



Neutral Citation Number [2023] EWHC 568 (Ch)

CR 2019 002993

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF ANDERSON SECURITY AND TRADING LIMITED
AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION
ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 23/03/2023

Before :

ICC JUDGE BARBER

Between :

**THE SECRETARY OF STATE FOR BUSINESS, ENERGY
AND INDUSTRIAL STRATEGY**

Claimant

- and -

ZAFAR ALI KHAN

Defendant

Thomas Cockburn (instructed by **The Insolvency Service**) for the **Claimant**
Andrew Young (instructed by **Dumonts Solicitors Ltd**) for the **Defendant**

Hearing date: 2 February 2023

Approved Judgment

This judgment was handed down remotely by email. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.30 a.m. on 23 March 2023.

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ICC Judge Barber

1. On 2 February 2023, I directed that the trial of this claim be vacated and that the matter be re-listed for a directions hearing on the first available date after 30 June 2023, with reasons to follow. This judgment sets out my reasons for that decision.

Background

2. The Defendant was the sole director of Anderson Security & Trading Limited ('the Company') from 22 September 2008 until it entered creditors voluntary liquidation on 29 June 2016. The Company traded in the provision of security services.
3. Prior to the Company's entry into CVL, a tax dispute had arisen between the Company and HMRC. In summary:

(1) the Company's case was that it provided security guards to clients via sub-contractors and did not employ the relevant security guards itself. On that basis, the Company maintained that (a) it was entitled to reclaim VAT paid to the sub-contractors as input tax and (b) that it was not liable for PAYE or NIC said to be due on wages paid to the security guards, as they were not employees of the Company;

(2) HMRC's case was that the Company employed the security guards directly, paying them in cash, and that the use of subcontractors (a) was a fraudulent attempt to avoid PAYE and NIC and (b) had given rise to fraudulent claims for input VAT.

4. It was not commercially feasible for the Company to dispute the amounts claimed by HMRC given the cost of professional fees and the quantum sought by HMRC and, as is fairly common in such circumstances, the Company entered into liquidation.
5. HMRC also pursued the Defendant personally, however, by way of personal liability notices in respect of the same (or substantially the same) VAT and NIC (respectively, the 'VAT PLN' and the 'NIC PLN'). The VAT PLN dated 6 June 2016 was issued to the Defendant in respect of a sum of £288,977.50 claimed pursuant to paragraph 19 of Schedule 24 to the Finance Act 2007. The NIC PLN was issued to the Defendant in respect of a sum of £851,127.55, (including £84,466.75 of interest) claimed pursuant to s121C of the Social Security Administration Act 1992. The Defendant launched challenges against both PLNs in the tax tribunal.
6. On 1 May 2019, the Claimant commenced disqualification proceedings against the Defendant under Section 6 of the Company Directors' Disqualification Act 1986. The grounds of unfitness alleged were in summary that:
 - (1) Between 2011 and 5 April 2015, the Defendant caused the Company to falsely claim input tax on VAT returns submitted to HMRC resulting in fraudulent evasion of VAT ('the VAT Ground'); and
 - (2) the Defendant caused the Company to deliberately under declare its PAYE and NIC liabilities by making direct payments to employees of the Company and not subjecting those payments to PAYE and NIC ('the PAYE/NIC Ground').
7. The VAT Ground and the PAYE/NIC Ground in substance relate to the same subject matter as the VAT PLN and the NIC PLN. Whilst the NIC PLN does not extend to

PAYE, the underlying principles at play are the same; the Defendant's case being that the Company did not owe either NICs or PAYE as the Company did not employ the security guards itself but provided them through sub-contractors.

8. The Defendant filed an affidavit in response to the disqualification claim on 8 August 2019. The evidence was prepared on the basis that the underlying tax issues would be addressed in the tax tribunal proceedings which were by then underway. Paragraphs 30 and 44 of the Defendant's affidavit of 8 August 2019 refer to those proceedings.
9. Following agreed extensions of time, the Claimant filed evidence in reply, comprising the second affirmation of Mr Leo of the Insolvency Service dated 18 October 2019 and the affidavit of Mr Simon Campbell of HMRC sworn on 18 October 2019. Mr Leo's second affirmation, as with his first, made numerous references to conclusions reached by HMRC in relation to the tax issues underlying the grounds of unfitness. Mr Campbell's affidavit of 18 October 2019 exhibited and adopted (as his evidence in support of the disqualification claim) three witness statements which he had filed in the tax tribunal proceedings. The overlap between the tax tribunal proceedings and the disqualification claim was readily apparent.
10. At a directions hearing on 1 November 2019, ICC Judge Prentis noted this overlap and observed that there was a case for simply staying the disqualification claim pending disposal of the tribunal proceedings. Ultimately, however, the learned judge opted for the expedient of directing that the trial be listed 'not before' a given date instead. By the order of 1 November 2019, it was directed that the disqualification claim be listed for a four-day trial plus one day of pre-reading, 'not to commence before 1 June 2020'. This provision was designed to allow time for the tax tribunal proceedings to conclude ahead of trial. The trial was then listed to be heard between 20 and 23 October 2020.
11. At the time of the directions hearing on 1 November 2019, the VAT PLN was under appeal in the First-Tier Tribunal under case number TC/2016/03644. On 17 December 2019, however, the Defendant suffered a setback, as his appeal against the VAT PLN was struck out due to the negligent failure of his former solicitors, Maya & Co, to comply with directions to file a list of issues by a given date ([2019] UKFTT 0751(TC)). Permission to appeal to the Upper Tier Tribunal against the strike-out was granted on 21 February 2020 and a new case number of UT/2020/0041 was allocated to the appeal.
12. The appeal against the strike-out of the VAT PLN appeal was then delayed. This was partly as a result of HMRC's (ultimately unsuccessful) attempts to consolidate the appeal with another appeal relating to the Company and the Defendant under case number UT/2019/0144. Pending determination of the consolidation application, both appeals were stayed by order of Tribunal Judge Jonathan Richards dated 11 September 2020. Following determination of the consolidation application, a further delay arose as a result of administrative error on the part of the tribunal, which forgot to relist the matters. The tribunal later wrote to both parties by email dated 1 September 2021 to acknowledge and apologise for this.
13. In the meantime, the appeal against the NIC PLN was proceeding in the First-Tier Tribunal under case number TC/2020/00116 (previously TC/2016/03644). Delays

were also encountered in this appeal when HMRC filed a Notice of Objection dated 20 April 2020 and requested that all deadlines be suspended.

