, and raised the matter with the court, everyone would have known where they stood."
128. So, it was not necessary for the appellant to show definitively or otherwise what would have happened. But, in any event, I respectfully disagree that the only thing that would have changed would have been the timing. If the Jersey court had known that the respondent was putting forward a case whereby she would be entitled to at least the occupation, if not the ownership, of the property for nothing, or at any rate for much less than its market value, so that its full value could not be brought into the pot, that would have meant revisiting the equalisation and distribution plan. As it was, a great deal of time and money were spent in considering the merits of the plan that was put forward on the assumption that it could be implemented. If the respondent established that she did indeed have the rights claimed, further time and money would have to be spent in future on considering a new plan. There is nothing in this point.

Respondent's ground 2

129. This is that "The Aldi Guidelines are not applicable at all or alternatively are not mandatory with respect to the Jersey Article 51 procedure."
130. The Jersey proceedings concerned a complex plan to divide up the valuable assets of four trusts between the several beneficiaries, in order to achieve a degree of equalisation of benefit between several beneficiaries. The benefit to each beneficiary (taking into account benefits already received) might well amount to sums in the region of £10 million. This was not a commercial case, in the sense of dealing with a cargo claim, or a bill of exchange, or a contract to buy and sell securities. But it was commercial in every other sense. It was not about compensating for a wrong done, or deciding what was in a child's or other

person's best interests. It was about how to divide up a huge amount of assets equitably between the people to whom the assets belonged, but who did not get on very well with each other, and could not agree how it should be done. So, even if the test for the application of the *Aldi* Guidelines was whether these proceedings amounted to complex commercial multiparty litigation, my view is that in substance that is exactly what they were.

131. But, for the reasons already articulated above, I hold that the application of the Guidelines is *not* confined to complex commercial multiparty litigation, properly so called. In my judgment they apply to any litigation where further claims are in the pipeline and it is sensible for the court currently seised of the litigation to know about them, because of their potential effect on the existing litigation and the need to make the resolution of any further claims as efficient as possible. So there is nothing in this ground.

Respondent's grounds 3 and 5

132. Ground 3 is that "The Defendant was not in breach of the Aldi guidelines". Ground 5 is that "The witness statement exhibited to the Defendant's fourth affidavit (as opposed to the Defendant's Defence) would have been sufficient for the Jersey Royal Court to be aware of the Defendant's defence and then-intimated counterclaim". These two grounds can be taken together.
133. I proceed on the basis that the respondent's witness statement (though not the defence itself) was before the Jersey court for the hearing in July 2024, though it was not before the court for any earlier hearing. If that witness statement was not sufficient in principle to comply with the *Aldi* Guidelines, then (if the Guidelines apply at all) there may have been a breach of them. If it was sufficient in principle, then there is a further question as to whether compliance was early enough.
134. The Jersey court obviously had some knowledge of the nature of the respondent's proposed defence to the possession proceedings. In paragraph 29 of the judgment of September 2024 it is stated that:

"Julia is now defending the Eviction Proceedings (at increased cost to the Family Trusts) and the Trustees find themselves unable to sell to a third party whilst those proceedings are ongoing, particularly as Julia appears to be claiming estoppel ... "

135. The respondent's fourth affidavit says, *inter alia* (in a passage already cited):

"112. ... I am claiming that due to the money that I have invested and the other detriment that I have suffered, I have an equitable proprietary claim against Stapleford Farm, which will require a determination in quantum ... "

But it is to be noted that the consequence of the claim is said to have a bearing on *the price which she will pay for the property* ("a determination on quantum"). That is its stated function. The thirty or so following paragraphs of the affidavit explain the sums that she claims to have spent in improving and repairing the

property, which need to be taken into account in calculating the price. This affidavit will not have given the Royal Court an accurate picture of the nature and effect of the claims which the respondent is making in her defence to the present proceedings.

136. Then there is the witness statement made on 1 May 2024 in the present proceedings, which is agreed to have been before the Jersey court as well. This also focuses almost entirely on Julia's complaints about the price (if any) that she should pay for the Farm, in light of her expenditure and the (low) valuations which she has obtained of it. It does not dwell on the legal nature of the defence that she proposes to make against the claimant. In my judgment, this material was not enough to, and did not, properly alert the Royal Court to the nature or extent of her defence to the possession proceedings. In my judgment there was a breach of the *Aldi* Guidelines, even in July 2024. There is accordingly nothing in this point.

