Neutral Citation Number: [2020] EWHC 2814 (QB)

Case No: QB-2016-004447
Appeal Ref: QA-2019-000056

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE ORDER OF
MASTER DAVISON DATED 18 DECEMBER 2018

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 October 2020

Before :

THE HON. MR JUSTICE MURRAY

- -

Between :

TARIK JAMOUS	**Claimant/ Applicant**
- and -	
ALEXANDER MERCOURIS	**Defendant/ Respondent**

- -
- -

The Applicant did not attend and was not represented.
Mr Gaurang Naik (instructed by **Howard Kennedy LLP**) for the **Respondent**

Hearing date: 2 October 2020

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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.

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THE HON. MR JUSTICE MURRAY

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:30 am on 23 October 2020.

Mr Justice Murray :

1. This is an application by Mr Tarik Jamous for an extension of time to file an Appellant's Notice of Appeal and for permission to appeal against the order of Master Davison dated 18 December 2018 ("the 18 December Order"), with the hearing of the appeal, subject to permission, to follow.

2. I had a late and informal application by email from Mr Jamous to adjourn the hearing of this application, which, for reasons given below, I refused. At the end of the hearing, I refused Mr Jamous's application for an extension of time to file an Appellant's Notice and indicated that I would provide my full reasons in due course in a written judgment. This is that judgment.

3. This appeal relates to a claim brought by Mr Jamous against Mr Alexander Mercouris in 2017 seeking damages for personal injury in the nature of anxiety and post-traumatic stress disorder ("PTSD") caused by the defendant's alleged breach of duty and related conduct during the period 2008 to 2009. At that time Mr Mercouris, as a legal adviser, was assisting Mr Jamous's mother, Mrs Lorna Jamous, who was acting as litigation friend for her son in relation to proceedings brought against Westminster City Council for damages caused to Mr Jamous while he was under its care and supervision. Mr Mercouris had been called to the Bar in 2006 but did not at the relevant time have a practising certificate.

4. This matter has a long and complicated history. As it is necessary for purposes of this hearing to assess "all the circumstances of the case" (the third stage of the *Mitchell/Denton* test), it is necessary, in my view, to set out the history of this matter in some detail as the conduct of these proceedings by Mr Jamous and his mother is a significant part of those circumstances. I will begin with the background to the 18 December Order.

Background to the 18 December Order

5. Mr Jamous was born on 4 July 1991.

6. There was, for a period of time during these proceedings, an issue about Mr Jamous's capacity to conduct litigation. This is discussed in more detail below. When Mr Jamous was first joined as a claimant to this claim in 2017, Mrs Jamous having been the sole claimant when these proceedings were first filed in 2016, no issue was raised as to his capacity to conduct litigation.

7. In the amended claim as filed on 11 August 2017 Mr Jamous was the first claimant and Mrs Jamous was the second claimant. This should be borne in mind when reading quotations set out below from various prior orders and judgments in these proceedings.

8. The issue of Mr Jamous's capacity did not arise until a letter dated 25 June 2018 provided to the court by Dr M Shakarchi, Mr Jamous's general medical practitioner, intended to excuse Mr Jamous's non-attendance at a hearing before Master Davison on 28 June 2018. In the letter, Dr Shakarchi gave his opinion that, in his mother's absence for medical reasons, Mr Jamous was unable to represent himself in court due to the amount of stress he was under.

9. On 28 June 2018 Master Davison dismissed Mr Jamous's application for a stay of proceedings and gave further directions for the progress of the claim, saying the following at paragraph 4 of his reasons:

> "The letter dated 25th June 2018 from Dr Shakarchi has placed Tarik Jamous's capacity to litigate into question. I assume that this was the temporary result of stress and that he does have capacity. (This is the presumption in the Mental Capacity Act). Because there is a question mark over his capacity, I have made no orders today against him. If it is alleged that he does lack capacity to litigate, then Ms Jamous must inform the court and supply (further) medical evidence by 22nd July 2018."

10. On 8 August 2018 Master Davison, having seen a letter from Dr Shakarchi dated 19 July 2018 (which has not been provided to the respondent and therefore is not in the respondent's bundle) in which Dr Shakarchi stated that Mr Jamous lacked capacity, made the following order:

> "1. By 4pm on 7 September 2018 the second claimant must file a Certificate as to Capacity to Conduct Proceedings from Dr Shakarchi or another doctor. The Certificate must be in the form to be found at the following URL:
>
> https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/582243/capacity-to-conduct-proceedings-certificate.pdf.
>
> A further hard copy of the required certificate is appended to this order. The proceedings to be inserted at page 1 and at paragraph 3 of the certificate are these proceedings, which are proceedings for personal injury arising out of breach of duty in 2008/2009.
>
> 2. The doctor must be supplied with a copy of this Order."

11. Master Davison gave the following reasons for his order:

> "The letter from Dr Shakarchi is very brief and I am concerned that the doctor has not fully considered the test of capacity to be applied and the serious implications for Tarik if he does indeed lack capacity. A certificate in the proper form is intended to direct the doctor to the relevant considerations and to provide the court with a proper basis to make an assessment."

12. On 17 August 2018, Mrs Jamous applied to set aside Master Davison's order of 8 August 2018. Neither Mrs Jamous nor Mr Jamous filed a certificate of capacity in respect of Mr Jamous as ordered by Master Davison by the deadline of 7 September 2018.

13. On 19 September 2018 Mr Mercouris applied for Mr Jamous's claim to be struck out for failure to comply with the order of Master Davison dated 8 August 2018.

14. By order made on 30 October 2018 Master Davison, among other things, dismissed Mrs Jamous's application to set aside his order of 8 August 2018 and refused Mr Mercouris's application to strike out Mr Jamous's claim. Crucially, he also made the following order:

> "3. Unless by 4pm on 30 November 2018 the claimants file a certificate in accordance with the order dated 8 August 2018 the first claimant's claim will stand as struck out."

15. The relevant part of his reasons for his order were as follows:

> "3. Notwithstanding her application to set it aside, I did not understand Ms Jamous to now object to my order of 8 August 2018 requiring proper medical evidence on the first claimant's capacity to litigate. The order I have made today is addressed to both claimants and if it is not complied with the first claimant's claim will be struck out. I judged it reasonable to make an order requiring the first claimant to take this step because, on present information, the presumption of capacity has not been rebutted. It seems to me that he does have capacity – albeit that (based upon what Ms Jamous told me) he finds these court proceedings very stressful.
>
> 4. The order that I have made is in the nature of a last chance. Once again, I emphasise to the claimants the importance of complying with court orders. As the second claimant has already learned, the consequence of non-compliance can be the termination of the claim. That will be the consequence in the case of the first claimant also unless they comply with the orders I have made."

16. On 18 December 2018 Master Davison made the 18 December Order, which provided as follows:

> "UPON considering the court file
>
> AND UPON it appearing that the claimants have not complied with paragraph 3 of the Order dated 30 October 2018, i.e. have not filed at court a certificate in the proper form as to the first claimant's capacity to conduct the proceedings
>
> IT IS ORDERED THAT the first claimant's claim stands as struck out."

17. The time for appealing the 18 December Order expired on 9 January 2019.

18. On 17 January 2019 Mrs Jamous's application to vary an order made by Martin Spencer J on 13 December 2018, relating to her appeal against an order of Master Thornett dated 19 July 2018 striking out her claim (which I discuss below), came before Martin Spencer J, together with other correspondence from the parties relating to these proceedings.

19. After a review of the papers, Martin Spencer J made a detailed order, with appended reasons, giving various directions, including as to preparation of a trial bundle and in relation to Mrs Jamous's appeal against the order of Master Thornett. The most relevant part of his order, for present purposes, was as follows:

> "5. The Second Claimant shall, by 4pm on Friday 25 January 2019, indicate to the Court and to the Defendant whether, to her knowledge, it is intended that there is to be an application by or on behalf of the First Claimant for permission to appeal against the Order of Master Davison dated 18 December 2018"

20. Martin Spencer J noted the following in his reasons for the above order:

> "As a result of the Orders of Master Davison, the claim of the First Claimant has been struck out and there has been no appeal from those Orders. **The time to appeal has now expired.** If the First Claimant intends to seek permission to appeal and for an extension of time, **he should do so as soon as possible** and it would then be appropriate for that application to be heard with the present application." (emphasis added)

21. Martin Spencer J also included the following direction to Mrs Jamous:

> "6. NOTE TO THE SECOND CLAIMANT: if you are unable to comply by 4pm on 25 January 2019 with the various Orders set out above or with the order to supply an appeal bundle by 1 February 2019 and you wish to apply for an extension, you must apply to the court (making a formal application on form N244) before 25 January 2019"

22. Although the note above was addressed only to Mrs Jamous, it also concerned Mr Jamous's appeal against the 18 December Order, as it was clear that Mrs Jamous was managing this litigation on behalf of herself and her son.

