Neutral Citation Number: [2023] EWHC 2873 (Ch)

CR 2016 002220, CR 2016 002221, CR-2016-002222, CR-2016-002224

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

IN THE MATTER OF BHS GROUP LIMITED, SHB REALISATIONS LIMITED (FORMERLY BHS LIMITED), DAVENBUSH LIMITED, LOWLAND HOMES LIMITED (EACH IN LIQUIDATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

15 November 2023

Before:

MR JUSTICE LEECH

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B E T W E E N:

(1) ANTHONY JOHN WRIGHT AND GEOFFREY PAUL ROWLEY (LIQUIDATORS OF BHS GROUP LIMITED, SHB REALISATIONS LIMITED, DAVENBUSH LIMITED AND LOWLAND HOMES LIMITED (ALL IN LIQUIDATION)	**Applicants**
(2) BHS GROUP LIMITED (IN LIQUIDATION)	
(3) SHB REALISATIONS LIMITED (FORMERLY BHS LIMITED) (IN LIQUIDATION)	
(4) DAVENBUSH LIMITED (IN LIQUIDATION)	
(5) LOWLAND HOMES LIMITED (IN LIQUIDATION)	

- and –

(1) DOMINIC JOSEPH ANDREW CHAPPELL	**Respondents**
(2) LENNART DAVID HENNINGSON	
(3) DOMINIC LEONARD MARK CHANDLER	

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MR JOSEPH CURL KC and **MR RYAN PERKINS** (instructed by **Jones Day**) appeared on behalf of the Applicants

MR PAUL SCHWARTFEGER (instructed by **New Media Law LLP**) appeared on behalf of the First Respondent

MS LEXA HILLIARD KC and **MS RACHAEL EARLE** (instructed by **Bark & Co**) appeared on behalf of the Second Respondent

MR DANIEL LIGHTMAN KC, MS CHARLOTTE BEYNON and **MR TIM BENHAM-MIRANDO** (instructed by **Olephant Solicitors**) appeared on behalf of the Third Respondent

Hearing dates: 10 November 2023

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APPROVED JUDGMENT

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Mr Justice Leech:

I. The Application

1. By Application Notice dated 6 November 2023 (but issued on 9 November 2023) the First Respondent, Mr Dominic Chappell ("**Mr Chappell**"), applied to adjourn the trial of the claims made against him in this action for a period of six months (the "**Application**"). The trial had been listed in a 5 day window commencing on 30 October 2023 with a time estimate of six weeks and after 5 days of pre-reading, the trial itself began on 3 November 2023.

2. On 10 November 2023 I heard the Application when Mr Chappell was represented by Mr Paul Schwartfeger of counsel instructed by New Media Law LLP ("**NML**") although they were not on the record as acting for Mr Chappell. By this time Mr Joseph Curl KC, counsel for the Applicants (the "**Joint Liquidators**"), Ms Lexa Hilliard KC, counsel for the Second Respondent, Mr Lennart Henningson ("**Mr Henningson**"), and Mr Daniel Lightman KC, counsel for the Third Respondent, Mr Dominic Chandler ("**Mr Chandler**"), had all made their opening statements. I had also heard the evidence in chief of one witness, Mr Mark Sherwood, for whom the Joint Liquidators had served a witness summary and who was giving evidence at the trial under witness summons. For all practical purposes, therefore, I had not begun to hear the oral evidence of the witnesses of fact and expert witnesses.

3. Mr Chappell played no part in the first four days of the trial. He had also played a very limited role in the procedural history of the action (below). On Friday 3 November 2023 he was released from prison on licence. He applied for an adjournment of the trial on six grounds which are set out in the continuation sheet which was annexed to the Application Notice itself and Mr Schwartfeger's Skeleton Argument.

   (a) The Applicants have unreasonably refused to provide Mr Chappell with paper copies of the trial bundle or extended disclosure which has effectively prevented him from defending himself properly.

   (b) His imprisonment has impeded Mr Chappell from preparing properly for the trial of the action.

(c) There is a risk of an unfair trial. On 3 and 6 November 2023 Mr Chappell had to attend probation appointments which prevented him from attending Court. He is also required to attend probation appointments at 11 am on each Monday and will be unable to attend Court then.

(d) Mr Chappell was diagnosed with prostate cancer whilst in prison. He had an appointment on 8 November 2023 and has further appointments on 14 November 2023, 28 November 2023 and 5 December 2023.

(e) There has been a change of circumstances since the trial was listed and Deputy ICC Judge Shaffer refused an adjournment. Disclosure has been given, trial bundles have been prepared but the Applicants have declined to give Mr Chappell access to them.

(f) The Applicants' conduct justifies an adjournment. In particular, they have ignored communications from Mr Chappell in which he made it clear that he intended to defend the claims against him and also communications from the other Respondents' solicitors stating that their letters to the Court do not provide the full picture.

4. Mr Curl opposed the Application on behalf of the Joint Liquidators. His primary submission was that I should dismiss the Application but he was prepared to be flexible and he accepted that I could give Mr Chappell (or his legal advisers) a week to read in and prepare before continuing the trial. Ms Hilliard for Mr Henningson and Mr Lightman for Mr Chandler opposed any adjournment of the trial against their clients but they supported Mr Chappell's application on the basis that I should sever the claims against Mr Chappell under CPR Part 3.1(2)(e) and direct that they are heard as separate proceedings.

5. Finally, the Application was complicated by the question whether Mr Chappell had served compliant Points of Defence and, if not, whether he was debarred from defending the claims against him at the trial. Mr Curl submitted that he was. Mr Schwartfeger submitted that he was not and that the Joint Liquidators had accepted by their conduct that he was fully entitled to participate in the proceedings. The resolution of this issue was relevant to the Application because Mr Curl submitted that I should refuse an adjournment on the basis that Mr Chappell was not entitled to participate in

the trial. Mr Lightman and Ms Hilliard submitted that he was entitled to participate but if he was not entitled to do so, this made it less of a difficulty to sever his claims.

6. In my judgment, the appropriate course is to deal with the Application in the following way. I must decide first whether the Application succeeds on the merits and Mr Chappell is entitled to an adjournment. If the application succeeds, then I must consider whether to sever the claims against Mr Chappell or to adjourn the trial against Mr Henningson and Mr Chandler (and if the Application fails, then that question falls away). In deciding these two issues, I assume in Mr Chappell's favour that he is still entitled to defend the proceedings and that if he continues to participate in the trial, he will be entitled to cross-examine witnesses and make closing submissions although not to give evidence (because he has not served a witness statement). However, I also go on to consider the question whether Mr Chappell is debarred from defending the claims against him because it will influence the conduct of the claims against him whatever the outcome of the Application.

II. Procedural History

7. The Second to Fifth Applicants are all companies in the BHS group of companies ("**BHS**" or the "**BHS Group**"). On 25 April 2016 the group went into administration and on 15 January 2018 it entered creditors' voluntary liquidation and the Joint Liquidators were appointed as the liquidators of all four companies. By email dated 4 June 2019 Jones Day, who act for the Joint Liquidators, gave notice to Mr Chappell that they intended to bring claims for wrongful trading and misfeasance against him and by email dated 4 September 2019 Mr Adrian Ring, who was a consultant at NML, replied on his behalf stating as follows:

> "I refer to your letter dated 1 August and apologise for the delay in responding. Mr Chappell has no funds with which to instruct legal representatives, nor does he have any resources to make any payments found to be due against him. He has now been served with Contribution Notices in excess of £10,000,000 that the Board of the PPF are seeking to recover. The only prospect of any settlement comes from the D&O Insurance through QBE being re-instated, or positive claims made by the BHS Companies against Arcadia, Sir Philip Green or PWC (as the Auditor for BHS)."

8. On 11 December 2020 the Joint Liquidators issued an Application Notice under sections 212 and 214 of the Insolvency Act 1986 against Mr Chappell, Mr Henningson and Mr Chandler, who were all former directors of each company. Mr Keith Smith was named as the Fourth Respondent (although he has since compromised the claims against him and been removed as a party by amendment). The Joint Liquidators applied for a directions hearing at which they asked the Court to give directions for the service of Points of Claim, Points of Defence and Points of Reply. They also set out briefly the nature of the claims made against the Respondents.

9. The Joint Liquidators' application was listed for a first hearing before ICC Judge Barber. By email dated 9 February 2021 Mr Ring wrote to Jones Day on behalf of Mr Chappell. It is apparent from his email that Mr Chappell was already serving his sentence of imprisonment by this date and he stated as follows:

> "You are aware that we have been assisting Mr Chappell and that he is currently serving a 6-year prison sentence for HRMC offences. We understand from Mr Chappell that there is currently a hearing listed for 11 February. We spoke with Mr Chappell today. Mr Chappell's position is as follows:
>
> 1. He is serving a long prison sentence and it is extremely difficult for him to be able to deal with any litigation matters.
>
> 2. He does not have access to paperwork or any electronic or online resources. Phone calls are outgoing only and are very restricted.
>
> 3. He has already been moved prisons 3 times and documentation does not always travel with him or be sent on to him.
>
> 4. With the current pandemic and the present lockdown, he is not able to obtain legal advice or meet with anybody who may be able to assist him.
>
> 5. He has no funds and no prospect of working or earning money whilst incarcerated. There is no prospect of obtaining legal aid. The D&O Insurance that was in place has been terminated (wrongly in his opinion).
>
> 6. He is obviously not able to travel and there are no facilities for him to join proceedings remotely.
>
> In the circumstances, Mr Chappell requests an adjournment of the hearing. Please consider the above and also provide a copy of our letter to the Court. For the avoidance of doubt, we are not able to be on the court record but will assist Mr Chappell where possible and appropriate for us to do so."

