

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)
MR DAVID STONE, SITTING AS A DEPUTY JUDGE OF THE HIGH COURT
Claim No. IL-2024-000036
Neutral Citation: [2025] EWHC 2172 (Ch)

B E T W E E N:

MRS MARIYA VASILYEVNA LISH

Claimant/Appellant

-and-

(1) THE NORTHERN BLOCK LIMITED
(2) MR JONATHAN HILL

Defendants/Respondents

REPLACEMENT DATED 11/03/2026 OF
APPELLANT'S SKELETON ARGUMENT DATED
2/3/2026 IN RESPONSE TO Rs' SKELETON ON
THEIR RESPONDENTS' NOTICE

*References to the appeal bundles where applicable are in the format [Volume/Tab/p.page].
The Core and Supplementary Bundles are referred to respectively as "CB" and "SB".*

Introduction

1. This is skeleton of the appellant, Mrs Lish, in respect of the respondent's notice. It responds to paragraphs 34 onwards of the skeleton of the respondents ("TNB") dated 25/2/26 ("Rs' Skel") [CB / Tab 10 / p.259-263]. It does not seek to address the earlier part of that skeleton that responds to the appeal. That is addressed in the Appellant's skeleton for permission to appeal, which it continues to rely on for the purposes of the appeal ("A's Main Skel") [CB / Tab 2 / p.17-30]. Capitalised terms used in this skeleton have the same meaning as they do in A's Main Skel.
2. The matters addressed in Rs' Skel in respect of the respondent's notice are, in summary, the following allegations:
 - 2.1. That Mrs Lish had sufficient information to bring the URC at the time the Newcastle Proceedings were issued, and/or before the Part 36 offer [CB / Tab 7 / p.236-237] was made (Rs' Skel [35]).

- 2.2. That no royalty payments had been made since 2015; and TNB says that they had consistently asserted that Mrs Lish had given up her rights to the 60% payments. (Rs' Skel [36]). This appears to be a proposition in support of TNB's argument that Mrs Lish had a basis to bring the claim before the Part 36 offer was made.
- 2.3. Mrs Lish's pre-action correspondence referred to an unpaid royalties claim (Rs' Skel [37]). This is a proposition in support of TNB's argument that Mrs Lish had sufficient information to bring the URC claim when the Newcastle Proceedings were launched, or at least before the Part 36 offer was made.
- 2.4. That TNB's unamended Defence in the Newcastle Proceedings "confirmed" that TNB had not paid a royalty since 2015 (Rs' Skel [38]-[39]). This also appears to be a proposition in support of TNB's argument that Mrs Lish had a basis to bring the claim before the Part 36 offer was made.
- 2.5. Mrs Lish had wondered about a potential URC in July 2022 (Rs' Skel [40] to [42]).
- 2.6. The size of the potential underpayment claim now advanced means Mrs Lish should have investigated in 2022 (Rs' Skel [43]).
- 2.7. These matters should also apply to the Infringements Claim (Rs' Skel [46]).
3. Those points are addressed in turn below, using the same headings that appear in Rs' Skel. Some of those points are repetitive, and if so what is repeated is noted.
4. TNB further asserts at Rs' Skel [34] that the Judge did rely on the matters at Judgment [79] and [80] [CB / Tab 5 / p.55-56] in reaching his decision on strike out. No reason is given for that assertion. It is clear from the opening part of Judgment [81] [CB / Tab 5 / p.56] that he considered what went before "*did not matter*" and based his decision on the matters set out in that paragraph. In any event, it is already part of Mrs Lish's appeal, addressed in A's Main Skel, that the findings in Judgment [79] and [80] were wrong.
 - (a) *The Appellant had not been paid royalty payments since 2015* (Rs' Skel [36])
5. It now seems to be common ground that Mrs Lish was not paid the 60% Payments that were due to her under the 2012 Agreement [CB / Tab 7 / p.85-88]. The fact of such non-payment is the basis of the URC. The relevant point is that Mrs Lish did not know that she had not

been paid until the receipt of the proposed amended DCC in the Newcastle Proceedings [SB / Tab 2 / p.70-128]. She made that clear, with reasons, in her witness statement at [11] and [13] [SB / Tab 9 / p.185-186], with further relevant evidence at [21] and [22] [SB / Tab 9 / p.188-190].

6. Rs say in Rs' Skel [36] and elsewhere that non-payment of royalties was "confirmed" by their allegation in paragraph 13(b) of the unamended Newcastle Defence [CB / Tab 7 / p.98]. While the form of language used at the start of that paragraph 13(b) made an allegation to that effect, Rs' Skel [36] does not deal with the substance of that paragraph, nor with the following paragraph 14 of the Newcastle Defence [CB / Tab 7 / p.98-99]. It is addressed in A's Main Skel at [2] and [3]. The substance of [13(b)] and [14] of the Newcastle Defence [CB / Tab 7 / p.98-99] was a pleading that said Mrs Lish was still going to receive the 60% Payments, but was going to be paid them in a different way: that she would receive a flat rate every month estimated against past entitlement, and then a balancing payment at the end of the year. The emails to TNB's bookkeeper set out at [14] of the Newcastle Defence [CB / Tab 7 / p.98-99] recorded that agreement. Further, that is what Mrs Lish understood it to mean, as recorded in her witness statement at [11] and [13] [SB / Tab 9 / p.185-186].
7. Further, contrary to the final two sentences of paragraph 36, Mrs Lish has explained in her witness statement at [13] [SB / Tab 9 / p.185-186] why she believed that she was being paid the 60% Payments: she believed that, after a fixed amount each month, she was paid any difference due to her at the year end. That is not a surprising belief: it is what Mr Hill recorded that he had agreed with Mrs Lish in his emails set out in the Newcastle Defence at [14] [CB / Tab 7 / p.98-99]. Until told otherwise, she believed that agreement had been honoured.
8. Mrs Lish's evidence is that she did not know that she had been underpaid, and that she had no basis to know otherwise. Her evidence to that effect has not been tested. The Judge did not have a basis to disbelieve her, and nor does this court.

