Neutral Citation Number: [2020] EWHC 3234 (QB)

Case No: QB-2020-000089

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/11/2020

Before:

THE HON. MR JUSTICE WARBY

- -

Between:

Yvonne Ameyaw	**Claimant**
- and -	
(1) Christina McGoldrick	
(2) Louise Coyne	
(3) PricewaterhouseCoopers Services Limited	**Defendants**

- -
- -

The Claimant did not appear and was not represented
Rupert Paines (instructed by **Fladgate LLP**) for the **Defendants**

Hearing date: 20 November 2020

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Judgment Approved by the court for handing down (subject to editorial corrections)

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Mr Justice Warby:

1. On the afternoon of 20 November 2020, I heard argument on matters consequential on the judgment I handed down on 12 November 2020 ([2020] EWHC 3035 (QB)), and the order I made that day. The Claimant did not appear at the consequentials hearing, nor was she represented. Her mother, Mrs Doris Mensah, attended. She did so for a specific and limited purpose. Mr Leonard Ogilvy, who has previously acted as the Claimant's McKenzie friend, was also in attendance, but he was not there to represent the claimant as an advocate. The claimant had applied in writing for an adjournment.

2. I dealt with, and refused, that application, having read documents submitted on behalf of the claimant to which I will refer later. I read and heard argument from Mr Paines of Counsel, for the defendants, on the consequential matters. I made orders for costs in the defendants' favour. I granted the claimant an extension of time for seeking permission to appeal, and extended time for service of draft Amended Particulars of Claim. I determined that two previous applications by the claimant were totally without merit. I reserved my decision on whether, in consequence, I should make a Civil Restraint Order.

3. I gave brief reasons at the time, but made clear that I would provide written reasons, as I now do.

Background

4. Two applications in this case were listed for hearing on Thursday 5 November 2020. The claimant applied for an injunction. The defendants applied to strike out the claim or for summary judgment in their favour. At the hearing, the claimant did not appear. She applied, through her mother, for an adjournment. I declined to adjourn the hearing and decided to proceed in the absence of the claimant. I considered and dismissed the claimant's application. I read and heard argument on the defendants' application, and reserved judgment.

5. On Wednesday 11 November 2020, before I had handed down judgment, I provided the parties – through my clerk - with a draft order, making clear that in accordance with the Covid-19 protocol the hand-down would be remote, without any attendance from the parties, and that I proposed in any event to give directions for the adjournment of all consequential matters to a hearing a week after the hand-down.

6. On Thursday 12 November 2020, I handed down judgment remotely. I gave my reasons for the decisions made on the day of the hearing, and gave judgment on the issues which I had reserved. I struck out the whole of the Particulars of Claim and most of the Claim Form. I transferred the claimant's data protection claim to the County Court. I entered summary judgment for the defendant on the majority of the other pleaded claims. I made an order for directions in the form of my earlier draft, but with the substantive decisions recorded. The order provided for a hearing on Friday 20 November 2020. It extended time for seeking permission to appeal. It provided (by paragraph 13) that

> "Any application to adjourn the Consequentials Hearing must be made by application notice with evidence in support in accordance with Parts 22 and 23 of the Civil Procedure Rules."

7. Part 23 provides that an application notice should be filed and served no less than 3 clear days before the date of the hearing at which it is to be considered. To be timely, an application to adjourn would have had to be filed and served on Monday 16 November 2020.

8. An application was filed by the claimant on Wednesday 18 November 2020 and, according to the defendants, it was served at 16:27 that day. In the skeleton argument later submitted for the defendants, Mr Paines fairly summarised the gist of the grounds put forward:

> "The main basis of the application is that (she states) she has now found solicitors to act for her on a CFA basis, but who require more time to prepare and who have not been able to instruct counsel (also on a CFA basis). There is a tangential reference ("*[I] remain unable to represent myself for reasons previously given*") to her previous assertions of medical issues, but those are no longer at the forefront of her application."