10. On 22 February 2022 ICC Judge Barber gave directions for service of statements of case and, in particular, for service of Points of Defence by 5 July 2021. It is clear from

her order that both of Mr Ring's emails were put before her and that she was not prepared to grant an adjournment. Mr Curl submitted that she did not adopt any principle that the litigation should wait because Mr Chappell was in prison and experiencing practical difficulties.

11. Mr Chappell did not serve Points of Defence by 5 July 2021. A case management conference was listed for December 2021 and by email dated 22 October 2021 Jones Day wrote to him again stating as follows:

> "We refer to our letters dated 20 July, 18 August and 8 October 2021 (to which we have received no response), and write in relation to the upcoming case management conference ("CMC") on Wednesday, 9 December 2021.
>
> As noted in our previous correspondence, we have not received any Points of Defence from you and understand that you have not contacted the Court directly to seek an extension of time. Although our clients have not received any indication from you since your letter of 13 July 2021 that you intend to participate in the proceedings and the time for service of any Points of Defence has now passed, we would remind you that it is very much in your interests to attend the CMC given the claims which you are facing and we are prepared to assist with any logistics in that regard should you wish to do so.
>
> We understand that HMP Onley can provide you with access to video link facilities by which you could attend remotely. Please let us know as soon as possible if you would like us to write to the relevant persons at the Court and HMP Onley on your behalf to facilitate your attendance. In the meantime, we will put the Court on notice that you may wish to attend and request that video link facilities are available on the day.
>
> Further, we understand from your letter that you have recently suffered a health diagnosis that you consider may impact on your ability to adhere to the proposed timetable for the proceedings (as set out in our letter of 8 October 2021). We would be grateful if you could provide any relevant details which you wish to be brought to the attention of the Court in advance of the CMC.
>
> Finally, the staff at HMP Onley have confirmed by telephone to us receipt of our clients' Points of Reply to each of Messrs Henningson, Chandler and Smith dated 4 October 2021, along with the accompanying bundles of documents. We trust that these have been passed to you. Please do let us know if there is anything further which you require from us."

12. By letter dated 4 November 2021 Jones Day wrote to Mr Chappell again chasing him for a response. They pointed out that they had also written to the governor of HMP Onley to ensure that appropriate facilities could be made available should he wish to

attend the CMC (and Mr Curl took me to the letter to the governor). By letter dated 8 November 2021 Mr Chappell replied as follows (original emphasis):

> "Pls find enclosed. Pls also confirm who from your firm stated in a letter to HMP Only [sic] that they were writing on "my behalf". I have reported this to the SRA. Do not ever report that you speak on my behalf. Further unless I have a full apology and a letter sent to me to Mr Tilt Gov of HMP Only [sic] confirming that you have no right to speak on my behalf and an apology I will take all action necessary. Don't do it ever again."

13. Mr Chappell enclosed with this letter a second letter addressed to the Business and Property Courts requesting an adjournment for six months. He gave the following reasons for asking for the CMC to be adjourned:

> "1. I am currently serving three years in prison, with two years left. I have no access to computing, printing and no access to any of my paperwork.
>
> 2. I am without funds and cannot afford legal representation, and therefore a litigant in person.
>
> 3. Due to the very large amount of papers and disclosure documents I am unable to cope with this.
>
> 4. I have been diagnosed with cancer and my mental health and stress this is causing me is affecting my wellbeing.
>
> 5. I suffer from dyslexia and cannot cope with this case without computing and printing equipment.
>
> 6. I am able to defend all claims given time.
>
> 7. This matter is now 6 years old and without access to documents and my computers it is impossible to defend myself."

14. By letter dated 10 November 2021 Jones Day replied stating that Mr Chappell's complaint was unjustified and that they were simply trying to facilitate remote access for him for the hearing. They also stated that the Joint Liquidators would resist the application for an adjournment. By email dated 11 November 2021 Mr Ring wrote to Jones Day on behalf of Mr Chappell again:

> "We have received instructions from our client. Mr Chappell has attempted re-categorisation to a category D prison, which will mean that he will then have the ability to deal with paperwork and take part in the current proceedings. As part of the review process, the prison and the probation service have noted that there is an outstanding court case which means they are hesitant to recommend re-categorisation. We believe it will be helpful if you write to this firm, copying the prison, or vice versa,

> confirming that your firm and your clients have no objection to Mr Chappell being re-categorised to category D status as this will increase his ability to take an active part in the court proceedings in which he is a named defendant. Should you have any queries regarding the above, please do not hesitate to contact the writer, Mr Adrian Ring."

15. By letter dated 12 November 2021 Jones Day replied. They asked Mr Ring to confirm that he was now instructed by Mr Chappell and on the record. They also addressed the question of re-categorisation as follows:

> "We do not consider that it would be appropriate for us or our clients to intervene in any re-categorisation process in respect of Mr Chappell's assigned prison status, not least in circumstances where your client informed us this week that he had reported us to the SRA for communicating with the prison in relation to this litigation. In any event, Mr Chappell has been able to make an application to Court and, it would seem, instruct your firm notwithstanding the nature of his present incarceration so we do not accept the suggestion that the nature of his current categorisation precludes his participation in the proceedings or excuses his non-compliance with Court deadlines thus far."

16. By email also dated 12 November 2021 Mr Ring replied. He confirmed that he and his firm were not on the record and were not prepared to accept service on behalf of Mr Chappell:

> "Whilst we are able to take limited instructions from Mr Chappell, we are not on the record and will not accept service. We believe that we have made this clear on many occasions before. It is not possible for us to be on the record in circumstances where Mr Chappell is in a closed prison system and we have very limited communications with him and he has very limited access to documentation. Mr Chappell is not able to deal with matters due to his current circumstances. We have explained that his change of status to category D would assist Mr Chappell and that the prison and probation service have quoted your client's case as a ground for being concerned about such recategorisation. If it is not a concern to you, it would indeed seem to be a clear benefit to assist the court and the parties. We repeat our client's request for your confirmation that there is no objection because of the current case. We are not asking you to approve such a process, merely to confirm that you do not oppose it. Unless and until Mr Chappell is recategorised and he is able to have better access to all relevant documentation, pleadings and statements and legal assistance, he is not in a position to participate in the proceedings. Mr Chappell was concerned that you communicated with the prison implying that you were somehow acting on his behalf. We see that as an entirely legitimate cause for concern and have explained the position in our previous communication. We have been asked to add one point. On a number of occasions we have stated to representatives of your firm and

> to your client that Mr Chappell would be able to have solicitors acting for him if his directors and officers insurance (D&O) with QBE was reinstated. This is not something that he has the means to do as it would require a challenge to the denial by QBE of cover, despite earlier providing significant cover and that the same insurance policy is covering a number of the other defendants. We also note that if the insurance was reinstated, it would not only cover significant legal fees, but would also cover the claims made against Mr Chappell. Funding the application for reinstatement might be unusual, but it would, if successful, provide significant benefits to your clients and also protection and the ability to fund legal advice to our client."

17. By letter dated 22 November 2021 Mr Dyal of HMP Onley wrote to Jones Day stating that Mr Chappell would be unable to attend the CMC by videolink. However, by email dated 30 November 2022 Mr John Jordan, the Prison Offender Manager for HMP Onley wrote to Jones Day stating that he had met with Mr Chappell who had not yet decided whether he would participate in the CMC on December 2021.

18. On 30 November 2021 Mr Chappell wrote two letters to Jones Day himself. I set out the first letter in full below together with extracts from the second in which he gave further detail. It is also important to note that in the second letter Mr Chappell did not oppose the timetable which was proposed or the listing of the trial in November 2023:

> "FOR THE AVOIDANCE OF DOUBT, PLEASE ENSURE THE JUDGE AT THE NEXT HEARING IS AWARE OF THE FOLLOWING POINT:
>
> 1. I AM RELEASED FROM PRISON ON 5 NOVEMBER 2023.
>
> 2. I HAVE CANCER, AND STARTING TREATMENT VERY SOON, THIS WILL BE FOR 2 MONTHS IN HOSPITAL WITH 2 MONTHS RECOVERY.
>
> 3. I HAVE NO COMPUTING, PRINTING, ACCESS TO THE INTERNET, NO ORIGINAL PAPERS REGARDING THIS MATTER SINCE THE ADMIN OF BHS.
>
> 4. I AM UNABLE TO AFFORD LEGAL ASSISTANCE AND UNLIKE OTHERS HAVE NO D&O INSURANCE.
>
> 5. I FULLY DISPUTE ALL CLAIMS AND WISH TO DEFEND ALL ALLEGATIONS MADE BY YOUR [CLIENTS?]"

