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KB-2022-003357
KB-2022-003404

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 January 2025

Before :

THE HONOURABLE MR JUSTICE NICKLIN
SENIOR MASTER COOK

Between :

- (1) BARONESS LAWRENCE OF CLARENDON**
OBE
(2) ELIZABETH HURLEY
(3) SIR ELTON JOHN CH CBE
(4) DAVID FURNISH
(5) SIR SIMON HUGHES
(6) PRINCE HARRY, THE DUKE OF SUSSEX
(7) SADIE FROST LAW

Claimants

- and -

ASSOCIATED NEWSPAPERS LIMITED

Defendant

David Sherborne, Ben Hamer and Luke Browne (instructed by gunnercooke LLP) for the 1st to 4th Claimants and (instructed by Thomson Heath Jenkins & Associates) for the 5th Claimant and (instructed by Hamlins LLP) for the 6th and 7th Claimants
Catrin Evans KC, Roger Mallalieu KC, Sarah Palin and Hannah Glover (instructed by Baker McKenzie LLP) for the Defendant

Hearing dates: 26-27 November 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 24 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Senior Master Cook:

Introduction

1. This judgment is confined to issues of costs management arising from a two-day costs and case management hearing (“CCMC”) which took place before Mr Justice Nicklin and myself. Although I am writing this judgment, the Judge agrees with its contents.
2. For those unfamiliar with costs management in civil litigation, the process involves the Court in approving and setting a budget for the costs of the litigation. A party is free to exceed the budget – i.e. to spend more than the budget permits on the litigation – but s/he is unlikely to be able to recover a sum in excess of the budgeted costs if another party is ordered to pay his/her costs.
3. The detailed background to this litigation is fully set out at sections A to C of Mr Justice Nicklin’s earlier judgment on limitation ([2023] EWHC 2789 (KB)), however, in short, each of the seven Claimants alleges against the Defendant that their private information has been misused by the Defendant and in the case of the First Claimant an additional claim is made for breach of confidence. The allegations made by the Claimants are, to use the phrase often deployed in this area of litigation, “strenuously denied” by the Defendant. Limitation is also in issue. Since the previous hearing before Mr Justice Nicklin the parties have filed Defences, Replies and Rejoinders.
4. Although issued separately by one or more of the Claimants, the Claims are being case managed together and will be tried together.
5. Prior to the hearing, the parties filed budgets in form Precedent H. Each of the Claimants filed a budget with the exception of the 3rd and 4th Claimants who filed a single budget. The Defendant filed budgets responding to each of the Claimants’ budgets and a further budget setting out what it called common costs. For reasons which will become apparent I do not intend setting out the detail of these budgets, a summary will suffice.

The combined total of the Claimants’ budgets

Party	Incurred Costs		Estimated Costs		Total
	Disbs	Profit costs	Disbs	Profit Costs	
C 1	£ 145,375.44	£ 477,653.07	£ 1,090,761.09	£ 880,395.14	£ 2,594,184.74
C 2	£ 134,925.44	£ 552,448.57	£ 1,213,411.08	£ 937,746.14	£ 2,874,531.23
C 3 & 4	£ 169,417.11	£ 432,487.84	£ 1,213,411.08	£ 983,434.67	£ 2,798,750.70
C 5	£ 140,475.43	£ 693,659.13	£ 1,213,411.08	£ 1,909,622.21	£ 3,957,167.85
C 6	£ 147,297.48	£ 508,640.00	£ 1,212,577.75	£ 1,466,897.81	£ 3,335,413.70
C 7	£ 147,594.10	£ 524,140.05	£ 1,212,577.75	£ 1,300,401.60	£ 3,184,713.50
Total	£ 885,085.00	£ 3,189,028.66	£ 7,156,149.83	£ 7,478,497.57	£ 18,744,761.72

