Neutral Citation Number: [2026] EWCC 50

Case No: 230DC281

IN THE COUNTY COURT AT WOLVERHAMPTON (SITTING AT WALSALL)

Walsall County and Family Court
Bridge House
Bridge Street
Walsall
WS1 1JQ

Date: 18 August 2026

Before :

HIS HONOUR JUDGE GRIMSHAW

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Between :

ANGELA RITCHIE	**Claimant**
- and -	
THE ROYAL WOLVERHAMPTON NHS TRUST	**Defendant**

- -
- -

Imogen Goold (instructed by **Fletchers Solicitors**) for the **Claimant**
Eloise Power (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing dates: 6 August 2026
(Draft judgment circulated on 13 August 2026)

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Approved Judgment

This judgment was handed down remotely at 10.00am on 18 August 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE GRIMSHAW

His Honour Judge Grimshaw:

Introduction

1. Where a claimant settles a claim for personal injuries during their lifetime, does that prevent his dependants from bringing a clinical negligence claim against a concurrent tortfeasor after his death? That is the issue that the Court is dealing with in this case. The Defendant argues that it does and thus the Court should strike out the present claim or, in the alternative, enter summary judgment. The Claimant argues that it does not and, if I decide I am bound by previous authorities on the point, those previous authorities were wrongly decided.

2. The present claim is brought by Angela Ritchie, who is the wife of the late Brian Ritchie (hereinafter "the Deceased"). For the reasons that will later become clear, this judgment is going to deal with the factual background to the case relatively briefly and is not going to name at least one of the central actors involved so as to not offend some of the terms of the settlement agreement, where doing so is unnecessary. There was no application before me specifically to order that the settlement agreement central to this case be disclosed as it had already been disclosed to the parties and to the Court. Should such an application have been made, the Court is likely to have taken the view that it was in the interests of justice that it be disclosed in these proceedings.

Factual background

3. The Deceased, born on 18 September 1944, underwent a mitral and tricuspid heart valve repair at the Defendant's hospital on 12 March 2015 under the care of a Mr Billing. During this procedure, he is believed to have contracted Mycobacterium Chimaera ("MC") mitral valve endocarditis from a contaminated heater cooler unit, which was manufactured by a company (whom I will simply refer to as "the Company") and which was used by the Defendant.

4. The Deceased became symptomatic in around 2018 and deteriorated further in 2020 to 2021. He was diagnosed with MC infection following analysis of samples taken during a further surgical procedure in July 2021. Throughout the period, he suffered from several unpleasant and increasingly debilitating symptoms and suffered deterioration in his sight. On 29 July 2021, the Deceased underwent an urgent re-do mitral valve replacement but unfortunately suffered an intra-operative aortic dissection, which required surgery to his aorta. A CT scan suggested that he had suffered a cerebral insult to his right frontal and left parietal lobes. Samples taken from the annuloplasty ring of the mitral valve grew MC and he was commenced on antibiotic therapy. He was eventually discharged home on 22 October 2021.

5. Mr Balen, solicitor for the Deceased at the time, explains in a witness statement in these proceedings that he received instructions to act for the Deceased towards the end of 2021 and that he notified the Company of his instruction on 17 November 2021. He explains in his statement that he was instructed in several other claims against the Company.

6. On 9 February 2022, Mr Balen explains that he sought an interim payment from the Company. The claim was advanced as a product liability claim. On 2 March 2022, Mr Balen explains that the Company made an interim payment in the sum of £25,000.

Copies of the correspondence relating to the interim payment have not been provided to the Court nor, it is understood, the Defendant.

The settlement negotiations

7. On 6 May 2022, Mr Balen explains that he served a Schedule of Loss upon the Company, which I will henceforth refer to as "the May 2022 Schedule". The total claimed was £346,963.79. Mr Balen describes the document as "*the usual broad-brush schedule accepted by the company's solicitors*". The Deceased was 77.6 years old as at the date of the calculation. The May 2022 Schedule explicitly pleaded a reduction of life expectancy, estimating that the Deceased would have a life expectancy of one further year, as against a 'but for' life expectancy to age 85. The "*lost years life multiplier*" was thus said to be 7.06.

8. The May 2022 Schedule included the following heads of loss:

   i) A claim for general damages, supported by a detailed description of the pain and suffering that the Deceased had suffered as a result of the MC infection and the treatment for the same. This description encompassed the full period of his illness between 2018 and the date of the May 2022 Schedule. The sum claimed was £150,000.

   ii) Claims for past care and assistance, travel, aids and equipment and medication and miscellaneous expenditure, spanning a time period from April 2018 to the date of the May 2022 Schedule. The total past losses claimed were £59,225.29. It is worth noting that the care claimed for the period 16 December 2021 to 30 April 2022 (135 days) was for 20 hours per day of care at a rate of £12.61[1] provided by the Claimant, with a further claim advanced for care provided by the Deceased's daughter.

   iii) A claim for future care and assistance, pleaded for a period of one year, in the sum of £73,613.50. This was advanced on the basis of 20 hours per day provided by the Claimant, at a rate of £13.00 per hour, along with a further 144 hours provided by the Deceased's daughter over the period, using the same hourly rate; no deductions were made for the care being provided gratuitously.

   iv) A claim for future DIY in the sum of £250.

   v) A claim for future occupational therapy and treatment in the sum of £11,610.

   vi) A 'lost years' claim in the sum of £44,405, seemingly based upon a claim of 50% of the Deceased's pension of £12,579.32 per year, multiplied by a multiplier of 7.06 to reflect 7 years loss.

   vii) A claim for future transportation and driving in the sum of £360.

   viii) A claim for miscellaneous purchases in the sum of £500 and a stairlift for £7500.

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[1] This appears to be the aggregate rate for the first part of that period (see Facts & Figures 2024/25), without any reduction for the care being provided gratuitously.

9. On 18 July 2022, Mr Spencer of Taylor Wessing, acting on behalf of the Company, sent an email to Mr Balen making an offer to settle the claim in the sum of £200,000, and raising quantum arguments in respect of the various heads of loss. Importantly, Ms Power says on behalf of the Defendant, there were no arguments advanced regarding liability. I note that Mr Balen states within his witness statement that it was always made clear by those representing the Company in this cohort of cases that liability was not admitted.

10. On 27 July 2022, Mr Balen made a counteroffer by email in the sum of £255,000 plus £20,000 costs (and any required payments to the DWP or other government entity), also providing a response to the quantum arguments raised by Mr Spencer. Mr Balen stated that the general damages figure was based on the Judicial College Guidelines for mesothelioma claims, albeit the Deceased's condition, it was argued, was worse than mesothelioma.

11. Settlement in the sum of £250,000 damages plus £20,000 costs was thereafter agreed by negotiation and an agreement entered into ("the Settlement Agreement") on 16 August 2022. I will return to the Settlement Agreement shortly. I note that it is pleaded within the Particulars of Claim that "*[t]he final agreed settlement did not cover lost years income*". I am unclear that there is any evidence to support this assertion.

Subsequent factual and procedural history

12. On 28 October 2022 the Deceased sadly died, i.e. approximately 6 months after the date of calculation utilised within the May 2022 Schedule of Loss. An inquest into his death was concluded on 18 October 2023. The Claimant argues that during the inquest process, a number of failings came to light in relation to the care provided to the Deceased by the Defendant and other healthcare professionals. The Claimant argues that, but for the failures on behalf of the Defendant and its clinicians, the Deceased would have survived a further two years than he did, and his pain and suffering would have been ameliorated earlier.