> "I am in receipt of your letter of 25 November 2021 and would make the following [sic].
>
> 1. All allegations made in your notice of claim are denied.
>
> 2. As you are fully aware I do not have access to computers, printers,

> internet or any of my documentation in regard to this matter. Further, I have not been supplied with [an] index to the 2 million documents and 42 boxes of hard copy that you now state you have. This was repeated in your witness statement [dated] 25 November 2021 and this being the first I have known about this. I FORMAL REQUEST FULL DISCLOSURE ALL DOCUMENTS AS LISTED IN HARD COPY AND STATED IN PARA 30 OF YOUR ABOVE STATEMENT. Further, until I receive full disclosure I will not be in a position to file a complete defence.
>
> 3. I have CANCER and am of ill health, currently I am not able to concentrate for long periods of time and this brings on severe migraines. I am starting treatment shortly, this will mean being in hospital for 6-8 weeks with recovery of 3 months, I FORMALLY REQUEST A 6 MONTH ADJOURNMENT TO ALLOW THIS TREATMENT.
>
> 4. As stated in OLEPHANT letter of 24 November 2021, I am in full agreement [with] the timetable as set out but for a request that the hearing be set 15 November 2023 (FIRST (FIRST AVAILABLE DATE) I request this because my release date from prison is 5 November 2023, NOT AS YOU HAVE STATED IN YOUR STATEMENT AS ONLY SERVED 1 YEAR OF 6 YEAR PRISON TERM. I believe this to be deliberate misleading of the court.
>
> 5. Given that there are 2 million documents and 24 boxes of documents and it has taken a firm such as yours 5 years to prepare, how does your firm expect me with only pen and paper to prepare. The simple matter is if I were to review each document at one minute per page it would take me 41,600 hours to review the disclosure further as such time has passed I will need to review everything. To this end I will FORMALLY REQUEST THAT DEFENCE WILL BE AS MY OTHER THREE DEFENDANTS AND THE COURT TO AGREE THIS."

19. Mr Curl described Mr Chappell's requests as "unappeasable". He submitted that Mr Chappell was demanding an index to 2 million documents and 42 boxes and disclosure of all of the documents in hard copy. By letter dated 6 December 2021 Jones Day wrote to Mr Chappell stating that they had sent him hard copy bundles for the relevant hearing and of the Joint Liquidators' disclosure. They also stated that it was unnecessary for him to have access to disclosure to prepare Points of Defence. They also confirmed that his letters would be put before the Court together with his request for an adjournment:

> "Whilst we appreciate the difficulty of your current situation, it is not correct to suggest that you have had no access to documentation in respect of this matter since the administration of BHS. You have received from this Firm hard copy bundles for relevant hearings and a full set of all of our clients' Initial Disclosure. Directions for further disclosure will be given at the Case Management Conference before ICC Judge Schaffer on 9 December 2021. It is entirely unrealistic to suggest that you require

> access to the entirety of the documentation relating to BHS within our clients' possession. Nor is it right to suggest that you require further disclosure to produce a Defence. Your Points of Defence were due prior to the full disclosure stage as is ordinarily the case. A copy of your correspondence will be put before the Court, together with your request that the proceedings be adjourned. We do not intend to debate the various issues raised in your correspondence. The appropriate way in which those matters should be addressed is in any Points of Defence (albeit the time for filing that Defence has expired and our clients' rights in respect of that failure to adhere to the timetable are expressly reserved)."

20. On 9 December 2021 Deputy ICC Judge Shaffer heard the CMC and gave directions although Mr Chappell did not attend the hearing either remotely or in person. The recitals to his order record that he read Mr Chappell's letters dated 8 November 2021 and 30 November 2021 (above). He did not grant an adjournment and gave directions for trial. In particular, he ordered the trial to be fixed with a listing category A on the first available date after 1 June 2023. Paragraph 1 of his order provided as follows:

> "Unless the First Respondent do file and serve Points of Defence by 9 February 2022, he shall be debarred from defending this claim."

21. By letter dated 21 December 2021 Jones Day wrote to Mr Chappell informing him that the CMC had taken place and that his letters had been put before the Court. They also stated (original emphasis):

> "We can also confirm that copies of your letters were put before (and drawn to the attention of) Deputy ICC Judge Schaffer as requested. Having considered your circumstances, the Deputy ICC Judge did not accept your argument that incarcerated individuals are unable to access documentation or obtain legal advice and ordered that **unless you file and serve a Points of Defence by Wednesday, 9 February 2022, you shall be debarred from defending the claims alleged against you (see Paragraph 1 of the Directions Order)**."

22. Under cover of a letter dated 24 January 2022 Mr Chappell sent what he described as "Points of Defence". In the covering letter he also asked Jones Day to remind the Court of his release date and to confirm that they agreed that the hearing of this matter did not start before 13 November 2023. It is clear that he was aware that the Court might list the trial on 30 October 2023 because he stated: "This is a date just under two weeks from the Court expected earliest date." Mr Chappell's Points of Defence consisted of a

copy of the backsheet from the Points of Reply on which he had endorsed the following statements:

> "1. These Points of Reply ("Reply") address the Points of Defence of the First Respondent dated 21 Jan 22 ("Defence"). Defined terms in this Reply follow the Points of Claim dated 11 December 2020 ("POC"). Save as expressly stated in this Reply, no admissions are made in respect of any matter stated in the Defence. Save as stated below, reference of paragraph [sic] in this Reply are references to paragraphs in the Defence.
>
> 2. All Points of Claim are denied. For avoidance of doubt from paragraph 1 through to 318 of Claim.
>
> 3. I intend to rely upon the Defence filed by Mr Henningson Mr Smith and Mr Chandler dated 23 July 21, 2 July 21, 26 July 21 as attached.
>
> 4. I have no legal counsel due to lack of funds.
>
> 5. I do not have access to any computing equipment.
>
> 6. I do not have access to any of my direys [sic]/notes/office paperwork.
>
> 7. I have little access to very limited disclosure.
>
> 8. I am unable to access and electronic data room.
>
> 9. I have cancer and unable to spend time on this matter until end of treatment."

23. I consider (below) whether Mr Chappell complied with paragraph 1 of the order made by Deputy ICC Judge Shaffer. But for present purposes I will use the term the "**Points of Defence**" to describe this document. Mr Chappell did not file the Points of Defence on 24 January 2022 in accordance with Deputy ICC Judge Schaffer's order and on 2 February 2022 Jones Day sent them to Mr Ring. On 9 February 2023 Mr Ring filed them on Mr Chappell's behalf and wrote to Jones Day stating: "My office has assisted Mr Chappell in filing the pleading he submitted to you." Mr Curl described the position of Mr Ring as "half in half out". He was prepared to file Mr Chappell's statement of case but he was not prepared to accept service on his behalf or go on the record.

24. Although Mr Ring filed the Points of Defence on the last day permitted by the order dated 9 December 2021, there is no dispute that Mr Chappell did not comply with any of the other directions. He did not give disclosure, serve a witness statement or witness statements (or, for that matter, serve any expert evidence). Mr Curl told me that the various time limits were extended. But there was no dispute that Mr Chappell failed to comply with them. Moreover, Mr Schwartfeger did not suggest that Mr Chappell

wished now to make and serve a witness statement or give evidence. For example, by letter dated 11 May 2022 Jones Day wrote to Mr Chappell in relation to disclosure:

> "In accordance with paragraph 4 of the Order of Deputy ICC Judge Frith dated 17 February 2022, as varied by the Consent Order dated 28 April 2022 (both enclosed), on 6 May 2022 extended disclosure of documents was given by the Applicants to the Second to Fourth Respondents in electronic form (the "Disclosure Documents"). Please let us know if you would like our clients to provide Mr Ring (copied) with the Disclosure Documents, or if you have engaged a third party e-disclosure provider, to that provider. For the avoidance of doubt, given the volume of documentation we do not consider it appropriate to provide you with hard copies of the Disclosure Documents."

25. By email dated 15 May 2022 Mr Ring wrote to Jones Day asking for a copy of the electronic disclosure. By email also dated 15 May 2022 Mr Adam Brown, a partner in Jones Day, wrote to Mr Ring asking him to confirm that NML was now on the record for Mr Chappell or to explain the basis on which the parties should provide disclosure to him. Mr Ring replied as follows on the same day:

> "NML is not on the record in the proceedings. We did not state that we were 'without instructions'. We have not heard from our client in respect of your recent correspondence, for the reasons set out. We remain instructed to receive copies of communications and documentation generally. You may choose not to copy us in, which will mean any documentation delivered and received by Mr Chappell will remain with him and only him. He will, as we are sure you are aware, have considerable difficulties in accessing, working with and sending any electronic material."

26. By letter dated 27 May 2022 Mr Chappell wrote directly to Jones Day. He stated that he had not consented to the order dated 28 April 2022 and he insisted that all disclosure was delivered to him in hard copy and that if this was done, he would have no alternative but to apply to Court for an order to that effect. He also stated: "I will need to go through each and every document and this will take, say, 1 min per document: 33,000 + hours." Finally, he also stated that if he had not received the documents by 4 June 2022, he would have no option but to apply for an adjournment for a further 12 months.

