Neutral Citation Number: [2019] EWHC 1323 (QB)

Case No: QB/2017/0271

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2019

Before :

MR JUSTICE NICOL

- -

Between :

Athir Al-Balhaa	**1st Claimant & Appellant**
- and -	
(1) Burnette Raphael **(2) RMG Residential Management Group Ltd** **(3) Termhouse (Clarendon Court) Management Ltd** **(4) Clarendon Court (London) Freehold Ltd**	**Defendants & Respondents**

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Michael Paget (instructed by **Direct Public Access**) for the **Appellant**
Terence Gallivan (instructed by **PDC Law**) for the **1st, 3rd and 4th Respondents**
Jane Hodgson (instructed by **RPC**) for the **2nd Respondent**

Hearing dates: 2nd May 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.

.....

MR JUSTICE NICOL

Mr Justice Nicol :

1. This is an appeal against an order made by HHJ Lamb QC sitting in the Central London Civil Justice Centre dated 20th October 2017. The principal part of his order declared that three consolidated actions brought by the Appellant and his sister, Intesar Dawber (Intesar Al-Balhaa) stood struck out for failure to comply with an earlier order by the same judge which had been made on 8th September 2017. Permission to appeal was granted by Walker J. on 2nd February 2018.

2. The Appellant is the leaseholder of Flat 82, Clarendon Court ('Clarendon Court'), Sidmouth Road, London NW2 5HD ('the property'). He lives in Sweden. Ms Al Balhaa is the Appellant's sister. She lives in the property.

3. The 4th Respondent ('R4'), Clarendon Court (London) Freehold Ltd, is the freehold owner of Clarendon Court. The 3rd Respondent ('R3'), Termhouse (Clarendon Court) Management Ltd, is the management company under all the long leases at Clarendon Court. It is responsible for providing services and levying service charges in accordance with those leases. The 2nd Respondent ('R2'), RMG Residential Management Group Ltd, is the managing agent employed by R3. The 1st Respondent ('R1') is the caretaker at Clarendon Court and is an employee of R3.

4. Between 2013 and 2015 the Appellant and his sister brought a series of claims against R1 and others (I shall refer to the Appellant and his sister collectively as 'the Claimants'). In November 2015 District Judge Backhouse consolidated three of these claims (which had the county court reference numbers: 3BT00449, A90YJ231 and B30YM427), struck out the claims against some of the defendants and gave the Claimants permission to add R2 and R3 to the consolidated claim. R4 was and continued to be a defendant to one of the claims, A90YJ231.

5. D.J. Backhouse also ordered the Claimants to serve consolidated particulars of claim, which they did on 20th January 2016. It is not necessary to elaborate on the nature of the claims. In summary they included harassment, negligence said to have resulted in a burglary and a further claim in relation to a CCTV camera. A consolidated defence was served on 23rd February 2016. Mr Paget told me that the amount claimed in total was about £150,000.

The relevant procedural history

6. As can already be seen, the consolidated claims had had a long genesis. However, a trial date had been fixed for 30th October 2017 with a time estimate of 5 days. Judge Lamb conducted a pre-trial review on 8th September 2017. On that occasion the Claimants were at first represented by counsel, Mr McCracken, through Direct Public Access. The Appellant's sister was also present, but not the Appellant. Shortly after the hearing commenced, the Appellant's sister dispensed with counsel's services at that hearing. She then appears to have represented both Claimants in person.

7. There is some controversy as to the precise nature of the Judge's order on that occasion. A draft order was prepared by the Defendants' counsel, Mr Gallivan, on behalf of R1, R3 and R4, and Ms Hodgson on behalf of R2. In any event, the draft which had been prepared by counsel was approved by Judge Lamb and was sealed on 6th October 2017. Paragraph 4 of Judge Lamb's order said,

