IN THE CROWN COURT AT NOTTINGHAM
sitting at Loughborough Magistrates' Court

THE KING v. JONATHAN PETER BROOKS
6 MARCH 2025

FULL RULING IN RESPECT OF THE PROSECUTION'S APPLICATION TO PROCEED IN THE DEFENDANT'S ABSENCE

THE HON. MR JUSTICE PEPPERALL

1. This case raises the issue of whether a defendant who deliberately makes himself unfit for trial by going on a hunger strike is voluntarily absent such that the court should proceed with his trial in his absence. The issue arises in particularly acute circumstances:

   1.1 First, Dr Jonathan Peter Brooks is a Consultant Plastic Surgeon with no previous convictions who is charged on this indictment with the attempted murder of Graeme Perks; the attempted arson with intent to endanger the lives of Graeme, Beverley and Henry Perks; and with possession of a knife in a public place. If convicted on this indictment, Dr Brooks faces the possibility of life imprisonment or a substantial determinate sentence of imprisonment.

   1.2 Secondly, Dr Brooks has dismissed his lawyers such that, should I hear this trial in his absence, there will be no one to argue his case for him. While, subject to a further ruling, the complainants and Mr Pease are likely to be cross-examined by a court-appointed advocate, his or her role – if appointed - will be limited to conducting those cross-examinations and there will be no one to challenge other evidence or address the jury on Dr Brooks' behalf.

   1.3 Thirdly, while Dr Brooks currently has capacity, I must confront the real possibility that, if he maintains his current hunger strike, he might become so unwell that he will lose the capacity to decide whether to attend his trial or to conduct his own defence.

2. Dr Brooks did not attend court on 3 March 2025 when this case was called on for trial. Tracy Ayling KC and Alastair Smith, who appear for the prosecution, argue that the court should now proceed to trial in the defendant's absence.

3. Edmund Vickers KC and Patrick Wise-Walsh appeared for the defendant on the first day of his trial despite Dr Brooks' earlier voicemail to his solicitors indicating that he wished to dispense with their services. They did so at my request while the court ensured that Dr Brooks' decision to sack his lawyers was both unequivocal and fully informed. While they did not feel able to make any oral submissions on behalf of Dr Brooks on 3 March pending clarification of their instructions, they lodged some written submissions in an attempt to assist both Dr Brooks and the court on 4 March.

4. After hearing brief further argument, I gave a short ruling on the afternoon of 4 March 2025. I indicated that a fuller ruling would be provided subsequently and that I was taking that course for two reasons:

   4.1 First, it was important that Dr Brooks should know as soon as possible that his trial was not being adjourned and that I would be empanelling a jury on Thursday 6 March 2025. He

needed to know that as quickly as possible so that he had some time to reflect on his decisions to maintain his current hunger strike and not to engage with the court.

4.2 Secondly, it was important that my shorter ruling should be read aloud to Dr Brooks and provided to him in hard copy. While he is equally entitled to a copy of this ruling, it would not have been reasonable to ask the prison staff to read the whole of this substantially longer ruling to Dr Brooks. Further, I had to be mindful of the level of detail that he could properly be expected to absorb in his current self-induced health crisis.

THE LAW

5. In R v. Jones [2002] UKHL 5, [2003] 1 A.C. 1, the House of Lords considered the circumstances in which the Crown Court can conduct a trial from its very commencement in the defendant's absence. The case did not call into question the settled principles on which a judge might direct that a trial that was commenced in a defendant's presence should continue in his absence where the defendant's continued presence could not be secured because of illness, misbehaviour or because the defendant had voluntarily absconded. Lord Bingham observed, at [6]:

> "The existence of such a discretion is well-established, and is not challenged on behalf of the appellant in this appeal. But it is of course a discretion to be exercised with great caution and with close regard to the overall fairness of the proceedings; a defendant afflicted by involuntary illness or incapacity will have much stronger grounds for resisting the continuance of the trial than one who has voluntarily chosen to abscond."

6. Lord Bingham briefly reviewed the caselaw of the European Court of Human Rights that established four principles:

6.1 First, that a fair hearing requires a defendant to be notified of the proceedings against him.

6.2 Secondly, that a person should as a general principle be entitled to be present at his trial.

6.3 Thirdly, that a defendant in a criminal trial should have the opportunity to present his arguments adequately and participate effectively.

6.4 Fourthly, that a defendant should be entitled to be represented by counsel at trial and on appeal, whether or not he is present or has previously absconded.

7. Lord Bingham observed that such principles could be very readily accepted and were in any event given full effect by UK law. He added, at [9]:

> "But the European Court of Human Rights has never found a breach of the Convention where a defendant, fully informed of a forthcoming trial, has voluntarily chosen not to attend and the trial has continued. In the Ensslin case, in which proceedings were continued during the absence of the defendants caused in large measure by self-induced illness, the proceedings were held to have been properly continued …
>
> There is nothing in the Strasbourg jurisprudence to suggest that a trial of a criminal defendant held in his absence is inconsistent with the Convention."

8. Lord Bingham said, at [10]-[11]:

> "10. If a criminal defendant of full age and sound mind, with full knowledge of a forthcoming trial, voluntarily absents himself, there is no reason in principle why his decision to violate his obligation to appear and not to exercise his right to appear should have the automatic effect of suspending the criminal proceedings against him until such time, if ever, as he chooses to surrender himself or is apprehended.

> 11. Counsel for the appellant laid great stress on what he submitted was the inevitable unfairness to the defendant if a trial were to begin in his absence after he had absconded. His legal representatives would be likely to regard their retainer as terminated by his conduct in absconding, as happened in this case. Thus, there would be no cross-examination of prosecution witnesses, no evidence from defence witnesses, and no speech to the jury on behalf of the defendant. The judge and prosecuting counsel, however well-intentioned, could not know all the points which might be open to the defendant. The trial would be no more than a paper exercise (as Judge Holloway at one point described it) almost inevitably leading to a conviction. The answer to this contention is, in my opinion, that one who voluntarily chooses not to exercise a right cannot be heard to complain that he has lost the benefits which he might have expected to enjoy had he exercised it. If a defendant rejects an offer of legal aid and insists on defending himself, he cannot impugn the fairness of his trial on the ground that he was defended with less skill than a professional lawyer would have shown. If, after full professional advice, he chooses not to exercise his right to give sworn evidence at the trial, he cannot impugn the fairness of his trial on the ground that the jury never heard his account of the facts. If he voluntarily chooses not to exercise his right to appear, he cannot impugn the fairness of the trial on the ground that it followed a course different from that which it would have followed had he been present and represented."

9. Lord Bingham stressed, however, that the discretion to commence a trial in the absence of a defendant should be exercised with "the utmost care and caution", adding that where the absence of the defendant is attributable to involuntary illness or incapacity it would "very rarely, if ever, be right" to proceed in absence "at any rate unless the defendant is represented and asks that the trial should begin".

10. In Jones, defence counsel had withdrawn. The House of Lords was divided as to whether the defendant was to be taken to have waived his right to representation at the trial conducted in his absence although unanimous in finding that, even if Mr Jones was not to be taken to have waived his right to representation, he had been fairly tried.

11. Lord Hutton cited the trial judge's ruling in which he balanced the prejudice to the defendant against the competing interest of the 35 prosecution witnesses who were anxiously waiting to give evidence and the fact that the trauma that some had experienced during the course of the alleged criminality would be unlikely to resolve until they had had the case dealt with. As the judge put it, he could not in all conscience say that the witnesses should wait for what could be many months to give their evidence.

12. In Jones, the House of Lords approved, with one exception, the guidance given by the Court of Appeal in that case (reported as R v. Hayward, R v. Jones and R v. Purvis [2001] EWCA Crim 168, [2001] Q.B. 862). So modified, the guidance was:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;

(iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;

(v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) the risk of the jury reaching an improper conclusion about the absence of the defendant; …

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present."

13. Rule 25.2(1)(b) of the Criminal Procedure Rules 2020 provides that the court must not proceed if the defendant is absent unless the court is satisfied that (i) the defendant has waived the right to attend, and (ii) the trial will be fair despite the defendant's absence.

14. In R v. Amrouchi [2007] EWCA Crim 3019, Hughes LJ, as he then was, observed at [11]:

> "The practical consequences [of a trial in absence] for a defendant who wishes to contest the allegations, whether for good, bad or indifferent reason, are enormous. He cannot give evidence and he cannot even respond to changes or subtleties in the evidence as it comes out. The jury, however carefully directed, is at least at risk of concluding that if he is not attending it must be because he has no confidence in his case. Even if they do not come to that conclusion, it is undoubtedly very much more difficult to weigh up the case which has been put on his behalf if he is not there to make it. This, moreover, was a case in which, good, bad or indifferent, the defence was self-defence. Sometimes it is no doubt true that self-defence can be established through the evidence of independent witnesses but very often it depends almost entirely on the evidence of the defendant and this was certainly such a case."

15. In Amrouchi, the Court of Appeal held that the trial judge had erred in his application of the Jones principles. Specifically:

15.1 In considering the extent of the disadvantage to the defendant, the judge failed to consider the fact that his potential defence of self-defence would depend entirely on the defendant's own evidence.

15.2 The judge took into account that the absent defendant would not be at risk of either "making a fool of himself" in the witness box or having adverse inferences drawn from his failure to testify, but failed to consider the possibility that the defendant would lose the chance to give convincing evidence that might support his case.

15.3 The judge had been wrong to consider that it was not important whether the defendant knew that he was required to attend court for his trial or some other hearing.

15.4 The judge had been wrong to conclude that a 24-hour adjournment would make no difference because there was no reason to think that the defendant would change his mind,

but had not considered the possibility of giving him a specific warning that his trial would take place in his absence if he were not to attend.