27. Mr Curl submitted that Mr Chappell was trying to engineer a situation in which the Court would accept that he was unable to participate in this action and to conclude that

this was unfair. He pointed out that if Mr Chappell spent 33,000 hours reviewing the documents it would have taken him approximately a decade. He also submitted that he could have instructed Mr Ring to go on the record. By letter dated 7 June 2022 Jones Day wrote back to him making these points:

> "Second, with regard to your request that the Applicants provide copies of their Extended Disclosure in hard copy, and notwithstanding the fact that your request is both unreasonable and unfeasible given the volume of the Applicants' Extended Disclosure (approximately 180,000 documents), the Applicants are under no obligation to provide Extended Disclosure in hard copy format. Paragraph 13.1 of Practice Direction 51U makes clear that save where otherwise agreed or ordered, disclosable electronic documents should be produced in their native format. The only basis upon which you might demand that the Applicants depart from their obligations under the CPR would be in circumstances where you were prepared and able to meet the costs of doing so.
>
> You reference lack of legal representation. We understand, however (as explained in our letter of 10 May 2022), that you are in contact with Mr Ring who has said that whilst he is "not on the record", he is instructed to accept copies of communications and documentation more generally on your behalf. Please confirm by reply that this is the case and that you authorise us to release electronic copies of the Applicants' Extended Disclosure to Mr Ring on your behalf.
>
> Finally, your previous requests for an adjournment and the reasons for such a request have already been addressed by the Court, both at the Initial Hearing on 22 February 2021 and most recently at the case management conference on 9 December 2021 ("CMC"). At the CMC, your previous letters of 8 and 30 November 2021 in which you sought a six month adjournment on the basis that, amongst other things, you are incarcerated and without access to funds, legal representation or documentation, were brought to the attention of Deputy ICC Judge Schaffer (a copy of our 21 December 2021 letter in which this was previously explained is enclosed for your ease of reference). The Judge did not accept your argument that individuals in your position are unable to access documentation or obtain legal advice (see the enclosed extract of the CMC transcript which we provided to you with our 5 January 2022 letter). The Applicants therefore reject your request for an adjournment and will oppose any formal application you choose to make to the Court."

28. Mr Chappell did not respond to this letter for four months. However, by email dated 6 October 2022 Mr Ring wrote to Jones Day on his behalf stating that they had been authorised to receive disclosure electronically:

> "I confirm Mr Chappell is now at HMP Guys Marsh. Whilst NML is not on the court record, Mr Chappell has authorised me to request a set of

> electronic material be released to my firm. Hard copies, in so far as they are generated, should be sent directly to the Prison, although it is not always the case that documentation (even headed Rule 39) is actually safely delivered to Mr Chappell."

29. Jones Day did not provide the electronic disclosure to Mr Ring in response to this request either. Mr Curl told me that the reason why they did not do so was that not all of the other Respondents would consent to them doing so and that, accordingly, the Joint Liquidators remained bound by CPR Part 31.22. Moreover, Mr Chappell did not apply for an order that the Claimants provide disclosure in hard copy. Nor did he apply for an adjournment at any time before the Pre-Trial Review was listed for hearing in a window commencing on 28 June 2023. By letter dated 20 June 2023, and shortly before the PTR, Jones Day wrote to Mr Chappell asking him to clarify his position:

> "We write to you with regard to the trial of the Proceedings which is listed to commence in a five day window from 30 October 2023 with a time estimate of 6 weeks (including five days of pre-reading).
>
> We understand from our previous correspondence that Mr Chappell is due for release from prison around the time of the trial window and would be grateful if you could confirm this understanding but in any event more immediately indicate whether Mr Chappell has any intention of attending and/or being represented at the trial. To the extent that Mr Chappell does intend to participate in the Proceedings at trial, please let us know as soon as possible so that we can ensure that this is raised with the court at the Pre-trial Review (which is listed in a three day window from 28 June 2023) and ensure that this is factored into the trial timetable.
>
> We have copied this letter to Mr Chappell. With the copy sent to Mr Chappell, we enclose by way of service the Applicants' application to re-amend their amended Points of Claim (to be heard at the PTR if not agreed before) and the reply property report of Ms Victoria Seal dated 16 June 2023."

30. By letter dated 11 September 2023 Mr Chappell finally replied to this letter. It is clear from the text that he now had access to a computer because this letter was typed rather than written in manuscript and he confirmed this in the text:

> "I have been in prison whilst these complex proceedings have progressed. I am simply not now, and have not been, in a position to participate properly in the proceedings from a prison cell. I have no access to electronic devices except from the library where I have been unable to do any legal work on the education computers until today. I have no ability to send or receive any documentation electronically. The

> majority of the material in this case is contained within many hundreds of thousands, perhaps millions of pages of documents, all of which I have requested in hard copy on a number of occasions from you selves [sic] which you have refused to do. I've been sent various documents by poos [sic], but I do not have any legal representation to assist me in reviewing that material, understanding the implications, advising and assisting in the drafting of any replies."

31. Mr Chappell stated that he wanted the right to be heard and to challenge the case against him but he had no choice but to represent himself. He repeated his complaint that insurance cover had been withdrawn or repudiated and he stated that he had no assets or financial resources to fund his defence. However, he confirmed that he definitely intended to attend the trial and to give a full defence of the claims. Finally, he repeated his request for a hard copy of all of the disclosure material.

32. By letter dated 21 September 2023 Jones Day replied to Mr Chappell pointing out that he had made two requests for an adjournment already both of which had been refused. They also set out the following statements which Deputy ICC Judge Schaffer had been recorded as saying on 9 December 2021:

> "i. "At the moment, Mr Chappell is floating in the ether because there is no unless order against him and, of course, he may seek to try and file some form of defence or, dare I say it, try to derail the proceedings at a later stage. So what I have in mind is that, in the order that you are going to be drafting, there is an unless order against the first respondent…."
>
> ii. "Yes, I think we have mentioned the unfortunate position on cancer. Well, I understand that, but people who are in prison can still have access to their lawyers, can still give instructions, can still look at the documents, as can their lawyers, so there is no reason why points of defence cannot be prepared and served."
>
> iii. "He will be eligible for legal aid, no doubt about that, and it is just a question of whether he gets his act together. But what I am not prepared to do and why I wanted an unless order is I do not want the case to be railroaded if he suddenly pops up whenever the trial is fixed and says "Oh, I want to say this and I want to say that." That is just not going to be acceptable.""

33. In their letter Jones Day also pointed out the difficulties of providing Mr Chappell with a hard copy of the trial bundle. They offered to provide him with a login to access the trial bundle electronically from the library. They also offered to liaise with Mr Ring to facilitate his access to the electronic bundle. By letter dated 10 October 2023 they also

wrote to Mr Chappell confirming that his letter had been passed to me and enclosing a copy of my clerk's response also dated that day. In that email my clerk had stated:

> "The Judge has read the correspondence. He notes that Mr Chappell has not made an application to the Court and he is not prepared to comment further either on the merits or the consequences of such an application until or unless he does so. However, if it is of assistance to the parties, the judge has asked me to confirm that he is prepared to be flexible in relation to the timetable. The trial is listed until Thursday 14 December 2023 and the judge is happy to revisit the timetable in the light of any representations made by Mr Chappell and use all available time to complete it (if possible)."

34. Mr Chappell did not take up either of the alternatives offered by Jones Day in their letter dated 21 September 2023. Nor did he make an application to adjourn. However, by letter dated 24 October 2023 Mr Ring wrote to Jones Day as follows:

> "We refer to various letters addressed to Mr Chappell that you have copied to this firm. We wish to make the following clear. Whilst we have in the past tried to assist Mr Chappell, NML is not on the court record, and Mr Ring is not regularly in contact with Mr Chappell regarding the proceedings. Whilst we have received from you many emails with various attachments, we have not taken any action in relation to any document and have not reviewed, advised about or passed on to Mr Chappell any attached material. We refer to your letter to Mr Chappell dated 21 September 2023. We note that Mr Chappell sent a letter to you earlier that month. We have not examined or taken instructions upon this, or any letter, request or application made by Mr Chappell. However, we have been asked by Mr Chappell to comment, insofar as it is appropriate, on this letter to Mr Chappell and subsequent letters that we have been copied into."

35. Mr Ring also pointed out that the disclosure documents had not been provided to Mr Chappell and that no attempt had been made to provide him with a copy of the trial bundle. He also stated that Mr Chappell was unable to access the internet using the prison computer or store documents and cast doubt on the proposition that Mr Chappell was eligible for legal aid. He then continued:

> "We also note from your extract of the transcript that Mr Chappell's cancer diagnosis was mentioned. It is our understanding that Mr Chappell's cancer treatment begins on, and is timed to coincide with, his release on license from prison. This is likely to be at the beginning of November 2023. We refer to your letter dated 10 October 2023, which attaches an email from Paul Byrne, Clerk to the Honourable Mr Justice Leech. He notes that Mr Chappell has not yet made an application to the

> Court, and there will be no further comment, either on the merits of the consequences of such application, until or unless it is made. This response follows your
>
> email to the Court for the attention of Mr Justice Leech, dated 4 October 2023. We note that, in paragraphs 3 and 4 of your letter, you refer to previous communications and the CMC on 9 December 2021. It appears to us that there is a continuing misconception concerning Mr Chappell's supposed ability to engage properly with the proceedings - both in respect of documentation and legal assistance.
>
> We note that you refer to Mr Chappell being assisted by Mr Ring of New Media Law LLP ('NML'). Whilst you have confirmed, on multiple occasions, that NML is not acting and is not on record, you have suggested that we have provided some assistance to Mr Chappell and have been copied into correspondence sent to him. The implication is that there is some level of engagement that may mean Mr Chappell can meaningfully participate in a multi-party 6 week complex High Court trial. For the avoidance of any doubt, we have previously indicated, and continue to indicate, we have not read the material sent to Mr Chappell beyond the letters addressed to him, have not provided the material to Mr Chappell or give any advice in relation to such material. We are simply not in a position to do so. We have made it clear to Mr Chappell that he must respond directly, and make it clear that NML is not advising on any aspect of the litigation and is not to be treated as a proper recipient for any document in the case."

