IN THE COUNTY COURT AT CHESTER Case No. A00CH865

Before His Honour Judge Pearce, sitting at Liverpool Civil and Family Centre on 30 November 2017, judgment handed down at Chester Civil Justice Centre on 21 December 2017

MRS SELINA LYLE

Claimant

and

ALLIANZ INSURANCE plc

Defendant

JUDGMENT

Appearances: Appellant/Claimant: Mr Jonathan Dale

Respondent/Defendant: Mr Richard Whitehall

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

References in this judgment in bold are to the divider number followed by the page number of the relevant document.

Introduction

1. This is an appeal against a decision of District Judge Sanderson handed down on 28 July 2017 following a hearing on 21 June 2017. District Judge Sanderson allowed an application by the Defendant pursuant to CPR 3.3(5) to set aside an order made by District Judge Newman on 7 March 2017, by which the latter lifted an earlier stay[1] in the proceedings and directed that the proceedings (which had been started as Part 8 proceedings) continue as Part 7 proceedings.

2. The proceedings involve a claim by the Claimant for damages for personal injuries and consequential losses suffered in a road traffic accident on 22 August 2011. The Defendant's liability for that accident has never been in dispute.

3. During the application before District Judge Sanderson, two matters were in issue. The same two matters have been in issue in this appeal, namely:

[1] The stay had been granted by District Judge Sanderson on 10 July 2014 (**7/43**). It was a general stay with no limit as to time. As described below, some courts impose stays that are limited as to time.

(a) Whether the Court has a power to direct that proceedings that were issued pursuant to CPR Part 8, to protect the Claimant's position on limitation, but were stayed to allow compliance with the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ("*the RTA protocol*") pursuant to paragraph 16.2 of the Practice Direction 8B to the CPR ("*PD8B*"), may be directed to continue as Part 7 proceedings;

(b) If so, whether on the facts of this case the Court should lift the stay and direct that the proceedings continue as Part 7 proceedings.

4. The first of these raises a point of general importance on which there is no reported authority. Both the ex parte order of District Judge Newman and the reasoned decision of District Judge Sanderson suppose that there is such a power; the learned authors of the White Book think otherwise.

5. If such a power does exist, the application of the power to the facts of the case is a matter of interest only to the immediate parties, but the principles to be applied in considering that application are of more general application.

The application of the RTA protocol and its interrelationship with the PI protocol

6. The RTA protocol applies where:

(a) the claim is for damages arising from a road traffic accident which occurred on or after 30 April 2010;

(b) the claim includes damages in respect of personal injuries;

(c) the Claimant values the claim at not more than £10,000 ("*the upper limit*") on a full liability basis;

(d) if proceedings were started, the small claims track would not be the normal track for the claim[2].

7. The protocol provides a speedy means for resolving such lower value claims, involving, at stage 1, the completion by the Claimant of an online Claim Notification Form ("*CNF*") and a response by the Defendant on issues of liability ("*the CNF response*"); and at stage 2 the obtaining of up to four medical reports by the Claimant, the making of an interim payment if resolution of the case is delayed and a process for settlement by which the Claimant serves relevant documentation on the Defendant by way of a settlement pack with the possibility for the Defendant to accept the Claimant's offer in the settlement pack or to make a counter offer.

8. The case may come out of the protocol at the end of stage 1 (if primary liability or contributory negligence are in issue) or at the end of stage 2 (if quantum is not agreed).

9. PD8B deals primarily with the situation where the parties have followed the RTA Protocol[3] (or the corresponding protocol for low value personal injury claims) but the parties are unable to agree the amount of damages at the end of stage 2 of the Protocol. It allows a Part 8 claim to be brought for the court to determine the amount of damages.

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[2] In effect, that the damages for pain, suffering and loss of amenity exceed £1,000 – see CPR26.6(1)(a).

[3] The RTA protocol was revised with effect from 31 July 2013. However, since the Claim Notification Form (CNF) in this case submitted before that date, the earlier version of the protocol applies – see paragraph 4.2 of the 2013 version.

That claim will proceed either to a determination on paper or to a hearing before the Court which is known as a Stage 3 hearing.

10. By paragraph 4.2, the RTA protocol ceases to apply "*where, at any stage, the Claimant notifies the Defendant that the claim has now been revalued at more than the upper limit.*"

11. The Pre-Action Protocol for Personal Injury Claims ("*the PI protocol*") applies where one of the other protocols does not apply[4]. Where the claim exits the RTA protocol prior to stage 2, the claim proceeds under the PI protocol[5].

