



Neutral Citation Number: [2023] EWHC 169 (Ch)

Case No: CH-2022-BRS-000012

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN BRISTOL**  
**CHANCERY APPEALS LIST**  
**On appeal from the Business List (ChD)**  
**District Judge Woodburn**

Bristol Civil Justice Centre  
2 Redcliff Street, Bristol, BS1 6GR

Date: 30 January 2023

**Before :**

**HHJ PAUL MATTHEWS**  
**(sitting as a Judge of the High Court)**

-----  
**Between :**

**TOM JOHNSON**

**Claimant/**  
**Appellant**

**- and -**

**BANK OF SCOTLAND PLC**

**Defendant/**  
**Respondent**

-----  
-----

**The Claimant/Appellant in person**  
**Eversheds Sutherland (International) LLP for the Defendant/Respondent**

Application dealt with on paper  
-----

**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.

.....

This judgment will be handed down by the Judge remotely by circulation to the parties or their representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 12 noon on Monday 30 January 2023.



## HHJ Paul Matthews :

### Introduction

1. This is my judgment on the question whether a transcript ought to be provided at the public expense of the whole hearing of (and not merely the judgment on) an application to set aside an order striking out a claim. The claim concerns a dispute between a mortgage lender and its borrower, in relation to an interest only loan taken out in 2010. The claimant borrower is a litigant in person who, according to the material which I have seen, suffers from severe hearing loss, anxiety and stress. The original claim form was issued in Bristol on 14 March 2022, claiming £426,000, without however any particulars of claim or other indication of how that sum was arrived at. Although the claim form was headed “Queen’s Bench Division, Commercial Court”, it was actually issued in the Chancery Division, Business List. But, so far as I can see, nothing turns on that.
2. On 20 March 2022 a further claim form (dated 17 March 2022) was issued against the defendant, under the same claim number, but this time claiming damages in the total sum of £726,400. Unlike its predecessor, this claim form attached particulars of claim, which were also dated 17 March 2022. They covered just two pages, but they did at least give a summary breakdown of how the sum claimed was arrived at. All the heads of damage alleged appeared to arise from claims in tort or for breach of fiduciary duty. A covering email to the court from the claimant asked: “Please discard form N1 filed by Claimant on 14.3.2022”. It appears that court staff did so. Effectively, therefore, this was from the outset an amended claim. The defendant by its solicitors acknowledged service on 13 April 2022, indicating an intention to contest the claim. A defence was filed on 13 May 2022, claiming that, by reason of lack of particularity, the defendant was unable to plead to the claim, but nevertheless denied that the claimant was entitled to any relief.

### The orders of DJ Wales

3. On 18 May 2022 DJ Wales, having considered the documents filed, made an order on his own initiative:

“Unless by 4pm on 8th June 2022 the Claimant files in court and serves upon the Defendant a properly detailed Particulars of Claim in accordance with the following paragraph, the Claimant's claim will be struck out.”

The following paragraph gave detailed directions to the claimant as to how the particulars of claim should be set out in order to avoid being automatically struck out. The claimant wrote to thank the court for its guidance, and apologised to the defendant’s lawyers. On 7 June 2022 (*ie* within the time limit set by the ‘unless’ order of 18 May) the claimant filed further, more extensive, particulars of claim. These were however couched in note form, using a considerable number of abbreviations. Having looked at them myself, I can say that they were not easy to follow.

4. On 16 June 2022 DJ Wales, sitting without a hearing, made an order striking out the claim on the papers. The order says that he was sitting in the County Court at Bath. No doubt he was physically sitting at Bath when he dealt with the papers, but obviously, since this was a claim in the High Court, it was an order in the High Court. He gave the following reasons for his order:

“(a) the amended Particulars of Claim do not concisely set out all the facts and circumstances which are alleged to give rise to his claim and do not allow the court or the Defendant to understand the nature of the Claimant’s claim without speculating or making imputations as to the nature of the claim

(b) the amended Particulars of Claim do not demonstrate what the Claimant says is his loss, how it has been calculated, or how it has been caused by the matters alleged

(c) the amended Particulars of Claim do not comply with the provisions of the order of the court dated 18 May 2022

(d) in the circumstances the amended Particulars of Claim do not properly disclose any reasonable grounds for bringing the claim

(e) the amended Particulars of Claim are an abuse of the court process and are otherwise likely to obstruct the just disposal of the proceedings and

(f) there has been a general failure to comply with court rules, namely CPR 16.2 (1)(a) which requires a statement of case to contain a concise statement of the nature of the claim, 16.4(1) which requires Particulars of Claim to contain a concise statement of the facts on which the Claimant relies, and Practice Direction 16 para 8.1 which requires proper details of any allegations of fraud, illegality, misrepresentation, breaches of trust, knowledge of a fact, and/or wilful default”.