16. As to the last point, Hughes LJ suggested that it was the court's experience that a clear warning that the trial would go ahead the following day should be given. He added, at [15]:

> "There are a number of ways in which that might be done. It does not require, necessarily, the hearing of the evidence of the Prison Officer who delivers the message. It does not require sending for the Prison Governor, which tends in any event to disrupt the administration of the prison. But the judge needs to satisfy himself that the explicit warning that he gives is delivered. We would suggest that most Crown Court judges would require written confirmation from the prison that the warning had been delivered and preferably in writing."

17. Just as the evidence of the defendant may often be critical to a plea of self-defence, so too will the defendant's evidence be very important to a defence of consent to a sexual offence. Nevertheless, the Court of Appeal upheld the trial judge's decision to proceed in absence on charges of rape and sexual assault where the apparent defence was consent in R v. Arshad [2024] EWCA Crim 67.

18. As noted above, Lord Bingham referred to Ensslin, Baader & Raspe v. Federal Republic of Germany (1978) 14 DR 64 as a case in which proceedings were held to have been properly continued where the absence of the defendants had been largely caused by "self-induced illness". Ms Ensslin, Mr Baader and Mr Raspe were part of the infamous Red Army Faction and were charged with murders in four different German cities. The defendants engaged in a series of hunger strikes in custody. They were present when their cases came before the court but after a short time they became incapable of following proceedings. Defence counsel sought a ruling that the defendants were unfit to attend the hearing. Medical evidence concluded that the hearing days would have to be reduced to a maximum of three hours each day. The court concluded that it could not adopt such a slow schedule of work and the hearing continued. On the fortieth day of the hearing, it became impossible for the defendants to follow proceedings. The court decided to continue the case in their absence on the ground that they had by their own actions (their repeated hunger strikes, their refusal of any therapy offered by prison doctors, their sleepless nights, their refusal to meet with other prisoners and to take exercise) brought themselves to a state of health that precluded their attendance at court.

19. Thereafter Ensslin, Baader and Raspe attended court intermittently. Their trial otherwise continued in their absence but with lawyers appointed by the court. Proceedings continued for a further 151 days. Upon their convictions, the defendants were sentenced to life imprisonment for multiple offences of murder.

20. The European Commission of Human Rights found that the defendants' complaints that the state had breached their Article 6 rights by continuing the trial in their absence were not admissible. It observed that the right of the accused to appear personally and be heard by the court should normally contribute to a fair examination of the case. It noted that the defendants were absent but not excluded from their trial. Account had to be taken of the particular circumstances of the case and of the requirement that justice be done, and that it be done within a reasonable time. The Commission concluded:

> "The reason for the decision was their medically attested unfitness to attend the hearings for more than three hours each day, over a period of at least six months. It refers to statements by the accused indicative of their wish to make it impossible for the trial to begin, particularly by recourse to hunger strikes.

> In the circumstances, the judge was able legitimately to make use of the only means at his disposal for preventing the proceedings from grinding to a halt, without however placing the defence at any disadvantage, their lawyers being present and having practically unlimited opportunities for contact with their clients.
>
> In the light of all the factors recapitulated above, the continuation of the hearings in the absence of the accused cannot therefore be deemed to have infringed the rights and freedoms guaranteed by the Convention ..."

21. Ms Ayling also draws my attention to a 2016 decision of the International Criminal Court in the case of The Prosecutor v. Ntaganda. In protest at a decision made by the court, Mr Ntaganda embarked on a hunger strike and refused to attend court. It was argued that he was not in either a psychological or a physical condition to attend his trial. Further, he instructed his lawyers that they were not to represent him in his absence.

22. The international court ruled that Mr Ntaganda had voluntarily waived his right to attend and that the trial should proceed in his absence. The issue of his representation was, however, solved by a power that is not available to me in that the court ordered defence counsel to represent Mr Ntaganda's interests notwithstanding his clear instructions that they should not.

REPRESENTATION

23. Dr Brooks left a voicemail for his solicitor on Thursday 27 February 2025 to indicate that he was withdrawing instructions from his legal team. Such decision potentially left Dr Brooks without legal representation just one working day before his trial.

24. The sacking of Dr Brooks' latest legal team was not without precedent:

    24.1 Dr Brooks sacked his original legal team in early 2022 and represented himself at his trial before Ellenbogen J in July and August 2022.

    24.2 By the next hearing, he had reinstructed his original lawyers.

    24.3 At a hearing in March 2023, those lawyers came off the record and he instructed Wells Burcombe.

    24.4 Shortly before last November's pre-trial review, Dr Brooks sacked his then leading counsel.

25. It was therefore foreseeable that Dr Brooks might dismiss his legal team shortly before or even mid-trial. I had therefore expressly warned him in my pre-trial directions on 18 November 2024 that, should he dispense with his legal team, he should not assume that his trial would not proceed without his having any legal representation.

26. It is of course Dr Brooks' prerogative to dismiss his lawyers. Like any other defendant, he is absolutely entitled to conduct his own defence. It was important, however, that Dr Brooks should understand that the court would be unlikely to allow an adjournment for the instruction of fresh lawyers. Further, while Dr Brooks is a highly intelligent man who has previous experience of conducting his own defence in this case, he does not have the legal knowledge, the professional training or experience, or the objectivity and emotional detachment of an advocate, let alone the very experienced and specialist criminal advocates provided by the state to defend him in this case. Furthermore, this is a very serious case with a number of complexities. It was therefore also important – despite Dr Brooks' track record for sacking lawyers and his 2022 experience of

representing himself – that his decision to dismiss his lawyers was properly informed and that Dr Brooks should have been given a final opportunity to reflect before his lawyers withdrew.

27. After hearing counsel, I therefore drafted a document explaining the seriousness and complexity of this case, the benefits of expert legal representation, and the burden that would fall upon Dr Brooks' shoulders should he decide to represent himself. I also pointed out that it was too late to instruct new lawyers for his trial and that the consequence of sacking his lawyers was likely to be that he would have to represent himself. My document was based on the helpful draft provided in the Crown Court Compendium but tailored to the circumstances of this case.

28. My document was sent to His Majesty's Prison Bedford during the afternoon of 3 March and the prison has confirmed in writing that it was read aloud to Dr Brooks. Furthermore, the prison has confirmed that Dr Brooks was provided with his own hardcopy of my document. That was not done to browbeat Dr Brooks or force his hand but in order to ensure that, if he maintained his decision to dismiss his lawyers, his final decision about representation was fully informed.

29. Dr Brooks failed to take any action in response to my document by the required deadline of 2pm on 4 March. A little further time was allowed but at 2.30pm Mr Vickers confirmed that nothing had been heard and that the defence team therefore had to treat themselves as dismissed. Accordingly, defence solicitors and counsel withdrew from the case. I am very grateful to them for not having done so while the court clarified Dr Brooks' intentions and for the helpful submissions lodged on 4 March before their withdrawal.

THE PROCEDURAL HISTORY

30. In order to consider the prosecution's application properly, it is necessary to understand the troubled procedural history of this case. This week is the ninth occasion on which this case has been listed for trial between September 2021 and March 2025. On seven of those earlier occasions, it has not proceeded. The exception was the fourth trial listing in July and August 2022 when the prosecution case was presented to a jury but the case was adjourned upon Dr Brooks' admission to hospital.

THE FIRST TRIAL LISTING: SEPTEMBER 2021

31. This case was listed for trial on 27 September 2021. One week before trial, Dr Brooks commenced a hunger strike and stopped engaging with prison staff. The trial had to be adjourned because of the very late service of a defence psychiatric report from Dr Maganty giving qualified support to a defence of insanity. The case was not then ready for trial since it was expected that Dr Maganty would have to make a supplementary report. In addition, it was necessary for the defence to commission a second psychiatric report and for the prosecution to instruct their own expert.

32. Meanwhile, the prosecution's application to extend the custody time limit was listed before His Honour Judge Gregory Dickinson QC on 27 September. Dr Brooks failed to attend the hearing. The prison confirmed that he had refused to leave his cell and that Dr Brooks was being assessed by the mental health team. The prosecution submitted that Dr Brooks' decision not to eat appeared to be deliberate and that the court should proceed with the custody time limit application. Judge Dickinson was reluctant to do so and granted a short extension until 11 October 2021.

33. Later on 27 September, Dr Brooks took a large overdose of paracetamol and was admitted to hospital.

34. In his subsequent written ruling dated 17 October 2021, Judge Dickinson noted Dr Brooks' earlier refusal to be seen by the defence psychiatrist until the contents of his laptops had been considered by his lawyers and made available to the expert. The judge observed that the prosecution should have been able to provide the defence with access to Dr Brooks' laptops sooner than they did. He noted, however, that there had been no defence case statement, that Dr Maganty's report did not depend at all on the contents of the laptops and that it had not been necessary to wait for disclosure.

35. The case was listed for further case management on 22 December 2021 because Dr Brooks had refused on three occasions to attend video-link interviews with the prosecution's psychiatrist. For the second occasion, Dr Brooks refused to attend court. No medical explanation was provided.

THE SECOND TRIAL LISTING: JANUARY 2022

36. The case was relisted for trial in January 2022. That listing was frustrated by Dr Brooks' late decision to dismiss his lawyers:

    36.1 Shortly before the January trial date, Dr Brooks wrote to the court to say that he wanted to represent himself and withdraw instructions from his lawyers. The case was therefore listed on 10 January 2022 but, for the third time, Dr Brooks refused to attend court. Defence counsel told the court that they had received information that he had refused to get on the prison bus and that he was again on hunger strike although they were not aware of any evidence that he was physically unwell. Judge Dickinson expressed real concern as to Dr Brooks' apparent decision to represent himself while running a psychiatric defence in a difficult case. Concerns were raised as to Dr Brooks' capacity to make such a decision and accordingly the defence lawyers remained on the record pending clarification.

