Neutral Citation Number: [2019] EWHC 3566 (QB)

Case No: HQ17X00691

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2019

Before :

THE HON. MR JUSTICE FREEDMAN

- -

Between :

TERENCE PHILIP RAMSDEN	**Claimant**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS	**Defendant**

- -
- -

Conrad McDonnell and Steven McGarry (instructed by **Muldoon Britton**) for the **Claimant**
Matthew Parfitt (instructed by **HMRC Solicitors' Office**) for the **Defendant**

Hearing dates: 15th – 19th July 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A 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.

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THE HON. MR JUSTICE FREEDMAN

MR JUSTICE FREEDMAN :

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II INTRODUCTION

1. Despite numerous points of controversy, the parties are agreed that this is an unusual claim. One of many unusual features is how old it is. It goes back to the removal of documents by the Defendants in 1988 and to the Claimant's bankruptcy on the petition of the Defendants in 1992 and to his discharge from bankruptcy on 12 November 1996. The Claimant says that but for wrongs of the Claimant including the wrongful interference with his documents which were not returned to him, he would have been able to have demonstrated that he had no liability to the Defendant. He thereby would have avoided or would have had the chance to avoid liabilities of many millions of pounds: he would have or would have had the chance to recover payments made on account and to have avoided alleged liabilities and bankruptcy and its consequences. He makes claims under (a) the Data Protection Act, (b) as reversioner for damages to

reversionary interests, and (c) for conversion and/or wrongful interference with goods at common law and/or under the Tort (Interference with Goods) Act 1997 ("the Claims"). By a preliminary issue on liability in principle only, as ordered by Master Thornett on 11 July 2018, this Court is to try "is HMRC liable to the Claimant in principle (aside from any issues of quantum) in respect of [the Claims]?".

2. The context of this order was that the Defendants wished to have an order to avoid the need to adduce very expensive expert evidence at a proposed cost to the Claimant of £310,000 from a forensic accountant, a tax barrister and an expert in Gen-saki trading. The object of the trial was to decide what could be resolved without reference to expert evidence: hence the reference to liability in principle. The parties have agreed issues, and aside from issues 17 and 27(b) to which I shall refer, the parties are in agreement about the issues to be determined by the Court. This judgment will revert to the issues after discussing the factual background.

III FACTUAL BACKGROUND

(a) The 1980's

3. The Claimant began his career in the financial services industry at the age of 16. He began trading in the Japanese markets in the mid 1970's, initially as an employee of others.

4. In November 1979, he began trading as a sole trader. From 1982 he began using a Japanese 'gen-saki' financing system which allowed him to increase his leverage and trade on a larger scale notwithstanding these book losses. He began to be very profitable from approximately the start of 1985: as analysed by Dragoslav Lazarevic, a forensic accountant who gave evidence for the Serious Fraud Office in criminal proceedings: "his disclosed trading profits started to increase substantially from accounting periods starting on 27 January 1985".

5. In 1984 the Claimant purchased an Edinburgh-based company called Glen International Plc ("Glen International") which he controlled, and it traded in a similar manner to him. Glen International and the Claimant traded successfully in the Japanese market, and consequently Glen International's turnover rose from £18,000 to £3.5bn over a three-year period to 1987. The Claimant's trading was ostensibly profitable.

6. In his own words in paragraph 10 of his witness statement, the Claimant was *"something of a celebrity figure"* in the 1980s. At the height of the 1980s, the Claimant was spending more than £20m per year with bookmakers. Over this period the Claimant developed a flamboyant lifestyle, owning many racehorses and several racing stables as well as greyhounds. Mr Lazarevic on behalf of the SFO reported a total spent over a three-year period of £52,808,000 (para. 6.03, 6.10). In the same period, Mr Lazarevic reported that the Claimant had an income of nearly £100 million. His "general lifestyle" attracted the attention of the tax authorities.

7. The Defendants' Special Compliance Office ("SCO") began a tax investigation. SCO was the Defendants' department investigating high value cases (in excess of £50,000 at that time) of suspected tax irregularity. From 1985, an Inspector of Taxes within that department, Michael Allcock proceeded to investigate the Claimant's taxation affairs.

8. In 1987 the stock market crashed. There was a significant decline of the Japanese stock market in the second half of 1987. The Claimant's business was severely affected. By 1988 Glen International had "*collapsed*". The Serious Fraud Office launched an investigation into the Claimant at around this time.

9. Following the significant decline of the Japanese stock market in the second half of 1987 including "*Black Monday*" and the resultant collapse of Glen International, the Claimant suffered very significant losses in his trading period ending 26 January 1988.

10. The Defendants raised a number of assessments to income tax on dates between 1986 and 1988, covering the tax years from 1981/82 to 1986/87. Those acting on behalf of the Claimant at the time appealed and applied to postpone the payment of any tax due in relation to the majority of those assessments: postponement was a standard consequence of an appeal and resulted in no debt becoming immediately due. These were estimated assessments based on round sum estimates. There were unpostponed sums in relation to an assessment for the 1986/1987 year (i.e. sums which were payable even though subject to appeal).

11. In the spring of 1988, the predecessor body to the Defendants (the term "Defendants" is used to refer to the Defendants and their predecessors) took into their possession many of the Claimant's documents ("the 1988 Documents"). The exact scope of what was taken is in dispute, and the Defendants have required the Claimant to prove what was taken: see Defence paras.8-9.

12. One assessment relating to the 1981/1982 financial year (which was raised on 5 April 1988) was not appealed or postponed. The Claimant says that he was not served with the 1981/1982 assessment, which is why it was not challenged. He accepts that he received a copy of this assessment in 1999. The General Commissioners considered that he was aware of it in practical terms in 1992 when it formed part of the debt in a bankruptcy petition presented by the Defendants.

13. The Claimant or his advisers did not, however, immediately appeal the 1981/82 assessment, which (on its face) was issued on the last possible day of the 6-year statutory time limit for it, i.e. on 5 April 1988. The Claimant says that he did not appeal because he did not know about it. He states that it was not served on him at his current address, and the copy sent to his accountants was also wrongly addressed.

14. As regards the 1986/87 assessment, at the time it was issued (in November 1986), the Claimant appealed it but only requested postponement of part of the tax assessed, in effect therefore accepting at the time that the remaining part was due or likely to be due. The appeal against the assessment was commenced at a time prior to the large number of documents being handed over to the Defendants which subsequently were lost. At that time, the Claimant was not yet aware that he was going to make very substantial losses in the following year. The Claimant says that these losses would eliminate any liability to tax at all for 1986/87, on the basis of carry back loss relief.

15. Besides paying all the tax shown in his original tax returns, the Claimant made on account payments towards the assessment for 1986/87. The total payments on account were £2,574,681. In addition, the Defendants took security over Scottish property owned by the Claimant in respect of aggregate tax debt said to be £19,500,000 for the

three years 1984/85, 1985/86 and 1986/87: that was the full assessed amount and was subject to the open appeals.

16. The primary reason for the assessments was that the Defendants suspected that he might in addition be personally liable for tax on the trading activities of certain offshore entities including two Liechtenstein Foundations and a Swiss company referred to as Anulda, Inshallah and Hereford. Having reached a suspicion of personal liability for two of the years in question (the period ending 26 January 1985 in particular where the profits of the overseas entities was approaching £20 million), the Defendants then raised a round sum estimated assessment and raised similar estimated assessments for several earlier tax years.

17. The Defendants ceased the investigation into the Claimant's taxation affairs in March 1991. At that time, the Defendants internally (and possibly without communicating this to the Claimant) accepted that they would not pursue any further the assessments which were under appeal and where tax was postponed, but would treat them as "informally discharged" by the Claimant's on account payments of £2,574,681. They did not, however, apply this treatment to the assessment for the tax year 1981/82 which had not been appealed, and they did not apply this treatment to the "non postponed" part of the 1986/87 assessment. Instead, the 1981/82 assessment and 1986/87 assessment were later used to support the statutory demand and bankruptcy petition.

18. The above-mentioned Mr Allcock of the SCO of the Defendants was later revealed as a corrupt officer of the Defendants and jailed for seeking and accepting bribes to close or compromise tax investigations into high net worth individuals. He pursued these activities over the period 1987 to 1992. His modus operandi broadly consisted of ensuring the department applied a hard-line treatment to taxpayers during the SCO investigation, while himself attending the taxpayer's premises and becoming personally acquainted with the taxpayer, and then at the conclusion of the investigation offering to authorise a reduced settlement in exchange for a monetary bribe or other inducements. This was the subject of a National Audit Office report entitled "Special Compliance Office: Prevention of Corruption".

(b) The 1990s

19. The Claimant left the United Kingdom and travelled from late 1989 onwards, but remained in touch with various government agencies through his advisers, and returned to the UK as and when requested.

20. The Claimant was arrested in California on 9th September 1991, at the behest of the Serious Fraud Office and thereafter remanded to the Federal Metropolitan Detention Centre in Los Angeles ("FMDC").

21. The Defendants raised a statutory demand on 14th October 1991, for a taxation debt of £21,737,545.01 (based on the 1981/82 estimated assessment and the non-postponed part of the 1986/87 assessment). The demand was therefore raised whilst the Claimant was held on remand in the FMDC in the United States.

22. The Claimant says that he was not served with either the statutory demand or the petition for bankruptcy. The Californian private investigator, Robert Carey, instructed by the Defendants to serve the documents while the Claimant was in custody made a

witness statement in 2015. He stated that although he attempted to visit the Claimant in the FMDC to effect personal service, on the first occasion (i.e. the statutory demand), the guards would not permit personal service, and that based on that experience he did not attempt to serve the bankruptcy petition on the second occasion. He states that notwithstanding that, he was required by the Defendants to sign affidavits of service they had drafted for the purpose of the bankruptcy proceedings in the UK.

23. On 10 February 1992, the Claimant agreed to be extradited to the UK. The Claimant landed at Heathrow on 14 February 1992 and appeared in Court in the UK on the next day. He now claims that he was not aware of the bankruptcy proceedings until after the bankruptcy order was made, although this is contradicted by statements which he made in a bail application between his return to the UK and the hearing of the petition on 5 March 1992. He said in his bail application (contrary to what he now says in his witness statement in these proceedings at paragraphs 69 and 71):

> *"I have been served with a bankruptcy petition. The hearing is on 5 March 1992 and I am at present advised that the petition should not be opposed and I am likely to be adjudicated bankrupt on that day".*

24. The Claimant instructed solicitors who appeared at the hearing of the petition. Other contemporaneous documents which the Claimant has now disclosed also suggest that service of the bankruptcy proceedings had indeed been effected on him while he was in prison in the USA. Following the making of the bankruptcy order, the Claimant (who was by then back in the UK) attended upon the Official Receiver's office as required on the 7 April 1992. On that occasion, there was prepared a statement to the Insolvency Service on 7 April 1992 signed by the Claimant in which he said that *"that HMRC served me with a statutory demand whilst I was imprisoned in America. They gain (sic) access by using a false identity".*

25. The Claimant instructed his advisers that he was served with the proceedings while in prison. The Claimant's expert in the SFO proceedings, Mr Arthur Harverd of Hacker Young, produced a report dated 30 June 1993 which also referred to the service of the statutory demand on the Claimant while in prison in the USA. On 21 December 1993, the Claimant's solicitors Burton Copeland informed David Rubin, the intended supervisor for an IVA the Claimant was then working on, that the petition had been served on the Claimant in prison. That letter also referred back to the meeting with the Official Receiver of 7 April 1992 referred to in the preceding paragraph above which the Claimant attended together with his solicitor Mr Martin Richards, his former solicitor at Slaters, and by this time employed by Burton Copeland to assist with the preparation of the Claimant's defence.

26. There is a note of a meeting of 7 September 1994 at which were present among others the Claimant, Mr Burton of Burton Copeland and a representative of the trustee. This detailed note states the following, namely *"TR [the Claimant] explained that he was in fact in prison at the time the statutory demand was served on him. He was not therefore in a position to do anything about it…"* On 17 July 1995, the Claimant's agent Peter Gregory wrote to the Claimant's solicitors Burton Copeland stating that *"Terry has told me that you have a copy somewhere of the statutory demand that was served on him in prison".* It seems that it was only from 2000 that the Claimant contested service of the insolvency proceedings.

27. The Claimant was made bankrupt on 5 March 1992, based on the above- mentioned statutory demand. He says, despite the above statements in his bail application and despite attendance by his solicitor according to the Court order that this occurred without his knowledge of the statutory demand, petition or the hearing.

28. The making of the bankruptcy order is central to the Claimant's claim in these proceedings: the Claimant asserts that if he had had the 1988 Documents, he would not have been made bankrupt or he would have been able to challenge the bankruptcy order. The Claimant claims that he had no tax liabilities, because he made no profits. This assertion would have to be proven despite his income of about £100m over a recent period, the £52m he spent at the bookmakers, and the other elements of his lifestyle that attracted the attention of the Defendants, as well as his involvement in offshore companies.

29. After the bankruptcy order on 5 March 1992, the Claimant was the subject of proceedings brought by the SFO. These ended on 20 November 1993 with a guilty plea to four counts of non-dishonest recklessness under the Prevention of Fraud (Investment) Act 1971. The Claimant was given a two-year suspended sentence.

30. On 18 February 1997 Mr Allcock of the Defendants was convicted of corruption, having accepted bribes from taxpayers whom he was investigating. He described his offence as agreeing lower settlements than was warranted by the evidence which he had uncovered in exchange for bribes. On one occasion he omitted to report the agreement to the Defendants so that the taxpayer was not called upon to pay the taxes. He was sentenced to five years' imprisonment. Mr Allcock did not seek a bribe in connection with the Claimant's case.

31. On 6 May 1998 the Claimant was sentenced to 21 months' imprisonment for bankruptcy offences. He had failed to disclose assets to his trustee in bankruptcy comprising assets beneficially owned by him.