13. I note an email sent from Mr Balen to Mr Long, the Defendant's solicitor, on 6 November 2023 contained the following:

> "…For guidance only at this stage because the inquest has not completely concluded in that the determination has not been published (due imminently), the civil claim, will be a FAA claim only as the patient settled his claim in life."

14. On 12 December 2023, the Claimant submitted a Letter of Claim to the Defendant. The Defendant responded on 2 September 2024 (solicitors having been instructed on 1 May 2024), setting out the position that it was necessary to construe the Settlement Agreement with the Company in order to consider the matter. The Settlement Agreement was disclosed to the Defendant on 9 December 2024.

15. On 8 January 2025, the Defendant set out its position that the Settlement Agreement with the Company was full and final, fixing the full measure of the Deceased's (and thus the Claimant's) loss.

16. Proceedings were issued in this matter on 13 October 2025 and were served on 23 October 2025. A draft Schedule of Loss dated 18 September 2025 ("the September 2025 Schedule") was served with proceedings. The September 2025 Schedule, whilst not very clearly drafted, included a claim for "*bereavement damages*" plus interest, funeral expenses plus interest, and a claim for *"financial dependency to 28 October 2024"* plus interest, representing the Claimant's case that, as a result of the Defendant's negligence, the Deceased had died 2 years earlier than he otherwise would have done. The total claim was in the sum of £35,214.95. It is of note that the claim advanced for the financial dependency was based upon a multiplicand of £5,450, subsequently uprated by 10.1% and then 8.5%[2], giving a total of £12,067.

17. On 18 November 2025, the Defendant made the present application to strike out the claim and/or for summary judgment.

Witness evidence

18. I should briefly set out the witness statements that have been placed before me for this application. As would be expected, I have a statement in support of the application provided by Mr Simon Long, dated 18 November 2025.

19. I then have statements filed in response to the application from:

   i) Mr Paul Balen, the Deceased's and Claimant's solicitor, dated 12 May 2026;

   ii) The Claimant, dated 24 April 2026; and

   iii) Ms Heidi Knight, Barrister, dated 14 May 2026.

20. I will deal with the issues raised by the statements throughout the course of this judgment. I should however briefly specifically deal with the statement of Ms Knight, who was not involved in this specific case at all. Ms Knight had clearly not seen a number of salient documents that I have now seen. Ms Knight was instructed by Mr Balen in several product liability cases involving the Company and offers her experience as to typical settlement parameters and approaches to valuing and risk assessing cases, having previously been involved as "*generic counsel*". Ms Power did not seek to challenge Ms Knight's statement but does say that the Court needs to place in its proper context given that Ms Knight was not involved in the present case at all. Where Ms Knight has indicated her general approach to considering litigation risk in such cases, that does not inform the Court about the settlement reached in this case, where no discussion took place as to liability. Ms Knight states that she was not aware of being involved in any case where it was alleged that an NHS entity had caused the claimant to contract MC.

The Settlement Agreement

21. The Settlement Agreement, which was signed on 16 August 2022, included the following provisions:

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[2] No explanation is given for these figures, but it is assumed to be based upon a measure of inflation to the state pension.

i) "*This agreement is in full and final settlement of, and Mr Ritchie hereby releases and forever discharges, all and/or any actions, claims, counterclaims, rights, proceedings, demands, and set-offs, whether in this jurisdiction or any other, whether or not presently known to the parties or to the law, and whether in law or equity, that Mr Ritchie, may have or hereafter can, shall or may have against [the Company] (or any group company) in respect of any monies, damages, losses, liabilities, interest, costs, or any other relief of whatever nature and however arising, directly or indirectly, arising out of or connected with the infection, the Claim or the underlying facts relating to the infection or the Claim including without limiting the generality of the forgoing any claim under the Law Reform (Miscellaneous Provisions) Act 1934, the Fatal Accidents Act 1976 or otherwise (hereinafter the "Released Claim").*" The Defendant highlights that the Settlement Agreement therefore explicitly includes a clause releasing the Company from any fatal accident claims, supporting the contention that the settlement reached incorporated losses that might otherwise be covered by the fatal accident regime.

ii) A non-admission of liability and a confidentiality clause.

iii) "*Mr Ritchie further agrees not to voluntarily participate or otherwise provide assistance in any litigation against [the Company] or any group company in relation to matters arising from or in any way related to the Released Claim*".

iv) A clause which expressly envisaged that the Company would not be restricted *"in relation to its right to pursue any third party in relation to the Claim or this settlement"*. It also contained an exception to the confidentiality provisions in circumstances where the Company wished to pursue a claim against a third party. There were no equivalent provisions entitling the Deceased or his heirs to pursue a third party.

<u>The issues for the Court to resolve</u>

22. I heard nearly a full day of legal submissions from counsel. The case was essentially distilled down into three central legal issues, which I will seek to deal with in turn:

i) Do existing legal authorities prevent the Claimant from recovering any losses under the Fatal Accidents Act 1976 (hereinafter "the FAA") in this case given the 'in life' settlement reached between the Deceased and the Company?

ii) Whether the Settlement Agreement constituted full satisfaction of the harm caused by the MC infection and linked to that issue, whether the damage sought in the present claim is the same as the damage compensated in the earlier claim?

iii) If the Claimant cannot recover any damages in this case, is it appropriate to dispose of the case summarily and, if so, is the correct approach to strike the claim out or to enter summary judgment?

<u>The law</u>

23. I was provided with a lengthy bundle of legal authorities ahead of the hearing, several of which were not in fact referred to during oral submissions made by counsel. I will therefore largely confine my consideration of the law to the authorities that were central to the parties' arguments.

24. I start with the decision of Langstaff J in the case of *Thompson v Arnold* [2007] EWHC 1875 (QB), a case concerning a negligent diagnosis of a left breast lump. By the time that the correct diagnosis was made, it was too late. Ms Thompson issued proceedings against the defendant in September 1999 when she had a predicted short life expectancy. Ms Thompson, with legal advice, ultimately settled the case for £120,000 in January 2020. Ms Thompson sadly died in April 2022. The claimant's husband and daughters subsequently sought to pursue a fatal accident claim against the defendant. The Consent Order signed in January 2020 stated:

> "The claimant accepts the sum of £120,000 in full and final settlement of her claim."

25. Langstaff J reviewed the relevant authorities. He stated at paragraph 5 of his judgment:

> "It ought to have been well known by any reasonably proficient personal injury practitioner that case law (*Read v Great Eastern Railway* (1868) LR 3 QB 555) had established well over a hundred years before that where a claimant pursued to judgment or settlement a claim for damages for an injury which subsequently proved fatal their dependants could have no right of action under the Fatal Accidents Act 1976. It was well recognised that *Read* had been followed or recognised at appellate level since then. Despite this, the Schedule of loss and damage annexed to the particulars of claim of September 1999 stated
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> > "The claimant is married with two young daughters. The evidence suggests that she will die of cancer sometime in the next 12 months. Her claim is for personal injury and consequential losses during her lifetime and funeral expenses. After her death, a separate claim will be pursued by her dependants pursuant to the FAA 1976".

26. The reference to the FAA 1976 is to s.1(1) of the FAA, which states that:

> "If death is caused by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured."