12. The PI protocol applies to higher value claims and supposes a "cards on the table" approach to litigation with early communication of the parties' positions through the Letter of Claim from the Claimant and the Response from the Defendant; voluntary disclosure; cooperation over the instruction of experts; negotiation; and consideration of alternative dispute resolution.

The procedure under Paragraph 16.2 of Practice Direction 8B to the CPR

13. Paragraphs 16.1 to 16.7 of the Protocol deals with the situation where it has not been possible to comply with the relevant protocol before the expiry of a limitation period. In those circumstances, the Claimant may start Part 8 proceedings under the Practice Direction, indicating on the claim form that the claim is for damages and that a stay of proceedings is sought in order to comply with the relevant protocol. The Claimant is required to send the claim form together with the order granting a stay to the Defendant, presumably supposing that the stay will have been granted without a hearing.

14. The Protocol then supposes two possible situations:

    (a) The first, pursuant to paragraph 16.5, is that the parties comply with the relevant protocol and the Claimant "*wishes to start the Stage 3 Procedure*". The Claimant is then required to apply to lift the stay and to request directions. The procedure to be followed includes the obligation to amend the claim form and file documents so that the proceedings approximate to what would have happened had they proceeded under PD8B without the stay.

    (b) The second, pursuant to paragraph 16.6, is that the claim no longer continues under the relevant protocol and the Claimant "*wishes to start proceedings under part 7*" in which case the Claimant must make an application to the court to lift the stay and request directions.

15. This case is concerned with the second of these situations, specifically where the value of the claim is initially believed to lie within the RTA protocol limit but the claim subsequently appears to have a greater value.

16. The Defendant's submission is that, where proceedings have been commenced under the RTA protocol, then stayed under part 16 of PD8B, the appropriate action for a Claimant who wishes a claim to proceed for a sum outside of the financial limit of the RTA protocol is to commence fresh proceedings under Part 7.

17. In support of this position, the Defendant contends:

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[4] See paragraph 1.1.1 of the PI protocol.

[5] See paragraph 1.2 of the PI protocol.

(a) The wording of paragraph 16.7 of PD8B refers to a Claimant who *"wishes to start proceedings under Part 7."* This is only consistent with a fresh claim being brought in such circumstances.

(b) The procedure under paragraph 16.2 of PD8B gives the Claimant a privileged position in respect of limitation by giving an easy route to obtaining a stay in cases that are close to the expiry of the limitation period. This must be policed to ensure that it is not abused by parties invoking the stay then using that period to prepare a higher value claim;

(c) A party who uses the procedure properly will not be met with a successful limitation defence in the new proceedings, so long as it has used the RTA Protocol procedure in good faith, since there would be an overwhelming argument for the exercise of the discretion under Section 33 of the Limitation Act 1980 in favour of the Claimant in this situation.

18. The Defendant further relies on paragraph 8BPD.16.1 of the White Book 2017 to the following effect: "*Paragraph 16.7 is odd. It assumes circumstances (which may arise readily enough) in which a Claimant has a claim falling within the scope of either Protocol*[6] *but which no longer continues under it, leaving them with the prospect of having to launch proceedings under Part 7 in order to assert their claim. It is not obvious why it should be assumed that in these circumstances the lifting of the stay on Part 8 proceedings should be a prerequisite for that. The Part 7 proceedings will be fresh proceedings and almost certainly for a cause of action now exposed to a limitation defence. However in these circumstances, provided after the stay was imposed in the Part 8 proceedings the Claimant had complied conscientiously with the protocol processes until their claim no longer continued under these processes, it is highly unlikely that the Defendant would be able to resist an application by the Claimant under Section 33 of the 1980 Act*[7] *to disapply Section 11 to enable them to pursue those fresh (Part 7) proceedings should the Defendant put them in the position where they had to make it (itself an unlikely event).*"

19. The Claimant contends that the Defendant's approach and that espoused in the note from the White Book fails to have regard to the terms of CPR 8.1(3), which provides that "*The court may at any stage order the claim to continue as if the Claimant had not used the Part 8 procedure and, if it does so, the court may give any direction it considers appropriate.*" This provides an appropriate solution to the position identified in the White Book without the need for commencing fresh proceedings.

