

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO. ANUHCV2023/0442

BETWEEN:

[1] GRETCHEN SAUNDERS-CHRISTOPHER
[2] RODY CHRISTOPHER

Claimants

and

[1] SIR LESTER BIRD MEDICAL CENTRE (MOUNT
ST. JOHN'S MEDICAL CENTRE)
[2] DR. DARYEN EPHRAIM

Defendants

Appearances:

Mr. Wendel Alexander, Counsel for the Claimants
Ms. Safiya Roberts, Counsel for the 1st Defendant
Ms. Sherrie-Ann Bradshaw, Counsel for the 2nd Defendant

2025: May 28th;
June 4th.

REASONS FOR DECISION

- [1] **MICHEL, M.:** On 28th May, 2025 I heard an application by the 1st Defendant ("**the Hospital**") for an order that a preliminary hearing be held to determine whether the Claimants' claim is statute barred as having been filed after the expiration of the six-month limitation period as set out in section 2(a) of the **Public Authorities Protection Act**.¹ The 2nd Defendant, ("**the Doctor**") did not participate in the hearing of the Hospital's application. On 4th June, 2025 I made an order refusing the Hospital's application and indicated to the Parties that I would provide written reasons for my decision. I do so now.
- [2] It is first necessary to set out the background to this claim and the Parties pleadings to place the Hospital's application into its proper context.
- [3] The Claimants are wife and husband and were expecting their third child. The 1st Claimant attended the Defendant Hospital in late October 2022 to have her baby delivered. Whilst awaiting the delivery of their baby at the Hospital, the

¹ Cap. 352, Laws of Antigua and Barbuda.

Claimants received the unfortunate news that their baby's heartbeat could not be detected, and the baby was subsequently still born.

- [4] On 4th December, 2023 the Claimants commenced these proceedings against the Defendants alleging negligence and breach of contract and seeking damages. In their claim, the Claimants make several allegations against the Defendants in relation to the circumstances surrounding the delivery of their baby, including, allegations of delay in the induction of labour and repeated assurances from the Defendants that their baby was not in any danger and allegations of negligent treatment and care of the 1st Claimant by the Defendants.
- [5] The Claimants allege that they were owed a duty of care by the Defendants and that the conduct of the Doctor, and the Hospital through its servants and agents, fell far below what is the appropriate standard for a reasonable health care professional and a hospital equipped with doctors, nurses and health care professionals. Furthermore, they allege that the Defendants breached the duty and standard of care of what was expected of a reasonable professional and a reasonable professional institution in exercising their skills to care for and treat the 1st Claimant, as they profess to have the requisite reasonable degree of care and skills. The Claimants allege that the Defendants breached that duty of care resulting in loss, damage, injury and psychiatric harm to them.
- [6] The Claimants further allege that the Defendants also breached an implied term of the contract to provide medical care to the 1st Claimant and to provide services of and/or satisfactory quality care and skill. They allege that the Defendants are not excluded from liability by any term of the contract that is unreasonable or where death or loss of the baby is concerned.
- [7] The Claimants aver that as a result of the breach of the duty owed to them by the Hospital acting through its servants or agents and the Doctor to provide the requisite medical care, the fetus was stillborn.
- [8] The Claimants plead the following particulars of negligence of the Defendants:-
- (1) The Defendants owed a duty of care and breached the same to the 1st Claimant to provide appropriate medical care;
 - (2) The standard of care the Defendants provided to the 1st Claimant fell below what was expected of reasonable professional medical care providers;
 - (3) A sufficient degree of foreseeability and proximity existed between both Claimants and the Defendants;

- (4) The Defendants foresaw and ought to have foreseen that failure to exercise the requisite duty of care to the 1st Claimant in all the circumstances of this case could also result in harm to the Claimants and their unborn child;
- (5) Negligent and or reckless failure to perform the 1st Claimant's induction as scheduled or within a short period as soon as practicable in all the circumstances, resulting in the loss of the 1st Claimant's fetus;
- (6) Reckless disregard for the health, safety and care of the 1st Claimant and her unborn child.
- (7) Failure to appropriately examine and or assess the 1st Claimant's condition, resulting in the Defendants unreasonably delaying the 1st Claimant's induction.
- (8) Causing stress, and psychiatric injury to the Claimants due to them realizing that the 1st Claimant's fetus ("the baby) had died.
- (9) The Defendants' breach of their duty of care to the requisite standard of the 1st Claimant caused injury, loss, financial loss, depression and psychiatric injury to the Claimants.
- (10) The Defendants owed a duty of care to the Claimants and failed to act reasonably in exercising that care.

