

Neutral Citation Number: [2022] EWHC 221 (QB)

Case No: B06YP013

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

On Appeal from the County Court at Liverpool

HHJ Graham Wood QC

The Liverpool Civil Justice Centre

Date: 04/02/2022

Before :

THE HON MR JUSTICE ROBIN KNOWLES CBE

Between :

KARCIHAN MERIC

(by the Official Solicitor as his Litigation Friend)

- and -

(1) ANDREW NAVIS

(2) QBE INSURANCE (EUROPE) LIMITED

Mr Neil Block QC and Ms Nicola Greaney (instructed by the Official Solicitor) for the Official Solicitor

Mr Karcihan MERIC in person

Mr Cheikh Djaaroun in person (for part of the hearing)

Hearing dates: 26 July 2021

JUDGMENT

Mr Justice Robin Knowles CBE:

The appeal and the applications

1.

There are before the Court an appeal and three applications. Each concerns the position of the Official Solicitor in this litigation.

2.

On 11 July 2019 the Official Solicitor was appointed as the litigation friend of the Claimant ("Mr MERIC"). The Official Solicitor sought an order terminating that appointment. On 7 December 2020 the application was heard and dismissed by HHJ Graham Wood QC. The Official Solicitor brings an appeal, with the permission of HHJ Graham Wood QC.

3.

The Official Solicitor has since brought a fresh application dated 26 March 2021 (and not by way of appeal) for an order terminating the appointment of the Official Solicitor as litigation friend. Mr Meric himself issued an application dated 23 March 2021 for the displacement of the Official Solicitor as his litigation friend. Further, a Mr Cheikh Djaaroun (“Mr Djaaroun”) applies by application dated 25 February 2021 to be appointed as Mr Meric’s litigation friend and to remove the Official Solicitor as litigation friend.

4.

These three applications were all issued in the County Court. On 27 May 2021 I directed that they be transferred to the High Court and listed for hearing at the same time as the appeal.

5.

In giving these and other directions I said: “It is essential that the substance of the question whether the Official Solicitor should be required to remain as litigation friend be determined on one final occasion.” I took the opportunity to work through the Court’s file, which is of appreciable size. It reveals many exchanges that the Court’s staff will have found challenging. It also shows the use of hard work and good judgment by HHJ Graham Wood QC, as Designated Civil Judge, to strive to ensure that the proceedings are properly dealt with in accordance with the Overriding Objective of dealing with cases justly and at proportionate cost.

6.

I later returned to Liverpool specifically to hear the appeal and applications, at a face to face, in person, hearing. This gave me the opportunity to see and hear Mr Meric in the setting of the litigation.

The history of the litigation

7.

The substantive claim arises out of a road traffic accident in 2021. The First Defendant was uninsured, leading to the involvement of the Second Defendant insurer.

8.

Liability is not disputed but causation and quantum are. A schedule of loss dated 1 August 2017 put past and future losses including interest at just below three quarters of a million pounds. Among the injuries alleged to have been caused to Mr Meric by the accident is psychiatric injury. The issues of existence, causation and extent of psychiatric injury are strongly challenged by the Second Defendant insurer.

9.

As the litigation has taken its procedural course both Mr Meric and the Second Defendant insurer have made serious allegations about the other, including of dishonesty.

10.

At times Mr Meric has been legally represented, and at times he has acted in person.

11.

A trial was listed before Mr Recorder Cowan to commence on 8 December 2018. Mr Meric terminated his instructions to a barrister he had retained on a public access basis. Mr Recorder Cowan determined that Mr Meric did not have sufficient capacity to represent himself. The trial was ineffective and adjourned.

12.

At a further hearing on 11 July 2019 before District Judge Lampkin, the District Judge determined that Mr Meric lacked capacity to conduct the proceedings and appointed the Official Solicitor as his litigation friend.

13.

The Second Defendant insurer was present (by solicitors and counsel) at the hearing before DJ Lampkin. Respectfully, this is unusual, even inappropriate, where the application is to appoint a litigation friend. That is a matter for the Court, the litigant said to lack capacity, and the prospective litigation friend.

14.