> 'The application of Ms Intesar Dawbar dated 9 April 2017 shall be dismissed save that the Order of DJ Backhouse herein dated 10 November 2015 and the Order of HHJ Hand QC dated 17 February 2017 insofar as they relate to the agreement and service of a trial bundle shall be varied as follows:
>
> > "(1) The Claimants shall serve on the Defendants' solicitors by 4 pm on 28 September 2017 a draft indesxed and paginated trial bundle to include the pleadings, orders, witness statements and exhibits which complies with CPR 39AP.3;
> >
> > (2) The Defendants shall comment on the draft trial bundle by 4 pm on 6 October 2017 and shall provide copies of all documents which they contend should be added to the trial bundle;
> >
> > (3) On receipt of the Defendants' comments and documents the Claimants shall either (i) file and serve by 4 pm on 13 October 2017 a revised indexed and paginated trial bundle to include all the Defendants' additional documents, or (ii) file and serve by 4pm on 13 October 2017 an indexed and paginated supplementary trial bundle comprising all the Defendants' additional documents;
> >
> > (4) In the event that the Claimants fail to comply with sub-paragraphs (1) and (3) the claims in 3BT00449, in A90YJ231 and in B30YM427 shall stand struck out."'

8. It is the Appellant's case that his sister received the sealed order relating to the hearing on 8th September 2017 on 8th October 2017. She promptly, in a series of emails of 9th October 2017, objected that it did not accurately reflect what Judge Lamb had ordered at the hearing. Nonetheless, in my view, the only proper course is to accept that the sealed order of the court does accurately reflect the order which the Court then made. I say this for two reasons:

   i) I have a transcript of the whole hearing which took place subsequently before Judge Lamb on 20th October 2017 (as well as a transcript of his judgment). In the course of submissions, Judge Lamb acknowledged that he had seen that the sister of the Appellant had challenged the court's sealed order on this basis. He said,

      > 'So I took the trouble to get a tape recording of everything that had passed and I satisfied myself that the order complied with what I had directed.'

   ii) The right course for a litigant who, after raising the matter with the judge, believes that the order does not reflect what was in fact ordered is to appeal. Belatedly the Claimants did seek to appeal the order of 8th September 2017. The application for an extension of time and for permission was considered by Walker J. on 16th July 2018. He granted an extension of time, but he refused permission to appeal and declared that the application for permission was totally without merit.

At the hearing before me, Mr Paget, on behalf of the Appellant, accepted that this was the correct course to take and that I should take the sealed order as reflecting accurately what Judge Lamb ordered on 8th September 2017.

9. The Appellant's sister did provide a draft trial bundle on 26th September 2017 (and so within the time prescribed by Judge Lamb). On 5th October 2017 Sedgwick, Detert, Moran and Arnold LLP ('Sedgwicks'), then solicitors for R2, wrote to the Claimants, (a) setting out why they said the Claimants' proposed trial bundles were deficient and did not comply with the Judge's order or CPR39AP.3 and (b) listing and providing copies of the additional documents which they considered should be included in the trial bundles. PDC Law, then, as now, solicitors for the other Rs wrote on the same day in similar terms.

10. The Sedgwicks' letter concluded,

> 'We understand you have arranged legal representation for the trial [I interpose here to say that Sedgwicks' understanding derived from an email which the Appellant's sister had written on 10th September 2017 to say that she had instructed a named barrister to deal with her brother's case.]. We strongly recommend that you discuss this letter and your response to it, with your advocate, particularly in view of your conduct with regard to the interference with witness statements and paragraph 4 of the order of 8 September 2017.'

I shall return to the comment concerning interference with witness statements. At this stage, as the letter itself acknowledged, the order following the hearing on 8th September 2017 had not been sealed. However, the reference to 'paragraph 4 of the order' would necessarily have been understood to refer to the paragraph 4 of counsel's draft which had been previously supplied to the Claimants and which had been quoted earlier in the same letter. In any event, the sealed version of the order was, as I have said, received by the Appellant's sister on 8th October 2017.

11. The Claimants did not include the additional documents requested by the Defendants either in a revised trial bundle or in a supplementary bundle. They did not make the changes (to the trial bundle) which the Defendants had alleged were necessary to comply with the Practice Direction.

