Neutral Citation Number: [2016] EWHC 1975 (QB)

Case No: HQ 07 X 04076

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2016

Before:

THE HON MR JUSTICE FOSKETT

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Between:

SANDRA BAILEY AND OTHERS	**Claimants**
- and –	
GLAXOSMITHKLINE (UK) LIMITED	**Defendant**

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- -

Jacqueline A. Perry QC, Timothy Killen (instructed by **Fortitude Law**) for the **Claimant**
Malcolm Sheehan QC, Andrew Kinnier and Henry Warwick (instructed by **Addleshaw Goddard LLP**) for the **Defendant**

Hearing date: 14 July 2016

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Judgment No. 2

Mr Justice Foskett:

1. This judgment needs to be read against the background of the judgment I gave in February 2016 (see [2016] EWHC 178 (QB)) and the order agreed between the parties thereafter giving effect to that judgment. The order is appended in Appendix 1 to this judgment.

2. The case came before me again on 14 July 2016 in accordance with paragraph 9 of that order. Whilst certain additional material was available for consideration and, accordingly, the hymn sheet was somewhat different from that which existed in November/December 2015, each side was reprising the same refrains rehearsed previously: the Claimants were contending that the claims can and should be allowed to continue; the Defendant was submitting that the Claimants were being unrealistic in suggesting that the claims could be taken to trial and that, for case management reasons, the claims should be struck out or in effect be stayed permanently.

3. It will be apparent from my earlier judgment that I wanted more information about the consequences of what the Claimants were proposing before deciding whether to permit the claims to continue. It will be clear from [125] that all options were to remain open, but that if I felt that the new information supplied was "satisfactory" I would "consider giving the Claimants' experts the opportunity to prepare their reports with a view to them being lodged with the court and served on the Defendant" [129].

It will also be apparent that if I was to be persuaded that the litigation could continue, I would probably be contemplating a step-by-step approach [136].

4. I can introduce the issues for consideration by summarising the position adopted by the Defendant. It is as follows:

(1) the information given in relation to the value of the claims if liability is established is such that there can be no confidence in the proportionality of permitting the proceedings to continue;

(2) the information as to the adequacy of the funding arrangements is such that there are "significant doubts" as to whether the claims could be brought to trial;

(3) there would be "very significant financial and non-financial prejudice" caused to the Defendant if the case was permitted to proceed.

5. I will consider each of these separately and then express my overall conclusion.

6. I should say that the Defendant submits that "[the] question whether the litigation should be permitted to proceed should now be determined" and "[the] question of viability is not amenable to incremental management". I will return to this contention in due course (see paragraph 50).

Proportionality/the value of the claims

7. The relevant paragraphs in my earlier judgment are [110-115] and [131-135] and the provisions in the order are paragraphs 6, 7 and 8(a).

8. Schedules and Counter-schedules were supplied. I will refer to them further below.

9. The results of the foregoing exercise from the Claimants' perspective can be summarised by reference to the four bands identified below and by the estimate of the numbers in each band:

BAND	VALUE	NUMBER OF CLAIMANTS
1	£1.31m - £3m+	15
2	£601,000 - £1.30m	20
3	£101,000 - £600,999	38
4	£30,000 - £100,999	32

10. In his third witness statement Mr Hanison said this:

> "The outcome of the assessment is that the Group Litigation can now be considered as having an estimated value of £63m."

11. Ms Perry amplified this by saying that taking the lowest figures in each band, the grand total would be about £36.5 million and taking the highest figures, a figure of about £97 million is achieved.

12. I have to say that, even allowing for the uncertainties that affected the process of valuing the overall claim set out in my first judgment (see [110-114]), the suggestion that the average value of each of the remaining 100 claims is £600,000 or thereabouts

seems far-fetched. Whilst it is right to say, as Ms Perry reminded me, that full details of the basis upon which Mr Maskrey QC and Mr Matthews approached their valuations are not available, I cannot believe that generally they had in mind claims approaching this kind of value: see [110] and [114] of my first judgment.