In the event, the Second Defendant insurer has since gone on to appeal the decision of DJ Lampkin. That appeal has not yet been heard.

15.

There are also various outstanding applications by the Second Defendant insurers. These include an application for an order that Mr Meric to pay the accrued fees of an expert as a condition of the litigation continuing. On 7 December 2020 HHJ Graham Wood QC made some useful observations about the high level of those fees, and I hope the parties have reflected carefully on what he said.

Civil Procedure Rule 21

16.

By CPR 21.1(2)(d) 'protected party' means a party, or an intended party, who lacks capacity to conduct legal proceedings.

17.

A protected party must have a litigation friend to conduct proceedings on her or his behalf (CPR 21.2(1)). If during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step in the proceedings without the permission of the court until the protected party has a litigation friend (CPR 21.2(3)).

The decision of HHJ Graham Wood QC

18.

At the hearing on 7 December 2020 the Official Solicitor appeared by Mr Vikram Sachdeva QC. HHJ Graham Wood QC described himself as deeply troubled by the case for three reasons.

19.

First because progress had been hampered by significant procedural problems relating to Mr Meric's capacity and ability to conduct the proceedings faced with a material number of applications by the Defendants. Second because of inappropriate steps taken or allegedly taken by Mr Meric towards Court staff and judges. Third, because if the application before him was granted, terminating the appointment of the Official Solicitor, it appeared that would leave Mr Meric without anybody to conduct the proceedings on his behalf or to represent his interests.

20.

Before HHJ Graham Wood QC on 7 December 2020 Mr Meric accepted that he did not have the capacity to conduct the proceedings. Although the Judge acknowledged that there was compelling evidence (and "even more so in the light of recent behaviour") that Mr Meric did not have capacity, he

expressly stated he did not decide the question of capacity. The Judge did however refuse the application of the Official Solicitor for other reasons.

The hearing of the appeal and the applications

21.

On the hearing of this appeal and of the applications before this Court, Mr Meric informed the Court that he no longer trusted the Official Solicitor.

22.

The Official Solicitor, through Mr Neil Block QC informed the court that since the hearing before HHJ Graham Wood QC the Official Solicitor had become satisfied that she was unable to instruct a firm of solicitors with experience in personal injury claims.

23.

Mr Block QC emphasised on instructions that the Official Solicitor herself (and including her small team) does not have the experience, skill or resources, to conduct personal injury litigation. Even though liability had been admitted, Mr Meric's interests would require for example further and up-to-date expert evidence, quite apart from the question of the conduct of the trial.

24.

In these circumstances the Official Solicitor had concluded, Mr Block QC said, that it was no longer reasonably practicable for her to remain as a litigation friend. When she had originally consented to be litigation friend it was on the basis that a firm of solicitors of huge experience were involved to conduct Mr Meric's case, and that was no longer the case. There were important follow-on consequences in terms of funding and costs risk.

25.

Mr Block QC emphasised to the Court that the conclusion reached by the Official Solicitor was not reached lightly. She understood the concerns that the Court would have and indeed largely shared them.

26.

I was informed that many litigants without capacity request the involvement of the Official Solicitor but are turned down. Mr Block QC said on instructions from the Official Solicitor that is rare to terminate an appointment of the Official Solicitor as litigation friend but it does happen; and, away from the Court, many end up in a similar position, where the Official Solicitor was unable to agree to be appointed in the first place.

27.

This of course leaves the wider issue of what becomes of a litigant who lacks capacity but where the Official Solicitor is not in a position to continue to be litigation friend, and no other litigation friend is available. To this the only answer currently offered is that the litigation cannot proceed; that is, that the person lacking capacity is effectively deprived of the opportunity of establishing their claim. It is possible to imagine a case where the claim was central to the person's long term wellbeing or livelihood.

28.

That this should be the only answer currently offered to that wider issue is beyond unsatisfactory. As an answer it would plainly require testing by reference to Article 6 of the European Convention on Human Rights and Fundamental Freedoms. But these considerations are first of all part of the context

in which I should reach my decision in the present case. They are a reason why I should examine even more carefully before going further, the question whether Mr Meric lacks capacity.

My assessment of Mr Meric's capacity now

29.