27. At paragraph 28 of *Thompson*, Langstaff J went on to consider the approach that those advising dying claimants could take:

> "In the (usual) case in which a claimant viewing her imminent death wishes her dependants to have the advantage of the more extensive sums that can be recovered under the Fatal Accidents Act, compared to a lost years' claim, she can achieve this within existing rules. One well recognised route is to seek an interim payment which, in a case in which liability has been admitted, may be equal or nearly equal to the amount of a lifetime award. The fact that it may be, or nearly be, the full amount of such an award does not prevent it being a reasonable proportion of the damages to be expected in the eventual claim (which will by amendment add a claim under the 1976 Act), since in the usual case it follows from what I have set out above that a dependency claim will usually be larger. Authority supports such an approach: Stephenson LJ. recognised in *Murray v Shuter* [1972] 1 Ll Rep 6, CA that: "delay usually defeats justice; but there are cases, of which claims for head injuries are notoriously an instance, where expedition may work injustice…" when ordering an adjournment of trial, which was otherwise ready and due to be heard, so that the dependants of an injured plaintiff whose death was imminent could benefit from the more generous financial compensation likely to be awarded under the Fatal Accidents Act. This principle of adjournment in appropriate cases, in order to secure the benefits of this Act, may be combined with an interim payment."

28. Langstaff J reached the following conclusions:

> "92. It would have been objectively understood by the reasonably well-informed observer that the whole of the lifetime damages claim was being settled. If a court were to hold that the words "full and final settlement of a claim" permitted subsequent exploration of whether certain heads of damage had been "claimed" or not, such that the settlement could be re-opened if they had not, would be to deprive such an agreement of the very certainty which is the point of making it in the first place.
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> 93. Moreover, it would not follow — even if this were wrong — that the claimants could take advantage of the Fatal Accidents Act. If it were sought to re-open a claim on the basis that not all of the possible heads of compensation had been explored, the attempt would fall foul of the principles of cause of action estoppel (subject only to residual questions of equitable discretion). I think it improbable that any such belated additional claim would be permitted. If that is so, then not only the basic contention that Mr. Lawrence QC makes but also the consequence of it necessary for his clients' claim to succeed cannot be established."

29. The claimant in *Thompson* attempted to persuade Langstaff J that *Read* was wrongly decided; Langstaff J disagreed. Counsel in the present case expressed uncertainty as to whether *Read* was in fact binding on Langstaff J and, indeed, on this Court. They

agreed, however, as do I, that this Court is bound by the decision in *Thompson*. Ms Power described this as an "*insurmountable hurdle*" for the Claimant to traverse in this claim given that I am so bound. I will return to the parties' arguments regarding *Thompson* in due course.

30. Ms Power also directed me to a passage of the judgment of Lord Salmon in *Pickett v British Rail Engineering Ltd.* [1980] A. C. 136, in which he stated (*obiter*) that (at 152E-G):

> "Although the point has never been considered by your Lordships' House, it is generally assumed that should the plaintiff accept a sum in settlement of his claim or obtain judgment for damages in respect of the defendant's negligence, his dependants will have no cause of action under the Fatal Accidents Acts after his death. This assumption is supported by strong authority: see *Read v. Great Eastern Railway Co.* (1868) L.R. 3 Q.B. 555; *Williams v. Mersey Docks and Harbour Board* [1905] 1 K.B. 804 and *Murray v. Shuter* [1972] 1 Lloyd's Rep. 6, 7. No point about the correctness of this assumption arises for decision in this appeal and therefore I express no concluded opinion about it. I think, however, that the assumption which has held the field for upwards of 100 years is probably correct and that, for present purposes, it must be accepted."

31. The next key authority is the decision in *Jameson & Anr v Central Electricity Generating Board* [2000] 1 A.C. 455. This case concerned a man who, a few days before his death from malignant mesothelioma, agreed to accept the sum of £80,000 from his former employer (Babcock Energy Ltd.) "*in full and final settlement and satisfaction of all the causes of action in respect of which the plaintiff claimed in the statement of claim*". The claim arose from exposure to asbestos at various premises where he had worked, including those of the CEGB. The £80,000 was significantly less than the full value of the claim, which was agreed between the parties to be £130,000. Mr Jameson's executors subsequently brought a claim against the CEGB pursuant to the FAA, including for Mrs Jameson's dependency, which was assessed on a conventional basis and the parties agreed at £142,000.

32. *Jameson* was a case where the injured party sued one of two (or potentially more) tortfeasors who, by their separate acts, caused the same harm. The argument was that there was a shortfall between the amount accepted within the settlement reached by Mr Jameson and the full value of his claim. The question for the House of Lords was whether he would be able to recover any shortfall in recovery from the first tortfeasor from any of the other tortfeasors. This was a case, like the present case, where the tortfeasors were concurrent rather than joint and where, if the deceased would have been entitled to maintain an action and to recover damages from the CEGB, notwithstanding his settlement with Babcock, the claimants would have been able to recover damages against the CEGB[3].

[3] In *Jameson*, the claimants invoked s.4 of the FAA to argue that no set off would need to be given for the damages already received as part of the settlement with Babcock; that point was not taken in the present case.

33. The "*first question*" that arose in Jameson was therefore whether, on the facts in that case, "*satisfaction for this purpose is achieved where the [claimant] agrees to accept a sum from one of the alleged concurrent tortfeasors which is expressed to be in full and final settlement of his claim against that tortfeasor, if that sum is less than the amount which a judge would have held to be the amount of the damages which were due to him if the case had gone to trial and the defendant had been found liable*" (at 472F).

34. The relevance to the present case, therefore, is whether a settlement with one tortfeasor discharges the other concurrent tortfeasor. The leading judgment in the case was given by Lord Hope, who set out the following preliminary relevant principles:

    i) A claimant cannot recover more by way of damages than the amount of his or her loss (at 471H).

    ii) The existence of damage is an essential part of the cause of action. In a case involving concurrent tortfeasors, such as the present, because the acts of negligence alleged against the defendants are not the same, the claimant has a separate cause of action against each of them for the same loss. As a matter of principle, once a claimant's claim has been satisfied by any one of several tortfeasors, his/her cause of action for damages is extinguished against all of them (at 472A).

35. Lord Hope reviewed various authorities and reached the following conclusions:

    i) An agreement reached between a claimant and one concurrent tortfeasor cannot extinguish the claimant's claim against the other concurrent tortfeasor if his claim for damages has still not been satisfied (at 473A).

    ii) The critical question is whether the claim has in fact been satisfied. Lord Hope stated (at 473B):

    > "*I think that the answer to it will be found by examining the terms of the agreement and comparing it with what has been claimed. The significance of the agreement is to be found in the effect which the parties intended to give to it. The fact that it has been entered into by way of a compromise in order to conclude a settlement forms part of the background. But the extent of the element of compromise will vary from case to case. The scope for litigation may have been reduced by agreement, for example on the question of liability. There may be little room for dispute as to the amount which a judge would award as damages. So one cannot assume that the figure which the parties are willing to accept is simply their assessment of the risks of litigation. The essential point is that the meaning which is to be given to the agreement will determine its effect.*"

    iii) A claim of damages in tort is a claim for unliquidated damages. It remains unliquidated until the amount has been fixed either by the judgment of the court or by an agreement as to the amount which must be paid to satisfy the claim. Once the amount of the damages has been fixed by a judgment against any one of several concurrent tortfeasors, full satisfaction will have been achieved when the judgment is satisfied (at 473D).

iv) "*…[M]any claims are settled without the amount due as damages having been adjudicated by the court. They are settled by agreement between the parties. Were it not for the fact that most claims of damages are settled in this way, the parties would be exposed to greater expense and uncertainty and the burden of work on the courts would be intolerable. There is a strong element of public interest in facilitating the disposal of cases in this way*" (at 474B).