    36.2 The position was further reviewed on 18 January 2022. Dr Brooks had been directed to attend by video link but, for the fourth time, refused to appear. Again, no medical explanation was provided. Defence counsel reported that Dr Brooks had also refused to attend a video consultation with defence psychiatrists the previous day.

    36.3 The case was relisted on 25 January 2022. For the fifth time, Dr Brooks failed to attend and no medical explanation was provided.

THE THIRD TRIAL LISTING: APRIL 2022

37. The case was then relisted for trial on 4 April 2022.

38. Dr Brooks failed to attend a hearing on 4 March 2022. It was the sixth time and again no medical explanation was advanced. Defence counsel confirmed that it had been established that Dr Brooks had capacity and that it appeared that he still wished to dispense with their services. While that matter was clarified, the judge accepted that the case would not be ready for trial a month later and the fixture was again broken.

39. Having dispensed with his lawyers, Dr Brooks attended hearings on 4 and 29 April, 20 May and 6 June 2022. Judge Dickinson advised him that the case was extremely serious and that it was not in his best interests to represent himself. Dr Brooks insisted that he wished to do so but complained that he was not being given access to the case papers.

40. At the hearing on 20 May, the prosecution explained that five appointments had then been made for Dr Brooks to see the prosecution's psychiatrist but he had on each occasion refused. The prosecution confirmed that the case papers had been provided to Dr Brooks but he insisted that he

was not being given access to the facilities to ensure that he could have a fair trial. Judge Dickinson refused Dr Brooks' application to adjourn the July date. He observed:

> "The Crown Prosecution Service has supplied to Dr Brooks a hard copy of the witness statements, exhibits and unused material; plus, DVDs of material which cannot be printed.
>
> Dr Brooks knows that he may have a prison-issue laptop, containing all of this material. He refuses to apply for such a laptop, because it will not be internet enabled.
>
> We are at an impasse. Dr Brooks is determined to represent himself, but is doing nothing to prepare for trial. He will not do anything until he has been provided with certain facilities. He has been told that he will not get those facilities.
>
> This trial should have been concluded before now. The next available date may now be January 2023. That would be unfair to the alleged victims."

41. Meanwhile, Judge Dickinson made orders pursuant to s.36 of the Youth Justice & Criminal Evidence Act 1999 prohibiting Dr Brooks from cross-examining the complainants in this case, Graeme, Beverley and Henry Perks, and Neil Pease. The judge appointed experienced leading counsel, Stephen Leslie QC, to conduct these cross-examinations.

42. On 28 June 2022, Dr Brooks refused to sign for a prison laptop that was preloaded with the prosecution papers. In any event, he had the hardcopy documents.

THE JULY 2022 TRIAL

43. The case was then relisted for trial in July 2022.

44. Dr Brooks attended a hearing on 4 July 2022 before the trial judge, Ellenbogen J. Mr Leslie QC indicated that Dr Brooks had not cooperated in the provision of instructions that would allow him to cross-examine witnesses.

45. The case came on for trial on 11 July 2022. Dr Brooks attended hearings on 11, 12 and 13 July when matters of law were argued. He complained that his Article 6 rights were being infringed. In a detailed ruling given on 13 July 2022, Ellenbogen J rejected his complaint and ruled that the trial would proceed. She observed, at [38]:

> "In my judgment, were his focus to be on achieving a fair trial (rather than on postponing its commencement) he would be seeking to engage with Mr Leslie QC, including in relation to the inconsistencies which he considers to exist in the Crown's evidence; would have accepted the laptop which the prison sought to deliver to him on 28 June 2022; and would have articulated, unequivocally, the nature of his defence in relation to all three counts on the indictment."

46. Dr Brooks sought clarification as to whether he could tell the jury that he considered that his Article 6 rights were being infringed. When told that he could not, Dr Brooks said that he could not participate in his trial. He explained that his intention was to remain for the empanelment of the jury and then only attend court to cross-examine two witnesses and make his speech to the jury provided that he was allowed to make submissions about the fairness of his trial. Asked by Ellenbogen J whether he was absenting himself by reason of disability, Dr Brooks responded that it was not a question of his ability to participate but more his desire to do so.

47. A jury was selected late on 13 July but not sworn until the next morning. As indicated, Dr Brooks did not attend on 14 July. The prison service reported that he would not provide a reason for this non-attendance and insisted that he had already told the court that he would not be coming. Ellenbogen J ruled that it was in the interests of justice for the trial to proceed in Dr Brooks' absence.

48. Mr Leslie QC attended the trial but, in the absence of any instructions from Dr Brooks, asked no questions of the four witnesses that he was to cross-examine. After absenting himself on 14, 15 and 18 July, Dr Brooks then re-engaged and attended the remainder of the prosecution case. Further, he then provided a 56-page defence statement.

49. The prosecution closed their case on 26 July. Upon Dr Brooks' late confirmation that he would be calling psychiatric evidence but that nothing had been done to arrange for the experts to attend court, the trial was adjourned until 8 August.

50. In the week when he should have been starting his defence case, Dr Brooks was admitted to hospital suffering from osteoradionecrosis of his jaw. Some years earlier he had been treated with radiotherapy for tonsillar cancer. Osteoradionecrosis is a serious complication of radiotherapy to the head and neck. In Dr Brooks' case, his osteoradionecrosis had progressed to Stage III such that he suffered a pathological fracture of his lower jaw. The condition can be treated surgically by resection of the dead bone and reconstruction of the jaw. Pending surgery, significant pain relief is required.

51. Ellenbogen J plainly had no choice other than to adjourn the trial. The course of this case over the following two-and-a-half years was dictated by Dr Brooks' professed wish to have surgery and medical evidence that, without surgery, Dr Brooks was not fit to stand trial.

52. Dr Brooks refused to attend a mention on 9 September 2022. It was, including the three days of trial, the tenth occasion on which he had failed to attend a court hearing without there being some medical justification for his absence.

53. In October 2022, Dr Brooks re-engaged his original legal team.

THE FIFTH TRIAL LISTING: FEBRUARY 2023

54. The case was relisted for 7 February 2023, but the fixture was broken because Dr Brooks had not had the required surgery.

55. On 10 March 2023, Dr Brooks refused to get on the prison bus to attend a further case management hearing before Ellenbogen J. It was the eleventh time that he had failed to attend without good reason. Meanwhile, his solicitors came off the record for the second time and Wells Burcombe LLP started acting for him. Dr Brooks then attended hearings by prison video link on 31 March and 25 April 2023.

THE SIXTH TRIAL LISTING: MAY 2023

56. The case was relisted for 9 May 2023.

57. On 9 and 10 May 2023, Ellenbogen J heard expert evidence and argument as to Dr Brooks' fitness for trial. The experts reported that Dr Brooks' jaw was unstable and that it was the movement of the edges of the fractured and necrotic mandible that caused substantial pain. They agreed that no amount of medication could manage his mechanical pain without causing sedation and affecting his cognition. Further, Dr Karen Simpson, a Consultant in Anaesthesia and Pain Management with particular expertise in the management of osteoradionecrosis in cancer patients, found evidence of total nerve injury which would also require anti-neuropathic pain relief.

58. Unsurprisingly, on 11 May 2023 Ellenbogen J found that Dr Brooks could not then participate effectively in his trial and that the case should be adjourned to allow him to undergo the required surgical treatment.

59. In fact, Dr Brooks refused surgery in October 2023 insisting that his health had not been adequately optimised. His treating surgeon took a different view and had been willing to operate. The following day Dr Brooks suffered a cardiac arrest. He would say that his concerns about his fitness for surgery were clearly vindicated while the prosecution has always argued that Dr Brooks caused his own collapse by taking an overdose of prescription drugs.

60. It is neither possible upon the papers before me nor ultimately necessary to seek to resolve that conflict. The prosecution's suspicions are not, however, without any foundation. In her December 2024 report, Dr Richardson reported:

> "In October 2023 he was found unresponsive and appeared to be having a seizure. He then underwent a cardiac arrest. He was transferred to the Nottingham University hospitals. The notes regarding this period are again extensive; suffice it to say that he was uncooperative with the care in the general hospital and refused to have his blood analysed fully for toxicology. Their working diagnosis had ruled out cardiac issues, despite Mr Brooks having underlying known heart disease, and they assumed he had taken an overdose. It was noted in initial assays that gabapentin levels were raised (a prescribed medication), and subsequently at the prison a large number of baclofen tablets (another prescribed medicine) were unaccounted for - Mr Brooks had had these in [his] possession at the prison."

THE SEVENTH TRIAL LISTING: APRIL 2024

61. The case was relisted for trial in April 2024. That was fixed on the basis that Dr Brooks was offered the required surgery in October 2023 and would then have had some six months after surgery to recover before his trial.

62. The April 2024 trial was to be heard by Turner J. On 17 April, the judge adjourned the trial again in order to allow a further opportunity for surgery. The parties had prepared for that hearing on the basis that they would litigate the issue of whether the surgeon had been right or wrong to conclude that surgery could have gone ahead in October. Turner J observed that such issue was complex but not central to the question of whether a further adjournment should be allowed. The prosecution also invited Turner J to conclude that Dr Brooks was manipulating the forensic process. The judge observed, however, that such argument was made more difficult by Dr Brooks' autism spectrum disorder which had the potential to lead to an unduly detailed approach and a rigidity of thought processes.

63. Turner J concluded that the real issue was whether, with reasonable adjustments, Dr Brooks could not participate effectively in his trial. The prosecution's proposal was that uncontroversial evidence could be read, played or led during the morning sessions and that Dr Brooks could then attend from

2pm when the cognitive impairment from his previous dose of morphine would have reduced and before his pain returned to the level that further medication was required. The judge rejected the defence argument that it would be inappropriate to proceed on such basis holding that the desirability of Dr Brooks' presence during the mornings could not outweigh the competing priority of expedition and that any prejudice could be addressed by jury directions.

