



Neutral Citation Number: [2025] EWHC 2154 (KB)

Case No: QB-2020-000092

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/08/2025

Before :

MASTER DAVISON

Between :

(1) ROBERT LEE
(4) JOHN BERESFORD
(6) PAUL KITSON
(7) THOMAS MOONEY
(8) STEPHEN SEDGLEY

Claimants

- and -

(3) JAMES HAY ADMINISTRATION COMPANY LTD
(4) JAMES HAY PENSION TRUSTEES LTD
(5) AJ BELL MANAGEMENT LTD
(6) AJ BELL (PP) TRUSTEES LTD
(9) PHOENIX LIFE LTD (AS SUCCESSOR TO STANDARD LIFE ASSURANCE LTD)
(10) STANDARD LIFE TRUSTEE COMPANY LTD

Defendants

Mr Gerard McMeel KC (instructed by **Northridge Law LLP**) for the **Claimants**
Mr Theodore Van Sante (instructed by **Pinsent Masons LLP**) for the **Third to Sixth Defendants**

Mr Henry Day (instructed by **Eversheds Sutherland (International) LLP**) for the **Ninth & Tenth Defendants**

Hearing dates: 23 & 24 June 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 August 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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1. This judgment deals with two applications: (1) the ninth and tenth defendants' ("the Standard Life defendants") application dated 6 June 2024 to strike out the eighth claimant's claim or for reverse summary judgment on that claim; and (2) the first, fourth, sixth and seventh claimants' application dated 5 February 2025 against the third to sixth defendants ("the James Hay & AJ Bell defendants") for relief from sanctions. The latter application is consequent upon these claimants having failed to comply with unless orders and their claims having, as a consequence, been struck out. The James Hay & AJ Bell defendants resist the application for relief and seek to preserve the strike-out of the claims.
2. In a judgment given *ex tempore* on 29 January 2025 of which a transcript has been obtained, I set out the background to and the basis of the applications. The judgment dealt with the claimants' request for an adjournment, which I granted. I will quote the relevant section, to which I have made some corrections and have added some further relevant material:

"The claimants are all ex-professional footballers and the claims concern their investments, on the manifestly bad advice of an Independent Financial Adviser, Mr Kevin Neal of Kevin Neal Associates Ltd, into schemes which were inappropriate and which ultimately failed. I'm told by Mr McMeel KC, who has appeared for them today, that the claim can be valued at several million pounds. The defendants are in each case the relevant Self-Invested Personal Pension ("SIPP") operators or trustees.

The investments were made on various dates between 2006 and 2009. For the purposes of the applications, Mr McMeel was content to accept that the cause of action in each case accrued on the date of the investment so that, subject to sections 32 and 14A of the Limitation Act 1980, the primary limitation period expired 6 years later.

Some or all of the claimants have obtained redress from the Financial Services Compensation Scheme. But the maximum scheme compensation available was £50,000 and in order to recoup the full extent of their losses, they issued these proceedings on 9 January 2020. The solicitors then acting for them were Cardium Law Ltd, a London firm.

In about April 2020, the file was transferred from Cardium Law to High Street Solicitors Ltd, as they are called, in Liverpool. The fee-earner who eventually came to act for them was a Mr David McCulloch. In June 2023 High Street Solicitors collapsed and in May 2023 the file was transferred to Angelus Law. I was told by Mr McMeel that the claimants were unaware of that¹. There was an intervention by the Law Society on Angelus Solicitors in April 2024. Prior to that, in about late January 2024, the file was further transferred informally to Ryans Solicitors. But Angelus never came off the record and Ryans never came on. Mr McCulloch remained the fee-earner who had conduct of the file throughout.

The claimants approached Barings solicitors. That may have been in July or August of last year. Barings solicitors came on the record only yesterday, 28

January 2025. Meanwhile, after an initial stay to allow compliance with the pre-action protocol, pleadings in the claim closed around-about the end of 2022. Since then there's been very little progress. Orders were made against the first, fourth, sixth and seventh claimants in April and June 2023 for further information and for costs.

The second order, the one in June, was an unless order whereby if the first, fourth, sixth and seventh claimants did not pay some £12,000 of costs, their claims would be struck out. That money was not paid by the date stipulated in the order and therefore the claims do stand as having been struck out. But Ryans Solicitors, even though they weren't on the record and never had been, made an application dated 5 February 2024 for an extension of time to pay the costs; (that application was made after the deadline had expired).

On 26 February 2024 the defendants in favour of whom those orders had been made, that's to say the third to sixth defendants, applied for their costs of the action against claimants 1, 4, 6 and 7, and on 6 June of last year defendants 9 and 10 applied to strike out the claim against them by the eighth claimant, based substantially on two grounds. The first that he lacks *locus standi* because he assigned the benefit of any claim to the FSCS, and the second based on limitation. It's relevant to note that defendants 3 to 6 also take the same *locus standi* / assignment point against the first, fourth, sixth and seventh claimants, though they advance it as a matter to be taken into account in those claimants' application for an extension of time / relief against sanctions, rather than as a basis for a strikeout."

3. The 29 January 2025 judgment set out my reasons for adjourning the applications (though the relief against sanctions application had not then been formally issued). They were restored before me with fuller evidence on 23 and 24 June 2025.

