Neutral Citation Number: [2024] EWHC 801 (Ch)

Case No: BL-2022-MAN-000036

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Wednesday, 17 April 2024

Before :

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between :

NIPROSE INVESTMENTS LIMITED
AND 34 OTHER CLAIMANTS

60th to 94th Claimants

- and -

VINCENTS SOLICITORS LIMITED **10th Defendant**

- -
- -

Mr Simon Wilton KC (instructed by **RPC**, London) for the **10th Defendant/Applicant**
Mr Laurie Scher (instructed by **Walker Morris LLP**, Leeds) for the **60th to 94th Claimants/Respondents**

Hearing date: 20 March 2024
Date judgment circulated: 10 April 2024
Hand down date: 17 April 2024

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HIS HONOUR JUDGE HODGE KC

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Remote hand-down: The court handed down this judgment remotely by circulation to the parties' legal representatives by email, by uploading it to CE-File, and by release to The National Archives. The time and date for hand-down is deemed to be 10:00 am on Wednesday 17 April 2024.

Professional negligence *– Solicitors – Defendants' application for strike out or summary judgment – Defendants acted for purchasers of 50 residential units in a buyer-funded, off-plan development scheme – Purchasers losing their substantial up-front payments on failure of development and suing their conveyancing solicitors for breach of duty – Extent of duty on purchasers' solicitors – Whether duty to advise that deposit-holding machinery offered no meaningful protection – Whether duty to advise purchasers against risks of investing in development – Whether duty to ensure advice fully understood – Whether solicitors in breach of duty – Whether loss of purchasers' investments legally attributable to any breach of duty – Whether claim sufficiently pleaded – Whether purchasers' claims should be struck out or summary judgment entered for defendant solicitors*

The following cases are referred to in the judgment:

BDW Trading Ltd v URS Corpn Ltd [2023] EWCA Civ 772, [2024] 2 WLR 181
Carradine Properties Ltd v DJ Freeman & Co [1999] Lloyd's Rep. P.N. 48
Dutfield v Gilbert H Stephens & Sons [1988] Fam Law 473
Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch)
In Soo Kim v Youg Geun Park [2011] EWHC 1781 (QB)
Kandola v Mirza Solicitors LLP [2015] EWHC 460 (Ch), [2015] P.N.L.R. 19
Manchester Building Society v Grant Thornton UK LLP [2021] UKSC 20, [2022] AC 783

His Honour Judge Hodge KC:

I: Introduction

1. This is my considered judgment on an application by the 10th defendant ('**Vincents**'), issued on 21 February 2024, to strike out a claim in professional negligence brought against them by 35 separate claimants (numbered 60 to 94) arising out of their purchase of 50 residential units in a buyer-funded, off-plan development scheme in Liverpool 6, or for summary judgment against the claimants under CPR 24. Each of the purchasers lost substantial up-front payments on the failure of the development and they are suing Vincents, who acted as their conveyancing solicitors, for breach of duty. The issues raised on this application include the nature and extent of the duties owed by Vincents to advise the purchasers against the risks of investing in this particular development; whether Vincents are in breach of such duties; what are the risks of harm to the claimants against which the law imposed on Vincents a duty to take care (the scope of duty question); whether the loss for which the claimants seek damages is the consequence of Vincents' acts or omissions (the factual causation question); whether there is a sufficient nexus between a particular element of the harm for which the claimants seek damages and the subject matter of Vincents' duty of care (the duty nexus question); and whether the claims against Vincents are sufficiently pleaded. Vincents are represented by Mr Simon Wilton KC, instructed by RPC, whilst the 35 purchasers who had instructed Vincents on their respective purchases are represented by Mr Laurie Scher (of counsel), instructed by Walker Morris LLP. Save where the context otherwise requires, in this judgment references to 'the claimants' are to Mr Scher's lay clients.

2. The application is supported by the witness statement, dated 21 February 2024, of Mr Graham Matthew Reid, a solicitor and partner in RPC which is instructed by Vincents (or its insurers). Evidence in answer is provided by the witness statement, dated 12 March 2024, of Mr Paul Douglas Hargreaves, a solicitor and partner in Walker Morris LLP, instructed by the claimants, to which Mr Reid replies by way of a second witness statement dated 14 March 2024. The hearing bundle extends to some 595 pages, and the bundle of authorities (with minor additions made during the course of the hearing) comprises some 400 pages. I have also received detailed written skeleton arguments from both counsel. With the benefit of my pre-reading, the hearing was comfortably completed within its time estimate of one day on Wednesday 20 March 2024.

3. For structural reasons only, this judgment is divided into the following sections (although these are not self-contained, and the contents of each part have informed the others):

    I: Introduction

    II: Background

    III: Pleadings

    IV: Submissions

    V: Analysis and conclusions

VI: Disposal

II: *Background*

4. By a claim form, issued on 20 April 2022, 94 claimants who, between 2017 and 2019, entered into contracts to purchase one or more individual units off-plan in a proposed residential development to be known as The Rise in Liverpool 6 have brought professional negligence claims against the ten conveyancing practices whom they instructed in connection with their respective purchases. On exchange of contracts, each claimant paid a substantial, upfront initial payment which, together, added up to over £6,000,000 in deposits across over 100 apartments. The claimants also paid reservation fees to reserve the units and, in some cases, paid further instalments of the purchase price. These sums were used to finance the marketing and construction of the development, which was to comprise 409 units, including student accommodation and residential studio, one- bedroom and two-bedroom apartments. It appears that construction work ceased around March/April 2019, by which time the works consisted only of a steel-frame structure. The developer went into compulsory liquidation on 10 June 2020. According to the liquidator's progress report for the year ending 18 June 2023, receivers appointed by the administrators of the developer's secured lender sold the uncompleted development for only £4 million. This was despite the fact that the value of work completed and approved by the developer's employer's agent was over £7.25 million. The claimants allege that they have derived no value from their investments, and have lost the substantial up-front payments and, in some cases, further instalments paid to the developer's solicitors as *'stakeholder'*. All the claimants allege that these losses were their respective conveyancer's fault because they were not properly advised of the risks of investing in this development. The claimants seek damages for losses resulting from the defendants' alleged breaches of duty.

5. Most of the claims have been stayed as the relevant defendant is in insolvent liquidation or has settled. Only the claims against the second and seventh defendants, and against Vincents, remain actively contested. The majority of the live claims are those which are proceeding against Vincents, who acted for 35 clients on the purchase of a total of 50 units, with deposits paid totalling some £2.7 million. Some of these claimants were purchasing more than one unit, with the 60th claimant purchasing eight, and the 79th claimant (a Turkish company based in Istanbul) purchasing ten, units. The pleaded defence alleges that Vincents' clients exchanged contracts *"on divers dates between 23 November 2017 and 16 August 2018"*, although at paragraph 4 of their reply the claimants assert *"that the last exchange of the claimants' contracts was later than 16 August 2018. C92 (Soneh Medical Limited) exchanged contracts (on Vincents' case) on 11 January 2019."*

6. CPR 7.3 permits a claimant to use a single claim form to start all claims which can be *"conveniently disposed of in the same proceedings"*. In terms, neither the rule, nor its related practice direction, provide any further test beyond that of *"convenience"*. The commentary at paragraph 7.3.5 of the current (2024) edition of Volume 1 of *Civil Procedure* points out that even if it may be inconvenient to attempt to try several claims together, there is no need to impugn the validity of the initial joinder of the claims in the one claim form; instead reliance may be placed on the court's powers to order separate trials to mitigate any inconvenience. However, it is my experience that the court is increasingly being confronted with extreme attempts to bring claims on

behalf of multiple claimants, or to sue multiple defendants, in one action. In such cases, in my judgment the court should not hesitate to use its general powers of case management (under CPR 3.1) to direct that specific parts of the proceedings should be dealt with as separate proceedings. Whilst it may be convenient to join in one claim all the purchasers of units in a single development who wish to sue a single firm of solicitors or licensed conveyancers, who used the same, standard-form documentation in connection with their respective purchases, in my judgment it is stretching the limits of the *'convenient disposal'* test to join claims against different conveyancers - some solicitors and other licensed conveyancers - who used very different forms of documentation in a single set of proceedings. I am also concerned that it may constitute an abuse of the rules governing the payment of court fees on starting court proceedings. In the instant case, a single court fee of £10,000 has been paid on the issue of a single Part 7 claim form initiating claims in excess of £6 million being brought by no less than 94 claimants who are suing ten entirely separate defendants.

7. One of the difficulties arising on the present application (to which I shall need to return in section V below) is that the allegations by all 94 claimants against all ten defendants have been set out in a single document entitled *'Particulars of Claim'*, albeit this is supplemented by an appended spreadsheet which is said to set out any particular material facts distinguishing claimants from one another. Vincents emphasise that the particulars of breach of duty and negligence in paragraph 45 of the particulars of claim are for the most part directed at all ten defendants, save that three of the ten allegations are not maintained against Vincents. Mr Wilton points out that this is perhaps not surprising as even the claimants acknowledge (at paragraphs 29.10.1 and 29.10.4 of the particulars of claim) that Vincents' report on title was "*a long and detailed report with 17 substantive pages*", and that within the report "*paragraphs 3.6 and 3.7 provided some advice about the risks of the transaction*". I shall set out the relevant allegations in the following section of this judgment.

8. In summary, the claimants were purchasing one or more investment properties in an off-plan property scheme, paying large up-front *'deposits'*, typically of 25% or 50%, on exchange of contracts, with a further instalment to be paid, in some cases, before completion, with, typically, a balancing payment on completion, in return for the prospect of acquiring a long leasehold interest in an individual unit or units on completion. The development held out the possibility of capital appreciation and the *'promise'* of a guaranteed rental income, equivalent to a return of 6% or 8% per annum (depending on the type of unit acquired) derived through an underlease, for a period of five years, to be granted on completion. The development was *'buyer-funded'* to the extent that the deposit monies were payable to the developer's solicitor, which (in accordance with clause 4.2 of the purchase contract) held them *"as stakeholder for the seller"* (i.e. the developer), to be released on the terms provided in Schedule 2 to the purchase contract (headed *'Deposit Release Terms'*) and thus, amongst other things, to fund the marketing and sale, and also the construction, costs of the development.

