Neutral Citation Number: [2018] EWHC 3528 (QB)

Case No: QB/2018/0136
QB/2018/0189
Claim No: HQ18X00355

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE
DECISION OF MASTER GIDDEN 2.5.18

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/12/2018

Before :

THE HONOURABLE MRS JUSTICE SLADE DBE

- -

Between :

MR PATRICK LACEY	**Respondent / proposed Claimant**
- and -	
MR NIALL LEONARD	**Appellant / proposed Defendant**

- -
- -

Mr Anthony Mazzag (instructed by **Express Solicitors**) for the **Respondent/proposed Claimant**
Mr Quintin Fraser (instructed by **DAC Beachcroft**) for the **Appellant/proposed Defendant**

Hearing date: 13th November 2018

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Mrs Justice Slade DBE :

1. Mr Lacey was involved in a road traffic accident on 14 August 2016 as a result of which he suffered personal injury. Solicitors acting for him wrote a letter of claim dated 26 September 2016 to those representing Mr Leonard, the proposed Defendant. They wrote that £750,000 would be claimed. Reference to Mr Leonard in this judgment should be taken as references to his insurers.

2. No evidence of injuries or loss was given to Mr Leonard. Those acting for him applied by notice of 26 January 2018 for pre-action disclosure under CPR 31.16. The application was refused by Master Gidden on 2 May 2018. By Notice of Appeal dated 23 May 2018 Mr Leonard appealed his decision.

3. As before Master Gidden Mr Leonard has been represented by Mr Fraser of counsel and Mr Lacey by Mr Mazzag of counsel. I announced the outcome of the appeal at the conclusion of the hearing. These are the reserved reasons.

Outline Procedural History

4. Solicitors for Mr Lacey wrote in the letter of claim of 26 September 2016:

> "Although this claim falls well beyond the value considered for any pre-action protocol, we notify you at this stage that we intend to instruct a consultant orthopaedic surgeon, care expert, occupational therapist / equipment expert, accommodation expert and if necessary consultant physiotherapist and specialist in disabled drivers assessments."

By letter dated 27 October and 5 December 2016 solicitors for Mr Leonard asked for an update 'as regards your client's current position'. They asked for joint instruction of a rehabilitation provider. The parties could not reach agreement on a provider.

5. On 27 June 2017 Mr Leonard admitted liability for the accident.

6. By application notice dated 26 January 2018 Mr Leonard applied for pre-action disclosure pursuant to CPR 31.16.

7. The application was heard by Master Gidden on 21 February, 28 March and 2 May 2018. By the time of giving judgment on 2 May 2018 the documents sought by Mr Leonard were:

   (1) Medical records relating to the index accident (App Notice item 1 (a));

   (2) Evidence of Mr Lacey's pre-accident earnings including any wage slips from 3 months prior to the accident or 3 years of tax returns prior to the accident (item 1 (e));

(3) Evidence of any job offers and acceptances for the Claimant from 6 months prior to the accident (item 1 (f)).

The Relevant provisions of the CPR

31.16

(1) This rule applies where an application is made to the court under any Act for disclosure before proceedings have started[1].

(2) The application must be supported by evidence.

(3) The court may make an order under this rule only where–

(d) disclosure before proceedings have started is desirable in order to –

(i) dispose fairly of the anticipated proceedings;

(ii) assist the dispute to be resolved without proceedings; or

(iii) save costs.

The Judgment of Master Gidden

8. Master Gidden dismissed the application by Mr Leonard for pre-action disclosure. He gave permission to appeal.

9. Master Gidden held:

> "4. In conclusion I can say that I am not persuaded disclosure pre-action as is sought by the applicant can be reconciled to the requirements in CPR 31.16(3)(d). Disclosure will not, in my estimation, dispose fairly of the anticipated proceedings; it will not assist the dispute to be resolved without the need for those proceedings and it will not necessarily save costs.
>
> 5. I say this in light of the submissions made by the respondent to the application – the would be claimant – which in my view have sufficient force to weigh against an exercise of discretion: principally it is argued that having regard to the nature of the documents sought as well as the nature and value of any claim the respondent may pursue, the parties are unlikely to reach an agreement to settle the claim without the crucial benefit of expert medical evidence. Clearly the provision, by way of pre-action disclosure, of wage slips, tax returns, medical records and job offers, cannot enable the parties to be as critically informed of the risks and the potential value of the claim or the fair disposal of it, as will their having to hand relevant, expert, medical opinion. The limited pre-action disclosure that

> remains in issue in this instance is unlikely by itself to lead to saving of costs or capable of resolving or disposing fairly of the anticipated proceedings.
>
> 6. Without the conditions to be found in CPR being present I am refusing the application in relation to what relates back to paragraph 3 of the application notice and it is 1(a), (e) and (f) in particular I am refusing at this stage."