20. In support of this interpretation, the Claimant relies on the following:

(a) There is nothing in CPR 8.1(3) to limit the circumstances in which the power can be exercised;

(b) PD8B does not exclude the application of CPR 8.1(3) in these circumstances;

(c) Where the Claimant has complied with paragraph 16 of PD8B to protect its limitation position, it would be illogical (and unnecessary) to require her to go through the further hoop of bringing fresh proceedings, which would risk the Defendant raising a limitation defence and therefore require the Claimant to make an application under Section 33 of the Limitation Act 1980.

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[6] That is to say either the RTA protocol or the corresponding protocol for low value employers' liability and public liability claims for personal injuries.

[7] The Limitation Act 1980.

(d) It would be inconsistent with the overriding objective to require the Claimant to incur the cost and inconvenience of having to bring fresh proceedings;

(e) In so far as there any risk that the procedure under paragraph 16.2 of PD8B might be abused, the court has ample power to prevent this through the exercise of the discretion not to lift the stay, forcing the Claimant to contemplate fresh proceedings with the possibility of an attendant limitation defence.

(f) If the Defendant's interpretation is correct, it is difficult to think what directions are contemplated by paragraph 16.7 of PD8B when the stay is lifted. Whilst the Defendant suggests that such directions might relate to a costs order and/or the repayment of an interim payment, it is not clear why such directions should necessarily be required, yet the terms of paragraph 16.7 imply that further directions will invariably be required.

21. In my judgment, the District Judge was correct to favour the Claimant's interpretation of paragraph 16.7. That interpretation is consistent with the wide discretion in CPR 8.1(3) and most accords with the overriding objective.

22. Accordingly, I agree with the decision of the District Judge below that it was open to the Claimant to apply to lift the stay so that she could seek directions for the further conduct of her claim under Part 7.

Which protocol applied here?

23. The Claimant contends that this claim was properly commenced in the RTA protocol and continued therein until the letter of 28 February 2017 (**9/50**), by which the Claimant states *"We hereby give you notice that that we are exiting the Ministry of Justice procedure i.e. the pre-action protocol for low value personal injury claims in road traffic accidents. The reason why we are leaving the process is because we reasonably believe that our clients claim is likely to exceed £25,000*[8]*..."*

24. The Defendant contends that the Claimant could not reasonably have valued this claim at £10,000 at the time that the stay was sought. Therefore, the Claimant should not have availed herself of the procedure under paragraph 16.2 of PD8B. In the alternative, the Defendant contends that the Claimant should have been aware at various points following the grant of the stay that the claim exceeded the upper limit and that it was not appropriate to continue the claim as if the RTA protocol applied.

25. It is instructive to note the developing medical evidence obtained by the Claimant:

(a) On 30 September 2011, Dr Glasby, a General Practitioner, reported (summarised at **11/94**) that the Claimant was suffering right shoulder pain and stiffness with paraesthesia in the right arm. The Claimant had suffered low back pain that had resolved over 2 weeks from the date of the accident. Dr Glasby anticipated the resolution of the residual symptoms over the following 8 weeks.

(b) On 17 May 2012, Mr McMurtry, orthopaedic surgeon, reported (see **11/64**) that the Claimant continued to suffer pain between the shoulder blades radiating into the right shoulder and down the right arm. This was affecting her ability to carry out domestic activities and her work. She was said to have had 6 weeks off work, and

[8] The reference to £25,000 appears to relate to the figure given in the 2013 version of the RTA Protocol that relates to accidents that occurred on or after 31 July 2013. The CNF in this case was submitted before 31 July 2013 so the earlier version of the protocol applied, and the figure here should have been £10,000. Given that this letter was sent very nearly 4 years after the new protocol with its increased upper limit came into force, the mistake is perhaps unsurprising!

then to have returned to work on light duties, a situation that persisted to the date of the report. He anticipated that her symptoms would persist and might take up to two years to settle.

(c) On 23 February 2015, Mr McMurtry reported again (based on medical records but no examination – see **9/72**), noting that the Claimant's symptoms persisted and that she had been diagnosed with fibromyalgia. He recommended reports from experts in fibromyalgia and (possibly) psychology or psychiatry.

