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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

AB

Plaintiff

v

UNIVERSITAIR ZIEKENHUIS GENT

-and-

BELFAST HEALTH & SOCIAL CARE TRUST

Defendants

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Ms M Anyadike-Danes QC with Mr D Hamill BL (instructed by Phoenix Law Solicitors) for the plaintiff
Mr P Lyttle QC with Mr J Park BL (instructed by Carson & McDowell Solicitors) for the first defendant and
Ms J Simpson QC with Mr M Lavery BL (instructed by the Directorate of Legal Services) for the second defendant

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McFARLAND J

Introduction

[1] This case has had a protracted history. The plaintiff, who was born in 1982, was diagnosed with gender dysphoria and in 2003 underwent surgery involving a laparoscopic hysterectomy and bilateral ovary removal, and then a mastectomy in 2005. The plaintiff was unable to access further surgical intervention in Northern Ireland, and he was referred by the second defendant to the first defendant, a hospital in Belgium. He underwent surgery for a gender transitioning vaginectomy and phalloplasty in the autumn of 2009. He issued a Writ on 7th September 2011 claiming damages arising out of the medical advice, care and

treatment in relation to the 2009 surgery. A claim against the Southern Health and Social Care Trust has already been dismissed by the court. Given the intimate nature of the surgery, the court made an order in 2016 permitting him to use the cypher 'AB' to protect his privacy. In this judgment I will refer to him as 'AB' or the plaintiff, I will refer to the first defendant as 'UZG' and the second defendant as 'BHSCT.'

[2] Two applications are before the court. They have common themes and have been dealt with together. Both seek an order from the court to strike out the plaintiff's action.

[3] BHSCT issued a summons on the 23rd October 2020 to strike out the proceedings by reason of the plaintiff's persistent delay in prosecuting his action and disregard for the directions and orders of the court.

[4] UZG issued a summons on the 12th November 2020 to strike out the action by reason of repeated failures on the part of the plaintiff in complying with the court's directions and failure to produce specific documents as directed by the court. It further sought an order to strike out pleadings that had not been amended as directed by the court.

[5] In the course of management of the proceedings, the plaintiff made disclosure of correspondence passing between the plaintiff and a doctor retained by the plaintiff to provide an expert report.

[6] As a result, BHSCT on 4th January 2021 issued an amended summons which still sought the same relief but included further grounds. UZG has supported the additional grounds and it came before the court, to all intents and purposes, as a joint application to strike out the proceedings on the grounds that it is an abuse of the court's process by virtue of the plaintiff's delay and failure to comply with the orders of the court and further, his conduct in relation to his engagement with an expert medical witness. Both defendants rely on Order 1A Rule 1, Order 18 Rule 19(1)(c) and (d) of the Rules of the Court of Judicature and the inherent jurisdiction of the court.

[7] The court benefited from extensive written and oral submissions of counsel and the industry of their instructing solicitors. I would also acknowledge the amount of work that has been carried out by Phoenix Law, solicitors for the plaintiff, since they came on record in August 2020.

Alleged Delay

[8] A chronology of events ("the Chronology") in relation to the conduct of the litigation was prepared by the solicitors for the first defendant. The plaintiff and the second defendant have not challenged the accuracy of the Chronology. It is set out in full in the annex to this judgment.

[9] There has been significant case management by the judiciary with a view to progressing the matter. On numerous occasions the plaintiff failed to comply with the directions. An 'unless order' was made on 25th September 2014 and judgment entered against the plaintiff as he was in default. The master reinstated the proceedings on 17th June 2015. On the 16th March 2016, the matter was transferred to a high court judge for future management due to the plaintiff's persistent failure to comply with orders. Stephens J issued an 'unless order' on 4th April 2017 which was complied with. On the 24th April 2017 the case was timetabled towards a final hearing scheduled for 4th June 2018 (which was later vacated). In September 2017 the plaintiff changed his solicitor. In February 2018 the plaintiff changed his solicitor. In October 2018 the plaintiff changed his solicitor. On 10th December 2018 it was directed that a hearing to determine liability be fixed and the case timetabled for that hearing. Due to a failure on the part of the plaintiff to comply with the timetable the matter was brought back before the judge on 22nd March 2019 when a revised timetable was ordered and the trial fixed for 27th January 2020. On 31st May 2019 the plaintiff served what was his fourth statement of claim, the amended, re-amended statement of claim.

[10] On the 21st January 2020, the plaintiff applied to vacate the hearing date for the liability only trial. Maguire J vacated the trial date on strict conditions with regard to compliance with further directions which were then issued. Those directions included a requirement concerning the expert witness, Professor Robert ("Robert") who was based in France. The plaintiff was stating that Robert was unable to attend the hearing, or be made available for cross-examination, and was seeking to have his evidence admitted in written form under the Civil Evidence (NI) Order 1997. This is relevant to the other limb of the application before me, as the application before Maguire J was not to permit Robert's evidence to be given by live-link, but rather that only his written report should be admitted, thus denying the defendants the opportunity to cross-examine him. The court ordered the defendant to provide all correspondence to and from Robert concerning his inability to attend at the hearing. The correspondence was to be produced by 23rd January 2020. Sir Richard McLaughlin on 4th March 2020 directed that the plaintiff provide the correspondence (and comply with other directions) within 7 days, and re-listed the matter for review on 1st April 2020.

[11] The public health restrictions relating to COVID-19 came into operation in mid-March 2020, which curtailed active case management of the case. On 5th June 2020 directions were made administratively requiring the plaintiff to serve the Robert correspondence by 12th June 2020. None of the Robert correspondence relating to the January 2020 hearing and his intended non-appearance has ever been served, and it still remains outstanding, as does any explanation as to why it is outstanding.

[12] In early August 2020, the Law Society of Northern Ireland had cause to intervene in relation to the practice of the plaintiff's then solicitors. His current solicitors are now on record for the plaintiff.

[13] The current state of the liability issue between the parties has been narrowed significantly as a result of a joint meeting of experts of 5th February 2020, the minute from which was produced on the 3rd March 2020. As a result of that agreed minute, the focus of the litigation has shifted away from the allegations relating to surgery and post-operative care itself, onto the duty of the medical practitioners to take reasonable care to ensure that the plaintiff was aware of any material risks involved in proposed surgery, and of reasonable alternatives open to him.

The plaintiff's engagement with Professor Robert

[14] Although the defendants and the court have yet to see the correspondence passing between the plaintiff, his then solicitors and Robert relating to Robert's inability to attend court to give oral evidence in January 2020, correspondence that passed between the plaintiff and Robert in relation to another topic, namely the content of an additional expert medical report from Robert has been produced. It begins from 1st April 2020 and ends on 20th April 2020.

[15] To put the content of this correspondence into context, the agreed minute of the experts' meeting of 5th February 2020 dealt with an issue relating to pudendal nerve damage, the pudendal nerve being the main nerve in the pelvic area. The experts stated that they could not think of a mechanism by which the plaintiff's pudendal nerve would have been directly damaged during the original phalloplasty, but that they would defer to Robert's expertise on expected appearances of entrapped or damaged pudendal nerves. In addition, the plaintiff, by order of Maguire J of 4th December 2019, had been debarred from serving any further medical evidence.

[16] On the 1st April 2020, the plaintiff emailed his current solicitors. At that stage his previous solicitors were still on record. The purpose of the email was to enquire if they would receive instructions to act on his behalf in the litigation. The email stated:

> *"I have found the Prudental Nerve Expert & Neurologist and both are willing to offer medicolegal reports … All of my injuries are nerve related …These are the only reports outstanding prior to the liability hearing which is not listed. There will be a Review in 8 weeks' time."*

The email was sent at 18.54.

[17] Earlier that day the plaintiff had been in email contact with Robert. At 11.20 Robert sent an email to the plaintiff:

> *"My dear [A] It has been a pleasure to hear from you again. I will do my best to help you. I just wrote this letter to explain my point of view…give me your impression; We will clarify my thoughts in a correct English."*

A further email followed at 11.22 attaching a short medico-legal report.

[18] Although the content of the email suggests that there had been earlier contact between the plaintiff and Robert, this has been denied by the plaintiff.

[19] At 14.48 on the 1st April 2020 the plaintiff emailed Robert. The email stated:

> *"I am so glad to finally hear from you. I previously sent these attachments to Dr Riant, can you please review these attachments carefully… Can you please look at the attachments 2, 5A, 5B, and 5C… Pudendal nerve can indeed cause urinary infections for various reasons as described in the journal article attached 5B by Dr Possover. Dr Rothburn a top medicolegal microbiologist expert in the UK asserts that the pudendal nerve damage is causing the urinary infections 5A. Isn't it possible that the urinary infections are caused by the consequence of the pudendal damage? The UK court test level in civil cases: on the balance of probabilities did XYZ cause etc. If you say that absolutely not the pudendal damage cannot cause pudendal damage then it severely damages my case and I will not get reimbursed for the 32 infections and 10.5yrs of hell. Please read the attachments and think. I had no infections prior to the surgery and after I am killed with infections. Once you have reviewed the attachments and had sufficient time, can myself and you chat by video call to clarify or conclude any points? All in all, in the same friendly manner that you know me I am asking for you to look into this. I am aware emails can be quite blunt…"*

(To avoid the overuse of the term *sic*, I have corrected a number of typographical errors in this quoted extract and in later extracts from other emails.)

[20] Attached to this email are several documents including a four page document which is a draft of a medical report purportedly from Robert. The draft document appears to have been created by the plaintiff. As to the source material for the report, it would appear that the plaintiff used various existing reports and detail from his own opinion. (There was no evidence presented to the court that the plaintiff had undergone any medical training. He could not be regarded as an expert.) It contains a statement of truth:

> *"I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."*

It also contains a part 35 declaration (a reference to the English civil practice directions):

> *"I understand my duty to the court and have complied with that duty. I believe the facts that I have stated in this report are true and that the opinions I have expressed are correct. I am aware of the requirements of part 35 and practice direction 35, this protocol and the practice direction on pre-action conduct."*

[21] This draft bears little resemblance to the document prepared by Robert, mentioned in [17] above. For example, Robert's draft stated:

> *"As a neurosurgeon for pudendal nerves I can only state the history of the patient, which leads to guess the potential causes of and the occurrence of the damage, in my area of specialism. Other expertises must be done by experts in other areas."*

The plaintiff's draft states:

> *"I can clarify the cause of his bilateral pudendal nerve entrapment was the direct result of the vaginectomy part of the major surgery in 2009."*

[22] One of the attachments to the email (4 Prof Robert's letter pdf) is a medico-legal report from Robert and dated 21 October 2015. It contains an expert's declaration required by the courts in Northern Ireland (see [53] below). The expert's declaration referred to in [20] above appears to have been extracted and copied from a medical report from a Mr Christopher dated 4th October 2018.