### **The application to set aside**

5. The claimant applied to the court by notice dated 3 July 2023 (issued the next day) to set aside the judge’s order. On 5 July 2022 DJ Wales listed an oral hearing of that application for 15 November 2022. On the latter day, DJ Woodburn, sitting at the Civil Justice Centre in Bristol, heard the claimant in person and a solicitor-advocate on behalf of the defendant, considered various documents, and dismissed the application. He also refused an application for permission to appeal.

6. The order of the court, sealed on 15 November 2022, recited in part:

“**AND UPON** the Claimant having not filed/served any further amended Particulars of Claim since the Order dated 16 June 2022 and the Court, today giving to the Claimant an opportunity to summarise his claim(s) against the Defendant and to explain the amount sought;

**AND UPON** the Court hearing the Defendant and considering the witness statement of the Claimant dated 3 July 2022 and forming the view that there is no (and not likely to be any) improvement in the particularity of this claim and that the Claim, such as it is, discloses no reasonable grounds for bringing a claim for the reasons set out at paragraph 1(a) to (f) inclusive of the Order dated 16 June 2022 and that there has been no, or no significant change, in the presentation of the Claim since the Order dated 16 June 2022 ... ”

7. The claimant, by notice in Form N161, dated 22 November but sealed by the court on 6 December 2022, seeks to appeal against those orders, for which purpose he requires permission (as indeed the notice makes clear). This notice was accompanied by written Grounds of Appeal. The claimant has also lodged a written skeleton argument dated 26 November 2022. All that is lacking, for the court to be able to decide whether or not to give permission, is a transcript of the judge’s judgment, or other note of his reasons.

### **The requests for a transcript**

8. On 9 December 2022 the claimant lodged with the court an application in Form EX105 for a transcript to be made at the public expense of the entire hearing before DJ Woodburn on 15 November. On 11 December he lodged the (logically prior) request in Form EX 107 for the transcript to be made at all. On 10 January 2023, court staff wrote to the claimant attaching a copy of an email from DJ Woodburn dated 22 December 2022, granting permission for a transcript to be provided at the public expense, but in respect of the judgment alone, and not the whole hearing.
9. The claimant was dissatisfied with this, and the two forms EX 107 and EX 105 were lodged again, this time under cover of a letter to the court dated 11 January 2023. Then, by a further letter dated 22 January 2023, the claimant also lodged an application notice in Form N244, both for (i) an order that a full proceedings transcript be supplied, and (ii) an order for the renewal of an earlier application (by notice dated 6 August 2022) for a costs capping order. At least so far as the transcript is concerned, it is not clear to me that the claimant is entitled to make a second application for the same relief without showing some material change in circumstances (see *eg Chanel Ltd v FW Woolworth & Co Ltd* [1981] 1 WLR 485, CA), but as things turn out I do not think this makes any difference.

### **The new particulars of claim**

10. In the meantime, following the dismissal by DJ Woodburn of his application to set aside the original striking out order of DJ Wales, and the lodging of his application for permission to appeal, the claimant has lodged a new document, entitled “summary particulars of claim”, dated 7 January 2023. So far as I can see, he has neither asked for nor obtained permission to do this. Accordingly, as things stand, this document has no official status. Nevertheless, it is helpful to understand the concerns of the claimant. The new (third) particulars of claim allege (amongst other things) that the claimant has “unfailingly paid the monthly interest due by Direct Debit, the amounts for which are controlled by

BOS, the Defendant”. Nevertheless, the claimant says that “‘fictitious ‘arrears’ [have arisen] from apparent errors in calculating direct debits paid to his mortgage account with the Defendant”. The new particulars further allege that a previous “almost identical” claim between the same parties was settled in 2016.

11. The relief sought by the claim includes damages for pain, distress, suffering and loss of amenity, aggravated damages (on grounds of injured dignity, deliberate malicious falsehood and unconscionable/coercive conduct regarding the defendant’s direct debit responsibilities) and exemplary damages (on the grounds that the defendant has since 2011 deliberately and unconscionably ignored reasonable requests to correct the mortgage account). The claimant also seeks interest and pro bono costs under section 194 of the Legal Services Act 2007 and CPR rule 46.7. This new document is not however relevant to the present question before the court concerning the transcript.

### **Cost-capping**

12. So far as concerns the question about the costs capping order, I can deal with this quite shortly for present purposes. I direct that this part of the application be adjourned to await the result of the application for permission to appeal, and then, if the appeal is successful and the struck-out claim is restored, listed for hearing before a fulltime district judge, with a time estimate of 1 hour, and pre-reading of 30 minutes. This would of course be without prejudice to any argument that may be raised based on the *Chanel Ltd v FW Woolworth & Co Ltd* principle. I have heard no argument, and make no decision about that.