12. On 16th October 2017 R2 issued an application for a declaration that, in accordance with the order of 8th September 2017, the consolidated claims stood struck out, for the trial date to be vacated and for the Defendants to be awarded their costs on an indemnity basis. The application was supported by a witness statement of Karen Morrish, a partner in Sedgwicks. The witness statement exhibited two large bundles of documents. The bundle prepared by the Claimants for the appeal included the witness statement itself, but not the exhibits. The Respondents provided copies of the exhibit bundles at the hearing of the appeal. No objection was then made by Mr Paget. The day after the hearing (3rd May 2019), the Appellant's sister wrote to the Court asking that I ignore the exhibits on the grounds that she had previously corresponded with Ms Morrish of Sedgwicks about the contents of the appeal bundle and this omission had not been mentioned and she had not had the opportunity to check the contents of the bundles. I saw no reason to comply with Ms Al-Balhaa's request: the letter did not come from Mr Paget, who had acted for the Appellant; the letter did not indicate that it had been copied to the Respondents; it was perfectly proper that

exhibits to a witness statement which was included in a hearing bundle should be made available to me; there had been only limited reference to the contents of the exhibits; and I had no reason to believe that what I had been supplied with was anything other than a true copy of the original exhibit.

13. It seems R2's application may not have been served until shortly after 4.00pm on 17th October 2017 and, therefore, not with the three days notice which CPR r.23.7(1)(b) requires.

14. On 18th October 2017 the Claimants applied for the Respondents' application to be adjourned. The Claimants referred to the Respondents' application as being 'to strike out' their claims. This was not strictly accurate. The Respondents were seeking a declaration that the claims stood struck out because of the failure to comply with Judge Lamb's 'unless' order of 8th September 2017. In summary, an adjournment was sought on three grounds: (a) there had been short service of the Respondents' application; (b) hearing the application would take longer than the 30 minutes estimated; and (c) the Claimants' public access barrister, Mr Coulter, was not available on 20th October 2017. The Appellant's sister made a ten-page witness statement in support of that application dated 19th October 2017.

15. On 20th October 2017 the matter first came before HHJ Gerald. After a period, he established that Judge Lamb was able to hear the matter and it was transferred to him. I have transcripts of the hearings before both Judge Gerald and Judge Lamb on 20th October 2017. No formal order was made as a consequence of Judge Gerald's hearing, although it is apparent from the hearing transcript that he did not consider the non-availability of counsel was a good reason to grant an adjournment.

16. There had been no formal application by the Claimants for relief from sanctions. In the course of her oral submissions on behalf of the Claimants, the Appellant's sister continued to deny that they were in default, but she did add, if they had been, 'I would like relief from sanction.'

17. Judge Lamb gave an oral judgment of which I also have a transcript (see below). His orders were subsequently incorporated into a formal order of the Court in which he:

    i) Granted any necessary abridgement of time to the Respondents.

    ii) Refused the Claimants' oral application for relief from sanctions.

    iii) Declared that the consolidated claims stood struck out.

    iv) Vacated the trial date.

    v) Refused permission to appeal.

    vi) Ordered the Claimants to pay the Defendants' costs on the standard basis subject to detailed assessment if not agreed.

18. As I have said, Walker J. granted the Claimants permission to appeal on 2nd February 2018. In addition to an appeal bundle, he directed that bundles should be prepared which would demonstrate (a) documents which the Claimants had proposed to include in their trial bundles; (b) documents which the Respondents alleged had been omitted

from the proposed trial bundles but which the Claimants alleged had been included; and (c) documents which the Respondents said had been omitted from the proposed trial bundles and which the Claimants agreed were missing. Such bundles of trial documents were prepared and were before me at the hearing.

19. The Appellant's sister was made bankrupt on 4th May 2018. Accordingly, on 18th December 2018 Stewart J struck out her appeal.

Judge Lamb's decision of 20th October 2017

20. Judge Lamb quoted from his order of 8th September 2017, including the obligation for the Claimants' draft trial bundle to be indexed and paginated and to comply (among other things) with the requirements of the Practice Direction A to Part 39.

