Neutral Citation No: [2026] NIMaster 1 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Typing Ref:*** **[2026] NIMaster 1** ***ICOS No:*** **24/6261/02** ***Delivered:*** **19/01/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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BETWEEN:

DANIEL MCATEER

Plaintiff

and

DECLAN MAGEE

First Defendant

and

CARSON MCDOWELL

Second Defendant

and

JOSEPH MCELHINNEY AND PATRICK MCDAID PRACTISING AS MCELHINNEY, MCDAID AND HEGARTY SOLICITORS/CLARENDON LEGAL

Third Defendants

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Mr McAteer representing himself
Mr Coghlin KC and Mr Dunlop (instructed by Carson McDowell, solicitors) for the Defendants

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MASTER BELL

Introduction

[1] This is an application by the defendants under Order 18 rule 19(1)(a), (b), (c) and (d) for the striking out of the plaintiff's writ and statement of claim.

[2] As issued, the plaintiff's writ sought damages for misrepresentation, deceit, abuse of civil process, vexatious use of process, intimidation, conspiracy, abuse of human rights, negligence, breach of statutory duty as officers of the court, and unlawful interference with the economic interest of the plaintiff including his unfettered access to the justice system in Northern Ireland.

[3] In addition, the writ sought an injunction restraining the defendants whether acting by themselves, their servants of agents or otherwise howsoever, from participating in ongoing actions against the plaintiff (and others) in the High Court in Northern Ireland. The application for an injunction was heard before McAlinden J and was rejected in an extempore ruling. That decision was then appealed to the Court of Appeal which affirmed it. The court said in their decision [2024] NICA 73:

> "[3] This application gave rise to a hearing in the High Court and an ex tempore adjudication by Mr Justice McAlinden. Having received the parties' respective submissions, the judge stated, according to the transcript, in somewhat colourful language:
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> > *"This is an absolutely nonsense of an application. It is a collateral challenge against the decisions of other judges in respect of the entitlement of the named defendants in this application to defend themselves or to make representations in legal proceedings which are already extant."*
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> The judge then referred to certain of the cases in question. He continued:
>
> > "*There is no basis for such an application in law. This is an abuse of process of the court, this is a waste of everybody's time, it is a waste of court time, this is an absolute abuse of the process of the court. I am dismissing the application for an interim injunction in this case because it does not get off the ground at all."*
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> The judge next augmented his reasoning with the reference to, in particular, the issue of a serious question to be tried i.e. one of the well-known *American Cyanamid* principles.
>
> [4] McAlinden J then highlighted the factor of <u>assertion</u>: "… *they are allegations no more than that."* He reiterated that the court would not entertain the application because it was considered, in his words, "*a plain and utter abuse of court process."* The judge dismissed the application. He also made a ruling on costs, which

> was that bearing in mind what he described as the "*absolutely groundless basis of the application"* costs would be awarded in favour of the defendants and on an indemnity basis."

[4] Therefore, although the defendant's summons listed before me seeks that the plaintiff's writ and statement of claim is struck out, the plaintiff's application for an injunction has already been dealt with by McAlinden J and that decision upheld by the Court of Appeal. Hence, I do not have to deal with the issue of striking out that portion of the plaintiff's writ.

Defendants' Submissions

[5] Mr Coghlin referred me to various authorities on the subject of strike-out applications, including *Rush v PSNI* [2011] NIJB 28, *Mulgrew v O'Brien* [1953] NI 10 and *Three Rivers District Council v Bank of England (No 3)* [2001] UKHL 16. None of these were in any way contentious between the parties.

[6] Mr Coghlin then summarized the law on the subject of res judicata as set out in *Virgin Atlantic Airways v Zodiac Seats UK Ltd* [2013] UKSC 46. He further referred me to the rule in *Henderson v Henderson* (1843) 3 Hare 100.

