



Neutral Citation Number: [2026] EWHC 951 (Ch)

Appeal No: CH-2025-000231

Case No: BL-2023-000116

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 28 April 2026

Before :

Andrew Twigger K.C. sitting as a Deputy Judge of the High Court

Between :

CATHERINE O'BOYLE
(AS REPRESENTATIVE OF THE ESTATE OF
PAUL O'BOYLE, DECEASED)

First
Claimant /
Appellant

- and -

MARY VIVIEN WALLIS

Defendant /
Respondent

Mr Farhan Asghar (instructed by TSABI Ltd.) for the First Claimant / Appellant
Ms Daria Gleyze (instructed by Adam & Remers LLP) for the Defendant / Respondent

Hearing dates: 25 March 2026

Approved Judgment

This judgment was handed down remotely at 10.30 am on 28 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Andrew Twigger K.C. :

Introduction

1. On 18 July 2025 Master Kaye struck out the claims in these proceedings. Paragraph 2 of her order of that date (“**the Order**”) provided that, “*The Claimants must pay the Defendant’s costs of the claim, to be assessed on the indemnity basis...*”. Pursuant to permission granted by Mellor J on 26 January 2026, Ms Catharine O’Boyle seeks to appeal the Order in so far as it renders her *personally* liable for the Defendant’s costs. That apparently short point has proved more complex to resolve than might be expected.
2. I will start by describing some of the background to explain why the various issues have arisen. To avoid confusion, I will refer to Ms O’Boyle hereafter as the Appellant.

Events prior to the hearing on 18 July 2025

3. These proceedings were issued in the County Court at Winchester on 14 August 2020 by “*Mr Paul O’Boyle (trading as Veridian)*”. Mr O’Boyle is the Appellant’s father. The Defendant to the claim, and Respondent to this appeal, is Mrs Mary Wallis. The substance of the claim has no bearing on the resolution of this appeal, but I understand it arose out of leases granted in 2012 of two units in a property called the Calvert Centre in Woodmancott, near Winchester. The joint lessors of both units were Mrs Wallis and her late husband, Mr Brian Wallis, who died before the proceedings began. Originally, there had been a Second Defendant to this claim, Mrs Anna Spencer, who was (along with Mrs Wallis) an executor of Mr Wallis’s estate. The claim against Mr Wallis’s estate was, however, discontinued in 2022.
4. The tenant of one unit had been Mr O’Boyle, and the tenant of the other had been his former wife (and the Appellant’s mother), Mrs Judith O’Boyle, who was joined as Second Claimant in May 2022. Mr O’Boyle claimed that he had been unlawfully evicted from both units in around 2014 and sought damages. He also claimed that certain items of equipment belonging to him were removed from the leased premises, and also from two container units which were the subject of separate agreements. That equipment was said to have been retained, lost or disposed of by Mr and Mrs Wallis. He sought delivery up and/or damages for breach of contract or conversion, including compensation for various alleged losses, including loss of profits.
5. In her detailed *extempore* judgment, given on 18 July 2025, Master Kaye explained what she described as the Claimants’ “*chaotic*” conduct of the proceedings, which do not appear to have advanced beyond the pleading stage in over five years since the claim commenced. There had been multiple failed attempts to produce viable Particulars of Claim. At some stage the amendments included an increase in the sum claimed, with the result that the proceedings were transferred to the High Court in (I believe) early 2023. Although there had been at least six hearings in relation to draft amendments, the claim never reached a Case Management Conference.

6. The Master said in paragraph 29 of her judgment that, "*The delay, since at least 2023, was directly attributable to the failings on the part of the Claimants' legal team and their inability to properly frame the claim ... the manner in which the claim has progressed and the manner in which the Claimants' solicitors conducted that claim was not the manner in which this court would expect a claim to be advanced.*" The Claimants' solicitor had, until the events described below, been Mr William Sclater of Taylor Fordyce Ltd ("TF"). Different counsel had been instructed at various stages.
7. At a hearing on 3 October 2024, Master Kaye gave various directions aimed at a further hearing in January 2025 at which the Claimants' various applications to amend and the Defendant's applications to strike the claim out were to be considered. Mr O'Boyle, however, died suddenly and unexpectedly in December 2024. That led to the January hearing being adjourned and relisted in April 2025.
8. On 10 March 2025, in advance of the April hearing, the Appellant applied to represent her father's estate pursuant to CPR 19.12(1)(b). Mr O'Boyle had died intestate and, because he and Mrs O'Boyle (the Second Claimant) were divorced, their children were the persons with priority for the purposes of obtaining letters of administration. The evidence in support of the application stated that the children, who were the Appellant and her two brothers, James and Henry, had agreed that the Appellant alone should apply for letters of administration.
9. The application for letters of administration was, however, said to be more complicated than anticipated, in part because of difficulties in ascertaining Mr O'Boyle's assets and liabilities, which would have to be estimated for the purpose of that application. The application pursuant to CPR 19.12 was, therefore, made on the practical basis that it would avoid the need to wait for letters of administration to be granted, enabling the April hearing to proceed, with the Appellant representing the estate of Mr Boyle.
10. In support of her application, the Appellant signed a document headed "Consent", which stated "*I ... consent to my appointment by the court to represent the estate of my father, the deceased First Claimant in [these proceedings]*" ("**the Consent**").
11. Mrs Wallis did not oppose the Appellant's application, so on 14 March 2025 Master Kaye granted it without a hearing and made an order appointing her "*to represent the Estate in these proceedings.*" That order also amended the title of the proceedings so that the First Claimant was thereafter to be described as "*Catherine O'Boyle (as representative of the estate of Paul O'Boyle)*". The order was sealed on 17 March 2025 and on occasion the parties have referred to that as the date of the order, but it seems to me that in accordance with CPR 40.7 it took effect on 14 March 2025, when it was made.
12. On 17 March 2025 the Claimants applied for permission to rely on a further revised version of the Particulars of Claim (which I am told was the eighth version of that pleading). The hearing on 15 April 2025 initially went ahead, with the Appellant and Mrs O'Boyle represented by solicitors (TF) and counsel. The Appellant was present. There was, however, too much to deal with at the hearing and it had to be adjourned part heard. It was at that adjourned hearing, which took place on 18 July 2025, that Master Kaye made the Order currently under appeal.

The hearing on 18 July 2025

13. By the time of the hearing on 18 July 2025, the Appellant and Mrs O'Boyle had parted company with TF. They appeared in person and the transcript of the hearing records them candidly telling Master Kaye that they had no funds and wished to bring the proceedings to an end. Accordingly, it was resolved soon after the hearing began that the claims would be struck out. There were then detailed submissions about the costs consequences of that order. These included whether costs should be payable on the indemnity basis and whether there should be an interim payment on account, and if so, how much it should be for. There was also a debate about whether the Appellant and Mrs O'Boyle should each be liable for the entirety of the Defendant's costs.
14. So far as the Appellant's liability for costs was concerned, Ms Gleyze (who appeared for Mrs Wallis before the Master and also before me) relied on the following extract from Williams, Mortimer & Sunnucks, Executors, Administrators and Probate, 22nd edition, at 59-01:

“The representatives will be personally liable to the other party for any costs order made against them, and their liability will not be limited to the assets of the estate even if their liability on the rest of the judgment debt is limited to the assets. The judge making such a costs order will not be concerned as to whether the representative will be entitled to be indemnified against that order out of the estate, and will have no jurisdiction to decide that question, because the persons interested in the estate are not party to the proceedings. The question of whether or not the representatives are entitled to be indemnified out of the estate is one that will have to be decided, if there is any dispute about it, in administration proceedings.”
15. This passage is, of course, dealing with the position of Personal Representatives, meaning executors or persons to whom letters of administration have been granted (I will hereafter capitalise the expression “*Personal Representatives*” to make clear that it is being used in this technical sense). Ms Gleyze nevertheless submitted to the Master that the position of a representative appointed pursuant to CPR 19.12 was similar. Such a representative was, she submitted, the person liable for costs, whether or not she was then indemnified by the estate. Master Kaye asked, if that was right, “*does it go backwards?*”, meaning would a representative appointed pursuant to CPR 19.12 be liable for costs incurred before she was appointed. Ms Gleyze said that she would: “*Whether or not she actively, subjectively knew what she was taking on is irrelevant but as a matter of law when she became the representative she accepted the risk that the estate, ie her, would be ordered to pay the entire costs of this claim*” (my emphasis).
16. In response, the Appellant said that she had not understood that she had signed up to be a Claimant at all, but in any case, it was unfair that she should be liable for costs incurred prior to March 2025, when she was appointed. In response to questions from the Master, the Appellant said she did not know much about what went on before March and did not think she had behaved unreasonably since then, or at least in the three weeks since she had been without a solicitor.

17. Master Kaye then gave an *extempore* judgment. After a detailed review of the history of the claim, she said that she understood the Defendant's frustration, but that she also understood the frustration of the Appellant and Mrs O'Boyle. In paragraph 37 she said, "*It is clear that they do not really have any real sense of what has been going on and will need to take their own advice in due course.*" So far as their situation was the result of poor advice from TF, the Master said, "*Those may be matters to be considered further another time but both Mrs O'Boyle and Ms O'Boyle [i.e. the Appellant] are for present purposes the Claimants*" (my emphasis). I understand the Master's reference to considering the advice from TF "*another time*" to be contemplating a wasted costs application in due course.
18. The Master then dealt with the considerations relevant to whether costs should be assessed on the indemnity basis. She said in paragraph 39 that, "*if this were not a claim in which the court ordered indemnity costs, I do not know what claim it would be.*" Having referred to some of the submissions made to her, she held that the conduct of the claim had been outside the norm and unreasonable to a high degree. It is clear from her judgment that this was a conclusion based on conduct throughout the entire course of the claim.
19. At paragraph 44 Master Kaye turned to whether "*there can be a split of liability between Mrs O'Boyle and Mr O'Boyle and whether [the Appellant] should have any liability at all and/or liability limited to when the order was made that she represent the estate.*" As to this, she began paragraph 45 by saying, "*There are two Claimants, Mr O'Boyle's estate and Mrs O'Boyle*" (my emphasis). This, of course, contrasts with her statement in paragraph 37 (quoted above) that the Claimants were the Appellant and Mrs O'Boyle.
20. The Master then dealt with the Appellant's liability in the following three paragraphs, which I will set out in full:
 - "46. In relation to Ms O'Boyle, I understand her concerns. The potential consequences of her being a claimant as representative of the estate since March 2025 is something that she needs to seek advice about and explore elsewhere. For present purposes, she is a claimant in these proceedings with her mother, having accepted the role albeit it appears that she may not have understood what she was doing or have had the consequences explained to her.
 47. I am going to keep this simple, therefore. The only appropriate order to make is an order that the Claimants are liable for the Defendant's costs on an indemnity basis to be the subject of detailed assessment if not agreed.
 48. Ms O'Boyle ought to get some legal advice about what that means to her personally but the order will be that simple."
21. It seems to me clear from the way these reasons are expressed that the Master agreed with Ms Gleyze's submission to the effect that, by accepting an appointment as a representative pursuant to CPR 19.12, an individual takes on personal liability for all costs payable by the estate as a matter of law, whether or not the individual subjectively understood that. That follows from the Master's reference in paragraph

46 to the Appellant being “*a claimant in these proceedings ... having accepted the role*” even though “*she may not have understood what she was doing...*”. It also follows from the Master’s references in some places to the Appellant being a Claimant and in others to the estate being the Claimant. She regarded them as interchangeable.

22. Thus, when the Master said in paragraph 47 that the “*only appropriate order to make*” was an order that the Claimants were liable for the Defendant’s costs, I do not understand the word “*appropriate*” to be indicating that the Master considered she was exercising any discretion about whether to impose personal liability for costs on the Appellant (as opposed to imposing liability solely on the estate of Mr O’Boyle). She appears to have meant that personal liability followed as a matter of law from the very fact of being appointed. I shall consider later whether this is correct.
23. Master Kaye then went on to consider whether to order a payment on account and, if so, how much it should be and when it should be paid. Whilst dealing with those issues, she explained that interim costs orders totalling around £40,000 had already been paid, and that the Defendant had incurred a further sum of around £160,000. Finally, the Master dealt with whether TF should be required to show cause as to why a wasted costs order should not be made against them.
24. Ultimately, paragraph 1 of the Order struck out the claim and paragraph 2 provided that:

“The Claimants must pay the Defendant’s costs of the claim, to be assessed on the indemnity basis (save for the costs ordered in the Defendant’s favour by order dated 3 March 2025 at paragraph 6, which were ordered on the standard basis), to be subject to detailed assessment if not agreed.”
25. By paragraph 3, “*the Claimants*” were ordered to pay £100,000 on account of costs and paragraphs 4 to 6 contained directions leading to a hearing of a wasted costs application against TF.

