Neutral Citation Number: [2026] EWHC 667 (KB)

Case No: KB-2024-000023

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/03/2026

Before :

DHCJ GUY VASSALL-ADAMS KC

- -

Between :

JAMES ALAN GAMBRILL

Claimant

- and -

NG BAILEY FACILITIES SERVICES LTD

Defendant

-and-

BEAUCHAMP & BIRD LIMITED

Third Party

- -
- -

Derek O'Sullivan KC (instructed by **Kennedys Law LLP**) for the **Defendant**
Joshua Hedgman (instructed by **RPC LLP**) for the **Third Party**

Hearing date: 2 March 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DHCJ Guy Vassall-Adams KC:

1. On 21 February 2023, Mr Gambrill suffered a tragic accident while working at Marlowes Shopping Centre in Hemel Hempstead. While he was attempting to change a light fitting on the ceiling of a roof space he stood on some fragile boxing, which collapsed under his own weight. He fell at least 40 feet through some ducting onto a concrete floor below. He suffered catastrophic injuries including a spinal cord injury, which has left him paraplegic, as well as a traumatic brain injury.

2. The Defendant, NG Bailey Facilities Services Limited ("NGB"), provided facilities management services to the owner of the Shopping Centre and kept an on-site presence with a small team that included its Lead Engineer, Alastair Kibble. NGB had subcontracted the Third Party, Beauchamp & Bird Limited ("B&B") to replace a large number of light fittings at the Shopping Centre. B&B had, in turn, subcontracted the work to Tekna Electrical Limited, ("Tekna"), which employed Mr Gambrill.

3. Mr Gambrill brought claims in negligence against NGB and B&B (the "underlying claims"). Those claims were settled during a mediation that took place in October 2025 in which NGB, without admitting liability, agreed to pay the Claimant £2.5 million in full and final settlement of his claim, plus his costs of the proceedings (the "settlement"). For completeness, it should be noted that Tekna has never been a party to the proceedings.

4. The underlying claims having settled, the present litigation concerns NGB's additional claims against B&B brought under Part 20 of the CPR, by which NGB seeks to recover the loss it has incurred as a result of settling Mr Gambrill's claim (the "additional claims").

5. There are two main applications before the Court, concerning three distinct issues:

   (1) B&B applies for strike out and/or summary judgment in respect of NGB's claim against it for a contribution pursuant to the Civil Liability (Contribution) Act 1978 (the "1978 Act").
   (2) B&B applies for strike out and/or summary judgment in respect of NGB's claim for a contractual indemnity.
   (3) NGB makes a cross-application for permission to amend its additional claim to bring a new claim for breach of contract. That new pleading is referred to below as the Proposed Amended Particulars of Additional Claim ("PAPAC").

6. The trial in this case is listed for 5 days in a window starting on 14 April 2026, i.e. in 6 weeks' time from the hearing date.

Factual background

7. The contractual arrangement between NGB and B&B took the form of a Trade Framework Agreement dated 5 June 2020 (the "TFA") in which NGB would engage B&B from time to time as and when it required B&B's services. Under the TFA, NGB would issue B&B with a purchase order when such a need arose.

8. In November 2022, NGB issued B&B with a purchase order for the replacement of a large number of LED light fittings at the Shopping Centre ("the light replacement works"), for which B&B was paid £64,416.

9. In the event, B&B subcontracted the light replacement works to Tekna. There is a dispute about whether, at the time of the accident, NGB knew that (i) the works had been subcontracted to Tekna and/or (ii) the operatives attending the site were employed by Tekna.

10. On 21 September 2022, Mr Khan (the Managing Director of Tekna) attended the Shopping Centre for a site walk-through with Mr Kibble, NGB's Lead Engineer. There is no allegation that Mr Kibble ever took Mr Khan to the plant room in which the accident took place.

11. On 16 February 2023, Mr Gambrill attended the Shopping Centre with two of his colleagues, Mr Farrington and Mr Jordan. All three of them were employed by Tekna.

12. At around 10.15am, Mr Kibble took Mr Gambrill to the plant room, which had two light fittings housed in its roof. One of the two light fittings (the "second light fitting") was positioned above fragile ducting and boxing, which was unsafe to stand on.

13. Mr Gambrill tried to access the second light fitting by standing on the boxing. It could not take his weight and subsequently collapsed. Mr Gambrill fell to the floor below and suffered catastrophic injuries.

14. There was no dispute that Mr Kibble had initially told Mr Gambrill *not* to change the second light fitting.

15. However, there was a critical factual dispute between Mr Gambrill and NGB about why he ended up standing on the boxing trying to change the light fitting. This turned on a conversation that took place between Mr Gambrill and Mr Kibble when they got to the plant room:

    i) Mr Gambrill's case was that he asked Mr Kibble if he could stand on the boxing because, if so, he could change the light fitting. Mr Kibble responded with words to the effect that yes, he (Mr Gambrill) could change the light fitting. Mr Gambrill therefore alleged that Mr Kibble caused, permitted and/or instructed him to change the light fitting and/or had given assurances that the boxing was safe for him to stand on.

    ii) NGB's case was that Mr Kibble said no such thing. It denied that Mr Kibble (i) expressly instructed Mr Gambrill to change the light fitting and/or (ii) told or caused him to believe that the boxing was safe to stand on.

16. Mr Gambrill's account of this conversation was supported by Mr Farrington and Mr Jordan, the two electricians from Tekna who were present in the room at the time at the time of the conversation (but who left before the accident took place).

