

Neutral Citation Number: [2022] EWHC 353 (Ch)

Case No: FL-2020-000023

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**FINANCIAL LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 8 February 2022

**Before :**

**Mr Justice Miles**

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**Between :**

**Business Mortgage Finance 4 Plc and others**  
**- and -**  
**Rizwan Hussain**

**Claimant**  
**Defendants**

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**Anna Dilnot QC and Alexander Riddiford** (instructed by **Simmons & Simmons LLP**) for  
the **Claimant**  
**Alex Haines** (instructed by **Janes Solicitors**) for the **Defendants**

Hearing dates: **8<sup>th</sup> February 2022**

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**JUDGMENT APPROVED**

## **Mr Justice Miles:**

1. The trial of the committal application brought by the claimants against Mr Hussain started on 2 February 2022. This date has been in the court's diary for some months and Mr Hussain was aware of it. He has not attended the trial. I now have to decide whether to continue the trial in his absence. There is also a separate application to adjourn for another day to enable Mr Hussain to obtain the assistance of leading counsel.
2. On 27 September 2021 at a directions hearing in the committal proceedings I ordered Mr Hussain to attend the trial in person. There has not been any order for a remote or hybrid hearing of the trial. Mr Hussain knew of the trial date and communicated with the court about it. He said in emails from mid-December onwards that he would attend the trial. There was also a hearing on 26 January 2022 when the claimants sought a bench warrant on the basis that there was a real prospect that Mr Hussain would not attend the trial. Mr Hussain was permitted on that occasion to appear remotely. He told the court of his location at that time, his parents' house in Preston. He assured the court that he would attend the trial in person and also later gave the name and address of a hotel where he would be staying for the duration of the trial.
3. I decided on balance not to issue a bench warrant at that stage. I raised with Mr Hussain the question of his right to seek legal aid and to be represented. He said that he understood that but intended to represent himself at the trial. Mr Hussain did not at any stage seek an adjournment of the trial.
4. He did not attend the first day of the trial. But late the previous evening he sent an email with a grainy pdf image of part of a covid lateral test strip and said that he had tested positive and therefore would not be attending. The number and QR code on the pdf picture were not legible.
5. The court agreed to provide him with a remote link for a short hearing on the morning of 2 February 2022 to address the reasons for his absence. Mr Hussain made representations. I concluded that his evidence of having covid-19 was wholly inadequate. He had not registered the test with the NHS, had not provided a proper picture, had not arranged a PCR test and had not taken the simple step of taking a further test with a remote medically trained observer (as had been suggested by the claimants' solicitors). Mr Hussain refused at the hearing to disclose his location or to provide his passport or passports. I issued a bench warrant for his arrest (and gave a separate ruling). The claimants had been employing surveillance agents, G3, who had observed Mr Hussain for some time before 2 February and they shared their intelligence with the tipstaff.
6. The police sought to execute the bench warrant at a number of addresses in Preston, including Mr Hussain's parents' house. They were told he was not there.
7. On the basis of further evidence from G3, I issued a further bench warrant on 4 February 2022 for the tipstaff and police to be allowed to enter various properties using force if needed. The steps to execute that further bench warrant have so far been unsuccessful. The arrest warrant remains effective.