14. In light of the delays encountered in the tribunal proceedings, in September 2020 the Defendant's solicitors wrote to the Insolvency Service inviting them to agree to an order vacating and relisting the trial of the disqualification claim then due to start on 20 October 2020. The Claimant initially refused consent, prompting an application to vacate and relist, supported by the witness statement of the Defendant dated 9 October 2020.
15. With the benefit of hindsight, it was at this stage in the disqualification proceedings that evidence of another issue emerged, although given that the Claimant ultimately consented to a vacation and relisting, it would appear that the issue was not fully explored by the court at the time. The issue concerned the Defendant's mental health. Whilst much of the Defendant's statement dated 9 October 2020 was devoted to setting out the steps taken (and setbacks) in the First-Tier and Upper Tribunal proceedings, it also made reference to the fact that his 'health' was deteriorating and exhibited various medical reports. These reports variously confirmed:
 - (1) 'acute episodes of depression... severe mental symptoms... poor concentration, lack of initiation': Dr M A M Mohamed, 6 November 2019;
 - (2) 'depression and suicidal thoughts', 'very anxious with depressive symptoms which have greatly impacted his life', 'his mental health continues to deteriorate': (Dr Omar Muhidin, Speciality Doctor to Dr Zaihab Nasser, Consultant Psychiatrist, 19 November 2019);
 - (3) 'severe panic attack', Dr Uzma Rashid, 22 November 2019;
 - (4) 'panic disorder', 'depression and suicidal thoughts' 'severe panic attacks', 'poor concentration, lack of initiation and depression', 'palpitations, dizziness, feeling of unreality ... insomnia', thoughts of 'jumping off buildings and committing suicide', 'struggles with any gatherings as he faces episodes of anxiety and panic attacks due to his mental health', 'needs the right help in order to get better': Dr Muhammad Shafi, Consultant Psychiatrist, 5 August 2020.
16. The Defendant had in fact already attempted suicide once, when he tried to jump out of a moving car on the motorway whilst travelling to court in November 2019, although this was not expressly referenced in his witness statement of 9 October 2020.
17. By the time of Dr Shafi's report (August 2020) the Defendant was being prescribed medication for depression and insomnia. It would only later become clear that he had not fully disclosed relevant background to the medical professionals treating him at the time. This is addressed at paragraph 45 below.
18. By a consent order dated 14 October 2020, directions were given that the trial of the disqualification claim be vacated and relisted 'no earlier than 1 November 2021'. Again, the 'no earlier' provision was included by agreement between the parties, in order to allow time for the tax tribunal proceedings to be concluded ahead of the disqualification trial. By subsequent listing order dated 15 January 2021, the trial was relisted for 9-12 November 2021.

Approved Judgment

19. By September 2021, it was clear that the tax tribunal proceedings would not be concluded ahead of the trial date fixed for the disqualification claim. The Defendant's solicitors wrote to the Insolvency Service on 24 September 2021 inviting the Claimant to agree to a vacation and re-listing. Having considered that request, the Claimant agreed a proposed consent order which provided for the trial to be vacated and relisted on the first available date after 1 May 2022.
20. The proposed consent order was filed with the court for approval on 18 October 2021 but appears to have been overlooked. A further version was filed on 26 October 2021. When it was placed before Deputy ICC Judge Frith for approval in boxwork on 27 October 2021, he required an explanation. The Defendant's solicitors, Dumonts, responded by letter dated 27 October 2021, explaining that:

‘A consent order has been agreed with the Insolvency Service on the same basis as the previous adjournment of this Trial namely that the allegations of unfitness within the disqualification proceedings are based upon matters which are subject to proceedings in the tax tribunals.’
21. The letter of 27 October 2021 went on briefly to summarise the stage reached in relation to TC/2020/00116 and UT/2020/0041 and continued:

‘It has .. been agreed with the Secretary of State's solicitors that the decisions of the tax tribunals are very likely to narrow the issues between the parties.’
22. The letter of 27 October 2021 was placed before ICC Judge Prentis, who requested a fuller explanation. He also indicated through his clerk by email that even if the fuller explanation was accepted and the trial vacated, the parties should not expect a further trial listing at that stage; the matter would simply be listed for a non-attendance pre-trial review instead.
23. The Defendant's solicitors, Dumont, provided a fuller explanation by letter dated 3 November 2021. The letter summarised why an adjournment was sought, stating:

‘it is inappropriate for the claim to go ahead in the High Court whilst the same matters are under appeal in the Tax Tribunal. In summary the reasons for that are as follows:

 - (1) The substantive allegations are the same, or at least contain a very significant amount of overlap, so it would represent a significant waste of the parties' resources and court time for the matters to be heard twice. It would further risk inconsistent judgments.
 - (2) Whatever happens in the High Court proceedings, Mr Khan will need to carry on his appeal in the tax tribunal in order to clear the significant debt said to be owed by him and which could otherwise bankrupt him.

(3) The Tax Tribunal is the more appropriate forum for resolution of the tax issues at stake, in part because it has a specific statutory jurisdiction to adjudicate these matters and also because of the specific procedural rules designed to ensure fairness between the taxpayer and the state (HMRC).’

24. The letter of 3 November 2021 also made clear that part of the delay in the tax tribunal proceedings was as a result of error on the part of the tribunal, enclosing a copy of the tribunal’s email dated 1 September 2021. Also enclosed with the letter of 3 November 2021 was a copy of the Defendant’s witness statement dated 9 October 2020 and its exhibits, including the medical reports referred to at paragraphs 14 and 15 above.
25. The letter of 3 November 2021 (together with its enclosures) was placed before me in boxwork. Having considered the letter and its enclosures, I directed that the trial listed in November 2021 be vacated and that the claim be listed for a non-attendance pre-trial review on the first available date after 31 January 2022. I also directed that the Claimant should file an updating statement not less than 7 days ahead of the NAPTR. I did not direct the re-listing of a trial.
26. As a result of administrative error however, the proposed consent order lodged by the parties in October 2021 was sealed and sent out to parties. This proposed consent order, which had not been approved by the court, provided for a re-listing of the claim for trial on the first available date after 1 May 2022.
27. Happily, the parties were also informed that an NAPTR was listed to take place on 2 February 2022. Ahead of the NAPTR, the Claimant lodged a bundle including an updating statement of Liam Byott, solicitor for the Claimant, dated 26 January 2022. The bundle also included the letters from Dumonts to Court dated 27 October 2021 and 3 November 2021, but not the enclosures to the letter of 3 November 2021; that is to say, the Defendant’s witness statement dated 9 October 2020 and the medical reports exhibited to it were not included in the NAPTR bundle. Mr Byott’s statement dated 26 January 2022 confirmed that:
 - (1) UT/2020/0041 had been given a new number (UT/2020/000399) and was listed for hearing on 20 and 21 February 2023;
 - (2) Directions had been given on 11 January 2022 in TC/2020/0116 for the Defendant to provide further and better grounds of appeal by 8 February 2022 and for HMRC to provide an amended statement of case 60 days thereafter.
28. Mr Byott’s statement went on to confirm that Mr Leo had left the Insolvency Service in 2021 and sought permission for Susan McLeod of the Insolvency Service to file a short affidavit adopting the two affirmations filed by Mr Leo in support of the disqualification claim. It was also confirmed that the Claimant continued to rely on the affidavit of Mr Campbell of HMRC.
29. An ICC judge carried out the non-attendance pre-trial review on 2 February 2022 and ordered that the claim be listed before him, for an attended CMC, ‘to consider further the listing of this claim for trial’.

