Neutral Citation Number: **[2026] EWHC 2158 (Ch)**

Claim No: BL-2023-000642

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

7 Rolls Buildings, Fetter Lane
London
EC4A 1NL

Date: Friday, 31 July 2026

Before :

MR JUSTICE MICHAEL GREEN

- -

Between :

XENFIN FUND 1 TRADING LIMITED (IN LIQUIDATION)
Claimant

- and -

(1) GFG LIMITED
(2) NICHOLAS HOFGREN
(3) STUART CHEEK
(4) ALI RAZA AHMAD
Defendants

- -
- -

Mr Alexander Brown KC (instructed by **Stewarts Law LLP**) for the **Claimant.**

Ms Bridget Lucas KC and **Mr Daniel Kessler** (instructed by **Keystone Law**) for the **First Defendant.**

Mr Oliver Phillips for the **Second, Third, and Fourth Defendants.**

Hearing dates: **Friday, 31 July 2026**

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JUDGMENT

Mr Justice Michael Green **Friday, 31 July 2026**

Introduction

1. I am delivering this oral judgment on the last day of term, having heard the applications earlier this week, over one-and-a-half days, on Tuesday and Wednesday, because it is important that the parties have my judgment before the summer vacation. That is because there is a trial listed in this matter, with a time estimate of 16 days, starting at the beginning of next March 2027, and much work needs to be done for the parties to be ready for that trial in accordance with the timetable set down. This judgment will therefore not be as polished as it might otherwise have been.

2. The two applications before me are as follows:

   (1) an application dated 6 March 2026 made by the first defendant, GFG Limited, in liquidation ("GFG"), to strike out the claimant's claim and/or for reverse summary judgment; the claimant is Xenfin Fund 1 Trading Limited, also in liquidation(the "Strike out Application");

   (2) an application dated 18 March 2026 by the claimant for permission to amend its Particulars of Claim and Reply(the "Amendment Application").

3. The Strike out Application was brought on three broad grounds:

   (1) the "Pleading Ground" - that the claimant's claim discloses no reasonable grounds for bringing the claim and/or has no real prospect of success and/or amounts to an abuse of process;

(2) the “Nomura Ground” - that the claimant could not properly plead its claim against GFG at the time the proceedings were issued, such that the commencement of the proceedings was itself an abuse of process;

(3) the “Conflict Ground” - that Mr Matthew Wright, of Leonard Curtis (“LC”), served as liquidator of both GFG and the claimant up to the commencement of these proceedings, a dual appointment which gave rise to a conflict of interest that was not properly managed, and that this also constituted an abuse.

4. At the hearing on Tuesday, I was unpersuaded by the latter two grounds, and I did not call on counsel for the claimant to make submissions in relation to them. I did, however, hear submissions from both counsel on the Pleading Ground and the claimant’s Amendment Application.

5. Ms Bridget Lucas KC, leading Mr Daniel Kessler, appeared for GFG. Mr Alexander Brown KC appeared for the claimant. Mr Oliver Phillips was also in Court in what I think I can fairly describe as “a watching brief” on behalf of the individual defendants. I am grateful to all counsel and their teams for their helpful submissions.

6. I should add that Mr Brown has an overarching point that the Strike-out Application should be dismissed *in limine* because of GFG’s acquiescence in the claim proceeding to a trial and that therefore GFG is debarred from bringing the Strike-out Application. He submitted that the application itself, because of its lateness, is an abuse of process. I will deal with that point after setting out a short background to the proceedings and their course.

Background

7. The claimant is a Guernsey non-cellular company incorporated on 9 March 2017. It is a special purpose vehicle ("SPV") within the group that has as its parent GFG Funds PCC Limited ("GFG PCC"). GFG PCC is a Guernsey-protected cell company. The claimant is the SPV through which one of the cells, Xenfin Securities Debt Fund 1 Cell ("Xenfin Cell") invests.

8. GFG is also part of the group and it is an investment manager. It is a non-cellular Guernsey company, licensed and regulated by the Guernsey Financial Services Commission ("GFSC").

9. The issue in these applications is whether there was a contractual relationship between GFG and the claimant that GFG would act as investment manager for the claimant and, if so, on what terms. There is no dispute that GFG acted as the investment manager for GFG PCC.

10. The second and third defendants, Mr Nicholas Hofgren and Mr Stuart Cheek, were directors of the claimant at the time of the relevant transactions. They were also the ultimate beneficial owners of GFG, and the second defendant, Mr Hofgren, was also a director of GFG. The fourth defendant, Mr Ali Raza Ahmad, is alleged to be a *de facto* director of the claimant, or otherwise owing fiduciary duties to the claimant.

11. All three companies are in liquidation and, with certain common liquidators acting at certain times, this has given rise to GFG's Conflict Ground.

12. The transactions at the heart of the case were loans that the claimant made to entities associated with the Dolphin Group, purportedly secured over real-estate developments in rural Germany. The Dolphin Group collapsed soon after and criminal charges have been brought against its owner, he being accused of operating a fraudulent pyramid scheme which took hundreds of millions of euros from investors on the promise of secured real-estate projects that did not and could never have materialised. The third relevant transaction is called the "Vordere

Transaction", and this was a purported swap of the security for the Dolphin loans to shares in a company called Vordere. However, the claimant alleges that those shares were significantly overvalued and were not an adequate replacement security for the Dolphin loans.

13. The claimant alleges that GFG, as its investment manager, breached its duties to exercise reasonable skill and care in managing the claimant's investments, causing the claimant to make the Dolphin loans without adequate security and in causing it to enter the Vordere Transaction.

14. Ms Lucas says that there has been no coherent case pleaded against GFG and it is not possible to understand what the claimant's case is in respect of the contractual relationship with GFG giving rise to the alleged duties to exercise reasonable skill and care. She also says that the claimant's case on causation is inadequately pleaded, such that it should be struck out. Not only that, she says that the pleading is so deficient that it constitutes an abuse of process and should be struck out as a consequence.

15. There are certain key documents to bear in mind before looking at the pleading itself.

16. The first is what has been called the "2014 IMA". This was entered into by GFG PCC and GFG on 3 April 2014. This was what GFG says established whatever investment management relationships there were within the group.

17. The following clauses of that agreement are relevant.

    (1) Pursuant to cl.2, GFG PCC appointed GFG to manage the investment affairs of GFG PCC. It was agreed that the performance by GFG of its duties and obligations as investment manager was "subject to the overall supervision of the directors of GFG PCC."

(2) Cl.3 provided that GFG was to manage the investment and reinvestment of the cellular assets in accordance with the investment policies of the cells as set out in the scheme particulars.