The applications

4. As already noted, the Standard Life defendants apply (by application dated 6 June 2024) for strike out under CPR 3.4(2) and/or reverse summary judgment under CPR Pt 24 on the claim brought against them by Stephen Sedgley, the eighth claimant, on grounds that his claim (a) is an abuse of process because, as part and parcel of his application to the FSCS, he had assigned his cause of action to that body and therefore lacked *locus standi*, (b) is time barred, (c) discloses no cause of action against the tenth defendant and (d) is inadequately particularised.
5. The claims of the first, fourth, sixth & seventh claimants (Messrs Lee, Beresford, Kitson and Mooney) stood as struck out for non-compliance with the unless order dated 12 January 2024. These claims were made against the James Hay & AJ Bell defendants. On 26 February 2024 these defendants applied for their costs of the action. On 5 February 2025, the first, fourth, sixth & seventh claimants cross-applied for relief against sanctions. These cross-applications raise broadly similar issues to the strike out / reverse summary judgment application of the Standard Life defendants.
6. Notwithstanding the lengthy and detailed arguments that were addressed to me, I have reached the clear conclusion that I should not strike out the eighth claimant's claim and that I should grant relief from sanctions in favour of the first, fourth, sixth and seventh claimants so that the strike-out of their claims consequent upon the breach of the unless

orders should be revoked. The reasons for that conclusion are relatively simply stated and, in the interests of brevity, I will not enlarge on the narrative introduction set out above and I will not separately recite the submissions made to me. I will move straight to a discussion from which the submissions will be apparent. I might note in passing that, even adopting this measure, the judgment that follows is longer than is really commensurate with the weight and complexity of the issues that the applications threw up.

Discussion

Preliminary

7. As a preliminary observation, the issues in these applications require or would require multiple determinations of the state of mind of the protagonists. Under section 32 of the Limitation Act 1980, the court must determine whether the defendants “deliberately concealed” any relevant fact and, if so, when the claimant “discovered” the fraud or concealment or “could with reasonable diligence have discovered it”. Under section 14A the court must determine when the claimant acquired “knowledge” according to the detailed formula in the section, which includes “knowledge which he might reasonably have been expected to acquire”. Relatedly, in order to ascertain whether these claimants committed an abuse of process by issuing a claim which they had ostensibly assigned to the FSCS turns – if it was an equitable assignment – on whether they “knew” or were “uncertain” whether the cause of action was vested in them.
8. In relation to the section 32 issue there is a further consideration which is that concealment and “deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time” (sub-section (2)) are issues upon which disclosure of documents may throw a good deal of light.
9. I acknowledge that cases involving section 32 and section 14A are not “at least as *a matter of principle* [my emphasis] outside the proper remit of CPR r 24” (see *Davy v 01000654 Ltd* [2018] EWHC 353 (QB)). Each case will be different. There will be cases where the evidence is clear and unlikely to be meaningfully developed or expanded upon at trial (including by the oral evidence of witnesses) and where there are no grounds for believing that disclosure will materially add to or alter the evidence which is relevant to whether the claim has a real prospect of success; see generally the commentary in the White Book at 24.3.2.1 to 24.3.2.3. But, in my view, this is not one of them. I agree with the submission of Mr McMeel that the issues I have described regarding the state of mind of the protagonists are not obvious candidates for summary determination but are more suitably dealt with at trial – perhaps a preliminary issues trial (though I am not to be taken as so ordering).

Abuse of the process – cause of action not vested in the relevant claimants

10. This arises primarily in the context of the Standard Life defendants’ application to strike out Mr Sedgley’s claim. But the James Hay & AJ Bell defendants also rely on it in relation to the first, fourth and seventh claimants whose relief from sanctions application they submit should be refused on this ground (and others).
11. Without making a final determination, it seems to me that Mr Sedgley and the other claimants have, at the very least, a real prospect of showing that the assignments to the FSCS were equitable as opposed to legal assignments (and the defendants did not

strenuously argue otherwise). This is because the formal requirements of section 136 of the Law of Property Act 1925 were not fulfilled. The assignments arguably were not “absolute” but, rather, to use Mr McMeel’s characterisation, “security assignments”. Notice to the debtor was not given – at least in the cases of Mr Sedgley and Mr Lee. Finally, no doubt reflecting considerations such as these, it is relevant that in *Investors Compensation Scheme Ltd v Cheltenham & Gloucester PLC* [1996] 2 BCLC 165 it was not argued by the FSCS’s statutory predecessor (represented, I note, by Mr Geoffrey Vos QC) that the assignments were legal assignments.

12. Even as equitable assignments, it would still be an abuse of process to start proceedings “knowing that the cause of action was vested in someone else”; see *Pickthall v Hill Dickinson LLP* [2009] EWCA Civ 543, [2009] PNLR 31. But *Pickthall* and other cases have acknowledged that the position is otherwise “if the claimant does not know, or is uncertain, as to whether he has title to the relevant cause of action”; see at paragraph 15. Further, in *Munday v Hilburn* [2014] EWHC 4496 (Ch), [2015] BPIR 684, Nugee J (as he then was) observed that the burden of proving knowledge was on the party alleging abuse of process and that “the fact that [the claimant] ought to have known is not enough”; see at paragraph 20.
13. The claimants in this case are former professional footballers. They are completely unsophisticated litigants. None of them signed, and there was not, a formal deed of assignment. The principal piece of paperwork they completed was in each case a FSCS claim form, the primary purpose of which was to obtain compensation up to the statutory limit of £50,000. The claim form was, in each case, directed against their financial adviser not these defendants; (see Boxes C & D of the form). I consider it very unlikely that they appreciated that the wording of the form meant that they had also assigned their rights against these defendants. It seems to me that at the very least they would have been “uncertain” as to their title to sue. Subject to the requirement set out in the next paragraph, they appear to me to have a real prospect of showing that there was no abuse of process on their part.
14. If the assignments were equitable it follows that the defect in title to sue “was curable but required swift resolution”; see *Smith and Leslie on Assignment*, 3rd Ed at para 26.105. Has it been swiftly resolved? The point was taken in the Defences, acknowledged in the Replies and the relevant claimants then obtained re-assignments of their causes of action from the FSCS – to which they were entitled as of right. That had been done by October 2023, which was before the date of the ninth and tenth defendants’ application to strike out. Taken in the overall context of this litigation, I think that that was “swift” – or, to use the terminology of CPR rule 24 – that there is at least a “real prospect” of showing that that requirement has been met.

