DAC BEACHCROFT

PROFESSIONAL LIABILITY – LEGAL UPDATE

DECEMBER 2025



CONTENTS

LINEAR INVESTMENTS LIMITED v FINANCIAL OMBUDSMAN SERVICE LIMITED and LESLIE WILLCOCKS 3

Classification of investors and contributory negligence

(1) MARK LEE and (2) KENILWORTH CLAIM LIMITED (IN LIQUIDATION) v BDB PITMANS LLP (now known as Broadfield Law UK LLP) and ADCAMP LLP (previously known as Pitmans LLP) 5

Substitution of parties

POWIS STREET ESTATES (No 3) LTD v WINSTON & STRAWN LONDON LLP AND ANOTHER 7

Barristers' duty of care

LINEAR INVESTMENTS LIMITED v FINANCIAL OMBUDSMAN SERVICE LIMITED and LESLIE WILLCOCKS COURT OF APPEAL – 29 OCTOBER 2025	CLASSIFICATION OF INVESTORS & CONTRIBUTORY NEGLIGENCE

COMMENTS

- COBS 3.5.3 sets out when a firm may treat a client as an elective professional client. It includes a qualitative assessment of the individual's expertise, a quantitative test (whereby two of a possible three criteria must be met) and the procedure which must be followed. A "tick box" exercise and representations made by a prospective client can be used as a starting point, but will be insufficient to comply with the requirements of COBS 3.5.3(2).
- Firms should make additional enquiries or obtain further information to satisfy themselves the client can be suitably classified. Unsupported assertions from clients about their experience or knowledge should be treated with caution.
- One of the key principles in contributory negligence is causation. A broad, common sense approach should be taken to cause and effect. It is irrelevant whether the fault of the claimant happens before or after the defendant's wrongdoing.

FACTS

Linear Investments Limited (**Linear**) is an investment firm. Professor Lesley Willcocks entered into its "Pembroke strategy", a managed investment account strategy for professional investors which dealt in derivatives. He invested £100,000 in January 2018, but by the following February his portfolio had lost about half its value. Professor Willcocks made a complaint to Linear and to the Financial Ombudsman Service Limited (**the Ombudsman**).

The Ombudsman found that Linear had wrongly allowed Professor Willcocks to invest in the Pembroke strategy. Linear was directed to pay Professor Willcocks the difference between the value of his investment at the end of the period during which it was managed by Linear and the value it would have had if invested in a benchmark FTSE portfolio, plus interest at 8%.

Linear brought an application for judicial review of the Ombudsman's decision, which was denied. It sought an appeal of that decision on three grounds.

It firstly argued that it had complied with the Financial Conduct Authority's Conduct of Business Rulebook (**COBS**) and undertaken an adequate assessment of Professor Willcocks. Professor Willcocks had applied to be treated as an "elective professional client" and had made misrepresentations as to his experience and knowledge in his application. Linear said that it had been entitled to rely upon those representations and the Ombudsman's decision to hold it liable was wrong in law, and irrational.

In respect of the decision on redress, Linear contended that it was irrational for the Ombudsman to award damages by reference to a low risk benchmark portfolio, given that Professor Willcocks had voluntarily applied to invest in a high risk strategy.

Finally, it argued that the award to Professor Willcocks should be reduced to reflect his contributory negligence in misrepresenting his trading experience on his application.

DECISION

Linear's appeal on the first and second grounds (relating to liability and the basis of Professor Willcock's compensation) was dismissed. Its third ground was accepted. The matter was remitted back to the Ombudsman to determine an appropriate reduction to the award.

In deciding Linear had not been entitled to treat Professor Willcocks as an elective professional client, the Ombudsman had given appropriate weight to the fact that he had indicated on the Account Opening Form that he had experience in investments. Lord Justice Snowden commented that Linear was entitled to start from an assumption that Professor Willcocks understood the paperwork and would provide truthful and accurate responses. However, the requirements under COBS 3.5.3(2)[1] were unlikely to be satisfied by a client completing "general tick boxes" and the form itself required an explanation and evidence in support of statements. Professor Willcocks had provided neither in respect of his purported experience or knowledge in dealing with derivatives, which the Court of Appeal stated was a "*materially different*" and much higher risk activity than dealing with stocks and shares. The information Professor Willcocks had provided "*cried out for clarification*". Linear's assessment of him was inadequate and the Ombudsman's conclusion that Linear had failed the COBS test by not making further enquiries was justified. The first instance judge had been right to reject the judicial review application on this ground.