(3) Cl.4 provided that the activities of GFG were subject to the control of and review by the directors of GFG PCC.

(4) Cl.5 set out the powers and duties of the investment manager. This included the obligation to:

> "manage the investment and reinvestment of the assets of the Cellular Assets with a view to achieving the then current investment objectives of each Cell ..." (cl.5.1.3) and:

> "... purchase (or otherwise acquire), sell (or otherwise dispose of) and invest money and other assets for the account of the relevant Cell(s) ..." (cl.5.1.5); and to:

> "supervise, regulate and direct the activities of any investment adviser(s)" (cl.5.1.11).

(5) Cl.6 set out the remuneration provisions and provided for fees to be paid by GFG PCC to GFG.

(6) Cl.11 contained provisions limiting the liability of GFG. It specified that GFG:

> "... agrees to use its reasonable endeavours and judgement and due care in exercising its duties and providing the Services and the authority granted to it by this Agreement."

It then excluded liability, save if GFG, or its directors, have committed fraud, were grossly negligent, or were in wilful default.

(7) In cl.11.2 there is an indemnity from GFG PCC to GFG in respect of any claims brought against it, save in relation to fraud, gross negligence, or wilful default.

(8) The governing law of the agreement was Guernsey and the parties submitted to its non-exclusive jurisdiction (cl.24).

(9) The cells covered by the 2014 IMA were set out in Sch.2 to the agreement, and any additional cells added to the agreement would be set out in Sch.3. It is common ground that Xenfin Cell and its SPV (the claimant) were not added to the 2014 IMA. They were only established three years later in March 2017.

18. The second relevant agreement, the "2017 IMA", is dated 24 March 2017, between the claimant, described as the "SPV", Xenfin Capital Limited ("Xenfin Capital"), described as the "Advisor" and GFG, which was described in the agreement as the "Manager". This is relied upon by the claimant for the purpose of establishing that GFG had been appointed as the claimant's investment manager. This is not done expressly in the 2017 IMA, but Mr Brown says that the fact that GFG had been appointed as the claimant's investment advisor is the premise for the 2017 IMA. The express purpose of the 2017 IMA was for GFG to appoint Xenfin Capital as its investment advisor and to delegate responsibility to it to determine appropriate investments for the claimant to enter into.

19. The recitals are important and they state as follows:

> "(A) The GFG Fund PCC Limited ("Company") was incorporated in Guernsey under the Companies Law on 14 March 2014 as a protected cell company limited by shares and has been authorised by the Guernsey Financial Services Commission as a Class B open-ended investment scheme under the Rules.
>
> (B) The Manager [GFG] was appointed as the investment manager of the Company [GFG PCC] and by implication all protected cell sub-funds of the Company, on 3 April 2014.

> (C) Xenfin Securitised Debt Fund 1 ("Cell") is a protected cell of the Company. The SPV is a wholly owned subsidiary of the Cell and is used as an investment vehicle for the benefit of the Cell. It is managed by the Manager.
>
> (D) The SPV has assets in an Account with the Bank.
>
> (E) In respect of the sums deposited by the SPV in the Account (or such sums as are otherwise agreed between the Manager and the Advisor), the Manager wishes to appoint the Advisor [Xenfin Capital] to present it with proposed investments and, following Manager approval, place those investments using its platform and the Advisor is willing to accept the appointment on the terms and conditions contained in this Agreement."

20. The reference in Recital (C) to "*It is managed by GFG*" is said by the claimant to be a reference to it, the claimant. GFG asserts that it is a reference to Xenfin Cell. There is a dispute about that, but Ms Lucas accepted, as she was bound to, that the claimant's construction is at least arguable and cannot be determined at this stage. If that point is arguable, it seems to me that it is at least arguable that therefore GFG was, by one means or another, appointed to be the claimant's investment manager. However, GFG says that is not properly arguable and any allegation to such effect should be struck out.

21. The 2017 IMA went on to provide at cl.3.1 that:

> "The Manager appoints the Advisor to present it with suitable investments ('Proposed Investments') to be made from the Account and, subject to receipt of the Manager's prior written approval, to execute the Proposed Investments on behalf of the SPV and to otherwise undertake the duties set out in this clause 3 with respect to the Account and Portfolio and the Advisor accepts the appointment."

22. By clause 3.2, GFG delegated to Xenfin Capital certain duties and powers in respect of the account and portfolio including:

> "To determine appropriate investments for the SPV and to provide all relevant information on said investments to the Manager for its consideration and approval;" (cl.3.2(A));

> "Subject to the Manager's prior written approval, use the sums placed in the Account to make investments on behalf of the SPV;" (cl.3.2(B)); and

23. By cl.29 disputes arising under, out of or connected with the Agreement are subject to the non-exclusive jurisdiction of the English courts.

24. There were two further documents referred to in the Particulars of Claim.

(1) A "Board Resolution" of GFG dated 27 March 2017, which was three days after the 2017 IMA was entered into. In paragraph 2, it said as follows:

> "IT IS FURTHER NOTED that the Company has been appointed to act as Investment Manager to Xenfin Securitised Debt Fund 1 [Xenfin Cell], a cell of GFG Fund PCC Limited ('Fund'). As per the Letter of Engagement entered into on 27 January 2017, the Company [GFG] wishes to appoint Xenfin Capital as the Investment Advisor to the Fund. The Board acknowledge that the assets of the Fund will be held within a Special Purpose Vehicle ('SPV'), namely Xenfin Fund 1 Trading Limited [the laimant]."

(2) The other document referred to in the particulars of claim was Xenfin Cell's 2018 accounts which showed it had paid substantial fees to GFG. Para.10(3) of the Particulars of Claim set out the passages from the accounts that the claimant relies on as supporting its contractual claim, and it says as follows:

> "(a) Listed GFG as Xenfin Cell's 'Investment Manager' and contained an 'Investment Manager's Report' by GFG;

> (b) Recorded that '[The claimant] is managed by the Investment Manager [i.e. GFG]' (although it also referred to an agreement dated 16 December 2014, to which the claimant was not a party);"

[I should add to this that that is disputed by GFG, which says that it refers not to the claimant but to Xenfin Cell and GFG PCC.]

> "(c) Recorded that 'A management fee [is] paid monthly in arrears of whichever is the greater of £15,000 per month or 1.25% per annum of the Net Asset Value of the relevant Class Account during the relevant period.'
>
> (d) Recorded that investment management fees of £20,769 were incurred between 20 March and 30 April 2017; and
>
> (e) Recorded that investment management fees of £307,048 were incurred in the year ended 20 April 2018."