36. Mr Curl submitted that Mr Chappell was now doing exactly what Deputy ICC Judge Schaffer wanted to avoid, namely, to "pop up" at the last minute and to attempt to "railroad" the proceedings. He also pointed out that Mr Ring was adopting an inconsistent position and no longer wanted to accept documents on Mr Chappell's behalf when they were made available. By letter also dated 24 October 2023 Jones Day replied briefly to Mr Ring stating as follows:

> "We refer to your letter of earlier today. We note that you are not on the record in relation to Mr Chappell, nor are you in regular contact with him, nor do you review documentation we provide to you on his behalf. We also note that you have advised Mr Chappell to correspond directly with us and
>
> on that basis we will not communicate with you further in this matter unless the position changes."

37. On 3 November 2023 Mr Chappell was released from prison. On 6 November 2023 the trial began and on the same day Mr Chappell applied for remission for fees. On 9 November 2023 this was granted and he issued the Application. By email dated 8 November 2023 he also wrote to the Court stating as follows:

> "As I am sure you are aware I was released from HMP Guys Marsh Prison on Friday am, I had to attend probation in Weymouth that afternoon and again on Monday pm. Yesterday I had the first opportunity to speak to a KC on open access send him the necessary paper work to put together an adjournment of this matter. I am doing this on a number of points a few, set out below
>
> 1. I have not been given any discloser regarding this matter after many requests to Jones Day.
>
> 2. I have not been sent the Pre trial Bundel [sic].
>
> 3. After numerus attempts and speaking to many legal firms, I could not get a legal aided firm to act
>
> 4. I have cancer and have a number of hospital appointments and meeting with specialists during my cancer treatment in November and early December.
>
> I am intending to file in court the adjournment documents later today."

III. Adjournment

A. The Law

(1) General Principles

38. Mr Schwartfeger cited a number of authorities which set out the principles which the Court must apply where a party makes an application to adjourn either at or immediately before trial. In *Fitzroy Robinson Ltd v Mentmore Towers Ltd (No 2)* (2009) 128 Con LR 91 Coulson J (as he then was) refused to adjourn a trial which was due to commence 17 days after the hearing of the adjournment application. He set out the relevant principles applicable to "eleventh hour" adjournments at [8] and [9]:

> "8. What are the relevant principles governing an application of this kind? It seems to me that the starting point is the overriding objective (CPR Part 1.1), the notes in the White Book at paragraph 3.1.3, and the decision of the Court of Appeal in *Boyd and Hutchinson (A Firm) v Foenander* [2003] EWCA Civ 1516. Thus, the court must ensure that the parties are on an equal footing; that the case - in particular, here, the quantum trial - is dealt with proportionately, expeditiously and fairly; and that an appropriate share of the court's resources is allotted, taking into account the need to allot resources to other cases.
>
> 9. More particularly, as it seems to me, a court when considering a contested application at the 11th hour to adjourn the trial, should have specific regard to:
>
> a) The parties' conduct and the reason for the delays;

> b) The extent to which the consequences of the delays can be overcome before the trial;
>
> c) The extent to which a fair trial may have been jeopardised by the delays;
>
> d) Specific matters affecting the trial, such as illness of a critical witness and the like;
>
> e) The consequences of an adjournment for the claimant, the defendant, and the court.
>
> I deal with each of these considerations in turn below."

39. The "delays" in [9](a) to which the judge was referring were the delays in complying with Court orders and preparing for trial rather than any delay in making the application to adjourn. He set out those delays at [10] to [15] and concluded that the Defendants' application was motivated by attempts to improve their negotiating position and that all of the difficulties which they faced at trial were their own responsibility. He, therefore, refused the adjournment. In *Elliott Group Ltd v GECC UK* [2010] EWHC 409 (TCC) Coulson J also applied the principles from his earlier decision in *Mentmore Towers (No 2)* in deciding an application made in February to adjourn a trial in July. He reached the conclusion that the case could be properly and fairly prepared in the time remaining before trial: see [29].

(2) Medical Evidence

40. Mr Schwartfeger cited the decision of the Court of Appeal in *Bilta (UK) Ltd v Tradition Financial Services Ltd* [2021] EWCA Civ 221 in relation applications to adjourn on medical grounds. On 11 January 2021 the Defendant applied to adjourn the trial of claims for dishonest assistance and wrongful trading under section 213 of the Insolvency Act 1986 which was due to start on 25 January 2021 for medical reasons. Marcus Smith J refused the application but on 14 January 2021 Lewison LJ granted permission to appeal. On 19 January 2021 the Court of Appeal allowed the appeal for reasons to be given later. When they handed down judgment Nugee LJ (with whom Peter Jackson and David Richards LJJ both agreed) set out the relevant principles at [30]:

> "In those circumstances we were taken to a number of authorities, dating back to long before the introduction of the CPR, and received much more extensive submissions on the law than it appears the Judge did. I consider the authorities below, but it may be helpful if I indicate my conclusions

> on the relevant principles at the outset. These are that Mr Scorey is right that the guiding principle in an application to adjourn of this type is whether if the trial goes ahead it will be fair in all the circumstances; that the assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist; that although the inability of a party himself to attend trial through illness will almost always be a highly material consideration, it is artificial to seek to draw a sharp distinction between that case and the unavailability of a witness; and that the significance to be attached to the inability of an important witness to attend through illness will vary from case to case, but that it will usually be material, and may be decisive. And if the refusal of an adjournment would make the resulting trial unfair, an adjournment should ordinarily be granted, regardless of inconvenience to the other party or other court users, unless this were outweighed by injustice to the other party that could not be compensated for."

41. When he came to explain his reasons for allowing the appeal Nugee LJ considered that the appropriate question to ask was whether it would be fair to have a trial without the oral evidence of a key witness (Ms Mortimer) and if the answer was No whether that was outweighed by prejudice which could not be compensated: see [57]. He concluded that the judge had not asked the right question and then went on to reconsider the position at [62] to [64]:

> "62. I can deal with this quite shortly. Ms Mortimer, as the Judge recognised, is an important witness for TFS. Mr Parker expressly accepted that he had never sought to suggest otherwise. Cases where an individual is accused of dishonesty are paradigm examples where the trial judge will benefit from seeing the witness being cross-examined. The case against her is heavily based on inferences from transcripts of recordings of telephone conversations. TFS is undoubtedly justified in wanting her to give oral evidence to explain, if she can, why those inferences should not be drawn. She has given a witness statement, but to proceed without her oral evidence and without it being tested in cross-examination will undoubtedly limit the weight that the trial judge would be able to give it. In circumstances where it appears very likely that she will be able to give oral evidence at a trial in or after October 2021, it does not seem fair to me that TFS should be deprived of the opportunity of calling her in person.
>
> 63. It is not suggested that there would be any uncompensatable prejudice to the Claimants. The Judge himself accepted that the claim was "just" about money, and that it was not one of those cases where there would be extraordinarily adverse consequences if it were put off again (Jmt at [21]). It is admittedly already a stale case, but the Claimants' case, as I have explained, does not rely on recollections of witnesses which would be liable to fade, and there seems no reason to think that the presentation of its case will be adversely affected. TFS has

> offered in correspondence to pay the Claimants' reasonable legal costs thrown away by the adjournment, and, in the event the claim succeeds, to pay interest in respect of the period from April 2020 until the commencement of the re-listed trial (without prejudice to any arguments the Appellant may make in respect of earlier periods and as to the basis and rate of interest). Mr Parker suggested that that would not fully cover the Claimants against liabilities under their CFA arrangements, but that was not a point dealt with in the Judgment or raised in the Respondent's skeleton, nor have we seen the CFA in question, and I do not think we can go into it.
>
> 64. Those were the reasons why I agreed that the appeal should be allowed and the trial adjourned to the first available date after 1 October 2021. We were told that in the normal course the trial would be listed from about March 2022. It is not for us to direct whether the trial should be expedited, but we directed the parties to write to the Chancellor of the High Court inviting him to consider the question."

42. Mr Curl also reminded me of the jurisprudence relating to the quality of evidence which is required to support an application by a party to adjourn a trial or hearing on medical grounds or ill-health. Mr Schwartfeger had included the decision in *Decker v Hopcraft* [2015] EWHC 1170 (QB) in his bundle of authorities and Mr Curl made his submissions by reference to that decision, which involved an application to adjourn a strike out application in a libel action. Warby J set out the relevant principles at [21] to [30]:

> "21. The decision whether to adjourn a hearing, and the decision whether to proceed with a hearing in the absence of a party, are both case management decisions. The court is required to exercise a discretion, in accordance with the overriding objective, in the light of the particular circumstances of the individual case. The authorities provide valuable guidance, however.
>
> 22. A court faced with an application to adjourn on medical grounds made for the first time by a litigant in person should be hesitant to refuse the application (*Fox v Graham Group Ltd*, The Times, 3 August 2001 per Neuberger J, as he then was). This, however, is subject to a number of qualifications. I focus on those which seem to be of particular relevance in the present case.
>
> 23. First, the decision is always one for the court to make, and not one that can be forced upon it. As Norris J observed in *Levy v Ellis-Carr* [2012] EWHC 63 at [32]:
>
> > "Registrars, Masters and district judges are daily faced with cases coming on for hearing in which one party either writes to the court asking for an adjournment and then (without waiting for a reply) does not attend the hearing, or writes to the court simply to state that they will not be attending. Not infrequently "medical" grounds are

> advanced, often connected with the stress of litigation. Parties who think that they thereby compel the Court not to proceed with the hearing or that their non-attendance somehow strengthens the application for an adjournment are deeply mistaken. The decision whether or not to adjourn remains one for the judge."

