Claim No. HC-2017-002628

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Neutral Citation Number: [2020] EWHC 26 (Ch)

8 January 2020

BEFORE
ADAM JOHNSON QC sitting as a Judge of the Chancery Division

BETWEEN

THE FINANCIAL CONDUCT AUTHORITY
(A Company Limited by Guarantee)
Claimant
and
(1) AVACADE LIMITED (in liquidation)
(trading as AVACADE INVESTMENT OPTIONS)
(2) ALEXANDRA ASSOCIATES (U.K.) LIMITED
(trading as AVACADE FUTURE SOLUTIONS)
(3) CRAIG STANLEY LUMMIS
(4) LEE EDWARD LUMMIS
(5) RAYMOND GEORGE FOX
Defendants

APPROVED JUDGMENT

Wednesday, 8 January 2020

Judgment (as approved)

THE DEPUTY: This is my judgment arising from the hearing before the court on 6 January 2020.

Introduction

1. The third defendant, by his application notice of 15 December 2019, seeks an order to vacate the trial date in the present action on the basis that he is medically unfit to stand trial.
2. The third defendant is Mr Craig Stanley Lummis. Together with the fourth defendant, his son, Mr Lee Edward Lummis, Mr Craig Lummis was at all material times a director of two companies called respectively Avacade Limited and Alexandra Associates (UK) Limited. Avacade Limited is now in liquidation. These two companies are respectively the first and second defendants in this action.
3. Essentially, the FCA's case is that the first and second defendants contravened the general prohibition in section 19 of the Financial Services and Markets Act 2000 and the financial promotions prohibition contained within section 21. The FCA say that they did so by promoting, advising upon and making arrangements for UK consumers to transfer their pensions into Self-Invested Personal Pensions ("SIPPs") and then to purchase various high-risk investments within those SIPPs. It is also the FCA's case that some of the statements used to persuade UK consumers to transfer and invest were false, misleading and/or deceptive, contrary to section 397 of FSMA and/or section 89 the Financial Services and Markets Act 2012.

4. It is then said that Mr Craig Lummis and his son were "knowingly concerned" in the contraventions by the corporate defendants as directors of those companies. The fifth defendant, Mr Fox, is also said to have been involved in contraventions by the first defendant, ie Avacade Limited.
5. Expressed at a high level, Mr Lummis and his son say that, in fact, Avacade Limited was nothing more than an unregulated business introducer that gathered information from UK consumers and passed that information on to FCA regulated SIPP providers and independent financial advisers. Amongst other things, they say that the statutory provisions that the FCA relies upon in respect of Avacade are not applicable, and that Avacade was exempt under article 33 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. They say that Avacade did not invite or induce consumers to engage in investment activity, and deny that any misleading, false or deceptive statements were made to consumers in relation to its activities.
6. They make similar points in relation to the operations of the second defendant, Alexandra Associates. There they say that consumers who transferred into a SIPP following contact with Alexandra Associates were referred to BlackStar, a firm of financial advisers, and they rely on the advice by BlackStar as exempting Alexandra Associates' activities from the provisions relied upon by the FCA.
7. I should point out that Avacade Limited's liquidator informed the court shortly after proceedings were issued in September 2017 that he is not taking any active part in the proceedings but will abide by any orders of the court.
8. The fifth defendant, Mr Fox, is a litigant in person. I am told it is unclear whether he will attend trial, although I am also informed that, in an email dated

11 December 2019, he said he would do his utmost to do so. At any rate, there is some uncertainty as to his present intentions.

Procedural background

9. The trial has been listed as a category B case and is scheduled to be heard in a window commencing on 13 January 2020 with a time estimate of 19 days, including two days of pre-reading. The matter has been listed for trial since September 2018.

10. Although there are some outstanding applications, the pre-trial steps have very largely been completed. The parties served their initial disclosure lists on 3 January 2019 and served witness evidence for trial in August 2019.

11. The FCA's disclosure was challenged, including its supplemental disclosure list, dated 20 September 2019. These disclosure challenges resulted in a two-day hearing on 16 and 17 October 2019, at which the second to fourth defendants were represented by leading counsel, Mr David Berkley QC. The application was dismissed by Mr David Halpern QC by order dated 23 October 2019.

12. At all stages until 10 December 2019, the second to fourth defendants were represented by solicitors, initially The Byrne Practice and subsequently, from August 2018 onwards, by Zakery Khub Solicitors. On 10 December 2019, however, the day before the scheduled pre-trial review, those defendants gave notice that they were no longer represented by solicitors. The position of Craig and Lee Lummis is that this decision was taken because they were not able to afford to continue with their legal representation. The upshot is that Craig and Lee Lummis are both now also litigants in person. I will come back to this point further below.

13. In the event, the pre-trial review took place on 11 December 2019, but none of the defendants was present or represented. Mr Anthony Elleray QC made various orders and gave a direction that any further applications in relation to the trial be made by 4.00 pm on 16 December 2019. A total of four applications was then issued on 15 and 16 December 2019, including the present application by the third defendant seeking a stay or adjournment. The other applications include an application for further disclosure from the FCA and an application for certain documents to be produced in unredacted form. On 19 December 2019, I directed that the present application be listed for hearing in advance of trial and that the other applications should be dealt with on the first day of trial.

14. I should note at this stage one particular point that Mr Vineall QC drew attention to in the course of the hearing before me. This relates to the witness statements served for trial on behalf of Craig Lummis and Lee Lummis respectively. Rather unusually, leaving aside the formal and introductory parts at the beginning of their respective statements, the contents thereafter are largely duplicative. By this I mean that they deal with the same topics, to a large extent using the same words and descriptions. Mr Vineall QC used this as the basis of a submission that the cases to be run by Craig and Lee are very largely the same. There is no tension between them and, indeed, that is the basis on which they were formerly jointly represented by the same solicitors and counsel. Based on the witness statements I have referred to, that seems to me to be correct.

The earlier stay application

15. Before moving on, I should also mention that there was an earlier application made by the second to fourth defendants on 21 March 2019 seeking an order that

the proceedings be stayed generally or at least until 8 July 2019, a period of four months. This was based on the then medical condition of both Mr Craig Lummis and Mr Lee Lummis. The application was dismissed by His Honour Judge Pelling QC on 7 June 2019, who approached the application on the basis that, if granted, it would lead to the trial date having to be vacated. He thought that a matter of very considerable weight. It is appropriate to record a number of points arising from the judgment of His Honour Judge Pelling.

