



IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No. GC 2 of 2014

BETWEEN

KURT SCOTT

Plaintiff

-and-

CARIBBEAN UTILITIES COMPANY LIMITED

Defendant

IN CHAMBERS via Zoom

Appearances: Mr. Jonathan Jones QC instructed by Ms. Kim Grandage of KSG for the Plaintiff
Mr. Henry Steinberg QC instructed by Mr. Gary Hendrikse and Ms. Natasha Partos of Campbells for the Defendant.

Before: Hon. Mme Justice Marlene Carter (Actg.)

Heard: 18 January 2022

Draft Ruling circulated: 26 January 2022

Ruling Delivered: 2 February 2022

RULING

1. This is the application of the plaintiff seeking an order of the court to engage the services of a second psychiatrist and flows from a previous application which was dismissed by this court in October 2021. The plaintiff had up to that time engaged the services of Dr Wayne Kampers as his expert psychiatrist. Among its reasons for dismissing the application, the court stated as follows:

“50. The crucial issue for this court is that no direct inquiries have yet been made of Dr. Kampers about his changed opinion. Without Dr. Kampers’ full explanation, this court is unable to find that the



Plaintiff has shown good reason for needing an additional expert. I do not agree with the Plaintiff's submission that no purpose could be achieved by asking Dr. Kampers about his change of mind because one could expect his answers to be self-exculpatory. This is an expert witness who has enjoyed the confidence of the Plaintiff up until the joint statement was released. There is nothing before me to cause me to doubt his professionalism."

2. After further application this court ordered that the plaintiff could ask further questions of Dr. Kampers, to seek a "full explanation". These further questions were sent to Dr. Kampers by letter dated 25 November 2021. Dr Kampers' report in response was filed on 21 of December 2021("the December Report").
3. Counsel for the plaintiff submitted that a further psychiatric evaluation is essential before the trial of this matter, now set for 18 February 2022. It is submitted that it is essential that the plaintiff is reassessed by a psychiatrist to assess and diagnose his mental state; to assess his capacity to instruct lawyers and/or manage his financial affairs; to assess his care requirements and employment capacity; and whether the Plaintiff requires treatment and ultimately his prognosis.
4. Counsel stated that if the plaintiff's psychiatric state has deteriorated his claim for damages will increase since he may be entitled to claim damages for care treatment and any other required treatment flowing therefrom. Also, if it is determined that the plaintiff is likely to be a protected party claims may be advanced for a court of protection or trustee fees which are likely to be significant.
5. Counsel for the plaintiff further contends that the further psychiatric evaluation should not be carried out by Dr Kampers as there is now good reason to find that Dr Kampers is an unsatisfactory expert.
6. Apart from this issue surrounding Dr. Kampers, counsel for the plaintiff submits that the plaintiff suffered a brain injury and reports from a neurologist and a neuropsychologist are reasonably required. There is also a need for updated care evidence to take account of the plaintiff's decline in mental health. Ultimately, if the



court agrees the above steps are now necessary, these steps will necessitate an adjournment of the trial listed for 18 February 2022.

7. The defendant opposes the plaintiff's applications.

The application for a second psychiatrist

8. The December Report detailed as follows:

- (1) Dr. Kampers was not provided with video surveillance footage of the plaintiff before the joint report was produced after consultation with the defendant's expert, Professor Greenberg, on 26 February 2020 (hereinafter 'the joint assessment report'). At the time that he received the original documents from the plaintiff's previous attorneys the surveillance footage was not part of the material disclosed to him. The surveillance footage was to have been sent to him via a separate link. He did not receive this link. Dr. Kampers did not view the surveillance footage prior to his meeting with the defendant's expert.
- (2) Dr Kampers met with the plaintiff after the production of the joint assessment report. This meeting was arranged because of further material shared with Dr. Kampers by the plaintiff's previous attorneys after the joint assessment report was produced. He met with the plaintiff on the 16th of March 2020. Following the meeting, Dr. Kampers detailed the following to the plaintiff's previous attorneys by email on the 30 March 2020:

"When I reviewed Mr Scott on Monday, 16 March 2020 his hostile and distrustful attitude towards me had certainly increased. I felt that this also applied to the world in general. Throughout the review, he presented as a man who was on edge. It was very difficult to reason or rationalise with him.

