IN THE HIGH COURT **Claim No.: KB-2024-001772**

BETWEEN:

PROFESSOR THEODORA KOSTAKOPOULOU

Claimant

-and-

(1) UNIVERSITY OF WARWICK (Corporate Body incorporated by Royal Charter under Royal Charter Number: RC0006678)
(2) PROFESSOR ANDREW SANDERS
(3) PROFESSOR CHRISTINE ENNEW OBE
(4) PROFESSOR ANDY LAVENDER
(5) MS DIANA OPIK

Defendants

PARTICULARS OF CLAIM

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1. Professor Theodora Kostakopoulou ('**The Claimant**') issued this claim on 12 June 2024 and requested its consolidation with KB-2024-001518 issued on 23 May 2024. This has been approved by Master Dagnall's Order on 14 June 2024, stating that this claim should be managed with Claim KB-2024-001518, being the lead claim [para 1 of the Order].

2. In KB-2024-001518, the Claimant applied for the rescission of Sir Nicol's Judgment and Order of 21 December 2021 in QB-2021-000171 on the grounds of fraud. The claim, filed on the 23rd of May 2024 and served on the Defendants on 28 May 2024, had previously been submitted to the HC using an application notice on 28 April 2024. On 29 April 2024, the Claimant informed the institutional Defendant's Senior Legal Counsel, Mr Nick Wright, and sent him the application notice and its exhibits.

3. On 1 May 2024, the Claimant discovered that the Defendants had obtained an interim charging order to enforce paragraph 4 of Sir Nicol's Order of 21 December 2021 and the payment of £ 75,000 incl. interest by the High Court when Mr Wright served the interim charging order on her and her spouse, Dr Dochery. In the ensuing legal process, the Claimant

discovered additional facts of deception of the High Court in relation to the Statements of Costs the Defendants had submitted to the High Court in 2021. These were not isolated incidents but rather permeated all submitted costs statements thereby revealing widespread and deliberate dishonesty. Because the cost/financial dimensions were not mentioned in KB-2024-001518 and making an amendment to justify a claim on a different factual basis amounts to making a new claim even if the remedy claimed remains unchanged (*Seele Austria GmBH and Co KG v Tokio Marine Europe Insurance* Ltd [2009] BLR 481), the Claimant submitted the present claim and requested its consolidation with the pending claim. The content of this claim thus provides grounds of fraud on the High Court in QB-2021-000171 which are additional to the grounds stated in KB-2024-001518.

4. More specifically, this claim focuses on the costs paragraphs of Sir Nicol's Order of 21 December 2021. It supports the Lead Claim's rescission of the Judgment and Order of Sir Nicol on the basis of fraud (as established in the case of Takhar v Gracefield Developments Ltd & Ors [2019] UKSC 13 and the case law referred to by Claimant in KB-2024-001518). The costs paragraphs of Sir Nicol's Order were:

> *'4. The Claimant shall pay the Defendants' costs of the strike out application and the Claimant's application for a default judgment, and of the action, to be subject of detailed assessment if not agreed.*
>
> *5. In respect of the payment ordered to be made in paragraph 4 above, the Claimant shall make a payment on account in the sum of £75,000 by no later than 28th February 2022.'*

5. The Claimant's breached rights under ECHR are Articles 6(1), 8 and 14 and Article 1 of the Protocol to the ECHR. Under EU law, several articles of the EUCFR are engaged, such as Article 47: Right to an effective remedy and to a fair trial; Article 20: Equality before the law; Article 21: Non-discrimination; Article 23: Equality between Men and Women; Article 17: Right to Property; Article 7: Respect for Private and Family Life. TEU provisions engaged are: Article 2: EU values including the rule of law; Article 6(1): Fundamental Rights; Article 19(1): Member States to provide remedies sufficient to ensure effective legal protection while the non-discrimination clause of Article 18 TFEU and TFEU's EU citizenship provisions coupled with the equal treatment provisions of the Citizenship Directive (2004/38, Article 24(1)) are also engaged. The General Principles of EU law breached are the principles of effectiveness, the right to be heard, equality, protection of fundamental rights and proportionality.

6. Fraud was not alleged at the High Court hearing of 18 and 19 October 2021 conducted by Sir Nicol because there was no discussion about costs. The ensuing judgment did not include references to costs. The costs were added in the post-hearing and post-judgement phase at the request of Mr Munden, Counsel for the Defendants. Sir Nicol relied on Defendants' submitted statements of costs (c. £ 140,000 in total) and made orders 4 and 5 stated in para

5 above. These were the only factors Sir Nicol considered and contributed materially to the costs paragraphs and the order that the Claimant should pay £ 75,000 on account for a litigation that did not even reach the defence stage. The Defendants' dishonesty in the statements of costs was thus causative of the cost orders being obtained in the terms they were (the second Takhar principle).

7. No cost hearing and no detailed assessment have ever taken place. The Defendants did not submit an N258 form between January 2022 and June 2024. The Claimant has persistently challenged those costs throughout the period (this is elaborated upon below).

8. Owing to Mr Nick Wright's pursuit of a final charging order on the Claimant's co-owned property in May and June 2024, the Claimant and her spouse, Dr Dochery, discovered evidence of fraud that surpassed the Claimant's prior complaints about unreasonable, disproportionate and punitive costs granted to the Defendants despite their breaches of CPR rules, including their refusal to adhere to the pre-action protocol, and of Court orders and that Sir Nicol's residual discretion as to costs had not been reasoned and 'judicially exercised' (*Pepys v London Transport Executive* [1975] 1 WLR 234, 237) as envisaged by CPR's rules on costs (Part 44 and PD 44).