9. On Thursday 19 November 2020,

   (1) Shortly after 11.30, Mr Paines submitted the skeleton argument to which I have referred, together with copy authorities and other documents, including costs schedules.

   (2) At 14:28 the claimant filed and served by email a witness statement in support of her application to adjourn. This was mainly concerned with the claimant's efforts to obtain a "medico-legal report", and her criticisms of the way the matter of her health and her previous adjournment application had been dealt with. The statement attached some documentation on these topics. One thing she said was that her GP had agreed to provide an updated statement on her condition "without giving an opinion on fitness to attend". She said this would "be made available to the court as soon as ready." The email said, "I will forward the GP's letter when this [is] ready".

   (3) The consequentials hearing was fixed to start not before 14:30 on Friday 20 November (to follow a hand-down and consequentials hearing in another matter, which was given a 14:00 marking.)

10. On the morning of 20 November, at 08:41, the claimant emailed the Court in these terms:–

> "Dear Sirs,
>
> I write further to my application notice dated 18 November and witness statement dated 19 November (per email chain below).
>
> I confirm that I am in receipt of one hard copy of a document titled "**Summary of computerised records relating to mental health held at FHR Group Practice**" dated 19 November 2020.

> I must explain that the records are summary information and further exclude information about the contents of confidential consultations that I have had with other NHS departments.
>
> I was required to collect this document in person from the GP's surgery. It was explained to me that the document could not be sent via email because such sensitive medical information could only be sent electronically to an NHS email account. I am now personally responsible for use/misuse of this information.
>
> For above reasons (and also due to my past experiences which the court is already aware of), I am not able to send out this information electronically. I do not understand the implications of doing so and do not believer that I will have control over how this information could subsequently be used.
>
> I do not wish to be discourteous to the court but having given it serious thought, I do not feel able to return to the RCJ at this point in time or to do so without any legal representation when this gives me such great anxiety and stress. If this situation does not improve then it may be that my mother, rather than me, attends court this afternoon in order to show the document to the judge only.
>
> In the event that I am unable to attend, I wish to make clear that I do not give my consent for the document to be shown to the Defendants or their lawyers.
>
> Where deemed strictly necessary, and sitting in private, I give consent that the judge may summarise relevant information to lawyers acting for Defendants for purposes of this application notice only. If contents of the document is communicated to the lawyers, I respectfully ask the court to give appropriate directions and/or direct that the Defendants' lawyers give an undertaking including that the information provided is not intended for any other use.
>
> Lastly I do not give my consent for copies to be made of the document or for it to be stored without my knowledge or consent.
>
> I will try to make every effort to attend this afternoon however if I am unable to do so, these are my wishes concerning use of my medical information."

I shall refer to the GP Summary identified in this email as "the Report".

11. At about 14.15, I received from my clerk a document entitled "Claimant's short skeleton for an adjournment". It was signed "L Ogilvy McKenzie Friend for the Claimant." It began by stating that it had been "prepared under intense pressure from my understanding" so far as the claimant was concerned and "prepared by me under

very pressing circumstances". It ran to 11 paragraphs, covering the following matters: (1) factual assertions about the hurt and injury suffered by the claimant; (2) factual assertions about the claimant's attempts to obtain legal representation on a CFA, and the time it would take to get on board "a competent counsel who is willing and able to take on this matter" ("a few weeks"); (3) a request to be heard on behalf of the claimant; (4) submissions in support of the legal and procedural framework and the merits of the adjournment application. It ended with a page of citation on the topic of Article 6 ECHR, and the following "Conclusion":

> "There is no reason to downplay the right to legal assistance and representation and which rights include the right to make written representations and the right to be heard within the principles of the audi alteram partem rule and natural justice principles."