17. On 3 February 2024, Mr Gambrill issued proceedings against NGB in negligence. Following NGB's inclusion of B&B through its additional claims (see below), Mr

Gambrill subsequently amended his statement of case to plead against B&B as well – save where inconsistent with his claim against NGB in the first instance.

18. On 8 April 2024, NGB prepared a Defence denying Mr Gambrill's claim. It denied that Mr Kibble was negligent as alleged. It also denied that it owed Mr Gambrill any duties in respect of his supervision, risk assessment and method of work. In fact, it alleged that B&B owed Mr Gambrill those duties as his 'employer'.

19. By its Amended Defence and Particulars of Additional Claim, NGB brought two claims against B&B:

    i) First, a claim for contribution under the Civil Liability (Contribution) Act 1978. This claim was made on the basis that B&B employed Mr Gambrill and therefore owed him a duty to ensure his safety at work. NGB's pleading at paragraph 10 of its Amended Defence was in the following terms: *"…[Mr Gambrill] and the other persons employed by Tekna who were held out or held themselves out as employees of [B&B] were de facto employees of [B&B] and/or should be treated as such for the purposes of these proceedings and/or were persons who [B&B] owed the duties owed by an employer to an employee"*.

    ii) Second, a claim for a contractual indemnity under clause 3.8 of the TFA, by which B&B expressly agreed that it would: *"indemnify NG Bailey against any claims or proceedings in respect of loss, damage or injury arising from its activities"*.

20. By its Defence to Mr Gambrill's claim and its Defence to the Particulars of Additional Claim, B&B denied the claims that NGB brought:

    i) The claim for contribution under the 1978 Act was denied on the basis that B&B did not employ Mr Gambrill and did not therefore owe him any duty of care. Further, B&B pleaded that Tekna employed Mr Gambrill such that it alone was responsible for the incidents of the employers' duty of care that were alleged against B&B.

    ii) The claim for the contractual indemnity was denied on a number of grounds, including that it did not extend to losses arising from NGB's own negligence.

21. On 21 October 2025, B&B applied for strike out, alternatively summary judgment in respect of (1) Mr Gambrill's claim against it; and (2) NGB's claim for contribution under the 1978 Act. B&B also applied for summary judgment on NGB's claim for a contractual indemnity.

22. On 21 October 2025, NGB settled Mr Gambrill's claim against it. B&B did not contribute to the settlement, but agreed that it would not seek any order for its costs from Mr Gambrill. NGB paid Mr Gambrill damages of £2.5 million and his costs, whilst preserving its right to pursue the additional claim against B&B. The order recorded that the trial date was to be maintained for that purpose.

23. On 24 November 2025, NGB applied for permission to amend its Particulars of Additional Claim ("POAC") against B&B to introduce a new cause of action for breach of contract. The amended pleading is in substitution for the Particulars of Additional Claim and is described below as the PAPAC.

B&B's applications for strike out/summary judgment

Legal framework

24. CPR 3.4 provides the ground for strike out, including that:

> "(2) The court may strike out a statement of case if it appears to the court (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim…"

25. CPR 24.3 provides the grounds for summary judgment:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
> (a) it considers that
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

26. The principles regarding summary judgment applications were fully articulated in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch), per Lewison J at [15] and were helpfully summarised in B&B's skeleton argument as follows:

i) The court must consider whether the claim has a realistic as opposed to fanciful prospect of success.
ii) A realistic claim is one that carries some degree of conviction and is more than merely arguable.
iii) The court must not conduct a 'mini-trial'.
iv) That does not mean the court is bound to take at face value the factual assertions made by the claim, including where it is clear those assertions have no real substance or are contradicted by contemporaneous documents.
v) The court must take into account the evidence that can reasonably be expected to be available at trial.
vi) The court should hesitate about making a final decision without a trial, where reasonable grounds exist for believing that a fuller investigation into the facts would add to or alter the evidence available to the trial judge.
vii) On the other hand, it is not uncommon for a summary judgment application to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if

the respondent's case is bad in law, they will in truth have no real prospect of succeeding on their claim.

27. It is common for strike out and summary judgment applications to be made in the alternative and paragraph 1.5 of Practice Direction 3A specifically envisages this approach.

The claim for contribution under the 1978 Act

28. As set out above, NGB's claim for a contribution under the Civil Liability (Contribution) Act 1978 was pleaded on the basis that B&B owed the Claimant a duty of care based on a relationship between them of employment, or *de facto* employment.

29. The entitlement to contribution arises under s.1(1) of the 1978 Act, which provides that "any person liable in respect of any damage by another person may recover contribution from any other person liable in respect of the same damage."

30. Section 1(4) of the 1978 Act provides that any person who has made or agreed to make any payment in bona fide settlement of a claim made against him in respect of any damage shall be entitled to recover contribution in accordance with section 1. NGB, having settled with Mr Gambrill, accordingly sought to recover a contribution from B&B towards that settlement.

31. Section 6(1) of the 1978 Act (Interpretation) defines "liable in respect of the same damage" in the following way:

> "A person is liable in respect of any damage for the purposes of this Act if the person who suffered it (or anyone representing his estate or dependants) is entitled to recover compensation from him in respect of that damage (whatever the legal basis of his liability, whether tort, breach of contract, breach of trust or otherwise)."

32. Mr Hedgman submitted that it follows that the party from whom a contribution is sought must itself be capable of being liable to the injured claimant. In other words, the defendant to a contribution claim must itself have owed and breached a duty of care to that claimant (see *Cooperative Retail Services Ltd v Taylor Young Partnership* [2002] 1 WLR, Lord Rodger [69]-[70]). The claim for a contribution towards damages for personal injury must fail if the defendant to that contribution claim did not owe the injured claimant a duty of care (see by way of example: *Furnell v Flaherty* [2013] EWHC 377 (QB), Turner J [31]).