Events following the hearing on 18 July 2025

26. As a result of comments at the hearing, the Respondent sought (within these proceedings) a freezing order against the Appellant and Mrs O’Boyle, which was granted without notice by Trower J on 22 July 2025. The freezing order applied to all the assets of the Appellant and Mrs O’Boyle up to the value of £200,000 but expressly also included various identified assets within the estate of Mr O’Boyle. The Appellant initially sought a variation of the amount which the order permitted her to spend on living expenses but ultimately consented to the order continuing without variation and Mellor J approved an order to that effect on 30 July 2025. Although that order contemplated an adjourned return date hearing, no such hearing has taken place.
27. Pursuant to CPR 52.12(2)(b), time for appealing Master Kaye’s Order of 18 July 2025 expired on 8 August 2025. I understand that the Appellant initially filed an

Appellant's Notice on 8 August 2025, which would have been in time, except that she erroneously filed it at the Court of Appeal. On 11 August 2025 the Court of Appeal informed her that it had no jurisdiction and that she needed to make a new application to the High Court. She was also told that an extension of time would be needed. The Appellant made two failed attempts to file an Appellant's Notice at the High Court on (I was told) 17 and 18 August 2025. She was eventually successful on 21 August 2025. In the relevant section of the Appellant's Notice, she ticked the box to apply for an extension of time and apologised for her errors, explaining that she had been unable to pay for legal assistance.

28. The Appellant stated in the Appellant's Notice that the part of the Order she wished to appeal against was:
 - "1. The part of the order which records me as a claimant in my personal capacity rather than solely as the representative/administrator of the estate of the late Paul O'Boyle.
 2. The part of the order which holds me personally liable for costs in the sum of £160,000 (including £100,000 payable within 28 days)..."
29. On 24 August 2025 the Appellant and Mrs O'Boyle each applied for their own bankruptcy. Bankruptcy orders were made on 28 August 2025, appointing the official receiver as trustee of both estates. Ms Gleyze submitted that the Appellant applied for a bankruptcy order in large part on the basis that she was personally liable for Mrs Wallis's costs of these proceedings. As I shall explain, that submission was based on inference rather than direct evidence.
30. On 22 September 2025 the Appellant made a witness statement in advance of the hearing ordered by Master Kaye to determine whether TF should pay wasted costs. Amongst other things, the Appellant said that Mr Sclater had placed her and Mrs O'Boyle "*in a position of personal liability we did not understand and did not agree to.*" She added that "*Critically, [Mr Sclater] failed to explain that under CPR 19.12, my appointment as administrator meant I would become the claimant on the record, exposing me personally to adverse costs. He did not warn me that costs orders normally fall on the estate but can be enforced personally if the estate cannot pay.*"
31. I understand there was a hearing in relation to the wasted costs application on 11 December 2025, but TF's liability was ultimately settled by consent. Ms Gleyze told me that the settlement was confidential, but that it did not result in Mrs Wallis's costs being paid in full by TF.
32. In the meantime, Mr Ames of Adams & Remers LLP, Mrs Wallis's solicitors, was contacted by Mrs Jane Ford on behalf of the official receiver. In an email of 18 September 2025, Mrs Ford explained, amongst other matters, that Mrs Wallis was the majority creditor of the estates of both the Appellant and Mrs O'Boyle. This statement by Mrs Ford is the basis on which Ms Gleyze asks the court to infer that the Appellant applied for bankruptcy principally because she considered she was personally liable for Mrs Wallis's costs. In the same email, Mrs Ford asked whether Mrs Wallis wished to nominate an Insolvency Practitioner to act as trustee in bankruptcy. So far as I am aware, there has not yet been any such appointment, and the official receiver remains the trustee.

33. During the ensuing correspondence, in September 2025 Mr Ames told Mrs Ford that he had explained to the Appellant on a number of occasions that she was unable to pursue legal proceedings as a result of her bankruptcy, without the permission of her trustee and the court. He asked Mrs Ford to confirm the position to the Appellant. Mrs Ford did not respond immediately.
34. On 26 January 2026 Mellor J granted the Appellant permission to appeal. He did not, however, expressly grant an extension of time. His reasons were as follows:
- “The Appellant, Catherine O’Boyle, was joined to this action as Claimant in her capacity as representative of her father’s estate, following his death in December 2024. I am satisfied that the reasons put forward as to why Catherine O’Boyle should not have to face liability for the full costs of the action are more than arguable and further, that exoneration should also have been considered by the Master in the interests of justice.”
35. After permission had been granted, Mr Ames chased Mrs Ford in February 2026 for an answer to his question about the Appellant requiring permission to pursue the appeal. She replied, *“I can confirm that it is a matter for Ms O’Boyle if she wishes to appeal or not. However, I have notified her via email that the Official Receiver will not be liable for any costs incurred. Therefore, she will be responsible for the costs.”* I note in passing that section 285 of the Insolvency Act 1986 (**“the 1986 Act”**) does not impose an automatic stay on proceedings brought by a bankrupt and no permission is required. There is, however, a separate question about whether the Appellant has standing to pursue this appeal following her bankruptcy, and Ms Gleyze submits that she does not.
36. The day before the hearing of this appeal, Mrs Ford wrote to the Appellant to say that the official receiver considered that the appeal is a right of action within the bankruptcy estate, which the official receiver was willing to assign. She wrote that, *“you may notify the Judge tomorrow that the Official Receiver has agreed that a Right of Action is applicable and the rights can be assigned to you, with a cost.”* Mrs Ford pointed out that an assignment would, however, take time to arrange. Mr Asghar (who represented the Appellant before me but not below) did not seek an adjournment of the appeal to enable an assignment to be concluded but invited me to postpone handing down this judgment for 28 days to see whether an assignment could be effected by then. As it happens, this judgment was handed down after a period of roughly that time, although that was not in response to Mr Asghar’s submission. For reasons I will explain, my decision is unaffected by whether or not there is an assignment.

The parties’ submissions

37. Mr Asghar submitted it was arguable that, properly interpreted, the Order does not impose personal liability at all. If it does, he submitted that the Master made an error of law by treating Mr O’Boyle’s estate and the Appellant as one and the same. The Master ought to have considered whether to make an order personally against the Appellant as if she was a non-party and, if she had done so, she should not have ordered the Appellant to pay any costs at all, because she had been guilty of no bad faith, improper or unreasonable behaviour. Alternatively, the Master should not have

imposed any personal liability for costs prior to 14 March 2025, when the Appellant was appointed as representative pursuant to CPR 19.12.

38. In addition to these points, Mr Asghar initially submitted that the Master should have considered whether the Appellant should have been exonerated pursuant to section 61 of the Trustee Act 1925. In the course of argument, however, he withdrew this submission. In my judgment, he was right to do so. Exoneration might be relevant to liability as between a representative and those whom she is representing; but I do not see how it can affect the liability between the representative and the other party to the dispute.
39. On behalf of Mrs Wallis, Ms Gleyze raised some preliminary objections to the appeal. First, she submitted that the Appellant has no standing to pursue this appeal. Either the right of appeal is “*property*” within the definition contained in section 436 of the 1986 Act, which has accordingly vested in the official receiver and has not been assigned to the Appellant, or else it relates to a liability which must be paid out of assets vested in the bankruptcy estate so that the Appellant has no interest in the outcome of the appeal.
40. Secondly, Ms Gleyze submitted that the absence of any express extension of time in the order of Mellor J means that his grant of permission to appeal was ineffective. The Appellant should not be granted an extension now because, applying the test for relief from sanctions, her delay was a serious and significant breach of the rules, for which no good reason had been given. The long history of the Claimants’ delays and failures to comply with orders mean that the Appellant is now in “*the room beyond the last chance saloon.*”
41. So far as the substance of the appeal is concerned, Ms Gleyze submitted, first, that the Order only refers to the “*Claimants*” being liable to pay the costs. This left it open to the Appellant to argue that, as a matter of interpretation, she is not personally liable, so there is nothing to appeal. Next, she relied on the passage from Williams, Mortimer & Sunnucks cited to the Master and said there was no reason to treat representatives appointed pursuant to CPR 19.12 differently from Personal Representatives. This was especially so when, on the facts of this case, the court had been told that the Appellant was applying for letters of administration and had become a party to the proceedings, rather than merely acting as a kind of *amicus curiae*, appointed to assist the court. If the Appellant had wanted protection from costs orders, she should have applied for it when she was joined to the proceedings.
42. Finally, Ms Gleyze submitted that the appeal should not be allowed because the Appellant had expressly relied on her personal liability for the costs on three occasions, and it is an abuse of process for her now to assert the opposite. The three occasions were, first when she consented to the continuation of the freezing order, secondly in her witness statement in support of an order for wasted costs against TF, and thirdly when she applied to be made bankrupt on the basis of her personal liability for these costs.
43. In reply, Mr Asghar pointed out that the capacity in which the Appellant was made a party to the proceedings was a representative one. Any liability imposed on her in a purely personal capacity was a matter for the official receiver and Mr Asghar accepted that the Appellant did not have standing to appeal in that capacity.

However, her role as representative of Mr O'Boyle's estate was not something which vested in the bankruptcy estate and the Appellant had standing to bring the appeal in that capacity.

44. So far as the extension of time was concerned, Mr Asghar said that the Appellant had requested an extension in her Appellant's Notice and it was implicit in Mellor J's order granting permission that an extension had been granted. In any event, there was a good reason for the delay and there was no prejudice to Mrs Wallis, whose legal team had prepared for and argued the appeal. There was no abuse of process because, unless and until the appeal succeeds, the Appellant was correct to say that the Order made her personally liable. She was not playing games with the court.

The issues

45. I will deal with the issues raised by the parties under the following headings:
- i) Does the Appellant have standing to appeal?
 - ii) Is an extension of time required and, if so, should it be granted?
 - iii) Has there been an abuse of process?
 - iv) Should the appeal be allowed and, if so, what order as to costs should be made?

Does the Appellant have standing to appeal?

The law

46. In *Heath v Tang* [1993] 1 WLR 1421 the Court of Appeal held that a bankrupt cannot in his own name appeal from a judgment against him which is enforceable only against the estate vested in his trustee. The decision concerned two appeals. In the first, the potential appellant had been adjudicated bankrupt on a petition based on the judgment under appeal and the trustee in bankruptcy had expressed an unwillingness to pursue the appeal. In the second, the potential appellant had lost an appeal against the dismissal of his application to remove the supervisor of a voluntary arrangement. He had been adjudicated bankrupt following his failure to meet a statutory demand in respect of the award of costs, but no trustee in bankruptcy had yet been appointed.
47. In his judgment, Hoffmann LJ (as he then was) first analysed the position where the bankrupt is a claimant. He pointed out that, except for certain causes of action which are personal to the bankrupt (such as claims for damages for defamation or assault), all causes of action which were vested in the bankrupt at the commencement of the bankruptcy, whether for liquidated sums or unliquidated damages, vest in the trustee. A bankrupt cannot, therefore, continue with proceedings based upon such a cause of action, unless the cause of action is assigned to him.
48. In the case of a defendant, however, Hoffmann LJ explained that there is usually no question of the cause of action having vested in the trustee. Leaving aside cases of set-off, he said (at page 1424F):

“...in cases in which the plaintiff is claiming an interest in some property of the bankrupt, that property will have vested in the trustee. And in claims for debt or damages, the only assets out of which the claim can be satisfied will have likewise vested. It will therefore be equally true to say that the bankrupt has no interest in the proceedings. As we have seen, section 285(3) [of the 1986 Act] deprives the plaintiff of any remedy against the bankrupt’s person or property and confines him to his right to prove.”

49. On the other hand, there are actions seeking personal relief against the bankrupt, such as an injunction, which “*do not directly concern his estate*” and the bankrupt can defend them and appeal. As an illustration of this, Hoffmann LJ cited *Dence v Mason* [1879] W.N. 177, which he explained as follows (at page 1424H):

“...a bankrupt wished to appeal against an order made before the bankruptcy granting an injunction to restrain passing off and ordering him to pay costs. His trustee declined to appeal but the court said, at p. 177, that the bankrupt himself could appeal against the injunction ‘which was a personal order against him, notwithstanding the bankruptcy, though he had no interest in the order as to costs, his estate being now vested in the trustee.’ This implies that the bankrupt would not have been entitled to appeal against an order which was enforceable only against his estate.”