23. On 23 January 2019 Mrs Jamous appeared, without notice to Mr Mercouris, before Cheema-Grubb J in the Interim Applications Court seeking to have Martin Spencer J's order of 17 January 2019 set aside in its entirety. Her application was refused.

24. On 24 January 2019 Mrs Jamous sent the following email to the Queen's Bench Masters Listing Office:

> "Could you kindly confirm you received the email and attachment below on the 30th November 2018 and this certificate of capacity to conduct proceedings was put before Master Davison."

25. On 25 January 2019 the Queen's Bench Master Listing Office replied as follows:

> "Further to our conversation yesterday, I have spoken to Master Davison with the following direction:
>
> 'I did not receive her email. The requirement was to file the certificate. We are not an e-filing court and we do not accept documents filed by email. So even if I had received it, that would not have been sufficient compliance with the order. As already discussed …, she will have to apply to set aside the order striking our [sic] her son's claim' "

26. Neither Mr Jamous nor Mrs Jamous, however, made an application to set aside the 18 December Order nor, as I have already noted, was any application for an extension of time to appeal against the 18 December Order made by 4pm on 25 January 2019 as directed by Martin Spencer J.

27. On 25 January 2019 at 5:25 pm Howard Kennedy LLP ("Howard Kennedy"), solicitors to Mr Mercouris, sent an email to the court, copied to Mrs Jamous, noting that Mrs Jamous had not complied with paragraphs 3, 4 or 5 of Martin Spencer J's order and drawing attention to the note to Mrs Jamous in that order, which I have set out at [21] above. Howard Kennedy asked that the court make an "unless" order to compel compliance by 4:00 pm on 30 January 2019.

28. Mrs Jamous's response by email to Howard Kennedy, copied to the court, was sent the same day at 7:36 pm. Among other things, she said:

> "I have … indicated to the court and the defendant, that the 1st Claimant will appeal the strike out order made by Master Davison. No deadline has currently been set for an application to be served. In her order, the judge kindly advised me, I need only, indicate whether the 1st Claimant wishes to appeal the order by 4pm 25th January"

29. Martin Spencer J's order of 17 January 2019 made it clear to Mrs Jamous that Mr Jamous was out of time to appeal the 18 December Order and that an extension of time to appeal would be necessary. It is true that in his order, as quoted above, Martin Spencer J merely directed Mr Jamous to "indicate" to the court and to Mr Mercouris by 4:00 pm on 25 January 2019 whether Mr Jamous intended to apply for an extension of time to appeal and permission to appeal against the 18 December Order. In his reasons, however, he made it clear that any such applications should be made "as soon as possible", so that they could be heard at the same time as Mrs Jamous's application for permission to appeal against the order of Master Thornett dated 19 July 2018.

30. On 30 January 2019 Mrs Jamous appeared before Waksman J in the Interim Applications Court, once again without notice to Mr Mercouris, regarding the bundle of documents relating to her application for permission to appeal against the order of Master Thornett dated 19 July 2018 striking out her claim ("the July 2018 Order").

31. When the parties appeared before me on 14 February 2019 at the hearing of Mrs Jamous's application for permission to appeal against the July 2018 Order, Mrs Jamous asserted that during the course of the hearing before Waksman J on 30 January 2019 the learned judge had told her that the judge hearing her application for permission to appeal against the July 2018 Order could also hear her son's applications for an extension of time to appeal and for permission to appeal, without there needing to be formal applications to that effect.

32. There was, however, nothing in Waksman J's order of 30 January 2019 to support Mrs Jamous's assertion. It was clear that Martin Spencer J's order contemplated that those applications should have been made in sufficient time that they could also be considered by me at the hearing on 14 February 2019. Those applications had not been made, and the opportunity to deal with them therefore on that occasion was lost.

33. Bearing in mind that Mrs Jamous was acting as a litigant in person on behalf of herself and Mr Jamous, I decided to give Mr Jamous one last chance to make the necessary applications. In my order of 14 February 2019 I directed that Mr Jamous file his Appellant's Notice, including his Grounds of Appeal, together with an application for an extension of time to file his appeal by 4:00 pm on 28 February 2019, with Mr Mercouris to be served with the relevant papers in accordance with CPR 52.12(3), and with the relevant papers then to be placed before a High Court judge to be decided on the papers and/or for the judge to give further directions.

34. Mr Jamous finally filed his Appellant's Notice, with his applications for an extension of time to appeal and for permission to appeal, on 27 February 2019.

Procedural history of these applications

35. On 5 March 2019, having reviewed the papers, Sir Alistair MacDuff, sitting as a Judge of the High Court, ordered that Mr Jamous's applications for an extension of time and for permission to appeal should be heard by a High Court Judge on a date to be fixed, with the appeal, subject to permission, to follow. He also ordered that, within 28 days of service of his order, Mr Jamous file a full appeal bundle, containing the documents specified in CPR PD 52B para 6.4, to be paginated and indexed and to contain all relevant documents to enable the appeal court to understand the full circumstances giving rise to the appeal, including all orders made in the case.

36. As noted at the outset of this judgment, Mr Jamous did not comply with the order of Sir Alistair MacDuff in relation to the appeal bundle within the time specified, nor has he done so since.

37. On 22 March 2019 Mrs Jamous appeared without notice before Swift J to make an oral application for:

    i) a transcript at public expense of the hearing before Waksman J on 30 January 2019;

ii) for an extension of time to serve the appeal bundle in respect of her son's appeal against the 18 December Order; and

iii) for relief from sanctions in respect of the 18 December Order

("the 22 March Application").

38. In his order dated 22 March 2019, Swift J refused the part of the 22 March Application seeking a transcript at public expense and refused Mrs Jamous's application for permission to appeal that refusal. He adjourned the remainder of the 22 March Application (namely, seeking an extension of time to serve the appeal bundle and for relief from sanctions in respect of the 18 December Order), ordering that the 22 March Application be served on Mr Mercouris and that a hearing between the parties to be listed.

39. On 29 March 2019 the matter came before Soole J. For that hearing Mrs Jamous filed at the court a short skeleton argument in support of her son's application for permission to appeal, saying essentially that the certificate of capacity had been filed with the court on 30 November 2018, therefore the order of Master Davison of 30 October 2018 had been complied with and, accordingly, the Master was wrong to make the 18 December Order striking out Mr Jamous's claim.

40. Attached to the skeleton argument as Exhibit 1 was the first page of a certificate of capacity apparently completed by Dr Badea Khalaf indicating that, following a referral by Dr Shakarchi on 12 November 2018, he was of the opinion that Mr Jamous lacked capacity to conduct proceedings within the meaning of the Mental Capacity Act 2005. The document appeared to be stamped "Received 30 November 2018 QBD Action Dept". The one page document corresponded to the first page of the standard form of "Certificate as to Capacity to Conduct Proceedings" that was attached to Master Davison's order dated 8 August 2018 and was also apparently the standard form found at the hyperlink in that order, as noted at [10] above. The remainder of the form, however, was missing, including the final page containing the statement of truth to be signed by the medical practitioner completing the certificate of capacity.

41. It appears that Mrs Jamous did not provide a copy of her skeleton argument of 29 March 2019 to Mr Mercouris, as she should have. In any event, even if she did do so, she did not provide him with a copy of Exhibit 1 to the skeleton argument.

42. Nothing was said in Mrs Jamous's skeleton argument in relation to Mr Jamous's application for an extension of time to apply for permission to appeal the 18 December Order. In the Appellant's Notice, however, Mr Jamous had set out his reasons for the delay in filing his Appellant's Notice, which I will consider in due course.