21. Paragraph 3.10 of the Practice Direction required the party filing the trial bundle to provide identical copies for all of the parties and for the use of witnesses. Although this obligation is normally placed on a legal representative, Judge Lamb said,

> 'in compliance with the claimant's express request to me and in the light of my knowledge that she had the resources at times to consult counsel and to have counsel represent her and her brother at trial, I entrusted to the claimant the task of discharging the burden of preparing the trial bundle, whether she chose to discharge that through solicitors or counsel or her own hand.'

22. Judge Lamb noted that the copies of the draft trial bundles supplied to the two firms of solicitors were different. He continued:

> '[9]. As I have said, the preparation of the trial bundle is essential for the efficient conduct of litigation. From what I have heard today it seems to me that for reasons which I shall explain the claimant cannot be trusted to fulfil this task. The service of different trial bundles on the defendants was not the only failing on this claimant's part. In correspondence the defendants' solicitors sought politely but firmly to impress upon the claimant that the bundle which constituted her initial service fell short of what was required.'

23. He noted that Sedgwicks had written to the Appellant's sister on 5th October 2017 and explained their views on why the draft trial bundles did not comply with the Practice Direction. The Judge continued:

> '[10] ... The matters which are most troubling and which were pointed out to the claimant before 13 October fell were as follows: 1: She inserted into the bundle material which had not previously been disclosed. An example of that is to be found behind tab 2 of the defendants' application bundle. The second troubling aspect is that the claimant substituted material: for example, see tab 8 of the defendants' application bundle, the substitution of what the claimant now says is a draft witness statement for an actual witness statement. The third aspect which troubles me particularly is this – an example is to be found behind tab 8 at page 446 of the defendants' application bundle and I am reading at 446 from the bottom of the page, a whole series of paginations have been adopted during this case, but for example at that page there is to be found what appears to be the claimant's manuscript comment crossed 'not true'. No party to litigation should

> be putting into a trial bundle his or her own personal annotations. This should be an instrument for the use of the court, the judge, the witnesses; it is not a vehicle for a party to litigation to convey their own personal comments on the content of the document.
>
> [11]. In a witness statement which the claimant prepared for the purposes of her application before the court today, what the claimant said at paragraph 9 is this – and I hasten to add that this document, this witness statement runs to nine pages, 38 paragraphs, and is dated 19 October 2017. Paragraph 9 reads as follows:
>
> > "It was only one document inserted which was my draft witness statement 27 July 2015 rather than the final draft. I had both witness statements in front of me. I picked the draft rather than the final. If the solicitor can see that the incorrect statement has been placed into the bundle then all they need to do is to inform me and I would simply insert the correct final version. I cannot see why the solicitor for the defendant cannot cooperate with me to correct the bundle without troubling the court".

24. The Judge noted that his directions at the PTR had set out the procedure which should be followed by the Defendants if they were unhappy with the draft trial bundles. The Defendants had followed this course. The Judge noted that the Claimants then had two alternatives: they could either file and serve a revised trial bundle or they could file and serve an indexed and paginated supplementary trial bundle comprising all the Defendants' additional documents. The Judge observed that the Claimants had taken neither course. He continued at [12]:

> 'It was the express obligation of the claimant to do that. It is not good enough to come along to court, so far as I am concerned and say, "Well, if they want to pin in any other additional documents they can jolly well put it in themselves and put in in a supplementary bundle of their own"
>
> [13]. This is not the way in which litigation should be conducted. I repeat I only gave the task of compiling the bundle to the claimant because she expressly asked for it and I made clear on the last occasion what the sanction would be if she did not comply. In my view, the complainant cannot be trusted to fulfil the responsibility which she sought and which I entrusted to her. In consequence, and pursuant to the order which I made on 8 September the claims in the actions three to nine, A to 1, B to 7, set out in subparagraph four (4) of my order are struck out.'