32. In the late 1990's, the Claimant engaged Peter Gregory an accountant at Fox Associates to appeal against the 1981/1982 assessment and to seek a postponement of the 1986/87 tax assessment which had already been appealed by him back in 1986. At first there was a point taken about the lack of standing of the Claimant (as opposed to his trustee in bankruptcy) to make such an application, but in July 2001, the trustee accepted that the Claimant was able to pursue the appeals and provided an assignment. In about June 2002, the application was made seeking an appeal in relation to the 1981/82 assessment (including that it had not been served on the Claimant) as well as the appeal itself, and an application seeking the postponement of the 1986/87 assessment. There was a letter written by the trustee in bankruptcy to the Defendants on 11 June 2002, referring to the late appeal in relation to the 1981/82 assessment as follows:

> "The information made available to the Trustee makes it more than clear that there is every justification for making an application for complete postponement of all tax for 1981/82.…
>
> I am advised that the said information makes it clear that the Claimant did not receive income that would be assessed for 1981/82 and there are the strongest possible grounds for ensuring

> that such an application for postponement of tax is justifiably being made.
>
> The Agent acting on behalf of the Claimant at the time the assessment was raised for 1986/87, lodged on appeal, which was accepted by the Inland Revenue and he then went on to lodge an application for partial postponement of tax. Accounting information now provided demonstrates that the Claimant did not receive any taxable income for the year of assessment 1986/87, and consequently an application is to be made to the General Commissioners for a further request for postponement of tax in accordance with that legislation. As stated, I have been provided with sufficient evidence to consider that such an application will be valid."

(c) Hearing before the General Commissioners in late 2004

33. After some difficulties establishing his locus standi, the Claimant eventually persuaded his trustee in bankruptcy to allow the Claimant to pursue a challenge to the tax assessments raised against him in the 1980s. The hearing of the challenge to the assessments took place on 10 November 2004. The Claimant relied on the fact that the Defendants' documents had gone astray and that they were required for the applications. He also relied on the conviction of Mr Allcock. By a judgment dated 7 December 2004, the applications of the Claimant were refused by the Commissioners.

34. The General Commissioners rejected the Claimant's application to bring a late appeal against the 1981/1982 assessment (the one he claimed not to have received). It was found that it was "inconceivable that Mr Ramsden was unaware of this particular debt and its constituency, which he claimed led to his bankruptcy." There was no evidence why the trustee failed to lodge a late appeal between 1992 and 1995 or why it took another four years until Fox Associates lodged an application in August 1999. It stated that the delays were entirely unreasonable and that there were no other circumstances of sufficient weight or merit advanced to justify the application for a late appeal. In the course of the litigation before the General Commissioners, the Defendants informed the Claimant that the documents taken in 1988 had been mislaid. The Claimant exhibited to his witness statement the Statement of Grounds and Facts prepared in connection with an abandoned application for judicial review of the General Commissioners' decision, apparently due to want of funds.

35. Although it appears that all of the outstanding appeals in relation to the Claimant's tax assessments were originally meant to be before the General Commissioners and, presumably determined at the same time, it is said by the Claimant that these appeals were not in fact dealt with and could be proceeded with even now: see Claimant's tax skeleton paragraph 26.

36. In January 2006 Sue Hicks, an Inspector of Taxes, produced a 'settlement report' into the Claimant's affairs. A settlement report is an internal report prepared when a case is

closed. Three versions of Ms Hicks' report exist, with minor changes, as the report was approved at different levels within the Defendants. The reports stated that all appeals except for 1981/82 "remains open" but that "all the postponed tax has been informally discharged since 1991…"

37. The report also included confirmation of a denial of loss relief contained in an "SCI Memo 02/05" in the order of £60 million. The writer recommends that "*No communication should be made with Albert Fox or Terry Ramsden to this effect…*" This report has been disclosed in recent annulment proceedings referred to below. The Claimant says that this was the first time that he became aware of any active consideration by the Defendants and disallowance of his loss-relief claim. The SCI Memo 02/05 is apparently missing. The original report of Sue Hicks concluded at 8.1.1 that:

> *"In conclusion there is no doubt if Ramsden's claims had not been resisted then there was a very strong likelihood that the £2,574,681.00 paid on account in the previous SCO investigation may have had to have been repaid to Ramsden. How this is claimed as yield under our current SCOLs system I am not certain. Please advise."*

(d) Meeting of the Claimant and Mr Allcock in 2014/2015

38. At some point in 2014 or 2015 the Claimant tracked down Mr Allcock and they had a meeting. Their recollections of what was said at this meeting differ. The Claimant thinks Mr Allcock told him that the Claimant's documents (those seized in 1988) had been sent to a landfill site in October 1996. Mr Allcock says he told the Claimant that it was the unused documents of the prosecution in relation to Mr Allcock's trial that went to the landfill site and not in 1996 but after the conclusion of his trial, and the Claimant has misunderstood him. Mr Allcock recognised that the Claimant could have understood that he was referring to the entirety of the documents held by the Defendants. Further, he said in his evidence that he was getting confused about what was sent to landfill. As for the Claimant, he said in his oral evidence that there could have been a misunderstanding in that conversation as to the documents about which Mr Allcock was speaking.

(e) Requests under the Data Protection Acts in late 2016/early 2017

39. In letters dated 23 December 2016 and 7 February 2017 the Claimant made requests of the Defendants under the Data Protection legislation. The Defendants responded by letter on 7 March 2017 informing the Claimant that it did not hold any personal data to which the requests related.

(f) The instant claim brought on 27 February 2017

40. Meanwhile, on 27 February 2017 the Claimant issued this claim in the Queen's Bench Division claiming breaches of the Data Protection Acts, damage to reversionary interest and conversion and/or wrongful interference with documents under common law and/or under the Torts (Interference with Goods) Act 1977. The Claimant sought relief including delivery up and/or damages in respect of the loss of the 1988 Documents. The claim in respect of reversionary interest is in case the Claimant has or had goods

claims in conversion and/or wrongful interference, but lacked the immediate title to sue due to the same being owned by the trustee in bankruptcy in which event the cause of action may be pursued through the reversionary interest of the Claimant pending his release from bankruptcy.

(g) Application for annulment heard in May 2018

41. In addition to the instant claim in respect of his documents, the Claimant also issued an application to annul the bankruptcy order. The main basis of that application was that the Claimant claimed he had not been served with the statutory demand or bankruptcy petition. The process server Robert Carey, who swore affidavits of service at the time of the bankruptcy order, had partially recanted by 2000 through a statement dated 6 March 2010. No proceedings were issued at the time, though, and by 2017 the process server was a very elderly man. To avoid the evidential difficulties involved in establishing what happened more than 25 years earlier, the annulment application was dealt with on a preliminary basis on the assumption that there had been no service.

42. On 18 May 2018, on this assumption of non-service, there was a trial of a preliminary issue in an application of the Claimant to annul his bankruptcy order in which the Defendants appeared as an interested party. Mr McGarry (led by Mr James Ramsden QC) appeared for the Claimant and Mr Parfitt appeared for the Defendants. The issue was whether there was a reasonable prospect of the Claimant being able (a) to challenge the petition debt and the value of the security held by the Defendants, and (b) to obtain an annulment in the event that other outstanding bankruptcy debts and expenses remain unsatisfied. Even on that assumption of non-service, the annulment application was dismissed by Deputy ICC Judge Agnello QC on 18 May 2018.

43. In the course of a detailed judgment, Ms Agnello QC said that in order to appeal the 1986/87 assessment, this must have been done with professional advisers retained by the Claimant. She also said that in 2002 it appeared that the Claimant had provided the evidence to the trustee which enabled the trustee to make the statements which he made. "In my judgment, when the contents of this letter (11 June 2002) is considered, it is simply not possible to conclude, as Mr Ramsden [QC] seeks to persuade me, that it was the loss of the documents which created a miscarriage of justice. The letter does not support a submission that the lack of these documents meant that the Debtor was unable to deal with his appeals either in 2002 or earlier." (paragraph 19 of the judgment of Ms Agnello QC).

44. Ms Agnello QC found that unless there was some miscarriage of justice, the Insolvency Court should not go behind the determinations of the Commissioners. There was nothing in this case to indicate a miscarriage of justice. Ms Agnello QC also referred to the 24 years since the bankruptcy during which there had been many, many years where there had been no activity by the Claimant. One of the factors for not annulling the bankruptcy was this unexplained delay. In all the circumstances, there was no reasonable prospect of challenging the petition debt. She also found that there was no argument to the effect that there were vast sums secured by forestland in Scotland, because the evidence did not provide any basis for believing that the same was worth more than a few hundred thousand pounds. The Claimant alleged that it was worth many millions of pounds including an estimate that it was £19,500,000. The result was that the Defendants succeeded in resisting an annulment due to the answer to the

preliminary issue that there was no reasonable prospect of establishing that which was required under the preliminary issue.

(h) Hearings before Master Thornett in 2017/2018

45. There was an application of the Defendants before Master Thornett in part in 2017 and adjourned and completed in 2018. It was for summary judgment and/or a strike out on the basis of limitation. It is important to note that it was not a trial of a preliminary issue or a trial of the case. To the extent that there was summary judgment striking out parts of the claim on limitation, that had permanent effect. To the extent that there was no strike out or summary judgment, those matters remained for consideration at the trial. It is therefore available to this Court to find that there are other matters which should be found statute barred even if at the hearing before Master Thornett, he was not able on the incomplete evidence to do so.

46. At the time of those hearings, the case of the Defendants was still being thought through. The application was dated 12 May 2017. The first hearing was on 12 October 2017 when the Defendants stated that the fact that they did not have the 1988 Documents did not mean that they would never have them. However, at the adjourned hearing on 13 April 2018, the Defendants stated that there was no foreseeable prospect of their having the 1988 Documents and thus this was in effect a damages claim and not a delivery up claim. The suggestion was that this was the first unequivocal statement to that effect and the Master referred in his judgment on a case of *Schwarzschild v Harrods Ltd* [2008] EWHC 521 (QB) that "Where the interference takes the form of a wrongful detention, time runs from the date when the defendant unequivocally refuses to deliver up the goods in the face of a lawful demand. Only in exceptional cases will mere inaction amount to an unequivocal refusal."

47. Master Thornett said that on the case as originally pleaded, the first unequivocal demands for delivery of documents had not been until December 2016 and February 2017. Nevertheless, the position as submitted by the Defendants to the Court at the strike out hearing was that any losses would have been incurred by not later than 2004 and therefore the case should still be struck out.

48. The Master then proceeded to dismiss the strike out application in respect of the delivery up claim and/or the claim for damages for conversion and/or wrongful interference with goods and/or damages to reversionary interests. This was on the basis that there was an arguable case with a realistic prospect of success that the causes of action accrued only following the demands in 2016/2017 and the stance of the Defendants at the second hearing that there was no foreseeable prospect of recovery of the documents. He also rejected an application to strike out the Data Protection Act claims holding that they would accrue only at the time of the Date Protection requests. He also refused to strike out the claim for damages on the basis evidently of a loss of chance claim which was having its first light of day at that hearing and was subsequently pleaded. That was to the effect that the Claimant suffered a loss of chance if he had had the 1988 Documents of being able to avoid bankruptcy and the effect of the assessments of the Defendants on the basis that he lost the chance of being able to show that his losses could be offset against the profits which he was found to have made. He therefore lost the chance to have the assessments set aside and avoid prospectively or retrospectively bankruptcy.

49. Master Thornett did strike out a part of the claim comprising claims based "purely on the concept of continuously negligent storage, handling, retention or interference with the documents (as goods)" which were statute barred. Such acts or omissions of that kind were transient." Those acts would be statute barred as regards acts or omissions more than 6 years prior to the proceedings. Paragraph 2 of the Order made by Master Thornett struck out the claims in negligence and in trespass at common law and under the Torts (Interference with Goods) Act 1977.

50. There will follow below the preliminary issue as set out in the order of Master Thornett followed by the issues as agreed by the parties.

51. Following that application, the parties were ordered to prepare amended pleadings. At a CMC on 11 July 2018 the parties were ordered to file revised amended pleadings, which has resulted in the substituted Particulars of Claim and Defence. The order of 11 July 2018 gave directions for the trial of a preliminary issue but left open the question of expert evidence. At a further hearing on 26 March 2019, Master Thornett refused the Claimant's application for expert evidence.

52. The Claimant made an application for specific disclosure on 13 December 2018 which resulted in the Defendants producing the second witness statement of Mr Murtha following the order of Master Thornett dated 25 April 2019, which mainly serves as an explanation of what the Sue Hicks report represents.

IV WHAT HAPPENED TO THE CLAIMANT'S DOCUMENTS?

53. The 1988 Documents were removed into the Defendants' custody. In March 1991, as noted above, the Defendants decided not to pursue any further assessments against the Claimant but would treat them as informally discharged. From September 1992, the attention of the Defendants went on to a huge internal investigation into the bribery allegations against Mr Allcock. Some files went to the police as part of the bribery investigation, but not those of the Claimant. It is suggested that the remaining files stayed with the Defendants until at least the conclusion of the investigation into Mr Allcock (he was convicted in February 1997). The Claimant has no knowledge of the date of destruction, and nor do the Defendants know the same.

54. There is a question as to what part of the accounting evidence was lost. The Claimant's case is that the inability to challenge the tax assessments or bankruptcy was caused by an inability to present the source trading documents either to his own advisers or to the Revenue. On 7 April 1992 the Claimant told the Insolvency Service that all of his relevant documents had been seized by the Department of Trade and Industry and the Serious Fraud Office; he claimed they were in a form no longer recognisable to him, and that he did not to have access to them, save for the prosecution material which he was going through with his lawyers. Whilst the accounts were there, the Claimant's case is that the underlying records were not and therefore there was no basis to support the accounts or to quantify or support any new claim, in particular a terminal loss relief carry back claim in respect of 1988 not based on the accounts but on the day to day trading during the final 12 months. Although he did add that the Defendants had also taken documents, the Claimant has not explained what steps he has taken to recover "*all of his relevant documents*" from these other sources.