### **Transcripts: the law**

13. I turn therefore to the question of the transcript. The right to obtain a transcript itself is governed by CPR rule 39.9(3), which provides:

“Any party or person may require a transcript or transcripts of the recording of any hearing to be supplied to them, upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.”

But that rule, whilst conferring a right, requires the party or person to pay authorised charges for the transcript. What about the supply of a transcript at the public expense?

14. The court has power to order a transcript to be made at the public expense under a new rule which came into force on 1 October 2014, as CPR r 52.14. (There was an earlier rule using this numbering, which dealt with a quite different subject.) This rule relevantly provides:

“(1) Subject to paragraph (2), the lower court or the appeal court may direct, on the request of a party to the proceedings, that an official transcript of the judgment of the lower court, or of any part of the evidence or the proceedings in the lower court, be obtained at public expense for the purposes of an appeal.

(2) Before making a direction under paragraph (1), the court must be satisfied that—

(a) the requesting party qualifies for fee remission or is otherwise in such poor financial circumstances that the cost of obtaining a transcript would be an excessive burden; and

(b) it is necessary in the interests of justice for such a transcript to be obtained.”

15. Three things will be noted. First, that for the purposes of this rule it is not sufficient to satisfy condition (a) alone. Merely qualifying for fee remission or being in such circumstances that the transcript cost would be an excessive burden is not enough. It must also be *necessary in the interests of justice* to obtain the transcript at public expense. Second, it will be noted that a transcript may only be obtained at the public expense *for the purposes of an appeal*. So, although a party may pay for a transcript to use for other purposes, the court cannot direct such a transcript under this rule for such other purposes. Third, although satisfying the criteria in both sub-paragraphs (a) and (b) of paragraph (2) is *necessary*, it does not follow automatically from this that, if the two conditions *are* satisfied, the court *will* make such an order. Paragraph (1), using the words ‘may direct’, shows that there is a discretion, and the court must consider all the circumstances.

16. There are not many authorities which deal with this rule. But, in *Anwer v Central Bridging Loans Ltd* [2022] 1 WLR 4917, CA, Coulson LJ (with whom Birss LJ and Zacaroli J agreed) said:

“32. First, if the requesting party is prepared to pay for the transcript of a judgment or hearing, he or she is entitled to it as of right. If the requesting party cannot pay, so seeks the transcript at public expense, that will only be permitted if it is in ‘the interests of justice’. That hurdle is to ensure the proper use of public funds. ... ”

17. So far as procedure is concerned, CPR Practice Direction 52B, paragraph 4.3, provides in part that “Any application for a transcript at public expense should be made within the appellant’s notice”. As far as I can see, that has not been done here. It is not a mere technicality, because in some cases this failure can cause difficulties: see *eg Kamara v Builder Depot Ltd* [2020] EWHC 3046 (QB), [20]. Nevertheless, it is clear in the present case that that is what the claimant wants, and I will deal with the claimant’s request as if it had been in the notice.

### **The claimant’s submissions**

18. In support of the request for a transcript to be made at the public expense of the entire hearing before DJ Woodburn, the claimant says this in the Form EX105 itself:

“Applicant A alleges severe hearing disability & proven recognised mental illness (anxiety-stress) rendered it impossible for him to participate in the proceedings.

Possibly A heard unfair imputations re 'wrongful' LIP & failing to provide evidence particulars which remain undisclosed i.e. evidence under the control of the Respondent.

A also alleges apparent imputations and unfairness/intimidation re his competence as a chartered accountant of 40 years' standing e.g. possible negativity regarding 'fishing' for evidence & LIP ignorance re the 'public' Direct debit payment system & LIP allegedly using court for consumer advice.”

19. In his covering letter to the court dated 11 January 2023, the claimant additionally says:

“Applicant’s grounds call for the full evidence of the 15.11.2022 Hearing because:

1. Evidence to support Applicant's veracity.
2. Fairness/Process. Access to the full transcript apparently has been obstructed.
3. CPR 52.14 (2) (a) Applicant qualifies for fee remission; also on grounds of such poor financial circumstances that the cost of obtaining a transcript would be an excessive burden; and
4. In particular A’s application for Permission for CCO has been struck out.
5. CPR 52.14 (2) (b) It is necessary in the interests of justice for such a transcript to be obtained; particularly regarding a public interest case.
6. Severe hearing disability. Applicant considers that this alone merits the full transcript.”

