Neutral Citation Number: [2022] EWHC 2069 (Ch)

Case No: PT-2021-BRS-000049

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURT IN BRISTOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR
Date: 1 August 2022

Before :

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

- -

IN THE ESTATE OF CLIVE MCDONALD (DECEASED)

AND IN THE MATTER OF S116 SENIOR COURTS ACT 1981 AND S50 ADMINISTRATION OF JUSTICE ACT 1985

BETWEEN:-

(1) KAREN PEGLER
(2) TAMARA SARAH STRINGER
(3) SERENA JULIET GAHAGAN HULME
(4) JEREMY EDWIN STANLEY GAHAGAN

Claimants

-and-

(1) TIMOTHY BRUCE MCDONALD
(2) HUGH JAMES TRUST CORPORATION LIMITED

Defendants

- -

Ashfords LLP, solicitors for the **Claimants**
The First Defendant in person
The Second Defendant took no part in the applications

Applications decided on paper

- -

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.

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This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 11:00 am on Monday 1 August 2022.

HHJ Paul Matthews :

Introduction

1. In an email to the court on 27 July 2022, the first defendant sought an adjournment of the trial of this claim, currently listed for hearing on 14 September 2022. He puts forward three grounds. The first is that he says that on 26 July 2022 he unfortunately contracted pleurisy. He further says that the recovery period is two weeks. The second ground advanced is "to give senior police and senior lawyer firms in several counties, and even countries, more time to consider the evidence that the [present] claim to depose me as executor is effectively a scam…" The third ground is that this "allows me to brief a senior barrister – if ever needed".

2. In addition to that, on 3 February 2022, the first defendant applied by notice for a Beddoe order. As I understand the matter this application has not been dealt with up until now, because of the existence of a pending application for permission to appeal by the first defendant against a decision of DJ Watkins on 1 October 2021. That application has now been resolved, and the application for *Beddoe* relief can accordingly be dealt with. My order deals with both applications, and these are my reasons for that order.

Background

3. The present claim was issued on 13 May 2021 by claim form under CPR Part 8, supported by a witness statement from the first claimant dated the same day. It seeks the passing over or removal of the defendants as personal representatives of the estate of Clive McDonald deceased. They (and another person who has renounced) were named as executors by the deceased's will of 24 September 2020. He died on 30 September 2020. The claimants are beneficiaries under the will.

4. However, the defendants have not applied for probate of the will. Indeed, the first defendant entered a caveat, which he has refused to remove. The original second defendant was a professional executor, who indicated that she no longer wished to be involved in the estate. Her acknowledgement of service indicated she did not intend to contest the claim. Indeed, she made a witness statement in support of the application to remove herself and the first defendant as personal representatives.

5. Because the first defendant is resident in Canada, on 14 May 2021 the claimants applied for permission to serve the claim form on the first defendant out of the jurisdiction. At the same time they sent the claim documents to the first defendant by email, and he agreed to accept service by this method. On 7 June 2021, DJ Watkins gave permission to the claimants so to serve the claim form. The first defendant's acknowledgment of service bears the date 31 May 2021, and the email sending it is dated 1 June 2021, though the court file says it was filed only on 10 June 2021. I expect that the pressure of work explains the delay. But nothing turns on this.

6. The first defendant's first witness statement is dated 6 June 2021. His second (dated 24 June 2021) was sent to the court on 28 June 2021, along with a number of other documents. On 12 August 2021 the first defendant sent to the court a third witness statement, once more together with a number of other documents. He made a further

witness statement concerning the order of 1 October 2021 (see below) on 18 October 2021.

7. On 1 October 2021, DJ Watkins made an order substituting Hugh James Trust Corporation for the second defendant, and giving directions to trial, "on the first available date after 13 December 2021, with a time estimate of 1 day and 2 hours pre-reading time". This was subsequently listed for Friday 11 February 2022.

8. On 12 October 2021, the first defendant wrote to the court and to the office of the Attorney General to report what he considered to be an apparent contempt of court by the claimants' solicitors, in recording the hearing on 1 October 2021. (The claimants' solicitors have denied doing so.) On 29 October 2021 the first defendant lodged a notice of appeal against the order of 1 October 2021 in relation to the removal of the second defendant and the substitution of Hugh James Trust Corporation.