(d) On 11 March 2016, Dr McKenna, a rheumatologist, reported (see **11/79**). He considered that the Claimant had suffered chronic pain as a result of the accident which had caused the development of fibromyalgia. The Claimant suffered widespread pain. She had reasonably reduced her working hours from 26 hours per week to 16 hours. She was restricted in domestic activities and self-care. Dr McKenna noted an entry in the Claimant's GP records for 2 December 2013 when a diagnosis of fibromyalgia was suggested and a letter from Dr Vagadia, consultant rheumatologist, dated 5 March 2014, in which it was noted that the Claimant had suffered worsening aches and pains since the road traffic accident in 2011 and a diagnosis of fibromyalgia was given. Dr McKenna considered that the Claimant might benefit from a pain management course (at an estimated cost of £15,000) but his prognosis was guarded.

(e) On 14 November 2016, Dr McKenna reviewed the medical records (see **11/93**).

(f) On 25 October 2016, Dr Vincenti, psychiatrist, reported[9] (see **11/97**). He concluded that she was suffering a persistent somatic symptom disorder which was attributable to the accident and which was likely to be improved with treatment but was unlikely fully to resolve. Dr Vincenti at **11/113** notes an entry in the Claimant's General Practice records for 22 August 2013 when she is diagnosed with fibromyalgia. It seems that the condition is attributed to the road traffic accident.

26. At the time the stay was obtained, the only medical evidence was that referred to at paragraphs 24(a) and (b) above. Given that the Claimant was at work albeit on light duties and that Mr McMurtry anticipated recovery within about two years of the accident, the Claimant contends that the use of the RTA protocol was legitimate.

27. The Defendant draws attention to the diagnosis of fibromyalgia in 2013 and to the fact that the Claimant's solicitors were in receipt of medical records in January 2014. Thus, even by the time of the stay, the Claimant's solicitors should have realised that this was not a typical case of a soft tissue injury. Thereafter there was increasing reason to realise that the value of the claim was likely to exceed the upper limit, in particular:

(a) The Claimant's solicitors recognised in July 2014 that a report from a rheumatologist might be required (**15.1/224**);

(b) The Claimant received a report dated 22 September 2015 from Dr Wilkinson, consultant in pain medicine and management, confirming the diagnosis of fibromyalgia (**15.1/227**);

(c) The Claimant's solicitors accepted in an email dated 7 January 2016 that the case was apparently no longer suitable for the RTA protocol (**15.1/229**).

[9] At paragraph 15 of the Claimant's skeleton argument (**2/14**) it is conceded (for reasons stated therein) that the instruction of Dr Vincenti might have been a technical breach of the RTA protocol. If this is a breach of the protocol, it is technical and the Defendant (rightly in my view) takes no issue with it.

(d) The Claimant received the report from Dr McKenna in March 2016.

28. As noted above, paragraph 4.2 of the RTA protocol provides a mechanism for the protocol to cease to apply where the Claimant notifies the Defendant that the claim has been revalued at more than the upper limit. It does not provide any express obligation on the Claimant to give the relevant notification. However, in my judgment, it is incumbent on a Claimant and their legal representative to review the potential value of the claim on a regular basis and to give notice under paragraph 4.2 when it appears that the value exceeds the upper limit.

29. If this were not the case, the Claimant would be enabled to take all of the advantages of the RTA protocol, particularly the right to obtain medical evidence without consultation with the Defendant and the ability to hold such evidence without disclosure to the Defendant, whilst avoiding the damages and costs limits that would apply if the case remained in the RTA protocol through to trial or settlement. This would be entirely at odds with the spirt of the protocols which provide on the one hand a streamlined and cheap procedure for low value cases and on the other a more case-specific but potentially more expensive procedure for higher value cases.

30. Where, as in this case, the Claimant has taken advantage of the procedure provided by paragraph 16.2 of PD8B to obtain a stay of proceedings so as to avoid the operation of a limitation defence, the result of the failure to give notice of the revaluation of the claim is that the Claimant has the benefit of a limitation defence to which she otherwise would not be entitled. In my judgment, the failure to give such notice is therefore capable of amounting to an abuse of the process of the court in depriving the Defendant of a potential Defence to the claim and preventing the court from carrying out proper case management, by ensuring that the case is pursued in an efficient and proportionate manner.

31. There will of course be cases where the valuation of the claim is not clear cut. Further it may be reasonable for a Claimant who suspects that her claim is worth over the upper limit to await giving notice until it has been possible to investigate the value more fully. Therefore, not all cases of delay in applying to lift the stay will necessarily be an abuse of process. It will be a question of judgment on the facts of the particular case.