25. Ms Lucas also referred me to a Wind Down agreement dated 20 February 2020 between GFG PCC and GFG after it had gone into liquidation, and which she submitted only referred to the 2014 IMA as the governing investment management relationship and that this undermined any suggestion that there was a separate unwritten IMA between the claimant and GFG. I understand that this will be part of GFG's defence to the allegation of an unwritten IMA between the claimant and GFG, but it is not, it seems to me, particularly relevant in considering whether the claimant has pleaded a reasonable cause of action that has a real prospect of success.

26. I will turn to the pleadings in a moment after completing the procedural chronology.

27. GFG was the first company to go into voluntary liquidation on 18 December 2019. As I said, Mr Matthew Wright of LC in Guernsey was appointed liquidator. On 13 January 2020, Mr Andrew Duncan, then of LC in London, was appointed as joint liquidator.

28. The claimant then entered voluntary liquidation on 4 May 2020. Mr Wright was appointed liquidator together with Mr Jamie Toynton of Grant Thornton ("GT") in Guernsey. On 29 May 2020, GFG PCC entered voluntary liquidation. Mr Toynton and Mr Benjamin Rhodes of GT in Guernsey were appointed liquidators. As can be seen, the group was put into liquidation and there were inevitably, particularly in the small community like Guernsey, the same people appointed as liquidators of different companies in the group.

29. On 10 June 2021, Mr Toynton resigned as liquidator of the claimant and Mr Wright continued as sole liquidator with GFSC's consent and he has authorised these proceedings to be brought and, presumably, remains in control of them.Having identified a claim against GFG in around mid-April 2023 and with the limitation period fast approaching, the claim was issued on 4 May 2023. On the same day, Mr Wright resigned as liquidator of GFG, having taken legal advice in relation to his inevitable conflict of interest in being liquidator of both claimant and defendant.

30. The claim form was amended on 29 August 2023 before service, and it was served on 19 October 2023, together with the Particulars of Claim.

31. The proceedings then got bogged down in a jurisdictional dispute instigated by the defendants. This culminated in a hearing in November 2024 on the defendants' various jurisdictional challenges and it was heard by Ms Joanne Wicks KC sitting as a Deputy High Court judge. She handed down judgment on 31 January 2025, and her judgment has NCN [2025] EWHC 172 (Ch), and she dismissed the defendants' challenges. I was taken to some passages of the transcript of that hearing by both parties to show the differing positions that were said to have been adopted by them at that stage.

32. Following the judgment, GFG filed its Defence and Counterclaim on 3 April 2025. This statement of case dealt with the case on the merits without any suggestion that the proceedings

were an abuse of process or that it could not understand the case being made against it. At various points in the Defence and Counterclaim, it is said that "*pending disclosure and further particularisation of the claimant's claim*" GFG says as follows… and Ms Lucas said that this was effectively a request for further particulars or an allegation that the claim was not properly particularised. But there was never a CPR Part 18 request made; nor did GFG seek further particulars before applying to strike the Particulars of Claim out. The claimant filed a Reply on 6 June 2025.

33. Six months later was the first intimation that GFG intended to make a Strike out Application. This was in a letter from its solicitors, dated 5 December 2025. They said that they hoped to issue such an application shortly so it could be addressed at the CCMC that had been fixed for 13 January 2026. However, the application was not so issued and the CCMC went ahead before Master Kaye, and she made directions for trial with a tightish timetable leading to the trial which, as I have said, has now been listed for March 2027. Master Kaye refused to delay the timetable to take account of any potential Strike out Application.

34. The Strike out Application was eventually filed on 6 March 2026. No criticism is made of the last period of delay which was occasioned by certain personal reasons that I do not need to elaborate on. The claimant does, however, rely on the fact that the application was made three years after the claim was issued, a year after the jurisdiction challenge was resolved and nine months after the close of pleadings. Mr Brown said that this, in itself, is an abuse of process as GFG has clearly thereby acquiesced in the claim as pleaded by putting in a defence without any reservation and the application only eventually coming on a few months before the 16-day trial, in respect of which there is still much to do.

35. Mr Brown ran two preliminary points that he said, I think, means that I should dismiss the Strike out Application without considering its merits. These were: (i) that GFG is barred by acquiescence from bringing an abuse of process challenge (I have to say that the extent to which this applied to the main Strike out Application on the Pleading Ground is unclear); And (ii) that there has been impermissible reliance on inconsistent evidence by GFG, and this is based on the evidential position put forward in the jurisdiction challenges hearing and that adopted for the purposes of this application; Mr Brown says that GFG is blowing hot and cold when it suits it tactically and it should not be allowed to do so.

The Pleadings

36. Before dealing with these preliminary points, I think it is important to have the context of the Pleading Ground for the strike out in mind, so I turn to the relevant paragraphs of the pleadings.

37. The Particulars of Claim, which were served in October 2023, set out the contract relied upon between the claimant and GFG, the duties that gave rise to, the breach of those duties, and the loss caused thereby. That is a straightforward approach and the correct one. GFG now says that the pleading is inadequately particularised, that it cannot understand the case it has to meet, and it is so deficient that it should be struck out seven months before the trial is due to commence. It does not suggest that there is no cause of action as a matter of law; it relies on inadequate particularisation, lack of evidence to support the alleged contract, and certain other deficiencies in the pleading.

38. So what does the claimant plead? At the heart of its case is the allegation that there was an unwritten agreement, called the "Unwritten IMA", between the claimant and GFG that the latter would act as the claimant's investment manager. This was said to be pursuant to an oral agreement and/or an agreement by conduct entered into at some point between its incorporation

on 9 March 2017 and 24 March 2017, a period of less than two weeks. Paragraph 10 of the Particulars of Claim states as follows:

> "Following the Company's incorporation, the Company and GFG agreed that GFG would act as the investment manager of the Company (the 'IMA'). Given that the Company is now in liquidation, the best particulars it can give at present as to such agreement, and pending full disclosure, are that it was reached orally, or in the alternative by conduct (including by GFG charging and accepting, and the Company paying, the fees referred to below), on, or soon after, the Company's incorporation. In support of that allegation and pending disclosure, the Company will rely on the following;"

39. The particulars were then set out in subparagraphs (1) to (4). They were the 2017 IMA, the Board Resolution, and the 2018 accounts – all of which I have already explained – and included at subpara.(4) that:

> "... GFG negotiated and managed the Company's investments on the Company's behalf, including the [Dolphin Loans]."

40. That plea is not difficult to understand and, seemingly, GFG did not find it difficult to understand for two years or so. It never asked for further particulars and there was no mention of the 2014 IMA.

