Neutral Citation Number: [2019] EWHC 1746 (QB)

Case No: HQ16X01670

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/07/2019

Before :

MR JUSTICE STEWART

- -

Between :

Lorna Jamous	**Applicant**
- and –	
Alexander Mercouris	**Respondent**

The Applicant in person
Mr Gaurang Naik (instructed by **Howard Kennedy**) for the Respondent

Hearing dates: 25 June 2019

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Approved Judgment

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

.....

MR JUSTICE STEWART

Mr Justice Stewart :

Introduction

1. In this appeal, by order dated 30 April 2019, I stated:

> "1. The appeal against the order of Master Davison be stayed until the court has appointed a litigation friend to act on behalf of the First Claimant under CPR Rule 21.6.
>
> 2. Any application made to the court must be supported by evidence in accordance with Rule 21.6(4) and Practice Direction 21 PD para 3.3.
>
> 3. At the hearing of such application the court will consider, if a litigation friend is appointed, the matters of (a) lifting the stay and (b) listing the pending appeal."

2. I gave reasons in these terms "from the certificate as to capacity, it appears that the First Claimant must have a litigation friend so as to continue the appeal (and any further steps in the proceedings).. The appropriate procedure in this case is the procedure under Rule 21.6."

3. On 8 May 2019 I made a further order namely:

> "Upon reading the email from Mrs Jamous dated 7 May 2019 and the enclosed N235 Certificate of Suitability
>
> It is ordered that the order of 30 April 2019 remains in force unless and until it is complied with
>
> OBSERVATIONS
>
> The procedure required under the order and CPR Rule 21.6 is that an application must be made supported by evidence. This is a formal process to enable a hearing to take place to determine the application. It requires a completed application notice under part 23.3 CPR. It also requires evidence in support i.e. a witness statement signed with a statement of truth, which complies with Practice Direction 21 para 3.3."

4. Mrs Jamous filed an application notice dated 13 May 2019 on 15 May 2019. She formally applied to be appointed as her son's litigation friend stating "he does not have capacity and lacks trust in others due to behaviour of his former solicitor whilst in care." In the evidence box on the application form she said she relied on the power of attorney, the certificate as to capacity to conduct proceedings, an email sent to my clerk dated 7 May 2019 and my order of May 2019.

5. The Defendant's solicitor, Joel Elliot Leigh, filed a witness statement dated 3 June 2019.

6. Mrs Jamous filed a witness statement in response dated 18 June 2019.

7. The First Claimant is an adult in his late 20s.

Outline Chronology of the Appeal

8. I will deal subsequently in this judgment with matters preceding this appeal. This section is merely an outline of what has happened so far in these appeal proceedings. It is not possible to give more than an outline since the documentation is substantial. Further, it is to be noted that in this chronology and in the more detailed one later in this judgment, 100% accuracy cannot be guaranteed. This is because Mrs Jamous has made applications and informal contacts to the court. A number have been without notice to the Defendant. Although I have spent many hours going through the various files, and correlating them with the bundle filed, it is possible that there is the occasional small error. Nevertheless, the substance of the decision will be unaffected.

9. On 19 September 2018 the Defendant applied for the claim to be struck out for failure to comply with the order of Master Davison dated 8 August 2018 requiring the First Claimant to provide a Certificate of Capacity.

10. On 30 October 2018 there was a hearing before Master Davison. Mrs Jamous appeared, along with counsel for the Defendant. For the purposes of the issue on appeal, the relevant part of the order is:

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

11. On 18 December 2018 Master Davison made an order:

> "Upon considering the court file
>
> And upon it appearing that the Claimants have not complied with paragraph 3 of the order dated 30 October 2018, i.e. have not filed at court a certificate in the proper form as to the first Claimant's capacity to conduct proceedings
>
> IT IS ORDERED THAT the First Claimant's claim stands as struck out."

12. On 27 February 2019 an appellant's notice was filed. It bears Mr Jamous' signature and is countersigned by Mrs Jamous as having a Power of Attorney. Reasons are given for the delay in filing the appellant's notice. In the grounds it is said that Mrs Jamous filed a copy of the certificate as ordered by Master Davison. It was filed by e mail and also a hard copy was filed, stamped as received on 30 November 2018.

13. The file came before Sir Alistair McDuff who made an order on 5 March 2019 that the application for permission to bring the appeal out of time and, subject to permission being granted, for permission to appeal, with the hearing of the appeal (subject to permission) to follow to be heard by a High Court Judge.

14. The appellant's notice should have been filed within 21 days of the Order of Master Davison. On 17 January 2019 Mrs Jamous' application for permission to appeal the striking out of her own claim was the subject of an application made by her (without notice to the Defendant). I shall deal later with the chronology of this claim. What is important at this stage is that Martin Spencer J ordered this:

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

REASONS

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

15. On 30 January 2019 there had been a hearing before Mr Justice Waksman, again in relation to Mrs Jamous' own appeal. The Defendant was not present at that hearing. The application was made without notice. In her evidence in support of bringing the present appeal out of time, Mrs Jamous refers to the fact that she told Waksman J that she thought it was a waste of public money to make a separate application for permission to appeal in this case alongside the existing appeal, but that she wished both appeals to be heard on the same day. The appellant's notice continues "Mr Justice Waksman verbally indicated to the Second Claimant it was correct not to obtain a further certificate, however did not address this at all in his orders. This gave us reason to believe that both applications would be heard on the same day. I was given a further two weeks to submit this application[1]." There is no record of this[2]. I must say that if Waksman J had known the full facts and been aware of the above section of Martin Spencer J's order, I would be very surprised if Mrs Jamous' recollection of what he said was accurate..

16. On 14 February 2019 Murray J, at an oral hearing of permission to appeal with both parties present, refused Mrs Jamous permission to appeal the order striking out her claim. In the judgment Murray J said:

"45. …Mrs Jamous relies on Mr Justice Waksman allegedly having said to her that the judge hearing her application for permission to appeal the order of Master Thornett could also hear the appeal against the striking out of the first claimant's

[1] The reference to a further two weeks is a reference to what was said by Murray J on 14 February 2019 – see below.
[2] Mrs Jamous has unsuccessfully sought a transcript of the hearing before Waksman J at public expense – see below

claim and, she says, he agreed with her that there was no need for her to make an application to that effect….however, that is not reflected on the face of the order, and there is no other note on the file…….

68. The second claimant says she was encouraged by Mr Justice Martin Spencer and Mr Justice Waksman to have those orders dealt with at the hearing before me.

69. I have read the order of Mr Justice Martin Spencer that he made on 17 January 2019 and….he contemplated that the second claimant would make an application for permission to appeal and that she would also need to apply for an extension of time, and he stated that she needed to make those applications by 25 January 2019. If she did not, she needed to apply for an extension to that deadline using a formal application notice.