13. I need to emphasise that I have not heard full argument on the way in which any damages claim may be advanced if liability were to be established and to that extent any views I express are provisional and would, if the matter proceeds to trial, ultimately be a matter for the trial judge. However, I consider that the criticisms made by Mr Sheehan of the schedules provided in relation to the four named individuals chosen as representative of the four bands are broadly justified. It appears that the schedules are based upon the premise that all the continuing symptoms after the first prescription of Seroxat are attributable to the Seroxat and that any failure to achieve a satisfactory withdrawal from the use of Seroxat is the cause of the continuing symptoms. This has the effect of attributing all alleged consequential losses after the first prescription of Seroxat to the Seroxat itself and/or to the failure to secure a withdrawal from it. That seems to me to be a misconceived approach bearing in mind the essential allegation made about Seroxat.

14. I identified the broad case that is being advanced against Seroxat as an antidepressant in [5] of my first judgment. I apprehend that the case is that anyone who takes Seroxat is likely to experience greater difficulty in discontinuing its use than if they had been prescribed another SSRI and will suffer discontinuation symptoms for longer. The expression "greater difficulty" could, in some cases, mean that discontinuance was never going to occur or in others that it would take longer than if another SSRI had been used. In either case, it would be necessary to compare the actual position that obtained in relation to discontinuance with the likely position had a different SSRI been used in order to determine the consequences of taking a "defective" drug (which Seroxat is alleged to be for this purpose). Damages could only be awarded to a claimant for the difference between these two situations: cf. *Reaney v University Hospital of North Staffordshire NHS Trust* [2015] EWCA Civ 1119.

15. If the general propensity of Seroxat to prolong discontinuation symptoms compared with other SSRIs is established, I imagine that what will be alleged in a given case is that the Claimant suffered discontinuation symptoms for a measurably longer period than he/she would have suffered from them had some other SSRI been prescribed. If a Claimant could establish, for example, that the administration of Seroxat prolonged the discontinuation symptoms for, say, 12 months more than if another SSRI had been prescribed, the damages and losses would be calculated by reference to that 12 month period. If it could be established in a given case that the Claimant would never be free from discontinuation symptoms because of the administration of Seroxat, then the damages would be assessed accordingly having taken into account what would have occurred if another SSRI had been prescribed. In that scenario, if the prolongation of the discontinuation symptoms is such that it has made a significant difference to the Claimant's life and, for example, he/she has become unemployable as a result, a sizeable overall claim could be anticipated.

16. However, as indicated above, this does not seem to be the way in which the schedules have been formulated.

17. In accordance with the order, the Defendant provided a Counter-schedule in relation to each of the sample Claimants chosen by the Claimants' legal team. Each contained a general denial of liability and each suggested that the absence of any supporting expert report meant that it was impossible to admit or deny that the alleged discontinuation symptoms were caused by the use of Seroxat and/or the discontinuation of its use. In each case there is an allegation, in a nutshell, that the symptoms of which complaint is made represent nothing more than a recrudescence of the individual Claimant's underlying chronic condition and/or would have been caused even if another SSRI had been prescribed. In each case the Claimant is put to proof that the symptoms were caused in the way it is alleged on the Claimants' behalf. Those represent the general lines of response in all cases; there are individual arguments advanced against certain heads of claim if liability for those heads of claim were *prima facie* to be established.

18. The Claimants' legal team criticised this approach and assert that no attempt has been made to consider the figures advanced at face value or to challenge them even on a without prejudice basis. It is suggested that the Defendant has done nothing to assist the court in the evaluation of the likely quantum of the claims.