[23] On 7 April 2020 at 13.58 the plaintiff emailed Robert. The email contained the following:

> *"Did you receive the previous email I sent to you with the 10 attachments? … Privately can me and yourself have a private consultation call to discuss the cause of the urinary infections? What date and time suits you? I hope you will review the previous email with the attachments and think… I have reattached a second draft version of the required letter and put your rough draft into it to try to make things clearer I require a structured format. This is an expanded letter to cover "referral*

> *to Nantes/symptoms/assessment/surgeries/prognosis." I reviewed your letter again with your thoughts it is clear we agree on everything. I have made some minor changes which are required-I have attached your letter again and put changes in bold so you can clearly see. If you accept these changes then we are on the same page with all. It may sound like repetition, but that is what the legal people require. Dr Rothburn a top medicolegal microbiologist expert in the UK asserts that the pudendal nerve damage is causing the urinary infections. Isn't it possible that the urinary infections are caused by the consequence of the pudendal damage? The UK court test level in civil cases: on the balance of probabilities did XYZ cause etc. If you say that absolutely not the pudendal damage cannot cause pudendal damage then it severely damages my case and I will not get reimbursed for the 32 infections and 10.5 yrs of hell. I had no infections prior to the surgery ever and after I am killed with urinary infections. What are you thinking? Will we be able to privately discuss via video call?… I am trying to make this as simple as possible. I have suffered too much and I want this nightmare to end. Please speak with me prior to finalising your letter. My number: [telephone number] the first step is to get the letter right. I need the letter before the end of the month.…"*

[24] There are three attachments to the letter. The first is the report which had been prepared by the plaintiff, and then amended by Robert. The second is that amended report with further amendments presumably inserted by the plaintiff. In the words of the plaintiff – "*I have made some minor changes which are required.*" The amendments are as follows:

a) Original – "*My constatations* [presumably 'observations' from the French] *during surgery (November 8 of 2011) were as follows*:" The amendment adds "*I observed bilateral pudendal entrapment"* after the date.

b) Original refers to pudendal nerves may be damaged through a pelvic surgery, the amendment removes '*may*' and replaces this with '*can.*'

c) Original refers to the bilateral pudendal nerve entrapment being a direct result of the pelvic surgery. The amendment deletes '*pelvic*' and inserts '*vaginectomy.*'

d) Original contains the sentence –"*on the right side, the surgery was less invasive for the nerve trunk but lead to perineural fibrousis which leads to pudendal entrapment.*" The amendment added the following at the end *"and is also a direct result of vaginectomy."*

e) Original contains the sentence: *"considering the urinary problems, we are used to see patients suffering from pudendal entrapment presenting urinary problems such as pollakiuria, dysuria, leakage. In this context infections are possible could come but it is not a direct consequence of pudendal dysfunction."* The amendment removes the words *"could come but it is not a direct consequence of pudendal dysfunction."*

f) The original concludes with the following paragraph:

> *"As a neurosurgeon for pudendal nerves I can only state the history of the patient, which leads to the guess the potential cause of and the occurrence of damage in my specialism. Other expertises must be done by experts in other areas."*

The amendment reads as follows:

> *"As a neurosurgeon for pudendal nerves I can only state the history of the patient, which leads to the cause of the occurrence of damage in my specialism and the prognosis of the patient. The Uroandrologist with the specific expertise in the vaginectomy surgery can further the causation and negligence points."*

[25] The third attachment to the email of the 7 April 2020 is a medico-legal report. It runs to 4 pages and I do not propose to quote from it extensively, but it appears to be a draft report prepared exclusively by the plaintiff. Included in this document at paragraph 1 under the heading *"referral of [AB]"* there is the phrase-*"keep this."* Under paragraph 2 which relates to *"patient symptoms"* are the words *"reword this paragraph."* Later in the document is the phrase *"reword from here onwards."* This document also contains the "statement of truth" and "part 35 declaration" referred to above. It is clearly a revision of the earlier draft prepared by the plaintiff;

[26] Robert replied by email dated 8 April 2020 at 15.31. It stated:

> *"I did some modifications. You will read that. The important thing to consider is that without any doubt, the surgery you had such as vaginectomy have led to your pudendal painful condition and all its consequences. But, I cannot say that pudendal damage leads to urinary infections. It is not true. If we write this, then the experts may consider that we are lying. But the phalloplasty and all surgery around the urethra could result in urinary tract infection. That is true. So do not mix the two problems. Tell me if we could conclude in the aim I have written. Correct please my English which sounds to me like a real disaster."*

Later Robert added:

> *"[A], nobody can say that urinary infections are the fact of pudendal disturbance. The PN [pudendal nerve] is the nerve of continence. Its damage causes leakage but not infection. To my point of view, you could discuss the responsibility of the phalloplasty, but not the pudendal damage."*

Robert attached to the email the medical report with his suggested amendments.

[27] The plaintiff replied by email dated 8 April 2020 at 14.28. There were eight attachments to that email and the email runs to three A4 pages. I do not propose to quote extensively from this email but it includes the following-

> *"Firstly, I am very glad for your assistance. Yes, I will review your attachment and correct the minor language. Please allow me until tomorrow… On first glance I agree with everything in your letter. The only sticking point is the cause of the urinary infections: of course I do not want you to lie."*

> *"Final aspect: pudendal damage can = damage nervous system= disrupted voiding system = sphincter and bladder dysfunction= predispose urinary tract infections. Possible? Review the below. Please kindly review the below and attached documents as to the primary or secondary cause of urinary infections: You don't even need to review the attachments: to save you time I have typed everything below with evidence. You only need to check the attachments to confirm the below is truthful."*

> *"Professor Robert you know me very well and that I am very honest. I ask you to please look into the above final time on the above significant question. If the above is not possible then why are all these professionals saying that the pudendal damage has caused functional dysfunction to the urine system which is causing the urine infections? They have been under absolute no duress and I have had no contact with the expert microbiologist. All experts are unwilling to criticise the phalloplasty - I think that is due to possible impact on present careers in urology and andrology."*

> *"I have suffered dreadfully by both the medical and legal fields. I feel men like me are very badly treated and do not stand a chance in society. I have fought very hard! Please review the final above question on pudendal nerve voiding dysfunction a last time. I would like to discuss the above question with you on video call so that I understand- if this is not causing the infections then it is beyond bizarre as all other professionals are stating that it is the cause. I trust you very much and you are*

> *by far the best doctor I ever met in my life so if you can explain anything to me I would greatly appreciate it."*

[28] The plaintiff sent a further email to Robert on 10 April 2020 at 20.42 there was one attachment. The attachment was the draft medical report. The email contained the following:

> *"I made minor changes as I cannot give the other side any holes or advantages."*

The attached report contained the following amendment at paragraph 5 – In the sentence *"in this context infections are possible (but are not a direct consequence of pudendal dysfunction)"* the words in the parenthesis were deleted. The email continued:

> *"Please return the letter to me when you have completed it for a final time before we agree on it to make sure. All points have been covered and I have nothing new to add…"*

The email then set out 10 paragraphs of what the plaintiff described as evidence and continued:

> *"Please do not write pudendal nerve damage is not directly causing the urine infections. It will seriously damage my case at this stage! There is no reason to write this - if you were giving evidence then when asked a direct question you could say what you wish when asked and explain… In regards to the law wording is very important. But the key thing at the minute is that the pudendal nerve damage does disrupt the voiding cycle because as Dr Possover states in his article that damage to the nervous system disrupts the entire voiding cycle causing sphincter and bladder dysfunctions/retention. And this is a primary impact of disruption to the voiding cycle causes a secondary impact of predispose to urine infections. It is possible."*

[29] The plaintiff sent another email to Robert on 14 April 2020 at 14.07. Attached to the email is an affidavit running to 24 pages which was filed in the court on 21 February 2019 the purpose of which was to provide a chronological history of the plaintiff's interaction with medical institutions and health care clinicians. In the email the plaintiff stated as follows:

> *"The problem with medicine and law is that both are concerned with money and business and not the morals of justice or healthcare. I believe that is why you retired from the business. Like myself you are a one-off. You are the best doctor and human I have met in the medical field-write and explain the best*

> *way you can the sentence on the urinary infections describing the above in your own words to lay people-old judges that are only concerned with the possibility-urine infections are a possible secondary consequence of pudendal damage that is my understanding of the above and what I have been told/read. People like me rarely get justice. If I have to come out publicly to get justice for others that is something I am deeply considering after the this time after the recent sepsis-it would be suicide for me that would greatly help others."*

[30] Robert replied by email on 14 April 2020 16.50 it stated:

> *"This is the last correction I did according to your answer. I defined the responsibility of the global surgery to explain urinary infections: the crude come mostly from the phalloplasty resulting in a stenosis of the urethra and a reduction of the bladder's nerve supply during the vaginectomy. So we can explain your problem in an orthodox way medically and anatomically speaking."*

[31] The plaintiff wrote to Robert by email of 15 April 2020 at 21.23. There are five attachments to the email including the finalised report. The plaintiff makes the following comments:

> *"I have attached the minor change that you requested and added the title. All is in red so you will see quickly. I have not change the part you have written in red regarding the infections-I think just leave it as you wish. I numbered the document. Please keep the numbers and if you're able please insert page numbers-strange things can happen where pages disappear. Include these changes in your document please PDF the medical report document or save it in a way that no one can edit it-so that you are the sole author. The report must be signed at the end and then again in the declaration part."*

The plaintiff then goes on to request that he be sent an electronic PDF copy of the report and also a hard paper copy posted to his home address. He continues:

> *"you must include your full resume as the court and judge places a lot of weight on that to know who you are fully. I want the judge to be able to lift your report from the piles of paperwork with the attachments and see that this makes factual sense especially with the attachments-these other professionals have told the truth."*

[32] The plaintiff continued and referred to a draft letter for legal aid purposes he stated:

> *"Please also sign the covering letter. Payment: legal aid usually will pay in normal circumstances but it is very slow-I find out legal aid can go as high as £3500 for these reports. Doing pro bono means doing it for free regardless. I would not ask you to do this, but it would certainly speed things up. Then if you require payment I will get you paid even from a private third source."*

Later he stated:

> *"attending court: keep what I have stated. We both know that you have no wish to come to Belfast to give evidence and that is perfectly acceptable because the court accepts videoconferencing evidence. But there is no need to state that now as it would potentially weaken my position if the other side thought you may not be interested in giving evidence by any method etc. The video evidence is perfectly acceptable to the judge on any occasion and more so now with the virus, you are retired, over 55/60 and live in France. It is too early to state these details now. The profession is regrettably a lot like a game of poker and at times stinks."*

He added the following:

> *"We are doing the above because I do not want any legal person to have access to you or your details yet even from my own legal team… Because you are vital to the case and I do not want anyone annoying you unnecessarily or making up lies! There was attempt to discredit one of the experts to me to force me to settle.… So, I am presently sourcing a completely new legal team given the unprofessional and illegal activity by my own legal team towards me and other experts in the case (I was tipped off by a solicitor who felt very sorry for me working in the same firm in Jan-March 2020-basically the legal team wanted me to settle for £30,000 when the case is worth 2 million minimum given lifelong-they don't want to take it to court due to the 'medical anatomy past')."*

[33] The email continued:

> *"Because I have been on disability benefit since the injury any payment from the court would have to be over £200,000 because the government take the money back or I would not see a penny of it and it would have to sustain me for however long I would live."*

Towards the conclusion of the email, the plaintiff added the following instruction:

> *"Please kindly delete all of our recent emails and letters including these. I would no wish these emails or letters to enter my hospital files in France. You may keep a private copy of any attachments for future reference in regards to your opinion and the court"*

[34] It is apparent that no reply was received to the email of the 15th April 2020 as the plaintiff forwarded a further email on the 20th April 2020 at 16.17 requesting that Robert sign the report urgently and send it as a pdf electronic document by email, with a hard copy to the plaintiff's postal address in Northern Ireland. The plaintiff added the following:

> *"The only reason I asked have you got a medical secretary still is that it would be good to use her as a buffer to the legal team until the right time, but it doesn't matter. You are highly astute. Please continue to liaise with me."*

Robert forwarded a signed report and other attachments including a fee note for €3000, by email of 20th April 2020. It has a time of 16.04, but as he appeared to be responding to the earlier email of 16.17, this may be the result of different time zones. In the email he added:

> *"I hope you will be satisfied"*

and

> *"I just want to help"*

[35] The plaintiff's counsel submitted a position paper to the court on the 30th November 2020. It contained a number of assertions as to fact, and the plaintiff has submitted a signed (but unsworn) affidavit adopting those assertions as to fact as being within his own knowledge information and belief. The affidavit was unsworn in accordance with the relaxation introduced as a result of the pandemic. It was endorsed as received in front of a Notary in Spain, and no issue is taken concerning it being filed in this manner.