50. Hoffmann LJ next referred to *Rochfort v Battersby* (1849) 2 H.L. Cas. 388, in which the House of Lords had referred to the issue as one of “*locus standi*” (or standing). The question was whether the appellant had “*that interest in the subject matter which would entitle [him] to appear here [as a party] questioning the propriety of the decision below*” and the bankrupt did not. The authorities led Hoffmann LJ to conclude, as mentioned above, that “*in principle a bankrupt cannot in his own name appeal from a judgment against him which is enforceable only against the estate vested in his trustee*” (emphasis added). I agree with Ms Gleyze that the word “*only*” highlighted in this quotation is contrasting a situation in which a judgment is enforceable against the bankruptcy estate *and* the bankrupt personally (as in *Dence v Mason*), with a situation in which the judgment is enforceable *only* against the bankruptcy estate. Hoffmann LJ was not saying that a bankrupt can appeal simply because the judgment is enforceable both against the bankruptcy estate and someone (or something) else, like the estate of Mr O’Boyle.
51. Hoffmann LJ went on to explain that it makes no difference that the judgment under appeal is the one on which the bankruptcy was founded. If a bankruptcy petition is founded on a judgment debt which is the subject of a good faith dispute, the appropriate course for a debtor to take is to apply for the petition to be stayed until the appeal has been determined. If a debtor fails to do that, “*it would not be unreasonable for the bankrupt to have to obtain the authority of the bankruptcy court before he could pursue an appeal*” (page 1426F). In the instant appeal, of course, it was the Appellant herself who applied to be adjudicated bankrupt.
52. In *Re GP Aviation Group International Ltd.* [2014] 2 All ER 448 HHJ Pelling QC (sitting as a High Court judge) analysed Hoffman LJ’s judgment in *Heath v Tang* in detail. The dispute before HHJ Pelling QC was not concerned with a bankrupt’s

appeal against judgment debts, but with a company's appeals against assessments for corporation tax raised by HMRC. The issue was not one of standing, but whether the appeals were property which the liquidator of the company could validly assign. The Judge held that they were not.

53. The definition of "*property*" in section 436 of the 1986 Act is "*money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.*" In paragraph 13 of his judgment in the *GP Aviation Group* case, HHJ Pelling QC said that it was not normally necessary to decide whether a right to appeal is property, unless an assignment was in contemplation. That was because it was only an office holder who could authorise a company's appeal and "*in personal bankruptcies, the bankrupt loses his locus standi to commence or continue an appeal on adjudication and thereafter any appeal can be advanced only by the trustee exercising his statutory powers.*"
54. Having considered *Heath v Tang*, he said in paragraph 16 that its effect was that "*whilst a bankrupt does not have locus to prosecute an appeal following his or her bankruptcy, that is not because the right of appeal is property which is vested in the trustee but because the appeal relates to a judgment that can be enforced only against assets that have vested in the trustee.*" In paragraph 18 HHJ Pelling QC concluded that *Heath v Tang* did not establish whether or not a right of appeal is property. He reviewed subsequent authorities which were potentially relevant to that question but found them to be inconclusive.
55. HHJ Pelling QC consequently approached the issue as a matter of principle and held that a "*bare right of appeal*" of the kind he was considering was not property which could be assigned. He gave three reasons for his conclusion. First, a right to appeal against a tax liability is not something which he considered could be claimed or enforced by action; it was a right conferred by statute. Secondly, he reasoned that a liability was not something capable of being turned into money, so it was not a chose in action capable of being assigned. The right of appeal was analogous to a remedy, which cannot be assigned independently of the cause of action. Thirdly, he considered his analysis was consistent with *Heath v Tang*.
56. The *GP Aviation Group* case was originally cited by Mr Asghar in support of an argument that the Appellant's right of appeal is not "*property*" within the meaning of section 436 and so has not vested in the official receiver. Ms Gleyze invited me to hold that HHJ Pelling QC had reached a conclusion in *GP Aviation Group* which ran against the general flow of authorities in this area and was wrong, or at least that the right of appeal in this case should be regarded as property which *has* vested in the official receiver as trustee. If that is correct, and since there has been no assignment by the official receiver back to the Appellant, the appeal is not the Appellant's to bring.
57. In support of that submission, Ms Gleyze relied on the terms of section 436 of the 1986 Act, and the commentary on that section in Sealy & Milman, Annotated Guide to the Insolvency Legislation, 28th edition (2025). In addition, she relied on *Shop Direct Finance Co Ltd v Official Receiver* [2023] EWCA Civ 367; [2023] Bus LR 1425, in which the Court of Appeal was "*prepared to accept*" that a consumer's right to complain to the Financial Ombudsman fell within the definition of "*property*"

within section 436, because it was an interest “*incidental to property*” (see the judgment of Singh LJ at paragraph 56). Mr Asghar argued, however, that a right to complain is more like a cause of action, so the decision provides no guidance about whether a defendant’s right of appeal is property.

58. In her skeleton argument, Ms Gleyze also cited *Muorah v Secretary of State for Housing, Communities and Local Government* [2023] EWHC 285 (Admin). In that case Neil Cameron KC (sitting as a Deputy High Court Judge) held that an appeal against a planning enforcement notice had vested in the appellant’s trustee in bankruptcy. That appears to have been on the basis that the dwelling house which was the subject of the appeal had vested in the trustee in bankruptcy, so the underlying cause of action, along with any right of appeal, had also vested in the trustee. The court did not consider *Heath v Tang* or *GP Aviation Group*.
59. For reasons I will come to, I do not consider it necessary to reach a concluded view about whether HHJ Pelling QC was correct to hold that a right of appeal is not “*property*”, or about whether the particular right of appeal in this case can be distinguished from the kind of appeal under consideration in the *GP Aviation Group* case. I would, in any event, have been reluctant to depart from a decision of a judge of concurrent jurisdiction which does not seem to me obviously to be wrong.
60. To my mind, the significance of the *GP Aviation Group* case for present purposes is that it explains and applies the analysis of the bankrupt’s standing to appeal in *Heath v Tang*. A bankrupt has no standing to appeal from a judgment debt which is to be paid out of the bankruptcy estate. That is so, whether or not the right to appeal can be said to be property which has vested in the trustee in bankruptcy. The bankrupt has no standing because he has no interest in an appeal of that kind, or at least no sufficient interest to entitle him to be heard. Whether the appeal is won or lost, the financial position of the bankrupt himself will be the same. The bankrupt’s assets will remain vested in the trustee, who will share them *pari passu* amongst his creditors. And either way, the creditor will have no remedy against the bankrupt; the creditor’s only entitlement in respect of the debt is to prove in the bankruptcy.

Discussion

61. Ms Gleyze submits that it follows from this analysis that the Appellant has no standing to appeal in this case. She is expressly appealing the Order only in so far as it makes her *personally* liable for costs. That much is clear from her Appellant’s Notice, quoted above. Her personal liability for costs will now be a liability of the bankruptcy estate vested in the official receiver. It therefore follows from *Heath v Tang* and *GP Aviation Group* that the Appellant has no interest in the appeal and, accordingly, no standing to pursue it.
62. As I have mentioned, Mr Asghar’s answer is that the Appellant only ever became involved with these proceedings in a representative capacity. She was not joined as a party to the proceedings in her personal capacity, whether for the purposes of costs or otherwise. Pursuant to the order of 14 March 2025, the title to the action describes the Appellant “*as representative of the estate of Paul O’Boyle.*”
63. Ms Gleyze replies that the Appellant is in the same position in relation to the Order as the bankrupt in *Dence v Mason* was regarding the order for costs. Even if the

Appellant's role as representative was personal to her and so fell outside the bankruptcy estate, she has no interest in appealing the costs order because that is to be paid out of assets vested in her trustee. Ms Gleyze says that the estate of Mr O'Boyle has no interest in the outcome of this appeal either; indeed, she submits that pursuing the appeal is contrary to the interests of Mr O'Boyle's estate, because allowing the appeal would mean that his estate would no longer be able to share liability for the costs with the Appellant.

64. It seems to me that there are three possible analyses of the capacity in which the Appellant is bringing this appeal. The first is that she is doing so purely in her personal capacity. There is force in Ms Gleyze's submission that this is the correct analysis. The Appellant's concern is solely with whether she should personally have to pay any of Mrs Wallis's costs. If she is personally liable, however, that liability is now one which will be paid by her trustee in bankruptcy out of the assets held by the Appellant at the time she was declared bankrupt, which have now vested in the official receiver. In that situation, the Appellant has no standing to appeal, following *Heath v Tang*.
65. The second analysis, however, is that the Appellant is bringing this appeal on behalf of Mr O'Boyle's estate. To state the obvious, the assets of Mr O'Boyle's estate have not vested in the official receiver. Indeed, because the Appellant has not been granted letters of administration, the estate's assets are not vested in her either. It does not seem to me that her role as representative involves her holding any property on behalf of her father's estate. She is not asserting a cause of action, legal title to which has vested in her (as would be the case if letters of administration had been granted). But if she is, section 238(3) of the 1986 Act excludes property held by the bankrupt on trust from falling within the bankruptcy estate.
66. If, rather than focussing on assets belonging to Mr O'Boyle's estate, one considers the Appellant's role as representative by itself, it is difficult to regard that role as "*property*" at all. But if it is property, it is personal to the Appellant, in the sense that it remains unaffected by her bankruptcy. The official receiver could not now step into the Appellant's shoes and act as representative of Mr O'Boyle's estate in these proceedings (and the official receiver has not sought to do so). The court did not appoint the official receiver to represent Mr O'Boyle's estate.
67. Nevertheless, Ms Gleyze is right to point out that there is something artificial about saying that the Appellant is acting on behalf of Mr O'Boyle's estate in bringing this appeal. Whilst I am not convinced that there is any real *conflict* between the Appellant's personal interests in this appeal and the interests of Mr Boyle's estate, it is difficult to see what the estate could be said to gain from the appeal.
68. I am not convinced that there is a conflict because Mr O'Boyle's estate cannot "share" liability with the Appellant. Although from Mrs Wallis's point of view the Appellant and Mr Boyle's estate are jointly liable, as between the Appellant and Mr Boyle's estate it is the estate which is primarily liable. If the Appellant were to pay any of Mrs Wallis's costs from her own resources, she would almost certainly be entitled to be indemnified by her father's estate, whether as a matter of equity or of unjust enrichment. The estate's liability would not, therefore, increase if the appeal succeeds. It would merely become a liability solely to Mrs Wallis, as opposed to a liability to either Mrs Wallis or the Appellant, or both.

69. As I say, however, the more difficult issue is whether it can realistically be said that the Appellant is appealing *on behalf of* Mr Boyle's estate. It is difficult to see how the appeal could improve the estate's overall financial position. It will remain liable for Mrs Wallis's costs, whatever the outcome. I suppose the estate could be said at least to have some interest in ascertaining whether it is only directly liable to Mrs Wallis, or whether it may also be liable to indemnify the Appellant, who is one of the beneficiaries of the estate. Success in the appeal might also bring improved settlement prospects for the estate as well as the Appellant. Nevertheless, I accept that it is hard to regard those considerations as a basis for characterising this as an appeal on behalf of the estate.
70. It seems to me, however, that there is a third analysis. It is always open to a representative party to seek the court's guidance and directions concerning her status as a representative, such as the scope of her duties, powers and liabilities. The effect of any such guidance and directions might be neutral so far as the estate represented is concerned but be significant for the representative. It seems to me that, in seeking the court's guidance and directions, a representative is acting in her representative capacity, whether or not the estate represented has a financial interest in the outcome. If the representative is unsatisfied with the directions given, I do not see why she would not have a sufficient interest to have standing to appeal them in her representative capacity.
71. In the case of *Bourlakova v Bourlakov* [2024] EWHC 1937 (Ch), which I will consider more fully below in relation to the substantive appeal, Richard Smith J gave various detailed directions concerning the duties, powers and potential liabilities of Mr Nicholas Jacob, a representative appointed under CPR 19.12 in that case. In part, this was necessary because it appears that Mr Jacob had, perhaps unusually, not been joined as a party. Nevertheless, it seems to me that directions about what a representative can and cannot do, and whether or not she should have certain liabilities (including as to costs), could be sought in any case where a representative is appointed under CPR 19.12, regardless of whether she has been joined as a party.
72. As Richard Smith J said in paragraph 56 of the *Bourlakova* case, in the context of an argument about whether the representative should be prospectively exonerated, "*the exoneration issue is concerned with the exercise by the Court of its power to appoint under CPR, Part 19.12. Inherent in that power is the Court's ability to determine the terms of that appointment.*" I respectfully agree. Mr Jacob was invoking the court's inherent jurisdiction to assist him in his role as the representative whom the court had appointed. Amongst the directions he asked for was one to the effect that he should not be personally liable for costs orders made against the estate. That was as much an exercise of the court's inherent power to control the terms of his appointment as the other directions he sought. If he had been unsatisfied with the court's ruling on that issue, he could have appealed it. That appeal would, it seems to me, have been brought in his capacity as representative.
73. The same logic applies, in my judgment, to the Appellant's situation. Lying behind Master Kaye's Order that "*the Claimants*" pay Mrs Wallis's costs was a decision about the Appellant's status as representative, namely that, because she was a representative, she was liable for whatever costs might be ordered against Mr O'Boyle's estate. That decision involved an exercise of the court's inherent jurisdiction to determine the terms on which the Appellant was appointed. The

decision was made against the Appellant in her capacity as representative, and it seems to me that she must be entitled to appeal it in that capacity, regardless of whether the estate itself stands to gain anything. Indeed, I am doubtful whether the Appellant could appeal in any other capacity, because that is the only capacity in which she is a party.

