Neutral Citation Number: [2019] EWHC 2643 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No. PT-2018-000566**
BUSINESS AND PROPERTY COURT OF ENGLAND AND WALES
CHANCERY DIVISION
PROPERTY, TRUSTS AND PROBATE DIVISION

Royal Courts of Justice,
Rolls Building, Fetter Lane,
London EC4A 1NL
Date 26 September 2019

Before

Peter Knox Q.C.

(sitting as Deputy Judge of the High Court)

Between

(1) ALPESH PATEL
(2) BISHOPS WALK DEVELOPMENTS LIMITED (suing on behalf of itself and all other shareholders in Fourstream Capital Limited)
Claimants

And
(1) ASHANK PATEL
(2) MOHAMMED BABAR IQBAL
(3) FOURSTREAM CAPITAL LIMITED
(4) EQUITY REAL ESTATE (ARIES) LIMITED
Defendants

MR MATTHEW PARKER (instructed by Bryan Cave Leighton Paisner LLP) for the Claimants

MR DONALD LILLY (instructed by Stokoe Partnership Solicitors) for the First Defendant

Hearing date: 25 September 2019

JUDGMENT

1. By this application, the Claimants ("Alpesh" and "BWD") seek an order that the First, Second and Fourth Defendants ("Ash", "Babar" and "Equity Aries") must file and re-serve defences that comply with CPR rule 16.5 and answer certain allegations which (it is said) their current defences fail to answer. No order is sought against the Third Defendant ("Fourstream"), which has been joined to the claim because BWD has

brought a derivative claim on its behalf, in addition to its own claims and Alpesh's claims. Accordingly, by order of 14 January 2019, it is not required to participate in the proceedings. When I refer to the "defendants" collectively in this judgment, I refer to Ash, Babar and Equity Aries.

The background

2. The background is set out in the parties' pleadings and the witness statements (in each case the second) of Mr Oliver Glynn-Jones for the claimants, and Mr Geoffrey Goldkorn for the defendants. Although there are some differences, the broad picture is not controversial.

3. In 2013, Ash and Babar decided to enter into a property development business trading under the name "Equity Real Estate", a name which Babar had been using for his own property business for many years before then. They invested in developments and bought and sold them through special purpose vehicles (SPVs), and in 2014 they were joined in the business by Mr Ikramul Haq ("Haq"), who plays no part in these proceedings.

4. Alpesh for many years was a partner at Enrst & Young, and he is now senior managing director at FTI Consulting. He also invests in his personal capacity. He has known Ash and Babar socially for some time, and in 2015 the three of them had conversations which resulted in Alpesh entering into a memorandum of understanding ("MOU") on 1 May 2015. Under this agreement, it was agreed that an SPV, to be owned as to 25% by each of Ash and Babar, and 50% by a nominee of Alpesh, would buy and develop a commercial property known as Vantage House in Basingstoke for £2.25 million. Alpesh (on behalf of himself and a friend) would advance funds totalling £850,000, carrying 8% interest, to be secured by a charge, and Ash and Babar would arrange the development funding and give personal guarantees for it.

5. Pursuant to the MOU, Alpesh advanced the £850,000 and the development of Vantage House has begun, but Alpesh alleges that in breach of it Ash and Babar failed themselves to provide their agreed funding (it being provided by others) and failed to ensure that Alpesh's loan was secured by a charge. This forms one of the complaints in these proceedings, but no issue arises on it in this application so I consider it no further.

6. On 28 September 2015, Alpesh, his vehicle BWD, Ash and Babar entered into a further written agreement (the "joint venture agreement"), which set out (the claimants say) the framework for their property development venture.