[36] The position paper states, and AB by his unsworn affidavit adopts, the following:

a) The contact on 1st April 2020 was initiated by Robert, who has said that he had been contacted by a colleague in France (Dr Riant) to see if he would be prepared to provide an expert report as Dr Riant had retired. The reference in Robert's email to hearing from AB was intended to convey that he was glad to hear of AB again.

b) AB did not know the outcome of the joint experts' meeting until it was provided to him by Phoenix Law when they came on record.

c) AB had been attempting to secure a pudendal nerve expert for some time, and as early as 16th July 2017 when AB contacted Robert seeking the name of an expert in the United Kingdom.

d) Robert has stated that there was no video call between AB and him.

e) AB provided the draft text for the report to provide what has been called 'structure to the report' and 'assistance with his English.'

f) AB was 'extremely keen' for Robert to make the causal link between pudendal nerve entrapment and the urinary tract infections.

g) AB inserted the reference to the English Civil Procedure Rules by copying them from another report. AB did not know what CPR Part 35 was or said.

h) Robert did not know about his duties under CPR Part 35.

i) AB's request for the pdf formatted report was motivated by a concern that someone might change the report.

j) AB's email of 15th April 2020 at 21.23 (paragraphs [31] to [33] above) was motivated by a desire to avoid any objection to Robert giving evidence by video link and thereby having his report excluded.

k) AB does not have funds to pay for the litigation, but he may have access to funds from a United Kingdom based campaign group.

l) AB wanted to avoid his personal details being given to a wider audience, and this motivated his desire to restrict access to emails and documents.

m) AB regrets the content and tone of the April 2020 correspondence with Robert, stating that at the time he was 'in a very bad way', in pain, not sleeping and felt that it had been largely left to him to secure an appropriate expert, and he did not intend to elicit anything other than Robert's honest view.

[37] Robert has not filed any affidavit, although the plaintiff's position paper refers to a telephone consultation between him and the plaintiff's solicitors and counsel.

The Law

Abuse of Process generally

[38] Order 1A of the Rules of the Court of Judicature sets out the overriding objective of the Rules of the Court of Judicature. It provides:

> *"1A. - (1) The overriding objective of these Rules is to enable the Court to deal with cases justly.*
>
> *(2) Dealing with a case justly includes, so far as is practicable -*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> *(b) saving expense;*
>
> *(c) dealing with the case in ways which are proportionate to:*
>
> *(i) the amount of money involved;*
> *(ii) the importance of the case;*
> *(iii) the complexity of the issues; and*
> *(iv) the financial position of each party;*
>
> *(d) ensuring that it is dealt with expeditiously and fairly; and*
>
> *(e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.*
>
> *(3) The Court must seek to give effect to the overriding objective when it -*
>
> *(a) exercises any power given to it by the Rules; or*
>
> *(b) interprets any rule.*
>
> *(4) Paragraph (3) above shall apply subject to the provisions in Order 116A, rule 2(1), Order 116B, rule 2(1), Order 116C, rule 2(1) and Order 126, rule 2(1).*

[39] In the context of these applications emphasis is placed on saving expense, expedition and fairness, and allotting an appropriate share of the court's resources.

[40] Order 19 (1) provides that the court may:

> *"at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –*
> *…*
> *(c) it may prejudice, embarrass or delay the fair trial of the action; or*
>
> *(d) it is otherwise an abuse of the process of the court."*

[41] The power of the court is an inherent power to regulate the proceedings before it. The court will always exercise this power with care, particularly when it is being asked to strike out proceedings before trial, as it will deny the plaintiff the remedy that he seeks without a trial of the issues. It raises issues concerning the right to a fair trial (Article 6 of the European Convention). In *McAteer v Lismore* [2000] NI 476 at 471, Girvan J stated that:

> *"An application to strike out proceedings at this stage of the proceedings if acceded to would bring the proceedings to an end and there would be no further trial of the dispute. An application to strike out raises issues under Article 6 of the Convention for such an application could result in depriving a plaintiff of his right under Article 6 to a fair and public hearing in respect of the determination of the party's civil rights (which includes a right in property)."*

However, both the common law, and the European Convention, guarantee a fair trial to both parties. In particular, the convention is intended to guarantee not rights that are theoretical or illusory, but rights that are both practical and effective (see *Airey v Ireland* (6289/73 9th October 1979). As Yip J in *Magee v Willmott* [2020] EWHC 1378 stated at [48] striking out proceedings "*will not offend Article 6 provided that doing so is proportionate."*

[42] When an abuse of process is alleged, it is important that the court approaches this in the correct manner. Dealing with abuse of process is an inherent power of the court to regulate the business before it. Many of the relevant authorities are from England, and in recent times, they have focussed on an application of the English CPR, which do not apply to Northern Ireland. The actual rules may not be the same, however the overriding principles are similar, if not identical. The English CPR 3.4 (2) provides:

> "*The court may strike out a statement of case if it appears to the court:*
>
> *(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;*

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order."

[43] Lord Clarke in *Summers v Fairclough Homes* [2012] UKSC 26, specifically reviewed the pre-CPR law in relation to civil abuse of process at [35]:

"The pre-CPR authorities established a number of propositions as follows:

(i) The court had power to strike out a claim for want of prosecution, not only in cases of inordinate and inexcusable delay which caused prejudice to the defendant, but also where the court was satisfied that the default was "intentional and contumelious, eg disobedience to a peremptory order of the court or conduct amounting to an abuse of the process of the court": Birkett v James [1978] AC 297 per Lord Diplock at p 318F-G. In the latter case it was not necessary to show that a fair trial was not possible or that there was prejudice to the defendant. See also, for example, Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd [1998] 1 WLR 1426, per Lord Woolf MR (with whom Waller and Robert Walker LJJ agreed) at p 1436H.

(ii) In a classic, much followed, statement in Hunter v Chief Constable of the West Midlands Police [1982] AC 529 Lord Diplock described the court's power to deal with abuse of process thus at p 536C:

> *"This is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied. … It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the*

court has a duty (I disavow the word discretion) to exercise this salutary power."

(iii) The court had power to strike out a claim on the ground of abuse of process, even though the effect of doing so would be to extinguish substantive rights. It follows from the conclusion in Birkett v James that the court could strike out a claim as an abuse of process for intentional and contumelious conduct amounting to an abuse of the process of the court without the necessity to show prejudice that the fact that a strike out might extinguish substantive rights is not a bar to such an order.

(iv) Although it appears clear that in the vast majority of cases in which the court struck out a claim it did so at an interlocutory stage and not after a trial or trials on liability and quantum, the cases show that the power to strike out remained even after a trial in an appropriate case. The relevant authorities, such as they are, were considered by Colman J in National Westminster Bank plc v Rabobank Nederland [2006] EWHC 2959 (Comm), where he summarised the position thus in paragraphs 27 and 28:

> *"27. In my judgment, there can be no doubt that the court does have jurisdiction to strike out a claim or any severable part of a claim of its own volition whether immediately before or during the course of a trial. This is clear from the combined effect of CPR 1.4, 3.3 and 3.4 as well as 3PD 1.2, and by reason of its inherent jurisdiction.*
>
> *28. However, the occasion to exercise this jurisdiction after the start of the trial is likely to be very rare. The normal course will be for all applications to strike out a claim or part of a claim on the merits to be made under CPR 3.4 or 24.2 and determined well in advance of the trial."*

(v) We agree with Colman J. His conclusions are consistent with Glasgow Navigation Co v Iron Ore Co [1910] AC 293, Webster v Bakewell RDC (1916) 115 LT 678, Harrow LBC v Johnstone [1997] 1 WLR 459, Bentley v Jones Harris & Co [2001] EWCA Civ 1724 per Latham LJ at paragraph 75 and The Royal Brompton Hospital NHST v Hammond [2001] EWCA Civ 550; [2001] Lloyd's Rep PN 526, per Clarke LJ at paragraphs 104–109, especially at paragraph 107.

[44] The correct approach to dealing with alleged abuse of process is for the court to adopt a two-stage test. First the court has to determine whether the plaintiff's conduct is an abuse of process. If so, the court is then required to exercise its discretion as to whether or not to strike out the proceedings or to take such other steps or make such other orders as are appropriate. That second stage question requires a balancing exercise, and in particular will require a consideration of proportionality (see *Asturion Foundation v Alibrahim* [2020] EWCA Civ 32 and *Cable – v- Liverpool Victoria* [2020] EWCA Civ 1015).

[45] As to what constitutes an abuse of process, it would not be appropriate to lay down a test or rule. As Lord Diplock said in *Hunter v Chief Constable of West Midlands Police* [1982] AC 529 at 536c it would be unwise to create fixed categories (quoted above at [43]). Lord Bingham CJ in *Attorney-General v Barker* [2000] 1 FLR 759 at [19] gave a working definition as "*a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.*" A failure to comply with the rules, or directions, of the court can amount to an abuse of process (see *Cable* at [44]).

[46] The jurisdiction should be exercised sparingly. The abuse needs to be clearly shown as stated in the judgment of Lloyd LJ in *Stuart v Goldberg Linde* [2008] EWCA Civ 2 at [65]:

> *"It is consistent with [Article 6 ECHR] to allow the court to strike out a claim which is an abuse of the process, but at common law it must be clearly shown to be an abuse before it can be struck out."*

As befits any draconian step, it will always be a last resort as it will deprive a plaintiff of a substantive right (see Lord Clarke in *Summers* at [49]). Colton J in *J19 v Facebook* [2017] NIQB 42 at [36] summarised the position as follows:

> *"It is clear that this power should only be exercised in very clear and obvious cases when one is relying on misconduct of a party. On the basis of the authorities to which I have referred this conduct has been described as 'misconduct so serious that it would be an affront to the court to permit him to continue …' or 'intentional and contumelious conduct.'"*

[47] Although Lloyd LJ referred to the need to clearly show the abuse of process, and this is quoted with approval by Coulson LJ in *Cable*, this cannot be taken as meaning that there is a potentially higher standard of proof above the normal civil standard of proof.

[48] The plaintiff's counsel in her position paper focussed a lot of her argument on the fact that the plaintiff's conduct had not been fraudulent. That has some relevance, but cannot be determinative of the issue as to whether there has been an

abuse of process. Use of analogies from the criminal law can be confusing. Fraud, perjury and perverting the course of justice are criminal offences that may give rise to the consideration of whether they are also abuses of process. But one does not necessarily follow the other, and in particular, failure to prove the criminal offence, does not disprove the existence of an abuse of process. Criminal offences have their own constituent elements which require to be proved beyond reasonable doubt. It is therefore confusing to consider misconduct by a party to litigation in the context of whether it constitutes a criminal offence. The test is "*serious misconduct and /or intentional and contumelious conduct"* as referred to by Colton J in *J19.*

Delay and failure to comply with court orders

[49] On the question of delay, courts have continually stressed the need for parties to deal with their obligations in respect of the litigation in an expeditious manner. That is the purpose of the Rules of the Court of Judicature and in particular Order 1A. As Megaw J stated in *Craig v Hamill* [1936] NI 78 at 93 the objects of the then Rules of the Supreme Court were:

> *"[to] provide the best way by which justice may be administered between parties, with the highest degree of accuracy, with expedition, and as economically as possible."*

[50] Yip J in *Magee* at [40] emphasised that there was a balancing exercise to be undertaken when considering delay arising from a failure on the part of a plaintiff to comply with court orders:

> *"It is not enough to weigh the prejudice to the respondent in losing her claim against the prejudice to the appellant in the loss of the trial date and the resultant delay and ongoing worry for her. The court must look at all the circumstances, including in particular the two factors set out in the rule, namely the need for litigation to be conducted efficiently and at a proportionate cost and to enforce compliance with rules, practice directions and orders."*

[51] It is the duty of the court to *"[promote] the need for litigation to be conducted efficiently and at proportionate cost and for parties to comply with rules and court orders."* And a failure on the part of the court to regulate matters only *"rewards the inefficient and improper conduct of the [delaying party] at the expense of a party who has done everything possible to conduct the litigation efficiently and without incurring unnecessary cost"* per Yip J in *Magee* at [46].

[52] When dealing with an application to reinstate proceedings after a striking out for failure to comply with an 'unless order', Gillen J in *Walsh v McClinton* [2009] NIQB 32 referred to the judgment of Carswell J in *Hughes v Hughes* [1990] NI 295 where it was emphasised that it was necessary for some explanation to be given for

the cause of the delay, and taking that into account the court should weigh up the prejudice to the respective parties, whether compensation is available by way of costs orders, the difficulties for the innocent party in preparing the case for hearing, and the whole period of delay.