55. The Defendants' case is that there are available documents which indicate that the Claimant had more information than he says. Reliance is placed on the following matters, namely

i) The Claimant's tax position was one of the issues considered by expert forensic accountants (instructed by each side) in the SFO prosecution in 1993-4. It appears that these accountants were not hampered by the Defendants' seizure of documents. Indeed, they indicate that there are extensive further sources of documents including the Claimant's accountants Berke Fine, who prepared his trading accounts, and the SFO itself.

ii) The Claimant's expert, Mr Harverd, was in possession of tax documents relating to the Claimant's affairs. The Claimant could have obtained documents from any of these sources as well as from the Defendants. There is no evidence that Mr Harverd was hampered by a lack of documentation: in the SFO proceedings he prepared an interim statement dated 30 June 1993. There is no evidence that the Claimant sought to obtain the documents taken by the Defendants in order to assist with the defence of the SFO proceedings. Mr Harverd made a statement in 1999 (after he had retired) which refers to the need to consult with leading tax counsel to determine the Claimant's tax liabilities. There was no mention in this statement that the Claimant would need the documents taken in 1988. Mr Harverd was able to take account of the loss relief available on his estimate from the period to 26 January 1988 and arrived at a preliminary tax position which was c.£36 million lower than that advanced by the prosecution based on a simple calculation of tax relief at a 60% tax rate for losses of £60 million.

iii) The SFO also relied on a statement prepared by Dragoslav Lazarevic obtained by the Claimant from the Insolvency Service who confirmed that the Claimant had not taken into account the potentially available loss relief in the order of £56 million. He also evidenced that in the mid-1980s, certain investments were made with a view to reduce the Claimant's tax liability (para. 7.17), such as interests in "Panther Oil and Gas Limited Partnership" and "purchases of forestry" (in fact the Claimant also incurred expenditure on reforestation in Scotland, which would similarly have qualified for certain tax reliefs at that time). In particular, Mr Lazarevic was able to conduct a detailed analysis of nine individual trades in section 11 of his report. In relation to these trades, he seems to have had all the details which the Claimant claims were only ascertainable from the 1988 Documents. He had access to the Claimant's "accounting records", "supporting documentation" (para 11.02), "counterparty ledgers" (paras 11.14, 11.18 and passim), the Claimant's "personal cash book" (paras 11.19 and 11.76), bank statements (e.g. 11.41), faxes sent to the Claimant from counterparties (e.g. para 11.81), personal nominal ledger (6.02) and trade nominal ledger (4.01). The Claimant repeatedly stressed in cross-examination that Mr Lazarevic was only looking at the three years 1985-1988. This ignores the confirmation of Mr Band that T C Coombs held the necessary documents for the period to the end of 1984.

iv) There were other sources of documents including the Claimant's accountants Berke Fine, who prepared his trading accounts, and the SFO itself. The SFO's expert, Mr Lazarevic, conducted a detailed examination of the Claimant's trading income and tax affairs, and the Claimant's expert subjected that to a detailed critique.

v) Even after this seizure, in March 1994 the Claimant's solicitors, Burton Copeland, were in possession of "*substantially greater*" than one million pages of the Claimant's

documents. These documents are likely to have been relevant to the Claimant's business affairs. Any documents taken by the Defendants must have left a large body of papers in the Claimant's own control, which could have been used to establish the Claimant's tax position. This appears to be a huge amount of material. They were "*either stored at our storage facility or at a facility made available to Mr Ramsden for storage of his own documents*": see letter of Burton Copeland of 19 May 1994. The Claimant made a payment of £1,600 in relation to the storage of these documents at this time.

vi) At a meeting with his trustee in bankruptcy on 7 December 1994, the Claimant stated that the trading records of Glen International are "*currently held in a vault in Los Angeles";* he referred to the possibility of his numerous professional advisers having retained documents, and added that *"most of his other records had been seized by the SFO.*"

vii) There was a letter written by the trustee in bankruptcy to the Defendants on 11 June 2002, referring to the late appeal in relation to the 1981/82 assessment as set out above. The effect of that letter was to show to Deputy Judge Agnello QC that the Claimant was in a position to make the necessary appeals in 2002 or earlier.

viii) In 2002, the Claimant's tax adviser Mr Fox wrote to a taxation consultant, Mr Surfleet, that the Claimant had no tax liabilities from his activities in the 1980s, and that "*full details are held on file to support the above to include accounting information.*"

ix) There must have been other documents in order to carry out day to day business which were not handed over to the Claimant. The Claimant continued to trade following the Defendants taking the 1988 Documents. Despite his denials in the witness box, it is plain that the Claimant needed to know his historic trading positions in order to run his business going forward. Even if the scale of his operations diminished, as he claimed (although Ms Aylott said there was no diminution in volume) there would still be a need to understand historic positions. It cannot be true that the Defendants took the Claimant's only copies of this information, otherwise the Claimant would have had to have terminate business immediately.

x) Mr Band confirmed that although it would be difficult, it would have been possible for the Claimant to reconstruct his trading operations with T C Coombs from documents held by T C Coombs. This period extended as far as the end of 1984. He confirmed that T C Coombs kept originals of the books of accounts, contract notes and cash books in relation to the Claimant's trading. Although the Claimant was provided with at least 12 boxes of documents, where these documents were important the Claimant was only given photocopies and T C Coombs retained the originals.

56. It should be added that although this is a matter of inference only, it is likely that the Claimant copied at least critical documents before handing over documents to the Defendants. The documents were not taken in a raid, but were gathered up by the Claimant and people who worked for him or his company. Given that the Claimant voluntarily provided the 1988 Documents to the Defendants, it would have been unusual if he did not, in the context of a continuing business, copy at least critical documents before allowing them to be taken away.

57. The Claimant knew in July 1995 that the Defendants had "*cupboards full*" of his papers, but it seems no steps were taken to obtain them.

58. The Claimant submits that if he had access to the documents then he would have been in a position to substantiate his trading losses, Yet, it follows that like Deputy Judge Agnello QC held, there is considerable material to indicate that the lack of documents did not cause an inability on the part of the Claimant to present a case properly evidenced to demonstrate the Claimant's tax position and accordingly his solvency. In these circumstances, the Claimant's position is extreme and unrealistic. He starts from the premise that the relevant documents had all been taken and that there was nothing. He did not seek to confront or deal with the inferences that he did indeed have documents from which he was able to mount challenges.

V THE PRELIMINARY ISSUE AS ORDERED BY MASTER THORNETT

i) The Preliminary Issue trial is concerned with the following, which have been agreed by the parties save for the parts of issues in paras. 17 and 27 below:

> "Is HMRC liable to the Claimant in principle (aside from any issues of quantum) in respect of:
>
> (a) The Data Protection Act claims;
>
> (b) The claim as reversioner for damages to reversionary interests; and
>
> (c) The claim for conversion and/or wrongful interference with goods at common law and under the Torts (Interference with Goods) Act 1977?"
>
> Here, (a), (b) and (c) together are the "Preliminary Issue Claims".

Common Ground

ii) It is common ground that the Defendants took or received into their possession at least some documents belonging to the Claimant in the spring of 1988.

iii) It is common ground that the Claimant had a relevant interest in the said documents, either as owner or as reversioner, at all material times.

iv) It is common ground that the Defendants are now and have been since at least the commencement of these proceedings, unable to deliver up the said documents.

The preliminary issue can be broken down into the following issues

A. Conversion / wrongful interference with goods

v) What documents did the Defendants take or receive into their possession from the Claimant in the spring of 1988 (any such documents being referred to as the "1988 Documents")?

vi) What statements have the Defendants made to the Claimant from time to time concerning the fate of the 1988 Documents?

vii) What on the balance of probabilities has happened to the 1988 Documents? If the Court concludes that they have been destroyed by the Defendants, then on which date, or if that is uncertain, what is the latest date by which it is likely that they were destroyed?

viii) In relation to the claims in conversion or for wrongful interference with goods or as a reversioner, has there been an unequivocal refusal by the Defendants to deliver up the 1988 Documents, and if so, when?

a) Were the Defendants under a duty to preserve the 1988 Documents indefinitely for the Claimant's benefit and/or return them to him pursuant to either the reasonable understanding of the Claimant or any applicable duty of care; or were the Defendants entitled to destroy those documents in accordance with their retention policies?

ix) In the premises, subject to the issues of loss, causation and limitation below, has the Claimant established the Defendant's *prima facie* liability for (a) conversion and/or wrongful interference with goods; (b) damage to the Claimant's reversionary interest in the 1988 Documents?

B. Data Protection Act claims

x) What relevant duties did the Defendants have in relation to the 1988 Documents from time to time as a result of the Data Protection Act 1984 and the Data Protection Act 1998? In particular:

a) Were the Defendants under a duty under that legislation to return the 1988 Documents to the Claimant and, if so, when?

b) Were the Defendants under a duty under that legislation to preserve the 1988 Documents until so returned?

c) Were the Defendants at any time entitled to and/or under an obligation to destroy the 1988 Documents in accordance with their retention policies applicable to the Defendants' own documents?

d) If so, what retention policies were applicable to the 1988 Documents, and on what date did the Defendants become entitled to and/or under an obligation to destroy them pursuant to any applicable retention policy?

e) Was the Defendant required to give notice to the Claimant of an impending destruction? If so, did the Defendant duly give notice to the Claimant of impending destruction?

f) Were any of the Defendants' relevant duties modified by any request from the Claimant for the return of the documents or any statements made to him as to their availability?

xi) In response to the Claimant's Data Protection Act requests made in 2016 and 2017 ("DPA requests"):

a) Did the Defendants breach the Data Protection Acts 1984 or 1998?

b) Does any such breach of the Data Protection Acts give rise to a damages claim at the suit of the Claimant?

c) Can breaches in relation to DPA requests in 2016 and 2017 cause losses which occurred in the past?

d) Which categories of loss alleged by the Claimant occurred after 2017 and what losses, if any, occurred as a result of any such breaches?

xii) In relation to any act of the Defendants in relation to the 1988 Documents earlier than the requests in 2016 and 2017:

a) Did the Defendants breach the Data Protection Acts 1984 or 1998?

b) Does any such breach of the Data Protection Acts give rise to a damages claim at the suit of the Claimant?

c) When did the breach occur?

C. Loss of chance

xiii) Without the 1988 Documents, was the Claimant able to mount an effective challenge (that is to say, a challenge with the same probability of success as the chance he claims to have lost) to the tax assessments for tax years 1981/82 and 1986/87 which led to his bankruptcy?

xiv) In particular, would he have been able to mount an effective challenge to the tax assessments at material dates including February/March 1992, April 1998, November 2004 and February 2017 or such other date as the Court finds to be relevant?

a) At each of the material dates, did the Claimant have any other copy of all or any of the 1988 Documents?

b) Was the Claimant on each of the material dates otherwise able to reconstruct the information contained in the 1988 Documents from other sources?

c) Did the *contra spoliatorem* principle have the consequence that his chance of success in a challenge to the tax assessments was unaffected by the non-availability of the 1988 Documents?

xv) If, on each of the said material dates, the Claimant had had all of the relevant 1988 Documents, would he (on the balance of probabilities) then have mounted a challenge to:

a) the tax assessments for 1981/82 and 1986/87?

b) his bankruptcy, including an application to annul it?

c) the actions of his trustee in bankruptcy, in particular the sale of the forestry properties?

xvi) In the premises, did the Claimant have a chance to challenge (a) the tax assessments, (b) his bankruptcy, or (c) actions of his trustee in bankruptcy but for the non-availability of the 1988 Documents or any of them?

xvii) In relation to any identified loss of a chance, was it a real or substantial chance, that is to say not negligible or minimal? [The Defendants are prepared to concede this point for the purposes of this trial only (i.e. without any admission for the subsequent quantum trial); the Claimant contends that it should be resolved once and for all at the liability trial.][1]

D. Causation of loss

xviii) Was the Claimant advised and/or did he choose, on a date prior to 5 March 1992, not to contest the bankruptcy proceedings?

xix) What steps were open to the Claimant to take to avoid the claimed losses even without the 1988 Documents?

xx) Did the Claimant make reasonable or any efforts to obtain the return of the 1988 Documents prior to the Data Protection Act letters in December 2016 and February 2017, and if not, would it in fact have led to the return of the 1988 Documents to him if he had done so, or done so at an earlier time? Is the Defendant entitled to rely on these matters in relation to causation?

xxi) In the premises, for each loss of a chance identified in (C) above, was the loss of that chance caused by any wrongful act by the Defendants, or was the loss of that chance caused by the Claimant's own actions or inactions?

E. Limitation

xxii) In relation to the claims in conversion or for wrongful interference with goods or as a reversioner, when was the first unequivocal refusal by the Defendants to deliver up the 1988 Documents?

xxiii) If the first unequivocal refusal was earlier than 6 years preceding the issue of the present claim form, aside from the claims under the Data Protection Acts, are any of the Preliminary Issue Claims based on:

a) continuing duties?

b) continuous breach of duties (i.e. not susceptible to a limitation challenge), and has any such claim of a continuing breach survived Master Thornett's limitation judgment? If so, was there any continuing duty even after the first unequivocal refusal by the Defendants to deliver up the 1988 Documents?

[1] The issue in square brackets is not agreed.

xxiv) Is any claim under the Data Protection Acts relating to earlier acts of the Defendants prior to the 2016 and 2017 DPA requests (see issue 12 above) now outside the standard limitation period applicable to such a claim, given that Master Thornett has ruled that such claims accrued on breach and not on a continuing basis?

xxv) To the extent that any Preliminary Issue Claim by the Claimant has been made outside the standard limitation period applicable to such a claim, is the limitation period extended by section 32 of the Limitation Act 1980 on the basis of deliberate concealment? In this regard:

a) was there deliberate concealment of a fact relevant to the Claimant's cause of action;

b) does destruction of the 1988 Documents (if the Court holds destruction has occurred) necessarily amount to deliberate concealment;

c) when did the Claimant discover the concealment; and

d) when could the Claimant or his agents with reasonable diligence have discovered it?

xxvi) In the premises, to what extent are the Preliminary Issue Claims statute barred?

F. Consequential issues for any quantum trial

xxvii) In the event that the Defendants are in principle liable to the Claimant in relation to any of the Preliminary Issue Claims, the issues for the next hearing will be:

a) What is the quantum of the loss caused by any wrongs for which the Court has held the Defendants in principle liable in relation to the Preliminary Issue Claims?

b) Is the Claimant entitled to damages in relation to the delivery up claim as of right (Master Thornett having determined that this claim will proceed as a damages claim following a finding the Defendants are unable to deliver up) [or is this damages claim the same as the existing claim for conversion][2]?

c) As regards every claim based on the loss of a chance:

i) if not resolved at the liability hearing, is the lost chance more than merely speculative?

ii) what percentage chance did the Claimant have at the time when his relevant loss occurred, to take relevant action (whether challenging bankruptcy), (1) on the assumption that he had all of the relevant 1988 Documents available to him at such time, and in comparison (2) by reference to the actual documents available to him at such time?