Limitation

15. The relevant sections of the 1980 Act are sections 32 and 14A.
16. Section 32 provides:

“(1) ... where in the case of any action for which a period of limitation is prescribed by this Act, either –

(a) ...

(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant;

(c) ... the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it ...

(2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty."

17. Section 14A applies only to claims in negligence. Where facts relevant to the cause of action are not known at the date of accrual, it provides for a limitation period of three years from the date the claimant had both "*the knowledge required for bringing an action for damages in respect of the relevant damage*" and "*a right to bring such action*", if such period expires later than six years from the date of accrual: see section 14A(3)-(5). The "*knowledge required*" means, relevantly: knowledge of "*the material facts about the damage in respect of which damages are claimed*", being "*such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment*" (see sections 14A(6)(a) and (7)); and knowledge (a) "*that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence*" and (b) of "*the identity of the defendant*" (see section 14A(6)(b) and (8)). Such knowledge includes "*knowledge which [a person] might reasonably have been expected to acquire – (a) from facts observable or ascertainable by him; or (b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek*": see section 14A(10). Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant: see section 14A(9).
18. In *Potter v Canada Square Operations Ltd* [2023] UKSC 41, [2024] AC 679 the Supreme Court emphasised that section 32(1)(b) made sense without elaboration. It required simply: (i) a fact relevant to the claimant's right of action; (ii) the concealment of that fact from the claimant by the defendant, either by a positive act of concealment or by a withholding of relevant information; and (iii) an intention by the defendant to conceal the fact in question. Section 32(2) was to be understood according to its natural construction, such that recklessness (as opposed to deliberation) will not suffice. The "relevant fact" under section 32(1)(b) had to be "a fact without which the cause of action is incomplete", not merely a fact which improves prospects or which is not a necessary ingredient of the cause of action: *Arcadia Group Brands Ltd v Visa Inc* [2015] EWCA Civ 883 at [49].
19. Notwithstanding that the primary limitation period expired on 29 April 2015, Mr Sedgley, the eighth claimant, relies upon section 32 and/or section 14A as having postponed that period until, at earliest, January 2017.
20. Section E of the first witness statement of Sarah Jayne Price dated 6 June 2024 contains a detailed exposition of the Standard Life defendants' case on section 32. It sets out the information that the defendants supplied as to the value of the investments and their responses to numerous enquiries as to the appropriateness of the investments and Mr Neal's role in recommending them. It includes reference to a letter dated 5 April 2013

which was sent by an investment claims management company, Financial Services Redress (UK) Limited (“FSR”), on Mr Sedgley’s behalf. The author of the letter was a Mr Alasdair Sampson, a qualified lawyer. The letter raised a “formal complaint” about the investments into which Mr Sedgley’s funds had been placed, viz the Aegon Portfolio, Fortress and Quadris. It alleged that Fortress and Quadris were unregulated collective investment schemes (“UCIS”); that as a retail client, to whom none of the relevant statutory exemptions regarding the promotion and sale of UCIS applied, Mr Sedgley should not have been advised or permitted to invest in Fortress or Quadris; that both Fortress and Quadris were high risk investments and therefore unsuitable for him; that by investing in Fortress and Quadris via the Aegon Portfolio within the SIPP Mr Sedgley had incurred unnecessary and excessive product provider fees and charges; and that as a result of his investment in Fortress and Quadris via the Aegon Portfolio he had suffered loss, comprising both losses in the market value of Fortress and Quadris and fees and charges deducted by Aegon.

21. The material in Section E of the witness statement and the allegations in the letter did not go to the role played by the Standard Life defendants as the SIPP provider and trustee. As to this, Ms Price devoted paragraphs 44 and 45 of her witness statement. I have italicised the key passages:

“44. The only material element of the present claim that did not feature in FSR’s letter of 5 April 2013 is the allegation that, on the basis of various constructed duties of due diligence, Standard Life and the SL Trustee are liable for Mr Sedgley’s alleged losses. Given the matters of which by April 2013 Mr Sedgley clearly had knowledge, however, there can be no substance to his assertion that by that stage he was not also aware, and could not reasonably have been expected to have been aware, of this alleged liability – or that he was unaware of, and could not with reasonable diligence have discovered, such matters as he now seeks to allege were concealed from him. If by April 2013 he knew that Fortress, Quadris and the Aegon Portfolio were, on his case, inherently flawed and unsuitable (as he did), and that this had caused him loss as alleged (as, again, he did), *he must also have known by this point that this loss could (on his case) have been attributed to Standard Life and the SL Trustee, as respectively the provider and the trustee of the SL SIPP who had permitted him to make these allegedly flawed investments.* Indeed, it is to be inferred from FSR’s letter of 12 July 2016 to Standard Life and the SL Trustee to which I referred at paragraph 37.9 above, that Mr Sedgley had by this point specifically considered the possibility of bringing a claim against Standard Life and the SL Trustee but had decided not to do so.