8. Mr Hussain had contended that he should be allowed to participate remotely. I shall revert to this suggestion below, but at this stage record that in the responses from the court Mr Hussain has been told in plain words that he should surrender himself into custody to answer the bench warrant and appear at the trial.
9. Also on 4 February 2022 the court received a letter from Mr Livingston, a partner and solicitor at the firm of Janes Solicitors, saying that Mr Hussain had been in contact, that Janes was expecting to seek legal aid and that Janes had advised Mr Hussain to surrender to custody. On Sunday 6 February 2022 Mr Hussain sent another email to the court, saying he had been liaising with Janes and that they would seek legal aid on 7 February 2022.
10. The court sent another email before court hours on 7 February 2022 repeating that Mr Hussain should surrender himself into the custody of the tipstaff and inviting Mr Livingston, if he chose, to appear on the morning of 7 February. I adjourned until 11.30am to provide him with more time. At 11.30 am on 7 February 2022, Mr Hussain did not attend at the trial. Mr Livingston attended with counsel and they explained that they were not yet formally instructed but had been liaising with Mr Hussain over the weekend. Janes had made an emergency application for legal aid and expected to receive confirmation quickly. Mr Livingston did not know where Mr Hussain was but had advised Mr Hussain to submit to arrest and attend at the trial. Mr Livingston explained that he and counsel were not yet formally instructed and had not yet had an opportunity to read into the case and that even if instructed did not expect to be able to advance a full positive case for Mr Hussain absent an adjournment. He explained, however, that his firm and counsel anticipated that they would be able to appear and ensure that the procedural safeguards found in committal hearings were properly met.
11. At that hearing the claimants opposed any further adjournment. They said that Mr Hussain had deliberately chosen not to attend, had known for a very long time of the right to seek legal aid and legal representation, that any prejudice to Mr Hussain was entirely of his own making, and that they would suffer serious prejudice from any adjournment.
12. I considered that there was real force in the claimants' submissions but reluctantly decided to adjourn until 10.30 am today, 8 February 2022, to give Mr Hussain a final opportunity to submit to custody and attend the trial. The extra time would also allow Janes and counsel further time to finalise their instructions and read into the case so that they could understand the allegations of contempt and the nature of the evidence submitted in support. I explained once again that Mr Hussain should understand that he had no choice about attending and I was allowing him a final opportunity to do so. I also indicated that if he did attend, I would consider any application for another adjournment on its merits.
13. Mr Hussain has still not submitted to custody, nor has he disclosed even to his own solicitors his current location. Mr Haines of counsel, who appeared before me today, said that Mr Hussain contends that he has health conditions but no medical evidence has been produced and Mr Haines did not suggest that any adjournment was justified on medical grounds. Mr Haines nonetheless sought a short further adjournment in order to allow Janes to apply for an extension of the legal aid certificate to extend to the instruction of a QC and to allow a QC, who has been identified, further time to read further into the case.

14. The claimants again object to any further adjournment. They say that Mr Hussain has been deliberately trying to engineer an adjournment of these proceedings. The current application arises from his own very late activity and is caused entirely by his own actions. There are safeguards in place in the committal process, including the need for a notification on the committal application that a defendant is entitled to apply for legal aid and these have been complied with. Mr Hussain, say the claimants, has known about his right to legal aid. He is an experienced litigator. He has been involved in previous committal proceedings where he had legal representation. On 26 January 2022 the court specifically raised with Mr Hussain the question of legal representation and legal aid. Mr Hussain said that he understood the position and had elected to represent himself. The first time that there was any suggestion that he was now seeking legal representation was the first day of the trial when he failed to turn up at court. That was on 2 February 2022. It was not until 4 February 2022 that he appears to have taken steps to instruct solicitors.
15. The claimants say that Mr Hussain has made a number of last-minute applications to derail the committal proceedings, including a recusal application and an application to set aside an order I made on 27 September 2021. He has taken the conscious decision not to instruct lawyers until the last minute. The potential sanctions of successful committal proceedings is serious, but Mr Hussain has done everything he can to avoid appearing. He has had every opportunity, say the claimants, to instruct lawyers and he cannot now seek to put things off again.
16. Moreover, the claimants argue that there would be substantial prejudice if the court were to adjourn the application still further. Almost a week of the trial has already been wasted and the claimants' legal representatives are now running up against the time when they will no longer be able to appear. The claimants say that the court should continue with the trial in the absence of Mr Hussain and should not grant any further adjournment.
17. I turn to the principles. There is a strong public interest in those accused of contempt of court being present at trials of committal applications, but the court has a discretion which it may exercise in exceptional cases to try a committal application without the attendance of the defendant. A helpful summary of the principles was set out in *Sanchez v Oboz* [2015] EWHC 235 (Fam). This has been applied in a number of later cases. As *Sanchez* shows proceeding with a trial of this kind without the defendant is a course which will only be followed with great caution, with close regard for fairness of the proceedings. A number of specific factors were set out in paragraph 5 of *Sanchez* which makes a handy checklist.
18. The first factor is whether the respondent had been served with the relevant documents, including the notice of the trial.
19. There is no doubt that Mr Hussain has been served with the relevant documents, including notice of the trial. He says that he only became aware of the committal application on 16 December 2021. I am unable to accept that for reasons I shall give in a moment. But even on his own evidence, he has had a full set of the committal application documents since about 20 December 2021, which is now about seven weeks ago. He has had enough time to prepare his response and evidence to address the allegations. That suffices on its own

to show that he has had sufficient notice. There is also no doubt that Mr Hussain knew of the date and location of the trial. Indeed, at the hearing on 26 January 2022, he assured the court that he would be attending on 2 February in person.

