Neutral Citation Number: [2025] EWHC 712 (Ch)

Case No: IL-2023-000080

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECUAL PROPERTY LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 25 March 2025

Before :

HIS HONOUR JUDGE HACON

- -

Between :

IDDQD LIMITED	**Claimant**
- and -	
(1) CODEBERRY LIMITED	
(2) LEE PAUL SMITH	**Defendants**

- -
- -

Chris Aikens (instructed by **Pinsent Masons LLP**) for the **Claimant**
Duncan MacPherson and **Emma Kiver** (instructed by **McEvedys Solicitors & Attorneys Ltd**) for the **Defendants**

Hearing date: 20 March 2025

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Approved Judgment

This judgment was handed down remotely at 12 noon on 25 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE HACON

Judge Hacon :

Introduction

1. This is an appeal by the defendants from the order of Master Pester dated 21 January 2025 insofar as the Master refused the defendants permission to amend their Defence to add a group of defences under the heading "Waiver, consent and laches". Permission to appeal was given by Meade J in an order dated 14 March 2025.

2. Duncan MacPherson and Emma Kiver appeared for the appellants/defendants, Chris Aikens for the respondent/claimant ('IDDQD').

Background

3. The action is one of two joined claims which have a substantial overlap in background facts, concerning similar conduct by the same defendants. The claimant in the joined claim is Royal Mail Group Limited ("RMG").

4. The second defendant ('Mr Smith') is a director of the first defendant. Mr Smith is alleged to be in breach of contract and to be a primary tortfeasor as well as being jointly liable for the torts of the first defendant. In this judgment for the most part it is not necessary for me to distinguish between the defendants.

5. It is not in dispute that the defendants have provided search and verification services to their customers. IDDQD alleges that this was done by copying in substantial part a database owned by IDDQD and that this was in breach of contract and an infringement of IDDQD's database right and copyright.

The proposed amendments

6. The relevant amendments are set out in proposed paragraphs 59-62 of the draft re-re-re-Amended Defence:

> '*Waiver / consent / laches*
>
> *59. Since around late 2015, the Claimant has:*
>
> *59.1 Been aware of the First Defendant's business activities and the Second Defendant's account with the Claimant for the use of the API service of the GBR database under licence. The particulars under paragraph 36 are repeated.*
>
> *59.2 Permitted the Defendants to continue with such activities in circumstances which included the technical knowledge of the Second Defendant and the small size of the market.*
>
> *60. The Claimant is estopped from relying on any breaches of its licence to the Defendants and/or its database rights and/or copyright (all of which are denied).*
>
> *PARTICULARS*

> *(a) The said forbearance constituted a clear and unequivocal representation by the Claimant that it would not rely on any terms within its licence with the Defendants or any database rights or copyright that prevented the said activities.*
>
> *(b) The Defendants relied upon that representation until receipt of the Claimant's letter dated 13 February 2023 by: (i) continuing to invest time into the GetAddress database and business; and (ii) by not obtaining a commercial licence from Royal Mail.*
>
> *61. Further or alternatively, for the same reasons the Claimant impliedly consented the Defendant to carry out the said activities.*
>
> *62. Further or alternatively, for the same reasons the Claimant's claim for equitable relief by way of injunction or otherwise in respect of any infringement (which is denied) is barred by laches. The Claimant has delayed unduly in asserting its rights (which are denied) in circumstances where the Defendants' said activities continued to the alleged detriment of the Claimant.*'

7. The defendants submitted that notwithstanding the heading above paragraph 59, the new defences were better characterised as estoppel, waiver and laches.

The law on permission to amend a pleading

8. Lambert J summarised the principles to be applied to applications to amend a statement of case in *Pearce v East and North Hertfordshire NHS Trust* [2020] EWHC 1504 (QB) at [10]:

> '[10] The legal framework is not in dispute and can be stated succinctly here. The starting point is CPR 17.3 which confers on the Court a broad discretionary power to grant permission to amend. The case-law is replete with guidance as to how that discretionary power should be exercised in different contexts. I need cite only two cases which taken together provide a helpful list of factors to be borne in mind when considering an application such as this*: CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [2015] EWHC 1345 (TCC) and *Quah Su-Ling v Goldman Sachs International* [2015] EWHC 759 (Comm). From those cases, I draw together the following points.
>
> a) In exercising the discretion under CPR 17.3, the overriding objective is of central importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted.
>
> b) A strict view must be taken to non-compliance with the CPR and directions of the Court. The Court must take into account the fair and efficient distribution of resources, not just between the parties but amongst litigants as a group. It follows that parties can no longer expect indulgence if they fail to comply with their procedural obligations: those obligations serve the purpose of ensuring that litigation is conducted proportionately as between the parties and that the wider public interest of ensuring that other litigants can obtain justice efficiently and proportionately is satisfied.