In relation to Linear's second ground of appeal, relating to the Ombudsman decision on redress, the Court of Appeal concluded that the compensation ordered by the Ombudsman must have some "*logical connection*" to the complaint. In this case, Linear's misconduct was accepting Professor Willcocks as an elective professional client without conducting an adequate assessment. The Pembroke strategy was a high risk investment, and it had not been established that Professor Willcocks was capable of understanding the related risks. As such, it would have been "*illogical*" for the Ombudsman to choose a benchmark relating to another high risk investment. It had instead treated Professor Willcocks as a "medium risk" investor, which the Court of Appeal did not consider irrational.

Finally, the Ombudsman had decided not to reduce the compensation awarded to Professor Willcock to reflect the inaccurate information he had provided, reasoning that Linear had provided unclear or misleading information and but for that, Professor Willcocks would not have invested in the Pembroke strategy. The Court of Appeal upheld the appeal on this front, holding that Professor Willcock was only able to participate in the Pembroke strategy because he had made misrepresentations to Linear. Had he not made those assertions, he would not have been accepted as an elective professional investor, would not have participated in the Pembroke strategy and would not have suffered the resulting losses. Both parties were at fault, and had caused the losses. Consequently, the Ombudsman's approach had been incorrect, and the first instance judge had been wrong to uphold it. However, the Court of Appeal found that it was not for the Court to substitute its views for those of the Ombudsman. It therefore referred the matter back to the Ombudsman to make a fair and reasonable reduction in the award.

[1] Setting out when a firm may treat a client as an elective professional client, including the assessment which must be undertaken and procedure which is to be followed.

(1) MARK LEE and (2) KENILWORTH CLAIM LIMITED (IN LIQUIDATION) v BDB PITMANS LLP (now known as Broadfield Law UK LLP) and ADCAMP LLP (previously known as Pitmans LLP) **HIGH COURT – 5 NOVEMBER 2025**	**SUBSTITUTION OF PARTY**

COMMENTS

- This case follows the decision from earlier this year of *Office Properties PL Limited (in liquidation) v Adcamp LLP* [2025] EWHC 170 (Ch) in which the Court also allowed substitution of a defendant after expiry of limitation.
- This case, and the *Office Properties* case, have permission to appeal. If the decisions are affirmed, the scope for adding or substituting parties under CPR 19.6(3)(b) after the primary limitation period has expired could be widened.

FACTS

The Claimants obtained legal services from Pitmans LLP in respect of a property transaction. Pitmans subsequently merged with Bircham Dyson Bell LLP, which changed its name to BDB Pitmans LLP (now known as Broadfield Law UK LLP).

The financial accounts of the merged entity included a statement that Broadfield had acquired the liabilities of Pitmans / Pitmans had transferred its liabilities to Broadfield and Pitmans assets and liabilities were nil.

The Claimants sued Broadfield in negligence shortly before the limitation period expired, on the basis that Broadfield had assumed the liabilities of Pitmans.

After the limitation period expired, Broadfield applied for summary judgment on the basis that it was not liable for Pitmans negligence. The Claimants argued that Broadfield had assumed the liabilities of Pitmans by novation, or was estopped from denying it had assumed those liabilities due to the statements in its financial accounts. In the alternative, the Claimants relied on the doctrine of acknowledgement.

The Claimants also made a cross-application that, if summary judgment was ordered, they should be granted permission to substitute Pitmans LLP (now known as Adcamp LLP) as defendant.

DECISION

The Court found that the claims based on implied novation, estoppel or the doctrine of acknowledgment were sufficiently arguable to defeat the summary judgment application.

In case those arguments failed at trial, the Court further ordered that Adcamp could be substituted as defendant in Broadfield's place. This follows the decision of earlier this year in *Office Properties PL Limited (in liquidation) v Adcamp LLP* [2025] EWHC 170 (Ch).

In that case Mr David Halpern KC took an expansive approach to the Court's power to order substitution of a party under CPR 19.6(3)(b) – which permits substitution if "*the claim cannot properly be carried out by or against the original party unless the new party is added or substituted*" – such that the pleaded allegation in the Claim Form that Broadfield was liable for Adcamp's negligence was held to be not a necessary ingredient of the claim. The claim, therefore, could not be carried out properly against Broadfield unless it was substituted for Adcamp.

The Court considered that the decision in *Lee* was on exactly the same facts as *Office Properties* (so far as material). The Court found there was no reason not to follow that judgment, and did so. Permission to appeal was granted.