19. I do not accept that criticism. For my part, for the reasons already given, I am not really satisfied that the nature of each Claimant's case on damages has as yet been analysed sufficiently closely (and, accordingly, with the rigour I would have hoped to have been applied) for any really valuable response to it to be advanced. It follows that I am left only a little better informed than I was in December 2015 about the true value of these claims. Mr Sheehan would doubtless argue that, in those circumstances, there are strong grounds for bringing the proceedings to a final halt because a significant feature of the landscape has not been brought into focus adequately. I do not think that it is quite as simple as that: for present purposes I need to give the claims some value since giving the claims no value simply means accepting that the Defendant's case is correct. I cannot do that at this stage.

20. I am not proposing to approach the case for present purposes on the basis that the 100 claims are worth in the region of £60 million. I am going to make a working assumption (which I emphasise is not to be regarded by anyone as anything more than a moderately well informed "stab in the dark") that the overall quantum might be in the region of £10 million. I arrive at that overall figure by inflating somewhat the figure of £6.9 million referred to in [111] of my original judgment to reflect some of the uncertainties associated with that figure. However, it has no more scientific basis than that.

21. To the extent that I should, at this stage, evaluate proportionality by reference to what might be gained by this group of Claimants compared with the costs of proceeding, I do not think taking that figure would be unfair to either side.

22. I will move to the next issue, the funding of the litigation on the Claimants' side.

The funding of the litigation

23. The funding of the current litigation was an issue that loomed large at the hearings in November and December 2015. The way in which I approached the information for the purposes of my initial judgment is set out at [123]. Having reviewed the transcript

of the hearing before me on 14 December 2015, I see that Mr Sheehan and Mr Fetto were to discuss how the Claimants might appropriately give more detailed information to the Defendant's side about the funding arrangements made. It is now clear to me that the information set out below was provided shortly after the hearing since I was sent the letter referred to below in an email on 23 December 2015. It was one of 20 attachments to the email and since I did not refer to it in the judgment (prepared some while later) I do not think I could have noted its contents. As it happens, I believe that it would simply have reinforced the decision I made in February, but in any event the information has now formed a framework within which the renewed debate has taken place and I am now able to take it into account in a more meaningful way than would have been the case hitherto.

24. The letter contained the following passage:

> "Without waiving privilege in the content of relevant discussions or meetings, the funding arrangement was agreed after extensive and rigorous evaluation and after several months of discussions, case analysis, and meetings between funders, insurers (and their external lawyers) and experienced counsel. With regard to the amount of funding to ensure the case was able to reach trial the following specific assumptions were made:
>
> 1. Experts would need to be substituted for both Professor Lader and Professor Hotopf;
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> 2. Further Disclosure on the standard basis would be required;
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> 3. Four further Lead Cases would need to be pleaded out, with Professor Healy acting as the psychiatric expert;
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> 4. The trial window had been previously set for 13 weeks; and
>
> 5. Fortitude Law and Counsel would operate on low fee Conditional Fee Agreements ("CFAs").
>
> On this basis MLS have, by way of a Funding Deed, committed to provide £800,000 to the Claimants to bring the matter to trial. In the unlikely event that the Claimants require further funds before/at trial, the potential to increase funds by up to an additional £400,000 has already been agreed with MLS, who have set aside that sum should the funding prove to be necessary. There is, of course, yet further potential for the Claimants' to approach the funders for further monies upon agreed terms, if required.
>
> The funding is to be used in part for ATE premium payments. A payment of £125,000 has been made. A further such payment will become due prior to trial. The total residual amount, combining the present fund and the contingency element, is therefore (£550,000 + £400,000), £950,000.

