Case No: **BL-2025-BHM-000072**

Neutral Citation Number: [2025] EWHC 2471 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

BUSINESS LIST (ChD)

Date: 30 September 2025

Before :

Deputy District Judge Bradshaw

- -

Between :

FRIEND MTS LIMITED	**Claimant**
- and -	
FRIEND PARTNERSHIP LIMITED	**Defendant**

- -

- -

Mr John Eldridge (instructed by Addleshaw Goddard LLP) for the Claimant
Mr Ryan Hocking (instructed by Lewis Silkin LLP) for the Defendant

Hearing date: 12 September 2025

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JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 09:30 on 30 September 2025.

Deputy District Judge Bradshaw:

1. This is my reserved judgment following the hearing of the Defendant's application for a stay of proceedings and (to the extent that it was required) relief from sanction in respect of non-compliance with the court's directions. The Claimant also sought that its recent application for an order under CPR r.18.1 be dealt with alongside the Defendant's application on the basis that if I refused the Defendant's application then the Claimant's application ought to be allowed as a logical consequence. I indicated at the outset of the hearing that as the Claimant's application was on notice to the Defendant I would deal with it if required alongside the Defendant's application.

2. In this judgment I adopt the following abbreviated references as used in the agreed Case Summary:

   i) **"FMTS"**: The Claimant, Friend MTS Ltd, a cybersecurity business.

   ii) **"FPL"**: Friend Partnership Limited, an accounting and tax advice business.

   iii) **"DF"**: Mrs Denise Friend, a director of FPL and a former director of FMTS.

   iv) **"MF"**: Mr Malcolm Friend, a director of FPL and a former director of FMTS.

3. I have had the benefit of a substantial bundle together with a supplementary bundle of further documents, and of very helpful and detailed skeleton arguments from Mr Eldridge for FMTS and Mr Hocking for FPL. I am most grateful for their submissions and assistance in this application.

Procedural Background

4. DF and MF are wife and husband. They have been involved in various business ventures including FMTS and FPL. From 2010 both FMTS and FPL occupied office premises in central Birmingham.[1]

[1] Strictly speaking it was another entity, Friend LLP, that leased the premises and occupied alongside FMTS, but from 2013 FPL took over the assets and undertaking of Friend LLP.

5. As I have noted, DF and MF are no longer directors of FMTS and it is apparent that they have fallen into dispute with that company. Indeed, it is a relevant issue in this application that this case is but one of a number of disputes in which DF and MF are engaged or involved. These include an unfair prejudice petition proceeding in the Royal Court of Jersey in respect of FMTS' parent company and an Employment Tribunal claim brought by DF and MF's son Mr Jonathan Friend against FMTS.

6. This case concerns an invoice for £226,000 plus VAT raised by FPL in October 2019 and paid by FMTS in instalments between then and November 2020. That invoice was said on its face to be a recharge of dilapidations provisions for the premises occupied by both companies. FMTS now claims for repayment of that sum on the basis either that it is due under contract or that FMTS is entitled to restitution of the sum that it says FPL has been unjustly enriched by. I do not need to go into either party's case in detail but it will suffice to say that there is a dispute over whether that invoice genuinely represented a dilapidations provision (and if so whether FMTS is entitled to repayment of it on the basis that a subsequent lease extinguished any such liability) or whether it was in fact payment or compensation for services provided to FMTS by FPL, DF and MF.

7. FMTS issued this claim on 24 January 2025. FPL filed and served its Defence on 30 April 2025. On 3 June 2025 the High Court in Leeds (where the claim was issued) gave notice of proposed allocation to the Multi-Track requiring that the parties file completed Directions Questionnaires by 8 July 2025. FMTS duly filed its directions questionnaire and filed and served a Reply on 8 July 2025. Prior to that it had also served a list of questions on FPL pursuant to CPR Pt 18 in respect of matters set out in FPL's defence.

8. Faced with such a claim in the Business and Property Courts FPL's solicitors would need to take the usual steps following exchange of statements of case as set out in Practice Direction 57AD in order to prepare for the Costs and Case Management Conference that would in due course be listed. This would involve preparation of a costs budget and of a Disclosure Review Document ("DRD"). Furthermore, FMTS' Pt 18 questions would require a response.