Master Gidden gave permission to appeal.

10. The Notice of Appeal of 23 May 2018 contains one ground:

> "the decision was unjust because of a serious irregularity in the proceedings in that the Master failed to give adequate reasons for his decision."

11. Counsel agreed that if the appeal were to succeed this court should determine the application by Mr Leonard dated 26 January 2016 for pre-action disclosure.

The Appeal

12. It is well established that as summarised by Lord Phillips MR giving the judgment of the Court of Appeal in **English v Emery Reimbold & Strick Ltd** [2002] 1 WLR 2409 at paragraph 16:

> "16. We would put the matter at its simplest by saying that justice will not be done if it is not apparent to the parties why one has won and the other has lost."

13. Counsel agreed that a judge is bound to give reasons for their decision. Mr Fraser referred to **Flannery v Halifax Estate Agencies Ltd (trading as Colleys Professional Services** [2000] IWLR 377. In **English** Lord Phillips MR explained that the trial in **Flannery**:

> "…had involved a stark conflict of expert evidence. The judge had preferred the expert evidence of the defendants to that of the plaintiffs, without explaining why. This court ordered a retrial."

14. Both counsel relied upon **English**. Having stated at paragraph 16 that it must be apparent from a judgment why a party has won or lost, Lord Phillips MR held:

> "18. …But when considering the extent to which reasons should be given it is necessary to have regard to the practical requirements of our appellate system…
>
> 19. It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the Judge reached his decision. This does not mean that every factor which weighed with the Judge in his appraisal of the evidence has to be identified and explained.

> But the issues the resolution of which were vital to the Judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, in may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

15. The submissions advanced by Mr Fraser in support of the appeal had been clearly summarised by him in the Grounds of Appeal at paragraphs 7, 8 and 9.

> "7. The Appellant had put forward a number of grounds on which the documents sought were desirable, namely:
>
> a. The potential settlement of the dispute without proceedings: the Appellant had said that it would likely wish to have its own expert medical evidence (if the claim was justifiably £750,000) and if facilities for examination of the Respondent were provided, then the prior disclosure of the documents, in particular the medical records, would potentially enable settlement without the need for the issuing of proceedings;
>
> b. The costs saved by the potential successful rehabilitation of the Respondent. The costs would be save[d] by the avoidance of the need for the instruction experts in certain fields of expertise or the facilitation of the parties agreeing on joint experts. The disclosure of documents in support of his injuries and losses was said to be likely to aid the parties in reaching an agreement as to an appropriate rehabilitation provider or in the Appellant making an interim payment (as had been requested by the Respondent but thitherto rejected by the Appellant).
>
> 8. There was no reference to these grounds in the judgment. The Appellant says that the judgment does not enable the parties or the appellate court to understand why the judge reached his decision, and as a consequence the appeal should be allowed and there should be a re-hearing.
>
> 9. Further there was no reference to the case of *OCS v Wells [2008] EWHC 919 (QB)*, which was relied upon by the Respondent and which the Appellant argued was distinguishable. Should the appellate court rehear the application it will not be bound by *OCS* in any event."

16. Mr Fraser agreed that Master Gidden did not have to deal in his judgment with every issue advanced before him. However counsel submitted that the Master did not deal with the specific arguments for disclosure in this case. In support of the application for disclosure, Mr Fraser had contended that disclosure of medical records related to the incident would assist in assessing the request for an interim payment without the need for an application. Further, disclosure of those medical records could assist in offering or agreeing on rehabilitation which could mitigate loss.

17. Mr Fraser agreed that before Master Gidden the focus of his submissions was on the application for disclosure of medical records. However he submitted that the disclosure sought regarding Mr Lacey's attempts to find employment in the months leading up to the incident was relevant and would help in assessing the value of the claim which was wholly unparticularised. In the letter of claim solicitors for Mr Lacey had included an employment expert in the list of seven experts whom they proposed instructing.