33. The fundamental problem for NGB's contribution claim based on employer's liability is that there was overwhelming evidence that Mr Gambrill was not an employee of B&B, but an employee of Tekna. In this respect, B&B pointed to the following matters:

    i) At the outset of his Particulars of Claim, Mr Gambrill pleaded that he worked 'exclusively' for Tekna.
    ii) Mr Gambrill led considerable evidence about his employment with Tekna – from the uniform that he wore, to the wages he was paid, and the control that it had over him at work (paragraphs 15 to 21 of his statement).

iii) B&B denied that it employed Mr Gambrill and likewise pleaded that he was employed by Tekna.

iv) B&B led evidence through Mr Bird that it had no relationship with Mr Gambrill whatsoever. Mr Bird had never even met him (paragraph 6 of his statement).

v) NGB led no evidence to gainsay the evidence that Mr Gambrill was employed by Tekna and not B&B. It led no evidence capable of sustaining a finding that there was any legal relationship between Mr Gambrill and B&B – let alone a relationship of employment.

34. No doubt recognising the strength of this application, NGB's latest pleading – the Proposed Amended Particulars of Additional Claim ("PAPAC") abandons the claim for a contribution based on the 1978 Act.

35. In his oral submissions Mr O'Sullivan KC realistically accepted that NGB couldn't resist this summary judgment application. That concession was well made as I would have found that the Defendant had no real prospect of success in its employer's liability claim. Accordingly, I grant B&B summary judgment in respect of that claim.

The claim for a contractual indemnity

36. The Trade Framework Agreement ("TFA"), which constituted the contract between NGB and B&B, contained the following indemnity at paragraph 3.8:

"The Subcontractor [B&B] shall indemnify NG Bailey against any claims or proceedings in respect of loss, damage or injury arising from its activities."

37. The claim was pleaded in NGB's Particulars of Additional Claim at paragraph 9 in the following terms:

"Pursuant to clause 3.6 [sic] of the TFA, the Third Party expressly agreed that it would indemnify NG Bailey [the Defendant] against any claims or proceedings in respect of loss, damage or injury arising from its activities. The personal injury suffered by the Claimant and/or any loss or damage to the Defendant arose from the works being carried out by the Third Party pursuant to the Purchase Order issued by the Defendant (and accepted by the Third Party) and accordingly arose from the activities of the Third Party (within the meaning of the TFA)."

38. This pleading puts NGB's case very high – if it were right any injury that befell Mr Gambrill while he was working at the Shopping Centre under the TFA's contractual terms would be an injury "arising from B&B's activities", even if as a matter of fact the injury wasn't caused by B&B. It would mean that if – while he was working at the Shopping Centre – a contractor from another company accidentally dropped a brick on his head, that would be an injury "arising from B&B's activities", which B&B had indemnified. That would be a strange state of affairs.

39. B&B argues that the liability that NGB has incurred to Mr Gambrill is not a loss "arising from its activities" but a product of the negligence claim that he brought against it for the actions of Mr Kibble as its employee. This submission raises the question of what the court can properly infer from the fact of this settlement.

40. Mr O'Sullivan emphasised in his written and oral submissions that NGB faced a claim which was supported by a number of medical experts and for losses totalling over £10 million in damages. Accordingly, NGB considered that a settlement for about 20-25% of the claim's value and with no provisional damages was a "reasonably prudent commercial decision" based on the risk that Mr Kibble might be blamed for giving an instruction to Mr Gambrill. Again, he emphasised that the settlement was done with no admission of liability.

41. Mr Hedgman for B&B argued that while NGB settled Mr Gambrill's claim without making any admissions, there could be no doubt that its liability under the settlement was a product of Mr Kibble's negligence or, at the very least, the substantial prospect that Mr Kibble would be found negligent. Mr Hedgman pointed specifically to the following matters as supporting that submission:

    (i) Mr Gambrill only ever sued NGB in negligence. He brought no other causes of action.

    (ii) As NGB's legal representative, Mr Bedford, says in his statement in support of the application to amend: *"[Mr Gambrill's] claim (if it was to succeed) hinged (in reality or to a large degree) on him proving the factual events… and in particular the conversation that he claimed he had with Mr Kibble"*.

    (iii) NGB's Amended Particulars of Additional Claim framed *"the central factual dispute (upon which the liability, if any, of [NGB] to [Mr Gambrill] would largely be determined) between [Mr Gambrill] and [NGB] being whether or not [Mr Gambrill] could prove that there was a conversation between [Mr Gambrill] and Mr Kibble which had the net effect as pleaded by [Mr Gambrill]…"*.

    (iv) NGB's Amended Particulars of Claim accept that it compromised Mr Gambrill's claim for damages based on, *inter alia*, "*the litigation risks of the matter proceeding to trial*".

    (v) If NGB did not settle Mr Gambrill's claim due to its own negligence – or at least the substantial prospect of him proving negligence against it – then NGB would be a volunteer to the liability that it has incurred. It would have paid damages to Mr Gambrill on a gratuitous basis.

42. In my view, the submissions of the parties are not mutually exclusive, they simply speak to different facets of the same issue. I have no doubt that NGB settled Mr Gambrill's claim in part for pragmatic commercial reasons when faced with a claim valued at over £10 million and it did so with no admission of liability. I cannot therefore proceed on the basis that liability in negligence has been admitted.