[2] The issue in square brackets is not agreed.

(iii)If the Claimant had succeeded in those challenges, what losses would he have avoided, and/or what payment, damages or other compensation would he have received?

(iv) In particular, what percentage chance was there that a challenge to the 1986/87 tax assessment would have resulted in a repayment by HMRC to the Claimant?

(iv) Are these losses foreseeable and not too remote?

d) What further losses (if any) are recoverable (including the claimed aggravated and exemplary damages, and damages under the Data Protection Acts)?

VI THE COURT'S APPROACH TO EVIDENCE

59. In the introduction, reference was made to how most of the matters which are the subject of this litigation arose a long time ago. The delay has given rise to limitation problems, some of which have been resolved by Master Thornett on 18 May 2018, and some of which are discussed below. In addition, the effect of the lapse of time is that documents once available are no longer available.

60. In this context, judges attach the highest importance to contemporaneous documents in Court cases. Gestmin was quoted, but to similar effect was *Onassis v Vergottis* [1968] 2 Lloyd's Rep 403, at 431 per Lord Pearce:

> "Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be … though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or overmuch discussion of it with others? … a witness, however, honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after … contemporary documents are always of the utmost importance …"

61. Further guidance can be found in *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 Comm at [15-24], especially at [22] per Leggatt J (as he then was):

> "22. … the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working

> practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

62. The witnesses' recollections of what was said in meetings and conversations may be of little value if the meetings were within the last few years, but where the recollections are of events of decades ago, this applies with even greater force. Thus, the effect of not having material documents is significant in any case, but a fortiori in a case where the events are so remote in time. The effect of documents not being available is to affect the extent to which the court is able to reconstruct the true facts. In this case, given the enormous lapse of time, even witnesses more impressive than the Claimant and Mr Allcock would have little or no weight attached to their evidence.

63. I have been unimpressed by the evidence of these two central witnesses. In the case of the Claimant, he was regularly in his evidence making speeches, which came over as pre-prepared to advocate his case, rather than to answer the questions about the facts put to him. He would then not answer the questions which had been put to him. One example was the number of times when the Claimant mentioned that he did not have accounts for the 6 years between 1979 and 1985. At one point in his evidence, he was asked about whether he had told the US Court in about 1992/93 about whether he had said that there that he needed the documents for the business. He then proceeded with a long explanation which was difficult to follow, but which did not answer the question. When pressed, he did not know the answer to the question. It may have been that he was obfuscating, it is more likely that it was simply impossible for him to answer questions by reference to events of so long ago. Since he bears the burden of proof, this is a significant problem. The Claimant, as is the case with Mr Allcock, has been sentenced to prison – in his case for a bankruptcy offence.. Whilst his offences appear less egregious than Mr Allcock, the length of his sentence indicates that this must have been intentional withholding of information about his assets to the trustee and thus reflected in 21 months' sentence of imprisonment.

64. I found Mr Allcock a credible witness at first, but as his evidence progressed to detail, it turned out to be utterly confused. For example, in considering the value of the Scottish property/forest of the Claimant, he confused the number of trees with its putative value, and this confusion was more than momentary in his evidence. He was challenged about having informed the Claimant in a conversation in 2014 or 2015 that he took the documents to a landfill to destroy the same. He failed to distinguish between the case file and to the documents entrusted to the Defendants by the Claimant. As his evidence continued, it became muddled and confused of which the above were examples. Of course, he was convicted of bribery and related offences for which he was sentenced to imprisonment, having shown himself to be thoroughly dishonest. His evidence has to be heavily discounted for this alone. Although called as a witness for the Defendants, most of his evidence was of no assistance.

65. Although the respective offences of the Claimant and Mr Allcock were more than 20 years ago, they are intimately connected with the matters which are the subject of this case. Further, they were the subject of substantial sentences of imprisonment, and so they are relevant to the weight to be attached to their evidence.

66. As regards the other witnesses, their evidence was very limited in its ambit. The Court has to consider how their evidence is unlikely to be of matters of which they have a clear recollection bearing in mind how historic it is. There was evidence from the Claimant's former PA Ms Aylott describing the size of the boxes holding the documents. It is very doubtful that she had as clear a recollection as she believes that she had. I did not find her to be a deliberately untruthful witness, but it seemed likely to me that the passage of time and her evident loyalty to the Claimant was such as to render her evidence of little value and likely to be partial. I found that there was very limited assistance from the evidence of Mr John Band, Mr Nigel Wood and Ms Cristy Semini. I shall refer below to the evidence of Mr Stuart Murtha.

VII THE ISSUES

A. Conversion / wrongful interference with goods

Issue 5: what documents did the Defendants take or receive into their possession from the Claimant in the spring of 1988 (any such documents being referred to as the "1988 Documents")?

67. The position of the Defendants is unsatisfactory to the extent that it took on any view a large number of documents, and yet it required the Claimant to prove what were in the 27 boxes which it admitted taking both numerically and item by item. The problem arose in the first place because the Defendants became unable to locate the documents and/or destroyed them apparently without reference to the Claimant.

68. Nevertheless, the position of the Claimant, on whom the burden of proof lies, is also unsatisfactory. He originally claimed that the Defendants took "approximately 40,000 documents in 27 boxes" from him, including items listed in very broad terms in nine categories. However, in evidence, the Claimant and Ms Aylott respectively claimed that the 27 boxes contained 5-6 million or 6-7 million documents. It was claimed that this included 40 trading books containing details of every trade carried out over a ten year period, 30 cash books recording every bank transaction over 10 years, 10,000 pages of accounting records including reconciliations with 30 counterparties worldwide, 5,000 pages of accounting advice confirmations for audits, every back office note, contract note, confirmation and other documents for 100,000 transactions over a 10 year period. It also included material relating to Scottish estates and expenditure. In order to hold this many documents, they had to be printed on amazingly thin paper (per Ms Aylott). More than 200,000 such documents would need to be held in each box. There were estimates of the weight of the boxes with the papers: the process was extraordinarily unscientific despite references to cubic sizes and density, and, in this way, there was a guess of a weight of 675kg. On any view, the papers on this basis would have been extraordinarily heavy, such that the Claimant accepted that such boxes could only be moved by very strong men. He said that there were two men: one a "famous pugilist" of around 20 stone, and the other a Sumo wrestler of 30-40 stone.

69. It was submitted that it is impossible for this to have occurred. I am unable to reach this conclusion because of the imprecision of the evidence. I conclude that it is unlikely to be accurate and that the probability is that the contents of the boxes have been significantly overstated. The change in account from 40,000 documents to many millions has not been explained. It is more likely that the Defendants took 27 normal

bankers' boxes of documents from the Claimant in the spring of 1988 than the description given by the Claimant.

70. I reject the suggestion that the Claimant was left without any documents having regard to the ability of experts to prepare reports and to the applications which were made. There must have been a very substantial number of documents which remained available to the Claimant, even if the documents in the office were all taken by the Defendant, as Ms Aylott suggested. It is possible that not all of the documents in the office were taken: it is possible many of the documents were available elsewhere. It is inconceivable that the business was able to continue uninterrupted and without change in the level of business (as Ms Aylott accepted) if there was no access to documents. I accept the submission of the Defendants that the continued trading suggests that the 27 boxes did not contain anything like all of the Claimant's documents and/or that the documents were available elsewhere.

71. It also became apparent during cross examination that the Claimant voluntarily provided his documents to the Defendants, and he or his employees or agents may have been responsible for boxing them up ready for collection. It is unlikely that the Claimant would have allowed his only copies of critical documents to be taken by the Defendants in circumstances where he knew there was a dispute about the tax consequences of his affairs. More likely is that the Claimant ensured that any critical documents were copied before being handed over, to allow his own accounting staff and his accountants to continue to work towards establishing his tax liabilities and for the business to be able to continue to operate.

Issue 6: What statements have the Defendants made to the Claimant from time to time concerning the fate of the 1988 Documents?

72. The evidence for what the Defendants told the Claimant comes from the Claimant's own evidence and disclosure. In July 1995, Mr Gregory, the adviser of the Claimant, wrote to the Claimant's solicitors, Burton Copeland, stating that Mr Barratt "*has told me during the course of a telephone conversation that they have cupboards full of Terry's papers*". It is not clear what these papers comprised and whether they were the entirety of the documents taken in 1988. No steps appear to have been taken by the Claimant at this time to recover the documents held by the Defendants.

73. The Claimant wrote a letter dated 8 December 1999 to the General Commissioners. At the end of the third paragraph on the second page, he referred to Mr Gregory having been instructed to communicate with the Defendants and resolve his tax affairs. He said:

> "Mr Gregory tried time and again to get relevant documents only to be rebuffed with excuses. His short letter confirms this and he would be pleased to give evidence. He and I met with the Inland Revenue in April 1998 and were treated very badly, mysteriously all my documents given to them had gone missing."

74. This account that the papers had gone missing by April 1998 has not been challenged. Subsequently, during the course of the hearing before the General Commissioners in December 2004, the Claimant was informed, according to his Particulars of Claim at

paragraphs 7 and 11 that his documents had been "mislaid". The Defendants admit according to paragraph 11 of the Defence that

> "in 2004, the Defendant informed the Claimant that the 1988 Documents could not be found".

75. As noted above, the Court heard evidence of a meeting between Mr Allcock and the Claimant in 2014 or 2015. The two individuals have differing recollections of this recent event as to what was said as regards destruction of documents. The evidence of both of them was unsatisfactory generally as set out above. Both recognised the capacity for misunderstanding in connection with this conversation. The objective facts and inherent probabilities have to be appraised. Whilst the level of criminality of Mr Allcock was profound, the following matters indicate that he is unlikely to have procured the destruction of the documents in about 1996, namely

i) Mr Allcock did not take the 1988 Documents;

ii) there is nothing to suggest that he had the 1988 Documents in his possession;

iii) the Defendants still had "cupboards full" of documents in 1995 and there is no reason to suppose they would have been given to Mr Allcock;

iv) the criminal charges in respect of Mr Allcock did not relate to any dealings which he had with the Claimant or with the Claimant's affairs;

v) Mr Allcock was suspended from his employment with the Defendants in 1996 and dismissed in 1997. He would from then not have had the opportunity to dispose of the 1988 Documents.

76. In the light of the foregoing, the Court is unable to find that Mr Allcock procured the destruction of the 1988 Documents. It is not apparent what happened to the Claimant's documents, but it is likely at some point they have been destroyed. There is no real prospect that they could be located now in the event that they still existed.

Issue 7: What on the balance of probabilities has happened to the 1988 Documents? If the Court concludes that they have been destroyed by the Defendants, then on which date, or if that is uncertain, what is the latest date by which it is likely that they were destroyed?

77. The Defendants have a document retention policy which would have led to the destruction of the 1988 Documents if the taxpayer had not collected them before the last date for destruction marked on the documents. This was described in detail by Mr Murtha in the witness box. On the one hand, there is no evidence of a destruction notice having been sent to the Claimant. On the other hand, there is contemporaneous evidence that the documents had been searched for and not found. Against the background that documents are not kept forever, it is probable that such destruction occurred many years ago. For the reasons above, it is probable that the destruction did not involve Mr Allcock.

78. There is a possibility that the 1988 Documents or some of them were still in existence in 1995 when the Claimant learned that there were cupboards full of documents with the Defendants, but had been destroyed by April 1998, when the Defendants failed to

provide them despite Mr Gregory attempting to get them "time and again". I accept that the Court cannot be satisfied that the documents were destroyed on any specific date. However, it is likely that the documents were destroyed many years prior to the commencement of proceedings. It is more likely than not that the documents were destroyed if not by 1998, then by 2004, when the Defendants informed the Claimant that the documents could not be found.

79. In any event, I reject the Claimant's submission (paragraph 7.9 of the Claimant's Closing) that it is at least equally likely that the documents were never in fact destroyed, but cannot be located within the Defendants' storage facilities. Given that the 1988 Documents were voluminous on any view, and the number of times when they have been searched for, and the passage of more than 30 years since they were taken, this is most unlikely to be the case.

Issue 8: In relation to the claims in conversion or for wrongful interference with goods or as a reversioner, has there been an unequivocal refusal by the Defendants to deliver up the 1988 Documents, and if so, when?

80. The Claimant submits that the first unequivocal refusal to deliver up the 1988 Documents took place within the present proceedings. He submits that the claim to delivery up could only be brought after a request so to deliver had been made and unequivocally refused (by letters of 23rd December 2016 and 7th February 2017). He submits that there is no evidence that such a request was made at an earlier point in time: see paragraph 8.3 of his Closing Submissions.

81. That submission is not made out on the evidence. The documentary reference in December 1999 to "*Mr Gregory [having] tried time and again to get relevant documents only to be rebuffed with excuses".* This means in context that he was asking for the documents back repeatedly. In my judgment, there was an unconditional and specific demand was made in April 1998 by Mr Gregory. Although it is not known exactly what the Defendants told Mr Gregory, the Defendants did not comply with his demands within a reasonable time (or at all).

82. The Court should conclude as a matter of fact that there was an unequivocal refusal to deliver up the 1988 Documents in or around April 1998. If that was not an unconditional and specific demand, there was such a demand in 2004 which led to the Defendants stating that the documents could not be found.

83. In my judgment, that amounts to an act of conversion. The ways in which that can be established are as follows:

i) Whilst at common law there could be no conversion simply by the loss of goods (although there be a liability for breach of bailment), under section 2(2) of the Torts (Interference with Goods) Act 1977, the bailee in such a situation is now liable to his bailor in conversion: see Clerk & Lindsell on Torts 22nd Ed. para. 17-21;

ii) If the goods were not lost, and there was a failure to comply with the request for delivery, then the holding on to the documents whether by saying that they were lost or otherwise is also a conversion. There is a duty to return the goods within a reasonable time of the demand: see Clerk & Lindsell on Torts 22nd Ed. para. 17-23.