[7] In addition, counsel also referred me to the leading authority on collateral attack abuse of process, *Hunter v Chief Constable of the West Midlands* [1982] AC 529, in which a claim against the police for damages for assault was struck out as being a collateral attack on a previous verdict finding the claimant guilty of murder. In *Hunter*, Lord Diplock said;

> "My Lords, collateral attack upon a final decision of a court of competent jurisdiction may take a variety of forms. It is not surprising that no reported case is to be found in which the facts present a precise parallel with those of the instant case. But the principle applicable is, in my view simply and clearly stated in those passages from the judgment of A. L. Smith, L.J. in *Stephenson v Garnett* [1898] 1 QB 677 and the speech of Lord Halsbury L.C. in *Reichel v Magrath* 14 App. Cas. 665 which are cited by Goff L.J. in his judgment in the instant case. I need only repeat an extract from the passage which he cites from the judgment of A. L. Smith L.J.:
>
> > "the court ought to be slow to strike out a statement of claim or defence, and to dismiss an action as frivolous and vexatious, yet it ought to do so when, as here, it has been shown that the identical question sought to be raised has been already decided by a competent court."
>
> The passage from Lord Halsbury's speech deserves repetition here in full:
>
> > "I think it would be a scandal to the administration of justice if, the same question having been disposed of by

> one case, the litigant were to be permitted by changing the form of the proceedings to set up the same case again." "

[8] Having set out what he considered were the legal principles on these issues, Mr Coghlin then turned to the plaintiff's statement of claim. The allegations in the statement of claim against the first and second defendants include:

a. Abusing the processes of the court by obtaining a judgment against the plaintiff.

b. Abusing the processes of the court by attempting to defraud the plaintiff by trying to pass off bills relating to two other cases onto another case.

c. Unlawfully interfering with the independent process of the solicitors' disciplinary process.

d. Abusing the process of the Commercial Court by knowingly providing false information.

e. Initiating unnecessary bankruptcy proceedings.

[9] The allegations in the plaintiff's statement of claim against the third defendant were that, by acting for both the plaintiff and the Gurams in respect of the sale and leaseback of a public house named "The Roebuck Inn", the third defendant owed the plaintiff a concurrent duty in contract and in tort to comply with the instructions, to act in the best interests of the plaintiff, to keep the plaintiff properly advised, to deal with the transaction in a timely fashion to identify any conflict of interest arising between the plaintiff and Anoop and Sanjeev Guram and to withdraw from the transaction in the event that any such conflict arose. However, in the light of that duty, the plaintiff alleged that the third defendants acted in breach of their retainer and/or negligently.

[10] Mr Coghlin explained that the plaintiff has previously been a party in a number of pieces of litigation including:

a. The plaintiff v Joseph McElninney;

b. The plaintiff v Brendan Fox and Other;

c. The plaintiff's complaint before the Solicitors' Disciplinary Tribuna;l

d. The plaintiff v Magee and Others (an application for an injunction heard before McAlinden J in 2024).

[11] Mr Coghlin also submitted that the plaintiff's action ought to be struck out on the basis that it was hopelessly out of time. He noted the allegations, such as they were, related to matters which occurred in 2007, 2014, 2015, and 2017 amongst others. As such, Mr Coghlin argued that these matters (even if properly particularized and relating to valid causes of action) were statute barred. The only

allegation which Mr Coghlin accepted was within time was the allegation that unnecessary bankruptcy proceedings had been initiated against the plaintiff. While within time, Mr Coghlin submitted that this allegation ought to be struck out on the basis that a solicitor merely acts for a client and that Mr McAteer's allegation is an abusive conflation of a solicitor with his client.

[12] Mr Coghlin further submitted that the plaintiff's statement of claim was inadequately particularized. Much of it contained mere assertions rather than material facts which the plaintiff hoped to prove. In particular, Mr Coghlin made this point in connection with the allegation that Mr Magee and Carson McDowell had committed fraud

Plaintiff's Submissions

[13] Mr McAteer submitted that he had not previously brought any proceedings against either Mr Magee or Carson McDowell in relation to the matters complained about and that the proceedings represented a genuine attempt by him to secure a remedy for damage done and loss suffered. He argued that this litigation was a new, free-standing action dealing with issues which have not previously been tried. It was his submission that, although Mr Magee and Carson McDowell have never acted for him, the action was a viable action on the basis that a solicitor can owe a duty of care to third parties but also on the basis that each of the matters complained of have not been set in the context of a solicitor/client relationship.