v) "*In the typical case the plaintiff agrees to accept the sum which the defendant is willing to pay in full and final settlement of his claim. Such a settlement normally involves an element of compromise on both sides. Each side will have made concessions of one kind or another to reflect its assessment of the prospects of success if the case were to go to trial. The plaintiff will normally have made a discount from the amount which he regards as full compensation for his loss. He may have withdrawn some elements of his claim, reduced the amounts sought in settlement of others or accepted an overall reduction in the amount claimed. But, whatever the nature and extent of the compromise, one thing is common to all these cases. This is that the agreement brings to an end the plaintiff's cause of action against the defendant for the payment of damages. The agreed sum is a liquidated amount which replaces the claim for an illiquid sum. The effect of the compromise is to fix the amount of his claim in just the same way as if the case had gone to trial and he had obtained judgment. Once the agreed sum has been paid, his claim against the defendant will have been satisfied. Satisfaction discharges the tort and is a bar to any further action in respect of it: United Australia Ltd. v. Barclays Bank Ltd. [1941] A.C. 1 , 21, per Viscount Simon L.C.; Kohnke v. Karger [1951] 2 K.B. 670 , 675, per Lynskey J. I think that it follows that, if the claim was for the whole amount of the loss for which the defendant as one of the concurrent tortfeasors is liable to him in damages, satisfaction of the claim against him will have the effect of extinguishing the claim against the other concurrent tortfeasors*" (at 474C).

vi) "*There may be cases where the terms of the settlement, or the extent of the claim made against the tortfeasor with whom the plaintiff has entered into the settlement, will show that the parties have not treated the settlement as satisfaction for the full amount of the claim of damages. In the same way a judge, in awarding damages to the plaintiff in his action against one concurrent tortfeasor, may make it clear that he has restricted his award to a part only of the full value of the claim*" (at 474G). As I will go on to consider, this is not the position in the present case.

36. This raises the important question as to how far the Court, in a situation such as the present case, should seek to examine the detail of the settlement reached 'in life' by a deceased claimant in the event of a subsequent action. Lord Hope was clear that there needs to be a limit on such an inquiry:

> "I think that these cases demonstrate the limits of the inquiry which the judge may undertake in the event of a subsequent action being raised against another alleged concurrent tortfeasor. He may examine the statement of claim in the first action and the

> terms of the settlement in order to identify the subject matter of the claim and the extent to which the causes of action which were comprised in it have been included within the settlement. The purpose of doing so will be to see that all the plaintiff's claims were included in the settlement and that nothing was excluded from it which could properly form the basis for a further claim for damages against the other tortfeasors. The intention of the parties is to be found in the words of the settlement. The question is one as to the objective meaning of the words used by them in the context of what has been claimed.
>
> **What the judge may not do is allow the plaintiff to open up the question whether the amount which he has agreed to accept from the first concurrent tortfeasor under the settlement represents full value for what has been claimed. That kind of inquiry, if it were to be permitted, could lead to endless litigation as one concurrent tortfeasor after another was sued on the basis that the sums received by the plaintiff in his settlements with those previously sued were open to review by a judge in order to see whether or not the plaintiff had yet received full satisfaction for his loss**. Different judges might arrive at different assessments of the amount of the damages. The court would then have to decide which of them was to be preferred as the basis for the apportionment between the various tortfeasors. I do not think that this can be regarded as acceptable. The principle of finality requires that there must be an end to litigation.
>
> The question therefore is, as Mr. McLaren for the C.E.G.B. put it, not whether the plaintiff has received the full value of his claim but whether the sum which he has received in settlement of it was intended to be **in full satisfaction of the tort**. In this case the words used cannot be construed as meaning that the sum which the deceased agreed to accept was in partial satisfaction only of his claim of damages. It was expressly accepted in full and final settlement and satisfaction of all his causes of action in the statement of claim. I would hold that the terms of his settlement with Babcock extinguished his claim of damages against the other tortfeasors" (at 476A-F, emphasis added).

37. *Jameson* was followed by the decision of the House of Lords in *Heaton and Others v AXA Equity & Law Assurance Society Plc and Others* [2002] 2 AC 329. *Heaton* was a different factual scenario, being a breach of contract dispute. As stated by Lord Mackay of Clashfern (at [50]):

> "In Jameson's case, if his employer had responsibility for the damage caused to him by exposure to asbestos the employer was responsible for the whole of that damage and that damage was the sole basis of the claim. Here, as I have said, the damage claimed against the appellants is not coincident with the damage claimed against Target which was the subject of the settlement

> and there is nothing in the Target settlement to show the extent to which Target accepted responsibility for the principal item of claim, namely the destruction of the Inter City business."

38. Lord Bingham of Cornhill defined the issues in the appeal at [3] to [5]. At [5], he said this:

> "Where a sum is agreed which makes a discount for the risk of failure or for a possible finding of contributory negligence or for any other hazard of litigation, the compromise sum may nevertheless be regarded as the full measure of B's liability. But A may agree to settle with B for £x not because either party regards that sum as the full measure of A's loss but for many other reasons: it may be known that B is uninsured and £x represents the limit of his ability to pay; or A may wish to pocket a small sum in order to finance litigation against other parties; or it may be that A is old and ill and prefers to accept a small sum now rather than a larger sum years later; or it may be that there is a contractual or other limitation on B's liability to A. While it is just that A should be precluded from recovering substantial damages against C in a case where he has accepted a sum representing the full measure of his estimated loss, it is unjust that A should be so precluded where he has not."

39. At [8] Lord Bingham identified the effect of the decision in *Jameson* and at [9] he explained the proper approach to a compromise case. He said that the primary focus of attention should be the construction of the agreement in its appropriate factual context. He said that the release of one concurrent tortfeasor does not have in law the effect of releasing another concurrent tortfeasor.

40. Lord Rodger of Earlsferry considered the judgment in *Jameson*, and stated the following:

> "80. …In my respectful view, this passage reflects a misunderstanding of the approach of the majority in Jameson, as I have analysed it. They did not hold that Mr Jameson and Babcock had intended to confer a benefit on CEGB by somehow releasing and discharging Mr Jameson's rights against CEGB. Rather, they held that, because the settlement had been intended to be in full satisfaction of the harm due to his mesothelioma, it had extinguished his loss and, with it, any claim for damages against CEGB. Therefore before his death Mr Jameson could not have sued CEGB. So his executors could not do so either.
>
> 81. In considering whether a settlement agreement has this effect, **the proper question is whether, when construed against the appropriate matrix of fact, the terms of the settlement show that the parties intended that the agreed sum should be in full satisfaction of the wrong done to the claimant**. In that connexion, an indication in the agreement — whether express or implied — that the claimant envisages the

> possibility of further proceedings against another wrongdoer may, of course, be of significance — but only as a pointer to the conclusion that the parties did not intend that the agreed sum should be in full satisfaction of the harm suffered by the claimant. Equally an indication in the agreement to the opposite effect will be a pointer that the parties intended that the agreed sum should constitute full satisfaction. In either event, the court will draw the appropriate conclusion as to the effect of the agreement on any claims against another wrongdoer" (emphasis added).

41. The Claimant referred me, more briefly, to two further decisions. Firstly, the High Court decision in *Wright v Barts Health NHS Trust* [2016] EWHC 1834 (QB). I agree with the submission advanced by Ms Power that this case is distinguishable for at least a couple of reasons, the most important of which is that the settlement against the company in Wright's case was reached on the basis of a "*substantial discount*" for contributory negligence, a defence open to the company but not to the defendant hospital trust in the subsequent litigation. In that case, only the company was liable for some of the loss and, after the clinical negligence, there was additional loss which would not have occurred but for the clinical negligence, for which both the hospital and the company were liable; the company was not liable to compensate the claimant for the whole of the loss for which both tortfeasors were liable because of the contributory negligence discount. In the present case, the Company was liable to compensate the Deceased for the whole of the loss, whereas the Defendant is alleged to have failed to alleviate suffering quickly enough as opposed to making it worse *per se*, and where there was no suggestion of contributory negligence.