[9] The Claimants further avers that the Hospital was at all material times under a statutory duty to provide medical care within the meaning of the **Supply of Goods and Services (Implied Terms) Act**,² sections 11 and 12 particularly; and that the Hospital breached that statutory duty resulting in injury, loss and damage to the Claimants. The Claimants allege further that the Defendants also breached the contractual agreement between themselves and the Claimants at common law since it was an implied term of the said contract that the Defendants provide proper care to the 1st Claimant at all material times when the 1st Claimant was under the Defendants' care. This, the Claimants allege, resulted in loss, injury and damage suffered by them.

[10] The Claimants allege that because of the Defendants' breaches of the requisite standard and duty of care, the Claimants suffered depression, psychiatric harm, stress, injury, grief and damage and that the Defendants are liable in negligence.

² CAP 421 A, Laws of Antigua and Barbuda.

- [11] The Claimants also allege that the 2nd Claimant suffered emotional stress and grief since the 1st Claimant lost the child through no fault of her own, and while offering and rendering emotional support and assistance to the 1st Claimant, the 2nd Claimant also suffered injury due to the negligence of the 2nd Defendant and or through the negligence of the 1st Defendant's servants or agents
- [12] The Claimants aver that they have been undergoing therapy to try to cope with the pain and grief lingering in their daily lives and that they have been seen by a counselor every Sunday since 18th June, 2023. The Claimants further plead other alleged impacts of their baby's stillbirth on their mental and physical health in their statement of claim.
- [13] The Claimants plead the following as their particulars of injury:-
- (1) Post-traumatic stress disorder
 - (2) Nervous shock
 - (3) Adjustment disorder with depressed moods
 - (4) Intense Grief
 - (5) Anxiety
 - (6) Loss of sleep
 - (7) Hypertension
 - (8) Other pains and sufferings
- [14] The Claimants therefore claim damages, inclusive of general, exemplary and aggravated damages, special damages, damages for pain, suffering and psychiatric injury, interest and costs.
- [15] On 22nd March, 2024 after filing an application for an extension of time to file its defence, the Hospital filed an application pursuant to rule 26.3(1)(c) of the Civil Procedure Rules (Revised Edition) 2023 to strike out the Claimants' claim on the basis that the claim was an abuse of the process of the Court as being statute barred having been filed after the expiry of the six-month limitation period as set out in section 2(a) of the **Public Authorities Protection Act**.
- [16] By order dated 16th May, 2024 this Court refused the Hospital's application to strike. In arriving at its decision, the Court applied the Court of Appeal's decision in **Jessy James Khouly et al v Mount St. John's Medical Centre Board**³ wherein the Court of Appeal found that the Court below in that case erred in striking out a claim against the Hospital Board on the basis of it being statute barred under the **Public Authorities Protection Act**, and reasoned that the appropriate course was to remit the issues posed in the Hospital Board's

³ ANUHCVP2022/0005 (delivered 8th March 2023, unreported).

application to strike out the claim form and statement of claim for consideration and determination during the trial of the matter in the court below.

- [17] This Court stated the following in its reasons for decision on the Hospital's strike out application:⁴

"In considering the applicability of the PAPA to the cases, the essential test lies in the difference between a public duty owed by the Hospital to the public generally and a private duty incurred in the course of acting under statutory enabling. Given that this remains a live issue on this claim, it is a matter best left for trial and not one for determination on a strike out application before a first case management conference has been held. In the circumstances, the Hospital's strike out application was refused."