70. I discussed this with the second claimant in the hearing today, and she indicated that when she appeared before Mr Justice Waksman on 30 January 2019, he had indicated that she did not need to file an Appellant's Notice or an application for extension of time. Had he actually said that (which is, of course, highly unlikely), he would have needed to reflect that in an order….

71. An Appellant's Notice needs to be filed and an application for extension of time needs to be made and reasons need to be given for that application, as she was directed to do by 25 January 2019 by Mr Justice Martin Spencer. Bearing in mind that the second claimant is a litigant in person, I will give her one last chance. If she wishes to appeal against Master Davison's Order dated 18 December, she needs to file an Appellant's Notice and make application for extension of time"

17. Murray J then gave her two weeks until 28 February 2019 to file these documents. It was done on 27 February 2019.

18. On 22 March 2019 Mrs Jamous appeared before Swift J. She made an oral application for a transcript at public expense, an extension of time to serve the bundle and relief from sanctions. Swift J refused the application for a transcript of the hearing before Mr Justice Waksman on 30 January 2019 at public expense. He refused permission to appeal. He ordered that the further applications for an extension of time to serve the bundle and for relief of sanctions in respect of the order of Master Davison dated 18 December 2018 be adjourned. Finally he ordered that the application be served on the Defendant and a hearing between the parties to be listed.

19. That on-notice application, signed by Mrs Jamous, came before Soole J on 29 March 2019. Mrs Jamous and counsel for the Defendant appeared. Soole J considered the application "without prejudice to the Defendant's contention that the Second Claimant does not have authority to make this application on behalf of the First Claimant or otherwise to act for him in these proceedings." He briefly recited the orders of Sir Alistair McDuff of 5 March 2019 and of Swift J on 22 March 2019 and ordered:

> "1. The balance of the application dated 22 March 2019 is dismissed as totally without merit.
>
> 2. The First Claimant is to pay the Defendant's costs of and occasioned by the application to be assessed on the standard basis if not agreed, but not to be enforced without the permission of the court …"

20. Mrs Jamous then emailed the court and my clerk. One of the issues was that the hearing had been before Soole J and not before me. Originally that application had been listed in Court 37 where I was sitting on 29 March 2019. When I saw the papers prior to that date, it became apparent that the application needed more time than is generally available in Court 37 for a judge to prepare for and deal with the hearing. That is why it was listed before Soole J. My clerk sent an email to Mrs Jamous explaining this.

21. The file having been referred to me, and in my capacity as Judge in Charge of the Queen's Bench General List, I made some enquiries as to the fact that Mrs Jamous was insistent that the certificate complying with Master Davison's order had been filed at court on 30 November 2018, and that she had exhibited the document with a QBD action department stamp dated 30 November 2018. It seemed that Mrs Jamous had made a complaint. I consulted with the Senior Master who checked and confirmed that the certificate had been lodged in the action department as being received on 30 November. I then caused the Queen's Bench Office to send an email to both parties which, as far as is material, stated:

> " … the judge does not know when, or whether, the certificate of capacity, although logged in the action department as received on 30 November, ever reached the court file of the court below. It was seemingly not on the file when Master Davison made his order. The judge is aware that it was on the appeal file when he first examined that file last week and that it is stamped as received on 30 November 2018. The copy on the appeal file has been restamped as received at QB Listing on 25 January 2019. That copy has the name of the Doctor redacted. However, there is a further document entitled "skeleton argument" on the appeal file. That skeleton argument is from Mrs Jamous and is dated 29 March 2019. It is stamped as having been received by QB Listing on the same date i.e. 29 March. It contains as "Exhibit 1" an unredacted copy of page one of the certificate of capacity bearing the action department stamp of 30 November 2018. The judge cannot say one hundred percent from what is before him that the entire certificate (as opposed to just page one) was filed on 30

> November 2018. There is no reason of which he is aware which would suggest that the entire certificate was not filed. The judge notes that the final page is dated 22 November 2018."

22. There was also a dispute about whether the Respondent was entitled to an unredacted copy of page 1 of the certificate thereby disclosing the name of the Doctor. This was resolved, with some intervention on my part, and an unredacted copy was served.

23. On 18 April 2019 Mrs Jamous asked for the appeal hearing to be listed. On the same date the Defendant raised the point that the First Claimant required a litigation friend and submitted that Mrs Jamous was unsuitable to act.

24. After that I made the orders set out above and these resulted in the hearing before me on 25 June 2019.

Legal and Procedural Matters

25. The relevant provisions of the Civil Procedure Rules are:

> "21.1(2) In this Part—
>
> ……..
>
> (c) *'lacks capacity'* means lacks capacity within the meaning of the 2005 Act;
> (d) *'protected party'* means a party, or an intended party, who lacks capacity to conduct the proceedings;
>
> 21.2— Requirement for a litigation friend in proceedings by or against children and protected parties
>
> 21.2
> (1) A protected party must have a litigation friend to conduct proceedings on his behalf…….
>
> 21.3
> …
> (3) If during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step in the proceedings without the permission of the court until the protected party has a litigation friend.
> (4) Any step taken before a child or protected party has a litigation friend has no effect unless the court orders otherwise.
>
> 21.6— How a person becomes a litigation friend by court order
> 21.6
> (1) The court may make an order appointing a litigation friend.
> (2) An application for an order appointing a litigation friend may be made by—
> (a) a person who wishes to be the litigation friend;
> ……

(4) An application for an order appointing a litigation friend must be supported by evidence.
(5) The court may not appoint a litigation friend under this rule unless it is satisfied that the person to be appointed satisfies the conditions in Rule 21.4(3).

21.4
……..

(3) …….. a person may act as a litigation friend if he—
(a) can fairly and competently conduct proceedings on behalf of the child or protected party;
(b) has no interest adverse to that of the child or protected party; and
(c) where the child or protected party is a claimant, undertakes to pay any costs which the child or protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the child or protected party."

26. The essential questions are:

1. Does Mr Jamous lack capacity within the meaning of the Mental Capacity Act 2005.

2. Is the court satisfied that Mrs Jamous satisfies the conditions in Rule 21.4 (3). This requirement is incorporated by Rule 21.6 (5).

27. The main function of a litigation friend appears to be to carry on the litigation on behalf of the Claimant and in his best interests.[3] However, part of the reasoning for imposing a requirement for a litigation friend appears also to be for the benefit of the other parties. This is not just so that there is a person answerable to the opposing party for costs.

28. In Masterman-Lister v Brutton & Co[4] Kennedy LJ said:

> "31 … in the context of litigation rules as to capacity are designed so that Plaintiffs and Defendants who would otherwise be at a disadvantage are properly protected, and in some cases that parties to litigation are not pestered by other parties who should be to some extent restrained …" (see also Chadwick LJ at [65]).