64. Turner J considered updated medical evidence and concluded that Dr Brooks' "persisting medical problems would have a significantly deleterious impact [upon] his ability to engage in the trial process". He concluded that "the time [had] not yet come" when it would be fair and just for Dr Brooks' trial to start without his being given a further opportunity to undergo the surgery that might allow him to participate more effectively in his trial. The judge then added, at [35]:

> "(i) There is some real uncertainty as to whether the defendant will ever be fit for surgery. The opinion of an anaesthetist will be needed to resolve this issue. It is a pity that the process has not been progressed more speedily over recent months. Indeed, it was for the first time during oral submissions that it was revealed that steps were being taken with a view to organising the procedure under a different team in Birmingham. The defendant realistically concedes in his written submissions that 'if Dr Brooks is no longer amenable to surgery, it is at that point [the Court should] move to considerations such as trial in absence…'.
>
> (ii) My views relating to the state of the evidence in support of the proposition that the defendant is deliberately manipulating the court process does not preclude the issue from being raised again in the event of any further relevant developments in the case. In any further assessment, the court would be fully entitled to have regard not only to such later developments but also to the relevant material which has accumulated so far. This ruling does not, therefore, provide for a clean slate on the issue.
>
> (iii) I expect the defence henceforth to proceed with all due diligence. I am willing to assist, as was Ellenbogen J, in the provision of a letter from the court to the hospital to encourage progress."

65. Finally, Turner J added, at [36]:

> " In conclusion, albeit on a relatively fine balance and recognising the growing force in the prosecution contentions, I am persuaded to grant an adjournment of the trial …"

66. On 18 April 2024, Turner J refused Dr Brooks' application for bail. Later that day, Dr Brooks started a hunger strike. He insisted that it would be his terminal hunger strike.

67. The prison's medical records document how he was carefully monitored. Day after day, Dr Brooks refused to engage with prison officers and healthcare staff. When staff entered his cell, he played loud music and lay on his bed facing the wall with a blanket over his face. He remained mute ignoring all questions asking after his welfare and refused to be examined. He took limited fluids but rejected all food. He engaged on only one matter: to confirm his instructions that he refused all treatment and that he did not wish to be resuscitated.

68. By 3 May 2024, prison staff were sufficiently concerned about Dr Brooks' failing health that they started considering options for end-of-life care. Dr Brooks was admitted to hospital in early May. Eventually, Dr Brooks accepted intravenous fluids and subsequently started eating again.

69. On 16 May 2024, Dr Brooks took a razor blade to his own neck and caused a deep injury.

THE EIGHTH TRIAL LISTING: JANUARY 2025

70. The case was relisted for trial in January 2025. Again, that listing was intended to allow Dr Brooks a further opportunity to have osteoradionecrosis surgery and a recovery period.

71. I was appointed to be the trial judge in the autumn of 2024. In preparation for the New Year trial, I heard a pre-trial review on 18 November 2024. Shortly before that hearing, Dr Brooks sacked his then leading counsel. Fortunately, Mr Vickers KC was quickly instructed in his place. Dr Brooks refused to come out of his cell on 18 November. It was the twelfth occasion on which he had refused to attend a court hearing without providing any good explanation.

72. I was told that Dr Brooks was then wheelchair bound but no further information was available. Dr Brooks' own lawyers had not been able to take recent instructions from their client and he was not of course present.

73. Mr Wise-Walsh raised concern as to Dr Brooks' fitness to plead. While not in a position to make any application, he observed that Dr Brooks had still not had surgery for his osteoradionecrosis and anticipated that there might be a further application to vacate the trial. I gave directions for psychiatric evidence to be obtained on the issue of fitness to plead. Further, I gave directions that any application to vacate the trial date on the grounds of ill-health be made by 16 December and supported by maxillofacial expert evidence as to the current position, the likelihood of treatment and the likely date of surgery; and pain management or anaesthetic evidence as to Dr Brooks' pain relief regime and his ability to participate effectively in his trial addressing, in particular, his ability to participate over a full court day and any reasonable adjustments that might be required to allow him to participate, including, if appropriate, significantly reduced sitting hours.

74. I also directed that further information be provided as to the likelihood that Dr Brooks would be using a wheelchair at trial.

75. The case was listed again for mention on 13 December 2024 when the defence sought an extension of time for complying with my directions. Again, Dr Brooks refused to attend the hearing. While I was told that he was refusing food and getting weaker by the day, there was no suggestion that he was not fit to attend by video link. It was the thirteenth unexplained failure to appear for a court hearing.

76. Despite my previous order, the defence were unable to assist as to Dr Brooks' wheelchair status. Meanwhile they sought an extension of time for service of any application to vacate and supporting medical evidence. Rather than risk listing this case in a court that could not properly accommodate a wheelchair-bound defendant in custody, I vacated the January trial date and relisted this case at Loughborough on 3 March 2025. Further I extended time such that the defence had until 17 January 2025 to make any application to vacate and to serve supporting expert evidence.

77. In the event, no application was made to vacate the trial and it was not argued that Dr Brooks was not fit to plead.

THE NINTH TRIAL LISTING: MARCH 2025

78. Bringing matters up to date, this week's listing was therefore the ninth occasion on which this case was listed for trial.

79. On Thursday 27 February 2025, Dr Brooks left a voicemail for his solicitor indicating that he was withdrawing his instructions from both his solicitor and counsel. On the following day, I received a letter from Dr Caroline Watson, a General Practitioner at HMP Bedford, indicating that Dr Brooks was on hunger strike and expressing serious concerns about his fitness for trial. He has not attended court this week and, as I relate below, there is evidence that he is now unfit for his trial.

THE MEDICAL EVIDENCE

PSYCHIATRIC EVIDENCE

80. Dr Tina Richardson was the Consultant Forensic Psychiatrist responsible for Dr Brooks' care during his admission to St Andrews's Healthcare between 27 August and 14 November 2024. I had directed that she provide a psychiatric report in view of Mr Wise-Walsh's concern at last November's hearing that Dr Brooks might not be fit to plead. In the event, there is no evidence to support such concern and that issue has not been pursued further.

81. Dr Richardson's report extended, however, significantly beyond that narrow question. She found no evidence that Dr Brooks lacks capacity:

81.1 Dr Richarson noted that Dr Brooks displays some features of high-functioning autistic spectrum disorder but it was not possible to say more given "his own conscious decision not to co-operate with the assessment process". She agreed with the earlier opinions of four other Consultant Forensic Psychiatrists that Dr Brooks show features of a disordered personality with predominant narcissistic and dissocial traits along with paranoia.

81.2 Dr Richardson reported that there was no evidence that Dr Brooks would fail to understand the charges, the court process, how to instruct a solicitor and how to review the evidence. She added that there was no reason to doubt that at the time of his discharge on 14 November 2024, Dr Brooks was fit to plead and to attend court.

81.3 Dr Richardson noted a pattern of intermittent hunger strikes in prison accompanied by disengagement from the treating team and prison officers. He had stated that he wished to reduce his weight so that in the event of an "unfavourable outcome" at trial he would be able quickly to starve himself to death. Periods of food refusal were triggered by prison disciplinary hearings and court appearances.

81.4 Psychiatric teams and a consultant forensic psychiatrist regularly assessed Dr Brooks and there was no evidence of serious mental illness such as psychosis or an affective disorder such as depression.

81.5 There was evidence that Dr Brooks used hunger strikes and other self-harm as leverage to obtain an advantage:

(a) In September 2021, Dr Brooks said that he would not eat until he was transferred to another prison.

(b) He then took a very large overdose of paracetamol. On admission to hospital, he said that he would kill himself if he could not stay in hospital.

(c) In October 2021, Dr Brooks was again refusing food. He told a consultant psychiatrist that he would kill himself by refusing food unless he were moved to a psychiatric hospital or another prison.

(d) In February 2023, Dr Brooks was again refusing food and fluids. He said that he was protesting against his incarceration.

(e) In May 2024, Dr Brooks said that he would eat and drink if admitted to hospital.

(f) In July 2024, a dispute as to hospital rules triggered a further hunger strike. Dr Brooks wanted a change of hospital.

(g) In September 2024, Dr Brooks went on hunger strike following complaints against the regime at St Andrew's. His mobile telephone was confiscated and he then said that he would eat again if he were given his phone back.

81.6 Dr Richardson reported, at para. 4.2:

> "Mr Brooks' presentation has continued to be consistent throughout his period of incarceration. It has been characterised by failure to engage with healthcare professionals, being selectively mute, repeated protracted complaints that are unresolvable, an unwillingness to accept other professionals' expert views, verbal aggression and hostility, physical assaults, and threats of litigation towards others when demands are not met, along with his carefully managed food and fluid restriction. He has not been reflective on his own behaviour that has brought him currently or in the past into conflict with society, choosing to blame others for his plight. Mr Brooks appears to be fully aware of the emotions that these behaviours he exhibits have on others. These behaviours are repetitive. Mr Brooks is at most risk of these behaviours when he has had to appear in court and on a number of occasions has been in hospital at the time."

MAXILLOFACIAL EVIDENCE

82. Professor Panayiotis Kyzas is a Consultant Oral and Maxillofacial Surgeon with a special interest in head and neck oncological surgery. Dr Brooks failed without explanation to attend an arranged consultation on 29 November 2024 and accordingly Professor Kyzas had to provide an updating report on the basis of the medical records.

83. He noted that after the breakdown in the relationship with the surgeon who would have operated in October 2023, Dr Brooks was referred to the specialist team at Queen Elizabeth Hospital, Birmingham. Unfortunately, Dr Brooks failed to attend clinic appointments in March and July 2024. In August 2024, Dr Brooks asked for all future appointments to be cancelled and was discharged from the hospital's care. Consequently, he was never seen by the Birmingham team.