12. Before going into court, I got my clerk to provide the parties with copies of the law report of *WEA Records Ltd v Visions Channel 4 Ltd* [1983] 1 WLR 721 and the text of CPR 39.8, both of which appeared to me to have a bearing on the issues raised by the claimant's email. *WEA Records* was a case about an application for an *Anton Piller* (i.e. search) order, heard and granted by Mervyn Davies J at an *ex parte* hearing. Confidential material was relied on, which was not disclosed to the respondent when the matter came back on notice. The respondent's application to discharge the order was unsuccessful. An appeal was dismissed as premature, but the Court of Appeal took the opportunity to re-state one of the fundamental rules of litigation. Sir John Donaldson MR said (at 726G) that a situation in which an order is granted after the Court has been given information which could not be disclosed to the defendants "should never be allowed to arise"; and that when it came to the *inter partes* hearing, "clearly the matter has to be considered solely on the basis of evidence which is known to both parties" (728D).

13. CPR 39.8 provides, relevantly, as follows:-

> "**Communications with the court**
>
> **39.8.**
>
> (1) Any communication between a party to proceedings and the court must be disclosed to, and if in writing (whether in paper or electronic format), copied to, the other party or parties or their representatives.
>
> (2) Paragraph (1) applies to any communication in which any representation is made to the court on a matter of substance or procedure but does not apply to communications that are purely routine, uncontentious and administrative.
>
> (3) A party is not required under paragraph (1) to disclose or copy a communication if there is a compelling reason for not doing so, and provided that any reason is clearly stated in the communication."

The hearing

14. The hearing began shortly after 2:30pm. In Court for the defendants were Mr Paines, his instructing solicitor Mr Drew, and an associate. As I have mentioned, the claimant was absent, but her mother and Mr Ogilvy were there. Mrs Mensah made clear that her attendance was solely for the purpose of providing the document that had been mentioned in the claimant's email. Mr Ogilvy did not seek a right of audience, making clear that he did not believe he could do so in the absence of the claimant. The hearing was in public, as there was no need nor any justification for any part of it to be in private.

15. Having asked some questions of Mrs Mensah and Mr Ogilvy I made the following clear:

    (1) I would take the Skeleton Argument into account in the claimant's favour, but would not hold anything in it against her. The reason for this is that it was not crystal clear to me whether she had authorised everything in that document. It seemed, from what Mr Ogilvy said, that the claimant had only had the opportunity to hear the document read over, and that in some haste.

    (2) I would not receive the Report if it could not be seen by the defendants' representatives. I observed that the claimant's email was not clear on whether she left it to me to decide how to deal with the Report, or was not willing to have it disclosed in full under any circumstances.

16. Thereafter,

    (1) Mr Paines offered undertakings on behalf of PwC, and - subsequently - on behalf of the defendants' solicitors (it was not possible for him to obtain instructions from his individual clients).

    (2) The hearing was briefly adjourned, to allow Mrs Mensah and Mr Ogilvy to speak to the claimant.

    (3) When the hearing reconvened, I was given to understand that the claimant accepted that the undertakings gave her appropriate protection, if the document was disclosed. Mr Ogilvy did inform me in addition that the claimant wished the health information to be anonymised, and for the Court to use discretion in what it said publicly about the contents of the Report. I indicated that, for obvious reasons, the former would be impossible. The latter point was noted.

    (4) The Report was passed to me by Mrs Mensah. I read it, and passed it to Mr Paines, who read it and returned it to me. I gave it to my clerk for copying, making clear that this was a necessary part of the process. My clerk made one scanned copy. He made no hard copies. A photocopier is not readily available to him. The original was then returned to Mrs Mensah. Electronic copies were retained in folders on my system, and that of my clerk.

17. I made a note of the undertakings offered, which were these:

    (1) The third defendant undertook through Counsel that

(i) any document disclosed by the claimant's mother at the Consequentials Hearing would be used only for the purposes of the proceedings and disclosed only to the defendants and their representatives

(ii) all hard copies and electronic copies of such document(s) would be held by the defendants' solicitors

unless the Court gives permission.

