Neutral Citation Number: [2005] EWHC 2450 (QB)

Case No: HQ02X01699

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/11/2005

Before :

THE HON. MR JUSTICE EADY

- -

Between :

Michael Johnson	**Claimant**
- and -	
1. Perot Systems Europe Limited	**Defendants**
2. Simon Browning-Hull	

- -
- -

William McCormick (instructed by **Bray Walker**) for the **Claimant**
Manuel Barca (instructed by **CMS Cameron McKenna**) for the **Defendants**

Hearing dates: 4th to 7th October 2005

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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.

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THE HON. MR JUSTICE EADY

Michael Johnson v Perot Systems Europe Ltd and Others

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The Hon. Mr Justice Eady:

1. The present applications and the underlying claim

1. The Claimant, now known as Mr Michael Leo Johnson, was for a brief period until his dismissal in August 1999 employed by the First Defendant Company, Perot Systems Europe Ltd as an "IBM Platform Manager" on the premises of one of their clients, UBS Warburg. During that period of employment his line manager was the Second Defendant, Mr Simon Browning-Hull. He has formulated claims against them based upon defamation, breach of contract and breach of duty or negligent mis-statement. He claims general and special damages, which he has variously assessed from time to time at figures ranging between somewhere over £10m and £2.3m. The proceedings were issued as long ago as 27th May 2002.

2. The present application by the Defendants is that they should obtain summary judgment under CPR Part 24 on the basis that the claims have no prospect of success and that there is no other reason for them to be tried; alternatively, that the proceedings should be dismissed for abuse of process "on the ground that the Claimant has pursued and conducted [them] in a grossly dishonest manner with the objective of preventing a fair trial". In this latter context reliance is placed particularly on the principles discussed in *Arrow Nominees Inc v Blackledge*, 22 June 2000, CA (unreported). There is also an application for a civil restraint order against the Claimant but that was left to be considered after the outcome of the other applications is known.

3. The issues as they stood on 1st October 2004 were summarised briefly in my judgment of that date. So far as defamation was concerned, reliance was placed on statements said to have been made by Mr Browning-Hull on behalf of the First Defendant. The context was of information being sought in March 2001 about the Claimant for transmission to Deutsche Bank, who had employed him at the time subject to satisfactory enquiries. What he said on the occasion in question has always been in dispute but, apart from that, there was naturally a plea of qualified privilege and this was combined with an alternative plea of justification. The Claimant had set out a wide range of allegedly defamatory meanings which included, specifically, fraud and dishonesty. Both Defendants from the outset sought to justify the following *Lucas-Box* meanings:

    i) that the Claimant had not been up to his job with Perot Systems and had, in consequence, been dismissed for poor performance in 1999;

    ii) that he had fallen foul of the UBS compliance rules while working for Perot Systems; and

    iii) that he was dishonest.

4. He says that his career prospects have been destroyed "because his professional reputation suffered irreparable damage and the allegations of dishonesty effectively precluded him from working within the banking and finance industry in the future".

2. The events of October 2004

5. The principal issue on 1st October 2004 related to an application by the Defendants for permission to amend to add further particulars of justification, supporting the allegation that the Claimant was dishonest, based upon information which had come into their possession in about the middle of July of that year. The matter was argued on their behalf by Mr Rampton QC and Mr Barca. I gave permission to amend and vacated the trial date which had been fixed for shortly thereafter. I said on that occasion "I want the delay to be as short as possible" and refixed the trial for 7th February 2005 with an estimate of 20 – 25 days. The trial never took place on the planned date largely because the Claimant sought to appeal various orders. In particular, he sought to challenge the order giving permission to introduce further allegations of fraudulent behaviour on his part.

6. Although he was for the purposes of the 1st October hearing represented by Miss Page QC and Mr Barnes, instructed by Peter Carter-Ruck and Partners (as the firm was then known), he and his lawyers parted company on 6th October. I do not know why this came about, and it does not matter. What is important, however, is that it appears that the Claimant had been planning for some time a strategy for discrediting me in the event that the hearing of the 1st October went against him (as indeed it did). He was busy concocting a story to the effect that I was in the habit of joining the Defendants' solicitors and counsel for discussions about the case over the short adjournment. There had been case management conferences on 17th June and 12th July 2004. The suggestion was that I had retired to Mr Barca's chambers (One Brick Court) with counsel and solicitors for the Defendants on both those occasions. This was later said by the Claimant to be information based on something he had been told by an unidentified female witness. It was obviously rubbish. I had not gone to counsel's chambers on either occasion.

7. The purpose of the ruse was obvious. It was to discredit me and, no doubt, to undermine any adverse order I might make against him. It was also to embarrass the Defendants by having their lawyers compromised. The Claimant was under the impression, it appears, that once these allegations were made we would all be potential witnesses and therefore unable to take any further part in the proceedings. As is obvious, however, one cannot create a conflict of interest, or grounds for alleging bias against a judge, simply by making baseless charges. If this were not so, it would be only too easy to work one's way through the complement of Queen's Bench judges until one found a tribunal to one's liking.

8. On 8th October 2004 (no doubt still trying to salvage the original trial date to some extent) the Claimant made an application for a split trial. On this occasion I raised with him in open court a letter which he had sent to me dated 6th October (i.e. the same day that he parted company with his lawyers). It was intended to be a private letter to me, effectively inviting me to drop out of the case because I had been rumbled. The obvious course to take was to raise the matter in open court and to treat it, however far-fetched, as an application to me to recuse myself for bias. Until that moment the Defendants' advisers had no idea that the letter had been sent. The Claimant wanted to oust the judge without the Defendants finding out.

9. What emerged was that the Claimant had, supposedly, instructed private detectives to follow me during the short adjournment on 1st October. This "evidence" was not

produced on 8th October, although it was later presented to the Court of Appeal. I made it quite clear to the Claimant on that occasion that he could not manufacture grounds for recusal out of nothing and that the allegations, both in relation to 1st October and the earlier dates, were simply false. I warned him that he could not expect to manipulate the court's process by making false allegations of corruption. I had no idea at that stage whether he had invented the story himself or was, for some reason, being duped by others. This, of course, made no difference to the Claimant's tactics. He claimed not to believe me or the Defendant's lawyers and pursued the allegations to the Court of Appeal – thereby losing his February trial date. (It is ironic that, if the trial had gone ahead on 7th February, a different judge would have tried it, as I was committed to another case.)

3. The evidence of the "private detectives"

10. When the matter eventually came before the Court of Appeal on 10th February 2005, on the Claimant's application for permission to appeal, he sought to introduce two witness statements from the "private detectives" using the names "Peter Jackson" and "Kenneth Haymes". The Court declined to admit these, as not being credible, and it was said by May LJ that there had been "a mischievous and manufactured attempt to undermine the proper administration of justice". This exercise forms part of the conduct now relied upon by the Defendants as "grossly dishonest" and as constituting abuse of process. The full extent of the mischief was, however, not apparent by that stage.

11. It only emerged in the course of the recent hearing, between 4th and 7th October of this year, that the statements the Claimant had provided for the Court of Appeal bore false names. This admission only came to be made because counsel for the Defendants had noticed that a signature upon a statement now put in evidence by the Claimant, from one Victor Harper, bore a resemblance to that on one of the two earlier statements purporting to be that of "Kenneth Haymes". It thus had to be admitted by the Claimant that these two deponents were indeed one and the same. He attempted in a new statement to explain what had been going on. He introduced fresh statements from the "private detectives" themselves.

12. A complicated story emerged. I should first explain that the reason why Mr Harper surfaced for the October 2005 hearing was that he was supposed to confirm the existence of a Mr "Harry Pearson". I shall need to return to this topic shortly. It has been the Defendants' case for some time that Mr Harry Pearson does not exist. His name was used by the Claimant from time to time in the course of his evidence. He claimed that he was a former employer and had cited him also as a reference. No statement has ever been produced from Mr Pearson or any other independent evidence of his existence. This was where Mr Harper came in. He gave evidence to the effect that he had met Mr Pearson with the Claimant some years ago in a public house: he had particular cause to remember him, as he had failed to pay for a round of drinks. When it was pointed out by the Defendants that Mr Harper's signature bore a striking resemblance to that of "Kenneth Haymes", the Claimant produced the following explanation:

> "3. In their skeleton argument the Defendants identify that the signature of Victor Harper & Kenneth Haymes are the same. I had not noticed this fact before now.

> 4. I must explain that when I considered engaging a private detective I was having problems locating a firm that was available to perform the task for me. My friend Mr Victor Harper suggested to me that I contact our mutual friend Paul Todd, since he organised such tasks for a number of barristers and solicitors.
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> 5. I therefore contacted our mutual friend Paul Todd, and he agreed to arrange for two private detectives to observe One Brick Court for me [i.e. the chambers of Mr Rampton QC and Mr Barca].
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> 6. I subsequently received the witness statements of the two private detectives. And I did not realise that my friend Victor Harper was the 2nd private detective who had actually monitored the comings and goings of One Brick Court chambers. Nor did Mr Harper advise me of this fact.
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> … 8. Having seen the skeleton argument of the defendants I tackled Mr Victor Harper about the issue of his signature being the same as Kenneth Haymes. Mr Harper confirmed that he is indeed that same person, but assured me that he had a very good reason for not using his own name for this witness statement at the time. Mr Harper agreed to provide a 2nd witness statement to me by fax to explain his reasons for using the pseudonym of Kenneth Haymes.
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> 9. Having now seen the 2nd witness statement of Victor Harper that was provided to me by fax late in the evening of 3rd October 2005, I could well understand why he did not wish to identify himself".

13. The "very good reasons" emerged from Mr Harper's statement of 3rd October 2005. Although he had concealed the fact previously, he now relies upon having instructed me through solicitors some thirty years ago in connection with some libel litigation. (I do not recall it, but he may be correct in this respect.) In the light of this, he stated that "privileged matters exist between myself and Mr Justice Eady". He continued, "… I believe it is wholly inappropriate, nor is transparency well served for either side in this case (in my view and as I am now so advised), and I am extremely unhappy with, if not totally against, being cross-examined either, by, or in front of, a Judge, who has previously acted for me and my family, in the privileged capacity of counsel". This is yet another ploy to have me removed from the litigation.

14. Whether Mr Harper bears a grudge against me, arising out of events long ago, I have no idea. What is clear, however, is that (a) he should have revealed his true identity when his evidence was placed before the Court of Appeal, and (b) if he perceived that there was some conflict of interest which prevented him from giving evidence in this litigation, he should have said so at the time. Far from being a "very good reason" for concealing his identity, it was wholly inappropriate for him to do so.

15. The two witnesses not only used false names but also gave (without any explanation) an accommodation address. Upon investigation, this related to a box on top of a post in an unmarked lane off the A413 between Chalfont St. Giles and Amersham. Photographs were produced in evidence by Mr Hardy, the Defendants' solicitor.