> c) The timing of the application should be considered and weighed in the balance. An amendment can be regarded as "very late" if permission to amend threatens the trial date, even if the application is made some months before the trial is due to start. Parties have a legitimate expectation that trial dates will be met and not adjourned without good reason. Where a very late application to amend is made the correct approach is not that the amendments ought, in general, to be allowed so that the real dispute between the parties can be adjudicated upon. A heavy burden lies on a party seeking a very late amendment to show the strength of the new case and why justice to him, his opponent and other court users requires him to be able to pursue it. The timing of the amendment, its history and an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise: there must be a good reason for the delay.
>
> d) The prejudice to the resisting parties if the amendments are allowed will incorporate, at one end of the spectrum, the simple fact of being "mucked around" to the disruption of and additional pressure on their lawyers in the run-up to trial and the duplication of cost and effort at the other. The risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be loaded heavily against the grant of permission. If allowing the amendments would necessitate the adjournment of the trial, this may be an overwhelming reason to refuse the amendments.
>
> e) Prejudice to the amending party if the amendments are not allowed will, obviously, include its inability to advance its amended case, but that is just one factor to be considered. Moreover, if that prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise.'

Judgment of Master Pester

9. Master Pester's judgment deals with three sets of proposed amendments to the Defence and a proposed Counterclaim. I leave aside those relating to competition law and misrepresentation which are not the subject of this appeal.

10. The Master considered the relevant legal principles and refused permission to amend, giving the following reasons in his conclusionary paragraph 52:

> 'i) The proposed application is late in the sense that allowing the new pleaded case, and in particular paragraph 60, would require further disclosure and evidence and in effect put the trial date at risk. There is insufficient time for these steps to be carried out. Even if I am wrong on that and they could theoretically be carried out in the time available, they would inevitably severely disrupt the preparation for trial and require the parties to revisit matters, namely disclosure and the provision of evidence, which they have already done.
>
> ii) The amendments are also late, in the sense they could have been raised earlier in the proceedings and were not. No proper explanation has been provided for the delay in making the application, and the defendants were aware of the matters on which they now rely since at the latest January 2024, allowing

> some time for them to review with their legal team the documents disclosed by RMG following the compliance with the SAR.
>
> iii) As Popplewell LJ indicated in *Kawaskai* [sic] *Kisen Kaisha Ltd v James Kemball*, an application to amend must raise a real prospect of success, be coherent and properly particularised, and any pleading must be supported by evidence which establishes a factual basis which meets the merit test and it is not sufficient simply to plead allegations which, if true, would establish a claim. There must be evidential material which establishes a sufficiently arguable case that the allegations are correct. At the moment, the pleading does not meet this standard, although I accept that it is possible that if the defendants went back to the drawing board they might be able to come up with something which met the threshold of a real issue to be tried. However, at the moment, they have not crossed that threshold.'

11. The first two reasons, based on the lateness of the application to amend, are necessarily connected. The longer after the earliest reasonable opportunity to apply that the application is made, the more likely it is to put the trial date at risk.

12. The third reason given by the Master refers to two distinct criteria. The first is that the pleading in issue must be coherent and properly particularised. The second is that the pleading must be supported by evidence which establishes a factual basis sufficient to support the allegation pleaded. The Master stated that the pleading requirement has not been met but did not expressly say here that there was insufficient evidence filed in support of the proposed defences. The parties assumed, rightly in my view, that this was nonetheless part of his reasoning, as appears from an earlier part of the judgment, discussed below.