29. In RP v Nottingham City Council[5] the Court of Appeal at [141] agreed with the submissions made by the then Mr Jackson QC in his Opinion for the Official Solicitor dated 13 March 2007. That advice was annexed as Annex B to the Judgment. Having referred to the general duty of the litigation friend, the advice continued:

[3] See Re E (Mental Health Patient) 1984 I WLR 20
[4] [2003] 1 WLR 1511; [2002] EWCA Civ 1889
[5] [2008] EWCA Civ 462

> "5 … the statement encapsulates two magnetic influences upon the conduct of the litigation friend. The prime motivating factor is beneficence - acting for the parents' benefit. The second is competence – acting according to proper professional standards."

Is Mr Jamous a Protected Party?

30. As the notes to the White Book 2019 make clear at paragraph 21.0.2 the presumption of capacity can only be overridden if the person concerned is assessed as lacking the mental capacity to make a particular decision for themselves at the relevant time. The formula to be used in making the assessment is set out in section 3 of the 2005 Act. In legal proceedings the burden of proof is on the person who asserts that capacity is lacking. If there is any doubt as to whether a person lacks capacity, this is to be decided on the balance of probabilities.

31. Mrs Jamous and the Defendant accept that Mr Jamous lacks capacity. Nevertheless, I shall examine the evidence. That evidence primarily comes from the report of Dr Khalaf dated 22 November 2018. He said that he assessed Mr Jamous on 25 February 2018 and on 12 November 2018. In his opinion Mr Jamous lacks capacity within the meaning of the Mental Capacity Act to conduct the proceedings. The reasons given for Mr Jamous' impairment in functioning are:

- Complex post-traumatic stress disorder
- Secondary Depression and Anxiety disorder
- Due to these conditions Mr Jamous has a tendency to become highly aroused, very anxious and irritable, including difficulty in managing anger when facing stressful circumstances and cues reminder (sic) of previous trauma.
- He also presents with paranoid ideation towards authoritive figures and at certain environments.

32. Doctor Khalaf says this impairment has lasted since 2001. Mr Jamous is able to understand that the proceedings are related to his claim against Mr Mercouris and will involve dealing with the procedure of the court, presenting his evidence and debating the case. He is unable to retain information. Although during a test he was able to repeat the information, the Doctor's concern is that Mr Jamous will be unlikely to be able to do this during the court session because his attention and concentration tend to become impaired in such situations. This is because he becomes highly anxious, aroused, and even paranoid, in his state of mind in these circumstances.

33. Further the Doctor says that Mr Jamous is unable to use or weigh information as part of the process of making decisions in the conduct of the proceedings. Again this is because of the impaired concentration and the fact that his emotional state is aroused

due to experiences of reliving the trauma represented by flashback, irritability and sense of paranoia. This would affect his cognitive processing of information and cloud his judgment of the situation.

34. Doctor Khalaf does not give his qualifications on the documents. However, internet research suggests that he is a consultant psychiatrist with Kent and Medway NHS Trust and also in private practice. I checked this with Mrs Jamous and she confirmed it to be correct.

35. There had been previously filed a letter from Dr Shakarchi. In his order of 8 August 2018 Master Davison said that that letter was very brief. He was not satisfied that the Doctor had fully considered the test of capacity to be applied and the serious implications for Tarik if he did indeed lack capacity. That is why he ordered a further report and attached to his order the proforma certificate as to capacity which Dr Khalaf has now completed.

36. On the balance of probabilities, I conclude that Mr Jamous does not have the capacity to conduct these proceedings. He is therefore a Protected Party and requires a litigation friend.

Does Mrs Jamous meet the Conditions in CPR Rule 21.4 (3)?

Background

37. In her witness evidence Mrs Jamous confirms that she has no interest adverse to that of her son and that she undertakes any costs which her son may be asked to pay in relation to the proceedings. The Defendant does not accept that she has no interest adverse to that of her son. As to the undertaking as to costs, the Defendant says that is worthless. I shall return to these points later.

38. The first focus of the court is as to whether Mrs Jamous "can fairly and competently conduct proceedings on behalf of the …. Protected Party." Before dealing with the present proceedings, Mr Leigh in his witness statement at [8]-[9] refers to an order of Master Eyre in a previous claim. This was Jamous v Westminster HQ06X02812. There the Defendant made an application under rule 21.7 to prevent Mrs Jamous acting as her son's litigation friend. Having heard from Mrs Jamous in person and counsel for the Defendant on 16 and 24 July 2008 Master Eyre granted the Defendant's application and ordered that Mrs Jamous "be not permitted to act as litigation friend to Tarik Jamous". The reasons for the ruling are exhibited to Mr Leigh's witness statement. At that point Tarik was a child, being a little over 17 years of age. The key paragraphs of the reasons are as follow:

> "…
>
> 5 In 2000, his mother, Mrs Jamous received attention on various occasions from mental health professionals about her state of mind and her frequent use of cannabis.
>
> 6 On 20 May 2001, a fire broke out at the family home when Tarik was there alone, and he had to escape by jumping out of a window.

7 Investigations into the cause of the fire have been generally inconclusive, and certainly do not lead to the conclusion that it was due to any external agency.

8 Despite that, Mrs Jamous insisted and still insists that the fire was caused by arson.

9 In the three weeks or so after the fire, her conduct on several occasions – all of them witnessed by Tarik – was such that she was made the subject of an order under the Mental Health Act 1983 s.2; Tarik was taken into care by the Defendant, where he remained until 31 May 2002, a period of a little less than one year.

10 On 22 September 2006, at a time when Tarik was just over 15 years old, Mrs Jamous brought this action against the Defendant on Tarik's behalf for damages in respect of psychological injury caused by the Defendants to Tarik during the time that he was in the Defendant's care.

..

14 Given the dramatic circumstances that led to the decision to take Tarik into care, it is obvious that in relation to the action as a whole the following are necessary:

(1) The most clear and specific allegations, whether as to liability, causation or quantum.

(2) A report from a qualified medical practitioner confirming that the relevant allegations are well founded.

15 Neither of those requirements has even been remotely fulfilled.

16 The result is that the whole action is crucially dependent on what Mrs Jamous will say as a witness.

17 Moreover, she necessarily has an interest of her own in the action, namely to repulse any suggestion that Tarik's family background is responsible for at least part – and possibly even a large part – of his troubles.

…

22 The result, though, is simply this:

(1) Mrs Jamous has on Tarik's behalf brought an action the merits of which are at least questionable, and which is nothing like ready for trial, with an enormous attendant risk in costs.

> (2) That state of affairs, which is undoubtedly not in Tarik's interests, is her responsibility.
>
> (3) She herself is deeply interested in the outcome of the litigation, not of course as a party, but as someone that wants her beliefs about what has gone wrong in Tarik's life to be vindicated.
>
> 23 For those reasons, it is obvious that she is a person that cannot fairly and competently conduct the action on Tarik's behalf and that she has an interest in the action adverse to that of Tarik.
>
> … "

39. Permission to appeal was refused by King J on 16 March 2009 there being no appearance by the parties[6]. The circumstances of the present case need to be examined carefully on their own merits. Many years have passed since Master Eyre's ruling. Nevertheless, his reasons have some relevance as background information.