16. As regards the third defendant, ie the present applicant, the medical evidence consisted of a GP's report from a Dr Khalil dated 6 March 2019, and a more detailed report from a consultant psychiatrist, Dr Alfred White, dated 1 April 2019. His Honour Judge Pelling QC found that neither document compelled the conclusion that a stay was required.

17. As regards Dr Khalil's report, and after noting Dr Khalil's statement that Mr Lummis was under treatment for an adjustment disorder induced by ongoing complex litigation, the judge considered there was a question mark over Dr Khalil's suggestion that a delay in proceedings was necessary until Mr Lummis was fit to make rational decisions and provide instructions. That was because no one at the hearing had sought to suggest that Mr Lummis was incapable of rational decision-making. As the judge put it at paragraph 15, it was not suggested that either defendant lacked capacity to conduct litigation, but merely that it had become more difficult.

18. At paragraphs 18 and 19 of his judgment, His Honour Judge Pelling then summarised Dr White's report so far as it concerned the third defendant. At paragraph 18, His Honour Judge Pelling noted the observation made by Dr White

at paragraph 11 of his report that the third defendant "has ruminated a great deal about killing himself, and has even thought about the spot where he might hang himself. He does however hope that this matter will be resolved in his favour and he will be able to have some respite."

19. The judge added his own comment on this as follows:

"It is important to note that paragraph 11 merely records what Dr White was being told. It does not purport to analyse whether or reach a conclusion as to whether what he said is, or might be, correct."

20. The judge then set out the text of paragraphs 26 to 28 of Dr White's report as follows:

"26. I feel that Mr Craig Lummis is suffering from a severe adjustment disorder secondary to the various issues which are the subject of this case. I do feel that currently his concentration is very poor. He is unable to deal with stressful events and I understand he frequently breaks down crying. He is also drinking excessively, which I understand was not the case prior to 2016.

"27. I think there are times when he is unable to deal with matters with his solicitor and unable to read the various papers that are provided for him and to advise on what he wishes to be done in relation to them. I do feel that if he were currently called to give evidence, there would be a reasonable chance that he would break down whilst doing so and be unable to give evidence in court. There is, I feel, some risk that he may kill himself.

> "28. It is obviously clear that this matter needs to be continued but from the clinical point of view there would be merit in some delay in proceedings, allowing time for treatment and allowing for some time for him to improve. I cannot say absolutely that such a delay will result in improvement, although I do feel that there might well be some benefit in such a delay occurring. I am thinking of a few months and no longer."

21. As to this, His Honour Judge Pelling QC said as follows at paragraph 20:

> "There are two points that arise from the way in which this opinion has been formulated. First, the description of the condition allegedly suffered by the third defendant is described as being a severe adjustment disorder which, as counsel for the applicant accepted, is not a recognised psychiatric condition but is simply another way of saying that the claimant is suffering from stress secondary to the conduct of litigation. It is also clear, particularly from paragraph 28 of the report, that no attempt has been made to set out what, if any, treatment it is proposed should be provided to this defendant in respect of his stress-related condition. Much less has there been an attempt to set out the likely effect of such treatment or its necessary duration before it can be effective. If and to the extent it is a mere delay and thus respite which is the treatment being proposed - something which is not in terms stated - Dr White does not express any view as to what period is appropriate."

22. The judge made similar comments about passages in Dr White's report concerning

the fourth defendant, Mr Lee Edward Lummis.

23. The judge then went on to consider other factors relevant to the exercise of his discretion. These were: first, the fact that the granting of the stay would result in the trial date being lost; second, the fact that the proceedings were brought in the public interest and that there was a very strong public interest in the litigation being resolved; and, third, the fact that, in his judgment, the applicant's reliance on the alleged complexity of the litigation was somewhat overworked. In dealing with the latter point, the judge said the following at paragraph 28 of his judgment:

> "First, it was entirely clear from the submissions made on behalf of the claimant that the focus will be on a relatively small number of test transactions so that it will not be necessary to review each and every one of the transactions that arise. Secondly, and more importantly, on the material that is currently available to me, it seems unlikely that there will be any material dispute as to the primary facts of what happened in relation to the transactions. There will be no doubt some factual dispute and some factual evidence from the defendants relevant to the steps which they took to ensure that the business of the first and second defendants was conducted properly and in accordance with applicable law. However, the evidence is not, or is unlikely to be, so complex as to take this case away from the norm to be expected of financial services litigation; that is, litigation which applies in the industry in which the third and fourth defendants were practitioners."

24. In summary, the judge held that the medical evidence was not sufficiently strong

to justify the stay sought in light of the other factors at play, including in particular the risk to the trial date in a case of substantial public interest. The judge thought that staying the action, and therefore closing out the claimant from pursuing what was admittedly a viable claim required very clear justification and, on balance, no such justification had been made out. The application was therefore dismissed. There was no appeal from His Honour Judge Pelling QC's judgment.

The evidence

25. The present application, when originally made on 15 December 2019, was supported by the fifth witness statement of Mr Craig Lummis. The case advanced by Mr Lummis in that witness statement was broadly as follows. He said he was suffering from severe adjustment disorder, and his ill health was preventing him from properly participating in the proceedings. He referred to medical advice, which I will come back to, supporting the conclusion that he was not fit for trial. He said that the period of the proposed stay should be determined by an independent medical expert.

26. Mr Lummis then drew attention to the following matters:

(a) He said that the claim is a high-value, complex one, and also made the point that if the FCA succeeds, either in whole or in part, then the consequences will be ruinous for himself and each of the defendants.

(b) He said that, as of 10 December 2019, he had no legal representation due to ill health and financial reasons.

(c) He pointed to the outstanding issues with the FCA's disclosure as themselves

being a source of further stress.

(d) Mr Lummis also pointed out that other investigations and disputes are placing a burden on his health. These include proceedings under the Company Directors Disqualification Act 1986, in which a trial has now been listed for May 2020. They also include an ongoing investigation by the Serious Fraud Office into the affairs of Ethical Forestry Limited, although Mr Lummis made the point that his first scheduled interview did not go ahead due to his ill health.

27. Mr Lummis then dealt with his medical condition at paragraphs 21 to 24. He referred to what he called "the latest doctor's medical advice", which is a note signed by a doctor from Lakeside Surgery in Lymm dated 5 December 2019. He then referred to the earlier application for an adjournment and the report of Dr White, which I have mentioned above, including paragraphs 26 and 27 of his report, which I have already quoted.

28. As to the earlier application, Mr Lummis made the point that, although the time taken to schedule that application resulted in a de facto delay in some of the procedural steps in the case, that did not result in any period of respite for him, in part because the application itself was vigorously opposed. In short, he said that he has never actually had the period of respite which Dr White recommended, and in fact matters have intensified on all fronts.