(2) The defendants' solicitors undertook through Counsel that they would not provide a copy of the Report to either of the first or second defendant unless that defendant has first given undertakings to the Court in the same terms as the third defendant's undertakings.

18. All of this took place on the footing that a copy of the document would later be provided to the defendants' solicitors by the Court.

19. Having read all the documents, including the Report, I then proceeded to hear argument, refuse the adjournment application, and make the other decisions I have mentioned.

20. Mrs Mensah and Mr Ogilvy were both present throughout the hearing. Mr Ogilvy was making notes. As I have made plain, the copy of the Report taken by my clerk was not provided to the defendants at the time. At the end of the hearing, I made clear that this would follow the provision of a draft order recording the undertakings. As the hearing concluded after 4pm on a Friday, it was envisaged that this would take place on or after Monday 23 November. At the time of writing, that has not taken place, for reasons it is unnecessary to recount in this judgment. But the fact remains that the undertakings were offered, and the Report was provided to and read by the Court and Counsel on that basis. The undertakings have therefore been recorded in the formal order of the Court.

21. I have set out these events in some detail not least because there has been correspondence since the hearing which makes it appropriate for me to record my findings of fact about what occurred.

The application to adjourn

22. The claimant has conducted these proceedings to date as a litigant in person, assisted from time to time by a McKenzie Friend. She has had solicitors acting for her in the employment proceedings. But there is no evidence that she has sought, at any previous time, to obtain legal advice or representation in this case.

23. The present application was made the best part of a week after I handed down judgment. It was late, and non-compliant with my order. The evidence in support was limited. The Skeleton Argument did not assist greatly, as its factual propositions were so limited and so broad-brush. I noted that the claimant's application was based on the need to obtain legal representation, and that was the subject of the evidence in box 10 of the application notice. Her witness statement of 19 November did not deal with that; it dealt instead with her health. I also noted that although assertions were made by the claimant (in her application notice and email correspondence) and by Mr Ogilvy (in the Skeleton Argument) on what the claimant's solicitors had said they required in order to act for the claimant, there was nothing from the solicitors themselves.

24. Any adjournment application must be considered in the light of the overriding objective. The Court needs to take into account what is at stake at the hearing which it is sought to adjourn. It may take into account the parties' prospects of success on those issues, if it is possible to form a clear view (see *Boyd & Hutchinson v Foenander* [2003] EWCA Civ 1516 [9]). It needs to take account of the risk that an adjournment will lead to the Court's scarce time and resources will be consumed to no useful purpose, or to an extent that is disproportionate to the strength of the case in favour of an adjournment.

25. The main consequential issues for resolution at this hearing were costs and (if an application was made) permission to appeal against my order dated 12 November 2020. It was clear to me that on the matter of costs there was little that could reasonably be said on the claimant's behalf. The general rule is that the unsuccessful party pays the costs of the successful party. The claimant was plainly the loser on substantially all the issues I resolved on 5 and 12 November 2020. The Court can make a different order but, absent some Part 36 offer or other admissible offer to settle (and none had been identified or suggested), I could not identify any tenable ground for resisting a costs order on those matters. I had familiarised myself with the history of the litigation and saw no realistic prospect that any argument could be mounted that this was a case for departing from the normal order.

26. The claimant's application notice did not identify any such argument. It explained that the solicitors acting for her in the EAT had "agreed to assist me on a CFA and, further, on condition that they are able to secure counsel who is willing to act on a CFA basis as well." It stated that the solicitors were seeking to identify Counsel to deal with the case, and

> "even if Counsel is secured, Counsel would need at least a week or more to get to grips with the long and tortuous history of this case before preparing grounds for permission to appeal and *grounds for objecting to costs*."

(The emphasis is mine).