9. The Defendants' very experienced solicitor, Mr Smith (BLM), knowingly and deliberately submitted statements of costs (5 statements) to the High Court in October 2021 characterised by artificially inflated costs, fraudulent misrepresentations, overcharging and double counting, a failure to properly categorize fee earners and apply appropriate hourly rates, the absence of a breakdown for routine communications and a general failure to adhere to the rules for preparing statements of costs as set out in CPR r 44 and PD44, reasonableness and proportionality. This pattern is repeated across several statements of costs filed in 2021, suggesting that it was not a mistake or an act of negligence but a deliberate attempt to deceive the Court and to gain an unfair advantage through an unjust, unreasonable and disproportionate costs award that would penalise the Claimant, a female LIP deprived of her livelihood by the Defendants and their false accusations.

10. Fraud is intentional deception in order to secure unfair or unlawful gain or to deprive a victim of a legal right, and the Defendants' legal representatives' fraudulent misrepresentations directly influenced Sir Nicol's decision to award them costs and to order the payment of £ 75,000 on account and thus his order should be set aside.

11. The subsequent exposition of the fraudulent misrepresentations on costs and flagrant instances of improper behaviour is based on five Statements of Costs submitted to the Court in October 2021, as follows:

1. Defendants' Statement of Costs (general costs of the claim not claimed elsewhere);

2. Defendants' Statement of Costs (regarding Defendants' application to strike out the claim and/or for summary judgment);

3. Defendants' Statement of Costs (regarding Claimant's application dated 15.07.21 seeking default judgment);

4. Defendants' Statement of Costs (regarding Claimant's application dated 23.8.21 seeking directions regarding Mr Smith's witness statement);

5. Defendants' Statement of Costs of the hearing of 18 and 19.10.21 (to be apportioned following the hearing).

THE LAW

12. In the lead claim KB- 2024-001518, the Claimant stated the law applying to the rescission of a judgment obtained by fraud owing to post-hearing discoveries and reflecting the principles of equity (*Flower v Lloyd* [1877] 6 Ch D 297) and natural justice. According to *Jonesco v Beard* ([1930] AC 298, 301-302), 'Fraud is an insidious disease and if clearly proved to have been used so that it might deceive the court, it spreads to and infects the whole body of the judgment'.

13. For ease of reference, paras 4-6 of the Particulars of Claim for KB-2024-001518 are re-stated below with the addition of authorities on what constitutes fraudulent misrepresentation and the (objective) legal test of dishonesty. In **Tahkar v Gracefield Developments Ltd and Others** [2019] UKSC 13, the Supreme Court held that a claimant could bring an action to set aside an earlier judgment which was obtained by fraud. At paras 56-58, the Supreme Court held that:

> '56. At para 26 of his judgment, Newey J said that the principles which govern applications to set aside judgments for fraud had been summarised by Aikens LJ in *Royal Bank of Scotland plc v Highland Financial Partners lp* [2013] 1 CLC 596, para 106. There, Aikens LJ said:
>
> "The principles are, briefly: first, there has to be a 'conscious and deliberate dishonesty' in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'. 'Material' means that the fresh evidence that is adduced after the first judgment has been given

is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus, the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence."

57. I agree that these are the relevant principles to be applied. I also agree with Newey J's view (expressed at para 47 of his judgment) that Mrs Takhar's application to set aside the judgment of Judge Purle has the potential to meet the requirements which Aikens LJ outlined. She should not be fixed with a further obligation to show that the fraud which she now alleges could not have been discovered before the original trial by reasonable diligence on her part.

58. I would therefore allow the appeal and restore the order of Newey J that Mrs Takhar's case should be allowed to proceed to trial.'

EARLIER AUTHORITIES

14. Earlier authorities for the principle of the 'rescission of the judgment' in the original proceedings and an order for a new trial on the ground of fraud or deliberate material non-disclosure (a species of fraud) or mistake include:

a) ***Daniel Terry v BCS Corporate Acceptances Limited and Others*** [2018] EWCA Civ 2422.
b) ***Salekipour and Saleem v Parmar*** [2017] EWCA Civ 2141, where the respondent had obtained judgment 'by subornation of perjury' and the practising of gross deception by the court.
c) ***Sharland v Sharland*** [2015] UKSC 60, [2016] AC 871. This case emphasises that a party who has practiced deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality. In *Sharland*, an order was set aside on the grounds that it had been procured by dishonest evidence in divorce proceedings. At [32] – [33] Baroness Hale, citing Smith v Kay (1859) 7 HL Cas 750, noted that: '*a party who has practised deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality. Furthermore, the court is in no position to protect the victim from the deception, or to conduct its statutory duties properly, because the court too has been deceived*'. This statement was highlighted with the approval of Lord Clarke in ***Zurich Insurance Co plc v Hayward*** [2016] UKSC 48, [2017] AC 142 at [37].
d) In ***Gohil v Gohil*** (no 2) [2015] UKSC 61, [2016] AC 849, the husband's serious material non-disclosure triggered his wife's application to set aside a consent order in ancillary relief proceedings.

e) In ***Royal Bank of Scotland plc v Highland Financial Partners LLP*** [2013] EWCA Civ 328, it was highlighted that the dishonest evidence, action, statement or concealment must be 'material' in the sense that it was an operative cause of the court's decision to give judgment in the way it did.

f) ***Noble v Owens*** [2010] EWCA Civ 224, [2010] 1 WLR 2491, where the Court of Appeal considered the tension between the *Ladd v Marshall* 'new evidence' cases and the *Jonesco* line of cases which involve a fresh action to prove the fraud.

g) **Jonesco v Beard** [1930] AC 298 (see para 2 above).

h) In ***Hip Foong Hong v H Neotia and Co*** [1918] AC 888, it was held that a judgment that is tainted and affected by fraudulent conduct is tainted throughout, and the whole must fail (Lord Buckmaster at 893).

i) The above-mentioned authorities encapsulate Lord Denning's statements in:

i) **Lazarus Estates Ltd v Beazley** [1956] 1 QB 702 at [712-713]:

'Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved, it vitiates judgments, contracts and all transactions whatsoever'.