29. The note produced by Mr Lummis is headed "Statement of Fitness for Work For Social Security or Statutory Sick Pay". It is effectively a sick note. According to Mr Lummis' witness statement, and indeed according to the further document I will come to below, it is signed by a Dr Nichols, although this is not clear from the face

of the document itself. The doctor has crossed the box saying "You are not fit for work" because of "stress". Under the heading "Comments", the note states as follows:

> "Patient presents with acute depressive symptoms and suicidal ideation secondary to stress related to upcoming court proceedings. In my opinion, any forthcoming trials in the three-month period would be detrimental to his health and he should not attend trial."

30. At paragraph 22 of his statement, Mr Lummis said that his doctor was currently writing an advice letter to provide further detail and this would be provided to the court once received.

31. A number of other medical records were exhibited to Mr Lummis' witness statement. Some are historic and of no relevance, but others are more recent and shed some light on events following the consultation with Dr White which resulted in his report mentioned above.

32. From Mr Lummis' clinical notes and related correspondence, one can see that in April 2019 he was referred for therapy. He attended an initial session on 7 May 2019. The clinical notes indicate that, although he still reported symptoms similar to those of both anxiety and depression, there had been some improvement. That was because he had been able to halt interviews with HMRC and the SFO and that had given some respite.

33. The clinical notes then indicate that Mr Lummis did not attend the further session scheduled for 28 May 2019 because he was away on holiday. Mr Vineall used this

as the basis of a submission that Craig had not properly sought to avail himself of help when it was made available. In his oral submissions before me, Mr Lee Lummis said that Mr Craig Lummis had in fact continued with therapy, though that was not reflected in the clinical notes or other documentation. I will come back to this point below.

34. Coming back for now to the evidence filed in connection with the present application, on 18 December 2019, Ms Dave of the FCA made a witness statement in response in which, amongst other things, she took issue with the suggestion that the second to fourth defendants' solicitors were dis-instructed due to a lack of financial means. She drew attention to a number of payments which she said had been made over time to Avacade and to Craig and Lee Lummis, including transfers made to Craig and Lee by Avacade totalling approximately £5 million. Ms Dave said that in light of such matters, the FCA did not consider it plausible that the solicitors had been dis-instructed because of lack of means.

35. Ms Dave also referred to evidence of Craig Lummis being engaged actively in the conduct of proceedings quite recently. She drew attention to a witness statement filed by him on 16 October 2019 in the context of the disclosure applications eventually resolved by Mr David Halpern QC. At paragraphs 4 and 7 of that witness statement, Mr Lummis referred to having reviewed on 11 October 2019 certain documents provided by the FCA by way of supplemental disclosure. In his judgment, Mr Halpern QC noted at paragraph 23 that Mr Lummis' witness statement exhibited "a schedule analysing 24 of the documents disclosed on 20 September 2019 in order to show why the Defendants say that these demonstrate that disclosure is incomplete."

36. That was the position and the state of the evidence until shortly before the hearing of this application on Monday, 6 January, when a number of further documents were produced. These include a further witness statement of Mr Lee Lummis dated 2 January 2020 dealing with financial matters and the decision to dis-instruct solicitors. In that statement, Lee Lummis dealt with some but not all of the payments described by Ms Dave, but also made the more general point that it makes no sense for the second to fourth defendants to be unrepresented at trial if they really have a choice about it, given how vigorously they have sought to defend themselves to date.

37. Importantly, the new materials provided also included two further items of medical evidence which I should describe.

38. The first is a "To whom it may concern" letter from Dr Nichols at the Lakeside Surgery dated 16 December 2019. This is the same Dr Nichols who provided the sick note on 5 December 2019. The letter is headed "Re: Craig Lummis". It is convenient to set out the text of the letter in full:

> "I confirm the above is a fully registered patient at Lakeside Surgery, where I work as a GP Partner. I have been asked by Mr Lummis to give a medical statement regarding his consultation with me on Thursday 5 December 2019. He presented expressing suicidal ideation. This appears to have been precipitated by upcoming court proceedings scheduled for 6 January 2020. He alleged that he was being persecuted by the Financial Conduct Authority. He stated that he would hang himself if he was forced to attend court proceedings. He had full mental capacity. He is being prescribed sertraline (a type of antidepressant) to manage his

symptoms. He was offered referral for psychological therapy. He was issued with a MED3 certificate from 5 December to 4 March, a copy of which is attached."

39. The second new document is a report headed "Expert Clinical Psychology Assessment Report Prepared for the Court" produced by Mr Matthew Akal, a consultant chartered clinical psychologist. The report is dated 2 January 2020. Mr Akal is a member of the British Psychological Society, and his qualifications include a Statement of Equivalence in Clinical Psychology in 2012 from the British Psychological Society. He is the clinical director and founder of Integrative Mindfulness Based Therapy (IMBT).

40. In his report, Mr Akal describes an assessment of Mr Lummis conducted on 27 December 2019. Section 4 of the report describes the information provided by Mr Lummis at interview. The description includes the following at paragraph 4.1.2, under the heading, "The Incidents":

"Mr Craig Lummis informed me that he is currently involved in a number of high profile, complex court cases. He reported that, due to the significant financial costs associated with several years of ongoing litigation, he is unable to afford further legal representation. Mr Craig Lummis said that, as a litigant in person, he has 18 boxes of difficult to understand legal documents in his garage to go through in order to prepare for trial. This is a task that he said he realistically does not feel able to cope with. Mr Lummis said that he is seriously considering using these boxes in his garage as a means to hang himself.

"Mr Craig Lummis informed me that his mental state began to decline after he

and his son, Mr Lee Lummis, suddenly and without warning appeared in The Sun newspaper associated with allegations of financial misconduct. Since then, the FCA have issued claims for £86,000,000. The liquidators of the first defendants have issued a letter before claim for £6,000,000 amongst other ongoing related matters. Mr Craig Lummis reported that, according to his understanding, the company for which he was managing director had been proceeding correctly.

"Mr Craig Lummis reported that, due to the ongoing stress from the various court cases and negative publicity for him and his family over the past few years, he has experienced a significant decline in his mental state and general health and wellbeing, exacerbated by underlying physical health conditions, including uncontrolled diabetes and a history of reflux and indigestion. As a result, his relationships have also been negatively affected and he is socially isolated at present.

"Mr Craig Lummis reported struggling as a litigant in person due to the complex nature of his case. He reported that he is currently struggling to maintain any legal correspondence and does not feel fit to stand trial and be cross-examined due to his increasing problems with forgetfulness and difficulty organising his thoughts. He informed me that he has been trying to compensate for the unmanageable stress with increased alcohol intake."