45. There is nothing in any of the valuations provided to Mr Sedgley in 2017 or afterwards that changes the position. *Those valuations represent a consequence, not the cause, of the matters at issue,* recording as they do only a further decrease in the value of the SL SIPP, additional to the decreases it had already experienced by 2013 and subsequently, as a consequence of Fortress’, Quadris’ and the Aegon Portfolio’s alleged inherent flaws and unsuitability, which formed the basis of the complaints Mr Sedgley previously made to Mr Neal and of the claim he lodged with the FSCS.”

22. I am not prepared to attribute knowledge or constructive knowledge to Mr Sedgley on the basis contended for. To phrase that in the language of the rules, I am not prepared

to say that the claimant has “no real prospect of succeeding” on these issues or that he has “no reasonable grounds for bringing the claim”.

23. The regular valuations which he received from Standard Life showed that his SIPP had substantial (though declining) value up to 7 September 2016, when the valuation was £90,158.35. Then, in January 2017, he learned that the Fortress Fund was in fact worth zero, which must have come as a bombshell to him. That went on to be reflected in the 7 September 2017 valuation he received from Standard Life, which was £4,731.85 – a loss of £85,426.50. (The residual value comprised a small, retained cash balance.) In the intervening period, the well-known footballer and pundit, Alan Shearer, had settled his case against Mr Neal and Suffolk Life. The settlement was well-publicised. Of these events, Mr Sedgley has said:

“... it was not until 2017 that I became alert to the fact that my pension might have become worthless. It was reported in June 2017 that Alan Shearer had agreed a settlement with Suffolk Life and Mr Neal in relation to his pension claim. It was not until I read this in the news that that I became aware that my losses could be attributable to Standard Life and/or SL Trustee.”

24. Spanning a longer period were the various rules, HMRC requirements and regulatory guidance as to the applicable standards for SIPP operators which are pleaded at paragraph 123 of the Particulars of Claim and of which, for present purposes, the most significant was the letter dated 21 July 2014 from the FCA addressed to the CEOs of SIPP providers. This stated that due diligence required:

- correctly establishing and understanding the nature of an investment
- ensuring that an investment is genuine and not a scam, or linked to fraudulent activity, money-laundering or pensions liberation
- ensuring that an investment is safe/secure (meaning that custody of assets is through a reputable arrangement, and any contractual agreements are correctly drawn-up and legally enforceable)
- ensuring that an investment can be independently valued, both at point of purchase and subsequently, and ensuring that an investment is not impaired (for example that previous investors have received income if expected, or that any investment providers are credit worthy etc.).

25. Mr McMeel submitted, and I agree, that the following propositions are reasonably arguable. The Standard Life defendants had chosen to provide annual valuations to the claimant based on information which was provided by third parties and/or was historic. They withheld from Mr Sedgley the fact that they did not have any means of providing realistic or accurate valuations either from the outset or at any time subsequently, including on annual reviews. The valuations were in fact valueless, or, worse, positively misleading. But Mr Sedgley did not know and was not to know that. The Standard Life defendants had also ceded any meaningful control of his pension assets at the outset and that remained the case throughout the life of the investment because the assets had been transferred to an offshore bond. Mr Sedgley did not know and was not to know that this meant, in practical terms, that his investment was neither safe nor secure. These failings amounted to or were in pursuance of what amounted to a policy

and hence the “deliberate commission of a breach of duty in circumstances in which it [was] unlikely to be discovered for some time” (the wording of section 32(2)). The policy was not reversed or partially reversed until 2017 when, for the first time, a realistic valuation of the flawed assets was given. In the meantime, there must have been internal discussions about Standard Life’s response to the letter of 21 July 2014. But no details of any such discussions had been given and no documents, of which there must have been many, had been disclosed.

26. It is in these circumstances difficult to say when Mr Sedgley acquired knowledge. It would require more detailed investigation, disclosure of documents (principally by the Standard Life defendants) and oral evidence and cross-examination. But it is reasonably arguable, at the very least, that that date was not before January 2017.
27. As to constructive knowledge, I think that there is a real prospect of Mr Sedgley showing that he was not put on notice of the need to investigate. The authorities on section 32 of the 1980 Act provide for a claimant to be treated as becoming aware of the things that a reasonably attentive person *in his position* would learn. (The test under section 14A is similar.) I have already referred to the characteristics and position of the claimant. I do not think that there is any sufficient basis, on a paper application, to conclude that he was put on notice, still less that it is to be inferred that “he specifically considered the possibility of bringing a claim against [the Standard Life defendants] but decided not to do so”; (see paragraph 44 of Ms Price’s statement). There is no real evidence at all to support the latter proposition. (But even if there were, I might add that it would not necessarily and without more be inconsistent with his case on section 32 and section 14A.)
28. It follows that I do not agree with paragraphs 44 & 45 of Ms Price’s statement (which were developed by Mr Day in his written and oral submissions). She has proceeded from the standpoint that because the investments were “inherently flawed and unsuitable” and had “caused [the claimant] loss”, he “must have known” that he had a case against the Standard Life defendants who “had permitted him to make these allegedly flawed investments”. That is to attribute to him antecedent knowledge of duties that were not made explicit by the FCA until July 2014 and not, as I understand it, within his knowledge until after these proceedings had commenced. It is also to overlook the two duties to which the concealment is principally relevant, namely the valuation duty and the custodian duty. These duties do not relate so much to the Standard Life defendants having “permitted” the investments as to their inability to value them and keep them secure.
29. In applying the foregoing analysis, I have had some regard to the remarks set out at paragraphs 12 – 16 and 64 of the speeches of the House of Lords in *Haward v Fawcetts* [2006] UKHL 9, [2006] 1 WLR 682. These remarks recognise that there is not always a bright line distinguishing between facts and duties and that a claimant “may know the basic facts but not know what, to an expert, they add up to”.
30. Mr Day had an ancillary point, which was that if the claim was to survive and go forward then that could only be on the basis of the pleaded valuation and custodian duties – because these were the ones that were affected by the concealment. No authority was offered for this proposition. Whilst it is true that the Particulars of Claim articulate eight “specific duties of SIPP operators and trustees”, these are all contractual or tortious duties derived from or analogous to the much more general, overarching