9. DF and MF were each directors of both FMTS and FPL at the relevant time and DF was the CFO of FPL (and had been the CFO of FMTS). It is common ground that DF

would have been closely involved in any agreements or discussions that would lay behind either party's explanation for the disputed payment. However, it was not common ground that FPL's solicitors would need to take detailed instructions from both of them so as to enable them to address the matters I refer to above.

10. Very unfortunately DF has recently had to undergo a course of chemotherapy in respect of a diagnosis of lymphoma. I have the benefit of two detailed letters from Dr Premini Mahendra, consultant haemato-oncologist, who sets out a medical history including a diagnosis of lymphoma in 2022 and a worsening of her condition in January 2025 that led to a course of chemotherapy between February and May 2025. Dr Mahendra explained the effects of this treatment in her first letter dated 19 June 2025 and in the context of this application I think it appropriate to quote excerpts:

> *"During the chemotherapy [DF] suffered from worsening fatigue, poor concentration, loss of taste and appetite, alopecia and impaired cognitive ability. These symptoms worsened with each cycle of treatment."*
>
> *"I have explained that following chemotherapy the symptoms of fatigue, poor concentration, decreased cognitive ability and increased susceptibility to infection will take time to recover. I have advised that that [DF] will need 6-months off work to enable a full recovery. The 6-month period is calculated from the time of her end of treatment PET scan in July 2025.*
>
> *During this period, she should avoid any stressful activities and work that involves high levels of focus or concentration. She should be able to return to work on 12 January 2026."*

11. In a follow-up letter dated 19 August 2025 Dr Mahendra repeated her view that DF should be able to return to work on 12 January 2026, but stated:

> *"In my opinion, she is currently unable, because of fatigue and poor concentration, to review lengthy documents or to have the ability to engage with solicitors."*

12. In such circumstances FPL's solicitors say that they cannot take instruction from DF as to the key matters they need to attend to. In a witness statement dated 21 August 2025

Mr Duran Ross of FPL's solicitors gave evidence as to the limited extent to which DF was able to engage with her legal representatives:

> *"In relation to Mrs Friend's inability to concentrate and review lengthy documents, we have had to adjust how we take instructions from Mrs Friend in relation to the Application because of these. In particular, we have agreed with Mrs Friend that we will call her to discuss any matters in relation to the Application unless they can be dealt with in one line in an email; this is specifically because Mrs Friend cannot currently engage in detailed correspondence or interact with lengthy documents."*

13. It might be thought – and this is indeed what FMTS says – that MF, as the other director of FPL could give instruction instead. However, it is FPL's case that MF lacks the relevant knowledge of matters on which FPL's solicitors need to take instruction.

14. In his earlier witness statement dated 8 July 2025 Mr Ross asserted that only DF had the relevant information:

> *"Mrs Friend has sole custody of the relevant file on behalf of FPL, and she has detailed knowledge of, and was the relevant person at FPL dealing with, the circumstances surrounding Friend MTS' claim. While Mr Friend had some oversight of the relevant matters in his capacity as Senior Partner at FPL, Mrs Friend's input to these proceedings is invaluable and indispensable especially as the parties move into the next phase of these proceedings including planning for disclosure and the preparation of witness statements."*

15. In a witness statement dated 10 September 2025 MF gave evidence that DF, as CFO of FPL, took lead responsibility for many day-to-day matters relating to the finances and operations of FPL with little or no involvement from DF himself. He states:

> *"While I had limited involvement in some decisions, I did not, and do not, have a sufficiently detailed background knowledge of the chronology and all of the background circumstances and facts to be able to instruct FPL's solicitors in relation to substantive matters. Further, most of my limited knowledge is second hand, i.e. summaries of key information were passed on to me by Denise and others involved at the time. As Denise was personally involved in the events that form the*

background to these proceedings, she will likely have a much better recollection of key facts and issues and, if she doesn't have a clear recollection, she will know where to find out any answers / required information or documents."

