Neutral Citation No. [2006] NIQB 64

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Judgment: approved by the Court for handing down

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

2004. No. 029775

BETWEEN:

SIE LIMITED

PLAINTIFF:

-and-

UNIVERSITY OF ULSTER

FIRST DEFENDANT:

UNIVERSITY OF ULSTER RESEARCH PARKS (UUSRP)

SECOND DEFENDANT:

-and-

UUTECH LIMITED

THIRD DEFENDANT:

-and-

CHRIS BARNETT

FOURTH DEFENDANT:

Mr P D Smith QC

Sitting as Deputy Judge of the High Court

Introduction

[1] The plaintiff company, SIE Limited ("SIE"), was incorporated on 18 April 2001. According to an affidavit sworn by one of its directors, Mr Gavan McGill, the "mission" of the company "… is to develop an Internet-based social investment exchange. This exchange is designed to provide a market mechanism for allocating and managing funds provided to third sector social businesses (the third sector [is] that sector for which profit is not the primary objective)." He goes on to state that in broad terms the company intended to provide the following products and services:

> "(i) The creation and maintenance of a register of third sector organisations.
>
> (ii) The provision of a range of capacity building programmes for third sector organisations.
>
> (iii) The creation and maintenance of a register of corporate donors.
>
> (iv) The provision of reporting mechanisms for donors in relation to donated income.
>
> (v) The developments (sic) of financial software specific to the sector.
>
> (vi) The provision of reports to Government on the sector generally.
>
> (vii) The provision of business consultancy advice to third sector organisations."

[2] In order to achieve its objectives the company sought to involve the University of Ulster ("UU"). The plaintiff's case was that a contract was made with UU, or with the second or the third defendant, which are subsidiaries of UU, or by those companies acting on behalf of UU, or by the fourth defendant acting in breach of warranty of his authority to act on behalf of the first three defendants. The defendants' case was that no enforceable agreement had been reached or, if agreement had been reached, it was conditional on things

being agreed which were never agreed or, if there was a complete agreement, it was void for uncertainty.

[3] At the trial SIE was represented by Mr McGill, leave for him to do so having been granted by Mr Justice Coghlin. The defendants were represented by Mr W B S Stephens QC and Mr Jonathan L Dunlop of counsel.

An Outline of the History of the Dispute

[4] During the second half of 2001 there were contacts between a Mr Daniel McAteer, a director of business consultancy company called PCI Consultancy Limited ("PCI"), acting on behalf of SIE, and UU personnel. The latter included the then Vice-Chancellor, Professor P G McKenna, to whom a presentation appears to have been made in August 2001, Professor Dolores O'Reilly, Professor of International Business Strategy and Head of the School of International Business and Dr (then Professor) Christopher Barnett, the fourth defendant who, up until early 2003, held the posts of Director of the Office of Innovation and Enterprise and Chief Executive of both UU Tech Limited and UUSRP Limited, the latter trading under the name of University of Ulster Science Research Parks. On 12 December 2001 the Vice-Chancellor wrote to Mr McAteer referring to recent discussions and informing him that UU would be prepared to partner SIE and would do so through its wholly owned subsidiary UU Tech Limited. The letter referred to the contribution of Professor O'Reilly's time to the venture.

[5] On 1 March 2002 a meeting was held at which Mr McAteer and Dr Barnett were present. As a result Mr McAteer wrote to Dr Barnett on 5 March 2002. In this letter Mr McAteer indicated, among other things, that Professor O'Reilly was to be appointed to the Board of SIE (she was made a director on 7 March 2002) and that UU would be granted "… a 10% equity stake (class A Ordinary shares) in the company in consideration for its investment and involvement in the company." The letter went on to refer to a contribution from UU "… along the following lines:

(a) Involvement of Professor O'Reilly

(b) Assistance with Fixtures and Equipment

(c) Provision of Accommodation

(d) Assistance with Marketing and Corporate Branding"

Enclosed with the letter was a schedule of "… how the contribution might be made."

