Neutral Citation Number: [2020] EWHC 3909 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Case No. CO/212/2020

Courtroom No. 1

The Court House
1 Oxford Row
Leeds
LS1 3BG

Monday, 15th June 2020

Before:
THE HONOURABLE MR JUSTICE WARBY

In the matter of an appeal by way of case stated

B E T W E E N:

LEE ANTHONY MOSEY

and

DIRECTOR FOR PUBLIC PROSECUTIONS

MS AYESHA SMART appeared on behalf of the Applicant
MR BEN LLOYD appeared on behalf of the Respondent

JUDGMENT
(Approved)

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MR JUSTICE WARBY:

1. On 13 May 2019 in the Harrogate and Skipton Magistrates' Court, the appellant, Lee Mosey then aged 37, was tried and convicted in his absence on one count of breaching a restraining order. The magistrates had refused an application by Mr Mosey's solicitor to adjourn on the grounds that he was unfit to attend.
2. This is Mr Mosey's appeal by Case Stated, in which the single issue is whether the magistrates were entitled to refuse the adjournment and to allow the trial to occur in Mr Mosey's absence.

The facts

3. The essential facts can be shortly stated, and I take them from the Case Stated.
4. The defendant was charged as follows:

> "On 11/07/2018 to 13/07/2018, at Princess Square, Harrogate, without reasonable excuse, you left a letter on the car of Amy Kirkpatrick, which you were prohibited from doing by a restraining order imposed by Harrogate Magistrates' Court on 30 April 2018. Contrary to section 5(5) and (6) of the Protection from Harassment Act 1997".

5. The issue the defence identified for the trial was whether Mr Mosey had breached the restraining order, on the basis that there was no evidence that he had placed the note, and in any event the message was addressed to Lucy King, and not the complainant Amy Kirkpatrick.
6. The case was first listed on 31 January 2019 and a trial was set for 11 March 2019. The complainant was in attendance for the trial on 11 March 2019; Mr Mosey was not. The Court declined to proceed in his absence, and a warrant was issued for his arrest. He was produced in custody on 15 March 2019, when an order was made that the complainant be allowed to give evidence with the benefit of screens. The case was re-listed for trial on 13 May 2019. Mr Mosey again failed to attend. His solicitor, Mr Wilson did attend. He made a short submission that the trial should be adjourned on the basis that the defendant was not in attendance due to the ill health of the defendant.
7. The Case Stated then explains what happened in the following terms:

> "We were referred to a letter dated 3 May 2019, from Dr Sarah Craven of East Parade Surgery, Harrogate. The letter stated that he was unfit to attend Court. The main body of the letter stated the following:
>
>> '1. He has an undiagnosed mental health problem. He has some features which could represent a psychotic illness. He has not been able to engage with formal assessment by the mental health I psychiatric team, following my previous referral. I continue to pursue the assessment for the patient. I am unclear when he will be assessed. It is not clear if or when he will regain fitness to attend Court.
>>
>> 2. He has an undiagnosed visual loss. Due to his unstable housing in recent months hospital appointments have not been attended. We do not have a diagnosis of why he has lost his vision. I am also investigating with a further brain scan in case his vision and mental health problems are related'.

The defence also relied on a sick note from the same surgery dated 24 April 2019, which stated that the defendant was unfit for work for the period 22 April 2019 to 21 June 2019. The Case Stated continues.

In their submission the defence advocate made a reference to the defendant having a suspected heart attack shortly after the first hearing and being taken from the Court in an ambulance. They asked the Court to adjourn the trial in order that they could consider obtaining a psychiatric report and a cardiology[1] report in respect to the defendant.

The prosecution objected to the application to adjourn highlighting the previous trial hearing which had been adjourned and the vulnerability of the complainant who had been granted the benefit of giving evidence from behind screens. They noted that the complainant had been at Court at the previous trial date. They were also concerned that the medical information provided offered no assistance as to when the defendant may be fit enough to attend Court. They asked the Court to conclude that the interests of justice in the trial proceeding took priority considering the vagueness of the medical information supplied on behalf of the defendant.