rules set out in the FCA's Conduct of Business Sourcebook ("COBS"). It would be odd if the effect of section 32 and/or section 14A was to allow a claim to go forward on the basis of breach of a general duty but to circumscribe or limit the claimant in the way he was entitled to express that duty as it has particularly affected him. I can see nothing in the wording of the sections which would provide a statutory basis for Mr Day's proposition. Section 32 refers variously to "any action" and "any fact relevant to the plaintiff's right of action". Section 14A refers variously to "any action for damages" and "facts relevant to the current action". These words refer to the whole action or right of action. They do not appear to me to envisage the sort of slicing or fragmentation of the action which Mr Day suggested. Lastly, quite apart from these legal considerations, I am not sure that I accept Mr Day's factual proposition. Although the evidence of the claimant was indeed principally directed at the valuation and custodian duties, I do not think it is necessarily correct these were the only ones affected by the concealment. Again, that is not an issue easily resolved on paper.

Strike out / grant summary judgment on claim against Tenth Defendant?

31. Mr Day's skeleton argument said that the tenth defendant "does not and has never carried on any regulated activities, therefore is not and has never been authorised by the FSA or the FCA and so is not subject to the UK financial regulatory regime. The tenth defendant therefore did not owe the claimant, and could not have owed him, any of the pleaded regulatory or analogous duties, which duties the claimant alleges are to be inferred from the UK financial regulatory regime ...". I disagree. As Mr Day himself touched upon in the passage just quoted, the claimant does not directly rely on COBS or any other part of the UK financial regime. He relies on tortious or contractual duties which arise or are to be inferred analogously. It seems to me at least reasonably arguable that such an analogy can be drawn whether COBS directly applied or did not. Further, the tenth defendant was the trustee and custodian of the funds that were lost and, indeed, was the legal entity which opened the portfolio in which the funds were held. It would be surprising indeed if no actionable duties attached to that role.

Strike-out on basis claim inadequately pleaded

32. This ground, which was advanced by Mr Day with less enthusiasm than his other grounds, could not appropriately form the basis of a strike-out without giving the claimant an opportunity to put right the omissions of which the Standard Life defendants complained. The complaint was that the formulation of the duties, the nature of the alleged breaches of those duties, causation and quantum were "wholly generic and unparticularised". The Particulars of Claim were drafted by leading counsel experienced in this type of litigation. I do not think that they can fairly be characterised in this way. But even if they could, the court would not proceed to the draconian step of striking out the whole claim without first inviting the defendants formally to request clarification, perhaps by means of a Part 18 request, and/or inviting the claimant to amend. That stage has not been reached.

The first, fourth, sixth and seventh claimants' application for relief against sanctions

33. The claims were struck out because the claimants failed to comply with a series of orders requiring them to pay costs. The orders have been set out by Mr McMeel at paragraphs 3 – 18 of his skeleton argument and, for brevity, those paragraphs are not

recited here but are appended as a schedule to this judgment. Suffice it to say that non-compliance led the James Hay & AJ Bell defendants to seek unless orders, which process generated costs upon costs culminating in the claimants having to pay a total of £22,996.22, £3,000 of which was paid and £18,996.22 was not.

34. The substantive relief which this series of orders related to was a Request for Further Information. That further information was ordered on 12 January 2024 and was eventually supplied on 30 June 2024.
35. The costs have now been paid.
36. The claimants are now very competently represented by Northridge Law LLP.
37. The strike-out of claims which may be worth millions of pounds would be a very draconian step and the more so when the costs liability was (a) modest and (b) has now been paid. What clearly emerges from what I, on the last occasion, called the “lamentable procedural history” of the claim is that these claimants have been badly let down by their solicitors. They were simply unaware of the costs orders non-compliance with which caused their claims to be struck out. They did not know of the extension application. They did not know that their claims had been struck out. The defendants’ solicitors were not to know the full state of the claimants’ ignorance. But (subject to a topic I deal with below) they know now. And they could scarcely have failed to appreciate at the time that the claimants’ legal representation was shambolic and ineffective. Given that, prior to amendment, CPR rule 9(1)(f), listed a relevant factor as “whether the failure to comply was caused by the party or their legal representative”, and given that (though no longer explicit) this is still a factor to be taken into account, I consider that the James Hay & AJ Bell defendants’ opposition to the application for relief against sanctions has a degree of opportunism about it. The resources and energy they have invested in their resistance could perhaps have been better expended elsewhere.
38. Applying the familiar three stage *Denton* criteria:
 - i. The breach was serious because the costs were unambiguously payable and were not paid.
 - ii. There was no good reason for the breach.
 - iii. But the breach was attributable to fault on the part of the claimants’ advisors. It has been rectified and to strike out (or allow to remain struck out) a valuable claim because of the non-payment of costs amounting to less than £20,000 (now paid) would be to apply a sanction that was out of all proportion to the breach. The claimants acted with promptness when they came to learn of the true position and their former solicitors had already made an application for an extension, albeit that an application for relief from sanctions would have been the more appropriate application. The claimants are now in a position to take the claim forward in an efficient manner. No trial date or other timetabled direction has been affected by the breach.
39. The James Hay & AJ Bell defendants took two specific points, which I must deal with before coming to my overall conclusion on the application for relief against sanctions.