9. On 18 November 2021, the first defendant applied for an injunction against Hugh James Trust Corporation, in effect seeking "**to reverse the decision made by Judge Myles Watkins in his October 1 Court Order** (received October 15) to appoint Mathew Evans of the Cardiff law firm Hugh James as replacement for the willing-to-be deposed local Sussex executor, Warwick Barker LLP's Gill Collins".

10. On 24 November 2021, the court wrote to the first defendant with my comments as follows:

> "Please tell the applicant that, in circumstances where he is seeking to appeal the appointment of Hugh James as substitute personal representative, an application for an injunction is duplicative and an abuse of process. If he has concerns about actions being taken in the short term which would prejudice him, he should seek an undertaking from appropriate parties that no such action will be taken before the appeal is dealt with, and if no such undertaking is given apply for a stay of execution of the order of the district judge pending the disposal of the appeal."

11. On 26 November 2021 the first defendant wrote by email to other parties, referring to my comments, as follows:

> "The request to you is that ***until my appeal*** of the BRS October 1 court order re the subject claim is ***heard***, HJCT refrain from any and all further action in their new capacity as PRs for the Estate of my brother Clive Angus McDonald …"

with certain limited exceptions.

12. On 10 December 2021, the first defendant made an application by notice (dated 8 December) for a stay of execution of the order of DJ Watkins dated 1 October 2021, pending the outcome of his appeal. On 7 January and then on 20 January 2022 he chased this application. I cannot see from the file that this was ever dealt with. However, DJ Taylor appears to have considered that he had (on 4 February 2022) stayed the proceedings pending the first defendant's appeal, and that may explain why nothing then happened.

13. On 3 February 2022, the first defendant applied by notice for a *Beddoe* order. It is not clear whether this notice was ever served on the claimants. On 4 February 2022, DJ Taylor of his own motion vacated the hearing listed for 11 February 2022, on the basis of the outstanding application for permission to appeal made by the first defendant. On 7 February the claimants' solicitors wrote to the court to complain about the decision to vacate the hearing of 11 February 2022, on the basis that the directions of 4 February were not available to the parties, nor on CE-File, and the matter under appeal was distinct from the matters to be resolved at the trial. (The order of 4 February was sealed and filed only on 9 February 2022.) It appears that the court never replied to the letter of 7 February. I do not know why. It may simply have been overlooked because of the pressure of work that court staff are under.

14. On 15 February 2022, the first defendant wrote to the court chasing up on his earlier report of possible contempt of court. This was referred to me on 24 February 2022, and I responded the same day, although my response was not sent out to the first defendant until 17 March 2022. That response was:

> "Please tell Mr McDonald that the court does not investigate possible contempts of court (other than in the face of the court). If he wishes to complain about a judge's decision as being wrong, he should seek to appeal that decision. If he wishes to complain about a judge's behaviour (other than in making a decision) he should complain to the JCIO (https://www.judiciary.uk/related-offices-and-bodies/judicial-conduct-investigations-office/). If he wishes to institute proceedings for contempt of court, he should follow the procedure in CPR Part 81 (https://www.justice.gov.uk/courts/procedure-rules/civil/rules#part81).

15. On the same day the court also sent out a letter to the first defendant in response to his *Beddoe* application of 3 February. This had been referred to DJ Taylor, who had commented on 21 February that the application could not be dealt with until the appeal had been dealt with. The delays involved in processing paperwork are attributable to the pressure of work on the court staff, but are nevertheless regrettable.

16. On 20 March 2022 the first defendant, having received my response of 24 February 2022 (in the email of 17 March), wrote to the court again to complain that his contempt of court report was not being dealt with. In part he said:

> **"**I will mention that I have not found the link to the CPR rules part 81 helpful as the link shows that part as having been *revoked*."

In passing, I think this was a misunderstanding on the first defendant's part. CPR Part 81 was *replaced* by new rules under the same name in October 2020. So, there is still a Part 81. The *Practice Direction* to Part 81 was however *revoked*, but not replaced. I think the first defendant must have been referring to the Practice Direction.

17. On the question of contempt, the first defendant concluded:

> "So please redirect my attached complaint as appropriate or somehow direct Judge Watkins to make a considered – not kneejerk - response."