POWIS STREET ESTATES (No 3) LTD v WINSTON & STRAWN LONDON LLP AND ANOTHER HIGH COURT – 13 NOVEMBER 2025	BARRISTERS' DUTY OF CARE

COMMENTS

- The judgment reinforces that barristers are not liable for mere errors of judgment - only for decisions that no reasonably competent barrister would have made. This case illustrates how courts apply that principle rigorously: even if alternative pleadings might have been "better," failing to include them was not negligent because it was a legitimate judgement call.
- Deciding which claims to plead involves weighing tactical risks, settlement dynamics, and evidential uncertainties. Negligence claims based on "*what could have been pleaded*" often fail because pleading strategy is inherently subjective and defensible.
- The court granted summary judgment, finding no realistic prospect of success without a mini-trial. Where allegations hinge on professional judgement rather than clear-cut errors, early disposal can prevent protracted litigation costs. The case signals that courts are willing to "grasp the nettle" and shut down weak professional negligence claims early - an important lever for claims management.

FACTS

Powis Street Estates (**Powis**) was a property investment company. In or around 2011, it instructed a firm of solicitors, Wallace LLP (**Wallace**) and a firm of property agents, Cradick Retail (**Cradick**), in relation to property transactions. The transactions resulted in a boundary dispute and, due to how the Heads of Terms and contract were drafted, Powis being denied an overage payment of around £4.8 million. Powis instructed Winston & Strawn London LLP (**W&S**) and a barrister, Mr Pilling KC (**Mr Pilling**), in a claim against Wallace and Cradick for professional negligence during the negotiation, drafting and finalising of the contracts.

W&S was subsequently replaced by Forsters, who raised concerns about how the negligence claim against Wallace and Cradick had been pleaded. Powis then instructed new leading counsel and applied to amend its Particulars of Claim. The application was allowed in part, but other proposed amendments (characterised by Powis as "*the claims which Mr Pilling negligently failed to plead*" and described by them as the "Relevant Claims") were found to be statute-barred. Powis's claim against Cradick and Wallace settled.

Powis then brought a negligence claim against W&S and Mr Pilling for not pleading the Relevant Claims in the original Particulars of Claims. It argued that if the Relevant Claims had been included, the settlement would have been significantly higher.

Mr Pilling brought an application for summary judgment.

DECISION

Justice Rajah rejected Powis's submission that summary judgment was not appropriate. The Claimant argued that the judge's decision was a substantial task which would

require a "*mini-trial*". However, Rajah J likened it to a point of law or construction, and decided he could safely form a view.

For liability to be established, Powis needed to show that in failing to plead the Relevant Claims, Mr Pilling acted in such a way that no reasonably competent barrister of similar seniority and experience would have done. Rajah J cited Lord Wilberforce in *Saif Ali v Sydney Mitchell & Co* when he held that "*much if not most of a barrister's work involves exercise of judgement – it is in the realm of art not science*." Rajah J commented that it would be "*impossible*" to list all the factors that go into the exercise of that judgement. Further, barristers are not required to plead every possible point or run every conceivable argument, but to judge how best to present their client's case.

Powis's case against Mr Pilling did not identify what he was alleged to have done wrong or why the Relevant Claims were better than the ones pleaded. Nothing was submitted in regards to why another KC of similar standing would have taken a different course and Powis was unable to explain why other competent barristers in Mr Pilling's position would have pleaded a different claim. The course Mr Pilling took was one many other barristers would have chosen.

Accordingly, Rajah J granted summary judgment against Powis. He found that despite the claim being at an early stage, Powis had no realistic prospect of success.

AUTHORS

Sarah Crowther
Partner
London - Walbrook

T: +44 (0) 20 7894 6254
scrowther@dacbeachcroft.com

Matt Williams
Legal Director
London - Walbrook

T: +44 (0) 20 7894 6233
mtwilliams@dacbeachcroft.com

Imogen Allan
Senior Associate
London - Walbrook

T: +44 (0) 20 7894 6047
iallan@dacbeachcroft.com

Jessica Brain
Knowledge Lawyer
Leeds

T: +44 (0) 113 251 4921
jbrain@dacbeachcroft.com

PUBLISHED

DECEMBER 2025

dacbeachcroft.com

Connect with us: DAC Beachcroft LLP

DAC Beachcroft publications are created on a general basis for information only and do not constitute legal or other professional advice. No liability is accepted to users or third parties for the use of the contents or any errors or inaccuracies therein. Professional advice should always be obtained before applying the information to particular circumstances. For further details please go to www.dacbeachcroft.com/en/gb/about/legal-notice. Please also read our DAC Beachcroft Group privacy policy at www.dacbeachcroft.com/en/gb/about/privacy-policy. By reading this publication you accept that you have read, understood and agree to the terms of this disclaimer. The copyright in this communication is retained by DAC Beachcroft. © DAC Beachcroft.