7. By clauses 3.6 to 3.11, Ash and Babar agreed to transfer part of their shareholdings in 14 existing and identified SPVs to BWD or, in two cases, to Equity Real Estate Developments (London) Limited ("ERED London"), in which BWD was to be

granted a 25% interest. By clause 3.13, it was agreed that all future property deals would be executed by ERED London, or, if this was not possible, Alpesh would be granted a 25% shareholding in any future property deals which that or any affiliated entity undertook. ERED London was one of the companies used by Ash, Babar and Haq to develop properties. By clause 3.14, it was agreed that Alpesh would receive 20 to 25% of all gross profits generated by property deals undertaken by all existing SPVs and SPVs used for future deals. In consideration of all this, Alpesh would, amongst other things, provide a loan of £800,000.

8. Pursuant to the joint venture agreement, Fourstream, the third defendant, was incorporated on 6 October 2015, to serve as the vehicle, the claimants say, through which Alpesh, Ash and Babar would hold their interests in the SPVs. Each of them, through corporate vehicles, had a 25% shareholding in it, along with Haq who owned the remaining 25%; and each of them was a director of the company.

9. A few weeks later, in part satisfaction of their obligations under the joint venture agreement, Ash and Babar declared trusts in favour of Fourstream of their shares in nine of the existing SPVs, but, say the claimants, they failed to transfer 25% of the shares in ERED London to BWD (as originally required by the joint venture agreement), or to transfer all its shares to Fourstream (as appears to have been agreed, according to the claimants, on or around 6 October 2015). Despite this, the claimants say, ERED London (along with another company called "Equity Real Estate Developments Limited") continued to be used by the defendants as a *"key operating company"* to undertake further property deals (see paragraph 36 of the re-amended particulars of claim).

10. Even worse, the claimants say, in March 2016 Ash and Babar secretly set up six new SPVs to develop new projects without Alpesh's knowledge or involvement. In addition, on around 1 June 2016 and 20 February 2017, they also transferred, it is said, all of Fourstream's shares in two SPVs to companies owned by themselves, in the latter case to the fourth defendant Equity Aries.

The course of these proceedings

11. After pre-action correspondence starting on 29 September 2017, the claimants issued these proceedings on 30 May 2018, claiming that:
    (1) Ash and Babar had acted in breach of the joint venture agreement, both by reason of their failure to transfer the agreed shareholdings in all 14 existing SPVs identified in that agreement, and by reason of their setting up and operating new SPVs carrying on property development business without involving the claimants. They had also acted in breach of fiduciary duty owed to Alpesh personally, which, they said, arose out of the particular circumstances in which the joint venture

agreement was executed and Fourstream was set up on 6 October 2015. They claimed damages for the former breach and an account of profits for the latter.

(2) Ash and Babar had acted in breach of fiduciary duty (owed as directors) to Fourstream, by transferring Fourstream's shares to SPVs they controlled, so they held those shares on constructive trust for Fourstream, which was entitled to an account of profits or equitable compensation.

(3) Fourstream was entitled to an account of profits or equitable compensation from Equity Aries on the basis that it had knowingly received Fourstream's shares in the relevant SPV which had been wrongfully transferred to it.

12. The proceedings were served on 8 June 2018, but no defence was served pending the claimants' obtaining permission to bring a derivative claim on behalf of Fourstream, which was later granted by Mr Francis Fitzpatrick Q.C. sitting as a deputy judge of the High Court on 14 January 2019, when he ordered the defendants to file defences by 18 February 2019. He also granted permission to the claimants to make a small re-amendment to the particulars of claim (an amendment having already been made on 18 September 2018).

13. On 22 February 2019, Ash served a defence, which he amended on 25 February 2019. Its central point was that in October 2016, a meeting took place between himself and Babar (on their own behalf and on behalf of Haq) and Alpesh, at which it was agreed that Alpesh should leave the business, and retain his participation in only some of the projects ("the Run Off SPVs", as the defence characterises them) but not in other then current or future projects ("the Further SPVs"). Therefore, Ash accepted that he owed a duty to account for profits in relation to the Run-Off SPVs, which he would provide when he reasonably could, but denied that he owed one in relation to the Further SPVs. Although in this respect he set out his defence in reasonable detail, he did not plead to the individual facts said to give rise to the breaches alleged by the claimants (for example, that they had set up new SPVs without telling Alpesh).

