IN THE FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(AGRICULTURAL LAND & DRAINAGE, WESTERN AREA)
Case ref. ALT/W/SR/222

Between :

RICHARD ARTHUR BAILEY	**Applicant**
and	
DAVID JOHN LOCKITT	**Respondent**

Decision on Respondent's interlocutory application for permission to adduce expert evidence out of time heard by telephone conference on 19th February 2014

---

1. The substantive application in this case is for a direction entitling the Applicant to a tenancy of Hall House Farm, Rushton Spencer near Macclesfield ('the Holding'). The final hearing of that application has been fixed for two days starting on 26th February, a week today. This telephone hearing was originally convened to hear the Respondent's application for permission to adduce expert evidence out of time. There has been added to that today an application to strike out the substantive application on the ground that it is founded on a defective retirement notice.

2. Both parties were represented at this telephone hearing by counsel – the Respondent by Ms Caroline Hutton instructed by solicitors Hibberts LLP, the Applicant by Mr Christopher McNall instructed by solicitors Nigel Davis & Co.

3. Given that the strike-out application might be determinative of the substantive application, it would ordinarily have been sensible to hear and determine that first. However, Mr McNall and his instructing solicitor had both been in court this morning and had not seen the application or had time to consider it until very shortly before this hearing. In that circumstance, Ms Hutton properly recognised that it would not be fair or reasonable to expect Mr McNall to deal with it today. It was therefore agreed that the application for permission to adduce expert evidence out of time should be heard today, leaving the strike-out application to be determined as a preliminary issue at the start of the substantive hearing next week. For the reasons which are set out below, the Tribunal's decision on this interlocutory application is that Respondent is refused permission to adduce expert evidence out of time.

The relevant legal principles

4. The procedural rules governing expert evidence are set out in rule 19 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('2013 Rules'). Subparagraph (2) of this rule provides that no party may adduce expert evidence without the permission of the Tribunal. This is reiterated in paragraph 10 of this Tribunal's Procedure Guide for Final Preparations and Hearing sent to each party with the Notice of Hearing.

5. On 14th May 2013 directions were given following a case management hearing attended by the representatives of both parties. These included permission for each party to adduce expert evidence on (so far as relevant to this application) any issue as to the Applicant's suitability to

become tenant of the Holding. As is usual, the Tribunal imposes a timetable for the obtaining and disclosure of expert evidence after discussion with and agreement by the parties' representatives. No specific sanction was imposed in the event of non-compliance with these directions but the permission to adduce expert evidence was conditional upon compliance. The parties were advised that any application to vary the directions given should be made in writing stating the variation sought, the reason for seeking it and whether such variation has been agreed between them.

6. In *Mitchell v News Group Newspapers* [2013] EWCA Civ 1357 Lord Dyson MR, giving the judgement of the Court of Appeal, gave guidance as to how the courts should apply the new, stricter approach to non-compliance with the provisions of the Civil Procedure Rules in accordance with the revised version of CPR 3.9. The revised CPR 3.9 requires the court to consider all the circumstances of the case so as to enable it to deal justly with the application before it, including the need (i) to conduct litigation efficiently and at a proportionate cost and (ii) to enforce compliance with rules, practice directions and orders. At paragraph [37] of his judgement Lord Dyson observed that the requirement to deal "justly" with the application echoes the phrasing of CPR 1.1 which sets out the "overriding objective" of the CPR. He accepted that regard should be had to "all the circumstances of the case" but said that effect of CPR 3.9 was that such circumstances should generally be given less weight than the two considerations expressly mentioned in the rule. In paragraphs [40] – [41] of his judgement he gave guidance as to how this new approach should be applied in practice:

> "40. ... It will usually be appropriate to start by considering the nature of the non-compliance with the relevant ... court order. If this can properly be regarded as trivial, the court will usually grant relief provided that an application is made promptly. ... The court will usually grant relief if there has been no more than an insignificant failure to comply with an order: for example, where there has been a failure of form rather than substance; or where the party has narrowly missed the deadline imposed by the order, but has otherwise fully complied with its terms. ...
>
> "41. If the non-compliance cannot be characterised as trivial, then the burden is on the defaulting party to persuade the court to grant relief. The court will want to consider why the default occurred. If there is a good reason for it, the court will be likely to decide that relief should be granted. For example, if the reason why a document was not filed with the court was that the party or his solicitor suffered from a debilitating illness or was involved in an accident, then, depending on the circumstances, that may constitute a good reason. Later developments in the course of the litigation process are likely to be a good reason if they show that the period for compliance originally imposed was unreasonable, although the period seemed to be reasonable at the time and could not realistically have been the subject of an appeal. But mere overlooking a deadline, whether on account of overwork or otherwise, is unlikely to be a good reason. We understand that solicitors may be under pressure and have too much work. It may be that this is what occurred in the present case. But that will rarely be a good reason. Solicitors cannot take on too much work and expect to be able to persuade a court that this is a good reason for their failure to meet deadlines. They should either delegate the work to others in their firm or, if they are unable to do this, they should not take on the work at all ... the need to comply with rules, practice directions and court orders is essential if litigation is to be conducted in an efficient manner."

7. Although the CPR do not apply to tribunals, Rule 3(1) of the 2013 Rules does provide that the overriding objective of the 2013 Rules is to enable the Tribunal to deal with cases "fairly and justly". Rule 3(2) specifies examples of those considerations relevant to dealing with a case fairly and justly. These are:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

Rule 3(3) requires the Tribunal to seek to give effect to the overriding objective when exercising any power under the Rules or interpreting any rule or practice direction. Finally, Rule 3(4) requires the parties to help the Tribunal to further the overriding objective and to cooperate with the Tribunal generally.

8. It is important to recognise and maintain the essential distinction between tribunals and courts – namely that tribunal proceedings should be more informal, flexible and cheaper than court proceedings, so far as may be practicable and commensurate with the overriding objective imposed by the 2013 Rules (and in practice adhered to by the former Agricultural Land Tribunal for many years before July 2013). A consequence of this distinction is that tribunals are not bound to follow decisions of the higher courts in cases concerning the interpretation and application of the CPR. That said, the guidance given by the Court of Appeal in *Mitchell* quoted above is plainly based on fundamental principles of fairness and justice and, as such, is of general application.

9. I was provided with the official transcript of a decision of Judge Sinfield sitting in the Upper Tribunal of the Tax and Chancery Chamber: *HMRC v McCarthy & Stone (Developments) Ltd* PTA/345/2013. In that case one of the matters the Judge had had to consider was whether the Court of Appeal's guidance in *Mitchell* applied to that tribunal when deciding whether to grant an extension of time to a party who has failed to comply with a time limit laid down in the *Tribunal Procedure (Upper Tribunal) Rules 2008.* The exact facts and circumstances of that case have no direct relevance to this case but paragraphs 43 – 47 of the judgement contain a helpful discussion of the point. The Judge concluded that the *Mitchell* guidance is as applicable to proceedings in the Upper Tribunal as to courts subject the CPR. I am satisfied that it applies equally to this application, particularly as both parties have been represented by solicitors throughout the proceedings who ought to be well aware of the existence, purpose and effect of the 2013 Rules and their overriding objective and to know that their acts and omissions will be judged accordingly.

The relevant procedural history and circumstances of the case

10. The incontestable facts and procedural history of the case up to the making of this interlocutory application are as follows:

25/04/2012	Substantive application issued.
15/06	Respondent's reply in Form S5R. This alleged that Applicant not eligible to make application because he had made a previous application on an earlier retirement notice and therefore this application should be struck out as an abuse of process. It also put the Applicant to proof generally of his eligibility to make the application and of his suitability to become a tenant of the