25. The Judge noted that the Claimants had raised the issue that they had received insufficient notice of the hearing on 20th October 2017. The Judge said,

> '[15]. I asked the claimant, "What more would you have done had you known on Monday the 16th rather than Tuesday the 17th that this application was going to be heard on Friday?" In her answer it became clear that she had the benefit of counsel's advice during the course of the week and the product of this advice was simply to make the application which was made on her behalf for the adjournment of these proceedings. This afternoon, for the first time, at 2.05pm the claimant asked for relief from sanctions, relief from the sanctions of striking out.

> [16]. Even if there were a formal application served in time, before me, for relief from sanctions I would reject it because the attitude towards her litigation which this claimant adopts is wholly adverse to the efficient conduct of this case, as CPR require. Even if I were to give relief from sanctions and give the claimant more time I am far from satisfied that she would produce by the date of trial a functioning trial bundle without putting everybody else to enormous cost, trouble and expense. I declare that the identified claims are struck out.'

Grounds of appeal

26. The Notice of Appeal and skeleton argument in support were settled by Mr Barry Coulter, of counsel. 9 grounds of appeal were listed for (what were then) the two Claimants/Appellants. Two further grounds of appeal were relied upon for (what was then) the 2nd Appellant, now the Appellant, alone.

27. Skeleton arguments in response were lodged by Mr Gallivan (for R1, R3 and R4) and by Mrs Hodgson (for R2).

28. On 18th December 2018 Stewart J directed that the Appellant file and serve a skeleton argument in response to those of the Respondents. In accordance with that direction a skeleton argument, settled by Elizabeth England, of counsel, dated 9th January 2019 was served. Ms England pursued all 11 grounds of appeal.

29. Before me, Mr Paget represented the Appellant. Sensibly, he chose to direct his arguments exclusively to two of the grounds, namely grounds 8 and 9 in the original notice of appeal. Accordingly, I can confine myself to those two grounds which are as follows:

> **Ground 8** - The Learned Judge failed to permit the [First] Appellant to make any or any adequate application for relief from sanctions - this was both wrong and a serious procedural irregularity.
>
> **Ground 9** - In the alternative if the Learned Judge did permit the [First] Appellant to make an application for relief from sanctions he failed to grant relief from sanctions - this was both wrong and a serious procedural irregularity.

30. In his oral submissions, Mr Paget elaborated as follows:

    i) The well-known case of *Denton v T.H. White* [2014] EWCA Civ 906; [2014] 1 WLR 3926 sets out three stages which a court must go through when considering an application for relief from sanctions: stage 1 is to identify and assess the seriousness or significance of the breach; stage 2 was to consider the reason for the breach; stage 3 was to consider all the circumstances of the case so as to enable the court to deal justly with the application including factors (a) and (b) [in CPR r.3.9(1)]. See *Denton* at [24]. It was important for a Judge to go through each stage – see *Rehman v Rehman* [2017] EWHC 2418 (Ch) at [21]-[23]. However, Judge Lamb did not do this.

    ii) Although Mr Paget accepted that the sealed order did represent the definitive version of what Judge Lamb ordered on 8th September 2017, the Claimants did not have a copy of that until 8th October 2017. The Appellant's sister

misunderstood what she was required to do and, as a litigant in person, some allowance should be made for such misunderstandings which, in any case, had some justification in the transcript of the hearing of 8th September 2017.

iii) If and so far as Judge Lamb considered the breach to have been serious or significant, he failed to have regard to the alternative which he had embodied in paragraph 4(3)(ii) of his order. That alternative allowed the Claimants to file a supplementary trial bundle which comprised the documents which the Defendants had alleged were missing from the Claimants' proposed trial bundle. Copying those documents would not have been difficult. Correspondingly, the breach of the order of 8th September by not complying with that provision, could not properly be characterised as serious or significant.

iv) In any case, striking out the whole claim was disproportionate. This was litigation which had been going on since 2013. The trial was imminent. A great deal of work and expense had gone into preparing for the trial. The extent to which the Claimants had omitted documents from their draft trial bundles had been exaggerated. The Defendants could be compensated by any additional expense by an order of costs in their favour. The Judge's order deprived the Claimants of adjudication on their claims..