9. Vincents' advice to each purchaser was set out within its standard-form report on title and its accompanying schedules and annexes. In his skeleton argument, Mr Wilton summarises the salient features of this advice as follows (with *"particularly salient advice being emboldened"*):

(1) Vincents was not providing a valuation or an investment report or advising on the current economic climate or the likely future state of the economy or markets, and it could not advise on current or potential value, and a valuation should be obtained if required.

(2) Vincents was also not advising as to the suitability or capabilities of the developer in relation to the obligations under the building contract or the purchase contract.

(3) **The developer was a newly-incorporated company and the likelihood was that it had very little, or no, asset value should it be necessary to take legal action against it**.

(4) Vincents could not advise further about the developer, and if the client had any concerns (implicitly about its financial strength and ability to complete the development), then the client should seek the advice of the sales agent or an accountant or chartered surveyor or other suitably qualified and experienced professional.

(5) Vincents had not inspected the individual property or the site and the client should satisfy him or herself that the build was proceeding in accordance with the building contract, which Vincents had not seen and upon which it could not comment; if the client required advice it should appoint a chartered surveyor or other suitable professional.

(6) Upon exchange, the client would be liable to make the *'First Instalment'*, which would be held by the developer's solicitors *"as stakeholder"* on terms whereby they could only release the money to the developer subject to the conditions in Schedule 2 of the contract, which meant that the developer's solicitors could release £10,000 towards the discharge of the developer's obligations in a loan agreement, and then the remainder in connection with the development (including construction costs).

(7) That arrangement gave the client *"some protection"* as the monies could not simply be sent to the developer to use for its own means, i.e. in respect of anything other than developing the property.

(8) **The usual maximum deposit was 10% and here the deposit was not a market standard deposit for residential conveyancing: it involved pre-payment of the price and, effectively, the provision of finance to the developer**.

(9) **Buying off-plan properties presented a substantial risk that the developer/seller could fail between exchange and completion and that any monies paid and released to the seller would be lost**.

(10) **That issue had been raised with the developer's solicitors, who had advised that the deposit required was in line with other developers and therefore they were not willing to change the arrangement**.

(11) **The developer had also been asked, but had not been prepared, to provide a deposit protection scheme**.

(12) **Therefore, it could be difficult, or even impossible, to recover any sums paid to the developer if the purchase did not complete for any reason, for instance if the developer were unable or refused to complete or became insolvent**.

(13) **The Solicitors Regulation Authority (*'SRA'*) Guidance was attached in such respects**.

(14) Vincents had undertaken no checks on the developer or the building contractor.

(15) The developer was obliged to carry out and complete building works after exchange, but there was no specific date by which completion had to be achieved.

(16) The anticipated practical completion date was in the first quarter of 2019, but no assurance could be given that the date would be met.

(17) If practical completion had not occurred by the long-stop date, the contract could be terminated and all monies should be returned, but that was subject to the inherent risks detailed in the report (as set above).

10. The SRA warning notice, issued on 23 June 2017, relates to *"Investment schemes (including conveyancing)"*. It extends to just over five pages of densely typed text. As well as law firms, the warning is *"also relevant to members of the public who are considering paying money into what is promoted as an 'investment' scheme where a law firm or solicitor is involved"*. Under the heading *"Conveyancing or purported investment in land"*, and the sub-heading *"Financing a development"*, the text includes (with particularly salient warnings emphasised by Mr Scher emboldened):

> Schemes are being promoted as involving the routine buying of a property when in reality the buyers' money is being used to finance a development or refurbishment. This is of particular concern when in unusual developments such as the buying of individual hotel rooms, rooms in care homes, or self-storage units. **Our concerns also apply to some extent to any *'off-plan'* purchases. These may not be investment frauds but they still involve higher risk than the simple purchase of a property.**
>
> **High *'deposits'* are used by property developers to finance their developments. Investors are not being advised, or properly advised, that this often presents a much higher risk than simply buying an existing house or apartment.**
>
> Where you are acting for the buyers in these types of transactions, **you must advise clients fully about the transaction and how it significantly differs from the simple buying of an existing property**, such as:
>
> 1. Buying a property not yet built or completed i.e. off plan or subject to significant refurbishment, involves substantial risk that the developer or seller could fail and money will be lost
>
> 2. Promises of substantial returns are often illusory – and standard warnings in publicity about the risk of capital loss are not enough to ensure that a law firm has properly advised a client upon the transaction …

> 3. High *'deposits'* are being used to finance the development (see below).
>
> We are seeing cases of solicitors simply processing transactions for buyers and adopting the language of conveyancing. The effect is to mask what is really happening. **For example, investors provide money for a *'deposit'* which is released to the seller upon some (often spurious) condition. The investor's money is used to buy the property or finance its building or refurbishment. This carries substantial risks such as the money being misappropriated, the seller failing to complete the scheme or the seller becoming insolvent.**
>
> The usual deposit in a conveyancing transaction is 10 percent. It is paid to ensure that the buyer will complete the contract. In dubious schemes we have seen, the *'deposit'* has been 30 percent or even 80 percent. These are not market standard deposits but involve both pre-payment of the price and effectively the providing of finance to the developer. Referring to them as deposits is part of the psychology of presenting a risky *'investment'* as routine conveyancing. Clients are actually paying their money into often high-risk property development, and substantial losses have been suffered. **You should ensure that clients fully understand the risks and it may well be necessary to strongly advise clients against entering into the transaction.**

Later, under the heading *"Relationship with investors"*, the text warns:

> **Attempts to prevent or reduce the likelihood of investors obtaining their own legal advice may well be evidence of dishonesty.**
>
> **Any attempt to prevent buyers or investors from obtaining objective and independent legal advice is a serious red flag indicator.** This could involve, for example:
>
> 1. Clear or subtle attempts to dissuade them from instructing their own solicitors — such as indications that they do not need legal advice or that the promoter and their solicitors will *'deal with everything'*.
>
> 2. A requirement, or pressure, to instruct a particular firm (which may have past links with the developer or be motivated not to advise about the risks of the transaction to maintain a flow of work).
>
> **3. A refusal by the scheme promoter to accept any changes to standard *'conveyancing'* documentation — where the terms are in any way unusual such as requiring a high *'deposit'* or its release to finance the development.**

11. Mr Wilton relies upon the inclusion of this warning notice as also highlighting to Vincents' clients the high risk of the investment and the potential lack of effective recourse if it failed. Mr Scher, by contrast, contends that Vincents failed to heed the serious *'red flag'* indicators identified by the SRA's warning notice, or to take on board, and act upon, its various warnings, including strongly advising the claimants against entering into their particular transactions.

III: Pleadings

(a) Particulars of Claim

12. As previously indicated, this is a generic statement of case directed to all ten defendant conveyancing practices. Paragraph 6 pleads that

> … if the Defendants had fulfilled their duties by properly advising the Claimants about the risks of the transactions, and the Claimants' lack of meaningful security or protection against those risks, the Claimants would not have entered into the transactions, and their money would not have been lost. The Claimants claim damages for losses resulting from the Defendants' breaches of duty.

13. Paragraph 13 pleads that some of the claimants had received very attractive marketing material, prepared by the developer's agent, which made claims such as:

> **How are my funds used during construction?**
>
> Funds received are held with solicitors in an escrow account until they are required for use in construction, development and management. When further funds are required, a site valuation is submitted to the Architects. Once assessed and accepted as an accurate requirement of funds, a valuation certificate is issued to solicitors. Only on receipt of the certificate will funds be released to the Developer and under the terms set as stakeholder. This ring fences your funds in the event of any difficulties as only funds used in line with the escrow terms and against the last valuation have been drawn and made available. Therefore all other amounts paid are still held in escrow and only made available to the Developer once the next valuation is submitted and authorized.

Paragraph 14 pleads that some of the claimants also received emails from the developer's agent in which statements were made, such as (amongst others) *"Funds secure in Escrow"*.

14. Paragraph 17 pleads the SRA's warning notice. Paragraph 19 pleads that *"the overwhelming majority of claimants instructed the relevant defendant at the instigation of [the developer's agent], and were given no choice in the matter"*. Paragraph 20.2 includes a plea that, exceptionally, certain claimants instructed the second defendant but were later informed that their files had been transferred to Vincents.

15. Paragraph 25.9 pleads that, contrary to the marketing statements, no version of Schedule 2 of the various sale contracts *"provided for any meaningful security or protection for the claimants whatsoever"*. Paragraph 26 pleads the respects in which the terms of the contracts to purchase *"exposed the claimants to abnormally high risks"* such that *"on its own terms Schedule 2 offers no or no sufficient protection for the claimants' money"*. It avers that *"the defendants had a duty to advise the claimants of the risks to which they were exposed, as set out below"*.

16. Paragraph 29 pleads the material passages and characteristics of each of the defendants' reports on title. As regards Vincents' report on title, paragraph 29.10 pleads as follows:

> 29.10.1 This document was a long and detailed report, with 17 substantive pages.
>
> 29.10.2 Paragraph 3.5 provided:
>
> *The remainder of the First Deposit will only be released to the Seller by their solicitor in connection with the construction of the development, including marketing of the same. This gives you some protection as the monies cannot simply be sent to the Seller to use for their own means, i.e. in respect of anything other than developing the Property /Building.*
>
> 29.10.3 However, in reality, Schedule 2 provided no meaningful protection, as the Developer's solicitor had no obligation to enquire into, or verify, the accuracy, appropriateness or authenticity of the documents submitted by the Developer's representative.
>
> 29.10.4 Further, paragraphs 3.6 and 3.7 provided some advice about the risks of the transaction. However, such advice was not emphasised, and was detracted from by the (wrong) advice in paragraph 3.5. ln any event, no steps were taken to ensure that the relevant Claimants in fact read and understood the advice in those paragraphs.

17. Paragraph 42 sets out the various express or implied terms of each defendants' retainer, including (at sub-paragraph 42.6) that *"the defendants would consider whether it was necessary to advise the claimants against entering into the transaction, and if so, to give such advice"*. Paragraph 43 alleges that each defendant owed a concurrent, and corresponding, duty of care in tort.