	holding.
03/05/2013	Respondent abandons strike-out application (which had been listed for determination as a preliminary issue on 8th May).
14/05	Directions given for future management of substantive application. These included the direction permitting the parties to adduce expert evidence on any issue as to the Applicant's suitability to become a tenant of the holding and the usual consequential directions as to exchange of experts' reports (by 4pm 12th July 2013), the holding of experts' without prejudice discussions (within 14 days thereafter) and the provision (within 7 days after that) of a joint statement by the experts of those issues agreed and those not agreed together with a summary of the reasons for disagreement.
05/07	Applicant served a witness statement from his expert, Mr David Hughes, exhibiting a business plan (dated February 2013) "to assess the current and proposed farming business" at the holding of the Bailey family farming partnership. [I comment that, although plainly intended to be an expert's report, this does not comply with the requirements for experts' reports as set out in Rule 29 of the *Agricultural Land Tribunal (Rules) Order 2007* or Rule 19 of the *Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013* (which had come into force on 1st July 2013).] The Applicant's own (first) witness statement had been served in April 2013. No witness statements or expert's report were served on behalf of the Respondent.
07/11	In a letter from the Respondent's solicitor to the Tribunal Secretary (in response to her request made on 17th October for dates when the parties, their respective representatives and witnesses would not be available for a hearing in November and December 2013 and January 2014) it was said that the earliest date possible for all such persons would be 8th February. In the same letter it was said, "It has now come to our attention that Mr Bailey may have been renting land at the Holding" and the Tribunal's "indulgence" was sought to allow the Respondent to request further evidence from the Applicant, including his final accounts for 2012/13 and his 2013 SFP. The letter referred to the Respondent's "expert advisor", Mr Alan Edwards, and said that, "In the opinion of our expert," clarification of the matters mentioned "may have some bearing on Mr Bailey's case". This letter had been copied to the Applicant's solicitors.
14/11	I declined to make a direction for specific disclosure on the basis of that letter but observed that, if the Applicant had not been given prior notice of the request for these documents and other information, he should be given an opportunity to provide such disclosure voluntarily.
13/12	The Applicant's solicitors wrote to the Respondent's solicitors confirming that the 2012/13 accounts and the 2013 SP5 would be provided and that the Applicant's instructions in regard to the queries raised about grazing licences and the income received from these would be obtained.
18/12	The Respondent's solicitors confirmed they had not contacted the Applicant's solicitors before writing to the Tribunal on 7th November "because we are trying to establish that the Tribunal would not have any objection to raising our enquiries at that stage of the proceedings".

22/01/2014	The Respondent's solicitors sent a chasing letter to the Applicant's solicitors.
27/01	The parties were notified that the hearing of the substantive application had been fixed for 26th and 27th February in accordance with the listing information provided by them.
29/01	The Applicant's solicitors supplied the documents and information which had been requested.
03/02	The Respondent's solicitors wrote to Tribunal Secretary "to respectfully ask the Tribunal to postpone the hearing" because of the late disclosure of the above, asserting that "the consequences of this delay is that our Expert Witness ... will not be able to assess the new information until 9th February" because he is away and will not be back until that date and that "we are not in a position to agree the hearing bundles ... until Mr Edwards has been able to assess the relevance of the additional documents and to provide a witness statement".
06/02	I dismissed the Respondent's application for postponement of the hearing for the reasons set out in a letter from the Tribunal Secretary of this date.

11. In a letter to the Tribunal Secretary dated 10th February 2014 and received by e-mail on 11th February the Respondent's solicitors said:

"Further in this matter we write to inform the Tribunal that our Client's Expert Witness, Mr Alan Edwards, has now returned from his holidays and prepared a draft report for our Client. However, it has transpired that the additional information now available to Mr Edwards ... needs clarification so that the figures contained in the Applicant's Business Accounts can be reconciled and Mr Edwards' report completed. We have asked the Applicant's Solicitors to seek this information from their client ... .

"We now refer to paragraph 10 of the Procedure Guide and respectfully ask the Tribunal's permission to rely on the report which Mr Edwards is preparing, and to call him as a witness at the hearing. We will be able to supply the report to the Tribunal and serve a copy on the Applicant's Solicitors very soon after we have received the requested information."

An e-mail from the Tribunal Secretary to the parties' representatives sent out the following day communicated my observations that the Tribunal had not received any application on behalf of the Respondent for permission to adduce expert evidence out of time and that any such an application should be made specifically, properly and promptly.

12. In the first of two letters to the Tribunal Secretary sent by e-mail on 12th February the Respondent's solicitors wrote as follows:

"We refer to our letter to you dated 10th February with a request to allow us to submit a Witness Statement from our client's Expert Witness. ...

"We would like to start by sincerely and profusely apologising to the Tribunal for not submitting the Expert Report within the deadline of the agreed direction. Unfortunately, the circumstances at the time were that the employee of the firm dealing with the matter had failed to instruct Mr Edwards to consider evidence and to prepare the Report and when the matter was passed on to another employee it was too late to produce the Report in time. We should have of course informed the Court and Messrs Nigel Davis at the time and this was overlooked. For this we also apologise.

“The reason that we particularly wanted to instruct Mr Edwards was that he was involved in advising our client during the previous application by the Applicant in 2002. He knows the Holding well and is familiar with the trading history of the Applicant’s business.

