

Necessity in Applications to Vacate a Trial

Posted On: 02/08/2021

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In the context of a potentially high value claim following a road traffic accident involving a young Claimant, HHJ Walden-Smith recently refused the Claimant's application to vacate a trial to be listed in a trial window commencing November 2021 and to stay proceedings.

The case was that of *Lavender v Liverpool Victoria Insurance Co Ltd* [2021] EWHC 2000 (QB).

The accident had occurred on 22 January 2018 and liability admitted on 4 December 2019. The Claimant's application had been made on the predominant basis of there being insufficient time, between July and the commencement of the trial window, for the Claimant to undergo and complete complex psychiatric treatment which would inform the value of his claim, and further physical rehabilitation which had been recommended. Furthermore, it was submitted that updated expert medical evidence was required, and further expertise introduced in other disciplines.

Whilst acknowledging the complexity of the matter, the Court approached the matter with the overriding objective firmly in mind and the need to apply that objective proportionately and fairly to both parties. HHJ Walden-Smith disposed of the application thus:

"In my judgment, there is no requirement for the trial fixture to be broken. It is a direction that will only be given by the court in last resort. I take into account, of course, the fact that the trial is not listed until November. But, in order to break that trial date, it is clearly for the claimant to show that that is an entirely necessary step to take."

In this instance the Court was not satisfied that sufficient progress couldn't be made in the Claimant's treatment prior to trial or that the matter could not be case managed between July and November to introduce the further expert evidence the Claimant sought and amend budgets accordingly.

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