The Combined total of the Defendant’s budgets

Party	Incurred Costs		Estimate Costs		Total
	Disbs	Profit Costs	Disbs	Profit Costs	
C 1	£ 50,925.00	£ 84,165.50	£ 517,780.00	£ 340,040.00	£ 992,911.00
C 2	£ 42,539.50	£ 68,733.50	£ 758,919.00	£ 462,747.50	£ 1,332,939.50
C 3 & 4	£ 47,401.00	£ 39,605.00	£ 772,720.00	£ 489,467.50	£ 1,349,193.50
C5	£ 16,128.00	£ 11,383.50	£ 517,780.00	£ 328,940.00	£ 874,231.50
C 6	£ 95,014.50	£ 76,935.50	£ 924,550.00	£ 543,467.50	£ 1,639,967.50
C 7	£ 28,607.00	£ 53,160.00	£ 763,720.00	£ 470,012.50	£ 1,315,499.50
Common	£ 1,934,529.40	£ 5,576,252.50	£ 2,897,183.00	£ 1,937,575.00	£ 12,345,539.90
Total	£ 2,215,144.40	£ 5,910,235.50	£ 7,152,652.00	£ 4,572,250.00	£ 19,850,282.40

6. On the basis of these budgets the parties were proposing to spend just over £38.8 million on this litigation. The Judge and I had little difficulty concluding that such sums were manifestly excessive and therefore disproportionate. Again, without descending into the detail, it seemed to us both there were some very obvious reasons for this.
7. First, large sums were presented as contingencies dependent upon the issued applications for further disclosure, the striking out of paragraph 12.4 of the Particulars of Claim or of, in the case of the First Claimant, the Amended Particulars of Claim and the possibility of further applications concerning disclosure and amended pleadings presented as contingencies in the parties' respective budgets. Second, the Defendant's solicitors' hourly rates were high, well outside the prevailing Guideline Rates. Third, there was considerable overlap between each of the Claimants' pleaded cases in circumstances where the three Claimant firms of solicitors were instructing the same counsel team. Fourth, there was considerable uncertainty concerning the path the claims would take to trial and the number and nature of applications which might be made by the parties. Fifth, insufficient allowance seems to have been made for the fact that many of the parties' respective legal teams were involved in the Leveson Inquiry and the man of those in the Claimants' respective legal teams have also conducted subsequent litigation involving both MGN Limited (publishers of the *Mirror* titles) and News Group Newspapers Limited (publishers of *The Sun* and *News of the World*). The Claimants' respective legal teams therefore had acquired considerable expertise in this type of litigation and were not starting from scratch.
8. Having regard to these features, at the CCMC the Court resolved discrete applications and directions were given for the future case management leading to a trial that has been fixed for 9 weeks from 14 January 2026. The timetable towards trial provides for a substantial two-day Case Management Hearing ("CMC") in May of 2025 and a further two-day CCMC in October of 2025. A PTR will be fixed in November 2025.
9. This course was adopted by the Court to enable the litigation to be budgeted based on the current statements of case, and very clear assumptions about its progress to trial, thus ensuring that the total costs were properly and effectively contained within the range of reasonable and proportionate costs. If and to the extent that the parties wish to raise issues concerning disclosure and amended pleadings such issues are to be raised at the May CMC. If and to the extent that the parties wish to revise their budgets in light of significant developments arising from the May CMC, or any other developments, such revisions must be addressed at the October CCMC.