> It is with those figures in mind that the Claimants maintain that there is sufficient funding to bring the case to trial, for which we believe a listing of 6-8 (7) weeks will be ample, but in any event within which the experts' fees element (the expenditure to which the funding is principally directed) will be a constant regardless of the length of the listing. Disbursements will be ring-fenced, and the legal team, all acting on CFAs, will limit/adjust their recoverable fees under the funding arrangement accordingly.
>
> As to potential expenditure on experts' fees, to recap: only Professor Lewis (statistics), if permitted, will come to the litigation "fresh", and will have the benefit of Professor Hotopf's prior work. Professor Healy (psychopharmacology), again if permitted, will bring intense prior familiarity with the subject-matter of the litigation. Professors Hughes (pharmacokinetics) and Hotopf (epidemiology) will pick up where they left off. The evidence of the three experts already instructed in this matter was, in 2010, already fully prepared for trial, and therefore the totality of the fees on experts is unlikely to come anywhere near what was expended previously.
>
> Thus we are confident that the available funding will more than adequately cover realistic experts' fees, and will in any event enable each expert to receive a six-figure sum if need be. By comparison, our estimates for the experts' fees, based upon the sums paid to those previously involved, are: (a) Professor Healy (generic & lead cases) - £125k, (b) Professor Hotopf - £60k, (c) Professor Lewis - £75k, (d) Professor Hughes - £60k, (e) Professor Green (lead cases) - £60k."

25. The figures advanced in that letter concerning the estimated future fees of the experts were put forward before the letters from each of them sent in accordance with paragraph 4 of my order (see paragraph 33 below). The figures for the experts' fees were said to be a "constant regardless of the length of the listing". That expression was not explained further in the letter, nor was any clarification sought, but taken as it stands it would appear to suggest that the figures would not be exceeded irrespective of the length of the trial.

26. Furthermore, the reference to the legal team acting on CFAs and who "will limit/adjust their recoverable fees under the funding arrangement accordingly" is a reference to the team currently acting on a "no win, low fee" arrangement which, as Ms Perry explained, would change if there is no money to continue any low-fee payments. In that situation "a full CFA" would be entered into which would operate on a strict "no win, no fee" basis.

27. The figures set out in this letter have been subject to analysis on the part of the Defendant. Ms Caswell, in her third witness statement, produced a table showing that the effect of the proposed expenditure would be to leave the Claimants' legal team with only £170,000 (or £570,000 if the £400,000 contingency was called in). The table (omitting Ms Caswell's comments) was as follows:

Claimants' guaranteed funding	**£800,000**	
Less ATE premium payment already made	£125,000	(£675,000)
Less ATE premium payment to be made prior to trial	£125,000	(£550,000)
Less Prof Healy's estimated fees	£125,000	(£425,000)
Less Prof Hotopf's estimated fees	£60,000	(£365,000)
Less Prof Lewis' estimated fees	£75,000	(£290,000)
Less Prof Hughes' estimated fees	£60,000	(£230,000)
Less Prof Green's estimated fees	£60,000	(£170,000)
Total amount left to: (i) bring the action to trial; and, (ii) pay for the trial.	**£170,000**	
Contingency amount potentially available to the Claimants	£400,000	

28. The possibility for the Claimants to approach the funders for further monies (as the letter suggests may occur) is not taken into account, but it is right to say that no information about the circumstances in which this might occur has been given.

29. It does not appear that Addleshaw Goddard sought any further information concerning the letter from the Claimants' solicitors until 7 July (one week prior to the hearing before me). In a letter sent on that date the following information was requested:

> "In order to allow the court to properly consider the adequacy of the funding available to the Claimants and in light of the above, please could you confirm at your earliest convenience (and in any event in sufficient time before the CMC next week):
>
> - Whether the reference in your letter of 22 December 2015 to the legal term "*limit*[ing]/*adjust*[ing] *their recoverable fees under the funding arrangement*" means that Fortitude Law and the Claimants' counsel are deferring any part of (and if so, to what extent)

> the low fee payable under the no win low fee CFA until after trial;
>
> - Whether any disbursements (other than counsels' fees) are also deferred (and if so, to what extent) until after trial;
>
> - The percentage of the Claimants' guaranteed legal funding that has been exhausted to date;
>
> - If some, or all, of solicitors' and counsels' low fees are now being paid on a monthly basis in line with MLS's normal practice;
>
> - If some, or all, of the other disbursements (including experts' fees) are now being paid on a monthly basis in line with MLS's normal practice."