43. At the hearing before Soole J on 29 March 2019, Mrs Jamous represented her son. At that time, her position was that her son lacked capacity to conduct proceedings himself. Although she had not been appointed his litigation friend, she relied on having a power of attorney as her authority to conduct proceedings on his behalf. Mr Mercouris was represented by counsel, who contended on behalf of Mr Mercouris

that Mrs Jamous did not have authority to make the 22 March Application on behalf of her son.

44. At the hearing on 29 March 2019 Soole J considered the outstanding part of the 22 March Application (namely, seeking for an extension of time to serve the appeal bundle in respect of her son's appeal against the 18 December Order and for relief from sanctions in respect of the 18 December Order), noting in the second recital to his order of 29 March 2019 that he did so:

> "without prejudice to the Defendant's contention that the Second Claimant does not have authority to make this application on behalf of the First Claimant or otherwise to act for him in these proceedings."

45. In his order of 29 March 2019, Soole J dismissed the outstanding part of the 22 March Application and certified it as totally without merit. In other words, Soole J found that there was no merit in the reasons put forward by Mrs Jamous on behalf of her son for his failure to file an appeal bundle on time and in accordance with the directions in the order of Sir Alistair MacDuff dated 5 March 2019. In reality, of course, the failure was that of Mrs Jamous, as she was at that time conducting the litigation on her son's behalf.

46. On 2 April 2019 Mrs Jamous filed a minimal appeal bundle in respect of her son's appeal against the 18 December Order with the court, including a copy of a full four page certificate of capacity, signed on the fourth page (signature illegible) and dated 22 November 2018. The first page corresponded to Exhibit 1 to Mrs Jamous's skeleton argument of 29 March 2019, but with the name and address of the medical practitioner giving the certificate of capacity redacted and with the following annotation next to the redaction: "Details deleted for privacy and security reasons for the Defendant [sic][.] Only Court has full certificate."

47. Mr Mercouris objected to having been served with a redacted copy of the certificate of capacity and, following an intervention by Stewart J, Mrs Jamous agreed to serve an unredacted copy on Mr Mercouris.

48. On 10 April 2019 the court notified the parties that the hearing ordered by Sir Alistair MacDuff on 5 March 2019 had been listed for 20 May 2019.

49. On 18 April 2019 Howard Kennedy wrote to the court on behalf of Mr Mercouris expressing "grave concern" regarding the certificate of capacity that had been provided. It purported to show that Mr Jamous lacked capacity and yet he had signed the Appellant's Notice in relation to the 18 December Order. The appeal was being conducted by Mrs Jamous, whose own claim had already been struck out, but she had not been appointed Mr Jamous's litigation friend, and therefore she had no *locus standi* in these proceedings. Howard Kennedy also argued that Mrs Jamous, for a variety of reasons, was unsuitable to act as Mr Jamous's litigation friend.

50. On 30 April 2019 Stewart J made an order staying this appeal until the court appointed a litigation friend to act on behalf of the Mr Jamous.

51. On 13 May 2019 Mrs Jamous filed an application notice seeking to be appointed as her son's litigation friend.

52. On 15 May 2019 Stewart J ordered that Mrs Jamous's application of 13 May 2019 be issued forthwith and that she serve it together with supporting documents on Howard Kennedy. He also gave directions for the filing of evidence and ordered that the matter be heard on the next available date after 24 June 2019, with a time estimate of two hours.

53. Following a hearing of Mrs Jamous's application on 25 June 2019 at which Mrs Jamous appeared in person and Mr Mercouris was represented by Mr Gaurang Naik, of counsel, Stewart J took time for consideration, handing down his judgment on 5 July 2019, in which he set out his reasons for refusing Mrs Jamous's application to act as Mr Jamous's litigation friend on the basis that she was unsuitable to act for him in that capacity: *Jamous v Mercouris* [2019] EWHC 1746 (QB). Stewart J's reasons are discussed in some detail below.

54. The Official Solicitor was subsequently appointed to act as litigation friend for Mr Jamous, with Fieldfisher LLP ("Fieldfisher") acting as solicitors for the Official Solicitor. It appears, however, that Mrs Jamous and her son were not happy with the appointment of the Official Solicitor as Mr Jamous's litigation friend. It is clear from correspondence with the court that the relationship between Mrs Jamous and her son with the Official Solicitor and with Fieldfisher rapidly deteriorated.

55. Notwithstanding that his mother had purportedly filed a certificate of capacity with the court dated 22 November 2018 stating in unambiguous terms that Mr Jamous lacked capacity to conduct proceedings, Mr Jamous filed an application to remove the Official Solicitor as his litigation friend on the ground that he did have capacity to conduct the litigation without a litigation friend.

56. About the same time, the Official Solicitor filed an application against Mrs Jamous seeking to restrain her from interfering with the functions of the Official Solicitor as litigation friend.

57. These two applications, together with supporting documents, were heard by Kerr J on 30 August 2019. Mr Jamous appeared in person, assisted by a McKenzie friend, Mr Saiyed Hanif, with Mrs Jamous also attending. The Official Solicitor was represented by Mr Shahram Sharghy, of counsel. At the hearing, Mr Jamous gave an undertaking to cooperate in a psychiatric assessment of his mental capacity. This was recorded in the second recital to the order dated 30 August 2019 made by Kerr J ("the Kerr J Order").

58. Mrs Jamous also gave undertakings to the court, as recorded in the third recital to the Kerr J Order. She undertook that she would not:

> "(i) communicate directly or indirectly with the staff and partners of Field Fisher LLP, the Official Solicitor or the staff employed by the office of the Official Solicitor or any court staff in all Divisions of the High Court in relation to these proceedings

> (ii) assist Mr Jamous directly or indirectly with the drafting and/or issuing of applications to any Division of the High Court in relation to these proceedings
>
> (iii) interfere with these proceedings or with the forthcoming psychiatric assessment in any other way that causes the progress of the case to be delayed"

59. In the Kerr J Order, Kerr J gave directions for Mr Jamous's mental capacity to be assessed. Paragraph 3 of the order provided that the assessment should be carried out by the consultant forensic psychiatrist, Dr Philip Joseph, "if available and willing", using contact details appended to the order. The Kerr J Order also provided at paragraph 4 that:

> "(4) if Dr Joseph is unable or unwilling to conduct the assessment or cannot do so within the next three months, the Official Solicitor will inform the court and Mr Jamous and the court will endeavour to find a different psychiatrist;"

60. The Kerr J Order directed the psychiatrist appointed to make a report to the court, copied to the parties, compliant with Part 35 of the Civil Procedure Rules stating the opinion of the psychiatrist on the question of Mr Jamous's mental capacity to conduct litigation in accordance with the Mental Capacity Act 2005.

61. Dr Joseph was approached by the Official Solicitor in accordance with the order of Kerr J, but declined to accept the appointment on the basis that he was approaching retirement and was fully occupied prior to retirement with other professional commitments.

62. Fieldfisher sought to propose an alternative psychiatrist, however Mr Jamous objected strenuously to the alternative, although his objection seemed only to be that he did not trust anyone recommended by the Official Solicitor. Mr Jamous maintained that Kerr J had promised him during the hearing on 30 August 2019 that if Dr Joseph were not available, no other psychiatrist could be appointed under the Kerr J Order without his consent.

63. I have set out the relevant part of Kerr J's order of 30 August 2019 at [59]. There is no reference there to Mr Jamous having any form of right of consent to or veto over an alternative psychiatrist. In fact, there is no mechanism in the order for making an alternative appointment. The Kerr J Order simply provides that, if the Official Solicitor informs the court and Mr Jamous that Dr Joseph is "unable or unwilling" to conduct the assessment, then "the court will endeavour to find a different psychiatrist". This would, perhaps, have been clearer in the Kerr J Order if there were a comma after "Mr Jamous" in the language quoted above at [59], but it is sufficiently clear that the Official Solicitor was required by that provision to notify the court *and* Mr Jamous. The court would not have ordered the Official Solicitor merely to notify the court. Accordingly, it is sufficiently clear, as a matter of construction, that the Kerr J Order imposes no requirement that Mr Jamous must agree to the appointment of an alternative psychiatrist in the event that Dr Joseph declined the appointment.