18. Mr Fraser pointed out that in their letter of 26 September 2016 solicitors for Mr Lacey had indicated that a reserve on damages of £750,000 should be made for his claim. They requested an interim payment of £25,500. No evidence to support the amount of these claims had been given. It was against this background and after no information was given for more than a year submissions were made to Master Gidden that the disclosure sought was desirable in order to fulfil the aims set out in CPR 31.16(3)(d). On appeal it was contended that the judgment failed to consider and deal with these arguments which formed the basis of the application.

19. Further Mr Fraser submitted that Master Gidden failed to deal with his submission that **Wells v OCS Group Ltd** [2009] 1 WLR 1895 in which Nelson J upheld a judge's decision that pre-action disclosure of medical records should not be ordered under CPR 31.16 was distinguishable and should not be followed. Unlike **OCS** the disclosure sought was only of medical records related to the subject matter of the claim. A considerable time had elapsed after the initial value of £750,000 had been put on the claim. Mr Leonard's insurers wished to reach a resolution. However without information on which an assessment could be made an impasse had been reached.

20. Accordingly it was submitted that simply saying as did Master Gidden in paragraph 5 of his judgment that the submissions on behalf of Mr Lacey are of sufficient force to weigh against an exercise of discretion to order disclosure failed to comply with the minimum requirement that reasons are given for the issues in dispute between the parties. The only matter the Master referred to was the argument that the parties were unlikely to reach agreement to settle the claim without the 'crucial benefit of expert medical evidence.'

21. Mr Mazzag for Mr Lacey contended that Master Gidden gave adequate reasons for his decision. It was said that the Master explained that CPR 31.16(3)(d) was not fulfilled because disclosure of the documents sought alone would not further those objectives.

22. It was said that the applicant did not support a contention that the disclosure sought with evidence as is required by CPR 31.16(2). The Master had to decide between competing arguments. It was a simple decision for him to take. Was an order for disclosure of medical and employment records desirable in order to achieve a

resolution of the dispute between the parties, save costs and dispose fairly of the anticipated proceedings? Faced with this stark choice it was submitted that Master Gidden gave adequate reasons for his decision to dismiss the application.

23. In my judgment there is force in the contention advanced by Mr Fraser that the judgment of Master Gidden does not deal with two specific submissions advanced by him in support of the application for pre-action disclosure. To say that 'the parties are unlikely to reach an agreement to settle the claim without the benefit of expert medical evidence' does not identify or give reasons for rejecting the arguments advanced on behalf of Mr Leonard.

24. Whilst there must be every sympathy for the Master and the parties for having to deal with the application which had extended over three hearings, in my judgment the resulting judgment failed to give reasons for rejecting the application which satisfy the requirements set out by the Court of Appeal in **English**. Master Gidden failed to set out the arguments advanced by Mr Fraser in support of the application and why he rejected them. A general observation on the unlikelihood of reaching agreement to settle the claim in the absence of medical evidence was made. However the argument that costs could be saved if agreement could be reached on the amount of an interim payment and that such an agreement would be facilitated by disclosure of relevant medical records was not dealt with in the judgment. Nor was the contention that such an interim payment and disclosure of medical records would facilitate agreement over any required rehabilitation which itself may lead to an early resolution of the anticipated claim.

25. I do not accept the submission that Master Gidden erred by not referring in his judgment to the argument advanced by Mr Fraser distinguishing **OCS**. **OCS** is a case in which on the facts Nelson J concluded that the judge below did not err in concluding that pre-action disclosure of medical records would not satisfy CPR 31.16(3)(d). The facts of that case were different but there is no indication in the judgment under appeal that Master Gidden regarded himself bound by **OCS** to reach the conclusion which he did. Nor in my judgment did Master Gidden err by failing to refer to **OCS** or the argument advanced by Mr Fraser that it was to be distinguished. Each application depends upon its own facts.

26. Master Gidden was not obliged to set out every argument advanced before him. However as in my judgment he failed to set out and give reasons for dismissing the principal arguments relied upon to support the application under CPR 31.16 the appeal is allowed.

The application of 26 January 2018 for pre-action disclosure

27. Counsel were agreed that if the appeal were to succeed, in accordance with powers under CPR52.20(1) and the overriding objective, this court would determine the application for pre-action disclosure made on 26 January 2018

28. Witness statements had been served by the parties. In support of the application Mr Adams, a partner at DAC Beachcroft solicitors, made a witness statement on 26 January 2016 with five exhibits. In resisting the application Mr Slade solicitor and partner in Express Solicitors made two witness statements.

29. In addition to the skeleton arguments prepared by counsel for the appeal hearing, the skeleton arguments prepared on 20 February 2018 by Mr Mazzag and Notes by both counsel for the hearing on 2 May 2018 were considered.