16. He told the Claimant that the rules required witnesses to give addresses. In a letter of 9th December 2004 he replied that he had requested both witnesses to expand on these points and that he would provide amended witness statements to address the point. He never in fact did so, but it is necessary to observe at this stage that this letter plainly indicates not only that the Claimant knew who the witnesses were but also that he had personally been in contact with them. This is inconsistent with later evidence from him which I shall shortly need to consider.

17. It is important to note that this saga is by no means concluded. Although the evidence of the "private detectives" was rejected by the Court of Appeal, in February of this year, in the terms I have described above, the Claimant is still maintaining the fiction that I went to counsel's chambers during the short adjournment on 1st October 2004 (as well as in June and July). His maintenance of this story is (at best) thoroughly irrational.

18. The evidence put forward by the "private detectives" was that on 1st October I emerged from One Brick Court, in the company, not of Mr Rampton or of Mr Barca, but of another (identified) member of those chambers. This was explained on the basis that I was trying to put people off the scent by emerging with someone unconnected with the Claimant's litigation. Photographs were produced which were supposed to bear out this story. The photograph of me that was placed before the Court of Appeal in February showed me quite clearly just outside the Royal Courts of Justice, on the north side of the Strand, talking to Master Leslie (who has no connection with One Brick Court). I had walked with him from the Middle Temple, crossed the Strand and was briefly discussing matters with him before we went our separate ways. The photograph is sufficiently clear for it to be obvious that the person concerned was Master Leslie. This was recognised by the Court of Appeal. Despite the fact, however, that he has appeared in front of Master Leslie himself, the Claimant refuses to accept this.

4. The Claimant's recent affirmation of the false story

19. Towards the end of the October hearing Mr McCormick, who was then representing the Claimant on legal aid, handed me a further witness statement dated 7th October. He told me that his client insisted that it be placed before the court, although it was not a course of action which counsel himself supported. In this statement, the Claimant returned to the issue of the "private detectives":

> "46. Mr Todd agreed to arrange for One Brick Court to be watched as a personal favour to me.
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> 47. It was my understanding that Mr Todd, Mr Harper, and another, monitored One Brick Court on the day in question. Indeed, Mr Todd and Mr Harper met with me at lunchtime, and at 13:40 they both went off to One Brick Court to join another person who I never met.

48. I make it quite clear that I was not present at One Brick Court on that day and the witness statement of the private detectives is not my witness statement.

14. Subsequently, I was provided with the witness statement of Jackson and Haymes, and advised that the names were in fact aliases. This fact, and the justification for an alias was made clear in the witness statement. Mr Todd assured me that the witness statements were true, but at that stage it was not confirmed to me the specific identity of the private detectives. I did not concern myself with the identity, or residential address of the private detectives, I was only concerned that the statements made were true. And, based on the assurances of Mr Todd, and the photographs taken, I believe the contents of the witness statements to be true. I still do believe the contents of the witness statements to be true.

…

51. I suspected that Mr Todd, and Mr Harper, were the private detectives, but this was not confirmed to me to the point that I was prepared to state which one was which, until this week when this was confirmed with the provision of further witness statements from Mr Todd and Mr Harper. I repeat that I did not consider this to be an important issue, I was only concerning myself with the truthfulness of the witness statements at one time.

52. I confirm that I believe the account in the two private detective witness statements. I believed it in October 2004 and I believe it now.

53. The fact that Mr Harper has previously instructed Mr Justice Eady when he was a barrister, and therefore personally knows him, only serves to convince me that when Mr Harper says this man exited One Brick Court, then this man did indeed exit One Brick Court. The confirmation this week that Mr Harper is the private detective who witnessed Mr Justice Eady exiting One Brick Court is significant and damming (*sic*).

54. My experience at the hands of this Court on 8th October 2004, and the unacceptable conduct of the Court on that date to myself when I was acting as a Litigant in Person does not incline me to accept the assurance of the Judge on this issue. And I do decline to do so.

55. I remain concerned regarding one of the photographs that I now know was taken by Mr Todd, has been identified by the Court, and by Lord Justice Rix, as being Mr Justice Eady and Master Leslie. I have been before Master Leslie at hearings, and while this is just a photograph, and of course subject to

> personal interpretation, it does appear to me to be [the identified member of chambers] and not Master Leslie. I have also taken the opportunity to compare the same photograph with Master Leslie, and I still have my own personal doubts on this issue. But this is not the important aspect of the evidence, it is a side issue that matters very little".

It is obvious that paragraph 51 is not consistent with the letter of 9th December 2004, in which he claimed that he had requested both witnesses to provide further information as to their addresses. Nor, indeed, would it appear even to be consistent with paragraph 47, where he states that Messrs Todd and Harper left him at 13.40 to go to counsel's chambers.

20. Far from being a "side issue", the fact that the "private detectives" claim to have identified me emerging from counsel's chambers with the person I was talking to in the photograph (he himself having no connection with the chambers) should clearly have brought home to the Claimant the inaccuracy of their story. There is no possible room for doubt about this, and his persistence in the teeth of that evidence is thus plainly irrational (and quite possibly also mischievous). It would appear from a later passage in the 7th October witness statement that the reason for this stance is that the Claimant wished (albeit virtually at the end of the hearing) that I should finally recuse myself from hearing the Defendants' application to stay or strike out his claim under CPR Part 24 or because of abuse of process. As he observed:

> "69. … I do not believe that this Judge can dispassionately, and impartially, consider the evidence concerning his alleged visit to One Brick Court on the 1st of October 2004. It is an impossibility for the Judge to consider evidence against himself.
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> … 72. Based on the advice of my legally aid funded solicitor [*sic*] and counsel I accepted that this application by the Defendants was considered by Mr Justice Eady. I agreed to this, but I have always had my own personal reservations about this decision. I believe the time has come for another judge to be appointed to this claim. I do not understand the insistence of Mr Justice Eady that this claim must be reserved to him alone. I do not accept that justice is best served if Mr Justice Eady continues to be the trial judge in this claim.
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> 73. I wish to simply state that I have little confidence that Mr Justice Eady can impartially make decisions in this claim. I believe it is my right to express that I do not have confidence in the impartiality of the judge, and I do so.
>
> 74. I formally request for Mr Justice Eady to assign this claim to another judge forthwith".

He even identified the particular judge he would like to have.

21. It is necessary to make express at this stage a number of points which should be obvious. First, the point was taken at the end of a hearing which lasted for more than two days. It would be quite inappropriate at that stage to transfer the case to another judge and have it argued all over again. It is my responsibility to determine the matter; it would be wrong to "palm it off" on another judge. Nor was this proposal supported by the Claimant's legal team (notwithstanding that counsel had put the evidence in). Secondly, whether he lacks confidence in my impartiality is not the immediate issue. The appropriate criterion to apply when dealing with allegations of bias is well known. The test is an objective one to be judged by reference to the reasonable onlooker. Precisely because the allegations of my attending counsel's chambers in the midst of the June, July and October 2004 hearings are "a mischievous and manufactured attempt to undermine the proper administration of justice", they should plainly not be allowed to succeed. Thirdly, continuity of case management is in general terms desirable, in so far as court listing arrangements permit. Fourthly, the Claimant has made the point that if the surveillance evidence is to be considered "another judge must do this". For the reasons I have already given, however, that evidence is *not* to be considered. The Court of Appeal declined to admit it. It is not in any event relevant to any of the issues in the proceedings. Since it is both irrelevant and false it has no further place in this litigation. Fifthly, it is not appropriate for a litigant to choose the judge he wishes.

22. What is material for the purposes of the present applications, on the other hand, is that despite the advice of his lawyers the Claimant is persisting in maintaining the validity of these discredited allegations. This has not surprisingly confirmed the Defendants' anxieties that a fair resolution of the pleaded issues in the litigation is not going to be possible. The Claimant's willingness to maintain demonstrably false allegations against their lawyers and the judge gives them no confidence that there can be a fair trial of the issues relating to the Claimant's integrity and honesty. In these circumstances, I cannot accept the original excuse put forward on his behalf (prior to the 7th October witness statement) by Mr McCormick: "It seems that the Claimant has been led astray by the remarks of persons who frequent the public areas of the jury list courts and who seek to involve themselves in litigation which is none of their concern". The Claimant has not been led astray by anyone. He knows exactly what he is doing.

23. It may be noted that I am not the only person to come under attack from the Claimant. No less than three Queen's Bench Masters have also been accused of bias (and in one case also mental illness, racial prejudice and unfitness for office). This appears to be a standard response when he is faced with an adverse decision from the court.

5. The abuse of process application

24. It is against that background that the Defendants take the unusual step of relying on abuse of process. The jurisdiction was explained in the *Arrow Nominees* case, to which I have referred above, by Chadwick LJ:

> "54. … But where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the

> court from doing justice, the court is entitled – indeed, I would hold bound – to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the court's function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who had demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke.
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> 55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court. The court does not do justice to the other parties to the proceedings in question if it allows its process to be abused so that the real point in issue becomes subordinated to an investigation into the effect which the admittedly fraudulent conduct of one party in connection with the process of litigation has had on the fairness of the trial itself. …
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> 56. In my view, having heard and disbelieved the evidence of [the relevant director] as to the extent of his fraudulent conduct, and having reached the conclusion (as he did) that [he] was persisting in his object of frustrating a fair trial, the judge ought to have considered whether it was fair to the respondents - and in the interests of the administration of justice generally – to allow the trial to continue. If he had considered that question, then – as it seems to me – he should have come to the conclusion that it must be answered in the negative. A decision to stop the trial in those circumstances is not based on the court's desire (or any perceived need) to punish the party concerned; rather, it is a proper and necessary response where a party has shown that his object is not to have the fair trial which it is the court's function to conduct, but to have a trial the fairness of which he has attempted (*and continues to attempt*) to compromise" (my emphasis).

No doubt in a case where the effect of a party's dishonesty is spent, and the court can be confident that it will no longer pollute the flow of a fair judicial resolution of conflicting evidence, it might be that summary judgment would not be appropriate. For example, in *Douglas v Hello! Ltd* [2003] EWHC 55 (Ch) at [97]-[104], Sir Andrew Morritt V-C concluded that the deployment of false evidence in the Court of Appeal might at one stage have put the fairness of the trial in jeopardy, but he was not persuaded that a fair trial was any longer an impossibility. That was because of admissions or findings of falsity. He referred to the judgment of Millett J in *Logicrose Ltd v Southend Football Club Ltd, The Times*, 5th March 1988:

> "I do not think that it would be right to drive a litigant from the judgment seat without a determination of the issues as a punishment for his conduct, however deplorable, unless there was a real risk that the conduct would render the further conduct of proceedings unsatisfactory. The court must always guard itself against the temptation of allowing the indignation to lead to a miscarriage of justice."