30. The "above" referred to in the first quoted paragraph related to provisions found on the MLS website which were to the effect (i) that MLS's core acceptance criteria included the requirement that an "agreed case plan and cost budget must be in place"; (ii) that upon agreeing to fund a claim, "MLS will provide funding for the following legal expenses: Solicitors fees, Barristers fees, Expert Witness Fees, ATE insurance premiums, Security for costs orders, General disbursements"; and (iii) that MLS would "Pay on a monthly basis, throughout the life of the case, the claimants' agreed costs".

31. Mr Sheehan complains that there was no response to the letter and no information given at the hearing. Ms Perry says that the late request for such information was not one that the Claimants were obliged by the order to answer. My view is that, whilst there may be relevance in the questions raised by Addleshaw Goddard, those questions were raised too late for it to be something I should regard as a matter of significance at this stage. Although Mr Sheehan said that the Defendant was "keen to understand" what legal costs have been incurred to date, what has already been paid and what effect this has had on the available funds, it was not until a week before the hearing that the inquiry was made. At all events, I do not think that the answer to the questions raised would be likely to affect my present decision.

32. Returning to the Defendant's analysis of the Claimants' funding arrangements, Mr Sheehan submits that what the Claimants are really saying is that I should regard the figure available to them to be £1.2 million rather than £800,000. I agree that this appeared to be the emphasis of Ms Perry's submissions. On that basis Mr Sheehan says that the position of MLS is merely that they have acknowledged the "potential" to increase the funding by up to a further £400,000, but the basis upon which this might occur is unclear. He submits that there is, accordingly, a risk in approaching this potential funding as being certainly available whereas in fact it is merely possibly available. I agree that there is the risk – but there is a risk in almost any provisional assessment one makes in a situation such as this. However, I have been told that the money has been set aside should the additional funding "prove necessary" and I do not think I can or should go behind that at this stage.

33. Each party complied with paragraphs 4 and 5 of the order. Letters addressed to the court from each of the relevant experts were provided. I do not wish to extend this judgment by referring to them in detail, although I will refer to some aspects briefly below. Attached to the letter to the court from Fortitude Law dated 10 June 2016 was a helpful table setting out the figures put forward on each side. That table is reproduced in Appendix 2 to this judgment. In round figures it shows that it would cost £87,000 for the Claimants' experts on the generic issues (including the new experts if permitted by the court) to produce CPR Part 35-compliant reports (or updated reports as may be the case) to take into account all up-dated disclosure. The total costs of the Defendant's experts is said to be approximately £148,000. All those figures are ex-VAT. My primary purpose at that stage for asking the Defendant's experts to perform the same exercise as the actual or potential experts for the Claimants was to see to what extent there was a difference in the assessments made.

34. If these figures are taken at face value (and ignoring any VAT element), the table produced by Ms Caswell (see paragraph 27) demonstrates that there is a "slack" of £233,000[1] for further experts' costs if assessed simply by reference to what Fortitude Law had estimated the position to be following a trial as set out in their letter of 22 December 2015 (see paragraph 24 above). The Defendant, however, suggests that two of the experts have significantly underestimated the costs of producing their reports.

35. The Defendant argues that Professor Lewis has underestimated the amount of work that will be required to produce his first report (bearing in mind he will not have produced a report in the case before). Attention is drawn to the view of his counterpart, Professor Gibbons, who believes it will take approximately 160 hours to re-familiarise himself with the case and prepare an updated report. It is argued by the Defendant that it is more likely that Professor Lewis will take longer than Professor Gibbons. Ms Perry says that Professor Gibbons' estimate may be excessive, but in any event says that Professor Lewis will be working with Professor Hotopf who will have done some of the earlier leg work. Just for the sake of argument, if one assumes that Professor Lewis will need 125 hours rather than the 67 hours currently estimated, that would mean his charge would be approximately £17,500 more than his current estimate (ex-VAT).