I am concerned that he is displaying chronic trauma-inflicted personality changes of a paranoid nature and, there may even be a delusional component to his thinking, including grandiosity. I recommend that he has a more detailed personality assessment for example SCID-II, with a view to amending the joint statement prepared by myself and Professor Greenberg.

Mr Scott is extremely preoccupied and unshakeable regarding his paranoid ideas. My concern is that these will be his only focus within a court hearing. As such, I am concerned about his

capacity and decision-making in this context. I therefore think that the role of a litigation friend (his mother) should be considered as it is my understanding that she would enable the litigation and act in Mr Kurt's Best Interests."

- (3) Dr. Kampers received an email from the plaintiff's previous attorneys on the 2 September 2021 advising him that they no longer represented the plaintiff.
- (4) Dr Kampers indicated that in his professional opinion the joint assessment report prepared by himself, and Professor Greenberg should be nullified because he had specifically recommended a more detailed psychiatric assessment on the plaintiff with a view to an amended joint statement in his email of 30th March 2020 to the plaintiff's previous attorneys.
- (5) Dr Kampers further indicated that because neither himself nor Professor Greenberg had been provided with the information sent to him by the previous attorneys prior to the preparation of the joint assessment report, that the joint assessment report was prepared based on the perceived progress that the plaintiff had made. However, with hindsight, if they had been provided with the aforementioned further material, that these opinions may have been significantly different and certainly his own opinion would have been significantly different.
- (6) He further stated that *"the contents of our joint statement cannot be considered to be true nor to the best of our knowledge and belief as we did not have vital information about Mr Scott at the time of preparation of these reports."*
- (7) Dr. Kampers recommended that the court take these matters into consideration and allow the plaintiff to have a more formal and detailed personality assessment and then be re-examined by both himself and Professor Greenberg independently so that *"we can then consider the evidence and our views and prepare our revised joint statement"*
- (8) Dr. Kampers declined to answer any of the questions apart from questions 1 and 2 to which he gave the above responses, stating that the questions were obviously based on the joint statement prepared by himself and Professor Greenberg at a time when they were not appraised of nor provided with all available evidence.



The Plaintiff's submissions

9. Counsel for the plaintiff argued that Dr. Kampers' evidence and his approach to this case has been unacceptable and the court has before it, material to lead the court to doubt his professionalism. The plaintiff referred to the following:
- (a) Dr. Kampers was prepared to alter a long-standing view about the severity of the plaintiff's psychiatric condition, his function and ability to work on the basis of surveillance evidence which he had not seen;
 - (b) Dr. Kampers did not bring it to the attention of the court that he had not seen the surveillance evidence;
 - (c) Dr. Kampers did not chase the plaintiff's attorneys for such surveillance evidence to be sent to him;
 - (d) Dr. Kampers could have asked Professor Greenberg for a copy of such surveillance evidence but choose not to;
 - (e) Dr. Kampers other reason for changing his mind, that the plaintiff was now in a relationship, is not consistent with the fact that the plaintiff was in a relationship when he was first examined by Dr Kampers in 2014;
 - (f) Dr. Kampers has deliberately not answered all of the questions posed to him by the plaintiff's attorneys;
 - (g) Dr. Kampers appears not to have considered the medical entries appended to the questions which shows that the plaintiff has suffered a brain injury;
 - (h) The plaintiff, who had already lost confidence in Dr. Kampers, has now been vindicated in this view by Dr Kampers' recent responses;
 - (i) Dr. Kampers' change of mind was unjustified and not supported by the surveillance evidence; and
 - (j) Dr. Kampers has made a serious error.
10. Counsel for the plaintiff submitted that if the plaintiff is not permitted to call alternative psychiatric evidence, he would have an understandable sense of grievance

judged objectively. However, if the plaintiff was entitled to rely on alternative psychiatric evidence and it was accepted, the defendant would not have an understandable sense of grievance when judged objectively. The defendant would be disappointed, but the judge would have considered all the expert evidence and reached a carefully considered conclusion.