64. Notwithstanding this, a dispute developed between Mr Jamous and the Official Solicitor regarding the appointment of an alternative psychiatrist to conduct the assessment of Mr Jamous's capacity, leading to Mr Jamous to file another application dated 9 September 2019, which came before me at a hearing on 14 October 2019.

65. At the hearing on 14 October 2019, Mr Jamous did not appear, but his mother appeared, assisted by Mr Hanif, the McKenzie Friend who had assisted Mr Jamous before Kerr J on 30 August 2019. Mrs Jamous's appearance to support her son's application was an apparent breach of the second and third undertakings she had given to the court, as recorded in the Kerr J Order (see [57] above). I decided, however, on that occasion to take no further action regarding the breach, notwithstanding that Mrs Jamous aggravated matters by abruptly leaving the hearing before it had ended, loudly accusing the Official Solicitor's legal representatives of dishonesty as she left the courtroom. At that hearing, the Official Solicitor was represented by counsel. Mr Mercouris did not appear and was not represented.

66. In my order of 22 October 2019, following the hearing on 14 October 2019, I dismissed Mr Jamous's application on the basis that he did not have capacity or standing to make it, noting that the application was, in any event, totally without merit. I discharged paragraph 4 of the Kerr J Order and gave directions providing a procedure to appoint a consultant psychiatrist to carry out the assessment of Mr Jamous's capacity. The procedure was designed to be fair to both the Official Solicitor and to Mr Jamous by allowing each (despite Mr Jamous's lack of capacity) to submit to the court a list of up to five consultant psychiatrists able to take on the appointment, the principal requirement being that each nominated psychiatrist was a current member of the Royal College of Psychiatrists. Subject only to that modification, the Kerr J Order was affirmed as continuing in full force and effect.

67. In correspondence with the court and the Official Solicitor, Mr Jamous continued to complain about the process and indicate his mistrust of any psychiatrist nominated by the Official Solicitor, although he never provided a satisfactory reason or explanation for that mistrust. The Official Solicitor provided five names to the court in accordance with my order of 14 October 2019. Mr Jamous provided a single name, Dr Jenny Judge, and indicated in correspondence with the court that if any other psychiatrist were to be appointed by the court, he would refuse to cooperate with the Official Solicitor in relation to a capacity assessment by that psychiatrist, despite his undertaking to the court as set out in the second recital to the Kerr J Order.

68. Pursuant to the procedure in my order of 22 October 2019, in my order dated 8 November 2019 I set out, in order of priority, a list of psychiatrists to be approached by the Official Solicitor to conduct the assessment, with Mr Jamous's nominee, Dr Jenny Judge, listed as the first to be approached. Mr Jamous, however, had not provided contact details for Dr Judge, and the Official Solicitor was not able to find her contact details independently. This and similar difficulties necessitated further recourse to the court and further orders by me dated 23 December 2019, 14 February 2020 and 12 March 2020, none of which would have been necessary had Mr Jamous been willing to engage constructively and cooperate with the Official Solicitor in the appointment of a suitable psychiatrist, as he had undertaken to the court to do on 30 August 2019.

69. In order to break the deadlock and permit this case to proceed, I made an order dated 12 March 2020 permitting Mr Jamous's general medical practitioner, Dr Shakarchi, to provide the necessary certificate of capacity. On 24 March 2020, in accordance with that order, the court received a certificate of capacity from Dr Shakarchi confirming that Mr Jamous did have capacity to conduct proceedings on his own behalf. Dr Shakarchi provided little in the way of explanation for or analysis of the change in Mr Jamous's mental capacity since November 2018, but the conclusion set out in the certificate of capacity was clear, and I had no material reason to doubt Dr Shakarchi's evidence. Accordingly, I accepted that evidence and made an order dated 29 April 2020 ending the Official Solicitor's appointment as litigation friend for Mr Jamous and allowing Fieldfisher to come off the record as the claimant's solicitors.

70. Mr Jamous then filed an application dated 22 June 2020 against Fieldfisher requiring them to provide "the complete file" they held by virtue of their instruction by the Official Solicitor during the period when the Official Solicitor had acted as litigation friend for Mr Jamous in relation to his claim against Mr Mercouris. It is worth noting that during that period of under a year the Official Solicitor and Fieldfisher had had little opportunity to engage with the substance of Mr Jamous's claim against Mr Mercouris, as those months had primarily been occupied dealing with the question of Mr Jamous's capacity.

71. The application came before me on 10 July 2020 and was heard remotely via Skype-for-Business. Mr Jamous appeared in person, Mr Sharghy represented Fieldfisher and Ms Eleanor Grey QC represented the Official Solicitor. There was no basis under CPR 31.17(3) to make the order sought by Mr Jamous, and I therefore refused his application. I noted, however, during the course of my *ex tempore* judgment on 10 July 2020 (a transcript of which is on the court file (no neutral citation number)), that, although there was no basis under CPR 31.17(3) to make the order sought, the Official Solicitor and Fieldfisher had each indicated during the course of the hearing that they had no objection to providing Mr Jamous on a voluntary basis with their complete file of documents relating to this matter, excluding privileged communications between Fieldfisher and the Official Solicitor relating to complaints made by Mr Jamous about their conduct of his case. I understand that "the complete file" was provided voluntarily by the Official Solicitor and Fieldfisher to Mr Jamous following that hearing.

72. On 24 July 2020 I made an order discharging the stay of the appeal ordered by Stewart J on 5 July 2019 and ordered that the "rolled-up" hearing ordered by Sir Alistair MacDuff on 5 March 2019 be listed on 2 October 2020. I reserved it to myself at the request of Stewart J, the Judge in Charge of the Queen's Bench Civil List. He asked me to do so on the basis that I had been dealing with the matter since October 2019, had previous involvement in February 2019 and was familiar with the complicated history of the case.

Appellant's request for an adjournment of this hearing

73. Before making my order on 24 July 2020, I had asked that enquiries be made of the parties by the Queen's Bench Listing Office whether the parties would be available for a hearing during the first week of August 2020, as I was conscious that this appeal (and the claim itself) had been outstanding for a long time and on that basis it was

appropriate to hear this as soon as possible during the vacation. It was not possible at that stage to list the hearing before the end of the judicial term on 31 July 2020.

74. Mr Mercouris was understandably anxious for the matter to be dealt with as soon as possible. He and his legal representatives were available for a hearing during the first week of August 2020, however Mr Jamous indicated that he was seriously unwell, with symptoms including a sore throat, constant coughing and a throbbing headache. He said that he had been advised to self-isolate. Given the current pandemic and bearing in mind that Mr Jamous was representing himself, I was concerned that there was too great a risk that Mr Jamous would have insufficient time to prepare and that he might be not be sufficiently well to participate effectively in a hearing during the first week of August 2020.

75. Accordingly, I listed the matter for 2 October 2020, but I asked the Queen's Bench Listing Office to relay a clear message to the parties from me that any application for a further adjournment would be scrutinised closely and was unlikely to be granted, unless there were exceptional unforeseen circumstances, that any request for a further adjournment by either party would need to be justified by evidence and, in particular, if made on health grounds, would require cogent and specific medical evidence explaining why the hearing could not go ahead subject to suitable arrangements being made.

76. On 28 September 2020 Mrs Jamous contacted the court on behalf of her son to indicate that Mr Jamous was currently too unwell to attend this hearing, although she gave no details of his specific illness and provided no medical evidence.

77. On 30 September 2020 Mr Jamous wrote a lengthy email to the court in which he requested an adjournment of the hearing on the basis that:

    i) he is suffering from severe stress and anxiety and therefore too unwell to attend the hearing, remotely or otherwise; and

    ii) he needs time to find a barrister whom he trusts who is willing to represent him pro bono as he does not have the funds to pay for representation.

78. In his email of 30 September 2020, Mr Jamous made various complaints and allegations about the conduct of past hearings. He also said that he suffers from PTSD (which according to his claim was caused by the defendant) and that the court should make "reasonable adjustments" when conducting these proceedings to accommodate that fact, although he did not indicate what those reasonable adjustments should be. Mr Jamous also made submissions about his applications, which I will summarise in due course. His email was not accompanied by any medical evidence.