- [18] The Hospital was later permitted to file its defence to the Claimants' claim. In its defence, the Hospital denies the Claimants' claim in its entirety. The Hospital specifically denies the extent of the duty of care that is alleged by the Claimants as owed to the 1st Claimant. The Hospital avers that its servants or agents owed a duty to exercise reasonable care, skill, diligence and competence in treating the 1st Claimant to the standard to be expected of reasonable medical personnel in all the circumstances. It further denies owing a duty of care to the 2nd Claimant. The Hospital specifically denies breaching its duty of care and denies that the alleged breaches resulted in loss, damage and personal injury to the Claimants.
- [19] The Hospital denies causation as alleged in paragraph 29 of the Claimants' statement of claim that because of the Defendants' breaches of the requisite standard and duty or care that the Claimants suffered depression, psychiatric harm, stress, injury, grief and damage and the Defendants are liable in negligence.
- [20] The Hospital avers in its defence that the fetal demise, or any alleged loss and injury suffered by the Claimants, was not as a result of any alleged action or inaction on the part of the Hospital or its physicians, nurses, employees, agents, and/or servants. It further denies that the alleged damages or loss suffered by the Claimants was caused or occasioned by the alleged negligence or breach of duty on the part of the Hospital, its servants and/or agents and required the Claimants to prove their alleged loss and damage claimed.

⁴ Gretchen Saunders-Christopher et al v Sir Lester Bird Medical Centre et al ANUHCv2023/0442 (delivered 16th May 2024) at para. 25.

- [21] The Hospital further pleads that the Claimants' claim should be struck out as being an abuse of process, as the claim is statute barred. They allege that the Hospital, its employees, servants and agents, are entitled to the protection of the **Public Authority Protection Act** and that the claim herein is statute barred, having not been filed within six months of the act complained of.
- [22] The Doctor has similarly filed a defence to the Claimants' claim, denying the Claimants' claim in its entirety. He asserts that he was not at all material times the 1st Claimant's Obstetrician-Gynecologist and denies any negligent care to the 1st Claimant.

The Hospital's Application for the Hearing of a Preliminary Issue

- [23] Following an unsuccessful attempt at mediation, on 25th November, 2024 the Parties were issued partial directions for trial including for standard disclosure and the filing of their witness statements. On 17th February, 2025 the Hospital applied to the Court for an order that:-
- (1) A preliminary hearing be held to determine whether the claim is statute barred having been filed after the expiry of the six month limitation period as set out in section 2(a) of the **Public Authorities Protection Act**, pursuant to CPR 26.1(2)(d), (e) and (y).
 - (2) Directions as to the filing of affidavits and legal submissions on the limitation issue in preparation for the preliminary hearing.
 - (3) The Hospital be granted an extension of time for filing of its witness statement and relief from any sanctions liable to be imposed for failure to comply with the order of the 25th day of November, 2024 pursuant to CPR 26.1(k).
 - (4) An order that the time for the parties to file any witness statements be stayed until the determination of this application and the preliminary hearing on the limitation issue (in the event the Court grants the application for a preliminary hearing), pursuant to CPR 26.1(q).
- [24] In its application, the Hospital contends that the applicability of the **Public Authorities Protection Act** to the case at hand and a determination of whether the claim is statute barred is a preliminary issue that can be decided prior to any issue of whether the Defendants were negligent and, if so, what damages are payable to the Claimants (if any). The Hospital further contends that the determination of the limitation point would allow the Parties to fully ventilate the facts and legal submissions relating to this preliminary issue before delving into

the wider issues of negligence and damages. This course of action, it argues, would ultimately save the Parties and the Court time and resources in determining, at this stage of the proceedings, whether the claim is statute barred, particularly due to the nature of this case involving medical negligence, where the necessity to obtain expert evidence (in some cases outside of the jurisdiction) can be timely and costly.

The Law on Preliminary Hearings

[25] The Court has the case management power pursuant to CPR 26.1(2)(e) to direct a separate trial of any issue, and pursuant to CPR 26.1(2)(i), the Court may dismiss or give judgment on a claim after a decision on a preliminary issue. Further, the Court's wide case management powers include the power to take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective pursuant to CPR 26.1(2)(y).