[14] A core submission by Mr McAteer was that Mr Magee and Carson McDowell were officers of the court, expected to uphold high standards given the privileges associated with that office. He asserted that they had abused the process of the court and that their actions had caused serious loss and damage to his family. In his oral submissions Mr McAteer was not only highly critical of those solicitors whom he is suing, but also was repeatedly critical of the defendants' counsel in relation to what he had said and done in previous proceedings.

[15] Mr McAteer submitted the judgments of McFarland J and of the Court of Appeal dealing with the McElhinney case had relied on previous findings by other judges rather than conducting an investigation into what had happened. As a result, it was his belief and submission that blatant wrongdoing has been covered over.

[16] In respect of the defendant's res judicata argument, Mr McAteer referred the court to a statement in *Zuckerman on Civil Procedure* (4th Edition, 2020) where the author writes:

> "Res judicata does not arise where litigation is brought to an end without any judgment at all. There is no res judicata where an action has been discontinued, withdrawn, struck out for non-conformity with rules or court orders, or terminated by acceptance of a CPR 36 offer."

[17] Mr McAteer stated in his written submissions that the "original" case against McElhinney McDaid which centered on the Roebuck Inn transaction was "killed off"

as a result of Master McCorry's decision on 27 May 2009 in which the Master concluded that the case against McElhinney McDaid was "fundamentally flawed because the case could not be brought until a loss had been sustained, that being a fundamental requirement in the law of negligence." Mr McAteer also blamed the misconduct by Carson McDowell and/or counsel in relation to the hearing on 19 September 2008 for this outcome.

Mr McAteer then stated:

> "Over 20 years later, and as a result of unprecedented delays, the Roebuck Inn action has not reached conclusion. We are still, therefore, not in a position to quantify our loss against the third named Defendants, a problem first identified by Master McCorry on the 27th May 2009. This "new case" which began life with a Writ of Summons dated 24th January 2024, represents my attempt to have a fair hearing on the issues and secure, once and for all, a remedy."

Mr McAteer's written submission later states:

> "The earlier case against McElhinney McDaid was struck out as a result of the alleged failure to comply with an Unless Order, and they have never been held to account for their actions before an independent tribunal, where a judge would be given the opportunity to hear evidence from the parties and reach a conclusion."

[18] In relation to the issue of lack of particularisation in his statement of claim, Mr McAteer observed that the defendants had the right to issue a Notice for Further and Better Particulars which they had not done.

[19] In respect of the issue that his causes of action were now statute barred, Mr McAteer submitted that this point was moot on the basis that the claim about what had happened on 19 September 2008 amounted to a fraud upon the court and upon Mr and Mrs McAteer, and the matters set out in paragraphs 18-24 of his statement of claim were part of a wider campaign of wrongdoing.

Discussion

Res Judicata

[20] Res judicata estoppel has as its rationale the importance of finality in judicial decision-making. In *The Ampthill Peerage Case* [1977] AC 547 at 569, Lord Wilberforce put the point as follows:

> "English law, and it is safe to say, all comparable legal systems, place high in the category of essential principles that which requires that limits be placed upon the right of citizens to open or to reopen disputes. The principle which we find in the Act of 1858 is the same principle as that which requires judgments in the courts to be binding, and that which prohibits litigation after the expiry of limitation

> periods. Any determination of disputable fact may, the law recognises, be imperfect: the law aims at providing the best and safest solution compatible with human fallibility and having reached that solution it closes the book. The law knows, and we all know, that sometimes fresh material may be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security it prevents further inquiry. It is said that in doing this, the law is preferring justice to truth. That may be so: these values cannot always coincide. The law does its best to reduce the gap. But there are cases where the certainty of justice prevails over the possibility of truth (I do not say that this is such a case), and these are cases where the law insists on finality. For a policy of closure to be compatible with justice, it must be attended with safeguards: so the law allows appeals: so the law, exceptionally, allows appeals out of time: so the law still more exceptionally allows judgments to be attacked on the ground of fraud: so limitation periods may, exceptionally, be extended. But these are exceptions to a general rule of high public importance, and as all the cases show, they are reserved for rare and limited cases, where the facts justifying them can be strictly proved."