41. These various events are referred to in the report as the "index events" or the "index incidents".

42. Also in section 4, Mr Akal goes on to say the following under the heading "Post-Incident Impact":

"Anxiety/mood. Mr Craig Lummis reported symptoms indicative of depression, including reduced interest or pleasure in activities, lowered mood, sleep disturbance, fatigue, change in appetite, feelings of worthlessness, loss of confidence, reduced concentration, psychomotor agitation and suicidal ideation since the index events.

"Mr Craig Lummis reported symptoms associated with generalised anxiety, including feeling nervous, anxious or on edge, not being able to stop or control worrying about various things, trouble relaxing, restlessness, becoming easily annoyed or irritable, and feeling afraid as if something awful might happen since the index events.

"These symptoms were not present before the index events and have not yet resolved."

43. The next section of the report, headed "Psychometric Tests", describes the output from three questionnaires completed by Mr Lummis. The first is "PTSD Checklist for DSM-5 (PCL-5)". Mr Akal explains that PCL-5 is a standardised screening tool used in clinical and research settings to screen for the possibility of post-traumatic stress disorder following a traumatic event. He explains that Mr Lummis' score on this questionnaire was 62 out of a possible 80, and says: "This score indicates that he is likely to meet the criteria for post-traumatic stress disorder."

44. The next checklist is "Patient Health Questionnaire - 9 (PHQ-9)". Mr Akal says that PHQ-9 is a standardised questionnaire for measuring severity of depressive symptoms within the two weeks prior to completing the questionnaire. He then

says: "Mr Lummis' score was 25 out of a possible 27. The score indicates that he is experiencing severe depressive symptoms."

45. The final checklist is "Generalised Anxiety Disorder - 7 (GAD-7)"". Mr Akal says that the GAD-7 is a standardised questionnaire for measuring severity of anxiety symptoms within the two weeks prior to completing the questionnaire. He goes on to say that: "Mr Lummis' score was 17 out of a possible 21. This score indicates that he is experiencing severe generalised anxiety symptoms."

46. At section 4.4 of his report, Mr Akal then goes on to consider a number of criteria indicating PTSD and depressive disorders. He says that, based on Mr Lummis' self-reporting at the time of interview, each of the criteria he identifies was met.

47. Section 5 of the report is headed "Discussion and Opinion", and I should set that out in full:

"Assessment of injuries to establish the extent and duration of any continuing disability.

"In my opinion, Mr Lummis is experiencing extreme symptoms of post-traumatic stress, and severe symptoms of generalised anxiety and depression including daily suicidal ideation. These meet the criteria for nationally and internationally recognised mental health diagnosis, based on the DSM-5 and ICD-10. From his account, these symptoms were not being experienced prior to the index event. It is my opinion that Mr Lummis' symptoms are reasonable and appropriate to the index events.

"Comment specifically on any areas of continuing complaint or disability or impact on daily living.

"The impact of these psychological injuries has resulted in significantly restricted domestic, family, social, leisure and sporting activities. Mr Craig Lummis is currently socially isolated and mainly housebound due to concerns around negative publicity for him and his family. He reported struggling as a litigant in person due to the complex nature of his case. This is likely exacerbated by the negative cognitive effects of his mental health disorders on his attention, concentration and memory. Mr Craig Lummis reported that is he currently experiencing significant daily suicidal ideation, including plans of using boxes of legal documents in his garage to hang himself.

"If there is continuing disability, comment upon the level of suffering or inconvenience caused and if able to give your view as to when the complaint or disability is likely to resolve.

"Mr Craig Lummis' mental health disorders and environmental stressors are causing him clinically significant distress, functional impairment and reduced quality of life. His symptoms have not shown some improvement. They are unlikely to resolve entirely without psychological and potential psychiatric intervention."

48. Section 6 is headed "Conclusion", and, again, it is appropriate to read that out in full:

"Summary of diagnosis.

"• In my opinion, at the time of assessment, Mr Lummis was presenting with the following nationally and internationally recognised mental health disorders:

1. "• Adjustment Disorder (DSM-5 code: 309.28; ICD-10 code:

F43.23).

2. "• Post-traumatic stress disorder (DSM-5 code: 308.81; ICD-10 code: F431.10).
3. "• Generalised anxiety disorder (DSM-5 code: 300.02; ICD-10 code: F41.1).
4. "• Major depressive order (DSM-5 code: 293.23; ICD-10 code: F32.2).

"• It is my opinion that, at the time of assessment and due to his mental health disorders and ongoing environmental stressors, Mr Craig Lummis' risk of suicide was medium.

"• Based on the above, it is my professional opinion that Mr Craig Lummis' current mental health disorders would be significantly exacerbated by engaging in trial at the present time, and it is highly likely that his risk of suicide would thereby increase from medium to high.

"Summary of aetiology.

"• On the basis of probability, Mr Lummis' psychological symptoms have probably been caused by the index events.

"Summary of treatment recommendations.

"• I would currently recommend 15 to 20 sessions of trauma focused cognitive behavioural therapy (CBT) for post-traumatic stress disorder (PTSD), generalised anxiety and depression. The specific number of sessions should be determined by the therapist.

"• I would currently recommend referral to a psychiatrist for a further assessment of his mental health symptoms and consideration for additional psychotropic

medication.

"• It is my recommendation that Mr Craig Lummis requires a period of 6 months' respite from further litigation with immediate effect in order to begin psychological treatment without increased environmental stressors, and that the FCA trial in January 2020 would need to be stayed for this purpose to allow Mr Craig Lummis time to recover.

"Summary of prognosis.

"• It is my opinion that Mr Lummis' psychological symptoms will resolve within 10 to 12 months after starting therapy. A primary determining factor will be if he is able to have a period of respite while starting treatment."

49. Accompanying the report, Mr Lummis has also produced a copy of a lengthy document published by Gaskell and the British Psychological Society entitled "Post-Traumatic Stress Disorder: The Management of PTSD in Animals and Children in Primary and Secondary Care".

The parties' submissions

50. The basic gist of Mr Lummis' submissions will already be apparent from the points I have made above. In his written and oral submissions before me, Mr Lee Lummis, who represented Mr Craig Lummis at the hearing, emphasised a number of particular points. He stressed that Craig Lummis is a litigant in person with no legal representation who is currently representing himself at trial. As I understood it, this was accepted by the FCA, although at an earlier stage their understanding was that Lee was to represent the second and third defendants at trial in addition to himself.