42. I was also referred in passing to *Appleby v Northern Devon Healthcare NHS Trust* [2012] EWHC 4356 (QB). Again, I agree with Ms Power that this case is largely distinguishable because of the "*substantial discount*" applied to the settlement of the road traffic accident claim, thought to be in excess of 50%, which rendered the road traffic and clinical negligence claims "*different*" and thus the settlement reached in the road traffic accident claim did not represent the full measure of the claimant's estimated loss. It is clear from Sir Robert Nelson's judgment in Appleby's case, however, that the Court should adopt the approach of assessing whether there has been full satisfaction of the Deceased's loss, as set out in *Jameson* and *Heaton*.

43. In terms of striking the claim out and/or entering summary judgment, the parties agree that the Court may strike out a statement of case pursuant to CPR 3.4(2) where:

> "(a) …the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) …the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings"

44. The parties also agreed that, pursuant to CPR 24.3, the court may give summary judgment on the whole of a claim or on an issue if:

> "(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

45. I was not taken to any of the authorities in relation to strike out or summary judgment during oral argument. However, Ms Goold reminded the Court that the Court should seek to adopt a less draconian course than strike out where defects within the pleaded case could be remedied by amendment. She also emphasised that the Court had to proceed with caution and, if there was any doubt that the Claimant may have a claim in this case, that in itself constituted a reasonable ground for bringing the claim (and/or a real prospect of succeeding on the claim) and thus the Court should leave all matters to trial and should not summarily dispose of the claim.

46. I have reminded myself that Paragraph 1 of Practice Direction 3A gives examples of cases where the court may conclude that particulars of claim disclose no reasonable grounds for bringing the claim, including those claims which set out no facts indicating what the claim is about; those claims which are incoherent and make no sense; and those claims which contain a coherent set of facts but those facts even if true, do not disclose any legally recognisable claim against the defendant. I have also referred myself to various parts of the commentary following CPR 3.4 within the White Book 2026. I note the following salient points from that commentary:

47. Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence.

48. In respect of ground (a):

    i) Statements of case which are suitable for striking out under ground (a) include those which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides.

    ii) A statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence.

    iii) An application to strike out should not be granted unless the court is certain that the claim is bound to fail (citing *Hughes v Colin Richards & Co* [2004] EWCA Civ 266; [2004] P.N.L.R. 35, CA).

    iv) Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend (citing *Soo Kim v Young* [2011] EWHC 1781 (QB)).

    v) A statement of case which discloses no reasonable grounds may also be an abuse of the court's process, and, in respect of it, the opposing party may be entitled to summary judgment under Part 24. There is no exact dividing line between grounds (a) and (b) or between either of them and summary judgment pursuant to Part 24. I was not referred to any authority in this regard, but I note the judgment of Choudhury J in *Kasongo v CRBE Ltd & Transport for London* [2023] EWHC 1464 (KB).

49. I have also reminded myself of the principles in relation to summary judgment as formulated in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch), and as approved by the Court of Appeal in *AC Ward & Son v Catlin (Five) Ltd & Ors* [2009] EWCA Civ 1098, including that the Court should not conduct a 'mini-trial'. However, where an application gives rise to a short point of law or construction, and if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and the parties have had an adequate opportunity to address it in argument, the court should grasp the nettle and decide it. It is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.

50. As set out above, the Defendant's application is pursued on the basis of strike out as either an abuse of process or due to the Claimant's case disclosing no reasonable grounds for bringing the claim or, in the alternative, for summary judgment. Ms Power, quite properly, did not push the argument about abuse of process and brought Ms Goold's attention to the passage in *Wright* where Edis J (as he then was), stated as follows:

> "The real basis of the defendant's application is that the compromise operates as a defence to the claim because the claimant has been fully compensated by it for his loss. Procedurally this could find its expression either as an order striking out the statement of case under CPR 3.4(2)(a) as disclosing no reasonable ground to bring the claim, or an order for summary judgment for the defendant under CPR 24.2. In substance, as Lord Bingham said in Heaton this involves a focus on the agreement and the circumstances in which it was concluded."

Issue 1: Do existing legal authorities prevent the Claimant from recovering any losses under the Fatal Accidents Act 1976 in this case given the 'in life' settlement reached between the Deceased and the Company

The parties' submissions

51. The Defendant's submission is a simple one: Where a claimant has pursued to judgment or settlement a claim for damages for an injury which subsequently proved to be fatal, their dependants have no right of action under the FAA, per *Thompson*. Furthermore, as per *Jameson*, the existence of damage is an essential part of the cause of action in any claim for damages. Where a settlement has been reached which is in *"full satisfaction of the harm"* done to a claimant, this has the effect of extinguishing the claimant's loss and with it, any claim for damages against another defendant in respect of the same harm, with the result that neither the claimant nor his executors can sue the other defendant (as per *Heaton*).

52. The Claimant's position is that she accepts that, to come within the scope of s.1(1) of the FAA, it is a requirement that the Deceased was able to maintain a cause of action at

the time of his death. To put matters more simply, to trigger the claim pursuant to s.1(1) of the FAA, the Deceased must have been entitled to pursue a claim against the Defendant at the point that he died. Ms Goold urged the Court to take a broad-brush approach to this question in that, even the tiniest of potential losses remaining uncompensated by the Settlement Agreement is sufficient to trigger s.1(1) of the FAA, if the Deceased could have maintained such an action at the point of his death; the FAA does not set a threshold as to how valuable a claim needs to be before s.1(1) is triggered. If there is any doubt at all that this is the case, the Court should refuse this application.

53. In relation to *Thompson*, and ergo *Read*, Ms Goold submits that if they act as a bar to the Claimant bringing the present claim, they were wrongly decided. Ms Goold accepts that I am bound by them and thus must apply them but argues that this creates an unfairness. In summary, Ms Goold argues that:

i) It is unfair and unjust that s.1(1) of the FAA is too broad in its drafting as it captures two distinct types of loss; firstly, losses in relation to dependency and secondly losses in relation to bereavement. Whilst losses that ultimately may form part of a financial dependency claim can be brought 'in life' by a dying claimant as a lost years claim, there is no mechanism for the relevant dependant to recover anything for their bereavement. This is a flaw in the drafting of the FAA, which runs contrary to Parliament's intention that bereavement damages should be recoverable. Ms Goold argues that the FAA should have been drafted to allow dependants to bring their own claims rather than making it contingent on what happened in relation to any settlement in life. Ms Goold accepts, however, that this is the legal position and I am bound by it.

ii) Furthermore, the relevant dependant (the Claimant in this case) is not privy to the settlement agreement/contract entered into between (in this case) the Deceased and the Company and therefore (potentially) has no knowledge of what was agreed and no say as to the terms of that agreement. Why, then, should she be deprived of her legal right to a bereavement award when she is (potentially) not aware of what was agreed and has no say in the contractual settlement agreement reached? It was argued that the Settlement Agreement cannot bind the Claimant and extinguish her right to a bereavement award when she was not party to it.

iii) The FAA is silent about a situation where there are multiple defendants.