The Defendant's response

11. The defendant opposes the application and submits that the court should make simple directions for the finalisation of the expert psychiatric evidence and provide for the plaintiff to attend the trial.
12. Counsel for the defendant submitted that the court must continue to be guided by the approach which it adopted in its judgment of 20th October 2021: *“the granting of permission for the instruction of a second expert by the same party on the same subject is rare; the plaintiff must demonstrate good reason for needing an additional expert. The court should look to determine whether the further evidence sought was reasonably required to resolve the proceedings.”*
13. The defendant's position is that while the defendant does not agree the opinion evidence of Dr. Kampers and will rely on the expert evidence of Professor Greenberg, criticisms of him by the plaintiff are unfair, unjustified and tendentious and it is not reasonably necessary for the plaintiff to instruct another psychiatric expert.
14. Counsel submitted that the suggestion that Dr. Kampers should have chased this material or informed the court is unrealistic because he had made comments and recommendations which were ignored. The defendant contends that there is no valid reason for the plaintiff to be given permission to instruct another expert with all the additional delay and expense that this will inevitably involve. Counsel for the defendant argues that any further examination or assessment of the plaintiff can be carried out by Dr. Kampers and Professor Greenberg who are already very familiar with the plaintiff, his medical background and issues involved. Most importantly, to do so would also enable the trial to proceed.



15. Regarding the plaintiff's position that he has lost confidence in Dr Kampers, counsel for the defendant invited the court to consider that while the defendant does not accept Dr. Kampers' view that there is evidence of a new psychiatric condition, the extent to which there is evidence of a different psychiatric problem comes solely from Dr Kampers whose evidence the plaintiff now seeks to reject.
16. Counsel for the defendant concluded *"the reality is that this plaintiff wants another opinion in the hope that he will obtain a report that he deems favourable to his case. The authorities suggest, for good reason that this should not be allowed. A mere change of opinion by an expert is not enough. A party will rarely be allowed to change expert after a joint statement. This is a very late application. Allowing the plaintiff to obtain another expert will inevitably result in the adjournment of another trial."*

Court's considerations and conclusions

17. The plaintiff's renewed application for a second psychiatric expert was made after direct questions were sent to Dr. Kampers pertaining to his observations, conclusions, and prognosis as stated in the joint assessment report, which appeared to have altered significantly from previous reports submitted by him regarding the plaintiff.¹ Most of these questions related to his seeming reliance on the surveillance footage showing the plaintiff having certain interactions in public and the fact of him being in a current relationship. It has now been confirmed by Dr. Kampers that he did not see the surveillance footage, and it can therefore be inferred that he may have relied on what the defendant's expert had indicated to him was represented in the surveillance footage.
18. It has now also been confirmed that very soon after the joint assessment report was produced, on 16 March 2020, Dr. Kampers evaluated the plaintiff again and made his own observations and assessments of the plaintiff. After making these observations

¹Reports dated 14 March 2014, 28 March 2017 and 10 November 2019



Dr. Kampers communicated to the plaintiff's then attorneys that he had reservations about the prognosis as had been stated in the joint assessment report. He has reiterated this position in his letter to the plaintiff's present attorneys to which he referred in the December Report. He states categorically that he does not now stand behind the assessment and conclusions in the joint assessment report.

19. While the plaintiff may have had had reason to feel aggrieved if his expert had, having not had the benefit of seeing the surveillance footage, maintained, and recommitted himself to the findings in the joint assessment report, the present position of Dr. Kampers is that the joint assessment report should not be relied upon. Within a month of having made that joint assessment, Dr. Kampers saw the plaintiff himself and having had the benefit of information not previously shared with himself or Professor Greenberg when they prepared their joint assessment, was adamant that the report not be relied upon, and the plaintiff be re-assessed.
20. It is unfortunate that the plaintiff's present attorneys do not appear to have had the benefit of Dr. Kampers' indication in March 2020 regarding the joint assessment report when they were retained by the plaintiff in January 2021.
21. Whereas, on the initial application, the plaintiff complained of Dr. Kampers' change of opinion, that it was unreasonable for him to have done so based solely on the surveillance footage and information about the plaintiff being in a then current relationship, the basis of the application presently before the court has shifted somewhat. The present application concerns not only whether it was reasonable for him to have changed his mind based solely on the surveillance footage and information about the plaintiff's relationship (which the plaintiff argues could not support his change of opinion), but that he did so without himself having seen the surveillance footage, apparently relying on the defendant expert's report of the contents of the surveillance footage.