43. Nonetheless, the context is important and the fact is that Mr Gambrill only ever brought a claim for negligence, that claim turned on disputed evidence about the conversation between Mr Gambrill and Mr Kibble, Mr Gambrill's account was supported by other witnesses, the litigation risks were admitted to be a factor in the settlement and NGB was willing to pay Mr Gambrill £2.5 million plus costs to settle his claim. In the circumstances, I consider that I can properly infer that NGB considered that it had been

negligent, or that there was a substantial prospect of it being found negligent, such as to warrant the high value settlement in this case.

44. I therefore accept Mr Hedgman's submission that whether this settlement was paid on the basis that Mr Kibble had been negligent or on the basis that it was apprehended he might be found negligent, this was a settlement based on NGB's liability or contingent liability in negligence. It follows that the loss NGB seeks to recover under the indemnity is a loss arising from its own negligence.

45. This then raises the question of the circumstances in which A can claim an indemnity from B for a loss arising from A's negligence. Mr Hedgman submitted that the law presumes that one party will not grant an indemnity for the other party's negligence and that there are only two ways of removing that presumption, express words or necessary implication. He relied on the pithy observations of Jackson LJ in *Persimmon Homes Ltd v Ove Arup and Partners Ltd* [2017] 2 CLC 28 at [55]:

> "It is one thing to agree that A is not liable to B for the consequences of A's negligence. It is quite another to agree that B must compensate A for the consequences of A's own negligence."

46. There is no reference to negligence in clause 3.8, let alone any reference to damage, injury or loss caused by NGB's negligence.

47. Mr Hedgman also relied heavily on *Jose v MacSalvors Plant Hire Ltd* [2009] EWCA Civ 1329 drawing a strong parallel with this case. The facts in that case were that a company ("the Hirer") hired a crane from MacSalvors Plant Hire ("the Owner") along with an operator, Mr Jose. Mr Jose climbed onto the top of the cab to sort out some equipment, but when he stepped back the cab was not aligned with the chassis and he fell into thin air and hit the ground, sustaining injuries. He brought a claim against the Owner, which the company settled. The Owner then brought a third party claim against the Hirer claiming that its loss was covered by the contractual indemnity in their agreement.

48. In that case, Ward LJ held that because there were no express words in the contract indemnifying the Owner against the consequences of its own negligence and the words in the contract were wide enough to cover bases of liability other than negligence, applying the principles in *Canada Steamship Lines Limited v The King* [1952] AC 192 at p.208 the Owner could not claim to be indemnified for the injuries to its driver which arose as a result of its own negligence: at [11]-[18].

49. Mr O'Sullivan accepted that the principles in the *Canada Steamship* case applied here and that clause 3.8 of the TFA does not contain any express wording indemnifying NGB for loss, damage or injury arising from its own negligence. However, he submitted that B&B had to prove that NGB had been negligent and B&B couldn't do so as there has been no finding of negligence at a trial and no admission of liability.

50. I agree with Mr Hedgman's submissions. It seems to me that the court must be able to look at all the circumstances in which a claim in negligence against A has been settled, and in appropriate cases, draw an inference as to whether that loss which A then seeks to claim from B under an indemnity arises from A's own negligence. I cannot see any

principled reason why such cases should be treated differently from cases where liability has been found or admitted, nor was any suggested to me by Mr O'Sullivan. In this case, there is a very clear basis for drawing such an inference: see [43] above.

51. NGB's claim for an indemnity is therefore contrary to binding authority that a party cannot pass on liability for its own negligence absent clear and unequivocal wording to the contrary. In these circumstances I consider that the indemnity claim has no real prospect of success and accordingly I grant summary judgment to B&B on this issue.

52. Mr Hedgman also sought to persuade me that the evidence in this case shows that changing the light fitting was not part of B&B's activities in any event. While I could see the force in his submissions, I am conscious that I don't have the full evidential picture, that NGB challenges aspects of that account and that I must not conduct a mini trial. In the circumstances, I do not grant summary judgment on this alternative basis.

The partial indemnity

53. NGB now seeks permission to amend its existing pleading on the indemnity to plead what both parties have described as a partial indemnity. Paragraph 40(5) of the Proposed Amended Particulars of Additional Claim is in the following terms, with the underlined words representing the new pleading:

> "The First Defendant is accordingly entitled to (and claims) an indemnity from the Second Defendant pursuant to clause 3.8 of the TFA in respect of the loss suffered by the First Defendant (as set out in paragraph 39 above) <u>or in the alternative in respect of such amount of the loss suffered by the First Defendant as was caused or contributed to by the performance by Tekna (as subcontractor of the Second Defendant) off the LED Replacement Works</u>."

54. Mr Hedgman on behalf of B&B submits that NGB's approach is impermissible, as apportionment is only possible in a case where there are concurrent duties in contract and in tort, relying on the judgment of Hobhouse J in *Forsikrings Vesta v Butcher* [1986] 2 All ER 488 ("*Vesta*"). That case concerned a Norwegian insurance company which had insured the owners of a Norwegian fish farm against loss from any cause. The Norwegian company reinsured with a London broker. It was a condition of the insurance and reinsurance policies that a 24-hour watch was to be kept on the farm. On reading the policy the owners realised they couldn't comply with the 24-hour watch condition and informed the claimant company of this fact. The company passed this information on to the brokers seeking clarification as to whether this was acceptable, but the brokers did not act on the call. Six months later a storm damaged the farm leading to the loss of 100,000 fish. The Norwegian company settled the claim with the fish farm and sought indemnity under the reinsurance policy, bringing a claim against the brokers for breach of duty in failing to act on the phone call. The brokers claimed contributory negligence under the 1945 Act. The Norwegian company argued that the 1945 Act did not apply to a claim in contract, hence apportionment was not possible.