Respondent's ground 4

137. This is that "If the Defendant was in breach of the Aldi guidelines, the Defendant's Amended Defence and Counterclaim are nonetheless not an abuse of process and specifically the Claimant has failed to demonstrate vexation, oppression and harassment".
138. The respondent's reference to "vexation, oppression and harassment" appears to be to the judgment of Clarke LJ in *Dexter v Vlieland-Boddy* [2003] EWCA Civ 14, [49] (vi), as summarised by Coulson LJ in *Outotec* (at [53.3] and [53.7]). In *Dexter*, Clarke LJ said, where A brings an action against B, and A then brings a later action against B or C, "The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C". It will be noted first of all that this case is the other way round, in that the first claim ("blessing" application) is brought by A against B, and it is *B's response* to the later (possession) claim against her that is said to be an abuse. So, the vexation, oppression or harassment would have to be of A by B.
139. But, assuming (as I do) that the dictum can be applied also in the reverse case, in my judgment it is undoubtedly capable of being vexatious or oppressive to allow a claimant to bring a claim against you, which involves the court's approval of a course of conduct contingently involving a later set of proceedings against you, which approval the first court gives, without your revealing that you intend to defend the second proceedings on the basis of a supposed "knock-out blow", or at least a significant defence, which you have not previously intimated. It is a waste of time and money, and significantly, a waste of scarce judicial resources, since the approval application will have to be done again. There is nothing in this point either.

Appellate court's own decision on abuse

140. Having concluded that the judge's decision on abuse cannot stand, I come back to the same questions as he answered: should the defence (apart from paragraph 6e) be struck out for *Henderson* and /or collateral attack abuse? As required by

Lord Bingham in *Johnson* (at [31]), and endorsed by appellate judges subsequently, I must make

“a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before”.

141. The appellant makes the following points in its skeleton argument (where “R” refers to the respondent, and “JRC” refers to the Royal Court of Jersey):

“(1) The issues which R now seeks to raise in her Defence – in essence, the assertion that she has some right not to be evicted from Stapleford Farm regardless of whether or not she buys it – could and should have been raised in the earlier proceedings before the JRC. They ‘could’ have been raised because the principal facts upon which R seeks to rely are facts which, if and to the extent that they could be established, pre-dated the JRC proceedings and would have been known to R personally. They ‘should’ have been raised because they go to the heart of the trustees’ equalisation scheme and Distribution Plan (the sale of Stapleford Farm having been recognised by the JRC as an ‘*essential step*’ in the equalisation process) which the JRC was being asked to consider and approve in the Article 51 proceedings ...

(2) As explained above, R’s failure to raise these issues before the JRC at the earliest opportunity constituted a clear and serious breach of the *Aldi* guidelines ...

(3) R has failed to offer any justification for her failure to comply with the *Aldi* guidelines ...

(4) The position which R now seeks to advance in her Defence is not merely new, but is actively inconsistent with the position taken by her before the JRC ...

(5) By her Defence in these proceedings, R is seeking to achieve an outcome (the trustees’ inability to sell Stapleford Farm) which would require the revision of the equalisation process, the Steps Plan and the Distribution Plan. It is submitted that, if she were successful in her Defence, the result would be that substantial work and money spent in the Article 51 proceedings, and substantial time devoted to those proceedings by the JRC, would simply have been wasted. That time and money was spent in obtaining the JRC’s ultimate approval of the equalisation process and the Amended Distribution Plan, but these would have to be revised by the trustees and reconsidered by the JRC (at further substantial cost in time and money) if R were successful in preventing the “*essential step*” of selling Stapleford Farm ...

(6) As explained above, the JRC has confirmed that the ongoing delay in the sale of Stapleford Farm is holding up the approved distributions to the

four children. It is submitted that the interests of the other sibling-beneficiaries weigh substantially against allowing R to raise the Defence in these proceedings, as this would result in significant continued delay in the implementation of the distributions (and the receipt by the siblings of their ultimate inheritance from their father) which were fully approved by the JRC back in July 2024.

(7) The JRC was overtly critical of R's decision to resist the present possession proceedings. It observed, at para.44 of the 15/9/24 judgment ... that '[R's] defence of the Eviction Proceedings appears to be yet a further attempt on her part to delay a decision as to whether or not to purchase [Stapleford Farm]. Further delay is likely to have a financial impact on her siblings' ...