18. Paragraph 45 sets out the allegations of beach of duty and negligence. Sub-paragraphs 45.2 to 45.4 are expressly not directed to Vincents but it is worth setting them out so as to emphasise that there had been concerns about which Vincents had advised, contrasting its advice with that of the first eight defendants, and stressing the limited nature of the claimants' complaints against Vincents. Paragraph 45 reads as follows:

> 45. In breach of the duties set out in paragraph 42 above, and/or negligently, when providing the reports on title set out in paragraph 27 - 29 above and in any event:
>
> PARTICULARS OF BREACH OF DUTY/NEGLIGENCE
>
> 45.1. Each of the Defendants failed to advise the relevant Claimants that the terms on which the *'deposits'* were to be held and released offered no meaningful security or protection.
>
> 45.2. The First to Eighth Defendants failed to advise the relevant Claimants that the payment obligations described as *'deposits'* were extremely high, and far above the normal 10% to be expected in a conveyancing transaction.

> 45.3. The First to Eighth Defendants failed to advise the relevant Claimants that in reality, the buyers' money was being used to finance the development, which involved a much higher risk than the simple purchase of property.
>
> 45.4. The First to Eighth Defendants failed to advise the relevant Claimants that there was a substantial risk that the money could all be lost, because (for example) the Developer could fail to complete the scheme; the developer could become insolvent; or the money could be misappropriated.
>
> 45.5. Further or alternatively to the breaches of duty set out in paragraphs 45.1-4 above: if and to the extent that such advice was given, the Defendants nevertheless failed to ensure, alternatively failed to take reasonable steps to ensure, that the Claimants fully understood the advice.
>
> 45.6. The Defendants gave the Claimants wrong advice, incomplete advice, or no advice at all.
>
> 45.7. The Defendants failed to consider whether it was necessary to advise the Claimants against entering into the transaction.
>
> 45.8. The Defendants failed to advise the Claimants against entering into the transaction.
>
> 45.9. The Defendants, in all the circumstances, failed to protect the rights and interest of the Claimants in respect of the transaction, the Development and their investments.
>
> 45.10. The Defendants, in all the circumstances, failed to exercise the care and skill to be expected of solicitors or licensed conveyancers skilled, experienced and competent in conveyancing.

19. Paragraphs 46 and 47 set out the allegations of causation, loss and damage. So far as material, they read:

> 46. The Claimants relied on the Defendants, the advice of the Defendants, and the proper discharge of the Defendants' duties as solicitors or licensed conveyancers. The Claimants would not have entered into the contracts to purchase their units or paid the sums described as *'deposits'* if they had been properly advised by the Defendants, and if the Defendants had discharged their duties.
>
> 47. The money paid by the Claimants is irrecoverable, and their interest in the Development is worthless …

(b) Defence

20. Paragraph 17 of the defence addresses the SRA warning notice, averring that it

> 17.1 … was a generic notice directed at many different types of property investment schemes, in respect of which different individual risks (and levels of risk) *might* arise, and accordingly insofar as it may be alleged it is denied that it is appropriate to infer that it applied in all respects to any individual property investment scheme such as the development, or that it mandated a uniform advisory response irrespective of the specific characteristics of the individual investment scheme; and
>
> 17.2. Vincents was duly cognizant of the Warning Notice and of the need to bear its contents in mind and to give appropriate precautionary advice to the claimants, as it duly did, as when advising the claimants via its reports on title Vincents:
>
> 17.2.1. referred to the Warning Notice and included it alongside its report on title as relevant guidance to which the claimants should have regard; and
>
> 17.2.2. gave specific advice in its report on title which was appropriate in respect of the particular risks which arose in respect of the Development.

21. As regards the protection afforded to purchasers by Schedule 2 of the individual purchase contracts, Vincents pleads as follows:

> 26.6. it is denied that Schedule 2 provided no meaningful security or protection: on the contrary, it provided a contractual framework pursuant to which the developer's solicitors as stakeholder for the developer were only entitled to release the monies they held to their client in respect of defined forms of expenditure actually incurred or payable by the developer in respect of the development, and then only on condition that documentation (whether Valuation Certificates or invoices etc) evidencing that expenditure had been produced in the requisite form by the relevant agent of the seller;
>
> 26.7. accordingly, absent fraud, there was every reason to expect that funds would only be released for legitimate purposes connected with the development and, should there be any failure on the part of the seller's solicitor to comply with the stipulations in question, that the claimants would have a contractual claim against the seller and, potentially at least, a claim in tort against the seller's solicitor and/or the seller's agent and/or the professional consultant too if the circumstances were such that there had been an assumption of responsibility towards the claimants by such parties, or if any such parties had been party to a fraud; and
>
> 26.8. it is noted, further, that it is no part of the claimants' case either that a fraud did in fact take place or even that any of the payments made by the seller's solicitor were used for any illegitimate or untoward purpose which was not contemplated and expressly authorised under Schedule 2.

During the course of oral submissions, Mr Wilton accepted that Vincents' defence did not plead that the claimants would have any claim in contract against the developer's solicitor, its agents or professional consultants.

22. Vincents responds to the allegation that the purchase contracts exposed the claimants to the risks of this buyer-funded development at paragraph 27 of the defence. At paragraphs 30 and 31, Vincents explains why its report on title *"provided an entirely adequate and appropriate explanation of the scope of [their] duty and of the risks involved in the investment purchase the claimants were contemplating insofar as such advice lay within the province of a conveyancing solicitor, and also highlighted the further advice from other professionals which the claimants might wish to obtain"*.

23. Vincents responds to the individual allegations of breach made against it at paragraph 45 of the defence as follows:

> 45.1. sub-paragraph 45.1 is denied because Vincents advised correctly that the terms on which the *'deposits'* were held provided some, but only some, protection, whilst also emphasising the many risks inherent to the transaction;
>
> 45.2. sub-paragraph 45.5 is denied because the Vincents was entitled to suppose that the claimants fully understood its advice because the advice was set out clearly in an obviously important document provided to investors making a substantial capital commitment who could be expected to be reasonably sophisticated (at least) and able to understand advice communicated in such a way, or to seek further explanation or advice if that were necessary;
>
> 45.3. sub-paragraph 45.6 is embarrassing and an abuse of process because the claimants have not identified what was wrong or incomplete about Vincents' advice and because it is plain (even on the claimants' pleaded case) that advice was in fact given: if any specific criticism *is* intended it is denied because the advice given by Vincents was correct and as full and complete as could be expected of a reasonably competent solicitor in the circumstances;
>
> 45.4. sub-paragraphs 45.7 and 45.8 are each denied because:
>
> 45.4.1. Vincents did appraise the risks involved insofar as they lay within its province as conveyancing solicitors; and
>
> 45.4.2. it also drew the claimants' attention to the need to obtain further advice from other professionals if they wanted to be assured about other matters which it did not lie within Vincents' province to advise upon; and
>
> 45.4.3. Vincents made clear that it was not possible for Vincents itself to appraise other risks lying outside its own province (such as the risk of the developer not completing the construction due to insolvency or otherwise), and it was self-evidently up to the claimants to decide,

having taken advice from other professionals as required, whether they wished to proceed or not; and

45.4.4. Vincents was entitled to conclude that it was appropriate to advise as it did, identifying the many risks inherent to the transaction insofar as they lay within its province, but leaving it up to the claimants to decide, with the input of other advisers as required, whether to proceed to take those risks in the hope and expectation of profiting from their investment;

45.5. sub-paragraph 45.9 is embarrassing and an abuse of process because the claimants have not identified what Vincents should have done to protect their rights and interests in respect of the transaction, the development, and their investments, but it is denied in any event because Vincents took all such steps as could reasonably have been expected to protect their rights and interests;

45.6. in the premises, and for the like reasons, sub-paragraph 45.10 is also denied.

24. Vincents plead to the claimants' case on causation and loss at paragraphs 46 to 51 of the defence. In particular, the scope of duty and the duty nexus questions are both addressed at paragraph 49 as follows:

Further or in the alternative, the loss and damage alleged was not loss and damage within the scope of any duty owed by Vincents and/or there is no sufficient nexus between the loss and damage alleged and the subject matter of any duty it owed because:

49.1. Vincents owed the duties of a conveyancing solicitor and did not give and could not be expected to give advice about the financial standing of the developer or [its parent company] or as to the ability (in any material respect) of the developer or its building contractor to complete the development or as to the building contract or as to issues of valuation (including the valuation of any works undertaken), and in all such respects the claimants, if they wished to get advice, were required to seek it from a financial adviser or valuer or surveyor or other construction professional as necessary, as was explained by Vincents in its report on title; and

49.2. on the face of the Particulars of Claim the failure of the development arose by reason of the insolvency of the developer and [its parent company] and/or their failure to complete the building work, but those were risks which *were* highlighted by Vincents insofar as it was possible for it to do so, and beyond that Vincents could not owe any further duty to advise on such matters, the claimants having been advised that they should seek further advice about such matters from appropriate specialist advisers to address any further concerns they might have; and,

49.3. the claimants do not allege that the failure of the development and the loss and damage they sustained was attributable to the inadequacies

> in the contractual protection afforded by Schedule 2 of the contract which it is now said Vincents should have highlighted (whether by way of losses arising on account of a fraud perpetrated by the developer or its solicitors or some other agent of the developer or by reason of the honest but irregular disbursement of the *'deposit'* funds for illegitimate or unauthorised purposes or in any other relevant sense); and
>
> 49.4. neither in that or any other respect is there any pleaded connection between anything Vincents is alleged to have got wrong and the loss and damage ultimately sustained.