74. Moreover, the Appellant's role as representative of Mr O'Boyle's estate has not entirely come to an end as a result of the claims being struck out. The freezing order obtained within the proceedings for the purposes of enforcement continues to be binding on her notwithstanding her bankruptcy. It is also still binding on Mr O'Boyle's estate, which the Appellant continues to represent. Some further process is likely to be required in relation to that order; it cannot properly continue in place forever. When the Appellant engages with that process, she will be doing so after the date of her bankruptcy and in her capacity as representative. It is, therefore, potentially relevant for her to know the basis on which she might, or might not, be liable for costs whilst fulfilling that role. The result of this appeal is bound to inform that issue. It seems to me that she has, therefore, an ongoing interest in this appeal in her representative capacity.
75. Although the Appellant's liability to pay a money sum is a personal liability, the point of distinction from the authorities relied on by Ms Gleyze is that her liability arose out of her role as representative and is dependent on the terms on which she was appointed to that role. In *Dence v Mason* only the trustee in bankruptcy had standing to appeal a personal liability for costs, but the bankrupt retained standing to pursue an appeal in relation to other parts of the order. That was not a case about a representative party, but it demonstrates that there can be circumstances in which a bankrupt retains standing to appeal, if the relevant issue continues to affect him in some way. Neither *Heath v Tang* nor *GP Aviation Group* was considering the position of a representative party. Nevertheless, Hoffmann LJ was clear that, where a bankrupt has interests which remain personal to him, he has standing to pursue them.
76. Ultimately, a question of standing turns on whether an individual has a sufficient interest in the subject matter of the appeal to entitle him to appear and question the decision below (as explained in the citation from *Rochfort v Battersby* referred to above). In my judgment, in the unusual circumstances of this case and for the reasons I have given, the Appellant is the right person to bring this appeal in her capacity as representative of Mr O'Boyle's estate, and she has a sufficient interest to do so. Her role as representative is unaffected by her bankruptcy.
77. Even if I had held that HHJ Pelling QC was wrong in the *GP Aviation Group* case, and that a right of appeal is property which could vest in a particular individual, the Appellant's right of appeal as representative of Mr O'Boyle's estate could not have vested in the official receiver as her trustee in bankruptcy. In these circumstances, I have not needed to consider whether to postpone handing down this judgment to see whether the official receiver completes an assignment to the Appellant of any right of appeal.

Is an extension of time required and, if so, should it be granted?

78. As mentioned above, Mr Asghar's principal submission was that, since the Appellant had applied for an extension of time in her Appellant's Notice and had given reasons

in support of that application, Mellor J's subsequent order granting permission to appeal must implicitly have granted the extension.

79. If it is wrong that Mellor J granted the extension, Mr Asghar submitted that I should grant it now. He agreed with Ms Gleyze that, following *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633, this required an application of the principles applicable to relief from sanctions derived from *Denton v T. H. White* [2014] 1 WLR 795.
80. Ms Gleyze submitted that permission to appeal granted in the absence of an extension of time, where such an extension is required, is ineffective. In support of that submission, she relied on *Jones v T Mobile (UK) Ltd* [2003] EWCA Civ 1162. She argues that it cannot be inferred from Mellor J's grant of permission that he was also granting an extension, because he would have had to consider the *Denton* test and give reasons. The correct interpretation of his order was that he had not addressed his mind to the extension. Permission should not be granted now, because the Appellant's reasons for the delay were not good ones, and the history of delay and failures to comply with orders, which Master Kaye had found to be "*outside the norm and unreasonable to a high degree*", meant that the Appellant did not deserve any further indulgence from the court. If permission were to be granted, however, Ms Gleyze submits (on the authority of the *T Mobile* case) that it should be granted on condition that the Appellant bears the costs of the appeal, whatever the outcome.
81. The reasons given by Mellor J for granting permission (which form part of his order) show that he had read the Appellant's Notice and he must, therefore, have seen the request for an extension. Any reasonable reader of Mellor J's order would, in my view, infer that he would not have granted permission if he had not also considered that an extension should be granted. It must be assumed that a judge (especially one with the experience of Mellor J) would have been well aware of the need to apply the *Denton* approach, and the omission of any reasoning is likely to have been an oversight. The oversight may have occurred because, for reasons I will come to, he is likely to have considered that this was a clear case in which the grant of an extension was justified.
82. The *T Mobile* case concerned a situation in which a judge had granted permission to appeal after the time for appealing had expired, but no application for an extension of time had been made. In those circumstances, the Court of Appeal considered that the grant of permission was "*of no real value*." Even then, the Court of Appeal granted the extension (albeit on terms). That is obviously a different situation from the present one, in which an application for an extension *was* made in the Appellant's Notice.
83. For those reasons, I consider that Mellor J has already granted an extension of time in this case. In case that is wrong, I have considered whether permission should be granted now. In my view, it plainly should, so I will deal with this issue briefly.
84. So far as the first stage of the *Denton* approach is concerned, Mr Asghar accepted that the delay in seeking permission was serious and significant. So far as the second stage is concerned, whether there is good reason for the default, the Appellant says she erroneously submitted an Appellant's Notice to the Court of Appeal on 8 August 2025, which would have been in time. Ms Gleyze submits that this is not evidenced,

but it is stated in the Appellant's Notice and there seems no good reason to disbelieve the Appellant about it. Making a mistake about the correct court to appeal to is not a good reason for a delay. There are various ways of finding out which is the correct court, such as telephoning the court in advance. Nevertheless, for the purposes of the third stage of the *Denton* approach, I disagree with Ms Gleyze that it is difficult to understand how such a mistake could have been made. It is understandable that a non-lawyer might assume that the Court of Appeal deals with all appeals.

85. I agree with Ms Gleyze that no good reason has been given for the subsequent delay until 21 August 2025, when the Appellant submitted an Appellant's Notice to the High Court in an acceptable form. There were two failed attempts to file the Notice on 17 and 18 August 2025 and the third, successful attempt took a further three days, without explanation for that delay.
86. It is, however, at the third stage of the *Denton* approach, considering all the circumstances of the case, that it becomes plain that an extension should be granted. The total delay was less than two weeks. The Appellant had made attempts to file the Appellant's Notice in the meantime but had made mistakes which (even if not "good" reasons for the delay) are understandable for a litigant in person, and for which she apologised. The delay caused no discernible prejudice to Mrs Wallis in relation to the conduct of the appeal and her legal team had fully prepared to argue it.
87. The repeated delays and failures to comply with orders on which Ms Gleyze relies almost all occurred before the Appellant became a party to the proceedings. If the substance of the appeal had, for example, been concerned with the liability of Mr O'Boyle's estate for the costs of the claim, the reference to his delays and failures might be pertinent. But this is an appeal about whether the Appellant should have personal liability for the entire costs of the claim. It cannot, in my judgment, be in accordance with the overriding objective of dealing with cases justly to shut her out from appealing that liability because of a minor delay on her part, combined with defaults which occurred before she personally had any involvement in the case. To refuse the extension would be wholly disproportionate to the default.
88. Given my conclusion that the grant of an extension was implicit in Mellor J's order, there is no scope to impose conditions on the grant of the extension now. But I would not, in any event, have imposed a condition that she should bear the costs of the appeal. As I have said, Mrs Wallis has suffered no prejudice that I can discern because of the delay and there is no good reason to disturb the normal principles applicable to the costs of the appeal.

Has there been an abuse of process?

89. Although both counsel dealt with this issue last, it seems to me that logically it ought to be considered before the substance of the appeal. If there is an abuse of process which requires the appeal to be struck out, it might not be appropriate to consider the substance at all.
90. Ms Gleyze cited no authority in support of this part of her argument. I assume she had in mind the principles set out by Sir Christopher Floyd in *LA Micro Group (UK) Ltd v LA Micro Group Inc* [2021] EWCA Civ 1429; [2022] 1 WLR 336, at paragraphs 19 to 26, and subsequently applied by the Zacaroli LJ in *Malik v Malik* [2024] EWCA

Civ 1323. These authorities refer to a form of estoppel by conduct, which is approached by means of a broad, merits-based assessment, and not constrained by strict rules. The essence of the abuse is that a party wins a case by persuading the court to accept a particular position, but then seeks to advance a position in subsequent proceedings which is clearly inconsistent with its earlier position, in a way which is unfair to the other party to those proceedings.

91. As noted above, Ms Gleyze submits that the Appellant has expressly relied on her personal liability for the costs on three occasions, and it is an abuse of process for her now to assert the opposite.
92. The first occasion relied on by Ms Gleyze was when the Appellant consented to the continuation of the freezing order without seeking to contend that she did not have personal liability. This does not seem to me to amount to the Appellant persuading the court to accept any position, let alone one on the basis of which she succeeded. She simply accepted the case advanced on behalf of Mrs Wallis that the effect of the Order was to make her personally liable for costs. Indeed, as I explain below, it was correct that the Order made her personally liable for costs, unless and until this appeal decides otherwise. I do not understand how the Appellant can be criticised for having sensibly consented to the continuation of the freezing order. She is now saying that Master Kaye was wrong to make the Order, but that is not inconsistent with her previously accepting that the Order was made and had the effect it did. Mrs Wallis is no worse off as a result of the Appellant having consented to the continuation of the freezing order; indeed, Mrs Wallis obtained what she wanted.
93. The second occasion was when, in her witness statement in support of an order for wasted costs against TF, the Appellant said that Mr Sclater of TF failed to explain to her that, if she was appointed as representative of Mr O'Boyle's estate pursuant to CPR 19.12, she would be "*exposed*" personally "*to adverse costs*". The wasted costs application was compromised, so the Appellant did not obviously persuade the court of anything. In any event, the Appellant was not saying anything that contradicts her current position. I have seen no evidence to suggest that the Appellant was not telling the truth about Mr Sclater's lack of advice, and it is true that her appointment exposed her to a risk of a costs order against her personally. It remains true that there was a *risk* of personal liability, even if the appeal succeeds. Again, Mrs Wallis is no worse off as a result of the Appellant having given evidence in support of the wasted costs order. On the contrary, that seems to have benefitted Mrs Wallis, in so far as it encouraged TF to agree to pay some costs.
94. The third occasion was when the Appellant applied to be made bankrupt on the footing that she was personally liable for Mrs Wallis's costs. The Appellant's application for bankruptcy is not in evidence but, as I have mentioned, Ms Gleyze invites me to infer that at least one of the debts relied on by the Appellant in her application was the judgment debt in respect of Mrs Wallis's costs pursuant to the Order. I agree that seems likely, given Mrs Ford's 18 September 2025 email explaining that Mrs Wallis was the Appellant's majority creditor. The Appellant has, therefore, succeeded in an application to the Insolvency Service Adjudicator's Office (although not to the court) based on the position that she was personally liable for Mrs Wallis's costs. Ms Gleyze said that bankruptcy was a "*get out of jail free card*" for the Appellant, because (as I understood the argument) it effectively enabled her to escape liability to Mrs Wallis. She submitted that the Appellant should not be entitled

to obtain that “*benefit*” on the basis of her personal liability to Mrs Wallis, whilst at the same time pursuing an appeal aimed at establishing that she had no such personal liability.

95. It is surprising that the Appellant applied for her own bankruptcy so soon after lodging her appeal against the Order and without waiting to find out whether her appeal succeeded. Nevertheless, I do not consider the Appellant’s application for her own bankruptcy renders the pursuit of this appeal an abuse of process. Bankruptcy is not a “*get out of jail free card*” which somehow enables the Appellant to thwart Mrs Wallis. If the effect of Master Kaye’s Order was that the Appellant became unable to pay her debts in full, her bankruptcy was inevitable. If the Appellant had not applied for it, it is likely that Mrs Wallis, or another creditor, would have done so in due course. I cannot see that Mrs Wallis is worse off because the Appellant made the application herself. The effect of the bankruptcy is not to leave the Appellant with assets which would otherwise have had to be realised to pay Mrs Wallis. On the contrary, it ensures that those assets will be realised to pay her and other creditors in an orderly fashion.
96. Moreover, if the effect of the bankruptcy had been to deprive the Appellant of standing to pursue the appeal pursuant to principles outlined in *Heath v Tang*, I do not imagine Mrs Wallis would have any complaint about the bankruptcy itself. It seems to me that Mrs Wallis’s objection to the Appellant pursuing this appeal after being made bankrupt really boils down to her argument that the Appellant does not have standing to do so. That is a separate argument, with which I disagree, for the reasons I have given. But I do not consider that the Appellant’s argument on appeal that liability was *wrongly* imposed is inconsistent with her prior acceptance that, nevertheless, liability *had been* imposed, even if that acceptance was in the context of an application for bankruptcy.
97. For these reasons, I do not consider that the statements and conduct of the Appellant on which Mrs Wallis relies precludes the Appellant from arguing that she is not personally liable for Mrs Wallis’s costs on this appeal. That being my view, it is unnecessary to consider Mr Asghar’s submission that Mrs Wallis should not be permitted to raise this point in the absence of a Respondent’s Notice.