55. Hobhouse J considered the question of whether the 1945 Act applies to claims brought in contract and considered that three different categories of case could be identified at p.508 f-g:

"(1) Where the defendant's liability arises from some contractual provision which does not depend on negligence on the part of the defendant.
(2) Where the defendant's liability arises from a contractual obligation which is expressed in terms of taking care (or its equivalent) but does not correspond to a common law duty to take care which would exist in the given case independently of contract.
(3) Where the defendant's liability in contract is the same as his liability in the tort of negligence independently of the existence of any contract."

56. Hobhouse J held that only in the third case, where there are concurrent liabilities in contract and in tort, does the 1945 Act apply and apportionment become possible. At page 510 f-g he held as follows:

"I consider that in the present case and in any similar category (3) case where there is no express contractual provision which defines the parties' rights and liabilities in a different way, apportionment of blame and liability is open to the tribunal. My reasons are twofold. First, I am bound by the Court of Appeal so to decide in a category (3) case. Second, the correct analysis is that where there is independently of contract a status or common law relationship which exists between the parties which can then give rise to tortuous liabilities which fall to be adjusted in accordance with the 1945 Act, the relevant question in any given case is whether the parties have by their contract varied that position. Here they patently have not."

57. Mr Hedgman also relies on the judgment of the Court of Appeal in *Greenwich Millennium Village Ltd v Essex Group Services Ltd* [2014] EWCA Civ 960, [2014] 1 WLR 3517 ("*Greenwich Millenium*"). This was a case involving works on a block of flats where there were three subcontractors in the chain and the sub-sub-contractor ("Robson") negligently failed to spot workmanship defects resulting in huge losses to the claimant arising from the flooding of the flats. The claimant brought proceedings against the subcontractor ("HSE"), which then brought a third party indemnity claim against Robson. Robson sought to argue that HSE's own negligence had contributed to the losses, but the Court of Appeal held that it would largely defeat the commercial purpose of the contractual chain if such a "failure to notice" prevented such indemnity clauses from operating, noting that participants in such building projects were insured against the risk of being held liable for shortcomings in their own work. Accordingly, notwithstanding its own negligence HSE was entitled to be indemnified by Robson under the indemnity clause.

58. Furthermore, HSE was entitled to recover the whole of its loss against Robson as damages for breach of contract, passing its own liability down the contractual chain to Robson, the party whose breaches were the main cause of the flooding.

59. Having so held, the Court of Appeal went on to make the following observation at paragraph 100:

"Finally, I should add that counsel are agreed that apportionment between HSE and Robson is not possible. Therefore this is an all or nothing case. I agree with that analysis. Robson's liability to HSE is contractual. Adopting the categorisation of Hobhouse J in *Forsikrings Vesta v Butcher* [1986] 2 All ER 488, this case cannot be fitted into category 3."

60. Mr Hedgman submits that this is not a case where there is concurrent liability in tort (*Vesta*, category 3) and accordingly that it is an "all or nothing" case; in other words, either clause 3.8 of the TFA entitles NGB to claim a full indemnity and can pass on all its loss to B&B, or it cannot, in which case "the buck stops with it". Mr O'Sullivan's only comment on *Vesta* was that he accepted the three categories identified in that case, but he did not address me on which of the three categories in *Vesta* this case falls into, and if not category 3, what this meant for his pleaded partial indemnity. Nor was Mr O'Sullivan able to point me to any other case suggesting that the analysis in *Vesta* and *Greenwich Millenium* is incorrect or has been superseded by subsequent case law.

61. In this case there is no pleaded duty of care in tort owed by B&B to NGB and their relationship is solely contractual under the terms of the TFA. This is not a *Vesta* category 3 case in which there are concurrent duties in contract and in tort and in which the court can engage in apportionment under the 1945 Act. It follows that if I were wrong in my earlier analysis and NGB could claim an indemnity under clause 3.8 of the TFA because this clause *does* cover NGB's negligence, NGB would be entitled to a full indemnity and could pass on all its losses to B&B (as HSE passed on its whole liability to Robson in *Greenwich Millenium*). But because this is not a *Vesta* category 3 case, there can be no apportionment between NGB and B&B. This is an "all or nothing" case. For this reason, I consider that the partial indemnity pleading has no real prospect of success and I refuse permission for NGB to make this amendment. I should add for completeness that if I had considered that this amendment had a real prospect of success, I would have allowed it as I think this point is purely a matter of legal argument and would not jeopardise the trial fixture.

NGB's amendment application

Legal principles governing amendment applications

62. Under CPR 17.3 the court has a broad discretionary power to grant permission to a party to amend its statement of case, taking into account all the circumstances of the case. The proposed amendments here are being sought 6 weeks before trial and therefore engage the principles on late amendments. These principles were not in dispute and the parties referred to the judgments of Coulson J in *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [2015] EWHC 1345 (TCC) ("CIP") and Carr J in *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm) ("Quah").

63. The judgment in *CIP* contains a particularly helpful summary of the key principles relating to late amendments at [19]:

> "(a) The lateness by which an amendment is produced is a relative concept (*Hague Plant*). An amendment is late if it could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the resisting party to revisit any of the significant steps in the litigation (such as disclosure or the provision of witness statements and expert's reports) which have been completed by the time of the amendment.
>
> (b) An amendment can be regarded as 'very late' if permission to amend threatens the trial date (*Swain-Mason*), even if the application is made some months before the trial

is due to start. Parties have a legitimate expectation that trial dates will be met and not adjourned without good reason (*Brown*).

(c) The history of the amendment, together with an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise (*Brown*; *Wani*). In essence, there must be a good reason for the delay (*Brown*).