(c) Reply

25. At paragraph 6, the claimants reiterate that if they had been properly advised, *"they would not have proceeded with the transaction, even if they were unable to recover the reservation fee, and in spite of the attractive marketing material concerning the development"*. At paragraph 7, the claimants assert that their claims *"are based on negligent legal (not commercial or investment or other) advice, as set out in (inter alia) paragraphs 26 and 45 of the Particulars of Claim. The losses claimed are within the scope of duty of Vincents."* At paragraph 8, the claimants *"repeat that Schedule 2 provided no meaningful security or protection. The so-called 'contractual fetter' added nothing material to the claimants' rights. MSB* [the developer's solicitor] *was not a party to the contracts between buyers and seller. There does not appear to be a claim in tort against MSB, or the seller's agent, or the professional consultant (and by using the words 'potentially at least', Vincents has refrained from alleging that such a cause of action exists)."*

26. The claimants respond to Vincents' case on breach of duty at paragraphs 12 to 14 of the reply as follows:

> 12. As to paragraph 45.1, Vincents' advice about the protection offered by Schedule 2 was negligent. Schedule 2 provided no meaningful protection or security at all.
>
> 13. As to paragraph 45.2, paragraph 29.10.4 of the Particulars of Claim is repeated. The advice about risk was not emphasised, and was detracted from by the negligent advice in the preceding paragraph.
>
> 14. As to paragraph 45.3, the claimants have set out in paragraph 29.10 of the Particulars of Claim what was wrong and incomplete about Vincents' advice. As is clear from Column L of the Schedule to the Particulars of Claim, the claimants do not allege that Vincents gave no advice at all.

27. The claimants respond to paragraphs 49.3 and 49.4 of the defence at paragraph 15 of the reply as follows:

> Paragraph 49.3 is denied. The loss and damage suffered by the claimants was caused by the negligence alleged. If correct advice had been given, the claimants would not have entered into the transaction, and they would not have lost their money (other than a small proportion of their

> money, i.e. the reservation fees). Moreover, if (which is denied) a counterfactual analysis is helpful as a cross-check in the present case: if the advice which was given had been correct, the claimants' payments would have had meaningful security or protection as (for example) set out in paragraph 26.3 of the Particulars of Claim; their funds would only have been released in stages connected to an objective appraisal of the progress of the development; and, as the development had barely progressed, the claimants would not have lost their money (or would only have lost a small proportion of their money).

28. Neither party has served any request for further information.

IV: *Submissions*

(a) For Vincents

29. Mr Wilton complains that the allegations of breach of duty and negligence against Vincents at paragraph 45 of the particulars of claim are wholly generic in nature and largely unparticularised. He points out that there is no allegation of any specific advice to any individual claimant being wrong; although, in a footnote to his skeleton argument, Mr Wilton notes that at paragraphs 23 and 32 of Mr Hargreaves's witness statement there is the suggestion, for the first time, that two of the claimants received unsatisfactory individual advice in the course of telephone calls with representatives of Vincents, despite no such case having been pleaded. Mr Wilton submits that the allegations against Vincents lack any substance since they advance duties which do not exist, or depend upon allegations of breach which plainly have no merit; and because there is no connection between the alleged failings and the losses (which are not legally attributable to anything that Vincents got wrong). Mr Wilton maintains that Vincents should never have been sued, and that the claim against it is a transparent attempt to shoulder it with investment risks which its clients chose to take despite Vincents having alerted the claimants to all such legal risks as a solicitor should highlight. Indeed, he maintains that Vincents went further and highlighted the precise *commercial* risk which caused the failure of the development: the risk that the developer would fail and be unable to complete the development, whereupon the claimants would lose their investment. Mr Wilton says that the claimants freely assumed that risk and cannot now offload it onto Vincents.

30. As set out in its defence (at paragraphs 28-32), Vincents also maintains that it gave detailed and comprehensive advice on the legal risks through its report on title. That highlighted the fact that each claimant was investing up front much more than the normal 10% deposit on an ordinary property transaction, that this was effectively pre-payment of the price and financing of the development, that the developer was a single purpose vehicle likely to have no assets, that there was a substantial risk of the developer failing before completion, that in that event the monies released would be lost, and that the developer was not prepared to offer any further contractual protection against such risks. For good measure, Vincents attached the SRA's 2017 warning notice, which highlights, in forceful terms, the unusual nature of property investment schemes of this character and the high level of risks that can arise. Vincents also said that it could not give valuation or investment or other financial advice.

31. Mr Wilton relies upon the court's powers in CPR 3.4 (2)(a) and (b) to strike out a statement of case which "*…discloses no reasonable grounds for bringing…the claim*" or "*is an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings*". As stated in the notes in the *2024 White Book*, ground (a) covers statements of case which are obviously ill-founded and do not contain a legally valid claim whereas ground (b) can, so Mr Wilton submits, cover both a claim which has no legal validity and claims which are not sufficiently intelligible to enable a defendant to know the case it has to meet. As to summary judgment, Mr Wilton relies on the summary of the applicable principles in the 2024 *White Book* and, in particular, the well-known summary contained in the judgment of Lewison J. in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15].

32. Mr Wilton submits that the case should be struck out under CPR 3.4 (2)(a) and/or (b) because:

(1) the claimants' allegations of breach of duty are obviously ill-founded and do not give rise to a valid claim and/or they do not amount to a properly intelligible case; and

(2) the claimants have not pleaded a legally valid case in respect of the scope of Vincents' duty and the losses claimed, such that there is no legal connection (or nexus) between duty, breach, and loss.

33. For like reasons, and having regard to the evidence before the court, the claimants have no real prospect of showing, for the purposes of CPR 24.3, that Vincents was in breach of duty in any of the respects alleged and/or that there is the necessary legal connection between the alleged duties and their breach and the losses which eventuated.

34. As regards the claimants' case on duty and breach, Mr Wilton submits that the starting-point is that:

(1) a solicitor is ordinarily only obliged to advise on matters within the compass of their retainer, subject to the need, which may on occasion arise, to advise of particular additional risks which may come to his/her attention in the course of performing the retainer;

(2) a solicitor is not a general adviser on matters of business and so is not generally under a duty to advise whether, legal considerations apart, a transaction is a prudent one;

(3) such a duty will only arise exceptionally, such as where it is plain that a client, particularly an inexperienced client, is rushing into an unwise, not to say disastrous, venture; and

(4) negligence requires proof that the solicitor has acted in a way in which no reasonably competent solicitor could have acted, although for that purpose the solicitor is not to be judged by the standards of the particularly meticulous and conscientious practitioner; rather the test is what the reasonably competent practitioner would have done.

35. Mr Wilton submits that none of the pleaded allegations of duty and breach disclose a properly pleaded and legally valid cause of action with any real prospect of success. The allegations, as detailed at paragraph 45 of the particulars of claim, are either obviously invalid or so vague as to be embarrassing and an abuse of process, and for that reason they are plainly devoid of merit. Mr Wilton proceeds to elaborate upon these submissions, addressing each of the pleaded allegations of breach of duty and negligence in turn, at paragraphs 19 to 38 of his written skeleton argument. In particular:

(1) The alleged failure *"to advise that the terms on which the 'deposits' were to be held and released offered no meaningful security or protection"* is the *only* specific, and properly particularised, allegation made against Vincents. Although this allegation is sufficiently pleaded, it has no real prospect of success because the arrangement whereby the developer's solicitor would only release funds on such terms plainly *did* provide *some* protection, just as Vincents had advised at paragraph 3.5 of its report on title. The arrangement plainly did give rise to a stakeholding arrangement to which the developer's solicitors were a party, and thus to a contractual fetter on what those solicitors could properly do with the funds they held. Mr Wilton does not suggest that arrangements that had been put in place would protect the claimants' funds in all conceivable circumstances such as, for instance, if there were to be a fraud by the developer. This was not a foolproof, or a fraudproof, arrangement for holding the deposit moneys; but Vincents never suggested that it was: Vincents only advised that it would provide "*some protection*", which it did, in the form of a fetter on the developer's solicitors' ability to release the claimants' funds, such that some of them were retained, and were available to be returned to certain of the claimants: Mr Wilton suggests that the proof of the pudding is in the eating. Mr Wilton submits that Vincents' qualified representation was a perfectly reasonable one; all the more so when it cannot have provided any untoward degree of assurance given the other warnings within the report on title. This report also drew attention to the fact that the deposit was non-standard in amount; said that it was so large that it was providing finance to the developer; and stressed that the developer had little or no substance if the buyer needed to sue it; that there was a substantial risk that the developer could fail between exchange and completion; that if that occurred, the buyer would lose all of the released deposit monies; that the developer was not willing to offer additional deposit protections; that if the purchase did not complete, it could be difficult, if not impossible, to recover the deposit monies; and that the SRA warning notice applied so, by clear implication, there were risks of the kind to which it referred. Given that the stakeholder arrangement did provide some protection, and given Vincents' very clear warnings about the risks, Mr Wilton submits that what was said about the stakeholding arrangement was unexceptionable, and was not a breach of duty at all; that the pleaded case as to the advice which should have been given is obviously untenable; and that the claimants have no real prospect of establishing this unwarranted allegation against Vincents. Mr Wilton says that in its report on title, Vincents explained the risk of the developer's insolvency that eventuated in clear terms; and if that was the cause of the claimant' loss, then they can have no claim against Vincents.

(2) The allegation that Vincents *"failed to ensure or take reasonable steps to ensure the Claimants fully understood the advice"* discloses no proper complaint, is embarrassing and an abuse of process, does not present an intelligible case, and has no

real prospect of success. No real indication is given of precisely what advice is in issue. The reply (at paragraph 13) suggests that the fault lay in failing to emphasise the risks which the report on title *did* mention, but the risks which were not duly emphasised are still not specified. Nor is anything said to enable one to understand which of the claimants it was who did not understand what they were told, or what it was that they did not understand. The plea is an entirely generic one, and there is no specific complaint lying behind it. In reality, the allegation is hopeless because Vincents' advice was perfectly clear, and was given in the course of an obviously important, and formal, document which clients who were making a substantial capital commitment could be expected to acquaint themselves with, and query if anything was not understood. That was a reasonable expectation. Furthermore, Vincents went to great lengths to identify the risks in terms which ought to have given any reader pause for thought, and further emphasised such matters by attaching the SRA warning. It is hopeless to say that a solicitor has any duty to ensure that advice clearly given has been understood unless that solicitor is on notice that, for some reason, the client did not understand what they were being told. Here there is no plea of anything in any individual retainer, such as a client of known vulnerability, to support the existence of any duty upon Vincents to take reasonable steps to ensure that any particular client had read and understood the advice in the report on title. Indeed, there is no plea that any individual claimant had failed to understand the advice that Vincents had given in its report on title.