30. The issue between the parties was whether CPR 31.16(3)(d) was satisfied. If it is satisfied the court exercises a discretion whether to order pre-action disclosure.

31. By request 1(a) Mr Leonard seeks Mr Lacey's medical records relating to the incident on 14 August 2016.

32. By letter of 27 June 2017 solicitors for Mr Leonard admitted liability.

33. Mr Adams exhibited a letter from Mr Lacey's solicitors dated 11 August 2017 which includes the following:

> "Our client can agree, once he is in a position to do so, to serve you with the medical reports upon which he intends to rely, together with his Schedule of Loss and supporting documentation. He is not yet in a position to consider settlement of his case…. Your client will be given ample opportunity to consider settlement without the need for issue of proceedings.
>
> ….
>
> Finally you have offered an interim payment in the sum of £10,000. You have done so under the condition that our client undergoes rehabilitation only with a company of your choosing. He has advanced an alternative and your abjections are unreasonable. We invite you to untether the offer of an interim payment and allow it to be paid to him without seeking to pressurise him to undergo rehabilitation in the manner you prescribe, so he has the freedom to do so in a manner he considers comfortable, which will no doubt be more beneficial than that he feels under duress to undergo."

34. Mr Adams in his statement which attached a letter dated 14 August 2017 to solicitors for Mr Lacey accepted that Mr Leonard will need expert medical evidence before they would be able to consider settlement. The letter continued:

> "As such, allowing us to obtain our own medico – legal evidence at this stage would help us to narrow the issues and allow more effective negotiations to take place once you provide your own evidence. It will also reduce any delay in the resolution of your client's claim."

35. Solicitors for Mr Lacey replied on 8 September 2017 saying:

> "The Defendant has failed to respond to the offer advanced by the Claimant on several occasions, which is; the Claimant is willing to provide necessary information to allow the case to

> settle without the need for proceedings. He is not in a position to consider settlement without appropriate expert evidence. His medical records are of no use for these purposes without examination of him in person and a medical interpretation of both the records and examination for the purposes of an opinion on causation and losses. The Defendant has been advised that all documentation sought will be made available to a medical expert, for the purposes of that interpretation, which will form an opinion which they can then choose to accept."

The solicitors provided an update on Mr Lacey's location and physical condition.

36. The solicitors for the parties could not agree on a rehabilitation provider. Mr Adams wrote to Express Solicitors on 10 October 2017:

> "In terms of your request for an interim payment of £10,000, we can recommend to our insurer client that this is paid on the following basis:
>
> - we can agree the letter of instruction to the rehabilitation provider
>
> - rehabilitation be provided on a joint basis and remains on this basis
>
> - one of the enclosed CVs be agreed
>
> - an informative response be provided to our queries in the paragraph below."

The information referred to was of benefits claims and whether Mr Lacey's London accommodation was owned by him and rented out.

37. Medical records were not provided.

38. By request 1(e) Mr Leonard sought wage slips of Mr Lacey's earnings from the three months before the accident or tax returns for three years before the accident. By request 1(f) Mr Leonard sought evidence of any job offers and acceptances from six months prior to the accident.

39. Mr Adams exhibited the letter of claim from Express Solicitors dated 26 September 2016. In it the solicitors wrote:

> "Our client was 39 years old at the date of the accident. He was not working but was looking for work. He is not likely to be able to do that for the next 12 months. We anticipate it is unlikely he will return to gainful employment…."

40. In his second statement dated 20 February 2018 Mr Slade, solicitor for Mr Lacey wrote at paragraph 19 that he did not have wage slips for the three months prior to the accident as he was not working but looking for work. Mr Slade stated that Mr Lacey does not have the tax returns for the three years before the accident. Further Mr Slade

stated that Mr Lacey had no job offers or acceptances the documentation the subject of paragraph 1(f) of the application.

41. In support of the application for pre-action disclosure Mr Fraser acknowledged that, as on the appeal, before Master Gidden the principal focus of his submissions was on the application for medical records. As did Mr Adams, Mr Fraser acknowledged that Mr Leonard would require a report from a medical expert to enable insurers to assess the level of a settlement offer.

42. The principal submission made by Mr Fraser was that the disclosure sought fell within CPR 31.16(3)(d)(iii) as it was desirable in order to save costs. It was submitted that once there was an admission of liability medical records should be disclosed and that lack of co-operation in providing these inevitably leads to further costs being incurred.