Our legal adviser referred the Court to the case of 'Picton'.

We decided to refuse the adjournment … "

8. The magistrates gave reasons, in open court. They said this:

> "We have decided to hear this case in the absence of the defendant because while we have evidence of a medical illness it was not conclusive and did not give a prognosis or time when he may be fit. We have decided that the case should proceed in a timely manner in the knowledge that the offence relates to July 2018, a witness is present and we cannot delay further".

9. The Case Stated also gives this further explanation of the decision, which was not given at the time of the magistrates' reasons:

> "We viewed the application as speculative without any structure, as to what would happen if the adjournment was granted. The defence sought an adjournment so that they could consider obtaining further reports.
>
> They had not identified any person to complete the reports or a time scale as when they would be completed by. A letter had been submitted from a Doctor that was unable to provide any firm diagnosis or prognosis. We noted that the defendant had failed to attend a previous trial hearing and the inference from the submissions of the defence were that they were aware of the defendant's health issues from the start of

[1] the Case Stated actually refers to "Cariology", but in context it is clear what is meant.

> the case. We were concerned that they had not already obtained the reports that they referred to in their application.
>
> We also placed an emphasis on the fact that... the complainant had attended at Court for a second time. The prosecution highlighted this and we were concerned that there was a restraining order in place, screens had been ordered at a previous hearing and on that basis we concluded that she could be classed as vulnerable. We had no certainty when any future trial could be listed and we therefore decided that the interests of justice required that the trial proceeded notwithstanding the medical information we had received in respect to the defendant".

10. The magistrates proceeded to hear the trial in Mr Mosey's absence. But Mr Wilson remained for the trial. He tested the evidence of the complainant by way of cross-examination. The magistrates convicted the appellant, but he has not been sentenced.

Procedure

11. This appeal comes before me over a year after the hearing in the Magistrates' Court, and in a somewhat unsatisfactory procedural state.

Timing

12. A request to state a case was made promptly, on 28 May 2019, but rejected by the magistrates' legal adviser. A further request was made on 17 June 2019, which was treated as effective, and it has not been suggested that this was out of time.
13. The Case Stated was eventually produced on 19 December 2019. But the Appellant's Notice was not filed until over a month after that, on 22 January 2020. The time limit for filing an Appellant's Notice is 10 days; see Practice Direction 52E 2.2. The Appellant's Notice contains an application to extend that time limit, blaming the court service for all of the delay, and making the point that the Case Stated is unsigned.

Grounds of appeal

14. There is another procedural problem. The Appellant's Notice did not contain, nor was it accompanied by, any grounds. The box was ticked to say that grounds accompanied the notice but there were none. It has been explained however, by Ms Smart, that the grounds of appeal relied on are those set out in the proposed grounds in the second and effective application to state a case. These were in substance similar to those that had been put forward in May 2019. They focused, as did the original grounds, on the statutory provisions of s 11(1)(b) and s 11(2)(a) of the Magistrates' Courts Act 1980.

15. Ms Smart's skeleton argument makes no reference to the Magistrates' Courts Act 1980, or to the cases that had been cited in the grounds. In paragraph 18 of her skeleton argument, she sums up Mr Mosey's challenge as follows:

> "… that the respondent did not adequately consider, or come to a reasonable conclusion when considering the appropriate guidance at 24.C of the Criminal Practice Directions".

16. She goes on to give particulars of the matters she says were not considered or not appropriately considered, concluding that the magistrates

"Proceeded with the trial when it was contrary to the interests of justice to do so".

17. It has however been confirmed in oral submissions today, that the core grounds of appeal relate to an alleged failure to comply with s 11 of the Magistrates' Courts Act 1980 and the guidance contained in the relevant sections of the Criminal Practice Direction.