41. An alternative to the oral and/or conduct contract is reliance on the 2017 IMA as pleaded at para.11 of the Particulars of Claim:

> "In the alternative, if GFG had not been appointed as investment manager of the Company by the time the [2017] IMA was entered into, it was so appointed by the [2017] IMA, either as a matter of construction or by virtue of an implied term, on the basis that the term is so obvious that it goes without saying and/or is necessary to give business efficacy to the [2017] IMA."

42. As a result of the alternative ways that the claim was put, in para.12, the claimant pleaded that:

> "Pursuant to the [Unwritten IMA], or ... the [2017] IMA, GFG owed [it] a duty to exercise reasonable care, skill and diligence in managing [its] investment affairs ..."

43. It went on in para.13 to say that the IMA *"gave rise to a relationship of trust and confidence"* between GFG and the claimant and that, therefore, GFG owed [it] a fiduciary duty to avoid conflicts. And, in para.14, a tortious duty of care is also pleaded; again based on GFG having been appointed as the claimant's investment manager.

44. The Particulars of Claim then continue to set out the transactions that the claimant says it should not have entered into. For instance, at para.18, it says as follows:

> "In March 2017, GFG (acting by Mr Hofgren), on behalf of the [claimant] ... entered into negotiations with Dolphin in relation to a substantial loan from Xenfin Cell (via the [claimant] ...) to a Dolphin special purpose vehicle. The negotiations ultimately led to the Company making the DC158 Loan. It is inferred and averred that, as the Investment Manager of the Company, GFG approved the Company entering into the DC158 Loan and thereby caused it to do so, including through the actions of Mr Hofgren and Mr Cheek, as set out below."

45. There are similar averments for the other transactions. The breaches of duty are further set out in paras.70, 74, and 76, and then in para.79 there is a very standard plea of causation and loss that:

> "But for the Defendants' breaches of their duties as alleged above, the Company would not have entered into the DC158 and 7EP Loan Agreements or the Vordere Transaction or made the First or Second Core Consulting Payments. As a result of doing so, it has suffered loss and damage."

46. That seems to me to be a clear and adequate plea as to what GFG is alleged to have done and what it caused the claimant to do that has resulted in the claimant suffering loss. Ms Lucas has a complaint about the causation plea being unparticularised, but I am afraid that I just do not see that.

47. As I have said, GFG put in a full Defence on the merits. There is also a Counterclaim based on the 2014 IMA applying as between GFG and the claimant, something which Mr Brown suggested was wholly inconsistent with its current position that the claimant should not be allowed to plead an alternative case based on the 2014 IMA. True it is that the Defence often mentions that it is subject to disclosure and further particularisation, but there is no mention of GFG being unable to understand the plea or that it is an abuse of process.

48. The thrust of the Defence is that the 2017 IMA is irrelevant and that the only relevant agreement is the 2014 IMA, by which GFG was appointed to provide investment services to GFG PCC and its underlying named cells. At paragraph 6, GFG "noted" the claimant's case as to the oral and/or conduct contract alleged. It then largely admitted the particulars of that, and at para.7 it averred that any investment services provided by GFG were pursuant to the 2014 IMA. This is repeated in para.10. Then, in para.11, as to the plea in relation to the 2017 IMA, GFG does state it is inadequately particularised and that, "pending provision of proper particulars", it is denied. But no request for

particulars was made and I do not understand in what sense this is actually unparticularised.

49. Then at para. 56 of the Defence, this is taken further forward by asserting that, if GFG provided such services to the claimant, it was pursuant to the 2014 IMA, which means that it is subject to cl.11 thereof requiring gross negligence to be proved and/or the indemnity in cl. 11.2 coming into effect. GFG then counterclaimed for a declaration in those terms.

50. Therefore, the position is that the claimant is relying on an unwritten agreement, alternatively the 2017 IMA, whereas GFG is saying that there was no unwritten agreement, at least not on the terms that the claimant is relying upon, and the only relevant investment management agreement was the 2014 IMA, which limited GFG's liability and provided for an indemnity.

51. The Reply repeatedly denied that the 2014 IMA was the governing agreement, principally on the basis that it was entered into three years before the claimant was incorporated. Ms Lucas submitted that this repeated denial changed everything so far as GFG's perception of the claim was concerned, and that, finally, it was confirmed in black and white that the claimant was not relying on the only IMA that she said could possibly be relevant. Again, I do not understand how it could have appeared otherwise from reading the Particulars of Claim.

52. The Reply expanded, so far as the claimant was able to, on its case in relation to the applicable contract and the duties arising thereunder. Then, at para.45, the claimant responded to GFG's assertion in its Defence at para.56, that if GFG provided investment management services to the claimant, those services were provided pursuant to the 2014 IMA. The claimant *"denied that the terms of the 2014 IMA applied to the relationship between GFG and the claimant."* It then said at subparas. (b) and (c) as follows:

> "(b) Further, even if GFG and the Claimant chose to replicate the other terms of the 2014 Agreement to govern their relationship, they cannot have intended for Clause 11 to apply as between GFG and the Claimant. Clause 11.2 required GFG PCC to indemnify GFG 'out of the Cellular Assets of the relevant Cell.' That is not applicable as against the Claimant as the Claimant did not own the Cellular Assets.
>
> (c) Further, even if a clause equivalent to Clause 11 of the 2014 Agreement did apply to the relationship between GFG and the Claimant (which is denied), GFG's breaches of its contractual/tortious duties to the Claimant as particularised at paragraphs 70, 74 and 76 of the Particulars of Claim constituted 'gross negligence' within the meaning of Clause 11.1 and Clause 11.2 of the 2014 Agreement."

53. Mr Brown argued that this is an alternative plea as to the substance of the unwritten agreement, namely that the terms of the 2014 IMA were agreed in March 2017 to be replicated in the IMA between the claimant and GFG. He accepted, I think, that it could have been more clearly expressed to be an alternative formulation of the Unwritten IMA, but his amendment application seeks to make that clear.

54. Ms Lucas said that because of the consistent denials of the relevance of the 2014 IMA, including in this very paragraph of the Reply, it was not an alternative plea. It was

simply a response to the averments in the Defence as to the relevance of the 2014 IMA. She also, of course, objects to clarity being brought to bear on this issue by the proposed amendment. She says that this is a yet further variation on the alleged contract, which only goes to show that the claimant has no real evidence in relation to any such alleged contract between the claimant and GFG.

55. Anyway, that is where things stood on the pleadings as at June 2025, and it took over six months for GFG to raise the prospect of a strike out, during which time no CPR Part 18 request or informal request for particulars was made. Ms Lucas said that there was no point making such a request, as it was clear from the Reply that the claimant had no more particulars to provide. She said this has been further proved to be true by the fact that, even for this hearing of the Strike out Application, the claimant has been unable to provide any further details whether by way of evidence or anything else of the contract allegedly entered into.