84. In my judgment, there are two forms of analysis of the instant case. First, it is that the claim in conversion is made good by the loss of the documents. Secondly, in the alternative, there was here an unequivocal demand for the documents and an unequivocal refusal based on the the repeated assertions that the documents were lost, in 1998 and, if not, then in 2004.

85. The different forms of conversion were discussed by Mr Stephen Morris QC (as he then was) sitting as a Deputy Judge in the case of *R (Atapattu) v Home Secretary* [2011] EWHC 1388 (Admin) at paragraphs 60-89. At 60-61, he said the following:

> "60. "Wrongful retention
>
> Conversion can be committed in a myriad of circumstances. The most relevant category of conversion, for present purposes, is described in Clerk & Lindsell as "wrongful retention" and explained, at §17-22, under the heading "Conversion by keeping or refusal to return", as follows:
>
> "**Conversion by keeping: demand and refusal** The ordinary way of showing a conversion by unlawful retention of property is to prove that the defendant having it in his possession, refused to surrender it on demand. Indeed such a demand is generally a precondition of the right of action for detention[1]: the mere unpermitted possession of another's chattel is not as such a conversion of it".
>
> Clerk & Lindsell continues, at §17-24:
>
> "**Demand must be unconditional and specific** The demand should be unconditional in its terms, ... ,. If the demand is unclear or equivocal, for example because it is merely a request for "immediate commencement of the process of return" of goods, it may not be enough."
>
> Then at §17-25 Clerk & Lindsell deals with refusal as follows:
>
> "**Refusal must be unconditional.** The refusal must also be unconditional[115]. A person on whom a demand for goods is made may not have them immediately available even though they are under his control;... he cannot be required to act at a moment's notice, or refuse at his peril. . .... a person in possession of another's goods has the right to a reasonable opportunity to check whether the person asking for them is really entitled to them."
>
> Footnote 115 highlights the issue in the present case, in the following terms:
>
> "Mires v. Solebay (1678) 2 Mod 242. In Schwarzschild v. Harrods [2008] EWHC 521 (QB)... the court seemingly thought that mere inaction in the face of a demand could not be a refusal, but this must be doubtful. A defendant in possession can hardly

> be allowed to stymie conversion proceedings by simply doing and saying nothing."
>
> Finally at §17-26, Clerk & Lindsell still under the heading of "wrongful retention" addresses delay as follows:
>
> "**Delay in complying with demand**. A bailee or person in possession of the goods of another must normally deliver them up forthwith on demand. .... delay in complying with the demand will not only render the defendant liable in conversion, but will normally make him an insurer of the goods in respect of all subsequent damage on the basis that he is thereafter in breach of bailment ... . However in the event of doubt as to the claimant's entitlement the defendant is entitled to a reasonable time to make enquiries. ... But, once the reasonable time has elapsed the defendant must hand over the goods. If he does not do so he will be liable in conversion and in addition the goods will be entirely at his risk thereafter."
>
> Mitchell v Ealing LBC [1979] 1 QB 1 is cited as authority for these propositions.
>
> 61. Indeed, the case where the goods are lost or destroyed (rather than merely kept) is also identified by Clerk & Lindsell as a distinct category of conversion: see §17-20. At common law, where a defendant, following a demand, failed to return goods, because the goods had been lost or destroyed, the position was as follows. First, if the goods had been lost before demand (or before the lapse of a reasonable time after demand), then the defendant was only liable if the goods were lost as a result of the defendant's own negligence. The claimant had a claim for breach of bailment and also for detinue. Secondly, if the goods had been lost after the lapse of a reasonable time following demand, then the defendant was strictly liable for their loss; here the claimant had, at least, a claim for detinue. This strict liability for loss after demand was commonly referred to "liability as an insurer". Thirdly, in either event, there was no claim for conversion, because there was no voluntary act by the defendant. As a result of the abolition of detinue in the 1977 Act, s.2(2) was introduced to make the bailee liable in (statutory) conversion in this situation."

86. Mr Morris QC said that "in a s.2(2) "lost or destroyed" claim, there is no additional requirement for a refusal as well as a demand; mere failure to return goods following a demand is sufficient to render the bailee liable as insurer thereafter: see *Clerk & Lindsell* §17-20 footnote 90 citing *Mitchell"*: see *Atapatttu* at para. 88.

87. The reference to Mitchell by Mr Morris QC was to *Mitchell v Ealing LBC* [1979] QB 1. He referred to that case at paras. 80-81 of his judgment which I adopt:

"80. …the defendant council had agreed to store the claimant's furniture. The claimant then demanded its return and a time and place for delivery was agreed. By mistake, defendant's employee failed to turn up. When the parties turned up on a later agreed date, it was discovered that the furniture had, in the meantime, been stolen. The claimant claimed for the return of the goods or alternatively their value. O'Connor J held the defendant council liable. First, having identified the defendants as gratuitous bailees, he referred to the general principle that such a bailee is bound to deliver up the goods when demand is made and "if the bailee is *unable* to deliver the goods he is liable for their value unless he can show that they have been lost without negligence or default on his part and again the time of such loss is of importance" (This is the principle referred to in paragraph 61 above). Secondly, he recorded the defendant's case that its failure to turn up on the first date of delivery "cannot be ranked as *a refusal* to deliver the plaintiff's goods"; it was merely a mistake. The learned judge then cited two leading textbooks on the law of bailment, both of which referred to the concept of "refusal" in the context of conversion. In particular he said (at 8A-C):

"[[Paton] has this to say under the heading "Delay in Returning":

'If the depositee is in mora (i.e. if he improperly refuses to restore the goods), then the goods are held at his peril. This was the rule of civil law, but as the refusal to restore would constitute the tort of detinue, an action for the full value of the chattel would lie at once. Subsequent restitution would merely go to reduction of damages'

The present case it will be seen, does not amount to a refusal. *Is then an unequivocal refusal a necessary element before it can be said that he goods are held at the peril of the bailee*?"

81. He then referred to the principle that the bailee is not liable if the goods are lost without any default on his part *before* the demand for return is made, but that, after demand, he is liable, even without fault, if they are lost after the expiry of a reasonable time between demand and occasion for redelivery. He said: "That that is right is plainly supported by other authorities: see, for example *Clayton v Le Roy*.... It is unnecessary to refer to the facts of that case, but the case on which the plaintiff is really entitled to rely is *Shaw & Co v Symmons & Sons* [1919] 1 KB 799." After explaining the facts in *Shaw,* O'Connor J commented on that case (at 9B):

"It will be seen by analogy there was no refusal to deliver the goods in that case. There was merely a delay in complying with the demand and it proved to be inexcusable delay."

> On that basis, O'Connor J held that from the moment the defendant failed to turn up at the agreed delivery place, they became insurers of the goods and responsible for their loss thereafter."

88. This bears out the primary matter about the cause of action in conversion being made out against a bailee where there is a demand for delivery up and where the goods are not returned within a reasonable time due to loss of the same unless the loss occurred without fault on the part of the bailee proven as such by the bailee.

89. The judgment in *Atapatttu* goes on to support that even in a case where an unequivocal refusal is required, this can be inferred by failure to redeliver or inaction. As Mr Morris QC stated at paragraph 89, "Further, in any particular case, mere failure to redeliver or inaction or silence may be sufficiently unequivocal to constitute a refusal. In this way, the conduct cited in footnote 115 to *Clerk & Lindsell* (a defendant who simply does nothing) would be sufficiently unequivocal to constitute a refusal, a result consistent with the analysis in *Schwarzschild*. To seek to "stymie" proceedings in this way is exactly the sort of case where the inference of refusal would properly be drawn."

90. The above decision has now been referred to in the latest 22nd Edition of Clerk & Lindsell and has led to the decision of *Schwarzschild* now being characterised as "very doubtful" and not just "doubtful" in the latest footnote. It will be noted that the Master had attached significance to *Schwarzschild* in his decision at an interim stage to refuse to strike out, but the analysis above is preferred.

91. The foregoing confirms the law referred to above about the two ways of putting the case, namely, first, demand and loss being sufficient without a refusal, and, second, demand and refusal being contained in or inferred from the statements that the documents were missing or had been mislaid: alternatively from failure to redeliver or inaction. The primary way is the first way. However, if it is necessary to prove a refusal to return the documents, this is proven by the statements that the documents had been lost. In the circumstances, this was not saying that there was a temporary problem whilst a search took place, but amounted to a statement that the documents would not be returned. As the Defendants have submitted in this case, refusal can be inferred from simply inactivity in the face of a claim, since otherwise a defendant in possession could stymie conversion by simply doing and saying nothing. Whether inaction amounts to refusal is a question of fact in all the circumstances: see *R (Atapattu) v Home Secretary* at paragraphs 64-89. In this case, I do not accept that the statements that the documents were missing or could not be found do not amount to an unequivocal refusal. If loss by itself is not sufficient, the statements about loss amount to a sufficient refusal.

Issue 8A: Were the Defendants under a duty to preserve the 1988 Documents indefinitely for the Claimant's benefit and/or return them to him pursuant to either the reasonable understanding of the Claimant or any applicable duty of care; or were the Defendants entitled to destroy those documents in accordance with their retention policies?

92. The Defendants contend that there has not been any conversion of the 1988 Documents because they had an entitlement to destroy the same under their policies. They say that there would have been a policy in place about an entitlement to destroy the documents within 6+1 years of the conclusion of the investigation. According to Mr Murtha's oral evidence, the Defendants would generally return taxpayers' documents to them at the

conclusion of investigations. He said that at the conclusion of the investigation that there was an expectation that the Defendants would write to the taxpayer inviting the taxpayer to collect his documents. He said that if there was no response, then the documents would be stored under the Defendants' document retention policy, marked for destruction in due course not before a specific date (probably 6+1 years after the conclusion of the investigation). He said that there were sometimes issues with knowing where a taxpayer was, and in this case there might have been a difficulty since, as shown in Sue Hicks' report from 2006, there was a reference to letters having been returned undelivered when sent to the Claimant.

93. From this, the Defendants submit that they would have been allowed to take the following steps in relation to the 1988 Documents under the terms on which the Claimant voluntarily provided them. They would have written to the Claimant in March 1991 at the conclusion of the tax investigation asking him to come and collect his documents. If the Claimant did not respond, perhaps because (among other things) he had not kept the Defendants informed of his current address, the 1988 Documents would then have been stored according to the Defendants' retention policy and marked for destruction by March 1998, being 6+1 years after the conclusion of the investigation. The Defendants would have been entitled to destroy them at that point. In these circumstances, the Defendants say that any destruction was permitted, and accordingly no case of conversion is made out.

94. The Claimant does not accept this case and says that assurances were made as to the safekeeping of the documents. Further, there is no evidence that there was a notification given to the Claimant that the documents should be collected or that they were about to be destroyed. There was no clear evidence of the retention policy having been in existence in the period in 1988. The only evidence in that regard was by reference to a document in 2016, and a belief of Mr Murtha that a similar policy had been in existence for about 19 years previously. In any event, there was an issue as to whether the policy applied to the primary documents of the taxpayer.

95. The Defendants nonetheless say that the Claimant cannot prove that there was any breach of policy by the Defendants because he has left it so late before bringing this claim and neither side has any relevant documents. Whilst this is an argument worthy of consideration, it is rejected. The Defendants' arguments are speculative as to the following matters, namely (a) whether such a policy existed in 1988, (b) whether it applied to original documents, (c) whether there was notification at the end of the investigation such as to trigger the 7 year period, (d) whether there was notification before destruction of the intention to destroy documents.

96. Whilst the Court takes into account the difficulties in respect of a claim being so many years old, the Defendants' response depends upon too many unreliable hypotheses. When there were statements about the documents being lost in 1998 and in 2004, they were not accompanied by positive statements to the effect that they were disposed of pursuant to the agreed retention policy. It is very likely that this would have been said at the time if it had been correct or was believed to be correct. I therefore do not accept the defence that the Defendants must have been acting under an agreed policy in destroying the 1988 Documents.

Issue 9: In the premises, subject to the issues of loss, causation and limitation below, has the Claimant established the Defendant's prima facie liability for (a) conversion

and/or wrongful interference with goods; (b) damage to the Claimant's reversionary interest in the 1988 Documents?

97. In my judgment, there may well have been a liability for conversion, but it remains unestablished what was lost or destroyed in view of the inconsistency of the Claimant's case and the improbability of the accounts given by and on behalf of the Claimant in evidence. Further, all of this is subject to issues of loss, causation and limitation referred to below.

B. Data Protection Act claims

98. The Data Protection Act claims take two forms:

i) Claims for breach of the Data Protection principles in the event of the loss or destruction of the 1988 Documents; and

ii) Claims for failure to comply with requests made under the Data Protection Acts on 23 December 2016 and 7 February 2017.

99. An important preliminary point needs to be made in relation to these claims. The Data Protection Acts do not apply to the 1988 Documents themselves. They apply to the Claimant's personal data. Neither of the Data Protection Acts confer any proprietary right upon a data subject in relation to data held by a data processor which relates to that data subject. They are concerned with data protection, not document protection. Other than where a data subject makes a specific request for personal data (no such request having occurred before 23 December 2016), the main effect of the Data Protection Act 1984 was to require the data processor to comply with the "data protection principles" in Schedule 1.

100. Section 23 of the Data Protection Act 1984 provides that a data subject may seek compensation if he suffers damage (inter alia) by reason of the loss of the data or its unauthorised destruction. Any breach of section 23 of the Data Protection Act 1984 which may have occurred would no longer be actionable, given than the section had not been in force for 17 years by the time these proceedings were issued.

101. Under the Data Protection Act 1998 section 7, there are contained similar rights of access to personal data, upon request in writing. Under section 13, an individual has a right to compensation for damage by reason of any contravention by a data controller of any requirements of the Data Protection Act 1998. There are 8 Principles including a principle that personal data shall be processed. This is interpreted under the interpretative provisions at Part II to Schedule 1 to the Data Protection Act 1998 so that regard should be had to the method by which they are obtained including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed. It is submitted by the Claimant that an assurance to keep the 1988 Documents in safekeeping meant that personal data could not be processed fairly without the return of the same.

Issue 10(a): Were the Defendants under a duty under that legislation to return the 1988 Documents to the Claimant and, if so, when?