22. I return to the dicta in ***Stallwood v David***². Teare J. referred to several relevant factors—

- “a. The mere fact that an expert had changed or modified his opinion following an experts’ meeting could not by itself be a reason for permitting a party who was disappointed thereby to adduce evidence from another expert.*
- b. However, under Part 35.12(5) a party was not bound by the experts’ agreement and, if a dissatisfied party could show that his expert had modified his opinion which could not properly or fairly support his revised opinion, Part 35 did not rule out granting permission to call a further expert, though such a case would be rare.*
- c. The court should consider whether, having regard to all the circumstances of the case and the overriding objective to deal with cases justly, further evidence was “reasonably” required to resolve the proceedings.*
- d. The claimant, having made no inquiries of her expert about his changed opinion, was unable to show good reason for needing an additional expert.”*

23. On the facts of ***Stallwood*** the claimant was found to have been unable to show good reason for needing an additional expert. She did not make inquiries of her expert about his changed opinion. In the instant matter this court found the plaintiff, on the initial application, to be in a similar position as the claimant in ***Stallwood***. However, after denying the plaintiff’s initial application, the court permitted the plaintiff to make inquiries of Dr. Kampers about his changed opinion.

24. The plaintiff in addition to the matters raised at paragraph 21 above argues that the central reason for the court allowing the second expert to be instructed in ***Stallwood*** was because of the special feature in that case: *“the manner in which the judge had dealt with the claimant’s application, which, judged objectively, would leave the*

² [2007 RTR 11



claimant with an understandable sense of grievance if she was not permitted to rely on the additional expert evidence". Counsel for the plaintiff submits that the actions of Dr. Kampers in agreeing the joint assessment report without the benefit of the surveillance footage, changing his opinion based on the footage that he had not seen and not seeking to have the footage from the plaintiff's previous attorneys before agreeing the joint assessment report, coupled with the lack of explanation of how the plaintiff's being in a relationship also affected his changed diagnosis/prognosis, would now cause the plaintiff to have an understandable sense of grievance were he not permitted to rely on an additional psychiatric expert and that he has lost all confidence in Dr. Kampers.

25. In assessing this application there is no issue that evidence from the plaintiff's psychiatrist is essential to the plaintiff's case. Updated assessments will be required. There is a trial date set in this matter of the 18 February 2022, approximately one month away. There have been other efforts to bring this matter to trial which have not succeeded. There have been at least two previous trial dates which have been adjourned. There are several experts on both sides who are aware of and may need to give evidence at trial. Apart from the plaintiff's position the court must also consider that of the defendant. It is now approximately eight years since the claim was filed and more than 10 years since the unfortunate incident that has led to this matter being before the court.
26. Counsel for the plaintiff has indicated to the court that there is another psychiatrist who is willing to assess the plaintiff and who could be available to attend at trial, if necessary.
27. The circumstances surrounding this application are unusual. While it is indeed curious that Dr. Kampers, in agreeing the joint assessment report, did so without himself seeing the surveillance footage, it is still not clear to this court the full extent to which Dr. Kampers relied on the surveillance evidence to change his views. In any event, the court cannot ignore the fact that Dr. Kampers has now disavowed that joint

assessment report. Indeed, Dr. Kampers has expressed, since March 2020, an opinion which seems more in keeping with his previous assessments of the plaintiff.

28. I am unable to agree with the plaintiff's submissions regarding Dr. Kampers. Dr. Kampers has explained the circumstances in which he agreed the joint assessment report. The surveillance footage was not forwarded to him. It may be that he can be criticized for not actively seeking the footage before the joint meeting. However, his assessment of 30 March 2020 is not averse to this plaintiff's case. This is an important factor in this court's conclusion on this issue.
29. Without making any determination on the extent to which the information regarding the plaintiff's relationship status, which it is fair to infer from the joint assessment report Dr. Kampers was made aware of at the time of that joint consultation, influenced Dr. Kampers' revised opinion, there is an indication from the matters referred to in Dr. Kampers' reports of March 2017 and November 2019, that Dr. Kampers may have had information before him in February 2020 which he did not have at the time of these previous reports, it not having been disclosed to him by the plaintiff.
30. In Dr. Kampers' report of 28 March 2017, he reported the following from his assessment of the plaintiff:

"He said he had completely lost interest in being intimate with anybody, because he was that self-conscious about how he looked."