54. Ms Goold did not seek within her oral argument to persuade me that *Jameson* or *Heaton* did not apply, nor indeed sought to disagree with the Defendant's interpretation of those cases. It was suggested within Ms Goold's skeleton argument that *Jameson* was distinguishable given it did not consider claims made by multiple claimants arising out of the same circumstances but for different losses, but this was not pursued orally before me. Ms Goold more took issue with how the Defendant sought to dissuade the Court from taking a forensic approach to analysing whether there had been full satisfaction obtained by the Settlement Agreement; I will deal with that argument as part of 'Issue 2' below. Ms Goold relied within her skeleton argument on parts of the speech of Lord Lloyd in *Jameson*; I note that Lord Lloyd gave the minority dissenting judgment in that case.

Analysis

55. I am bound, at the very least, by *Thompson*, *Jameson* and *Heaton*. One can see from the judgments in *Thompson* and *Jameson* why the courts took the approach that they did when grappling with similar issues to the present case. There is very good reason why, where a claimant settles a case 'in life', their dependants should not be entitled to pursue a further claim after they have died. Personal injury practitioners know that, where their client is dying, advice ought to be provided as to whether the claim is better dealt with in life or after death. The quantification of the claim *may* be higher post-death, but that may not be the case. The Defendant argues that the settlement reached in this case may in fact have been more beneficial than that which could have been obtained after death. Considerations also extend beyond the purely financial; a claimant may gain the satisfaction of settling their claim in life, or they may wish to have their damages so that they can use the money before they pass away. The point is that a decision must be made as one cannot pursue both courses of action. That is what the decisions in *Read* and *Thompson* state and I follow them. Langstaff J sets out a number of potential solutions as to how those representing the dying may approach the presentation and settlement of such claims.

56. Insofar as Ms Goold sought to argue before me that the FAA was badly drafted and/or *Read* and/or *Thompson* were wrongly decided, whilst academically interesting, this is not a matter for this court. Ms Goold's arguments shared similarities with those advanced by counsel in *Thompson* and which were rejected by Langstaff J. I am bound by that authority, but in any event see great force in the reasoning and logic adopted by Langstaff J. As Langstaff J stated in *Thompson* (at [86]):

> "The right given by the Fatal Accidents Act to dependants to sue is thus a right created specifically by the statute, and not an example of a more general right which one would expect to encompass examples such as the above, if it were to exist. It deals with the case in which a victim has not had the opportunity of obtaining funds which, indirectly, might benefit those for whom the victim cares, and those who depend upon his income. If I am right as to the approach which I take to construction of the Fatal Accidents Act itself, entitlement to compensation is conferred by the wording of the Act, whereas otherwise there would be none: and since it is part of the definition of the right that it should exist only where the victim has not himself brought a claim to termination within his lifetime, I do not think that the effect of the construction could be said to bar access to an existing right."

57. In terms of the remaining authorities that I have addressed above, I accept that I am bound by them and apply them accordingly. I reject the written submission made that *Jameson* should be distinguished as it seems to me to be very similar to the present case. From these authorities, I conclude that settlement against one concurrent tortfeasor (here, the Company) does not *automatically* release another concurrent tortfeasor (here, the Defendant) from liability, but it may do so if the claimant achieves full satisfaction of the tort against the first tortfeasor. Full satisfaction is not the same as full value, as was demonstrated by *Jameson* itself where the settlement was for a sum considerably lower than the agreed full value of the claim. The Court must consider the Settlement Agreement to determine whether the settlement reached between the

Deceased and the Company, when construed against the relevant factual matrix, demonstrates that the parties intended that the agreed sum should be in full satisfaction of the wrong done to the Deceased by virtue of his MC infection. What the Court should not embark upon is a detailed inquiry that seeks to value the Deceased's (and potentially the Claimant's) claim now to calculate whether the Court would have awarded the same, more or even less had the action against the Company been fought at trial. This would create all manner of difficulties, as highlighted by Lord Hope in *Jameson*.

58. The present case also serves as a good example of why such satellite litigation would be problematic. Within the papers before me in this case, there is a suggestion that there were also failures in the management provided by the Deceased's general practitioners. If the approach was to be adopted that the Court should allow an action to proceed where it was felt that there was a shortfall in the settlement reached between the Deceased and the Company, what if the Claimant then settled against the Defendant but still felt there was a shortfall in terms of the overall recovery of damages? Would a further action against one or more general practitioner be acceptable, with a later court determining what it considered to be the full value of the loss and then determining whether there had been any shortfall? Equally, if it was determined that an earlier settlement transpired to be more generous than what a subsequent court would have awarded, would that allow that earlier settlement to be reopened? I, for my part, do not believe either of the above scenarios would be acceptable, for the reasons set out by Lord Hope. The principle of finality requires that there must be an end to litigation.

59. In my judgment, the answer to the first issue, therefore, is that a dependant is prevented from pursuing a claim under the FAA where a claimant has settled a claim 'in life' for the same damage that forms the basis of the claim under the FAA unless the claimant did not receive full satisfaction of their claim by that in life settlement. In the present case, if the Deceased settled his claim for the same damage (i.e. the MC infection), which now forms the basis of the claim under the FAA, the Claimant cannot pursue this claim if the Deceased previously received full satisfaction for that damage. This therefore requires the Court to move on to consider whether the damage forming the basis of the present claim is the same as that which formed the basis of the claim that was settled with the Company and whether the Settlement Agreement constituted full satisfaction of that claim.

Issue 2: Did the Settlement Agreement constitute full satisfaction of the harm caused due to MC infection?

The parties' submissions

60. The parties' positions can be stated relatively briefly. The Defendant argues that the Deceased received full satisfaction for his loss within the Settlement Agreement. The Defendant points to the following factors:

i) The Settlement Agreement was said to be in "*full and final settlement*".

ii) Insofar as Mr Balen (and indeed the Particulars of Claim in the present action) seek to paint the settlement between the Deceased and the Company as an *ex gratia* payment, that is unsustainable given that an enforceable contractual agreement was entered into for consideration, the Settlement Agreement containing a term that commences with "*In consideration for entering this* *agreement…*" Ms Goold did not seek to argue that Mr Balen was correct to characterise the settlement reached as an *ex gratia* payment.

iii) All three heads of loss claimed in the present case are irrecoverable pursuant to *Thompson*.

iv) The losses allegedly caused by the Defendant fall within the losses that the Deceased alleged were caused by the Company and upon which his claims were advanced. The preamble to the May 2022 Schedule is clear that it includes all the pain and suffering relating to the MC infection. The past care claim, for example, covers the whole period from 2018, including the period relevant in the present claim, i.e. any care brought about by the delay in diagnosis has already been claimed against the Company within the May 2022 Schedule. No time period has been excluded from the Settlement Agreement.

v) The Settlement Agreement explicitly excluded further claims pursuant to the Act and the Law Reform (Miscellaneous Provisions) Act 1934 ("LRMPA"), which provides a strong indication that the settlement was intended to compensate for the losses that could have been claimed under those statutes. The Settlement Agreement was entered into not only in contemplation of death but also encompassed consideration of claims that could be brought pursuant to the FAA.

vi) The May 2022 Schedule claims for a reduction in life expectancy of about 7 years.

vii) The May 2022 Schedule claims an amount for lost years, which compensates for a loss of earnings/pension during the period of reduced life expectancy and thus the loss that would form part of the financial dependency pursued within the FAA claim. In fact, the multiplicand claimed in the present case for financial dependency (£5,450, rising to just over £6,000) is for most of the period lower than the multiplicand claimed as part of the lost years claim (just under £6,300).