Additional factual matters

18. There is a third procedural matter, which has to do with the facts. Ms Smart has sought to put before me and rely upon additional factual matters derived from a chronology which is in my papers that goes somewhat beyond the facts set out in the Case Stated. She has referred, for example, to details of what is said to have happened at the first appearance in the magistrates' court on 31 January 2019.
19. Mr Lloyd submits on behalf of the Director of Public Prosecutions that this is not legitimate. He points out that the general rule is that the High Court must answer the question in the Case Stated by reference to the facts set out in that case, and only those facts.

Discussion and decision

20. This is all, as I have said, rather unsatisfactory.
21. For the reasons given by Mr Lloyd, I do not think that I can take account of factual matters that are disputed and not contained within the Case Stated. The responsibility of setting out the facts is that of the lower Court, subject to the supervisory jurisdiction of the High Court, and this is not a fact-finding hearing. That said, the key facts relied on by Ms Smart seem to me to be adequately referred to in the Case Stated itself, which of course refers to the defence submission about a heart attack or suspected heart attack in January. This is, however, something of a double-edged sword in one sense because, as I have pointed out, the Case Stated itself contains what purport to be reasons for the original decision, which were approximately three times the length of those actually given in Court, and were not, seemingly, produced until December 2019.
22. As far as the other matters are concerned, I have concluded that it is right to grant the extension of time that is applied for, and to proceed without requiring any amendment of the Appellant's Notice.
    i) It does seem to me, on the basis of the information I have, that the majority of the delay was due to the fault of someone other than the appellant, or his legal advisers. It is a little difficult to understand why there was a delay even after the Case Stated was produced in December 2019, but that is not a serious or significant breach, there is an explanation for it, and in all the circumstances it is just to extend time.
    ii) The issue for the Court is whether the magistrates' decision was wrong in law. The relevant legal provisions are not difficult to identify, or to analyse. Nor are they in dispute. The central question is whether the magistrates misapplied them.

The law

23. There is no dispute about the legal framework.
24. Decisions on whether to adjourn a trial and to proceed in the defendant's absence are governed by ss 10(1) and 11(1) of the Magistrates' Court Act 1980. Section 10(1) provides that the court "may" adjourn before or after beginning to try an information. Section 11(1) provided, in its original form, that where the accused does not appear the court "may" proceed in his absence.

25. The exercise of these discretions has been the subject of a number of decisions of the Senior Courts. One of those is the case mentioned by the magistrates: *Crown Prosecution Service v Picton* [2006] EWHC 1108 (Admin). That was a decision of a Divisional Court on a prosecution appeal against the refusal of an adjournment. The main judgment was given by Jack J, who summarised at paragraph [10] the principles that emerged from the authorities as they then stood. So far as relevant to the present case, they were these:

> "(a) A decision whether to adjourn is a decision within the discretion of the trial court. An appellate court will interfere only if very clear grounds for doing so are shown.
> (b) Magistrates should pay great attention to the need for expedition in the prosecution of criminal proceedings; delays are scandalous; they bring the law into disrepute; summary justice should be speedy justice; an application for an adjournment should be rigorously scrutinised.
> …
> (d) Where an adjournment is sought by the accused, the magistrates must consider whether, if it is not granted, he will be able fully to present his defence and, if he will not be able to do so, the degree to which his ability to do so is compromised.
> (e) In considering the competing interests of the parties the magistrates should examine the likely consequences of the proposed adjournment, in particular its likely length, and the need to decide the facts while recollections are fresh.
> (f) The reason that the adjournment is required should be examined and, if it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise if the party opposing the adjournment has been at fault, that will favour an adjournment.
> (g) The magistrates should take appropriate account of the history of the case, and whether there have been earlier adjournments and at whose request and why.
> (h) Lastly, of course the factors to be considered cannot be comprehensively stated but depend upon the particular circumstances of each case, and they will often overlap. The court's duty is to do justice between the parties in the circumstances as they have arisen".