The Proceedings till July 2018

40. The substance of the present proceedings is set out in the amended particulars of claim signed by Mr and Mrs Jamous on 31 May 2017 and filed on 11 August 2017.

41. In summary the allegations are:

(1) In April 2007 Mr Jamous, through Mrs Jamous his litigation friend, commenced proceedings against Westminster City Council ("Westminster") for damages whilst he was under their care and supervision.[7]

(2) The Defendant was studying to be a Barrister and was called to the Bar in 2006.

(3) Subsequently the Defendant said he was a fully qualified Barrister and could represent the First Claimant.

(4) The Second Claimant, on the Defendant's advice, refused an offer of £5000, made by Westminster, for cognitive behavioural therapy.

(5) In the context of an allegedly ill-advised appeal against a decision of HHJ Mackie QC ordering the trial listed for 2008 to be vacated, the Defendant told Mrs Jamous, that Westminster had agreed to settle the claim out of court for £983,000.

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

[6] Mrs Jamous says that the non-appearance was due to the wrongful advice of the Defendant.
[7] These are the proceedings dealt with by Master Eyre in 2008

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

- That on 28 August 2009 he had purported to obtain a statement from Lady Justice Hale that was not a true document, that he knew was not a true document, and that he had had no contact with Lady Justice Hale.

- He had instructed the Claimants not to attend an Appeal hearing in relation to the compensation claim on the basis that he was negotiating with Westminster. This was in circumstances where no such negotiations were being conducted.

- He had stated that he would make an application to the court for an interim payment of £50000 when he knew no such application had been made, or was going to be made.

- That the £983,000 settlement had been stolen by his brother (sic).

- In a statement dated 11 December 2009 he said he had been detained by police officers and taken to a meeting with Lord Phillips. This was a dishonest statement.

42. Mr Jamous's loss was alleged to be the loss of the £5000 worth of cognitive behavioural therapy offered by Westminster, the loss of chance of compensation against Westminster had the claim been pursued to a full hearing, and personal injury in the nature of anxiety and post-traumatic stress disorder aggravated by or worsened by the Defendant's conduct.

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

44. Apart from limitation defences[8], the defence can be broadly summarised as follows:

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

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

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

[8] Mr Jamous' disability during any relevant period would be potentially relevant here

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

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

(6) The Defendant's increasingly bizarre behaviour between 2007-2010 was the consequence of his mental health which was known, or ought to have been known, to Mrs Jamous.

(7) By that stage professional negligence allegations had been struck out, by order of 12 July 2017, by Master Davison. Also, part of the claim of Mrs Jamous had been struck out as being statute barred.

(8) In those circumstances the claims were denied.

45. I emphasise that the above is a broad summary only so as to give a general indication of the nature of the underlying claim in this case.

46. A number of matters need to be highlighted in relation to what has happened during the course of the present proceedings. As a preliminary matter, though, the defendant says that the claim was issued in May 2016. There was no pre-action letter or other intimation of the claim.

47. The first matter concerns the period July 2017 – 27 October 2017. On 12 July 2017 Master Davison made a Directions Order. This culminated in an order by Martin Spencer J, on 27 October 2017, refusing permission to appeal. He gave detailed reasons. It is helpful to cite sections from those reasons:

> "5. The matter was listed for a CMC before Master Davison on 12 July 2017 when both parties were represented by counsel. The Defendant additionally made an application for an order that the claim be struck out as showing no cause of action
>
> 6. The Master made the following orders:
>
> a. (Orders 2-8) He allowed the Second Claimant to join the First Claimant and to amend the claim, but subject to any limitation defence which the Defendants might raise and equally subject to any decision under s.33 of the Limitation Act upon an application to disapply the limitation period and he gave directions for the further conduct of the action. This included the following:

> "3. For the avoidance of doubt, the amendments seeking damages in respect of loss of the offer of settlement and/or loss of the chance of a more advantageous settlement in 2008/09 are not allowed because that claim is statute barred under s.2 and s.14 of the Limitation Act 1980"
>
> 7. Costs of and occasioned by the amendment be the Defendants in any event."

b. (Orders 9-12) He gave directions for disclosure.

c. (Order 13) He gave directions for witness evidence.

d. (Orders 14-21) He gave directions for expert evidence.

e. (Orders 22-25) He gave directions for trial. This included the following:

> "22. The trial is listed as category C and shall take place before Master Davison on 9-11 July 2018."

…

7. The Claimants now seek permission to appeal against orders 3, 7 and 22 set out above …"

48. Martin Spencer J then gave reasons for refusing permission to appeal each of those orders. His order ends as follows:

> "12. In reaching this decision it should be noted that I have taken fully into account the matters raised by the Second Claimant in her letter to the court dated 18 October 2017. I understand that she says that she is "very tired of fighting for justice" and that "only after a fair trial will we be able to move on with our lives." The sooner this matter can be decided and concluded, the better, and it was probably with that in mind that the Master gave directions whereby he would try the case himself only one year from the CMC (a relatively quick timetable). This was wholly appropriate
>
> 13. As I consider that the appeal is wholly without merit, I order that pursuant to CPR 52.4(3) the Appellant may NOT request this decision to be reconsidered at a hearing."

49. It is thus apparent from Martin Spencer J's order that:

- Directions to trial had been given
- The matter should reach trial as soon as practicable

- Mrs Jamous[9] had filed an appeal which was certified as wholly without merit.

50. Between 2 November 2017 and 29 March 2018, the Defendant applied for an unless order for the Claimants' failure to give disclosure. The Claimants instructed solicitors and there was a telephone agreement between the solicitors about disclosure and a consent order filed on 29 November 2017. On 14 December 2017 the Claimants' solicitors came off record. On 12 February 2018, the Claimants applied for an extension of time to file expert evidence.

51. On 29 March 2018 (sealed 10 April 2018) Master Davison varied the directions given on 12 July 2017. Counsel appeared for the Defendant and Mrs Jamous appeared in person. For present purposes material parts of that order are:

> "2. By 4pm on 13 April, the Claimants must give standard disclosure/further standard disclosure by list in form 265 of :
>
> a) The file in action number HQ06X02812 including the statements of case (pleadings), medical reports and correspondence with Westminster City Council
>
> b) All documents in support of their claim herein for financial loss
>
> …
>
> 5. The Claimants are to make available their medical records to any medical expert instructed by the Defendant. If they decline to sign forms of authority for the release of such records to that expert, then their claims will be stayed.
>
> 6. By 4pm on 20 April 2018 the Claimants are to exchange their witness statements with the Defendant.
>
> 7. The Claimants are to be treated as having made an application to disapply the limitation period pursuant to s.33 of the Limitation Act 1980 and their witness statements are to explain the delay in putting forward their claims.
>
> 8. The time for submitting questions to the claimants' medical expert is extended to 30 April 2018. The expert is to respond by 4pm on 27 April 2018 …"

52. Therefore, a clear timetable was reset for the Claimants to provide disclosure, make available their medical records and exchange witness statements.