16. MF goes on in that statement to accept that he did have more involvement in respect of the accounting treatment of the disputed payment of £226,000 plus VAT, but asserts that his correspondence related mainly to the propriety of the way the payment was being treated in financial statements rather than to the actual basis of the payment.

17. It is therefore FPL's position that DF and DF alone can provide the relevant instructions to FPL's solicitors and that MF is not in a position to do so. In light of the prognosis set out by Dr Mahendra FPL accordingly seek a stay in proceedings until 12 January 2026.

18. FMTS very much opposes FPL's application. Whilst not (with one caveat) taking issue with Dr Mahendra's medical opinion FMTS does not accept that MF cannot provide sufficient or appropriate instructions to FPL's lawyers such as to allow them to complete the pre-CCMC procedural steps or address FMTS' Pt 18 questions. FMTS exhibit correspondence involving MF that, it says, demonstrates that MF was fully involved in the relevant discussions and decisions regarding the disputed payment. Furthermore, FMTS submit that many of the pre-CCMC tasks require only limited direct instruction from a director of FPL and that the routine aspects of budget preparation and DRD drafting can perfectly well be carried out by FPL's solicitors, familiar as they are with the background to this dispute.

Applicable Law

19. The court has the power to stay proceedings on case management grounds pursuant to CPR r.3.1(2)(g) and as part of its inherent jurisdiction. Counsel agreed that there is very little by way of authority on the question before the court today of staying proceedings on medical grounds. Both counsel referred me to *Financial Conduct Authority v Avacade Ltd and Ors* [2019] EWHC 1961 (Ch), a decision of HHJ Pelling QC sitting as a judge of the High Court. In *Avacade* two of the defendants sought a stay of four months some six months prior to trial on the grounds that the stress of proceedings had caused them identifiable psychiatric conditions such that they needed such period of respite to allow them to deal with the litigation.

20. HHJ Pelling QC applied, by analogy, the principles developed in cases where a party sought adjournment of a hearing on medical grounds. In *Forresters Ketley v Brent and Anor* [2012] EWCA Civ 324 Lewison LJ addressed the question of adjournments on the basis of stress experienced by litigants in the following terms:

> *"25. […] 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 purpose because the stress will simply recur on an adjourned hearing."*

21. Lewison LJ went on to adopt the guidance given by Norris J in *Levi v Ellis-Carr* [2012] EWHC 63 (Ch) which I quote in full below:

> *"In my judgment it falls far short of the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in the trial. 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 (in the medical attendant's opinion) 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. It is being tendered as 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 a party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case)."*

22. It is convenient at this point to deal with a point raised by FMTS concerning Dr Mahendra's letter of 19 August 2025 and in particular her view as expressed therein that (my emphasis added):

> *"**In my opinion**, she is currently unable, because of fatigue and poor concentration, to review lengthy documents or to have the ability to engage with solicitors."*

23. For FMTS Mr Eldridge took issue with the admissibility of this comment. He argued that neither of Dr Mahendra's letters had been adduced as expert evidence under CPR Pt 35 and that accordingly they stood as no more than evidence from Dr Mahendra as to the treatment that DF had received and the effects of that treatment on DF that Dr Mahendra had observed. The expression of opinion, Mr Eldridge submitted, was therefore not admissible as it had not been adduced as expert evidence.

24. With the greatest of respect to counsel I consider this objection to be misconceived. What one might term '*Ellis-Carr* letters' are put before the court on a regular basis in support of applications for adjournment. I am not aware of any case, and could not find any reported example, of a requirement that such a letter be put in by way of an application under CPR Pt 35 for permission to rely upon it as expert evidence. I consider that to the extent such an application is required, it is part and parcel of the wider application for adjournment (or as here, stay of proceedings) in which a medical letter is adduced in support. The application is implicitly one for permission both to rely on expert medical evidence and for the grant of an adjournment on the basis of that evidence. The opinion expressed by Dr Mahendra in her second letter is in my view exactly the opinion on the effect of a medical condition on the trial process and on prognosis that Norris J set out in *Ellis-Carr* as being required to support such applications.