14. As for Babar and Equity Aries, they served a very short joint defence on the same day as Ash, and on 25 February 2019 they informed the claimants' solicitors that they agreed with the amendment to Ash's defence on that day. Their defence simply said:

> "[Ash] and [Equity Aries] adopt and agree with the Defence of [Ash] with all necessary changes."

In addition, Babar said that he would provide *"the necessary information"* as and when a profit was made, i.e. on the Run-Off SPVs which he (by adopting Ash's defence) accepted to be ones in which the claimants still had an interest.

15. After correspondence in March 2019 about the alleged defects in the amended defences (to which Ash but not Babar and Equity Aries responded), the claimants issued their application notice for the relief they now seek on 3 July 2019, supported by a statement from their solicitor Mr Oliver Glynn-Jones. The application had attached to it a schedule identifying a number of paragraphs in the Re-Amended

Particulars of Claim which, the claimants said, had not been satisfactorily answered, and two specific allegations in the amended defence which, it was said, had not been properly pleaded.

16. On 16 August 2019, Mr Geoffrey Goldkorn, on behalf of Ash, made a witness statement in response, which provided by way of counter-schedule his answers to the alleged deficiencies with certain points of clarification.

17. In Mr Glynn-Jones's witness statement in reply the claimants accepted some of these answers, and so the only remaining items in issue are items 4, 6, 7(b), 8, 9, 9A, 10, 11, 12, 12A and 13 of the revised schedule which was attached to that further witness statement.

18. In the meantime, no evidence or submissions have been provided by Babar or Equity Aries. On 5 July 2019, Ash's solicitors, in proposing a date for the hearing, informed the claimants' solicitors that Babar had *"left a voice message on his mobile phone that he is unavailable for three weeks"*, but since then nothing has been heard from him. However, I was informed at the hearing by Mr Matthew Parker on behalf of the claimants that the bundle for today's hearing, with (as I understand it) notice of the hearing, was sent to them both in hard copy and as an attachment to emails to them, which have been downloaded.

The issues

19. The claimants' application gives rise to three issues:
    (1) Do the amended defences comply with CPR rule 16.5?
    (2) If not, should an order be made requiring them to be further amended, or should one be made instead for the provision of further information under CPR 18?
    (3) If an order should be made, should it be made on "unless" basis?

The first issue

The law

20. It is common ground that in certain respects the defendants' defences do not plead anything more than a bare denial to many of the individual allegations of fact in the Re-Amended Particulars of Claim. This gives rise to a point of principle: do they have to plead anything more than this, given that, as is also common ground, the defences, if proved, will give rise to a complete defence to the claims?

21. Mr Donald Lilly, who appears for Ash (but who did not draft his defence or amended defence), contends that under CPR rule 16.5 there is no need for a defendant to plead anything more than a positive case which, as here, amounts to a complete defence to

the claim (i.e. the defence that in October 2016, the claimants agreed to give up their rights in relation to the SPVs in dispute). He says that there is no need for a defendant to plead in addition an "alternative" case in answer to the individual allegations which fall to be considered only in the event that his main line of defence fails. He can leave them unanswered in his defence for the claimant to prove, even if he is in fact able to admit or deny them. If the claimant wants any further clarification of his case in relation to such unanswered individual allegations, he must make a request of the defendant for further information under CPR rule 18.1, and show that this request is confined to matters which are reasonably necessary and proportionate to enable the claimant to prepare his case, within paragraph 1.2 of the Practice Direction under Part 18.

22. On the other hand, Mr Parker contends that it is not enough for the defendants to advance a defence which, if proved, would defeat the whole claim: they must also deal with the allegations in the particulars of claim which proceed upon the premise that the positive defence or defences will fail. So here, for example, the defendants, regardless of their positive defence, must plead to the allegations of fact which are said to amount to a breach of the joint venture agreement and breach of fiduciary duty. Further, it is not enough, he says, for them simply to put the claimant to proof of them: they must, if they can, say whether they admit or deny them, and if they deny them, they must give reasons for doing so.

