[2022] EWHC 1807 (QB)

QB-2021-002484

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

15 July 2022

Before :

MASTER DAVISON

- -

Between :

DAVID ABBOTT & 3,449 Ors **Claimants**

- and -

MINISTRY OF DEFENCE **Defendant**

- -
- -

Mr Harry Steinberg QC and **Mr David Green** (**Hugh James**) for the **Claimants**
Mr David Platt QC and **Mr Peter Houghton** (**Keoghs**) for the **Defendant**

Hearing date: 7 July 2022

- -

Approved Judgment

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii and The National Archives.

....

1. This is the polished (and expanded) version of an *ex tempore* judgment which I gave in the course of a case management conference on 7 July 2022. Because it deals with a point that has now arisen several times in recent multi-party litigation against the MOD and because it has the potential to affect other cases (and also in order to spare the claimants the time and expense of obtaining a transcript), I am promulgating my judgment on Bailii.

2. There are, broadly, two cohorts of military noise deafness cases before me in which the claimants are represented by Hugh James solicitors. The first cohort ("the *Turner* cohort") was being case managed by me under claim number QB-2017-006007. That cohort consists of roughly 250 claims. They were issued on a single claim form and on 22 May 2018 directions were given for a form of common case management falling short of a Group Litigation Order. The thrust of the order was to stay the claims in favour of negotiated dispute resolution with permission to lift the stay if, in any case, NDR was unsuccessful.

3. On 2 December 2019, Senior Master Fontaine made an order in a much smaller cohort of claims against the MOD for non-freezing cold injury. The lead claim was *Bargh & Ors v MOD* QB-2019-000555. The Senior Master, of her own motion, had raised the issue whether it was permissible under the rules to issue (in that case) 5 claims on one claim form. She ruled that it was not. This was because the claims had very little in common other than the fact that they were all for the same type of injury and all against the MOD. This same issue was then raised by me in relation to the *Turner* cohort. I made a similar ruling leading to an amendment to the original case management order which required that in every case where the stay was lifted, the claimant had then to issue a separate claim form (with payment of the relevant issue fee) and serve Particulars of Claim and medical evidence etc in the normal way. Provision was made in the order for there to be, in these cases, a deemed date of issue – being the date of issue of the original claim form for the *Turner* cohort.

4. Notwithstanding those rulings by Senior Master Fontaine and me[1], on 28 June 2021, Hugh James issued a further "omnibus" claim form under case number QB-2021-002484 ("the *Abbott* cohort"). By now there were an additional 3,500 claims. All of them were placed on to the same claim form. The issue of the claim form in the *Abbott* cohort was prompted by limitation concerns raised by the coming into force of the Overseas Operations (Service Personnel and Veterans) Act 2021.

5. For a second time, this presented the question whether it was permissible to join multiple claimants with widely differing claims to one claim form. In my view it clearly was not.

6. CPR rule 19.1 says that "any number of claimants or defendants may be joined as parties to a claim". The rule certainly allows multiple claimants. Mr Platt suggested that, taken on their own, the words "as parties <u>to a claim</u>" indicated that there must be just one claim – not multiple claims. Be this is at may, rule 19.1 is subject to the provisions of rule 7.3, which states that "a claimant may use a single claim form to start all claims which *can be conveniently disposed of* in the same proceedings". The 3,500 claims joined in these proceedings plainly cannot be conveniently disposed of in the same proceedings. Indeed, it seems to me that the contrary is not seriously arguable. The claims are far, far too disparate in terms of the periods and circumstances in which each claimant sustained his or her NIHL. They have a common defendant and a number of common themes. But that is all. They otherwise present a huge variety of unitary claims. As Mr Houghton pointed out in his skeleton argument, the whole approach thus far in the *Turner* cohort (which has been to lift the stay in those cases that cannot be settled and at that point progress the individual claim in the ordinary way) shows that they cannot conveniently be disposed of in the same proceedings. There obviously could not be a trial of 3,500 claims at one sitting. Mr Steinberg met this point by saying that the intention was to select 16 "lead cases" for trial. Leaving on one side the question whether even 16 could be