(b) pre-action correspondence expressly referred to underpaid royalties and "acknowledged the URC" (Rs' Skel [37])

9. It is correct that there was a mention of unpaid royalties in a solicitors letters of 15 and 29 July 2022 [SB / Tab 14 / p.225-228]. The context of those letters was explained in the

evidence of Mrs Lish (at [13]) [SB / Tab 9 / p.185-186] and in the evidence of the author of those letters, Ms Hudson, in her first witness at [41] [SB / Tab 10 / p.206] (letter of 15 July [SB / Tab 14 / p.225-226]) and third witness statement at [4] to [6] [SB / Tab 13 / p.222-223] (letter of 29 July [SB / Tab 14 / p.227-228]). Those explained:

- 9.1. Mrs Lish believed that the position TNB took in respect of ownership of her copyright works when she terminated the 2012 Agreement was unreasonable. It caused her to wonder, but nothing more, because she had not basis to know anything more, whether TNB had behaved unreasonably towards her in another way, by not making the correct payments to her.
 - 9.2. The letter of 15 July was written because Mrs Lish had been caused to wonder about underpayments. It made an assertion but was not able to set out any basis: Mrs Lish could not have known of, and did not know of, any basis at that stage.
 - 9.3. The letter of 29 July was about the infringement claim (that arose because TNB had continued unlawfully to exploit Mrs Lish's copyright works after the termination of the 2012 Agreement). It referred to 60% royalties in the context of calculating damages from that infringement.
 - 9.4. Further, those letters had none of the detail of the URC asserted in this claim: Mrs Lish did not know any of that detail to be able to assert it.
10. The proposition in the third sentence of Rs' Skel [37] saying that A's evidence contains "*no credible explanation*" for those emails is not a suggestion that there is no explanation. It can only be a contention that the evidence giving an explanation is so lacking in credibility that it must be disbelieved without cross-examination. The attempts to justify that proposition in Rs' Skel [37] are inadequate: they do not establish as a fact in the context of this application that Mrs Lish knew or should have known of an underpayment in 2022. In particular, the proposition in the final sentence of Rs' Skel [37], that Mrs Lish had sufficient information to bring a claim for significant underpayment when those letters were sent, is an unsupported assertion. What that "sufficient information" is supposed to be is not explained. Mrs Lish's evidence is that she had no relevant information.

c) Early pleading in the Newcastle Action confirmed the Respondents had not paid the Royalty Payment since 2015. Rs' Skel [38] and [39].

11. This is a repetition of the point made at heading (a) (Rs' Skel [36]) in different words. It again relies on paragraph 13(b) of the Newcastle Defence [CB / Tab 7 / p.98], but ignores the substance of that paragraph, and paragraph 14 of that Defence [CB / Tab 7 / p.98-99], indicated by the contents of the emails it copied out. The same response as set out at [6] to [8] arises.

d) Mrs Lish wondered about the potential URC in July 2022 but, on her account, chose not to make any further enquiries. Rs' Skel [40] to [42].

12. The "wondering" is what gave rise to the letter of 15 July 2022 [SB / Tab 14 / p.225-226] referred to by TNB under heading (b), and Rs' Skel [37]. Those are addressed at paragraphs 9 and 10 above.

13. TNB says that Mrs Lish's evidence, which is clear that she merely wondered, but had no basis to think, that she had been underpaid, means that she was on notice of the URC. No basis for that proposition is given. It is wrong. There is a distinction between i) being on notice of an underpayment, and ii) wondering without any basis to think you had been underpaid that you might have been, with that wondering being because of other mistreatment one had received.

14. Further, Mrs Lish did assert an underpayment because she had wondered about it in the 15 July 2022 letter [SB / Tab 14 / p.225-226].

(e) the size of the underpayment meant Mrs Lish should have made further enquiries. Rs' Skel [43].

15. This is a bad, logically flawed proposition. Mrs Lish did not know or have reason to believe she had been underpaid. At one point she merely wondered. When TNB said in the Defence in the Newcastle Proceedings that they had honoured the arrangement by which she would continue to receive the 60% Payments but on a different timetable, she believed them.

16. Further, she never had, and it is not suggested that she ever had, any information on which she could estimate the size of the underpayment until after the Newcastle Proceedings had settled.

17. After the settlement of the Newcastle action, information was provided that gave some hint as to the size of the URC. Further information provided in early 2025 gave more

information. It was only after that that she was able to make an estimate of the size of the underpayment.

Conclusion

18. There is nothing in the respondents' notice that provides a basis to maintain the decision to strike out this claim. The respondents' notice should be rejected.

THOMAS ST QUINTIN
HOGARTH CHAMBERS
tstquintin@hogarthchambers.com
020 7404 0404