23. The starting point for consideration of this issue is CPR rule 16.4(1), which provides:

> "(1) Particulars of claim must include –
>
> (a) a concise statement of the facts on which the claimant relies ……
>
> ….
>
> (d) such other matters as may be set out in a practice direction."

24. CPR rule 16.5 provides:

> "
>
> (1) In his defence, the defendant must state –
>
> (a) which of the allegations in the particulars of claim he denies;
>
> (b) which allegations he is unable to admit or deny, but which he requires the claimant to prove; and
>
> (c) which allegations he admits.
>
> (2) Where the defendant denies an allegation –
>
> (a) he must state his reasons for doing so, and
>
> (b) if he intends to put forward a different version of events from that given by the claimants, he must state his own version.

(3) A defendant who -
(a) fails to deal with an allegation; but
(b) has set out in his defence the nature of his case in relation to the issue to which that allegation is relevant,

shall be taken to require that allegation to be proved.

(4) Where the claim includes a money claim, a defendant shall be taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation.

(5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation."

25. The Practice Direction to Part 16 goes on to provide for matters that have to appear in the particulars of claim (none of which are relevant to the present case) and in the defence. In particular, paragraph 10 provides:

"**General**

10.1 Rule 16.5 deals with the contents of the defence.
10.2 A defendant should deal with every allegation in accordance with rule 16.5(1) and (2)
10.3 Rule 16.5(3), (4) and (5) sets out the consequences of not dealing with an allegation."

26. Mr Lilly develops his arguments by reference to these provisions as follows.

27. First, he says that in the case of all the paragraphs in the Re-Amended Particulars of Claim which are said not to have been answered properly, the allegations are denied, even if in only the most general terms. Therefore, Ash has complied with rule 16.5(1).

28. Next, he says that Ash, in denying the allegations, has stated his *"reasons for doing so"* within rule 16.5(2)(a), because he has explained his reason for denying the claim (and therefore the allegations in the claim) against him, that is to say, all his obligations, save in relation to certain existing SPVs, were extinguished by the October 2016 agreement. Therefore, having complied with rule 16.5(2)(a), he has complied with all of rule 16.5(2), because under rule 16.5.2(b) he is not under an obligation to put forward a different version of events from the claimant's version unless he intends to advance one at trial. Therefore, having complied with both rule 16.5(1) and (2), he has complied with all of rule 16.5, which contains no other relevant requirements for a defence.

29. In the alternative (he says) even if, by making only general denials of certain allegations, Ash has failed to satisfy rule 16.5(2), he comes within rule 16.5(3), in that although he has (by such general denial) failed *"to deal with an allegation"* within rule 16.5(3)(a), nonetheless he has set out in his defence *"the nature of his case in relation to the issue to which that allegation is relevant"* within rule 16.5(3)(b), i.e. that he was discharged from all relevant obligations by the October 2016 agreement. Therefore, as provided for by the words in the tail of rule 16.5(3), Ash *"shall be taken to require that allegation to be proved"*. Further, because this is what the words in the tail expressly provide in such an event, he does not have to say anything more about the allegation that is required to be proved, even if he is in fact able to admit or to deny it because the relevant facts are within his knowledge. In short, these words at the tail of rule 16.5(3) provide an exception to the requirement in rule 16.5(1) that a defendant must say which allegations he is unable to admit or to deny, but requires the claimant to prove.

30. In my judgment, this construction is misconceived. The short answer is that it confuses the word "allegation" in rule 16.5(2) with the word "claim" in the sense of "cause of action", and assumes that once an "allegation" (i.e. in the sense of a claim or cause of action) has been denied with reasons given for the denial, rule 16.5(2) has been satisfied, and the defendant does not have to deal with any other individual allegations in the claim. But the word "allegation" in rule 16.5(2) is not synonymous with the word "cause of action" or "claim", as is shown by rule 16.5(1), which draws a clear distinction between the particulars of claim, and the individual allegations it contains. Further, rule 16.5(1) proceeds on the premise that the defendant may be unable to admit or deny some "allegations", which makes sense in reference to individual allegations of fact, but little in reference to claims or causes of action. Likewise, as Mr Parker points out, the provision in rule 16.5(3)(b), that a defendant who has set out the nature of his case *"in relation to the issue to which that allegation is relevant"* is taken to require that allegation to be proved, implicitly draws the same distinction, and presupposes that "an allegation" is an allegation of individual fact which goes to, and is therefore a mere part of, an issue raised by a claim.