Should the appeal be allowed and, if so, what order as to costs should be made?

Preliminary points

98. Ms Gleyze’s initial point was that there was, in fact, nothing to appeal. The Order says only that “*the Claimants*” must pay Mrs Wallis’s costs and does not say that the Appellant is personally liable for them. The real issue, therefore, was about the meaning of the expression “*the Claimants*” and Master Kaye had not decided that. The Appellant was free to argue in any enforcement context that this did not mean that she was personally liable.

99. There is some irony in Ms Gleyze taking this point (which, in fairness, she accepted was not her best). It seems to me that Ms Gleyze made the submission to Master Kaye that the Appellant was personally liable for the costs of the estate and Mrs Wallis succeeded in obtaining the Order on that basis. Moreover, Mrs Wallis then succeeded in obtaining a freezing order which (amongst other things) prohibits the Appellant from disposing of *her own* assets as well as those of the estate. That order was plainly founded upon the Appellant being *personally* liable for Mrs Wallis's costs. I am not sure it is open to Mrs Wallis now to submit that the appeal should fail because the Appellant is free to argue that she is *not* personally liable for Mrs Wallis's costs. That is clearly inconsistent with the position which Mrs Wallis is obviously taking in these proceedings.
100. Curiously, however, Mr Asghar also had an initial point that, properly interpreted, the order does not make the Appellant personally liable for Mrs Wallis's costs. If that is right, it is not clear to me why there is an appeal of the Order at all. It is the freezing injunction which ought to be under appeal, on the basis that it proceeded on the wrong interpretation of the Order.
101. I have no doubt, however, that any reasonable reader of the Order would consider that it *does* make the Appellant personally liable for Mrs Wallis's costs. The expression "*the Claimants*" plainly refers to the parties listed in the title to the action, who include "*Ms Catharine O'Boyle* [i.e. the Appellant] (*as representative of the estate of Paul O'Boyle, Deceased*).\" There does not seem to me to be any room for doubt that the Appellant is one of the two parties who are currently the Claimants (the other being Mrs O'Boyle). The rest of the Order only makes sense on that basis. Paragraph 6, for example, requires "*the Claimants*" to file and serve evidence in relation to the wasted costs application, if so advised. That must mean that the Appellant is to serve the evidence. She could not argue that she did not personally have to do it and that someone else should be filing evidence on the estate's behalf.
102. These preliminary points, therefore, go nowhere and I will move on to the substance of the appeal.

The law

103. CPR 19.12 provides as follows:

"Death

- (1) Where a person who had an interest in a claim has died and that person has no personal representative the court may order:-
- (a) the claim to proceed in the absence of a person representing the estate of the deceased; or
 - (b) a person to be appointed to represent the estate of the deceased.
- (2) Where a defendant against whom a claim could have been brought has died and:-
- (a) a grant of probate or administration has been made, the claim must be brought against the persons who are the personal representatives of the deceased;

- (b) a grant of probate or administration has not been made:-
 - (i) the claim must be brought against “the estate of” the deceased; and
 - (ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim.
 - (3) A claim shall be treated as having been brought against “the estate of” the deceased in accordance with paragraph (2)(b)(i) where:-
 - (a) the claim is brought against the “personal representatives” of the deceased but a grant of probate or administration has not been made; or
 - (b) the person against whom the claim was brought was dead when the claim was started.
 - (4) Before making an order under this rule, the court may direct notice of the application to be given to any other person with an interest in the claim.
 - (5) Where an order has been made under paragraphs (1) or (2)(b)(ii) any judgment or order made or given in the claim is binding on the estate of the deceased.”
104. In *Bourlakova v Bourlakov* [2024] EWHC 1937 (Ch) Richard Smith J traced the history of this rule in detail, noting at paragraph 9 that the law relating to appointments pursuant to it is limited. The genesis of the rule was section 44 of the Court of Chancery Procedure Act 1852, which was introduced to avoid the cumbersome process of obtaining letters of administration for the purposes of the claim and then joining the administrator.
105. When applying the rule, Richard Smith J found it helpful to consider the other situations covered by CPR Part 19, in which a representative can be appointed for someone else. Amongst other things, he referred to *Lloyd v Google LLC* [2022] AC 1217, which concerns the procedure under CPR 19.8 whereby one or more individuals can be appointed to represent others with the same interest in a claim. Richard Smith J referred to paragraph 75 of the judgment in *Lloyd* which points out that the court must exercise its discretion with a view to giving effect to the overriding objective, including by saving expense, dealing with the case in ways which are proportionate to the amount involved and ensuring it is dealt with expeditiously and fairly. Richard Smith J said that he had exercised his power pursuant to CPR 19.12 by reference to such considerations.
106. The *Bourlakova* case itself was a complex dispute involving multiple parties in different jurisdictions concerning assets worth more than a billion dollars. The claimants included the wife and daughter of Mr Oleg Bourlakov, who accused him of dishonestly maximising his share of the family assets. Mr Bourlakov, however, had died and, although there were Personal Representatives appointed in other jurisdictions, there was no such appointment in England and Wales, because he did not have any assets here. In these circumstances, Richard Smith J had appointed a

solicitor, Mr Jacob, as the representative of the estate pursuant to CPR 19.12. Interestingly, however, Mr Jacob was not treated as a party to the action. That is clear from paragraph 49 of the judgment, which I consider further below.

107. After Mr Jacob was appointed as representative, it appears that the parties were unable to agree about the scope of his role. Mr Jacob, therefore, sought directions and guidance from the court, which Richard Smith J gave in his judgment. The directions sought included the extent of his duty to consult with the parties, the extent to which court approval was required for any decision, the types of document he could call for and whether he could settle the claim. Importantly for present purposes, he also sought orders that he was not personally liable in respect of any costs orders made against the estate and was not personally liable for loss or damage to the estate caused by his conduct of the proceedings, unless he had acted fraudulently, dishonestly or in bad faith.
108. In relation to the scope of the representative's duties, Richard Smith J pointed out, at paragraph 27, that Mr Jacob was not a Personal Representative of the estate. Rather, he had been appointed under CPR 19.12 because there was no such representative. His role related to the proceedings within which the appointment was made and did not confer more general rights or obligations on him in relation to the estate. This is consistent with paragraph 2.10 of the current Chancery Guide, which states that an order appointing a representative is "*for the purposes of the proceedings only. It is not a grant of representation, nor does it entitle the person appointed to obtain a grant of representation.*"
109. Richard Smith J continued in paragraph 27 by saying that an analogy with a litigation friend was helpful in this context. He referred to dicta from *OH v Craven* [2017] 4 WLR 25 concerning the role of a litigation friend, including that such a person is not a "*mere cypher*", but must take all measures he sees fit for the benefit of the infant defendant with a view to guarding, or safeguarding, the interests of the infant in the litigation.
110. Ms Gleyze expressly relied on paragraph 27 of the *Bourlakova* judgment in her skeleton in support of a submission that a representative under CPR 10.12 is "*akin to a litigation friend, with similar duties and responsibilities.*" I agree that the analogy with a litigation friend is helpful and I will return to it below. As will be seen, there is authoritative recent guidance from the Court of Appeal concerning the liability of a litigation friend for costs.
111. Mr Asghar relied, in particular, on two parts of the *Bourlakova* judgment. One related to exoneration. As explained above, Mr Asghar no longer pursues his exoneration argument, so I do not need to consider this further. The other related to costs. In paragraph 49, Richard Smith J said this:

"Mr Jacob also sought the Court's clarification that it is the Estate, not Mr Jacob personally, that is responsible for costs orders made during the course of the proceedings. The Claimants and the Kazakovs did not demur from this once it was properly understood that Mr Jacob was saying that, since he was not a party to the proceedings, he would not be the proper respondent to any costs order made under CPR, Part 44. As Mr Jacob accepted, that does not mean, however, that he is not

amenable to section 51 of the Senior Courts Act 1981 and the Court's related power under CPR, Part 46.2 to make a costs order against non-parties. With that clarification, I agree that this reflects the correct position."

112. As mentioned above, it is clear from this passage that Mr Jacob was not regarded as a party to the proceedings. It is unclear whether that was because of the particular terms on which Mr Jacob was appointed in the unusual circumstances of that case, or because Richard Smith J considered that a representative appointed pursuant to CPR 19.12 should never be treated as a party to the proceedings. Mr Asghar pointed out during the hearing that, in a subsequent decision reported at [2025] EWHC 909 (Ch), Richard Smith J considered, but did not ultimately approve, a complicated proposal to fund Mr Jacob's costs, which would have involved (amongst other things) Mr Jacob being joined as a party for the purposes of obtaining an order for costs against another party. When explaining that proposal, Richard Smith J said, in paragraph 21 that he had "*previously found*" Mr Jacob to be a non-party. Unfortunately, he did not explain why he had reached that decision. I will return to this issue below.
113. The other authority cited to me was *Heating Electrical Lighting and Piping Ltd (in liquidation) v Ross* [2012] EWHC 3764 (Ch). That was a decision of HHJ Langan QC, sitting as a High Court Judge. At a trial of a misfeasance claim by the liquidator of the claimant company, he made orders for payment of various sums against the estate of Mr Alan Ross, who had died in October 2010, before proceedings began in December 2011. The named respondents to the claim were the estate of Mr Ross and two of the individuals named as executors in Mr Ross's will, Mr Lowe and Mr Hussain. Probate was not granted until September 2012, so the liquidator had obtained an order in May 2012 appointing Mr Lowe and Mr Hussain to represent Mr Ross's estate pursuant to what is now CPR 19.12(2)(b). By the time of the trial, it had become clear that Mr Ross's estate was insolvent, so the judge had to decide whether Mr Lowe and Mr Hussain were personally liable for the liquidator's costs of the proceedings.
114. At paragraph 42 of his judgment, HHJ Langan QC referred to the passage from Williams, Mortimer & Sunnucks in the then current edition (2008) which is equivalent to the one now relied on by Ms Gleyze and quoted above. Although there are differences in wording between that edition and the one relied on by Ms Gleyze, there is no material difference in substance. In paragraph 43 the judge recorded the submission of counsel representing Mr Lowe (Ms Sarah Harrison) to the effect that the principles referred to in Williams, Mortimer & Sunnucks relate to the situation in which a Personal Representative is a party to proceedings, whereas different considerations apply to a party appointed pursuant to what is now CPR 19.12. He said:

"...Ms Harrison does not go so far as to say that an adverse costs order can never be made against a person who is joined to represent an estate under CPR r 19.8(2)(b)(ii). Whether such an order is made must depend on the circumstances and, in particular, whether such a person has remained quiescent or has actively defended the claim. The question is, to use the current legal jargon, fact-sensitive. Thus far I agree."

115. Applying those principles to the facts, HHJ Langan QC held that Mr Lowe had done everything in his power “*to delay, block, drag out or frustrate the claim.*” That included his conduct before proceedings commenced and before he was appointed as representative. He could, and should, have said at an early stage that he would abide by any order that the court might make, but his active participation in the proceedings had caused costs to be incurred. Consequently, Mr Lowe was ordered to pay the liquidator’s costs of the proceedings.
116. The position of Mr Hussain, however, was different. The judge considered it to be unclear whether Mr Hussain had “*hitched his horse to Mr Lowe’s chariot*” prior to a hearing on 11 May 2012, when he was appointed as a representative. Thereafter, if Mr Hussain’s position was different from Mr Lowe’s it was incumbent on him to say so. He did not do so, so he was liable for costs for the period after 11 May 2012.
117. In the course of the hearing, I invited the parties to comment on *Barker v Confiance Ltd* [2020] EWCA Civ 1112; [2021] 1 WLR 231. The facts were complicated but in simple terms, Mr Barker had brought proceedings to set aside a trust of which the beneficiaries included two of his children, Tom and Freya. Those proceedings were compromised and the settlement was approved by the court. Subsequently, Tom and Freya, acting by their litigation friend, Ms Susan Glover, applied to be added as defendants to the proceedings and for a declaration that the court’s order approving the settlement was not binding on them. This was a precursor to them bringing proceedings against Confiance as trustee of the trust. Morgan J concluded, at first instance, that Mr Barker would have been entitled to have the trust set aside, so that Tom and Freya could not claim against Confiance as beneficiaries of the trust. Accordingly, there was no basis to set aside the court’s order approving the settlement, which had been beneficial to them, and their application failed.
118. The judge then granted an application for Ms Glover to be added as a party to the proceedings for the purposes of costs and ordered her to pay the costs of Mr Barker, Confiance and one of the other beneficiaries. The judge considered, but rejected, the possibility that there was a distinction between the principles applicable to a litigation friend acting for a claimant and one acting for a defendant. He stated the applicable principle as follows (in paragraph 53 of his judgment, quoted in paragraph 21 of the Court of Appeal’s judgment):
- “When considering whether to make an order for costs against a litigation friend, who has acted for an unsuccessful child party, the court should apply the general approach that, as regards costs, the litigation friend is expected to be liable for such costs as the relevant party (if they had been an adult) would normally be required to pay.”
119. The judgment of the Court of Appeal was given by Newey LJ. In paragraphs 42 to 44 of his judgment, he summarised the provisions of the CPR relating to the appointment of a litigation friend as follows:
- “42 Assuming that a litigation friend has not been appointed by the court, a person may become a litigation friend without any court order by, among other things, filing and serving ‘a certificate of suitability stating that he satisfies the conditions specified in rule 21.4(3)’ (see

CPR r 21.5). CPR r 21.4, headed 'Who may be a litigation friend without a court order', provides:

- '(1) This rule does not apply if the court has appointed a person to be a litigation friend.
- (2) A deputy appointed by the Court of Protection under the 2005 Act with power to conduct proceedings on the protected party's behalf is entitled to be the litigation friend of the protected party in any proceedings to which his power extends.
- (3) If nobody has been appointed by the court or, in the case of a protected party, has been appointed as a deputy as set out in paragraph (2), a person may act as a litigation friend if he— (a) can fairly and competently conduct proceedings on behalf of the child or protected party; (b) has no interest adverse to that of the child or protected party; and (c) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party.'