27. Nothing was said, nor was any document produced, to indicate what the solicitors themselves had said. I did not believe that fairness required that the claimant's solicitors – knowing nothing about the case so far – and new Counsel should be given time to prepare submissions on costs. Initially, I thought there might be a case for reserving aspects of the costs, in case a tenable pleading was produced to amend the residual parts of the claimant's case. But I was confident that argument could be dealt with fairly by my taking up that argument in debate with Mr Paines.

28. As for the claimant's health, I had reviewed the position when deciding to refuse the claimant's previous adjournment application. My judgment on that application sets out the history. At [22-23] it refers to the principal authorities and summarises some key principles. At [24], I set out my reasons for refusing the adjournment application made at that time. At the hearing on 20 November 2020, I had additional material: the claimant's witness statement of 19 November 2020, its attachments, and the Report. But this material did not persuade me that I should adjourn argument on costs on the footing that the claimant's health disabled her from presenting her position, or so impaired her ability to do so that the overriding objective called for an adjournment of that aspect of the matter.

29. The claimant had now produced some written evidence that her GP clinic declined to provide a report assessing her ability to take part in legal proceedings. In what appear to be text messages, the claimant sought a report compliant with the requirements identified in *Levy v Ellis-Carr*. The GP practice wrote that

> "We are not able to provide a medical report regarding fitness to attend court. It is for the court to determine this, not your GPs."

In another text, undated in the copy I have, the doctor states

> "For the final time, we are unable to do this … please direct all further requests relating to fitness for court proceedings to the clerk of the court, as they are experienced in this field and will obtain medical advice for you if they require it."

The claimant has said that the GP contract does not cover the provision of reports and that she has been directed to private providers.

30. This is all most unusual, and puzzling, for reasons explained in my earlier judgment at [24(7)]. The final text quoted above is certainly wrong in what it says about the Court. It is doctors, health professionals, not Courts or Court clerks, who can assess a person's health and fitness. The claimant's evidence is also that she cannot afford a private report, and is awaiting a referral, having escalated the matter to NHS England as long ago as 25 August 2020.

31. This is an improvement on the evidence and information put before me on 5 November 2020. That said:-

(1) The texts produced by the claimant date from early August 2020, several months before the hearing before me on 5 November. There is nothing to suggest that they could have been produced to the Court then, or sooner, and no explanation is given for why that was not done.

(2) The documents show that the claimant was told on 6 August that she could obtain a statement of her medical history by contacting the Admin team.

(3) The Report records that offer. It also records that it was on 14 November 2020 that the practice was contacted to provide that statement, and that agreement to provide it was given on 17 November 2020. That statement, in the form of the Report, was produced on 19 November 2020. The report was produced promptly. The 3-month delay on the claimant's part is unexplained.

(4) Having reviewed the Report, I concluded that it does not assist the claimant in any significant way. It is, unsurprisingly, consistent with the GP report of 2 July 2020 to which I referred in my previous judgment at [17(2)], [17(8)], [24(5)] and [24(6)]. It does provide a more detailed medical history, evidently drawn from the electronic records. Given the claimant's sensitivity and wishes in the matter, I shall not set out the diagnosis or treatment details. These can be made available to those who need to see it, if that is required at any later stage of this case. What I shall say is that:

(a) The record begins in June 2015, when the claimant registered with the practice.

(b) She had health problems at the time of her Tribunal hearing in 2017, and the record suggests some continuing problems in the year that followed. But there is no record of any contact with the practice between September 2018 and May 2019.

(c) Nor is there any record of any contact, between May 2019 and July 2020, when she is reported to have "collapsed in court" and to have reported feeling "unable to attend court for 4 weeks" (c.f. the GP letter, already mentioned).

(d) On 11 August 2020, an "initial assessment" (meaning, it seems, a provisional diagnosis) was made, based on questionnaires, but later that month she was discharged from the service with which she had been registered due to her failure to reply to follow-up calls. The only record of any contact between the claimant and her GP practice between 11 August and 20 November 2020 is the record of her request, on 14 November 2020, for a statement of her medical history.