10. To address the Court's third concern, set out at paragraph 7 above, we required the Claimants to prepare amended budgets particularising the individual and common costs incurred and sought. When I pressed Mr Sherborne for an explanation why the Claimants' budgets had been presented in the way they had been, he explained that in the absence of any costs sharing order the decision had been made to work out the common costs and apportion them between the individual solicitors.
11. Cost sharing orders are a feature of Group Litigation, see PD 19B paragraph 16.1 and CPR 46.6. These provisions apply only where the Court has made a Group Litigation Order and makes provision for the apportionment of "individual costs" and "common costs". Individual costs are those costs incurred in relation to an individual claim on a group register and common costs are those costs incurred in relation to the GLO issues. The default position is that a group litigant who is a paying party will be liable for the individual costs of the receiving party/parties and an equal proportion, together with all the other group litigants, of the common costs.
12. There is no group litigation order in this case. The Court's powers in relation to costs are however very broad. CPR 44.2 makes clear that the Court has a very wide discretion in relation to issues of costs that are in no way circumscribed by the commonly made costs orders set out at CPR 44.2 (6).
13. As I pointed out in the case of *Hammon -v- University College London* [2024] EWHC 1744 (KB) [42], the Court's conventional powers of case management under CPR 3.1 are very wide indeed and include the power to "*take any other step or make any other order for the purpose of managing the case and furthering the overriding objective*". In that case I held that the effect of CPR 46.6 could be imported into the case management order to ensure fairness in respect of the parties' potential liability for costs.
14. Mr Sherborne was clear that the firms representing the Claimants had reached a clear understanding of what the division between "individual costs" and "common costs" was. Given that clear understanding we invited the parties to draft a suitable costs sharing provision to be incorporated in the case management order. The inclusion of a costs sharing order provides one very tangible benefit, which is that the Court can approve a single budget for the Claimants and a single budget for the Defendant in respect of the remaining steps in this litigation. In our view the inclusion of a costs sharing order provides a far more transparent mechanism for controlling the budgeted costs in circumstances where there is a substantial generic case presented with a large degree of overlap between the individual claims. In the circumstances, we required the parties to revise and discuss their budgets for agreement and further consideration by the Court in the course of the hearing.
15. The parties were unable to agree their revised budgets and so the Court was required to set budgets for the remaining phases of the litigation.

The Court's Task

16. The task of the Court, when carrying out costs management, is well understood but worth setting out. By CPR 3.15(1):

“The court may at any time make a ‘costs management order’. Where costs budgets have been filed and exchanged the court will make a costs management order unless it is satisfied that the litigation can be conducted justly and at proportionate cost in accordance with the overriding objective without such an order being made. By a costs management order the court will—

(a) record the extent to which the budgeted costs are agreed between the parties;

(b) in respect of the budgeted costs which are not agreed, record the court’s approval after making appropriate revisions;

(c) record the extent (if any) to which incurred costs are agreed.”

17. The Court will therefore approve a total budget for each phase of the litigation on the basis that the costs approved are within a range of reasonable and proportionate costs.

18. In considering whether a budget is proportionate the Court must have regard to the provisions of CPR 44.3 (5) which provides:

“Costs incurred are proportionate if they bear a reasonable relationship to
—

(a) the sums in issue in the proceedings;

(b) the value of any non-monetary relief in issue in the proceedings;

(c) the complexity of the litigation;

(d) any additional work generated by the conduct of the paying party;

(e) any wider factors involved in the proceedings, such as reputation or public importance; and

(f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.

19. In considering whether costs are reasonable the following factors, which are set out at CPR 44.4(2), are relevant to the amount of a costs budget:

“(a) the amount or value of any money or property involved;

(b) the particular complexity of the matter or the difficulty or novelty of the questions raised;

(c) the skill, effort, specialised knowledge and responsibility involved;

(d) the place where and the circumstances in which work or any part of it is to be done.”

20. When reviewing budgeted costs, the Court will not undertake a detailed assessment in advance but will consider whether the budgeted costs fall within the range of reasonable and proportionate costs as provided by PD 3D paragraph 12.

21. The injunction not to embark upon a detailed assessment in advance is an important one and feeds into issues of proportionality.
22. The overall costs of costs management are limited by CPR 3.15 (5) to 1% of the total of incurred costs (as agreed or allowed on assessment) and the budgeted costs (agreed or approved) for completion of the precedent H and 2% of the total of incurred costs (as agreed or allowed on assessment) and the budgeted costs (agreed or approved) for all other costs of budgeting or costs management.