20. For completeness, however, I do not accept that Mr Hussain only became aware of the application and the documents in December 2021. The committal proceedings were commenced in June 2021. The claimants' solicitors sent a full set of the documents to Mr Hussain on 9 July 2021 to three email addresses of Mr Hussain, which, using part of their names, I shall call the "personal", "Clifden" and "Clavis" accounts.
21. At the 27 September 2021 directions hearing, I was satisfied by the evidence that he had received the committal application by service to those three accounts and I made an order for alternative service, including retrospective service of the committal application and related documents by email to those three email addresses. There is a recent application made by Mr Hussain to set aside that order which I shall have to address later, but I also need in the context of the present matter to express my conclusions about the notice he has received of the committal proceedings.
22. In support of his set-aside application, Mr Hussain has served evidence in which he says he did not know of committal proceedings by their service through the email addresses. He says that in March 2021 his personal assistants blocked all emails from the Simmons & Simmons domain for the personal and Clifden addresses, and that the Clavis address was deactivated at some date in 2021, before the committal proceedings were said to have been sent to it.
23. Mr Hussain has served a witness statement in his own name and two witness statements in the names of two people he calls his "personal assistants" dealing with the email accounts. The addresses given in the two statements of the personal assistants are for "Block 5" in an area of Karachi, which is not a proper address. Those statements do no more than confirm what Mr Hussain has said in his statement and provide no independent detail. There is no back-up documentation supporting his version of events. Mr Hussain himself says that he cannot remember the blocking of the email accounts, so this way of presenting the evidence is inherently unsatisfactory. In any event a court is not required to accept written evidence where it is incredible or contradicted by contemporaneous documents, particularly when the maker of the statement does not appear in court and make himself available for cross-examination.
24. I do not think Mr Hussain's evidence about email accounts is credible when set against the contemporary documents:
  - a. The idea that the emails from Simmons & Simmons were blocked is inherently very improbable. Mr Hussain has been involved in serious proceedings with the issuers. He knew that the trial that led to the injunction was taking place and indeed appeared at the first day of the trial in January 2021. The evidence shows also that he was aware of the terms of the draft injunction that had been sought by the issuers which imposed restrictions on his actions. Mr Hussain would have wanted to know the outcome of the proceedings. I have already said that he is an experienced litigator.

He has been involved in a great many sets of legal proceedings and he is a sophisticated and intelligent man. He would also have known that the order would be likely to include a liability for costs. Mr Hussain has offered no explanation why, in those circumstances, he would have given an order to block emails from Simmons & Simmons, who were acting for the claimants. Indeed his own evidence is that he cannot remember a block being put on his accounts.