(d) The particularity and/or clarity of the proposed amendment then has to be considered, because different considerations may well apply to amendments which are not tightly-drawn or focused (*Swain Mason; Hague Plant; Wani*).

(e) The prejudice to the resisting parties if the amendments are allowed will incorporate, at one end of the spectrum, the simple fact of being 'mucked around' (*Worldwide*), to the disruption of and additional pressure on their lawyers in the run-up to trial (*Bourke*), and the duplication of cost and effort (*Hague Plant*) at the other. If allowing the amendments would necessitate the adjournment of the trial, that may be an overwhelming reason to refuse the amendments (*Swain Mason*).

(f) Prejudice to the amending party if the amendments are not allowed will, obviously, include its inability to advance its amended case, but that is just one factor to be considered (*Swain-Mason*). Moreover, if that prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise (*Archlane*)."

The amendments sought

64. NGB seeks permission to rely on a new pleading, the Proposed Amended Additional Particulars of Claim "PAPAC", which would bring a contractual claim against B&B for the first time. The PAPAC is advanced in substitution for the current Particulars of Additional Claim ("POAC") and so the new pleading does not show what is the original pleading and what is new, although it is clear that the new pleading is much more extensive than its predecessor, as the POAC was a tightly pleaded 6 page document and the PAPAC has mushroomed into 25 pages.

65. The focus of the new contractual claim is now clause 2.10 of the TFA, which provided that *"The subcontractor [B&B] shall comply with all applicable laws, statutes, regulations, codes and policies having the force of law, particularly regarding health and safety matters and the Construction Design and Management Regulations."* In this context, NGB relies in particular on B&B's Risk Assessment Method Statement ("RAMS"), which identified legislation relevant to the LED Replacement Works including the Working at Height Regulations and the Construction Design and Management Regulations. NGB pleads that B&B then delegated the performance of its obligations to its sub-contractor Tekna and Tekna failed to comply with clause 2.10 of the TFA, rendering B&B liable for its breach. NGB makes complaint of many matters but in his submissions Mr O'Sullivan particularly emphasised the failure properly to supervise Mr Gambrill, NGB's case being that he should never have been engaging with Mr Kibble at all; this should have been done by a competent supervisor in which case Mr Gambrill would not have been permitted to carry out the work in the way that he did and the accident would not have happened.

Assessment

The lateness of the amendments and their history

66. This application for permission to amend was made on 24 November 2025, some 4 ½ months before trial. NGB accepted that this was a late amendment, which could have been made at an earlier stage of the proceedings. NGB also accepted that the hearing date of the application is the relevant date on which to assess lateness, but submits that it is not the case that NGB made an application on the eve of trial.

67. NGB submitted that there was a good reason for the lateness of the application. Mr Paul Bedford, NGB's solicitor, addressed this in his evidence, explaining that the reason this breach of contract claim was not included within its original Particulars of Claim was that NGB had understood that B&B owed Mr Gambrill a duty of care as an employer, having supplied it with the RAMS for the light replacement works that it later discovered were produced by Tekna. NGB said they only reconsidered their case once Mr Bird's witness statement was served in July 2025, which explained that Tekna had prepared the RAMS.

68. I have real difficulty with NGB's explanation for the lateness of its application in this case. First, it is not the case (as NGB implies but does not state in terms) that the contractual claim could only ever have been brought as an alternative to the 1978 Act contribution claim. B&B submits that such claims can and often do get brought together. I accept that submission. It follows that even if NGB believed that it had a claim under the 1978 Act, it was able to plead a breach of contract claim in addition. Accordingly, the obvious time for NGB to have brought its contractual claim was at the same time as it pleaded its additional claim, namely April 2024, not November 2025.

69. Secondly, while Mr Bird's evidence may have added to the evidential picture as far as NGB was concerned, there was ample material available to NGB long before July 2025 showing that Mr Gambrill was an employee of Tekna, such that NGB could not reasonably have believed that B&B owed Mr Gambrill "a duty as an employer":

    (a) On the evening of the accident date, 16 February 2023, NGB prepared an Incident Brief which referred to Mr Gambrill as being part of a 3 member contractor team and talked about need to interview the 2 Tekna engineers the following morning. The clear inference is that NGB knew that Mr Gambrill was also employed by Tekna.

    (b) Before NGB pleaded its Particulars of Additional Claim, NGB had a witness statement that it had taken from its employee Mr Kibble on 23 February 2024, in which Mr Kibble had stated that although at the time he had thought Mr Gambrill was employed by B&B (because the paperwork was submitted in B&B's name), he later found out that Mr Gambrill, Mr Jordan and Mr Farrington were all employed by Tekna. NGB undoubtedly knew that Mr Gambrill was employed by Tekna before it pleaded its Particulars of Additional Claim 2 months later.

(c) NGB's argument that its beliefs were reinforced by Mr Gambrill adopting its case in his Amended Particulars of Claim encounter a fundamental difficulty which is that in his original Particulars of Claim dated 14 February 2024 he states in terms at paragraph 1 that *"[a]t all material times the claimant was working as an electrician's labourer/assistant exclusively for Tekna"*. Furthermore, Mr Gambrill only adopted NGB's case insofar as it was consistent with his own case in the first instance.

(d) B&B's Defence dated 22 July 2024 made it clear that it did not employ Mr Gambrill such as to owe him a duty of care, indeed this was one of B&B's main arguments. That Defence also made it clear that Tekna, not B&B, prepared the RAMS.