102. As set out above, the Data Protection Acts have nothing to do with document protection. If there was an obligation to look after the 1988 Documents under the principles and other provisions of the Data Protection Acts, then the cause of action is no wider than the claims in conversion or wrongful interference, and must have accrued no later than the time of loss or destruction. There are findings above of destruction on balance by 1998 or no later than 2004. Accordingly, any such causes of action must have accrued by those times, and must have been statute barred many years before the inception of this action. This is referred to below in the section about limitation.

Issue 10(b): Were the Defendants under a duty under that legislation to preserve the 1988 Documents until so returned?

103. Again, the Data Protection Acts have nothing to do with preserving documents per se. They are concerned with personal data, which is to be handled in accordance with the Data Protection principles.

Issue 10(c): Were the Defendants at any time entitled to and/or under an obligation to destroy the 1988 Documents in accordance with their retention policies applicable to the Defendants' own documents?

104. The Defendants contend as set out above that they were entitled to destroy the 1988 Documents in line with their own data retention policies as described above. Whilst it is possible, and Mr Murtha was a satisfactory witness, I am not satisfied that it is sufficiently cogently made out that this is the case. The most telling point against it was that in 1998 and 2004, it was not asserted as a positive case when it would have been the most obvious retort. I accept that it is very difficult so many years after the event, and that the Claimant is the party responsible for this delay, but that does not seem to me to be a segway to a finding which depends upon so many unreliable hypotheses as discussed in the section under issue 8A above.

Issue 10(d): If so, what retention policies were applicable to the 1988 Documents, and on what date did the Defendants become entitled to and/or under an obligation to destroy them pursuant to any applicable retention policy?

105. This point has been addressed above in the context of Mr Murtha's evidence, but I repeat my serious doubts as to whether the Defendants become entitled to and/or under an obligation to destroy them pursuant to any applicable retention policy. I have not been able to find on the basis of what has been put before me that the Defendants had duties under the Data Protection principles, in particular principle 5 under the Data Protection Act 1998 and Principle 6 under the Data Protection Act 1984 which require personal data not to be kept for longer than is necessary for the purpose for which it was processed in the first place. It therefore follows that I am not satisfied that the Defendants were entitled to destroy the 1988 Documents.

Issue 10(e): Was the Defendant required to give notice to the Claimant of an impending destruction? If so, did the Defendant duly give notice to the Claimant of impending destruction?

106. The Defendants' practice was to invite a taxpayer to arrange to collect any documents at the end of a tax investigation. Whether this was formally a duty, it was certainly a sensible precaution. There is no evidence either way as to whether the Defendants gave notice to the Claimant in March 1991 (or at any other time) inviting him to collect his documents. It is probable that the reason why there is no evidence is because the Claimant delayed almost 30 years before starting his claim. The delay was entirely the Claimant's responsibility and it is no injustice for him to have to bear the consequences of that delay. The Court cannot conclude that the Defendants did not attempt to contact the Claimant as its practice suggests that it would.

Issue 10(f): Were any of the Defendants' relevant duties modified by any request from the Claimant for the return of the documents or any statements made to him as to their availability?

107. There is nothing to indicate that any duties were so modified. It is not clear how this connects with the Claimant's pleaded case.

Issue 11(a): In response to the DPA Requests made in 2016 and 2017, did the Defendant breach the Data Protection Acts 1984 or 1998?

108. The Defendants gave a true answer to the DPA requests made in 2016 and 2017, which is that the Defendants did not hold any relevant data of the Claimant. This was complete compliance with the Data Protection Acts, and the Claimant has not identified how it was not. I reject the submission of the Claimant that it is more likely than not that the 1998 Documents still exist.

109. In disclosure in these proceedings, very limited further information has been provided to the Claimant following a review of the Defendant's historic computer records. Although this may have been personal data falling within the Data Protection Acts, it was not something the Claimant's Requests sought. This disclosure does not demonstrate any failure by the Defendants to comply with the Requests.

Issue 11(b): Does any such breach of the Data Protection Acts give rise to a damages claim at the suit of the Claimant?

110. This is a very broadly drawn question. As regards what happened following the Requests, there was no breach and therefore no damages. If, somehow, there has been a breach of the Data Protection Acts in relation to the Requests, then theoretically the Claimant might have a claim for compensation under section 13 of the Data Protection Act 1998, subject to proving damage and subject to the defence afforded by sub-section (3) ("reasonable care"). However, the overriding point here is that there was no breach for the reasons set out above. Further, if there are historic breaches, they are statute barred insofar as they related to the period of many years prior to the issue of proceedings, as set out more fully in the section below about limitation.

Issue 11(c): Can breaches in relation to DPA requests in 2016 and 2017 cause losses which occurred in the past?

111. It is not possible for something which occurs at a particular point in time to cause something which happened before that point in time: see Defence para. 46.2. Accordingly, the only losses caused by a breach in relation to the Requests made in 2016 or 2017 are those which occurred after the failure to comply.

Issue 11(d): Which categories of loss alleged by the Claimant occurred after 2017 and what losses, if any, occurred as a result of any such breaches?

112. Master Thornett was persuaded that the loss of chance to challenge the tax assessments using the 1988 Documents only arose upon the confirmation by the Defendants in these proceedings that they were not going to be able to deliver up the documents to the Claimant. That confirmation, he held, post-dated the Requests. In the context of an application for summary judgment (not given in this regard) and strike out, this is not a final judgment. It simply opened the door to an amendment of the pleadings to plead a loss of a chance.

113. In view of the matter being examined in these proceedings with the benefit of disclosure of documents and witness statements, it is apparent that the loss of the documents was made clear by the Defendants to the Claimant in April 1998, particularly by reference to the letter of 8 December 1999. There are several documents thereafter repeating this position in the context of the application before the Commissioners in late 2004. In the light of these matters, there having been an unequivocal refusal to deliver up the documents at this point, any claim for loss of chance, if at all, arose at that point and not in 2017 or 2018. It follows that there are no categories of loss alleged by the Claimant which occurred after 2017, and any breach in relation to the Requests (which is in any event denied) has not caused the Claimant any loss.

Issue 12(a): In relation to any act of the Defendants in relation to the 1988 Documents earlier than the requests in 2016 and 2017, did the Defendants breach the Data Protection Acts 1984 or 1998?

114. The Defendants deny that they breached the Data Protection Acts. It is contended that there have may have been a breach of the principles in the way in which the 1988 Documents were lost and/or destroyed. However, I am satisfied that if this occurred, it happened by not later than 1998, alternatively 2004. It is unnecessary to make a finding as to whether that does give rise to a breach of the Data Protection Acts. In any event, it covers the same ground as the more straightforward cause of action in conversion and/or wrongful interference with goods. As put, the alleged breaches of the Data Protection Acts seem to add nothing to the possible claim in wrongful interference and/or conversion. I do not accept that it has been made out that the Defendants were permitted to destroy the Claimant's documents.

Issue 12(b): Does any such breach of the Data Protection Acts give rise to a damages claim at the suit of the Claimant?

115. If the breach is the failure to accede to the requests in 2017/2018, the failure to observe them does not give rise to a damages claim. This is because by this stage the 1988

Documents had been destroyed, and thus there was nothing that could then have been delivered up.

Issue 12(c): When did the breach occur?

116. If there was any breach of the Data Protection Acts, it seems to have occurred by April 1998 when the Defendants refused to provide the 1988 Documents to the Claimant following repeated requests from Mr Gregory. If it was not then, it was in 2004 at the time of the references to the 1988 Documents being mislaid in the context of the application to the General Commissioners. It follows that, as described below, the Claimant's claims (if any) are time barred.

C Loss of chance

117. There are numerous issues regarding loss of chance and causation of loss. It is for the Claimant to prove these matters. If he cannot, due to the antiquity of the case, then this follows from his delay. The delay is of an extraordinary nature. For most of the time, there is no obvious reason for the same. In particular, if there was a need to recover documents which had been lost, one would expect far more focussed activities to recover the documents than occurred.

118. This only harms the Claimant, since it is for the Claimant to establish its case at trial, and his ability so to do is impaired due to the distance in time of the events which are being considered.

119. The claim for loss of chance was a late arrival into these proceedings, introduced by amendment after the Defendants raised its initial defence based on limitation: see paragraphs 64 and following of the amended Particulars of Claim dated 8 May 2018. As referred to above, the key attribute of the loss of chance claim was Master Thornett's conclusion that it did not arise until the failure to deliver up the 1988 Documents was established, which the Master concluded (on the material before him) was during the course of these proceedings. However, as referred to above, there is evidence of a sufficient refusal in April 1998 which means that the loss of chance claim is as time-barred as the rest of the Claimant's original claims. In other words, a loss of chance claim does not obviate the need to consider limitation.

120. The issues concerning the loss of chance claim which arise for decision in this hearing are aspects of the Defendants' causation challenge. The position is as follows. In order to succeed on the loss of chance claim overall, the Claimant needs to show that a wrongful act by the Defendants in relation to the 1988 Documents (e.g. conversion) caused him loss. Ordinarily, that loss would need to be established on the balance of probabilities. Indeed, to the extent that issues of causation depend on what the claimant would have done absent a wrong (e.g. conversion), they are to be resolved on the balance of probabilities. Thus, he would need to show on the balance of probabilities that if he had had all of the 1988 Documents, he would have mounted a challenge as per Issue 15 below. However, to the extent that the loss depends on the action of some third party (e.g. the Tax Tribunal in deciding whether to set aside the assessments or the Bankruptcy Court in deciding whether to make or annul the bankruptcy order), the Claimant does not have to prove that the third party would have acted in a given way on the balance of probabilities. All he has to show is that there was a real or substantial chance that the third party would have acted in the way he claims as per Issue 16 below.

If so, then the Court should go on to assess the percentage likelihood of that chance, and award pro-rated damages to the Claimant: see *Perry v Raleys* [2019] UKSC 5 at [15] onwards, affirming the principles of causation stated by the Court of Appeal in *Allied Maples v Simmons & Simmons* [1995] 1 WLR 1602.

Issue 13: Without the 1988 Documents, was the Claimant able to mount an effective challenge (that is to say, a challenge with the same probability of success as the chance he claims to have lost) to the tax assessments for tax years 1981/82 and 1986/87 which led to his bankruptcy?

121. The Claimant submits that if he had access to the documents then he would have been in a position to substantiate his trading losses. It is simply incredible for him to assert that the relevant documents had all been taken and that there was nothing left. He had extensive assistance from professional advisers including in relation to taxation matters, and his trading necessarily involved counterparties who would have retained records themselves. In the section above headed "What happened to the Claimant's Documents", there are set out the important sources of documents available to the Claimant to prove his case. This contains workings as well as views of experts about his ability to make out his case.

122. Whilst it is inevitable that his position would have been ameliorated by having the 1988 Documents, the Claimant's position is extreme and unrealistic. In a theoretical sense, the answer to this question is that the loss of 1988 Documents must have affected his probability of success to some extent, the Claimant has failed to face up to or deal with the inferences that he did indeed have documents from which he was able to mount challenges. The burden is on the Claimant to prove how this affected his ability to make out a case that the absence of the 1988 Documents has affected is position. As Deputy Judge Agnello QC held in the annulment application, there was a large amount of material to enable a case to have been presented to demonstrate the Claimant's tax position. By not providing any real explanation as to the availability of the other material, the Claimant has failed to prove the extent, if at all, to which the absence of the 1988 Documents affected his probability of success.

123. I am satisfied on the evidence that the points made by the Defendants as regards the documents available to him as set out in the section "What happened to the documents" are likely to be correct. These points show that the Claimant did have many documents available to him. This enabled him to continue business after the 1988 Documents were taken. This made it possible for professional advisers to prepare reports without taking the view that they were unable to do so.

124. In my judgment, the Claimant's case that without the 1988 Documents he had nothing is a false one. It undermines any point that he makes about the difficulties of presenting a case without the 1988 Documents. That case is also undermined by the lack of clarity as to what the 1988 Documents comprised. A part of the lack of clarity comes not just from the inconsistency of the Claimant's case from pleadings to evidence (40,000 documents to 6/7 million documents), but also from the passage of almost three decades between the time that the 1988 Documents and the inception of this claim. The Claimant's inability to prove a case due to lapse of time is a matter ultimately for which he is responsible.

125. In my judgment, the Claimant has not established that he has not been able to make out a case without the 1988 Documents. The Claimant was able to mount an effective challenge without the 1988 Documents. It might have been more effective with the 1988 Documents, but he has failed to establish whether this is the case or how much more effective it would have been.

126. As regards to the 1986/87 documents, the Claimant has been unable to establish that he would not have been able a case that would have been open to him with the 1988 Documents. He claims an inability to establish a likely date of cessation of trading, but absent a cogent rebutting of the obvious inferences in the section of "What happened to the Claimant's documents", I do not accept this assertion.

127. The Claimant then refers to difficulties of providing the quantification of losses at this stage if the 1986/1987 appeal is still open. The real reason why this is difficult is the lapse of time due to his own delay. Without the delay, he had the other documents available to him. It is an entirely artificial construct to imagine that all these years later, he would have the 1988 Documents available, but none of the earlier documents.

128. As regards the 1981/82 assessment, the Claimant accepts that his chance to reduce the assessment to nil by means of a statutory appeal was lost in 2004 as a result of the finding of the General Commissioners. It is entirely fanciful to suggest that there was any prospect of a non-statutory route against that background. He suggests that the Defendants may acknowledge an error and there might be a public law challenge if the Defendants did not. However, it is the statutory route which was the way for the Claimant to resolve the matter. He lost before the General Commissioners because of his unreasonable delay. The Claimant then mounted a judicial review claim in 2004, and he withdrew it. Against this background, there is no arguable case with a real prospect of success to the effect that the Defendants could be challenged in a public law case for not engaging now with a non-statutory attempt to revisit a matter long ago resolved against the Claimant.

129. I also reject the notion that the Claimant would have had a higher chance of obtaining permission in 2004 before the General Commissioners if he had had the 1988 Documents. The delay was so extreme and the view of the General Commissioners so clear that a complicated argument on the merits (as opposed to a clear and crisp one) would not have changed anything. All of this is before factoring in the difficulties to his case of what documents there were as regards 1981/82 and the extent to which he has documents available that were not removed.