53. The Master gave detailed reasons. It is instructive to repeat certain extracts. These are:

> "1. This case came before me yesterday on the Defendant's application dated 2 February 2018 for "unless" orders in

[9] Although represented by counsel before Master Davison, she had made the application for permission to appeal in person

respect of the Claimants' disclosure and witness statements. Additionally, by an application made by email on 23 February 2018, the Defendant sought to set aside an order I made on 15 February 2018 extending the time for the Claimants to serve expert medical evidence…

2. I do not want to lengthen these reasons with a recitation of the complex and somewhat bizarre facts which give rise to the claims. But suffice it to say that when the matter came before me on 12 July 2017, I concluded that the First Claimant had a reasonably arguable claim that, due to the Defendant's actions in 2008 and 2009, he (the First Claimant) did not receive the cognitive behaviour therapy that he stood in need of and that, in consequence, his anxiety condition and PTSD persisted and worsened and that that injury had been exacerbated or further exacerbated in 2016 when he saw the Defendant in the media. As to the Second Claimant, I concluded that it was reasonably arguable that those actions on the part of the Defendant in 2008/9 had caused her some psychiatric injury /exacerbation of pre-existing psychiatric illness and that she had suffered the same exacerbation or further exacerbation as her son in 2016 … So far as events in 2008/9 were concerned, the claims were out of time. But there existed a discretion under section 33 of the Limitation Act 1980 to allow them to go forward.

3. So far as the claim was for deceit/negligence causing the First Claimant to lose the benefit of the cause of action against Westminster City Council, that claim was unequivocally out of time and statute barred and I struck it out.

4 … As at the date that the Defendant issued his application, the position was that the time for compliance with the order for disclosure had been extended by a month to 20 October 2017; the second Claimant's list had actually been served on 21 November 2017; however, the list was said to be incomplete and she had not given inspection of the few documents within it. The time for exchange of witness statements had been extended .. to 20 January 2018; but the Claimants had not complied. The date for the Claimants to serve their expert medical evidence had been put back from 9 February 2018 to 28 March 2018 (the date of yesterday's hearing). The reports were served in the afternoon.

5. … In combination with her mother's illness and the need for Mrs Jamous to look after her and also the difficulty of (a) locating and (b) funding the instruction of an expert psychiatrist, she had good reason to seek an extension of time for provision of her and her son's expert medical evidence. However she seemed to have little excuse for the delay in and inadequacy of disclosure. And I could discern no valid excuse at all for the fact that she and her son had prepared no witness

> statements. Obviously, allowances have to be made for litigants in person … but in this case … (b) I have formed the impression that Miss Jamous regards court orders and rules of court as to be subordinated entirely to her "fight for justice" .. To put it another way she appears to me to consider that orders and rules are to be obeyed by others but not necessarily herself …
>
> 11. I was invited to make "unless" orders. It was not appropriate to do that at this stage in a case where the claimants are acting in person. I do, however, note that a time may come when such an order would be appropriate and all parties should note that the consequences of breaching an unless order are very serious. It can result in the loss of the claim or the loss of the defence to the claim."

54. In summary it is apparent from Master Davison's order that :

- He found there was little excuse for the delay in/inadequacy of disclosure and no valid excuse at all for the lack of witness statements by Mr and Mrs Jamous.

- He had put down a clear marker as to his impression of Ms Jamous's approach to court orders and what might be the consequences if orders were not obeyed in the future

55. On 20 April 2018 Mrs Jamous issued an application notice seeking a stay of the claim "until the criminal investigation has been concluded by placing a stay on this claim, will prevent subjudice contempt." On 23 May 2018 the Defendant applied for the stay application to be dismissed and for unless orders in relation to complying with the provision of Master Davison's order in relation to standard disclosure, witness statements and medical records being made available. These applied to both Claimants.

56. These two applications came before Master Davison on 28 June 2018. The Claimants did not attend. Mrs Jamous had submitted medical evidence seeking an adjournment. The Master refused that on the basis that the evidence did not support the proposition that she was unable to attend. He recorded that on the morning of the hearing she supplied an amended letter from her doctor to the extent that she was physically incapable of attending the hearing. Master Davison said that he did not see that amended letter until the hearing had commenced. He therefore decided to proceed with the hearing, making appropriate allowances for the fact that she could not attend.

57. Master Davison refused the Claimant's application for a stay to await the outcome of possible criminal proceedings. He described it as "misconceived". He said that there were no such proceedings at present and it was important to make progress with these claims. The Master also vacated the trial listed on 9 July 2018 and ordered that Mrs Jamous file and serve a copy of the Power of Attorney referred to in her doctor's letter dated 20 June 2018. He made other orders requiring disclosure of documents, that Mrs Jamous should return signed forms of authority for access to her medical records and that she should provide statements and special damage documentation. All this

was to be done by 22 July 2018. He listed the matter before the Master for a trial on the preliminary issue of limitation on the first available date after 1st October 2018. In paragraph 10 he said:

> "10. Should the Second Claimant fail to comply with paragraphs 4-8 of this order, the Defendants are permitted to make an application to strike out the Claimants' claim."

58. In his written reasons Master Davison made it clear that his order was in the nature of a last chance. He said that Mrs Jamous had not complied with the carefully phrased and carefully explained order that he had made on 29 March 2018. In particular she had not filed and served her witness statement and had not made her medical records available to the Defendant's doctors. He could detect no reason for this. If she did not comply with the new order then it was a real possibility that the case would be struck out.

59. It was in this order that, picking up on the Power of Attorney referred to in Dr Shakarchi's letter of 25 June 2018, Mr Jamous's capacity to litigate first appeared. In paragraph (4) of his reasons Master Davison said

> "4. The letter dated June 2018 from Dr Shakarchi has placed Tarik Jamous's capacity to litigate into question. I assume this was the temporary result of stress but he does have capacity. This is the presumption in the Mental Capacity Act. Because there is a question mark over his capacity I have made no orders today against him. If it is alleged that he does lack capacity to litigate, then Mrs Jamous must inform the court and supply further medical evidence by 22 July 2018."

60. It is at this point that the First Claimant's claim and the Second Claimant's claim bifurcate procedurally. The First Claimant's claim has become complicated by reasons of adjudging his capacity etc. The Second Claimant's claim continued on a separate track because of the orders made in relation to her claim by Master Davison on 28 June 2018. I have already set out in this judgment the procedural history of the First Claimant's claim after this point. I will now deal, as briefly as possible, with the Second Claimant's claim. This is because it is relevant to the appropriateness of Mrs Jamous to be the litigation friend of the First claimant.