[26] In **Craig Reeves v Platinum Trading Management Limited**,⁵ Barrow JA explained that the trial of a preliminary issue is 'a procedure that the court employs when costs and time can be saved if decisive issues can be tried before the main trial.'⁶ The learned Justice of Appeal identified three types of orders that can be made: (1) for the trial of a preliminary issue on a point of law; (2) for the separate trial of preliminary issues or questions of facts; and (3) for separate trials of liability and quantum. He continued at paragraph 17, that:-

"Wasting rather than saving time, complicating rather than simplifying issues, and engaging in mini-trials with no true justification for doing so, are among the risks that require careful consideration before a court decides to order the trial of a preliminary issue."

[27] The learned Justice of Appeal in the judgment of the Court of Appeal further referred⁷ to the dicta of Lord Roskill in **Allen v Gulf Oil Refining Ltd**⁸ where it was stated:-

"The preliminary point procedure can in certain classes of case be invoked to achieve the desirable aim both of economy and simplicity. But the cases in which such invocation is desirable are few. Sometimes a single issue of law can be isolated from the other issues in a particular case whether of fact or of law, and its decision may be finally

⁵ SKBHCVP2008/004 (delivered 30th May 2008, unreported) at para. 16.

⁶ At para. 16.

⁷ At para. 17.

⁸ 2 [1981] AC 1001 at 1021-1023.

determinative of the case as a whole. Sometimes the facts can be agreed and the sole issue is one of law. But the present is not a case in which this procedure ought ever to have been adopted ...”

[28] Following this, Barrow JA noted the following at paragraph 18:-

“It will be seen from the speech of Lord Roskill that the trial of a preliminary issue will usually be of a point of law, which can be isolated from any factual dispute, or may be made separately triable because facts are agreed. To order the separate trial of a question or issue of fact was described in the early case of *Piercy v Young*⁸ [(1880) 15 Ch. D. 475 at 480] as an “extraordinary and exceptional” course that should only be made “on special grounds”.

[29] Barrow JA concluded that ‘it will indeed be an exceptional case in which a question of fact will be ordered to be tried in advance of the trial.’⁹

[30] In a later decision of the Court of Appeal in **Aquaduct Limited et al v Faelesseje et al**,¹⁰ Baptiste JA made the following observations with respect to preliminary issues:-

“The court, and the parties, should give careful consideration to the issues to be determined when making an order for a split trial. Where a claim is highly fact sensitive, it is important to establish the factual premise for the issue of law on which the judge was invited to rule. There is a need for total clarity when a court orders the trial of a preliminary issue of law. Preliminary issues should not be set in motion in a casual and unstructured way. The right approach to preliminary issues should be (inter alia) that the questions should usually be questions of law and should be decided on the basis of a schedule of agreed or assumed facts. Authorities for these propositions are: (1) *Mcloughlin v Jones*¹ ([2002] QB 1312 paras 61-66, David Steele J.) in which the Court of Appeal made clear what the approach should be in terms of ordering and hearing the trial of preliminary issues and (2) *Larkfleet v Allison Homes Eastern Limited*² ([2016] EWHC 195.) where Mr. Justice Fraser pronounced on the need for total clarity when a court orders the trial of a preliminary issue.

[31] Referring to the House of Lords judgment in **SCA Packaging Ltd v Boyle**,¹¹ Baptiste JA noted that ‘the power the tribunals have to deal with issues separately at a preliminary hearing should be exercised with caution and

⁹ At para. 19.

¹⁰ SVGHCVAP2014/0017 (delivered 18th April 2016, unreported) at para. 12.

¹¹ [2009] UKHL 37 at para. 9.

resorted to only sparingly'. The learned Justice of Appeal further referred to the statement of Lord Hope in Tiling v Whiteman¹² that preliminary points of law are too often treacherous shortcuts and that this is even more so where the points to be decided are a mixture of fact and law. The following dicta of Lord Hope was cited:

"The essential criterion for deciding whether to hold a pretrial hearing is whether, as it was put by Lindsay J in *CJ O' Shea Construction Ltd v Bassi* [1998] ICR 1130, 1140, there is a succinct knock out point which is capable of being decided after only a relatively short hearing. This is unlikely to be the case where the preliminary issue cannot be divorced from the merits of the case, or the issue will require the consideration of a substantial body of evidence. In such a case, it is preferable that there should be only one hearing to determine all the matters in dispute".