24. Secondly, the court must scrutinise carefully the evidence relied on in support of the application. In *Levy v Ellis-Carr* at [36] Norris J said this of the evidence that is required:–

> "Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case)."

25. Norris J's approach in *Levy v Ellis-Carr* was expressly approved by Lewison LJ in *Forrester Ketley v Brent* [2012] EWCA Civ 324 [26], upholding a decision of Morgan J to dismiss an application to adjourn on medical grounds. It was followed by Vos J (as he then was) in refusing an application to adjourn the trial in *Governor and Company of the Bank of Ireland v Jaffery* [2012] EWHC 734 (Ch) [49].

26. In the context of what amounts to proper medical evidence it is pertinent to note two points made by Vos J in the *Bank of Ireland* case. At [19], referring to a GP's letter running to some 11 lines which confirmed that the defendant had been signed off work for three weeks, he said this: "It is important to note that a person's inability to work at a particular job is not necessarily an indication of his inability to attend court to deal with legal proceedings. It may be but it may also not be." At [58] Vos J indicated that he took into account the contents of the defendant's litigation correspondence, observing that he "has been communicating with the court and with the claimants over a lengthy period in the most coherent fashion. He is plainly perfectly capable of expressing his point of view, taking decisions and advancing his case".

27. The third main qualification to Neuberger J's observations in *Fox v Graham* is one that is implicit, if not explicit in what Norris J said in *Levy v Ellis-Carr*: the question of whether the litigant can or cannot participate in the hearing effectively does not always have a straightforward yes or no answer. There may be reasonable accommodations that can be made to enable effective participation. The court is familiar with the need to take this approach, in particular with vulnerable witnesses in criminal cases. A similar approach may enable a

> litigant in poor health to participate adequately in civil litigation. But the court needs evidence in order to assess whether this can be done or not and, if it can, how.
>
> 28. Fourthly, the question of whether effective participation is possible depends not only on the medical condition of the applicant for an adjournment but also, and perhaps critically, on the nature of the hearing: the nature of the issues before the court, and what role the party concerned is called on to undertake. If the issues are straightforward and their merits have already been debated in correspondence, or on previous occasions, or both there may be little more that can usefully be said. If the issues are more complex but the party concerned is capable, financially and otherwise, of instructing legal representatives in his or her place and of giving them adequate instructions their own ill-health may be of little or no consequence. All depends on the circumstances, as assessed by the court on the evidence put before it.
>
> 29. The fifth point that may be of significance here is that, sometimes, it may appear to the court at the outset or after hearing some at least of the rival arguments that in truth the matter before it is one on which one or other side is bound to succeed. The closer the case appears to one or other of these extremes the less likely it is that proceeding will represent an injustice to the litigant. Thus, in *Boyd & Hutchinson (A Firm) v Foenander* [2003] EWCA Civ 1516 the Court of Appeal proceeded with the hearing of an appeal on the basis that it would refuse an adjournment if it concluded, as it did, that the appeal had no real prospect of success. This appears consistent with the conclusions of Neuberger J in *Fox v Graham* that where the court refuses a litigant in person an adjournment it may proceed in his absence if satisfied either (a) that it is right to grant the applicant the relief sought or (b) that the application is plainly hopeless.
>
> 30. I accept the point made by Ms Wilson, in order to assist the court, that when considering an adjournment application the court's approach should to an extent be affected by whether the matter involves applications of a case management nature, or final determinations on the merits such as an order striking out a statement of case or part of it, where Article 6 of the Convention is engaged. The court will need to be more cautious in cases failing within the second category. Nonetheless, the factors I have identified above are relevant in both contexts."

(3) Article 6

43. Finally, Mr Schwartfeger relied on *Akcine Bendrove Bankas Snoras v Antonov* [2020] EWHC 3514 in which Mr Christopher Hancock QC (sitting as a judge of the High Court) granted an adjournment to the First Defendant, Mr Antonov, on the basis that he was in prison in Russia. After a careful analysis of the authorities he set out the principles which he proposed to apply at [104] and then applied them at [105]:

"104. I derive the following principles from the above submissions and authorities:

(1) First, it is clear that I have a discretion as to whether to proceed to hear and determine the case in the absence of the Defendant: see CPR 23.11 and the discussion in *DPP v Jones*.

(2) Secondly, in my judgment, any decision to continue in the absence of the Defendant, particularly where that Defendant is unrepresented, must be exercised with great caution: see again *DPP v Jones*, in the criminal context, and *Fox v Graham Group Ltd*, cited in the notes to CPR at 23.11.2. As it was put in *Jones*, it would only be in rare and exceptional cases that the trial would proceed. This was of course a criminal trial, but it points up the need for extreme caution.

(3) Thirdly, this is particularly so because of the necessity to take into account the provisions of Article 6 of the European Convention on Human Rights and the associated jurisprudence.

(4) The Court of Appeal's decision in *DPP v Jones* provides helpful guidance, albeit in the criminal context, as to the types of consideration that it is appropriate for me to bear in mind.

(5) More specifically, looking at the Article 6 authorities themselves, I accept Snoras's summary, taken from *Reid*. Thus there are 3 considerations.

i. The first is what the requirements of Article 6 are in the civil context. I accept that there is no right to be present at trial, and that this is simply an aspect of the principle of equality of arms. However, in the current case, I take the view that two matters are of particular importance. The first is the nature of the claims, which involve serious allegations of fraud. I would naturally therefore wish to hear Mr Antonov's evidence on such allegations. The second is the evidence of Mrs Yampolskaya to the effect that her husband is unable to give proper instructions to lawyers from gaol in Russia. Although Snoras challenged this proposition, they produced absolutely no evidence to meet the assertion. I take the view, therefore, that I cannot conclude that Mr Antonov is able to instruct lawyers and is simply choosing not to do so.

ii. The second question is waiver. Mr Antonov has, through his wife, indicated a desire to take part in the proceedings, albeit that this was done only late in the day, and may be said to run counter to his lack of effective participation at earlier stages. Given the fundamental nature of the Article 6 right, any waiver must be clear and unequivocal. In my judgment, although the matter may be said to be finely balanced, I am not satisfied that there has been a waiver on his part of his right to be heard and to participate in the proceedings.

iii. The fact that there can be a rehearing, although there would be no absolute right to one, may be said to alleviate the fact that Mr Antonov has not had an opportunity to take part in the hearing before me. However, the issuance of a judgment would, as Mrs Yampolskaya has pointed out, lead to the possibility of enforcement against her husband. Whilst a stay of execution would avoid this problem, it would render the

> grant of judgment somewhat pointless.
>
> (6) I also bear in mind that this action has been ongoing for many years, and that, although delay is clearly attributable to Mr Antonov to some extent, it would also seem to me that it has not been pursued with any great vigour to date. Whilst a further delay until next March (when Mr Antonov will be freed, at least from his current sentence) is clearly regrettable, in my judgment, viewed against the background of the action as a whole, that delay is not such as to justify proceeding in the absence of Mr Antonov.
>
> 105. In the final analysis, after giving the matter very careful consideration, I have come to the conclusion that I should exercise my discretion so as not to continue to judgment against Mr Antonov at this time. In particular, I am concerned to ensure that there is no breach of Mr Antonov's fundamental right to a fair hearing under Article 6 of the Convention. Instead, in my judgment, I should give directions for the further conduct of this matter so as to ensure that, so far as possible, a trial can take place in a manner which provides safeguards for Mr Antonov's rights within a timescale that also respects Snoras' rights. I will invite submissions as to what those directions should be at a further hearing which should be fixed for a date when Snoras's representatives and Mrs Yampolskaya and any representative she wishes to instruct can be present."

44. In *Antonov* the Claimant made a submission that the First Defendant had waived his right to be present at trial because he failed to apply promptly. In support of this submission the Claimant relied on the decision of the Court of Appeal in *JSC BTA Bank v Ablyazov (No 9)* [2013] 1 WLR 1845 where Mr Ablyazov was held to have waived his right to apply to the judge to recuse himself on grounds of bias: see [89] to [92]. The facts of that case were very different to the facts of the present case and, indeed, to the facts of *Antonov* itself. But Mr Hancock summarised the principles to be derived from it at [42] and [43]:

> "42. A party which wishes to raise an objection to a hearing going ahead should act promptly: *see JSC BTA Bank v Ablyazov (No.9)* [2013] 1 WLR 1845 (CA). The court made the following observations:
>
> (1) A litigant who wishes to object to a trial going ahead has a positive duty to speak under CPR r.1.3 ("The parties are required to help the court to further the overriding objective"). It is contrary to that duty to allow the court and the other parties to waste time and resources in preparing for a trial which, if the litigant's application is successful, could not start on the fixed date: para.89.
>
> (2) Any application should be made as soon as the litigant is aware of the grounds for the application: para.90.
>
> (3) Mr Ablyazov's late application was "a tactical decision, designed to

> derail the trial": para.91.
>
> 43. Although *Ablyazov (No.9)* concerned the potential loss of a trial date, the concerns identified by the Court of Appeal (the waste of time and costs occasioned by a late adjournment) apply with equal force to a late application to adjourn a heavy summary judgment application."