- b. Mr Hussain says that he did not receive a very significant email of 7 April 2021. This enclosed a copy of the February 2021 injunction and a letter from Simmons & Simmons, pointing out that he was late in paying the costs that had been ordered. That email was only sent to Mr Hussain. It was sent to the two of the email accounts (personal and Clifden) from the Simmons & Simmons domain. Later the same day Simmons & Simmons received a letter from a company called Kipling Firs Limited, complaining that Simmons & Simmons were threatening witnesses, including Mr Hussain, who were assisting it in criminal prosecutions concerning the affairs of the issuers. Kipling's letter specifically referred to the details of a passage in Simmons & Simmons' letter about the costs of the earlier proceedings. The author of Kipling's letter had a copy of Simmons & Simmons' letter of 7 April 2021 which had been sent to Mr Hussain alone and only via the email accounts. This documentary record is completely at odds with the idea that the email accounts had been blocked.
- c. Mr Hussain has offered no explanation of this. This is particularly telling because Mr Hussain recently applied for an extension of time for permission to appeal the February 2021 order and one of the reasons specifically given by Lord Justice Newey on 28 January 2022 for refusing permission was that Mr Hussain had not addressed the evidence about the 7 April 2021 email.
- d. I note that Mr Hussain says in his witness statement that the blocking of the accounts did not always work perfectly, but he does not explain how this was possible or how some emails must have come through to him if the accounts were blocked. I find this part of the evidence to be self-serving and incredible.
- e. He has said in his evidence that he was not aware of the February injunction until December 2021. That evidence is not credible in the light of the documents just recited.
- f. Nor has Mr Hussain addressed the claimants' evidence of a read receipt dated 13 July 2021 from his own email address for an email originally sent on to Mr Artemiou of Kipling on that date to an email address at "legal@businessmortgagefinance". His read receipt shows that the accounts were linked and that the email was read by a user of Mr Hussain's accounts that day. The attachment to that email included the February 2021 injunction. I repeat that Mr Hussain contends that he only learnt of the injunction in December 2021. This unexplained email receipt is entirely inconsistent with his evidence.
- g. There are no documents, emails or otherwise, passing between Mr Hussain and his alleged personal assistants relating to the blocking of the email accounts.

- h. Mr Hussain says that one of his assistants, Mr Khan, told him that the Clavis account was deactivated in mid-2021. This too is contradicted by incontrovertible evidence. There are delivery receipts for emails addressed to that account up to 3 December 2021. One of them was for the committal papers emailed to the account on 9 July 2021. Emails to the account only started being returned as “undeliverable” on 20 December 2021.
  - i. Mr Hussain's case that he only became aware of the application in December 2021 cannot be squared with his own actions at that time. He wrote to the court on 17 December, saying that he would attend the trial in person, but made no efforts to obtain the committal application or the supporting evidence from Simmons & Simmons. It was Simmons & Simmons itself which volunteered a full set of the documents and provided them to Mr Hussain. I cannot accept that he would have been so passive and uninterested if he had only just discovered the existence of a committal application against him. He is well aware of the potentially painful consequences of committal, having been sentenced to 12 months imprisonment for contempt in unrelated proceedings in the summer of 2020.
- 25. The second *Sanchez* factor is whether the defendant has had enough time to prepare. I have partly covered this above. On his own evidence Mr Hussain has had at least seven weeks since being sent a full set of the documents. In fact he has had far longer for the reasons already given. I am satisfied that he has had the committal application and supporting evidence since July 2021.
- 26. Mr Hussain is a seasoned litigant. He has been engaged in disputes involving the issuers since 2019 and in numerous other cases against other securitisation companies. Some of these have involved lawyers acting for Mr Hussain or his associated parties. He has also been involved in committal proceedings which led to his imprisonment, where he employed lawyers.
- 27. Simmons & Simmons have urged him a number of times in correspondence to seek legal advice and the application notice itself (as required by Pt 81) notified him of his ability to seek legal aid. As already explained, I also raised this issue with him on 26 January 2022, when he said that he was going to attend the proceedings and represent himself at trial. He did not seek an adjournment of the proceedings then or indeed in his emails of December 2021, when he told the court he would attend.
- 28. It has only been at the very last minute, indeed after the trial had already started, that he raised the possibility of instructing Janes. He has also recently contended that he requires an adjournment for his lawyers to consider his arguments and present his case and Mr Haines has repeated that suggestion today (see further below).
- 29. I have no hesitation in concluding that Mr Hussain has had more than ample time to prepare his case. He decided to represent himself notwithstanding the repeated notices that he should seek legal aid and should seek legal assistance, something he already knew from his earlier experience of committal proceedings. If he now finds that his lawyers are shorter of time to prepare than they would like, that is to be laid at his own door. He

elected to represent himself and cannot now seek more time to do something which he could and should have been doing months ago.