But the situation described by the Vice-Chancellor seems far removed from the present case. Here, there has been no admission or acknowledgement of falsity; still less any change of heart. The 7th October witness statement from the Claimant in these proceedings has, not surprisingly, prompted the Defendants to submit that he has demonstrated a *continuing* attempt to compromise the fairness of these proceedings by persisting, against all reason, in pursuing his false allegations and those of the "private detectives". On the other hand, this was merely a last minute supplement to the battery of arguments and evidence which they had already deployed.

6. The Claimant's loss of memory

25. There is another important strand to the Defendants' argument on whether or not a fair trial of the issues is any longer possible. The pleading of the Defendants and the evidence put forward by their solicitor, Mr Hardy, amounts to what I described in the course of argument as a strong *prima facie* case of dishonesty on the Claimant's part (and indeed, as will become material, on that of his wife), and Mr McCormick was not disposed to disagree with that characterisation. Of course the burden of proof remains throughout upon the Defendants to establish their multifarious allegations, but for a fair trial of these proceedings what would be critical would be a proper opportunity to assess any explanation or rebuttal the Claimant intended to put forward. Hitherto I have addressed his continuing espousal of demonstrably false allegations of corruption and bias. Yet equally important is what the Claimant had to say about his current mental state and his diminished capacity for giving material evidence. In relation to a number of quite specific allegations relied upon by the Defendants, the Claimant's current stance is that he is simply unable to remember. As he put it in paragraph 2 of his witness statement of 12th September 2005:

> "… I must explain that my memory of many of the events relied upon by Mr Hardy is extremely poor or even non-existent because of the effects of the stress, medication, medical treatment, and depression, I have been under since late 1999. In many respects I have had to rely on large part on my wife's recollection of the events relied upon by Mr Hardy which occurred many years ago. Where I do so I make this clear below and I have no reason to doubt what my wife tells me".

His own counsel has submitted that his "objectionable conduct" in these proceedings must be attributed to the fact that his client has lost "the capacity for rational thought". That does not bode well for the court's task of identifying the issues – let alone for resolving them fairly.

26. That would hardly be a satisfactory state of affairs at the best of times, but it is important to note that the Defendants have had no hesitation in these proceedings in alleging dishonesty on Mrs Johnson's part and indeed complicity with the Claimant in some of his misrepresentations. Again they rely on the documents.

7. Taking the Claimant's evidence as it stands

27. Furthermore, it is contended by Mr Barca on the Defendants' behalf that, since both the Claimant and Mrs Johnson have put in witness statements in these proceedings, it is possible in large measure in assessing their responses to the Defendants' strong *prima facie* case to take them as they stand. Little purpose would be served, he submitted, by going through a hugely expensive month long trial or even cross-examining the Claimant and his wife on evidence which can already be demonstrated as being, in significant respects, inconsistent and untenable. His pleaded case does not take matters much further.

28. Mr Hardy and Mr Barca were undoubtedly conscious of the unusual nature of their applications, seeking as they do to obtain by one means or another summary judgment on allegations of fraud. Nothing daunted, however, Mr Barca invited me to apply the very same criteria I set for myself in *Bataille v Newland* [2002] EWHC 1692 (QB) as adopted by the editors of *Gatley on Libel and Slander* (10th edn.) at 30.28:

> "First, it seems that I should address the primary facts relied upon by the Claimant for establishing the Defendant's responsibility for the publication of the 12th January letter. The burden is upon the Claimant to establish those facts at trial. At this stage, I should make all assumptions in favour of the Claimant so far as pleaded facts are concerned.
>
> Again, in so far as evidence has been introduced for the purpose of the present application, I should assume that those facts will be established, save in so far as it can be demonstrated on written evidence that any particular factual allegation is indisputably false.
>
> The next question is whether, on the facts assumed, a properly directed jury could draw the inference for which the Claimant contends. In this case, of course, the inference is that the Second Defendant was, in some sense, a participant in the publication of the letter. I should only rule out the case against the Second Defendant if I am satisfied that a jury would be perverse to draw that inference …
>
> If the Defendant's case is so clear that it cannot be disputed, there would nothing left for a jury to determine. If, however, there is room for legitimate argument either on any of the primary facts or as to the feasibility of the inference being drawn, then a judge should not prevent the Claimant having the issue or issues resolved by a jury. I should not conduct a mini trial or attempt to decide the factual dispute on first appearances when there is the possibility that cross-

> examination might undermine the case that the Second Defendant is putting forward".

It is very important to bear in mind, when assessing the submissions in this case, that the ultimate test is one of perversity. Would a jury (or, for that matter, a judge) be perverse to accept in any given case the denial or explanation put forward by the Claimant or Mrs Johnson? I should apply the test of incredibility rather than merely implausibility.

29. In the particular context of fraud, it is perhaps helpful to have in mind also the words of Mr Leslie Kosmin QC (sitting as a deputy judge of the Chancery Division) in *Equant SAS (UK Branch) v Ives* [2002] EWHC 1992 (Ch), 4th October 2002 (unreported). Having referred to the speech of Lord Hope in *Three Rivers District Council v Bank of England* [2001] UKHL 16 at [90]– [95], and to the judgment of Lord Woolf MR in *Swain v Hillman* [2001] 1 All ER 91, the learned deputy judge continued:

> "[16] These principles were followed by Moore-Bick J in *International Fund for Agricultural Development v Jazayeri* … (case number WL1476313 (QBD) Comm Ct)) which concerned an application under Pt 24 for summary judgment where the Fund's case was that the Defendant had obtained payments from four consultants dishonestly and in fraud of his employer. The learned judge pointed out at para. [5] that the mere fact that the Defendant has put forward evidence which tends to contradict the Claimant's case does not invariably lead to the conclusion that the case must be allowed to go to trial. It is sometimes apparent from independent evidence that the Defendant's account is plainly without substance and has no prospect of being accepted by the court at trial. In such a case the court will exercise its power to give summary judgment. He continued:
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> 'However, in a case where the Defendant's account appears farfetched but is not contradicted by independent evidence, the court should in my view normally hesitate long before rejecting it as incredible at a preliminary stage. The evaluation of witnesses is essentially a matter for a judge at trial who has the benefit of seeing them give evidence. Moreover, where contradictory accounts are given in the witness statements, any attempt to evaluate the competing accounts inevitably involves an exercise in the nature of a trial.'
>
> [17] It is still a little unusual for there to be an application for summary judgment in a case involving serious allegations of fraud or dishonesty. Indeed, prior to 1992 it was not possible to make such an application in a fraud case. However, the predecessor of Pt 24 of the CPR, namely Ord. 14 of the Rules of the Supreme Court, was amended in March 1992 (SI 1992 No. 638) to permit an application to be made for summary judgment even where the case was based upon allegations of

> fraud. Nevertheless, where allegations of dishonesty are made the Court will of course require cogent evidence before being satisfied that such allegations are made out".

30. I have also been reminded of the warning of Simon Brown LJ (as he then was) in *Spencer v Sillitoe* [2002] EWCA Civ 1579, [2003] EMLR 10 at [31] to the effect that the power to award summary judgment under Part 24 should not extend to denying a claimant the chance of persuading a jury, albeit against the odds, that his account of (say) a meeting is the truth and his adversary's is not. This was despite his conclusions on the facts of the case that the claimant's case was "singularly unconvincing and … highly likely to fail at trial". He considered that all the probabilities appeared to favour the respondents. Despite "some hesitation", however, he concluded that the claimant was entitled to have the relevant issues resolved by a jury.

31. My attention was also drawn to the decision of May LJ (sitting alone on an application for permission to appeal) on 27th May 2004 in *Keesoondoyal v BP Oil UK Ltd* [2004] EWCA Civ 708, where he too considered *Swain v Hillman* and *Three Rivers District Council v The Bank of England*, cited above, and concluded that permission should be refused to appeal against summary judgment ordered in an action for deceit. At [29] May LJ concluded:

> "The test of perversity is, however, a very high one. Applying that test, which the Judge in the present case was not asked to do, I have no hesitation in concluding that it would be perverse, on the particular facts of the present case, for any jury on the evidence before the Court to reach a conclusion other than that the first defendant was dishonest here. That is, I grant, a strong conclusion which recognises that summary judgment against a defendant against whom fraud is alleged will only be given in exceptional circumstances. I am, however, satisfied that these are such circumstances".

Of course, in the present case the boot is on the other foot: it is the Defendants who allege fraud against the Claimant. But that cannot affect the principle. Mr Barca acknowledges that the test to be applied is that of perversity.

8. The nature of the defamatory allegations

32. As I have already indicated, the Defendants' pleading contains a catalogue of allegations of dishonesty against the Claimant and his wife going back over a number of years, including those for which I gave permission on 1st October 2004. Since then, yet further allegations of dishonesty have been raised, although as yet no application has been made for permission to amend, and these are included in the third witness statement of Mr Hardy for the purposes of the present applications. They are submitted to be material both for the purposes of the Part 24 application and for abuse of process. Although Mr McCormick objected to reliance upon unpleaded allegations, it is nonetheless important that they should be addressed for present purposes.

33. The Claimant's causes of action are essentially founded upon the content of a report sent to Deutsche Bank by Zephon Employee Screening, which was in turn said to be

based upon observations made by the Second Defendant in these proceedings, Mr Browning-Hull. It was claimed at one stage that the contents of that report led Deutsche Bank to terminate the Claimant's employment. This is disputed by the Defendants, whose case is that the dismissal occurred because the Claimant had dishonestly concealed from Deutsche Bank the true reason for his dismissal by Perot Systems in August 1999; that is to say, poor performance.

34. Whether or not the content of the Zephon report correctly attributes the allegations to Mr Browning-Hull is a matter of dispute. Nevertheless, it is said that during a conversation in March 2001 Mr Browning-Hull, acting on behalf of the First Defendants, made a number of statements to a Mr Davies of Zephon concerning the Claimant and his experience of him. As pleaded, these allegations are summarised as follows:

> "(i) Working with the candidate was the most horrendous episode that I have ever experienced in my working life.
>
> (ii) They had all sorts of problems with the candidate.
>
> (iii) Technically Mr Johnson was just not up to the job.
>
> (iv) They had tried a number of get-well plans to try to help him but nothing worked.
>
> (v) Mr Johnson had a significant lack of management skills.
>
> (vi) There was little in his performance which supported the work that he claimed to have done previously.
>
> (vii) They had serious compliance issues and that the Bank had strict rules about staff dealing in shares and equities and Mr Johnson repeatedly fell foul of this rule.
>
> (viii) Eventually we had to terminate his employment.
>
> (ix) Mr Johnson initiated action through the employment tribunal against Perot Systems.
>
> (x) He heard that the candidate had got kicked out of a bank after he left the company, and that it allegedly was something to do with obtaining a mortgage with the bank concerned fraudulently".