viii) During settlement negotiations, there was no suggestion that any reduction was being made for any risk on liability. Ms Power pointed to the email negotiations between the parties' solicitors, which focussed on quantum arguments rather than any liability arguments. Unlike *Wright* and *Appleby*, there was no suggestion of any contributory negligence. There was no reduction for litigation risk written into the Settlement Agreement. Ms Power therefore invites the Court to conclude that the case was being treated as a liability admitted case for this reason and because an interim payment was made; this is despite Mr Balen's evidence and the fact that the Settlement Agreement explicitly stated that there was no admission of liability.

ix) There was no reservation whatsoever in terms of any claim against the Defendant for the Claimant/the Deceased, but there was a reservation in terms of the Company pursuing others for a contribution.

x) One cannot assume, Ms Power argued, that a settlement reached in life would be less generous than one that could be achieved under the fatal accident provisions. Ms Power pointed to two specific examples:

a) In terms of the care claim advanced within the May 2022 Schedule, that was based upon care being provided for one year, whereas the Deceased sadly died within about 6 months. The Deceased was therefore potentially 'overcompensated' in terms of the care claimed for that period.

b) Whilst the pleading of the lost years and financial dependency claims are not as clear as they could be, it appears that the multiplicand claimed within the lost years claim was actually higher than that claimed within the financial dependency claim, indicating that the 'in life' claim was in fact more generous that the claim advanced under the FAA, as set out above.

61. Ms Power argues that on the above analysis, the Deceased obtained a "*rather good*" outcome and thus the Court can be satisfied that the Deceased received full satisfaction for his loss and, as such, would not have been able to pursue the Defendant 'in life' for any further damages pursuant to *Jameson* and *Heaton*. Consequently, pursuant to *Thompson* and *Read*, the Claimant cannot pursue the present claim as she falls foul of the requirements under s.1(1) of the FAA.

62. Ms Power also gently argued that, insofar as it is relevant, it cannot be said that the claim against the Defendant is strong based upon the findings at the Deceased's inquest and given that it is not clear that the Claimant has supportive expert evidence at this stage. It seems to me that this is not a relevant factor that I should take into account at this stage as I should proceed on the basis that the Claimant could establish liability on the part of the Defendant for the purposes of this application or, perhaps more accurately, the Defendant has not shown on the material before me that the Claimant's prospects of success against the Defendant in terms of liability merit summary disposal of the claim.

63. Ms Goold argues that the Court cannot be satisfied that the Deceased did receive full satisfaction for his claim and, importantly, the Claimant has not received full satisfaction for her loss as she has not been able to claim her bereavement award and her rights should not be excluded by a settlement agreement that she was not party to. Ms Goold argues that:

i) The settlement reached was not reached utilising the traditional approaching of providing pleadings and expert evidence; instead, a broad-brush approach was taken by Mr Balen to secure a sum from the Company at pace. There was no Counter Schedule of Loss or any detailed discussions as to quantum. The nature of the Settlement Agreement and the confidentiality clauses therein reinforces that this was a rapid process that was not focussed on achieving *full* satisfaction, just *some* satisfaction of the Deceased's loss and that the Settlement Agreement should be seen in that factual context.

ii) If there is any doubt that there was even a £1 shortfall in the Deceased's recovery of damages below full satisfaction of his claim, that is enough for him to have been able to bring a further claim during his lifetime against the Defendant and thus the Claimant can pursue the current claim. If there is any doubt whatsoever, the Court must let the case proceed to trial to test out what the true full value of the claim was/is.

iii) The Claimant only became aware of failings on the part of the Defendant following the inquest process and thus a claim could not be advanced against the Defendant prior to the Deceased's death as the Claimant/Deceased were not aware of those failings, which only crystalised at the inquest. The settlement reached by the Defendant was therefore on the understanding that there was only one tortfeasor, and the Settlement Agreement should be seen in that factual context.

iv) Mr Balen states within his witness statement that he suspects the Company were working on a 40% discount on the schedule advanced when making offers of settlement. Whilst clearly that was not the case here, the Court can be satisfied, Ms Goold argued, that there was a shortfall in recovery as the Deceased only recovered £250,000 against the May 2022 Schedule totalling £346,963.79 (i.e. 72% of the pleaded Schedule); this supports that the Deceased did not receive full satisfaction.

v) Ms Goold conceded that the financial dependency claim may be extinguished or be significantly reduced because of the lost years claim, but that would not defeat the bereavement award. Ms Goold also argued that the Court should grant further time to consider whether there may be other traditional 'fatal accident' losses that *may* be able to be advanced.

Analysis

64. I am of course bound by the case law set out above. Pursuant to ***Jameson***, as interpreted and expanded upon by ***Heaton***, whilst a settlement against one tortfeasor does not *automatically* extinguish a claim against a concurrent tortfeasor, the Court still must consider whether the claimant received full satisfaction for his loss within the settlement reached with the first tortfeasor. This is not a forensic exercise in counting pounds and pence but instead must look at the factual matrix of the settlement reached. I note that many, if not all, of the cases argued before me were trials on preliminary issues as to whether the claimant in the respective case could continue their claim against the second tortfeasor. The parties before me agreed that such a preliminary issue trial is not required in the present case as I have witness evidence before me from the Claimant and her solicitor (who negotiated the settlement with the Company) and there would be no need to cross-examine those witnesses to determine the issues in this application. I also take the Claimant's case at its highest given that I am being asked to dispose of it in a summary fashion.

65. Dealing briefly with the argument that the Claimant only became aware of the alleged failings on the part of the Defendant at the inquest and thus no claim could have been advanced against the Defendant by the Deceased in life, I reject that submission. This was a central part of Mr Balen's witness evidence. Ms Goold did not press it hard within her oral submissions, for good reason. When one considers the Claimant's witness statement, it appears that both she and the Deceased were aware of alleged failings against the Defendant before his death. To give some examples:

i) The Claimant and the Deceased's daughter appear to have attended a consultation with a Mr Billing on 10 August 2021, at which they were informed that the Deceased had developed an infection known as MC and that it was related to his previous heart surgery. Mr Billing seems to have asked at that time whether a letter had been received since the cardiac surgery in 2015 advising of the risk of MC infection, to which the Claimant confirmed it had not. Mr Billing seemingly explained that the MC infection "*may have been the reason for much of the ill health [the Deceased] had suffered prior to the [subsequent] operation*".

ii) The witness statement then went on to detail a referral to a Dr Dedicoat, which led to a conversation with Dr Dedicoat on 21 October 2021, during which Dr Dedicoat seems to have stated that, had the Deceased been brought to his attention earlier, Dr Dedicoat would not have prescribed the medications that the Deceased received and the deleterious effects that those medications may have had on the Deceased's sight and hearing may have been avoided. The Claimant states, "*…it wasn't until September/October 2021 when I started to notice that Brian's hearing was deteriorating whilst he was still in hospital that we became aware that this could possibly be a side effect and by that point it was too late*".

iii) The Claimant refers to a further discussion with Dr Dedicoat in February 2022, wherein Dr Dedicoat was asked for his opinion as to whether an earlier diagnosis may have given a better quality of life for the Deceased. The Claimant states that, "*…he agreed that although mortality was likely with MC he certainly could have had a better quality of life if we'd had chance to treat the infection before it attacked his other organs and indeed caused him to lose his sight and some of his mental capacity*".

66. I also note that Mr Balen refers in his witness statement to the confidential settlement agreements that he was presented with for a number of his clients reserving the rights of the Company to pursue contribution claims "*presumably against the hospitals where the heart operation took place*". That would seem to suggest that Mr Balen had some understanding that there may have been potential claims available against NHS trusts. He went on to state that, even if there had been negligence by others, the manufacturer would have "*prime liability*" to the patient given it was a product liability claim.