And

ii) in ***Metropolitan Bank Ltd v Pooley*** [1981] 1 QB 923 at [944]:

'It is a principle of our law that the court will not allow a person to keep an advantage he has obtained by fraud. No judgment of a court, no order of a minister can be allowed to stand if it has been obtained by fraud'.

LATER AUTHORITIES

15. Subsequent authorities confirming, and clarifying, the principles governing rescission applications on the ground of fraud include ***Broomhead v National Westminster Bank plc and Another*** [2020] EWHC 1005 (Ch), ***Park v CNH Industrial Capital Europe Ltd*** [2021] EWCA Civ 1766, ***Cathcart v Owens*** [2021] EWFC 86, ***Cummings v Fawn*** [2023] EWHC 830 (Fam) and ***Tinkler v Esken Limited*** [2023] EWCA Civ 655. Mr Justice Mostyn stated at para [30] in *Cathcart* and [65] in *Cummings* that:

> *'Fraud is classically defined as wrongful deception intended to result in financial and personal gain. In the field of ancillary relief, the traditional grounds for seeking the set-aside of a final order are conventionally stated to include both fraud and non-disclosure: see, for example, FPR PD 9A para 13.5. Deliberate non-disclosure is, of course, a species or subset of fraud for both in law and morality* ***suppressio veri, suggestio falsi****. The reason for separately identifying* ***fraud*** *and* ***non-disclosure*** *as grounds for a set-aside is that there are some rare cases whether the material non-disclosure is inadvertent and therefore not fraudulent.'*

FRAUDULENT MISREPRESENTATION

16. In ***Derry v Peek*** (1889) 14 App Cas 337, the House of Lords defined a fraudulent misrepresentation as one made either knowing that it was false, or without belief in its truth, or recklessly careless as to whether it was true or false. Whichever of the three states of mind is held by the maker of the misrepresentation, they must have acted dishonestly. Mere carelessness is not enough to amount to fraudulent misrepresentation. Fraudulent misrepresentation amounts to the common law tort of deceit, and thus, mens rea must be present. As Lord Herschell stated in *Derry 'wilfully to tell a falsehood, intending that the another shall be led to act upon it as if it were the truth, may well be termed fraudulent'* [p. 12]. It is for this reason that where fraud is alleged, it has to be clearly pleaded and proved (***Royal Bank of Scotland plc v Highland Financial Partners LP*** [2013] EWCA Civ 328). The standard of proof is the 'heightened' civil standard (on a balance of probabilities) which is different from the criminal standard (beyond reasonable doubt). If fraud is proved, a judgment or order could be set aside, even if the evidence could have been obtained with reasonable diligence at the time of the original trial and without activating the appeal route first and then seeking a retrial (*Tahkar*).

DISHONESTY TEST

17. ***Twinsectra Ltd v Yardley*** [2002] UKHL 12 established that the test for dishonesty in fraud is an objective one, requiring that the defendant's conduct must be dishonest by the ordinary standards of reasonable and honest people. ***Ivey v Genting Casinos*** [2017] UKSC 67 confirmed the objective test for use in both civil and criminal proceedings by recognising that what is important are (i) the defendant's actual state of knowledge or belief as to the facts and (ii) whether their conduct is dishonest by the standards of ordinary decent people.

18. CPR's cost rules envisage the possibility of dishonesty on the part of a litigant or legal representatives in the context of the Court's powers concerning misconduct in r 44.11 and outline sanctions. The Court may make an order under CPR r. 44.11, if the conduct of a party or its legal representative before or during the proceedings or in the assessment proceedings, was unreasonable or improper. The applicable sanctions are the disallowance of all or parts of the costs or ordering the party at fault to pay the costs which the misconduct has caused the other party to incur. Improper conduct in his context has been held to be conduct which could ordinarily justify the disbarment of barristers, striking off from the role of solicitors, suspension from practice or another serious professional penalty (***Ridehalgh v Horsefield*** [1994] Ch 205, CA). Instances for the activation of r 44.11 include:

Gross Overcharging

Claiming costs of attendance without entitlement

False representation of hourly rates

Claiming for work while the work was carried out by a junior fee earner

Fabricating time records and charging for work that had not been carried out

Double counting

Disregarding fixed recoverable costs

19. Evidently, there is '*a strong public interest in ensuring solicitors do not certify costs figures dishonestly*' and '*the Court has an important role in maintaining professional standards and ensuring that parties behave fairly and honestly towards each other in the litigation process*' (***GSD Law Ltd v Wardman and Others*** [2017] EWCA Civ 2144). In ***Gempride v Bamrah*** ([2018] EWCA Civ 1367), the Court of Appeal upheld a decision to disallow all costs due to fraudulent misrepresentations in a bill of costs. The SRA has adopted Accounts Rules, principles and code of conduct which requires solicitors to act with honesty and integrity ('not to mislead or attempt to mislead clients, the Court or others') and to report serious misconduct, including fraud, by any person or firm authorised by the SRA. In addition, principle 1.2 of the SRA's code of conduct prohibits solicitors from abusing their position and taking advantage of clients or others. The fabrication of time records, falsifying dates for meetings and work undertaken and double counting are forbidden as they constitute dishonesty and fraud. There are clear, general rules on billing, and the SRA Accounts Rules require record-keeping, which would prohibit any falsification of records. Violations of these rules and the code of conduct can lead to serious consequences, including disciplinary action by the SRA, which could result in fines, suspension, and even being struck off the roll of solicitors.