“It was further unfortunate that in July Mr Edwards was away quite a lot and then on his return he had to consider the evidence available from the Applicants but also investigate validity and relevance of information provided by third parties.

“Following this period we requested specific information from the Applicant and this was not provided till 30 January 2014. You are of course familiar with our request for the postponement of the hearing owing to the delay with receiving the information and we refer to the latter of the Regional Judge , dated 6th February 2014 which addresses our request in a very detailed way and, quite rightly, points out to shortcomings of both parties in dealing with this request.

“It was, of course, unfortunate that Mr Edwards went away on holiday and was unable to consider the new information until 10 February 2014. However, his draft statement, based on the information previously obtained had already been considered and was updated immediately on Mr Edwards’ return was ready and has been updated to accommodate the latest information from the Applicant. The additional request for clarification (our letter to the Messrs Nigel Davis solicitor of 10 February) has arisen from the need to qualify the latest information and the nature of the information requested was not outside the personal knowledge of the Applicant.

“Whilst accepting that through a combination of facts our request to the was submitted at a late stage, we would like to point out that we had not assumed that our evidence would be allowed but we sought the permission from the Tribunal albeit at a very late stage when we had sufficient information to be able to provide that Report. May we also respectfully point out that, had the initial request for information in November 2013 been dealt with diligently by the Applicant, we would have had the report ready in December. ...

“There are two weeks left before the Hearing and clearly the Applicant has the benefit of the advice from Counsel who has been involved in this matter from the beginning and should be able to assess the weight of our Expert’s submission. ...

“Clearly, if our report is allowed to be submitted today, there will be ample time for the advocate to consider it and advise on it, whilst preparing his client’s case for the hearing. May we add that the report is not a lengthy document and is prepared by reference to the Applicant’s documents which should be familiar to the advocate.

“May we respectfully point out that if the report is not allowed to be submitted, this will clearly adversely affect the Respondent’s case. There have been shortcomings in the course of this matter on both sides and, perhaps, a co-operation at this stage (on the basis that no party would be adversely affected) could make some amends for that”.

The contents of this letter effectively comprised the Respondent’s explanation for the failure to comply with the directions concerning expert evidence of 14th May 2013 and the lamentable lateness of the application so close to the date fixed for the start of the substantive hearing, which is why I have thought it appropriate to quote it more or less in full. This explanation did not significantly change at the hearing.

13. In the second letter, presumably written after receipt of my observations noted at the end of paragraph 11 above, the Respondent’s solicitors said,

“our Client’s Expert Witness, Mr Alan Edwards, has ... prepared a draft report for our Client. However, it has transpired that the additional information now available to Mr Edwards ... needs clarification so that the figures contained in the Applicant’s Business Accounts can be reconciled and Mr Edwards' report completed. We have asked the Applicant's Solicitors to seek this information. ...

"We now refer to paragraph 10 of the Procedure Guide and respectfully ask the Tribunal's permission to rely on the report which Mr Edwards is preparing, and to call him as a witness at the hearing. We will be able to supply the report to the Tribunal and serve a copy on the Applicant's solicitors very soon after we have received the requested information".

14. On 17th February the Applicant's solicitors delivered to the Tribunal Secretary Mr McNall's written submissions for the hearing of this application together with a chronology and a second statement from the Applicant. Both in the submissions and the witness statement the point was quite rightly taken that, as at that date, Mr Edwards' report had not been disclosed, even in draft form. Later that day the Respondent's solicitors did provide copies of a draft report from Mr Edwards to the Applicant's solicitors and the Tribunal Secretary. On the following day they also e-mailed a copy of a brief statement by Mr Edwards and Ms Hutton's written submissions for this application together with a bundle of documents to be referred to at the hearing. [I observe in passing that this draft report and the statement taken together do not strictly comply with the requirements of rule 19(5) of the 2013 Rules as to the form and content of an expert's report.]

Mr Edwards' draft report

15. This comprises: (i) a summary of the Bailey family partnership's trading accounts for the years 2006/07 to 2012/13 followed by some general and hardly reasoned assertions to the effect that this business has not been viable "for a long time"; (ii) a comparison of the 2012/13 forecast prepared by the Applicant's expert against the actual results for that year and the assertion that "Clearly there is no relationship between the 2013 forecast and what actually happened"; and (iii) a series of unexplained print-outs apparently derived from some form of proprietary computer accounting or budgeting software.