70. It seems to me that the main driver for this application was not the evidence received by NGB in July 2025, but B&B's application for summary judgment on the contribution claim and the indemnity claim, which was issued on 21 October 2025, just one month before NGB issued its amendment application. It was at that point in time that NGB realised that its contribution claim was fundamentally flawed and that its indemnity claim was also imperilled. In paragraph 16 of his skeleton argument Mr O'Sullivan accepted that "the NGB Application and PAPAC are in response to the B&B Application"; that was a realistic admission.

71. Even if NGB's case on this issue is approached from the most favourable standpoint, on the premise that July 2025 was when the penny finally dropped that the employer's duty claim was unviable, this does not explain the four month delay between July and November 2025 in issuing the application for permission to amend. With the clock counting down towards a trial in April 2026 there was no time to spare and had an application been issued in August or early September 2025, it might well have been heard in the Michaelmas term. If that had been the timing, it might well have been possible to complete the necessary steps flowing from the PAPAC without jeopardising the trial date.

72. For all of these reasons, I am unable to accept that there is a good reason for the successive and significant delays in making this application, which now falls to be assessed 6 weeks from trial.

The merits of the amendments

73. Mr Hedgman challenged NGB's assertion that the new claim for breach of contract has a real prospect of success. Consistently with how he has put his case throughout, he submitted that NGB's own negligence, through Mr Kibble, was the effective cause of the losses that it has suffered in settling the claim that Mr Gambrill brought against it.

74. Mr Hedgman relied on *Quinn v Burch Bros (Builders) Ltd* [1966] 2 QB 370. In that case, *Quinn* was an independent sub-contractor carrying out plastering for the main contractor, *Burch Bros*. By that sub-contract, *Burch Bros* was required to supply any equipment reasonably necessary for the work within a reasonable time of receiving a request to do so. In breach of contract, *Burch Bros* failed to supply *Quinn* with a ladder. *Quinn* therefore decided to prop a trestle table against a wall and use it as a ladder. *Quinn* did not foot the trestle table, and it consequently slipped from underneath him.

75. *Quinn's* claim for personal injury failed on the basis that *Burch Bros'* failure to provide a ladder was not the effective cause of the loss. At most, it gave *Quinn* the opportunity or occasion to make negligent use of the trestle table for the access that he desired – but in no way did it cause that negligence (see Sellers LJ at [p390 A-B]; Salmon LJ at [p395 A-B]).

76. Mr Hedgman argued that, applied to the present facts, the alleged breaches of contract are a series of omissions (e.g. failing to provide equipment, supervision, training etc.) Even if NGB proves that B&B was in breach of contract for failing to provide those things, that did not cause Mr Kibble's positive act(s) of negligence in the conversation that he had with Mr Gambrill. At most, they gave rise to the opportunity for Mr Kibble to have that conversation and to give Mr Gambrill the negligent instruction that he alleged.

77. There is a true analogy here with *Quinn v Burch Brothers*. Taking NGB's case at its highest, I must approach this application on the basis that NGB would establish that B&B owed NGB the contractual duties it has pleaded and that B&B failed to adhere to best health and safety practices and failed to provide supervision over the works carried out in its name. But there is a compelling argument that NGB's involvement in the form of the conversation between Mr Kibble and Mr Gambrill breaks the chain of causation, just as Mr Quinn's use of the trestle table broke the chain of causation in that case. This analysis points towards NGB's negligence having caused the accident in this case, with B&B's breaches of contract (assuming they can be proved) providing the occasion for that negligence.

78. Mr O' Sullivan did not address me on *Quinn v Burch Brothers* specifically. Rather he took me through the PAPAC in some detail by way of emphasizing that the new claim has merit. He also submitted that the merits test for an application to amend is a low one, requiring only a real, as opposed to a fanciful, prospect of success. I accept that submission as representing the correct test for me to apply. Nonetheless, I am not persuaded that NGB has a real prospect of success in respect of causation, for the reasons set out at [77] above.

79. However, even if I am wrong about this and the amended claim does have a real prospect of success, I would still reach the same conclusion on the amendment application as a whole, as I consider that the balance falls clearly in favour of refusing the amendments having regard to all the relevant factors.

The prejudice to the parties

80. NGB's primary case is that the issues arising from the PAPAC will not require any or any extensive investigation by B&B or further evidence. NGB seeks to characterise the issues as ones that can all be dealt with by submissions. Its primary case is that it will be a matter for submissions whether or not an employer in the position of Tekna should have allowed "an unqualified and unsupervised labourer such as Mr Gambrill to carry out the fateful work that he attempted to carry out". Mr O'Sullivan's skeleton goes on to say that "it is abundantly obvious that a competent supervisor of Mr Gambrill would (at the very least) have ensured the work required to Light 2 was clear – either it was not to be replaced under any circumstances or, if it was to be replaced, it could not be

replaced by men standing on the boxing (and a proper method/plan for the replacement of it would need to be devised and implemented)."

81. Seductively straight-forward as the case sounds when put in this way, I am satisfied that NGB's submissions significantly downplay the substantial nature of the amendments and their likely impact on the trial.

82. First, I have already observed that the amended statement of case dwarfs the original pleading. It also seeks to introduce a new cause of action for breach of contract. True it is that the TFA has been in play from the outset and some of the issues have already been ventilated in the pleadings, but through the prism of a different cause of action. However, to date B&B has understandably responded to the claim brought against it.

83. Up until this point, NGB's claim against B&B was a claim for employer's liability. B&B's statements of case, disclosure and witness evidence responded to that claim. Based on that claim, it was sufficient for B&B to deny that it owed Mr Gambrill any duty in respect of his safety at work. For example, it was sufficient for B&B to deny that it supervised Mr Gambrill as a matter of fact and to deny that it owed him any duty of supervision in law.