I have read the various expert reports on the court file that have been prepared over time.

30.

There is expert opinion on both sides of the question of capacity. I positively do not wish, in this particular case, to make comment on their substance because some may be referred to at trial (the issues at trial of course overlap with the question of capacity) and the Second Defendant insurer was not before the Court at the hearing.

31.

I have however had the additional advantage, as a judge, of seeing Mr Meric represent himself over the course of a day. That is an advantage that is in the live context of litigation itself, and is more recent than the expert opinion.

32.

I mean no disrespect when I say that at points the hearing was challenging because Mr Meric has much he wishes to say and about which he feels strongly. But the hearing was not impossible. He was heard, he heard what his opponent needed to say, he replied to that, he answered the court's questions, he made and explained decisions. There was courtesy to the Court and its users from Mr Meric for which I was, respectfully, grateful.

33.

A trial would be different, but not so different that it cannot be managed. I have no doubt that, as Designated Civil Judge, HHJ Graham Wood QC, will continue to ensure the selection of a Judge of suitable experience to hear all further stages of this litigation.

34.

In the circumstances I conclude that, now, Mr Meric has capacity to conduct these proceedings. It is of the nature of a question of capacity that the answer can change over time. Although in the present case I hope it would be a last resort, my conclusion can be revisited if circumstances change.

35.

Of course my conclusion cannot help Mr Meric with things like obtaining the further expert evidence that Mr Block QC indicated would be required (and if the Court when case managing the litigation allows further expert evidence). It does not mean that he will have a reliable understanding of litigation procedure. But these are difficulties that many litigants in person face; they do not go to capacity to conduct proceedings within the meaning of CPR 21.

The Second Defendant insurers - Mr Meric's capacity

36.

In giving directions on 27 May 2021 I also said the question of capacity "is a matter first and foremost between Mr Meric and the Official Solicitor, and not the Defendants". I directed that the Defendants were not entitled to be served with and should not be served with any of the documents prepared for the appeal and the applications or with notice of the hearing.

37.

I recorded that it was after the hearing that “it will be necessary to address as a next stage the position between [Mr Meric] and the Defendants in the underlying litigation”. I gave a specific direction that my direction over documents prepared for the hearing was “not to have any effect in relation to [Mr Meric’s] obligations of disclosure to the Defendants at the appropriate stage or stages in the underlying claim between [Mr Meric] and the Defendants.”

38.

However it is the case that, of course for very different reasons, the conclusion I have reached - invited by each of Mr Meric and the Official Solicitor (i.e. that the Official Solicitor not be Mr Meric’s litigation friend) - is also the conclusion that the Second Defendant insurer (by its appeal against the decision of DJ Lampkin) wishes. I do not agree that it is a matter for that party, but that is a separate point.

The appeal and the applications

39.

As between the appeal and the applications, I prefer to decide this matter by reference to the up-to-date position rather than by reference to the merits of a decision reached at an earlier date and now challenged on appeal. Given my assessment of Mr Meric’s capacity, above, I grant the Official Solicitor’s fresh application dated 26 March 2021 (and not by way of appeal) for an order terminating the appointment of the Official Solicitor as litigation friend.

40.

However, and in the interests of trying to achieve completeness, I do also allow the appeal. The appeal is advanced on a number of grounds, but I propose to focus on one. The Judge declined the application to terminate where the Official Solicitor no longer consented to act as litigation friend and where her withdrawal of consent was the result of material changes in circumstances as to legal representation by solicitors, and as to the funding of litigation and risk.

41.

On authority not cited to HHJ Graham Wood QC that situation may justify the grant of an application on behalf of the Official Solicitor to terminate her appointment as litigation friend (see Bradbury and Others v Paterson and Others [2014] EWHC3992 (QB) per Foskett J). HHJ Graham Wood QC was understandably concerned to hold the ring for a period to see if the position could be repaired, but the decision he made was a final one - to refuse the application rather than to adjourn the application. I do not consider that he had sufficient material before him to justify that course.

42.

