IN THE COUNTY COURT AT MANCHESTER

Date: 4 August 2025

Before :

HHJ MALEK

- -

Between :

AUDLEY CLARKE SOLICITORS LIMITED	**Claimant**
- and –	
MDMKJB LIMITED	**Defendant**

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Mr Platts (instructed by **Horwich Farelly**) for the **Claimant**
Mr Edmonds (instructed by **Muldoon Brittan**) for the **Defendant**

Hearing dates: 9-10 June 2025

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APPROVED JUDGMENT

I direct that pursuant to CPR PD39A 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.

HHJ Malek :

Introduction

1. This is my judgment following the trial of the claim brought by Audley Clarke Solicitors Limited (the "Claimant") against MDMKJB Limited (the "Defendant") concerning an Introduction & Referral Agreement dated 4 September 2019 (the "Agreement"). The Claimant seeks damages for alleged breaches of the Agreement, including failure to pursue Referred Claims, failure to report, failure to allow an audit, and failure to pay fees due upon successful conclusion of claims. The Claimant further seeks injunctive relief compelling performance – albeit that the claims for specific performance and/or injunctive relief were abandoned at the conclusion of the trial.

2. The Defendant denies liability and raises a number of defences, including the alleged change in the "Plevin" litigation landscape, the unenforceability of certain contractual clauses, and the implication of terms limiting liability to profitable claims.

Background

3. The Claimant was a firm of solicitors whose business model focused on pursuing "Plevin" claims. These cases take their name from the Supreme Court's decision in *Plevin v Paragon Personal Finance[2014] UKSC 61* and, very roughly, focus upon undisclosed commissions where Payment Protection Insurance ("PPI") has been sold to individuals.

4. In 2019, the Claimant decided to cease trading and sought to transfer its portfolio of Plevin claims to another firm. The Defendant, a firm with experience in PPI litigation, agreed to take over the Claimant's caseload.

5. The parties entered into the Agreement on 4 September 2019, followed by a Deed of Assignment and a Deed of Variation later that month. Under the Agreement, the Defendant undertook to use "*reasonable endeavours*" to "*process and conclude the Referred Claims*" and to provide monthly reports to the Claimant. In return, the Claimant was to receive a fee upon the successful conclusion of each claim, calculated in accordance with Schedule 2 of the Agreement.

6. According to the witness statement of Ms Mandi McLauchlan, the Claimant's director and at the relevant time a Compliance Officer for Finance and Administration for the Claimant, the Claimant transferred approximately 707 claims to the Defendant. These included 212 litigated claims and 495 pre-litigation claims. The Defendant was expected to contact each client, secure retainer agreements, and progress the claims.

7. Mr Michael Muldoon, the Defendant's director, gave evidence to the effect that the Defendant encountered difficulties in progressing the claims, citing a shift in the Plevin litigation landscape and challenges in client engagement. However, it is fair to say, no contemporaneous evidence was provided to substantiate these assertions.

8. Emails passing between the parties, particularly those dated 10 March 2021 and 24 March 2021, highlight the Claimant's repeated requests for reports and the Defendant's assurances that reports would be provided. These emails are crucial

in understanding the parties' expectations and the Defendant's acknowledgment of its reporting obligations.

Issues for Determination

9. In my judgment the following issues require determination:

i) Whether the Defendant breached its reporting and audit obligations.

ii) Whether the Defendant breached its obligations to process and conclude the referred claims.

iii) Whether the Claimant is entitled to Schedule 2 fees and disbursements.

iv) Whether any implied terms or unjust enrichment defences apply.

v) Whether the Claimant is entitled to damages for unpursued or unsuccessful claims.

vi) The appropriate quantum of any sums due.