(3) It is hopeless to contend that Vincents had any duty *"to advise the claimants against entering into the transaction"*. It is only in very exceptional cases, where a venture is obviously foolhardy and a client especially vulnerable, that any duty of that kind may arise. Ordinarily a solicitor's task is simply to identify legal risks which are pertinent to the transaction, it being the client's decision whether or not to proceed having been so advised, and having taken advice from other relevant professionals as appropriate. Vincents drew attention to all the risks within its sphere of responsibility, and even identified additional issues outside the scope of its responsibility in respect of which the claimants might wish to get their own advice. It is hopeless to contend that any more extensive duty arose, such as might oblige Vincents to counsel against the transaction. There is, for instance, no basis for saying that Vincents knew, or should have realised, that the development would inevitably fail. It was a matter for the clients, having been warned of the risks, to assess whether they were worth running, bearing in mind the potential upside. That was what the claimants did, the inevitable inference being that the claimants' desire to make a capital profit, or to benefit from an enhanced return by way of the guaranteed rent, outweighed any concerns about downside risks. The reply is conspicuously silent, and says nothing further, on this point. Once again, the claim is embarrassing, and an abuse of process, and does not disclose an intelligible and legally valid case; and it also has no real prospect of success.

(4) All other allegations are makeweights which disclose no proper complaint, and are embarrassing and an abuse of process, for like reasons, and because it is not said what was not done which should have been done, even though the defence drew attention to the claimants' failure to give due particulars. Once again, the reply is conspicuously silent and says nothing to substantiate these complaints. Yet again, the allegations are purely generic, there appears to be no specific complaints lying behind

them, and they add nothing to the other allegations made. They disclose no intelligible or legally valid case; and they have no real prospect of success.

36. In the course of his oral submissions, Mr Wilton referred me to observations of HHJ Cooke, sitting as a Judge of the High Court, in *Kandola v Mirza Solicitors LLP* [2015] EWHC 460 (Ch), [2015] P.N.L.R. 19 at [46-7]. Judge Cooke referred to the proposition that a solicitor's duty to explain matters to his client takes account of the client's own experience; the solicitor is not required to explain matters that should be obvious to a person with the client's experience or background. The judge continued:

> This is particularly relevant in considering the extent to which a solicitor should explain matters such as the risks involved in taking a particular step. An inexperienced client, or one dealing in matters he is not familiar with, may require more explanation before he can sufficiently understand the risk he is about to take. An experienced client may need less explanation, or even none at all. When an explanation is given, the solicitor may appropriately tailor it to fit his knowledge of the client's understanding. Of course if the client asks for more explanation or appears not to understand, the solicitor may have to go into more detail. But the solicitor is not a guarantor of his client's subjective understanding, and will have fulfilled his duty if he gives an explanation in terms the client reasonably appears to him to be able to understand, and to have understood, even if the client later alleges that he did not in fact understand what was said.

Mr Wilton submitted that any facts relied upon as giving rise to any special duty to advise any individual claimant as to the risks of entering into these investment purchases should have been fully and properly pleaded; but they have not. The claimants' generic statement of case does not identify any factual basis requiring Vincents to take the exceptional step of advising any particular client against entering into these transactions, either by reference to the particular circumstances of that individual claimant, or by reason of any knowledge on the part of Vincents of any particular risk of the development's failure, such as knowledge of any previous failure or of the perpetration of a fraud. Nowhere is there any pleaded basis for supposing that investing in this particular development would result in the loss of the claimants' funds. The SRA's warning notice was directed at various different kinds of *'investment'* schemes and, on a fair reading, it does not suggest that there is any blanket duty *"to strongly advise clients against entering into"* all such transactions. Such a duty is an exceptional one; and a party asserting such a duty needs to identify the particular characteristics of the individual transaction which would lead the reasonably competent solicitor to conclude that their client should not *"touch the scheme with a barge-pole"*. Nothing of that kind has been identified in the claimants' pleadings. Whilst similar developments that have come before the court all tend to have failed, that is inherent in contested litigation; and it is not the case with all such self-funded residential developments.

37. Mr Wilton submits that an independent reason why the claim against Vincents should be struck out, or summary judgment given, is because the claimants have not pleaded, and have no real prospect of proving, the necessary connection between the scope of Vincents' duty, what it was that Vincents allegedly got wrong, and the losses that eventuated. In short, the claimants do not plead that any of their losses arose out of

some matter about which Vincents were under any duty to give advice. There is no suggestion that any of the claimants' deposit moneys were released without good and valid reason, so there is no legally relevant connection between any breach of duty and any loss suffered by any of the claimants. According to the liquidator's progress report for the year ending 18 June 2023, *"the value of work completed and approved by the developers' employers agent was £7,266,708"*; and *"a sale of the land was completed for the sum of £4 million"*. One can reasonably anticipate that had there been any evidence of any misuse of any of the claimants' funds, this would have emerged by now.

38. Mr Wilton submits that in a professional liability claim like this a claimant can only succeed if they can show that the professional: (1) owed the claimant a duty to protect their client from risks of harm of the kind that occurred, and (2) that the loss for which damages are sought arose by reason of the eventuation of risks from which it was the professional's duty to provide protection, and in respect of which it failed to advise appropriately. Mr Wilton submits that it is a claimant's obligation not just to prove, but also to plead, a duty of a scope which embraces the losses claimed, and to plead such facts as demonstrate that those losses are attributable to what the professional got wrong. The claimants do not suggest that Vincents had any duty to protect them from any risk of loss arising by reason of the developer's insolvency; and it would be hopeless to suppose that Vincents owed any expansive duty of that kind, given its limited role as the claimants' legal adviser and the care it took to emphasise what it could, and could not, advise about, and the various recommendations it made to seek other specialist advice. The claimants have not pleaded anything like a sufficient duty nexus case as nowhere do they identify any connection between what it was that Vincents got wrong and the eventuation of the losses they sustained. Nor have they pleaded what it was about the development which should have caused Vincents to advise the claimants not to proceed, so again one cannot identify any connection between what went wrong and the loss. If the problem was the deposit-holding arrangements, there is no attempt to say what connection lies between the alleged failure to give proper advice and the eventuation of loss.

39. Mr Wilton submits that the claimants' case as to how the loss came about goes no further than to highlight the developer's default in respect of its lender, its insolvency, and the consequence that, apart from some sums recovered where deposits had not yet been used, the remainder of the payments made to the developer or its solicitors is irrecoverable, and the claimants' rights under the contracts of sale are worthless. Nothing is pleaded, and there is no evidence to suggest, that the failure of the development, and the claimants' losses, were due to some inadequacy in the deposit-holding arrangements which allowed funds to be misused. All the evidence indicates that the development failed because of the insolvency of the developer before completion, a risk that Vincents had emphasised in its report on title. Yet the claimants cannot, and do not, plead that Vincents owed, or breached, any duty to protect them from the developer's insolvency, which was the very thing which did occasion their losses.

40. Mr Wilton submits that the claimants' case is fatally flawed when they have not pleaded, could not properly plead, and have no real prospect of establishing, the necessary expansive duty or legal connection between duty and breach and loss of the

kind which they need in order to succeed. For that reason also, the case against Vincents should either be struck out, or summary judgment given for Vincents.

41. In the course of his oral submissions, Mr Wilton pointed out that this point had been taken as long ago as 26 April 2021, at paragraph 16.2 of RPC's response to Walker Morris's letter of claim:

> It is not enough in such a case for a claimant to show that the material contributed by the defendant to the decision to proceed was *'critical to the claimant's decision'*. They must go further and identify the reasons why the development failed and then connect them – in a legally relevant sense – to the alleged negligence. The letter of claim does not address this issue at all – a highly material omission in our view, doubtless reflecting the claimants' inability to present an effective case in this regard.

The point is fully pleaded at paragraph 49 of the defence. The plea at paragraph 7 of the reply that *"the losses claimed are within the scope of duty of Vincents"* is pure assertion, unrelated to the facts of this case; whilst paragraph 15 of the reply fails to identify the legal connection between the alleged breaches of duty and the claimants' loss of their investments. This was due to the developer's insolvency; yet Vincents had advised the claimants that they would lose their money if the developer fell into insolvency before the development was complete. Any weakness in the arrangements for the protection of the claimants' deposits had nothing to do with the developer's insolvency. Mr Wilton submits that this is a fatal flaw in the claimants' case.

42. The only way around the problem for the claimants would be if they could persuade the court that there is a real prospect that Vincents had been under a duty to advise the claimants that they should not touch this development with a barge-pole. Such a claim is hopeless because there are no facts pleaded that would have suggested to a reasonably competent solicitor that this was such an exceptional case. Vincents had clearly identified the relevant risks. Where are the relevant factors that should have identified to Vincents that this buyers-funded development was so suspect that no purchaser should sensibly engage with it? The SRA warning notice suggests that there may be such cases, where the whole edifice is suspect. But the claimants plead nothing to suggest that this was just such a case. Forensically there is no space for the claimants to assert that this was a *"don't touch it with a barge-pole case"*.

(b) For the claimants

43. Mr Scher invites the court to dismiss Vincents' application on the basis that the pleaded claim against it has (at the very least) a real prospect of success, based on sufficiently particularised statements of case. He also asks the court for indemnity costs, to mark the court's disapproval of what he describes as a blatantly tactical and oppressive application.

44. Mr Scher submits that:

(1) It is not appropriate to strike out a claim in an area of developing jurisprudence since, in such areas, decisions as to novel points of law should be based on actual findings of fact.

(2) Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend.

I do not understand Mr Wilton to dispute these as accurate propositions of law.

45. Mr Scher submits that it is clear what the case against Vincents is. Vincents has not requested any further information or clarification under CPR Part 18. If the court considers the statements of case deficient in some way, then the claimants will gladly amend or provide further information. However, he submits that the claimants' statements of case are satisfactory, and sufficiently clear for Vincents to respond to; and the fact that it has responded to them without seeking any further clarification is a powerful indicator that the issues between the parties are sufficiently clear from the statements of case.

46. Mr Scher invites the court to find that the claimants have a real prospect of successfully showing that the pleaded duties existed and were breached, and that their statement of case should not be struck out.