The preliminary issues

(i) Acquiescence

56. Before dealing with the particular arguments on the Pleading Ground, I return to Mr Brown's two preliminary points. First, acquiescence: Mr Brown's argument is based on the principles explained by the House of Lords in *Johnson v Gore Wood & Co* [2002] 2 A.C. 1, in particular by Lords Bingham and Millett. That was a case where, four-and-a-half years after the claim was issued, the defendant firm of solicitors applied

to strike it out as an abuse of process on *Henderson v Henderson* (1843) 3 Hare 100 grounds, that the claim should have been brought as part of the proceedings brought by the claimant's company against the defendant firm many years before. Their Lordships actually overturned the Court of Appeal and held that the claim was not an abuse -- so they decided the appeal on the merits, not on this acquiescence point -- but Lord Millett did also consider that the delay in applying for that relief was fatal to the defendant's application. He said:

> "A defendant ought to know whether the proceedings against him are oppressive. It is not a question which calls for nice judgment. If he defends on the merits, this should be taken as acquiescence. It might well be otherwise if the ground on which the proceedings are alleged to be an abuse of process were different. But in a case of the present kind the Court is not so much protecting its own process as the interests of the defendant."

57. That latter distinction is important. Acquiescence applies where it is used to protect the defendant, but it may not apply where it is to protect the administration of justice or the court's own process. That is for the sound reason that there cannot be acquiescence by the parties in matters affecting the administration of justice, which are for the court to determine. But in this case, the alleged abuse, whether in relation to the Pleading Ground, the Nomura Ground, or the Conflict Ground, are all directed at protecting GFG's own interests in the litigation.

58. Lord Bingham had a slightly different take. He said:

> "... failure to take action to strike out over a long period of time is potent evidence not only that the action was not seen as abusive at the time but also that, on the facts, it was not abusive. The indicia of true abuse are not so

> obscure that an experienced professional party, advised by leading counsel … will fail to recognise them."

59. Mr Brown also cited *Booth v Booth* [2010] EWCA Civ 27, in which Rimer LJ referred to *Walbrook Trustees (Jersey) Ltd & Ors v William Simon Fattal & Ors* [2009] EWCA Civ 29 but found that, contrary to *Johnson v Gore Wood*, in his case the defendant had flagged up clearly in his Defence and evidence that he considered the claim to be abusive, thus preventing any notion of acquiescence arising. I do not agree with Mr Brown that a defendant has to plead in their Defence that they will be applying to strike out for abuse of process. But, if they do not, I think they do run the risk that they would be taken to have acquiesced in the bringing of the claim. Mr Brown submitted that the delay and the putting in of the Defence on the merits without any hint that it would be running an abuse argument amounts to acquiescence, and GFG should therefore be debarred from running its abuse arguments.

60. I should add that, in relation to the Conflict Ground, the point was first raised by GFG's solicitors in April 2024, but not in the context of asserting that the proceedings were an abuse. That was only first suggested in the letter of 5 December 2025.

61. Ms Lucas' answer to this is firstly to say that it can only be applicable to abuse of process, not the other grounds upon which Mr Brown attacked the pleading, and there is no obligation for GFG to have flagged it up earlier, whether in the Defence or otherwise. If it is an abuse, then it is an abuse, and the merits of the application have to be considered.

62. I am with Ms Lucas in relation to the application of acquiescence to anything other than an abuse argument. In fairness to Mr Brown, I do not think he was suggesting otherwise, and the authorities before me on this are only dealing with a delayed abuse argument. Ms Lucas confirmed in her reply submissions that she was not really pursuing her Pleading Ground for strike out on the basis of the pleadings being an abuse.

63. But where I do think this concept is relevant is as to the Nomura and Conflict Grounds. The putting in of a substantive Defence and the way GFG's defence has been conducted could amount to acquiescence of the claimant's entitlement to commence and continue its claims to trial.

64. In any event, I would prefer to deal with all the Grounds on their merits, as I have heard argument on them. But in relation to the Nomura and the Conflict Grounds, I take on board particularly Lord Bingham's point that, if it did not seem abusive at the time, it is unlikely that it was, as a matter of fact, abusive at all.

(ii) Inconsistent positions

65. The second preliminary ground is Mr Brown's approbation and reprobation argument in relation to the evidence provided by GFG's solicitor on the jurisdiction challenges, that he said is inconsistent with the position adopted by GFG on the Strike out Application. Mr Alex Ferrari of Keystone Law is GFG's solicitor and, in his third witness statement used for the purposes of the jurisdiction hearing, he said as follows, in paragraph 23:

> "GFG agrees with the claimant that disclosure, and oral evidence will be relevant when determining the basis and terms upon which GFG provided services to the claimant."

66. He repeated the point at para.28:

> "... disclosure from both the claimant and the defendants will be relevant to the determination of which terms actually applied as between the claimant and GFG. That decision will also (consistent with the claimant's case) be informed by the oral evidence of those actually involved at the time."

67. And in the paragraph before, para.27, he said as follows:

> "Mr Clark suggests (paragraph 77 [of his second witness statement]) that it is 'not in dispute' that the provisions were not invoked to add the claimant as an additional cell for the purposes of the 2014 IMA. Unless and until disclosure has been provided, and GFG understands what the other defendants maintain happened (being the persons involved at the time) GFG does not know whether the provisions were invoked. Nor does GFG know whether (as pleaded) there was an agreement reached orally or by conduct that the terms of the 2014 IMA would apply as between the claimant and GFG."

68. That latter reference to "as pleaded" is to the Particulars of Claim, and there is no suggestion that GFG is unable to understand that pleading, and there is recognition that the terms of such an oral and/or conduct contract will have to be determined at a trial after disclosure and witness statements, etc. That is inconsistent with the position being taken now that such evidence is irrelevant and the plea should be struck out before trial without consideration of the evidence. Furthermore, that last sentence of para.27 suggests that GFG understood that it could be part of the claimant's case and/or GFG's case that the oral and/or conduct agreement was based on the 2014 IMA, yet now GFG opposes the amendment that clarifies that.

69. Mr Brown submitted that GFG should be held to its sworn position that this is a triable issue. He said that Mr Ferrari's statement was used by GFG at the jurisdiction hearing to prevent the Court coming to any conclusion on the terms of the unwritten IMA, so as to prevent the claimant from relying on the English jurisdiction clause in the 2017 IMA. GFG was trying to steer the conversation over to the 2014 IMA as that had a Guernsey jurisdiction clause. GFG actually succeeded on that issue before Ms Wicks KC. So Mr Brown said that GFG should not be allowed to argue the opposite in this application, that the terms of the relationship are not a triable issue, and that it does not require disclosure and witness evidence so as to be determined at a trial.