40. The first was an attack on the merits. In relation to the first, fourth and seventh claimants, it was said that they were in the same position as Mr Sedgley, the eighth claimant, i.e. they lacked *locus standi* because they had assigned their claims to the FSCS. I have considered that argument above and rejected it. No or no substantially different considerations apply to these claimants and I reject it in their cases too.
41. In relation to the sixth defendant, Mr Kitson, it was said that he lacked standing because he was made bankrupt on 4 April 2017 and this claim had therefore vested in his trustee in bankruptcy. I reject this also. Section 11(1) of the Welfare Reform and Pensions Act 1999 states that:

(1) Where a bankruptcy order is made against a person on a bankruptcy application made or petition presented after the coming into force of this section, any rights of his under an approved pension arrangement are excluded from his estate.

It is true (as Mr Van Sante submitted) that the claim is presently formulated as a claim for damages for a lost investment, not a claim to assert or protect pension rights. But such a claim could, it seems to me, be put forward on the basis of the pleaded facts and the custodian duty. As already noted, the court does not generally strike out claims that can be cured by amendment. Further, Mr Kitson intends if necessary to procure an assignment back to him of this claim from his trustee. Similarly to the other claimants, I would not expect him to have appreciated the fact / effects of the statutory assignment on bankruptcy. It is a matter of common experience that many bankrupts do not and Mr Kitson is neither sophisticated nor knowledgeable in business and legal affairs. If this claim was assigned to his trustee (which, in at least one possible formulation of it, I find it was not) then I am not prepared to strike it out in circumstances where he would have been, at the very least, uncertain about that and where he intends to and can remedy the defect swiftly. In relation to the latter requirement, I note that the case from which the requirement of “swift” action emanated (*Walter & Sullivan Ltd v J Murphy & Sons Ltd* [1955] 2 QB 584) stipulated that the claim had to be put into proper form “within a fixed period”; see at 589 final paragraph. If necessary, I will so direct.

42. Mr Van Sante’s second point was an attack on the credibility and *bona fides* of the claimants. This was derived from enquiries that the James Hay & AJ Bell defendants’ solicitors, Pinsent Masons, had made of Ryans Solicitors – who acted for the claimants (without ever coming on the record) between about January and July 2024. The enquiries were designed to elicit evidence as to the extent of the claimants’ ignorance of the steps taken by their solicitors on their behalf and of the orders made. In making such enquiries, Pinsent Masons were on dangerous ground. First, any response from Ryans was all too capable of trespassing on matters that were *prima facie* privileged. Second, given that the conduct and representation of Ryans was criticised, their response was almost bound to be (adopting Mr McMeel’s expression) “defensive and self-serving”. That is, indeed, how the responses read. I doubt that it was wise for Pinsent Masons to have embarked on these enquiries in the first place and they have contributed very little to the matters at issue. The high point of Ryans’ responses to the enquiries was that it was speculated by them that the first claimant, Mr Lee, might have discussed the extension application with Mr McCulloch on 23 January 2024. In order to rebut this, the claimants waived privilege in an email dated 14 May 2024 from Ryans to Mr Lee. The sense of the email was that there was no such discussion.

43. Mr Van Sante relied upon the decisions in *Goldcrest Distribution v McCole* [2016] EWHC 1571 (Ch) and *Devon & Cornwall Autistic Community Trust v Cornwall Council* [2015] EWHC 129 (QB). The judges in those cases (respectively Master Matthews, as he then was, and Green J) criticised what I might call bald assertions by a party in default that it was their solicitor who was to blame for the conduct that had led to the need to apply for relief from sanctions. Green J, for example, commented that all he had before him was “a series of unsubstantiated assertions of a particularly serious nature about the conduct of previous legal advisors”. Master Matthews commented that the claimant “should have waived privilege and enabled a full explanation to be given by the lawyers of their criticised conduct”. These cases led Mr Van Sante to submit to me that “Cs should themselves have waived privilege and presented a full account to the Court, exhibiting all relevant documents and obtained evidence from their former legal representatives to substantiate their position.”
44. I have taken careful note of the decisions of Master Matthews and Green J. But there are some obvious points of distinction. In this case, the claimants have given a full explanation of their state of ignorance and the lack of progress of their claim. It is abundantly clear from the succession of retainers and instructions from one set of solicitors to the next (what Mr McMeel, not inappropriately, called a game of “pass the parcel”) that their interests were neglected. Their ignorance of what was actually happening is not bare assertion and is only too plausible. Mr Van Sante nevertheless insisted that it was incumbent on the claimants to “put in the file”, i.e. to disclose the solicitor’s entire (privileged) file of documents and provide evidence and explanation from the relevant firm through whose hands the file had passed. This would amount to a mini-trial of a satellite issue and would be completely disproportionate. Further, Mr Van Sante’s real point was that without disclosure of the file his clients and the court could not be satisfied that, for example, there was not a note of a discussion on 23 January 2024 or some other date between Mr McCulloch and Mr Lee at which Mr Lee was – contrary to what he has maintained – in fact acquainted with the true position. As Mr McMeel pointed out, this amounted to a conspiracy theory involving his instructing solicitors, Northridge Law. It is scarcely likely that they would have suppressed such a document thereby actively misleading the court and I regard the stance taken by Mr Van Sante and his solicitors on this matter to be unreasonable and unrealistic.
45. Having rejected Mr Van Sante’s specific points, I return to the *Denton* criteria. As will already be apparent, my view is that weighing up those criteria (and especially the last) the balance comes out clearly in favour of granting relief from sanctions.
46. I invite counsel to submit an order reflecting the determinations in this judgment. If that and/or costs cannot be agreed, I will list a further short hearing.