47. Mr Scher submits that the claimants relied on the negligent advice of Vincents when entering into the transactions. He says that when reporting on title, Vincents failed to advise that Schedule 2 of each purchase agreement provided no meaningful security or protection. The claimants would pay their deposits to the developer's solicitors (MSB Solicitors), who would hold them as stakeholder for the developer, and then release them on the terms of Schedule 2. This expressly acknowledged that MSB *"shall not be required to enquire into or verify the accuracy appropriateness or authenticity"* of the relevant documents referred to in the valuation certificates issued by the developer's agent when the release of deposit moneys was requested. Schedule 2 gives the illusion of security, but in reality there was no effective protection whatsoever. Practically all of the money was transferred to the developer, before its liquidation. It is now irrecoverable.

48. Mr Scher points out that the claimants are not the first investors to find themselves in this situation. The extraordinary risks to purchasers in developments funded by very large payments described as *"deposits"* are well-known, and were noted in a warning notice issued by the SRA on 23 June 2017, around the time when the earliest of the claimants first began purchasing units in the development. Nevertheless, despite the very high risk, despite the SRA's warning, and despite the indulgent wording of Schedule 2, the claimants were not advised that their deposits had no meaningful security or protection. They seek damages for this negligence.

49. In response to the specific points submitted by Mr Wilton in relation to the more important breaches of duty and negligence, Mr Scher submits as follows:

(1) Mr Scher notes that Vincents asserts that its advice (in para 3.5 of the report on title) that the terms governing the release of the first instalment give *"you some protection as the monies cannot simply be sent to the seller to use for their own means"* was correct. Vincents relies on the segregation of funds in a client account; the fact that such funds *"ought"* to be held on trust; and that there *"ought"* to be *"strong PI insurance protection"* if there were any dissipation in breach. However,

Vincents has not pleaded or provided any evidence for such protection. Nor does that argument stand up to scrutiny. Clause 4.2 of each sale agreement provides that the deposits will be held by MSB *"as stakeholder for the Seller subject to the conditions set out in the Schedule 2"*; but even if that arrangement were genuine, it gives no security or protection to the buyers. They are not party to any contract with MSB, or beneficially interested in the money. In any event, the claimants have a real prospect of success on the issue of whether the advice about Schedule 2 was negligent.

(2) Mr Scher notes Vincents' assertion that because it provided clear written advice, it was entitled to assume that this would be read and understood unless questions were asked; and its denial of any duty to check whether the claimants understood its advice. However, the claimants will argue that there was indeed a duty to ensure understanding, relying upon the SRA warning notice, which could hardly be clearer: *"You should ensure that clients fully understand the risks …"*. Mr Scher also relies upon observations of Anthony Lincoln J in *Dutfield v Gilbert H Stephens & Sons* [1988] Fam Law 473 at 474 as authority for the proposition that *"it was the duty of the solicitor to inform and advise, ensuring that the information and advice was understood by the client"*. This is an issue where the claimants have (at least) a real prospect of success. Moreover, the question of whether the advice itself was so clear that it must have been understood is not one which can be decided summarily. What is clear to a lawyer or to a judge may not be clear to a layperson. On this, the claimants' own evidence will be important: if advice is in fact misunderstood by the recipient, its clarity must be in doubt; and if the same advice was misunderstood by several recipients, it will be very hard to argue that it was clear.

(3) Vincents says that advising against entering into the transactions fell outside the scope of its duty. However, this again contradicts the SRA warning notice *"that it may well be necessary to strongly advise clients against entering into the transaction"*. Moreover, the question of what falls within the scope of a solicitor's retainer is something which requires consideration at trial of the sophistication of each individual claimant. The experience of a client is relevant to determining the scope of the retainer: see *Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep. P.N. 48. This is a question that cannot be determined on the present application; and is one on which the claimants have a real prospect of success.

50. In the course of his oral submissions, Mr Scher invited the court to find that this particular investment scheme had all the hallmarks of a dubious scheme such that Vincents should have advised their client not to touch it with a barge-pole. Vincents had advised that the deposits had some protection when in fact there were no adequate protections in place at all. Mr Scher identified four *'red flags'* which Vincents should have flagged up from schedule 2:

(1) The developer's solicitors (MSB) had no obligation to inquire into the veracity of the requests for payment.

(2) The valuation certificates had nothing to do with the valuation of the site at all, as suggested in the marketing literature.

(3) It was the developer's own agent that was doing the certifying. The buyers were entirely powerless in this scheme.

(4) The deposits were not being held as stakeholder for the purchasers but rather for the developer. This was not truly a stakeholder relationship at all. If it was, then it was entirely one-sided and worthless to the purchasers, who had no meaningful rights, or protection, at all. That alone should have acted as a red flag that should have led Vincents to advise their clients to run a mile.

The SRA warning notice is the basis for Vincents' duty to strongly advise its clients against entering into these investments.

51. Mr Scher emphasises that the vast majority of the purchasers' investments received by MSB have been lost. He highlights the serious mismatch between the sums (over £7 million) certified as having been spent and the sale price of the part-completed development (£4 million). One simply does not know what had been stated in the valuation certificates, or why the development failed. The claimants have been left with the loss of their investments, and without any cause of action against MSB with any real prospect of success.

52. In support of the alleged duty to ensure that the claimants fully understood Vincents' advice, Mr Scher relies upon:

(1) The duty to *"ensure that clients fully understand the risks"* identified in the SRA warning notice. Para 11-217 of *Jackson & Powell on Professional Liability* (9th edn) points out that the failure to heed and follow the recommendations given in such official regulatory guidance is likely to be found to be negligent.

(2) The solicitor's general duty to explain legal documents to the client, or at least to ensure that they understand the material parts, which is identified at para 11-174 of *Jackson & Powell*.

(3) The proposition of law recognised by the Court of Appeal in *Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep. P.N. 48 that the precise scope of a solicitor's duty to advise depends not just upon the retainer but upon the extent to which the client appears to need advice. Where a client is financially less sophisticated, there is a greater duty to give legal advice. The level of the client's sophistication and experience is a matter for trial, with a specimen number of claimants specially selected in this case to provide a spread of sophistication and experience.

(4) The duty to ensure that the information and advice was understood by the client, identified by Anthony Lincoln J in *Dutfield v Gilbert H Stephens & Sons* [1988] Fam Law 473. It was unsatisfactory for Vincents merely to have sent out a pro forma report on title to every client without taking any steps to ensure that its advice was fully understood and appreciated. Vincents should have ensured that a full statement of the risks involves in entering into these transactions was included upfront, rather than being buried in the body of a lengthy document. Under the heading *'Conclusion'*, paragraph 11 (at page 17) of the report on title merely states:

> Subject to the matters referred to in this report as stated above, we are of the opinion that upon completion of the purchase of the Property and registration at the Land Registry you will obtain a good and marketable title to the Property.

To an unsophisticated lay client, that was the thrust of the advice. Clearly, there was scope for genuine misunderstanding in this report; and that added to the duty to ensure that Vincents' full advice was properly understood. There may be issues of contributory negligence, but that is only a partial defence to a claim for breach of duty.

For these reasons, there is a real prospect of success in establishing that Vincents owed a duty to ensure that its advice was properly understood by each of the claimants.

53. Mr Scher acknowledges that any duty to advise a client against entering into a particular transaction is unusual, but then so were these investments. There is a real prospect of establishing the existence of such a duty, founded upon the SRA warning notice and all the other red flags. This development bore all the hallmarks of being a dubious scheme, devoid of any meaningful protection for any of the claimants. Unlike other such schemes, there was no professional person involved in certifying that the deposits might be released, and no true stakeholder relationship. Vincents should have advised its clients not to touch it with a barge-pole. In the course of oral submissions, Mr Scher pointed out that Schedule 2 of the standard-form sale agreement permitted the release of deposit moneys for *"the marketing and sale and/or lease of any part of the building"*. When he objected that these activities did not add to the value of the claimants' investments, I pointed out that the marketing of the development was directed to finding further purchasers to provide additional necessary development funding. Mr Scher's riposte was that I had identified a further risk: the risk that there might not be sufficient purchasers to finance the build-out of the development was a further *'red-flag'* risk that Vincents should have highlighted in the report on title, and which should have triggered a warning not to touch this high-risk investment. I am conscious that I must be circumspect about what I say in this judgment, lest I trigger any further complaints of breach of duty on the part of the claimants.

54. Mr Scher reiterated that if any amendments were needed to the claimants' statement of case, he would make them; but his primary submission was that no amendments were required. It was implicit in paragraph 45.5 of the particulars of claim that the claimants had not understood Vincents' advice; and this implication had been obvious to Vincents, who had responded to this allegation at paragraphs 30.7 and 45.2 of the defence. The battlelines concerning the claimants' level of understanding had been clearly drawn on the pleadings. There had been no request for further information about the claimants' case. Mr Scher submitted that it was not true to say that the claimants *"could be expected to be reasonably sophisticated"* investors. Developments of this kind were attractive to those with little money to invest, and who aspired to make a quick profit. This optimistic aspiration was unlikely to prove true; but the nature of such investments was such as to attract naïve and unsophisticated investors who needed special levels of protection. The reports on title provided by Vincents were long documents with no summaries, emphases, or highlighting of the risks, and where the trees were concealed from sight within the wood. It was a matter for the court at trial to determine whether these claimants had understood, and could reasonably be taken to have understood, the advice given; and this would be assisted by the documents that would be disclosed by Vincents on discovery. To apply the same broad brush to each of the claimants would be wrong; the distinctions between them could only be developed at trial.

55. For all these reasons, Mr Scher invites the court to find that the claimants have a real prospect of successfully showing that the pleaded duties existed and were breached, and that the statement of case should not be struck out.

56. In response to Mr Wilton's arguments on the connection between the pleaded losses and breaches of duty, Mr Scher makes five points in his written skeleton argument:

(1) This argument has no application to the broader breaches of duty alleged, such as the failure to advise the claimants not to enter into these transactions. The *"duty nexus"* question would obviously be satisfied for that duty. There is an obvious connection between the entry into the transaction and the loss of the claimants' deposits. If the court considers there to be a real prospect of that duty existing, Vincents' application is not at all assisted by the *"duty nexus"* argument.