Approved Judgment

30. By listing order dated 7 February 2022, the claim was listed for a (remotely) attended CMC before the same ICC Judge ('the CMC judge') at 9.30am on 15 February 2022. The bundle prepared for the CMC included the claim form, the updating statement, a selection of orders and application notices, and the substantive evidence filed in the Claim, comprising the first affirmation of Mr Leo dated 11 April 2019, the Defendant's affidavit in answer to the Claim sworn on 8 August 2019, Mr Leo's second affirmation dated 18 October 2019 and Mr Campbell's affidavit of 18 October 2019. Also enclosed was a short draft affidavit of David Elliott of the Insolvency Service, by which Mr Elliott (in place of Ms McLeod) proposed to adopt the evidence of Mr Leo for the purposes of the claim. The CMC bundle did not include the witness statement of the Defendant dated 9 October 2020 or the medical reports exhibited to it, referred to in paragraphs 14 and 15 above.
31. On 10 February 2022, ahead of the CMC, the Claimant filed a consent order permitting the Claimant to rely on the (by then sworn) affidavit of Mr Elliott dated 10 February 2022, adopting the first and second affirmations of Mr Leo. The consent order also provided for Mr Elliott to attend trial remotely for cross examination unless notified by the Defendant that attendance was not required. The consent order was placed before the CMC judge, who by his clerk's email dated 14 February 2022 suggested some minor amendments but also indicated that the current practice was for trials to be heard in court and not remotely. The email confirmed that the CMC judge was willing to vacate the CMC if the parties all agreed to a trial in person, but that if the parties wished to debate this issue, the CMC listed for the following day would go ahead.
32. In the event, the CMC went ahead on 15 February 2022. The Claimant appeared by Ms Wilson-Barnes and the Defendant appeared by Sam Brodsky. I am told that, during the course of the hearing, the CMC judge expressed the view that it would be 'completely wrong' for the disqualification claim to await the outcome of the tribunal proceedings. No transcript of the CMC was available, nor any agreed note of the hearing. No skeleton arguments were filed ahead of the CMC either. In short, it is not clear whether this aspect was the subject of detailed submissions at the attended CMC or not. The attendance sheet for the CMC completed by the judge simply noted that parties were to lodge dates to avoid for trial and that 'if D wishes to apply for a stay or other relief, an application is required'.
33. The order made on 15 February 2022 (1) gave permission to the Claimant to rely on the affidavit of Mr Elliott dated 10 February 2022 and (2) required parties to lodge dates to avoid and a time estimate by 22 February 2022.
34. The claim was then listed for a four-day trial commencing on 7 February 2023. The parties were informed by listing order dated 28 February 2022.

Subsequent events

35. In the Defendant's appeal against the NIC PLN, the Defendant's legal team applied for disclosure to establish whether the alleged 'employees' had personally accounted for income tax and national insurance as contractors.
36. HMRC's response was to notify the FTT that it would no longer oppose the NIC PLN appeal.

Approved Judgment

37. On 15 March 2022, the FTT informed the Defendant and HMRC that it was allowing the Defendant's appeal against the NIC PLN.
38. As noted by the Defendant's solicitor, Mr Khan, in his first witness statement, given HMRC's 'Litigation and Settlement Strategy' (which prevents HMRC from making concessions on a commercial basis and permits HMRC to withdraw only where the withdrawal is right as a matter of principle), HMRC's decision to withdraw their opposition to the NIC PLN appeal was highly significant. It signalled acceptance by HMRC that their case was not properly maintainable.
39. By letter dated 17 March 2022, Mr Pawley of HMRC issued an amended NIC PLN to the Defendant, reducing the amount of the original notice (£851,127.55) to nil, thereby (in Mr Pawley's words) withdrawing or cancelling the notice.
40. On 1 April 2022, in a separate appeal brought by the Defendant in respect of personal tax liabilities under TC/2017/01394, having considered medical evidence, Judge Bowler made a determination recognising the Defendant's 'enduring mental health condition' and directing that he be treated as a 'vulnerable witness'. Judge Bowler ordered that a hearing scheduled to start on 5 April 2022 be postponed and directed that certain measures be put in place to facilitate remote, supported participation by the Defendant at any later hearing in the matter.
41. On 11 November 2022, the Defendant's solicitors emailed the Insolvency Service to provide an update on the tribunal proceedings. The email confirmed that:
- (1) The appeal against the strike out of the VAT PLN appeal (UT/2020/0041, allocated a new number of UT/2020/000399) was listed for hearing in the Upper Tribunal (Tax and Chancery Chamber) on 20 February 2023;
- (2) The appeal against the NIC PLN (TC/2020/00116) had been successful. The email from HMRC dated 17 March 2022 (referred to in paragraph 39 above) was attached.
42. The email of 11 November 2022 continued:
- 'As UT/2020/0041 is listed to be heard after our own Trial on 7 February I would propose we agree a further adjournment. In light of HMRC's withdrawal in TC/2020/00116 you may consider it necessary to amend the Secretary of State's claim. I would be happy to discuss any proposed directions.
- I am dealing principally with Mr Hassan at HMRC ...'
- [Mr Hassan's email address is then provided].
43. It was not until nearly a month later, on 7 December 2022, that Mr Byott at the Insolvency Service responded, saying that they would carry out further enquiries with HMRC and respond 'in due course'.
44. On 20 December 2022, the Defendant's solicitors received a further email from the Insolvency Service; on this occasion from Ms Aslam (who had taken over the case from Mr Byott). This stated simply that she would review the matter further and 'revert' on the proposal of a further adjournment 'as soon as possible'.

Approved Judgment

45. On 4 January 2023, the Defendant had a conference with his solicitor Mr Khan and his barrister Mr Young relating to a self-assessment appeal which he was pursuing in the First-Tier Tribunal under case number TC/2017/01394, which was at that stage due to be heard on 16-19 January 2023. During the course of that conference, the Defendant had broken down and had revealed to Mr Khan and Mr Young traumatic events of his youth in Afghanistan. In summary, his village had been subjected to regular raids by the Taliban regime, who would kidnap boys aged 14 or older whom they considered to be of fighting age. The Defendant was hidden by his family during these raids, to prevent him being taken. He remembered intense feelings of terror whenever this happened. Concealing young males in the village was difficult as the Taliban also had informants within the villages. His older brother had been taken by Taliban soldiers and was later killed. Eventually the Defendant was smuggled out of Afghanistan and left on the Kent coastline speaking no English. These experiences had left the Defendant deeply traumatised, but he had not shared them before with his advisers or (importantly) the medical professionals whom he had consulted over the years regarding his mental health. He became so distraught disclosing this information to Mr Khan and Mr Young at the conference on 4 January 2023 that they immediately sought medical advice. An appointment was also booked with a consultant forensic psychiatrist called Dr Martin Laker, whose preliminary view is that the Defendant is likely to be suffering from post-traumatic stress disorder. Dr Laker has been instructed to prepare a full report following a home consultation booked for 24 February 2023, the earliest date available.
46. The Defendant's solicitors did not alert the Claimant to these developments immediately. From the evidence and correspondence now before me, this appears to have been partly because they considered there to be free standing grounds for an adjournment in any event, as they expected the Claimant to wish to review and amend his case in the light of the Defendant's successful NIC PLN appeal. There was also a degree of 'fire-fighting' going on, as the Defendant had a number of tribunal hearings listed in January and February 2023 which his legal team were busy trying to get vacated in light of the Defendant's mental health condition.
47. On 10 January 2023, the Defendant's solicitors pressed the Insolvency Service for a response. Ms Aslam responded on 11 January 2023, stating that she would let Mr Khan know by the end of the week (13 January) whether the adjournment was agreed.
48. On 13 January 2023, at midday, Mr Khan of the Defendant's solicitors again chased, pointing out that in light of the Defendant's success in the NIC PLN appeal, which was of direct relevance to the PAYE/NIC Ground, the Claimant would need to amend his claim in any event, observing that 'this will surely affect the period of disqualification sought, the evidence to be discounted and the Bundle'. Mr Khan continued: 'To prepare on the basis that the second matter of unfitness is still an issue would be to waste costs. We cannot prepare for the Trial as if this [ie the successful NIC PLN appeal] has not happened.' Mr Khan also made reference to the timing of the hearing in the appeal against the VAT PLN, then listed for 20 February 2023.
49. It was only late Friday afternoon (on 13 January 2023, at 16.25) that Ms Aslam made clear that the Claimant would not agree an adjournment. In this regard reliance was placed upon the concerns about repeated adjournments said to have been expressed by the CMC judge in February 2022. I pause here to observe that if this was the basis

upon which the Claimant declined to consent to an adjournment, it should not have taken the Claimant two months to say so.