31. Further, I reject the argument that, once a defendant has set out in his defence the nature of his case in relation to the issue to which an allegation is relevant, he can rely on the words at the tail end of rule 16.5(3) in order to avoid dealing with that allegation, if he is fact able to admit or deny it. Rule 16.5(1) is mandatory, and requires a defendant to say which allegations – i.e. individual allegations - he is unable to admit or deny. Rule 16.5(3), therefore, cannot sensibly be read as permitting a defendant to escape dealing with an allegation of a fact within his knowledge (i.e. which he can admit or deny) by explaining the nature of his case in relation to the issue to which it relates without dealing with the allegation itself. Rather, it permits him, where he cannot admit or deny the allegation itself, to put forward the nature of his case on the issue to which that allegation is relevant. If he

does that, he does not have to go on to add in terms that he is unable to admit or deny the allegation. In short, rule 16.5(3) presupposes a genuine inability to admit or deny a particular allegation, in which case its provisions apply.

32. With that introduction, I now turn to the individual items still in issue.

Items 4 and 11 of the schedule

33. Paragraphs 35 and 36 of the Re-Amended Particulars of Claim plead that on or around 6 October 2015, Ash, Babar and Alpesh (on behalf of himself and BWD) formed Fourstream, in which each of the three of them owned 25% through their corporate vehicles, and of which each was a director, along with Haq. Although this partly satisfied Ash and Babar's obligations under clause 3.12 of the joint venture agreement, they failed to transfer any shares in ERED London to Fourstream or BWD. The final sentence of paragraph 36 concludes:

> "Notwithstanding, [ERED London and Equity Real Estate Developments Limited] continued to be used as a key operating company to undertake further property deals/transactions as part of the Equity Real Estate business and (it is inferred) to earn profits through Profit Sharing Agreements including those referred to in paragraph 41 below."

34. This is an important allegation, because it goes to whether the defendants have continued to operate and to make profits from the SPVs other than those for which they accept they are prepared to account.

35. The only answer to this is in paragraph 47 of Ash's Amended Defence, which pleads:

> "Save as consistent with the foregoing, paragraphs 35 to 37 are denied."

36. The difficulty with this is that it is not clear what the "foregoing" is, and even if one reads it as referring to paragraphs 45 and 46 of the Amended Defence (the most likely candidates) these paragraphs simply don't explain whether (for instance) ERED London and Equity Real Estate Developments Limited ceased to be used at all, or whether they continued to be used, but not in relation to the companies set out in paragraph 41 in respect of which the claimants make their claim. I accordingly agree with this aspect of the claimants' complaint (which constitutes what is left of item 4).

37. The complaint in item 4 also initially included a complaint that paragraph 47 did not make clear whether Ash disputed that he and Babar had failed to transfer any shares in ERED London to Fourstream or BWD. However, in the counter-schedule to Mr Goldkorn's second witness statement, he explained that this was denied by virtue of the allegation in paragraph 45, which alleged that it was not agreed that ERED

London would be transferred to Fourstream, and it was Alpesh who did not wish to use the pre-existing structures for the business. The claimants in their response to the counter-schedule accepted this explanation. This also disposes of the complaint in item 11, which was to the same effect in relation to paragraph 70 of the Amended Particulars of Claim, which also pleaded Ash and Babar's failure to transfer shares to ERED London or BWD.