Legal and Factual Findings

Breach of Reporting and Audit Obligations

10. Clauses 5.5, 6.2, and 9.1 of the Agreement required the Defendant to provide monthly Referred Claim Reports and to permit audits of its records. The relevant clauses are as follows:

11. Clause 5.5 provides:

> *"MB [the Defendant] will provide to AC [the Claimant] on a monthly basis on the last working day of each month the Referred Claim Report detailing the Referred Claims received, attempts by MB to contact a Referred Client, the date of any agreements made between MB and the Referred Client and of the status of all Referred Claims, particularly of the settlement and conclusion of such Referred Claims to enable AC to monitor the performance of the Services and Referred Claims."*

12. Clause 6.2 provides:

> *"MB will provide AC with monthly clear reporting upon the progress and status of the Referred Claims by making available to AC all relevant information and co-operating fully with them"*

13. Clause 9.1 provides:

> *"MB shall maintain complete and accurate records in respect of all Services provided by AC under this Agreement and agrees that AC has the right, during normal business hours and on 2 weeks written notice, to inspect MB's records relating to the Services and to the Referred Claim Report, or to authorise a mutually agreed agent or mutually agreed representative to carry out that work on AC's behalf. This right will exist during the life of this Agreement and for two years after its expiry or termination. AC will use its reasonable endeavours, to ensure that its inspections do not unreasonably disrupt MB's work. MB agrees*

to co-operate with the inspection and where requested, provide access to its staff, systems and premises."

14. There is no dispute that the Defendant failed to provide monthly reports and only produced two reports over a span of nearly three years. Rather, the Defendant contends that these clauses were void for uncertainty. I reject that submission wholeheartedly.

15. Megarry J in *Brown v Gould* [1972] Ch 53 said that there are "*two main ways*" in which a provision may be void for uncertainty:

    i) Firstly, if it is "*devoid of any meaning […] there may be an unintelligible collocation of ordinary English words, or there may be mere gibberish, such as the phrase 'Fustum funnidos tantaraboo cited in Fawcett Properties Ltd v Buckingham County Council [[1961] AC 636*" (61H-62A), and

    ii) Secondly "*where there is a variety of meanings which can fairly be put on the provision, and it is impossible to say which of them was intended. Mere ambiguities may sometimes be resolved by the application of legal presumptions, and so on […] If a case is to be brought under this head, the attack will usually start with the demonstration of a diversity of meanings which are consistent with the language used; and if this is not done, the attack will usually fail*".

16. More recently, in *Openwork Ltd v Forte* [2018] EWCA Civ 783, Simon LJ held:

    "The court should strive to give some meaning to contractual clauses agreed by the parties if it is at all possible to do so".

17. In short, it is well established that the courts are reluctant to find contractual terms void for uncertainty and will strive to give effect to commercial agreements.

18. The Defendant argues that the term "*Referred Claim Report*" was undefined and that the scope of "*records relating to the Services*" was too vague to be enforceable. However, clause 2 of the Agreement expressly defines "*Referred Claim Report*", and clause 5.5 sets out the specific information to be included. The language is not ambiguous. Far from it. The Defendant comes nowhere near to showing that this part of the Agreement is unintelligible or capable of a multiplicity of meaning such that it is impossible to say what was intended. The Defendant's own conduct—repeatedly promising to provide reports and eventually doing so—demonstrates that it understood what was required.

19. The Defendant's refusal to permit an audit on the basis of data protection concerns is also unpersuasive. Schedule 1 of the Agreement contains a detailed data protocol, and the Defendant could have redacted sensitive information. I find that the Defendant was in breach of its obligations under clauses 5.5, 6.2, and 9.1 of the Agreement.

Breach of Obligation to Process and Conclude Claims and Implied Terms

20. Clause 4.2.5 of the Agreement required the Defendant to use reasonable endeavours to process and conclude the referred claims. The Defendant argues that it is not in breach of the Agreement because:

    i) there was an implied term, necessary to give business efficacy to the agreement and / or which was so obvious as to go without saying "*to the*

effect that the Fee would be payable in respect of each Referred Claim only if and insofar as the claim generated the Defendant sufficient profit to pay the Fee (ie. Greater than £1,500 in damages/settlement monies received by the Defendant)", and / or

ii) It was obliged only to use reasonable endeavours and such an obligation (i.e. to use reasonable endeavours (contrary to best endeavours)) does not normally require an obligor to sacrifice its own commercial interest and the obligor is entitled to consider the impact of a course of action on their own profitability: *Gaia Ventures Ltd v Abbeygate Helical (Leisure Plaza) Ltd [2019] EWCA Civ 823* per Patten LJ at [44].