As I have already said, there are a number of natural and ordinary defamatory meanings which are attributed by the Claimant to the above allegations. For present purposes, clearly the most important are those concerning fraud and dishonesty. Those are sought to be justified.

9. The Abbey National mortgage application of March 1999

35. At the heart of the plea of justification, and of the present applications, lies the application for a mortgage from Abbey National made by the Claimant and his wife in

March 1999. The Defendants argue that it contains six "lies" and that these were such that Abbey National would have been fully entitled to repudiate the contract. As such, this was a proposition from which Mr McCormick did not demur, although he was at one stage carried away to the extent of making the novel submission that "not all lies are dishonest".

36. The application was made jointly by the Claimant and his wife. On the first page of the form she gives "Pearson" as her previous surname, although before she married her name was in fact "Ashbolt". Ashbolt is an unusual name: Pearson is not. For all I know, she may have wished to disguise her connection with certain companies in the context of which she had used the name "Ashbolt". (I shall need to return to this topic in due course.) She had also sometimes used the name Pearson-Ashbolt. This was explained in a witness statement of Mr Nigel Tait, the Claimant's former solicitor, for the purposes of the hearing on 1st October 2004 on the basis that:

> "Like many other working women, Mrs Johnson uses both her married name and her maiden name, but not necessarily with complete consistency. She has tended to use her maiden name for business purposes but, for instance, her car is registered in her maiden name. For a period of time, including in 1973 when she and Mr Johnson got married, she used the name Pearson-Ashbolt. She saw [it] as a bit of fun at the time to use a double-barrelled name".

Be that as it may, the fact remains that "Pearson" was not Mrs Johnson's name: nor indeed does one use a false name on a mortgage application form for "a bit of fun".

37. Also on the front page of the application form, one finds a question directed towards ascertaining the applicants' current home addresses together with any other addresses occupied over the previous three years (that is to say, in this case back to March 1996) and the length of residence at each address. The Claimant asserted that he had lived at No. 8 Quernmore Close, Bromley, for one year and one month. Prior to that he had lived throughout the relevant period (or so he claimed) at "Ascot Apartments, Scotts Road, Singapore". He claimed to have lived there for two years. Thus, the effect of his representation was that he lived in Bromley from February 1998 and, prior to that, in Singapore from February 1996. The indisputable fact, however, as now emerges from the Claimant's relevant passport, is that over the relevant period he made no more than four short visits to Singapore (comprising 2nd to 6th October 1996, 17th to 18th January 1997, 21st to 22nd January 1997 and 21st to 24th April 1997). He thus spent no more than twelve days in the country in which he claimed to have lived for at least two years.

38. Mrs Johnson, on the other hand, claimed to have lived at the Bromley address for one year and five months (i.e. approximately from October 1997). She gave as her previous address No. 66 Leysdown Road, Mottingham. She asserted that she had lived there for one year and three months (i.e. from July 1996). This is to be contrasted, however, with the instructions on this matter which the Claimant gave to Mr Tait in September 2004. He stated that she lived there "for approximately a month in October 1997 while the Claimant was on business in the United States". These assertions are clearly irreconcilable.

39. On the third page of the application form the Claimant was asked a very simple question: "Have you ever been bankrupt or been subject to an individual voluntary arrangement?" The Claimant answered in the negative. Another fact which the Defendants were able to discover after the commencement of these proceedings was that the Claimant had indeed been declared bankrupt in 1993. It emerges from the statement of affairs (reference Aylesbury County Court, No. 212 of 1993) that there were two secured creditors, namely the Portman Building Society and Doris Johnson (the Claimant's mother). The amounts owed to these creditors were, respectively, £117,500 and £30,000. There was also a list of 29 unsecured creditors, the majority of which consisted of banks or other financial institutions from whom credit had been obtained. The total of unsecured indebtedness appears to have been of the order of approximately £130,000. At that time the bankruptcy would have expired automatically three years after May 1993. According to one of the documents in evidence, the Claimant wrote on 13th January 1997 (from an address in Southend-on-Sea, Essex) seeking from the Aylesbury County Court a discharge certificate. He asked for it to be sent to the Southend address "where I am staying temporarily with friends".

40. The stance taken by the Claimant and his wife in the present proceedings is that he did not believe the denial of bankruptcy on the mortgage application form was false. He thought that the bankruptcy had come to an end in 1994. Because of memory loss, I understand that this has been based on what he has been told by his wife. It would be difficult to reconcile this with the application for a discharge on 13th January 1997. Moreover, it has not been suggested that the Claimant was suffering from memory loss in March 1999. More importantly, however, the question asked on the form was not whether the Claimant was currently bankrupt, but rather whether he had "ever been bankrupt". The answer was therefore plainly false.

41. Also on the third page of the application form, the Claimant was asked if he had "ever had a property repossessed, or had a court order for debt registered against you, or not kept to any credit agreements?" He answered again simply in the negative. As a matter of fact, his house at 3 Lisle Close in Newbury had been sold to pay secured creditors, but I can understand that a lay person might not have thought this equated to a "repossession". On the other hand, there is no doubt that the Claimant had a "court order for debt" registered against him. It emerges from the documents that there had been a judgment in December 1992 in favour of Robert Fleming (the bankers). Moreover, one only has to look down the extensive list of unsecured creditors following the bankruptcy to realise that there were a number of "credit agreements" with which he had failed to comply. Again, therefore, the answer was false.

42. Against this background, the Defendants ask rhetorically why they should be put to the expense, measured in tens of thousands of pounds, of having to go through a trial in order for the various explanations of the Claimant and his wife to be tested (i.e. that all these misrepresentations were honest or, at least, not dishonest "lies"), when the chances of success on the central libel allegation would appear already to be virtually nil. To adopt a phrase used by the Court of Appeal recently in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] 2 WLR 1614 at [69], why should the litigation be allowed to progress at enormous expense, and with the corresponding consumption of public resources, when "the game will not merely not have been worth the candle, it will not have been worth the wick"? If the false mortgage application stood alone, it would be

in practical terms impossible to imagine how the plea of justification could fail. The Defendants would not need to go further.

10. The application for a bank account

43. Matters do not rest there. The Defendants place reliance also upon an application for a bank account in May 1999. This was also made to Abbey National. Again the Bromley address was given and again Mrs Johnson falsely gave her name as "Pearson" under the question relating to "any other full names by which you have been known (e.g. maiden name)". This time the Claimant purported to have lived for *three* years at the Ascot Apartments address in Singapore.

44. On this occasion the Claimant himself was asked "please give any other full names by which you have been known (e.g. maiden name)". He had in fact on 29th September 1998 (some nine months earlier) changed his name by deed poll to Michael Leo Johnson, having been previously known as Lee Johnson. His previous passport had given that name and, indeed, in December 1998 he obtained a new passport in the name of Michael Leo Johnson which he presented to the First Defendants as evidence of his identity. In the application form in May 1999, on the other hand, he did not reveal the fact that he had previously been known as Lee Johnson. Whether this was to avoid credit information coming to light during searches, I do not know. The fact remains, however, that he did not disclose the relevant information he was asked for. It can only have been a deliberate misrepresentation that his name had always been Michael Leo Johnson.

45. It will be noted that the overall effect of the information supplied on this form was to give the impression that he had lived at the Ascot Apartments address in Singapore from about February 1995 to February 1998. It is, of course, different from the information supplied on the mortgage application form, but equally false. It goes without saying that, on both occasions, these misrepresentations would have presented formidable hurdles to anyone seeking credit information by reference to searches against addresses. At all events, not only is the Singapore address inconsistent with the details contained on the Claimant's passport, but it is also inconsistent with his *curriculum vitae* dated October 1998 in which he set out his past work history (and, incidentally, knocked five years off his age).

46. In that document he claimed to have been working between November 1993 and February 1994 for four months as a technical consultant for Citibank in Singapore. He also claimed to have been working from August 1994 to February 1995 for the Royal Bank of Scotland on a six month contract (which was extended) to provide technical support, advice and management for the development phase of Royal Bank's largest branch banking development project.

47. From February 1995 to June 1996 he said that he had been working for GA Insurance of Perth. From June 1996 to September of the same year he was (he said) with Citibank Lewisham. From October 1996 to March 1997 he was vice-president and development manager of Citibank Private Bank in Hong Kong. From March 1997 to January 1998 he was with Standard Chartered Bank in Hong Kong and from January 1998 to May 1998 with Citibank in London. Then, from May 1998 to October 1998 he was with Woolwich plc.

48. None of these claims sits comfortably with the Singapore address (whether from February 1995 or from February 1996 to February 1998).

49. It is the Defendants' contention that the suggestion of the Claimant and his wife that these misrepresentations on the application forms were honest mistakes is "utterly bereft of credibility". It is their case that there was a pattern of skulduggery and general muddying of waters so as to prevent Abbey National discovering that the Claimant had in fact been living in Scotland between approximately August 1994 and October 1996. They suggest that the Claimant wished to avoid any searches throwing up addresses which might reveal credit card and other debts incurred during the period of his bankruptcy. Mr McCormick argues that no credit card accounts or debts could have been linked to a Scottish address. I need not decide that for present purposes. I am not in a position to do so. But the Claimant's motive is not an essential ingredient for the Defendants to establish. The fact remains that he deliberately fed Abbey National misinformation.

11. The Defendants' original allegations of dishonesty

50. Before the Defendants were able to pin down the false applications made to Abbey National, they had pleaded in support of their defence of justification certain facts relating to the Claimant's dismissal from Perot. Not only had he kept the true reason from Deutsche Bank when he applied for a post with them, but he had also sought to persuade Perot to classify his dismissal as a redundancy. This would have been plainly false, the object being to enable the Claimant to make a dishonest insurance claim under an employment protection policy. This is a matter which turns, not upon conflicting accounts, but upon the construction of a document. The Claimant had instructed solicitors to write a letter dated 11th November 1999 in which the threat of wrongful dismissal proceedings was used to force Perot to comply with his demands. He was willing:

> "… to undertake that should you be prepared to re-classify his dismissal to 'by reason of redundancy' then he [would] undertake not to pursue any further action against yourselves …".

Perot would have nothing to do with this proposal. The Claimant's approach would appear to be entirely consistent with his earlier conduct in relation to the false application forms submitted to Abbey National. Nevertheless, his case is that he was in fact made redundant and that the letter of 11th November is inadmissible, as representing a without prejudice attempt to settle a dispute, or potential dispute, with Perot. Therefore, whatever the merits of this argument may or may not be, it is right that I should put it to one side when determining the present issues.

12. The lease of No. 79 Morningside Drive

51. One of the many curiosities in the case concerns the Claimant's signing of a lease in respect of premises at No. 79 Morningside Drive in Edinburgh on or about 29th July 1994. The story is taken up by Mr Hardy in his third witness statement at paragraph 13.