Items 6, 9, 9A, 10, 12 and 12A

38. Paragraphs 41 to 42 of the Re-Amended Particulars of Claim contain detailed allegations to the effect that Ash and Babar created several new companies to exploit property opportunities for themselves outside the structure provided for by the joint venture agreement, and also transferred two of the SPVs out of Fourstream (including in one case to ERED London). This is item 6.

39. Paragraphs 68 to 74 of the Re-Amended Particulars of Claim generally contain a series of allegations that Ash and Babar acted in breach of the joint venture agreement, for example, by carrying out property deals other than through Fourstream but through SPVs in which they did not give Alpesh a 25% interest in the shares, by failing to distribute to him profits in certain ventures, and by transferring certain shareholdings in SPVs to other companies. This is item 9.

40. Further:
    (1) Paragraph 68 alleges that in breach of warranty, Babar did not have a registered shareholding in one of the companies operating under the Equity Real Estate brand (i.e. Equity Real Estate Lambda). This is item 9A.
    (2) Paragraph 69 complains that they acted in breach by failing to transfer certain existing and future SPVs or 25% of ERED London to BWD. This is item 10.
    (3) Paragraph 72 complains that they acted in breach by failing to distribute profits generated from the sale of one particular SPVs property at Mile Cross. This is item 12.
    (4) Paragraphs 81 to 84 set out the claimants' derivative claim on behalf of Fourstream that in acting as they did in transferring Fourstream's shareholdings in two SPVs, Ash and Babar acted in breach of fiduciary duty to Fourstream; and Equity Aries, in receiving the shares in one of those SPVs, was guilty of knowing receipt. This is item 12A.

41. In the case of each of these paragraphs, the Amended Defence simply pleads a bare denial (in paragraph 50 on item 6, paragraph 62 on items 9, 9A, 10 and 12, and paragraph 67 on item 12A).

42. Mr Lilly's first justification for these bare denials is his general argument identified above, which I have already rejected (i.e. they were legitimate because Ash, by

advancing a complete defence to the claim, was not obliged to deal with these allegations which are relevant only if his defence fails).

43. Mr Lilly's second justification is that in some cases, if the court were to order the defendants to amend their defence so as to require them to explain their case about what happened to the Further SPVs, it would be giving to the claimants now the very relief which they seek in these proceedings, when the defendants deny that they are entitled to that relief by virtue of their plea in paragraph 11(4) of the Amended Defence, to the effect that under the alleged October 2016 agreement, it was agreed by Alpesh that neither he nor BWD nor Fourstream would have any interest or entitlements in these SPVs. Further, Ash should not be required in his defence, where there is such an issue, to advance a case which might require him to breach confidences to investors in those SPVs.

44. I reject these arguments. First, the claim is not a bare claim for information, but one that pleads a financial claim based on breaches of the joint venture agreement and fiduciary duty. There is no question therefore that an order requiring Ash to plead his defence properly will give the claimants the entire or even a substantial part of the relief they seek. Second, considerations of mere confidentiality do not of themselves override the requirements of the CPR, as is most obvious from the requirement to disclose confidential documents (unless privileged). Therefore, they do not provide any excuse for non-compliance with rule 16.5.

45. Accordingly, I uphold the claimants' complaints on these items, because the Amended Defence does not give reasons for the denials, contrary to rule 16.5(2)(a).

Item 7(b)

46. As I have said, the joint venture agreement required BWD to provide a loan of £800,000 to Ash and Babar. In paragraph 48, the claimants plead that this was provided in six instalments from 5 October 2015 to 29 January 2016.

47. This allegation is met with a bare denial in paragraph 54 of the Amended Defence.

48. Mr Lilly maintains that the allegation is dealt with in paragraphs 36 to 38 of the Amended Defence, but all these plead is that Alpesh, before the joint venture agreement, said that he wanted his proposed contribution of £800,000 to be treated as a loan for tax reasons. They say nothing about whether the sum of £800,000 was or was not actually paid, and whether, if it was, it was paid by way of loan or by way of some other form of contribution, and if so, what. Accordingly, I uphold this complaint on the basis that no reasons are given for the denial contrary to rule 16.5(2)(a).