[6] The reference to "a 10% equity stake (class A Ordinary shares)" is ambiguous. It emerged in the course of Mr Gavan McGill's evidence that, although this is not entirely clear from the Memorandum of Association of SIE, the intention was that the class A shares would carry voting rights but no right to dividends, whereas the class B shares would carry the right to dividends but no voting rights. However, as, as is confirmed by subsequent correspondence (see para. [13] below), UU was to be allotted class B shares to the value of £100,000, representing ten percent of the authorised share capital in that class, I interpret "a 10% equity stake" as referring to shares of both classes.

[7] Dr Barnett replied to Mr McAteer's letter of 5 March in a letter of 19 March 2002, which referred also to a telephone conversation between the two men on 15 March. The material paragraph from this letter reads as follows:

> "I would confirm that we are considering the content of your letter. The University is in agreement in principle to release Professor Delores (sic) O'Reilly for the venture. We are sorting out terms of the release at the present time so that we can be clear on the level of University investment for the equity position. With respect to our previous action point I would be grateful if you could forward a copy of the company Memorandum and Articles of Association to me. The University would require a shareholders agreement to be in place for SIE Limited once the investment is agreed. This is our standard policy for investment."

[8] There was a meeting of the SIE Board on 12 April 2002. Mr Angus Creed, a partner in Arthur Cox, Solicitors, was introduced as SIE's legal adviser and it was recorded that he was "… to examine SIE's agreement with University of Ulster."

[9] On 10 May 2002 Dr Barnett wrote to Mr McAteer as follows:

> "Further to our telephone conversation this morning I would confirm that the University confirms support for SIE Limited. The University is prepared to release Professor Dolores O'Reilly for 30 hours per month for an initial 12 month period to provide business development and marketing support to SIE Limited. This represents a commitment of £31,200 to the company. In addition we are prepared to make available 10 desks in the Technology and Software Innovation Centre at Magee for a 12 month period

> representing a commitment of £25,800 to the company. Furthermore the University is prepared to have SIE Limited promote itself as a University-related company where appropriate but would need to be consulted if the University logo or name is being used on promotional literature or electronic media to ensure compliance with our corporate visual identity.
>
> This support is subject to receipt of the memoranda (sic) and articles of association of the company for our solicitors to review and will require a shareholders agreement to be executed as agreed at our previous meetings.
>
> I look forward to meeting with you and the fellow investors in this extremely interesting and promising enterprise."

[10] On 21 May 2002 Mr McAteer wrote to Professor O'Reilly referring to a meeting between them of the same date. Under the heading "Negotiations with University" Mr McAteer said that a meeting had been set up for 4 June 2002 "to finalize the position." He also mentioned the issuing of a press release "about the existence of the company."

[11] On 21 June 2002 Mr McAteer wrote to the Vice-Chancellor. He asserted that "[a] deal has now been agreed with the University." A copy of the terms were said to have been enclosed, but it is not clear that these were actually sent or, if they were, what they comprised. There was also reference to a draft press release but, once again, it is not clear that such a document was enclosed with Mr McAteer's letter. There is a letter of the same date from Mr McAteer to Dr Barnett which refers to the intention of PCI to issue "some press releases within the next couple of weeks" and to enclosing "a copy." Once again it is not clear that a copy was enclosed but it appears that Dr Barnett did at some stage receive a document which Mr McAteer intended to distribute to the press on behalf of SIE and which alleged that UU had become "an equity shareholder."

[12] The Vice-Chancellor does not appear to have replied to the letter of 21 June but on 26 June 2002 Dr Barnett wrote to Mr McAteer in the following terms:

> "I have received a response from the University's solicitors regarding the Memorandum and Articles of Association for SIE Ltd. They have advised that the University should not proceed with SIE Limited until there is an adjustment of the Memorandum and

Articles, which they consider to be inappropriate at the present time in relation to the University of Ulster and UUTECH involvement in the company. In particular, they require further information provided regarding the makeup of the Board, proposed allocation of shares in the company. They have also requested proper Shareholders Agreement and related agreements which are appropriate.