36. The Defendant also says that Professor Healy has underestimated the time he would need. It was suggested that he will need longer than Professor Allan Young, his counterpart for the Defendant, who says he will need 120 hours to produce a supplemental report. Again, if one assumes that Professor Healy will need 40 hours extra over the 100 hours he has estimated, that will cost a further £10,000.

37. If both these two additional charges are added together, the total underestimate would be £27,500. But even if that were the case, there would still be a significant "slack" of over £200,000.

38. It follows that I am not satisfied <u>at the present stage</u> that there is insufficient funding to take this case to trial. Whilst it would be difficult to say that the possibility of an appeal should not, in principle, be taken into account, the reality is that it is almost impossible to predict what nature of appeal there might be since it would depend upon

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[1] £320,000 - £87,000 = £233,000.

the findings of fact and the conclusions of law. Equally, I imagine that the Claimants' commercial funders would take a view of the position following the first instance judgment. I do not think I can give it much, if any, weight in the scales at this stage.

39. I will return to the implications of the foregoing after I have considered the issues of prejudice.

Prejudice

40. A number of matters are relied upon. In no particular order of importance, they are as follows.

41. First, because of the 5-year delay since any meaningful steps have been taken in the litigation, a number of witnesses that the Defendant would wish to call are now retired and have said that they do "not feel in a position to continue to assist [the Defendant] or the Court."

42. Second, reference is made again to Dr Shah, the Defendant's regulatory expert. As recorded in my first judgment, he is unwell and cannot take part in any future trial. Ms Caswell's recent witness statement indicates that the Defendant has been unable to identify an appropriate alternative. It is said that this is an important part of the Defendant's case and it is contended that the absence of an appropriate substitute "substantially prejudices [the Defendant's] position in the litigation" which cannot be compensated for by an award of costs.

43. Third, it is said that there will be a "litigation advantage" to the Claimants (and a countervailing disadvantage or prejudice to the Defendant) if they are given permission to instruct Professors Healy and Lewis because they will, it is said, both be responding to disclosed Defendant's experts' reports and this affords them a second opportunity to make out their case, something which would not have been available to them if the case had gone to trial.

44. I am not persuaded that any of these matters affords sufficient prejudice to warrant bringing the case to a halt. As to the first, mere reluctance on the part of a potential witness can rarely, if ever, be a reason for suggesting that proceedings should be halted. The reluctance of a witness may well be overcome once he or she knows what arrangements have been made to receive the evidence and, in any event, if necessary there is always the sanction of the issue of a witness summons. As to the second matter, as Ms Perry says, it would be open to the Defendant to serve a Civil Evidence Act notice in relation to Dr Shah's report and the evidence would be received at trial. Since no expert witness to counter that evidence is contemplated on the Claimants' side (their response presumably being by way of submissions), it is difficult to see how any prejudice to the Defendant is thus occasioned. As to the third matter, if this were a case of "expert shopping" I would have had some sympathy with the proposition. However, as I said in my first judgment, that is not the case here. But furthermore, the trial judge will be able to evaluate the expert evidence as a whole, taking into account the way in which it emerged. If he/she thought that the Claimants' new experts were not approaching their task in the correct manner, that would doubtless be a factor affecting their credibility as expert witnesses.

45. The final matter that Mr Sheehan relied upon was the apparent expansion by the Claimants of their case concerning the consequences of taking Seroxat. I say "apparent" expansion because Ms Perry did say that it was not the intention to stray beyond the pleaded case. I made it clear during the hearing that I was approaching the current issues on the basis of the pleaded case and I have reflected on this in relation to the way in which the schedules of loss have been prepared (see paragraphs 12-20 above). For my part, the currently pleaded issues are the issues at stake in the litigation and there is no scope for expansion.