Discussion

31. Ground 8 is a procedural challenge. It alleges that the Judge failed to allow an application for relief against sanctions to be made. This is hopeless. There had been no application notice seeking relief from sanctions, but the Judge plainly entertained the last-minute oral application for relief. In her skeleton argument, Ms England contends that the Judge erred by not assisting the Appellant's sister and directing her to the three-stage test in *Denton.* Judges will sometimes assist a litigant in person in this way, but it is not mandatory for them to do so. Judge Lamb had reason to believe that the Claimants had access to legal advice even if they were not represented before him. The Appellant's sister had made a lengthy witness statement in support of her application for an adjournment.

32. Ground 9 is directed at the refusal of Judge Lamb to grant relief against sanctions.

33. I do not accept that Judge Lamb was obliged to adopt a particular formula or straightjacket when considering the Appellant's oral application for relief from sanctions. CPR r.3.9 confers on the Court the power to give relief from any sanction 'on application'. Ordinarily, therefore, the application in question must be made in conformity with Part 23 of the Civil Procedure Rules. Neither Mr Gallivan nor Ms..Hodgson submitted that Judge Lamb was incapable of giving relief from sanctions in the absence of a formal application, but the informal way in which it was presented was not without consequence. Notably, Rule 3.9(2) says that the application must be supported by evidence. Since there was no formal application, there was no evidence specifically directed at the material issues which the Judge had to decide when considering relief against sanctions. There was only such evidence as could be gleaned indirectly from the other material before the Judge. In any case, a complaint that Judge Lamb did not formally address the three stages in *Denton* is a barren

argument if, nonetheless, the essence of his reasoning can be deduced and he reached a decision which was open to him.

34. *Rehman* has some parallels with the present case. In that case as well the Appellant/claimant had been unrepresented before the county court Judge. In that case, too, the claimant had failed to comply with an earlier 'unless' order. The county court judge had then found that the non-compliance meant that the claim should be struck out. But Rose J. found that the county court Judge in that case did not exercise her discretion at all (see [23]) and that it therefore fell to the High Court to do so. She considered that striking out was disproportionate - see [28]. The present case is different. Judge Lamb did take a deliberate decision not to give relief from sanctions. Unless he misdirected himself in principle or unless his decision was irrational or otherwise beyond his discretion, it is not for me to exercise that discretion again.

35. In my view, Judge Lamb did not err in principle. While it may have been preferable for him to go through the *Denton* stages, it is clear that he thought that his PTR directions had been breached in a manner that was serious and significant. It is important to recall that a 5-day trial was due to start in 5 working days. The trial had been listed since April or May 2017. At the PTR on 8th September 2017, the Claimants had applied to vacate the PTR and/or the trial. As Judge Lamb recorded in his order following the PTR, he had dismissed that application and characterised it as totally without merit. In paragraph [10] of his judgment he identified what he regarded as the 'most troubling' aspects of her default. These were failures to comply with the Practice Direction over and above the omission of the documents which the Defendants wanted to be included in the trial bundle. Those aspects were also in addition to the provision of different copies of the trial bundle to the two sets of defendants. This had not been the first time that the Claimants had provided different trial bundles. They had also done so for a hearing before HHJ Hand QC on 17th February 2017. Further, it is not to be forgotten that the order which Judge Lamb made on 8th September 2017 was an 'unless' order. Its consequences would follow unless the Court granted relief from sanctions – see CPR r.3.8 and *Marcan Shipping (London) Ltd v Kefalas* [2007] EWCA Civ 463, [2007] 1 WLR 1864 CA.