I dismiss Mr Djaaroun’s application. He did not press it, and nor did Mr Meric. Mr Djaaroun kindly attended Court for a short while and I was able to hear from him. It was clear to me that he was prompted by a wish to help, but had no understanding of what would be involved. I intend no disrespect in saying that I was not satisfied that Mr Djaaroun would be able “fairly and competently [to] conduct” these proceedings on behalf of Mr Meric (see CPR 21.7(3) and 21.4(3)(a)).

This judgment and next steps

43.

Although a decision reached on a matter between the Court, Mr Meric and the Official Solicitor, having reached the decision I have it is desirable in my view that this judgment be made available to the Second Defendant insurer and I so direct.

44.

Mr Meric should now serve notice on the Second Defendant insurer (a) stating that the appointment of his litigation friend to act has ceased; (b) giving his address for service; and (c) stating whether or not he intends to carry on the proceedings (see CPR 21.9(4)).

45.

The Court will (unless informed otherwise by the Second Defendant insurer) work on the basis that my decision (which sees the end of the Official Solicitor's involvement as litigation friend) means that the Second Defendant insurer will not need to press their appeal against the decision of DJ Lampkin to appoint the Official Solicitor as litigation friend.

46.

DJ Lampkin understandably envisaged that the next step would be a case management conference. I think that is the next step now. If any other application is to be pursued that should be listed for the same hearing. Subject to any other application, the matter should then proceed to trial unless resolved by agreement. At the case management conference the issues of disclosure (see above), further expert evidence (above) and mediation (below), will need particular attention, and the Court may wish to offer explanation and guidance to ensure that what is required is fully understood.

The Second Defendant insurer: the litigation ahead

47.

The Second Defendant insurer, and its solicitors and counsel, will now face a litigant in person. The Official Solicitor formed the view that the case had its complexity, and I agree.

48.

Until the issues in the litigation are decided it will not be known whether Mr Meric suffers from psychiatric illness, and whether that illness was caused by the accident. The litigant in person involved in this complex case is therefore potentially vulnerable.

49.

In these circumstances there are professional and procedural responsibilities on the shoulders of the solicitors and counsel to the Second Defendant insurer, and indeed the Second Defendant insurer itself (see in particular CPR1.3, CPR1.1(2)(a), 3.1A, CPR Practice Direction 1A). All are very experienced and will know this. Quite apart from Mr Meric, the responsibilities are important to the ability of the Court to do justice. The Court itself will be alert that the responsibilities are met.

Mediation

50.

At the case management conference I would respectfully encourage the Court, with the assistance that the Court is entitled to expect from those representing the Second Defendant insurer, to discuss the involvement of an independent mediator.

51.

Mediation offers a range of approaches, tools and frameworks for resolution that are not available in the courtroom. The Court at the forthcoming case management conference has a valuable role in explaining to Mr Meric what the process of mediation involves and can bring.

52.

The Court will also want to address the Second Defendant insurer on the topic. I appreciate that the Second Defendant insurer has a strong view on the case, but it will also have the experience to know that that is no reason for not attempting a mediation. In fact sometimes it underscores the reason for attempting a mediation. And the present is a case where a representative of the Second Defendant insurer should attend the Case Management Conference with solicitors and counsel.

53.

If a difficulty for the parties is agreeing on the choice of mediator, I have no doubt that the Court will be prepared to assist, including by nominating a mediator. The Commercial Court has, for example, been prepared to do that, sometimes from a list of names to which the parties have contributed.

54.

Although I am not suggesting compulsion in the present case, of either Mr Meric or the Second Defendant insurer, there is nonetheless valuable up to date material on the use of mediation to be found in the recent report commissioned by the Master of the Rolls and published by the Civil Justice Council ("Compulsory ADR"; June 2011; Rt Hon Lady Justice Asplin DBE, William Wood QC, Professor Andrew Higgins, Hon Mr Justice Trower).

Concluding remarks

55.

This litigation has been difficult for Mr Meric. I can understand that it has been frustrating for the Second Defendant insurer. But each party will have to do its best.

56.

What has also come through is the way in which the Court staff, under the leadership of HHJ Graham Wood as the Designated Civil Judge, have persevered, despite challenges of many forms, and sometimes serious challenges. I pay tribute to them. They have by their actions and approach set an example of the importance of seeing through even the most difficult case.