[21] The simplest way of condensing and explaining the legal principles on the subject of res judicata is to adopt the summary thereof used by *Clerk and Lindsell on Tort*, 24th edition in chapter 29. The authors state:

> "Res judicata may once have been limited to previous decisions between the same parties on the same matter, but it is now regarded as an aspect of a wider doctrine of abuse of process which can be referred to as the "wider principle of *Henderson v Henderson*". Under this, the courts have an inherent jurisdiction to strike out as vexatious and abusive not only a claim or defence which not only has been already decided in previous proceedings between the same parties against the party raising it, but also more generally any allegation which might have been raised in any previous proceedings in which the facts necessary to raise it have been decided against him. The law was helpfully summarised by Lord Sumption in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd*, who noted that "res judicata" is in fact a "portmanteau term which is used to describe a number of different legal principles with different juridical origins."

[22] In the context of this application the significant passage of Lord Sumption's judgment is as follows:

> "[17] Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle. The first principle is that once a cause of

action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is 'cause of action estoppel.' It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see *Conquer v Boot* [1928] 2 KB 336. Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being aright upon the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as 'of a higher nature' and therefore as superseding the underlying cause of action… Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: *Duchess of Kingston's Case* (1776) 20 St Tr 355. `Issue estoppel' was the expression devised to describe this principle by Higgins J in *Hoysted v Federal Commissioner of Taxation* (1921) 29 CLR 537, 561 and adopted by Diplock LJ in *Thoday v Thoday* [1964] P 181,197-198. Fifth, there is the principle first formulated by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100,115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."

[23] *Clerk and Lindsell* also, however, explain:

"In *Johnson v Gore Wood & Co (A Firm)*, the House of Lords held that *Henderson v Henderson* should not be rigidly applied. Lord Bingham confirmed that *Henderson* was closely connected with the principle of "abuse of process", that is the power that any court of justice must possess to prevent misuse of its procedure. The bringing of a claim or the raising of a defence in later proceedings might amount to an abuse if the court was satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings, something which would rarely be the case, unless the later proceedings involved an element of unjust harassment. It was thus wrong to hold that merely because a matter *could* have been raised in earlier proceedings it *should* have been. The court should instead take a broad, merits-based approach.

> Decisions in earlier cases should be read in the light of the guidance from House of Lords in *Johnson v Gore Wood*."

[24] In *Test Claimants in the Franked Investment Income Group Litigation v Commissioners for Inland Revenue* [2020] UKSC 47, Lord Reed and Lord Hodge, with whom Lord Lloyd-Jones and Lord Hamblen agreed, said:

> "It is not sufficient to establish abuse of process for a party to show that a challenge could have been raised in a prior litigation or at an earlier stage in the same proceedings. It must be shown both that the challenge should have been raised on that earlier occasion and that the later raising of the challenge is abusive."

The approach to be adopted is therefore that the court must take a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it an issue which could have been raised before.

[25] Mr McAteer has argued that *Zuckerman on Civil Procedure* states that res judicata does not arise where litigation is brought to an end without any judgment at all and that there is no res judicata where an action has been discontinued, withdrawn, struck out for non-conformity with rules or court orders. The authority for this point in *Zuckerman* is the decision of the House of Lords in *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd and Others (No. 2)* [1966] 2 All E.R. 536. However, in that decision, Lord Reid made it clear that, when considering res judicata, it was necessary to distinguish between cause of action estoppel and issue estoppel. The former prevents re-litigating an entire claim which has already decided, while the latter prevents a party from re-arguing a specific issue of fact or law. The question of res judicata being decided by the House of Lords in *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd and Others (No. 2)* was one of issue estoppel and not cause of action estoppel. Mr McAteer's argument that the principle of res judicata cannot apply in respect of this litigation is therefore based on a misconception and must fail.

[26] Mr McAteer's statement of claim states that since March 2008 he and his wife have taken steps to overturn the "Roebuck Inn Judgment". It states that "they have been denied a proper appeal" and there are at present two live challenges to the judgment, namely an "abuse of process" challenge and a "fraud" challenge.

[27] The statement of claim further sets out that Mr McAteer and his wife issued proceedings against Joseph McElhinney and Patrick McDaid Practising as McElhinney, McDaid and Hegarty Solicitors/Clarendon Legal on 10 September 2004. It then goes on to say that the plaintiff and his wife have been denied the opportunity of a proper hearing of their case and that this abuse of their rights has been caused entirely by the first and second defendants.