25. Mr Eldridge noted that as there was no direction issued in respect of questions that FMTS might wish to put to Dr Mahendra. However, CPR r.35.6(1) does not require that the court give directions for such questions to be asked (although it is common practice for courts to give a timetable for such questions) but rather sets out the right of a party to put written questions about an expert's report. I see no obstacle under the CPR to FMTS having been able to write to Dr Mahendra in respect of her letter. Dr Mahendra would no doubt have sought DF's permission (or the permission of MF as her next of kin) to respond in light of the medical sensitivity of the information sought but I have little doubt that in the circumstances such permission would have been given.

26. I therefore consider that Dr Mahendra's opinion as to the ability of DF to review documents or engage with FPL's solicitors is admissible and I give it due weight.

27. Returning to HHJ Pelling QC's analysis in *Avacade*, the learned Judge followed the guidance of Lewison LJ in *Forresters Ketley* and reiterated (at [12]) that the test for granting a stay on medical grounds was a stringent one:

> *"Preventing a party from having access to the courts for the purpose of resolving his, her or its claim requires very clear justification not least because once even a finite stay has been granted on grounds such as those relied on in this case, it is likely that it will be followed by multiple applications for extensions of the stay."*

28. Finally, in respect of the legal principles to be applied, Mr Hocking for FPL had sought in his skeleton argument to rely upon both the Equality Act 2010 and Art. 13(1) of the UN Convention on the Rights of Persons with Disabilities. At the outset of the hearing I was advised that following discussion between counsel Mr Hocking was no longer pursuing these points but that Mr Eldridge accepted that the court had a duty as set out in the Equal Treatment Bench Book to make reasonable adjustments to its procedures to accommodate persons with a disability.

The Parties' Submissions

29. For FPL Mr Hocking argued that the stay sought was necessary. Although the immediate issue was the stress of proceedings, the current proceedings were not, unlike in *Avacade*, of themselves the root cause of the stress. Rather, a separate medical condition in the form of DF's lymphoma and the consequent chemotherapy had caused DF to be temporarily vulnerable to stress. In such circumstances the concern expressed by Lewison LJ in *Forresters Ketley* that the circumstances leading to the application for a stay would recur *ad infinitum* did not arise. Indeed, Dr Mahendra had recently reiterated her opinion that DF would be fit to give instruction and participate in proceedings from 12 January 2026 onwards. Furthermore, unlike the position in *Avacade* where the proposed stay would have resulted in loss of the trial, matters in this case were at such an early stage that the only hearing that would be affected would be the (as yet unlisted) CCMC.

30. Mr Hocking relied on the evidence of both Mr Ross and MF to argue that MF lacked sufficient knowledge of the circumstances giving rise to the disputed payment to be able to properly instruct FPL's solicitors to either address pre-CCMC tasks or to respond to FMTS' Pt 18 questions. To the extent that the proposed stay delayed proceedings as a whole Mr Hocking said that any prejudice to FMTS would be remedied by an award of interest on any sum awarded by way of damages or restitution.

31. For FMTS Mr Eldridge firmly opposed the application. He emphasised the observation of HHJ Pelling QC in *Avacade* that a stay such as that sought by FPL required very clear justification and submitted that FPL had failed to establish that such justification was made out. In particular, he criticised FPL's argument that without the input of DF its solicitors would be unable either to address the pre-CCMC tasks or to respond to the Pt 18 questions.

32. In support of this point Mr Eldridge referred me to exhibited correspondence relating to the offices shared by FMTS and FPL that was either written by MF or addressed to him. He argued that such correspondence showed that MF had been fully involved in such discussions and that this had gone well beyond simple observations on the propriety of accounts. He also referred me to FPL's Defence and noted that it clearly pleaded reliance on alleged oral agreements to which MF was himself said to be party. Mr Eldridge further noted that the statement of truth on the Defence had been signed by MF so indicating that MF accepted he had personal knowledge of the matters set out therein.