26. Since *Picton*, the approach to be taken in the Magistrates' Court when the defendant does not appear has been more tightly prescribed by statute. As I have mentioned, at the time of the *Picton* decision, s 11(1) of the Act merely provided that if the accused does not appear, the Court "may proceed in the absence of the accused". Section 11 was amended by the Criminal Justice and Immigration Act 2008, with effect from 14 July 2008. As it stood at the time of the magistrates' decision it contained the following relevant provisions:

> "**Non-appearance of accused: general provisions**
> (1) Subject to the provisions of this Act, where at the time and place appointed for the trial or adjourned trial of an information the prosecutor appears but the accused does not,
> …

(b) if the accused has attained the age of 18 years, the court shall proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so.

This is subject to subsections … (2A) …

(2A) The court shall not proceed in the absence of the accused if it considers that there is an acceptable reason for his failure to appear".

27. Principles relating to adjournments in the Magistrates' Court are now to be found in consolidated form and in considerable detail in the Criminal Practice Directions 2015, Part VI, and mainly in paragraph 24C. The material provisions are, so far as relevant to this case, these:

"**Trial adjournment in magistrates' courts**

…

Application to adjourn on day of trial…

General principles

…

24C.6 Section 10 of the Magistrates Courts Act 1980 confers a discretionary power to adjourn… the following directions codify and restate procedural principles established in a long line of judgments of the Senior Courts to some of which they refer, therefore these directions supersede those judgments, and it is to these directions that Magistrates' Courts must refer in the first instance.

…

24C.7 The starting point is that the trial should proceed…

…

24C.9 In general, the relevant principles relating to trial adjournment are these:

- the Court's duty is to deal justly with the case which includes doing justice between the parties.
- the Court must have regard to the need for expedition ...
- applications for adjournments should be rigorously scrutinised...

…

- where the defendant asks for an adjournment, the Court must consider whether he or she will be able to present the defence fully without and, if not, the extent to which his or her ability to do so is compromised.
- the Court must consider the consequences in an adjournment and its impact on the ability of witnesses and defendants accurately to recall events…

The Relevance of Fault…

…

24C.11 The reason why the adjournment is required should be examined and if it arises through the fault of the applicant for that adjournment then that weighs against its grant ...

…

Length of Adjournment

24C.14 Were an adjournment granted, for how long would it need to be? …

Particular Grounds of Applications to Adjourn Trials

…

Absence of Defendant

24C.17 If a defendant has attained the age of 18 years the Court shall proceed in his absence unless it appears to the Court to be contrary to the interests of justice do so: section 11 the Magistrates' Courts Act 1980. In marked contrast to the position in the Crown Court, in Magistrates' Courts proceeding in the absence of the defendant is the default position, where the defendant is aware of the date of trial and no acceptable reason is offered for their absence. The Court is not obliged to investigate if no reason is offered, in assessing where the interests of justice lie, the Court will take into account all factors including such reasons for absence that may be offered, the reliability of the information supplied in support of those reasons, the date on which the reasons for absence became known to the defendant and what action the defendant thereafter took in response. Where the defendant provides a medical note to excuse his or her non-attendance, the Court must consider 5C of these Practice Directions (issue of medical certificates) and give reasons if deciding to proceed notwithstanding …

…

Applications to Vacate Trials

24C.30 To make best use of the Court's and parties' time, it is expected that applications to vacate trials will be made promptly, and in writing, in advance of the date of trial …".