Issue 14: In particular, would he have been able to mount an effective challenge to the tax assessments at material dates including February/March 1992, April 1998, November 2004 and February 2017 or such other date as the Court finds to be relevant?

a) At each of the material dates, did the Claimant have any other copy of all or any of the 1988 Documents?

b) Was the Claimant on each of the material dates otherwise able to reconstruct the information contained in the 1988 Documents from other sources?

c) Did the contra spoliatorem principle have the consequence that his chance of success in a challenge to the tax assessments was unaffected by the non-availability of the 1988 Documents?

130. The answer to this question contains an overlap with the previous questions. The Claimant has not established what were in the 1988 Documents and his account as to their size is unlikely to be true. Further, the Claimant must have been able to reconstruct information having regard to the matters set out in the section about "what happened to the Documents". The Claimant seeks to answer this by distinguishing between primary records of account which he says had gone missing and secondary records such as profit and loss accounts. However, my findings go beyond such secondary records. In the light of those findings, I am satisfied that the Claimant would have been able to reconstruct a very substantial amount of information in the late 1980s and early 1990s. I am satisfied that the Claimant would have been able from this to mount an effective challenge to the tax assessments. That does not mean that he would have succeeded but it does mean that in my judgment he has not proven that he lost that ability due to the removal and non-return of the 1988 Documents.

131. That was the position at all times since their removal until the early 1990s. As time went on, it is to be inferred that it would have become increasingly more difficult to mount an effective challenge. However, that was due to the delay on the part of the Claimant in taking any or any efficient action.

132. As regards the contra spoliatorem principle, I am satisfied that this has no application in the case as such. It is applied in the case of destruction in the course of or anticipation of court proceedings. In this regard, the Court has been assisted by the Claimant's closing written submissions at para. 14.9. Even if it might apply to a deliberate removal of evidence for the purpose of concealing a position from a counter-party. There is nothing of that kind in this case, as is recognised by the Claimant in his Closing at para.14.9(d). The Claimant points in particular to the Privy Council case of *The Ophelia* [*1916*] 2 AC 206, P.C at 229-230, where the presumption was described (without the Latin maxim) as follows:

"In the cases as to spoliation of documents, the point has frequently arisen on the preliminary hearing on documents, and the question has been debated whether or not further proof should be allowed. This point cannot arise under the present procedure, and it may be that in some respects the old doctrine was rather technical. The substance of it, however, remains and is as forcible now as ever, and it is applicable not merely in prize cases, but to almost all kinds of disputes. If any one by a deliberate act destroys a document which, according to what its contents may have been, would have told strongly either for him or against him, the strongest possible presumption arises that if it had been produced it would have told against him, and even if the document is destroyed by his own act, but under circumstances in which the intention to destroy evidence may fairly be considered rebutted, still he has to suffer. He is in the position that he is without the corroboration which might have been expected in his case."

133. Thus, there is a distinction between a deliberate act and an action without an intention to destroy evidence. In the latter case, there is no presumption but simply a lack of evidence which might have supported the tortfeasor's own case, which is relevant to the weight of the evidence.

134. Contra spoliatorem is an evidential presumption. Even without the presumption, there would be scope for a tribunal to make allowances in favour of the taxpayer. Clearly, it cannot construct a case out of nothing. However, if it were proven that the quality of the evidence was impaired because the defendants had destroyed or lost material documents, then appropriate allowances would be made as a matter of procedural fairness. In this case, to the extent that there would be an impairment in the presentation of the case without the 1988 Documents (and for the reasons set out above it has not been proven that there was), such detriment would be reduced by appropriate allowances being made. This is not to say that the Tax Tribunal could allow a party to prove a case without evidence. It is simply that appropriate allowance is likely to be made for the shortcomings.

Issue 15: If, on each of the said material dates, the Claimant had had all of the relevant 1988 Documents, would he (on the balance of probabilities) then have mounted a challenge to:

a) the tax assessments for 1981/82 and 1986/87?

b) his bankruptcy, including an application to annul it?

c) the actions of his trustee in bankruptcy, in particular the sale of the forestry properties?

135. The Claimant has not proven that he would have mounted any relevant challenges if he had the documents. The reasons for this are as follows:

i) The Claimant did not seek to mount a challenge before he became bankrupt in 1992. It is not an answer that he was defending VAT proceedings or prosecuting judicial review proceedings in 1988. At this time, he had access to the documents referred to in the section "What happened to the Claimant's documents", and it would have been within his power to have made the challenge.

ii) He became bankrupt on the petition of the Defendants. On the balance of probabilities, he had knowledge of the petition at least by 5 March 1992, the date of the bankruptcy. There is set out above the numerous occasions evidencing that he had notice of the bankruptcy proceedings including:

a. Statements in his bail application to the effect that he had been served with the bankruptcy petition

b. He instructed solicitors to appear at the hearing of the petition.

c. He acknowledged service in a statement to the Insolvency Service in April 1992

d. In 1993, his solicitors Burton Copeland acknowledged that he had been served whilst in prison

e. In 1995, his agent Peter Gregory acknowledged that the Claimant had told him that he had been served whilst in prison.

iii) He did not thereafter act promptly, for example, by seeking an annulment (that would take more than 25 years). This was despite his having access to the documents referred

to in the section "What happened to the Claimant's documents". Nor did he take proceedings before the Commissioners to seek to set aside assessments for many years thereafter culminating in the hearing in November 2004.

iv) He did not seek the recovery of the 1988 Documents for years until Mr Gregory sought to recover them.

136. The inference from this behaviour (which is referred to in greater detail in the section below about causation of loss) is that he would not have mounted any of these challenges. This is reinforced by the fact that he had access to a large number of documents and did not make challenges until after delays of many years. The Defendants raise a telling matter in paragraph 89 of their Closing Submissions, namely an observation in Sue Hicks' report referring to the Claimant and his advisers being unwilling to engage in the real issues, *"preferring instead to resort to legal wrangles over procedural or administrative matters not relevant to establishing Ramsden's UK liabilities."*

137. Given the extent to which the Claimant would have been able to reconstruct the information in the 1988 Documents throughout the late 1980s and early 1990s, the Court can conclude that the Claimant was in a position to mount an effective challenge to the tax assessments at all material dates and, to the extent that the Claimant has lost that ability at some stage since 1994, that is the Claimant's responsibility.

138. The loss of a chance depends on the Claimant proving in respect of matters within his control that on the balance of probabilities he would have taken actions available to him if he had the 1988 Documents available to him. Issue 15 refers to steps which lay within his power to take and which, even in a loss of chance case, he must establish on the balance of probabilities: see *Perry v Raleys* above. I find that the Claimant's inactivity despite all the other sources of information available to him lead to an inference that he would have failed to have mounted a challenge even with the 1988 Documents in the late 1980's and early 1990's. This is the platform of a loss of chance claim, and he does not get onto the platform.

Issue 16: In the premises, did the Claimant have a chance to challenge (a) the tax assessments, (b) his bankruptcy, or (c) actions of his trustee in bankruptcy but for the non-availability of the 1988 Documents or any of them?

139. For the reasons set out above, the Claimant did have a chance to make these challenges without the 1988 Documents, but he has failed to avail himself of these opportunities. Further, in all the circumstances, he has been unable to show that his chance of doing so has in any practical sense been significantly greater if he had had the 1988 Documents.

Issue 17: In relation to any identified loss of a chance, was it a real or substantial chance, that is to say not negligible or minimal? [The Defendants are prepared to concede this point

for the purposes of this trial only (i.e. without any admission for the subsequent quantum trial); the Claimant contends that it should be resolved once and for all at the liability trial.][3]

140. It is not apparent that this issue stands in the light of the findings made thus far. There has not been identified above a specific loss of a chance. The concession of the Defendants may not arise. It is contained at paragraph 91 of the Defendant's Closing Submissions. This will need to be considered on the hand-down of the judgment.

D Causation of loss

Issue 18: Was the Claimant advised and/or did he choose, on a date prior to 5 March 1992, not to contest the bankruptcy proceedings?

141. The Claimant claims that he was not aware of the bankruptcy proceedings, and so did not have a chance to challenge the bankruptcy order before it was made. This is contradiction by a large amount of evidence including the facts that

(1) Solicitors attended on the hearing of the bankruptcy petition, according to a handwritten recital on the bankruptcy order;
(2) he made a statement in connection with a bail application upon his return to the UK in the weeks before the bankruptcy hearing, saying that he had been served with the bankruptcy petition and he had been at that point in time advised not to oppose it (it was not signed, but it also contain a detailed statement of his assets);
(3) there is a handwritten document dated 7 April 1992 containing his signature (apparently on each page, but at least on the last page) and his initials in the margins for alterations. It is so specific about having been served with a statutory demand whilst imprisoned in America. He cannot know that this was supposed to have happened unless he was served there.
(4) As noted above, Mr Harverd referred to his having been served in prison, as did Burton Copeland. More specifically, the Claimant's agent Mr Gregory told Burton Copeland that the Claimant had informed Mr Gregory that the Claimant had been served with a statutory demand whilst in prison.

142. Years later, the Claimant would say that he had not been served. However, this relatively contemporaneous evidence is to one effect, namely that he was served. There are very detailed attempts which have come from the Claimant to the effect that he was not served. They are to the effect that there was an affidavit of service which was false, and that professional advisers may have assumed that he had been served, but that he had not been. The full picture as it emerges from the above is that he was either served in prison or he had in any event by the time of the bankruptcy hearing the knowledge about the petition. If that was not the case, and it is difficult to understand how it was not the case, he must have soon thereafter understood it to be the case as he prepared and/or agreed the above-mentioned document of 7 April 1992.

143. I reject the submissions of the Claimant to contrary effect. There is a very detailed attempt to refute all of this by the Claimant at paragraphs 18.4 and 18.5 of his Closing

[3] The issue in square brackets is not agreed.

Submissions. In order to overcome the clear thrust of the above mentioned information, the Claimant resorts to statements such as "It would seem reasonable for UK-based professionals, at the time, to put faith in an affidavit of service sworn by a US individual stating that he was a "process server instructed by the Solicitor of the Inland Revenue", notwithstanding that their own client was telling them something different." That does not make any sense. The professionals would have been bound to record in some way that the Claimant did not accept that he had been served or in some explicit to reserve the position. Far from this, documents were produced acknowledging that the Claimant had been served, and even that he had informed them that he had been served whilst in prison.

144. It was submitted that there was a possibility that there was no attendance at the hearing of the petition and that it was a court error. That is possible, but unlikely. It is much more likely that it was an attendance to protect the Claimant's interests, and that the attention at that stage was on protecting him in respect of criminal proceedings. However, such protection is only consistent with his having knowledge of the petition.

145. In the end, there is a big picture, and the combination of the many acknowledgments and statements leads to a finding that on the balance of probabilities the Claimant did have knowledge of the petition before the hearing and/or at the hearing and/or shortly thereafter, and that he acknowledged that position to his professional advisers. Many years later, it is possible that this may have escaped his memory as he planned to challenge the assessments. The first time that he questioned service was not until many years later. The earliest point at which any doubts about service were raised seems to have been the year 2000. At that point, it appears that there was a volte-face by the process server and it was discovered that there was no record of the process server visiting the Claimant in prison.

146. The Defendants comment in their closing written submission on the attempt of the Claimant to deny as is own the revealing statement of 7 April 1992 quoted above in which he acknowledged that he had been served in prison. They said in a manner which appears to be a correct characterisation of the position, as follows:

> "Mr Ramsden's unconvincing statement almost 30 years later that this was an "*after the fact*" document was a desperate attempt to explain away a straightforward document which he knew was fatal to his claim and called into question both the position he took in the annulment proceedings and the evidence he has filed in these proceedings (e.g. paragraphs 69 and 71 of his WS in which he claims to have been unaware of the petition and that he would have challenged it if he had been aware of it)."

Issue 19: What steps were open to the Claimant to take to avoid the claimed losses even without the 1988 Documents?

147. Reference is made to the lack of clarity and the inconsistent evidence as to what comprised the 1988 Documents. For the reasons set out above, and particularly having

regard to the matters set out in the section above about "What happened to the Claimant's documents", there were many documents accessible to the Claimant following the removal of the 1988 Documents and until the bankruptcy order and probably for some time thereafter.

148. The Claimant's case operates on the level that following the removal of the 1988 Documents, the Claimant was in an impossible position and that it is unreasonable to expect him to mount an attempt to reconstruct the position. That premise is not accepted for all of the reasons set out above. Thus, this is not a case of mitigation being unreasonable because it was too much to ask for. It was not a question of reconstruction, but largely of accessing the documents available. Insofar as it involved seeking documents from third parties, then that was well within the Claimant's power. In fact, the Claimant chose not to embark upon that exercise until years later, particularly through Mr Gregory. It is not apparent when such communication started with the Defendants for the return of the 1988 Documents.

149. With information about a large amount of documents available to the Claimant, there was no reason for him not to mount any challenge many years before Mr Gregory sought the documents on his behalf, and/or to seek to resolve the position with the trustee as to locus and/or to seek an annulment.

150. This is all on the premise that the Claimant had a substantive defence to the petition although this is not obvious having regard to the vast income which he received, the moneys which he spent on lifestyle and the offshore companies and vehicles which he maintained and questions as to what was disclosed. On this premise, he could have sought to obtain an adjournment of the bankruptcy proceedings in order to challenge the 1981/82 assessments, or seek to postpone the 1986/7 tax. He could have sought an annulment if he had brought a swift (successful) challenge to those assessments with the assistance of his trustee in bankruptcy. His problem was the delay on his part which in the end made impossible his challenge culminating in judgment against him the General Commissioners in December 2004 and by the failure of his annulment application before Deputy Judge Agnello QC.

151. This action suffers from the same problem. It is to wait for almost 30 years from the 1988 Documents being seized, and over 20 years from the time when the Claimant was told unequivocally that the 1988 Documents were lost until the commencement of the instant proceedings.

Issue 20: Did the Claimant make reasonable or any efforts to obtain the return of the 1988 Documents prior to the Data Protection Act letters in December 2016 and February 2017, and if not, would it in fact have led to the return of the 1988 Documents to him if he had done so, or done so at an earlier time? Is the Defendant entitled to rely on these matters in relation to causation?