30. The third *Sanchez* factor concerns the reasons for non-compliance. This is a short point. There are none. I have already set out the history. Mr Hussain has known of the trial date and the requirement that he attend in person. Moreover, he has known of the bench warrant since 2 February 2022 and has evaded arrest. The court has informed him that he must surrender but he remains at large. Mr Livingston of Janes has also advised him to attend and he has ignored his own solicitor's advice. The only excuse offered is the supposed positive covid test and entirely unspecified medical reasons. The evidence advanced by Mr Hussain about the covid test on 2 February 2022 was wholly inadequate and that is why I issued a bench warrant on 2 February. Mr Hussain has nonetheless provided no further evidence of taking any further tests. He has not apparently registered the existing test on the NHS website, taken a PCR test or carried out a test observed by a medical practitioner since 2 February 2022. It is well known that courts require proper evidence before adjourning on medical grounds and Mr Hussain has not come close to providing such evidence.
31. The fourth *Sanchez* factor is whether a defendant has waived their rights to be present. I have largely covered this above. I conclude that Mr Hussain has clearly waived his right to be present. He has known about the trial and the need to attend and has offered no good reason for his absence. I have reached the clear view that his decision to stay away from court is a calculated one and he is determined to remain beyond the reach of the court and its officers.
32. I should address at this stage the suggestion in Mr Hussain's emails that he is prepared to participate remotely and cannot therefore be said to have waived his right to take part. I consider this suggestion to be groundless.
33. First, I ordered the trial to take place in person. There are compelling reasons for that: a committal application concerns a public administration of justice and the applicants are contending that the respondent has breached the order of the court; the hearing should therefore take place with the alleged contemnor present to answer the charges. It may be possible to contemplate unusual cases where remote appearance may be justified for reasons of health or vulnerability or otherwise. But that requires evidence and is not this case.
34. I also note that Mr Hussain did not object to the hearing taking place in person in his email to the court of 17 December 2021 or indeed at the hearing of 26 January 2022 when he assured the court that he would be attending in person. In any event, the mode of hearing is a matter for the court, not the parties, and I ordered that this trial should be in person.
35. Secondly, Mr Hussain has not only failed to comply with the order that he attend in person, but has refused the requests of the court to be informed of his whereabouts or hand over his passport or passports. He is therefore asking the court to allow him to participate on his own terms from an undisclosed location while avoiding arrest and refusing to cooperate with the court and its officers, while trying to maintain the option



of avoiding the court's reach if things go against him. The court cannot allow him to dictate the terms of his involvement in that way.

36. The fifth *Sanchez* factor is whether an adjournment would be likely to secure Mr Hussain's attendance or at least facilitate his representation. I have set out the history which shows that Mr Hussain has been given every opportunity to attend. The trial commenced almost a week ago and Mr Hussain has been told in plain words that he must attend. He knows of the bench warrant and has done nothing to comply, despite the advice of his solicitors. There is no reason to think that an adjournment will lead to his arrest soon. He has made no proposals to submit himself in person.
37. Mr Hussain has had ample time and opportunity to seek representation. I have already addressed this. He knows about the legal process and legal aid. He took a voluntary decision to represent himself until the very last minute. If that means that his recently instructed lawyers are less informed than they otherwise would have been, that is his responsibility. Moreover, it seems to me that his lawyers will be able to provide at least some assistance to the court in raising any points that are proper concerning the procedural requirements for a committal hearing. I have already adjourned the matter since yesterday, in part to enable them to read into the case. Counsel for the claimants has said that she will open case and evidence against Mr Hussain fully if the trial continues and his lawyers will therefore have further time to prepare before being given the opportunity to make such submissions as they consider appropriate.
38. I do not think that there is any justification in a further delay to enable steps to be taken to see whether it is possible to instruct a QC. This is a case that junior counsel could deal with. The main reason why the claimants have instructed a QC is to pre-empt any argument that Mr Hussain and others associated with him might seek to run that the solicitors and junior counsel acting for the claimants were acting improperly and with animus towards Mr Hussain and that they did not have the appropriate degree of impartiality to be involved in the prosecution of committal proceedings. It was with that in mind that Ms Dilnot QC was instructed as she had no previous involvement with the case.
39. I accept the claimants' submissions that Mr Hussain has been taking steps to seek to put off these proceedings and he has had more than enough time to instruct lawyers. It would be contrary to the interests of justice for him to obtain a further delay in order that his lawyers should have further time to prepare.
40. The sixth *Sanchez* factor is the extent of the disadvantage to the defendant of not being able to present his account of events. It is of some importance here is that Mr Hussain has chosen not to put forward any alternative account of events. I gave directions on 27 September 2021 that Mr Hussain should serve a statement (if he chose) by November 2021 properly in advance of the trial. That order did not of course compel Mr Hussain to serve evidence or give evidence at the trial, but did require him to serve a witness statement, setting out any evidence he might choose to present to the court at the trial. Mr Hussain has never sought an extension of time for the service of any such evidence. He has not served any such evidence. Instead indeed he has repeatedly emphasised his right