[28] Mr McAteer's speaking note filed with the court indicates his position in respect of the Roebuck Inn case. He states that the action was struck out by Deputy Master Wells on 19 September 2008 on the basis that there had been a failure to comply with an Unless Order. He states that it is not disputed that he was "denied the opportunity to be present" on 25 April 2008 when the Unless Order was granted and that he "was duped into not attending by Carson McDowell on 19 September 2008." He submits that attempts to obtain a remedy in relation to this injustice were unsuccessful, concluding with the judgment of Lord Justice Coghlin on 21 November 2011. He considers that that judgment "is littered with inaccuracies and overlooks/ignores the way in which the orders of 25 April 2008 and 19 September 2008 had been obtained by Carson McDowell."

[29] In his written and oral submissions Mr McAteer stumbled time and time again into criticisms of those members of the judiciary who had dealt with his previous litigation. It was clear that he considers his current litigation as an attempt to rectify the wrongs which he believes have been done to him by the legal profession and the courts on previous occasions. In *McAteer v Solicitors' Disciplinary Tribunal, Fox, Diver and Magee* [2024] NIKB 8 McBride J observed:

> "The judgment given in the Roebuck Inn case in 2008 has spawned an unprecedented level of litigation involving Mr McAteer and includes proceedings brought by and against him involving former partners, banks, the PSNI, the Legal Services Agency and a number of former solicitors."

[30] Following an analysis of the Court of Appeal decision in *McAteer and McAteer v McElhinney and Others* delivered on 21 November 2011, I am satisfied that that action made the same claim against Mr McElhinny which is made in the action which I am considering, which is a claim for breach of contract or negligence by the third defendants in relation to the Roebuck Inn sale and leaseback transaction and associated costs. The current litigation is therefore a clear example of res judicata.

Duty of care owed by solicitors to third parties

[31] Mr McAteer argued that solicitors, even though they are not formally instructed by an individual, may owe that individual a duty of care and sues on this basis. The issue of whether solicitors owe a duty of care to third parties was dealt with in *Ashraf v Lester Dominic Solicitors* [2023] EWCA Civ 4. The Court of Appeal acknowledged that such actions were possible in limited contexts. In his judgment, with which the other Lord Justices concurred, Nugee LJ held that the general principle was that a solicitor owes no duty of care to those who are not his clients. He does not owe them any obligation to perform his services with competence for the simple reason that he has not agreed to provide any service to them at all. However, the court recognised that there were special cases which were exceptions to the general rule. After discussing what those exceptions were, Nugee LJ summarised the position in para 62 of the decision:

> "It can be seen that the circumstances that generate the duty of care in these three types of case (instructions to solicitors by A to confer a benefit on B, representations or actions by solicitors reasonably and foreseeably relied on by other parties, and solicitors stepping outside their role) are all rather different. Beyond these three types of case there is scant authority for solicitors owing duties of care to those that are not their clients."

[32] In my view Mr McAteer has not advanced any arguable basis whereby his position falls within one of the three exceptions identified in *Ashraf v Lester Dominic Solicitors*. I do not consider therefore that he has a viable basis for claiming that Mr Magee or Carson McDowell owed him a duty of care. I therefore consider that the allegations against them on this basis merit being struck out.

[33] Mr McAteer repeatedly sets out in his statement of claim that Mr Magee and Carson McDowell have abused the process of the court. However In *Land Securities v Fladgate Fielder* [2009] EWCA Civ 1402, the Court of Appeal recognised that, although the concept of abuse of process was well known to the law, both in civil and criminal proceedings, it has rarely been treated as giving rise to a cause of action which plaintiffs may allege. The concept of abuse of process is, however, commonly used by defendants in strike out applications.

[34] Where an individual is aggrieved by the actions of another party's solicitors, the appropriate way of dealing with this is usually to report the firm of solicitors to the Law Society. In most cases that will be the only remedy which the aggrieved person has available to them. Mr McAteer has done this. The idea that he can sue solicitors for initiating unnecessary bankruptcy proceedings is entirely erroneous. This aspect of the statement of claim is therefore struck out on the basis that there is no reasonable cause of action.