.....

"He told me his social life was virtually non-existent, that he'd become a solitary figure who'd had very limited social outlets."

He was not interested in forming close or intimate relationships, and he said when back in Florida, he still relied a lot on his father for day-to-day home management."

.....

"Social Life

- *6/8 (Severely affected)*

Private Life



- 6/8 (Severely affected)

Private Leisure

- 6/8 (Severely affected)

Relationships

- 8/8 (Very severely affected)

Sexual Relationships

- 8/8 (Very severely affected)”

“He remains disabled in terms of

- *Ability to work*
- *Home Management*
- *Social Life*
- *Private Leisure*
- *Social relationships, and*
- *Sexual relationships”*

31. Dr. Kampers’ report of 19 November 2019 noted as follows:

“He said he remains disinterested in forming any close or intimate relationships as he was self-conscious of how he looks.”

32. In his report, filed on behalf of the defendant, Professor Greenberg, having considered Dr. Kampers’ previous reports of March 2014, March 2017 and November 2019 noted the following at paragraph 43.3 of this report.

“Mr. Scott reported that he could not clearly remember the details of what had happened to him during the explosion or the months afterwards although he did have many memories of that time. He had a strong, possibly distorted, negative belief about the reason why the explosion happened and the response of CUC after the accident. He also had persistent, and possibly distorted, negative beliefs about the world in which he felt that people talked about him and were following him/being overly nosy in what he was doing. This belief caused him to feel angry. I note that he had told Dr Kampers that he was unable to form close relationships and had a diminished interest in significant

activities but both from his GP records and what he told me at interview, it was evident that he had been able to form relationships with females both when he was in Miami (he fathered a son from a relation whilst he was there) and when he had been in the UK as evidenced in his GP records. I also note that he had not told Dr Kampers about his current relationship which from what he told me was ongoing when he saw Dr Kampers in November 2019. Mr Scott also told me that he had enjoyed spending time at a car club and was also able to enjoy playing pool and was quite good at it. As such, Mr Scott reported two or more negative alterations in cognitions and mood PTSD symptoms.”

33. During his interviews of the plaintiff, as reflected in the March 2017 and November 2019 reports, Dr. Kampers stated that he *“did not think that there were any attempts to conceal information [on the part of the plaintiff].”*
34. Counsel for the plaintiff has submitted that Dr Kampers’ other reason for changing his mind in the joint assessment report, that the plaintiff was now in a relationship, is not consistent with the fact that the plaintiff was in a relationship when he was first examined by Dr Kampers in 2014. In his submissions on this issue counsel for the plaintiff expressed: *“A 6-month relationship with his then girlfriend [referring to the relationship described by Professor Greenberg in his report] is no different to the relationship with Chanel.”* [the relationship in 2014].
35. While factually that may be correct, Dr. Kampers’ change of mind may not be considered so inconsistent if, as it now appears, he was confronted with the fact that the plaintiff had been in a relationship/s during the periods subsequent to his March 2014 report, information which contrary to what he had been said to him by the plaintiff and which formed at least part of the basis of his assessments of the plaintiff in 2017 and 2019.
36. Dr. Kampers has provided various reports of this plaintiff’s condition since at least 2014. With this background, he may be better placed to assist the court regarding the plaintiff than a second psychiatric expert who at this point would have only limited interaction with the plaintiff before the trial. However, that is not the determinative factor on this application.