It is imperative that these matters should be resolved before I could commit the University to any PR activities with SIE Limited. Please provide the information requested as a matter of urgency and if you require any further clarification, please do not hesitate to contact me."

[13] Mr McAteer responded the following day, 27 June. I quote two portions of his letter:

"At our previous three meetings it was confirmed by yourself that a simple issue of shares and copy of Memorandum and Articles would be sufficient to move the deal forward …

In terms of share capital, Gavan McGill ownes (sic) 100% of the issued £100 of the voting share capital. It is intended to transfer shares as follows:

To Prof Fred McBride 5%
To the University 10%

In recognition of the cash equivalent investment by the University, Class B shares will be issued to the value of £100,000."

[14] On 3 July 2002 Dr Barnett replied to this letter as follows:

"Thank you for your letter. The University [solicitors] have raised the requirement for alteration to the Memorandum and Articles of Association. I have copied your letter to them and await their response.

I apologise for the delay but I am sure that you can appreciate that the University must ensure that the

> arrangements are appropriate for its participation in SIE Limited."

[15] Not long afterwards a press release with input from and the approval of the Public Affairs Office of UU was issued and which referred to SIE and UU becoming partners in SIE and to UU having become an equity shareholder. It purported to quote Dr Barnett as expressing delight at UU becoming involved with the venture. Subsequently, articles describing the venture and UU's involvement appeared in the edition of News Letter Business of 23 July 2002 and the July edition of Business Eye.

[16] A meeting of the SIE Board was held on 24 July 2002. The minutes record that Mr. McAteer had met and briefed Mr. Creed "… who will be finalising legal arrangements with the University."

[17] On 21 August 2002 there was a meeting attended by both Professor Barnett and Mr McAteer. This resulted in a letter from Mr McAteer to Dr Barnett dated 27 August 2002. It referred to the meeting and continued: "… We wish to record our understanding of the details and arrangements agreed between SIE Ltd and the University as then clarified." There followed a series of bullet points, the first two of which read as follows:

> "
>
> ➢ Previous commitments made by both parties remain fully in force and not altered by yesterday's clarification.
>
> ➢ The University's legal department accepts that the articles and memorandum referred to in earlier correspondence need no alteration. However, the legal department requires the completion of a standard shareholders' agreement, to give security to both parties."

Clearly "the legal department" was a reference to the University's solicitors.

[18] On 17 September 2002 Dr Barnett sent Mr McAteer a copy of the draft shareholders' agreement which had been prepared by Mr Alan Taylor of Carson McDowell, the solicitors acting for UU.

[19] In October 2002 there was contact and correspondence between the parties with which I deal in detail later in this judgment. On or about 30 October 2002 a stock transfer form was received from SIE by which Mr McGill purported to transfer ten of his one hundred class A shares to an unidentified recipient. This was forwarded to Mr Taylor and eventually, on 4 December 2002, and at Dr Barnett's request, Mr Taylor wrote to the secretary of SIE

listing a series of issues "which require clarification prior to the establishment of a relationship between the Company and the University", many of which were not related specifically to any of the provisions of the draft shareholders' agreement.

[20] The upshot of this letter was a meeting in Londonderry on 16 December 2002 between Mr Taylor, Dr Barnett, Mr McGill and Mr McAteer. This did not result in agreement being reached as to the way forward. Mr Taylor, in particular, remained concerned about a number of issues, including what he saw as risks to UU's reputation inherent in what was proposed at that time, and as a result of his advice UU Tech Limited, the third defendant and UU's chosen vehicle for its role in the venture with SIE, decided that it did not wish to participate as a shareholder and the project collapsed.