79. Mr Mercouris opposed the application for an adjournment.

80. The court does, of course, have the power to grant an adjournment, but in doing so must have regard to the overriding objective. Where a litigant in person requests an adjournment on the ground of ill-health the court should be slow to refuse, provided that it is their first request and the case has some prospect of success: *Fox v Graham Group Ltd*, The Times, 3 August 2001 (Neuberger J, as he then was). There are,

however, a number of qualifications to this. Also, this is not the first time that Mr Jamous has requested an adjournment on the ground of ill-health.

81. In *Decker v Hopcraft* [2015] EWHC 1170 (QB), Warby J summarised the relevant principles at [21]-[30]. I have had regard to them. The decision to adjourn is for the court, not for the parties. An application to adjourn, even if agreed, must be accompanied by evidence. In *Decker v Hopcraft* at [24], Warby J set out the summary in *Levy v Ellis-Carr* [2012] EWHC 63 by Norris J of what is required of the evidence supporting an application to adjourn on medical grounds.

82. In this case, there is no evidence to support the adjournment application. One topic that such evidence could possibly have assisted the court in determining is what arrangements might be made, short of an adjournment, to accommodate Mr Jamous's difficulties. Although Mr Jamous has said that the court should make "reasonable adjustments" to accommodate him, it is not clear what those would be, and the court has no evidence from him to assist in this regard. Simply adjourning would serve no useful purpose, as there is no guarantee that Mr Jamous will be in a better condition to participate in this hearing than he currently is, particularly bearing in mind that the principal health issues currently are stress and anxiety caused by this litigation.

83. In this regard, I note the comment of Lewison LJ in *Forrester Ketley v Brent* [2012] EWCA Civ 324 at [25]:

> "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."

84. In short, therefore, I concluded that I must refuse Mr Jamous's informal application for an adjournment as there was no evidence to support it, nor was there any realistic prospect that such an adjournment would serve a useful purpose. This claim was first filed in May 2016, when Mrs Jamous was the sole claimant, Mr Jamous himself having joined the proceedings in 2017. This appeal was filed on 27 February 2019. The reasons for the delay since that time are set out above. There is no justification for further delay on the basis of Mr Jamous's stress-related illness, for the reasons I have given.

85. Regarding Mr Jamous's submission that he needs time to find pro bono counsel, he gave no explanation as to why he had not taken that step sooner. The date of this hearing had been fixed since 24 July 2020. Mr Jamous had plenty of time to look for counsel, pro bono or otherwise, since that date. That was, therefore, a wholly inadequate reason for an adjournment at this late stage.

86. Finally, I bore in mind that the issues relating to the application for an extension of time and for permission to appeal are relatively straightforward, and I had the benefit

of some submissions from Mr Jamous, albeit only in his email of 30 September 2020. He had the opportunity and could have provided a proper updated skeleton argument and proper supporting evidence but has not done so.

87. For those reasons I refused Mr Jamous's informal late application to adjourn.

Background to the claim

88. As I have already noted, these proceedings originally began in May 2016 as a claim by Mrs Jamous only, apparently without any pre-action correspondence or other intimation to Mr Mercouris that she intended to make a claim. Mr Jamous was joined as a claimant in 2017. Amended Particulars of Claim were signed by the claimants on 31 May 2017 and filed on 11 August 2017. The Amended Defence was filed on 12 September 2017.

89. Stewart J summarised the underlying claims and the defences, as well as the course of the proceedings until July 2018, in some detail in his judgment of 5 July 2019 at [40] to [44]:

> "40. The substance of the present proceedings is set out in the amended particulars of claim signed by Mr and Mrs Jamous on 31 May 2017 and filed on 11 August 2017.
>
> 41. In summary the allegations are:
>
> (1) In April 2007 Mr Jamous, through Mrs Jamous his litigation friend, commenced proceedings against Westminster City Council ('Westminster') for damages whilst he was under their care and supervision.
>
> (2) The Defendant was studying to be a Barrister and was called to the Bar in 2006.
>
> (3) Subsequently the Defendant said he was a fully qualified Barrister and could represent the First Claimant.
>
> (4) The Second Claimant, on the Defendant's advice, refused an offer of £5000, made by Westminster, for cognitive behavioural therapy.
>
> (5) In the context of an allegedly ill-advised appeal against a decision of HHJ Mackie QC ordering the trial listed for 2008 to be vacated, the Defendant told Mrs Jamous, that Westminster had agreed to settle the claim out of court for £983,000.

(6) The Defendant also provided Mrs Jamous with a fictitious and forged document purporting to be from Lady Justice Hale and purporting to show Westminster had agreed to pay Mr Jamous £983,000 by way of settlement of his claim. There was a further bizarre false representation that Lord Phillips had detained the Defendant and bribed him not to pursue the Claimants' £983,000, in return for a payment of £50,000 plus payment of his debts and mortgage.

(7) In March 2012 the Disciplinary Tribunal of the Council of the Inns of Court heard that the Defendant had admitted:

- That on 28 August 2009 he had purported to obtain a statement from Lady Justice Hale that was not a true document, that he knew was not a true document, and that he had had no contact with Lady Justice Hale.
- He had instructed the Claimants not to attend an Appeal hearing in relation to the compensation claim on the basis that he was negotiating with Westminster. This was in circumstances where no such negotiations were being conducted.
- He had stated that he would make an application to the court for an interim payment of £50000 when he knew no such application had been made, or was going to be made.
- That the £983,000 settlement had been stolen by his brother (sic).
- In a statement dated 11 December 2009 he said he had been detained by police officers and taken to a meeting with Lord Phillips. This was a dishonest statement.

42. Mr Jamous's loss was alleged to be the loss of the £5000 worth of cognitive behavioural therapy offered by Westminster, the loss of chance of compensation against Westminster had the claim been pursued to a full hearing, and personal injury in the nature of

anxiety and post-traumatic stress disorder aggravated by or worsened by the Defendant's conduct.

43. Mrs Jamous also made a claim for her own psychiatric injury and consequential loss in relation to a potential business deal.

44. Apart from limitation defences, the defence can be broadly summarised as follows:

(1) It was Mrs Jamous who refused the offer of therapy made by Westminster both for herself and her son, on the grounds that neither of them trusted the intentions of Westminster.

(2) The Defendant was initially involved in working at the RCJ Advice Bureau and, in that capacity, assisted the Claimants in various matters. Mrs Jamous later asked him to assist her in the claim against Westminster. He told her that he had neither the knowledge nor authority to assist her in the claim and he was not authorised to represent her since he was not a practising Barrister. At this point he was involved in his legal studies.

(3) Mr Mercouris completed his legal studies in 2006. He was unable to obtain pupillage. He became his 99 year old grandmother's carer and, as a result of these events, became depressed and had a full nervous breakdown in the Summer/early Autumn of 2007. He remained depressed until 2012.

(4) Mrs Jamous knew that the Defendant was suffering from depression at the material times. Further, she knew at all times that he was not a practising Barrister, that he was not qualified and that he did not have the knowledge/authority to represent her or her son in the case against Westminster.

(5) In 2007 the Defendant agreed to assist Mrs Jamous to draft the particulars of claim because she no longer had anybody acting for her and, to the best of his recollection, Mrs Jamous was concerned that the limitation period was about to expire. He assisted in drafting the particulars of claim without charging a fee.

> (6) The Defendant's increasingly bizarre behaviour between 2007-2010 was the consequence of his mental health which was known, or ought to have been known, to Mrs Jamous.
>
> (7) By that stage professional negligence allegations had been struck out, by order of 12 July 2017, by Master Davison. Also, part of the claim of Mrs Jamous had been struck out as being statute barred.
>
> (8) In those circumstances the claims were denied."

(footnotes omitted)

90. Stewart J summarised the subsequent course of the proceedings up to July 2018 at [47] to [60] of his judgment.

91. Mrs Jamous's claim came to an end on 14 February 2019 when I refused Mrs Jamous permission to appeal the striking out of her claim by the July 2018 Order: *Jamous v Mercouris* [2019] EWHC 722 (QB). I also certified her application for permission to appeal as totally without merit. My judgment on that occasion provides further background on the claims and the course of these proceedings.

92. Mr Jamous's claim, the remaining claim, is as summarised at [42] of Stewart J's judgment. The respondent characterises this in his skeleton argument for this hearing as a "weak claim of relatively low/modest value".