43 CPR r 21.6 deals with the appointment of a litigation friend by the court. An application for such an appointment may be made either by a person wishing to be so appointed or by a party (see CPR r 21.6(2)) and, where no one has become a litigation friend for a child or protected party who is a defendant, the claimant is generally obliged to make such an application if he wishes to take a step in the proceedings (see CPR r 21.6(3)). CPR r 21.6(5) stipulates that the court 'may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in rule 21.4(3)'.

44 CPR r 21.9 explains that, where a child who is not a protected party has a litigation friend, the litigation friend's appointment ceases when the child reaches the age of 18. By CPR r 21.9(4), the child in respect of whom the appointment to act has ceased must serve notice on the other parties stating, among other things, whether or not he intends to carry on the proceedings. CPR r 21.9(6) provides:

'The liability of a litigation friend for costs continues until— (a) the person in respect of whom his appointment to act has ceased serves the notice referred to in paragraph (4); or (b) the litigation friend serves notice on the parties that his appointment to act has ceased.'

120. After a detailed review of the authorities relating to costs orders against litigation friends, Newey LJ concluded that there *is* a distinction to be drawn between the position of a claimant's litigation friend and that of a defendant. He pointed out, in paragraph 61 that a claimant's litigation friend will commonly be answerable for costs by virtue of having given an undertaking of the kind contemplated by CPR 21.4(3)(c) and 21.5, so that there is no need to consider whether to make an order under section 51 of the Senior Court's Act 1981 ("**the 1981 Act**"). But he went on, in paragraph 61,

to consider a situation in which a claimant's litigation friend had not given such an undertaking. He said that "*it remains the case that liability for costs should typically be imposed on a claimant's litigation friend, but with the important caveat that, when deciding whether to make such an order, the court is exercising a discretion and entitled to have regard to the particular circumstances of the case*" (my emphasis).

121. Amongst Newey LJ's reasons for concluding that Morgan J had taken the wrong approach, he said in paragraph 63(iii) that there was force in the policy argument that children and protected parties need litigation friends, but "*there must be a risk that, if a defendant's litigation friend were unusually vulnerable to an adverse costs order, that would deter suitable individuals from taking on the role.*" Similar policy considerations apply, in my judgment, to the position of a representative appointed pursuant to CPR 19.12.
122. Newey LJ summarised his conclusions in paragraph 64 as follows:
- "(i) At any rate where a litigation friend has not previously given an undertaking to pay the costs at issue, the power to make an order for costs against a litigation friend derives exclusively from section 51 of the 1981 Act.
 - (ii) When deciding whether an order should be made against a litigation friend under section 51, the 'ultimate question' is 'whether in all the circumstances it is just to make the order'.
 - (iii) It will typically be just to order a claimant's litigation friend to pay costs if such an order would have been made against the claimant himself had he not been a child or protected party, but it remains the case that the court is exercising a discretion and entitled have regard to the particular circumstances.
 - (iv) There is no presumption that a defendant's litigation friend should bear costs which the defendant would have been ordered to pay if not a child or protected party. That the litigation friend controlled the defence of a claim which succeeded will not of itself generally make it just to make an adverse costs order against the litigation friend. Factors that might, depending on the specific facts, be thought to justify such an order include bad faith, improper or unreasonable behaviour and prospect of personal benefit. If a director causes his company to litigate 'solely or substantially for his own benefit (to quote Lord Brown in *Dymocks* [2004] 1 WLR 2807), that may point towards a costs order against him. The fact that a litigation friend stands to gain a substantial personal benefit must also, I think, be capable of weighing in favour of a costs order against him."
123. Newey LJ went on to hold that, despite their having made the application, the nature and circumstances of Tom and Freya's participation made it appropriate to apply the approach adopted in relation to defendants' litigation friends, rather than that adopted in relation to claimants' litigation friends. He concluded that there was no sufficient justification for costs orders against Ms Glover and he allowed her appeal.

Discussion

124. Mr Asghar submits that a representative appointed pursuant CPR 19.12 either is, or at least should be treated as, a non-party for the purposes of costs, separate from the estate being represented, as happened in *Bourlakova*. There should be consistency in the approach to liability for costs, regardless of whether the representative happens to have been joined as a party in a particular case. The judge was wrong to start from an assumption that a representative appointed under CPR 19.12 is normally liable for whatever costs are ordered against the estate. The correct approach is that applied in the *Heating Electrical* case, looking at whether the conduct of the representative was improper or unreasonable and whether the representative can be said to have caused, or increased, costs. Taking that approach, the Master ought either to have made no order for costs at all against the Appellant, or at most made an order that the Appellant was only liable for costs incurred after 14 March 2025, when she was appointed to represent the estate. Mr Asghar said that it cannot be right that, for example, a representative appointed pursuant to CPR 19.12 on a Monday, who responsibly decides to withdraw the claim on Tuesday, is personally liable for all the costs of the claim incurred by the defendant over many years previously.
125. Ms Gleyze, on the other hand, submits that the circumstances of Mr Jacob's appointment in the *Bourlakova* case were unusual and that he was acting as a kind of *amicus curiae* (i.e. an impartial individual assisting the court). The normal approach is for a representative pursuant to CPR 19.12 to become a party to the claim. In any event, she says that the Appellant did become a party in this case, as shown by the change of title to the action, describing the First Claimant as "*Catherine O'Boyle (as representative of the estate of Paul O'Boyle)*." Whether she understood it or not, by becoming a party in these circumstances she took on personal liability for the costs, just as a Personal Representative would do. If the Appellant had wanted to limit her liability, she should have made an application at the time of her appointment. Rather than do that, however, the Appellant signed the Consent, agreeing to become a representative, and told the court that she was applying for a grant of letters of administration. In those circumstances, the Master was right to make the Order she did.
126. In my judgment, the starting point is that the source of the court's discretion as to costs and, in particular, who is to pay them, is section 51 of the 1981 Act. That is so regardless of whether the court is considering making an order against a party or a non-party. Section 51 provides, so far as material:
- “(1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in— ... (b) the High Court ... shall be in the discretion of the court.
- ...
- (3) The court shall have full power to determine by whom and to what extent the costs are to be paid...”
127. Of course, different general principles have developed in relation to costs awards against parties from those applicable to non-parties, and different provisions of the CPR apply to them. In the specific case of a representative appointed pursuant to CPR 19.12, however, I cannot discern any principled basis for taking different approaches to the exercise of the discretion to award costs, depending on whether the

representative happens to have been joined as a party or not. I agree with Ms Gleyze that the appointment of Mr Jacob as a non-party in the *Bourlakova* case is unusual, but CPR 19.12(1)(b) does not in terms require a person appointed as a representative to become a party. It is simply that the usual practice is for the representative to become a party “*as representative of*” the relevant estate. Why should the effect of that practice be to render the representative more or less automatically liable for whatever costs are payable by the estate, whilst a more nuanced and principled approach can be applied if the representative does not become a party? Whether or not the representative becomes a party, her general duties and functions are the same (subject to any specific directions given by the court). It seems counterintuitive to encourage potential representatives to resist becoming a party in order to obtain a more flexible costs regime.

128. Ms Gleyze responds that there is no reason to treat a representative appointed under CPR 19.12 differently from a Personal Representative. As the passage from Williams, Mortimer and Sunnucks on which she relies makes clear, a Personal Representative is normally personally liable for costs and the court is not concerned as to whether the Personal Representative will be indemnified by the estate.
129. In my judgment, however, there are important differences between such a person and a representative appointed under CPR 19.12. The estate’s assets are vested in a Personal Representative. Where the Personal Representative is the claimant, she is asserting a cause of action, legal title to which is hers. Whether claimant or defendant, she has access to the assets of the estate to fund her costs and can indemnify herself out of those assets for any adverse costs orders. If the estate is unlikely to be able to afford to indemnify her, she will know that, because she is in a position to ascertain the extent of the estate’s assets and liabilities. In those circumstances, she can take appropriate steps to mitigate the risks, including petitioning for an insolvency administration order, if appropriate.
130. The position of a representative appointed under CPR 19.12 is different. As Richard Smith J said in *Bourlakova*, a representative appointed under CPR 19.12 has no general rights or obligations in relation to the estate. Most importantly, the estate assets are not vested in her. When representing a claimant, she is not asserting a cause of action to which she has title; she is not a party bringing *her own* claim. She is simply assisting an estate which has no other representative by asserting its cause of action on its behalf. No doubt, she would have a claim against the estate for reimbursement for any costs, but she has no automatic access to the assets of the estate to fund her costs and she cannot easily indemnify herself for any adverse costs orders. These seem to me sound reasons in principle why the general rule that a Personal Representative is normally personally liable for costs should not apply to a representative appointed pursuant to CPR 19.12.
131. So, what general principles should apply to the personal liability for costs of a representative appointed under CPR 19.12? As already discussed, there are few authorities directly on point and they give limited guidance. The jurisprudence relating to litigation friends, however, is far more developed and the principles have recently been analysed and clarified by the Court of Appeal in the *Barker* case. The overriding objective requires the court to look beyond the differing historical genesis of litigation friends and representatives appointed under CPR 19.12 and instead to focus on dealing with cases justly. I can see no reason in logic or justice for

approaching the costs liabilities of those two types of representatives from a different starting point.

132. The court cannot, of course, disregard the important differences between CPR Part 21 and that of CPR 19.12. There are, for example, differences in the in the conditions for, and manner of, appointment. A litigation friend can be appointed without a court order and, whilst not a party, must file a certificate of suitability. In particular, where the child or protected party is a claimant, a litigation friend must normally undertake to pay any costs which the claimant is ordered to pay. A representative appointed pursuant to CPR 19.12 normally does become a party and can only be appointed by the court, but no certificate of suitability, and no undertaking, is required.
133. Nevertheless, the function and duties of litigation friends and representatives appointed under CPR 19.12 are similar (as Ms Gleyze submitted). In either case, the appointee is not asserting their own cause of action or defence but is conducting the proceedings on behalf of someone else (or something else, in the case of an estate), whose interests they must safeguard. In either case, it would normally be difficult for the proceedings to continue without the appointment of a representative (although the rules allow for a child to act without a litigation friend and for proceedings to continue without a representative of an estate, in appropriate circumstances).
134. In the light of these substantial functional similarities, it seems to me that, for the purposes of deciding whether a litigation friend or a representative should be personally liable for costs, the starting point ought to be the same in both cases; although in every case (as Newey LJ said in *Barker*) “*the court is exercising a discretion and entitled to have regard to the particular circumstances of the case.*” Thus, although the power to make an order for costs against a representative appointed pursuant to CPR 19.12 will not derive *exclusively* from section 51 of the 1981 Act if the representative has become a party to the proceedings, nevertheless the ultimate question should be “*whether in all the circumstances it is just to make the order*”. The policy considerations referred to above, strongly support an approach which gives the court the flexibility to recognise that a representative who has assisted the parties and the court should not be unduly vulnerable to a costs order.
135. Just as with a litigation friend, it will, in my judgment, typically be just to order a representative of a *claimant* appointed under CPR 19.12 to pay costs if such an order would have been made against the estate, but always subject to the court’s overriding discretion in the particular circumstances. That is principled and in accordance with the overriding objective, it seems to me, because it is generally the case that a claimant is in the driving seat; he can choose whether or not to proceed with a claim and, if the claimant proceeds, that will necessarily cause the defendant to incur costs. That explains why a claimant’s litigation friend will normally have to undertake to pay any costs. CPR 19.12(1) envisages that the claimant will already have begun a claim at the time a representative is appointed, but it is nevertheless within the representative’s power to decide whether or not to proceed from that time onwards and, therefore, whether the defendant must continue to incur costs. As I shall explain in a moment, that seems to me to be an important consideration so far as the Appellant is concerned.
136. Ms Gleyze relied on the similarities between litigation friends and representatives appointed pursuant to CPR 19.12. She argued that it followed from the requirement

for a claimant's litigation friend to undertake to pay any costs that a representative of a claimant estate would more or less automatically be required personally to pay whatever costs were ordered against the estate. That was, she said, a risk that a claimant's representative took when agreeing to be appointed, especially if she agreed to become a party. As Newey LJ held in *Barker*, however, where an undertaking given by a claimant's litigation friend does not bite, she *will* typically be liable for costs, but "*with the important caveat*" that the court is exercising a discretion. There is no "automatic" personal liability in the case of a claimant's litigation friend (absent an undertaking), and it seems to me that the position cannot be different for a claimant's representative appointed under CPR 19.12(1), where there is no requirement for any undertaking to be given.