50. Even at that stage (ie late afternoon on 13 January 2023),
- (a) Ms Aslam did not make clear whether the Claimant intended actively to oppose an adjournment or simply to decline to agree one;
 - (b) Ms Aslam stated that the Claimant was making ‘further enquiries’ as to the outcome in case TC/2020/00116 (the NIC PLN appeal which had been allowed);
 - (c) there was no clear statement as to whether or not the Claimant agreed to amend his claim to take account of the fact that the appeal against the NIC PLN had been allowed.
51. It is against this backdrop that the application to vacate and relist came to be issued on 18 January 2023. The application was accompanied by a certificate of urgency. It is unclear why it was only listed for hearing on 2 February 2023.

The Evidence

52. The application is supported by the first and second witness statements of the Defendant’s solicitor, Mr Khan (‘Mr Khan’), dated respectively 18 January 2023 and 1 February 2023. I confirm that I have considered both witness statements, together with their exhibits, with some care.

Principles

53. The application is made under CPR 3.1(2)(b), which permits the court, in exercise of its general case management powers, to ‘adjourn or bring forward a hearing’. Such powers are to be exercised in accordance with the overriding objective set out at CPR 1.1.

Defendant’s submissions

54. On behalf of the Defendant, Mr Young submitted that the Defendant was experiencing a mental health crisis and was in no fit state to stand trial in February.
55. In oral submissions Mr Young explained the difficulties which he had encountered in taking instructions from the Defendant in January 2023 for a number of tribunal hearings which at that stage were imminent, confirming the account given in Mr Khan’s witness evidence of the conference which had taken place in January 2023, as summarised in paragraph 45 above. He confirmed that he and the Defendant’s solicitor, Mr Khan, had been so concerned that they immediately arranged for medical help. The preliminary view of the psychiatrist consulted, subject to a full examination that is set to take place in February, is that the Defendant is suffering from post-traumatic stress disorder. As Mr Young put it, ‘the trauma has come back’.
56. As a result of these recent developments, a number of tax tribunal matters involving the Defendant had been adjourned. Mr Young confirmed that HMRC had adopted an open-minded approach to the adjournments and the admission of new medical evidence for the Defendant. By consent, an UTT hearing in case number

UT/2019/00007 (formerly UT/2019/0144) listed on 23 January 2023 was recently adjourned to enable further medical evidence to be obtained and to allow the Defendant to amend his grounds of appeal to include his disability. For similar reasons, the FTT had adjourned a hearing in case number TC/2017/01394 listed from 16 to 20 January 2023 by consent and had given directions for further medical evidence and amended grounds. A further application was underway to vacate a hearing listed for 20 February 2023, which Mr Young anticipated HMRC would consent to as well.

57. Mr Young expressed dismay at the ‘hard line’ being adopted by the Claimant, which he maintained did not compare well with the approach adopted by HMRC.
58. Mr Young also stressed his concern, based on his recent personal encounters with the Defendant, that the Defendant was a suicide risk; a concern, I note from paragraph 11 of Mr Khan’s witness statement dated 12 January 2023 in UT/2019/000007 (exhibited to his witness statement dated 18 January 2023 in this claim), shared by the Defendant’s solicitor Mr Khan. Mr Young said that he was concerned at what the Defendant might do on his way to court if the trial went ahead. He reminded me that there had been a previous attempt at suicide in 2019, when the Defendant had attempted to jump out of moving motor vehicle on the motorway on the way to a court hearing. He added that even if it was possible to get the Defendant to court, he did not know what it would be possible to get out of him in the way of evidence or instructions.
59. Mr Young went on to submit that whilst the foregoing were the most pressing reasons for an order adjourning the trial, there were other grounds as well.
60. In this regard he submitted that the two grounds of unfitness relied upon by the Claimant rested on the same tax issues as those underpinning the VAT PLN and the NIC PLN.
61. He argued that there was no doubt that Parliament intended the FTT to have primary jurisdiction over tax matters. In this regard he referred me to the decision of Park J in *The Claimants under the Loss Relief Group Litigation Order v The Commissioners of Inland Revenue* [2004] EWHC 3588 (Ch) at [19], where Park J said:

‘There have been several cases over the years which have considered to what extent the jurisdiction of the General or Special Commissioners to determine issues of tax law between a taxpayer and the Revenue is exclusive, in the sense that it is not open to a taxpayer to seek a determination by another procedure, such as an action commenced in the High Court’
62. At that time, appeals from the General or Special Commissioners were to the High Court. Parliament then replaced the General and Special Commissioners with the FTT. The Upper Tier Tribunal was created to deal with appeals from the FTT.
63. Park J at [22] continued:

‘.. if a statutory scheme creates rights and obligations, and also confers on a specific court or tribunal jurisdiction to determine

questions about the rights and obligations, it would be inconsistent with that for a party to be able to ignore the statutory procedure and to take the questions to the High Court instead'

64. In *Autologic Holdings plc and Ors v Her Majesty's Commissioners of Inland Revenue* [2005] UKHL 54, [2006] 1 AC 118, having considered a statutory tax appeal procedure, Lord Nicholls at [12] said:

'Clearly the purpose intended to be achieved by this elaborate, long established statutory scheme would be defeated if it were open to a taxpayer to leave undisturbed an assessment with which he is dissatisfied and adopt the expedient of applying to the High Court for a declaration of how much tax he owes and, if he has already paid the tax, an order for repayment of the amount he claims was wrongly assessed. In substance, although not in form, that would be an appeal against an assessment. In such a case the effect of the relief sought in the High Court, if granted, would be to negative an assessment otherwise than in accordance with the statutory code. Thus in such a case the High Court proceedings will be struck out as an abuse of the court process. The proceedings would be an abuse because the dispute presented to the court for decision would be a dispute Parliament has assigned for resolution exclusively to a specialist tribunal. The dissatisfied taxpayer should have recourse to the appeal procedure provided by Parliament. He should follow the statutory route.'

65. Mr Young submitted that given that the tax issues in this case are being litigated in the tax tribunals, even leaving aside the Defendant's current mental health crisis, the appropriate course was for this Court to await the outcome of the tribunal proceedings.
66. He acknowledged that there had been a number of delays, some of which were due to difficulties encountered by the Defendant's legal representatives in getting instructions; difficulties now believed to be a result of the Defendant's disability. Other delays had arisen by virtue of matters which had nothing to do with the Defendant, however. In this regard he reminded me of the matters addressed in paragraphs 12 and 13 above.
67. Mr Young contended that, notwithstanding such delays, significant progress had been made. The NIC PLN appeal had now been allowed and a clear strategy was in place to address the outstanding VAT PLN.
68. By way of overview, Mr Young explained that the Defendant had been suffering from mental disability which interfered with his ability to challenge decisions of HMRC in the First Tier Tax Tribunal ('FTT') within the normal 30-day time limit. As a result, a number of matters had gone by default. Evidence of the Defendant's disability had since become available and had now been accepted by both HMRC and FTT as a valid reason to extend time limits where applications to extend time limits had not yet been decided.