36. The second *Denton* stage is for the Judge to consider why the default occurred.

37. In the ordinary course, where a formal application for relief from sanctions is made the court would look to the evidence filed in support of the application pursuant to r.3.9(2) for such explanation of the breach as the applicant wished to advance. The informal nature of this application meant that that usual course was not available. There was, though, in the papers before Judge Lamb and, in particular, in Ms Al-Balhaa's witness statement of 19th October 2017, some explanation or justification for some of what had happened. Thus, she said:

    i) that PDC (solicitors for some of the Defendants) had inserted paragraph 4(3) into the Judge's order. As I have explained, Mr Paget accepts that the sealed order (including paragraph 4(3)) should be taken as the definitive expression of what the Judge had ordered at the PTR.

    ii) The Claimants had included a draft of one witness statement into the bundle by mistake. The error was not deliberate.

iii) Preparing the draft trial bundles had taken a great deal of work. There was not the time to revise them to meet all the Defendants' objections in the time available.

iv) DJ Backhouse had said that the trial bundles should be limited to 500 pages. Ms Al-Balhaa had tried to observe this limit.

v) The costs budgets had been printed on A3 paper. Ms Al-Balhaa had asked the solicitors for copies on A4 paper.

vi) The Defendants were trying to take advantage of the Claimants as litigants in person.

38. Although the Judge did not specifically consider stage 2 of the *Denton* process and did not expressly consider each of Ms Al-Balhaa's explanations, it is implicit in his decision that he was unimpressed by them. I would not reverse Judge Lamb's order because he did not dwell further on his reasons for taking this course.

i) As I have said, Mr Paget accepted that the sealed order was the definitive expression of what Judge Lamb had directed at the PTR. It plainly superseded the order of DJ Backhouse.

ii) Judge Lamb could see that, although Ms Al-Balhaa was representing herself and her brother on 20th October 2017, she had taken advice from Mr Coulter (who had written to the Judge on 19th October 2017 about his inability to be present at the hearing on 20th October) and Mr Coulter had also said that he was instructed to represent the Claimants at the trial. These were not, therefore, claimants who were having to manage everything on their own without any legal assistance.

iii) The evidence was an incomplete explanation for the defaults which had occurred. In the course of her oral submissions, Ms Al Balhaa had tried to supplement them and tried to explain, for instance, why the draft trial bundles differed. The explanation was confusing.

iv) The Judge clearly thought that the Defendants' concerns about the trial bundles were well-founded. They were not simply trying to take advantage of the Claimants.

39. Finally, in the *Denton* process the Judge had to consider all the circumstances of the case so as to deal justly with the application for relief from sanctions. Mr Paget acknowledged that this was, effectively, a case management decision, as to which, an appellate court will give a large measure of discretion to the first instance judge. He also accepted that this Judge had had experience of the Appellant's sister by her conducting the hearing on behalf of the Claimants on 8th September as well as on 20th October. Nonetheless he submitted that the Judge had overlooked the alternative which had been incorporated into his order of 8th September. That alternative was for a supplementary trial bundle to be prepared and copied. The Defendants had already collated the documents which they said were missing from the Claimants' draft trial bundle. Even though the task had previously been given to the Claimants, it would have been a simple matter for the Judge to direct that the Defendants should make

sufficient copies of this supplemental bundle for use at trial. Striking out the claims was a particularly draconian sanction, even more so given the length of time over which the claims had lasted and been prepared for trial.

40. I recognise, of course, the severity of the sanction from which the Claimants were asking relief, but I am not persuaded by Mr Paget that the refusal of relief was outside the Judge's discretion. It is unrealistic to submit that the Judge overlooked paragraph 4(3)(ii) of his order of 8th September 2017 since he quoted that very part in his judgment. In addition, in my judgment, Mr Paget's submissions regarding the missing documents only deals with part of the Judge's concerns. Those submissions do not address the Judge's concerns about the bundle which the Appellant's sister *had* produced. They had the defects which have already been mentioned. The imminence and likely length of the trial were also important factors. Although the Court must take into account all the circumstances of the case, specific reference is made to the needs '(a) for litigation to be conducted efficiently and at proportionate cost and (b) to enforce compliance with rules, practice directions and orders' – see rule 3.9(1). The efficient conduct of a trial is substantially hampered if bundles are not properly paginated, if documents are omitted, if the different bundles are not identical as well as the other concerns identified by Judge Lamb.

41. Overall, I cannot say that the exercise of discretion in this case was irrational or otherwise flawed.

Conclusion

42. It follows that this appeal is dismissed.