(2) Regarding Schedule 2 and the protection of the claimants' instalment payments: if the claimants' payments truly had any meaningful security or protection, as (for example) set out in paragraph 26.3 of the particulars of claim, their funds would only have been released in stages connected to an objective appraisal of the progress of the development; and, as the development had barely progressed, the claimants would not have lost their money (or would only have lost a small proportion of it). This is set out in the reply at paragraph 15. Naturally (given the early stage of these proceedings) the claimants do not yet have the factual or expert evidence to prove this; but that is because pleadings have only just closed.

(3) Such a counterfactual (and indeed the "*duty nexus question"* generally) is of limited use. The key question is whether the scope of Vincents' duty includes the type of loss suffered. Their report on title covered various risks to the claimants' money, touching upon Schedule 2 (amongst others), but giving negligent advice about how much protection was offered. When the development failed, the claimants' money was not protected. The loss is within the scope of Vincents' duty (or, at the very least, there is a real prospect of such a finding).

(4) If (which is not clear) Vincents says that the claimants must show that the deposit moneys were wrongly dissipated whilst in the hands of MSB, this cannot be done without disclosure and evidence.

(5) This is a developing area of law. *Manchester Building Society v Grant Thornton UK LLP* [2021] UKSC 20, [2022] AC 783 was decided in the Supreme Court in 2021; but by 2023 the Court of Appeal (in *BDW Trading Ltd v URS Corpn Ltd* [2023] EWCA Civ 772, [2024] 2 WLR 181) has said that there is no need to apply the six-stage checklist set out by the majority in *Manchester BS* by rote in every case. There will be an argument in this case about just how close a *"nexus"* there must be between duty and damage: Is it sufficient that the duty was to advise about legal risks, and the damage is likely to have been caused by one such risk eventuating? Or must it be proven that the damage was caused exclusively by the risk about which the advice was negligent? Who bears the burden? What is the test if the trial judge finds that the precise mechanics of loss were unclear, but it could well have been a notorious scam? These questions cannot properly be answered other than by the trial judge. Mr Scher submits that the claimants have a real prospect of success on these questions, and that, in any event, the impossibility of deciding them fairly at a summary hearing is itself a compelling reason for trial.

57. In the course of his oral submissions, Mr Scher emphasised that the scope of the duty of care assumed by a professional adviser is governed by the purpose of the duty, judged on an objective basis by reference to the reason why the advice had been given. Here the purpose of the duty was to warn about **all** of the risks of entering into these transactions, and not just the conveyancing risks. Further, had the claimants been properly advised about the risks to their deposits, these would not have been lost. Had the claimants' deposits been properly protected, they would only have been released against certificates correctly valuing the development. So the claimants would not have lost most of their money had Vincents' advice been correct. Mr Scher argues that it is not the failure of the development that he has to connect to Vincents' breach of duty, but only the loss of the deposits. He submits that he has a real prospect of establishing a sufficient nexus between the loss of the deposits and the negligent failure to advise about the lack of meaningful protection afforded to those deposits.

58. For these reasons, Mr Scher submits that summary judgment should not be granted against the claimants on this issue. If meaningfully protected, their funds should only have been released in stages, connected to an objective appraisal of the progress of the development. Vincents failed to advise that Schedule 2 offered no meaningful protection. That is sufficient connection between the claimed loss and the scope of Vincents' duty.

59. Overall, Mr Scher submits that it is inappropriate to dispose of this claim summarily. Disclosure is likely to provide important material relevant to the claimants' case. The duty nexus question is a developing area of law. This is a clear example of a case in which the court needs to have a full understanding of the actual facts in order to determine the duty nexus question. What actually happened to the deposit moneys, if this is relevant, cannot be determined on a summary application decided on the papers. If there are any outstanding pleading points, the court needs to consider whether any deficiency can be cured by amendment, and give the claimants an opportunity to amend first. Where the court holds that a pleading is defective, it is usual for the court to refrain from striking it out unless the court has first given the party concerned an opportunity of putting right the defect, provided there is reason to believe that they will be in a position to do so: see *In Soo Kim v Youg Geun Park* [2011] EWHC 1781 (QB) at [40] per Tugendhat J. Disputes about the existence and content of a duty of care are highly fact-dependent and suitable for trial.

(c) For Vincents in reply

60. In reply, Mr Wilton submitted that if any of the claimants were proposing to say that they had not understood Vincents' advice, then that should have been pleaded. No facts (such as lack of sophistication) had been pleaded to suggest that Vincents had been put on notice that any of its clients had needed any further advice or special protection. It was unfair to suggest that risks had been buried in the report on title when they had been highlighted throughout that report. The SRA warning notice bore that heading, and Vincents were entitled to assume that its clients would read it. On its face, it was addressed not just to law firms but also to "*members of the public who are considering paying money into what is promoted as an 'investment' scheme where a law firm or solicitor is involved"*. They were also invited to *"read this warning and other material we have published"*. There is no pleading that Vincents were on notice of any *'red flags'* indicating that this development was likely to fail. A duty to advise against entering into a particular transaction might arise if solicitors could see that

their client was entering into an unwise, or fraudulent, transaction, but this was not that sort of case.

61. The deposit moneys could only be released if certain pre-conditions were satisfied. The scheme adopted was not foolproof, and there were *"gaps in the fence"*; but Vincents had advised that it provided *"some"* protection, and it would be an unfair characterisation of the deposit release arrangements to say that they had provided no protection at all. It would always be possible to envisage ways in which the contractual protections could have been improved; and Vincents had sought to do so, but without success. Vincents had clearly communicated the degree of risk to their clients. Although the SRA warning notice was a relevant consideration, it was addressing several, very different types of investment schemes, so it was impossible to contend that it created any form of immutable duty. Vincents had clearly identified in the report on title that the claimants' deposits would be released in connection with the marketing of the development. Nor is there any plea that the claimants' losses have been caused by excessive expenditure on marketing, or that there had been any risk of insufficient funds coming in to compete the development.

62. Vincents had discharged its duty of ensuring that its clients fully understood the risks of entering into these transactions. Having identified the relevant risks, it had not been necessary for Vincents to interrogate its clients to make sure that they had digested the lessons unless there had been something which put Vincents on notice that its clients had not understood the position, or were so vulnerable that the report on title was insufficient. The observations in *Dutfield* had been made in the very different context of negotiations leading to a consent order settling financial arrangements between husband and wife following their divorce. Given that individual claimants were based all over the country, with some overseas, it was not practicable to postulate face-to-face meetings with Vincents' clients. Nothing had been pleaded to indicate a lack of understanding on the part of any of the individual claimants.

63. There was no provision for any expert evidence that might tend to show that the claimants' deposits had been unlawfully dissipated. Nor were there any cogent grounds for supposing that Vincents' disclosure might throw any light on what had happened to the released deposits. In any event, the claimants had to plead their case properly before they could reach the stage of disclosure.

64. There was no pleaded basis for the claimants to advance any case that Vincents should have advised them not to touch this development with a barge-pole, or that there was any lack of understanding on the part of the claimants, or that they were lacking in sophistication; and the duty nexus issue is not developed at all in the claimants' pleadings. There is no breaking wave of authorities on the connection between the subject matter of Vincents' alleged breach of duty and any particular element of the harm for which the claimants seek damages; and this is a matter covered by a consistent body of case law authority. The *BDW Trading* case does not negate the need to address the duty nexus question.

65. At bottom, this is a case founded upon generic allegations directed to a *'tail-end'* defendant which had gone to significant lengths to do what the claimants say it should have done. If there were a valid case against Vincents, the claimants could have been expected to plead it out fully. This was a proper case for strike out or summary

judgment against the claimants. If, however, the claim were to go forward, the claimants should be required to plead it out fully against Vincents.

V: *Analysis and conclusions*

66. By CPR 3.4 (2) the court may strike out a statement of case if it appears to the court -

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order.

67. Mr Wilton points out that according to the commentary at para 3.4.1 of Volume 1 (at page 93) of the current (2024) edition of *Civil Procedure*, grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded, and other cases which do not amount to a legally recognisable claim or defence. Ground (c) covers cases where the abuse lies not in the statement of case itself but in the way the claim or defence (as the case may be) has been conducted. I am not sure that this statement is entirely accurate, because the non-compliance may relate to the statement of case itself; but it is unnecessary for me to determine this point for the purposes of the present application.

68. By CPR 24.3, the court may give summary judgment against a party on the whole of a claim or on an issue if -

(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and

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

The principles governing a claimant's application for summary judgment were identified by Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15] (and later approved by the Court of Appeal). They are set out at paragraph 24.3.2 of the current (2024) edition of Volume 1 of *Civil Procedure*, and may be summarised as follows (omitting citation of authorities)

(1) The court must consider whether the claimant has a *'realistic'* as opposed to a *'fanciful'* prospect of success.

(2) A *'realistic'* claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.

(3) In reaching its conclusion the court must not conduct a *'mini-trial'*.

(4) This does not mean that the court must take at face value, and without analysis, everything that a claimant says in their statements before the court. In some cases it

may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents.

(5) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.

(6) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on an application for summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.

(7) On the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question, and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, they will in truth have no real prospect of succeeding on their claim, or successfully defending the claim against them (as the case may be). Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that, although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because, Micawber-like, something may turn up which would have a bearing on the question of construction.

69. Having carefully considered the parties' submissions (as summarised in section IV of this judgment), I am entirely satisfied that it would be premature for me to strike out the claim against Vincents, or to enter summary judgment in its favour, without giving Mr Scher an opportunity to amend the particulars of claim. The dispute about the precise nature, and extent, of the duty of care owed by Vincents to each of its purchaser clients is highly fact-sensitive, and some, at least, of their claims may be suitable for trial. I have already observed that the allegations by all 94 of the claimants against all ten defendants have been set out in a single statement of case, supplemented by a spreadsheet purporting to set out any particular material facts distinguishing individual claimants from each other. However, this spreadsheet does not address, or identify, any particular characteristics, or vulnerabilities, of individual claimants. Nor does it condescend to particulars about any discussions with particular clients of Vincents.