Conclusion

46. So where does all this lead? As I said in my first judgment, this is not a strike out application or an application for summary judgment by the Defendant. I said that I did not doubt that I had jurisdiction to act as the Defendant was inviting me to act, but that it would be an unusual step to take. That remains my essential view. In my view, it is important to be cautious where the attempt to bring litigation to a halt is based upon the submission of a large corporate organisation with very significant resources that the resources of a group of individual litigants are not sufficient to be able to maintain the litigation. The responsibility of the court is to keep the playing field as level as possible. Whilst I have expressed reservations about the overall valuation of the claim, even taking it at £10 million does suggest that it has not been demonstrated as things stand that the costs (by which, for this purpose, I am referring principally to the Defendant's recoverable costs rather than the costs the Defendant will be required to pay its solicitors and experts) are disproportionate.

47. Having given the matter the best consideration I can, I think the right step to take next is to permit the substitution of the experts sought by the Claimants and to direct that updated (and, where relevant, new) reports are prepared. At that stage, the high point of the Claimants' case will be known (that case, I emphasise, being that reflected in the list set out in [19] of my first judgment). The Defendant will then be in a position to decide whether, for example, it is in a position or has strong enough grounds to apply for summary judgment or whether it would wish to answer the new reports. If the latter is the case, the costs of so doing could be evaluated more clearly than at present.

48. The other advantage of taking this step would be that MLS would know the apparent strength of the Claimants' case at that stage through the medium of the experts relied upon. There may have to be a further review after the Defendant's experts have reported and discussed the position with their counterparts for the Claimants, but the "high point" to which I have referred would be a useful benchmark for all to see.

49. If at that stage, or indeed some stage thereafter, the claim was dismissed or stayed, there would be funds available to pay at least some of the Defendant's recoverable costs since the Legal Aid certificate was discharged. That does mean that the Defendant is in a better position from that perspective than it was hitherto. If the view was that the Claimants' expert evidence gave a reasonable prospect of success in the litigation, further assessments of the Claimants' costs position could be undertaken.

50. Whilst this represents another step in a step-by-step approach, I do not think "incremental management", as Mr Sheehan called it, causes the Defendant any prejudice. If anything it continues to protect its position. However, despite the

preferred position of the Defendant that I should make a final decision now (in other words, a decision favourable to the Defendant's position), I am not prepared to do so. As I have indicated, I am permitting the Claimants to demonstrate the high point of their pleaded case by reference to the expert evidence they would seek to rely upon at a trial if a trial took place. Adequate time for the preparation of these reports must be given in any order drawn up to give effect to this decision. I would be grateful if attempts could be made to agree a timetable and an appropriate order. If it cannot be agreed, I will endeavour to reach a decision based upon written representations. If there are other consequential matters that cannot be agreed, I will try to resolve them on the basis of written representations.

APPENDIX 1

UPON hearing Counsel for the Claimants and Leading Counsel for the Defendant at an adjourned Case Management Conference on 14th December 2015.

AND UPON it being recorded that the Claimants' proposed and current experts (referred to herein as "proposed experts") are as set out in the Schedule to this Order.

IT IS ORDERED THAT:

1. Fortitude Law is appointed as the Lead Solicitor for the Seroxat Group Litigation for the purpose of carrying out the directions set out below.

2. The parties do provide each other with updated disclosure by list, that is to say, from the date that disclosure was last provided, such disclosure to be provided as set out below.

(a) As to the Claimants' disclosure:

(i) it shall include disclosure of the updated medical records of all the Claimants and shall, subject to sub-paragraph 2(a)(ii) below, be provided by 4 p.m. on **3rd June 2016**;

(ii) the Claimants shall disclose, by 4 p.m. on **29th April 2016**, the updated medical records of those Claimants in respect of whom fully worked-up schedules of loss are to be served under paragraph 6 below.

(b) As to the Defendant's disclosure:

(i) tranche 1 shall be provided by 4 p.m. on **18th March 2016**. Tranche 1 shall include the documents identified in para. 107(i)-(ix) of the judgment of the Honourable Mr Justice Foskett (dated 4th February 2016);

(ii) tranche 2 shall be provided by 4 p.m. on **29th April 2016**. Tranche 2 shall include the balance of the disclosure.