16. The purpose of the report appears to be to challenge the Applicant's suitability to become a tenant of the Holding, although I note that paragraph 10 of Ms Hutton's written submissions also contends that "The loss-making financial status of the existing farming business ... as analysed by Mr Edwards indicates that it is highly unlikely that he fulfils the livelihood criterion for eligibility". Both are important issues: the burden of proving eligibility and suitability rest on the Applicant.

17. I have not had time to consider the report in detail, nor is it necessary that I should do so for the purposes of determining this application. My impression is that it was prepared in something of a hurry. It certainly appears to lacks the depth and clarity of reasoning reasonably be expected in an expert's report. I think it is appropriate to express those comments here for two reasons. Firstly because, were I to grant permission for expert evidence to be adduced from Mr Edwards, that evidence would not in reality be limited to his report; I have little doubt that Ms Hutton would require and receive detailed assistance from Mr Edwards for the purpose of preparing her cross-examination of the Applicant and Mr Hughes and would be anxious to have Mr Edwards make good the apparent defects of his report when giving his oral evidence. Secondly, as it stands the report does not give the Applicant or Mr Hughes much of a basis on which to prepare a response to Mr Edwards' evidence.

The Tribunal's conclusions

18. The nature of the Respondent's non-compliance with the Tribunal's direction in regard to expert evidence given on 14th May 2013 cannot be categorised as trivial. The plain fact is that no expert's report was served on the Applicant within the time limit ordered or at all. As a result, the without prejudice discussion between experts for the purpose of clarifying the issues

in dispute and the reasons for such dispute never took place and no joint statement was ever produced. I must therefore consider the Respondent's explanation for the non-compliance.

19. It is apparent from the Respondent's Solicitors' first letter of 12th February that the intention of instructing Mr Edwards to provide expert evidence had been formed at the latest shortly after the abandonment of the preliminary issue in May 2013 (and probably well before then). The explanation proffered for failing to obtain and disclose a report from Mr Edwards within the time limit imposed is that an employee of the Respondent's solicitors had failed to provide Mr Edwards with the necessary (or possibly any) instructions for him to prepare and provide a report within that time limit. That plainly cannot constitute a good reason.

20. The Respondent's solicitors recognise that the Tribunal and the Applicant's solicitors ought to have been told of this failure once it had been discovered (their letter does not say when that was except that it was by then too late to comply with the timetable), but this too was overlooked. No explanation is proffered for this second oversight.

21. They then say it "was unfortunate" that Mr Edwards was away "quite a lot" in July. That can be nothing to the point in light of the admission that the giving of the necessary instructions had been overlooked anyway. But even had Mr Edwards' absence in July been a genuine part of the explanation for the failure to comply, the proper step would have been to apply for an extension of time as soon as it became apparent that the timetable could not be adhered to. No such application was ever made.

22. The Respondent's solicitors then say that, upon his return after his absences in July, Mr Edwards had to consider the evidence disclosed by the Applicant and investigate the validity of evidence from third parties. The reference to evidence disclosed by the Applicant must be to the Applicant's own witness statement (served in April 2013), Mr Hughes' forecast budgets and the supporting documents (both disclosed in early July 2013). What the evidence from third parties the validity of which Mr Edwards apparently had to investigate was never clarified. No date was given for the period when this consideration and investigation took place.

23. No explanation whatsoever was advanced as to why no application for an extension of time was applied for, or even requested informally of the Applicant's solicitors. Instead it is said that "following this [unspecified] period" further information was requested from the Applicant. In fact no request for further information appears to have been made before the Respondent's Solicitor's letter to the Tribunal of 7th November.

24. No consideration appears to have been given to the possibility of disclosing a report based on the information already available with a view to providing a supplemental report later if necessary. Nothing at all appears to have been said or done to inform the Applicant's solicitors that the Respondent was intending to adduce expert evidence until the informal application to postpone the hearing was made on 3rd February this year.

25. This series of explanations cannot amount to a good reason for the Respondent's non-compliance with the directions of 14th May 2013. In fairness to Ms Hutton, doing the best she could with the case in which she had only very recently been instructed, I do not think she seriously argued the contrary.