The nature of the appeal

13. As noted by Lambert J in *Pearce* at [10], the power given to the court under CPR 17.3 is discretionary. Birss LJ considered appeals from an exercise of the court's discretion in *ABP Technology Ltd v Voyetra Turtle Beach Inc* [2022] EWCA Civ 594:

> '[21] The principles applied on appeal from the exercise of discretion have been addressed in many cases. I will only refer to the useful recent summary by Saini J in *Azam v University Hospital Birmingham NHS Foundation Trust* [2020] EWHC 3384 (QB):
>
> > "50. An appellate court will only interfere with a discretionary evaluation where an appellant can identify one or more of the follows errors:
> >
> > (i) a misdirection in law;
> >
> > (ii) some procedural unfairness or irregularity;
> >
> > (iii) that the Judge took into account irrelevant matters;
> >
> > (iv) that the Judge failed to take account of relevant matters; or
> >
> > (v) that the Judge made a decision which was "plainly wrong".

> 51. Error type (v)… means a decision which has exceeded the generous ambit within which reasonable disagreement is possible.'
>
> 52. …The appellate court's role is to police a very wide perimeter and it will be rare that a judge who has exercised a discretion having regard to relevant considerations will have come to a conclusion outside that perimeter… It needs to be underlined that an appellate court in an appeal such as the present is exercising a CPR 52.21(1) "review" power. It is also well-established that the weight to be given to specific factors is a matter for the trial judge and absent some wholly unjustifiable attribution of weight, an appellate court must defer to the trial judge."'

Grounds of Appeal

14. There are six pleaded Grounds of Appeal.

Ground 1

15. Ground 1 was that the Master was wrong to find that the factual evidence served by the defendants did not support a prima facie evidential case of estoppel, waiver and laches. The only evidence relied on by the defendants to support their application to amend is paragraph 30 of Mr Smith's witness statement dated 19 December 2024.

16. During the course of argument before me, counsel for the defendants expanded this to add that the Master had wrongly found that the pleading of estoppel, waiver and laches was not coherent or properly particularised.

17. Both of these grounds, pleaded and unpleaded, were said to be errors of law which required this court to exercise its discretion anew.

18. In respect of the pleaded ground of appeal, I was referred to the following paragraphs of the judgment of Asplin LJ in *Elite Property Holdings Ltd v Barclays Bank plc* [2019] EWCA Civ 2212:

> '[41] For the amendments to be allowed the Appellants need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472 . A claim does not have such a prospect where (a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a prima facie case that the allegations are correct; and/or (c) the claim has pleaded insufficient facts in support of their case to entitle the Court to draw the necessary inferences: *Three Rivers District Council v Bank of England (No3)* [2003] 2 AC 1.
>
> [42] The court is entitled to reject a version of the facts which is implausible, self-contradictory or not supported by the contemporaneous documents and it is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action relied upon. With that test in mind, I turn to the grounds of appeal.'

19. This is the relevant part of the paragraph of Mr Smith's witness statement relied on to support the proposed defences, as edited by the defendants:

> '30. … IDDQD had never contacted me about my accounts except for a sales email in May 2022 from a Mr. Nick Mercer of IDDQD to the Company … where he invites us to have a chat and says that their products have moved on since 2015 … They also asked to audit our use in 2022. I did not respond. They obviously had full records and were aware of our use in real time. I was not sure they had the right to audit anything so I did not respond and they did not pursue it. So at no time before the first letter on 13 February 2023, did I think anything was amiss with the use or operation of the accounts or the pay as you go look up fees we were paying. They closed the accounts that same month.'

20. The Master said:

> '37. … I have read the witness statement of Mr. Smith, which was served after the present application was made, and represents the evidence Mr. Smith is to give at trial. Paragraph 30 is the only paragraph relied upon by the defendants as factual evidence said to be in support of the proposed defence of waiver/consent/acquiescence.
>
> 38. In my view, it does not go nearly far enough in order to substantiate the plea of estoppel, or indeed waiver/consent/acquiescence.'

21. I agree. Mr Smith says that IDDQD asked to audit the defendants' use in 2022. Nothing was done in response to this request because IDDQD had the information anyway and because Mr Smith was not sure that IDDQD had the right to conduct an audit.

22. Neither IDDQD's request to conduct an audit nor its failure to pursue the audit was in my view a representation. The latter was at most an indication that IDDQD no longer wished to conduct an audit and possibly not even that. It seems that there were reasons why IDDQD may not have wanted to carry out an audit.

23. Mr Smith says that he took it to mean that nothing was amiss. That is evidence of what his understanding was in the absence of any further move towards an audit. He does not say that he relied on that understanding for any purpose.