Was Agreement Reached Between the Parties?

[21] It was SIE's case that a contract was concluded between the company and UU (or its chosen vehicle UU Tech Limited) by Dr Barnett's letter to Mr McAteer of 10 May 2002. In my opinion, the correct approach to this contention is to be derived from the principles set out by Toulson J in Spectra International plc -v- Tiscali UK Limited [2002] EWHC 2084 (Com) at paras. 98-102 and endorsed by Pumfrey J in Morgan Grenfell Development Capital Syndications Limited -v- Arrows Autosport Limited [2003] EWHC 333 (Ch) (see para. 72). These indicate that the crucial issue is the intention of the parties: Did each of them intend to be bound? Initially this is a subjective question: What intention did the parties clearly evince or can reasonably be inferred? But if the intention of the parties is unclear the court then examines the background circumstances, the nature of the alleged contract and the negotiations between the parties and seeks to infer what a reasonable person would have taken the intention to have been. This is an objective test.

[22] There is another aspect of Toulson J's principles that I must bear in mind. It is for the parties, and not the court, to determine whether a term is one upon which they must be agreed before there is a contract between them and, as a corollary, it is for the parties, and not the court, to determine whether a particular point is merely a peripheral matter of detail. And, of course, it is trite law that the onus of proving the creation of a contract lies on the party asserting it.

[23] Although Toulson J's principles are couched in the language of common intention - the intention of both parties - the real focus in this case is the intention of only one of them. This is because, and I so find, that there was agreement between Dr Barnett, acting for UU and its subsidiaries, and SIE, represented by Mr McAteer, on a number of things which could have constituted a binding contract if both parties had intended it to be so. Thus,

by 10 May 2002, the date of Dr Barnett's letter, the UU contribution to the project had been sufficiently defined. Also, the consideration for that contribution – a ten per cent equity stake in SIE – had been agreed. It was contended on behalf of UU that, in the circumstances, this was merely a meaningless phrase unless other things were agreed which were not agreed, but I am prepared to assume that its provision would have been capable of realisation. Furthermore, although a number of other matters were canvassed on UU's behalf as not having been agreed there is only one - a shareholders' agreement - that I consider requires further scrutiny from the point of view of the intention of the parties and, in particular, whether on the UU side this was considered fundamental or merely a peripheral matter of detail.

[24] Against this background I turn to the evidence. Dr Barnett's letter of 10 May 2002 explicitly stated that what he described as UU's support for SIE would "require a shareholders agreement to be executed as agreed at our previous meetings." The previous meetings were not identified but "Shareholders agreement" is referred to in Dr Barnett's manuscript note of his meeting with Mr McAteer and Professor O'Reilly on 28 November 2001 which led to the Vice-Chancellor's encouraging letter to Mr McAteer of 12 December 2001. Furthermore, in his letter of 19 March 2002 to Mr McAteer, Dr Barnett asserted that UU would "require" a shareholders' agreement to be put in place "once the investment is agreed."

[25] SIE sought support for its contention that a shareholders' agreement was not an essential term in the failure of the Vice-Chancellor to contradict the statement in Mr McAteer's letter to him of 21 June 2002 that "[a] deal has been agreed with the University." But it was Dr Barnett and not the Vice-Chancellor who had carriage of the negotiations on behalf of UU and I do not think that it is reasonable to infer that the Vice-Chancellor's failure to repudiate the statement was based on or indicative of Dr Barnett's acceptance of the validity of it.