32. I understand that some courts, when considering an application under paragraph 16.2 of PD8B, impose a time limit on the stay, typically 6 months, and require the Claimant to apply to the court for the court for further directions at the end of the stay in default of which the claim is struck out. In my judgment, that is a sensible exercise of case management powers to avoid cases becoming stale. A Claimant who complies with such a requirement that is imposed by the court is unlikely to find themselves subject to a criticism that they have abused the process of the court.

33. On the facts of this particular case, it is in my view arguable that the Claimant was entitled to take the view, at the time of the issue of proceedings and the application for a stay, that the value did not exceed the upper limit. Though the mention of fibromyalgia and its apparent association with the accident would put a reasonable Claimant on notice that the value might well exceed £10,000, the evidence of valuation of the claim as at the time of the issue of proceedings was not so clear cut as to lead to the conclusion that the procedure followed was wrong.

34. But I agree with District Judge Sanderson at paragraph 22 of his judgment that, by the time of Mr McMurtry's report of February 2015 (at which stage the Claimant's symptoms had persisted for over 3 years and the diagnosis of fibromyalgia had been

confirmed by a rheumatologist), a reasonable Claimant would have been satisfied that the value of the claim clearly exceeded £10,000.

35. In fact, the Claimant failed to apply to lift the stay for a further two years, during which time she obtained reports from two new experts. The Defendant was wholly ignorant of this. The Claimant herself acknowledged in January 2016 that the claim did not seem suitable for the RTA protocol. In March 2017, the Claimant finally served her application to lift the stay. The application referred to the Particulars of Claim which value the claim at an unstated figure in excess of £200,000.

36. In my judgment, this conduct of proceedings lies far outside the expectation of the pre-action protocols. It is not an acceptable way to conduct proceedings under the CPR. The District Judge was right to be highly critical of the conduct of the claim on behalf of the Claimant.

Should the District Judge have refused to lift the stay?

37. The Claimant draws attention to paragraph 13 of the Practice Direction on Pre-Action Conduct and Protocols ("*the Pre-Action Conduct Protocol*"), which provides: "*If a dispute proceeds to litigation, the court will expect the parties to have complied with a relevant pre-action protocol or this Practice Direction. The court will take into account non-compliance when giving directions for the management of proceedings (see CPR 3.1(4) and (6)) and when making orders for costs (see CPR 44.3(5)(a)).*" There is no reference in this paragraph to exercising the power to strike out where there has been non-compliance with a Practice Direction.

38. The primary problem for the Claimant in continuing these proceedings lies in the stay. It has not been suggested that the court has no discretion as to whether lift the stay. But if the court was right in declining to lift the stay in this case, the inevitable consequence was that the proceedings could not proceed, rendering strike out an appropriate order to bring finality.

39. This does not prevent the general tenor of paragraph 13 of the Pre-Action Conduct Protocol being applicable to this case. The court should hesitate before reaching a decision the result of which is to bring a claim prematurely to an end without judicial determination on its merits - see for example the judgment of Lord Woolf in *Biguzzi v Rank Leisure plc [1999] 1 WLR 1926*). As Laddie J put it in *Reckitt Benkiser UK v Home Pairfum Limited [2004] EWHC 302 (Pat), "the striking out of a valid claim should be the last option. If the abuse can be addressed by a less draconian course, it should be."* I accept that the same principle applies to the consideration of an application to lift a stay where the result of not lifting the stay will be to cause a claim to fail.

40. The Defendant contends that the conduct of these proceedings by the Claimant and her legal advisers has caused it prejudice.

    (a) Until March 2017, the Defendant had simply no idea about the potential value of the claim that was being brought. Whilst there was a hint that it might exceed £10,000 (or £25,000) in value, the Claimant had done nothing to communicate its true worth;

    (b) When the Defendant was served with the application, it was faced with medical reports from experts to whose instruction it had had no opportunity to contribute. The process of instruction of experts under the PI protocol (which is not adopted by the RTA protocol so as to create a more streamlined system suitable for lower valued cases) was bypassed. So, for example, the Defendant was now faced with reports to

the authors of whom it might have taken legitimate objection. Had it been consulted in accordance with the PI protocol, it may have been possible to agree experts.

(c) The Claimant's medical evidence in March 2016 suggested that the Claimant might be suitable for a rehabilitation programme. This suggestion was maintained in the Provisional Schedule of Losses and Expenses at **12/150**. It is not clear why such rehabilitation has not yet taken place. Whether the reason is the Claimant's impecuniosity or otherwise, the Defendant has been denied the opportunity to promote rehabilitation and/or to make an appropriate interim payment to fund it.