Postscript

47. I distributed copies of this judgment in draft for editorial corrections. These were duly supplied by Mr McMeel KC and Mr Day. Mr Van Sante supplied a document of a somewhat different character. It was prefaced with the following statement:

“D3-D6 note in providing suggested corrections that it is incumbent on them to point out if they consider reasoning in a judgment is inadequate in line with paragraph 32(e) of *Wuhu Ruyi Xinbo Investment Partnership Enterprise (Limited*

Partnership) v GLAS SAS (London Branch) [2025] EWCA Civ 933 to permit such perfections as are permitted under paragraph 32(f) of that judgment, and have therefore sought to do so where relevant.”

Almost the whole document consisted not of editorial corrections but an attack on my reasoning and conclusions.

48. The sub-paragraphs of the judgment of Falk LJ in the *GLAS SAS* case which Mr Van Sante relied upon were drawn from her summary of the methodology that judges might bring to the task of expressing their reasoning. This is what she said:

“32. Before leaving the topic of inadequate reasoning, I will draw together some threads from the authorities and comment on how they may be applied in the context of an interim application or case management decision such as this. These points should come as no surprise to experienced judges, but they may assist those at earlier stages of their judicial careers:

a) A judgment or ruling given in an applications list such as the Friday Commercial Court list, or at a case management hearing where there may be a multiplicity of issues to address in a limited time, is unlikely to be, and need not be, a polished product like a reserved judgment.

b) What is required will depend on the context. However, summaries of background facts and uncontroversial legal principles may be omitted in appropriate cases, or at least significantly trimmed. If a judge is able to do so, preparation of notes in advance will assist him or her to include the minimum required to make the judgment understandable. If essential, cross-references to skeleton arguments or other documents can be made, although it is preferable for these to be "read in" to the transcript, or for the approved transcript to include the information referred to (see further below).

c) As Males LJ explained in *Simetra*, the best approach is to identify the issue or issues, refer to any relevant evidence (again by cross-reference if needed) and then give the core reasons for the judge's conclusions. Again, the issues and relevant evidence may well be capable of being noted in advance. If the judge has formed a provisional view, it may also be possible to reflect that in a tentative draft, but that will of course require careful review in the light of oral argument. If necessary, the judge should rise (or send the parties out) to allow enough time for that review. This applies whatever the time pressure may be. Even 10 minutes might make all the difference. Alternatively, if necessary and provided that the judge is sure as to the outcome, a decision could be announced with reasons to follow. In other cases judgment might have to be reserved, however unpalatable that is.

d) As a rule of thumb, it will usually be more important in practice to focus on the reasons why the losing party's case is being rejected rather than the (positive) attractions of the winning party's case. That approach is not only transparently fair and should minimise the chance of an appeal being made, or at least permission to appeal being granted, but it also helps to ensure rigour. Accepting the winning party's arguments "for the reasons they give" (or equivalent) will

usually not suffice without saying something specific about the losing party's case.

e) Importantly, counsel should immediately point out if they consider that reasoning is inadequate. It is regrettable that this was not done in this case. A failure to do so cannot prevent an appeal being made, but it is conduct that might be taken into account by the appellate court in determining the appropriate order for costs, since raising the issue might have resulted in an unnecessary appeal being avoided.

f) A judge also has scope to perfect a transcript of a judgment when he or she is asked to approve it. *Ex post facto* justifications are of course not appropriate, but amendments are possible to ensure that the approved transcript clearly conveys what the judge intended to say, in a way that is understandable both to the parties and to an appeal court. This is not limited to correcting obvious errors or infelicities. For example, the content of cross-references that have not been read in to the transcript could be expanded, and reasoning can be clarified. The structure, or order in which text appears, can also be altered if required to improve clarity. If further reasoning was in the judge's mind but was omitted in error, a post-script could be added explaining that.”

49. My judgment in this case is not an *ex tempore* judgment given orally in the middle of a busy list (as was the first instance judgment in the *GLAS SAS* case). Editorial corrections, which are what I invited, in respect of a reserved, written judgment are not generally an occasion to mount an attack on the judge's reasoning. That is perhaps especially so when that judge has made the opening remarks I have made at paragraph 6 above. To those opening remarks – and given the tenor of Mr Van Sante's document – I might now add that not every argument or consideration urged on me by the parties has been central to my decision and not every argument has required from me the detailed analysis found in the skeletons; see generally *Commissioner of Customs & Excise v A* [2002] EWCA Civ 1039 at paragraphs 80 – 84. I do not read Falk LJ's judgment in the *GLAS SAS* case as altering this general rule. The position was summarised by Baker LJ in a recent case concerning family proceedings; see *YM (Care Proceedings) (Clarification of Reasons)* [2024] EWCA Civ 71.