28. Criminal Practice Direction 5C, to which the passages I have cited refer, is headed "Issue of Medical Certificates". This section contains the following:

"5C.2 If a medical certificate is accepted by the Court this will result in cases ... being adjourned.
5C.3 However a Court is not absolutely bound by a medical certificate. The medical practitioner providing the certificate may be required by the court to give evidence. Alternatively the Court may exercise its discretion to disregard a certificate which it finds unsatisfactory…
…

> 5C.4 Circumstances where the Court may find a medical certificate unsatisfactory include:
>
> a) Where the certificate indicates that the defendant is unfit to attend work (rather than to attend Court);
> b) Where the nature of the defendant's ailment (e.g. a broken arm) does not appear to be capable of preventing his attendance at Court.
> c) Where the defendant is certified as suffering from stress/anxiety/depression and there is no indication of the defendant recovering within a realistic time scale".

29. Paragraph 5C of the Criminal Practice Direction is clearly designed to avoid some of the well-known problems that can confront courts, when faced with frankly inadequate medical certificates. The provisions of 5C.4 (a-c) are clearly non exhaustive.

Submissions

30. For the appellant, Ms Smart focuses her attention on Criminal Practice Direction 24C.17 and 5C. She submits that the magistrates failed to consider all aspects of Mr Mosey's absence and, specifically, the reliability of information supplied, the date of supply, and whether Mr Mosey took any action to avoid being absent. She argues further that the magistrates failed to consider appropriately or to consider at all the interests of justice of all parties, and that they proceeded with the trial when it was contrary to the interests of justice to do so, which of course would be a breach of s 11(1)(b).
31. She submits that the appellant provided a medical certificate in the form of the GP letter, which was reliable, stated clearly - or clearly enough - that he was not able to attend and gave sufficient reasons for reaching that conclusion. She submits that on a proper assessment of the factors listed in 24C.17, the only proper decision was to adjourn rather than proceed with a trial in absence. She submits that this is not a case within the scope of Criminal Practice Direction 5C.4(c). This GP letter did not identify stress, anxiety or depression as the problems from which Mr Mosey was suffering.
32. Mr Lloyd, in his very helpful written and oral submissions, has submitted that the magistrates were entitled to refuse to adjourn, and the court's decision was not plainly wrong. I hope I do justice to his admissions by highlighting the five points that he has emphasised in his oral submissions.
    i) Firstly, that the medical evidence was inadequate. He referred to the sick note mentioned in the Case Stated, and argued that this did not assist because it did not address fitness to attend court and referred to conditions of an entirely different order from those alluded to in the GP letter. Neither of the documents, he submits, addressed in any detail the question of why it was that the appellant was unfit to **attend** court; the material before the magistrates did not address in anyway Mr Mosey's *participation* in proceedings.
    ii) There had already been an adjournment due to Mr Mosey's failure to attend on a previous occasion. He had benefited from that indulgence, and that was an important factor.
    iii) No expert had been identified, no date had been identified for any reports, nor had any explanation been given of why reports were not already available. Enough time had passed for all of that to be done.

iv) The application was not made in a timely fashion in accordance with the Criminal Practice Direction. It was not notified until the working day before the hearing, which among other things made it impossible to stand down the complainant as a witness.

v) Finally, there is no evidence before the Court (submitted Mr Lloyd), that the appellant was unable to provide instructions. That is an assertion made on his behalf but not one that can be sustained on the basis of the material before the Court. The prosecution does not accept that there was any overall unfairness. So far as fitness to plead is concerned, in the Magistrates' Court, it is open to the Court to make a hospital order as a disposal in proceedings, the procedure is different from that which obtains in the Crown Court and in any event, the medical evidence did not approach that topic.

33. In summary, Mr Lloyd submits that while there may be arguments both ways as to whether the right decision was to grant or not grant the adjournment, that is not the test, and this is not a decision that could possibly be described as one that is plainly wrong.

Decision

34. The first of the principles identified in *Picton* has not found its way into the Criminal Practice Directions I have alluded to. But that is because it is a principle of appellate review, rather than a principle to guide the exercise of the original discretion. The principle remains valid and applicable to an appeal of this kind. An appellant who seeks to challenge a discretionary decision of the kind under examination in this case will generally face a difficult task. The appeal court will not interfere unless it is satisfied that the decision was clearly wrong in the sense that it involved an error of law or principle, or was outside the range of reasonable responses to the situation that faced the decision makers.