21. The reason why, it was argued, there was "insufficient" profit was that there had been a change in the Plevin litigation landscape in 2020. Mr. Muldoon's oral evidence was, in effect, that a number of changes had occurred (the most notable of which was probably the decision by banks and commercial institutions (the defendants in Plevin type claims) to fight or litigate the Plevin claims and for many or most of these claims to be allocated to the small claims track resulting in limited recoverable costs) post 2020 that rendered these cases uncommercial to run.

22. It is trite law that a term will only be implied, under this head, if both parties had intended it, and it is necessary to give business efficacy to the contract because it is so obvious that it goes without saying. See the speeches of Scrutton LJ in *Re Comptoir Commercial Anversois and power Son & Co [1920] 1 KB 868*, Lords Wilberforce & Edmund-Davies in *Liverpool City Council v Irwin*

[1977] and Lord Neuberger in *Marks and Spencers PLC v BNP Paribas Securities [2016] AC 742*, at [21].

23. In this case The Agreement was negotiated between commercial parties and is detailed and comprehensive. In particular the Agreement sets out at clause 3.3 "*the Parties agree that the terms of this Agreement shall apply to the exclusion of all other terms that AC or MB seek to impose or incorporate*". That is evidence of what was in the mind of the parties (i.e. what was intended by each) at the time of entering into the Agreement to the exclusion of anything else. There is, accordingly, no necessity to imply such a term. Further, Ms McLoughlin evidence (which was compelling on this point) was that the Claimant would be unlikely to have agreed to a term which would mean that payment was conditional upon some level of profit being generated by the Defendant.

24. Nor can the Defendant find succour in its argument that it was not required to sacrifice its own commercial interest. This is to be considered in the light of its obligations and what was known to it when it entered into the agreement. The evidence shows that the Defendant knew or should have known, at the time of entering the Agreement, that the Plevin cases were of low value, would require work and that some would require the payment of disbursements by the Defendant, that some would need to be issued at court and would generally be allocated to the small claims track, and that these latter cases would, given the limited costs recoverable by legal representatives, likely be unprofitable. In simple terms, the Defendant assumed the commercial risk of both the Agreement and the running of these unprofitable cases – no doubt in the hope

(nay expectation) that any unprofitable cases would be sufficiently small in number so as to render the overall 'deal' profitable. Alas that was not to be. As Mr Muldoon confirmed, the banks and other financial institutions decided to vigorously defend most of the Plevin cases. However, this does not mean that the Defendant is not bound by the bargain (bad as it now would appear to be for the Defendant) that it voluntarily struck.

25. Much time was spent during the course of this hearing on the change in the Plevin landscape and whether this rendered the running of the Plevin cases unprofitable for the Defendant. For the reasons that I have already given this is entirely irrelevant. Even if that were, somehow, not to be the case; I should have the gravest concern in accepting Mr. Muldoon's evidence that each case cost, on average, £1,500 to run. In this case Mr. Muldoon was called by the Defendant as a witness of fact. Accordingly, his expertise or opinion on the cost of running these types of cases is irrelevant. Rather than simply say (as he did) that this was his evidence and we could, effectively, take it or leave it; Mr. Muldoon should, if he was to be the least bit persuasive, have provided in support of his opinion a proper analysis (supported by contemporaneous documentation) of the cost of running the cases in question.

Unjust enrichment

26. The unjust enrichment argument also fails.

27. There is no dispute as to applicable legal framework. Unjust enrichment arises where one party is enriched at the expense of another party and that enrichment was the consequence of an unjust factor. Such an unjust factor, it is argued in this case, was a failure of basis.

28. In *Barnes v Eastenders Cash & Carry plc [2014] UKSC 26, [2015[AC 1* Lord Toulson at [107] held that:

> "*A succinct summary of the meaning of failure of consideration was given by Professor Birks in his "An Introduction to the Law of Restitution (1989), p 223 (cited with approval by the Court of Appeal in Sharma v Simposh Ltd [2013] Ch 23, para 24):*
>
> > *"Failure of the consideration for a payment…means that the state of affairs contemplated as the basis or reason for the payment has failed to materialise, or if it did exist, has failed to sustain itself*."