52. Mr Hardy collected on 24th January 2005 the landlord's copy of the lease which had been granted by Mrs Deirdre Galloway and her husband to the Claimant's wife and a person using the name Leonard Ernest Edward Johnson. Mrs Galloway's records showed that the house had been occupied by a "Mr and Mrs Johnson" – apparently a married couple living with their children. It is also clear that the relevant "Mr Johnson" used the name Lee. The evidence is that Mrs Galloway had never met the tenants because she was abroad at the material time. It was provided in clause 4(e) of the lease that the tenants were "to use the house as a residence for ourselves and our family only …". Mr Hardy decided that the handwriting on the lease, purporting to be that of the tenants, corresponded with that of the Claimant and his wife. He therefore instructed a handwriting expert to compare samples. She came to the conclusion that there was "very strong support" for the view that Claimant signed, initialled and completed the associated handwriting. Likewise Mrs Johnson.

53. Mr Hardy therefore wrote on 23rd February 2005 inviting the Claimant to provide his explanation for the signature on the lease. He replied in these somewhat evasive terms:

> "You will have to excuse me, but your speculative outrageous accusations and fanciful conclusions based on a document that I have absolutely no recollection of having signed, for somebody else, in 1994, does not impress me as a sound basis for justification of the offensive and malicious employment reference issued by Simon Hull some eight years later".

Mr Hardy wrote immediately upon receiving this response to enquire whether the Claimant denied taking the lease under the alias "Leonard Ernest Edward Johnson". He replied:

> "I neither admit nor confirm anything concerning the lease agreement that you have faxed to me. For the avoidance of doubt, I say again: I have no recollection of such a document … I repeat again my own observation that this lease appears to be a document from nearly 12 years ago, and that the document in question appears to have been signed for, on behalf of, somebody else. It is therefore a document of little value and adds absolutely nothing to your accusations.
>
> Be advised that I have great difficulties remembering events that have occurred this week, let alone from years ago. I am suffering from a combination of short and long term memory malfunctions, brought on by stress, medication, prolonged medication regimes, and more recently the effects of my recent severe physical illness, together with resultant hypertension and high blood pressure. These medical conditions are confirmed by my medical advisors, which have attended me for several years now, and this is not in dispute.
>
> Your assumptions and demands that I must recall the details of events from nearly 12 years ago are just preposterous".

It was then put to the Claimant that, inconsistently with the instructions he had given to Mr Tait in 2004, the lease provided evidence that he was indeed using the alias "Leonard Ernest Edward Johnson" (the initials corresponding to his own name "Lee"). No clear denial was forthcoming. None of this gives any confidence that the Claimant is willing to co-operate in the "cards on the table" approach which litigants are nowadays supposed to adopt towards the narrowing of issues. This attitude rather supports the Defendants' primary contention that he was continuing to attempt to compromise a fair resolution of the pleaded issues.

54. Mr Hardy concluded in the light of the material before him, and the Claimant's blustering responses and obfuscation, that there was now powerful evidence that he had incurred credit card debts totalling £16,456. These related to Barclaycard (twice), American Express, Thames Credit Ltd/Royal Bank of Scotland and Kings Hill (No. 1) Ltd/Royal Bank of Scotland. The accounts were in various names. The Barclaycard accounts were attributed to "Leonard E Johnson"; the American Express account to "L Johnson"; the Kings Hill account to "L E Johnson"; and the Thames Credit account to "L E E Johnson".

55. These allegations are denied and it is not possible definitively to determine, on an application of this kind, that the Claimant was responsible for setting up these accounts or that they provide further evidence of dishonest misrepresentation in relation to the questions on the mortgage and bank account application forms to which I have already referred. It was alleged in a pleading on behalf of Abbey National in other proceedings brought by the Claimant that "… on 11th March 1999, there were five credit cards which the Defendant believes belonged to Mr Johnson". That may or not be correct, but I could not dispose of the allegation on a summary basis if it stood alone. The Claimant has produced an elaborate explanation which plainly lacks credibility, but this could not *taken by itself* justify summary judgment in the libel proceedings or, for that matter, go to support the allegation of abuse of process. It is nonetheless worth considering in a little further detail, since other instances of dishonesty are said to have come to light in the course of investigation.

13. "Mr Pearson" and "Mr Leonard Johns(t)on"

56. What the Claimant says, in effect, is that these credit cards were taken out as "company" credit cards for an employee of "Mr Harry Pearson". Which "company" was supposed to be involved remains obscure. The Claimant himself had worked for "Mr Pearson" and it so happened that a fellow employee had the name "Leonard Johnston". By a similar coincidence this Mr Johnston was said to be sharing 79 Morningside with the Claimant's wife and was registered on the electoral register as Leonard E E Johnson. The credit cards were issued in the name of Johnson (as opposed to Johnston). Mrs Johnson has provided evidence to the effect that she was living with this other person, whom she had taken as a lover following the breakdown of her marriage to the Claimant.

57. The various breakdowns or "estrangements" in the marriage are impossible to reconcile with what the Claimant told Dr Lawrence Goldie, a psychiatrist who prepared two medical reports dated respectively 17th June 2002 and 24th October 2003. He reported that throughout his marriage has been a happy one and they appeared to have been a happy family. "This is confirmed by a detailed perusal of the records as there is no reference whatsoever to any marital or family difficulties".

Moreover, the Claimant has in paragraph 17 of his witness statement dated 27th July 2004 confirmed that the information he gave to Dr Goldie was true. Clearly these propositions are inconsistent. This is not simply evidence of dishonesty for the purpose of supporting the plea of justification. It also supports the application based on abuse of process *in these proceedings*. I am not prepared to accept Mr McCormick's submission that he told Dr Goldie that his marriage was a happy one because he had forgotten that it was not.

58. It appears that "Mr Johnston" found it convenient to use the name Johnson simply because he was living with Mrs Johnson. Moreover he (the Claimant) had signed the Morningside lease but, although he was Mrs Johnson's husband, and the father of the two daughters who lived there with her, his case appears to be that he would have incurred no personal liability under the lease because he was actually signing on behalf of her lover (as presumably an undisclosed principal). This would appear to lack credibility, to say the least, and the Defendants have no hesitation in suggesting that Mrs Johnson has perjured herself and is attempting to pervert the course of justice in adopting it. Moreover, until Mr Hardy unearthed the lease in 2005, the Claimant was maintaining the position (through Mr Tait) that the Morningside property was "a large house that Mr Pearson, Mrs Johnson, and others lived at for a period of time". Mr Leonard Johnston was merely described as having "lodged" there for some months in 1994. The Claimant did not say he suffered from memory loss. In seeking to distance himself and to give the impression that the lease had nothing to do with him, and that he had not himself lived there, he was distinctly lacking in candour. Once the lease was produced a different account was called for. All Mr McCormick could say on the Claimant's behalf was that his previous lack of candour "should be looked at in the context of the deeply personal and hurtful nature of what is now having to be exposed for examination in this hostile litigation". The lack of candour cannot, however, in my judgment be isolated from the other examples of deliberate misrepresentation – a significant proportion occurring before "this hostile litigation".

59. The Claimant accepts now, in reliance (he says) upon what he has been told by his wife, that he did indeed sign the lease for Morningside Drive, although he claims to have done so on behalf of the other Mr Johnson (or "Johnston"). It happened to be convenient because Mr Johnston was (as so often) not around at the time. The contract nowhere indicates, however, that the Claimant was purporting to sign on someone else's behalf. The tenants are represented in the lease as being Mr & Mrs Johnson, giving a Southend address (898 London Road). I am quite satisfied that there is no way that Mrs Galloway or her husband could have known that their real tenant was supposed to be an individual other than the present Claimant (i.e. Mrs Johnson's husband). Indeed the Claimant now admits, in the context of the present litigation, that from about October 1994 he was living at the Morningside address (following a reconciliation), for about a year, and later just outside Edinburgh at Lasswade (at a property said in the Reply to have been rented by Mr Pearson in 1995 – who "presumably completed the electoral registration at that time" in the names of Lee Johnson and Jan Johnson). To others, of course, the Claimant was claiming that he had lived in Singapore or in unspecified hotel accommodation for a significant part of the relevant period.

60. It is notable that, over the considerable period of time for which this litigation has been proceeding, no independent evidence has been produced of the existence of this

L E E Johnston. Likewise, no convincing evidence has been produced of the existence of Mr Pearson. It will be observed that his name corresponds to Mrs Johnson's mother's maiden name (which she herself used on the application forms), but it is not suggested that he is a relative of hers. Indeed, the evidence appears to be that he is a person of oriental appearance, as described in Mr Victor Harper's account of the meeting in a public house. If that is the best evidence of Mr Pearson's existence, it is hardly compelling. Moreover, it would be unrealistic to ignore the fact that the witness concerned has already attempted to give untrue evidence to the Court of Appeal under a false name (see paragraphs [10]-[12] above).

14. "Mr Pearson" and Dynamic Multi National Ltd

61. "Mr Pearson" comes into the case in a number of capacities. He was, for example, supposed to be managing director of a company called Dynamic Multi National Ltd which, on 4th December 1998, provided a reference for the Claimant over what purported to be Mr Pearson's signature. It was in support of his application to Perot. It contains a certain amount of information about the Claimant including the following:

> "I confirm that Mr M L Johnson has worked for my company since January 1998 on various contracts and assignments as a Project Manager for our clients in the UK and Europe. His tenure as a consultant with DML will terminate by mutual agreement on 18th December 1998 following his resignation. Lee has worked on the following major DML contracts this year … . In addition to these major projects Lee has provided DML with advice for our new Capital Futures and Options trading system.
>
> I have known and worked with Lee since 1982. He works very hard at what ever he is doing and will work whatever hours are required. Uniquely, he consistently tries to exceed the client's expectations in terms of deliverables. He has demonstrated a totally positive attitude for a consultant and in many cases has refused payment for minor tasks if nothing was actually achieved. I will be sorry to lose his skills and doubt if I will be able to replace him in the short term. If he should ever decide to rejoin my company I will certainly endeavour to make room for him."

The address given for Dynamic Multi National Ltd ("DML") is No. 55 Derby Road, Croydon. This was described by Mr Tait as "the address of an office services/mail forwarding bureau called Posthaste that was used for many years by Mr Pearson". DML's telephone number was 07050-145829 (which would permit incoming calls to be re-routed to another telephone number without the caller knowing). The signature purporting to be that of Mr H J Pearson is simply a scrawl written out in capital letters. It is noteworthy also that the secretary of the company was none other than the Claimant's wife using the name "J Ashbolt". The company appears never to have filed any accounts. Not surprisingly, it is the Defendants' case that the company is a sham and that the reference was therefore bogus.