(d) Had this case proceeded by Part 7 proceedings from February 2015 when application should have been made to lift the stay, the claim would have been resolved well within the following 2½ years, that is to say by the hearing of this application by the District Judge. The Claimant's own medical evidence supports the conclusion that continuing litigation is not in the interests of her health (see for example Dr Vincenti at paragraph 11.8, **9/129** when he says, "*Mrs Lyle will be best served by as rapid a resolution of her compensation claim as can be practically organised*"). Thus, the delay in this case during the period when the stay should have been lifted may arguably have aggravated the Claimant's injuries and thereby increased the damages that the Defendant is liable to meet.

(e) Even now the Defendant does not know the value of the case it must meet. The Defendant has had no opportunity since the stay was imposed to make a realistic offer to settle this case and avoid any further liability for costs. The delay will certainly have increased costs.

41. As the Defendant rightly identifies in its skeleton argument at **2.1/19.14**, it made several attempts to obtain an update on the claim. The response on behalf of the Claimant was perfunctory.

42. To compound the criticism made above, the Defendant points out that even now, more than 6 years after the accident, the Claimant relies on a Schedule of Loss which is described as "*provisional*" and states most heads of loss as to be confirmed. Such a Schedule simply does not comply with the obligation in paragraph 4.2 of PD16 to give particulars of the value of the claim.

43. It is often the case that those preparing a case on behalf of a Claimant do not have the necessary information to plead future losses at the time of first service of the Schedule. Sometimes even past losses may not be capable of quantification for want of relevant documentation. But in this case the Schedule is seriously deficient:

(a) The Claimant had had almost six years from the date of the accident to the date of its service in order to obtain the necessary documentation;

(b) In so far as relevant documentation had not been obtained in this time scale, this suggests either that the documents did not exist or that the Claimant's representatives had made no real attempts to obtain them;

(c) The Claimant must have had access to the necessary information to state at the very least what her actual earnings were before and after the accident;

(d) It is very likely that those figures, fortified if necessary by reference to average earnings figures, could be used as a basis to estimate what she contends her earnings would have been but for the accident;

(e) The amount of care and assistance, including gardening, DIY and decorating, received by the Claimant was a matter of past fact not expert opinion and did not require a report from a care expert;

(f) There is simply no explanation for the lack of particularity about past medical treatment, travel costs and miscellaneous expenses incurred by the Claimant, even though these matters are peculiarly within the Claimant's knowledge.

44. The Claimant contends that there is no true prejudice to the Defendant from the matters it identifies. Indeed, the Claimant contends that the Defendant has acquiesced in the Claimant's conduct of the litigation by inviting an application for transfer to the Part 7 procedure (see **15.1/235**).

45. I agree with the findings of the District Judge that the prejudice to a Defendant through delay such as this is obvious. Even if it were not obvious, he (at paragraph 16(vi) of his judgment at **5/35**) and I (above) have set out various aspects of that prejudice. His concluding statement that "*this state of affairs offends against every aspect of the CPR and the overriding objective*" is amply justified.

46. The Claimant makes various points in mitigation of its position, these are fully set out at paragraph 18 of the judgment below and I do not need to repeat them here.

47. I bear in mind the draconian consequences of striking out a case which may be worth more than £200,000 to the Claimant. I accept, following paragraph 67 of the judgment of Barling J in *Wearn v HNH International EWHC 3542 (Ch),* that delay alone is not an abuse of the process of the court.

48. But in my judgment the Claimant's significant and persistent failures and the consequent delay, increased expense and prejudice to the Defendant, amply justified the District Judge's refusal to lift the stay and his consequent order striking out the claim. The prejudice to the Defendant through this manner of conducting the claim could simply not be properly compensated with a costs order because of the potential for the delays to have contributed to persistent symptomatology and/or a lack of rehabilitation, thereby increasing the value of the claim.

49. It is a particularly distressing feature of cases such as this to have to conclude that avoidable delays in litigation have not only increased costs but are likely to have exacerbated the Claimant's health problems. Those who profess any expertise in this kind of litigation should be aware of that risk. The Claimant's advisors here appear not to have been.

Conclusion

50. For the reasons set out above, I dismiss this appeal. The parties have agreed a consequential order.

HIS HONOUR JUDGE PEARCE
CHESTER CIVIL AND FAMILY JUSTICE CENTRE
TRIDENT HOUSE
LITTLE ST. JOHN STREET
CHESTER
CHESHIRE
CH1 1SN