29. Further, a claim in unjust enrichment cannot be made out where it interferes impermissibly with the parties' contractual allocation of risk (*Dargamo Holdings Ltd v Avonwick Holdings Ltd* [2021] EWCA Civ 1149, per Carr LJ at [115-126]).

30. In this case, as I have already held, there was no shared assumption that the landscape for the Plevin claims would continue to be the same or that these cases would be, or continue to be, profitable (either for the Defendant or anyone else). Here, the Claimant provided the Defendant with something "*of real value*" namely the provision of referred claims, in consideration for the promise of payment upon successful conclusion of those referred claims. The Defendant took on the commercial risk of running the Referred Claims.

31. In summary, the Claimant provided valuable consideration by transferring the claims. The Defendant's obligation to pay fees was clearly set out in the

Agreement. The enrichment was not unjust; it was the result of a commercial bargain.

Entitlement to Schedule 2 Fees and Disbursements

32. The Claimant is entitled to Schedule 2 fees in respect of settled claims. The Defendant's assertion that it incurred losses is not substantiated by reliable evidence. The Claimant's figures are based upon the Defendant's own spreadsheet and are consistent with the Agreement.

33. The Defendant argues that the court issue fee is only payable in certain circumstances – namely on "*receipt*". Further, the use of the term "*on receipt*" envisages the Defendant paying the Claimant the court issue fee upon receiving it from the defendants to the Plevin claims. Further still, although the terms of the settlements of the settled cases are confidential, the payments, it is said, were without demarcation between damages, costs and disbursements. That is to say that the defendants in the Plevin claims made "*global offers*" which were accepted by the Defendant on behalf of claimants in the Plevin claims.

34. The obvious difficulty for the Defendant is that there is no evidence to substantiate that global offers were made in all (or indeed any) of these cases. During the course of submissions I asked Mr. Edmonds if the Defendant's position was that every single one of these cases was settled following a global offer. The answer appeared to be "yes". Whilst that could be the case, it is not the most inherently likely of events, and I would, accordingly, need some cogent evidence that this was the case before I was prepared to make such a finding.

35. Even more problematic for the Defendant is the fact that a global offer will include an element of payment (and accordingly receipt) of disbursements (including court issue fees). That is the nature of a global offer. It is an offer in respect of damages, costs and disbursements made in the round. The argument that such an offer was only in respect of damages is entirely divorced from reality.

Damages for Unsettled Claims

36. The Defendant contracted to use its reasonable endeavours to process and conclude Referred Claims.

37. By paragraph 18 of the Particulars of Claim the Claimant alleged "....*The Claimant avers that the sheer number of cases (around 600) that are listed as 'not retained' suggests that little or no attempt was made to contact Referred Clients which is why the excel workbook is silent on this point*". Paragraph 19 of the defence says that "*Paragraph 18 is admitted. For the reasons set out above, it is correct that the Defendant has not pursued claims on behalf of 580 of the Referred Clients*". The reasons '*set out above*' in the defence appear to be that it became uneconomic for the Defendant to pursue these claims.

38. This is a clear admission that in respect of these claims the Defendant made little or no attempt to contact Referred Clients. Given that I have already rejected any argument based upon the lack of profitability of running these cases, it must follow that the Defendant acted in breach of the Agreement resulting in loss to the Claimant.

39. Notwithstanding this clear pleaded admission the Defendant, by its skeleton argument, sought to argue that it was only obliged to use reasonable endeavours to contact or retain Referred Clients and that it had not only done so, but that the burden rested on the Claimant to show that the Defendant was in breach of the Agreement. This argument not only flies in the face of the pleaded admission, but is completely meritless on its own account. In circumstances where the Claimant can only evidence a breach by reference to records / documents which have not been provided by the Defendant pursuant to its obligations under the Agreement or disclosure obligations it will not, usually, lie in the Defendant's mouth to argue that the Claimant has not discharged its evidential burden. If the documents or records were not created then that would, absent proper explanation, indicate a prime facie breach of the Agreement. If they have been created, but subsequently lost or destroyed then, again, proper explanation is required.

Quantum

Settled claims and disbursements (102 cases)

40. It follows from what I have said above the Claimant is entitled to the sum of £19,443.48, as claimed and invoiced.

Issued but not retained cases (85 cases)

41. As I have indicated, and for the reasons given earlier in this judgment, the Claimant is entitled to damages in respect of these cases. Going back to basics the Claimant is entitled to be put into the position it would have been in had the contract been performed properly.

