Court of Appeal gives judgment on the use of "omnibus" claim forms in multi-party claims - kicks the can down the road.

INTRODUCTION

The Court of Appeal recently handed down judgment in *Morris & Ors v Williams [2024]* EWCA Civ 376 in which Caytons were instructed by an insured and its professional indemnity insurer to appeal a first instance decision on the use by groups of claimants of a single claim form to pursue a number of claims by disappointed investors in a failed buyer-funded hotel scheme against a firm of solicitors. The appeal involved a direct challenge to the decision of the Divisional Court in the high-profile case of *Abbott v MOD*. The Court of Appeal dismissed the appeal but reformulated the test outlined in Abbott. The decision is of wide-ranging significance.

This note reviews the judgment.

BACKGROUND

Williams was a case in which 134 Claimants brought their claims on a single Claim Form. The Claimants had, between them, sought to invest in 9 different buyer-funded development schemes being carried forward by the same developer. The projects involved hotels, aparthotels and lodges at a proposed outdoor adventure park. The only real commonality between the cohort as a whole was that they had all retained the defendant solicitors to carry out their conveyancing work. They were a disparate group of individuals and companies. The various transactions took place over an extended period. Over the course of that period, the solicitors' report on title evolved substantially. There was a total of 61 different versions of the report.

THE RULES

The Civil Procedure Rules contain two provisions which appear difficult to reconcile.

CPR7.3 provides (emphasis added) that:

> *A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings.*

CPR19.1 then provides that (emphasis added):

> *Any number of claimants or defendants may be joined as parties to a claim.*

THE ABBOTT LITIGATION

MOD v Abbott [2022] EWHC 1807 (QB) was a personal injury claim brought by some 3560 claimants who claimed to have suffered hearing loss as a result of firing guns without adequate ear protection while in military service. They brought their claims on a single claim form. Of his own initiative, Master Davison requested submissions on whether this was permissible under the rules. Having considered competing arguments, he held that it was not.

That decision ('Abbott1") was appealed. The appeal was heard by a Divisional Court consisting of Dingemans LJ and Andrew Baker J [2023] EWHC 1475 (KB) ('Abbott2'). The Divisional Court allowed the appeal.

The Divisional Court disagreed with the Master by holding that any number of Claimants or Defendants could be parties to a single claim form subject only to the requirement that they be conveniently disposed of in the same proceedings. The Court proposed a convenient disposal test that a single set of proceedings could be used where "it was highly desirable …for significant common issues of fact" for some of the claims to be tried and the findings in those claims to bind both the MOD and the claimants.

It is worth noting that, following the decision in *Abbott2*, the claimants applied for a Group Litigation Order. This was not opposed by the defendant but was successfully resisted by other claimant groups who were already pursuing the MOD using different representatives and did not want their claims to be delayed or have to change solicitors.

WILLIAMS 1: THE STRIKE OUT APPLICATION

Following the decision of Master Davison in *Abbott1*, we made an application in *Williams* to strike out the claimants' omnibus Claim Form as an abuse of process. By the time the application was heard, the Divisional Court had handed down judgment in *Abbott2*. This restricted us to arguing that there were too many differences between the various individual claims for it to be convenient for them to be tried together.

At a hearing in July 2023 HH Judge Jarman KC (sitting as a High Court Judge) dismissed the application to strike out the Claimants' claims. He was persuaded that there was sufficient commonality between the claims to meet the substantial progress test in Abbott 2.

Lewison LJ gave permission to appeal on the basis that the appeal was a direct challenge on the correctness of the decision in Abbott2 which merited consideration by the full Court of Appeal. He declined to grant permission to appeal on the Judge's findings that the issues in the claims were broadly similar.

ANGEL

Between HH Judge Jarman's decision in Williams and the hearing of the appeal HHJ Worster handed down judgment in *Angel v Black Horse Rock Limited* (unreported) in the Birmingham County Court ("Angel"). In that case approximately 5000 claimants issued 8 claim forms (one for each defendant bank) . They had all purchased cars from car dealers and entered into credit agreements to fund those purchases. Most of the agreements were regulated under the Consumer Credit Act 1974. The claims were that there was an unfair relationship under section 140A of that act because of failure to disclose the commission arrangements between the dealer and the relevant finance company.

The Judge decided that it was not convenient for multiple claimants to be joined in a single set of proceedings. All the individual claims demanded a separate evaluation of whether the separate relationship between the claimant and defendant was unfair within the meaning of section 140A of the Act. We considered that this decision was correct and that the facts in Williams were similar. The Solicitors' argument was that to determine the duty of care required individual investigation as did any claim of factual causation.

The fact that different Judges could reach diametrically opposed conclusions in similar circumstances illustrated the difficulty that the Courts were facing interpreting the tests in Abbott2,

WILLIAMS 2: THE APPEAL

The appeal in Williams was heard on 19 and 20 March 2024 and the decision of the Court of Appeal (the "Decision") was handed down on 18 April 2024 [click here for a copy of the Judgment].

Sir Geoffrey Vos MR (with whom Lewison LJ and Falk LJ agreed) gave the sole reasoned judgment.

