Dealing with Applications for Adjournments due to Ill-Health

The High Court has provided a comprehensive summary, in the case of *Financial Conduct Authority (FCA) V Avacade Ltd & Ores* [2020] EWHC 26, of the relevant authorities when it comes to applying for an adjournment on the grounds of ill-health.

Although the High Court does not seek to offer defined rules that should be applied to such applications, the guidance is likely to provide some clarity on what is largely a matter for judicial discretion. Such principles are likely to be of particular importance when dealing with applications from litigants in person.

The guidance offered by Norris J, in *Levy v Ellis-Carr* [2012] EWHC 63 (Ch), was described as a "a good starting point" in assessing the medical evidence relied upon in support of an adjournment application. Norris J stated that:

"Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which … prevent participation in the trial process, should provide a reasoned prognosis and should give the Court some confidence that what is being expressed is an independent opinion after a proper examination."

The comments of Norris J seem to suggest that any medical report should be comprehensive and actively engage in not only the applicant's medical condition, but the effect of that medical condition upon participation in the trial process. It is significant that Norris J refers to "participation in the trial process" and attendance at trial; the two are not synonymous.

This point was also highlighted in the case of *Maitland-Hudson v SRA* [2019] EWHC 67 (Admin). Although "it is not possible to lay down rigid rules to be applied identically in every situation", it is worth noting that "a 'fair' hearing does not necessarily mean that there must be an opportunity to be heard orally". The Court must bear in mind that "context is everything".

Norris J then detailed the approach that the Court should take when faced with appropriate expert evidence:

"The Court can then consider what weight to attach to that opinion and what arrangements might be made (short of an adjournment) to accommodate the party's difficulties. No Judge is bound to accept expert evidence…"

Although the Court is not bound by expert evidence, adequate reasons should be given for departing from it. In *Solanki v Intercity Telecom and Another* [2018] EWCA (Civ) 101 an appeal against a decision refusing an adjournment was allowed because the Judge had failed to give sufficient reasons for disregarding medical evidence.

Coulson LJ made comments in *GMC v Hayat* [2018] EWCA (civ) 2796 that the Court should not only look at the most recent medical evidence, but also wider considerations. The wider considerations that were deemed to be relevant in this case included the fact that three applications had previously been made to adjourn on entirely different grounds, each without success. Coulson LJ was explicit that as part of these wider considerations, the Court should consider the question of the public interest:

"Any adjournment causes extensive disruption and inconvenience and wastes huge amounts of costs. That would have been particularly acute here, given the number of witnesses and the length of the hearing. Those again were relevant factors which the Tribunal was entitled to consider when arriving at its conclusion."

Lewison LJ, in the case of *Forrester Ketley v Brent* [2012] EWCA (Civ) 324, built upon the guidance of Norris J, with specific reference to dealing with applications made by a litigant in person:

"An adjournment is not simply there for the asking. While the Court must recognise that litigants in person are not as used to the stresses of appearing in Court as professional advocates, nevertheless something more than stress occasioned by the litigation will be needed to support an application for an adjournment. In cases where the applicant complains of stress-related illness, an adjournment is unlikely to serve any useful purposes because the stress will simply recur on an adjourned hearing."

Some further useful guidance on applications made by litigants in person was offered by Mr Warby J in the case of *Decker v Hopcraft* [2015] EWHC 1170 QB:

"The question of whether effective participation is possible depends not only on the medical condition of the applicant for an adjournment, but also, and perhaps critically, on the nature of the hearing, the nature of the issues before the Court and what role the party concerned is called to undertake. If the issues are straightforward and their merits have already been debated in correspondence, or on previous occasions, or both there may be little more that can be usefully be said. If the issues are more complex but the party concerned is capable, financially and otherwise, of instructing legal representatives in his or her place concerned is capable, financially and otherwise, of instructing legal representatives in his or her place and of giving them adequate instructions their own ill health may be of little or no consequence. All depends on the circumstances as assessed by the Court on the evidence put before it."

The authorities also suggest that an application for an adjournment of trial should be treated differently to an application under CPR 39.3 to set aside a judgment entered in default because of the non-attendance of a party. The Court should not be too rigorous when questioning if there is a good reason for non-attendance in the context of an application under CPR 39.3, but a rigorous approach is justified in the context of an adjournment application (*Mohun-Smith v TBO Investments Limited* [2016] EWCA (Civ) 403).

After discussing the relevant case law, the High Court offered guidance of its own:

"[It] is essentially a case management decision which I must make taking account of all the relevant factors and bearing in mind in particular the overriding objective and the need to deal with cases justly. As has been said, that involves looking at the position in the round and not from the perspective of one party only. I must therefore obviously take into account matters beyond the medical evidence available to me."

Summary

Dealing with applications for adjournments is ultimately a matter for the Court's discretion. It is worth noting that medical evidence alone is not determinative and that the Court should be mindful of the wider issues of the case. An important distinction can be drawn between attendance at a trial and participation in a trial; the issues and complexity of the case will be an important factor in this distinction. The common theme in the authorities appears to be that a global approach should be taken looking at the case in its entirety.

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Law is correct as of 6th February 2020

Whilst every effort has been taken to ensure these notes are correct, they are intended to give a general overview of the law. Delegates are respectfully reminded that they are not intended to be used as a substitute for specific legal advice. No liability is accepted for an error or omission contained herein.