Approved Judgment

69. Upon HMRC and the FTT accepting late evidence of mental disability in the NIC PLN appeal and on that basis time for the appeal having been extended, the Defendant's representatives had been able to make an application for disclosure, reasoning that since the 'employees' were agency workers, they would have paid the tax and NIC on their own account. Disclosure was sought against HMRC for documentation which would establish whether not the workers in question had in fact paid tax and NIC on their own account. The disclosure application was made against a background of it having been established before the FTT in other cases that HMRC had on occasion asserted that payments had not been made without actually checking to see if this was correct and had gone on to allege fraud against a company officer. By way of example, Mr Young referred me to the case of Navjot Singh v the Commissioners for HMRC Appeal Number TC/2017/03838, where HMRC had admitted during the course of the hearing that no checks had been made, which led to the appeal being allowed.
70. Following the Defendant's application for disclosure in the NIC PLN appeal, HMRC had withdrawn their opposition to the appeal and the appeal had been allowed.
71. Mr Young stressed the significance of evidence relating to the Defendant's disability. But for the admission of that late evidence in the NIC PLN appeal, he argued, the Defendant's appeal would not have been allowed to proceed, his advisers would not have had the opportunity then to seek targeted disclosure with a view to establishing that the so-called employees had in fact been agency workers who paid their own tax and NIC, the appeal would not have been successful, and the Defendant would have been left with a personal liability of £880,000 in respect of the NIC alleged to have been unpaid by the Company in relation to its so-called employees.
72. The NIC at issue in the NIC PLN appeal was one and the same as that forming the basis of the PAYE/NIC ground of unfitness relied upon by the Claimant in the disqualification claim. As Mr Young put it, one of two planks of the Claimant's case has already fallen away. Any attempt by the Claimant to continue to rely on the PAYE/NIC Ground in the disqualification claim following the Defendant's successful appeal against the NIC PLN, he argued, would be a clear abuse of process, akin to that identified in the case of Secretary of State for Business Innovation & Skills v Mr Nadhan Singh Potiawal [2012] EWHC 3723 (Ch); and would be challenged as such.
73. Medical evidence of the Defendant's disability, he submitted, was also relevant to other matters going through the tribunal at present, including the appeal against the strike out of the VAT PLN appeal. HMRC had adopted an open-minded approach to the admission of new medical evidence for the Defendant in other cases going through the tax tribunals, such as UT/2019/00007 (formerly UT/2019/0144) and TC/2017/01394. Mr Young expected HMRC to adopt a consistently open-minded approach in connection with the admission of new medical evidence and grounds as a reason to extend time in the VAT PLN appeal. The likely consequence, he submitted, is that the UTT will allow the appeal against the strike out on paper and will then remit the matter back to the FTT.
74. Mr Young confirmed that in that event, the Defendant's legal representatives intend to make a similar disclosure application in the VAT PLN appeal to that made in the NIC PLN appeal. Given HMRC's response to a disclosure application in the NIC PLN appeal, it was quite possible that HMRC will also concede the VAT PLN appeal at

that point. If it does, he argued, the other plank of the Claimant's case will also fall away.

75. Mr Young made clear that in light of the Defendant's mental health issues, he was applying for an adjournment of the UTT hearing of 20 February relating to the VAT PLN. He also confirmed that he would be amending the grounds of appeal to add a ground to the effect that the tribunal would have allowed an extension of time had the tribunal known of the Defendant's disability at the time. He did not consider that adjourning the UTT hearing and amending the grounds of appeal would result in significant delay, however. As previously stated, HMRC were adopting a fairly open-minded approach on the admission of fresh medical evidence.
76. As an experienced tax practitioner (with the benefit of experience as a lawyer working for HMRC followed by many years' experience as a tax barrister in private practice), Mr Young submitted that the appeal against a refusal to extend time in the VAT PLN appeal was a fairly straightforward matter (the issue being whether 'reasonable excuse' for the delay had been shown), for which three UT judges would be assigned, rather than a panel including a High Court judge (which takes longer). Absent a High Court judge, he maintained that a re-listing should be possible in approximately three months.
77. At my request, Mr Young worked through the estimated timeline during the course of his submissions. The timeline was in summary as follows:
- (1) vacate disqualification trial;
 - (2) vacate UTT hearing on 20 February 2023 with agreed directions for amended grounds of appeal;
 - (3) three weeks for amended grounds of appeal for the UTT (adding disability);
 - (4) UTT process: if contested, three months from 20/2/23. If not contested, the appeal could be allowed on paper with a direction remitting the matter back to the FTT to consider new evidence;
 - (5) if remitted, HMRC would have 60 days to put in a statement of case, but may not defend the appeal; HMRC conceded the NIC PLN appeal following an application for disclosure: there would be an application for disclosure in relation to the VAT PLN as well.
78. Mr Young submitted that the question for this court is whether, given the likelihood that the VAT PLN appeal will go back to the FTT within a relatively short timeframe, the court should await the tribunal outcome or decide the matter for itself.
79. Mr Young went on to argue that, even if the court was in principle prepared to press on, a further factor to take into account is that the defence evidence prepared for the disqualification claim thus far has been prepared on the footing that the tax issues would be determined in the tribunal ahead of the disqualification trial. Written evidence in the disqualification claim had closed on that basis, prior to the CMC in February 2022 at which the CMC judge is said to have voiced concerns about awaiting the outcome of the tribunal proceedings, yet no further directions permitting

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the filing of supplemental evidence were given at the CMC. In the event that the court did decide that it should not await the outcome of the tribunal proceedings, therefore, there would need to be a reappraisal of the evidence ahead of trial; in that event, the Defendant's legal representatives would be seeking permission to adduce further evidence within the disqualification claim, issuing witness summonses against officers of HMRC and making third party disclosure applications against HMRC and others. All such matters would impact on the point at which the matter could sensibly be ready for trial and on the time estimate for trial.

80. Mr Young accepted that the timing of the application to vacate was regrettable but submitted that this was a consequence of the very unique circumstances surrounding the Defendant's disabilities. An updated psychiatric report on the Defendant had been commissioned and was due in March. This was the earliest date by which the report could be completed following a consultation booked for the earliest date available in February.
81. Mr Young invited the court to exercise its discretion in a manner consistent with the UTT and FTT and to adjourn the disqualification trial. He submitted that overall, the interests of justice required that the trial be vacated.

Claimant's submissions

82. Mr Cockburn was instructed actively to oppose a vacation of trial.
83. Mr Cockburn initially contended that the Claimant was not put on notice of any mental health difficulties until this year and that the Claimant had not had sight of any medical evidence until the application of 18 January 2023. Over the short adjournment, however, he checked the hearing bundle and after lunch very properly corrected himself on this, confirming that the Claimant had been on notice of the Defendant's mental health problems since 2020.
84. Mr Cockburn maintained that the application to vacate had initially been made simply on the basis of a connection between the disqualification claim and the tribunal proceedings and what he described as 'sequencing' issues. He contended that it was only by Mr Khan's second witness statement dated 1 February 2023 that the issue of the Defendant's mental health had been raised as a ground for vacating. This is a somewhat overly-literal analysis of the evidence, considered against the backdrop of the medical evidence already made available to the Claimant in 2020 and the duties of the Claimant considered at paragraph 108 below. A witness statement is not a pleading. Paragraphs 26 to 28 of Mr Khan's first witness statement dated 18 January 2023 refer to the Defendant's mental health problems. Paragraph 29 confirms that the Defendant is 'vulnerable' and that he 'struggles to provide instructions and give proper input'. Moreover, exhibited to Mr Khan's first witness statement dated 18 January 2023 were (inter alia) (1) a witness statement of Mr Khan dated 12 January 2023 in UT/2019/000007 which addressed the Defendant's mental health issues, confirming (at para 19) that the Defendant had a 'disability' which was affecting his ability to instruct his legal representatives (for example at paragraphs 22 and 23) and making reference to the Defendant's previous suicide attempt in November 2019 (at para 21); (2) the witness statement of the Defendant dated 10 January 2023 in TC/2017/01394 addressing his past traumas and his mental health problems (3) the witness statement of the Defendant dated 19 November 2021 in TC/2020/00116