The principal points of the Judgment are:

- The Court overruled the tests for the permissible use of a single claim form given in *Abbott 2* variously described as "the real progress", "the real significance" and the test that "requires the determination of common issues in a claim by multiple claimants which would bind all of the parties". Abbott 2 suffered from setting out the test in a number of different ways in the same judgment. Given the Solicitors' appeal was whether the test in Abbott 2 was wrong, they were successful on this limited point.

- The Court rejected the Respondents' cross appeal that the test should be whether judgment on common issues could be binding on all of the parties. It did not deal with the Claimants' European Human Rights arguments in significant detail as it had decided that "19.1 and 17.3 allow a broad range of multiple claimants claims to be brought in a single claim form" **(paragraph 58)**.

- However, it rejected the Solicitors' argument that the interpretation of rule 19.1 and 7.3 CPR limited the use of a claim form effectively to one claimant (or co-claimants where several parties have the same interest, such as the co-owners of a property).

- Vos LJ reframed the test, first indicating that the Court did not need to define the word "convenience" which is found in rule 7.3 as it is a common everyday word. He accepted that it included the old test for convenience under RSC Order 15 rule 4 (which would include claims arising out of the same transaction or series of transactions). However the Court in its Judgment made clear that "convenience" just *includes* the type of cases referred to in R.S.C Order 15 rule 4. [**see paragraph 48** Judgment]. However, Vos LJ gave further clarification to the test at paragraph 63 of the Judgment where the Court held as follows:

- *"[CPR rules]19.1 and 7.3 mean what they say. Any number of claimants or defendants may be joined as parties to proceedings, and claimants may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings.* ***The court will determine what is convenient according to the facts of every case****. There is no test beyond the words of rule 7.3"*

- The Court did not accept that it was unfair or inconvenient for the Claimants' claims to be grouped together and cited HHJ Jarman KC's finding of common issues in the hearing below. **(see paragraph 53**)

- The Court declined to set out a test for what convenient is and has left this decision for Masters and for Judges as part of their case management function (**paragraph 56** of the Judgment).

- Whilst not addressing the issue of Court Fees in the Judgment the Master of the Rolls had made it clear during the course of the Appeal that he considered that the issue of fees payable was irrelevant to whether a single claim form could be used or not. However, we note that this was a significant factor in the Claimants proceeding by use of a single claim form as this limited the Court fee to £10,000 when issued individually the Court fees would have been in excess of £500,000

DISCUSSION

It was unsurprising that the Court of Appeal rejected the Abbott2 test. The difficulties with were apparent from the diametrically opposed conclusions to which different Judges came in seeking to apply it. Interventions during the course of the appeal hearing made it apparent that at least a majority of the Court of Appeal found the test unsatisfactory.

We had anticipated that the court would formulate a new test, but it instead left it to the discretion of the Judge or Master dealing with case management to determine whether or not it is convenient for claims to be tried together. This leaves significant uncertainty and potential for more inconsistent decisions. There will be little prospect of successfully appealing a case management decision which involves an exercise of a discretion.

A POSTSCRIPT

This needs now to be read in light of the Court of Appeal's judgment, but it is interesting to note the observations made by HHJ Hodge KC (sitting as High Court Judge) in *Niprose Investments Limited v Vincents Solicitors Limited* (2024) EWHC 801. This was handed down on 17 April 2024 , a day before the Court of Appeal's judgment in *Williams*. It was a case about a buyer-funded residential development where 35 claimants had used one claim form and the defendant solicitors were applying to strike the claim out on the basis that the claim was inadequately particularised. The Judge commented as follows (emphasis added):

- *"CPR 7.3 permits a claimant to use a single claim form to start all claims which can be "conveniently disposed of in the same proceedings". In terms, neither the rule, nor its related practice direction, provide any further test beyond that of "convenience". The commentary at paragraph 7.3.5 of the current (2024) edition of Volume 1 of Civil Procedure points out that even if it may be inconvenient to attempt to try several claims together, there is no need to impugn the validity of the initial joinder of the claims in the one claim form; instead, reliance may be placed on the court's powers to order separate trials to mitigate any inconvenience.* ***However, it is my experience that the court is increasingly being confronted with extreme attempts to bring claims on behalf of multiple claimants, or to sue multiple defendants, in one action.*** *In such cases, in my judgment the court should not hesitate to use its general powers of case management (under CPR 3.1) to direct that specific parts of the proceedings should be dealt with as separate proceedings. Whilst it may be convenient to join in one claim all the purchasers of units in a single development who wish to sue a single firm of solicitors or licensed conveyancers, who used the same,*

standard-form documentation in connection with their respective purchases, ***in my judgment it is stretching the limits of the 'convenient disposal' test to join claims against different conveyancers - some solicitors and other licensed conveyancers - who used very different forms of documentation in a single set of proceedings. I am also concerned that it may constitute an abuse of the rules governing the payment of court fees on starting court proceedings. In the instant case, a single court fee of £10,000 has been paid on the issue of a single Part 7 claim form initiating claims in excess of £6 million being brought by no less than 94 claimants who are suing ten entirely separate defendants****."*

Further Information

Given the generality of the note it should not be treated as specific advice in relation to a matter as other considerations may apply.

Therefore, no liability is accepted for reliance on this note. If specific advice is required, please contact one of the Partners at Caytons who will be happy to help.

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