84. Professor Kyzas confirmed that Dr Brooks suffers untreated stage III osteoradionecrosis with pathological fracture and deviation of the mandible. The condition is not directly life threatening but impacts on function and quality of life and can lead to recurrent infections. He reported:

> "Although not directly lifesaving, in my opinion, the defendant needs to have his procedure prior to the trial for many reasons. These include, but not limited to, control his pain, restore form and function, allow normal nutrition and improve the defendant's quality of life."

85. Professor Kyzas observed that Dr Brooks' current condition is unknown because of his failure to attend either his consultation or any of the clinical appointments in 2024. He said that he could be confident that on the balance of probabilities his osteoradionecrosis would be the same or worse and that the condition would not be cured without major reconstructive surgery. He added that Dr Brooks' apparent suicide attempt in which he cut his neck would have made future major surgery and reconstruction more difficult. He stressed:

> "It is very important for the defendant's condition to be treated as soon as possible, to control his pain, restore form and function, allow better nutrition, improve his quality of life and allow the defendant to participate in his own trial with his symptoms controlled and without the need of excessive amounts of analgesics."

PAIN MANAGEMENT EVIDENCE

86. Key to the decisions of Ellenbogen J (in May 2023) and Turner J (in April 2024) to adjourn earlier trials was Dr Simpson's evidence that Dr Brooks was not then fit for trial by reason of the significant levels of medication required to mask the pain of his untreated osteoradionecrosis.

87. That position has now changed. In her January 2025 report, Dr Simpson reported that it was likely that Dr Brooks was now quite tolerant of the modified-release morphine that had been prescribed since 2023. She reported that the window of opportunity for optimisation for Dr Brooks to be able to have such major surgery was now likely to have passed. She reported that it would now be very difficult for Dr Brooks ever to reach a point where he would be fit for osteoradionecrosis surgery, although she would need to examine him to clarify this. She agreed in principle that his health might best be optimised outside of the prison environment and noted that the six months he had spent as an inpatient in a mental health unit had presented the opportunity to optimise his analgesia, exercise, rest and nutrition. This had not, however, happened and his poor health had been exacerbated by his decision to engage in fluid and food avoidance. She concluded:

> "Although I previously expressed the opinion that surgery would be the most likely method to provide appropriate analgesia to allow [Dr Brooks] to participate in the trial, I am now of the opinion that this is not likely to be realistic."

88. Dr Simpson reported that Dr Brooks was now unlikely to become sedated from his pain relief and that the more likely limiting factors on his ability to engage in his trial would be fatigue and his general health rather than drug-related side effects. She concluded that in view of his general debility, fatigue and pain, Dr Brooks was unlikely to be physically able to maintain participation for more than two hours. She recommended that he would be in the best position to tolerate court sittings in the afternoons.

FITNESS FOR TRIAL

89. Given the medical evidence in this case, I was concerned that the 150-mile roundtrip from HMP Bedford to this court might compromise Dr Brooks' limited ability to participate effectively in this trial. After seeking the views of counsel then instructed, I therefore wrote to the governor on 25 February asking whether urgent consideration could be given to transferring Dr Brooks to a local prison.

90. Dr Watson reviewed Dr Brooks that same day with a view to progressing his transfer to HMP Leicester. She reported in her letter dated 28 February that Dr Brooks' health had deteriorated further in recent weeks. She said that he had recently spent two weeks in hospital with pneumonia and an exacerbation of a lung condition. She then reported:

> "Following his discharge from hospital, and possibly in relation to his upcoming trial, Dr Brooks has declined to eat food from 20 February and since then has also severely restricted his fluid intake. He has been lying on his bed with very little movement.
>
> Due to his food refusal and significant restriction of fluid intake, when I saw him on 25 February, he had become very dehydrated and was dizzy on sitting up which was reflected in his clinical observations. He appeared frail and had developed a new medical issue, that requires a hospital mattress and bed to prevent worsening of the situation.

Due to my clinical assessment, I conveyed my concerns to the prison about moving him from the healthcare unit, and encouraged Dr Brooks to increase his fluid intake, even if he continued to decline his foods. My nursing colleagues implemented treatment for his new medical condition. Dr Brooks told me that if he were to move from the healthcare unit, he would stop drinking altogether. He was assessed by another doctor on 26 February who was also concerned about his dehydrated status and requested that Dr Brooks was transferred as an emergency to Bedford Hospital. Unfortunately, Dr Brooks declined to attend hospital and he was deemed on assessment to have capacity to make that decision.

I reviewed Dr Brooks again on Thursday 27 February and spent time discussing his wishes, including his refusal of treatment. I asked if he would complete a new Respect form and Advanced Decision to Refuse Treatment, due to the fact that the last forms were completed 31/10/2023 and were under a previous healthcare provider. I explained that I wanted to be sure that we respected his wishes and that there was no room for doubt. Dr Brooks said that his wishes remained unchanged and he declined to complete another Respect form and ADRT with me. He said that he continued to hold the position that:

- if refusing fluids and/or food, he does not wish to have life sustaining treatment, even if this is at a risk to his life.
- he does not wish to be resuscitated in the event of a cardiac arrest.

While he clearly demonstrated capacity for his choices, he said that if he were to lose capacity and were to be transferred to hospital, his ADRT for fluid and food refusal and DNACPR still stands. I gave him some more information about ADRT from NHFT.

My medical opinion is that, currently, I think it unlikely he would physically be able to cope with sitting or standing in court while in this state and, unfortunately, if he continues to refuse food and restrict his fluids, his physical state will only deteriorate, potentially to the point of death.

I think that currently, from a frailty perspective, it would not be unreasonable to facilitate a video link with court if he were able to remain semi-recumbent, but appreciate that this is not for me to decide. I also think that, today, tomorrow or over the next few days, unless his condition deteriorates rapidly, he could likely withstand the journey to HMP Leicester if transferred on an ambulance where he could be on a stretcher and lying down or semi-recumbent, rather than sitting upright. He would need a hospital mattress and bed in whichever [prison] he resides in, to prevent his new medical condition deteriorating and to allow it to improve. From HMP Leicester, due to the proximity to Loughborough, his medical condition could be more easily assessed from day to day regarding his fitness to attend court in person."

91. On Monday 3 March, Dr Watson reported that Dr Brooks' health had deteriorated further because he had continued to decline to eat and was restricting his fluid intake to the minimum required to allow him to swallow his pain relief. Dr Watson reported that Dr Brooks continued to lie on his bed with very little movement and could not sit up without feeling dizzy due to his low blood pressure. She reported:

> "Due to his low body mass index and dehydration, Dr Brooks is at risk of organ failure, collapse and a sudden cardiac event. I have taken blood this morning to get a clearer assessment of his risk and current kidney function. We are also investigating for a recurrence of his respiratory infection, although he currently declines treatment for this. I have sought advice from our palliative care consultant and requested psychiatry colleagues to review him, specifically in relation to the risk to loss of capacity and Best Interests decision-making.
>
> Dr Brooks has signed an update to his ADRT stating that his wishes remained unchanged, and he continues to hold the position that:
>
> - if refusing fluids and/or food, he does not wish to have life sustaining treatment, even if this is at a risk to his life.

- he does not wish to be resuscitated in the event of a cardiac arrest.

He told me this morning that these are the specific treatments that he refuses because they are life-sustaining. He said that he would accept oxygen and other medicines required to palliate end of life symptoms.

My medical opinion is that, currently, I think that the only way Dr Brooks could appear before a judge would be lying in a hospital bed. He would not be able to cope with sitting or standing in court and unfortunately, if he continues to refuse food and restrict his fluids, he is at escalating risk of organ failure, collapse and sudden death."

92. On the afternoon of Tuesday 4 March, the prison confirmed to the court that Dr Brooks was waiting for an ambulance because of concerns about his low potassium levels. He was maintaining his hunger strike.

ARGUMENT

93. Ms Ayling submits that Dr Brooks has voluntarily decided to make himself ill and should be regarded as voluntarily absent from his trial. She argues that there is an established pattern of behaviour in this case of absenting himself. She contends that he was given the opportunity to have surgery before his trial but deliberately caused his own collapse in October 2023 by taking an overdose so that he would not be fit either for surgery or trial. While given another chance for surgery in April 2024, he refused to engage with his new surgical team and embarked on a hunger strike.

94. Ms Ayling submits that Dr Brooks has had capacity throughout and is seeking to manipulate the forensic process so that he does not have to attend his trial. She points to his manipulative behaviour in refusing to eat or drink unless some advantage is achieved. She submits that cutting his neck was not an attempt on his life but the actions of a man with medical knowledge to make it look like a suicide attempt.

95. Further, Ms Ayling points to Dr Brooks' deliberate conduct in repeatedly sacking his lawyers without any apparent cause.

96. As to the critical question under the Jones guidelines of the extent of any disadvantage, she observes that Dr Brooks admits loading his car with petrol, a knife and a crowbar; breaking into the Perks' home; spreading petrol; and stabbing Mr Perks. According to his defence case statement, he could not however say why he had done that and he had made no comment in his police interviews.

97. Two potential defences are raised in the defence case statement. Insanity, she submits, is not supported by expert evidence, and indeed it is apparent that Dr Brooks' experienced lawyers were not planning to argue insanity at trial. As to self-defence, Mr Perks could be cross-examined by the court-appointed advocate but counsel would be unlikely to get anywhere given Mr Perks' inability to remember his stabbing. Dr Brooks also did not profess to any recollection.

98. Ms Ayling argues that proper directions can address the risk that the jury might reach improper conclusions from Dr Brooks' absence. Further, she argues that Dr Brooks has been given every opportunity to attend his trial and that the public interest plainly favours now going ahead with this trial in his absence. She stresses that the complainants in particular have been kept waiting for years and now deserve to face any cross-examination as soon as possible.