70. Mr Brown referred to the very different cases of *Express Newspapers PLC v News (UK) Ltd* 1[990] 1 WLR 1320, and more recently *Malik v Malik* [2024] EWCA Civ 1323 for the general proposition about approbation and reprobation.

71. But like with acquiescence, I am unwilling to decide this matter on the basis of this principle. However, I do think it is an important factor in testing GFG's Strike out Application and in particular where it is suggested that disclosure and witness statements are not going to be necessary to establish the claimant's case and that the Court can be sufficiently confident at this stage that the case cannot succeed, and so it should be struck out. I prefer to decide this application on its merits, but that includes the fact that at an earlier stage, whether tactically or not, GFG considered that the issue of the Unwritten IMA and its terms needed to go to a trial and could not be summarily disposed of.

The Pleading Ground

72. I turn therefore to the Pleading Ground.

73. There was not much dispute on the legal principles in relation to strike out and summary judgment. Insofar as the application is brought under CPR 3.4(2)(a) on the basis that the statement of case discloses no reasonable grounds for bringing the claim, the Court applies a stringent test and only looks at the pleadings to see whether, on their face, the Court is sure that the claim is bound to fail. Either that is because there are no facts pleaded that could support the claim, or that even if the facts pleaded are proved true, there would still not be a cause of action- see the examples in CPR PD3A, para.1.2. The Court will also strive to uphold pleadings if they are capable of being cured by amendment.

74. GFG did also rely on CPR 3.4(2)(b), that the pleading is an abuse of process, but, as I have said, Ms Lucas confirmed that that is now not relied upon and, frankly, I can see no proper basis that it could be relied on.

75. As for CPR 3.4(2)(c), that there has been a failure to comply with a rule, practice direction or court order, it seems to me that this is what Ms Lucas was substantively relying on as she repeatedly stressed that there had been a failure to comply with the pleading requirements in CPR PD16, paras.7.4 and 7.5 in relation to oral and conduct contracts. This, combined with CPR 3.42(a), was the gravamen of her complaint about the pleading and she says that the failure to comply should be visited with the draconian

measure of strike out. However, this strikes me as wholly disproportionate and unrealistic.

76. The burden is on GFG to demonstrate that the abuse or breach of the rule should receive the last resort remedy of strike out. Mr Brown showed me the very recent decision of the Court of Appeal in *Pliego & Anor v Astor Asset Management 3 Ltd & Ors* [2026] EWCA Civ 940 in which the facts as to the abuse of process were quite extraordinary. This was a case of 'privilege hunting' whereby the claimants employed a private investigation firm to target the defendant's solicitors by a covert sting operation that led a particular solicitor to meetings at which he disclosed sensitive information about the case and its weaknesses. The claimants then attempted to use the information obtained by those means in the proceedings, including by bringing a summary judgment application.

77. The first instance judge held that the sting operation was an abuse of process, but he refused to strike out the claim. He thought that would be disproportionate if there was otherwise a good claim on the merits. He did strike out the summary judgment application and he deferred a decision on what to do about the illegally-obtained evidence. Both sides appealed.

78. The Court of Appeal upheld the judge on not striking out the claim but striking out the summary judgment application. But it went further than the first instance judge, as it also discharged the freezing injunction that had been obtained by the claimants. This

was, in essence, because the Court of Appeal considered it was an appropriate response to the gravity of the abuse.

79. Mr Brown's point was that even in such an egregious case of abuse, the Court is reluctant to go nuclear and strike out the whole claim, and I accept that submission. Even if I thought that the claimant had failed to comply fully with the practice direction, would it really be proportionate to strike out the claim? I add to that that GFG has had no difficulty understanding the claim it has to meet.

80. Paragraph 7.4 of CPR PD16 states:

> "Where a claim is based upon an oral agreement, the particulars of claim should set out the contractual words used and state by whom, to whom, when and where they were spoken."

Note it says "should" rather than "must". Paragraph 7.5 says:

> "Where a claim is based upon an agreement by conduct, the particulars of claim must specify the conduct relied on and state by whom, when and where the acts constituting the conduct were done."

That does say "must", but there are unquestionably some particulars of the conduct relied upon pleaded.

81. The final basis upon which the Strike out Application is made is for summary judgment under CPR Part 24, where there is no real prospect of the claimant succeeding on its claim and there is no other compelling reason why the matter should go to trial. Both counsel referred to the

familiar principles set out in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]. In particular, the Court said:

> "(i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success ...
>
> (ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable ...
>
> (iii) In reaching its conclusion the court must not conduct a 'mini trial' ...But it does have to take at face value ... everything that a claimant says in his statements before the court."

82. Mr Brown emphasised paras.(v) and (vi) of Lewison J's judgment:

> "(v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond* (No. 5) [2001] EWCA Civ 550.
>
> (vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus, the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63."

83. Ms Lucas warned against "Micawberism", citing Eyre J in *Kyte v McLaren Automotive Limited & Anor* [2026] EWHC 1126 (TCC), that is the notion of keeping a pleading alive in the hope that something will turn up on disclosure or at trial. She also referred to *Amersi v Leslie & Ors* [2023] EWHC 1368 (KB), a case on amendments but specifically applying the same principles as on summary judgment, namely, that for a

pleading to be coherent and properly particularised, it must be supported by evidence which establishes a proper factual basis for the plea.

84. There was a dispute about whether it is likely that disclosure or witness evidence will emerge to strengthen the claimant's case. Ms Lucas submitted that Mr Wright, the claimant's liquidator, had had all relevant documents for years, from both GFG and the claimant. He also had extensive powers as liquidator to interview relevant individuals and obtain their evidence as to, for instance, whether there was an oral agreement concluded in March 2017. Ms Lucas surmised that as the relevant particulars had not been provided, there must have been nothing in that documentation or from the interviews that he conducted that supported the assertion of an oral contract in the Particulars of Claim.

85. Mr Brown accepted that Mr Wright had those powers and that he had used them, but he categorically did not accept that all the evidence had been obtained. He referred to the SecuriSync repository, which is a database of documents that was disclosed by GFG to the claimant on 3 June 2026. Ms Lucas suggested, I think, that the claimant had effectively had all these documents before they were disclosed. But the simple fact of the matter is that, as I understand it, this repository consists of over 44,000 documents and that, with some preliminary keyword searches performed by the claimant, they have calculated that there might be some 11,000 relevant documents which will have to be reviewed. They have not yet been reviewed by either side, and formal disclosure in the proceedings is not due to happen until 28 August 2026.