18. He also complained about the fees charged by HMCTS for court claims and applications, which he described as discriminatory. As to this he asked court staff:

> **"Please advise me** - or point me to some body which can, other than the Citizens' Advice Bureau or similar – as to **which body at which court level do I bring an action against to change this Act *away* from an up-front commission basis to a more equitable cost-based or even subsidized fee structure."**

The first defendant was evidently not aware that it is not the function of court staff – or indeed the court – to give advice to litigants. Indeed, court staff are told that they cannot do so.

19. On 22 March 2022 the first defendant issued a further claim (claim number PT-2022-BRS-000043), seeking relief in relation to the estate of the deceased. However, this was struck out by DJ Taylor on 13 April 2022 as incomprehensible and procedurally defective, and as disclosing no reasonable grounds for bringing a claim. It was recorded as being totally without merit.

20. On 31 May 2022 the claimants' solicitors wrote again to the court to say (amongst other things) that on 25 May 2022 they had received a sealed copy of the first defendant's appeal notice dated 25 October 2021, some seven months after the application had been made. The court's reply, dated 1 June 2022, apologised for this delay, which was attributed to "a period of changeover, both in terms of staff and systems for dealing with appeals". Again, however, regrettable as it is, nothing turns on this for present purposes.

21. After considering judicial availability, 24 June 2022 was fixed for remote hearing of the first defendant's application for permission to appeal and for directions. On that day, Zacaroli J, after hearing the first defendant, refused him permission to appeal in relation to the order of 1 October 2021, and recorded that the application had been totally without merit. He directed that the claim be relisted for trial "on the first available date after 22 July 2022".

22. I should say that, on I July 2022 the first defendant wrote a (very long) email to Zacaroli J to complain about the judge's decision. The email begins:

> "As a retired forensic auditor (still a British citizen) with Ernst & Yonge and KPMG (with a prestigious C.A. Institute first prize in law), and as the retired CFO of McGraw-Hill and (Harold) MacMillan in all of Vancouver, Toronto, Montreal and Paris, I say with considerable authority that your biased conduct and ridiculous illogical without-merit punitive judgment at the subject hearing exhibited oath-breaking ill will.
>
> Accordingly, I submit that your judgment is without legal effect. It is void ab initio because it is ultra vires due to this misconduct and malfeasance. It is of course incumbent upon me to report your abuse of privilege to: The Judicial Investigation Office, as I have the similar misconduct of circuit judge

> Watkins; the Judicial Hall of Shame, and most of the other High Court judges of the Chancery Division and possibly the Law Ombudsman."

23. On 15 July 2022 the court wrote to the parties about relisting the trial before me, either in August, before I went on leave, or in September, after I returned. The claimants wanted August, the first defendant September. In the event I decided that it would be better listed in September, and it was fixed for 14 September. This date was communicated to the parties. Indeed, the first defendant wrote to the court on 22 July 2022 accepting it.

The application for an adjournment of the trial

24. However, and as already stated, by email to the court some five days later, on 27 July 2022, the first defendant has now sought a further adjournment of the trial. The claimants oppose this. I do not consider that a formal hearing of the application is appropriate, as both parties have had an opportunity to make written representations, which I have considered, and time is short before the listed trial.

25. The position is that, once a claim has been listed for trial, a very good reason indeed has to be shown to break the fixture, especially close to the date of the trial. In *Bilta (UK) Ltd v Tradition Financial Services Ltd* [2021] EWCA Civ 221, the Court of Appeal considered an appeal against a refusal to adjourn a forthcoming trial because of the unavailability on *bona fide* medical grounds of an important witness against whom allegations of dishonesty were made, but who was predicted to become available later, if an adjournment were granted.

26. The appeal was allowed. Nugee LJ (with whom David Richards and Peter Jackson LJJ agreed) said:

> "30. … the guiding principle in an application to adjourn of this type is whether if the trial goes ahead it will be fair in all the circumstances; that the assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist; that although the inability of a party himself to attend trial through illness will almost always be a highly material consideration, it is artificial to seek to draw a sharp distinction between that case and the unavailability of a witness; and that the significance to be attached to the inability of an important witness to attend through illness will vary from case to case, but that it will usually be material, and may be decisive. And if the refusal of an adjournment would make the resulting trial unfair, an adjournment should ordinarily be granted, regardless of inconvenience to the other party or other court users, unless this were outweighed by injustice to the other party that could not be compensated for."