3. Any request to inspect a document to be made within 7 days of the production of lists, any request for inspection (unless objected to) to be complied with within 7 days.

4. Each of the Claimants' proposed experts and the Defendant's experts are to indicate, by way of letter, the estimated number of hours required to produce CPR Part 35 compliant reports (or updated reports, as may be the case) and how much the experts propose to charge, along with reasons for their respective assessments. The aforesaid letters are to be the subject of mutual exchange between the parties on or before **27th May 2016**.

5. By 4 p.m. on **10th June 2016**, the parties are to file with the Court (electronically) and serve on each other, the letters of the experts referred to in paragraph 4, above, along with a written commentary on the assessments of the other party's experts or proposed experts.

6. By 4 p.m. on **29th April 2016**, the Claimants are to file and serve fully worked-up schedules of loss, with as much supporting documentation as possible, for 4 example Claimants whose claims are representative of Claimants at four stages on the scale of value of the claims as a whole.

7. By 4 p.m. on **10th June 2016**, the Defendant is to file and serve counter schedules of loss responding to the schedules ordered at paragraph 6, above.

8. By 4 p.m. on **20th May 2016**, either Mr Darren Hanison or Dr Sarah-Jane Richards is to file and serve a witness statement:

a. Indicating their assessment of how many of the Claimants' cases fall within each of the 4 categories of value referred to at paragraph 6, above;

b. Identifying, with reasons, 2 new Lead Cases (in addition to the existing Lead Case previously selected by the Claimants) whom they consider suitable to act as additional Lead Cases in order to determine the issues outlined in the Order of Master Whitaker (dated 29th October 2008); and

c. Explaining why the 2 new Lead Cases and the existing Lead Case previously selected by the Claimants are suitable to enable the issues in this litigation to be determined.

9. List for a CMC on the first open date after **27th June 2016** in order for the Court to consider:

a. The appointment of the Claimants' proposed experts;

b. The schedules and counter schedules of losses for the 4 example Claimants whose claims represent alleged losses typical of Claimants in each of 4 different categories of value.

c. The appointment of the 2 further Lead Cases proposed by the Claimants; and

d. Any further directions to progress this matter to trial.

10. A copy of this order shall by **11th March 2016** be supplied by the Lead Solicitor to the 2 Claimants who are currently acting in person.

11. As to the costs of and incidental to the hearings of 28th October and 14th December 2015, the costs shall be in the case.

SCHEDULE ….

Claimants' Proposed/Current Experts

FIELD	(PROPOSED) EXPERT
Psychopharmacology	Professor Healy
Pharmacokinetics	Professor Hughes*
Epidemiology	Professor Hotopf*
Statistics	Professor Lewis

*Indicates an expert for whom permission has already been given.

APPENDIX 2

Field of Expertise	Claimants/ Defendant	Expert	Claimants Hours	Defendant Hours	Fee Rate	Claimant sTotal	Defendant Total
Pharmacology	Claimant	Prof. D. Healy	100		£250	£25,000	
	Defendant	Prof. A. Young		28	£540		£15,120
Epidemiology	Claimant	Prof. M. Hotopf	100		£380	£38,000	
	Defendant	Prof. J. Newton		164	£250		£36,000
Statistics	Claimant	Prof. G. Lewis	67		£300	£20,100	
	Defendant	Prof. R. Gibbons		160	£586		£93,760
Pharmacology & Pharmacodynamics	Claimant	Prof. J. Hughes	20		£200	£4,000	
	Defendant	Prof. D. Greenblatt		15	£207		£3,104
TOTAL			**287**	**367**		**£87,100**	**£147,984**
Psychiatric Expert for Lead Cases	Claimant	Prof. D. Healy	29			£7,250	
	Claimant	Prof. B. Green	3			£1,050	
	Defendant	No data submitted					
TOTAL			**32**			**£8,300**	