99. Ms Ayling argues that even if Dr Brooks were now to say that he wished to attend his trial, it would be a long time before he would be fit to do so. The court should therefore proceed without further delay.

100. Mr Vickers argues that Dr Watson's letters provide compelling evidence of the serious deterioration in Dr Brooks' health and that the position had changed radically from as recently as even last week. He says that in the voicemail left for their solicitor last week, Dr Brooks sounded weak.

101. Mr Vickers observes that it currently appears that Dr Brooks has mental capacity to make decisions, including about his medical care, but that the prison's medical team is preparing for a loss of capacity and the possibility that that might happen quite soon. He submits that Dr Brooks is very seriously unwell and may be close to death.

102. Mr Vickers argues that, in the exceptional circumstances of this case, the Attorney General should consider entering a nolle prosequi. If that course is not taken, he urges, in accordance with the authorities, great caution before the court decides to proceed in Dr Brooks' absence. He contends that Dr Brooks has consistently maintained his instructions that he wishes to attend and participate in his trial, and that his actions have been consistent with such wish. He asserts that after representing himself during his earlier trial, he instructed solicitors and counsel to pursue applications to adjourn his trial to enable him to have surgery and recover in order that he was well enough to engage and participate in his trial.

103. Further, he argues that Dr Brooks has always been consistent in wanting to give evidence at this trial.

104. Mr Vickers challenges the prosecution argument that Dr Brooks would suffer very little disadvantage if he were tried in his absence. He argues that Dr Brooks' defence statement makes clear that there are a considerable range of issues on which Dr Brooks could give direct evidence. Specifically, Mr Vickers identifies the defence of self-defence; Dr Brooks' recall of events on the night in question; his reasons for attending the Perks' home; his intention when pouring petrol within the property; his state of knowledge as to whether anyone was at home that night; his possible change of mind mid-actions; whether his actions were no more than merely preparatory; and his deteriorating mental state in the days leading up to the incident. Further, he argues that Dr Brooks would be deprived of the ability to give instructions to any court-appointed advocate.

105. Mr Vickers recognises the need for fairness to all parties, but argues that the touchstone is to ensure that Dr Brooks is able to participate effectively in his trial and give evidence in his defence if at all possible.

106. Mr Vickers invites me to conclude that there is no clear evidence that Dr Brooks has voluntarily decided to be absent from his trial, nor that he does not wish to represent himself. He insists that this case requires robust forensic scrutiny and, where appropriate, challenge. Further, the case requires an explanation from Dr Brooks as to what he did that night and why.

107. For all of these reasons, Mr Vickers argues that it is not in the interests of justice to try Dr Brooks on such serious charges when he is so unwell that he cannot participate effectively in his trial.

108. Ms Ayling responds that the prosecution has no intention of applying to the Attorney General to enter a nolle prosequi. She particularly challenges the defence submission that Dr Brooks' actions have been consistent with the claimed desire to attend and participate in his trial.

ANALYSIS

NOLLE PROSEQUI

109. A nolle prosequi staying the indictment can only be entered at the direction of the Attorney General. It is not a matter for the court. As Ms Ayling points out, it is open to Dr Brooks to apply to the Attorney General to consider the exercise of his discretion. I am not remotely surprised by Ms Ayling's own stance that the prosecution will not be making such application in this case.

FITNESS FOR TRIAL

110. There is no doubt that Dr Brooks suffers stage III osteoradionecrosis. While not life threatening, it is a very serious and painful condition which substantially affects function and quality of life and requires surgical treatment. Dr Brooks' diagnosis with that condition, his need for surgery, and the effects that his pain relief formerly had on cognition explain much of the delay in this case from the summer of 2022 until the autumn of 2024:

    110.1 It was inevitable that Ellenbogen J would have to discharge the jury and adjourn this trial when Dr Brooks was first admitted to hospital suffering that condition in August 2022.

    110.2 Equally, upon the expert evidence before Ellenbogen J, I consider that the judge was right to adjourn the trial in May 2023 in order to allow Dr Brooks the opportunity of having his surgery later that year.

    110.3 While, as Turner J observed, the case for further delay became weaker as time went by, the judge was confronted in April 2024 with disputed evidence as to why surgery had not gone ahead in October 2023, the assertion (that with hindsight appears dubious) that Dr Brooks intended to engage with his new surgical team and have his surgery, and expert evidence that again called into question Dr Brooks' ability to participate effectively in his trial. Faced with that evidence, it was perfectly reasonable to adjourn the trial in one final attempt to allow Dr Brooks to obtain treatment.

111. The situation is now different in a number of material respects:

    111.1 First, and most straightforwardly, time has moved on. It is now almost 2 years 7 months since Dr Brooks was first admitted to hospital suffering with osteoradionecrosis and yet he has still not had surgery.

    111.2 Secondly, whatever the rights and wrongs of his refusal to undergo surgery in October 2023, Dr Brooks refused even to attend a single consultation with the new maxillofacial team at Birmingham and has been discharged from that clinic at his own request. The inescapable conclusion is that Dr Brooks has decided, as is his right, that he does not currently wish to pursue surgery.

    111.3 Thirdly, the evidence before the court is that the window for surgery has now closed.

    111.4 Fourthly, the direct consequence of Dr Brooks' decision not to pursue surgery is that he is likely to continue to suffer significant pain as a result of the untreated pathological fracture of his necrotic jaw. The evidence of Dr Simpson is, however, that his morphine prescription should now be well tolerated such that the concern in 2023 and 2024 as to its effect upon cognition is no longer pertinent.

112. Upon the expert evidence now before me, neither Dr Brooks' untreated osteoradionecrosis nor his reliance on morphine currently renders him unfit to participate effectively in his trial. Accordingly, there would be no basis for adjourning this trial yet again on those grounds. Indeed, that conclusion was recognised by Dr Brooks' former very experienced legal team who, upon reviewing the updated medical records from the prison and the expert reports of Drs Richardson and Simpson and Professor Kyzas, accepted that they could not make any application to vacate the trial.

113. That said, quite apart from the effects of his latest hunger strike, it must be recognised that Dr Brooks is not in robust health. No doubt the combined effects of his osteoradionecrosis, his reliance on morphine, his cardiac arrest, his attempts or apparent attempts on his life, his recent respiratory infection, and his very poor nutritional status as a result of repeated hunger strikes have all taken their toll on his health. If Dr Brooks were to attend his trial, I accept that adjustments would be required to the trial process in order to achieve his effective participation. As to that:

113.1 First, I had already made an obvious adjustment by directing that this trial should be heard in a wheelchair-accessible court not just because there was doubt at the end of last year as to Dr Brooks' likely need for a wheelchair but in order to ensure that he could continue to access the court should his health decline further.

113.2 Secondly, I listed this case for very many weeks longer than its complexity justified since I anticipated the possibility that the court might only be able to sit for reduced hours in order to ensure Dr Brooks' effective participation.

113.3 Thirdly, one of the express purposes of last week's final pre-trial review (before that hearing was overtaken by events) was to hear the parties' submissions on the reasonable adjustments that might be required to ensure effective participation and the linked question of whether it was appropriate to make greater use of the court day by allowing the prosecution to read statements and agreed facts, and play video evidence during the times when Dr Brooks could not attend his trial.

114. I turn now to Dr Brooks' current hunger strike. I accept Dr Watson's evidence that Dr Brooks' health has deteriorated to the extent that he is now bed bound and unable even to sit up. It would, in my judgment, be very difficult for him currently to participate effectively in his trial. I find on the basis of the evidence before the court that by the afternoon of 4 March Dr Brooks was already unfit for trial by reason of his hunger strike.

WAIVER OF THE RIGHT TO ATTEND

115. Dr Brooks has sporadically engaged with the court. On no fewer than thirteen occasions, he has declined to attend court, sometimes even when only required to appear by prison link, without good reason. While he did engage to some extent with his trial in July 2022, even then he declined the offer of a laptop preloaded with the case papers while complaining that he could not adequately prepare for trial, he absented himself for three days without good cause when the judge would not allow him to address the jury about what he saw as breaches of his Article 6 rights, and he declined to engage with the court-appointed advocate thereby preventing him from being able to cross-examine any of the witnesses subject to s.36 directions. That said, upon the evidence before me, I accept that Dr Brooks had wanted to present his defence case to the jury in August 2022 and was only prevented from doing so by his involuntary ill-health.

116. Even if there was a time in 2022 and 2023 when Dr Brooks genuinely intended to undergo surgery and sought further adjournments of this trial in order that he could have surgery before his trial, that was not in fact the case by April 2024. Dr Brooks failed entirely to engage with the Birmingham maxillofacial team and, far from seeking to optimise his condition in order to improve the prospects of a successful surgical outcome, he engaged in further hunger strikes.

117. There is no evidence that Dr Brooks currently lacks capacity, even if he is at risk of making himself so ill by his voluntary act of maintaining his hunger strike and severely restricting his fluid intake that he might lose capacity. He is a highly intelligent man and a doctor by training who will fully appreciate the dangers of persisting in his hunger strike. It is clear from the records before me that he has been advised that he risks organ failure, cardiac arrest and ultimately death. Indeed, his stated intention is that his hunger strike should be terminal. Further, he has expressly given an advance direction refusing treatment and requested that he should not be resuscitated in the event that he collapses. Whether he truly intends to take his own life or not, such directions increase the prospect that he might die since, were he to lose consciousness or capacity, it would be too late to rescind his instructions.

118. Dr Brooks has been here before. In May 2024, the prison was openly discussing end-of-life care. Sadly, on the evidence before me, he may not be so far from the same position now in March 2025.