[26] SIE also relied on the involvement of UU in the press release as indicating that its position was that a deal had been done. Dr Barnett's explanation for what happened was that he participated in the drafting of the statement and involved the UU Public Affairs Office in anticipation of agreement rather than in acknowledgement of its existence. This seems to me to be borne out by the documents. Dr Barnett's letter of 26 June 2002 explicitly stated that certain requirements of UU's solicitors would have to be "resolved" before he could commit UU "to any PR activities with SIE Limited." It is true that the need for a shareholders' agreement, as such, does not feature in this letter, but it is quite clear that it was not written by someone who thought that he had made a binding contract with SIE. This tends to be confirmed by a fax message from Dr Barnett to Mr McAteer on 5 July 2002. It is couched in terms of UU's intended partnership with SIE and not of a concluded agreement.

[27] Mr McGill suggested that Dr Barnett's failure to repudiate the allegation in Mr McAteer's letter of 27 June 2002 that at three meetings Dr Barnett had "confirmed … that a simple issue of shares and copy of Memorandum and Articles would be sufficient to move the deal forward" indicates that an agreed shareholders' agreement was not an essential requirement as far as UU was concerned. Dr Barnett told me that he did not accept the allegation in Mr McAteer's letter but conceded that he had not challenged it when it had been made. However, I cannot accept that this failing is to be interpreted in the way contended for by Mr McGill. During the material period, and to the knowledge of Mr McAteer who was acting for SIE at the time, UU's solicitors were involved and I am satisfied - and this must have been obvious to SIE - that Dr Barnett was not going to move from the requirement of a shareholders' agreement without the imprimatur of those solicitors, which never came. Indeed, the involvement of the solicitors was taken sufficiently seriously by Mr McAteer for him to meet and brief Mr Creed "who will be finalising legal arrangements with the university" (see the minutes of the SIE Board meeting of 24 July 2002). In the event Mr Creed does not appear to have done any finalising but that, of course, is not the point.

[28] In my view it is clear from the evidence that, certainly prior to the events of October 2002 (to which I shall come), Dr Barnett was insisting that a shareholders' agreement was an essential requirement if UU, in the form of the UU Tech Ltd. Board, was to be persuaded to participate in the proposed venture with SIE Ltd. This is confirmed by his repeated references to such a document and to the fact that it was to be drafted by the UU solicitors. Dr Barnett saw such an agreement as necessary to safeguard UU's position in relation to its investment and Mr Taylor in his evidence emphasised its importance. During the period to which I have referred SIE could not have been under any illusion as to the significance attached by UU to what was required.

[29] It follows that I cannot accept that the letter of 10 May 2002 constituted a concluded agreement between the parties. However, this is not the end of the matter and I must now turn to consider whether subsequent events, particularly those of October 2002, either met UU's requirement as to a shareholders' agreement or signalled its abandonment of it.

[30] As I have said, in September 2002 Carson McDowell furnished a draft agreement which was copied to SIE. Even on a quick perusal its importance is obvious. At its core lay detailed provisions as to "Important Management Decisions" which were designed to ensure that the benefits which were intended to accrue to UU, a minority shareholder, would not be eroded.

[31] The document was patently incomplete and one might have expected that SIE would have engaged either directly or through Mr Creed in finalising

it. However, this did not occur and on 8 October 2002 a meeting took place between Dr Barnett, Mr McAteer, Mr McGill and Mr Peter Mullan, company secretary of SIE. A brief note of this meeting was kept by Mrs Pat Ferguson, Dr Barnett's personal assistant. This records that discussions took place as to the issue and receipt of the draft shareholders' agreement but stated that "no issues were raised that required any negotiation." Under the heading "Action points" SIE was to return the draft agreement "with their confirmation of acceptance" to Mr Taylor at Carson McDowell.