51. It was also stressed on behalf of Craig Lummis that the report from Mr Akal now addresses the concerns identified by His Honour Judge Pelling in connection with the earlier report of Dr White. In particular, it is said there is now sound evidence before the court that, with respite and a course of treatment, Craig Lummis will be able to resume participation in the proceedings. It is also said that there is now evidence of a genuine risk of suicide should Craig Lummis have to engage with the trial process at the present time.

52. In his written submissions, Mr Lee Lummis focused particularly on the right to a fair hearing enshrined in Article 6 of the European Convention on Human Rights. In this context, he said that breach of the general prohibition under section 19 of FSMA is capable of amounting to a criminal offence. He submits that the FCA's case that Craig Lummis was "knowingly concerned" in the breaches committed by Avacade and Alexandra Associates will necessarily involve and require an assessment of his personal conduct and knowledge, and that can fairly be done only in proceedings in which he has a proper opportunity of being actively involved. Craig Lummis is not in a position to engage and attend trial on the basis of the medical advice, and that non-participation will mean that he is not able to comment on the proceedings and will not be in a position to cross-examine the FCA's own witnesses. All of this will lead to basic unfairness, and any judgment will almost certainly be subject to an appeal. It will be much better to avoid such complications by adjourning proceedings now to allow the proposed course of treatment to take place.

53. Very broadly, the position of the FCA was that the application was made extremely late and that an adjournment now would waste costs, court time and resources, and

inconvenience the many witnesses who have been warned. Specifically as to the report of Mr Akal, Mr Vineall QC submitted that this was largely dependent on self-reporting by Craig Lummis himself. He said that a diagnosis of PTSD was unusual and had not been identified in the earlier report of Dr White. He said there was doubt as to whether Mr Akal had seen Mr Lummis' full medical history, and in any event it was the first time he had himself seen this patient. There was evidence that Mr Lummis had not sought to avail himself of treatment when made available in May 2019, and there had been no suggestion of any inability to attend trial prior to the PTR. In any event, Mr Akal's proposed treatment was dependent on there being an initial stress-free period, and it was very difficult to see how this could happen, given in particular the pending trial in the Directors Disqualification proceedings. He said the court could therefore have no real confidence that anything will be achieved.

54. As to the possible prejudice accruing to Mr Craig Lummis, Mr Vineall submitted that, in reality, this was likely to be very limited in the unusual circumstances of this case. That is because, on proper analysis, there are very few issues of primary fact which are disputed. The case will largely depend on analysis of the documents, including transcripts of telephone calls, none of which were made by Mr Craig Lummis himself. The case is largely about inferences to be drawn from the documents and legal submissions.

55. Further, there is the point already made above about there being an almost complete overlap in the written evidence tendered for trial by Craig and Lee Lummis respectively. This means not only that their cases are largely the same, but also that there is no good reason why Lee should not represent his father

at trial. Moreover, what he says, both in submissions and his evidence, will be relevant to his father's defence.

56. Significantly, Mr Vineall also offered an undertaking that the FCA would not seek to strike out Craig Lummis' defence and to enter judgment against him in the event of his non-attendance at trial. Instead, the FCA would proceed on the basis that they would need to make good the case against Mr Lummis and, in the course of doing so, would have to engage with his defence and evidence.

57. On the question of the legal representation of the second to fourth defendants, Mr Vineall was willing to accept that this may have been motivated by financial considerations, but was not willing to concede that those defendants were simply unable to afford representation. An equally plausible explanation is that they are simply choosing to conserve their financial resources. In other words, the decision to terminate their solicitors' retainer was not an inevitable decision forced on these defendants. Mr Vineall said that a party wishing to make good such a submission would need fully to disclose its asset position, and that had not been done here.

58. Mr Vineall also emphasised the public interest in these proceedings being brought to a conclusion together with other related matters, including the SFO investigation. He said the risk of being unable to enforce any money judgment was likely to increase over time, and, further, that there was a risk that any costs thrown away by an adjournment would in practice be irrecoverable. A trial has to take place sooner or later, and there is a risk that an adjournment now is simply delaying the inevitable because that trial will be stressful for Mr Craig Lummis whenever it occurs.

The proper approach and the authorities

59. A good starting point is Levy v Ellis-Carr [2012] EWHC 63 (Ch) in which Norris J gave the following guidance on the proper approach to the assessment of the medical evidence relied on in support of an adjourment application:

"Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion and what arrangements might be made (short of an adjournment) to accommodate the party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case). The letter on which the Appellant relies is wholly inadequate."

60. The guidance given by Norris J has been approved in a number of later decisions, including by Lewison LJ in the Forresters Ketley v Brent [2012] EWCA (Civ) 324 at [26], and again by the Court of Appeal in GMC v Hayat [2018] EWCA (Civ) 2796 at [48].

61. In the Forresters Ketley case, Lewison LJ also said the following at [25] which is relevant in the circumstances of this case:

> "Judges are often faced with late applications for adjournments by litigants in person on medical grounds. An adjournment is not simply there for the asking. While the court must recognise that litigants in person are not as used to the stresses of appearing in court as professional advocates, nevertheless something more than stress occasioned by the litigation will be needed to support an application for an adjournment. In cases where the applicant complains of stress-related illness, an adjournment is unlikely to serve any useful purpose because the stress will simply recur on an adjourned hearing."

62. GMC v Hayat mentioned above also provides support for the proposition that, in considering the weight to be attached to a particular medical report, the court is entitled, indeed obliged, to look at it in light of the history and the other materials available to it. In that case, Lang J had allowed an appeal from a decision of the Medical Practitioners Tribunal on the basis that the tribunal had failed to adjourn proceedings against the appellant in light of a sick note he produced which advised that he was not fit for work.

63. Lang J's decision was overturned by the Court of Appeal. Coulson LJ at [45] said that Lang J appeared to conclude that, because the sick note post-dated earlier evidence of the appellant's condition, "it somehow trumped all that had gone before it". Coulson LJ said that was wrong in principle.

64. At [56] he then said:

> "Finally, I consider that the Tribunal was entitled to weigh up the (inadequate) sick note against all of the other material available to them. This included not only the existing medical evidence (and the fact that the sick note was broadly consistent with that other evidence, and not contrary to it) but also the fact that [the appellant] had already made three unsuccessful applications to adjourn this hearing on entirely different grounds, each without success."

65. At [57], Coulson LJ said expressly that, as part of these wider considerations, there was the question of the public interest. He said:

> "Any adjournment causes extensive disruption and inconvenience and wastes huge amounts of costs. That would have been particularly acute here, given the number of witnesses and the length of the hearing. Those again were relevant factors which the Tribunal was entitled to consider when arriving at its conclusion."