119. I therefore find that the reason that Dr Brooks is now unfit for this trial is his own voluntary and fully informed (albeit desperately unwise) decisions to maintain his current hunger strike, severely restrict his fluid intake, and refuse treatment. This is therefore, in the language used by Lord Bingham, a case of voluntary absence caused by Dr Brooks' self-induced illness. Further, it is a voluntary absence with full knowledge that his trial is this week. (Any doubt as to that last point is resolved by my order of 13 December 2024, the timing of his decision to dismiss his lawyers, and his receipt on Monday 3 March of my document in respect of the wisdom of representing himself at trial.)

120. Dr Richardson identifies no fewer than seven previous occasions when Dr Brooks has used hunger strikes or the threat of other self-harm to achieve some advantage, whether that was to stay in hospital, to be moved from a prison or hospital that he did not find congenial. or to have his mobile phone back. Even last week Dr Brooks was again seeking to manipulate the prison authorities to his own advantage by threatening to Dr Watson that he would stop drinking altogether if he were to be moved from the healthcare unit. Further, there is evidence that Dr Brooks has used hunger strikes around the times of major court appearances.

121. In my judgment, Dr Brooks has deliberately embarked upon and maintained his current hunger strike knowing full well that it would at some point render him unfit for trial. I find that his actions in doing so and simultaneously sacking his lawyers are deliberately designed to seek to control and manipulate the court process. I therefore reject the defence submission that Dr Brooks' actions have been consistent with a desire to attend and participate in his trial.

122. For all of these reasons, I find that Dr Brooks is voluntarily absent from his trial. My order of 18 November 2024 expressly warned Dr Brooks that should he refused to appear at trial, the trial might proceed in his absence. Such warning echoed that given by previous judges. Indeed, in July 2022 Ellenbogen J had to start the trial in Dr Brooks' absence. He has, in my judgment, unequivocally waived his right to attend his trial.

WOULD IT NOW BE FAIR TO TRY DR BROOKS IN HIS ABSENCE?

123. I turn therefore to the question of fairness. I approach this issue in a structured way following the Jones guidelines.

(i) The nature and circumstances of Dr Brooks' behaviour

124. I have already found that Dr Brooks has deliberately made himself ill in order to seek to manipulate the court process and prevent his trial from proceeding. Such conduct was the voluntary decision of a well-informed medical man with capacity.

(ii) Whether an adjournment would resolve the matter

125. In my judgment, there is no doubt that a wholesale adjournment of this trial listing would not secure Dr Brooks' attendance at trial. Such adjournment might cause Dr Brooks to suspend his current hunger strike but I find that that would simply kick the can down the road and that Dr Brooks, buoyed by the success of the strategy this March, would simply engage in another hunger strike or find some other way of preventing his trial from going ahead when the case eventually came back before the court.

126. That said, a shorter adjournment within the current trial window might conceivably resolve the issue. As Hughes LJ observed in Amrouchi, a 24-hour pause before the court proceeds in the absence of a defendant who can be contacted can be effective. Letting Dr Brooks know that his strategy will not work and giving him a little time for reflection before proceeding in his absence might yet persuade him that he should call off his hunger strike and attend his trial.

(iii) The likely length of such an adjournment

127. In my judgment, a delay from Tuesday 4 March until Thursday 6 March is long enough for Dr Brooks to reflect on the fact that his trial might go ahead without him and decide whether he wishes to engage with the court after all. Should he decide to do so, a further adjournment would be necessary to allow Dr Brooks to recover from his recent hunger strike but, subject to further medical evidence, that may not be of such length that the current trial listing would be lost.

(iv) Whether Dr Brooks wishes to be represented or has waived his right to representation

128. The sacking of his legal team is of itself significant in that, should the court proceed in Dr Brooks' absence, there would be no one to argue his case. That said, I infer that the dismissal of his lawyers without any apparent cause and, in the case of Mr Vickers, the dismissal of his third leading counsel without ever having met by reason of Dr Brooks' failure to engage with him, was part of a deliberate attempt to manipulate the forensic process.

129. Dr Brooks has plainly waived his right to representation.

(v) Whether Dr Brooks' representatives were able to receive instructions and the extent to which they could present his case

130. This does not apply since the lawyers have been sacked. That said, there will now be the need for the court to consider the appointment of a new advocate to cross-examine those witnesses that Dr Brooks might otherwise be prohibited from cross examining. While in 2022 the court-appointed advocate was given no instructions, any successor in 2025 will have the benefit of Dr Brooks' defence statement. Such advocate is, however, unlikely to be able to obtain any further instructions. That said, the cause of that inability would not just be Dr Brooks' ill-health but his clear track record for declining to engage with the court-appointed advocate.

(vi) The extent of the disadvantage in not being able to present his account of events

131. This is of course a very important consideration. It is a fact-specific consideration which requires some analysis of the likely issues in the case. By his defence statement, Dr Brooks appears to accept having taken petrol, a crowbar, matches, a lighter and a knife to Mr Perks' home. He admits breaking into the house and dousing petrol around the ground floor. He admits stabbing Mr Perks.

132. He identified five defences:

132.1 First, no intent to kill.

132.2 Secondly, not having committed any acts that were more than merely preparatory to setting a fire.

132.3 Thirdly, no intent to endanger lives.

132.4 Fourthly, in respect of the stabbing, self-defence.

132.5 Fifthly, insanity.

133. Dr Brooks' case is that his mental health was "on the edge" after years of deterioration. He blames the sustained and deliberate use of disciplinary processes to drive him out of his NHS Trust or to make him insane so that he could be dismissed.

134. Denying any preplanning, he asserts that all the things he used on the night (the petrol cans, the matches, the lighter, the balaclava, the nitrile gloves, the knife, the shoes and the crowbar) were stored in his garage and had been acquired for innocent purposes.

135. He claims that he was hypothermic after the cycle ride in wintry weather. He denies any recollection of events and asserts that amnesia could have been caused by hypothermia, his drug overdose (which he assumes was a suicide attempt) and insanity. He remembers three things: breaking the glass in the door, seeing Mr Perks' face close to his by torchlight outside the house, and seeing Mr Perks standing just outside his house with a knife sticking out of his left side.

136. Dr Brooks reasons on the basis of the forensic evidence, video evidence, photographs and his own limited recollection of events that he must have broken the glass with the crowbar and cut his hand in doing so, carried the fuel into the living room/hall, and poured it into those two areas while dropping the crowbar in the hall. He then says that something must have stopped him doing any more or perhaps that was it and he left. He reasons that he was outside when he was surprised from behind by a barefoot Graeme Perks. He suggests that Mr Perks must have run up and shouted at him and, believing he was under attack and acting reflexively, he stabbed him.

137. As to intent, he accepts having left his home with the materials capable of causing serious fire and fatal injury, but adds that it is also possible that he just wanted to frighten Mr Perks and let him know what could have happened. Dr Brooks denies a violent hatred of Mr Perks but says that he did not like or trust him. He says that Mr Perks had a "nasty side" and that he had referred him to the Medical Director and, together with eight other doctors, to the General Medical Council. He denies that Mr Perks was attending a hearing in January 2021. He denies having abused, threatened or stalked him.

138. Dr Brooks cannot say either way because he cannot remember, but believes that he was "out of [his] mind". He insists that he would not have carried a knife if he had not been insane.

139. As to the stabbing, he says that he does not think that he intended to kill Mr Perks. He insists it was a single stab of at best moderate force. He also observes that he did not remove the knife and stab Mr Perks again.

140. In suggesting that the attack was in the garden, he points to Mr Perks' video evidence, the presence of blood outside, the lack of Mr Perks' blood on his clothing and gloves, the rain, and his own limited recollection. Dr Brooks challenges the suggestion that the risk of death was as high as 95%. He points out that nothing was lit and there were no spent matches.

141. Upon this account, Dr Brooks has no recollection as to the circumstances of the stabbing itself. His plea of self-defence is dependent upon his rationalisation of other evidence. It is, however, partly based on his three snapshots of recollection which can only be given to the jury should he be present to give evidence at his trial.

142. Dr Brooks' amnesia also stops him giving evidence as to his actual intentions. His evidence at trial would provide important background evidence as to his own personality and background, and as to his relationship with Mr Perks and his disposition towards him in January 2021. Such evidence would not directly go to his intent on the night but would be relevant to whether the jury should infer an intention to kill or to endanger life.

143. Dr Brooks' evidence could also provide important background evidence to assist the psychiatrists and the court as to the availability of the defence of insanity.

144. Accordingly:

144.1 Intent:

(a) The issues of any intent to kill or to endanger life would be likely to turn on the inferences drawn from Dr Brooks' actions. Dr Brooks cannot directly assist as to what those actions were, with the limited exception of the snapshots of memory. Further, he cannot assist with what was in his mind.

(b) Trial in absence would, however, deprive the jury of Dr Brooks' general evidence as to his personality and background, and as to his relationship with and disposition towards Mr Perks in January 2021. Such evidence could be important in respect of whether the jury could be sure about his intentions on the night.

144.2 More than merely preparatory: Dr Brooks cannot assist with the issue of whether his actions were more than merely preparatory to setting a fire.

144.3 Self-defence:

(a) Dr Brooks cannot directly support a defence of self-defence since he has no recollection of stabbing Mr Perks or what might have caused him to do so. Most of the material that he relies upon for his own deduction (as opposed to memory) of having acted in self-defence is physical evidence that will be before the jury in any event. Trial in absence would, however, deprive the jury of the evidence referred to at paragraph 144.1 above and Dr Brooks' own snapshots of memory that, taken together, might add some support to his deduction.

(b) Whether present or absent, any court-appointed advocate can cross-examine Mr Perks. While such advocate might be assisted by being able to discuss the case with Dr Brooks,

he or she would have the benefit of the defence statement and might well, on Mr Leslie's experience, get nothing further from Dr Brooks in any event.