“9. The delivery of a judgment is not a transactional process. Its contents are not open to negotiation. Just as the trial is "not a dress rehearsal" but rather "the first and last night of the show" (per Lewison LJ in *Fage UK Ltd v Chobani UK Ltd*, [2014] EWCA Civ 5 at paragraph 114), so the judgment is not a draft paper for discussion but the definitive recording of the judge's decisions and the reasons for reaching them. It is therefore inappropriate to use a request for clarifications to reiterate submissions or re-argue the case, or to cite a part of the evidence not mentioned in the judgment and on the basis of that evidence ask the judge to reconsider the findings.”

50. The third to sixth defendants' List of Proposed Corrections provides examples of all these vices. The List does not, in truth, seek clarification or elaboration of my reasoning. It invites me to adopt different reasoning and/or to take into account considerations which these defendants think are important, but which I did not. I therefore decline the invitation to embark upon the “perfections” that were urged upon

me. I will deal with them in the context of any application for permission to appeal, which seems to me to be the proper forum for them.

ⁱ These were Mr McMeel's instructions, which were apparently compiled in haste and which (as with much else) required further evidence from the claimants. It was clarified at the June hearing that this was incorrect and that they were aware that Angelus were conducting their claims.

Annex – the orders (as summarised in Mr McMeel KC's skeleton)

1. The backdrop is a sequence of orders, culminating in the Order of Master Davison dated 12 January 2024 (and sealed on 15 January 2024) ("the Third Order"). [/].
2. The first order in the sequence is the Order dated 25 April 2023 (and sealed on 28 April 2023) ("the First Order"), on the application of Ds dated 28 March 2023, and made without a hearing, requiring Cs to answer requests for further information ("RFIs") within 14 days (para 1) and requiring Cs to pay £3,000 in costs (paras 2 and 3). It was served on High Street Solicitors Ltd. [/].
3. The next is the Order dated 22 June 2023 (and sealed on 23 June 2023) ("the Second Order"), on the application of Ds dated 25 May 2023, also made without a hearing, which comprised an unless order requiring Cs to answer the RFIs within 7 days and to pay the £3,000 of costs under the previous Order, or else their claims "shall be struck out" (para 1). It provided that the costs of that application were summarily assessed on the indemnity basis in the sums of £5,181.58 (para 2) and £6,689.97 (para 3), totalling £11,871.55. It was served on Angelus Law. [/].
4. The £3,000 of costs were paid by Angelus Law on behalf of Cs on 3 July 2023 ("the Angelus Payment"), a short extension having been agreed by Pinsent Masons on behalf of Ds with Mr Dave McCulloch of Angelus Law. See "JRC 3" p 38 [/].
5. The responses to the RFIs dated 30 June 2023 ("RRFIs") were filed and served on time, signed by Mr McCulloch of Angelus Law. [/] and [/].
6. The Third Order itself, on the application of Ds dated 20 July 2023, also made without a hearing, comprised unless orders requiring Cs to pay the £11,871.55 of costs under the previous Order, or else their claims "shall be struck out" (paras 1 and 2) ("the Unless Order"). It also provided that the costs of that application were summarily assessed on the indemnity basis in the sums of £4,056.84 (para 3) and £4,067.83 (para 4), totalling £8,124.67. It was served on Angelus Law. [/].
7. It will be seen that the Third Order was generated by near monthly applications by Ds' Solicitors between April and July 2023, none of which was determined at a hearing, heaping costs on costs, latterly upon the indemnity basis, on Cs. The costs associated with the three orders totalled £22,996.22.

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8. The RFS Appln supersedes the application made by Mr McCulloch, then of Ryans Solicitors, on 5 February 2024 (“the Extension Application”), seeking a further 28 days for compliance with the Unless Order. [/].
 9. Prior to the previous hearing on 29 January 2025 before Master Davison (“the January Hearing”), Cs’ immediately previous Solicitors, Barings Law only went on the record on 28 January 2025. They instructed Counsel on behalf of Cs the same day. At the hearing Cs sought, and were afforded, under CPR 3.1(2)(b), an adjournment.
 10. The resulting Order of Master Davison dated 31 January 2025 (and sealed on 7 March 2025) (“the Hearing Order”), [/], set out the background, including that (in the first recital) Cs’ claims were “standing struck out” for non-compliance with the Unless Order, and (in the fifth recital) that Cs had made an application for an adjournment at the hearing, including to permit them to make an application for relief from sanctions.
 11. By para 4 Cs were to make any application for relief from sanctions within 7 days. Cs made their application on 5 February 2025. This was conditional (under paras 6 and 7) on Cs paying the sums required by the Unless Order (under paras 2 and 3 of the Hearing Order).
 12. By para 8 Cs were required to provide the evidence on which they wished to rely within 21 days of the Hearing Order.
 13. By paras 10 and 11 Cs were ordered to pay Ds’ costs of the hearing thrown away, including interim payments in the sum of £20,000 to be paid within 21 days of the Hearing Order.
 14. By para 12 Cs were required to file and serve this Skeleton by 23 May 2025.
 15. Cs have paid all the sums required by the Hearing Order timeously, and have complied with all its other provisions.
 16. Ds (D3, D4, D5 and D6) have to date been awarded and paid costs, including £20,000 on an interim basis, under the aforesaid Orders totalling £42,996.22.