The strike out of Mrs Jamous' claim

61. On 6 July 2018 Mrs Jamous applied to vary Master Davison's order. The hearing came before Master Thornett on 19 July 2018. His order was sealed on 25 July 2018. He ordered that unless there was compliance with paragraphs 4-8 of the order of Master Davison the claim would stand automatically struck out. Two recitals to Master Thornett's order are:

> "And upon hearing solicitor (Mr Leigh) for the Defendant, the Second Claimant in person (who attended through to the commencement of the Judgment but was then asked to leave the Master's room with the assistance of security) and there being no appearance by the First Claimant

> And upon the court finding no basis or merit on the Claimant's application to vary the 28 June 2018 order other than, in response to the Second Claimant's repeated confirmation at the hearing of her intent not to comply with the same, to provide her with the modest extension of time (but on peremptory terms) for reflection and due compliance …"

62. On 8 August 2018 Mrs Jamous filed an appellant's notice against the order of Master Thornett. On 15 August 2018 Sir Alistair McDuff ordered a transcript of the judgment of Master Thornett to be obtained at public expense and, upon receipt of the transcript, the case to be place before a High Court Judge to consider whether to grant permission to appeal and/or for further directions.

63. On 29 August 2018 Master Thornett made a further order. He referred to the Defendant's letter to the court 28 August 2018 confirming that Mrs Jamous had not complied with the order of 25 July 2018. He then struck out the Second Claimant's claim as at 4.01pm 3 August 2018.

64. On 7 September 2018 Mrs Jamous made an application to set aside the 29 August 2018 order made by Master Thornett on the basis that she was not notified or present. On 20 October 2018 Master Davison referred that application to a High Court Judge dealing with her appeal against that order.

65. On 12 November 2018 Mrs Jamous made an application in the appeal proceedings asking for a copy of the recording and/or to listen to the recording of the hearing before Master Thornett. In the application notice she said "there has been a three month delay and I have grave concerns regarding part of this recording which I believe may well be edited once it goes to Master Thornett for approval." That was refused on paper by Nicol J on 19 November 2018.

66. On 3 December 2018 Mrs Jamous filed an application notice that Nicol J's order be set aside. She said "this order was made in my absence and is obstructive to my application for permission to appeal." In support she said:

> "When I went before Judge Yin (presumably Yip J) in Court 37 out of desperation that Master Thornett had acted inappropriately at a hearing and ignored the request made by the Met Police "the civil claim should be stayed until after the criminal investigation", Judge Yin was surprised that the Master had ignored this and that he had said "I don't care what the police say". She advised to obtain a full transcript of the hearing. Neither of us expected it to be heavily edited. If I do not get a full edited transcript or I will not have a fair hearing".

I have not found any order or record on the file of an attendance before

Yip J in court 37. The defendant was not notified of the appearance

before Yip J.

67. On 13 December 2017 Mrs Jamous appeared before Martin Spencer J without notice to the Defendant. Having heard Mrs Jamous in person he ordered that there be permission to listen to the recording of the proceedings below and to annotate the existing transcript with the corrections which Mrs Jamous considered necessary for the transcript to be an accurate transcription of those proceedings. He then ordered that she provide a copy of the annotated transcript to the court to be placed before a judge for such further directions as may be necessary, so that the judge who heard the application for permission to appeal had an accurate transcript of the proceedings in the court below.

68. There is a note on file made by Martin Spencer J on 27 December 2018. It is addressed to the judge before whom this matter was to come for further directions. It records that Mrs Jamous came before Martin Spencer J on 27 December 2018 with concerns that her appeal hearing would be delayed because she had been informed by the court that her appeal file had gone missing. He informed Mrs Jamous that her application was premature and that, in accordance with his order of 13 December, once she had submitted the revised transcript the matter would then be put before a High Court Judge for further directions. Mrs Jamous was concerned that she had been told that the matter could not be set down for hearing until the missing file had been located, that she had been put under stress by the attitude of the Defendant's solicitors, and that it was in the interests of justice that the matter be set down as soon as possible. Martin Spencer J recorded that he told Mrs Jamous that he would relay her concerns about that to the judge before whom the matter came for directions. While he was providing the note, he said it would be unfortunate if there was further delay because the file had gone missing. He had been told that the court staff were doing all they could to locate the missing file.

69. On 17 January 2019 Martin Spencer J again considered the matter on paper. He referred to a number of documents, including Mrs Jamous' application dated 7 January 2019 to vary the order of 13 December 2018 and an email from Mrs Jamous to his clerk dated 16 January 2019. He recorded that it appeared from the documents that the following applications or matters needed to be considered and dealt with:

> "1. Whether this matter is reserved to Mr Justice Martin Spencer
>
> 2. Whether the order of 13 December 2018 should be varied and it should be ordered that the judge who is to hear the Second Claimant's application should be provided with, and be asked to listen to, the recording of the hearing before Master Thornett on 19 July 2018, instead of the Second Claimant making "the relevant amendments to the transcripts of the recording of the hearing before Master Thornett on 19 July 2018"
>
> 3. Whether if the order of 13 December 2018 is not to be varied, a deadline should be set for the Second Claimant to finalise the amendments to the transcript.
>
> 4. What further needs to be done for this matter to be ready for hearing."

70. Mr Justice Martin Spencer refused to reserve the matter to himself and refused to vary the order of 13 December 2018. He ordered that the parties should liaise in order to seek to agree the documents which needed to be put before the court and to compile an appropriate trial bundle. In particular he ordered "the Second Claimant shall send to the Defendant's solicitors by 4pm on Friday 25 January 2019 an index for a suggested trial bundle, which shall be agreed or amended by the Defendant's solicitor and returned to the Second Claimant by 4pm on Wednesday 30 January 2019. An appeal bundle shall be sent by the Second Claimant to the court and the Defendant by 4pm on Friday 1 February 2019. The application is to be listed in the week commencing 4 February 2019 …"[10]

71. On 23 January 2019 Cheema-Grubb J made an order. There was an application notice by the Applicant dated the same date requesting Martin Spencer J's order of 17 January 2019 be set aside. It appears that the Respondent was neither present nor represented. In fact he had no knowledge of the application, seemingly until I mentioned it during the hearing on 25 June 2019. Cheema-Grubb J heard Mrs Jamous and refused her application.

72. On 30 January 2019 Mrs Jamous appeared in person before Waksman J. Again the Defendant was neither present nor represented. In fact the Defendant had not been served again. Mrs Jamous appeared in person. Waksman J ordered that the Defendant should agree a list of documents for the permission to appeal hearing by adding to the Second Claimant's proposed list any further documents which the Defendant wished to have in the bundle, by 31 January 2019. Also:

> "2. Any representations to the effect that the Second Claimant is in breach of paragraphs 3, 5 and 6 of the order of 17 December 2018 shall be made to the judge hearing the application for permission to appeal
>
> 3. The court notes that the Second Claimant's intention is to ask the judge at the hearing to listen to the tape of the hearing before Master Thornett."