66. It is often said that the decision whether to adjourn a trial is a case management one involving the exercise of a discretion. On the other hand, such decisions have been said to engage basic questions of fairness. So, for example, in Teinaz v London Borough of Wandsworth [2002] IRLR 721 Peter Gibson LJ said as follows at [21]:

> "A litigant whose presence is needed for the fair trial of the case but who is unable to be present through no fault of his own will usually have to be granted

an adjournment, however inconvenient it may be to the tribunal or court and to the other parties. That litigant's right to a fair trial under Article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment."

67. Later in the same judgment at [22], after referring to the possibility of the court giving directions for the filing of further medical evidence in doubtful cases, Peter Gibson LJ went on to say the following:

"All must depend on the particular circumstances of the case. I make these comments in recognition of the fact that applications for an adjournment on the basis of a medical certificate may present difficult problems requiring practical solutions if justice is to be achieved."

68. The later case of Mohun-Smith v TBO Investments Limited [2016] EWCA (Civ) 403 emphasised that there is a material and important distinction between an application for an adjournment of trial and an application under CPR rule 39.3 to set aside a judgment entered in default because of the non-attendance of a party. The decision indicates that the court should not in general adopt too rigorous an approach to the question of whether a good reason has been shown for non-attendance in the context of an application under CPR rule 39.3, but that a rigorous approach is justified in the context of an adjournment application.

69. Lord Dyson MR explained why at paragraph [26]:

> "If the court refuses an adjournment, there will usually be a trial and a decision on the merits, although the unsuccessful applicant will be at a disadvantage, possibly a huge disadvantage, by reason of the absence of the witness or the party himself. Despite their absence and depending on the circumstances, it may still be possible for the disadvantaged claimant to prove the claim or the disadvantaged defendant to resist it. I accept that in some cases the refusal of an adjournment will almost inevitably lead to the unsuccessful applicant losing at trial. That is a factor that must be borne in mind when the court exercises its discretion in deciding whether or not to grant an adjournment. But if the application to set aside a judgment under rule 39.3(3) fails, the applicant will have had no opportunity whatsoever to have an adjudication by the court on the merits. The difference between an application under rule 39.3(3) and an application for an adjournment of the trial is important. Although it has not been articulated as the justification for generally adopting a more draconian approach to the application for an adjournment than to an application under rule 39.3(5), in my view it does justify such a distinction."

70. Some further useful commentary was provided by Mr Warby J in a later case involving an application by a litigant in person, Decker v Hopcraft [2015] EWHC 1170 QB at paragraphs [21] to [31]. I draw attention in particular to the following paragraphs from paragraphs [27] and [28]:

> "27. ... the question of whether the litigant can or cannot participate in the hearing

effectively does not always have a straightforward yes or no answer. There may be reasonable accommodations that can be made to enable effective participation. The court is familiar with the need to take this approach, in particular with vulnerable witnesses in criminal cases. A similar approach may enable a litigant in poor health to participate adequately in civil litigation. But the court needs evidence in order to assess whether this can be done or not and, if it can, how.

"28. ... the question of whether effective participation is possible depends not only on the medical condition of the applicant for an adjournment, but also, and perhaps critically, on the nature of the hearing, the nature of the issues before the court and what role the party concerned is called on to undertake. If the issues are straightforward and their merits have already been debated in correspondence, or on previous occasions, or both there may be little more that can be usefully be said. If the issues are more complex but the party concerned is capable, financially and otherwise, of instructing legal representatives in his or her place and of giving them adequate instructions their own ill health may be of little or no consequence. All depends on the circumstances as assessed by the court on the evidence put before it."

71. In Solanki v Intercity Telecom and Another [2018] EWCA (Civ) 101, [2018] 1 Costs LR 103, the Court of Appeal allowed an appeal against a decision refusing an adjournment. The medical evidence relied on was a letter from a doctor indicating symptoms consistent with depression, and reporting an assessment by the practice therapist that the appellant was suffering from "moderately severe depression" and "severe anxiety". On that basis, the doctor expressed his concerns as to whether the

appellant was medically fit to be able to represent himself in court at the present time. The appeal was allowed because the judge failed to give adequate reasons for disregarding the medical evidence.

72. As Gloster LJ put it at [40], the judge's view, based apparently on his own observations of the appellant in court, was that the appellant was "putting on an act", but that was no proper basis for disregarding the professional medical evidence put forward. There was evidence that the appellant was plainly ill and no evidence to suggest that the illness was contrived, see per Gloster LJ at [41].

73. More recently, in Maitland-Hudson v SRA [2019] EWHC 67 (Admin), the Divisional Court said as follows at [73] to [76] under the heading "Right to a fair trial":

"73. The right to a fair trial is enshrined under the common law and Article 6. The content of procedural fairness is infinitely flexible. It is not possible to lay down rigid rules to be applied identically in every situation. Whilst there is a core minimum of process required, involving notice and some form of hearing, what is necessary to meet the requirements for a fair trial in any given case will depend on the specific facts, including for example the nature of the proceedings, the stage reached by the proceedings and the overall procedural history. So, for example, a 'fair' hearing does not necessarily mean that there must be an opportunity to be heard orally.

"74. The ability of a respondent to participate effectively in regulatory proceedings is a fundamental element of the right to a fair trial. It is to be assessed in the context of the particular proceedings (see for example R v Marcantonio and

Chitolie [2016] EWCA (Crim) 14 at 7) ... The courts will interfere to protect it when necessary: see for example Anastasi v Police Appeal Tribunal [2015] EWHC 4156 at 38 and Brabazon-Drenning v UKCC [2001] HRLR 6 where Elias LJ stated at [18] and [19]:

"'Save in very exceptional cases where the public interest points strongly to the contrary, it must be wrong for a committee which has the livelihood and reputation of a professional individual in the palm of its hands to go on with a hearing where there is unchallenged medical evidence that the individual is simply not fit to withstand the rigours of the disciplinary process ... She clearly was unable to attend this hearing because she was too ill to do so. In those circumstances, I do not think there were any overriding public interest considerations which should have deprived her of her basic rights to be present when the case was put against her, and to be in a position where she could either cross-examine herself or have a representative with whom she could communicate cross-examine on her behalf. It was a breach both of the principles of natural justice and Article 6.'

"75. Equally in R (on the application of Gatawa) v Nursing and Midwifery Council [2013] EWHC 3435 (Admin) a decision not to adjourn a disciplinary hearing to allow more time for a lay representative to prepare on behalf of a nurse, who was suffering from mental illness and was absent, was held not to be have been procedurally unfair when her representative had been given many opportunities to ask for more time.