42. If the contract had been performed properly the Claimant would have been entitled to the following, per schedule 2 and clause 5.2 of the Agreement:

    a) Issue fees in respect of all successful claims, plus

    b) A percentage based upon the value of the "tipping point offer" and whether or not the case had been issued at court multiplied by the total fee charged by the Defendant to the successful Referred Client.

43. Ms McLaughlin says in her statement that the best estimate of the potential valuation of the claims if successful is as per the amount referred to in pre-contract negotiations, which the Defendant took no issue with at that time. She says that it was anticipated that the value of the cases transferred would be 2.4 times the "tipping point" offer values in each case. It was further anticipated that profit costs would be 30% of this figure.

44. Using this methodology the Claimant comes to a fee in respect of the profit cost together with the disbursements of £47,815.23 for 212 (including 25 failed) cases. From this needs to be subtracted £19,443.48 to account for the 102 successfully concluded cases. This leaves £27,771.75 in respect of the 110 litigated cases that were not successfully concluded. The Claimant accepts and does not criticise the Defendant for failing on 25 cases (77% of the remaining 110). The Claimant further accepts that, as a result, the figure of £27,771.74 needs to be reduced appropriately (£27,771.74 x 77% =) £21,384.25.

45. This seems, to me, to be a reasonable approximation of the damages suffered by the Claimant in respect of these cases. The Defendant's criticisms of the

methodology used are unfounded. Firstly, it must be proportionate, given the relatively modest sums at stake, for the Claimant to be entitled to rely upon approximate calculations. Secondly, whilst the Defendant seeks to cast doubt on the Claimant's methodology and submits that blanket figures may lead to an unjust result, it is unable to provide figures (in the time available) as to what the appropriate reductions should be, and the court must do the best that it can with the evidence that it has. Thirdly, there is no merit to the argument that the disbursements figure should have been separated out and then reduced (to reflect the 77% success rate). Using an overall figure (which included disbursements) which itself is reduced to 77% gives us exactly the same total figure in the end.

Non-issued and non-litigated cases (495 cases)

46. Again Ms McLaughlin uses the same methodology – 2.4 x the tipping point offer and a profit share of 30% of this, and because these are pre-issue cases she adds nothing for disbursements. Her estimate of the value of these claims (assuming a 100% success record) is £65,954.95 + £25,667.82 = £91,622.77.

47. The Claimant accepts that not all of these cases would be successful and suggests a success rate of 80%. In my view, the success rate must be lower. It stands to reason that, generally speaking, the earlier in life that a case is the higher the probability that it will "drop off". This is to reflect (i) the fact that less might be known about the merits of the case earlier on, and (ii) the longer time (with all the factors that might change along the way) that is needed to conclude cases which are at the start of the process. In my judgment, doing the

best that I can, a "drop off" rate of some 30% is realistic. That would mean that the Claimant's figure under this head should be £91,622.77 x 70% = £64,135.94.

48. For the reasons given above I reject the Defendant's criticisms of the Claimant's methodology. I further reject the Defendant's submission that there is likely to be a "drop off" rate of 90% (or, put another way, a 10% success rate) for these cases. Whilst there is scant evidence that the "drop off" rate would be 20% (as the Claimant contends for) there is absolutely no evidence that it would be as high as 90% (as the Defendant contends). Doing the best that I can, I have come to my figure by extrapolating from the 77% success rate demonstrated in litigated cases. It is asking too much to suggest that my figure (based on the evidence before me) should be as high as 90%.

Interest

49. The Defendant takes no issue with the Claimant's interest calculation and I accordingly allow the same – subject to any appropriate reduction necessitated by my calculation of the quantum.

Conclusion and next steps

50. For the reason given, and to the extent set out, I find for the Claimant.

51. In the event that the parties are able to agree a suitable draft consequential order (which should include a dismissal of any aspects of the claim not pursued) for my approval in advance of the handing down of this judgment then it should be filed at least 3 days in advance of the hearing convened to hand down judgment. If such an order is filed then the parties (and their representatives) are excused from any further attendance when judgment is handed down.