(8) At para.35 of his judgment ... the Judge said that it would be a very serious matter to shut R out from defending a claim for possession of her home of some 16 years. However, it is submitted that this is not a factor which weighs heavily in the balance. As the Judge noted at para.5 of his judgment ... R had received some £2.3 million from the Deceased in 2017 for the specific purpose of buying Stapleford Farm. Ultimately, she did not do so and instead spent the money on buying the Landscape Stud – the possibility of losing Stapleford Farm stems from R's own decision not to use the Deceased's generous gift for its intended purpose ... ”

At the hearing the appellant made additional submissions along the same lines.

142. On the other side, in her skeleton the respondent said (*inter alia*, where “A” refers to the appellant, and “R” to the respondent)

“80. The burden lies upon A to demonstrate abuse ...

81. ... the Jersey Proceedings concerned a variety of changing distribution plans made by the trustee in order to wind up a number of Jersey trusts. Under some of those plans, as described by R, there would have been little need for a determination of the present issues, because R's interests would have been appropriately catered for by the trustee without any need for such determination. It is thus plain that in those circumstances the matter should not have been raised, because it would have been a waste of time and resources for all parties.

82. Further, A appears to contend that the effect of R 'raising the matter' in the way A deems R to have failed to do (but which is not admitted) would (or may) have led the Jersey Court to stay the proceedings in order for that matter to be determined, by the English court if necessary ... If this would have been the consequence of R doing what A says she should have done, then again it is not something that A can establish R should have done. There is no reason to think that the entire Article 51 proceedings would have been stayed, in order to determine the present proceedings, or that any 'time and money' would have been saved by doing so.

83. A's case rests on the assertion that if R's case is heard, then this will 'require a complete revision of the equalisation process, the Steps Plan and the Distribution Plan'. This has not been evidenced and it appears extremely implausible ...

84. On the merits, allowing R's defence (and amended defence and counterclaim) to stand is not an abuse of process:

a. R is facing eviction from her home that she has expended in excess of £1m on with no accounting for that expenditure either by way of interest in the property or any other account.

b. A relies on a contested Licence Document.

c. Allowing A to evict R would give A a windfall of those monies.

d. The Jersey court did not deal directly with the issues raised by R in her amended defence and counterclaim.

e. The Jersey Court gave permission for the proceedings to be brought by A. It did not state that they could not be defended by R.

f. Despite A's assertions, there is no clear prejudice suffered by R in having to contest these proceedings as opposed to having contested them in the Article 51 proceedings, even if that had been possible.

g. R has a strong prima facie case and is likely to succeed.

85. R further notes that if this court holds that the Aldi guidelines were engaged and not followed, then this is not sufficient for a finding of abuse of process. It is still necessary for A to demonstrate vexation, oppression and harassment (*Outotec*, citing *Okritie/Dexter*). It has not done so ... "

Again, these submissions were amplified at the hearing.

143. So far as concern the submissions of the respondent, that in paragraph 81 misses the point. The point is that the matter should be raised so that the court can decide. Whether it makes a difference at the end of the day is irrelevant. I disagree with paragraph 82. We cannot now know what the Jersey court would have said, because it was never asked. As to paragraph 83, it is not necessary to evidence, let alone prove, what the Jersey court would have done. It is enough that revision of the plans was a possibility. As it happens, for myself, looking at the material before the court, I think it was probable. In paragraph 84, sub-paragraphs (a) and (c) are contentious, because the claimant says it has reimbursed the expenditure in question. I cannot resolve that question for the purposes of this appeal. Sub-paragraph (b) raises a point not put to the Jersey court. It cannot help the respondent here. Sub-paragraphs (d) and (e) are irrelevant. Sub-paragraph (f) is in my judgment wrong. The prejudice to the appellant is that it launched possession proceedings on the basis "blessed" by the Jersey court. But that was a false basis, because the respondent failed to inform the court of her real case on possession. Sub-paragraph (g) is

tendentious. The merits are relevant only where they are clear. Here, I do not think that they are.