"76. Thus, refusal of an adjournment to a party unable to attend the hearing, if wrongful, may be tantamount to a denial of justice. Context is everything."

Discussion and conclusions

74. I am asked to adjourn the trial. That is essentially a case management decision which I must make taking account of all relevant factors and bearing in mind in particular the overriding objective and the need to deal with cases justly. As has been said, that involves looking at the position in the round and not from the perspective of one party only. I must therefore obviously take into account matters beyond the medical evidence available to me. I draw attention in particular to the following.

75. First, the nature of the proceedings. It is true that the proceedings involve serious allegations against, amongst others, the third and fourth defendants which will have serious consequences for them if sustained. But they are not in form criminal proceedings; they are civil proceedings in which civil remedies are sought.

76. Second, the nature of the allegations in the proceedings. This seems to me to be a critically important point in light of the observation made by Warby J in Decker v Hopcraft that the question of whether effective participation in a hearing is possible will depend in part on the nature of the hearing, meaning the issues before the court and what role the party concerned is called on to undertake.

77. I am struck by Mr Vineall's submission that, on proper analysis, the case gives rise to very few disputes of primary fact, and that much will depend on inference and on the legal characterisation of facts which are not in issue. I have not been able, in the time available, to conduct a detailed analysis of that proposition, but rather like His Honour Judge Pelling QC, it strikes me as correct based on the information I have seen and the documents I have been shown.

78. It may turn out, as any trial progresses, that important nuances arise. It is difficult

to be definitive about that at this stage. It does seem to me, however, that, given the unusual circumstances of this case, including the striking fact that the written evidence of the third and fourth defendants for trial is largely identical, it may be one of those limited cases where a fair trial against the defendant is possible despite non-attendance.

79. In expressing that view, I also bear in mind the timing of the present application. That has negative consequences in terms of the effects of any adjournment, which I mention below, but looked at more positively, it has the effect that the case is very far advanced in terms of preparation. Disclosure has taken place, albeit that some issues remain be to resolved, and statements of case have been exchanged, as have witness statements. The court will thus have available to it a large amount of documentary material relevant to the third defendant's position and the defences he is advancing.

80. Here I also bear in mind the undertaking Mr Vineall has offered on behalf of the FCA to the effect that they will not seek to strike out Mr Lummis' defence and enter judgment against him. The trial will therefore have to proceed against him on any view, and the trial judge will need to take a view on liability in light of all the evidence and submissions made. That seems to me to be a very weighty factor in the exercise of my discretion, since it means that the possibility of non-attendance by Mr Lummis does not carry with it the inevitable consequence that judgment will be entered against him without more.

81. Third, there is the question of the third and fourth defendants' status as litigants in person. Here, although I fully accept what Mr Lee Lummis said to me about the costs involved in litigation of this type, I do not feel able to conclude on the basis

of the evidence I have seen that the only alternative available to the second to fourth defendants in December was to stand down the entire legal time for trial. I see particular force in Mr Vineall's submission that a party wishing to invite such a conclusion should give full disclosure of its asset position. I do not think that has happened here, and I think I must accept the FCA's suggestion that there is evidence at least calling into question the level of funding available to the second to fourth defendants. Perhaps some, but more limited, legal representation than that originally envisaged would have been possible at reduced cost. Moreover, if the funding issue is as serious as is suggested, it must have been foreseen for quite some time. Efforts could have been made to secure pro bono representation through one of the organisations providing such services.

82. I take the point that, presently, Mr Craig Lummis is representing himself as a litigant in person, but I also take the point that, given the overlap between his case and that of Mr Lee Lummis, there would in principle be no impediment to him authorising Mr Lee Lummis to make representations on his behalf.

83. Fourth, I must record the negative consequences arising from an adjournment at such a late stage. These are obvious and very serious. They include, but are not limited to, the inconvenience to the witnesses who have been warned, wasted court time and resources and costs thrown away which may ultimately be irrecoverable.

84. Fifth, there is the wider public interest in the present litigation being concluded in a timely manner, in particular given the time that has elapsed so far since the proceedings were commenced.

85. The FCA's position is that, as a result of the actions of the first and second defendants, UK consumers transferred in excess of £86 million in pension funds

into SIPPs. The FCA says that approximately £70 million was then invested into investments, promoted (on the FCA's case), or introduced (on the defendants' cases), by the first and second defendants. Those investments have either failed or seem likely to fail.

86. These are obviously very substantial sums. Many people have been affected. There is an obvious public interest in the issues raised by this litigation being resolved without any unnecessary delay. It is certainly a highly unattractive proposition to subject the proceedings at this late stage to a substantial period of further delay. It is unclear precisely what period of delay is sought, but it seems it is in the region of 12 months, and in practical terms any adjourned trial is unlikely to come on before that in any event.

87. Bearing those points in mind, I then come to the evidence of Mr Lummis' condition. The recent evidence comprises the sick note from Dr Nichols dated 5 December 2019, Dr Nichols' later letter of 16 December 2019 and the report of Mr Akal dated 2 January 2020. Looking at these documents together, and also taking account of the earlier evidence of Mr Lummis' medical conditions, it seems to me I am bound to accept that Mr Lummis is suffering from serious mental health issues, which are causing him distress and functional impairment.

88. What is much less clear to me, however, is that Mr Lummis is unable to play any part at all in the ongoing litigation and the trial process. I note that the sick note of 5 December 2019 recommends that he "should not attend trial", and that Mr Akal's opinion is that:

> "Mr Craig Lummis' current mental health disorders would be significantly

exacerbated by engaging in a trial at the present time, and it is highly likely that his risk of suicide will thereby increase from medium to high."

89. But it is not completely clear from these comments what is meant by *attending* trial or by *engaging* in a trial. It may well be, in light of the comments I have made, that something falling short of full engagement and day-to-day attendance at trial is sufficient. It may be that no attendance at all is sufficient. In any event, what does not seem to me to have been explored is whether something falling short of complete disengagement is possible and advisable clinically. What is presented is an all-or-nothing response, which in the circumstances and for the reasons given above is deeply unattractive.

90. In this context, I note several further points.

91. First, the statement in Dr Nichols' letter of 16 December 2019 that Mr Lummis had full mental capacity. That suggests to me that he is capable at least to some degree of engaging with the issues in the case, difficult though that may be for him to do.

92. Second, I have in mind the evidence referred to above which suggests that Mr Craig Lummis was actively involved in October 2019 in analysing the FCA's disclosure. This again is consistent with the idea that some degree of engagement with the ongoing litigation is practically possible. It ties in with Mr Vineall's observation that, prior to the PTR, there was no suggestion that Mr Lummis was not fit for trial and could not attend.