(c) In any event, it appears that Mr Perks is unlikely to be able to assist.

145. Dr Brooks' absence would also deprive the jury of his evidence as to his perception of his own deteriorating mental health in the build up to these events. Critical, however, to the success of the defence of insanity would be the psychiatric evidence. As to that:

145.1 Dr Maganty reported that if Dr Brooks had no settled intention to stab Mr Perks but did so in the moment when confronted by him, the assault could have arisen in the context of disassociation. If severely disassociated he may not have known the nature and quality of his actions such that the defence of insanity would be open to Dr Brooks.

145.2 Dr Kennedy reported that if Dr Brooks had no settled intention to stab Mr Perks and severely disassociated at the point of the assault, he may not have known the nature and quality of his actions such that it was possible, but not probable, that the defence of insanity was available to Dr Brooks.

145.3 Dr Blackwood reported that even if there was some element of disassociation that did not mean that Dr Brooks did not know the fundamental nature and quality of his actions. He concluded that he was aware that he was engaged in an assault that was likely to inflict serious injury on another and that what he was doing was legally wrong, such that the defence would not be available.

146. Should that be the final psychiatric evidence, it is properly arguable that the defence of insanity is not supported by two psychiatrists as required by s.1(1) of the Criminal Procedure (Insanity & Unfitness to Plead) Act 1991 such that it should not in any event be left to the jury: see R v. Usman [2023] EWCA Crim 313.

147. In any event, the defence would first depend upon evidence that Dr Brooks had not set out to stab Mr Perks (on which Dr Brooks could not comment directly although his general evidence might assist his case) and as to whether he had disassociated (on which Dr Brooks could only say that he suffered amnesia and describe his islands of memory).

148. Pulling together these threads, this is not a case where much of the prosecution case is challenged. Indeed, at his first trial, Dr Brooks considered that he only needed to cross-examine Adam Brooks and Pamela Bauer, neither of whom were either eyewitnesses or could give evidence relevant to the defence of insanity. In my judgment, any prejudice from Dr Brooks' inability to cross-examine these witnesses in this trial can be ameliorated by obtaining transcripts of Dr Brooks' 2022 cross-examinations and considering how best to ensure that any answers that he then obtained that might conceivably be favourable to the indicated defences can be put before the jury. As already noted, any court-appointed advocate can and will consider whether there is any proper cross-examination of the s.36 witnesses regardless of whether Dr Brooks attends, although his absence deprives the defence of the possibility that in 2025 he would have engaged with the court-appointed advocate in a way that he had not done in 2022 and that he might have additional useful instructions in respect of these witnesses that were not covered by his defence statement.

149. The real disadvantage is Dr Brooks' inability to give evidence in his own defence and the loss therefore of the chance to give convincing evidence as to:

149.1 the background that might indirectly support his case on intent, self-defence and insanity (although it is doubtful that insanity could be properly left to the jury); and

149.2 his limited islands of memory that might provide some support his case on intent, self-defence and, subject to the same caveat, insanity.

150. However much the prosecution is conscious of their duty to the court and the administration of justice and however much as a trial judge I strive to ensure that Dr Brooks' interests are protected, trial in absence will inevitably disadvantage Dr Brooks in the loss of the opportunity to give his account to the jury. Against that, and as the trial judge was rather too quick to observe in Amrouchi, giving evidence would not be without risk. Specifically in this case, there would be a real risk that Dr Brooks' attempt to establish an insanity defence (that was not in any event supported by the required expert evidence) might simply serve to reveal the true depth of his anger at his perceived treatment by the Trust and by Mr Perks in particular such that he would unwittingly provide evidence of motive.

(vii) The risk of the jury reaching an improper conclusion about Dr Brooks' absence

151. Juries can be expected to follow a judge's clear directions. The solution therefore lies in my own hands in ensuring that the jury is carefully directed so as to avoid such risk.

(ix) The general public interest that a trial should take place within a reasonable time

(x) The effect of delay on the memories of witnesses

152. These are also important factors. This case relates to events over four years ago. When managing this case in 2022, Judge Dickinson considered it to be unconscionable that the case might not be tried before January 2023. As recounted, this trial has been listed for trial nine times at enormous public cost and disruption to an overstretched criminal justice system. Repeated delays are inconvenient at best, and often unfair and deeply distressing, to complainants. Given the need for a High Court Judge, a fresh trial date could not now be accommodated before October 2025. Further, taking into account the time estimate and the pressures of other cases, it might well be that the next available trial date would be in early 2026.

153. There is, in my judgment, an enormous public interest in these proceedings finally being tried. It is also in the public interest that there should be no further delay before witnesses' memories, which are already over four years old, are tested by the trial process.

(xi) Undesirability of separate trials

154. This factor does not apply.

CONCLUSION

155. Dr Brooks will therefore be at some disadvantage by his absence and particularly by not being able to give evidence in his own defence. As Lord Bingham observed, Dr Brooks cannot be heard to complain that he has lost the benefits that he might have expected to enjoy had he exercised his rights to retain his expert legal representation and the ability to give evidence and put his own case to the jury. Further, there is a very strong public interest in not allowing a defendant who has deliberately made himself ill to succeed in his attempt to force the court to adjourn his trial. The courts cannot countenance the adjournment of cases on the grounds of illness caused by the fully informed and deliberate actions of a defendant with capacity to engage in a dangerous hunger strike while also dismissing his lawyers in a cynical attempt to manipulate the forensic process.

156. Taking into account all of these considerations, I have no doubt whatever that the balance of fairness clearly comes down in favour of now proceeding in Dr Brooks' absence. In any event, the remedy to the disadvantage that a trial in absence will cause Dr Brooks remains in his own hands, at least until he makes himself so ill that he loses the capacity to decide otherwise. On Tuesday afternoon, I gave notice that this trial would proceed on Thursday 6 March. That was more generous than the 24 hours' notice that was suggested in Amrouchi. Further, I made plain that if Dr Brooks seeks an adjournment so that he can participate in his trial, he will need to engage with the court and commit to ending his hunger strike and accepting all reasonable medical treatment to restore his health. Thus, it is – and even after this ruling remains - within Dr Brooks' hands to decide to do so, and to apply for an adjournment while the immediate health crisis is averted. And it is – and remains - within his own hands to address the disadvantage that he might otherwise suffer through a trial in his absence. Indeed, all that has happened by the end of the first week of this case is that a jury panel has been selected but not sworn.

157. I therefore formally repeat the directions already given in this case in my shorter ruling:

> "12. Given my conclusion that Dr Brooks has already inflicted such damage upon his own health that he is unfit for trial, the first step to re-engaging with the court would be to end his hunger strike. As a medical doctor he will well know that his health might be rapidly stabilised and then restored by accepting his immediate admission into hospital and the prescription of intravenous fluids. He has consented to such treatment in the past and, if he is serious now about engaging with the court and doing what he can to make sure that he can participate effectively in his trial, he would no doubt consent again. Further, if he is serious about engaging with the court, he will consent to treatment to support him safely into refeeding.
>
> 13. I hope very much that once Dr Brooks realises that his voluntary decision to continue his dangerous hunger strike will not achieve the further adjournment of his trial, he may choose to engage with the court and put his case to the jury.
>
> 14. I therefore give the following directions:
>
> 14.1 [That shorter ruling] should be provided to Dr Brooks. Should he decline to read it, I direct that it must be read aloud to him and that a hard copy of the ruling should be left with him so that he can read it over in private should he wish to do so. [I interpolate here that I have written confirmation from the prison that that was done.]
>
> 14.2 The empanelment of the jury will be delayed until Thursday 6 March 2025 in order to give time for Dr Brooks to reflect on matters, end his current hunger strike and decide whether he wishes to attend his trial. [In fact a panel was selected on 6 March but will not be sworn until Monday 10 March.]
>
> 14.3 If Dr Brooks does not attend his trial on 6 March 2025, the case will go ahead in his absence.
>
> 14.4 A production order will be made for 6 March and each subsequent day of his trial. While it would be very unwise if Dr Brooks were to decide not to attend from the start of his trial, that would not mean that he would not be able to attend on subsequent days should he change his mind.
>
> 14.5 While I have considered the question of adjournment in this ruling without any application being made, Dr Brooks can of course apply to adjourn his trial at any point. Since he has sacked his lawyers, he will have to do that by engaging with the court. Even if he is too unwell to attend at court, he should ask his prison to arrange a prison video link so that

he can address the court or put what he wants to say to me in writing. If he wishes to make an application that I should now adjourn his trial, it will be properly considered and ruled upon. Dr Brooks will have to explain when he will be ready for his trial and whether he is now prepared to end his hunger strike and accept all active treatment so that he can recover sufficient strength to attend court and put his case.

14.6 While any application he might make will be decided on the evidence and argument presented to the court, Dr Brooks should appreciate that a vague assurance that he might end his hunger strike will not be nearly as persuasive as:

(a) evidence that he has already done so and is accepting all reasonable medical treatment to restore his health; and

(b) a clear commitment to attending his trial as soon as he fit to do so."

158. Finally, I should add that Dr Brooks has neither attended court nor engaged in any other way with the court on 6 March. The prison has confirmed the desperately bleak news that he maintains his hunger strike and that his health has deteriorated still further. Dr Watson now describes him as very unwell and needing hospital treatment that he is still refusing.

159. I accept that attendance in person to seek an adjournment is no longer practical before Dr Brooks receives much-needed emergency medical treatment. But even now, it is not too late for him to change course and let the court know that he wishes to attend his trial, that he will engage with the court, that he has already stopped his hunger strike, and that he is accepting all reasonable treatment so that he can in time recover sufficient health to put his case to the jury.

160. Absence any positive response, there is no basis for further delaying the empanelment of the jury or this trial.