62. It seems clear that it was incorporated on 25th November 1997 and that "Harry Pearson" was made a director on 18th January 1998. Mrs Johnson was appointed company secretary on the same day. The use of the name "Ashbolt" on the reference obviously had the effect of concealing from Perot the Claimant's personal connection with the company (through his wife). They were also unaware at that stage that he had (apparently) shared residential accommodation with "Mr Pearson" at one stage. His name appeared on the electoral roll at No. 79 Morningside Drive, Edinburgh for a year from October 1994. The reference was thus, even if genuine, somewhat less "arm's length" than it would appear to the routine observer.

63. On 25th November 1998 Mrs Johnson had filed an annual return for DML declaring that she and Mr Pearson had one share each. On 19th April 1999 an application was made to have DML struck off the register because it had not traded for the previous three months. The application was signed by "Pearson" and gave the Derby Road address. The telephone number given (in case of queries from Companies House) was Mrs Johnson's personal mobile number.

64. By the time DML was struck off on 21st September 1999 it had filed no accounts. Mr McCormick points out that this does not necessarily mean that it had not traded at all between 18th January 1998 and 18th January 1999. Of course that is so, but there is no independent evidence that it actually did. In particular, there is nothing to bear out the rosy picture summarised by Mr Pearson in the reference or as to what became of "our new Capital Futures and Options trading system" between 4th December 1998 and 18th January 1999.

15. "Mr Pearson" and Beagle IT Ltd

65. Mr Pearson also surfaced in connection with the Claimant's application to Deutsche Bank at the end of 2000. He claimed in his then *curriculum vitae* that he had been working in a "general consultant role" with a company called Beagle IT from October 1999 to (approximately) October 2000. This was inconsistent with his later claim (made in his action against Abbey National) to the effect that he had, on 3rd November 1999, been diagnosed as suffering from anxiety and depression. He said that this rendered him unfit to work until 20th February 2000, and that during the intervening period he had been receiving medication and stress counselling. He also asserted that the contract had come to an end, as a result of which he had been made redundant in February.

66. It is to be noted that he appears also to have made claims under his mortgage protection policy with Abbey National because of unfitness between 3rd November 1999 and 21st February 2000 and, subsequently, because of unemployment following Beagle's ceasing to trade.

67. On or about 9th February 2000 the Claimant signed an unemployment claim form making a number of assertions:

    i) that he worked for his previous employer for four months on an employed basis;

    ii) that he had been working for over forty hours per week;

iii) that he had not been on a fixed term contract;

iv) that his last day at work was 29th February 2000;

v) that he had been made compulsorily redundant.

68. Further information supplied to Deutsche Bank on 6th November 2000, in response to specific questions, was as follows. First, the Claimant said that he had worked for Beagle from November 1999 to October 2000 (albeit the date actually given was "October 1999" – presumably a slip), and that the reason for leaving was that he had come to the end of his contract. Secondly, he identified a Mr "Craig Shea" as a business referee. He was given the title "project manager, Beagle IT". The contact telephone number for him was in Australia, as was an e-mail address.

69. Thirdly, Mr "Harry Pearson" was described as the person to whom the Claimant had reported at DML and Beagle. Contact details for Mr Pearson were a "Hotmail" e-mail address and telephone number. This was another "07050" number (07050 144413).

70. Fourthly, the Claimant claimed to have a bonus coming from Mr Pearson in March 2001 and that the bonus was "dependent on Beagle being awarded the next stage of the contract".

71. Fifthly, the Claimant also said on this occasion that he had been employed by DML as a consultant from March 1997 to December 1998. (It will be remembered that DML was not incorporated until 25th November 1997 and, moreover, that Mr Pearson and Mrs Johnson were not appointed to their respective positions until 18th January 1998.) No reference was made to the dissolution of DML, over a year before, on 28th September 1999.

72. Sixthly, the Claimant made the representation that he had not had any periods of unemployment exceeding one month during his career.

73. Seventh, when asked if he had ever been known by any other name, the Claimant simply answered in the negative despite the change of name by deed poll in September 1998.

74. When asked for previous addresses over the past six years, the Claimant stated that he had been living in "hotels" in the "Far East and UK" from 1994 to October 1996 (when he was actually living at addresses in Scotland). A Singapore address was also given, but this time it was "Scotts Apartments, Scotts Road, Singapore" and the period given was October 1996 to December 1997.

75. Against this background, it is necessary to consider the established facts about Beagle IT Ltd. It is by now a familiar story. This was a company incorporated in 12th October 1999 (two weeks after DML was struck off). On 22nd November 1999 a form was completed (form 287) giving the Derby Road address as Beagle's registered office. Another such form was completed by Mrs Johnson on 26th November 1999, using the name Janet Ashbolt, but failing to provide a contact name or other details. On the same day she also completed a form, relating to the appointment of a director or secretary, purporting to record the appointment of "Mr Harry Pearson" as a director of Beagle and giving the Derby Road address as his usual *residential* address. A

signature purporting to that of Mr Pearson also appeared on the form. Again, no contact name or details were supplied.

76. A second form was also completed on the same day in the name of "H Pearson". This was signed by Mrs Johnson giving the name Janet Ashbolt and the address, purporting to be her usual residential address, No. 37 Hamstel Road, Southend-on-Sea. This would not appear to be consistent with the information supplied by the Claimant to Deutsche Bank, to the effect that he was living at No. 5 Hatton Close, Grays from July 1999 until the date of his application. Mr Tait described the Hamstel Road address as the family home of the Ashbolts, where Mrs Johnson stayed at times of matrimonial difficulties "and often dealt with her paperwork, including company matters, whilst working there".

77. On 30th July 2000 an application for striking off Beagle was completed in the name of "Harry John Pearson", purporting to be a director, on the basis that the company had not traded for three months. This time the contact name given was M Johnson and No. 5 Hatton Close was the contact address. Beagle was duly dissolved on 2nd January 2001, having never filed any accounts. The Defendants' case is, therefore, that both DML and Beagle were sham companies used for no other purpose than providing the Claimant with bogus references and a fictitious career history.

78. It is obvious that if Beagle was not trading after 30th April 2000, and the Claimant was claiming unemployment benefit from the end of March 2000, and been off sick from 3rd November 1999, he was making a dishonest representation to Deutsche Bank about his employment history. He could not have been working for Beagle from October 1999 to October 2000. When that is combined with his misrepresentations to Perot and (twice) to Abbey National, it is difficult to see how these proceedings can serve any useful function. It is not a case of resolving two conflicting accounts, to be tested in oral evidence. It is one of those cases where the incredibility of the Claimant's case, and that of his wife, emerges from the documentary evidence. As Mr Barca put it, "the Claimant is hanged by his own documents".

79. It seems that Mr Davies of Zephon took up the "Harry Pearson" reference by ringing the number he was given in March 2001. He actually spoke to somebody on the telephone purporting to be "Harry Pearson", but it is the Defendants' case that this was simply re-routed to the Claimant via the "07050" telephone number. The inference is invited that the Claimant himself conducted the telephone conversation pretending to be "Harry Pearson".

16. Mr Pearson's power(s) of attorney

80. Through Mr Tait the Claimant explained that Mr Pearson had granted a power of attorney to various persons who were enabled to sign on his behalf. One of them was Mr Pearson's girlfriend (who apparently used the name "Mary Pearson"). Another was Mrs Johnson. Another was a mysterious Mr John V'Gott (or Vergott). It seems from a letter of 22nd March 2001 that he too used the address of 55 Derby Road and shared the use of the telephone number 07050 145829. It will be recalled that this was the number for DML given on the reference of 4th December 1998. By the time of Mr Vergott's letter, however, DML had been struck off for 18 months. It is a reasonable inference that any calls to Mr V'Gott would have been redirected to the same individual who would have earlier fielded calls to DML.

81. All of these persons were allowed to sign documents on Mr Pearson's behalf. On the other hand, at the hearing on 1st October 2004, I was curious to know which of the candidates was supposed to have signed the reference of 4th December 1998. Miss Page responded, "Mr Johnson is unable to say whose signature it is. Mrs Johnson says it is Harry Pearson's signature. It is certainly not her signature". It is thus all the more curious that "Mr Pearson" should sign himself in rather crude block capitals.

82. Mr Hardy pressed to see the power of attorney, which had so far not emerged. On 3rd March 2005, when the Claimant was present at Mr Hardy's office for the purpose of inspecting documents, he stated that there were two powers of attorney. One of them appointed a list of five people who were given authority to sign on behalf of each other in connection with the business affairs of Mr Pearson. His copy of that power had been returned to Mr Pearson when Beagle IT Ltd was wound up. The Claimant did not retain a copy. He explained that the second power of attorney has been given to Mrs Johnson. Although his wife retained a copy, he was unable to get hold of it because they were once again estranged and she was not prepared to discuss business matters with him. Eventually it turned up as an exhibit to the witness statement of 12th September 2005. It was dated 1st February 1998 and purported to have been witnessed by the Claimant (albeit using the name Michael Johnson eight months before changing his name by deed poll). The signature attributed to "Mr Pearson" takes the form of shaky capital letters again. His address was the same as that given for the Claimant (8 Quernmore Close).

17. Did "Mr Pearson" annul the bankruptcy of 1993?

83. "Mr Pearson" also comes into the case in connection with the Claimant's explanation as to why he failed to reveal his bankruptcy on the mortgage application form. He says that he believed his bankruptcy had been annulled, not pursuant to any court order (as would in fact be required), but because "Mr Pearson" had paid off most of the debts outstanding at that time (save in respect of the Claimant's mother). This has not been confirmed by anyone in evidence. On the other hand, certain documents have been produced with a view to bolstering this story. There is a letter purporting to be written by "Mr Pearson" on 5th September 1993 in the following rather chirpy terms:

> "Dear Lee,
>
> Sorted out all the unsecured debts except for your mother. Your mum has agreed with the solicitors/receiver to accept whatever is left over after your assets are realised, and the secured creditors are satisfied. John and I will chip in something if she gets nothing, but I think it will be OK. You and I are all square after this? … .
>
> Try your very best to sell the secured assets at a profit, it would certainly help a lot. OK?
>
> Once everybody is paid off then the bankruptcy is annulled. End of story, finito, done, forgotten. Chin up pal, nearly there.
>
> I'll keep trying to get you into Zurich, but it's hard to do.

Yours,

HJP"

This document was signed in the familiar capitals but on this occasion simply "HP".

84. In May 2005 the Claimant wrote to various of the creditors, enclosing a copy of this 1993 document and asking for confirmation that his outstanding debts had been paid off. Rather curiously he also enquired "if you are willing to agree to my 1993 bankruptcy now being annulled". No response has been forthcoming.

18. Enter a firm of Edinburgh lawyers

85. An extra dimension of confusion is added by the saga concerning a firm called Lindsays, Writers to the Signet in Edinburgh. They come into the picture because it was being suggested by Abbey National that there were indeed credit card debts outstanding in 1999 at the time the mortgage application was made; namely, the debts attributable to the credit cards in the name of Mr L E E Johnston. This was denied by the Claimant on the basis explained by Mr Tait in his witness statement. It appears that the Claimant's instructions to him were that these "company" credit cards had been cleared by Mr Pearson in 1996. Indeed, some letters were produced by Mr Tait purporting to be from Mr Pearson confirming this. They were dated 1st August 1996 and do not carry any signatures, although each of them purported to be signed "pp H J Pearson".