43. Further it was submitted that disclosure of medical records could assist in agreement on what rehabilitation may be required and assessment of an interim payment without the need for an application to the court. In addition as suggested by Mr Adams in paragraph 28 of his statement, it was said that disclosure would assist in putting rehabilitation in place. Mr Fraser referred to paragraph 31 of Mr Adams' statement in which he said:

> "The Claimant's approach of providing the bare minimum of information, after a year of chasing and cajoling is simply not in the spirit of the pre action protocol and is preventing any progress in the Claimant's recovery, in the negotiation of the claim, and in the narrowing of the issues."

Mr Fraser said that an impasse had been reached with Mr Lacey failing to provide information.

44. Mr Fraser submitted that the facts of this case distinguish it from and a different conclusion should be reached on the application from that in **OCS**. In that case all medical records were the subject of the application. In this case only those medical records relating to the accident on 14 August 2016 were sought.

45. Mr Fraser referred to the obiter dicta of Rix LJ in **Black v Sumitomo Corporation** [2002] 1 WLR 1562 in which the judge expressed the view at paragraph 83 that if the case was a personal injury claim it was easy to conclude that pre-action disclosure of medical records should be made.

46. No additional submissions were made by Mr Fraser in support of the application for documents regarding wages, tax returns, job applications and job offers, the subject of requests 1(e) and 1(f). This information was sought for the purpose of enabling assessment of damages.

47. Mr Mazzag submitted that the application for pre-action disclosure of documents sought by 1(a), (e) and (f) did not satisfy the test in CPR 31.16(3)(d).

48. Counsel submitted that disclosure of medical records in isolation will not assist in disposing fairly of anticipated proceedings or lead to saving of costs. Both parties

would obtain expert medical evidence before considering settlement of the claim. In his letter of 14 August 2017 Mr Adams informed solicitors for Mr Lacey that the insurers would be likely to require medico – legal evidence in any event.

49. Mr Mazzag referred to **OCS** in which Nelson J held at paragraph 28:

> "Most claims of any substance cannot sensibly be disposed of until a medical report has been prepared. It may even be,…that a claimant would not merely limit her claim further, but might even withdraw it once she has had the opportunity to consider the contents of and importance of the medical records through her medical expert's report, and if necessary in consultation with their expert."

Counsel submitted that these observations are applicable to the application for disclosure of medical records in this case. Further Mr Mazzag submitted that the evidence filed on behalf of Mr Leonard in the witness statement of Mr Adams did not support a contention that disclosure of medical records would be likely to lead to a settlement of the claim and the saving of costs. Mr Slade said at paragraph 9 that in his experience insurance companies are only willing to settle such claims once they have the benefit of their own expert evidence, not only the Claimant's.

50. As for the request under 1(e) and (f) Mr Mazzag submitted that information had already been given to Mr Leonard. Mr Lacey was not in work in the period of three months leading up to the accident and was not in possession of the requested tax returns. After the accident he had not been in a position to apply for jobs.

51. In conclusion Mr Mazzag submitted that the application for pre-action disclosure did not satisfy CPR 31.16(3)(d) and should be refused.

52. The issue in this application is whether the pre-action disclosure requested is desirable in order to achieve any of the objectives set out in CPR 31.16(3)(d). It is only if the application satisfies that provision that the question of exercise of the discretion to make such an order comes into play.

53. **OCS** is a case in which it was doubted that pre-action disclosure of medical records would assist the dispute to be resolved without proceedings. Whilst Nelson J made the general observation at paragraph 28 that:

> "Most claims of any substance cannot sensibly be disposed of until a medical report has been prepared."

54. As observed by Nelson J in **OCS** no doubt most personal injury claims of any substance cannot sensibly be disposed of until a medical report has been prepared. However it may be that one of the objectives stated in CPR 31.16(3)(d), that in (iii) to save costs, may be furthered by disclosure of medical records in the stages before reaching a disposal or resolution of the claim. That is the basis of the contention of Mr Fraser in support of this application.

55. Counsel submitted that costs would be likely to be saved by the disclosure of Mr Lacey's medical records relating to the incident. It was said that such disclosure

would enable a decision on an interim payment to be made which would provide funding for rehabilitation which in turn could assist in reducing the loss suffered by Mr Lacey. Further, such disclosure may enable the parties to reach agreement on the number of expert witnesses needed and hopefully on the identity of the rehabilitation provider.