The first ground

27. So, it is a fact-sensitive enquiry. I bear in mind that this is a Part 8 claim, where the evidence is given by witness statements, but not normally by live witnesses. That evidence has all been filed. As I have said, there are three grounds put forward here for adjournment. The first is medical. In *Levy v Ellis-Carr* [2012] EWHC 63 (Ch), in

a passage often cited with approval, Norris J referred to the medical evidence that was needed to support an application for an adjournment of a hearing.

28. He said this:

> "36. … I will consider that additional evidence. In my judgment it falls far short of the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in the trial. Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case). The letter on which the Appellant relies is wholly inadequate."

As I say, this statement of the law has been followed on many subsequent occasions, and approved by the Court of Appeal: see *eg Forresters Ketley v Brent and Another* [2012] EWCA Civ 324, *McKay v The All England Lawn Tennis Club* [2020] EWCA Civ 695, *Fatima v Family Channel Ltd* [2020] 1 WLR 5104, and also the *Bilta* case itself. I propose to follow it.

29. The first defendant's evidence in the present case amounts to his own assertion, together with a photograph of his arm with a bandage round it and what looks like a hospital inpatient wristband identification. I see no reason to doubt that the first defendant is unwell, and even that he was in hospital at the time that the photograph was taken, but the photograph does not itself disclose what illness he was suffering from. Neither the email nor the photograph (amongst other things) identifies the medical attendant or gives details of his or her familiarity with the first defendant's medical condition.

30. Nor does the email identify the features of the first defendant's medical condition which (in the medical attendant's opinion) would prevent participation in the trial process, or provide a reasoned prognosis. The court has no evidence that what is being expressed is an independent professional opinion after a proper examination. It is indeed wholly inadequate.

31. In any event, the first defendant himself says that the usual recovery period for pleurisy is two weeks. That will be over long before the trial date. I am not satisfied on this evidence that the first defendant will be unable on medical grounds either to take part in the trial on 14 September or instruct someone else to do so, especially in circumstances where all the evidence has already been filed, and essentially it will be a matter of submissions to the court. Accordingly, I decline to accept the first ground as a basis for adjourning this trial.

The second ground

32. The second ground for seeking an adjournment, as I have already said, is that it would "give senior police and senior lawyer firms in several counties, and even countries, more time to consider the evidence that the [present] claim to depose me as executor is effectively a scam…" I do not understand this. These are civil claims and not criminal ones. The police are not involved, so far as I know. They are certainly not parties to this claim. Since the first defendant has no legal representation, the only lawyers involved are the claimant's solicitors, and they have stated that they need no more time to prepare for the trial. As I say, the evidence is already filed. Even if the police were investigating allegations made by the first defendant, that could not normally be a good ground for adjourning the trial between these parties. I reject this second ground as a basis for adjourning the trial.

The third ground

33. The third ground is that an adjournment would allow the first defendant "to brief a senior barrister – if ever needed". The first defendant has had well over a year, since this claim was issued in May 2021, to decide whether or not to instruct a professional English lawyer. As is his right, he has decided not to do so. Nor has he indicated his intention to do so in the future. I respect his choice, but, if he seeks to change his mind hereafter, so close to the trial, that will be at his own risk as to finding appropriate counsel. The fact that he wishes to preserve his freedom of choice even further is not a good reason for adjourning the trial.

Conclusion on adjournment

34. In these circumstances, I am wholly unpersuaded that it would be right to adjourn this already adjourned trial. I have no doubt that a trial of this claim on 14 September 2022 would be a fair one. The application for an adjournment is therefore dismissed, as totally without merit.

The application for a *Beddoe* order

35. I turn now to the first defendant's application for a *Beddoe* order. Again, I do not consider that a hearing is appropriate, for reasons that will become apparent. The *Beddoe* jurisdiction arises out of the special rules for costs affecting trustees and personal representatives. The general rule of both trust and estate law is contained in the Trustee Act 2000, section 31:

> "(1) A trustee –
> (a) is entitled to be reimbursed from the trust funds, or
> (b) may pay out of the trust funds,
> expenses properly incurred by him when acting on behalf of the trust."

Under section 35(1), that section applies to a personal representative as it does to a trustee.