67. Insofar as it is relevant, therefore, I conclude that there was at least some knowledge on the part of the Deceased and the Claimant prior to the Deceased's death that there was concern about the care provided by the Defendant and that this had a potential impact on how long he would survive as a result of the MC infection and/or a failure to alleviate his suffering. I reject the submission that this knowledge about a second potential tortfeasor only came about after the Deceased's death.

68. Having considered the settlement documents and witness statements carefully, noting what Lord Hope said in *Jameson* about the type of inquiry that the Court should undertake, I am satisfied that the Deceased did receive full satisfaction in this case within the Settlement Agreement, broadly for the reasons set out by the Defendant, including that:

i) It appears to me that the claim advanced against the Company was for all of the losses that could be recovered by way of an 'in life' claim, including a claim for lost years. The Defendant's (in)actions did not create "*additional loss*" (in the sense of causing a new injury that was not part of the MC infection) as suggested by the Claimant, they (allegedly) failed to relieve suffering caused by the Company's actions, for which a claim was presented to the Company covering all that period of loss and for all of those losses.

ii) The May 2022 Schedule clearly encapsulated a reduction in life expectancy of 7 years; the period of 2 years loss of life expectancy as advanced in this case was already subsumed within the 7 years advanced in the initial claim. The fact that a lost years claim was advanced clearly demonstrates that the May 2022 Schedule was intended to cover such a reduction in life expectancy. As it happens, the lost years claim appears to have been pleaded more generously than the financial dependency claim now advanced, suggesting that it was beneficial to pursue the lost years claim rather than the dependency claim. Contrary to what is pleaded within the Particulars of Claim, a lost years claim was pleaded within the May 2022 Schedule and the correspondence between the solicitors during the settlement negotiations does not state that nothing was allowed for that head of loss.

iii) The Settlement Agreement clearly excluded any further claim under the FAA or the LRMPA, thus indicating that the Deceased appreciated that no further claim could be advanced against the Company once he had died, suggesting that it was intended that the 'in life' settlement would compensate him for all of his losses.

iv) Whilst the Settlement Agreement ultimately documented a settlement for a figure below that initially claimed in the May 2022 Schedule, that does not mean that the Deceased did not receive full satisfaction for his loss. Even had the case gone to trial, it is vanishingly unlikely that a Court would award the full value of a schedule of loss in a case such as this. Several of the heads of loss in the May 2022 Schedule were pleaded 'optimistically' and would inevitably have been reduced at trial, some quite considerably. Just because the Deceased's claim was pleaded at a certain figure, that figure does not necessarily determine what full satisfaction of the claim would be. If that were to be the case, claimants could plead the most outlandish schedules of loss and use that as a reason to pursue further concurrent tortfeasors in cases such as this, when the value of the claim is realistically much lower. As Lord Hope pointed out in *Jameson*, settlements do require a degree of compromise on both sides. That does not mean that the receiving party does not receive full satisfaction. In this case, whilst not forensically valuing the Deceased's case, one can see from the sum recovered against the May 2022 Schedule that the Deceased received full satisfaction for his pleaded loss.

v) Although the point was not taken before me, the thrust of the Claimant's analysis in the present claim, as demonstrated by Mr Balen's email on 6 November 2023, was that the present claim was only advanced pursuant to the FAA as there had been a settlement by the Deceased in life and therefore a claim under the LRMPA could not be pursued. That rather reaffirms that Mr Balen believed there was no available claim for pre-death losses because of the settlement that had been reached with the Company, i.e. no suggestion that the Deceased had not received full satisfaction for his pre-death losses. The losses claimed in this case are essentially losses for a dependant that only arise in fatal accident cases.

69. Therefore, even taking the Claimant's case at its highest, I am satisfied that the Deceased obtained full satisfaction for the tort within his lifetime and therefore would not have been able to maintain an action against the Defendant during his lifetime, as any further action would have been seeking losses that he had already been compensated for by the Company and thus any claim against the Defendant would have amounted to double recovery and would have been liable to be struck out due to the want of recoverable damage. As such, the Claimant cannot avail herself of s.1(1) of the FAA and cannot bring a further claim for further losses, pursuant to *Thompson*, *Jameson* and *Heaton*.

Issue 3: If the Claimant cannot recover any damages in this case, is it appropriate to dispose of the case summarily and, if so, is the correct approach to strike the claim out or to enter summary judgment?

The parties' submissions

70. The Defendant argues that, should I find that the Deceased received full satisfaction for his claim, I should strike the claim out pursuant to CPR 3.4(2)(a) or (b), either due to the statement of case disclosing no reasonable grounds for bringing the claim or that the claim was an abuse or process, albeit Ms Power, correctly in my view, did not push the abuse of process point. In the alternative, I should enter summary judgment. The Defendant argues that there is simply no damage in this case and, as an essential ingredient in this claim, the claim must be dismissed as it cannot succeed at trial. The Claimant was well aware of the Defendant's position as to these issues before these proceedings were issued.

71. Ms Goold argues that there is sufficient doubt as to the full satisfaction point to justify the Court finding that the case should run to a full trial. Ms Goold accepted, however, that if the Court concluded that the Deceased had received full satisfaction, the Court was bound by *Jameson*, *Thompson* and *Read*.

Analysis

72. Both *Appleby* and *Wright* considered the approach to take in such circumstances, stating that either striking out the claim for failing to disclose a valid cause of action or entering summary judgment may be permissible. In those cases, the distinction between those approaches may not have been so great as in the present case due to the introduction of the qualified one-way costs shifting provisions set out in CPR Part 44. In short, if I strike the case out, the Claimant will be liable to pay the Defendant's costs, and the Defendant will be able to enforce those costs against the Claimant. If I enter summary judgment, the Claimant will be liable for the Defendant's costs, but the Defendant will not be able to enforce them.

73. The Court should not, at this stage, seek to determine whether the Claimant is deserving of costs protection. The issue is whether it is more appropriate to strike out the claim or enter summary judgment. In my judgment, the Claimant's statement of case disclosed

a cause of action recognised in law and a reasonable ground for bringing the claim if her case about full satisfaction was correct; the Claimant's statement of case does not fall into the category of cases set out in paragraph 1.2 of PD3A, for example. The issue here is not a deficiency with the pleading *per se*. I have concluded that there are no reasonable prospects of succeeding on the claim due to my findings that the Deceased did receive full satisfaction of his claim and thus an essential element of the cause of action is missing. In those circumstances, it seems to me that the more appropriate route is to enter summary judgment against the Claimant and dismiss the claim rather than strike the claim out. For completeness, there is no reasonable prospect of the Claimant succeeding on the claim and no other compelling reason why the case or issue should be disposed of at a trial.

74. As Lord Hope said in *Jameson*, "*The principle of finality requires that there must be an end to litigation*". That is as apposite in the present case as it was in *Jameson*.

Disposal

75. As I explained to the Claimant at the start of the hearing, I have to apply the law in this case dispassionately and nothing that I said during the course of the hearing, nor indeed in this judgment, undermines nor belittles the suffering that the Deceased clearly suffered. However, for the reasons that I have set out herein, I am bound to enter summary judgment in favour of the Defendant on the claim as it discloses no reasonable prospects of success given the absence of quantifiable loss.

76. The parties are invited to agree a form of Order and submit it to the Court for approval within 7 days of the formal handing down of this judgment.

77. I thank both counsel for their submissions and for the sensitive way that the case was presented in what is an emotive case.