24. The defendants referred to the conclusionary paragraph 52(iii) of the Master's judgment and submitted that the Master must have meant that although Mr Smith's paragraph 30 would not be sufficient at trial to support the new proposed defences, it was enough to support a pleadable case. That case should therefore be allowed to go forward.

25. I do not think that is what the Master meant. He said, unambiguously, that Mr Smith's evidence does not go nearly far enough to substantiate the relevant plea. I agree. There is no evidence of a relevant representation by IDDQD or of relevant reliance by the defendants.

26. The Master did say this:

> '[51] Ultimately, I do not consider that I need … to rule positively that the defendants would not be able to establish even a serious issue to be tried.'

27. I understand this to have been an unsurprising acknowledgment that if further evidence were to be filed by the defendants it is possible that it would overcome the hurdle of supporting a serious issue to be tried.

28. In my judgment the Master was right to say that the evidence as it stands does not support a plea of estoppel, waiver or laches.

29. The defendants' second argument under Ground 1 was directed to the Master's finding that the proposed pleading is not coherent or properly particularised.

30. The Master referred to *Fisher v Brooker* [2009] UKHL 41, at [63]:

> '[63] Fourthly, in so far as the respondents' argument is put on the basis of estoppel, they would have to establish that it would be in some way unconscionable for Mr Fisher now to insist on his share of the musical copyright in the work being recognised. As Robert Walker LJ said in *Gillett v Holt* [2001] Ch 210, 225 D, "the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine" of estoppel. Given that their case at each of the three stages is based on the fact that Mr Fisher did not raise his entitlement to such a share, one would expect the respondents to succeed in estoppel only if they could show that they reasonably relied on his having no such claim, that they acted on that reliance, and that it would be unfairly to their detriment if he was now permitted to raise or to enforce such a claim. As was also said in *Gillett v Holt* [2001] Ch 210, 232D, the "overwhelming weight of authority shows that detriment is required" although the "requirement must be approached as part of a broad inquiry" into unconscionability.'

31. The elements of a defence of estoppel identified in the foregoing paragraph can be summarised as (i) a representation, (ii) *reasonable* reliance by the defendant on that representation (my emphasis), (iii) action by the defendant on that reliance and that (iv) in consequence it would be unfairly to the detriment of the defendant if the claimant could enforce his claim.

32. The Master also referred to *Martin v Kogan* [2021] EWHC 24 Ch in which the parties agreed that there was a further element required for a successful defence of estoppel: (iii)(a): that the claimant knew that the defendant believed that he could reasonably rely on the representation and accordingly act to his detriment.

33. The Master declined to decide whether element (iii)(a) was required in law, or whether, in this regard, there is a difference between acquiescence-based estoppel and representation-based estoppel (at [48]-[49] and [50]).

34. The Master found that the defendants' proposed amendment does not plead that Mr Smith believed that the defendants could carry out the acts complained of without interference from IDDQD (at [45] and [46]). He also said:

> '[50] It seems to me what the defendants have pleaded [is] actually not very clear. The opening words of paragraph 60(a) pleads that, "the said forbearance constituted a clear and unequivocal representation...". This seems to me at least to be muddled, because it appears to blur the distinction between a

> representation and a forbearance; forbearance, as I understand it, being in the nature of acquiescence.
>
> [51] … It seems to me that the defendants' pleaded case has in its existing form real difficulties. This is because, as pleaded, the defendants' conduct by continuing to invest time into the GetAddress database and business and the failure to obtain their own commercial licence from RMG are at least as consistent with the defendants' simply continuing with their (alleged) acts of infringement and breach of contract as long as they felt they could get away with it, rather than being based on any reliance on the alleged "representation" by forbearance, as pleaded at paragraph 60(a). The defendants have not even pleaded that they believed that they were free to carry out the acts complained of. Had this application not been made so close to trial, I would otherwise have been minded to give the defendants an opportunity to improve their pleading.'

35. The Master apparently had in mind his observation that there is no pleading that Mr Smith believed that the defendants could carry out the acts complained of without interference from IDDQD. Absent that belief, there could be no *reasonable* reliance on IDDQD's forbearance for the defendants to carry on the acts complained of. I take the Master's point to be that the pleaded case is at least as consistent with a cynical belief that the defendants were likely to get away with such acts and an unreasonable reliance on that.