84. The position would be very different if these amendments are allowed. In his witness statement in response to the application, B&B's solicitor Thom Lumley states as follows at paragraph 29:

"If permitted, the amendments would fundamentally change the basis upon which the Third Party would need to defend the Defendant's Additional Claim - and the substance of the matters that it would need to investigate, plead to, and thereafter deal with through disclosure and witness evidence. The third party would need to deal with the new factual matters raised by the alleged breaches of contract and the particulars of causation that the defendant now seeks to advance."

85. Mr Lumley points out that the proposed amendments introduce several express terms, namely clauses 1.1, 1.4, 2.10,7, 13 and 15, which do not form part of NGB's current case. B&B submits that as these terms come from the TFA as an overarching contract, B&B would require an opportunity to deal with how they operated in the specific contract for the light replacement works. B&B identifies the following pleaded issues which NGB have now introduced that are likely to require factual investigation:

(a) They plead new facts relevant to the site walk-through that took place between Mr Kibble and Mr Khan on 21 December 2022.

(b) They plead new facts about the competence and capacity of Mr Gambrill's colleagues to supervise him together with an allegation that they did not act in any such capacity at the time.

(c) They plead new facts about Mr Gambrill's competence, the extent of the supervision that he required, and his ability to undertake the task.

(d) They plead a specific allegation that Mr Gambrill should never have been the one to communicate with Mr Kibble.

(e) They plead a new and specific case on causation.

86. As I set out above, central to the new claim is the allegation that (i) it was a breach of contract for B&B not to provide supervision to Mr Gambrill and (ii) that the accident would probably have been prevented by such supervision whatever the conversation between Mr Gambrill and Mr Kibble. Mr Bedford's witness statement on behalf of NGB describes this as "a significant element of the case", stating that "the Court will appreciate the importance of this point".

87. Mr Lumley on behalf of B&B states the following in his witness statement about the steps he would take if the amendments were granted:

"In circumstances where the Third Party had no presence on site, my intention, should the amendments be permitted, is to liaise with the Claimant to see if he would cooperate by providing witness evidence on the issues raised by the amendments. I also intend to liaise with Tekna's lawyers to try and secure voluntary third-party disclosure of documents relevant to the competence, supervision and training of its operatives together with the instructions that they were provided (albeit an application for third party disclosure is not beyond the realms of possibility). I would also wish to investigate whether its employees would cooperate and provide witness evidence in respect of those matters, so that the Third Party can defend the new allegations of breach and causation."

88. Mr Lumley also states that he would need to take a further statement from Mr Bird (of B&B) to deal with how the express terms from the overarching TFA translated to the particular light replacement works that Mr Gambrill was completing at the time.

89. I accept that these further investigations arise from NGB's new pleaded case. Mr O'Sullivan did not seek to suggest otherwise. Rather, he developed a second argument which said that NGB is to blame for not having investigated these matters earlier and should therefore not be allowed to benefit, in the balancing act, from any prejudice caused by a situation of its own making.

90. I regard that submission as unrealistic. NGB chose to sue B&B for breach of employer's liability and until now that is the claim that B&B faced. That claim did not require investigation of the specific matters B&B will now need to investigate if permission to amend is given precisely because B&B had a complete defence to the original claim, as NGB has belatedly conceded. B&B's position has been vindicated, and it has won on the employer's liability claim. In the circumstances, I don't think B&B can properly be criticised for not investigating these matters earlier. The blame for the current situation falls fairly and squarely on NGB's shoulders in taking so long to bring their contractual claim forward.

91. Mr O'Sullivan did concede that, if I were to find that B&B would need additional time to take further investigatory steps arising from the amendments, then there was insufficient time for this to take place before the trial. That concession was inevitable given that the trial was in 6 weeks' time (and less by the time this judgment is handed down), it would take about 28 days for B&B to produce a Defence and then there would

hardly be time to prepare for a 5 day trial, let alone carry out further enquiries, or provide further disclosure or evidence.

92. The prejudice to B&B from allowing these amendments is therefore very substantial. B&B would, in effect, be facing a new claim three years into this litigation and just a few weeks before trial. It would have to do further investigations, the trial date would be lost, costs would escalate significantly and there would have to be a trial on the new claim. B&B would have been "mucked around", and the interests of other court users would be adversely affected with the loss of a precious 5 day fixture.

93. I have also considered whether B&B could be adequately compensated in costs if I were to allow the amendments at this stage. That argument is always open to the amending party and I have taken it into account, but it carries much less weight in the context of a very late amendment that will necessitate the adjournment of a trial.

94. Balanced against this is the prejudice to NGB in not being able to advance its new claim. In some circumstances that can be a very weighty matter, but here the prejudice is of NGB's own making in failing to bring this claim in a timely way. As *CIP* paragraph 19(f) makes clear, where the prejudice to the amending party arises from its own conduct then it is a much less important element in the balancing exercise.

95. NGB's final fallback was to argue that even if I concluded that the amendments would jeopardise the trial date, this was not in itself determinative, and I should nonetheless allow them. I accept that the loss of a trial date is not in itself determinative and that there may exceptionally be cases where the court concludes that it is in the interests of justice to allow amendments that will result in a trial being adjourned. However, these decisions are highly fact-sensitive and *CIP* at [19(e)] holds that if allowing the amendments would necessitate the adjournment of the trial, that may be an overwhelming reason to refuse the amendments.

Outcome

96. Taking all of these matters into account, the balance comes down clearly in favour of refusing permission to amend. Accordingly, NGB's amendment application is dismissed. I will hear from the parties on costs and other consequential issues.