Item 8

49. In paragraph 63, the claimants allege a series of detailed facts in support of the allegation that Ash and Babar owed Alpesh fiduciary duties in relation to the carrying out of the joint venture agreement. This is necessary, Mr Parker contends, because a joint venture agreement would not without more necessarily carry with it fiduciary duties owed by one party to the other.

50. Again, Ash simply makes a bare denial of this allegation in paragraph 59 of his Amended Defence, save to allege that if the parties' arrangements were as alleged by the claimants, no fiduciary duties arose.

51. The only justification Mr Lilly advanced for not pleading to the facts is his main justification, which I have already rejected, i.e. that as the Amended Defence puts forward a complete defence by virtue of the October 2016 agreement, Ash does not have to plead specifically to these allegations.

52. There is, however, one point which causes me concern, which is that the pleading in sub-paragraphs (a) to (e) of paragraph 63(4) goes far beyond a "concise statement of the facts" required by CPR rule 16.4(1), and I see no good reason why Ash should be required to plead to these subparagraphs without a request for further information and an explanation why an answer would be necessary in order to enable the claimants to prepare their case or to understand Ash's case.

53. Subject to this reservation, I uphold the claimants' complaint, on the basis that Ash's denial fails to give reasons, contrary to rule 16.5(2)(a).

Item 13

54. Finally, the claimants complain that in paragraph 70 of his Amended Defence, Ash claims a set-off against Alpesh for losses which he, Ash, is said to have suffered by reason of Alpesh's alleged breach of duties. The complaint is that although Alpesh's conduct is said to have been *"negligent and in breach of duty"*, no facts are alleged which are said to have given rise to the alleged duty or duty of care, and it is not said what he did so as to be negligent.

55. However, although I accept that no facts are alleged which are said to give rise to the alleged duty, it is said in what respect Alpesh's conduct was negligent. Further, I do not see how this failure to plead the relevant facts giving rise to the duty can be said to amount to a breach of rule 16.5. The most to which it would entitle the claimants, as Mr Parker appeared to accept, is an order that the defendants provide further information on this point.

The second issue: what form of order should be made?

56. In my judgment, although some of the failures on their own (e.g. on items 7(b) and 13) could be dealt with conveniently by an order for the provision of further information, the failures do (apart from on item 13) amount to a breach of CPR rule 16.5 for the reasons I have given. Further, I am satisfied that the rules permit me to order a revised defence which properly pleads to the allegations in question. Mr Lilly contends that paragraph 10.3 of the Practice Direction recited above, by providing that rules 16.5(3), (4) and (5) set out "the consequences" of not dealing with an allegation, limits the powers a court has when there is a breach. However, all this paragraph is doing is confirming what the consequences of a breach are, not limiting a court's powers when there is a breach. In particular, I see no reason why I cannot order a revised defence under the court's powers in CPR rule 3(1)(m), as His Honour Judge Parkes Q.C. did in *Devere Holding Company Limited v. Belgravia Wealth Management Europe* [2014] EWHC 3781.

57. I shall therefore order that Ash in relation to each of the relevant allegations above must set out in a revised defence (a) whether the allegations are admitted, denied, or neither admitted nor denied but are ones that he requires the claimants to prove; and (b) the reasons for any denials, including the facts relied upon to put forward a different version of events from that given by the claimants if he intends to advance any such different version. Mr Lilly has accepted that if this is to be ordered in relation to the other items, then he is content to deal with the complaint under item 13 in this way.

The third issue: unless order?

58. In my judgment, it would premature to make the order on unless terms. Although the defendants' approach has been misconceived and unhelpful, they have set out the gist of their defence, and have not been guilty of failure to conduct the litigation properly in other material respects.

The position of Babar and Equity Aries

59. I make the same orders against Babar and Equity Aries. I note that the application notice does not ask them to explain what the "necessary changes" are which they intend to make from Ash's defence, and so I do not make any order to that effect on this application.