B. Application

(1) General Principles

(a) Conduct and reasons for the delay

45. There are two delays to consider in the present case: first, Mr Chappell's delay in making the Application and, secondly, his delay in preparing for trial. The reasons for Mr Chappell's delay in making the Application are obvious. He was not released from prison on licence until 3 November 2023. He made two requests for an adjournment before ICC Judge Barber and Deputy ICC Judge Schaffer. Although they were not formal applications, it is difficult to see what more he could have done at the time. Likewise, he put the parties and the Court on notice that he intended to apply for an adjournment in his letter dated 22 September 2023 and he made the Application promptly on his release from prison. Mr Curl submitted that he signed the Application Notice but did not issue it until a week later. Again, I am satisfied that Mr Chappell was waiting for the Court to determine whether he was entitled to remission from fees and I asked the Court staff to resolve that issue so that I could list the Application as soon as possible.

46. However, I reject Mr Schwartfeger's submission that the Joint Liquidators' conduct was responsible for Mr Chappell's delay in preparing for trial (or his inability to do so) because they failed to provide Mr Chappell with hard copies of disclosure and then the trial bundle. I have set out the procedural history in some detail. Subject to one point, I am satisfied that the Joint Liquidators provided all reasonable assistance to Mr Chappell in the course of the action and cannot be held responsible for either his delay either in issuing and making the Application or his delay in being ready for trial.

47. The only real criticism which could be made of the Joint Liquidators was that they failed to provide Mr Ring with electronic disclosure in response to his requests dated 15 May 2022 and 6 October 2022. However, I accept Mr Curl's submission that CPR Part

31.22 prevented the Joint Liquidators from disclosing documents provided by the other parties to Mr Ring unless expressly authorised by them to do so or unless they came on the record. It is arguable that it would have been enough for Mr Ring to confirm that he had Mr Chappell's express authority to receive the documents and to assist him in sifting them. But it is unnecessary for me to decide whether they could or should have disclosed the documents because there is no evidence that Mr Chappell would have been ready for trial if they had done so. Moreover, as Mr Curl submitted, the easiest course was for Mr Chappell to instruct NML to act for him in the proceedings and he chose not to do so. In my judgment, the Joint Liquidators are not responsible for Mr Chappell's inability to prepare for trial or any delay in him doing so.

48. Mr Curl described Mr Chappell's conduct as studied or tactical helplessness and submitted that I should refuse an adjournment for this reason. But I am not satisfied that Mr Chappell was being tactical with the aim of derailing the trial (as the Court of Appeal found in *Ablyazov (No 9)*. In my judgment, it was practically impossible for him to defend these proceedings whilst in prison.

(b) The consequences and whether they can be overcome

49. Mr Curl submitted that there is no principle that a party in prison is entitled to an adjournment of civil proceedings because of the practical constraints which a prison sentence imposes upon them. He also relied on the fact that both ICC Judge Barber and Deputy ICC Judge Schaffer refused adjournments for that very reason and he relied on Deputy ICC Judge Schaffer's comments on 9 December 2021 as recorded in Jones Day's letter dated 21 September 2023. I accept that submission. For this reason, I would only have been prepared to grant a short adjournment of either a week or two weeks to enable Mr Chappell to get up to speed before continuing the trial. Moreover, I would only have granted such an adjournment even if he had been continuing to act in person.

50. In my judgment, this would have struck a fair balance between the interests of the parties and the Court and limited the consequences of the delays which Mr Chappell has encountered both in making the Application and in preparing for trial. However, it became clear during the hearing of the Application that the consequences of these delays could not be overcome in this way for two reasons: first, because of Mr

Chappell's medical condition and, secondly, because the parties' availability after the end of the current trial window are extremely limited. I was, therefore, faced with the stark decision whether to continue the trial of the claims against Mr Chappell immediately after handing down this judgment or to adjourn it to be re-fixed. For the reasons which I set out below, it seems to me that the only sensible course left was to sever the claims.

(c) The extent to which a fair trial has been jeopardised by the delays

51. But for his medical condition, I am satisfied that a fair trial of the claims against Mr Chappell would not have been jeopardised by the delays and that a fair trial could have taken place if I had granted a short adjournment to enable Mr Chappell to get up to speed and present his case whether with the benefit of legal representation or in person.

(d) Specific Matters

52. I deal with the medical evidence below. The specific matters to which I have otherwise had regard are as follows. First, I take into account Mr Schwartfeger's position that Mr Chappell will act in person if the trial continues and that he was only instructed to appear on the Application. Secondly, I take into account the fact that Mr Chappell has not made or served a witness statement and will not be giving evidence. If the trial of the claims against him proceeds, his participation is limited to cross-examination of other witnesses and submissions in closing. Moreover, the extent to which he is entitled to put a positive case to any of the witnesses or in closing submissions apart from on the question of remedy remains in doubt. I take the view now that I would probably take a pragmatic approach on these issues but none of the other parties has yet made submissions on this issue. Thirdly, I take into account the fact that Mr Chappell shares an interest with Mr Henningson and Mr Chandler in relation to many of the issues, particularly, in relation to the wrongful trading claim. In my judgment, these factors would have justified a short adjournment to get up to speed but no more.

(e) The consequences for the parties and the court

53. Mr Chandler's team served the third witness statement of Jan Maarten Sentongo Mugerwa dated 10 November 2023 in answer to the Application setting out the costs consequences for Mr Chandler of an adjournment of the trial for six months. In

particular, he estimated the additional costs of Mr Chandler's full participation in the action and the costs thrown away by the adjournment. The exhibit to his witness statement included an estimate prepared by Bark & Co for Mr Henningson's costs. Mr Chandler's and Mr Henningson's costs are very substantial indeed. Although the Joint Liquidators did not file similar evidence, I am entitled to take the view that their costs would be of a similar order. Further, it was Mr Mugerwa's evidence that the insurance cover of Mr Henningson and Mr Chandler will be very significantly eroded by an adjournment and there is a risk – I put it no higher – that it will be exhausted if the trial is adjourned.

54. In my judgment, the additional costs which the other parties will incur if the trial is adjourned is a very strong reason indeed for granting Mr Chappell no more than a brief adjournment. I have found that the Joint Liquidators were not responsible for Mr Chappell's delay in preparing for trial and there is no evidence that he would be able to meet any of these costs if his defence fails. Indeed, he claims to have no financial resources at all.

(2) Mr Chappell's Medical Condition

55. Mr Schwartfeger took me through the medical evidence which Mr Chappell has been able to assemble since his release. The letters which he produced show that Mr Chappell is on medication and that he has appointments for surgery in Salisbury as an outpatient on 28 November 2023 and 5 December 2023. Mr Chappell told me personally (and I accept) that he had only become aware of these appointments very recently and could not have known about them very much earlier. Mr Schwartfeger also told me on instructions that Mr Chappell has an appointment on 14 November 2023 which will involve recovery time of 2-3 days, that his appointment on 28 November 2023 will involve recovery time of 5-7 days and that his appointment on 5 December 2023 will incapacitate him for a similar period. He submitted, therefore, that Mr Chappell could not participate in the trial even if I gave him a short period to get up to speed. Ms Hilliard on behalf of Mr Henningson also submitted that there was no realistic way that Mr Chappell could participate in the trial.

56. Mr Curl submitted that the correspondence which Mr Chappell had put before the Court did not satisfy the test in *Levy v Ellis-Carr* (above) and that I should give it little weight

in the same way that Warby J gave little weight to the medical evidence in *Decker v Hopcraft*. I have considered this submission carefully but I am not prepared to dismiss the evidence of Mr Chappell's medical condition as a reason for an adjournment. He has consistently told the Court that he has cancer and relied on this as a reason for the adjournment. Mr Curl did not suggest that he was exaggerating his condition or that he did not need treatment. In the ordinary course, I might have adjourned the application to enable Mr Chappell to obtain expert evidence to support the Application but the issue is time critical and I must determine it now.

57. Although treatment for prostate cancer may be considerably less invasive than it used to be, I accept that it is not practically possible for Mr Chappell to participate in a heavy trial whilst undergoing treatment. In my judgment, it would not be fair to continue with the trial of the claims against Mr Chappell in circumstances where the effect of refusing the adjournment would be to preclude his participation. In my judgment, it will make the resulting trial of the claims against Mr Chappell unfair if I refuse the adjournment and, in those circumstances, I take the view that those claims should be adjourned irrespective of the convenience to the other parties and other court users: see *Bilta* (above) at [30] and the reasoning of Nugee LJ at [62] to [64].

(3) Article 6

58. For these reasons, it is unnecessary for me to consider Mr Chappell's right to a fair trial under Article 6 separately. However, in my judgment I should exercise the same caution as Christopher Hancock QC did in *Antonov* and this dictates the approach which I should approach Mr Chappell's medical condition. I am also satisfied that Mr Chappell has not waived his right to appear at the trial (unlike Mr Ablyazov in *Ablyazov (No 9)*) and has consistently maintained that he wishes to attend and to be heard. I will, therefore, adjourn the claims against Mr Chappell.