56. Whilst the arguments advanced by Mr Fraser that pre-action disclosure of medical records relating only to the subject matter of a personal injury claim as being desirable in order to save costs which otherwise may be incurred before a final settlement of a claim can be reached and therefore fall within CPR 31.16(3)(d)(iii) may be sustainable in principle, each application must be determined on its own facts.

57. CPR 31.16(2) provides that the application for pre-action disclosure must be supported by evidence. The evidence in support of this application is in the statement of Mr Adams of 4 August 2017 together with the correspondence between solicitors of the parties which he exhibits.

58. Paragraphs 32 and 33 of the statement of Mr Adams in support of the application refer to the personal injury pre-action protocol. Mr Slade is correct in stating in his letter of 11 August 2017 that the claim is beyond the upper limit of the protocol. On 10 October 2017 Mr Adams commented that the principles of the protocol should apply. Other reasons advanced by Mr Adams in support of the application are: timely exchange of information is a mutual obligation of the parties and accords with the 'cards on the table' approach of the CPR (para 35); it is for both parties to narrow the issues and Mr Lacey's solicitor has refused to obtain or disclose further quantum updates despite repeated requests (para 38). In light of lack of reasoned objections to a suggested rehabilitation provider Mr Adams had 'no real hope that they will provide any further evidence to allow the Defendant to properly quantify the claim and take steps to assist the Claimant's recovery without being ordered to do so by the Court.'(para 39).

59. In my judgment the correspondence exhibited by Mr Adams and by Mr Slade does not support a contention that pre-action disclosure of Mr Lacey's relevant medical records would assist the claim being resolved without proceedings.

60. In a letter of 14 August 2017 Mr Adams wrote to Mr Lacey's solicitors:

> "You have previously stated that you do not wish to provide us with evidence until your client is ready to settle."

Mr Adams continued:

> "Given the very high valuation you have put on the claim, it is almost inevitable that we will need our own evidence before we are able to consider settlement. As such, allowing us to obtain our own medico-legal evidence at this stage would help us narrow the issues and allow more effective negotiations to take place once you provide your own evidence. It will also reduce any delay in the resolution of your client's claim."

In a second letter of 14 August 2017 Mr Adams wrote:

> "Your client may not currently be in a position to consider settlement of this case, however, this does not mean that you can simple [sic] withhold providing any information until the moment your client wants to settle."

Mr Adams explained the reason for making an application for pre-action disclosure:

> "We are not asking you for your full medico-legal evidence and Schedule of Loss. We are requesting some meaningful evidence and information as to how your valuation has been calculated and how your client's injuries and treatment are progressing."

61. The solicitor for Mr Lacey made it clear in his letter of 8 September 2017 that the Claimant was not in a position to consider settlement without appropriate expert evidence. Mr Slade continued:

> "His medical records are of no use for these purposes [as] without examining him in person and a medical interpretation of both the records and examination for the purposes of an opinion on causation and losses."

There is no evidence that the parties moved from those positions.

62. In my judgment the evidence before the court does not suggest that pre-action disclosure of medical records relating to the accident would assist in resolving the dispute without proceedings, nor lead to a saving of costs. As the parties have recognised and as explained by Nelson J in **OCS** it is expert medical reports and not raw data which may or may not be relevant which are likely to form a basis for settlement.

63. With regard to the making of an interim payment, the evidence before the court is that £25,000 was requested by Mr Lacey. On behalf of Mr Leonard £10,000 was offered subject to conditions set out in a letter from his solicitors of 10 October 2017. There is no evidence that the parties moved from their respective positions. Mr Mazzag was right to point out that neither in Mr Adams' statement nor in correspondence was it said that an interim payment would be made if medical records were provided.

64. The contention that providing medical records would assist in agreeing a rehabilitation provider which in turn may assist recovery and reduce loss does not bring the application within CPR 31.16(3)(d). This string of reasoning is far removed from establishing a basis for saying that disclosure of relevant medical records would be likely to lead to the saving of costs or the resolution of the claim.

65. As for requests 1(e) and (f), solicitors for Mr Lacey have explained in correspondence his lack of employment in the relevant period. In paragraph 20 of his statement of Mr Slade says that there had been no job offers or acceptances.

66. Whilst there must be some sympathy with the insurers of Mr Leonard in being faced with an unparticularised claim for the large sum of £750,000, their application for pre-action disclosure does not satisfy CPR 31.16(3)(d) and is dismissed.

Disposal

67. The outcome of the appeal and the application was given at the conclusion of the hearing. These are the reasons for allowing the appeal and for dismissing the application.