36. I must assume that the facts as proposed to be pleaded are established at trial, namely (a) IDDQD was aware of Mr Smith's account with IDDQD for the use of the API service of the GBR database, (b) IDDQD took no action until the letter of 13 February 2023 and (c) the defendants relied on this forbearance to continue to invest and not to obtain a licence from RMG. The pleading as it stands does not support the reasonable reliance required for a defence of estoppel. A reasonable reliance would require a belief on Mr Smith's part that the defendants were entitled to continue their conduct without interference from IDDQD, as opposed to an unreasonable reliance on no push for an audit by IDDQD. A necessary element of the pleading of (at least) estoppel and waiver is missing. I leave the pleading of laches to one side for the moment since that is the subject of Ground 2.

37. In my judgment, in relation to Ground 1, the Master was entitled to conclude first, there is no filed evidence to support the defences of estoppel, waiver and laches and secondly, that the proposed pleaded case does not support, at least, estoppel and waiver. On the first basis, the amendments in relation to all three proposed defences should not be allowed to go forward. On the second, the same applies to estoppel and waiver, and possibly laches.

Ground 2

38. The defendants argued that a defence of laches does not require reliance by the defendant on the representation made by IDDQD and that the Master had wrongly assumed otherwise. This was said to be an error of law.

39. I can well understand why the Master for the most part focused on estoppel. I was shown a transcript of the hearing before him at which counsel for the defendants gave

a clear impression that all three proposed defences amounted to the same thing and that by implication they stood or fell together.

40. However, addressing the argument, while I agree that the law on laches is less structured than that of estoppel, it is not the case that reliance can be ignored in the context of laches.

41. Lord Neuberger said this in *Fisher*:

> '[64] Fifthly, laches is an equitable doctrine, under which delay can bar a claim to equitable relief. In the Court of Appeal, Mummery LJ said that there was 'no requirement of detrimental reliance for the application of acquiescence or laches': [2008] EWCA Civ 287, para 85. Although I would not suggest that it is an immutable requirement, some sort of detrimental reliance is usually an essential ingredient of laches, in my opinion. In *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221, 239, Lord Selborne LC, giving the opinion of the Board, said that laches applied where "it would be practically unjust to give a remedy", and that, in every case where a defence "is founded upon mere delay … the validity of that defence must be tried upon principles substantially equitable." He went on to state that what had to be considered were "the length of the delay and the nature of the acts done during the interval, which might affect either party, and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."'

42. Thus, under the broad assessment of the balance of justice required by a defence of laches, detrimental reliance is usually an essential ingredient. No reason was advanced, and I can see none, why this case is out of the ordinary in that sense.

43. As discussed above, Mr Smith's evidence does not support there having been a relevant representation by IDDQD or any relevant reliance by the defendants; the proposed pleaded case does not support a reasonable reliance. Absent those, I see no real prospect of the defendants' proposed defence of laches succeeding at trial.

Ground 3

44. The Master found that there had been no proper explanation for the defendants' delay in applying to amend and that allowing the amendment would put the trial date at risk. Grounds 3-6 all address this finding. The defendants did not say that there had been any error of law, rather that the Master had taken account of irrelevant matters or alternatively had failed to take account of relevant matters and in consequence had wrongly exercised his discretion.

45. Ground 3 puts the fault for lateness at the door of the Master's Order of 4 October 2024. Shortly before the hearing of that date the defendants had been shown a draft re-re-Amended Reply and Defence to Counterclaim, which included the proposed new defences of estoppel, waiver and laches. In the Order the Master required IDDQD to inform the defendants by 25 October 2024 whether they objected to the proposed amendment and that the defendants should issue any application to amend by 15 November 2024.

46. The trial was due to start in a window beginning 28 March 2025. Given that date, one might have expected the defendants to press for a more urgent timetable. They did not. Even more it might have been expected that having been informed by IDDQD of no consent to the proposed amendments on 25 October 2024, the defendants would launch their application to amend right away and to seek an urgent hearing. They did not.

47. Instead the application to amend was issued on the last possible date, 15 November 2024. The defendants were offered a hearing on 9 January 2025 by the court. They declined on the ground that they were not ready. That surprising assertion was not satisfactorily explained. Due to the subsequent unavailability of IDDQD's counsel, the hearing did not take place until 16 January 2025.