86. Furthermore, the claimant has said that it intends to call three former directors of GFG, Messrs McGall, Rodger and Le Roux, together with Mr Barnier of GFG PCC. They will all give evidence, so it said, as to GFG acting as the claimant's investment manager and will explain how the structure and the relationships worked.

87. Going back to what Mr Ferrari said in his third witness statement, that disclosure and witness evidence were needed to determine the basis upon which GFG was acting, it is inconceivable that there will not be further evidence, whether by way of contemporaneous documentation or witnesses, that shed light on the arrangements between the relevant parties and the basis upon which they were operating. That is not Micawberism. It is realistic to assume that such evidence will be useful and will establish the terms upon which the parties were acting.

88. It is also relevant to point out (and this is actually stated on the pleading) that the claimant is acting through its liquidator, Mr Wright, and he does not have his own contemporaneous knowledge of the relevant events, particularly what was happening in March 2017 when this was set up. He has to reconstruct from the available evidence and by use of his investigatory powers. I do bear in mind that he has had a long time to do so, but it is also true to say that he has also had lots of other things to do, and it was only at a relatively late stage that he alighted on the potential claim against GFG in this respect.

89. With that very long introduction, I can now deal relatively shortly with the Pleading Ground, as it must be fairly clear which way I am going.

90. As I have said, I consider that Ms Lucas' submissions on strike out really merged the CPR 3.4(2)(a) and (c) grounds, such that her real case was that there was inadequate particularisation of the oral and/or conduct agreement case that it was impossible for GFG to understand the case it has to meet. The notion that there are no reasonable grounds for bringing the claim seems to me to be misconceived. The Unwritten IMA is identified in its two alternative forms, the duty relied on is spelled out, as is breach and causation.

91. As to particularisation and para.7.4 of CPR PD16, I would accept that chapter and verse as to the words used and between whom the communications were are not spelled out. But the liquidator has been trying to work out what were the contractual relationships between the parties at the time and he has not unreasonably concluded that there would have had to have been an IMA in place for Xenfin Cell and its SPV (the claimant) at the time it was entering into the transactions. It was not a party to the 2014 IMA as it was not incorporated until three years later, but the documents identified in the Particulars of Claim, in particular the 2017 IMA, the Board Resolution and the 2018 accounts, can be interpreted as assuming that some form of IMA must have been in place with GFG when the transactions were entered into. These are the best particulars that the claimant has been able to provide pending disclosure and witness statements. It would be completely disproportionate to strike out such a claim on that basis, particularly where, for two-and-a-half years, GFG seemingly had no difficulty in understanding the plea and never asked for further particulars.

92. As for para.7.5 of CPR PD16 in relation to the agreement by conduct, I do not see that there can be any real complaint about compliance as the claimant pleaded in para.10 of

the Particulars of Claim that the fees were paid by the claimant to GFG and that GFG negotiated and managed the claimant's investments in the Dolphin funds on its behalf. GFG may disagree with those facts, but it is reasonably arguable that this constitutes an agreement by conduct and I see no basis for striking it out.

93. I have come to the same conclusion on summary judgment. I consider that the claim has a real prospect of success. Ms Lucas accepted that Recital C of the 2017 IMA could be a reference to the claimant in the last sentence, and the other terms of the 2017 IMA arguably are premised on there being already in place an IMA between the claimant and GFG. GFG was delegating investment powers that it had to Xenfin Capital and that can reasonably be inferred to mean investment powers that it had been given by the claimant under an Unwritten IMA.

94. Indeed, there must have been some form of IMA agreed after the setting up of Xenfin Cell on 9 March 2017 and the incorporation of the claimant. It has been accepted that Xenfin Cell was not added to the 2014 IMA. Therefore, even GFG must be alleging that there was some form of agreement entered into during March 2017 if, and even if, it is to extend only to GFG's responsibilities to GFG PCC in relation to Xenfin Cell. Indeed, what GFG was arguing at the jurisdiction hearing and its alternative case in these proceedings, is that such agreement adopted the 2014 IMA terms and that can only logically have been agreed in March 2017. Therefore, there is very likely to have been an agreement in March 2017 that was not in written form; at least, no such agreement has yet been found, which means that there must be a real prospect of the claimant turning out to be right that there was such an agreement between GFG and the claimant. That would be consistent with the 2017 IMA, the Board Resolution, the 2018

accounts, and what GFG actually did for the claimant in terms of negotiating and managing the Dolphin loan investments.

95. Accordingly, I reject the Pleading Ground in the Strike out Application.

The Amendment Application

96. While we are on the pleadings, it is probably convenient for me to turn to the Amendment Application. I have already explained what is pleaded in para.45 of the Reply. Mr Brown says that the Amendment Application has been brought out of an abundance of caution if it is unclear that this was a further alternative being run by the claimant. What is proposed is a new para.12A of the Particulars of Claim and a similar addition to the Reply in a new para.8A. The proposed new para.12A is as follows:

> "In the alternative, when entering into the IMA, the parties expressly or impliedly agreed that the terms of the agreement reached between GFG and GFG PCC on or around 3 April 2014 (or substantially similar terms) would apply between GFG and the company (at least insofar as applicable between the parties). Those terms require GFG inter alia to: (i) do all such matters, acts, and things as reasonably necessary and/or incidental to the discharge of GFG's services, obligations, and duties under the agreement (clause 5.1.1); and (ii) to use its reasonable endeavours, judgment, and due care in exercising its duties and providing services under the agreement (clause 11.1). "

97. Ms Lucas objects to the proposed amendment on similar lack of particularisation grounds. But I reject those arguments on the same basis as I have rejected them on the original pleading. It is clear what the claimant is saying, that as an alternative to its primary case, as set out in paras.10 and 11 of the Particulars of Claim, the terms of the 2014 IMA were agreed in March 2017 to be replicated as between GFG and the

claimant so far as they could be. Whether they were or not is a question of fact to be determined at trial, having had the full benefit of disclosure and witness evidence.

98. Ms Lucas also raised the point over whether the amendments adequately plead gross negligence in order to get round the limitation of liability in cl.11 of the 2014 IMA. She referred to *Camerata Property Inc v Credit Suisse Securities (Europe) Ltd* [2011] BCLC 54. However, I think Mr Brown is correct to say that any such exclusion from liability would normally first be pleaded by the defendant, to which the claimant would respond in its Reply by alleging, if it so chooses, that the defendant was grossly negligent.