20. ***Brett v SRA*** (2014 EWHC 2974) exemplifies the Court's stance when solicitors violate the core duty of integrity as well as the core duty not to deceive or mislead the court, clients and others (core duty 11). The Guidance in the Code of Conduct concerning rule 11 states that the court could be deceived or misled '*by a solicitor submitting inaccurate information or allowing another person to do so.*' This is '*one of the most serious offences an advocate or litigator can commit. It is not simply a breach of the rule of a game, but a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings*' (Brett, [111]). '*Where an advocate or other representative or a litigator puts before the Court matters he knows not to be true or by omission leads the court to believe something he knows not to be true, then as an advocate knows of these duties, the inference will be inevitable that he has deceived the court, acted dishonestly and is not fit to be a member of any part of the legal profession*' (Brett, [112]). Relying on Brett, in ***Shaw v SRA*** (2017 EWHC 2076) Mrs Justice Carr observed that '*there is harm to the reputation of the solicitors' profession when a solicitor and officer of the court dishonestly misleads the court*', while in ***R (on the application of Gopinath Sathivel) v Secretary of State for the Home Department***, [2018] EWHC 913), Mr Justice Green expressed his concern about a system '*where lawyers can mislead the courts with impunity*' [48].

21. Similar principles apply to barristers under the Bar Standards Board Handbook, and a barrister cannot show wilful blindness to dishonest and fraudulent cost statements or participate in unfair, gross overcharging.

22. The above transgressions become accentuated and grossly unethical, if additional improper motives are involved, such as the revictimisation of a party, the weaponization of costs in order to cause intimidation, harassment, the paralysis of a party and/or serious health problems, be they physical or mental, the discontinuation of the litigation, economic haemorrhage, theft through asset stripping and, generally speaking, taking unfair economic advantage of vulnerable party or a person belonging to minorities and/or a litigant in person. Since 2022, the Claimant has pleaded for the weaponization of costs and the presence of a morally reprehensible motive on the part of the Defendants. Since May 2023, the Claimant and her family have lived with the University of Warwick's/Mr Wright's costs intimidation strategy and the ensuing protracted distress, anxiety, insomnia, distraction from normal writing activities, economic loss and inconvenience.

APPEAL TO THE COURT OF APPEAL, CONTINUOUS CHALLENGES OF COSTS AND HOW THE NEW EVIDENCE AND FRAUD WERE DISCOVERED

23. Sir Nicol's ordered costs constituted a separate ground of appeal in the Claimant's notice of appeal to the Court of Appeal on 11 January 2022. The Claimant had argued that *'unreasonable and disproportionate costs of £ 75,000 [were awarded to] to the Defendants who have been in breach of the pre-action protocol, have failed to consider and to participate in ADR and been in breach of CPR rules and Court orders which are outlined below'*. In section 11 of the Notice of Appeal, there was a list of the Defendants' breaches of the rules, court orders, and directions (a-j). The Claimant had also requested a *'stay of the execution of the enforcement of the payment of £75,000 which is not consonant with justice, is punitive and threatens the imposition of serious hardship on myself and my family'*.

24. Lady Justice Asplin's refusal of leave to appeal on 9 March 2022 did not engage at all with the costs appeal ground. This ground was ignored alongside other appeal grounds.

25. On 12 March 2022, the Claimant wrote to the CA to express her dissatisfaction with Lady Justice Asplin's decision and noted inter alia the costs issue. On 26 June 2022, the Claimant re-opened the refusal to grant permission to appeal (CPR r 52.30 and *Taylor v Lawrence*),

requesting, once again, Lady Justice Asplin's engagement with the issue of costs. On 14 July 2022, Lady Asplin refused the Claimant's application without any reference to costs.

26. In the meantime, the University of Warwick had failed to activate detailed assessment proceedings and the Claimant believed that the absence of the confirmation of costs by the Court of Appeal coupled with the immorality of penalising the innocent Claimant having first deceived the High Court to deny her access to justice meant that the costs issue was dead.

27. Mr Wright, Senior Lead Counsel of the University of Warwick, surprised the Claimant in May 2023 by sending her a County Court interim charging order. This was challenged successfully via an application on 22 May 2023 and the Claimant's challenge included submissions on the fairness, justice, proportionality and reasonableness of the costs and breaches of CPR. District Judge Downey discharged the interim charging order on paper without engaging at all the substantive unfairness, unreasonableness and disproportionality of the costs in November 2023. The same happened on 26 March 2024 during a hearing before DJ Harrison, resulting in the Claimant being awarded costs. DJ Harrison expressly stated that she did not wish to get involved in the discussion of Sir Nicol's underlying costs order.

28. The Claimant requested Mr Wright to provide her with copies of BLM's invoices, the final statute bill and the receipts of payment by the University of Warwick, but he refused to do so. She also suspected that the University's costs had been covered by their insurance and requested a copy of their policy to see whether there was a recovery clause since Zurich insurance was not co-Claimant.

29. On 1 May 2024, the Claimant was surprised when Mr Wright served another interim charging order issued at the High Court, this time by Master Dagnall. Once again, in her application of 13 May 2024 for the discharge of the interim charging order and the dismissal of Mr Wright's application as well as orally at the hearing of 30 minutes conducted by Master Armstrong on 7 June 2024, she emphasised inter alia the unassessed, unreasoned, non-compliant with CPR, unjust nature of the astronomical costs the Defendants had been awarded as well as the improper motivation underpinning their enforcement of costs. Master Armstrong ignored all submissions and made a final charging order.

30. It was in the afternoon of Friday, 7 June 2024 and during the weekend that the Claimant and her spouse started discovering the fraud. They first discovered the revised Civil Procedure fixed costs regime introduced in October 2023, which caps interim applications at £ 750. The ordered costs were more than 100 times the fixed rate. They printed the CPR new rules and the tables on fixed costs. The differences between the fixed recoverable costs regime and the

Defendants' charges were colossal; they started comparing the figures. The Claimant then read the Jackson Report and discovered the existence of the Capped Costs List Pilot Scheme in operation in certain property courts since 2021 (- and voluntary at the High Court, according to information on the internet) and the cap of £ 3000 in making a strike out application; the Defendants had charged £ 58,387 excluding VAT. The injustice was cutting deep. The Claimant searched her files for the five Statements of Costs Mr Smith had submitted to the High Court in October 2021, downloaded the same documents from the CE-file and a process of intense scrutiny commenced by her and her spouse during the weekend (8 and 9 June 2024). They were astonished to discover blatant misrepresentations in the hours and amounts charged, numerous double counting, unaccountable large sums of money of thousands of pounds, duplicative in nature work across statements of costs, gross overcharging and fraudulent misrepresentations even in the charged amounts for preparing statements of costs. The evidence pointed to serious, systematic and pervasive deception. They co-wrote their discoveries (- these are presented below). On Monday, 10 June 2024, the Claimant sent an urgent letter to the High Court for the attention of Master Armstrong. The Claimant filed the letter in the CE-file and also emailed it to Master Armstrong's clerk, Ms Horn. She also emailed it to him personally the following day. Dr Dochery also wrote a letter/memo about the misrepresentation of costs and the dishonesty involved on 12 June 2024. Dr Dochery's letter/memo was addressed to Master Armstrong and was copied to Master Dagnall and the Masters' two clerks.