137. Moreover, it seems to me that there is an explanation for the absence of any requirement for an undertaking in the case of someone appointed to represent a claimant's estate pursuant to CPR 19.12(1). That is because, by definition, when a representative is appointed pursuant to CPR 19.12(1), the claim will have already been commenced, and the representative will not obviously be responsible for what has already happened. Where a potential claimant has died *before* the claim has been commenced, it is only a Personal Representative who can bring the claim (as Richard Smith J pointed out in paragraphs 13 and 14 of *Borlakova*), and the costs liability of such a person is different, as explained above. A claimant's litigation friend will generally be required from the outset of a claim, because CPR 21.3(4) provides that any step taken before a child or protected party has a litigation friend has no effect unless the court orders otherwise. Such an appointee will, therefore, be responsible for the decision to launch the claim and its subsequent conduct.
138. A claimant might, of course, lose capacity during the course of proceedings, in which case a litigation friend would need to be appointed at that later stage, but that situation is relatively unusual. Pursuant to CPR 21.6(5), the court would need to satisfy itself that the appointee would be willing to pay any costs ultimately ordered, which would require the appointee to be aware of, and accept, that risk. There is no equivalent condition in CPR 19.12.
139. Returning to the principles applicable to costs orders against representatives appointed pursuant to CPR 19.12, just as with a litigation friend, there is also, in my judgment, no presumption that a *defendant's* representative should bear costs which the estate would have been ordered to pay. Similar factors to those applicable to a litigation friend might justify such an order, including bad faith, improper or unreasonable behaviour, or the prospect of personal benefit. That approach seems to me broadly consistent with the outcome in the *Heating Electrical* case, although HHJ Langan QC did not analyse the principles in precisely the same way. This approach is principled and accords with the overriding objective, in my view, because a claimant who brings a claim against a defendant cannot reasonably anticipate that anyone other than the defendant might become liable for his costs if he wins. If the defendant dies, then provided the defence is thereafter conducted reasonably, liability for the claimant's costs should come from the deceased defendant's assets, which were always the potential pool for the claimant's recovery of costs. If, however, the representative conducts the defence in bad faith, or improperly, or unreasonably, the representative will potentially have caused the claimant to incur costs over and above those which

would always have been incurred simply because the claim had been brought. In those circumstances it is fair that the representative should have to bear those costs.

140. Since these are, in my judgment, the principles applicable to an award of costs against a representative appointed pursuant to CPR 19.12, it follows that there is no general principle that such a representative takes on personal liability for all costs payable by the estate as a matter of law, as would be the case if a Personal Representative had been appointed. It also follows that Master Kaye, who was not shown the authorities which have been cited to me, made an error of principle when ordering the Claimants to pay the costs on that basis. Although the Appellant was representing a claimant's estate, the Master nevertheless had a discretion to make an order against her which was different from the order made against the estate. The Master did not consider whether she had a discretion, nor did she exercise any discretion, or consider how the particular circumstances were relevant to the Appellant's potential personal liability for costs. Accordingly, in so far as the Order imposes personal liability on the Appellant, it cannot stand.

Exercise of discretion

141. The parties were agreed that, if I reached the conclusion that the Master had erred in principle, rather than remitting the matter to her (as had been suggested in the Appellant's Notice) I should exercise the discretion myself. That seems in accordance with the overriding objective, in the interests of saving costs and court time, and I consider that the Master's judgment and the transcript of the submissions that were made to her give me a sufficient basis for doing so. I must exercise the discretion with a view to giving effect to the overriding objective.
142. There can be no doubt in this case that the Appellant was appointed as the representative of a *claimant*. As I have said, the starting point generally applicable in such a case is that the representative should be ordered to pay the costs, if such an order would have been made against the estate, but always subject to the court's overriding discretion in the particular circumstances.
143. In my judgment, the particular circumstance applicable here is that the Appellant was only appointed as a representative on 14 March 2025. In my view, on the facts of this case, that factor points overwhelmingly towards exercising my discretion to make an order which departs from the general starting point in respect of the period prior to that date.
144. By the time the Appellant was appointed, the proceedings had been on foot for nearly five years. During that time, as Master Kaye explained in her judgment, the conduct of the claim had been "*chaotic*", Mr and Mrs O'Boyle and their legal team had been unable to formulate a viable claim and there had been multiple breaches of orders. There is no evidence that the Appellant was in any way responsible for any of that. On the contrary, as I have mentioned, the Master made express findings that the delay in the proceedings was "*directly attributable to the failings on the part of the Claimants' legal team*" and that it was clear that neither the Appellant nor Mrs O'Boyle had "*any real sense of what has been going on.*" There is, therefore, no causal link between the Appellant and the costs incurred by Mrs Wallis prior to March 2025. That strongly suggests that the Appellant should have no liability for costs before that.

145. That conclusion is supported by the policy consideration referred to by Newey LJ in the *Barker* case. It is in the interests of justice that individuals are willing to step forward to act as representatives. At the time of agreeing to act, individuals might not have much idea about the merits of the claim, or what has happened so far (as the Master expressly found in the Appellant's case). They could not, therefore, be blamed for being unwilling to act if they thereby automatically become personally liable for all the costs incurred to date, without having the means to reimburse themselves from the estate, or to ascertain whether the estate is good for the money. It seems to me, therefore, that (whilst the exercise of discretion must always be based on the facts of the particular case) the court should be cautious before imposing personal liability on a representative for the period prior to their appointment unless there is a good reason for doing so. Good reasons might include prior involvement with, or funding of, the claim, or a clear acceptance by the representative of the potential liability for costs at the time of the appointment.
146. Moreover, it is of particular assistance to the court, and indeed to parties in the position of Mrs Wallis, that responsible individuals are appointed as representatives, who are willing to take a fresh view of the proceedings and, if appropriate, to discontinue them or agree to them being struck out. In paragraph 36 of her judgment Master Kaye expressed gratitude to the Appellant and Mrs O'Boyle for taking that responsible approach. In circumstances such as that, therefore, it is doubly important to treat representatives fairly by not imposing liability on them for costs which they did not cause.
147. I do not see how it could be said that Mrs Wallis is prejudiced by that outcome. As I have said, Ms Gleyze submitted that the Appellant had said she was planning imminently to apply for letters of administration and Mrs Wallis should not be worse off than she would have been if that application had been made and granted. Moreover, the Appellant had provided a signed Consent to become a representative, by which Ms Gleyze said the Appellant was effectively adopting the claim as a whole, including accepting the risk of an adverse costs award in respect of the prior conduct of the claim.
148. The fact that the position might have changed had letters of administration ultimately been granted does not, in my judgment, mean that the Appellant should be treated as if they had been. As I have mentioned, the evidence suggested that there had been difficulties in ascertaining Mr O'Boyle's assets and liabilities and it does not seem to me reasonable for anyone to have assumed that the application for letters of administration would proceed swiftly, if it proceeded at all. So far as the Appellant's Consent document is concerned, it was directed at representation of the estate for the future, it made no reference to what had happened already, and there is nothing in its wording which could reasonably be interpreted as accepting the risk of being ordered to pay all of the estate's costs to date.
149. Up until she learned of Mr O'Boyle's death, Mrs Wallis can have had no reasonable expectation that, if she defeated the claim, her costs would be paid by anyone other than Mr O'Boyle, or his estate if he died, and Mrs O'Boyle. Whilst it is regrettable that Mrs Wallis had to incur the costs of this "*chaotic*" claim at all, it would not, in my judgment, accord with the overriding objective to allow her now also to recover those costs from the Appellant, merely because the Appellant was willing to act as representative at a late stage of the claim.

150. In those particular circumstances, I will direct that Appellant is not personally liable for Mrs Wallis's costs prior to 14 March 2025. The Master's Order for indemnity costs will, of course, continue to apply unchanged so far as concerns the liabilities of Mr O'Boyle's estate and Mrs O'Boyle.
151. So far as Mrs Wallis's costs between 14 March 2025 and 18 July 2025 (the date of the Order) are concerned, there does not seem to me to be any good reason not to apply the general rule that, as a claimant's representative, the Appellant should be liable for those costs. Once she was appointed, the Appellant was able to decide whether or not to continue the claim and, whilst it continued, she can be said to have had some part in causing Mrs Wallis to incur costs. On the basis of the Master's findings, Mrs O'Boyle does not appear to have been the driving force behind these proceedings and, as representative of Mr O'Boyle's estate, the Appellant seems likely to have had greater (or at least as much) influence over the conduct of the proceedings as her mother. The Master found that TF were responsible for the way the claim was mishandled and it may well be that, at least initially, the Appellant personally had insufficient knowledge to exercise meaningful control over what was happening. She is not a lawyer, and it would take anyone time to get up to speed with the lengthy history of the case. Nevertheless, Master Kaye rightly said that, as between one party to a claim and another, there is no distinction to be drawn for costs purposes between a party and his lawyers. If the Appellant was not properly advised by TF about the risk of personal liability for costs after her appointment, that is not something which should affect Mrs Wallis's entitlement to recover her costs from a party which caused them.
152. Mr Asghar submitted that I should apply the approach in *Heating Electrical*, which he characterised as only holding a representative personally liable for costs where there has been improper or unreasonable conduct. As I have explained, however, that approach is appropriate for a defendant's representative but not a claimant's representative, and (although HHJ Langan QC made no express distinction between claimants and defendants) Mr Lowe and Mr Hussain were, in substance, representing a defendant in that case. Whilst it is clear from *Barker* that there can be arguments about whether a particular party is truly a claimant, I do not consider that there is any basis on which I can properly treat the Appellant as a defendant's representative in this case. As I have explained, whether Mrs Wallis continued to incur costs was under the Appellant's control (along with Mrs O'Boyle).
153. I will, therefore, order that the Appellant is personally liable, along with Mr O'Boyle's estate and Mrs O'Boyle, for Mrs Wallis's costs incurred after 14 March 2025.
154. It does not necessarily follow, however, that those costs should be assessed on the indemnity basis so far as the Appellant is concerned. The Master ordered all costs to be assessed on that basis, but it appears from paragraphs 42 and 43 of her judgment that she did so on the footing that she was "*considering the question of indemnity costs by reference to the Claimants' conduct over the entire period of the claim not just the Claimants' own conduct in the last three weeks.*" That approach was, of course, founded upon the error of principle which I have held she made concerning a representative being personally liable for whatever costs are ordered against the estate.

155. It is, of course, a fact that TF continued to represent the Claimants for a substantial period between 14 March 2025 and 18 July 2025. It is also the case that the Master's finding that TF's conduct was clearly outside the norm throughout the entire history of the claim has not been appealed. Nevertheless, once a distinction is drawn between the Appellant and Mr O'Boyle's estate for the purposes of assessing costs, and in circumstances where I am only considering the period between 14 March 2025 and 18 July 2025, the Master's approach to indemnity costs as against the Appellant requires reconsideration. The issue as to whether *the Appellant* should pay costs on the indemnity basis depends, in my judgment, on an analysis of the conduct of the proceedings between those two dates, rather than before then, although I agree that TF's conduct is to be regarded as the Appellant's conduct from 14 March 2025 until they were disinstructed. The Master did not conduct such an analysis.
156. Based on the transcript of the hearing on 18 July 2025 and the Master's judgment, it appears that the following relevant events occurred during that period:
- i) On 17 March 2025, the Claimants made an application for permission to rely on the draft eighth version of the Particulars of Claim, which adopted the amendments made during Mr O'Boyle's life with some further additions.
 - ii) It was that eighth version of the pleading which was advanced at the hearing on 15 April 2025. As already mentioned, that hearing was adjourned part heard.
 - iii) On 17 April 2025 Mrs Wallis made an offer to accept £101,000 in full and final settlement of the proceedings, but that was not accepted.
 - iv) On 29 April 2025 Mr Sclater filed and served a witness statement on behalf of the Appellant, which the Master found (at paragraph 25 of her judgment) "*raised more questions than it than it answered about what [parts of the proposed amendments] in fact Mr O'Boyle had approved prior to his death.*"
 - v) On 13 May 2025 Mrs Wallis's solicitors wrote asking about whether Mr O'Boyle had given authority for the most recent draft of the particulars of claim before he died. That letter went unanswered.
 - vi) Master Kaye was told that the Appellant and her mother had been unrepresented for about three weeks by the time of the hearing on 18 July 2025. That would mean that TF were disinstructed in the last week of June 2025.
 - vii) On around 7 July 2025 notification of a change of legal representative was filed, presumably indicating that TF were no longer instructed, but the form is said to have been filled out incorrectly.
 - viii) Letters sent to TF on behalf of Mrs Wallis asking if they were still instructed went unanswered until the day of the hearing on 18 July 2025, when it was confirmed that they were no longer instructed, although at some stage TF had written about the substance of the claim as if they were still instructed.