Duties of experts

[53] Another matter relating to the law is the preparation and disclosure of expert medical reports. The law and practice in Northern Ireland is not as developed as in England. There are limited references to expert evidence in Rule 38 which deals with evidence generally and Rule 40 which deals specifically with court appointed experts. Practice Direction 7 of 2014 applies to all Divisions of the High Court and the declaration to be incorporated into any expert's reports is as follows:

> "*1. I understand that my duty in providing written reports and giving evidence is to help the court, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.*
>
> *2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.*
>
> *3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.*
>
> *4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.*
>
> *5. I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affects my answers to points 3 and 4 above.*
>
> *6. I have shown the sources of all information I have used.*
>
> *7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.*
>
> *8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.*

9. *I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.*

10. *I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.*

11. *I understand that -*

a. *my report will form the evidence to be given under oath or affirmation;*

b. *questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;*

c. *the Court may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues and identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties;*

d. *the Court may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing;*

e. *I may be required to attend Court to be cross-examined on my report; and*

f. *I am likely to be the subject of public adverse criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.*

STATEMENT OF TRUTH

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my

true and complete professional opinions on the matters to which they refer."

[54] Robert and the plaintiff did not incorporate that declaration into the report, despite the direction contained in the Practice Direction that it must be contained in all reports after 1st January 2015. This is not a fatal flaw that would render a report inadmissible, and it is acknowledged that the court does receive from time to time expert reports without that specific declaration, but in substitution a declaration of truth and a declaration of compliance with the English CPR 35. This reflects an acceptance that the Northern Irish practice and the English practice in respect of experts are largely similar in nature. The declarations of truth in both jurisdictions are identical, and the general practice is largely identical.

[55] As Robert declared his compliance with the English CPR 35 practice by appending his signature to the report he is bound by that declaration. The plaintiff had an intention to promulgate the report that contained the declaration and is therefore also fixed with the provisions of CPR 35 applying to the report and its preparation, and further, he intended that UZG, BHSCT and the court, would rely on that declaration.

[56] I do not propose to quote extensively from CPR 35 and associated documents. CPR 35 incorporates a practice direction PD35, and a further guidance document in relation to the instruction of experts. Of particular relevance, CPR 35 contains the following extracts:

"35.3(1) - "It is the duty of experts to help the court on matters within their expertise."

35.3(2) – "This duty overrides any obligation to the person from whom experts have received instructions or by whom they are paid."

35.10(1) – "An expert's report must comply with the requirements set out in Practice Direction 35."

35.10(2) – "At the end of an expert's report there must be a statement that the expert understands and has complied with their duty to the court."

35.10(3) – "The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report is written."

35.10(4) – "The instructions referred to in paragraph (3) shall not be privileged…"

[57] Practice Direction 35 (PD35) contains the following:

"2.1 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

3.1 An expert's report should be addressed to the court and not to the party from whom the expert has received instructions

3.2 An expert's report must: (1) give details of the expert's qualifications (2) give details of any literature or other material which has been relied on in making the report (3) contain a statement setting out the substance of all facts and instructions material to the opinions expressed in the report or upon which those opinions are based (4) make clear which of the facts stated are within the expert's own knowledge … (9) contain a statement that the expert (a) understands their duty to the court and has complied with that duty; and (b) is aware of the requirements of Part 35, this practice direction and the Guidance for the Instructions of Experts in Civil Claims 2014.

3.3 An expert's report must be verified by a statement of truth in the following form – I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."

[58] The Guidance for the Instruction of Experts in Civil Claims issued by the Civil Justice Council is also incorporated into the English directions. Paragraph 9 of the Guidance states:

"9. Experts always owe a duty to exercise reasonable skill and care to those instructing them, and to comply with any relevant professional code. However when they are instructed to give or prepare evidence for civil proceedings they have an overriding duty to help the court on matters within their expertise (CPR 35.3). This duty overrides any obligation to the person instructing or paying them. Experts must not serve the exclusive interest of those who retain them.

10. Experts should be aware of the overriding objective that courts deal with cases justly and that they are under an obligation to assist the court in this respect. This includes

dealing with cases proportionately (keeping the work and costs in proportion to the value and importance of the case to the parties), expeditiously and fairly (CPR 1.1).

11. Experts must provide opinions that are independent, regardless of the pressures of litigation. A useful test of 'independence' is that the expert would express the same opinion if given the same instructions by another party. Experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates or mediators. "

[59] The common themes emerging from both the Northern Irish and English practice in relation to experts' reports can be found in well-established principles which have developed over many years. An expert is entitled to give opinion evidence about a matter about which a judge (or jury) may not have sufficient knowledge. However, for that to be a fair process, in the sense of being fair to both parties, it is imperative that those giving expert evidence are scrupulous in their approach. The duty of the expert is to assist the court and not his or her client. The expert must retain his or her independence. Arising from his frustration about the state of the expert evidence in *Re: Ikarian Reefer* [1993] 2 Lloyd's Rep 68, Cresswell J at 81-82, set out what has become the seminal judicial statement on the duties and responsibilities of expert witnesses:

"The duties and responsibilities of expert witnesses in civil cases include the following:

1. Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.

2. An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise… An expert witness in the High Court should never assume the role of an advocate.

3. An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.

4. An expert witness should make it clear when a particular question or issue falls outside his expertise.

5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a

> *provisional one. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.*
>
> *6. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the Court.*
>
> *7. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports"*

[60] *Whitehouse v Jordan* [1980] 1 All ER 650 (EWCA) and [1981] 1 All ER 267 (UKHL) involved a consultant first reporting that there had been no negligence, and then in a joint report with another doctor stating that there had been negligence. That joint report had been prepared after long conferences between the two doctors and counsel and it was actually 'settled' by counsel. Lord Denning MR said of the report that:

> *"it wears the colour of special pleading rather than an impartial report. Whenever counsel 'settle' a document, we know how it goes. 'We had better put this in', 'We had better leave this out', and so forth."*

Lord Denning was also critical of the lawyers blacking out a couple of lines in another report when the expert agreed that there had been no negligence. On appeal, Lord Wilberforce at 276 set out what was to be Cresswell J's first duty in *Ikarian Reefer*:

> *"expert evidence presented to the court should be, and should be seen to be, the independent product of the expert, uninfluenced as to form or content by the exigencies of litigation."*

[61] Lord Denning returned to the topic in *Kelly v London Transport* [1982] 2 All ER 842 and was most strident in his condemnation of the tactics adopted by the legal representatives in the conduct of that litigation. At first instance Caulfield J rejected completely the evidence of a medical practitioner. He stated that the doctor was "*over-obliging in his quest for the plaintiff.*" In particular, the judge was most critical of the solicitor who had asked the doctor to change his report, and stated that a consultant if asked to do so, knowing that he was delivering a forensic report—one that is going to be used in the courts— should not have obliged. Lord Denning at 851 summarised the duties of solicitors:

> "*They must not ask a medical expert to change his report, at their own instance, so as to favour their own … client or conceal things that may be against them. They must not 'settle' the medical evidence as they did in Whitehouse v Jordan which received the condemnation of this court … and the House of Lords.*"

Whitehouse and *Kelly* have obvious application to matters of legal professional misconduct. Although a lay litigant such as AB has no professional duties to observe, he has a duty to the court, and a duty to his opponents in the litigation. The same principles apply concerning a party, whether directly or by his or her solicitors or counsel, attempting to influence an independent witness.

[62] The *Whitehouse* and *Kelly* examples are extreme not least because the experts connived with the lawyers, but the problem can be present at a less obvious level, as shown in the case of *Cox v Secretary of State for Health* [2016] EWHC 924. Garnham J was critical of the claimant's expert who changed his opinion after consultation with counsel, including in his report the following –

> "*Discussing the case again, probably after a conference with Counsel, I revisited the question regarding breech extraction. The primary criticism was a lack of proper system dealing with it. Then, I realised, as a second twin, and a small baby it was not unreasonable to also allege that breech extraction was an option the doctor could have taken. I advised those instructing and they modified the Particulars of Claim accordingly*" (quoted at [30]).

At [33] Garnham J emphasised the correct role of the expert:

> "*In my judgment the role of the expert witness is to provide expert evidence on the issues he is asked to address, rather than to concern himself with the conduct of the litigation*."

[63] Before leaving the role of experts, recent observations by Mostyn J in *Bux v General Medical Council* [2021] EWHC 762 are also relevant. At [16] he stated that:

> "*It is the duty of an expert to help the Court on matters within his or her expertise; and this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.*"

Crucial to this duty is the duty of independence, and Mostyn J quoted the well-known metaphor of Thorpe LJ in *Vernon v Bosley* [1998] 1 FLR 297:

> "*The area of expertise in any case may be likened to a broad street with the plaintiff walking on one pavement and the*

> *defendant walking on the opposite one. Somehow the expert must be ever-mindful of the need to walk straight down the middle of the road and to resist the temptation to join the party from whom his instructions come on the pavement."*

[64] Another discrete issue in this case relates to conflicts of interest. Richards J in *Rowley v Dunlop* [2014] EWHC 1995 at [21] identified three forms of conflict. One of which is where the expert has, or may have, a personal or other connection with a party which might consciously or subconsciously influence, or bias, his evidence. When such a conflict arises, or could potentially arise, the obligation is on the expert, and those procuring his report, to declare the conflict, or potential conflict, as has been stated by Phillips LJ in *Factortame (No 8)* [2002] 3 WLR 1104 at [70]:

> *"It is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a pre-condition to the admissibility of his evidence. Where an expert has an interest of one kind or another in the outcome of the case, this fact should be made known to the Court as soon as possible."*

In the later decision of *Toth v Jarman* [2006] EWCA Civ 1028, the Court of Appeal, revisited the issue of the need for experts to declare interests, or potential interests, and was of the view that consideration should be given to amending the rules to place a more specific requirement on all experts to make a full disclosure at the end of their reports. Potter LJ delivered the judgment of the court and indicated at [111] that there was in any event a requirement to make disclosure of potential conflicts at the time the evidence is served. The suggested changes are dealt with at [119] and [120]:

> *"119. In our judgment, the Civil Procedure Rules Committee should consider extending the requirement for an expert's declaration at the end of his report. Its present form is directed to ensuring that the contents of the report represent the independent and unvarnished opinion of the expert making the report. But, as we have explained above, there is another side to independence. The expert should not leave undisclosed any conflict of interest which might bring into question the suitability of his evidence as the basis for the court's decision. The conflict of interest could be of any kind, including a financial interest, a personal connection, or an obligation, for example, as a member or officer of some other body. But ultimately, the question of what conflicts of interest fall within this description is a question for the court, taking into account all the circumstances of the case.*

> *120. Without wishing to be over-prescriptive or to limit consideration by the Civil Procedure Rules Committee, we are of the view that consideration should be given to requiring an expert to make a statement at the end of his report on the following lines:*
>
> *i) that he has no conflict of interest of any kind, other than any which he has disclosed in his report;*
>
> *ii) that he does not consider that any interest which he has disclosed affects his suitability as an expert witness on any issue on which he has given evidence;*
>
> *iii) that he will advise the party by whom he is instructed if, between the date of his report and the trial, there is any change in circumstances which affects his answers to (a) or (b) above."*

Professor Zuckerman's editorial in Civil Law Quarterly

[65] The final consideration of the law relating to abuse of process includes an editorial by Professor Zuckerman, Professor of Civil Procedure at the University of Oxford, in Civil Law Quarterly (2008) 27 CJQ Issue 4. The title "Access to justice for litigants who advance their case by forgery and perjury" clearly refers to litigation misconduct of a serious kind. He commences his editorial with the observation that he is not considering the situation of a party's misconduct emerging during the hearing of the case from the tribunal's final findings of fact. He had focussed on the situation when the misconduct emerges before that stage and essentially it has become apparent that a party has employed "*fraudulent means to impede the adjudicative process.*"

[66] Zuckerman considered that there were three discernible approaches to this problem. The first is that the court should just continue to try the issues as long as the conduct has not rendered it impossible to hold a fair trial (the "merits approach"). The second is that a party who seeks to subvert the court process has forfeited the right to an adjudication of his cause and his statement of case should be struck out on this ground alone (the "forfeiture approach"). The third is described as a compromise between the first two, and takes into account the overriding objective of the CPR. It holds that a party engaging in serious litigation misconduct is imposing a greater and unjustified burden on court resources, because such subversive practices would oblige the court to devote more time and effort to disentangling reliable evidence from false evidence. A litigant who employs such practices does not deserve the investment of the court's scarce resources to his case and it should therefore be dismissed on the merits.