86. Despite this, however, it appears from another letter purporting to be written by Mr Pearson, dated 9th October 2003, that he had been contacted in February 2001 by debt-chasing agents requiring the payment of certain outstanding credit card debts attributable to "Leonard Johnson". It was at this stage that Lindsays were apparently instructed by someone purporting to be Mr Leonard Johnston in June 2001 for the purpose of searching out the full extent of his outstanding debts with a view to payment.

87. The search revealed certain credit card debts albeit in the name of "Johnson". Lindsays wrote to each apparent creditor offering settlement terms. It transpired that one of the credit card debts, originally owed to the Royal Bank of Scotland, had in the meantime been assigned to Cabot Finance, who offered to accept £889 in settlement. This was confirmed in a letter of 24th September 2003 from Lindsays addressed to "Harry Pearson Esq." at an address in Docklands. They added that no response had been received from the other companies despite repeated requests. It would thus appear on the available evidence that there was at least one outstanding credit card debt, which would have been extant in March 1999 also, albeit that the Claimant contends that it had nothing to do with him at all. His case is that it was for Mr Pearson to discharge in his capacity as Mr Leonard Johnston's former employer. In the light of this stance, it would appear that the Claimant's later conduct with regard to Lindsays was somewhat difficult to understand.

88. Mr Hardy explained that on 8th March 2005 he telephoned Ms Karen Jones of Lindsays, who told him that on 1st March 2005 a gentleman presented himself as Leonard Johnson and insisted on seeing her. He sought to identify himself to her by presenting various documents:

i) The original of an expired passport in the name of Lee Johnson (which referred to two daughters Lorna and Zena);

ii) An original pass in the name of Lee Johnson relating to employment at Citibank;

iii) An original pass of L Johnson from employment at Frizzell dated April 1994;

iv) The first and last pages of the No. 79 Morningside Drive lease granted on 29th July 1994;

v) A letter from a doctor in Edinburgh addressed "To whom it may concern" stating that he had known "Lee Johnson" (also known as "Leonard Johnson") for some 40 years. He apparently stated that he had resided in Edinburgh between 1994 and 1995 and at Lasswade in Scotland, in 1995 to 1996. It also referred to a large operation scar on his chest (which the Claimant apparently has as a result of an operation he underwent in 1997).

89. It thus appears that the Claimant was, at least on this occasion, actually claiming to be "Leonard Johnson" (something which he had denied throughout in the course of these proceedings). When he spoke to Ms Jones he stated that he was actually Lee Johnson (not Michael Leo Johnson, which had been his true name since 29th September 1998) but that he was also known as "Leonard Johnson". He asserted also that he was the Leonard Johnson mentioned in the 1994 lease (despite claiming in these proceedings that he signed the lease on behalf of another person called Leonard Johnston). He also claimed that he was the person who had instructed her to investigate "his debts" in 2001.

90. Ms Jones explained that "the gentleman" (i.e. the Claimant) wrote out a document dated 1st March 2005 authorising Lindsays to send all his papers to Mrs Johnson at 5 Hatton Close in Grays, Essex. Mr Hardy exhibited a faxed copy of that document sent to him by Ms Jones only a week later on 8th March. It is the opinion of Dr Giles, the handwriting expert, that she found sufficient similarity between the questioned signatures and the signatures of Mr Michael Leo Johnson to amount to very strong support for the view that Michael Leo Johnson signed the authorisation. That document was written out in capital letters as follows:

> "I AUTHORISE LINDSAYS WS TO SEND ALL MY PAPERS DOCUMENTS AND FILES TO:
>
> MS JAN JOHNSON
>
> 5 HATTON CLOSE
>
> GRAYS
>
> ESSEX RM16 6RP"

There appears Mr Johnson's signature and the date of 1st March. Underneath is written "LEONARD (LEE) JOHNSON".

91. It will be remembered that the Claimant had explained that he was unable to produce a copy of the power of attorney in his wife's possession because they were "estranged" and she was unwilling to discuss business affairs with him. It is therefore suggested on behalf of the Defendants that the only reason why the Claimant was inviting Ms Jones of Lindsays to send the relevant documents to his wife was so that he could claim to Mr Hardy that he was unable to get hold of them. It may seem devious but there is no other logical explanation.

92. If the Claimant was telling the truth to Ms Jones, then it would appear that he was admitting to having used the name "Leonard Johnson" and that some or all of the debts due on the credit cards had been incurred by him, rather than by a third party called "Leonard Johnston". Nevertheless he claims that he was pretending to be Mr Leonard Johns(t)on because he was put up to it by Ms Jones, effectively to get him "off her back". She was willing to go along with this fiction because otherwise she would not be able to release the documents attributable to her client "Mr Johnston". In other words, she was suggesting a dishonest misrepresentation which she could pretend was genuine. (Even if this were true, it does not explain why the documents were to be sent to Mrs Johnson in Grays.) Thus, once again, the Claimant resorts when he finds himself in difficulty to attacking someone's professional integrity. If, on the other hand, he was only pretending to Ms Jones that he was Mr Johnston, the former client, one might have expected the problem to be overcome by obtaining Mr Johnston's co-operation and his permission to hand over the documents.

93. For the purposes of the present applications, it is not possible to make definitive findings on these matters. Although, as I have already acknowledged, the burden of proof remains on the Defendants with respect to the plea of justification, the evidence relating to Lindsays points very powerfully in favour of the Claimant's having acknowledged his use of the name "Leonard Johnson". Without a convincing explanation, that evidence would be likely to prevail at trial. None has been forthcoming. It is not a question of trying to resolve two conflicting accounts on paper, since the internal contradictions in the Claimant's evidence cannot be explained even on the basis of the material which he has chosen to place before the court. His story is simply incredible and would only be worthy of being allowed to go to trial if some further explanation were forthcoming and, in particular, some independent and convincing evidence of the existence of Leonard Johnston, Harry Pearson, Mary Pearson, Craig Shea and Mr V'Gott.

94. It will be noted that, as recently as 2003, Mr Pearson seems to have been accessible at a Docklands address – that is to say, after the commencement of this litigation. If these individuals are genuine, one would expect by now to have seen corroboration. In this context, my attention was drawn to the judgment of Hart J in *RBG Resources plc (in liquidation) v Rastogi* [2004] EWHC 1089 (Ch) at [33]. In the absence of rebutting evidence, he was prepared to grant summary judgment notwithstanding the serious allegations of fraud. What is more, the evidence given in these proceedings about the existence of Leonard Johnson supports the Defendants' case that he has sought to compromise a fair resolution of the issues.

95. Another intricate little twist arising out of the Lindsays connection was developed by Mr Barca on the Defendants' behalf in his skeleton argument. He referred to evidence given by the Claimant in his witness statement of 12th September 2005:

> "38. The problem with access to the file is that Lindsays WS require authority from 'Leonard Johnston' (as opposed to myself or even Mr Pearson). This was the stance adopted by Lindsays WS to Mr Pearson on 24 September 2003 … and to CMS [the Defendants' solicitors] on 30 December 2004.
>
> 39. In the letter of 24 September 2003 Lindsays WS (replying to an e-mail from Mr Pearson which I have not seen) set out some information regarding their client. They regarded their client as 'Leonard Johnston' even though it is my belief that they were instructed by Mr Pearson (one of whose companies would have discharged the credit card on behalf of Leonard Johnston). Following sight of this communication I asked Mr Pearson to try and secure all the Data Protection Act information from Lindsays WS to try and get to the bottom of the credit card debts of Leonard Johnston. On 12 December 2003 Mr Pearson sent me an e-mail … which contained Ms Jones' response to a request that DPA letters be sent to the 'creditors'.
>
> 40. Ms Jones' e-mail refers to an e-mail from Mr Pearson having been forwarded to her by Mr Johnston and provides a quote for doing the work requested. She also seems to have money in a client account in the name of Mr Johnston. As the impetus for this request had come from me, Mr Pearson was (not unreasonably) asking that I fund the work. This I did by means of a direct funds transfer from my bank on the 10th December 2003 … . The transfer was made on 10th December because Mr Pearson telephoned me on receipt of the e-mail from Ms Jones and told me what she had said.
>
> 41. Unfortunately, although I paid for the work, when I telephoned Lindsays WS to ask for an update I was told that as I was not the client I could not be given any information. But on the 29th December 2003 Mr Pearson advised that there was nothing to substantiate the allegation that the credit card debts of Leonard Johnston were outstanding. Mr Pearson in fact expressed the opinion that the credit card debts were a fabrication by Abbey National …"

96. Mr Barca makes the point that, if Mr Johnston was in a position to forward an e-mail from Mr Pearson on 10th December 2003, he was plainly still at that time on the scene and in contact with Mr Pearson. Yet no statement was obtained from either gentleman for use in these proceedings. It is clear that Ms Jones replied to Mr Pearson at a "Hotmail" address on 10th December 2003 and it was copied to leonardjohnston@hotmail.com. That document purports to be a copy of Ms Jones' e-mail as forwarded to the Claimant by Mr Pearson on 12th December. The apparent purpose of Mr Pearson in sending that message was to inform the Claimant of his dealings with Lindsays and to ask him to credit the firm with £200.

97. This is difficult to explain in the light of the fact that the Claimant asserts that Mr Pearson had telephoned him on receipt of Ms Jones' e-mail of 10th December. Moreover, Mr Pearson makes no reference to that telephone call in his e-mail. It was, of course, necessary for the Claimant to explain how he was able to make the transfer to Ms Jones on 10th December (i.e. the same day that she sent her e-mail to Messrs Pearson and Johnston). That is why the telephone call evidence had to be deployed. Mr Barca suggests that the only logical explanation is that the Claimant was simply able to read the messages for himself because he was the creator of both "Hotmail" addresses in the fictitious names of Pearson and Johnston. He may well be right. At any rate, a cogent explanation is clearly called for. A further mystery is why, on his own account of events, the Claimant should have been paying for all this rather than Mr Pearson or Mr Johnston. They were not supposed to be his debts – nor had he incurred them on a "company" credit card.

98. It is thus the Defendants' case that, following a series of inconsistent and/or false claims about his personal and employment circumstances over the years, the Claimant has now been driven in this litigation in the course of trying to explain himself to pile improbability upon improbability. The resulting edifice therefore goes beyond implausibility and can be characterised as incredible. Indeed, it is not even possible to identify what the Claimant's case is because of the inconsistencies. They suggest that the time has now come to put an end to the drain on their resources and those of the public, since no legitimate purpose is being served.