31. The Masters did not respond al all. Master Armstrong sent the sealed final charging order to the Claimant a few days later (on 14 June 2024).

OVERCHARGING, FRAUDULENT MISREPRESENTATIONS, DOUBLE COUNTING, FABRICATION OF TIME RECORDS AND BREACHES OF CPR

Statement of Costs 1 (general costs of the claim not claimed elsewhere)

32. The Claimant and Dr Dochery discovered that:

1. Same hourly rate for all fee earners (4): the hourly rate claimed for all fee earners (Grades A through D) is the same at £170 per hour. This is unusual and may not accurately reflect the differences in experience and seniority among the fee earners. The consistent application of a £170 hourly rate for all fee earners, regardless of their level of experience or seniority breaches CPR which prescribe that fee earners should be categorized into appropriate grades based on their level of experience and expertise (PD44 para 9.5(4)).

2. Solicitor Mr Abhinav Parameshwar features twice (under c and d) as a fee-earner, having a different grade: under c, he is graded C and under d, he is grade D. **Consistent claiming of hours and money by the same person twice**. This is a significant false representation aimed at procuring artificially inflated costs (- if he was included under c only, £ 952 would not have been charged with respect to attendances only). This is an outright and deliberate false representation.

3. There are no dates for what was done during that period (?) which makes it impossible to verify costs for attendances and difficult to verify costs for work on documents.

4. Attendances on clients have no description even though a highly inflated sum of 3,093 is charged.

5. Letters/Emails on opponents (Claimant) amount to 24,70 hours by all 3 fee earners which are represented as 4 (a-d) and a total of £ 4,199 was charged for the first few weeks of instruction.

6. The statement of costs does not provide a breakdown of the time spent on routine communications, which should be claimed at one-tenth of the hourly rate.

7. Non-routine communications are not set out in chronological order and there are no details to ascertain their existence and accuracy (PD 47 para 5.18 for guidance).

8. On attendances on others (Court, Counsel), the claimed 4.9 h (£ 833) and 1.9h telephone (£323) appear to overlap with work on documents' items 6, 7 and 18 'review re Counsel' and 'instructions to Counsel' since the emails to Counsel must have contained those instructions (double counting and overcharging).

9. Again, Mr Parameshwar appears twice, a fraudulent representation.

10. The Defendants chose to change their solicitors after the claim had been served to them. Thus the Claimant should not have to bear the costs of their choices and the repetition of work carried by the new solicitors (BLM), such as for example, item 1: notice of change (£ 68), item 4: review/prepare documents and making notes (£ 4,437), item 24: drafting a chronology of key events (£ 1,717) which in any case is a

very high charge for a chronology (- even more so given the existence of written accounts of events).

11. Duplicative work and charging can be found in items 4 ('review/prepare documents and making notes', 26,10 h and £ 4,437) and 14 ('review particulars of claim and documents referred to' 19,90h in total); £ 7820 charged just for these documents. This is a significant overcharging.

12. Item 26 contains a charge of £1275 for 7,5 hours of work by two solicitors for reviewing just 1336 words (the total number of words in ALL Submitted Notices to Admit Facts), which the Defendants refused to admit. No table of 20 pages was required for 1336 words of Notices to Admit Facts, which, in any case, were not responded to.

13. Item 17: 'Part 18 requests/replies' entails the work of three solicitors amounting to 23,80 h and an overcharge of £ 4,046 for choosing to draft a long list of questions (90) to the Claimant some of which were completely irrelevant. The Claimant's replies were incorporated in the POC.

14. Finally, £ 884 is claimed for preparing this statement of costs (5,2 h); that is, for inputting c. 22 numbers and one A4 page of schedule of work – an excessive charge. As demonstrated below, this was not an isolated incident; all five statements of costs display the same pattern, revealing an intent to engage in dishonest billing in order to influence Sir Nicol to make the Order's costs terms.

33. **<u>Statement of Costs 2 (Strike out/Summary Judgment)</u>**

1. Seven solicitors feature having the same hourly rate for all fee earners in breach of the CPR; Mr Parameshwar appears, again, twice under both (c) and (d), and there is no clear description of any work by David Healey and Rachel Wright.

2. Once again, there are no dates, no details about who wrote letters and emails to whom, and no distinction between routine and non-routine communications, which attract a different charge. There are breaches of the CPR since statements of costs should be accurate, transparent, and sufficiently detailed to enable the court and the opposing party to understand the costs claimed (CPR 44.4(3)(a)); and costs should be proportionate to the matters in issue and the sums involved (CPR 44.3(5)). The total hours claimed for certain categories, such as attendances on opponents (26.1 hours),

attendances on others (23.9 hours) and attendances on clients (27,5 hours), are very high and disproportionate for an application to strike out a claim or for summary judgment – an overstatement of expenditure without adhering to accurate and transparent financial recording.

3. £ 4437 is claimed for letters out/emails on the Claimant and £ 4318 for letters out/emails to Clients while £ 2686 is charged for letters out/emails to Counsel and /or the Court. In brief, £ 11,441 is charged only on attendances in relation to the summary judgment/strike out application, excluding documents! Out of these £1377 is the charge for telephone calls (to Counsel, presumably). This is gross inflation on expenditure by a substantial amount, which is not justified or properly accounted for.