99. The only real objection to the amendment seems to me to be that it has to satisfy CPR 17.4 as it is being made after the end of the limitation period. As explained in *Geo-Minerals GT Ltd & Anor v Downing & Ors* [2023] EWCA Civ 648, there is a four-stage test under CPR 17.4, namely:

(1) is it reasonably arguable that the proposed amendments are outside the applicable limitation period?;

(2) do the proposed amendments seek to add or substitute a new cause of action?;

(3) does the new cause of action arise out of the same or substantially the same facts as are already in issue in the existing claim?; and

(4) should the Court exercise its discretion to allow the amendment?

100. It is accepted that stage 1 is probably satisfied. But Mr Brown says that the other stages are in his client's favour.

101. Ms Lucas says that this is a different cause of action because it relies on a third contract, the 2014 IMA, and a different set of facts. I do not see it that way. It seems to me that it is still the same Unwritten IMA agreed orally or by conduct in March 2017, but with a different set of terms agreed to be replicated in the relationship between the claimant and GFG. It is the same or a very similar duty to take reasonable care that is relied upon and there are exactly the same allegations of breach, causation and loss.

102. As *Geo-Minerals* makes clear, the question is whether a different duty is sought to be pleaded. Mr Brown referred to *Mrs Daad Sharab v His Royal Highness Prince Al-Waleed* [2012] EWHC 1798 (Ch), which was to similar effect. I therefore think that there is no new cause of action. It is the same unwritten contract incorporating slightly different terms, but to the same effect, and all other elements of the contractual cause of action are the same.

103. Even if I am wrong about that, I would have concluded that it arises out of the same facts within stage 3. The issue as to what was or was not agreed in March 2017 is the focus of inquiry on the existing pleadings and it is the same inquiry that is engaged on the proposed amendments. In any event, it is GFG's defence that any relationship was governed by the 2014 IMA, so that fact is already under the spotlight for the trial.

104. In all the circumstances, I give permission to amend on the claimant's Amendment Application.

The Nomura Ground

105. I now turn to the other two grounds that I made clear at the hearing I was not attracted to and I will give my reasons shortly as to why that was so, particularly given the length of this judgment already.

106. The Nomura Ground takes us right back to the Claim Form. It is based on *Nomura International Plc v Granada Group Ltd & Ors* [2007] EWHC 642 (Comm), a decision of Mr Justice Cooke. This states that the issue of a Claim Form can be an abuse of process if, at the time of issue, the claimant was not in a position to formulate its claim and it was only done to stop the clock on limitation while the claim is further investigated.

107. What I find extraordinary about this allegation of abuse is that it is said to apply even where I have decided that there is a properly formulated claim that should be allowed to go to trial. The notion that in those circumstances the claim should be struck out because of what the claimant did or did not know at the time it issued seems outlandish to me.

108. Furthermore, this does fall foul of the acquiescence argument. There is no earthly reason why if the Claim Form was so abusive, GFG allowed the proceedings to trundle along for two years and to defend it on the merits before finally raising the point.

109. Ms Lucas focussed on para.2 of the Claim Form, which she says should have given more details of the alleged contract between the claimant and GFG. But para.2 referred to GFG being the investment manager of the claimant and owing the claimant contractual duties to act in its best interests and with all reasonable skill and care. That seems to me to be amply sufficient, particularly as when it was served, the Particulars of Claim were also served.

110. In any event, the claimant only identified the claim against GFG in April 2023, but it had by that stage all the documents that it now relies on in establishing the Unwritten IMA. If it had all the documents that it then pleaded in the Particulars of Claim as supporting its case of an Unwritten IMA and the Particulars of Claim have been properly pleaded and particularised, as I have found, how can it properly be said to be an abuse to have commenced the proceedings on this basis?

111. I therefore dismiss this Nomura Ground.

The Conflict Ground

112. Finally to the Conflict Ground, GFG must satisfy me that: (1) there was a relevant conflict of interest; (2) the conflict meant that the claimant's conduct of these proceedings amounts to an abuse of process; and (3) if it does, then it is appropriate and proportionate to strike out the claim.

113. I think this Ground falls at all three hurdles. It is based on Mr Wright's position as liquidator of both the claimant and GFG. Obviously, he could not be the liquidator of both parties when they were on opposite sides of the litigation, and he resigned as liquidator of GFG on the day the claim was issued. Once he realised, only in April 2023, that the claimant had a claim against GFG, he took legal advice as to what he should do and that led to his resignation. He clearly could not turn the clock back, and the issue really thereafter was whether there were any ongoing conflicts or access to confidential information that might suggest the proceedings were an abuse. The evidence goes into great detail as to Mr Wright's time as a liquidator of GFG, what his responsibilities were when he was joint liquidator, and whether there were information barriers put into place.

114. But as it turned out, when I was questioning Ms Lucas as to what this Ground was really about, she said that it was causing tremendous problems in relation to disclosure, that there was an information imbalance between the parties because Mr Wright had had access to both sides' documents and created and saw GFG's documents post-liquidation, including in particular in its dealings with GFSC and its investigation into what happened. Various proposals have been put forward to deal with this recognised problem of disclosure, but Ms Lucas submitted that none have been satisfactory and it needs resolving quickly.

115. I understand that there may be problems with disclosure and there have been disclosure guidance hearings where these issues have been raised. But the solution is not to throw your hands up in the air and say it is all an abuse, that it has been since the start, and that the only course open to the Court is to strike the case out. That would,

frankly, be absurd. Plainly, this can only reasonably be dealt with through the disclosure process.

116. It also falls foul of the acquiescence point. Ms Lucas submitted that the claim was abusive from the day it was issued but GFG knew exactly what Mr Wright's position was and yet allowed the proceedings to continue on without saying or doing anything about the purported problem. The matter was gently raised in April 2024, but it was only said to be an abuse as part of the lead up to this application from December 2025.

117. I am not convinced that there was any relevant conflict of interest up to the time of Mr Wright's resignation, when it would be quite normal to have common liquidators of companies in the same group, particularly in a small jurisdiction like Guernsey. After his resignation, the only issue might be whether he had and misused confidential information acquired when he was liquidator of GFG. but, as I have said, this can be managed through the disclosure process.

118. Perhaps more importantly, this gets nowhere near establishing an abuse of process. If anything, as Mr Justice Miles, as he then was, reasoned in *Harrington & Charles Trading Company Limited (in liquidation) & Ors v Jatin Rajnikant Mehta & Ors* [2023] EWHC 2420 (Ch), the complaint should more properly have been dealt with within the liquidations. In any event, GFG will get all relevant documents and it cannot identify anything confidential that the claimant has relied on, whether improperly or not, in this litigation. There is therefore no basis for striking out the claim on this Conflict Ground.

119. The result of this is that I dismiss the Strike out Application but allow the claimant's Amendment Application and the matter will proceed to trial on the existing timetable.