93. Third, I bear in mind the description in Dr White's opinion at paragraph 27, where he said he felt there were times when Mr Lummis was unable to deal with matters with his solicitor, and that, if he were currently called to give evidence, there was

a reasonable chance that he would break down whilst doing so and be unable to give evidence in court. But that falls short of saying that any degree of engagement with the trial process is impossible. As Warby J said in Decker v Hopcraft, methods are available for dealing with vulnerable witnesses and parties, and accommodations can be made -- for example, taking regular breaks -- to facilitate attendance and the giving of evidence if that is necessary.

94. I come next to what seems to me a critical point, namely Mr Akal's conclusion that Mr Craig Lummis' conditions are treatable and can be resolved within a time frame which he has identified. He recommends six months' respite and expresses the view that the various symptoms will resolve within 10 to 12 months of starting therapy. This was emphasised by Mr Lee Lummis in his submissions, in particular in the context of Mr Akal's PTSD diagnosis, which Mr Lee Lummis stressed was a treatable condition. That formed the basis of his submission that there was practical utility in ordering an adjournment at this stage.

95. A number of observations are relevant in relation to this. First, as Mr Vineall submitted, and as I accept, it seems highly unlikely in light of the various sets of proceedings and investigations he is facing that Mr Lummis will in practice be able to achieve a complete respite for a period of six months. I take the point made by Mr Lee Lummis in his submissions that the intention would also be to apply for an adjournment of the trial in the Directors Disqualification action, but even if one were granted, it seems difficult to think that Mr Lummis will be able to achieve an extended period free from any stress caused by the proceedings and enquiries he is involved in.

96. Second, and perhaps more fundamentally, Mr Akal's confident prognosis was not

shared by Dr White in his report. Dr White is a senior psychiatrist and a qualified medical practitioner. Mr Akal is not. He is a professional psychologist. Of course, Dr White's diagnosis was also different. He did not identify PTSD as a condition affecting Mr Lummis. Neither has anyone else prior to Mr Akal. I note that the 5 December 2019 sick note referred to Mr Lummis presenting with "acute depressive symptoms and suicidal ideation secondary to stress related to the upcoming court proceedings". This reflects Dr White's earlier assessment that Mr Lummis was suffering from "severe adjustment disorder secondary to the various issues which are the subject of this case". It was in this context that he gave his more cautious assessment at paragraph 28 of his report, namely that, although he could see merit in some delay in the proceedings, "I cannot say absolutely that such a delay will result in improvement". Dr White's diagnosis and prognosis were relied on originally by Mr Lummis as the basis for his application in his witness statement of 15 December.

97. At this point it seems appropriate to refer again to the clinical notes mentioned above and, in particular, the entry for the first session attended by Mr Lummis on 7 May 2019. Mr Vineall relied on these notes as indicating that Mr Lummis had not availed himself of the opportunity of undertaking therapy sessions when offered.

98. I do not feel able to accept that submission in light of the observations made to me by Mr Lee Lummis during his submissions, but the clinical notes to my mind are relevant for another purpose. That is to say, the story they tell seems to me to reinforce the diagnosis and the rather more cautious prognosis of Dr White, and in particular his view that, given the nature of Mr Lummis' condition as he saw it, and

its connection with the ongoing litigation, there could be no certainty that the delay would result in any improvement. The clinical notes are consistent with that because they suggest there was some improvement during a period of respite, but plainly, if the recent evidence of Dr Nichols and Mr Akal is taken at face value, Mr Lummis has encountered problems again in the period leading up to the currently proposed trial.

99. Although Mr Akal's report refers to him having reviewed Mr Lummis' medical records, there is no mention of this point; neither is there any direct engagement with the issue of why, given that Mr Lummis' involvement in a number of high-value, complex cases is one of the index factors underlying his various conditions, it is thought those conditions are unlikely to recur absent the various cases being resolved. It seems to me that Dr White was resigned to that reality in his report when he said:

> "It is absolutely clear that this matter needs to be continued, but from the clinical point of view there would be merit in some delay in proceedings."

100. I also note that although Dr White said in his report at paragraph 29 that he would be happy to examine Mr Lummis again to see whether respite and treatment had been helpful, there is no evidence that that has happened, and instead of going again to Dr White for an update, Mr Lummis, for the purposes of this application, has instructed Mr Akal instead.

101. This all leads me to the conclusion that there is a material risk that Mr Craig Lummis' conditions either will not be resolved or will recur at some future stage,

even if there is presently an adjournment. That gives rise to the very unappealing prospect of an adjournment now, followed by a lengthy period of delay, only for the same or a similar problem to recur before the adjourned trial comes on for hearing. This seems to me to be a very weighty factor to be borne in mind in determining what steps to take at this stage.

102. Drawing the various threads together, I have come to the following conclusions.

103. First, I do not think it is appropriate to adjourn the trial in its entirety at this stage. In the circumstances, that seems to me to be too crude a response to a difficult situation in which many factors are at play beyond the medical condition of the third defendant. Quite aside from the many matters already mentioned above, there are live claims against the other defendants, who do not claim any medical reason for non-attendance.

104. Second, I would encourage Mr Craig Lummis to give careful consideration, if necessary together with Dr White and/or Mr Akal, as to whether some more limited engagement with the trial process is possible and advisable in the circumstances. That might involve attending only to give evidence, or perhaps even more limited engagement, such as commenting on daily transcripts and having discussions with Mr Lee Lummis. Mr Craig Lummis should be told, and if necessary Dr White and Mr Akal also informed, that the court can make accommodations in respect of vulnerable witnesses and parties. Discussions might also usefully be undertaken with Mr Vineall and his team. I have in mind here the observation of Peter Gibson LJ in the Teinaz case to the effect that adjournment applications of this type may present difficult problems requiring practical solutions.

105. Third, and in any event, it seems to me that the question of fairness to the third

defendant is a matter which should be kept under review as the trial progresses. I have already mentioned above that I see force in the submissions made by Mr Vineall about the nature of the issues in this case. If, as matters progress, his own prognosis on that topic turns out to be correct, that will obviously have consequences in terms of the fair management of the case from the point of view of the third defendant, and it may be possible for the claims against him to be resolved despite non-attendance, if that is what happens. If serious doubts arise, however, it will always be open to the trial judge, it seems to me, to take steps at that time, including, if necessary, adjourning the proceedings against the third defendant alone.

106. The overall position, therefore, is that the third defendant's application for an adjournment of the trial is dismissed. I will hear from the parties in connection with any consequential matters arising.