4. In addition to the above-mentioned sum of £11,441, the Counsel's fee is £2300. The work on documents amounts to £ 42,364. Accordingly, £ 56,105 is charged for an application which the costs pilot scheme was placed at that time at £ 3000 and CPR's new rules at £ 750. Sir Nicol was not troubled by such grossly excessive charges and the improperly inflated figures. The Claimant has consistently argued that the Defendants pursued punitive costs against her and that they had an improper, re-victimising motive.

5. There is duplicative or overlapping in nature work, and thus a systematic attempt to mislead, for:

a) Items 2 (£ 476) for 'legal research; preparation of attendance note' and item 24 (£ 204) 'drafting attendance notes';

b) Items 1 (£ 2703), 12 (£ 7497) and 30 (£ 6851) as they relate to preparing witness statements, exhibits, and bundles.

c) Items 13 (£ 459) and 26 (£ 1394), bearing in mind that item 26 captured the names the Claimant had provided to Mr Smith. Item 13 did not require work by 4 solicitors, 2,7 hours of work.

d) Items 6 (£ 85), 14 (£ 357) and 26 (£1394) contain triple counting (they involve the same or similar task): drafting a list of profiles of publishees (item 6), drafting a table of recipients of publications (item 14) and drafting table of list of publishes (item 26)

e) Items 16, 27, and 38 all relate to reviewing the claimant's correspondence, submissions, or evidence and duplicate work charged for £4437 (and 26,1 hours of work) in relation to letters out/attendances on opponents.

6. A total of £ 11628 is charged for bundles in this statement of costs alone. Out of this, £ 2074 and the work of three solicitors (12.20 h) is for the preparation of the authorities bundle which involves the photocopying of cases and is a cost that generally is not allowed (PD 47, para 5.22(5)).

7. Drafting instructions to Counsel appear twice (items 1 and 31)

8. There is a lack of detail or specificity in certain descriptions of work for documents, such as Review next steps (Item 4), Review client documents (Item 5), Review claimant's documentary evidence (Item 7), Review Defendants' response (Item 9), Review re alleged publication of 31 January email (Item 10), review issue of malice (Item 15) and so on. This suggests not only double counting since item 1 and the sum of £ 2703 included 'review of documents', but also unnecessary and thus deliberate overcharging. The Defendants' legal team attempted to conceal it by deploying vague descriptions (-'review') and by not including dates.

9. Mr Smith's witness statement of 9 July 2021 and exhibits involved 44,1 hours and a cost of £ 7497 by 4 fee-earners!

10. A sum of 8,500 (item 41) is not properly and lawfully accounted for since it overlaps with the Statement of costs (costs of the hearing 18 19.10.21), which contains charges an additional 20 hours for attendance at the hearing on 18-19 October 2021 by Mr Smith and a junior solicitor in addition to Mr Munden's astronomical fee of £ 16500 (1600 per hour while various chambers charge c. 5000 for one-day hearings and barrister's fees are much lower) which is at odds with the previously charged fee for his work and thus rate. Leaving aside issues such as the hearing attendance being charged for 10 hours for each solicitor while, in reality, the hearing was 6 hours and 35 minutes in duration and the fact that there was no explanation about the necessity of two solicitors in addition to Mr Munden at the hearing, there is double counting between Item 41 (50h work including attendance and £ 8.500), Item 33 'hearing preparation' (£ 136) and the charge of £3.400 for hearing attendance. Double-counting in statements of costs is considered to be a form of dishonesty or fraud, as it involves claiming for the same work more than once to inflate the overall costs. This practice is unethical and violates the principles of integrity and honesty that solicitors are expected to uphold, as well as the true and fair accounts required by accounting bodies.

11. It is also worth comparing 'then' and 'now': i) £2,300 for counsel's advice, when only £750 is allowable per Table 1; ii) £16,500 for counsel's trial advocacy fee, when

only £750 is allowable per Table 1; iii) £3,200 for solicitor's instruction of counsel fee, when this is not separately recoverable under Table 1; iv) £3,500 for solicitor's attendance at the hearing, when this is not separately recoverable under Table 1; v) £3,570 for preparing statements of costs, when there is no provision for such costs under Part 45; and vi) Unspecified sums for process server fees, when only fixed sums of £15 or £53.25 are recoverable per Table 6. In sum, the total costs claimed of £69,995.10 (including VAT) for an application to strike out or for summary judgment are astronomical and should not have been entertained by any High Court judge or master.

12. Simple diary checking about dates of availability for the strike out/summary hearing carries a charge of £ 238 and double counting as items 22 (review re dates for application/hearing) and 25 (review re dates to avoid listing) concern the same task, are charged twice and appear to have required 1h and 24 minutes!

13. Item 20: 'Review re sealed date of application notice including review of e-filing system' has taken up 24 minutes and entails a cost of £ 68.

14. Finally, the preparation of the statement of costs, which includes a schedule of work of one page and half, appears to have required work of 21h (nearly three full working days) and an astronomical charge of £ 3570! Fabricating time records and such gross overcharging can be neither an act of negligence or accidental. The Defendants' legal representatives made false statements and misrepresentations knowing that they were false because they intended to induce Sir Nicol's reliance on them so that they would gain an unfair advantage and the innocent Claimant, from whom they had usurped justice and access to justice, would be penalised with heavy debt and potentially asset stripping!

34. **<u>Defendants' Statement of Costs 3 (regarding claimant's application of 15.07.2021 seeking default judgment)</u>**

1. The statement of costs does not distinguish among the differential fees of solicitors of different grades in accordance with the rules. The involvement of so many solicitors working on and charging for the Claimant's default judgment application of 15 July 2021, which amounted to less than one page (- set out on page 2 of the N244 form), is unjustified by the standards of ordinary, reasonable people.