## **Discussion**

20. The form EX107 which has been lodged by the claimant shows that the hearing lasted some 40 minutes, from 10:30 am to 11:10 am. A small part of this time will have been taken up by the extempore judgment which was given by the judge, and the rest (the greater part) will have been taken up with the argument.
21. What usually matters, in considering whether to give permission to appeal, are the judge’s reasons for making his decision, *ie* the extempore judgment. A transcript of the judgment alone will be far less expensive than a transcript of the entire hearing, and it should provide a sound basis for further decisions to be made, both in relation to permission to appeal and (if that is granted) the substantive appeal. Given the claimant’s financial circumstances, and the

relatively low cost of supplying the transcript of the judgment, I am satisfied that it is in the interests of justice that he should have a transcript of the judgment provided at the public expense. In fact, as I have already said, DJ Woodburn has already reached the same conclusion, and made that decision, and I need say no more about that.

22. But the claimant is not satisfied with that. He asks for a transcript of the *whole* proceedings to be provided at the public expense. This would be more expensive, and usually (as I have said) it is unnecessary. I therefore need to look at the claimant's reasons for seeking this.
23. The first point (from Form EX 105) is that the claimant's disability and illness "rendered it impossible for him to participate in the proceedings". Yet it is clear from the court's order, as well as from the Grounds of Appeal themselves, that the claimant did indeed participate in the hearing. So far as I can see from the materials before me, no complaint was made at the time. This does not justify the public's paying for the transcript of the entire hearing.
24. The second point is that "Possibly [the claimant] heard unfair imputations" against him. This is an odd thing to allege when the claimant is, on the evidence before the court, suffering from "severe hearing loss". Even so, it is a wholly unparticularised allegation, and is clearly fishing. It cannot justify obtaining a transcript of the whole at public expense. The third point is that the claimant "also alleges apparent imputations and unfairness/intimidation re his competence as a chartered accountant of 40 years' standing e.g. possible negativity regarding" various issues. This too is too vague, and also clearly fishing, and similarly does not justify obtaining such a transcript.
25. The next point (taken from the claimant's covering letter) is that the transcript will provide "Evidence to support Applicant's veracity". I doubt very much that any transcript of the hearing would do such a thing, but in any event that is not what matters here. The order of DJ Wales, and the hearing before DJ Woodburn, were not concerned with, and hence were not about, anyone's veracity. The first order (of DJ Wales) proceeded on the basis that the Particulars of Claim did not comply with the rules and did not sufficiently enable the defendant to know what was the case it had to meet. It was a matter of procedure and not a matter of substance or merits of the case. The second order (of DJ Woodburn) dismissed the application to set aside the first. That too was not about the merits of the underlying claim.
26. Then it is said that "Access to the full transcript apparently has been obstructed". I do not understand this unparticularised allegation. This current application is entirely about whether the criteria in CPR rule 52.14 are satisfied and whether the court considers it appropriate to direct a transcript at the public expense. Dealing with that application is not obstruction. It is following the procedural rules, and thereby doing justice as between the parties.
27. Next, the claimant asserts that both conditions in rule 52.14(2) are met. I agree that the first one is, because the claimant qualifies for fee remission, and that is one alternative way to satisfy the first condition. But, as I have said, that is not

enough. Whether the second condition (“in the interests of justice”) is met is the very question that I am presently considering. Merely asserting that it is met does not make it so.

28. The claimant also says that his “application for Permission for CCO has been struck out”. I am afraid that that is irrelevant to the present question. Finally, the claimant says that he considers that his “severe hearing disability ... alone merits the full transcript.” I disagree. Having a severe disability does not of itself mean that it is in the interests of justice for a litigant to have a transcript of the whole proceedings provided at the public expense.
29. I am bound to conclude that none of the reasons given, taken singly or together, justifies the public paying for a transcript of the whole proceedings, as opposed to a transcript merely of the judgment. Further, the claimant has not given the court any idea of how much the transcript will cost. So, the court is unable to judge what kind of burden would be placed either on the claimant or the public, as the case may be. Moreover, in considering whether it is necessary in the interests of justice for the public to pay for the transcript of the whole of the proceedings, I bear in mind that the claimant seeks to appeal an order already made twice at first instance, once on paper and again after an oral hearing (and by a different judge). He is not, for example, being required to fund a transcript in order to obtain a decision in the first place.

### **Conclusion**

30. On this basis, although the court has power to order such a transcript I am not prepared to exercise it. DJ Woodburn has already directed that the judgment alone be transcribed at the public expense. The claimant should get on with that. If, in addition, the claimant wishes to commission and himself pay for a transcript of the remainder of the hearing, that is his right, as Coulson LJ said in *Answer*. But it must be obtained and lodged by 4 pm on 27 February 2023, after which the court will decide the application for permission to appeal on the basis of the materials then available to the court.
31. If the claimant does commission his own transcript, and there is any difficulty about obtaining it within the time limited, it will be open to him to apply on Form N244 *before* the expiry of that period for an extension of time, supported by evidence to show what he has done, when he did it, and what is holding up the process. In that case, the court will then decide, based on that material, whether to grant any extension of time, or whether instead to go on and decide the question of permission to appeal on the basis of the material then available.