26. There was indeed an apparently unreasonable and certainly unexplained delay on the part of the Applicant and or by his solicitors in providing the documents and information sought in the Respondent's letter to the Tribunal of 7th November 2013 which had been copied to the Applicant's solicitors that day. That does not justify the Respondent's solicitor's failure to do anything to rectify their own serious and longstanding default. They could have referred the matter back to the Tribunal at any time between mid-November with an application for a direction for specific disclosure and, more importantly, coupled that with an application for the

permission they seek by this application made on 12th February this year. Even when making their informal and inadequately supported application for postponement of the substantive hearing on 3rd February, they failed to make the necessary application for permission to adduce expert evidence from Mr Edwards out of time, or even to notify the Applicant's solicitors that they would need to do so.

27. In the absence of any good reason for the non-compliance, I must turn to consider whether there is any circumstance of the case which, having regard to the need to give effect to the overriding objective set out in rule 3(1) of the 2013 Rules, would justify granting the permission sought as being necessary to enable the Tribunal to deal justly with this case. Put another way, I must identify, weigh and balance the possible prejudice to the Applicant were I to grant permission and the possible prejudice to the Respondent were I to withhold permission against the considerations specified in rule 3(2) of the 2013 Rules and set out in paragraph 7 above.

28. The material factors from the Applicant's point of view seem to me to include the following –

(1) The financial and other uncertainties and the stress and anxiety consequent upon them which he faces for so long as his application remains undetermined.

(2) The fact that a year has already been lost because of the Respondent's pursuit until days before it was to be decided of the unmeritorious point raised under section 51(2) of the *Agricultural Holdings Act 1986.*

(3) The additional time, effort and expense which he undoubtedly will have to undertake and incur in order to deal with the case put forward by the Respondent so very late in the day on the basis of what appears to be the unacceptably unreasoned draft report of Mr Edwards and in anticipating the likely development of what is said in that report by Mr Edwards in his oral evidence to be given after the Applicant and his own expert, Mr Hughes, have had to give their evidence.

I must also consider whether and, if so, to what extent such prejudice can be mitigated by the postponement of the substantive hearing fixed for next week and any order as to costs which it lies within the power of the Tribunal to make.

29. The material factors from the Respondent's point of view seem to be or include –

(1) Loss of the opportunity to put before the Tribunal evidence which, if accepted as credible, might have the effect of showing that the Applicant is ineligible to make the substantive application because he cannot meet the livelihood condition and, further, cannot satisfy the Tribunal that he would be suitable to become a tenant of the Holding.

(2) Were the Respondent to succeed on either of these important issues, he would defeat the application and thus be enabled to recover the Holding for the occupation, use and benefit of himself and his family in their own farming business.

(3) Although it is possible that the Respondent might have some remedy against his solicitors to the extent that it would appear to be their negligence which has been the cause of the non-compliance with the May 2013 directions and the need to make the interlocutory application before me, it is unlikely that any such remedy could achieve for him what defeat of the Applicant's application would.

30. It is unusual, at least in this Tribunal, to reserve a decision on an interlocutory application to another day. Had it been an ordinary hearing rather than a telephone hearing, I probably would not have reserved my decision in this case but rather would simply have retired to collect and

review my thoughts before giving my decision. That said, it is a decision which has caused me more difficulty than I had anticipated. Hence the length of this reasoned decision. Having balanced the factors identified in the preceding paragraphs against each other and against the considerations specified in rule 3(2) of the 2013 Rules, I have come to the conclusion that the Respondent's application must be dismissed.

Addendum

31. Since reaching my decision and while in the course of writing my reasons for it, I have learnt that the Applicant intends to withdraw his substantive application, although no formal notice of withdrawal had yet been received by the Tribunal Secretary as at close of business today (Friday). In light of the strike-out application notified to the Tribunal on the morning of this interlocutory application, that does not come as a surprise. The consent of the Tribunal to such withdrawal, even at this late stage, is not required. I do not wish to encourage applications for orders as to costs by either party, still less to encourage expectations as to the likely outcome of any such applications. However, I would point out to the parties that because all concerned had prepared for the hearing which was to have started next Wednesday morning, it might be a sensible use of everybody's time if any such applications could be heard and dealt with on that morning. If an oral hearing is required, that could be held at Macclesfield County Court but I would be open to a telephone hearing that day if both parties so wished.

....
Michael Heywood
Regional Judge, Western Area
21st February 2014