37. The plaintiff's application to instruct a second psychiatric expert is denied. The factors surrounding the two limbs of the plaintiff's application for a second psychiatric expert both the surveillance evidence and the evidence of the plaintiff being in a relationship are not straightforward. However, there is before the court information which goes some way to explain Dr Kampers' change of opinion as evidenced by the joint assessment report. I do not agree that Dr. Kampers' change of mind was for illogical or irrational reasons. I find that there is an explanation for his change of mind. I therefore find that Dr. Kampers should assist the court at trial. The plaintiff should submit to a further assessment by Dr. Kampers before trial.
38. At paragraph 42 of the 7th affidavit of Gary Hendrikse filed in on behalf of the defendant it was suggested as follows:

"The Defendant respectfully submits that the circumstances suggest a fair and proportionate approach as follows. The Plaintiff's attorneys should, at last, send the surveillance evidence to Dr Kampers. Then, as a matter of urgency, Dr Kampers and Professor Greenberg should examine Mr Scott in January 2022. After their reports are prepared, they can discuss the matter and prepare a further joint report without the need for the 18 February 2022 trial date being lost. If any issues remain in dispute after the further joint report, the experts can be asked about them in evidence in chief and cross-examination.

39. The plaintiff was due to be examined by Professor Greenberg on the day following the hearing of this application, the 19 January 2022. The course proposed by the defendant above should be adopted to ensure that the best evidence is before the court at trial.

The application for instruction of a neurologist and neuropsychologist

40. Counsel for the plaintiff has also applied for the court to order that a neurologist and a neuropsychologist should be engaged on the plaintiff's behalf. The basis of this application is what counsel described as *"extensive evidence before the court that P[plaintiff] might have suffered a brain injury."*
41. The court was referred to Dr. Kampers' indication in the December report:



“On the basis of the information provided to me by Mr Patel, I am concerned that he may be displaying chronic trauma inflicted personality changes of a paranoid nature, and that there may even be a delusional component to his thinking including grandiosity.

As such, this can be considered to be a brain injury.”

42. Counsel also referred to various notations in the plaintiff’s medical records which seem to refer to a brain injury. The 3rd affidavit of Kim Grandage, filed in support of this application states as follows:

“15. Since my 1st Affidavit we have received and reviewed further medical records from the Plaintiff’s former Attorney. There are over 35,000 pages of such records.

16. Extracts from these records are in the bundle at pages 19 – 278. It is our understanding these form part of the Plaintiff’s rehabilitation records. These demonstrate that the Plaintiff suffered loss of cognition and memory at certain times in his recovery. Unfortunately the records are somewhat contradictory since at times the Plaintiff is recorded as having impaired cognition and comprehension, but at other times, these matters were described as normal.

17. It is submitted that these records raise the possibility further that the Plaintiff suffered a head injury and requires examination from a neuropsychologist and neurologist.

18. We have not located any neuropsychological assessment in the records despite the reference to one being required.”

43. I have been referred to various lines in reports recording the plaintiff’s treatment in further support of this application.³ I note that most of those instances stem from a period very soon after the plaintiff was injured in 2011 and refer only to a relatively short period of time, from March 2011 to June 2011. While I note the indication in Ms. Grandage’s affidavit that the plaintiff’s attorneys have seen no indication that a neuropsychological assessment report was prepared, I am mindful that this plaintiff has been under the almost constant care of several doctors in various disciplines for

³ See paragraph 33 of the Plaintiff Skeleton Arguments for the hearing of 18 January 2022



over a decade and there has been no indication from any of these doctors, subsequent what was referred to in the early reports, to support the fact of a brain injury.

44. I am mindful that the plaintiff's present attorneys received a large amount of the evidence upon which they rely in this application sometime after they were instructed in January 2021. However, this is not a factor that will have the greatest weight on this application. The plaintiff has been represented by competent attorneys from the time that these proceedings were instituted, and these medical records have been in possession of the plaintiff's attorneys for some time.
45. Counsel for the plaintiff has stated that while the court may have turned its mind to the instruction of a neurologist and neuropsychologist in its judgment of 21 October 2021, in fact, no application was made by the plaintiff regarding these experts at that time, the court was instead just alerted to the possibility of the need for such experts. In any event, the court notes its approach as expressed therein: "*Counsel for the Plaintiff may wish to consider the need for the renewal of such application once all the Plaintiff's medical records are in hand and have been fully considered*".
46. The additional information furnished by the plaintiff on this application show that a brain injury was actively considered as a possibility when the plaintiff was first hospitalised. I agree with the defendant that after it was actively considered the plaintiff was never diagnosed as having suffered a brain injury.
47. Dr. Kampers indication at paragraph above does not assist this application when taken in context.
48. The principles to be considered are stated in the cases of ***T v Imperial College Healthcare NHS Trust*** [2020] EWHC 1147 and ***Heismer v The Islamic Republic of Iran & Anor*** [2019] EWHC 2073:
- (i) *Whether there is good reason for the late application.*
 - (ii) *The significance of the new material*
 - (iii) *Considerations of prejudice to each party*
 - (iv) *The need to do justice to all the parties having regard to the overriding objective.*