which referenced mental health problems (4) the witness statements of the Defendant's wife, Mrs Shabnam Khan and adult daughter, Ms Ruksahr Khan, each dated 17 November 2021, which attest to deeply concerning aspects of the Defendant's behaviour at home (5) a further set of the psychiatric reports spanning 2019 and 2020, which were exhibited to the Defendant's witness statement dated 9 October 2020 filed in the disqualification claim, addressed previously in this judgment (6) a psychiatric report of Dr Ahmad dated 11 and 18 August 2021; and (7) the order of Judge Bowler dated 1 April 2022 in TC/2017/01394, referencing the Defendant's 'enduring mental health condition'. Moreover, it was not clear quite what point Mr Cockburn hoped to achieve by this argument; given that, even on receipt of the second witness statement of Mr Khan, the Claimant continued to oppose the application to vacate.

85. Mr Cockburn was also critical of Mr Khan's second witness statement dated 1 February 2023, which wrongly employed the language of 'capacity' on several occasions, rather than 'disability'. It is correct that the language of capacity was wrongly employed at times. Reading Mr Khan's two witness statements and their exhibits as a whole, however, it was clear that the intended meaning of such references was that of disability rather than a lack of capacity.
86. Mr Cockburn submitted that the evidence fell short of establishing a current suicide risk and supported only the making of reasonable adjustments at trial, not the vacation of trial.
87. Mr Cockburn was also critical of the Defendant's legal team not having raised any mental health issues in the run up to the NAPTR and CMC which took place in February 2022. He observed that there had been no mention of any reasonable adjustments required.
88. Mr Cockburn went on to submit that, leaving aside 'unevidenced' mental health conditions, the application to vacate rested on the link between the grounds of unfitness and the subject matter of the tribunal proceeding.
89. Mr Cockburn accepted that there was an overlap of factual issues. He stated that:

'the fact that there is a factual overlap is one of the reasons why Secretary of State has agreed adjournments in the past, but four years have now elapsed and there comes a point when the time comes for the matter to simply go ahead'.
90. Mr Cockburn argued that the application to vacate on this basis had been made far too late. In this regard he referred me to CPR 23PD paragraph 2.7, which provides that:

'Every application should be made as soon as it becomes apparent that it is necessary or desirable to make it'
91. He pointed out that the Defendant was aware in February 2022 both that (i) the hearing in the VAT PLN matter was listed on 20 February 2023; and that (ii) the trial of the disqualification claim was listed to commence on 7 February 2023. By March 2022, the Defendant was also aware that the NIC PLN appeal had been allowed. Had he wished to apply to adjourn the trial on the basis that his VAT PLN appeal would

not be finally disposed of by 7 February 2023, he should have done so in March 2022, not January 2023.

92. Mr Cockburn submitted that the Defendant should have updated the Claimant earlier on the outcome of the NIC PLN appeal, pointing to the fact that the Claimant had sought updates in February 2022 (when in fairness there was no updating to report) and then again in September 2022 and October 2022, but had only been provided with an update in November 2022.
93. The result of the Defendant's delay, Mr Cockburn argued, was that the Claimant had incurred costs in preparing for trial (in this regard a schedule of costs had been filed showing £4,749.20 of costs incurred in trial preparation which, it was said, would be wasted in the event that the trial was adjourned). I pause here to note that Mr Cockburn accepted in submissions that Counsel would not have been briefed for trial by the time of the request for an agreed adjournment in November 2022. Counsel for the Claimant was briefed for trial after the Claimant was put on notice that the Defendant wished to vacate and relist.
94. Mr Cockburn also contended that the Defendant's delay had resulted in other court users having been deprived of the court time that could have been made available had a successful adjournment application been made in March 2022.
95. Mr Cockburn went on to submit that the application was in effect an application for a general stay of the proceedings pending the outcome of a possible appeal which the Defendant may ultimately not have the opportunity to pursue. He pointed out that there is no extant substantive appeal (the VAT PLN appeal having been struck out) and no certainty as to when it will be listed if the Defendant's appeal against a strike out order is successful.
96. In relation to the timetabling explored with Mr Young (paragraph 77 above), Mr Cockburn accepted that the three months estimated on the footing that a High Court judge would not be involved in the UTT hearing was probably the best estimate to go on. He maintained however that there was still uncertainty and that it was not known when the substantive VAT PLN appeal would be dealt with, even if the Defendant was successful in the UTT.
97. Mr Cockburn referred me to the general principle stated by Hoffmann LJ in *In Re Rex Williams Leisure Plc* (in administration) [1994] Ch 350 at 368F as follows:

‘The Secretary of State has a public duty to apply for the disqualification of unfit directors. He cannot be held up indefinitely by other proceedings over which he has no control.’
98. That principle, Mr Cockburn submitted, ‘applies with greater force where, as is the case here, serious misconduct is alleged’.
99. Mr Cockburn submitted that there is a public interest in disqualification proceedings being concluded without undue delay, given that the principal purpose is to protect the public. The Defendant was at present at liberty to be involved in the management of a company notwithstanding the allegations made against him.

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100. Mr Cockburn further argued that, quite apart from the public interest consideration, the delay caused by a further adjournment would be unacceptable in the context of any litigation. The proceedings had already been on foot for almost 4 years, to which one could expect at least another year if an adjournment with an immediate relisting was granted.
101. Mr Cockburn maintained that it would be improper for the Claimant to agree any further adjournment given the ‘critical remarks made by the court’ at the CMC in February 2022 concerning the history of adjournments. Mr Cockburn was at pains to stress that the Claimant was not suggesting that this court was bound by such remarks but submitted that they were ‘relevant context’.
102. He also contended that there was no prospect of the VAT PLN appeal, even if reinstated and successful, disposing of the disqualification claim. In this regard he confirmed that the Claimant wished to pursue both grounds of unfitness, notwithstanding that the NIC PLN appeal has now been allowed.
103. In relation to suggestions that the Defendant would wish to adduce further evidence in the event that the tax issues are not ruled on in the tribunal ahead of determination of the disqualification claim, Mr Cockburn submitted that the Defendant had had more than sufficient time to respond to the claim. He said that it was now in the interests of all parties, the courts and other court users that the time allotted for trial is utilised for that purpose. It has been open to the Defendant to advance his defence since May 2019. It has been open to him to advance the same evidence in these proceedings as he has advanced in the tax tribunals.
104. Mr Cockburn further contended by paragraph 35 of his skeleton argument that any evidence of disability would not assist the Defendant as a substantive defence to the disqualification claim, arguing that even if it was the case that the Defendant was suffering from severe mental difficulties at the time of his misconduct, it would not be a total defence to the claim since the appropriate course of action would have been to have resigned from his directorship. In oral submissions Mr Cockburn made clear that he was not suggesting that anyone suffering from a mental disability was unfit to be a director.