48. This relaxed conduct by the parties cannot be blamed on the Master's timetable. If blame is to be ascribed, by far the greater part lies with the defendants who should have made their application much sooner and pressed for the earliest possible hearing date. It was the defendants who had the main responsibility to make sure that no time was wasted. I see no merit in Ground 3.

Ground 4

49. Ground 4 concerns an email dated 19 January 2016 from Chistopher Blanchard of IDDQD to Jean Parsons of RMG. Mr Blanchard expressed concern about the data service provided by the defendants, wondered how that service manages to generate a seemingly complete address list, identified Mr Smith as the likely owner of the service and provided possible evidence of copying which Mr Blanchard described as 'circumstantial at best'. The email was served on the defendants by IDDQD on 19 December 2024 as part of disclosure.

50. By the time the email was disclosed the defendants had already applied to amend their pleading, some 6 weeks earlier. The argument before me was that had the defendants not already applied to amend, this email would have made all the difference and would have prompted the application. Any delay should therefore be measured from 19 December 2024, making it minimal.

51. I find that argument wholly unpersuasive. The defendants cannot be heard to say that when they made the application to amend, they had insufficient basis for such an application – in fact they have strongly argued to the contrary. Delay must be assessed from the time they had sufficient basis. As the Master found (at [39]-[40]), that was either December 2023 or January 2024, nearly a year before the application to amend was made.

52. Further, I do not accept that Mr Blanchard's email made all the difference. It appears that the knowledge of IDDQD to be inferred from that email was already known to the defendants from earlier disclosure, as appears from the Master's paragraph 39.

Ground 5

53. Ground 5 is in two parts. The first is that no further evidence or disclosure can be required in the light of Mr Blanchard's email of 19 January 2016. Therefore the Master should have made no finding of delay in the sense that the trial date is threatened.

54. I doubt that Mr Blanchard's email would get the defendants home on their proposed defences, presumably along with paragraph 30 of Mr Smith's email. Even if it did, IDDQD would be fully entitled to file evidence to deal with both and would fall under an obligation to conduct searches for disclosure relevant to those defences. I fully agree with this observation made by the Master:

> '[34] … It seems to me that however the amendment is described, whether as "waiver/consent/acquiescence" or perhaps more properly as estoppel, this is likely to be a highly fact-sensitive issue. Estoppel as an equitable doctrine requires a close examination of the relevant facts, not least because it must be found to be unconscionable to allow a party to go back on a representation. The state of mind of the parties and what they understood was being represented is also highly material. The draft order accompanying the application to amend makes no provision for the exchange of any further disclosure or evidence.'

55. The Master went on, rightly in my view, to find that any proposed timetable to accommodate further evidence and disclosure (and a further pleading from IDDQD) would be both unrealistic and inappropriate (at [36]).

56. The second part of Ground 5 is that orders were made pursuant to applications for further evidence and disclosure by IDDQD on 10 January and 7 February 2025. I fail to see the relevance of this. Those applications were no doubt considered on their own merits. They cast no light on the present application.

57. I therefore reject Ground 5.

Ground 6

58. Finally, the defendants submit that the Master denied the importance of the proposed amendments to the defendants and the fact that they offer a complete defence to the claim. I disagree. The Master said:

> '[41] I accept that the proposed amendments of waiver/consent/laches are potentially at least very important to the defendants, because if they were allowed they might present a complete defence to the claim. However, their importance only serves to highlight the defendants' failure to raise the issue earlier. The defendants issued various applications in relation to strike-out and disclosure throughout 2024, but no proper explanation in my view has been provided by Ms. McEvedy as to why the application in relation to waiver/variation/acquiescence was not made earlier.
>
> [42] It seems to me therefore that taking into account the inevitable disruption to the timetable, the fact that the defendants could have sought permission to introduce these amendment earlier and failed to do so, and that no convincing explanation has been provided for the lateness of the application, these are all factors which strongly point towards refusing the application to amend.'

59. Thus, the Master expressly took the importance of the proposed amendment to the defendants fully into account. He weighed that against the other relevant factors he discusses in his judgment and arrived at a clear view that the balance came down in

favour of refusing permission to amend. I see no reason to interfere with the Master's overall assessment and in fact I agree with it.

Conclusion

60. In my judgment there is no merit in any of the Grounds of Appeal. The Master made no error of law and exercised his discretion in a correct manner. The appeal is dismissed.