35. That said, in my judgment, the magistrates were clearly wrong to refuse the application to adjourn in this case.

36. In *Houston v Director of Public Prosecutions* [2015] EWHC 4144 (Admin) the Divisional Court considered the effect of the 2008 amendments to s 11 of the Magistrates' Courts Act 1980. Sir Brian Leveson analysed the resulting position at [22]. He said this:

> "section 11… was specifically amended to provide that proceeding in the absence of a defendant was the default position where the defendant was proved to be aware of the date of trial *and in respect of whom no good reason for absence was shown. Of course, the interests of justice must prevail*…"

(The emphasis is mine.)

37. On a proper application of the law there were two main questions for the magistrates to answer in this case, and they were straightforward. Was there an acceptable reason for Mr Mosey's failure to appear? And would it be contrary to the interests of justice to proceed in his absence? If the answer to both questions was no, the magistrates were bound to proceed. If the answer to either question was yes, the magistrates were obliged not to do so, but to adjourn.

38. The magistrates did not ask or answer either of those questions. That, it seems to me, was because they were not directed by their clerk (or for that matter by the representatives who appeared before them), to s 11 of the Magistrates' Courts Act 1980, or to section 24C of the Criminal Practice Direction, or for that matter to section 5C of that direction. Instead, they took the law from the 13-year-old decision in *Picton*. That, in itself, was contrary the express wording of Criminal Practice Direction 24C.6 which I have quoted above. This

might not have mattered, had *Picton* remained in all respects a full and accurate statement of the relevant principles. But the statutory amendments of 2008 meant that it did not.

39. Those amendments were and are faithfully and helpfully reflected in paragraph 24C.17, and other aspects of the Crim PD that I have cited. But 24C.17 was the key passage, for the purposes of this decision. And section 5C of the PD contained important guidance on how to approach medical certificates to which, again, it appears the magistrates did not direct their minds.

40. The reasons given by the magistrates for deciding to proceed make clear that four factors were uppermost in their minds: (i) the events in question were already nearly a year old; (ii) the appellant had already failed to appear once; (iii) the complainant had therefore already attended court twice; and (iv) it was unclear how long any adjournment would need to be. Those are all relevant factors, and powerful ones. But there were other factors, which clearly called for evaluation. Why was the appellant absent? The answer given was the one set out in the medical certificate. So, was the medical certificate "unsatisfactory"? If so, why? Or was the reason given in that certificate an acceptable one? And if it was not acceptable would it, in the light of that certificate, be contrary to the interests of justice to proceed?

41. The key issue here is what to make of the GP letter. The core passages are set out in the Case Stated, and I have quoted them already. Those passages in themselves make clear that this was a long way from the perfunctory sicknote or brief letter, which is so often presented to a Court as the basis for an adjournment application. Indeed, a document of that kind was among the material put before the Court on this occasion. All judges and magistrates are familiar with documents of that kind, often bearing undecipherable signatures, that are vague and unspecific, containing references to matters such as "low mood", and lacking any real indication that the practitioner has directed his or her mind in any detail to the question of whether the patient is fit to take part in legal proceedings. Sometimes, the impression is given that the patient has taken advantage of the medical practitioner, to endorse some vague indication of illness, to support an attempt to put off the inevitable. But this was not that kind of a document at all.

42. It was a bespoke letter which had the following important features. It told the reader that the patient had been registered at the surgery since 1995, that is to say, for 24 years. The author was the patient's usual GP. She was plainly familiar with his medical problems. She described the two problems she identified as "two current major medical problems". She expressed herself as "most concerned" about his current medical condition. She made clear that she considered that the patient might be psychotic and she had referred him to the mental health team. She knew that he was due for a court appearance, and she made an unequivocal assessment that "due to his serious and severe problems" his mental ill-health made him unfit to attend court. This was a man who, on her assessment, might have become blind due to mental ill health. Finally, the doctor made an express statement that she would be, "willing to provide further information" if the need should arise, with the patient's permission.