Discussion and Conclusions

105. Whilst the most recent psychiatrist to be instructed, Dr Laker, has yet to provide a written report, it is clear from the evidence before me that the Defendant has a disability within the meaning of s.6(1) of the Equality Act 2010 (‘EA 2010’). It is also clear that the Defendant is currently experiencing a severe mental health crisis.
106. In concurrent tax tribunal proceedings, HMRC have recently accepted psychiatric evidence relating to the Defendant and have not opposed directions vacating forthcoming hearings to allow time for further psychiatric evidence to be filed and considered. To date, two matters relating to the Defendants tax affairs, (TC/2017/01394 and UT/2019/00007, formerly UT/2019/0144), listed in the tribunal for hearing on 16-19 January 2023 and 23 January 2023 respectively have recently been postponed by consent with directions to allow time for consideration of psychiatric evidence. At the time of the hearing before me, an application to postpone a further matter (TC2016/2020/000399, formerly UT/2020/0041) listed on 20

February 2023 was about to be made, on the same basis. (Since the hearing before me, I have been informed that the UT granted the postponement application).

107. Counsel for the Defendant, Mr Young, expressed concerns from his own recent personal encounters with the Defendant that the Defendant could be a suicide risk if overly stressed. The Defendant's solicitor, Mr Khan, expressed similar concerns at paragraph 11 of his witness statement dated 12 January 2023 in UT/2019/000007, exhibited to his witness statement dated 18 January 2023 in this claim.
108. Mr Cockburn submitted that the medical evidence before the court fell short of establishing that the Defendant was currently a suicide risk. In the circumstances of this case, the 'prove it' stance adopted by the Claimant on this issue is both regrettable and inappropriate. On the evidence before me, the Defendant plainly has a disability within the meaning of s6(1) of EA 2010. The Claimant has known of this since 2020 at the latest, when it received the Defendant's witness statement dated 9 October 2020. Having been informed of the Defendant's disability, the Claimant owes the Defendant a 'public sector equality duty' ('PSED') under s.149 of the EA 2010. Where a public authority proposes in the exercise of its statutory functions to carry out an act which may affect persons who are known to have a disability, the PSED imposes an obligation on the public authority to carry out an 'open-minded conscientious enquiry' of the potential impact of that act on those persons before so acting: *Luton Community Housing Ltd v Durdana* [2020] EWCA Civ 445 at [16]-[19]; *HMRC v De Freitas* [2022] BPIR 1470 at [62]. There is nothing before me to suggest that the Claimant has carried out any such enquiry, conscientious or otherwise.
109. It is correct to state that the Court does not yet have before it the report of the forensic psychiatrist most recently instructed, Dr Laker. There is however uncontroverted evidence before the court that the Defendant previously attempted suicide in November 2019. The evidence before the court also includes several psychiatric reports spanning 2019-2021, all of which reference suicide. The psychiatric reports of Dr Muhidin and Dr Shafi dated 19 November 2019 and 5 August 2020 (which the Claimant has had since receipt of the Defendant's witness statement of 9 October 2020) each record that the Defendant has suicidal thoughts, the latter confirming that the Defendant has thoughts of 'jumping off buildings'. A later report of Dr Ahmad, consultant psychiatrist, prepared in August 2021 (which the Claimant has had since service of Mr Khan's witness statement of 18 January 2023 at the latest), also confirms suicidal ideation, although the Defendant had denied having a suicide plan at that time. In my judgment all of this is relevant history and should be taken into account.
110. As confirmed by CPR 1.1(2), dealing with a case justly and at proportionate cost includes, so far as is practicable, ensuring that the parties are on an equal footing and can participate fully in proceedings and that parties and witness can give their best evidence: CPR 1.1(2)(a).
111. On the evidence before me, as supplemented by Mr Young's own account of his recent dealings with the Defendant, it appears that the Defendant's mental health issues have worsened considerably since the time of his examination by Dr Ahmad in 2021. Against a backdrop of years of mental health problems and suicidal ideation evidenced consistently by psychiatric reports spanning back to 2019, the Defendant is

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now in a state of crisis. In my judgment, the Defendant is in no fit state to participate fully in these proceedings and give his best evidence at present. In my judgment it would be irresponsible for the Court to permit the trial to proceed at this time, pending receipt and review of Dr Laker's report.

112. Mr Cockburn also criticises the Defendant's legal team for not having raised the issue of reasonable adjustments at the time of the NAPTR or the CMC which took place in February 2022.
113. This criticism, however, is wrongly premised on the Defendant having sole responsibility to bring such matters to the Court's attention. The Claimant has a responsibility too; under CPR 1.3 (duty of the parties to help the court to further the overriding objective), by virtue of ss149 EA 2010 (PSED: see paragraph 108 above) and pursuant to ss20, 29(7) and 31(3) EA 2010 (duty to make reasonable adjustments: see *HMRC v De Freitas* 2022 BRIR 1470 at [64(i)]). In this regard I note that the Claimant prepared the bundle for use at the CMC in 2022 and omitted to include relevant medical evidence relating to the Defendant which the Claimant had known of since 2020: see paragraph 30 above. Whilst I accept that it is unfortunate that the Defendant's legal team did not themselves raise the issue of the Defendant's mental health at the time of the CMC in February 2022, responsibility for that omission cannot be laid solely at the door of the Defendant. Both parties had an obligation to draw it to the Court's attention.
114. I accept that there were delays on the part of the Defendant's legal team in raising any perceived problems in sequencing; they knew by the end of February 2022 that the disqualification claim had been listed for a trial commencing on 7 February 2023 and also knew by then that the UTT hearing in the VAT PLN appeal was listed for 20 February 2023. Had they wished to move the trial date for the disqualification claim simply on that basis, they should have applied much earlier.
115. Their delay in raising this issue is however only one of a number of factors to be weighed by the court when considering whether, in the exercise of its discretion, to vacate the trial.
116. Further factors, which in my judgment weigh heavily among those to be considered, are that (i) the Defendant has a disability falling with s.6 EA 2010 which has yet to be properly addressed (by the Claimant or the court) within the context of these proceedings, (ii) he is not fit to stand trial at present and (iii) he is a suicide risk.
117. These factors of themselves would suffice as grounds upon which to vacate the trial. There are however other factors which in my judgment also support vacation of the trial.
118. Parliament clearly intended the FTT to have primary jurisdiction over tax matters: see paragraph 61-64 above. The reason for previous adjournments of the disqualification claim was to allow the substantive tax issues underpinning the alleged grounds of unfitness to be litigated in the tax tribunal first. As confirmed by Mr Cockburn, both parties proceeded upon that shared understanding: see paragraph 89 above.
119. The Claimant only changed its position on sequencing after the comments made at the CMC in February 2022. In this regard I refer to paragraph 32 above. The attendance

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sheet completed by the CMC judge, however, quoted at paragraph 32 above, of itself tacitly acknowledged that it was open to the Defendant to apply for a stay or other relief by way of formal application, which in the event is what has occurred. The discretionary powers of this court under CPR 3.1(2)(b) must now be exercised afresh, in accordance with the overriding objective set out in CPR 1.1, on the basis of the submissions now made and the evidence now before the court.