- ix) It appears that in the meantime Mr James O'Boyle (the Appellant's brother) sought to make contact with Mrs Wallis's solicitors, who informed him that, before they could discuss the case with him, they would at least need some written confirmation from the Appellant and Mrs O'Boyle that he was entitled to act for them. No such confirmation was received. Mrs Wallis's solicitors then incurred the additional cost of serving all documents on each of the Appellant, Mrs O'Boyle, TF and Mr James O'Boyle.
 - x) Also on around 7 July 2025, Mrs Wallis again offered to accept £101,000 in full and final settlement payable in instalments, or else to accept £75,000 within 14 days.
 - xi) I understand the Appellant and Mrs O'Boyle at some stage informed Mrs Wallis that they did not have enough money to pay and would be bankrupted by the sums being sought, but nevertheless made an offer of £20,000, and later of £40,000. That was said to be based on the value of the estate, but the evidence of value provided was insufficient and the offer was rejected.
 - xii) These assertions as to the value of the estate led Mrs Wallis to have concerns about whether the assets of the estate were being dissipated, and Ms Gleyze made a suggestion to the Master that the Appellant and Mrs O'Boyle had been deliberately dragging their feet in relation to discontinuing so that they could dissipate the estate's assets, and their own assets, in order to avoid paying Mrs Wallis.
 - xiii) The Appellant and Mrs O'Boyle were told by Mrs Wallis's solicitors that they could discontinue the claim and were directed to the appropriate form to fill out for that purpose, but they declined to do so.
 - xiv) Mrs Wallis and her team were unaware that Appellant and Mrs O'Boyle were not going to proceed with the claim until they said so at the hearing on 18 July 2025.
157. Ms Gleyze submitted to Master Kaye that all of these matters took the case out of the norm and that, amongst other things, if Mrs Wallis's offers had been accepted, or if the claim had been discontinued, at least the costs of the hearing on 18 July 2025 (of around £20,000) could have been avoided.
158. The Master summarised these matters in paragraph 40 of her judgment as follows:
- “The Claimants have been unrepresented for the last three weeks. The Defendant says that the Claimants' conduct in the last three weeks adds to the difficulties for the Claimants in relation to indemnity costs because they have not properly engaged despite the opportunities they have been given. Having heard from Mrs O'Boyle and Ms O'Boyle, I fully appreciate that they had not fully understood both the seriousness of the position they were in and quite what had happened. Unfortunately, however, the perception from the Defendant's point of view is therefore that they were not properly engaging. As a consequence they have been unable to salvage the position over the

last three weeks although frankly, it is not immediately clear to me how they could have done.”

159. In relation to the offers of settlement, she said in paragraph 42 that the Claimants might have benefitted from legal advice, but in the absence of a resolution, she was considering conduct over the entire period of the claim.
160. Plainly the Appellant and Mrs O'Boyle could have brought these proceedings to an end sooner. It is because they did not do so that I have held that the Appellant is liable for costs after her appointment. The question in relation to indemnity costs as against the Appellant, however, is whether what she (and TF) did in the period after she was appointed was unreasonable to the high degree required to take her (and TF's) conduct outside the “norm”, meaning the ordinary and reasonable conduct of proceedings. In my judgment, it was not.
161. The Claimants' application to amend the Particulars of Claim was made on 17 March 2025, the same day that the order appointing the Appellant was sealed. The Master ultimately made no finding as to whether Mr O'Boyle had, or had not, approved all the amendments prior to his death. Accordingly, whilst that issue undoubtedly caused Mrs Wallis to incur costs in the period after 17 March 2025 (which I have held that the Appellant must pay on the standard basis), it remains undetermined whether there was any *unreasonable* conduct in relation to the amendments made after Mr O'Boyle's death and, if there was, the majority (if not all) of that conduct must have occurred before the Appellant was appointed. The hearing on 15 April 2025 went part heard before the Master ruled on whether the amendments should be permitted or not. For the same reason, she never reached the point of deciding whether there had been a breach of any unless order, or whether relief from sanctions should be granted. There is, therefore, insufficient information to determine whether the Claimants' conduct of that particular hearing was unreasonable to a high degree. Plainly, the Master was not satisfied by the explanations subsequently given in Mr Sclater's witness statement of 29 April 2025 and I agree that TF's conduct of the case is open to criticism in that regard. Whilst all these points must be weighed in the balance, they do not, in my judgment, render the Appellant's conduct throughout the period after she was appointed outside the norm.
162. It seems to me that it was not unreasonable for a non-lawyer coming to a long-running case of this kind to take a little time to familiarise herself with it. Once she had done so, the decision to disinstruct lawyers who had been involved from the beginning cannot have been an easy one and was bound to take time. The offers of settlement may well have been reasonable in the sense that they involved a significant discount from the sums to which Mrs Wallis is likely to be entitled by way of costs. The Appellant, however, would not necessarily have known that without the benefit of proper legal advice and it may be that she and her mother were simply unable to pay £101,000, or even £75,000, as they said. I appreciate that Mrs Wallis is sceptical about that and is concerned that there may have been dissipation of assets, but the Master does not seem to have been shown any evidence of that. She certainly did not award indemnity costs on that basis. Indeed, she seems to have taken a largely benevolent view of the Appellant's conduct, but erroneously to have considered that she was bound to make the costs order against the Appellant which she would have made against the estate.

163. The Claimants could, of course, have discontinued the claim before the hearing, but I do not think it is unreasonable for them to have been cautious about doing that in a hurry, without the benefit of legal advice as to the consequences. Nor am I convinced that the costs of the hearing on 18 July 2025 could have been avoided if the Claimants had discontinued the claim, at least not in their entirety. It seems to me almost inevitable that there would have been an argument about the costs consequences of discontinuance.
164. Ultimately, whilst I accept that criticisms can be made about the Appellant's (and TF's) conduct, the crucial factor which outweighs all others, it seems to me, is that after years of the "*chaotic*" pursuit of a claim for which she was in no way responsible, it was the Appellant who finally got a grip on the matter. She took the prudent steps of first, disinstructing the lawyers who (in the Master's view) had caused so much delay and confusion, and secondly, of bringing the proceedings to an end. Just as I have said that the court should generally not discourage individuals from acting as representative by holding them liable for costs incurred before their appointment, I also consider that representatives who do their best to do the right thing once appointed should not be penalised for failure to meet unrealistically high standards of conduct. It seems to me that the Master considered that the Appellant had done her best in the circumstances and that there was little more that she could reasonably have done. It seems likely that, if the Master had not been persuaded to treat the Appellant and the estate as one and the same, she would not have ordered her to pay costs on the indemnity basis for the period after she was appointed.
165. So, as I have said, I do not consider that the Appellant's conduct between 14 March 2025 and 18 July 2025 was unreasonable to the high degree required to take her conduct outside the ordinary and reasonable conduct of proceedings so as to justify an award of indemnity costs. Accordingly, whilst she will also be liable with Mrs O'Boyle and Mr O'Boyle's estate for Mrs Wallis's costs between those dates, she will only be liable on the standard basis (although they will, of course, remain liable on the indemnity basis).

The payment on account

166. As noted above, the Appellant's Notice expressly appealed against the £100,000 payment on account contained in the Order, in so far as it applies to the Appellant personally. In paragraphs 51 to 55 of her judgment, the Master explained that she was exercising her discretion to award £100,000 by way of payment on account based on a total sum sought by Mrs Wallis of around £160,000. That amount was said to be the total of the costs which had been incurred throughout the entire course of the proceedings, less a sum of around £40,000 which had already been paid pursuant to previous interim payment orders.
167. There was no evidence before me as to the costs said to have been incurred by Mrs Wallis between 14 March 2025 and 18 July 2025. Nevertheless, given that the proceedings had been on foot for nearly five years by 18 July 2025, and given their "*chaotic*" nature throughout that time, it is reasonable to infer that the costs incurred in the last four months or so were materially less than the £160,000 total. It follows that, in the light of my decision that the Appellant is personally liable only for Mrs Wallis's costs incurred in those last four months, the Master cannot have exercised her discretion to order a payment on account of £100,000 against the Appellant

personally on a correct basis. That part of the Order must, therefore, be set aside in so far as it applies to the Appellant personally.

168. In the absence of any evidence about the costs incurred by Mrs Wallis between 14 March 2025 and 18 July 2025, the court is unable to exercise its discretion now to make a fresh order for an interim payment. Moreover, it seems to me that it would be wrong to make such an order without knowing how much TF has paid to compromise the wasted costs application. The total amount which now remains outstanding will obviously have been reduced by TF's payment. Ms Gleyze was unwilling to reveal the amount TF had paid because the settlement was confidential. I understand that reasoning, but it leaves me unable to make any reliable assessment of a suitable payment on account to order against the Appellant personally.

Conclusions

169. For the reasons I have given, my conclusions are in summary as follows:

- i) This appeal arises out of the Appellant's conduct of her role as representative of Mr O'Boyle's estate. That role is unaffected by her bankruptcy. Accordingly, she has standing to pursue the appeal.
- ii) A grant of an extension of time was implicit in Mellor J's order granting permission to appeal. If I am wrong about that, I would in any case have granted an extension now. The sanction of effectively dismissing the appeal would be out of all proportion to the (lack of) gravity of the two-week delay.
- iii) It is not, in my judgment, an abuse of process (or otherwise impermissible) for the Appellant to pursue this appeal against the Order, despite having accepted in other contexts that the Order imposes personal liability on her for costs. There is no inconsistency appealing an order, whilst accepting that it is effective unless and until set aside.
- iv) Master Kaye made an error of principle because she equated a representative appointed pursuant to CPR 19.12 with a Personal Representative and accordingly regarded the Appellant as personally liable for whatever costs were payable by the estate, as a matter of law.
- v) In my judgment, the correct principle is that, in every case involving a representative appointed pursuant to CPR 19.12, the court has a discretion concerning the representative's personal liability for costs and is entitled to have regard to the particular circumstances of the case. It will typically be just to order a claimant's representative to pay costs, if such an order would have been made against the estate, but the court always has a discretion.
- vi) The Master did not exercise any discretion, and accordingly her Order cannot stand. It was common ground that, in those circumstances, I should exercise the court's discretion myself, rather than remitting the matter to the Master.
- vii) In my judgment, it would not accord with the overriding objective for the Appellant to be held personally liable for Mrs Wallis's costs prior to 14 March 2025. The Appellant was in no way the cause of those costs and nothing she

said or did when applying to be appointed can reasonably be interpreted as accepting the risk of being ordered to pay the estate's costs up to that date.

- viii) It accords with the overriding objective for the Appellant to be held personally liable for Mrs Wallis's costs between 14 March 2025 and 18 July 2025, but in the Appellant's case those costs are to be assessed on the standard basis, rather than the indemnity basis. The Appellant's conduct of the proceedings between those dates was not unreasonable to the high degree required to take her conduct outside the "norm". On the contrary, she behaved reasonably and responsibly in bringing the proceedings to an end.
 - ix) The order for a payment on account of £100,000 must be set aside in so far as it affects the Appellant personally. In the absence of any evidence about the costs incurred by Mrs Wallis between 14 March 2025 and 18 July 2025 or how much has been paid by TF, I cannot make a fresh order for a payment on account now.
 - x) The appeal will, therefore, be allowed to the extent indicated above. For the avoidance of doubt, Mrs O'Boyle and Mr O'Boyle's estate remain liable for Mrs Wallis's costs throughout, assessed on the indemnity basis (except for those costs previously ordered on the standard basis, referred to in paragraph 2 of the Order).
170. I am grateful to both counsel for their thoughtful submissions. I invite the parties to agree an order to reflect my decision on the above issues, and to deal with any consequential issues, including costs. If they are unable to agree, I direct that (in the interests of keeping costs to a minimum) they file their rival formulations of the order together with short written submissions (of no more than ten pages each) within 14 days of this judgment being handed down, and I will decide the outstanding issues on the papers.