43. The clear implication, in my judgment, is that the appellant was not fit to take part in proceedings, and that he might not be fit to plead; in other words, that he suffered from such severe mental health problems that he might be unable to understand the proceedings, give instructions to his lawyers, or participate effectively in other ways. Beyond that, the doctor was clearly indicating that in her professional opinion the appellant might never recover the ability to take part in proceedings. That is the plain meaning of the sentence, "It is not clear if or when he will regain fitness to attend Court". Of course, the doctor's assessment may have been, or may turn out to be, wrong. But the magistrates were in no

position to reach such a conclusion. In my judgment this letter was not describing someone experiencing an episode of stress or some temporary depression of the kind that falls within the scope of paragraph 5C.4(c) of the Criminal Practice Direction.

44. I have mentioned the statutory sick note which was before the magistrates, though their reasons do not refer to it. In many ways this was very much the kind of document that I have mentioned. It referred to unfitness to work; that would plainly have been insufficient. But it did contain some corroboration of the GP letter: it referred to "ischemic heart disease and PTSD."

45. There is certainly force in some of the criticisms made by Mr Lloyd. This medical assessment could and should have been obtained at a much earlier stage and, once made, it should have been communicated to the prosecution and the court much sooner than it was. There could have perhaps been more detail in the GP letter as to the way forward. The solicitors could have done more, I suspect, to identify the next steps. But this was on the face of it a complex clinical picture with unsatisfactory aspects so far as access to treatment was concerned. It was fair to say that there was no prognosis, but that was not because the doctor had failed to turn her mind to the point. She plainly had. The problem was that she was simply unable to make an assessment of whether Mr Mosey would regain fitness to attend Court or, if so, when. For reasons explained in the GP letter the route forward was not crystal clear. The delay in providing this medical evidence might have been excusable, on the basis of the mental health problems themselves. But even if that was not so, these are not factors that could in my judgment be sufficient to outweigh the substance of the evidence or the information contained in the letter. Nor do I think it fair for the magistrates to describe the report as "speculative".

46. It might have been legitimate for the magistrates to conclude that the GP letter did not provide an "acceptable reason" why Mr Mosey was not physically present at court on 13 May. But the magistrates did not say that. In any event, the key question would have remained: whether Mr Mosey was unfit to take part in proceedings. The letter was, in my judgment, clear on that point and gave sufficient reasons for it. The magistrates did not state that they regarded the medical evidence as unsatisfactory in that respect, and neither in the reasons they gave at the time, nor in the supplementary reasons that they took the opportunity to add in December 2019, do I detect anything of that kind.

47. Ms Smart has referred me to paragraph 25B.2 of the Criminal Practice Direction which deals with trials in absence in the Crown Court. It contains the following wording:

> "If the defendant's absence is due to involuntary illness or incapacity it would very rarely be right to exercise the discretion in favour of commencing or continuing the trial".

As I say, that relates to trials in the Crown Court, where the default position is different from that provided for by s 11 of the Magistrates' Courts Act 1980. But in my judgment it sets out considerations which must be relevant to an assessment by magistrates of whether it would be unjust to proceed in a defendant's absence.

48. My conclusion is that, on the basis of the material before them, the magistrates could not properly reject the GP's assessment. The only legitimate conclusion on the evidence was that it would be contrary to the interests of justice to proceed. That was not a matter that could be put right by way of an appeal to the Crown Court if the magistrates erred. It was open to them to impose a timescale, and to require any further information or evidence to be provided within a specific time, failing which they might have proceeded in absence on

a subsequent occasion. However, that was not the approach that they took and, for the reasons that I have given, the appeal succeeds. I shall hear Counsel on the form of the order.

End of Judgment.

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