(5) This evidence, and what the Report says about diagnosis and treatment, has to be seen in the context of what the claimant was able to do in the Tribunal proceedings, and the appeal processes, and in embarking on this litigation. It also has to be seen in the context of the extensive correspondence and submissions which the claimant has produced, and which I have seen and read, in relation to the matters that I have dealt with. This includes not only the application notice, witness statement and email to which I have referred above, but also a large number of emails to the Court and to the defendants' solicitors, as well as a number of earlier documents containing evidence and written submissions. I find myself in a position similar to that of Vos J (as he then was) when refusing an application to adjourn the trial in *Governor and Company of the Bank of Ireland v Jaffery* [2012] EWHC 734 (Ch). The Judge did not regard a GP report signing the applicant off work as especially persuasive ([49]), and went on at [58] to say that the applicant

> "has been communicating with the court and with the claimants over a lengthy period in the most coherent fashion. He is plainly perfectly capable of expressing his point of view taking decisions and advancing his case".

32. It is clear that in the week that passed between the hand down of judgment and the consequential hearing the claimant was able to spend some time seeking agreement to act on a CFA and compile a fairly substantial body of evidence and argument in support of her adjournment application. A relatively small portion of the energy devoted to all of that would have been enough to enable her to prepare and advance a few short submissions on costs.

33. I turn to the second main consequential issue, permission to appeal. I can deal with this more shortly. In essence, the claimant was seeking more time to enable her to get lawyers on board to formulate grounds of appeal and/or to put forward Amended Particulars of Claim, if she decided to seek to do so. She had not explained why those

steps were only being taken at this late stage. She had failed to provide direct evidence from the solicitors to explain the position. I could not understand why it should take weeks to instruct the solicitors or Counsel on these matters. This case is not as complex as it might seem to some. If there are arguable grounds of appeal (rather than matters on which the claimant disagrees with my decision) it should be relatively easy to identify them. I know that specialist Counsel in this field will often pick up cases very quickly at very short notice.

34. But there were several case management factors in favour of extending time. The claimant is unrepresented. She may conclude, having taken advice, that she has no prospect of success and should not seek to appeal. If she does, her grounds are likely to be more focused and better directed if formulated by a lawyer. I know the case well now. If there is an application for permission to appeal, it is better that it be made to me in the first place. If I give permission, that will avoid an application being made to the Court of Appeal. If I refuse, the Court of Appeal will have the benefit of my reasons. And an extension of time will cause the defendants negligible prejudice. This was not a matter on which they had spent, or could have spent, irrecoverable costs. Respondents have a minimal role to play when it comes to permission to appeal.

35. I was therefore broadly sympathetic to the submission that some further time should be given. I made this clear to Mr Paines who, having taken instructions, indicated that he would not resist the grant of further time. I extended time for seeking permission to appeal, making clear that if a further extension was sought it would be unlikely to succeed, in the absence of evidence from the lawyers to explain why more time was needed.

36. Time for service of draft Amended Particulars of Claim (if so advised) was also extended for similar reasons.

Costs: decisions

37. I dealt first with the costs of the hearing before me, awarding them to the defendants. My reasons for that will be apparent from what I have already said: the defendants were the winners on all those issues, and no reason was identified, nor could I see any reason, why the general rule should not apply in this case.

38. I assessed the costs of the hearing before me summarily because that is the default position, and there was no reason to depart from it. I deducted the costs of attendance at the hearing by an associate from the defendants' solicitors' firm. A partner was in attendance and that, in my judgment, was as far as it was reasonable to go in all the circumstances. The rates sought and the hours worked were reasonable and proportionate, in my judgment, as were Counsel's fees. The rate charged for the partner, Mr Drew, was below the 2010 guideline rate. The rate charged for the associate was somewhat above that rate but still reasonable in my judgment.