[35] It is clear, when Mr McAteer's statement of claim is analysed, that the focus of his action against Mr Magee and Carson McDowell is on how previous proceedings were managed, whether those proceedings were in the High Court or before the Legal Services Commission or the Solicitors' Disciplinary Tribunal. Those allegations should, as Lord Lloyd Jones and Lord Hamblen stated in the *Test Claimants* decision, have been raised in the context of the earlier litigation and the later raising of these challenges is abusive.

Failure to Plead Material Facts

[36] A further factor which Mr Coghlin submitted must lead to the plaintiff's action being struck out is the failure to plead his case properly. McAlinden J observed in his decision whereby he struck out Mr McAteer's application for an injunction, that Mr McAteer's statement of claim made assertions but did not plead primary facts.

[37] Mr McAteer's statement of claim makes a number of allegations that the defendants have committed an abuse of process. The authorities do indicate that

there is such a tort as abuse of process. I refer to the Privy Council's decision in *Crawford Adjusters (Cayman) Ltd v Sagicor General Insurance (Cayman) Ltd* [2013] UKPC 17. *Clerk and Lindsell* describe this tort as "extortion under the colour of process." In order to be successful, however, the plaintiff must establish that the defendant used the legal process for a predominant purpose outside the ambit of the legal claim which the court is asked to adjudicate. Mr McAteer's statement of claim frequently fails to allege such a purpose or allege any material facts upon which a court could reach such a conclusion.

[38] The absence of material facts is a fundamental stumbling block in litigation. In their decision in *Michael O'Higgins v Barclays Bank plc* [2022] CAT 16, Marcus Smith J and Anthony Neuberger commented:

> "Bare or unparticularised assertion is not enough: a pleading must set out (but does not have to prove) all the material facts on which a party relies for his or her claim or defence."

Likewise, Popplewell LJ explained in *Kawasaki Kisen Kaisha Ltd v James Kemball Ltd* [2021] EWCA Civ 33 at [18] that a pleading must be supported by evidence which establishes a factual basis for an allegation. It is not sufficient simply to plead allegations which, if true, would establish a claim. There must be evidential material which establishes a sufficiently arguable case which undergirds it.

The concept of material facts is described in *The Supreme Court Practice* (1999 edition), at para 18/7/11:

> "It is essential that a pleading, if it is not to be embarrassing, should state those facts which will put those against whom it is directed on their guard, and tell them what is the case which they will have to meet (per Cotton LJ in *Philipps v Philipps* (1878) 4 QBD 127, p 139). "Material" means necessary for the purpose of formulating a complete cause of action; and if any one material statement is omitted, the statement of claim is bad (per Scott LJ in *Bruce v Odhams Press Ltd* [1936] 1 All ER 287 at 294). Each party must plead all the material facts on which he means to rely on at trial; otherwise he is not entitled to give any evidence of them at the trial. No averment must be omitted which is essential to success. Those facts must be alleged which must, not may, amount to a cause of action (*West Rand Co v R* [1905] 2 KB 399; see *Ayers v Hanson* [1912] WN 193)."

[39] The proper pleading of facts is a fundamental aspect of litigation practice. In *NEC Semi-Conductors Ltd v IRC* [2006] STC 606, Mummery LJ made the following observations:

> "While it is good sense not to be pernickety about pleadings, the basic requirement that material facts should be pleaded is there for a good reason – so that the other side can respond to the pleaded case by way of admission or denial of facts, thereby defining the issues for decision for the benefit of the parties and the court. Proper pleading of the

> material facts is essential for the orderly progress of the case and for its sound determination. The definition of the issues has an impact on such important matters as disclosure of relevant documents and the relevant oral evidence to be adduced at trial. In my view, the fact that the nature of the grievance may be obvious to the respondent or that the respondent can ask for further information to be supplied by the claimant are not normally valid excuses for a claimant's failure to formulate and serve a properly pleaded case setting out the material facts in support of the cause of action."