[32] Looking at Mrs Ferguson's note in isolation it might appear that SIE was on the cusp of meeting UU's requirements as to a shareholders' agreement, notwithstanding that the document that Mr Taylor had prepared was incomplete. However, it seems that this was not the case for on 14 October 202 Mr McGill wrote to Dr Barnett referring to the meeting on 8 October and saying that he had considered the shareholders' agreement and that, although he was happy in general terms with the contents, he wanted to make a number of adjustments which he set out as follows:

> "a. I do not think there is a need for "B Directors", as I understand it the University has the right to appoint a director and I have no difficulty with this.
>
> b. In reference to Section 4.1, I would prefer if completion took place at Magee.
>
> c. With reference to Part 5, the information is as follows:
>
> The Auditors of the company should be - Paul Green, PO Box 167, 5B Messines Terrace, Derry, BT48 TTD (sic)
>
> The bankers should be - Bank of Ireland, Strand Road, Derry
>
> The Company Secretary will be - Daniel McAteer, 21 Clarendon Street, Derry
>
> d. In relation to Section 9.1.14, I would prefer to be the sole signatory on the Banking account.
>
> e. I think we need some discussion on Section 11, "Important Management Decisions".
>
> f. Paragraph 12 [which dealt with transfers of shares and loans] seems to contradict the earlier

> [discussions] held with yourselves. In other words it has always been my intention to transfer my shares to key people at the appropriate time. However, I do not wish to transfer my entire Share Capital at any time."

His letter continued: "Given that the above changes are fairly minor it is probably sensible that we should meet to have the document amended before it is returned to the Solicitors. In that way we can ensure that the deal is completed as soon as possible."

[33] On 21 October 2002 Dr Barnett wrote a letter to Mr McGill. It began as follows:

> "I still feel that there is some confusion as to what has and has not been agreed at previous meetings and therefore I would suggest that our agreements are those between yourself and I.
>
> With respect to your letter of 14 October 2002 I would make the following comments:
>
> Item 1 Shareholders Agreement."

[34] After this somewhat Delphic reference to the portion of Mr McGill's letter which dealt with the issue of the shareholders' agreement, and which I have quoted above, Dr Barnett's letter went on to deal with other matters referred to in Mr McGill's letter which I need not set out.

[35] In the course of their evidence both men agreed that there had been a telephone conversation between them on 21 October 2002 and Mr McGill told me that Dr Barnett's letter was accompanied by a "with compliments" slip on which the following words were written:

> "Further to our discussion by telephone today these issues have been resolved.
>
> Chris"

[36] Mr McGill asserted that the message on the slip was intended to convey that Dr Barnett was confirming that the telephone conversation had resolved the matters raised in relation to the shareholders' agreement in Mr McGill's letter of 14 October.

[37] Mrs Ferguson, Dr Barnett's personal assistant, gave evidence as to the provenance of the compliments slip. She said that she had written the words

on it. She thought that it was a message to Dr Barnett and not from him and that what she was intending to convey to him was that matters, other than those relating to the shareholders' agreement, raised in Mr McGill's letter of 14 October 2002 had been resolved. The compliments slip was not intended for SIE, and she did not know how it got into Mr McGill's hands.

[38] According to Dr Barnett he had made no concession in the telephone conversation with Mr McGill on any of the items referred to under the shareholders' agreement heading in Mr Magill's letter of 14 October. He said that what I have described as his somewhat Delphic comment in his letter of 21 October ("Item 1 Shareholders Agreement") was intended to convey that there were still things to agree in relation to it. Mr McGill's evidence as to the terms of this conversation was not altogether clear but he suggested that Dr Barnett had conceded item a. (the need for "B Directors") but accepted that neither item e. ("Important Management Decisions") nor item f. (dealing with the transfer of shares and loans) had ever been the subject of agreement. This, in turn, sits rather uncomfortably with Mrs Ferguson's e-mail to Mr Taylor of 29 October 2002 in which she says that "SIE have indicated in their letter [i.e., Mr McGill's letter of 14 October] that they are happy with the Shareholders Agreement …".