2. Mr Parameshwar appears twice under C and D, being assigned two different grades (C) and (D). This cannot be an unintentional error since it is consistently repeated across the statements of costs. It represents a form of dishonest billing since the same person cannot feature and charge twice. It is done to gain an unfair income and to mislead.

3. There are no dates to ascertain that attendances and work on documents were carried out. The absence of dates is a serious anomaly in financial reporting since it prevents the identification of, transparency and accuracy in what is being recorded and charged. It violates the SRA Accounts Rules and the SRA core duties to act with honesty and integrity.

4. Routine and non-routine communications are not distinguished; there are no details about the recipient of letters and communications under attendances on others. Non-routine communications are not set out in chronological order (PD 47).

5. The statement of costs does not provide a breakdown of the time spent on routine communications, which should be claimed at one-tenth of the hourly rate according to the rules stated at the bottom of the form.

6. 12,8 h and a corresponding sum of £ 2176 have been charged in relation to attendances (letters/emails) on client and opponent for a simple default application of one page; this is a significant overstatement of time and overcharging. The same task also features under documents under item 1 'Review claimant's application and considering strategy and response' (£ 340), item 2 'review claimant's correspondence; consider position' (£119), item 8 'review issue of service' (£204) and others. The double-counting between attendances and work done on documents - items 1 and 2 in the schedule of work (reviewing the claimant's application, correspondence, and considering strategy and response) overlap with the time claimed for attendances on opponents (9.7 hours for letters out/emails and £1649) - is a deliberate dishonest action since the same work is charged twice and/or the same task is replicated under different guises.

7. Another financial misrepresentation is the charge for item nine 'Drafting index and preparation of electronic bundle for heating' of £ 1037 (6,1h) because bundles and index had already been charged in SC 2 (- under items 30 (£ 6851) and 1 (£ 2703)). It falsifies work undertaken and is double counting. It results in an artificial and thus dishonest overstatement of costs and total costs intending to mislead the judge and the Claimant and to take an unfair advantage of the Claimant qua LIP.

8. Looking at item 10, 'Review/preparation of a statement of costs', 6,3h have been claimed (3 solicitors) and a sum of £ 1071 for inputting 12 numbers by 170 and writing 10 rows of the description of work – a task that could be carried out in less than 30 minutes. It is a fabrication of time records and a deliberate falsification in order to deceive Sir Nicol. This financial misrepresentation alone leads to an overcharge of £985.

Schedule of work done on documents

Item	Description of work (one line only)	(A) hours	(B) hours	(C) hours	(D) hours	Total £
1	Review claimant's application and considering strategy and response	0.4	1.6			340
2	Review claimant's correspondence, consider position	0.5	0.2			119
3	Considering claimant's complaints re witness statement of Tim Smith	0.1	0.2			51
4	Reviewing authorities referred to by claimant and the issue of admissible evidence		1.9			323
5	Preparation of third witness statement & exhibits re claimant's application	1.1	4.4	2.1		1,292
6	Review CE filing system re certificate of service				0.1	17
7	Considering/arranging process server			0.5		85
8	Review issue of service		1.2			204
9	Drafting index and preparation of electronic bundle for hearing		0.1	6.0		1,037
10	Review/preparation of statement of costs	0.4	0.2	5.7		1,071
11						
12						
13						
14						
Total		2.5	9.8	14.3	0.1	4,539

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9. Finally, Item 5 (Mr Smith's witness statement) entailed 7.60 h (with 4.4 spent on it by Mr Tom Double) and a cost of £ 1292. That was a witness statement of 7 pages double spaced (overcharging). Assuming that Mr Smith wrote his witness statement (1.1 h), the time record of 4.4h for work by Mr Double and 2.1h for work by Mr Parameshwar cannot be justified because of the work involved in preparing its exhibits (76 pages) which included copies of letters and email communications threads with Master Sullivan and her clerk, Ms Sheila Anirudhan, a copy of the CE-file and the acknowledgement of service, copies of sections of the QB Guide and CPR (padding). It misrepresents the extent of the work undertaken and the time recorded and it is done with the intention to obtain a higher cost.

10. Proportionality: The total amount claimed for reading and responding to the default judgment application of one page (£8,323.20 including VAT) is dishonestly exaggerated and disproportionate for such an application (such applications were capped at £ 3000 under the Capped Costs List Pilot Scheme). This led to an artificially inflated amount of costs influencing Sir Nicol's decision to award costs and £ 75000 on account.

35. **Statement of Costs 4 (regarding Claimant's application dated 23.8.21)**

1. Once again, the reader discerns: a) the absence of distinct hourly pay rates for fee earners, and b) dates to identify and verify that routine/non-routine letters/emails were written on Others for which £ 374 is charged.

2. It is also highly suspicious that 2,2h were spent writing to the court (- according to the relevant heading) in late August 2021, for which £ 374 was charged.

3. If, on the other hand, 2,2 h were spent in writing to the Counsel, then there seems to be double-counting between attendances and work done on documents: a. Item 1 in the schedule of work (reviewing the claimant's application, witness statement, and draft order, and preparing an attendance note) appears to overlap with the time claimed for attendances on others (2.2 hours for letters out/emails to Counsel). b. The time claimed for attendances on the client (0.5 hours for letters out/emails) may also be duplicated in the schedule of work, as the tasks described likely involved communicating with the client.

4. Items 1 and 2 amount to £ 884 for reading the Claimant's application and witness statement which replicated whole pages from her POC and exhibits- texts Mr Smith had read and charged for in the previous SCs. Items 1 and 2 should not have been separate entries inflating the costs and the same applied to item 3 'consideration re evidence in respect of application'.

5. Finally, 1.3h and £221 have been charged for 'review/preparation statement of costs', which consists of 4 short descriptions and the input of a few numbers.