70. I accept Mr Scher's submission that the decision of the Court of Appeal in *Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep. P.N. 48 stands as authority for the proposition that the precise scope of a solicitor's duty to advise depends not just upon the terms of the solicitor's retainer, but also upon the extent to which any individual client appears to need particular advice. I accept that where a client is financially less sophisticated, the solicitor is under a greater duty to give legal advice.

The level of the particular client's sophistication, and experience, is a matter for trial, provided the issue has been properly raised and addressed on the pleadings. The court should not necessarily apply a *'one size fits all approach'* to all 35 claimants: the precise content of the advice required from Vincents, and the extent to which it owed a duty to check that its clients fully understood such advice, may well differ as between, for example, a first-time buyer purchasing a single residential unit for their own occupation and a seasoned landlord or investor purchasing multiple units solely for their investment potential. However, to the extent that such matters are raised as justifying a higher-level duty to explain, they must be fully pleaded, so that Vincents may know the nature of the case they have to meet. It is not sufficient for this simply to be left to the witness statements for, in that scenario, how is Vincents to know the evidence that it needs to deploy to meet the claimants' evidence on that aspect of the case? Further, as Mr Wilton points out in a footnote to his skeleton argument, Mr Hargreaves suggests (for the first time), at paragraphs 23.3 and 32 of his witness statement, that two of the claimants (C78: Mr Moukhametzianov and C89: Ms Clarke) received unsatisfactory individual advice in the course of telephone calls with representatives of Vincents. Mr Wilton highlights the fact that no such case is presently pleaded.

71. In my judgment, the court should not strike out a statement of case, or enter summary judgment against a party, without giving the party concerned an opportunity of curing any defects or omissions in their pleaded case, provided, of course, that there is good reason to believe that they will be in a position to do so, and they invite the court to take that course. Although his primary submission was that no amendments were required to his clients' pleadings, Mr Scher indicated that, if any amendments were needed to the claimants' statements of case, he would wish to make them. I do consider that substantial clarification, and amplification, of the claimants' case is required. Vincents need to know the particular facts and matters upon which these 35 claimants found their claims against them, so that Vincents can identify, and seek to address, the particular facts in dispute, and focus upon the matters relevant to these claims. At the moment, this exercise is clouded by the use of generic, and *'scatter-gun'*, particulars of claim, which divert Vincents' attention away from what is strictly relevant to the case against them, as distinct from other of the defendants, which leave some matters to be inferred, and which leave other facts and matters unpleaded.

72. I have already articulated my concern (at paragraph 53 above) that I should be careful about what I say in this judgment, lest I trigger any further complaints of breach of duty on the part of the claimants. However, it is appropriate that I should set out at least some of my concerns.

73. First, the claimants plead (at paragraph 45.1 of the particulars of claim) that Vincents failed to advise the claimants that the terms on which the *'deposits'* were to be held and released *"offered no meaningful security or protection"*. However, the facts and matters relied upon in support of this plea, at paragraphs 31 and 32 of Mr Scher's skeleton argument, are far more extensive than those pleaded in the particulars of claim (which are principally confined to the matters set out at paragraph 29.10.3). Second, the claimants allege that if and to the extent that such advice was given, Vincents nevertheless *"failed to ensure, alternatively failed to take reasonable steps to ensure, that the claimants fully understood the advice"*. However, the claimants set out no particular facts and matters, whether general to all 35 claimants, or specific to

only some of them, upon which they rely in support of any duty along these lines. At paragraph 45.2 of the defence Vincents explains why it says it was entitled to suppose that the claimants fully understood its advice; yet in their response, at paragraph 13 of the reply, the claimants do not even begin to engage with this explanation. Third, there is the claimants' case that Vincents failed to advise the claimants against entering into these transactions. This is of particular relevance and importance, not only to the issue of breach of duty, but also to the duty nexus question, where it may prove to be of crucial significance. As Mr Scher observes (at paragraph 35 (a) of his written skeleton argument), if the court considers there to be a real prospect of that duty existing, Vincents' present application is not at all assisted by Mr Wilton's duty nexus argument. Mr Scher acknowledges that any duty to advise a client against entering into a particular transaction is unusual; but so, he says, were these investments. He contends that there is a real prospect of establishing the existence of such a duty, founded upon the SRA warning notice and all the other *'red flags'*. However, these red flags, though they were highlighted in Mr Scher's oral submissions, are not set out in the claimants' statements of case. Indeed, they are not even highlighted in his skeleton argument.

74. I accept Mr Wilton's submissions that *Dutfield* is a very different case from the present. It concerned negotiations leading to a consent order settling financial arrangements between husband and wife following upon their divorce. The brief report is not a full, verbatim transcript of the judgment, but only a short summary. The trial judge's observations about the duty resting on a solicitor to ensure that information and advice are understood by the client were made in the context of a decision that it was no part of a solicitor's duty to force their advice upon their client; and they were, in any event, obiter because the trial judge concluded that the solicitor had satisfied all the requirements of his retainer, so negligence was not established, and the claim was dismissed. However, all of this merely serves to emphasise the fact-sensitive nature of the duties, both to inform and to advise, and to ensure that such information and advice is understood by the particular client. The facts underlying such a duty are for determination at trial, and not on a paper application for strike out or summary disposal. However, Mr Wilton is right to submit that they must first be properly pleaded. For the reasons I have already given, it is not enough to leave them for the witness statements. That is particularly so in a case where there are 35 clients who were purchasing a total of 50 units, as to whom different considerations may apply.

75. Mr Scher submits that it is clear to Vincents what the case against it is. Vincents has requested no further information about, or clarification of, the claimants' pleaded case under CPR 18. It has considered that case to be sufficiently clear to be able to plead to it by way of defence. These are said to be powerful indications that the issues between the parties are sufficiently clear from the existing statements of case. However, Vincents is entitled to know precisely how the case against it is put. It should not be left to conjecture. Mr Scher suggests that the allegation that Vincents' advice was in fact misunderstood is *"perhaps so obvious as to go without saying, and will of course feature in **some** claimants' evidence as appropriate"* (with my emphasis supplied). Apart from the fact that it is not appropriate to leave allegations such as this to be made only by implication and inference, therein lies the difficulty: each separate purchase constitutes a separate claim. Vincents are entitled to know precisely how each claim is put against it, for purposes of settlement as well as defence. If it is to be

alleged that particular claimants misunderstood Vincents' advice, then this should be properly pleaded, with full particulars. Any difficulties there may be in doing so, because of the number of individual claimants, particular properties, and individual defendants, is the result of joining all such claims in a single set of proceedings; but this cannot justify denying Vincents the proper procedural protections to which they would otherwise have been entitled.

76. In my judgment, I should not finally determine these applications at the present time, but should afford the claimants an opportunity to amend their existing statements of case. At least on a preliminary, and provisional, basis, I have formed the view that there **may** be some traction in at least some of the claimants' allegations of duties: (1) to advise that the deposit-holding machinery afforded no meaningful protection to the claimants, (2) to advise against entering into these purchase contracts, and (3) to ensure that individual claimants properly understood Vincents' advice. However, the factual bases for such duties needs to be properly pleaded out, both at a generic, and also at a granular, and individual, level.

77. I have considered whether I should identify the precise respects in which the pleading of these claims is presently deficient and should be amended; but, on mature reflection, I do not consider that it is for the court to prescribe such matters, at least in the first instance, because to do so would be to risk entering into the forensic arena of combat. It is for the court to assess the adequacy of any amendments when they have been fully formulated, and are presented to it for its approval. If any prescription is required, at least in the first instance this should come from Vincents, and not from the court. If Vincents wish to do so, it may seek to identify particular respects in which the existing statements of case are inadequate, and need to be supplemented; and, if necessary, I can rule on the propriety of such asserted deficiencies on the further consideration of this application, either on the papers, or, if matters are hotly contested, at a consequentials hearing, when considering the appropriate form of order. I would, however, venture to suggest that it may be beneficial for the common understanding of all concerned - the parties and the court - for any amended statements of case to be confined to the claims brought by their clients against Vincents alone.

78. It does not seem to me that I should venture upon any consideration of the duty nexus question at the present time since this is closely linked to the existence of any duty to advise the claimants, whether collectively, or in particular instances, against entering into these particular purchase contracts. As at present advised, my preliminary, and provisional, view is that if the court considers there to be a real prospect of that duty existing, Vincents' present application is not at all assisted by Mr Wilton's duty nexus argument. That is because if Vincents owed a duty to advise against entering into these transactions, then there would seem to be a sufficiently clear nexus between the breach of that duty and the loss of the claimants' deposits. If that is correct, then this case must go to trial; and it would not be right for me to seek to impose any fetter upon the freedom of the trial judge to determine the duty nexus question insofar as it may arise in relation to other alleged breaches of duty.

VI: Disposal

79. For the reasons I have given, I would adjourn the further hearing of this application to give the claimants the opportunity to amend their pleadings in the light of this

judgment. The application should then be brought back before me, at a date convenient to the parties and the court, with a new time estimate. I would urge the parties to attempt to agree a sensible timetable to lead to this adjourned hearing, and to liaise with Manchester BPC Listing to that end as soon as possible so as to achieve the earliest possible return date.

80. I would invite the parties to seek to agree a substantive order to give effect to this judgment. This should include provision as to the costs of this application. My present, provisional, inclination is that these should be reserved to the restored hearing. If the parties cannot agree on a suitable form of order, they should provide a draft composite order, together with brief written submissions on the outstanding consequential matters, which should be no longer than necessary, and, in any event, no longer than five pages in length. Unless I direct otherwise, I will proceed to determine the outstanding matters on paper.

81. I propose formally to hand down this judgment remotely at 10.00 am on Wednesday 17 April 2024. No attendance is required. I will extend the time for appealing to 42 days after formal hand down (i.e. to 4.00 pm on 29 May 2024). I direct that written submissions in support of any application for permission to appeal, with concise draft grounds of appeal, are to be filed and served within 14 days after hand down (i.e. by 4.00 pm on 8 May 2024). Unless I direct otherwise, I will determine any such application on paper.

82. I conclude by reiterating my thanks to both counsel (and their respective solicitors) for their considerable assistance in facilitating the disposal of this application.

83. That concludes this reserved judgment.