[67] The Court of Appeal decision in *Arrow Nominees Inc v Blackledge* [2000] EWCA Civ 200 is instructive in relation to the three approaches. The plaintiff, as a minority shareholder, had petitioned the court for relief. He produced fraudulent documents, and the judge dismissed the defendant's application to strike out the petition on the ground that a fair trial was still possible. A further incident of identical conduct then occurred but the judge still considered a fair trial was possible and dismissed a second application. The matter then came before the Court of Appeal, which allowed the appeal.

[68] The lead judgment was delivered by Chadwick LJ, who emphasised at [54] that:

> *"the function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke."*

At [55] there was further emphasis on the impact on resources:

> *"Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court. The court does not do justice to the other parties to the proceedings in question if it allows its process to be abused so that the real point in issue becomes subordinated to an investigation into the effect which the admittedly fraudulent conduct of one party in connection with the process of litigation has had on the fairness of the trial itself. That, as it seems to me, is what happened in the present case. The trial was "hijacked" by the need to investigate what documents were false and what documents had been destroyed. The need to do that arose from the facts (i) that the petitioners had sought to rely on documents which Nigel Tobias had forged with the object of frustrating a fair trial and (ii) that, as the judge found, Nigel Tobias was unwilling to make a frank disclosure of the extent of his fraudulent conduct, but persisted in his attempts to deceive. The result was that the petitioners' case occupied far more of the court's time than was necessary for the purpose of deciding the real points in issue on the petition. That was unfair to the Blackledge respondents; and it was unfair to other litigants who needed to have their disputes tried by the court."*

[69] Zuckerman took the view that this approach was mirrored in the equity jurisdiction applying the maxim "*he who comes into equity must come with clean hands*" quoting Pollock & Maitland *The History of English Law* 2nd edn (1952) at p.189:

> "*The royal tribunal is not so strictly bound by rules that it cannot defeat the devices of those who would use legal forms for the purposes of chicane.*"

[70] Ultimately Zuckerman's conclusion is that there is only one correct approach for dealing with litigants who embark on litigation determined to subvert the adjudicative process by fraudulent means: the forfeiture approach. In this context, it has to be acknowledged that the misconduct he was discussing was forgery, perjury and fraud. This does not apply, in its purest criminal form, in this case, but, for reasons, I will state below, I consider that AB's conduct did amount to a deliberate course of conduct with an intention to mislead the defendants, and ultimately the court. The intention only failed as his conduct was exposed.

Discussion

Delay

[71] In the context of the general delay the plaintiff may well be blameless and the blame may attach to the various solicitors he has instructed, but the court must consider the overriding objective, described in *Magee* at [40] as the "*need for litigation to be conducted efficiently and at a proportionate cost and to enforce compliance with rules, practice directions and orders.*" The consequence for a blameless litigant is just one of the factors to be taken into account.

[72] The delay in this case has been chronic. This has to be seen in the current state of the litigation. The case now stands or falls on the advice and warnings that were given to the plaintiff prior to the surgery which would have been in or about the summer of 2009, approaching 12 years ago. The pleadings indicate that the advice was presented by way of slide show supplemented by verbal engagement. Any delay in relation to bringing the case on for hearing will increase the prejudice to both parties, and particularly a defendant, as it will compromise the ability of witnesses to remember conversations. The slide show is available, but the court will have to rely on the memories of what witnesses will remember concerning questions and answers arising before, during and after the slide show. For the second defendant these would have occurred sometime between 2006 and 2008, and for the first defendant much closer to the surgery in 2009.

[73] A consideration of the Chronology indicates that the litigation, since it commenced on the 2nd September 2011, has been a catalogue of failures by and on behalf of the plaintiff. There has been a widespread disregard for court orders which is set out in more detail below. Significant delay has been occasioned as a result of the plaintiff's approach to the case. 'Unless orders' have been required on more than

one occasion and in one instance judgment was marked against the defendant and then the action was re-instated. Despite this occurrence, there did not appear to be any lessons learned by the plaintiff or his solicitors as a further 'unless order' was required. Leaving aside the specific failure to produce the Robert court attendance correspondence which is dealt with below, the catalogue of failures to comply with other court orders is as follows:

Date	Master/Judge	Orders not complied with
6th December 2012	Master	2
7th March 2013	Master	2
22nd March 2013	Master	1
31st May 2013	Master	1
8th August 2013	Master	1
20th February 2014	Master	2
6th March 2014	Judge	1
25th September 2014	Master	1
21st June 2016	Master	1
24th April 2017	Judge	1
4th October 2017	Master	1
25th May 2018	Judge	1
10th December 2018	Judge	7
22nd March 2019	Judge	1
21st January 2020	Judge	4

[74] The Chronology reveals the full extent of work by the defendants' solicitors and by the courts to ensure that there would be full compliance by the plaintiff of his obligations as a party to litigation. It has to be acknowledged that given the nature of this litigation and the foreign aspect of some of the evidence, that compliance with some of the judicial directions could have been difficult within the time limits. It is more than likely that the various judges and masters would have built in an element of contingency into the timetable to take this into account. Had there been any valid reasons for non-compliance then it was a very simple task to bring the matter back to the court, explain why the timetable was unachievable, and apply for an extension of time. At no stage did the defendant seek such an extension.

[75] When eventually the matter was set down for hearing to determine the issue of liability, a failure on the part of the plaintiff to comply with timetabling orders resulted in a hearing date being vacated. When the matter was fixed for hearing on the 21st January 2020, the plaintiff again frustrated the efforts of the court by applying to adjourn because it was said on his behalf that a witness (Robert) was unable to attend court in Belfast. Maguire J accepted this explanation at face value, but insisted on receiving all correspondence passing between the solicitors and

Robert concerning his inability to attend. The clear inference from the order was that the court wanted to receive corroboration that what had been stated to the court on behalf of the plaintiff about Robert's non-availability was correct. That evidence has never been produced. Three specific court orders have been made requiring the correspondence to be produced – on the 21st January 2020 by the 23rd January 2020, on the 4th March 2020 by 11th March 2020 and on 5th June 2020 by the 12th June 2020. No explanation has been given to the court as to why this has not been complied with. It is obvious that there are very open channels of communication between the plaintiff and Robert. Not once, when corresponding with Robert in April 2020 did the plaintiff ever ask to see this correspondence. The court has no idea whether it exists at all or whether there existed in January 2020 any impediment which prevented Robert from travelling to Belfast. These were highly relevant court orders and they have not been complied with, to the extent that they have been ignored.

[76] The failure on the part of the plaintiff to produce this correspondence is a flagrant breach of the orders of Maguire J and Sir Richard McLaughlin. It comes on top of all the other breaches committed by him, or on his behalf, since 2011.

[77] These breaches taken cumulatively have resulted in the defendants having to dedicate a huge amount of time and resources into managing the case. The delay has resulted in the matter continuing to hang over the heads of the surgeons, other medical professionals and medical administrators involved in the case for a significant period of time, and none of that period can be attributed to their conduct, or the conduct of their solicitors or counsel. The court has also been required to invest a significant level of judicial resources to manage the case, with the result that other litigants and their cases have had to wait. Salmon LJ in *Allen v McAlpine & Sons Ltd* [1968] 2 QB 229 said that it was highly undesirable and impossible to attempt to lay down a tariff for delay, but that "*inordinate delay should not be too difficult to recognise when it occurs.*" It is not too difficult to recognise the delay in this case as inordinate.

Robert's Report

[78] The efforts made by the plaintiff to procure the report of Robert were persistent and highly irregular, bordering on the scandalous. It was not, as suggested by his counsel "*regrettable both in content and tone.*" It went far beyond that. Had a solicitor or counsel been involved in this type of conduct and communication with an expert, it would be a matter for a professional conduct enquiry.

[79] Ms Anyadike-Danes QC quoted Lady Hale – "In law context is everything" (*Stack v Dowden* [2007] UKHL 17 at [69]). The context of the plaintiff's engagement with Robert was that Maguire J had ordered that the plaintiff could not serve any further medical evidence on 4th December 2019 without leave of the court, with any liability evidence requiring to be served by 14th December 2019.

[80] The plaintiff made direct contact with Robert. He states that he was having difficulty in relation to his then solicitor. He appears to have been contemplating a change of solicitors in January 2020 (long before the Law Society intervention in July 2020). There is no evidence that he had contacted either his existing solicitor or his intended solicitor concerning this new evidence, or whether it was permitted or advisable that he should approach a medical expert direct.

[81] It is clear from the correspondence that the plaintiff as an absolute minimum sought to influence the content of the Robert report. He clearly understood the significance of the state of his litigation, and he appreciated that his case was hanging by a very thin thread, and he was belatedly trying to bolster up the medical evidence. Robert did maintain a degree of pragmatism, stating on several occasions that he could not say what AB wanted him to say, although whether this was motivated by his professionalism and a duty to the court or a fear of being exposed as a non-expert is unclear. His email of 8th April 2020 at 15.31 states – *"If we write this then the experts may consider that we are lying."* Whatever Robert's motivation it is clear from the correspondence that Robert regarded the effort as a joint effort.

[82] In his attempt the plaintiff was particularly manipulative in seeking to influence Robert. This is apparent right from the start of the communication on 1st April 2020 – *"If you say [this] then it severely damages my case and I will not get reimbursed for the 32 infections and 10.5 years of hell",* an assertion repeated on 7th April 2020. He expanded on this appeal to Robert's sympathy in the email of 8th April 2020 – *"I have suffered dreadfully by both the medical and legal fields"*, before adopting an element of sycophancy – *"You are by far the best doctor I ever met in my life",* later on 14th April 2020 adding *"you are the best doctor and human I have met in the medical field."*

[83] Further manipulation is evidenced by references to "*the unprofessional and illegal activity by my own legal team towards me and other experts in the case*" (email at 21.23 on 15th April 2020).

[84] By an email of the 15th April 2020 the plaintiff made the following statement:

> *"Because I have been on disability benefit since the injury any payment from the court would have to be over £200,000 because the government take the money back or I would not see a penny of it and it would have to sustain me for however long I would live."*

This statement is nothing short of a blatant misrepresentation of the law and practice in relation to the recoupment of disability benefits. It was made to a foreigner who is unlikely to be in a position to check the accuracy of the assertions made. There is no obligation at all on a plaintiff to reimburse the government for the benefits received, and the so called cap of £200,000 is plainly false. Any liability for the recoupment of state benefits falls on an unsuccessful defendant. I consider that the only purpose the plaintiff could have to make that statement is to put pressure on

Robert by creating a wholly false scenario that without Robert's support, the plaintiff was going to suffer significant financial consequences. His earlier emails had stressed the need for Robert to create the missing medical link, and Robert's failure to do so would result in the plaintiff failing to succeed in his litigation. It follows on from a series of statements which paint a picture for Robert:

> *"If you say that ... then it severely damages my case and I will not get reimbursed"* (email 14.48 1st April 2020);

repeated again (email 13.58 7th April 2020):

> *"the legal team wanted me to settle for £30,000 when the case is worth 2 million minimum"* (email 21.23 15th April 2020).

The picture is that unless Robert provides the missing link the case is worth nothing except the £30,000 offered, if Robert provides the link then it is worth at least £2,000,000 but unless AB gets at least £200,000 in damages, AB is going to have to repay all the disability benefit paid to him by the government. This statement adds a further layer to the pressure as it asserts that not only will he get no money, but his failure to succeed would result in him having to pay the government back and leave him seriously out of pocket.