[32] In Mcloughlin v Jones¹³ David-Steele J put it thus:-

"In my judgment, the right approach to preliminary issues should be as follows. (a) Only issues which are decisive or potentially decisive should be identified. (b) The questions should usually be questions of law. (c) They should be decided on the basis of a schedule of agreed or assumed facts. (d) They should be triable without significant delay, making full allowance for the implications of a possible appeal. (e) Any order should be made by the court following a case management conference."

[33] Having carefully considered the above authorities; it is pellucid that ordering a trial of a preliminary issue is a case management decision which should be approached with caution. In this regard, I have found the following dicta by Briggs J in Lexi Holdings Plc v Pannone & Partners¹⁴ on the Court's exercise of this discretion to be particularly helpful:-

"In my judgment, questions of case management, questions of cost, delay and the use of the parties' and the court's resources must come first and foremost in the consideration whether any particular issue should be dealt with as a preliminary issue."

[34] Turning to the substance of the present application, I agree with the submission of the Hospital that the applicability of the **Public Authorities Protection Act** to the Hospital is a potentially decisive issue in respect of the Claimants' claim

¹² [1979] 1 All ER 737.

¹³ [2002] QB 1312 at para. 66.

¹⁴ [2009] EWHC 3507 (Ch) at para. 4.

against the Hospital if the Court were to conclude that the Claimants' claim against it is statute barred pursuant to section 2 of the Act. However, the applicability of the **Public Authorities Protection Act**, like any other limitation defence or substantive defence must be considered in the context of the evidence placed before the Court. Thus, the Hospital's contention that the Claimants' claim against it is statute barred is a matter to be determined at a trial after hearing the evidence of the Parties. The question is whether in the circumstances, this should be at a preliminary trial.

- [35] In Dexter Noel v The Attorney General of Grenada,¹⁵ Glasgow J cited with approval the Jamaican Court of Appeal's decision in Bryan v Lindo¹⁶ in relation to the applicability of the **Jamaican Public Authorities Protection Act** where it was stated:-

"In cases where the Act is pleaded, three questions arise for determination:(1) is the person or body claiming the protection of the Act a 'public authority' within the Act? (2) is the act which is complained of one that falls within the protection of the Act? (3) if so, from what date does the time period indicated in the Act run?

- [36] In my view, each of the three questions noted above will require the Parties to place considerable evidence before the Court to enable the Court to make factual findings in relation to each question.
- [37] In relation to the second question, which has historically been fraught with difficulty for courts to answer, the following principles affirmed by the Judicial Committee of the Privy Council in Alves v Attorney General of the Virgin Islands¹⁷ should guide the Court:-

35. Although the many conflicting decisions on Public Protection Acts cannot all be reconciled, the Board is satisfied that the principle which properly underlies the statutes can be extracted from *Bradford Corp v Myers*, and particularly from the speech of Lord Shaw, having been accurately foreshadowed by Farwell J in *Sharpington*. It lies in the oft-repeated proposition that the essential test lies in the difference between a public duty owed to the public generally and a private duty incurred in the course of acting under statutory enabling.

...

¹⁵ GDAHCV2014/0517 (delivered 10th June 2022, unreported).

¹⁶ (1986) 44 WIR 295.

¹⁷ [2017] UKPC 42.

37. Despite the potentially wide words of PAPA, it must, as has consistently been held, be construed restrictively. It only applies to public authorities, and not to all persons acting under statutory authority. It does not apply to all actions performed by public authorities, but only to those where the obligation sued upon is owed generally to the public or to a section of it. Where the obligation sued upon arises simply out of a relationship with the claimant which would be the same for any non-public person or body, and where there is no question of a public law challenge, the Act has no application.

[38] Thus, in relation to the second question, the Hospital would have to present evidence to the Court to show that it was exercising its statutory functions in fulfilling its duty to the public which are caught by the **Public Authorities Protection Act** when the 1st Claimant came to the Hospital to deliver her baby. Thus, in the present case, if the trial judge finds that the Hospital is in fact a public authority, the trial judge will have to go on to consider the evidence of the Parties in the context of the pleadings to identify the parameters of the case and the obligations upon which the Claimants have brought these proceedings against the Hospital and determine whether those obligations are owed generally to public or are private obligations simply arising out of a relationship between the Claimants and the Hospital which would be the same for any non-public person or body.