[1] Master Cook has taken a similar view in a cohort of PTSD claims against the MOD. To the extent that HHJ Cotter QC (as he then was) took a different approach in the NFCI claims he was managing in the Bristol District Registry, (a) it appears that the point was not argued or debated and (b) I prefer the approach adopted by the QB Masters.

dealt with at one time, that does not meet the objection. It is not realistic to suppose that the other 3,484 cases would be resolved or fully resolved by the outcome of the lead cases. The other cases, or a great many of them, would still have to be litigated and ultimately tried. Thus this one claim, if allowed to proceed on the basis proposed, would generate or would, at the very least, be capable of generating multiple tracks and multiple trials. With respect to Mr Steinberg, this is not an arguable proposition.

7. As Mr Platt pointed out, the way that these military NIHL claims are being managed is analogous to the procedures that would be adopted under a Group Litigation Order. Were this litigation being managed under a formal GLO, there would be a mandatory requirement to issue a claim form and pay the relevant court fee for every claim on the Register; see paragraph 6.1A of PD19B and see also *Boake Allen v Revenue & Customs Commissioners* [2007] 1 WLR 1386. There is no reason to treat these claimants differently. As Mr Platt also pointed out, around 100 other military NIHL cases have been issued by claimants who are represented by solicitors other than Hugh James and all of these claimants have issued individual claim forms and paid the relevant fee. There is no proper basis to treat the claimants represented by Hugh James more favourably.

8. Lastly, the proposal to place 3,500 separate claims on one claim form would put an impossible strain on the court's computerised case management system – CE File. The system has no facility to create sub-files for individual, unitary claims. By way of illustration of that difficulty, the court has received a letter dated 6 July 2022 from Hugh James under the heading "*Jan Flynn v MOD*; Claim number: QB-2021-002484" stating baldly that "this matter has settled by way of the Claimant's acceptance of the Defendant's Part 36 offer dated 20 June 2022. We would be grateful if you could kindly update the court file". The court staff initially interpreted that as meaning that claim number QB-2021-002484 had settled and that the file could be closed. But in fact what it meant was that Mr Flynn's case, being number 1108 in the schedule to the claim form (that schedule itself running to 323 pages), had settled. The difficulties caused by this one small piece of routine case management for a case which has settled would be greatly magnified if the system had to accommodate under one case number all the documents and steps taken in multiple cases that did not settle.

9. I do not think that it would be appropriate to address the problems I have described by way of staying the claim and directing that an individual claimant within it whose claim did not settle should then be required to issue an entirely new claim. It is true that I made such an order in the *Turner* cohort of claims (which numbered around 250). This order was something of a concession reflecting the fact that the appropriateness of joining them all together on one claim form had initially been overlooked. The *Abbott* cohort of 3,500 claims was issued on one claim form by Hugh James knowing full well that I (and Senior Master Fontaine) had already ruled that that course was impermissible. I do not think that a stay of the claim is in these circumstances appropriate. Staying a claim is a step which anticipates that the claim may one day be revived and progressed. But, as presently constituted, these claims cannot be progressed because each one requires its own claim form. What Mr Steinberg was, in substance, asking me to do was to "warehouse" them. To put that differently, he was asking me to treat the claim as a species of standstill agreement. That is something which the parties can, of course, do themselves. But I do not think that it is a proper use of the court's procedures. I have therefore directed that unless individual claim forms are issued within a period of 6 months, the claims will be struck out. That generous period of 6 months reflects the fact that, as Mr Steinberg told me, Hugh James must now (a) address the question of the court fees (which all litigants who do not qualify for fee remission must pay) and (b) review all of the 3,500 claims to assess which are, in reality, to be taken forward.

10. Having characterised his position as not seriously arguable, I refused Mr Steinberg's application for permission to appeal. An application for permission may be renewed to a High Court Judge within 21 days.