[40] When it comes to pleading fraud and dishonesty, the authorities are clear about the issue of particularisation. In *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1 Lord Hope stated:

> "A party is not entitled to a finding of fraud if the pleader does not allege fraud directly and the facts on which he relies are equivocal. So too with dishonesty. If there is no specific allegation of dishonesty, it is not open to the court to make a finding to that effect if the facts pleaded are consistent with conduct which is not dishonest such as negligence. As Millett LJ said in Armitage v Nurse [1998] Ch 241, 256g, it is not necessary to use the word 'fraud' or 'dishonesty' if the facts which make the conduct fraudulent are pleaded. But this will not do if language used is equivocal: Belmont Finance Corpn Ltd v Williams Furniture Ltd [1979] Ch 250, 268 per Buckley LJ. In that case it was unclear from the pleadings whether dishonesty was being alleged. As the facts referred to might have inferred dishonesty but were consistent with innocence, it was not to be presumed that the defendant had been dishonest. Of course, the allegation of fraud, dishonesty or bad faith must be supported by particulars. The other party is entitled to notice of the particulars on which the allegation is based. If they are not capable of supporting the allegation, the allegation itself may be struck out. But it is not a proper ground for striking out the allegation that the particulars may be found, after trial, to amount not to fraud, dishonesty or bad faith but to negligence."

[41] The fact that a pleading is defective does not of course inevitably lead to an outcome of that pleading must be struck out. As Tugendhat J observed in *In Soo Kim Park & Others* [2011] EWHC 1781 (QB) at [40]:

> "However, where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right …"

While I consider that the allegations in Mr McAteer's statement of claim currently contain an insufficient foundation of material facts, I do not consider that this in

itself merits his statement of claim being struck out at this stage. If the action was not being struck out for other reasons, I would therefore simply have directed that the plaintiff should amend his statement of claim to include those material facts upon which he was intending to rely.

Striking out for Abuse of Process

[42] In *AB v Universitair Ziekenhuis Gent and Belfast Health & Social Care Trust* [2021] NIQB 47 McFarland J comprehensively summarised the position in this jurisdiction regarding applications for the striking out of pleadings on the ground that they were an abuse of process and concluded:

> [44] The correct approach to dealing with alleged abuse of process is for the court to adopt a two-stage test. First the court has to determine whether the plaintiff's conduct is an abuse of process. If so, the court is then required to exercise its discretion as to whether or not to strike out the proceedings or to take such other steps or make such other orders as are appropriate. That second stage question requires a balancing exercise, and in particular will require a consideration of proportionality (see *Asturion Foundation v Alibrahim* [2020] EWCA Civ 32 and *Cable –v- Liverpool Victoria* [2020] EWCA Civ 1015).
>
> [45] As to what constitutes an abuse of process, it would not be appropriate to lay down a test or rule. As Lord Diplock said in *Hunter v Chief Constable of West Midlands Police* [1982] AC 529 at 536c it would be unwise to create fixed categories (quoted above at [43]). Lord Bingham CJ in *Attorney-General v Barker* [2000] 1 FLR 759 at [19] gave a working definition as "*a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.*" A failure to comply with the rules, or directions, of the court can amount to an abuse of process (see *Cable* at [44]).
>
> [46] The jurisdiction should be exercised sparingly. The abuse needs to be clearly shown as stated in the judgment of Lloyd LJ in *Stuart v Goldberg Linde* [2008] EWCA Civ 2 at [65]:
>
> "It is consistent with [Article 6 ECHR] to allow the court to strike out a claim which is an abuse of the process, but at common law it must be clearly shown to be an abuse before it can be struck out."
>
> As befits any draconian step, it will always be a last resort as it will deprive a plaintiff of a substantive right (see Lord Clarke in *Summers* at [49]). Colton J in *J19 v Facebook* [2017] NIQB 42 at [36] summarised the position as follows:
>
> "It is clear that this power should only be exercised in very clear and obvious cases when one is relying on misconduct of a party. On the basis of the authorities to which I have referred this conduct has been described as 'misconduct so serious that it would be an affront to the

court to permit him to continue …' or 'intentional and contumelious conduct.'"

[47] Although Lloyd LJ referred to the need to clearly show the abuse of process, and this is quoted with approval by Coulson LJ in *Cable*, this cannot be taken as meaning that there is a potentially higher standard of proof above the normal civil standard of proof."