[39] It is not every act performed by the Public Authority that is covered by the **Public Authorities Protection Act**. The Board in Alves approved the speech of Lord Shaw in Bradford Corp'n in which Lord Shaw noted:

“It is not enough that the neglect occurs in the doing of a thing which is authorized by statute, but the thing done is not every or anything done but must be something in the execution of a public duty or authority, and it is only neglect in the execution of any such duty or authority that is covered by the statute.

[40] The question of whether the acts which complained of by the Claimants fall within the protection of the **Public Authorities Protection Act** is a mixed question of law and fact, and the court will have to carefully consider the evidence and make factual findings in answering the question. The Court would therefore be required to consider the duties the Claimants allege were owed to them by the Hospital and consider the factual matrix to determine whether those acts fall within the protection of the **Public Authorities Protection Act**.

[41] Having carefully considered the Parties pleadings, in my view, in making findings on the applicability of the **Public Authorities Protection Act**, the Court will have to consider some of the same evidence which it would later need to

consider to make findings on liability for negligence or breach of contract. The Court would be considering the relevant provisions under the **Mount St. John's Medical Centre Act 2009**¹⁸ (as amended), and the evidence as to the specific acts complained of by the Claimants, what the Hospital was obligated to do, what was the advice rendered by the Defendants, and what were the decisions made, amongst other things. I am not of the view that the facts in relation to the applicability of the **Public Authorities Protection Act** are so isolated from the factual considerations for the possible later question of liability, that it warrants separate consideration. The Parties and the Court will undoubtedly have to conduct a duplicate exercise of going through much of the same evidence at two trials if the limitation issue fails, instead of all matters being considered in one trial.

- [42] Further, having considered the Claimants' claim and the Hospital's defence, it can be seen that the Hospital's defence is replete with denials of the factual and other allegations made by the Claimants. There appears to be much disagreement between the Parties as to when the 1st Claimant attended the Hospital, the reasons for attending on particular dates and what exactly occurred when the 1st Claimant was at the Hospital to have her baby delivered. In those circumstances, it does not appear that there is much agreement between the Parties as to the specific facts of the case. This in my view would further militate against ordering a separate trial of the issue of whether the Claimants' claim is statute barred pursuant to section 2 of the **Public Authorities Protection Act**.
- [43] The Hospital further submits that ordering a preliminary hearing of the issue of whether the Claimants' claim against it is barred under the **Public Authorities Protection Act** would lead to costs and time savings if the issue is found in the Hospital's favour. However, in my view, there is a real risk of the opposite occurring. In ordering a separate trial of the issue at this stage, the Court will be halting the case management of the full trial in its tracks and redirecting the matter to a trial of an issue which could comfortably sit for consideration in the full trial together with the other issues to be tried on the claim. At this stage, I would estimate that the full trial of the Claimants' claim should last no more than two days. This is not the situation where the Parties and the Court have to allocate resources for a complex multi-week trial which could be short-circuited to a one-day trial for the consideration of the preliminary issue. The time and cost savings to be realized from a preliminary hearing may well end up being elusive.
- [44] The Parties and the Court, will, in my view, end up spending more time and resources and incurring more costs on a separate trial, when the time, resources and costs could be applied to a single full trial of the claim. Further, if a

¹⁸ No. 2 of 2009.

preliminary trial on the issue of the **Public Authorities Protection Act** is ordered, either way it is determined, there is a real possibility of appeal proceedings which ought to be taken into account the court is considering the time for the determination of the preliminary issue.¹⁹ Whether or not there is an appeal, it will be the case that all the while the substantive claim would remain undetermined pending the resolution of the preliminary issue, only to revert to the case management stage in the end if the determination of the issue does not dispose of the claim. This, in my view, taking all the circumstances of this case into account, would not be in keeping with the overriding objective of dealing with cases justly.