144. So far as concern the submissions of the appellant, I agree with points (1)-(4), (6) and (8). As to (5), I do not think I can go so far as to say that the respondent's success in her defence of the possession proceedings would "*require* the revision of the equalisation process" and the plans the trustees have formulated, but I do think that it is the likely outcome, and that consequently "substantial work and money spent in the Article 51 proceedings, and substantial time devoted to those proceedings by the JRC, would simply have been wasted". That is sufficient in this context. I note sub-paragraph (7). In my view this simply increases the likelihood that the Jersey court would not have simply approved the plans and the intention to take possession proceedings as it did, if it had known of the respondent's position in the possession proceedings.
145. Overall, I am quite satisfied that the failure of the respondent to bring forward her full case as to the Farm to the Jersey court seised of the "blessing" proceedings at the earliest possible moment, and thereby to comply with the *Aldi* Guidelines, was not only a serious breach of those Guidelines, but also resulted in an abuse of the process of the English court in seeking subsequently to advance that case by way of defence (and indeed counterclaim) in the possession proceedings. The Jersey court was asked to (and did) approve the trustees' proposed course of action on a false basis. If the respondent succeeded in her defence, the plan approved by the court would probably have to be rethought and further application made to the court, wasting further time and money in a matter which has already consumed too much of both. The other beneficiaries, meanwhile, are being kept out of their intended benefits. This is clearly abusive. In my judgment, the defence should be struck out on that ground.
146. It should also be struck out on the separate ground that the defence amounts to a collateral attack on the decision of the Jersey court. This is because it seeks a result which is inconsistent with the Jersey decision. The Jersey decision was to approve the trustees' equalisation plan, including a sale of the Farm to the respondent at the price of £2 million, or eviction of the respondent and a sale to a third party. If the respondent succeeded in her defence, none of those things would be likely to happen.

Appellate court's own decision on summary judgment

147. As to summary judgment on paragraph 6e, in its skeleton argument the appellant says that

"73. ... there are two separate reasons why R cannot realistically expect to defend the possession proceedings on the basis that she was not given a reasonable time to vacate Stapleford Farm:

(1) The 1 February 2022 Notice to Quit gave R a period of 6 months in which to leave. This was the period which R herself had agreed to as a party to the December 2009 licence (the period is set out in cl.7 of the licence

[193]) and she cannot therefore seek to claim that the period is unreasonable.

(2) In *Minister of Health v Bellotti* [1944] 1 KB 298, the Court of Appeal confirmed that, even if the period of notice given in a Notice to Quit was not itself reasonable, the Notice will still be valid if the licensee has had a reasonable time to vacate by the time proceedings come to be issued. In the present case, the Notice to Quit was served in early February 2022 and the possession claim was issued on 28 March 2024, more than two years later. D had therefore been given more than two years to leave the property, which was plainly reasonable.”

148. In her skeleton argument, the respondent says that the court should not strike out any part of the defence. Hence the position on summary judgment remains as it was before the judge, and the statement of Fancourt J from *Anan Kasei* is still in point. But, in addition, the respondent says that the notice that she was given was still not reasonable notice, despite having agreed to 6 months’ notice (on either side) in the written licence of December 2009. As to that point, the notice to quit was given in February 2022. That is now more than four years ago. The proceedings themselves were issued more than two years after the notice to quit. Not only has the respondent not vacated the premises, but she has not since the notice was given sought to pay £2 million for the property, or even demonstrated that she has £2 million, insisting instead that she is entitled to it for much less, or even nothing at all. In my judgment, the respondent has had far more than reasonable notice to determine her licence, and it was at an end before these proceedings were issued.
149. Returning therefore to summary judgment, I consider that there is no real prospect of the respondent succeeding on paragraph 6e of the defence, and I see no other compelling reason for a trial of that issue. Accordingly, I will grant summary judgment for the claimant on that point.

Appellate court’s own decision on amendment

150. I have already held that the appellant’s ground 10 is made out. The judge’s decision must be set aside. I set out earlier the test for amendment of a statement of case. In my judgment, on the basis that the amendments proposed do not cure the abuse of process, but indeed perpetuate it, I refuse permission to amend the defence and add a counterclaim as proposed by the respondent.

Conclusion

151. For the reasons given above, this appeal succeeds. The judge’s orders will be set aside. Further, I will order that the defence be struck out, that summary judgment be given for the appellant on paragraph 6e, and that permission to amend the defence and add a counterclaim be refused.