33. Mr Eldridge also relied upon a witness statement dated 5 September 2025 made by Mr Mark Scotter, CFO of FMTS. In that statement Mr Scotter set out his recollection of meetings that he had in 2022 and 2023 with both DF and MF in relation to the offices and referred to emails (including those from or to MF which I refer to above) which referred to those meetings.

34. I should emphasise that Mr Eldridge did not suggest, and indeed was clear that he did not suggest, that MF was seeking to mislead the court. Rather, Mr Eldridge submitted that MF had fallen into the error of assuming that because DF had been the CFO of FPL and, in MF's words, taken the lead on relevant discussions, he could not assist with details of those discussions. Mr Eldridge argued that there was no evidence that FPL's

solicitors had sought to establish what MF did or did not know about the issues in question, and indeed that MF had not really asked himself in any detail as to what he could do to assist FPL's solicitors rather than assume that he could not.

35. In support of this point Mr Eldridge pointed to MF's witness statement of 10 September 2025. His initial point was that it was surprising that for an application predicated on the lack of MF's knowledge of key matters the first witness statement from MF himself was not made until 3 months after the application had been issued and two days before it was due to be heard.[2] It was the content though of that statement, or rather the lack of certain content, that Mr Eldridge focussed on. His submission was that MF should have given evidence on what he did or did not know and in particular which parts of FMTS' Pt 18 request he could assist with and which he could not. Instead, save for one paragraph dealing with MF's account of his concerns regarding the propriety of financial statements, MF's statement comprised a general denial that he knew enough of relevant matters to give proper instruction to FPL's solicitors.

36. Mr Eldridge also referred to documents that he submitted demonstrated that DF was actively participating, at least to the extent of being able to give instructions to solicitors, in some of the other disputes involving her, MF and the various companies that I have referred to. In particular he noted that she had consented to directions in the Royal Court for disclosure in the Jersey proceedings and that she had made a witness statement in ongoing Employment Tribunal proceedings.

37. In response, Mr Hocking argued that DF's involvement in the Jersey proceedings was relatively modest, her being one of a number of plaintiffs, and noted recent evidence from Mr Ross that DF had drafted her statement before her course of chemotherapy and done no more than confirm her approval of it.

Analysis

38. I accept counsel's submissions that the relevant legal test is that in *Avacade* which I summarise thus:

[2] There was a wider point made on behalf of FMTS about the very belated evidence in response filed and served by FPL following the service of FMTS' own responsive evidence for the application, and the consequential failure by FPL to exchange skeleton arguments on time. I do not deal with those matters further in this judgment as they are more apt to form the subject of submissions on costs in due course.

i) A stay of proceedings on medical grounds is an exceptional order and one that requires very clear justification.

ii) A stay should not be granted on the basis of stress to a party or witness caused by the proceedings themselves, as such stress is likely to recur so resulting in repeated applications for a stay.

iii) The medical evidence required is the same as that required for an application to adjourn on medical grounds, i.e. that set out by Norris J in *Ellis-Carr*. The evidence must be from a medical professional with detailed knowledge of the person in question, that person's diagnosis, and the effect of that diagnosis on that person's ability to participate in proceedings. It should include a prognosis as to when the person in question will be able to participate and in what manner.

39. I also accept that these principles fall to be interpreted subject to the guidance of the Equal Treatment Bench Book and the Overriding Objective:

i) The court is under a duty to make reasonable adjustments for parties and witnesses who are disabled, and such disability may include cancer and related conditions and the consequences of treatment for them.

ii) The court must also take into account the interests of other parties to proceedings in not having their access to the court unduly delayed.

40. I deal first with the submission that evidence of DF's involvement in other proceedings indicates that she is able to assist FPL's solicitors with the pre-CCMC tasks and Pt 18 request in this case. I do not consider that this is clearly so. Although DF has a role as a plaintiff in the Jersey proceedings it appears that her involvement in that matter is far less central than it is in this dispute. As for the witness statement in the Employment Tribunal, I accept the point that it is much less demanding a task to endorse a previously

drafted statement (or one redrafted by solicitors from a written proof) than it is to prepare one from scratch. As I noted in discussion with counsel, there is still a duty to ensure that a statement of truth is properly verified, but Mr Ross' evidence was that DF is and has been able to give some minimal level of instruction which I infer would include confirming that a finalised witness statement prepared from a prior draft was true.