73. On 14 February 2019 the application for permission to appeal came before Murray J. Mrs Jamous appeared in person and counsel appeared for the Defendant. There is an approved transcript of the judgment of Murray J on file. He ordered that the application for permission to appeal against the order of Master Thornett dated 19 July 2018 be dismissed on the basis that it was totally without merit. He also dismissed the application dated 7 September 2018 to set aside Master Thornett's order dated 29 August 2018. Finally, he added that if Mr Jamous still wished to appeal Master Davison's order dated 18 December 2018, he should file his appellant's notice and grounds of appeal together with an application for extension of time, by 28 February 2019. The papers would then be placed before a High Court Judge.

74. I do not propose to go through Murray J's judgment. However at [4]-[6] he remarked on the fact that Mrs Jamous had not provided an appeal bundle by 1 February 2019 as ordered by Martin Spencer J on 17 January 2019 nor subsequently. She handed in

[10] It was in this order that Martin Spencer J also picked up on the order of Master Davison dated 18 December 2018, the subject of the present appeal proceedings. See details at [14] above.

some documents that morning. He said that they did not constitute a proper appeal bundle. At [6] he said:

> "The Second Claimant is a litigant in person and some allowance needs to be made for that, but nonetheless a litigant in person is required to comply with the Civil Procedure Rules and other procedural requirements just as other litigants are. Since I have an adequate bundle prepared by the Respondent which appears to include all the relevant documents and the Second Claimant is here in person as well as counsel of the Defendant, I will proceed with this appeal notwithstanding the Second Claimant's substantial non-compliance with the order of Mr Justice Martin Spencer."

Overview of Procedural History and Conclusions

75. Mrs Jamous is the driving force behind the litigation. Although Mr Jamous has signed applications, these have been drafted and countersigned by his mother. He has never otherwise communicated with the court or appeared at court.

76. Mrs Jamous has serially:

(a) Issued applications certified as totally without merit

(b) Failed to comply with court orders

(c) Issued applications without notice to the Defendant

(d) Attended before judges without making applications

77. The Totally Without Merit Applications are those certified as such by Martin Spencer J on 27 October 2017, Murray J on 14 February 2019 and Soole J on 29 March 2019.

78. As to failure to comply with court orders, there has been a continuing failure to comply with the numerous directions orders for disclosure, witness statements etc. This resulted eventually in Mrs Jamous' claim being struck out. The same may well have happened to Mr Jamous' claim had the capacity issue not arisen. In addition to the applications certified as totally without merit, there have been misconceived applications to stay and to set aside orders. For some relevant orders – see those of Master Davison dated 29 March 2018, Master Davison 28 June 2018, Master Thornett 6 July 2018, Master Thornett 29 August 2018, Martin Spencer J 17 January 2019, Cheema-Grubb J 23 January 2019 and Murray J 14 February 2019. I have already cited the remarks of Master Davison on 29 March 2018 and those of Murray J in [4]-[6] of 14 February 2019. I will not repeat the latter relating to Mrs Jamous' failure to comply with appeal directions. However, the remarks of Master Davison on 29 March 2018 have been reinforced on many occasions since he made them. They are worthy of repetition. He said:

"Obviously, allowances have to be made for litigants in person … but in this case … (b) I have formed the impression that Miss Jamous regards court orders and rules of court as to be subordinated entirely to her "fight for justice" .. To put it another way

she appears to me to consider that orders and rules are to be obeyed by others but not necessarily herself."

79. As to issuing applications and appearing before judges without notice to the Defendant, examples are: an apparent undated appearance before Yip J in Court 37 in late 2018, and those culminating in the following Judges' orders: Martin Spencer J on 17 January 2019, Cheema Grubb J on 23 January 2019, Waksman J on 30 January 2019 and Swift J on 22 March 2019. There was also the without notice attendance before Martin Spencer J on 27 December 2018 which gave rise to his note, but no order.

80. In addition Mrs Jamous regularly e mails the court office and judges' clerks. See the comments of Martin Spencer J in his 17 January 2019 order. There were also numerous e mails between the parties, many copied into the court, for example on the following disputes:

(a) Prior to the hearing before Murray J. Mrs Jamous was insistent that she had complied with the directions order for the appeal. I have already cited what Murray J said about this. In short, she had not.

(b) Mrs Jamous refused to disclose a redacted version of Doctor Khalaf's capacity report to the defendant. She did not want to disclose the identity of the author of the report. These e mails ran from January to April 2019. Eventually, shortly after the papers came before me, I caused an e mail to be sent to the parties on 16 April 2019. In paragraph 4 I dealt with the relevant rule and indicated as firmly as I could without having a hearing, that the full report should be disclosed. Mrs Jamous then disclosed the full report[11].

81. In addition, so as to indicate the fraught nature of the litigation, Mrs Jamous:

(a) on 30 January 2019 e mailed Mr Leigh and copied in the court listings office and an individual in the court listings office. In this e mail she said: "..The reason I feel the need to copy in the investigating journalist in this matter, is due to the deceitful/behaviour of Joel Leigh and the handling of the civil claim"

(b) on 3 April 2019, Mrs Jamous sent an e mail to Mr Leigh, copied to Counsel, Master Davison and a journalist, stating: "There is evidence which proves counsel lied at the hearing before Mr Justice Soole….Due to the seriousness of Mr Naik Gurung's conduct in this case and the effect it is having on my son's health, as a direct result of yourselves and counsel deceiving the court in an attempt to have my son's claim wrongly struck out and deprive him of his day in court, I am now forced to have this matter investigated by the Bsb. I therefore request Mr Garung is replaced with a different barrister to deal with this case…"

82. To return to the procedural chronology of this action, this by itself contradicts the assertion in paragraph 4 of Mrs Jamous' witness statement where she says: "I have at all times conducted my son's proceedings in accordance with the various court orders." She continues: "however, I have been hampered by evidence which I have

[11] Mrs Jamous cited this compliance as an example of how she now has a better understanding of how better to proceed.

submitted, however, has been lost internally and not registered on the court file, despite being formally submitted."

83. It is right to point out that Martin Spencer J did refer in his 27 December 2018 file note that some papers had gone missing. Also, although I have not heard the appeal which is pending against the strike out of the First Claimant's case, it appears that the relevant document was filed at court within the time period allowed and an error occurred. This has given Mrs Jamous a sense of grievance. To some extent this is understandable. However, her conduct in these proceedings, both before and since these matters occurred, has fallen well below what might be described as fair and competent conduct of the proceedings. Her own case, and that of her son in which she has clearly been the prime mover, have included many examples of failure to comply with orders and failure to follow proper procedures.

84. Mrs Jamous made a number of points in explanation of her past actions and failures and in support of the fact that they would not be repeated if she was appointed as litigation friend.

85. First she said that she has been looking after her son and, until her death in April 2018, her elderly mother. After the death it took her time to adjust.