93. On 18 April 2019, although Mr Jamous had not by that stage complied with the order of Sir Alistair MacDuff of 5 March 2019 to file an appeal bundle, Mrs Jamous asked for the hearing ordered by Sir Alistair MacDuff to be listed.

94. It was after Mrs Jamous's claim was ended that she formally applied by application notice dated 13 May 2019 (filed on 15 May 2019) to be appointed as her son's litigation friend stating that "he does not have capacity and lacks trust in others due to behaviour of his former solicitor whilst in care".

95. Stewart J's judgment of 5 July 2019, in particular, at [54] to [60] and [75] to [83], makes clear the many deficiencies in the way that these proceedings have been conducted by Mrs Jamous, whom Stewart J described at [75] as the "driving force behind the litigation". At [76] Stewart J noted:

> "Mrs Jamous has serially:
>
> (a) Issued applications certified as totally without merit
>
> (b) Failed to comply with court orders
>
> (c) Issued applications without notice to the Defendant

(d) Attended before judges without making applications"

96. Stewart J elaborated on this summary in the subsequent paragraphs of his judgment, including noting at [77] that there had been three applications by Mrs Jamous certified as totally without merit, namely, by Martin Spencer J on 27 October 2017, by me on 14 February 2019 and by Soole J on 29 March 2019. At [78] he noted the remarks of Master Davison on 29 March 2018, which he considered worthy of repetition:

> "Obviously, allowances have to be made for litigants in person … but in this case … I have formed the impression that Miss [sic] Jamous regards court orders and rules of court as to be subordinated entirely to her 'fight for justice' … To put it another way she appears to me to consider that orders and rules are to be obeyed by others but not necessarily herself."

97. Ultimately, Stewart J concluded on the basis of "grave shortcomings in Mrs Jamous' conduct of this claim so far" ([89]) that her application to be appointed litigation friend for her son had to be refused ([96]).

98. As discussed earlier in this judgment, the Official Solicitor was then appointed to act as litigation friend for Mr Jamous, but that relationship broke down, and Mr Jamous sought to establish that, contrary to his mother's position prior to Stewart J's refusal of her application to act as litigation friend for her son, he did, in fact, have capacity to conduct litigation. Ultimately evidence of Mr Jamous's capacity was provided by Mr Jamous's general medical practitioner, Dr Shakarchi, and the Official Solicitor was discharged as litigation friend.

99. The circumstances giving rise to this appeal occurred during the period before the appointment of the Official Solicitor as Mr Jamous's litigation friend, when Mrs Jamous was conducting the claims on behalf of herself and her son.

The application for an extension of time to appeal

100. The Court of Appeal set out the principles that the court should apply when considering an application for an extension of time to file an appellant's notice in *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633, [2015] 2 WLR 2472. The key principle is that such an application should be approached in the same way and with the same rigour as an application for relief from sanctions under CPR rule 3.9.

101. In *Hysaj* at [36], Moore-Bick LJ said:

> "… As the authorities demonstrate, for the past 12 years it has been consistently understood that in the *Sayers* case [2002] 1 WLR 3095 this court deliberately equated applications for extensions of time for filing a notice of appeal with applications for relief from sanctions because in its view the implied sanction of the loss of the right to pursue an appeal meant that the two were analogous. Following the decision in the *Mitchell* case [2014] 1 WLR 795 the courts have continued to proceed on the basis that applications for extensions of time for filing a

> notice of appeal should be approached in the same way as applications for relief from sanctions under CPR r 3.9 and should attract the same rigorous approach. It might even be said that the decision in the *Mitchell* case has provided an independent basis for a similar approach to applications of that kind. The clearest example is perhaps to be found in *Baho v Meerza* [2014] Costs LR 620, to which I have already referred. Whatever one may think of the doctrine of implied sanctions, therefore, particularly in the light of the views expressed by the Privy Council in the *Matthews* case [2011] UKPC 38, I think that the approach to be taken to applications of the kind now under consideration is now too well established to be overturned. It follows that in my view the principles to be derived from the *Mitchell* case and the *Denton* case [2014] 1 WLR 3926 do apply to these applications."

102. CPR rule 3.9 provides:

> "**3.9— Relief from sanctions**
>
> (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need—
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders.
>
> (2) An application for relief must be supported by evidence."

103. The cases of *Mitchell v News Group Newspapers* [2013] EWCA Civ 1537, [2014] 1 WLR 795 and *Denton v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926 are the leading cases on the proper approach to an application for relief from sanctions. The relevant test is summarised in the *Denton* case at [24] as follows:

> "… A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the 'failure to comply with any rule, practice direction or court order' which engages rule 3.9(1) . If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate 'all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]'. … ."

104. In the Appellant's Notice, Mr Jamous gave the following reasons for the delay in filing the Appellant's Notice:

> "On the 30th January 2019 the 2nd Claimant who was conducting these proceedings, as I do not have capacity (certificate has been filed with the court), went before Mr Justice Waksman. At this hearing she brought to his attention the fact that she had only filed one appellant's notice [in relation to her appeal against the order of Master Thornett dated 19 July 2018] but had made it clear the wish for both applications for permission to appeal the 1st and 2nd Claimant, to be heard on the same day. She informed the judge that she believed it to be a waste of public monies to make a separate application, as both the 1st and 2nd Claimant were fee exempt. She had also made it clear that if absolutely necessary she would make a separate application on behalf of the 1st Claimant after obtaining a further fee exempt certificate. The 2nd Claimant has [illegible]. Mr Justice Waksman verbally indicated to the 2nd Claimant it was correct not to obtain a further certificate, however did not address this at all in his order. This gave us reason to believe both applications would be heard on the same day. I was given a further 2 weeks to submit this application."

105. In his email to the court dated 30 September 2020 in which he made his informal application to adjourn this hearing, Mr Jamous had the following to say about the delay in filing his Appellant's Notice:

> "I was out of time with my application because my mother wrongly believed that both applications could be heard at the same time as explained in the judgment of Mr Justice Stewart. My mother also suffers from stress and anxiety and was attempting to act in my best intertest and not [incur] unnecessary costs by making a separate application for a fee exempt certificate. This was verbally agreed by the judge. However it turns out this was not acceptable therefore my application was late which was no fault of my own."

106. Applying the test set out in the *Mitchell* and *Denton* cases, as summarised above, the first question to consider is whether Mr Jamous's delay in filing the Appellant's Notice was a serious and significant breach of CPR 52.12(2), which stipulates the time period within which an Appellant's Notice must be filed. The 18 December Order was made on 18 December 2018. The Appellant's Notice should have been filed within 21 days of that date. It was, however, not filed until over two months later, roughly seven weeks late.

107. Had the Appellant's Notice been filed on time or even late but by the end of January 2019, then it would have been possible for both appeals to have been heard by me on 14 February 2019, which would clearly have been in the interests of justice and in accordance with the overriding objective, in particular, the objectives of dealing with both appeals expeditiously and at proportionate cost.

108. The filing of the Appellant's Notice roughly seven weeks late was clearly a serious and significant breach of the relevant rule.

109. The next question to consider is whether there was a good reason for the Appellant's Notice having been filed so late. I have summarised Mr Jamous's reasons for the delay above. Notably absent is any explanation from Mr Jamous as to why the Appellant's Notice was not filed by 9 January 2019. The reasons given by Mr Jamous focus almost completely on what Mr Jamous's mother believes that she was told by Waksman J at the hearing before him on 30 January 2019. Mrs Jamous had, however, been reminded by Martin Spencer J nearly two weeks earlier on 17 January 2019 that her son was **already** out of time to file an Appellant's Notice and that, if he intended to seek permission to appeal and for an extension of time, he "should do so as soon as possible". It is hard, therefore, to credit her apparent claim, on which her son relies, that she was unaware that there was a time limit for filing her son's Appellant's Notice.

110. Although it is appropriate to take into account that a person is acting as a litigant in person and to make allowances, if possible, where necessary (and the history of these proceedings shows that allowances have frequently been made for Mrs Jamous and her son by various judges involved in these proceedings at different stages), a litigant in person is still required to comply with the relevant rules of civil procedure.