36. In relation to *litigation* costs, this general rule has found its way into CPR rule 46.3 and PD 46.1, and in relevant caselaw. In a case called *Lines v Wilcox* [2019] WTLR 927, I explained these procedural rules as follows:

> "15. In substance, and subject to one important exception, a trustee or personal representative who is party to any legal proceedings in that capacity is entitled to be paid the costs of those proceedings (including any costs of other parties which he or she is ordered to pay) out of the relevant trust or estate, assessed on the indemnity basis, to the extent that they are not recovered from anyone else. The exception is for the case where the costs are not properly incurred, in particular where the trustee or personal representative has acted unreasonably or in substance for his or her own, or indeed a third party's, benefit (in the books and cases this is sometimes called 'misconduct'). In that case the trustee or personal representative is deprived of the indemnity.
>
> 16. Trustees and personal representatives who are contemplating the bringing or defending of legal proceedings typically seek assurance that their legal costs will be paid out of the trust fund or estate. So they ask the court to make a pre-emptive costs order in their favour to that effect. This is called a *Beddoe* order, after the decision in *Re Beddoe* [1893] 1 Ch 549. But the court will only make such an order if it can be satisfied that, in the circumstances of the case as known at that time, the indemnity will indeed apply, and the exception will not: see for example *McDonard v Horn* [1995] ICR 685, 697A-B, per Hoffmann LJ (decided under the RSC).
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> 17. For costs purposes, disputes involving trustees or personal representatives are usually divided into three kinds: see *eg Alsop Wilkinson v Neary* [1996] 1 WLR 1220, 1224-1225. The first kind is a *trust* dispute, where there is a dispute about the terms of the trust or the assets which are subject to it. This can be either 'friendly' (such as an argument over the true construction of the trust instrument) or 'hostile' (such as a challenge to the whole trust, or a claim by one beneficiary to the share of another). The second kind of dispute is a *beneficiary* dispute, where a beneficiary sues a trustee or personal representative for a breach of trust, a *devastavit*, or other wrong allegedly committed. The third kind of dispute is a *third party* dispute, one which has nothing to do with the internal workings of the trust or estate, but instead with the relations between the trustee or personal representative and some third party. This might for example be a breach of contract or tort claim brought by or against the third party, or a boundary or other property dispute with a neighbour.
>
> 18. In the case of third party disputes, the interests of the trustees or personal representatives on the one hand and the beneficiaries on the other are not normally in conflict. Nor are the interests of the beneficiaries as between themselves usually in conflict. The beneficiaries stand squarely behind the trustees or personal representatives in putting forward the claim or defence against the third party. So, if the trustees or personal representatives provide all relevant information to the court, it can judge whether the trustees or personal

> representatives are acting reasonably in spending trust or estate money in prosecuting or defending the claim. If the court considers that they are, it may make a *Beddoe* order. (In some cases, the 'third party' may be one of the beneficiaries, and different considerations arise.)
>
> 19. In beneficiary disputes, however, the court is usually unable to predict in advance whether the trustee or personal representative will be held to have acted unreasonably or in substance for his or her own benefit until the claim is concluded, since that is usually the point of the claim. In such cases costs should follow the event and not come out of the trust fund or estate: see *Williams v Jones* (1886) 34 ChD 120. In such cases, therefore, a *Beddoe* order will not be made."

37. The dispute in this case, between the beneficiaries of the will and the personal representatives, is not a third party dispute (where a *Beddoe* order can be made), but a beneficiary dispute (where it cannot). Accordingly, the claim to a *Beddoe* order was always bound to fail, and I dismiss it, as totally without merit. On this basis, if it should turn out that the application notice of 3 February 2022 was never served on the claimants, there is now no point in doing so, and I direct under CPR rule 23.9(2) that it need not be so served.

Civil restraint order?

38. CPR rules 3.3(7), 3.4(6) and 23.12 provide that, where a statement of case or application is struck out or dismissed and is totally without merit, the court order must specify that fact and the court must consider whether to make a civil restraint order. As I have said, DJ Taylor on 13 April 2022 dismissed the first defendant's further claim PT-2022-BRS-000043 as totally without merit, and Zacaroli J on 24 June 2022 dismissed the first defendant's application for permission to appeal as totally without merit. I have now dismissed two further applications of the first defendant as totally without merit. That makes four in total.