IV. Severance

C. The Law

59. CPR Part 3.1 sets out the court's powers of case management. The relevant powers which I have to consider in this case are paragraphs (b), (e) and (i) which provide as follows:

> "(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.
>
> (2) Except where these Rules provide otherwise, the court may—….
>
> (b) adjourn or bring forward a hearing;…
>
> (e) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;…
>
> (i) direct a separate trial of any issue;…
>
> (3) When the court makes an order, it may—
>
> (a) make it subject to conditions, including a condition to pay a sum of money into court; and
>
> (b) specify the consequence of failure to comply with the order or a condition."

60. Mr Lightman submitted that I had power to sever the claims against Mr Chappell from the claims against Mr Chandler and Mr Henningson under CPR Part 3.1(2)(e) and to order a separate trial of those claims under CPR Part 3.1(2)(i). None of the other parties disagreed with that submission and no authority was cited to me for the principles upon which the court should exercise these powers. The editors of the Supreme Court Practice (2023 ed) Vol 1 state that CPR Part 3.1(2)(e) gives the court power to divide the present proceedings if their joinder into a single proceeding will lead to inconvenience: see 3.1.2 (p.74). I propose to apply that test.

D. Application

61. The present case is unusual. Mr Chappell applied for an adjournment of the trial of the claims against him. But he did not oppose the continuation of the trial of the claims against Mr Henningson and Mr Chandler. Moreover, Mr Lightman and Ms Hilliard submitted that I should adopt that course and sever the claims against Mr Chappell from the claims against their clients. Mr Curl did not oppose that course but opposed an adjournment of the claims against Mr Chappell if that resulted in an adjournment of the trial of all of the claims. None of the parties submitted, therefore, that it would be inconvenient for me to sever the claims.

62. I was strongly opposed to the suggestion that I should sever the proceedings at the hearing of the Application and for two reasons. First, I was concerned about the use of Court time. A second trial of the claims against Mr Chappell will involve significant

court time at the expense of other court users. But secondly, and more importantly, I was concerned that a second trial would have to take place before a different judge and that there was a risk of inconsistent findings which would be contrary to the proper administration of justice. However, after careful consideration of the submissions which were made to me, I am satisfied that it is more convenient to sever the claims against Mr Chappell under CPR Part 3.1(2)(e) for the following reasons:

(1) Given that I have granted an adjournment of the claims against Mr Chappell, this is the "least worst" option. It is not ideal but the prejudice to the parties if I adjourn the trial of the claims against Mr Henningson and Mr Chandler is very significant indeed. All of the parties will incur significant additional costs and there is a risk that the insurance cover of both Mr Henningson and Mr Chandler would be eroded entirely.

(2) There is a possibility that the Joint Liquidators will not pursue the claims against Mr Chappell. If the claims against Mr Henningson and Mr Chandler fail, they may take the view that it is not worth pursuing the claims against Mr Chappell. They did not dispute the fact that Mr Chappell is an uninsured party and he claims to have no assets with which to satisfy a judgment. Moreover, even if they are successful against Mr Henningson and Mr Chandler, the Joint Liquidators may take a commercial view that it is not worth pursuing the claims against Mr Chappell.

(3) Even if the Joint Liquidators take the view that they wish to pursue the claims against Mr Chappell, it remains open to them to apply for summary judgment or to strike out Mr Chappell's defence: see further below.

(4) Finally, if Mr Chappell had not applied for an adjournment but had simply declined to participate in the trial, it would have been open to him to apply to set aside any judgment under CPR Part 39.3(5). He would no doubt have had a heavy burden in persuading the Court to set aside the judgment but he would have been able to provide intelligible reasons for doing so, namely, his recent release from prison and his medical condition. If I sever his claims now, there is no risk of such an application.

(5) The severance of the claims against Mr Chappell will no doubt have consequences for the way in which the Court approaches the trial of the claims against Mr Henningson and Mr Chandler. For example, if the claim for wrongful trading against them succeeds, then the Court has power to make a declaration that they are liable to contribute to the assets of the relevant BHS Group company. It may be more difficult to assess the level of contribution which they should be required to make because they both blame Mr Chappell to a greater or lesser extent. However, none of the parties submitted that this would be an impossible task for the Court to carry out. Moreover, in the last resort it would remain open to the Court to adjourn the question of contribution until the claims against Mr Chappell are resolved.

V. Points of Defence

63. Mr Curl urged me to decide the status of Mr Chappell's Points of Defence and whether he was debarred from defending the claims against him under the order made by Deputy ICC Judge Schaffer on 9 December 2021. On 24 January 2022 Mr Chappell served the Points of Defence and on 9 February 2022 Mr Ring filed that document on his behalf. Mr Curl submitted that this document did not answer to the description "Points of Defence" because it did not comply with CPR Part 16.5 which is headed "Contents of defence" and which provides as follows (so far as relevant):

> "(1) In the defence, the defendant must deal with every allegation in the particulars of claim, stating—
>
> (a) which of the allegations are denied;
>
> (b) which allegations they are unable to admit or deny, but which they require the claimant to prove; and
>
> (c) which allegations they admit.
>
> (2) Where the defendant denies an allegation—
>
> (a) they must state their reasons for doing so; and
>
> (b) if they intend to put forward a different version of events from that given by the claimant, they must state their own version.
>
> (3) If a defendant—
>
> (a) fails to deal with an allegation; but
>
> (b) sets out in the defence the nature of their case in relation to the issue to which that allegation is relevant,
>
> the claimant is required to prove the allegation.

> (4) Where the claim includes a money claim, the claimant must prove any allegation relating to the amount of money claimed, unless the defendant expressly admits the allegation.
>
> (5) Subject to paragraphs (3) and (4), a defendant who fails to deal with an allegation shall be taken to admit that allegation."

64. Mr Curl submitted that CPR Part 16.5(1) was mandatory and that Mr Chappell had not complied with it. He also submitted that because Mr Chappell had not complied with CPR Part 16.5(2) he must be taken to have admitted all of the allegations in the Points of Claim and that it was embarrassing for him to rely on the Points of Defence of the other Respondents because they all contained allegations against him which he could not have intended to adopt. Mr Curl submitted that for all these reasons he had not served proper Points of Defence within the meaning of paragraph 1 of the order dated 9 December 2021 and is now debarred from defending.

65. Mr Curl did not rely on any authority in support of his submission that I ought to construe paragraph 1 of the order dated 9 December 2021 as if it meant "valid Points of Defence" or "Points of Defence which comply with CPR Part 16.5" and I am not prepared to do so for the following reasons:

(1) The notes to CPR Part 3.1(3) in the Supreme Court Practice Vol 1 (2023 ed) at 3.1.14 state that any condition imposed on compliance with an order should be stated clearly and precisely. If Deputy ICC Judge Schaffer had intended to debar Mr Chappell from defending the action if he failed to serve fully particularised Points of Defence or Points of Defence which complied with CPR Part 16.5 he should have said so. He did not.

(2) But in any event, I very much doubt whether the judge had this in mind. He knew that Mr Chappell was in prison and not legally represented and he made the order to give Mr Chappell a final chance to engage with the proceedings. It would be very onerous indeed to impose a condition on a litigant in person that they are required not only to serve a statement of a case but also to comply with all of the requirements or rules of pleading in doing so. I am satisfied that the order was not intended to have that effect.

(3) Moreover, the rule itself prescribes a remedy for failure to comply with the requirements or rules of pleading. CPR Part 15.6 provides that Mr Chappell

should be taken to admit the allegations in the Points of Claim to which he has not properly pleaded. It does not prescribe that he should be debarred from defending or that his Points of Defence should be treated as struck out.

66. In my judgment, therefore, Mr Chappell is not debarred from defending the claims against him pursuant to the order dated 9 December 2021. However, I travel this far with Mr Curl. If Mr Chappell does not make an application to amend the Points of Defence, then he runs the risk that the Court will treat him as having admitted many of the allegations in the Points of Claim pursuant to CPR Part 16.5(5). Moreover, if Mr Chappell makes such an application, the Court will adopt the normal approach to late amendments and require him to satisfy the Court that they have a real prospect of success. Likewise, if Mr Chappell intends to give evidence and to advance a positive case at a second trial, I would expect him to serve a witness statement and to apply for relief against sanctions.

67. If Mr Chappell does not make these applications, then he can expect the Joint Liquidators to make an application for judgment on admissions or for summary judgment. I see no reason why I cannot give further directions in relation to the conduct of any applications which the Joint Liquidators and Mr Chappell may issue in the period before I have given judgment following the present trial (even if I cannot be the trial judge). Moreover, in the absence of any application by Mr Chappell to amend or to give evidence himself, I see no reason why I could not hear the Joint Liquidators' applications for judgment on admissions or summary judgment or, indeed, why I could not rely on any findings which I have made following the present trial in deciding those applications. However, I leave open all of these issues for further consideration should they arise.

V. Disposal

68. I therefore grant the Application and I will adjourn the trial of the claims against Mr Chappell for further directions until after I have handed down judgment following the present trial. I will also direct that those claims should be dealt with as separate proceedings pursuant to CPR Part 3.1(2)(e) and that the claims against Mr Henningson and Mr Chandler should continue to be heard at the present trial. I am handing down this judgment in draft on 13 November 2023 and I will give the parties one day to

consider this judgment and to apply for permission to appeal (if any of them wish to do so). I will also direct that the trial resume at 10.30 am on Wednesday 15 November 2023. In the meantime, I invite the parties to agree a form of order (if possible) and a new timetable to enable the trial to be concluded by Friday 8 December 2023.