120. Naturally I am mindful of the observations of Hoffmann LJ in *In Re Rex Williams Leisure Plc* (in administration) [1994] Ch 350 at 368F. That case however concerned a disqualification claim and a claim brought by the administrator of a company against the same director. In this case the tax liabilities under challenge in the tax tribunals are at the very heart of the grounds of unfitness relied upon by the Claimant. They underpin those grounds. Much of Mr Leo's evidence in support of the disqualification claim rests on investigations undertaken and conclusions reached by HMRC.
121. The Claimant's change of tack on sequencing places the Defendant in an invidious position. He has not fully adduced in the disqualification claim all evidence that he would wish to rely on in relation to the substantive tax issues as it was expected that (as has already occurred in respect of the NIC PLN) the substantive tax issues would be litigated in the tax tribunal. By the time of the CMC in February 2022, written evidence had closed. No directions permitting the filing of further evidence were given at the CMC.
122. It is also difficult to see how hearing the disqualification claim first can properly be described as an efficient use of court and tribunal resources or how it would save expense.
123. If the disqualification claim goes ahead first and the Defendant is successful, there is no guarantee that HMRC will consider itself bound by any findings made by this court. It is not a party to the disqualification claim. The Defendant would still have to pursue his VAT PLN appeal to avoid bankruptcy.
124. Similarly, if the disqualification goes ahead first and the court makes a finding of unfitness which is premised on an unchallenged VAT liability, it would still be open to the Defendant to continue his appeal against the VAT PLN in respect of the same VAT. If he was later successful in the VAT PLN appeal, he may then seek to appeal against the disqualification order or the period of disqualification ordered, taking up more court time and incurring further expense.
125. In contrast, if the underlying tax issues are ruled on by the tribunal, this should shorten the court time needed in this court to adjudicate on the disqualification claim and may even negate the need for a trial at all. In this regard:

(1) the tribunal has already allowed the NIC PLN appeal following HMRC's withdrawal of opposition. Mr Cockburn has confirmed to me that the same NIC underpins the Claimant's PAYE/NIC ground of unfitness. The same factual considerations (ie whether the security guards were employees, whether they paid their own tax) apply to PAYE as to NIC. Whilst the Claimant presently indicates an intent to pursue the PAYE/NIC ground of unfitness in spite of the Defendant's successful NIC PLN appeal, this approach is difficult to reconcile with (i) Claimant's

acknowledgement that same issues arise in both and (ii) the reasoning behind the sequencing strategy originally agreed by the Claimant. In the wake of this adjournment the Claimant may revisit his stance on this issue (reflecting on the matters addressed at paragraph 38 of this judgment) and drop the PAYE/NIC ground, which will shorten trial time required. If he does not, as made clear by Mr Young, the PAYE/NIC ground of the claim is likely to be the subject of a strike out/reverse summary judgment application on grounds of estoppel and/or abuse of process, which again, if successful, will shorten the trial time required; and

(2) if the VAT PLN matter is remitted back to the tribunal and the tribunal finds against the Defendant on the VAT issue on the ground of fraud (ie Kittel), this would shorten the disqualification proceedings considerably, as in that eventuality, as confirmed by Mr Young, the Defendant would be likely to offer a disqualification undertaking. Conversely, if the tribunal finds in favour of the Defendant on Kittel, that will (or Mr Young submits certainly should) shorten the court time needed in this court to adjudicate on the disqualification claim and may negate the need for a trial at all.

126. These are all relevant factors when considering CPR 1.1(2)(e) (allotting to a case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases) and CPR 1.1(2)(b): saving expense. Considered against the backdrop of Parliament's clear intention that the FTT should have primary jurisdiction over tax matters (see paragraphs 61 to 64 above), in my judgment they carry significant weight.
127. Mr Cockburn also stressed the need to avoid wasting the court days allocated for the forthcoming trial of this matter. I accept that on some occasions this may be a relevant factor. On this occasion, however, the court days can readily be allocated to other cases by the simple expedient of standing down deputies who would otherwise be covering other hearings, preserving the deputy budget for use on other occasions.
128. Naturally I am mindful of the public interest in disqualification proceedings being concluded without undue delay, given that the principal purpose is to protect the public. Mr Cockburn submitted that the Defendant was at present 'at liberty' to be involved in the management of a company notwithstanding the serious allegations made against him. In reality, however, the Defendant is not a director of or involved in the management of any company save for the Company, which is now in liquidation. He had been a director of another company, Anderson Security Services Limited, but resigned on 5 December 2019. This was confirmed by paragraph 13 of Counsel's Note dated 9 October 2020 (which bears a statement of truth signed by the Defendant), lodged together with the 2020 application to vacate referred to at paragraphs 14 and 15 above. At the hearing before me, Mr Young of Counsel confirmed that this remains the position; the Defendant is not a director of any company (save for the Company, which is in liquidation) or involved in the management of a company's affairs. He further confirmed that the Defendant would if required offer an undertaking not to be a director of or otherwise involved in the management of a company pending determination of the disqualification claim. In reality, the Defendant is far too ill to undertake any meaningful work at present in any event. His wife has to remind him to wash, get dressed and eat, on a daily basis. The theoretical risk to the public posed by any delay in concluding the disqualification proceedings is therefore in this case not a reality.

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129. I do also take into account CPR 1.1(2)(d) (ensuring that the case is dealt with expeditiously). Any prejudice suffered by the Claimant as a result of the delay is however minimal. Mr Leo's affirmations rest largely on investigations carried out and conclusions reached by HMRC. Mr Leo's function was largely to produce documents. His evidence for the most part summarises past events of which he had no personal knowledge or recollection. To the extent that his evidence went to investigations carried out by him personally, his role at trial was clearly not considered to be of particular importance, as since his departure from office, his written evidence has simply been adopted by another officer. If anything, any prejudice caused by the delay as a result of fading recollections will be suffered by the Defendant, not the Claimant. The Defendant's legal team consider that any prejudice of this nature is outweighed by the benefits of adjournment in this case. I agree.
130. Moreover, the need to ensure the cases are dealt with 'expeditiously' does not mean expedition at all costs. CPR 1.1(2)(d) of itself requires the court to ensure that cases are dealt with 'expeditiously and fairly'. Expedition is but one of a number of factors which fall to be taken into account by the court when exercising its general case management powers in accordance with the overriding objective.
131. Mr Cockburn also referred to the uncertainties surrounding (i) whether the VAT PLN appeal will be reinstated and (ii) if so, when it will finally be resolved. In my judgment these uncertainties are overstated. The Defendant was not consistently well-served by his previous legal representatives but now has the benefit of an extremely able legal team. As a result of their endeavours thus far, the NIC PLN appeal has been allowed. HMRC has also dropped its previous stance of opposing extension applications and has adopted an open-minded approach to further medical evidence. This clears the way for a successful timeous appeal against the strike-out of the VAT PLN appeal and an extension of time based on the ground of reasonable excuse, which HMRC is now unlikely to oppose. Once the VAT PLN is reinstated the Defendant's legal team will make a targeted disclosure application. A similar disclosure application in the NIC PLN appeal prompted HMRC to drop opposition to the appeal and withdraw the NIC PLN notice. There is a realistic prospect that HMRC will respond in a similar fashion in the context of the VAT PLN appeal: see paragraph 69 and 70 above. HMRC's position should be known by the end of June 2023. In short, the Defendant's legal team now have a clear strategy in place for the efficient disposal of the VAT PLN appeal.

Conclusion

132. For all these reasons, I shall order that the trial of the disqualification claim listed to commence on 7 February 2023 be vacated and that the matter be listed for an attended directions hearing on the first available date after the end of June 2023 with a time estimate of half a day. I shall also grant the parties permission to file updating witness statements in the run up to the directions hearing.

ICC Judge Barber