152. It appears that the Claimant did make efforts to obtain the return of the 1988 Documents particularly in April 1998 leading to the response that they were missing. These did not result in the return of his documents: it seems likely that they were destroyed by then, or by 2004 as set out above.

153. If the 1988 Documents were critical to the establishing his affairs, it is not apparent why earlier attempts were not made before the involvement of Mr Gregory to recover the 1988 Documents. Far from his mind being off the ball because he was having to defend criminal proceedings, it might have been expected that his defence would have required access to the supposedly critical documents taken by the Defendants. As the Defendants submit, this undermines the Claimant's claims that the 1988 Documents were indeed critical. If they were critical, this only adds to the conclusion that any losses flowed from the inaction of the Claimant rather than the fact that the Claimant's documents had been taken away.

154. The Claimant contends that he did not act in an unreasonable manner in the foregoing way. If the Claimant had a complaint to make that he should not have been the subject of bankruptcy proceedings, then he acted wholly unreasonably in not defending himself against bankruptcy and/or in delaying for so many years in all of the steps to annul and/or set aside the assessments. Reference has been made by the Claimant to the cases on breaking the chain of causation in contract and in tort and in particular to the Court of Appeal judgment in *Borealis AB v Geogas Trading SA* [2010] EWHC 2789 (Comm) per Gross LJ at [42-49] and in a tortious context in *Robinson v Ness and Co* [2017] EWHC 2305 (Ch). Each case depends on its own facts, but in the instant case it was unreasonable to wait for so many years and then to say that the problem arises from a tort of the Defendants. That is not the end of the reason why causation is not established. Before that, there are the conclusions set out above as regards the inconsistencies and unsatisfactory evidence relating to the 1988 Documents and the failure of the Claimant to acknowledge the access to other documents. In consequence, the Claimant is not able to make out a case that the Defendants have caused him loss.

Issue 21: In the premises, for each loss of a chance identified in (C) above, was the loss of that chance caused by any wrongful act by HMRC, or was the loss of that chance caused by the Claimant's own actions or inactions?

155. For all the reasons set out above, the loss of the 1988 Documents was not critical and/or the Claimant has caused the problem by his own actions or inactions for the reasons described above.

E Limitation

Issue 22: In relation to the claims in conversion or for wrongful interference with goods or as a reversioner, when was the first unequivocal refusal by the Defendants to deliver up the 1988 Documents?

156. Reference is made to the discussion in respect of issue 8 above. There are three ways of addressing the issue, namely (a) the moment of communication that the 1988 Documents were lost, (b) the expiry of a reasonable time from the failure to return the same following a demand, and (c) a clear and unequivocal refusal to return to the 1988 Documents following a demand for the same. In my judgment, for the reasons set out above, these events each took place in April 1998, and if not then, in 2004.

Issue 23: If the first unequivocal refusal was earlier than 6 years preceding the issue of the present claim form, aside from the claims under the Data Protection Acts, are any of the Preliminary Issue Claims based on:

(a) continuing duties?

(b) continuous breach of duties (i.e. not susceptible to a limitation challenge), and has any such claim of a continuing breach survived Master Thornett's limitation judgment? If so, was there any continuing duty even after the first unequivocal refusal by the Defendants to deliver up the 1988 Documents?

157. The Claimant has sought to argue that there is a continuing duty to restore the 1988 Documents and so the conversion claim does not become statute barred for so long as there was the duty to return the 1988 Documents continued. The nature of the action is conveniently summarised in the decision of their Lordships in *Kuwait Airways Corp v Iraqi Airways Company and others* [2002] 2 AC 883 per Lord Hoffmann at [129]:

"In the case of conversion, the causal requirements follow from the nature of the tort. The tort exists to protect proprietary or possessory rights in property; it is committed by an act inconstant with those rights and it is a tort of strict liability. So conversion is a "taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession": per Rolfe B. in *Fouldes v Willoughby* (1841) 8 M & W 540, 550. And the person who takes is treated as being under a continuing strict duty to restore the chattel to its owner."

158. In *Uzinterimpex JSC v Standard Bank Plc* (CA) [2008] Bus LR 1788 at [63], Moore-Bick LJ stated:

> "Moreover, in the light of sections 2 and 3 of the Act it may now be more appropriate to regard a temporary interference with goods of the kind that occurred in this case as a new form of continuing conversion."

159. However, *McGee on Limitation* 8th Ed. 12.003 suggests that:

> "Conversion is now governed by the Torts (Interference with Goods) Act 1977. The changes made by the Act, particularly s.2(2), which are consequent upon the Act's abolition of the concept of detinue, extend the right of action for conversion to those cases of detinue which did not previously give rise to an action in conversion. The action for conversion is an action in tort for the purposes of limitation, so that the period of limitation is prima facie six years from the date on which the cause of action accrues, as provided by s.2 of the 1980 Act. That date will normally be the date of the wrongful interference with the plaintiff's goods."

160. McGee then goes on to derive a proposition from *Schwarzschild* which has been discussed above and commented on critically in the case of *Atappatu* with some support from Clerk & Lindsell.

161. In my judgment, there is no scope here for a continuing conversion in the circumstances of this case. Contrary to the Claimant's case to the effect that the retention of the 1988

Documents had a temporary or transient quality, there was nothing of the sort here. That might exist in circumstances where the goods could be returned. It does not apply to a case where they were lost and unrecoverable. The Claimant's case would have it that over a period of decades, the non-delivery was temporary or transient, but this is a state of affairs which is difficult to conceive.

162. By 1998, alternatively by 2004, it was apparent that the 1988 Documents were not going to be delivered up since they had been lost. In my judgment, those statements about the 1988 Documents were in context unequivocal refusals to deliver the same. By that stage, the relevant cause of action in conversion or under the Torts (Unlawful Interference with Goods) Act 1977 had accrued. Nothing that thereafter happened before Master Thornett in October 2017 altered or affected the character about what was said in context in 1998 and in 2004 about the same. One other feature of that hearing was the ruling against continuing causes of action in trespass and negligence. There does not appear to be a qualification upon the survival of the claims in conversion and/or as reversioner (paragraph 11.7 of the judgment). However, for the above reasons there is no effective claim in this case for a continuing conversion or wrongful interference with the goods. In my judgment, the duties are not based on continuing duties. The 1988 Documents had been lost. There had been repeated requests and they had not been tracked down. There was no apparent prospect after a reasonable time of recovering the 1988 Documents. The notion that despite the unequivocal comments in 1998 and 2004 about the documents being lost or mislaid, they were capable of being found is unrealistic. So is the notion that the statements that the 1988 Documents were temporary or transient statement. In the context of being so many years after they had been taken and the clear demands for their return including by Mr Gregory in 1998 and/or in the context of the application before the General Commissioners, this amounted to an unequivocal refusal or a statement about permanent loss.

163. There have been passages identified in the law reports about a continuing duty to return the goods in detinue. That might exist in circumstances where the goods could be returned. It does not apply to the instant case where they were lost and unrecoverable, and identified as such in 1998, and again in 2004. The references in case law to a continuing strict liability to restore a chattel to an owner refer to a case where the goods are available to be restored, but not to a case where there has been total loss or destruction. The instant case does not come within temporary interference with goods of kind referred to in *Uzinterimpex JSC v Standard Bank plc* [2008] Bus LR 1788 at [63].

Issue 24: Is any claim under the Data Protection Acts relating to earlier acts of the Defendants prior to the 2016 and 2017 DPA requests (see issue 12 above) now outside the standard limitation period applicable to such a claim, given that Master Thornett has ruled that such claims accrued on breach and not on a continuing basis?

164. Master Thornett in his judgment struck out claims based on continuing negligence and continuing trespass. As a result of the trial, there have been identified an unequivocal demand for and refusal to provide the 1988 Documents. Once that occurred and/or once the 1988 Documents were not then returned, it is difficult to see how the cause of action does not accrue at that stage. However, nothing referred to the Court is to the effect that where goods are lost or destroyed in circumstances where they cannot be delivered up that there is thereafter indefinitely a continuing conversion or wrongful interference with the goods.

Issue 25: To the extent that any Preliminary Issue Claim by the Claimant has been made outside the standard limitation period applicable to such a claim, is the limitation period extended by section 32 of the Limitation Act 1980 on the basis of deliberate concealment? In this regard:

(a) was there deliberate concealment of a fact relevant to the Claimant's cause of action;

(b) does destruction of the 1988 Documents (if the Court holds destruction has occurred) necessarily amount to deliberate concealment;

(c) when did the Claimant discover the concealment; and

(d) when could the Claimant or his agents with reasonable diligence have discovered it?

165. The Claimant maintains that in any event his claims survive by operation of section 32 of the Limitation Act 1980. The Claimant relied upon the facility to extend the period in which to bring a claim by operation of section 32(1)(b) of the Limitation Act 1980 which provided as follows:

> (1) Subject to subsection (3) subsections (3) and (4A) below, where in the case of any action for which a period of limitation is prescribed by this Act, either—
> (a) the action is based upon the fraud of the defendant; or
> (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or
> (c) the action is for relief from the consequences of a mistake;
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.
> References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.
> (2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty…."

166. On the Claimant's case, the Claimant was informed only in 2015 that the documents had been destroyed in 1996 or thereabouts. The Claimant also says that the first time that Defendants confirmed that they were unable to deliver up the 1988 Documents was in these proceedings in the exchanges to Master Thornett. The Claimant says that earlier references to the loss of the documents or to their being mislaid in 1998 and in 2004 implied a loss of a temporary nature. As noted above, I have found that it was a misunderstanding that led to his belief in 2015 that they were destroyed by Mr Allcock or under his watch. I have also found that the statements in 1998 and 2004 in context were not of a temporary nature, but were statements that the documents were lost of sufficient permanence to amount to a refusal to return the 1988 Documents on account of their non-existence. Accordingly, the case that the Claimant could not have

discovered that the 1988 Documents were lost or destroyed until 2015 or until the confirmation to Master Thornett is rejected.

167. It is contended that in the circumstances of this case, the destruction of the 1988 Documents must have come about as a result of a reckless disregard of the interests of the Claimant. It is said that the case is analogous to the case of *Beaman v A.R.T.S. Ltd* [1949] 1 KB 550. I do not consider this case to be analogous. Beaman concerned a bailee who decided to close its business. It therefore decided to remove the goods which it held. It did so with reckless disregard to the interests of the bailors and without any inquiry as to their worth assuming that they were worthless. In those circumstances, the Court (Lord Greene MR at p.565) found that this recklessness amounted to concealment of an action by fraud (which was then required under the Limitation Act 1939 s.26(b)). In my judgment, in the instant case, there has not been proven a deliberate concealment (fraud is no longer required under section 32(1)(b)). There is no evidence that the destruction of the 1988 Documents was done deliberately, that is knowingly or recklessly, such as to prevent the Claimant knowing about his cause of action or about information with which he could mount a challenge against the Defendants. It is more likely that this occurred due to a belief, whether erroneous or not, that there was an entitlement to destroy the documents.

168. In any event, the Defendants provided information to the Claimant in April 1998 that the 1988 Documents were lost. Such information was provided again in 2004 in the context of the case against the Commissioners. There is not an inference that the Defendants concealed the fact of *destruction* or *permanent deprivation* when it informed the Claimant (and/or his advisers) in 1998 that they were lost or in 2004 that they were mislaid. That information was sufficient on which to mount a case. It was not necessary to have evidence of destruction, because it came to the same. Thus, from the time that it was known that the documents were lost, there was the required knowledge on which to bring an action. Whether that was 1998 or 2004, the limitation period would have long since expired by the time that the action was commenced on 27 February 2017.

169. At relevant times including the time of the April 1998 response and of the 2004 hearing before the General Commissioners, the Claimant was represented. He declared several times in the witness box how he was in receipt of the very best professional advice during the period leading up to the 2004 hearing before the General Commissioners. Those advisers could have discovered everything that was necessary for the purposes of the Claimant's present claims, namely the fact the statements that the 1988 Documents had been lost or mislaid, and there was no reason not to proceed to action at that point or indeed much earlier.

170. Much was made in opening and in cross examination of Mr Allcock of the statement in the Sue Hicks report that '*I recommend closure of this case. No communications should be made with Albert Fox or Terry Ramsden to this effect as it may only cause him to rake up the old arguments all over again and to not result other than to waste valuable SCI resources.*"

171. This statement does not represent concealment. I accept the submission of the Defendants that it reflects the frustrations felt by the Defendants at this time concerning

the "obstructive" stance adopted by the Claimant in his communications and the need to preserve valuable government resources.

172. It does not show that the Defendants were guilty of deliberately concealing any facts relevant to the Claimant's causes of action. The reality is that the Claimant should have known in 1998 or (at the latest) in 2004 that the Defendants were not returning his documents despite repeated clear demands for their return. These were the only facts the Claimant needed to know for his cause of action in conversion to be capable of being pleaded.

173. I am satisfied in this case that there is no scope for an extension of the limitation period under section 32 such as might make some aspect of this claim not statute barred to the extent that otherwise it would have been statute barred.

Issue 26: In the premises, to what extent are the Preliminary Issue Claims statute barred?

174. The conversion/reversionary injury claims are statute barred, having accrued in April 1998, and at latest in 2004.

175. The claims under the Data Protection Acts for wrongs committed prior to the 2016/2017 requests are statute barred, because the Claimant cannot point to any wrong which was done only in the period since 2011.

176. The claims under the Data Protection Acts in respect of the 2016/17 requests are not statute barred, but they have not resulted in any losses and there was no breach of the Act in any event as set out above.

F Final issue

177. The only remaining issue which may need to be addressed is issue 27(b) – the claim for damages for failure to deliver up. I accept the submission of the Defendants that delivery up is a remedy for conversion and not a freestanding cause of action: see Clerk & Lindsell 22nd Edition para. 17-88 onwards. If the conversion claim fails, so too must the delivery up claim.

VIII CONCLUSION

178. The parties are asked to draw up an order in the light of the matters on which I have concluded. There are a number of matters of principle which have been answered against the Claimant and in favour of the Defendants. It remains then to consider what are the appropriate orders. The submission of the Defendants is that the action is to be dismissed on the basis of findings in respect of these issues. Before coming to any view, I invite the parties to consider the appropriate orders and what is left in the action.