- [45] To my mind, ordering a trial of an issue which could be considered on the same evidence at the full trial would be fraught with the danger that the authorities caution against: increasing the time and cost of resolving the underlying dispute.
- [46] The only significant cost issue the Hospital has pointed to which they argue could be avoided if the Claimants' claim is found to be statute barred and does not go on to a full trial, is the possible cost savings of not having to file expert evidence on issues of liability and quantum. Whilst costs in this regard may be a relevant concern, I do not consider it to be an exceptional matter or special grounds for ordering the trial of a preliminary issue. This is the ordinary course of litigation.
- [47] The Parties however may well wish to consider the provisions for expert evidence under Part 32 of CPR 2023 and seek to agree on experts on any issue or jointly instruct an expert selected by the Court rather than taking the approach of making multiple, piecemeal applications to appoint their 'own experts' at various stages in the case management of the claim. An expert's duty is to the Court, not an instructing party²⁰ and the Parties may want to think carefully as to whether there is scope in these proceedings for the Court to exercise its direction under CPR 32.10 to direct that expert evidence be given by one expert witness.
- [48] It may be the case that the Parties would want to invite the trial judge by way of application at the pre-trial review stage to deal with the applicability of the **Public Authorities Protection Act** as a preliminary issue at the start of the trial. By that stage, the matter would have gone through the case management process for trial and could swiftly progress to the full trial if the preliminary issue is not found in favour of the Hospital. I would leave open the possibility for the Parties to do so, but, as a matter of case management, I was not of the view that an

¹⁹ See *McLoughlin v Jones* [2002] QB 1312 at para. 66..

²⁰ See CPR 32.3.

order for a trial of an issue is a proper and efficient case management order to make at this stage.

[49] I accordingly refused the Hospital's application for a preliminary hearing to be held to determine whether the claim is statute barred pursuant to section 2(a) of **The Public Authorities Protection Act**.

[50] Having concluded that an order should not be made for a trial of preliminary issue at this time, this left the matter of the Hospital filing its witness statements. As previously mentioned, the Hospital had made a rolled-up application with its application for a preliminary hearing, for an extension of time to file its witness statements and stay of the Court's order for the filing of witness statements pending the hearing and determination of the preliminary issue. There was also a pending application by the Claimants on the Court's file for relief from sanctions and an extension of time to file their witness statements and list of documents and to deem their witness statements and list of documents filed on 24th February, 2025 as properly filed and served. Having decided that an order for a trial of a preliminary issue ought not be made, I treated the hearing fixed for the Court's decision on the Hospital's application as a case management conference, granted the pending applications and gave further case management directions for the progress of the matter to trial.

[51] In light of the foregoing, I made the following orders:-

1. The 1st Defendant's application for a trial of an issue is refused without prejudice.
2. The 1st Defendant is granted an extension of time to 31st July, 2025 to file and serve its witness statements.
3. The Claimants and the 2nd Defendant are granted relief from sanctions and an extension of time to 24th February, 2025 to file and serve their witness statements.
4. The witness statements filed by the Claimants and the 2nd Defendant on 24th February, 2025 and 18th February, 2025 respectively, are deemed to be properly filed and served.
5. The Claimants are granted relief from sanctions and an extension of time to 24th February, 2025 to make standard disclosure.
6. The list of documents filed by the Claimants on 24th February, 2025 is deemed to be properly filed and served.

7. Time is extended to 30th June, 2025 for the Parties to meet and settle the list and bundle of documents agreed and documents not agreed and for the Claimants to file the settled list and bundle of documents countersigned by counsel for the Defendants.
8. The time for the filing of interlocutory applications including any application for the appointment of an expert witness pursuant to Part 32 of the Civil Procedure Rule (Revised Edition) is extended to 5th September, 2025. The Parties are encouraged to file any proposed expert application pursuant to CPR 32.9 if deemed necessary.
9. The matter is adjourned for further case management to 29th September, 2025.
10. The 1st Defendant shall have carriage of this Order.

[52] I wish to record my sincere thanks to the Parties and their Counsel for their assistance in this matter.

Carlos Cameron Michel
High Court Master



By the Court

Registrar