Schedule of work done on documents

Item	Description of work (one line only)	(A) hours	(B) hours	(C) hours	(D) hours	Total £
1	Reviewing claimant's application, 50 page witness statement & draft order, preparing attendance note (6 pages)	3.2	1.1			731
2	Review exhibits to application (3 large emails)	0.9				153
3	Consideration re evidence in respect of application	0.1				17
4	Review/preparation re statement of costs	0.3		1.0		221
5						
6						
7						
8						
9						
10						
Total		4.5	1.1	1.0		1,122

36. Statement of Costs 5 (costs of the hearing on 18 and 19 October 2021)

1. Under CPR r. 45.39(2), the solicitors' hearing attendance would only be payable if the court awards fast trial costs and considers that it was necessary for them to attend in order to assist Counsel. Mr Smith charged for the attendance of himself and Mr Parameshwar 30h and £ 3,400 and 20 hours without explaining why their presence was necessary at the hearing, which, in reality, lasted 6,35h.

2. Mr Munden's fee of £ 16.500 is astronomical and far excessive to what Chambers typically quote for the first day of a trial and the reduced fee for the second day. My Munden's fee amounts to £1600 per hour on a 10 h hearing and £ 2,598.43 per hour for the actual 6,35 hearing that took place. Of course, Mr Munden must have been paid for preparation, but, once again, highly regarded QCs/KCs normally charge £ 5000 per day of hearing/trial. The common hourly rates for barristers in the High Court for leading barristers who are not QCs/KCs with over 8 years of experience do not exceed £ 400. In fact, a survey conducted by the Bar Council of England and Wales in 2021 placed the median hourly rate for a senior barrister (with more than 10 years experience) to £350-£400. The jump from £400 to £ 1600 and to £ 2,598.43 (6.35 h hearing) per hour is grossly exploitative and improper. It cannot be justified.

3. When one compares this statement of costs with the statement of costs on the strike out application, there appears to be potential double-counting or overlap in the time claimed. In the previous statement of costs 2, item 41 claimed an estimated 50 hours (£8,500) for 'Work w/c 11.10.21 - preparation, attendances and communications' a week before the hearing. This likely included time spent preparing for the hearing on 18 and 19 October 2021. However, in this statement of costs, an additional 20 hours (£3,400) is claimed specifically for attendance at the hearing. This suggests that most of the time claimed in item 41 of the previous statement (and could also be under attendances for others in SC2, which also included 28h on telephone calls and a charge of 1377 only for those telephone communications) is duplicated in this statement. The double-counting of time between the two statements of costs, particularly in relation to the preparation for and attendance at the hearing, raises concerns about the accuracy and integrity of the costs claimed, and is an attempt to inflate the overall costs by claiming the same work twice (- it could be three times) under different guises. This amounts to a fraudulent misrepresentation.

4. Once again, a handful of figures and one short description in the work schedule amount to £ 136 (- and work of 0.8 hours)! This is an unreasonable, concocted figure: inputting those numbers and writing a description of 6 words in a standard document takes only a few minutes.

5. The Defendants' solicitor's and barrister's conduct in claiming the above costs is unreasonable, improper and dishonest. The total amount for preparing statements of costs across all five statements alone is £5,882. This is an unreasonable and untrue amount considering the actual time it takes to perform those tasks and that the statements of costs follow a standard format with ready-made calculations and additions of sums and do not require extensive drafting or legal analysis. BLM/UoW wished to inflate the overall costs claimed. The manifestations of their dishonesty are multiple, present in all five statements of costs, and are not limited to a few specific items; the whole process is tainted. Under no circumstances could this be a manifestation of gross negligence. Nor was it a mistake. It was a choice, a conscious and deliberate choice. The Defendants' legal representatives engaged in fraud to get the Order' terms they wished, to breach her rights under ECHR (Articles 6(1), 8 and 14 and potentially Article 1 of the Protocol to the ECHR) and EU law and to cause immense harm to the Claimant.

37. The cumulative instances of serious dishonesty described in the paragraphs above contributed materially to the costs paragraphs of Sir Nicol's Order. They show a clear pattern of behaviour attributed to intentional misconduct rather than to a few isolated errors. The absence of dates for the work done, the presence of vague descriptions and the lack of proper accounting for very large bills for attendances also demonstrate concealment, that is, a decision to hide or obscure the fraud.

38. Having first knowingly deceived the High Court with the materially operative false misrepresentations and the material non-disclosure of information and documents (KB-2024-001518) thereby causing a gross miscarriage of justice and denying C access to justice, they then submitted fraudulent statements of costs inducing Sir Nicol to order the Claimant to pay £ 75,000 on account within 14 days without any hearing, any assessment and compliance with the relevant CPR rules. The judge unduly relied on the Defendants' grossly inflated and untrue costs statements exceeding £140,000 (- subsequently, Mr Wright submitting to the County Court that their costs amounted to £ 200,000) in total in order to incorporate their desired wishes into his Order of 21 December 2021 and to order the payment of £ 75,000.

39. The Defendants and their legal representatives acted in a manner that is unethical, improper and in breach of the law.

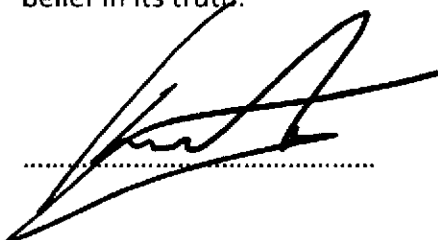
40. Because the law does not permit a dishonest party to benefit from their dishonesty and the unjust suffering they have caused to the other party, and 'a person who obtains a judgment through fraud deceives not only their opponent, but also the court and the rule of

law' (Lord Kerr, *Tahkar* at [52]) and thus 'the integrity of the legal system is put at risk' (Lady Ardin, *Tahkar* at [101]), the Order of Sir Nicol should be set aside.

41. The Court has a duty to protect the integrity of its process and to ensure that justice is seen to be done. It 'must act fairly, honestly and without bias' (***Stevenson v United Road Transport Union*** [1974] CA, SN 309).

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



.... 28 June 2024