39. The civil restraint order regime is contained in CPR rule 3.11 and Practice Direction 3C. There are three kinds of such order: limited, extended and general. A limited civil restraint order may be made by a judge of any court where a party has made 2 or more applications which are totally without merit: PD 3C, para 2.1. An extended civil restraint order may be made by a High Court judge where a party has persistently issued claims or made applications which are totally without merit: PD 3C para 3.1. "Persistently" means at least three such claims or applications: *CFC 26 Ltd v Brown Shipley & Co Ltd* [2017] EWHC 1594 (Ch), [13]. For this purpose, a specialist civil circuit judge such as I am has the power of a High Court judge: *Middlesborough Football & Athletic Co (1986) Ltd v Earth Energy Investments LLP* [2019] 1 WLR 3709, [82]. A general civil restraint order may be made by a High Court judge where the party against whom the order is made persists in issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate: PD 3C para 4.1; *Chief Constable of Avon and Somerset v Gray* [2019] EWCA Civ 1675, [14].

40. I must therefore consider whether to make an ECRO in this case, and if so of which kind and for how long. In *Nowak v The Nursing and Midwifery Council* [2013]

EWHC 1932 (QB), Mr Justice Leggatt (as he then was) explained the justification for civil restraint orders. He said:

> "58. As explained by the Court of Appeal in the leading case of *Bhamjee v Forsdick* [2004] 1 WLR 88, the rationale for the regime of civil restraint orders is that a litigant who makes claims or applications which have absolutely no merit harms the administration of justice by wasting the limited time and resources of the courts. Such claims and applications consume public funds and divert the courts from dealing with cases which have real merit. Litigants who repeatedly make hopeless claims or applications impose costs on others for no good purpose and usually at little or no cost to themselves. … In these circumstances there is a strong public interest in protecting the court system from abuse by imposing an additional restraint on their use of the court's resources.
>
> 59. It is important to note that a civil restraint order does not prohibit access to the courts. It merely requires a person who has repeatedly made wholly unmeritorious claims or applications to have any new claim or application which falls within the scope of the order reviewed by a judge at the outset to determine whether it should be permitted to proceed. The purpose of a civil restraint order is simply to protect the court's process from abuse, and not to shut out claims or applications which are properly arguable."

41. Although not everything that Mr Justice Leggatt said there applies to the case of the first defendant, much of it does. I have no doubt that the first defendant sincerely believes in the rightness of his cause, and wishes to vindicate it through the courts. Unfortunately for him, his various claims and applications have failed. The problem is that he does not take No for an answer. He sought to appeal DJ Watkins' order of 1 October 2021, and reported him to the JCIO. He has complained to Zacaroli J about his refusal of permission to appeal against that decision (and threatened to report him to the JCIO). He has insisted that the court investigate his allegations of contempt of court by other parties, despite my comments that it could not, and that court staff advise him how to challenge the court fees system, despite the fact that this is not their function.

42. This conduct is both time-consuming and labour-intensive for both court staff and judiciary alike, and, as this case itself shows, the court system is short of resources. The first defendant has persistently issued claims or made applications which are totally without merit, and a civil restraint order of some kind is appropriate. In my judgment, the case is too serious for a limited order, but not so serious as to merit a general order. In my judgment it is therefore appropriate for me to make an extended civil restraint order against the first defendant for the period of two years from today, applying in both the High Court and the County Court (but not the Court of Appeal or Supreme Court). I have chosen two years because I anticipate that the administration of this estate can be completed in that time. But the parties will bear in mind that such orders can be renewed if it is appropriate to do so.

43. The effect of this (amongst other things) is that, if the first defendant

> "issues a claim or makes an application in a court identified in the order concerning any matter involving or relating to or touching upon or leading to

> the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the claim or application will automatically be struck out or dismissed –
>
> (a) without the judge having to make any further order; and
>
> (b) without the need for the other party to respond to it … ”

44. But the order does not require the first defendant to obtain permission before applying for permission to appeal this order, should he wish to do so: PD 3C para 3.2(3). The judge nominated for the purpose of giving permission under the order will be me, or in my absence HHJ Russen QC. The procedure for seeking permission to bring a claim or make an application is set out in paras 3.4 to 3.6 of Practice Direction 3C, and must be strictly followed.