[85] The correspondence also indicates a clear willingness to attempt to influence and manipulate the presentation of the evidence. The report is being created and held by a method by-passing normal legal channels and without the knowledge of his solicitors, and is thus an attempt to prevent a solicitor from exposing the manipulation which he or she would be required to do under a professional duty owed to the court. The emails contain various pieces of advice as to how to present evidence, and include instructions as to how to avoid having to physically attend court:

> *"We both know that you have no wish to come to Belfast to give evidence … But there is no need to state that now as it would potentially weaken my position."*

and

> "*Please do not write pudendal nerve damage is not directly causing the urine infections. It will seriously damage my case at this stage! There is no reason to write this – if you were giving evidence then when asked a direct question you could say what you wish when asked and explain … in regards to the law wording is very important."*

[86] The plaintiff was most concerned that another expert had been discredited, giving rise to his efforts to avoid scrutiny of the Robert report:

> *"I do not want any legal person to have access to you or your details yet even from my own legal team."*

[87] There was also a clear attempt to hide the evidence from a source that could be accessed through the normal court channels:

> *"Please kindly delete all our recent emails and letters including these. I would not wish these emails or letters to enter my hospital files in France."*

These extracts are from the 21.23 email of 15th April 2020. A further extract from a later email of 16.17 on 20th April 2020, contains the suggestion that Robert's medical secretary be used as a *"buffer to the legal team until the right time."*

[88] What the plaintiff attempted to do was to manipulate a professional witness to provide false or misleading expert evidence to further his claim for damages and to create a paper trail avoiding his solicitor so that he maintained full and unfettered control over the evidence. By inducing Robert to adopt the CPR Part 35 rules on expert evidence he was ensuring that the report when produced would have the appearance of an authentic report, free from influence by the plaintiff, and would be accepted as such by the defendants and the court. In not including a declaration about the connection between the plaintiff and Robert, the plaintiff was also endeavouring to mislead the defendants and the court. Given its provenance, at the very least it should have been described as a joint report from Robert and the plaintiff. The plaintiff chose to include compliance with CPR 35 and PD 35 in Robert's declaration. He claims that he did not know what was contained in those rules. He could have very easily found out by contacting his solicitors or he could have looked them up on the internet. It is clear that Robert's report could never have complied with CPR 35 both in what it actually stated and in what it omitted. The plaintiff either intentionally set out to mislead his own solicitors, the defendants and the court, or was highly reckless as to whether they would be misled.

[89] The history of the evolution of the report is set out in the table below. Some of the emails included other attachments but the table displays only those relevant to the evolution.

Date and time of email	From	To	Attachment	Remarks
1st April 2020 at 11.20	Robert	AB	Nothing attached	Initial contact
1st April 2020 at 11.22	Robert	AB	[A] final.docx	One page with five paragraphs created by Robert. Supposed to be attached to earlier email.

1st April 2020 at 14.48	AB	Robert	Required Letter.docx	Four page report drafted by AB
7th April 2020 at 13.58	AB	Robert	[A] final.docx [A] final (2).docx Required Letter (2).docx	AB amends Robert's initial report ([A] final.docx) and amends AB's first draft of Required Letter (2).docx
8th April 2020 at 15.31	Robert	AB	[A] last note.docx	Required Letter (2).docx is prepared on a different font with different spacing with amendments and comments
10th April 2020 at 20.42	AB	Robert	[A] last note (2).docx	AB amends Robert's latest draft
14th April 2020 at 16.50	Robert	AB	[A]'s last letter.docx	Robert amends AB's latest draft
15th April 2020 at 21.23	AB	Robert	Cover.Letter.docx [A] last letter (2).docx	AB creates a covering letter for Robert, including the fee note, and the final draft of the report
20th April 2020 at 16.04	Robert	AB	Letter.001.pdf [A] 1 001.pdf [A] 1 002.pdf [A] 1 003.pdf [A] 1 004.pdf	The covering letter and the four page report are signed by Robert, converted to pdf documents and forwarded separately

[90] The choice of title for the evolving report is instructive. AB, as a further extension of his attempted manipulation uses the title – "Required Letter." Robert's choice of descriptions, initially using "Final" on two occasions and then "Last" on two more occasions, perhaps reflects Robert's desire to bring closure to this enterprise, an enterprise that perhaps started with good intentions on his part, but rapidly deteriorated into AB attempting to dictate what Robert should write. In any event the final report, signed by Robert as his sole work, was initially drafted by AB as Required Letter, was re-drafted by AB as Required letter (2), was amended by Robert to create [A] last note, amended by AB as [A] last note (2), was then amended by Robert to create [A]'s last letter, and finally amended by AB as [A]'s last letter. In simple numerical terms, after the initial drafting by AB, the report was amended twice by Robert and amended three times by AB.

[91] The court cannot simply ignore the fact that the Robert report was essentially drafted and written by the plaintiff, it was then subjected to amendments, and then signed off by Robert as his work. Fortunately for all concerned, and this ultimately includes the plaintiff and Robert, the plaintiff's new solicitors in fulfilment of their professional obligations to the court, once they became aware of the correspondence disclosed it, thus preventing the report ever being promulgated into the court arena.

[92] Notwithstanding the immense forensic skills of his counsel in trying to explain away the plaintiff's conduct and provide an explanation for his conduct, the

court is compelled to the view that the actions taken by the plaintiff were highly inappropriate, an attempt to manipulate the court process and an attempt to mislead the defendants and ultimately the court. Much of the plaintiff's conduct is incapable of being explained. There are no real explanations that the court would consider satisfactory. There is no doubt that the plaintiff would appear to be suffering significant pain and this impacted on his well-being in 2020, but the emails clearly show that he was acting in a very coherent manner and well-motivated to advance his case by whatever means available to him.

[93] His explanation concerning the deletion of the correspondence is that he did not want it to appear on his hospital notes in Nantes because he wanted to restrict people from seeing his personal details. This correspondence would have added very little to what would have been very intimate details already on the Nantes hospital records. There is only one real motive for the request to delete emails and documents and that is that they would not become available to the defendants as the plaintiff would have known that exposure would have precipitated an application such as the one that was already before the court concerning the correspondence about Robert's non-attendance at court. The plaintiff would also have been aware of the discovery process. As early as 6 December 2012 the plaintiff was ordered to complete a consent form to release his GP, hospital and London Gender Clinic notes and records. In the Spring of 2018 the court had specifically ordered production of the Nantes hospital notes. The production of medical notes and records was a constant theme throughout this litigation. There was a very clear and obvious motive as to why the plaintiff did not want these emails and attachments to be contained in any set of records that could become potentially available, and it had nothing to do with the plaintiff's concern about his privacy.

[94] The plaintiff's ultimate fall-back position, as stated by his counsel, is that Robert had not been manipulated and had no difficulty in disagreeing and substituting his own language. That assertion ignores the role played by the plaintiff, his motives and what he tried to accomplish. Robert retained a semblance of professionalism and could not bring himself to state obvious false opinions, despite the efforts of the plaintiff.

[95] I will deal briefly with Robert's fee note. The plaintiff indicated that Robert could charge up to £3500 (email 15th April 2020 21.23). With that email the plaintiff attached a draft fee note charging €3000, and included the following statement – *"I am happy to assist Pro-bono if the legal aid funding is unattainable in a timely manner."* Robert, despite his protestations that he did not "*any pence from you*", still saw fit to sign the fee note. By signing the note Robert was establishing a claim to be paid, either by the legal aid fund or the defendants in the event of a successful outcome to the litigation, but, presumably, not directly or indirectly, by the plaintiff. My first observation is that the fee charged by Robert was extraordinarily high given his very limited input into the report. The second is that this fee note was calculated by the plaintiff without any input whatsoever from Robert as to time spent and hourly rate. The third is that it had the potential to be a fee contingent on the success of the

litigation, a matter which required disclosure. The final observation is that whatever the plaintiff's motive, this was a highly questionable state of affairs with regard to his legal aid funding. The plaintiff's clear intention was that Robert would be rewarded out of public funds for his agreeing to sign this report. He further indicated that third party funding could be made available, but there is no evidence that he had disclosed this availability of third party funding to the Legal Services Agency.

[96] This was clearly a report which could either by categorised as being prepared by the plaintiff and amended by Robert or a joint report prepared by both of them. Both regarded it as a joint effort (see the plaintiff's comments – "*Please return the letter to me when you have completed it for the final time before we agree on it to make sure*" (email 10th April 2021 20.42) and Robert's comments – "*Give me your impression; We will clarify my thoughts in a correct English*" (email 1st April 2020 11.20), "*If we write this, then the experts may consider that we are lying*" and "*Tell me if we could conclude in the aim I have written*" (email 8th April 2020 15.31), and "*so we can explain your problem in an orthodox way*" (email 14th April 2020 16.50). The use by both the plaintiff and Robert of the plural first person pronoun is compelling evidence in this regard.

[97] To use the metaphor of Thorpe LJ in *Vernon*, this is a case of either Robert walking down the plaintiff's pavement arm and arm with the plaintiff, or alternatively, an attempt by the plaintiff to walk down the middle of the road, disguised as Robert. Either way this whole episode is a rather unedifying spectacle, and it has resulted in the type of situation that attracted the criticism of Lord Denning and Lord Wilberforce in both *Kelly* and *Whitehouse.*

Abuse of Process?

[98] I am therefore satisfied that there has been serious litigation misconduct committed by the plaintiff, and on his behalf, in relation to delay; a continuing failure to comply with court orders including the orders of the 21st January 2020, 4th March 2020 and 5th June 2020; and in relation to the production of the medical report.

[99] I am satisfied that there has been an abuse of process by the plaintiff and on his behalf. The delay has been chronic. Little if any of this delay can be apportioned to either of the defendants or to the court. The defendants and the court have invested a huge amount of time and effort in attempting to progress this case. The plaintiff, and those acting on his behalf, have persistently failed to comply with court orders. As set out above, these failures amount to 27 breaches of court orders, and in addition there are the three latest orders, focussed on seeking corroboration for assertions made as to why Robert could not attend court and thus requiring the vacating of a hearing date, which have not been complied with. The conduct in relation to the approach to and pressure placed on Robert to procure his signature to a document purporting to be an independent medical report, although largely drafted by the plaintiff, is a gross manipulation of the court's process.

[100] This case falls squarely into the category described by Lord Bingham in *Attorney-General* as a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process. I am therefore satisfied that the plaintiff has abused the process of the court, and the first stage of the test is satisfied

[101] Moving to the second stage, this requires a balancing exercise and a consideration of proportionality.

[102] No real effective remedy short of striking out the pleadings and the action is available. The plaintiff is in receipt of legal aid and although the court has no knowledge of his means, it would be extremely unlikely that a costs order made against him could ever be effectively enforced.

[103] Now that this conduct by the plaintiff has been exposed, there will, in all likelihood, be a need to revisit all contacts between the plaintiff and the experts retained on his behalf to enquire if there have been any other inappropriate approaches and contact, as this could have the potential of contaminating the evidence that heretofore has been considered to be independent. There may also need to be an examination of medical and hospital records to ensure that these records are complete with no document removed or not included.

[104] During the submissions it was indicated that the latest change of tack by the plaintiff seems to suggest that the agreed note of the experts, which appeared to narrow the outstanding issue down to pre-surgery advice and warning, may not be accepted as conclusive and that further medical evidence would be sought. Should the court permit such a development, it would mean further enquiry concerning any relationship between any new expert and the plaintiff.

[105] All this would add to the cost and to the delay in the proceedings and have a significant detrimental impact on the defendants, both financially, and also in their ability to present an effective defence. It will further compound the emotional and professional pressure on the surgeons and other medical and health professionals involved, as this litigation continues to 'hang over their heads.' It would also consume further valuable court time.

[106] The termination of the case at this stage will, of course, mean that the plaintiff will be denied an opportunity to have his case tried in court and will result in the loss of a chance that he could recover damages for the pain and suffering he says that he has suffered. A pre-eminent factor is his own conduct concerning Robert. In relation to the delay and failure to comply with court orders, the court is unaware of the exact dealings between the plaintiff and the various solicitors he has instructed, and whether it may be possible for the plaintiff to claim that some or all have been negligent. That may be an avenue open to him to recover some damages, but it would be speculative for the court to predict the outcome of such a course of action.