[39] I have been unable to solve the mystery of the compliments slip. Although I reject the suggestion made on behalf of the defendants that Mr McGill acquired it by some improper means, I remain uncertain as to whether it was sent to Mr McGill deliberately or accidentally. I do not find credible Mrs Ferguson's proposition that the message on the slip was to Dr Barnett and not from him - this is inconsistent with both the layout and the punctuation. However, I have come to the clear conclusion that there was no agreement between the parties in October 2002 as to the terms of the proposed shareholders' agreement.

[40] I refer, in particular, to the "Important Management Decisions" section of Mr Taylor's draft. In the course of the hearing I asked Mr McGill quite specifically as to whether SIE had agreed to this section of the draft and he said it had not. Although it may not be necessary as a matter of law for me to express a view as to the significance of this section (if it is I would say that it seems to me to have been highly significant and that, applying an objective test, I think that any reasonable person would take the same view) it is clear that the parties thought it significant - I refer, for example, to Mr Mullan's letter to Carson McDowell of 16 December 2002 which interprets the section, as drafted, as capable of proving obstructive in the day to day operation of SIE's business.

[41] Furthermore, I am satisfied that Dr Barnett did not, as it were, abandon, or appear to abandon, the UU requirement as to a shareholders' agreement in the terms of Mr. Taylor's draft. I accept Dr Barnett's evidence

that in his telephone conversation with Mr McGill on 21 October 2002 he reiterated why agreement was required on the issues raised in relation to the draft agreement in Mr McGill's letter of 14 October. It follows that I cannot accept that Mr McGill could reasonably have interpreted the message on the compliments slip as indicative of any change in Dr Barnett's position.

[42] It is true that by the end of 2002 at, it appears, the instigation of Mr Taylor, issues other than the terms of the shareholders' agreement were raised on UU's behalf and that these, or some of them, also influenced the decision of UU (in the form of UU Tech Limited) to pull out of the venture. If, at that time, a binding agreement had existed between the parties any attempt by UU to withdraw would have constituted a breach of contract. But there never was a contract and, therefore, there has been no breach.

The Representation of SIE by Mr Magill

[43] Before concluding this judgment I wish to comment on a point which arose at the trial in relation to the fact that SIE was not legally represented, but was represented by Mr McGill.

[44] At the beginning of the hearing I drew the attention of Mr Stephens QC to what I understood to be the practice in England whereby, in cases in which one party is legally represented and the other is not, counsel for the represented party assists the court by making sure that it is informed of all relevant facts and arguments on the facts and on the law which a barrister acting for the unrepresented litigant would raise. Mr Stephens told me that he was unaware of this practice and that he did not consider it to be appropriate that he should be asked to perform this role.

[45] I invited Mr Stephens to check whether there was such a practice in England and then to make such further submissions as he should see fit. He did not make any further submissions but I myself investigated the English position. This confirmed that if it was not the invariable practice - there are alternatives - the procedure to which I have referred is adopted from time to time by judges in England, apparently without demur.

[46] With the contraction of legal aid the unrepresented litigant is likely to become a more frequent phenomenon in our courts in the future. It seems to me to be in the interests of justice and the efficient despatch of judicial business for the procedure I invited Mr Stephens to follow in this case to be adopted by counsel where the judge requests it. In my view, Mr Stephens' reaction was over defensive. If the response to the judge's request is skilfully effected there should be no disadvantage to the represented party and, indeed, in cases involving unrepresented plaintiffs there may well be advantage to the defendant in getting its case before the judge at the beginning of the trial.

[47] I would add that, in the event, Mr McGill proved perfectly capable of presenting SIE's case and did so in an impressively succinct and effective manner, making every point that could have been made on SIE's behalf.

Conclusion

[48] I do not consider the plaintiff's claim to be characterised correctly as based on an agreement which was subject to conditions which were not fulfilled. In my opinion there never was an agreement. Accordingly it is not necessary for me to deal with the allegation of uncertainty. For the sake of completeness I should add that the issues of part performance and estoppel which are pleaded in the Statement of Claim do not arise in this case. The plaintiff's claim must be dismissed.