[43] I note the decision by McFarland J in *McAteer and McAteer v McElhinney, McDaid and Hegarty (practicing as Messrs McElhinney, McDaid and Hegarty Solicitors)* [2020] NIQB 72. McFarland J's decision sets out the history of the litigation, culminating in the 2011 decision of the Court of Appeal. However matters did not rest there and the litigation continued dealing with issues as to costs. McFarland J's decision deals with a summons issued by Mr McAteer seeking review of a taxation certificate issued by Master McGivern, a certificate that the judge affirmed. However during his consideration of the litigation McFarland J observed:

"[30] As stated, Mr McAteer's main case relates to the fraud he says was perpetrated against the applicants, primarily because they were, in his words, 'duped' into not attending a hearing at the Master's court and this resulted in the order of Deputy Master Wells. During this hearing, the allegation was then extended to include counsel, as Mr McAteer discovered that counsel had been present at the hearing.

[31] As previously set out, I consider that the Taxing Master had a discretion to consider litigation misconduct, whether it has been referred to her by a trial judge (in this case by Master McCorry, Mr Justice Hart, and the three members of the Court of Appeal) or should she become aware of it during the taxation process. I have similar powers on review. I do not have any greater powers than those held by the Taxing Master, as I am conducting a review of her decision.

[32] Five very experienced judges, each with many years' experience both in practice and on the bench, Master McCorry, Mr Justice Hart, Lord Justice Girvan, Lord Justice Coghlin and Sir John Shiel have considered Mr McAteer's complaints about the conduct of the legal representatives before Deputy Master Wells. None of them found that there had been any irregularity sufficient to set aside the order of Deputy Master Wells.

[33] Nor had any of the five judges considered that anything had been unreasonably or improperly done or any omission had been made by the legal representatives that, although falling short of being an irregularity that would justify setting

> aside the order, still merited a disallowance of all or any costs, or even a referral to the Taxing Master.
>
> [34] There was no irregularity present in this case; none that would justify the setting aside the order of Deputy Master Wells, and none that would even render a reduction in costs.
>
> [35] Mr McAteer is most insistent that there has been a fraud, but the reality is that apart from making this assertion, he was not been able to provide any evidence to substantiate that assertion, either before the five judges, or before me. Repetition of an assertion, in the absence of evidence, does not make it a fact, no matter how many times it is repeated."

[44] McFarland J concluded:

> "As indicated, I do not have the power, as part of my review of the taxation process, to re-open the entire case, including the various findings and orders of the Master, the Deputy Master, Mr Justice Hart and the Court of Appeal. Nor would I wish to do so, as the applicants have not produced any evidence to suggest fraud or misconduct on the part of the respondents' solicitors. This litigation has been concluded as far as this court is concerned."

[45] Being dissatisfied with McFarland J's decision, Mr McAteer appealed to the Court of Appeal which dismissed his appeal in their decision which bears the neutral citation [2023] NICA 72.

[46] I consider that, after considering the pleadings and the submissions made by the parties to the court, that the claims set out in the statement of claim are vexatious and an abuse of process on the basis that they are simply further attempts to mount a collateral attack on previous decisions of the courts. Mr McAteer is attempting to reopen a matter which has concluded.

Limitation

[47] Given my conclusions on the arguments as to res judicata and abuse of process it is unnecessary for me to discuss at any length the arguments as to the issue of limitation. I need merely record that I would have found for the defendants on this issue, except in respect of the allegation of initiating unnecessary bankruptcy proceedings against the plaintiffs. Although that particular allegation does not merit being struck out on grounds of limitation, it does, however, merit being struck out for the reasons argued by Mr Coghlin.

Conclusion

[48] I am of the view that Mr McAteer, in the current litigation before the court, is raising issues which have already been raised in earlier litigation (many of which

issues have been considered with great thoroughness by a considerable number of judges) or, alternatively, is raising issues should have been raised in earlier litigation. I consider that Mr McAteer was not content with the decisions of the courts in his previous litigation and seeks to mount a collateral attack on them in the hope of achieving a more favourable outcome on this occasion. I therefore conclude that (other than the allegation about unnecessary bankruptcy proceedings) his current writ and statement of claim must be struck out on the grounds of res judicata and because they are an abuse of process. The allegation concerning unnecessary bankruptcy proceedings is struck out on the ground referred to earlier.