[107] The court must also look at what would be regarded as the triangulation of interests when considering the proportionality exercise – the rights of the plaintiff, the rights of the defendants and the rights of the general public, who fund the court services and, in the case of some members of the wider public, are patiently awaiting their turn for their case to be heard in court. The requirement to micro-manage this case has resulted in valuable court time being invested, giving rise to that time being diverted away from other court business. The public interest must be taken into account when considering the matter.

[108] Ultimately, this court is drawn towards what Zuckerman has described as the forfeiture approach. In assessing the appropriateness of adopting this approach I am looking at the three strands – the overall chronic delay, the repeated failure to comply with court orders, and the attempt to procure the medical report – cumulatively. The delay and failure to comply may not have been the result of deliberate action on the part of the plaintiff or his solicitors, but it reflects a widespread failure to comply with the basic requirements imposed on any litigant and a blatant disregard for the rights of the defendants, and the orders of the court. The conduct in relation to the medical report was a deliberate course of conduct intended to mislead the defendants and the court.

[109] The plaintiff has been guilty of the most deliberate and serious misconduct in respect of the Robert report. He is also guilty of contumelious conduct in respect of delay and failure to comply with court orders. The former intended to deny the defendants a fair trial, and the latter made it more likely that the defendants would be denied a fair trial. As a consequence he has forfeited his right to a trial of his case.

Conclusion

[110] For the reasons stated I grant the relief sought by the defendants and strike out the writ of summons and enter judgment in the case in favour of both defendants. I will hear counsel in respect of any matter arising, including costs.

ANNEX

CHRONOLOGY OF EVENTS

2 September 2011	-	Writ of summons issued
7 September 2011	-	Concurrent writ issued.
13 September 2011	-	Letter of claim sent to University Hospital of Gent (not Protocol compliant)
15 August 2012	-	Appearance on behalf of the Southern HSC Trust.
3 September 2012	-	Notice of writ to be served outside of the jurisdiction.
6 December 2012	-	Review Hearing. Master McCorry directed that the plaintiff:-

(i) Sign a form of consent, within 14 days (by 20 December 2012), allowing the defendants access to his GP, Belfast HSC Trust and London Gender Clinic notes. The plaintiff failed to comply; and

(ii) Commission a report from a gender re-alignment surgeon within 3 months (by 6 March 2012). The plaintiff failed to comply.

13 December 2012	-	Appearance entered on behalf of the University Hospital of Gent.
12 February 2013	-	Letter from Carson McDowell to plaintiff's solicitors noting that they had failed to comply with the Order of Master McCorry dated 6 December 2012.
20 February 2013	-	Further letter from Carson McDowell to plaintiff's solicitors noting that they continued to fail to comply with the Order of Master McCorry dated 6 December 2012.
4 March 2013	-	Plaintiff provided signed Form of Authority.
6 March 2013	-	Summons issued (on behalf of the plaintiff) pursuant to O6r7 and O15r6/O20r5.
7 March 2013	-	Order of Master McCorry directing that:

(i) A Statement of Claim be served within 12 weeks (by 30th May 2013). The plaintiff failed to comply;

(ii) Any summons to set aside service of the writ, on behalf of the University Hospital of Gent, be served within 21 days (by 28 March 2013); and

(iii) A protocol compliant Letter of Claim be served within 21 days (by 28 March 2013). The plaintiff failed to comply.

22 March 2013 - Order of Master Bell directing that:

(i) The Belfast HSC Trust be added as a defendant; and

(iii) The plaintiff serve an amended statement of claim within 28 days (by 19 April 2013). The plaintiff failed to comply.

28 March 2013 - Summons issued (on behalf of the University Hospital of Gent) pursuant to O12r8 and O11r5.

29 March 2013 - Writ amended to add the Belfast HSC Trust as a defendant.

17 April 2013 - Appearance on behalf of the Belfast HSC Trust.

25 April 2013 - Letter from Carson McDowell to plaintiff's solicitors noting that they had failed to comply with the Order of Master McCorry dated 7 March 2013.

30 May 2013 - Plaintiff's solicitors served Letter of Claim.

30 July 2013 - Letter from Carson McDowell to plaintiff's solicitors noting that they had failed to serve a replying affidavit in accordance with the Order of Master Bell dated 31 May 2013.

8 August 2013 - Plaintiff's application to extend validity and University Hospital of Gent's Application to set aside writ listed for mention in the summons court before Master McCorry as the plaintiff's solicitors had failed to serve a replying affidavit. Master McCorry directed that the plaintiff was to serve any further affidavit within 14 days (by 22 August 2013) together with a skeleton argument by 3

September 2013. Plaintiff failed to lodge skeleton argument in time.

9 September 2013 - Letter from Carson McDowell to plaintiff's solicitors noting that they had failed to lodge a skeleton argument by 3 September 2013, in accordance with the Order of Master McCorry.

16 October 2013 - University Hospital of Gent's O12r8 and O11r5 and plaintiff's O6r7 and O15r6/O20r5 summonses listed for hearing.

14 November 2013 - Review hearing. Master McCorry adjourned the hearing until 20 February 2014, pending judgment in relation to the University Hospital of Gent's O12r8 and O11r5 and plaintiff's O6r7 and O15r6/O20r5 summonses.

10 January 2014 - Judgment of Master McCorry declaring that service of the writ be deemed good.

22 January 2014 - Notice of appeal lodged (on behalf of University Hospital of Gent) against the judgment of Master McCorry dated 10 January 2014.

20 February 2014 - Review hearing. Master McCorry directed that:

(i) The Plaintiff serve a statement of claim by 30 June 2014. The Plaintiff failed to comply; and

(ii) All outstanding issues of disclosure be completed by 31 May 2014. The plaintiff failed to comply.

6 March 2014 - QB Review hearing. Mr Justice Gillen directed that the plaintiff's solicitors were to respond to correspondence (relating to postal method) from the solicitors on behalf of the University Hospital of Gent within 14 days (by 20 March 2014). The plaintiff failed to comply.

21 March 2014 - Letter from Carson McDowell to the plaintiff's solicitors noting that they had failed to comply with the Order of Mr Justice Gillen dated 6 March 2013.

28 March 2014 - Appeal Hearing (on behalf of University Hospital of Gent) before Mr Justice Gillen. Appeal dismissed by consent, with no order as to costs.

15 April 2014 - Amended writ of summons served.

19 August 2014 - Reminder letter from Carson McDowell to the plaintiff's solicitors noting that the statement of claim (due by 30 June 2014) was overdue.

16 September 2014 - Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the outstanding statement of claim.

25 September 2014 - Review hearing. Master McCorry directed that:

(i) Unless the plaintiff serves a statement of claim within 8 weeks (by 20 November 2014), his claim would be struck out with judgment for the defendants. The plaintiff failed to comply.

8 October 2014 - Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the statement of claim.

10 November 2014 - Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the statement of claim.

28 November 2014 - Certificate of non-compliance lodged on behalf of the University Hospital of Gent and court order issued confirming that judgment had been entered against the plaintiff.

28 November 2014 - 4.38pm: statement of claim served by fax.

8 December 2014 - Summons issued (on behalf of the plaintiff) pursuant to O19r9 and O3r3.

9 February 2015 - Summons issued (on behalf of the Southern and Belfast HSC Trusts) pursuant to O18r19.

15 April 2015 - Plaintiff's O19r9 and O3r3 summons and Trusts' O18r19 Summons listed for contest. Master McCorry extended time for the plaintiff to serve an amended statement of claim for a period of 8 weeks (to 10 June 2015). Master McCorry also directed that the plaintiff must serve their liability report. Trusts' summons struck out.

19 May 2015 - Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the amended statement of claim and plaintiff's expert evidence, due to be served by 10 June 2015.

8 June 2015 - 12.55pm: Amended statement of claim and report of Mr Nim Christopher served, by fax.

17 June 2015 - Order of Master McCorry setting aside judgment dated 25 September 2014.

1 February 2016 - Southern and Belfast HSC Trusts' summons (pursuant to O18r19) listed for hearing. Adjourned.

12 February 2016 - Application issued (on behalf of the plaintiff) to anonymise the plaintiff's name in proceedings, substituting the letters 'AB.'

21 June 2016 - Review hearing. Master McCorry struck out the Trusts' O18r19 summons by consent. Master McCorry approved directions to include:

(i) The plaintiff shall serve any final amendments to the statement of claim by 31 August 2016. Plaintiff failed to comply;

(ii) Defences/Notices for further and better particulars to be served by 30 September 2016;

(iii) Replies to the defendants' notice for further and better particulars to be served by 30 November 2016;

(iv) Mutual and simultaneous exchange of liability evidence by 4 January 2017;

(v) Plaintiff's quantum reports to be disclosed by 4 January 2017;

(vi) Defendants quantum reports to be disclosed by 15 March 2017;

(vii) Meeting of lability experts by 15 March 2017; and

(viii) Meeting of quantum experts by 28 April 2017.

19 September 2016 - Summons issued (on behalf of the Southern and Belfast HSC Trusts) pursuant to O24r7.

16 March 2017 - Review hearing. Master McCorry directed that the case be referred to the QB judge (on 4 April 2017) due to the plaintiff's failure to comply with previous court directions.

4 April 2017 - Review hearing. Mr Justice Stephens directed that unless the plaintiff serve Mr Christopher's addendum report by noon on 7 April 2017 the claim would be struck out with judgment for the defendants.

7 April 2017 - Re-amended statement of claim and addendum report of Mr Christopher served.

24 April 2017 - Review before Mr Justice Stephens. Case management timetable directed to include:

(i) Defences/Notice for further and better particulars to be served by 30 June 2017;

(ii) Replies to the Defendants' notice for further and better particulars to be served by 31 July 2017;

(iii) Mutual and simultaneous exchange of liability evidence by 30 November 2017;

(iv) Plaintiff's quantum reports to be disclosed by 30 November 2017;

(v) Defendants quantum reports to be disclosed by 28 February 2018;

(vi) Meeting of lability experts by 28 February 2018;

(vii) Meeting of quantum experts by 30 March 2018; and

(viii) Listed for final hearing for 14 days commencing on 4 June 2018.

26 June 2017 - Summons issued (on behalf of the Southern and Belfast HSC Trusts) pursuant to O18r19

20 September 2017 - Notice of change of solicitor confirming that Hunt Solicitors had been appointed on behalf of the plaintiff, in place of Maurice RJ Kempton.

26 September 2017 - Letter from Carson McDowell to the plaintiff's solicitors detailing the medical notes that remained outstanding.

4 October 2017 - Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes.

4 October 2017 - Trusts' O18r19 Summons listed for hearing. Master McCorry struck out the claim against the Southern HSC Trust. The Master also directed that:

(i) The plaintiff serve a further amended statement of claim within 7 days (by 11 October 2017). Plaintiff failed to comply; and

(ii) The remaining defendants to serve defences within 21 days of service of the further amended statement of claim.