111. In *Hysaj* at [44], Moore-Bick LJ considered whether the court should adopt a different approach to the question of relief from sanctions in relation to litigants in person:

> "… The fact that a party is unrepresented is of no significance at the first stage of the inquiry when the court is assessing the seriousness and significance of the failure to comply with the rules. The more important question is whether it amounts to a good reason for the failure that has occurred. Whether there is a good reason for the failure will depend on the particular circumstances of the case, but I do not think that the court can or should accept that the mere fact of being unrepresented provides a good reason for not adhering to the rules. That was the view expressed by the majority in the *Denton* case [2014] 1 WLR 3926, para 40 and, with respect, I entirely agree with it. Litigation is inevitably a complex process and it is understandable that those who have no previous experience of it should have difficulty in finding and understanding the rules by which it is governed. The problems facing ordinary litigants are substantial and have been exacerbated by reductions in legal aid. None the less, if proceedings are not to become a free-for-all, the court must insist on litigants of all kinds following the rules. In my view, therefore, being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules."

112. In short, a litigant in person is required to comply with the rules. Not knowing or being confused about the deadline is not a sufficient excuse for failing to comply. Moreover, Mrs Jamous has, it appears, acquired considerable experience of legal proceedings over the past few years. Also, she and her son continued to fail to comply

with the relevant deadline even after the failure was pointed out to Mrs Jamous by Martin Spencer J on 17 January 2019 with a recommendation that the failure be remedied as soon as possible. No Appellant's Notice was filed until after I had given the direction in my order of 14 February 2019 that the Appellant's Notice and related applications for an extension of time and permission to appeal be filed by 29 February 2019. Mrs Jamous's view that it would be a waste of public monies for her son to file an Appellant's Notice and related applications in relation to his own appeal was not a good or acceptable reason for Mr Jamous not to have complied with the rule.

113. In summary, Mr Jamous has not advanced any good or acceptable reason why he failed to file his Appellant's Notice on time.

114. Finally, it is necessary to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application", including the need (a) for litigation to be conducted efficiently and at proportionate cost and (b) to enforce compliance with rules, practice directions and orders.

115. As is clear from Stewart J's judgment of 5 July 2019, the conduct of these proceedings by Mrs Jamous and her record of compliance with court orders has been poor, including failures to comply with various directions orders for disclosure, the production of witness statements and so on in relation to the claim. There have been numerous misconceived applications by Mrs Jamous to stay or set aside interim orders, and Mrs Jamous has made at least three applications that have been certified by High Court judges as totally without merit, as noted in Stewart J's judgment of 5 July 2019 at [77]-[78], as I have already discussed at [96]-[97] above. Those failures eventually resulted in Mrs Jamous's claim being struck out.

116. In relation to the conduct of this appeal, there have also been serious failures. As I have already concluded, Mr Jamous failed to file his Appellant's Notice within the time period stipulated in CPR 52.12(2) without any good reason to explain the failure. He has also failed to comply with the direction in Sir Alistair MacDuff's order of 5 March 2019 to produce an appeal bundle in compliance with CPR PD 52B, para 6.4. He did not do so by the deadline of 28 days following service of Sir Alistair MacDuff's order on him. When his mother sought an extension of time to file his appeal bundle in the 22 March Application, Soole J in his order of 29 March 2009 dismissed the application and certified it as totally without merit. The failure to file the appeal bundle on time in accordance with the order of Sir Alistair MacDuff was another serious and significant breach of the rules, and therefore a relevant consideration as part of all the circumstances of the case.

117. Mr Jamous has filed insufficient evidence in support of his applications for an extension of time and for permission to appeal, and he has filed no updated skeleton argument for this hearing. His only submissions, beyond the minimal submissions in the skeleton argument filed by his mother on 29 March 2019 (which I have summarised above), are those in his e-mail of 30 September 2020. Most of that email, however, is concerned with his informal application to adjourn this hearing, accusations against and complaints about Mr Mercouris and his legal representatives and complaints about past hearings and orders.

118. I have already noted that Mrs Jamous filed a minimal appeal bundle, out of time, on behalf of her son in early April 2019. Although not required to do so, Mr Mercouris's

solicitors have provided a full bundle for the hearing including the pleadings, various application notices by the parties over the past two years (made principally by the appellant), the 30 or so orders that have been made by various Masters and High Court Judges in these proceedings over the past four years (although I notice that the bundle omits some orders that I would consider relevant, for example, the order of Soole J dated 29 March 2019 and the order of Stewart J dated 30 April 2019), witness statements and exhibits, correspondence, other background documents, a chronology, some relevant authorities and the judgment of Stewart J dated 5 July 2019 made in these proceedings, discussed earlier in this judgment. Mr Mercouris also provided a skeleton argument for the hearing.

119. In his submissions on behalf of Mr Mercouris in opposition to the application of Mr Jamous for an extension of time to file his Appellant's Notice, Mr Gaurang Naik, of counsel, has made the following points regarding the third stage of the *Mitchell/Denton* test, "all the circumstances of the case" and the overriding objective:

i) the extant claim (after Master Davison in 2017 struck out the allegations of professional negligence against Mr Mercouris and ruled that parts were time-barred and after the striking out of Mrs Jamous's claim) is of relatively modest value (see [92] above);

ii) the trial of the claim was originally listed as far back as 9 July 2018 with a time estimate of three days, the trial having to be vacated because of the failure of the claimants to comply with relevant orders, yet there has still been no disclosure and no witness statements and currently no prospect of a trial date;

iii) these proceedings have already, over a period of several years, generated some 30 or so orders and numerous applications and appeals by the claimants;

iv) the claimants have repeatedly failed to comply with rules, practice directions and orders;

v) Mr Mercouris is a private individual without deep pockets;

vi) the claimants' conduct of the case has been "oppressive and unconscionable"; and

vii) the claimants have abused the generous indulgence that the court has granted them on numerous occasions.

120. In summary, Mr Naik submitted, having regard to the amount of money involved, the financial position of each party, the need to ensure that the case is dealt with expeditiously and fairly, the need to allot to it an appropriate share of the court's resources and the need to enforce compliance with rules, practice directions and orders, it is very clear, in light of all the circumstances of the case, that Mr Jamous's application for an extension of time should be refused.

121. In relation to Mr Naik's submissions, I do not think that the claimants have necessarily intended to conduct these proceedings in a manner that was "oppressive and unconscionable" to Mr Mercouris. That has, however, been the effect. It is clear that Mrs Jamous and her son have a sincere and deeply felt grievance against Mr

Mercouris. But they have seriously and repeatedly failed to comply with relevant rules, practice directions and orders and the effect of that lack of compliance has meant that these proceedings have not been properly and fairly pursued against Mr Mercouris, with the result that Mr Mercouris has found these proceedings oppressive.

122. Mr Naik's other submissions are amply borne out by the history of these proceedings, as reflected in observations by Master Davison, Stewart J and other judges, including me, made on other occasions, some of which I have quoted from or summarised above.

123. Before concluding the analysis of the third stage of the *Mitchell/Denton* test, I consider, for the reasons given below, that it is necessary in this case to consider the merits of the appeal and to weigh those in the balance.

The merits of the appeal

124. As noted in *Hysaj* at [46]:

> "… In most cases the merits of the appeal will have little to do with whether it is appropriate grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them. …"

125. In this case, there is one substantive ground of appeal, namely, that Master Davison was wrong to strike out Mr Jamous's claim because Master Davison's order of 30 October 2018 was, in fact, complied with by the filing of a certificate of capacity at the court on 30 November 2018. *Prima facie*, there appears to be merit in this ground of appeal, for the reasons discussed below. There are, however, some uncertainties that would need to be considered and resolved before the appeal could be finally determined.

126. I have already referred at [24]-[25] to the email exchange between Mrs Jamous and the court on 24-25 January 2019 regarding whether Master Davison had received her email with attached certificate of capacity on 30 November 2018, and Master Davison's reply that the court was not an e-filing court and therefore sending the certificate of capacity by email "would not have been sufficient compliance with the order". There was no mention in that email exchange of Mrs Jamous or her son having also filed a hard copy of the certificate of capacity with the court.

127. On 8 April 2019 there was an email from Mrs Jamous to Stewart J's clerk in which Mrs Jamous forwarded to her the exchange of emails on 24-25 January 2019 to which I have just referred and then said the following:

> "Could you please scroll down and find the email from [the Queen's Bench Masters Listing Office] sent to myself on the 25th January with reference to Master Davison's directions.