41. I turn now to the more substantial of Mr Eldridge's arguments, which was that the evidence as to MF's involvement in relevant decisions is such as to show that he could in fact give sufficient instruction to FPL's solicitors. I was taken to several items of such correspondence but indicated at the end of the hearing that I wished to read all of it so as to form a full picture and avoid any risk of 'cherry-picking'.

42. Having read the correspondence I have formed the clear view that MF was indeed involved to a substantial degree in the discussions regarding the shared office use and the basis of the disputed invoice. I will not list all of the relevant correspondence but I would note the following in particular as indicating that MF had significant direct involvement in such discussions:

    i) An email from DF to Mr Scotter, copied to MF, on 19 December 2022 setting out in detail FPL's position as to how the disputed charge had arisen.

    ii) An email from Mr Scotter to MF on 17 February 2023 referring to and expanding upon discussions between them a couple of weeks beforehand regarding the allocation of office expenses from 2010 onwards.

    iii) A detailed note by MF dated 14 August 2023 setting out his understanding of the dispute regarding the payment and raising his concerns as to the manner in which the payment had been dealt with in business accounts.

43. I also take note that FPL's Defence specifically pleads that DF and MF were party to the alleged oral agreements that FPL say justify the retention of the payment. It also avers that the payment was in consideration for services provided by, among others,

MF and sets out a summary of such services, including the provision of loans to FMTS. It is apparent when reading the Defence and the emails and notes I have referred to that not only does FPL's Defence (signed by MF) assert that MF was fully and directly involved in matters central to the dispute but that in 2022 and 2023 he was setting out detailed recollection and explanation of such matters.

44. In light of those pleadings and correspondence is difficult to sustain an argument that MF did not have sufficient knowledge and understanding of the relevant matters to allow him to give meaningful instruction to FPL's solicitors.

45. I am satisfied that MF possesses sufficient knowledge of FPL's dealings in respect of the matters in dispute to allow him to give adequate instruction to FPL's lawyers for them to carry out pre-CCMC tasks such as preparing FPL's budget and drafting the DRD.

46. I am also satisfied that MF has sufficient knowledge to instruct FPL to prepare at least an initial response to FMTS' Pt 18 questions. It may well be that there are particular questions where he cannot assist or where he says that DF will, once recovered, be able to provide a more detailed response. I noted in discussion with both counsel that in the undisputed circumstances of DF's ill-health it would be difficult for FMTS to object to such a further response once DF has recovered or to criticise such a further response for providing details omitted in an initial response, provided that there was a credible explanation that those details were ones that DF alone had knowledge of.

47. However, I do accept the point that MF is also DF's husband and carer. In the circumstances I consider that, applying the guidance in the Equal Treatment Bench Book, he should be given additional time to provide instructions to FPL's solicitors. Subject to any further brief submissions in writing from counsel, I intend to make the following orders:

    i) That the application for a stay is refused.

    ii) That there be relief from sanction against FPL in respect of FPL's failure to file a Directions Questionnaire.

iii) That time for FPL to file a directions questionnaire be extended to the date 14 days from the hand-down of this judgment.

iv) That FMTS' application for an order requiring FPL to respond to its Pt 18 questions be granted, but that time for such response will be 28 days from the date of hand-down of the judgment.

v) That upon receipt by the court of FPL's directions questionnaire the case be referred to a BPC District Judge or Deputy District Judge for the giving of directions for a CCMC to be listed.

48. I will invite written submissions as to further or consequential orders.

49. I conclude by thanking counsel for their submissions and on behalf of the court wishing DF a recovery in line with the prognosis set out by Dr Mahendra.

[Judicial note: in light of further correspondence regarding the personal commitments of MF and DF the time periods at sub-paragraphs 47(iii) and (iv) were extended to 28 and 48 days respectively in the subsequent order.]

Deputy District Judge S Bradshaw

30 September 2025