- (v) *If there is not a very late application then the court's discretion is to be exercised simply in accordance with the overriding objective.*

49. Other considerations are set out in ***Knapman v Carbines*** [2020] EWHC 3586:
- (i) *Whether such expert evidence is reasonably required to resolve an issue in the proceedings.*
 - (ii) *Whether the applicant has adopted a "cards on the table" approach and has not sought to obtain expert evidence in advance of the application.*
 - (iii) *Whether a trial date has not been fixed and therefore will not need to be adjourned. Is it a "very late application?"*
50. Mindful of the considerations expressed above and these authorities, I am not satisfied that the instruction of a neurologist and neuropsychologist is reasonably required to resolve the issues in this case. I am especially mindful of the timing of the application. This court has previously expressed concerns about the *significant delay*, which may be occasioned if a neurologist and a neuropsychologist were to be permitted to be instructed. Concerns surrounding delay are even more relevant now that a trial date has been set in this matter.
51. I consider too the overriding objective: *"The overriding objective of these Rules is to enable the Court to deal with every cause or matter in a just, expeditious and economical way."*
52. The application for the instruction of a neurologist and neuropsychologist is denied.
53. The application for a further updated schedule of loss and counter schedule is denied.

The attendance of the plaintiff at trial.

54. The defendant has sought the attendance of the plaintiff, in person, at trial. I have reviewed the defendant's submissions. The plaintiff has submitted that he should be permitted to attend the trial by video link for various reasons including that he was assured by the Learned Chief Justice that he would not need to attend, that he is not now vaccinated against Covid-19 and he would be at significant risk if he attends, that



he may be unable to obtain health insurance and that he may need to quarantine in accordance with the present COVID-19 Regulations because he is unvaccinated.

55. I have been referred to part of the the “Video Conferencing Guide” appended to Practice Direction No.2/2004 on ‘Proceedings by way of video conferencing’. Paragraph 1 of the guidance states as follows:

“VCF may be a convenient way of dealing with any part of proceedings: it can involve considerable savings in time and cost. Its use for the taking of evidence from overseas witnesses will, in particular, be likely to achieve a material saving of costs, and such savings may also be achieved by its use for taking domestic evidence. It is, however, inevitably not as ideal as having the witness physically present in court. Its convenience should not therefore be allowed to dictate its use. A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving, but as to whether its use will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In particular, it needs to be recognized that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.”

56. As previously expressed, this court is very concerned with the question of delay. This concern relates to the need for the matter to be determined. The accident which resulted in the plaintiff’s injuries took place in 2011. Proceedings were first filed in 2014. One of the court’s concerns is for the welfare of the plaintiff himself. The experts engaged by both parties have expressed that the resolution of these proceedings will benefit this plaintiff and that its continuing non-resolution may already have a negative effect on his well-being and mental health.
57. I note that the plaintiff has not presented any medical evidence to buttress his submission that he be permitted to give evidence via video link
58. However, in the interests of ensuring an effective trial date on 18 February 2022, I will order that the plaintiff be permitted to attend the trial via video link.



59. The trial date for this matter, commencing 18 February 2022, is confirmed. Counsel have referred to a draft timetable for the trial. The court would be grateful if this could be finalised and agreed between the parties.
60. The plaintiff will pay the defendant's costs on this application.

A handwritten signature in black ink, appearing to read "Carter J.", with a horizontal line underneath.

Hon Justice Marlene Carter (Actg.)
Judge Grand Court