86. Next, she has had the assistance of another person since February 2019. This person is Ms Donna Desporte. Ms Desporte sat beside Mrs Jamous during the hearing before me. She was in the past registered as an Associate of the Institute of Legal Executives. Mrs Jamous told me that Ms Desporte has experience of being a litigation friend herself. Mrs Jamous said she now understands how things work in the legal system. She had previously been desperate and had now settled down. She said she should be judged on looking at her now, rather than having regard to the past.

87. By way of brief response to these points:

- Master Davison's comments in his Order of 29 March 2018 expressly took into account the problems Mrs Jamous said she had in looking after her mother. Mrs Jamous did not comply with the directions order but issued an application for a stay which Master Davison subsequently refused on 28 June 2018, describing it as 'misconceived'. She then did not comply with his order of 28 July 2018, which he described as a 'last chance'. On each occasion Master Davison spelled out carefully the orders and the need for compliance.

- Mrs Jamous was very active before the court in November 2018/March 2019. Her energies were almost all misdirected as has already been demonstrated. This was over 6 months after her mother's death. In this period she made applications to/appeared before no fewer than 9 High Court Judges, including 3 times before Martin Spencer J[12].

- With particular relevance to Mr Jamous' claim, Mrs Jamous failed to ensure that his appeal against Master Davison's Order of 18 December 2018 was filed in time. She said that she had assumed that appeal and her appeal would have

[12] Nicol, Yip, Martin Spencer, Cheema-Grubb, Waksman, Murray, Swift and Soole JJ; also Sir Alistair MacDuff.

been heard at the same time. Whatever her understanding at the outset, she failed to have any regard to Martin Spencer J's Order of 17 January 2019, instead going without notice before Cheema Grubb J and Waksman J. I have set out a detailed account of this above at [11]-[17].

- As late as March 2019, in relation to Mr Jamous' claim, she went without notice before Swift J and then proceeded with an application which Soole J certified as totally without merit.

- In addition she failed to comply with the directions order for her own appeal prior to its hearing on 14 February 2019 – see the comments of Murray J in that judgment. That appeal was certified as totally without merit

88. It must be recorded that Mrs Jamous was polite and respectful throughout the hearing before me. Also that I do not question that she wishes to, and believes she does, act in her son's best interests. She emphasised, and I agree, that the main focus of the court in this application should be her son's claim. Nevertheless, I am afraid that it follows from the above that Mrs Jamous cannot fairly and competently conduct proceedings on behalf of her son. After such a history, which continues up to very recently, the court can have no real confidence that she would do so in the future.

89. I have taken into account Mrs Jamous' statement where she says that there is no other person whom her son trusts to conduct these proceedings, particularly after the history of his dealing with the Defendant as a professional person. There is also the exhibited letter of Dr Shakarchi dated 28 May 2019 in which he says that in his opinion "Tarik will suffer psychologically as well as physically if his mother is not allowed to continue to act as his litigation friend as he will not have had his right to justice. Tarik only trusts his mother to act for him as his litigation friend." I have carefully considered this. It is a factor which the court must weigh in the balance. However, I am forced to the conclusion that it is far outweighed by the grave shortcomings in Mrs Jamous' conduct of this claim so far, and what that would augur for the future if Mrs Jamous was appointed as litigation friend.

90. Mr Jamous' claim is a personal injury claim. It therefore benefits from Qualified One Way Costs Shifting (QOCS) under CPR Rules 44.13 to 44.16. By Rule 44.14, Mr Jamous would not be liable for any costs except to the "extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of any orders for damages and interest made in favour of the claimant". Should he succeed in his claim, his damages would therefore be liable to reduction or extinction by virtue of a set off of costs orders made against him. There have been costs orders made against the claimant(s) in these proceedings. Examples are the Orders of Master Davison 28 June 2018 (para 11), Master Thornett 19 July 2018 (para 2), Murray J 14 February 2019 (para 4) and Soole J 29 March 2019 (para 2). Many other applications have failed, but there have been no costs orders, primarily because they were either applications for permission to appeal or applications made without notice to the Defendant. Such costs orders resulting from the way Mrs Jamous has conducted the litigation could, if they continued, have a deleterious effect on any damages which Mr Jamous might recover.

91. All these matters go to prove that the claim would not be conducted in the best interests of Mr Jamous. That is not to say that Mrs Jamous is not conducting it in what

she perceives to be her son's best interests. It is that the effect of how she conducts proceedings that is not in his best interests.

92. On the other hand, should Mrs Jamous be appointed litigation friend and should Mr Jamous' claim fail, the Defendant, who is apparently funding the case privately, would be left with an even greater bill of costs than should be expected if the claim were reasonably and properly conducted. This is of some relevance given the point made in the *Masterman Lister* that part of the reason for appointing a litigation friend is for the protection of the other party. Mrs Jamous' undertaking as to costs is worth little, if anything, as she is not apparently a wealthy woman.

93. Mrs Jamous exhibited to her statement a Lasting Power of Attorney – property and financial affairs. This is date stamped as registered at the Office of the Public Guardian on 15 July 2011, having been signed by Mr Jamous on 19 April 2011. Mr Jamous appointed Mrs Jamous as his only attorney. This document does not affect the court's judgment on whether to appoint Mrs Jamous as litigation friend.

94. Finally there is the question of whether Mrs Jamous has an interest adverse to that of her son. In her witness statement she says "I confirm there is no conflict of interest in this matter, especially as I am no longer a claimant in the civil claim". The Defendant submits that she has an adverse interest. The basis for this is that Mr Jamous' claim against the Defendant for professional negligence was struck out by Master Davison on 12 July 2017 as being statute barred. His existing claim is that his psychiatric condition has been aggravated/exacerbated because, as a result of the Defendant, he did not receive the psychiatric treatment which he otherwise would have had. The Defendant's case on this claim is that Mrs Jamous would not agree to any settlement offered by Westminster City Council. In other words, any failure to receive psychiatric treatment funded by Westminster was the fault of Mrs Jamous, not of the Defendant. I did not go into this in great detail during the hearing since it was not the main basis of the Defendant's objection. However, without deciding the issue, I would have needed more persuading that of itself this would have prevented Mrs Jamous being litigation friend. It seems that there may be some merit in Mrs Jamous' point that the offer of £5000 treatment by Westminster was made as an all-in offer and one which she said the defendant advised to reject.

95. It was indicated by Counsel at the end of the hearing that on the handing down of judgment the Defendant may apply for a Civil Restraint Order against Mrs Jamous. It remains to be seen if that application will be made. If so, then I will determine it on its merits. However, I did indicate that I did not consider that the present application is one that would be certified as totally without merit. I should add that, if the application for a Civil Restraint Order is not made and while this application is not totally without merit, Mrs Jamous is on real risk, should she attempt to continue to issue applications such as some of those she has issued in the past[13], of being made the subject of a Civil Restraint Order.

96. In those circumstances the application by Mrs Jamous to be appointed litigation friend of her son must be refused.

[13] 3 certified as totally without merit by High Court Judges