

## POINT OF PRACTICE: STRIKE OUT APPLICATIONS

### CIVIL WATCH – BLOG POST

***As part of Goldsmith Chambers' Civil Watch series, we have invited members of our Civil Team to write blog posts on their recent experiences within the Civil Courts.***

***In this post, David Mendes Da Costa of Goldsmith Chambers explains what happened during a recent strike-out application at the County Court at Central London.***



1. On 4 January this year, I was involved in a strike out application, before District Judge Lightman at Central London, which demonstrates an important point of practice which can arise after listing questionnaires have been filed and a case is manifestly not ready for trial due to the non-compliance with directions by one of the parties. The point may be trite law to some, but this note may be useful for those for whom the answer is not obvious.
2. At the listing questionnaire stage in September 2020, the claimant had complied with all of the court's directions, but the defendant was in default having not been in a position to exchange witness statements which had been time tabled for July.
3. The defendant put in an application for relief for sanctions. The claimant's litigator took the view that it should not be listed for trial having sent his application to strike out the defence and for judgment to be entered with his listing questionnaire.
4. At the listing hearing, the claimant's position was it should not be listed for trial. However, the defendant whose solicitor, through an agent, was claiming the default was due to the solicitor's extraordinarily difficult personal circumstances, wanted the matter listed for trial.
5. In the event the matter was not listed for trial and a date for the application to strike out was sent out by the court shortly afterwards.
6. At the strike out application where the court agreed to hear an application for relief which had not been issued but which was in draft before the court, the court ruled the matter would not be struck out, rather an unless order and a costs order should be made against the defendant. The reasoning in the



judgment was that the matter should have been listed for trial at the listing hearing and applications for strike out/relief determined beforehand.

7. District Judge Lightman relied on *Gladwin v Bogescu* [2017] EWHC 1287 (QB)[2017]; 4 Costs L.O. 437 where on appeal a claim had been struck out which had been listed for trial when the claimant in his listing questionnaire had admitted he was in breach of directions as to filing a witness statement.
8. *Gladwin v Bogescu*, a decision of Turner J., contains useful legal analysis of the applicable legal principles and makes the point that where there is a failure to comply with directions, the issue is not limited to whether or not a party can rely on a witness statement, but was rather concerned with the power to strike out under CPR 3.14 for breach of a court order.

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