10 October 2017 - Notice of appeal lodged on behalf of the plaintiff (subsequently withdrawn).

10 October 2017 - Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes.

18 October 2017 - Order of Master McCorry granting judgment in favour of the Southern HSC Trust.

20 October 2017 - Amended re-amended statement of claim.

21 November 2017 - Defence on behalf of the Belfast HSC Trust.

21 November 2017 - Notice for further and better particulars on behalf of the Belfast HSC Trust.

23 November 2017 - Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes.

24 November 2017 - Defence on behalf of University Hospital of Gent.

24 November 2017 - Notice for Further and Better Particulars on behalf of University Hospital of Gent.

22 January 2018 - Further Notice for Further and Better Particulars on behalf of the Belfast HSC Trust.

6 February 2018	-	Notice of change of solicitor confirming that Maurice RJ Kempton had been re-appointed on behalf of the plaintiff, in place of Hunt Solicitors.
8 February 2018	-	Plaintiff's replies to Belfast HSC Trust's notice for further and better particulars.
8 February 2018	-	Plaintiff's replies to University Hospital of Gent Notice for further and better particulars.
8 February 2018	-	Reply to University Hospital of Gent's defence.
14 February 2018	-	Plaintiff's replies to Belfast HSC Trust's further notice for further and better particulars.
14 February 2018	-	Notice for further and better particulars on behalf of the plaintiff.
20 February 2018	-	Reminder letter from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes.
6 March 2018	-	Notice for interrogatories on behalf of the Belfast HSC Trust.
12 March 2018	-	Reminder email from Carson McDowell to the plaintiff's solicitors in relation to their outstanding medical notes.
20 March 2018	-	University Hospital of Gent's Replies to the plaintiff's notice for further and better particulars.
23 March 2018	-	Summons issued (on behalf of the Belfast HSC Trust) pursuant to O24r7.
23 March 2018	-	Summons issued (on behalf of the Belfast HSC Trust) pursuant to section 32 and O24r8.
28 March 2018	-	Reminder email from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes.
13 April 2018	-	Reminder email from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes
25 April 2018	-	Reminder email from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes

27 April 2018 - Review Hearing. Mr Justice Maguire fixed this claim for a half day review on 25 May 2018.

3 May 2018 - Plaintiff's solicitors disclosed 2 pages of Mr Ralph's private notes.

9 May 2018 - Plaintiff's solicitors disclosed further translated L'Hopital prive notes.

21 May 2018 - Reminder email from Carson McDowell to the plaintiff's solicitors in relation to the outstanding medical notes

22 May 2018 - Plaintiff's solicitors disclosed updated London Gender Clinic notes and South Eastern HSC Trust notes.

25 May 2018 - Review hearing. Mr Justice Maguire directed that:

- The plaintiff's solicitors prepare a chronology, for the court, of the steps they had taken to secure the outstanding medical notes, within 7 days;
- This claim proceed by way of a split trial;
- The plaintiff provide full disclosure by 29 September 2018;
- The plaintiff's solicitors serve an updated statement of claim by 10 October 2018;
- The plaintiff provide the other parties with a list of all experts upon which they intend to rely by 10 October 2018; and
- The parties comply with any of Mr Justice Stephen's directions dated 24 April 2017 that remain outstanding, by 10 October 2018. These directions include dates for exchange of liability evidence and meetings of liability experts. As a further amended statement of claim is to be served, and the plaintiff's solicitors have not yet finalised their liability evidence, it is unlikely that the parties will be in a position to exchange liability evidence by 10 September 2018, as directed.

29 May 2018	-	Plaintiff's solicitors provided a copy of their client's legal aid certificate.
31 May 2018	-	Plaintiff's solicitors submitted, to the court, a chronology of the steps that they had taken to secure outstanding medical records.
18 June 2018	-	Plaintiff's solicitors disclosed updated GP notes.
19 June 2018	-	Plaintiff's solicitors to have commissioned a forensic accountancy report by today (in accordance with the Order of Master McCorry).
4 June 2018	-	Email from Carson McDowell to the plaintiff's solicitors requesting confirmation as to whether, or not, any restrictions had been imposed by the Legal Services Agency.
4 July 2018	-	Email from Carson McDowell to the plaintiff's solicitors seeking confirmation as to whether, or not, they had commissioned a forensic accountancy report and requesting a copy of their chronology outlining the steps they had taken to secure outstanding medical notes.
17 July 2018	-	Reminder email from Carson McDowell to the plaintiff's solicitors in relation to the outstanding chronology and forensic accountancy report.
3 August 2018	-	Email from Carson McDowell to the plaintiff's solicitors noting that the recently disclosed updated GP notes were incomplete and failed to include the plaintiff's urine test results.
14 August 2018	-	Plaintiff's solicitors disclosed a copy of their client's urine test results.
10 October 2018	-	Plaintiff's amended statement of claim and list of experts due today (in accordance with the directions of Mr Justice Maguire).
25 October 2018	-	Notice of change of solicitor confirming that Robert G Sinclair & Co now act on behalf of the plaintiff.
9 November 2018	-	Email from Carson McDowell to the plaintiff's solicitors noting that we were still awaiting disclosure of all relevant medical notes, service of an amended statement

of claim and a list of experts that the plaintiff intended to rely on at trial.

12 November 2018 - Review before Mr Justice Maguire. Plaintiff's solicitors directed to serve an affidavit, within 7 days, detailing the steps that they had taken to comply with the previous court directions.

15 November 2018 - Plaintiff's solicitors served list of experts that they intend to rely on at trial together with their affidavit and exhibits.

10 December 2018 - Following directions agreed by consent:

1. The plaintiff to serve a list of documents on or before 31 January 2019 verified on oath to include all outstanding medical records including:

   (i) Records from Prof Robert;

   (ii) Records from Prof Ralph and University College London Hospital;

   (iii) Records of Mr Murray, Physiotherapist.

   (iv) Records of Mr Spence, Sports Injury Clinic;

   (v) All relevant records

   The plaintiff's affidavit was to include a chronology of all medical institutions and health care clinicians the plaintiff attended together with dates he attended.

2. The plaintiff is to serve a final version of the statement of claim on or before 28 February 2019.

3. The plaintiff shall disclose all outstanding liability evidence substantiating the allegations and injuries pleaded in the final version of the statement of claim no later than 28 February 2019. The plaintiff shall not be permitted to disclose any further liability evidence without leave of the court and any allegations or injuries not substantiated by expert evidence will be struck out.

4. The defendants shall make any amendments to their respective defences and serve any further notice for further and better particulars no later than 31 March 2019.

5. The defendants shall disclose all liability evidence (breach of duty and causation) no later than 30 April 2019.

6. The liability experts shall meet and prepare a joint report setting out the areas of agreement and disagreement no later than 30 June 2019. The meeting shall be governed by an agenda which will be agreed by the parties no later than 31 May 2019;

7. Subject to witness availability the claim shall be listed for liability only trial for two weeks commencing on 16 January 2019. The parties have until 11 January 2019 to check witness availability. The claim will be listed for review before the Queen's Bench Judge on 11 January 2019 to allow the parties to make a formal request to the court for a priority listing before a designated judge.

The plaintiff failed to comply with these directions and the matter was further listed for review on 22 February 2019.

22 March 2019 - Directions ordered by Mr Justice Maguire:

1. The plaintiff shall serve a final version of the statement of claim on or before 31 May 2019.

2. The plaintiff shall disclose all outstanding liability evidence substantiating the allegations and injuries pleaded in the final version of the statement of claim no later than 31 May 2019. The plaintiff shall not be permitted to disclose any further liability evidence after this date without leave of the court and any allegations or injuries not substantiated by expert evidence will be struck out.

3. The defendants shall make any amendments to their respective defences and serve any further notice for further and better particulars no later than 30 June 2019

4. The plaintiff and defendants shall serve all outstanding discovery no later than 31 March 2019.

5. The defendants shall disclose all liability evidence (breach of duty and causation) no later than 31 July 2019.

6. The liability experts shall meet and prepare a joint report setting out the areas of agreement and disagreement no later than 30 September 2019. The meeting shall be governed by an agenda which will be agreed by the parties no later than 31 August 2019.

7. Subject to witness availability the claim shall be listed for liability only trial for two weeks commencing on 27 January 2020. The parties shall have until 29 March 2019 to check witness availability.

31 May 2019 - The plaintiff served amended re-amended statement of claim.

31 May 2019 - The plaintiff served one medical report from Mr Henderson, Consultant Plastic Surgeon.

3 June 2019 - The plaintiff served addendum report of Mr Henderson dated 3 June 2019 (despite Prohibition Order granted by Mr Justice Maguire on 22 March 2019. The plaintiff failed to apply for leave to introduce this evidence. Numerous allegations in the final version of the statement of claim not substantiated by medical evidence.

4 December 2019 - Mr Justice Maguire directed:

1. The plaintiff would be debarred from serving any further medical evidence.

2. The defendants were directed to serve any liability evidence within ten days.

3. The joint meeting of the experts to take place by 18 December 2019.

21 January 2020 - The plaintiff made an application to adjourn the liability only trial.

The adjournment was granted solely on the understanding that the plaintiff would comply with the following directions:

1. The case will be adjourned upon the application of the plaintiff;

2. The defendants' application for 'wasted' costs (if any) is adjourned to the date of the trial, for determination by the trial judge;

3. The plaintiff's solicitors are to provide notes and/or correspondence, if any, in respect of their efforts to obtain the attendance of Professor Robert to act as the plaintiff's expert witness and/or to attend trial (listed for 23 January 2020);

4. The plaintiff intends to seek further medical evidence from a consultant neurologist;

5. The parties agree there is to be a time limit set for the confirmation that a consultant neurologist is willing to assist/provide a report;

6. There will regular reviews of the case in the interim;

7. The plaintiff's solicitors will provide a copy of a 'Power Point Presentation', used by Mr Nim Christopher and to which reference is made in his report on or before 12 February 2020.

8. The plaintiff's solicitors will provide updated copies of the GP's notes and records on or before 12 February 2020.

9. The plaintiff's solicitors will obtain the following further documents (if any) for inspection, including:

    (i) Letters exchanged between the GP and the Nantes Clinic; and

    (ii) All notes and records from Nantes hospital (including any correspondence with the GP); and

(iii) Any GP or hospital notes and records relating to the plaintiff's recent hospital admission into in Spain;

10. The above documents are to be furnished on or before 12 February 2020.

11. The respective solicitors will provide copies of the Curriculum Vitae relating the respective expert witnesses on or before 12 February 2020.

12. In relation to the trial bundle, the plaintiff's solicitors agree that these must include:

(i) All previous court orders;

(ii) All pleadings and lists of documents;

(iii) All GP notes and records.

13. The plaintiff's (current) skeleton argument to be withdrawn and the issue of future skeleton arguments to be reviewed, if necessary.

14. The original operation notes will be made available for inspection by the 2nd defendant on or before 12 February 2020.

15. The case shall be reviewed on 4 March 2020.

23 January 2020 - Joint meeting takes place between Mr Nim Christopher on behalf of the plaintiff and Dr Bouman on behalf of the second named defendant.

3 March 2020 - The plaintiff's expert, Mr Nim Christopher, returns the signed minutes of the joint meeting (attached). Joint meeting confirms the plaintiff cannot substantiate the majority of the pleadings in the statement of claim.

4 March 2020 - Review before Mr Justice McLaughlin. The plaintiff was ordered to reply to the defendants within seven days as to why there had been slippage in relation to the court directions which were issued by Mr Justice Maguire in January 2020. The claim was relisted for review on 1 April 2020 (adjourned due to Covid-19).

5 March 2020 - Letter from Carson McDowell to the plaintiff's solicitors chasing compliance with the court directions.

11 March 2020 - Letter from DLS to the plaintiff's solicitors requesting compliance with the court directions.

29 May 2020 - Email from the plaintiff's solicitors requesting further time to comply with directions.

5 June 2020 - Form QBCI1 submitted. Defendants grant the plaintiff a further extension of time to comply with the following directions:-

1. Direction that the plaintiff serve all correspondence to and from Professor Robert regarding his instruction and requirement to attend court at the hearing of this matter on or before 12 June 2020.

2. Plaintiff provide Legal Services Commission with the minute of the joint expert meeting between Mr Christopher and Professor Bouman on or before 12 June 2020, and thereafter Legal Services Commission to make a determination regarding the funding for the plaintiff to instruct a consultant neurologist on or before 26 June 2020.

3. The plaintiff to serve any consultant neurologist report which he intends to rely on before 31 August 2020.

4. That Mr Christopher to serve the 'Power Point Presentation' he uses to consent patients undergoing before 12 June 2020 and if he still fails to do so, that he should file a sworn affidavit on or before 26 June 2020.

5. The plaintiff will serve all notes and records held by Nantes Hospital and all updated records hospital notes and records from all hospitals and clinical settings the plaintiff has attended, to include all clinical notes, correspondence, emails, tests and imaging, on or before 15 June 2020.

6. This matter is listed for review on 23 September 2020

10 August 2020	-	Notice of change of solicitor. Phoenix Law now retained for the plaintiff.