to remain silent. This is therefore not a case in which there is any intention on the part of Mr Hussain to set out a different positive account of events. Mr Hussain has also chosen not to serve a skeleton argument in advance of the trial concerning the substance of the allegations against him, notwithstanding the directions that I gave in that regard.

41. He has made various interlocutory applications, including that I should recuse myself, and to set aside the service provisions of the order of 27 September 2021 and served evidence and written submissions supporting those, but those do not address the substance of the case against him.
42. It will of course be for the claimants to satisfy the court to the criminal standard of the charges of contempt and, if they fail to do so, there will be no finding of contempt on the part of Mr Hussain. By not attending and engaging in the merits, Mr Hussain may be prejudicing his defence of the case against him, but that again is entirely of his own making. There is nothing to stop him from attending now. Moreover, he now has lawyers acting for him and, albeit they are no doubt not as fully informed as they would wish to be, that results from Mr Hussain's own choices.
43. The seventh *Sanchez* factor is whether there would be undue prejudice to the claimants from delay. In my judgment the claimants would be unduly prejudiced. This application has been in the court's diary for some time. The claimants' legal team have booked out the necessary time. Almost a week has already passed since the start of the trial with no progress. If there were to be any further adjournment, there would be a real risk that leading counsel would no longer be available. The claimants also seek the committal of Mr Hussain as a way of giving effect to the February 2021 injunction. They say they have been put to huge cost and trouble by the various steps taken against them which form the subject matter of the committal application. They contend that if there is further delay, there is a real risk that Mr Hussain will be able to continue what they say is an unlawful campaign against them. Of course that submission assumes the claimants are right to contend that Mr Hussain is responsible for the various steps that have been taken and that remains to be determined at the trial, if it proceeds, but if they are correct in the bringing of charges of contempt, I agree with them that delay in the determination of those claims would be potentially prejudicial to the claimants and their businesses.
44. The eighth *Sanchez* factor is whether there will be undue prejudice to the forensic process from the absence of the defendant. I have largely covered this above. It is for the claimants to satisfy the court to the criminal standard of the charges of contempt. Mr Hussain has chosen not to put forward an alternative version of events or advance any positive case. I do not think that the forensic process will be unduly prejudiced by his absence, particularly in circumstances where he now has representatives acting. It is a statement of the obvious that it would be better for all parties were Mr Hussain to attend, but he can readily do that as there is no good reason for his absence.
45. The ninth *Sanchez* factor is the overriding objective, including dealing with cases justly, expeditiously and fairly and considering the use of the court's resources and the position of other litigants. I consider there be no injustice to Mr Hussain in continuing the trial. His absence is elective and there is no good reason for it. The court has given him every

reasonable opportunity to attend and defend himself. Any prejudice he suffers from non-attendance is the result of his own voluntary act. There would be injustice to the claimants were the trial to be further delayed. Time has already been wasted and I consider that a further delay would be unduly prejudicial to the claimants: see the discussion of the seventh factor above.

46. The claimants and their solicitors have made all reasonable efforts to ensure that Mr Hussain is informed about proceedings and has been able to participate and they have no share of responsibility for his decision to absent himself.
47. There is also a particular interest in committal proceedings being dealt with as rapidly as possible, consistently with procedural fairness. Where a case is brought alleging that a party has acted contrary to the proper administration of justice by breaching an order of the court, the case should be determined in all the parties' interests - and those of the court - as soon as fairly possible. Further delay would also result in unfairness to other court users. The court has already had to redeploy its own resources to cover for the existing delay. This has itself had an impact on other cases. A further adjournment would inevitably have a knock-on impact on other litigants and their cases.
48. I have also stepped back and considered the various features of the case in the round. In my judgment the overall balance comes down decisively in continuing with the trial in the absence of Mr Hussain. I reject the separate application for a further adjournment.