39. I also awarded the defendants the majority of their other costs of the claim to date, to be assessed on the standard basis if not agreed. I was persuaded that my initial response (paragraph [27] above) was mistaken. As Mr Paines pointed out, my judgment and order represented the final dismissal of everything the claimant had pleaded, except for a few words in the Claim Form. It was on the matters I struck out, and the causes of

action on which I granted summary judgment, that the defendants incurred their costs. I accepted those submissions.

40. Even if the claimant were able to comply with the requirements of my Order dated 12 November 2020, and produce Amended Particulars of Claim which disclosed a reasonable basis for seeking remedies for harassment and/or breach of confidence and/or breach of privacy and/or negligence, that would have no impact on the costs position. It remains to be seen whether the claimant, or her solicitors and Counsel, can produce draft Amended Particulars of Claim that meet these criteria. It would obviously be impermissible and abusive to plead a case that relied on claims on which I have given judgment, or struck out. But if the claimant and/or her legal team were able to do so, that would in substance be a fresh action, setting the costs meter running afresh.

41. I did not award the defendants their costs of the proceedings dealt with by Steyn J, DBE on 14 September 2020. That is because the Judge made no order as to the costs of those proceedings, and the general rule in such a case is that no party is entitled to costs: CPR 44.10(1)(a)(i).

42. I made an order for a payment on account of the costs I had awarded but not assessed, in the sum of £35,000. That is roughly 50% of the total costs claimed, after deducting the sum claimed in respect of the hearing before me. That proportion is in line with the authorities on the topic, and with the defendants' submissions.

43. I have accepted the defendants' application for an order that the claimant should pay interest on costs from the date of my order, pursuant to s 17 of the Judgments Act 1838.

Totally without merit

44. If the Court dismisses an application and considers it to be totally without merit ("TWM"), the order must record that fact, and the Court is bound to consider whether to make a Civil Restraint Order ("CRO"): CPR 23.12.

45. Mr Paines, applying for determinations that two of the claimant's applications were TWM, reminded me of the right approach, as set out in *R (Grace) v Secretary of State for the Home Department* [2014] EWCA Civ 1091 [2014] 1 WLR 3432 [13]: "totally without merit means no more and no less than 'bound to fail'" (Maurice Kay LJ, with whom Sullivan LJ and Lord Dyson MR agreed).

46. The claimant's injunction application comfortably satisfies this test. The reasons are clear from what I said in my previous judgment at [25-34]. In short, the application sought to prevent the defendants from holding medical reports which they reasonably require to hold for the purposes of 'live' proceedings; and it contained a procedurally flawed application to restrain disclosure of such reports, without any evidence that there was a risk of improper disclosure. It was also persisted in, despite evidence clearly explaining the true position.

47. The claimant's application to adjourn the hearing on 5 November 2020 also satisfies the TWM test. As my earlier judgment makes clear, the claimant has been told time and again what is required by way of evidence to support an adjournment on medical grounds. This application could never have succeeded. It was wholly unfounded for the reasons I gave in my judgment at [24].

48. As I made clear at the hearing on 20 November 2020, I reach that conclusion after taking account of the additional evidence and information made available by the claimant for the purposes of that hearing. I have indicated that the position adopted by the GP practice is concerning. There is now evidence of a refusal to prepare a fitness for court assessment. But it is now apparent that the claimant knew, from as long ago as 6 August 2020, that she could have a report on her medical records from her GPs, if she asked the administrative department to produce it. The facts that she did not ask until 14 November, and that it took only 5 days to produce it when she did, serve to underline the weakness of the position she adopted on 5 November. My assessment of the substance of the report is also supportive of my conclusion on this point.

49. As indicated above, I shall consider separately whether to make a CRO. That matter remains reserved. When I come to it, I shall have to bear in mind any previous certifications as TWM. I am told by Mr Paines that applications in this case have been so certified on two previous occasions.