19. The Defendants' reliance on a variety of "dishonest" court proceedings

99. The Defendants allege that these proceedings were an abuse of process from their inception since the Claimant was claiming, at that stage, no less than £10m on causes of action which he knew not to be well founded. In letters before action addressed to Perot Systems (dated 5th and 12th May 2002), no doubt seeking to explain the delay, he stated that Abbey National had registered him as a fraudster with the Credit Industry Fraud Avoidance System [CIFAS] and various credit reference agencies. It had taken him "simply ages to get this situation resolved". He enclosed a letter dated 14th April 2000 from Abbey National, based on their state of knowledge at that time, acknowledging that the CIFAS registration had been in error and apologising for any inconvenience and distress. In the light of this, he informed Perot that he was suing Abbey National in High Court proceedings.

100. In those proceedings (HQ02X00701), issued the previous March, the Claimant estimated his damages at £7.5m, asserting that he had been rendered unemployable by Abbey National's CIFAS category 4 warning registered on 20th October 1999. He even alleged that his dismissal from Perot had been caused by false statements by Abbey National. In those proceedings he also alleged that the CIFAS warning had been "associated personally" with the managing director of Beagle IT Ltd (i.e. "Mr Pearson") and that this led to Beagle being unable to continue in business. The "association" with Mr Pearson came about because of a link to the 55 Derby Road address. This was said to be the cause of the Claimant's redundancy from Beagle on 29th February 2000. This was not, of course, what he had told Deutsche Bank in his CV in November 2000. Nor was it consistent with Mr Tait's witness statement which attributed his being "laid off" to deterioration in the political situation in Malaysia (which in turn had led to Beagle losing a contract in February 2000).

101. It is said by the Defendants that the claim against themselves, as well as that against Abbey National, was dishonest – not least because the Abbey National mortgage application had contained a series of statements (identified above) which the Claimant must have known to be false.

102. In due course the Master struck out the Abbey National action (on 20th October 2003). An appeal was dismissed by Pitchers J on 22nd January 2004. There followed fresh proceedings against Abbey National in the Basildon County Court issued on 14th April 2004. This claim appeared to be based on the proposition that the CIFAS warning registered by Abbey National had been part of a continuing policy of harassment and intimidation. It was thus, the Defendants submit, an abusive attempt to re-litigate the claims already struck out. This supports the allegation of abuse in the present case as well as giving grounds, they would argue, for a civil restraint order.

103. Another strategy adopted by the Claimant against Abbey National was to cause embarrassment or difficulty in the context of the recent takeover by Banco Santander Central Hispano. Having acquired a nominal shareholding he issued an application in the Chancery Division on 28th October 2004 with a view to challenging a resolution passed on 14th October approving the takeover. He had also played a role at the meeting itself, as he was fully entitled to, including calling upon the Chairman to resign. A hearing took place before Evans-Lombe J on 8th November 2004 at which various applications by the Claimant were dismissed and characterised as "misplaced" or "misconceived". This again gives the present Defendants concern as to the probability of continuing abuse of process in this litigation.

104. Another target for the Claimant's litigious activities was Zephon and its parent, The Risk Advisory Group Ltd. They too were sued in May 2002 for £10m. This was based on defamation, negligence and alleged violations of the Data Protection Act 1994 concerning the privileged report to Deutsche Bank. This too, the Defendants claim, was a dishonest abuse of process, since the Claimant was well aware of the false applications he had made to Perot, Abbey National and Deutsche Bank (as set out above).

20. The claims in contract and negligence

105. Mr McCormick has argued that, whatever the merits of the plea of justification, nothing the Defendants have so far produced would support a Part 24 ruling in respect of the other causes of action which I mentioned at the outset. Mr Barca responds, and Mr McCormick accepts, that if the submission based on the *Arrow Nominees* principle is well founded it would undermine all causes of action equally. Furthermore, since damage is a necessary ingredient of negligent mis-statement, the Claimant would be unable to establish causation having regard to the pattern of dishonesty now established. As to contract, for similar reasons, the best the Claimant could hope to achieve would be an award of nominal damages. Once again, therefore, "the game would not be worth the candle". In order to test these submissions, it is necessary to consider the claims in a little further detail.

106. Following the Claimant's dismissal by Perot Systems, it is alleged that negotiations took place and that it was agreed that Perot would "provide a standard reference". The agreement relied upon is said to have evidenced by or confirmed in a letter of 4th

October 1999. Not surprisingly it is not accepted that there was any consideration – let alone a binding agreement.

107. It is the Defendants' case that the letter did no more than confirm the dismissal and offer a gratuitous payment equivalent to one month's salary. As to the furnishing of a reference, the letter merely confirmed, in accordance with Perot's standard practice, that upon a request a standard employment reference would be provided. The letter speaks for itself. Even if Mr Browning-Hull spoke words similar to those attributed to him, therefore, it is not accepted that this represented a breach of contract. Nor yet that there was any causal link between such words and the Claimant's dismissal from Deutsche Bank and his subsequent lack of employment. Indeed, there is no evidence of such a link. There is the formidable hurdle to overcome that Sally Goldthorpe (Senior Human Resources Adviser at Deutsche Bank) had come to the conclusion that the Claimant's employment should not be confirmed even prior to the receipt of the final Zephon Report on 1st June 2001. This was primarily because he had not been frank in disclosing the circumstances of his dismissal by Perot.

108. When his complaint against Deutsche Bank was determined by an employment tribunal in August 2002, it concluded that he "had not been forthcoming about his dismissal by Perot at interview". Moreover, "The Tribunal did not find it at all surprising that [the Bank] took a serious view of the situation with such a highly paid employee nor that a decision not to confirm employment was taken". Naturally, the finding is not binding in this litigation. Yet, in the face of such evidence, it is in practice difficult to understand how the contract claim could result in anything other than nominal damages (assuming the contract is upheld). In any event, the existence or otherwise of the pleaded agreement can surely be assessed by the content of the document relied upon.

109. Likewise, any claim based upon a duty of care would be likely to founder on causation of damage. That is why it seemed to me that the robust approach taken by the Court of Appeal in *Jameel (Yousef)* was very much in point. There would be no "realistic prospect of a trial yielding any tangible or legitimate advantage such as to outweigh the disadvantages for the parties in terms of expense, and the wider public in terms of court resources": [2005] 2 WLR 1614, 1631 at [57]; see also *Wallis v Valentine* [2003] EMLR 175.

21. Conclusions

110. This is a unique situation. I am quite satisfied that the Defendants have established abuse of process in the sense contemplated in *Arrow Nominees* (see paragraph 24 above). They cannot be confident of identifying any genuine issues capable of resolution at a fair trial. The Claimant has put forward so many contradictions and inconsistencies that it is impossible to identify any clear position in relation to the essential allegations made against him. He has espoused even in this litigation so many inconsistent accounts that there is no way of identifying any genuine response to the allegations of dishonesty.

111. Indeed, the Claimant will largely be unable to engage with the allegations against him because of short and long term memory loss. That is less significant in a case where many of the allegations which he cannot answer are simply unanswerable.

112. These problems confront him even without the Defendants being able definitively to establish the origin of the credit card accounts attributed to Mr L Johns(t)on. The dishonest applications to Abbey National and Deutsche Bank speak for themselves. The claim in these (and other) proceedings based on a denial of dishonesty must in itself therefore be dishonest and abusive. That is leaving out of account altogether the Claimant's recent reaffirmation of the untrue claims of corruption against the Defendants, their lawyers and myself. As the Court of Appeal inevitably noted, this was a mischievous attempt to undermine the administration of justice. What is more, it is one that cannot be isolated and treated as water under the bridge. There has been no admission – on the contrary a reaffirmation and further steps taken on 7th October to have the Defendants' lawyers and the judge removed.

113. In all the circumstances, it is clear that further expenditure of time and money in the case would serve no useful function. There would be no purpose in a trial. Moreover, I cannot believe that it is in the Claimant's interests to allow this to continue, with the attendant stress and anxiety and the incurring of greater and greater financial liabilities.

114. The conclusion on abuse of process would in itself be enough to determine the outcome of the present applications. For the sake of completeness, however, I should address the Part 24 applications on their own merits. As I have already indicated, I can see no realistic prospect of the plea of justification failing – especially having regard to s.5 of the Defamation Act 1952. There is ample evidence of dishonesty which the Claimant is not in a position to rebut in the light of the documentary material. It would indeed be perverse of a fact-finding tribunal to reject that defence.

115. It is thus unnecessary to address the plea of qualified privilege. In itself it would be likely to succeed, but there is a plea of malice directed towards Mr Browning-Hull's state of mind. It is pleaded on a formulaic basis, suggesting that he had no honest belief in the various defamatory allegations attributed to him (see paragraph [34] above). I have no reason to believe that Mr Browning-Hull, whatever he actually said, made it all up. But it would be most unusual to pre-judge a plea of malice except in a case where the criteria identified in *Alexander v The Arts Council of Wales* [2001] 1 WLR 1840 have been fulfilled. The Defendants have not put their case in that way.

116. Assuming for this purpose that Mr Browning-Hull spoke words to the effect attributed to him, I cannot see that the claim in contract could succeed either. I do not see a realistic prospect of establishing a binding contract in the light of the document relied upon but, even if I were wrong about that, I cannot accept that anything Mr Browning-Hull did would establish a breach of such an agreement. If a former employer, or one of its employees with relevant knowledge, is asked for information for or on behalf of a prospective employer, it is not tenable to argue that the conveying of information which is substantially true would establish a breach of an obligation to provide a standard reference; nor that a claimant should be entitled to compensation for loss of employment opportunities which would have been open to him - if only he had enjoyed a reputation to which he was not entitled.

117. So too, I would not accept that the Claimant could establish any breach of a duty of care by the imparting of information sought by a prospective employer which was substantially true – nor that he had suffered damage caused by any such breach of

duty. Thus, the merits of the plea of justification are intimately connected with those relating to the other causes of action.

118. Mr McCormick has submitted that the application for summary judgment is defective, at least so far as concerns the claims in contract and negligence, for non-compliance with CPR 24 PD 2 requiring the grounds and points of law to be clearly identified. If the outcome turned only upon the Part 24 application, that is a matter which would have to be addressed by way of amendment and, perhaps, an adjournment. I prefer not to determine this important application by reference to technicalities which would, if necessary, be capable of being cured. I have therefore focussed rather upon the substantive merits. In any event, as I have said, the application is entitled to succeed because of abuse of process and there would be no point in insisting upon amendments, or further delays, in connection with summary judgment.

119. Subject to this, I should be prepared to hold that the Part 24 test has been passed in relation to each of the claims. It follows from what I have said earlier that I do not consider, for the purposes of Part 24, that there would be any other reason why the matter should proceed to trial.

120. The Defendants are entitled to have the action dismissed and I will discuss with counsel the terms of the order in the light of the rulings I have given.