> I'd really appreciate it if you could pass this onto Mr Justice Stewart so he is fully aware of the situation regarding Master Davison. My point being: (1) Master Davison did receive a copy of the Certificate on the 30th November 2018 as he was copied into the [email] which I sent to the court … . (2) I believe the court was an e-filing court at the time the Master made his directions on the 25th January 2019."

128. There is no reference in this email to a hard copy also having been filed with the court, as one would have expected there to be if it were the case that a hard copy of the certificate of capacity had also been filed at court on 30 November 2018. Mrs Jamous was clearly aware that Master Davison was taking the view that if the certificate of capacity was filed only by email, then had not been properly filed. Accordingly, the natural response would have been to say that a hard copy was also filed. But Mrs Jamous's only argument in her email of 8 April 2019 is that she believed the court to be an e-filing court "at the time the Master made his directions on the 25th January 2019".

129. In any event, it did not matter whether the court was an e-filing court on 25 January 2019, but whether it was so on 30 November 2018, which was the deadline by which the certificate of capacity had to be filed under the "unless" order made by Master Davison on 30 October 2018. The Master was clearly correct on 25 January 2019 when he said that filing the certificate of capacity by email on 30 November 2018 did not comply with his order of 30 October 2018, as the court was not an e-filing court at that time.

130. The only evidence that Mr Jamous has filed to support his case on the merits of his appeal against the 18 December Order is his one-page "Ground for Appeal" in his Appellant's Notice, which reads in its entirety as follows:

> "1) The 2nd Claimant filed a copy of the certificate as ordered by Master Davison on the 30th October 2018. The certificate was filed by email and also a hard copy was filed which was stamped as received on the 30th November 2018. It was not ordered that the certificate should be served on the Defendant.
>
> 2) The [Defendant's] solicitor claims by email to the 2nd [Claimant] the following: 'I note that Master Davison considered the certificate to be in some way(s) defective.' This email was sent on the 1st February 2019. However on 25th January 2019 at 07:44 [the Queen's Bench Masters' Listing Office] emailed the 2nd Claimant on behalf of Master Davison stating the Master made the following direction: 'I did not receive her email. The requirement was to file the certificate. We are not an e-filing court and we do not accept documents filed by email.'
>
> 3) There is supporting evidence that this certificate was filed and Master Davison does not make any reference

> to a defect. He actually denies he has received the certificate. I/we believe to strike out the 1st Claimant in his absence was wrong. This is the grounds for appeal."

131. Although Mrs Jamous makes no reference in her email messages of 24 January 2019 and 8 April 2019 to which I have just referred above to having also filed a hard copy of the certificate of capacity, that is now clearly Mr Jamous's case. Mr Jamous asserts that there is "supporting evidence" that the certificate was filed at court, but he has not provided any for this hearing. Attached to the skeleton argument The correspondence to which I have just referred also raises a question mark over whether a hard copy was filed.

132. I note that at paragraph (3) of the Ground for Appeal, Mr Jamous asserts that Master Davison does not make any reference to a defect in the certificate of capacity but simply denies having received it. While that is an accurate summary of Master Davison's response to her email of 24 January 2019, as sent to Mrs Jamous by the Queen's Bench Masters' Listing Office, I note that in the 18 December Order against which Mr Jamous is appealing, Master Davison noted in the second recital to the order that:

> "… the claimants have not complied with paragraph 3 of the Order dated 30 October 2018, i.e. have not filed at court a certificate **in the proper form** as to the first claimant's capacity to conduct these proceedings" (emphasis added)

133. On its face, in other words, Master Davison's order does not make it clear whether no certificate at all was "filed at court" or whether a certificate was "filed at court" but the document filed was not "in the proper form". Mr Mercouris appears to have interpreted the 18 December Order in the latter way, which may explain the reference by his solicitors to the certificate being "in some way(s) defective" in their email of 1 February 2019 (which is not in the bundle provided to the court by Mr Mercouris for this hearing), referred to at paragraph 2 of the Ground for Appeal.

134. So, if the appeal were to proceed, there would need to be proper evidence, beyond Mr Jamous's mere assertion in his Ground for Appeal, that the certificate was filed at court (rather than simply sent to the court by email) within the deadline stipulated by Master Davison, and, if that were established, there would need to be proper evidence as to the contents of the certificate to verify whether it was "in the proper form", as required by Master Davison's order of 8 August 2018. As I have already noted, Mrs Jamous provided to the court, with a copy to Mr Mercouris in redacted form (and later in unredacted form) in early April 2019 a copy of what she asserted was the full certificate of capacity filed by her on 30 November 2018. That would need to be assessed at a hearing of the substantive appeal.

135. Finally, I note that I have found on the court file that on 15 April 2019 the Queen's Bench Judges Listing Office sent the following message on behalf of Stewart J to Mrs Jamous and to Howard Kennedy:

> "Mrs Jamous e mailed the clerk to Mr Justice Stewart (in his capacity as Judge in Charge of the Queen's Bench Civil List)

> last Friday (2nd April) and Monday 5 April regarding the pending appeal.
>
> The Judge has made investigations of the file. The attached document was filed at The Royal Courts of Justice Action Department on 30 November 2018, as the stamp demonstrates. [A copy of page 1, not redacted is also on the court file] The Senior Master has checked that the form is logged on the court system as having been filed on 30 November. This matter was of course mentioned before Mr Justice Murray in the related appeal heard on 14 February 2019, [see in particular para 66 transcript of which is on the Lawtel website]. The Judge has out a copy of this transcript on the Court file
>
> This message is so that both parties are fully in the picture and in case it might enable resolution of the appeal by a draft consent order.
>
> The Respondents are entitled, if they wish[,] to a copy of the emails sent to Mr Justice Stewart by Mrs Jamous and the brief written response made by the Judge's clerk to her sending the Judge's reply.
>
> Mr Justice Stewart will not hear the appeal if it is a contested matter."

136. This does appear to support Mr Jamous's case that a hard copy of the certificate of capacity was filed with the court on 30 November 2018.

137. Mr Mercouris was not, however, bound to accept the suggestion by Stewart J that the appeal be resolved by consent order. He was entitled to challenge Mr Jamous's application for an extension of time to file his Appellant's Notice and for permission to appeal.

138. Furthermore, questions remain as to whether the certificate of capacity as purportedly filed by Mrs Jamous on 30 November 2018 properly complied with Master Davison's order of 30 October 2018 and why Mrs Jamous made no reference to having filed a hard copy in her email messages of 24 January and 8 April 2019.

139. A question also arises as to why, immediately after receiving the 18 December Order, Mrs Jamous, on behalf of her son, did not take the simple and obvious step of applying to Master Davison, supported by appropriate evidence, to have the order set aside on the basis that the order of 30 October 2018 had been complied with. Mrs Jamous had already made a number of applications to set aside orders in these proceedings and was familiar with the procedure.

140. When considering the third stage of the *Mitchell/Denton* test, I have weighed carefully in the balance, as part of all of the relevant circumstances of the case, that, particularly in light of Stewart J's investigation of the court file, referred to at [135] above, there appears to be merit in Mr Jamous's ground of appeal. Given the lack of supporting evidence, however, from Mr Jamous that would be needed to resolve the

questions that I have highlighted above, this factor does not persuade me that the extension of time to appeal should be granted notwithstanding the other factors discussed above that weigh heavily in favour of refusing the application.

Conclusion

141. In summary, Mr Jamous's failure to file his Appellant's Notice within the time limit stipulated by the rules was a serious and significant breach that continued even after an explicit warning by Martin Spencer J that the appeal was out of time and, if it was going to be pursued, should be filed "as soon as possible". There was no good reason for that serious and significant breach. Having regard to all the circumstances of the case, there is no justification for relief from sanctions. Accordingly, in my judgment, applying the principles set out in *Mitchell*, *Denton* and *Hysaj*, Mr Jamous's application for an extension of time to file his Appellant's Notice must be refused.

142. The effect of this is that Mr Jamous's application for permission to appeal the 18 December Order does not fall to be determined and, accordingly, Mr Jamous's claim against Mr Mercouris remains struck out by virtue of the 18 December Order.