Proportionality

23. Judges conducting costs management will usually, as here, be managing the litigation and have a clear understanding of the issues and the factors at play, particularly those relating to proportionality.
24. In the course of argument I pointed out, by way of comparison, that in my experience it is very rare to find a complex clinical negligence claim with many experts on each side and with issues of breach of duty, causation and quantum all in issue where the budget of a claimant exceeds £1,000,000.
25. While Mr Sherborne was right to point out that these claims were of a different nature, and that there were seven individual Claimants, it is important to have in mind, as the Judge observed, that these claims are really rather simple (particularly if compared to the issues that commonly arise in clinical negligence claims, for example). In respect of each of the articles upon which the Claimants rely, they say they were the product of unlawful information gathering. This is not a subtle question. The Claimants will either succeed or fail in demonstrating the proposition. If the relevant Claimant fails, that will be the end of the claim in respect of that article. If the Claimant succeeds, the question of remedy will arise and on this issue the law is clear. We accept that, in reaching a conclusion about these factual issues, the Court may be required to resolve several sub-issues, but these too are ultimately matters of fact. This is not to downplay the complexity of the factual issues that may arise in the litigation, but it puts these claims in the context of the sorts of litigation that come before the Courts. The fact that these Claimants are well-known, and the litigation high-profile, does not affect the issues that must be resolved.
26. The Court should therefore not engage in an overly elaborate analysis of each phase; it should stand back and look at the bigger picture. Costs management is not an exercise of reducing the parties' costs to an irreducible minimum but setting reasonable and proportionate parameters.

Consideration of the parties' revised budgets

27. With the above principles in mind, we now turn to consider the individual phases of the parties' revised budgets.
28. Statements of Case. The Court has decided that the claims will proceed based on the existing pleadings unless and until an application to amend is permitted. The Defendant claimed a further sum of £51,925 to which Mr Mallalieu KC said there had been no objection. I am unable to understand the work to which this is said to refer. As I have

already observed all work has been completed on the statements of case. In the circumstances, I would allow £0.

29. Disclosure. The Claimants seek £1,822,229.98 and the Defendant offers £600,000. The Defendant seeks £1,299,850 and the Claimants offer £800,000.
30. Both the judge and I agree that the burden of disclosure is likely to fall more upon the Defendant. I have already observed that the Defendant's solicitors' hourly rates, claimed at £740 per hour for a grade A fee earner, are high. The Claimants' budgets contain a large amount of duplication between the solicitor and counsel team. We have also taken into account that both sides will incur electronic hosting costs but not at the rate they anticipate. In the circumstances we have concluded that the sums sought by both sides are clearly outside the range of reasonable and proportionate costs. We would allow £474,000 for the Claimants and £750,000 for the Defendant.
31. Witness Statements. The Claimants seek £2,142,554.92 and the Defendant offers £415,000. The Defendant seeks £1,335.949 and the Claimants offer £665,000.
32. The Judge and I are of the view that both parties' budgets do not allow for sufficient delegation to lower level fee earners and contain too much duplication between the solicitor and counsel team. We consider that the Claimants have overestimated the likely number of witnesses they will call and have given insufficient credit for the work which will have already been undertaken on each Claimant's personal witness statement. In the circumstances we have concluded that the sums sought by both sides are clearly outside the range of reasonable and proportionate costs.
33. In general, there is an expectation that the first draft of a witness statement can be undertaken by lower grade fee earners including Grade C solicitors and legal executives (and those with similar experience). This is particularly so since witness statements should, in general, be drafted in the witness' own words. Whether and the extent to which a higher level senior fee earner may reasonably be involved in taking the witness statement (and/or checking the contents of the statement) is case sensitive and may depend on the complexity and value of the case. We accept that a reasonable level higher fee earner or counsel supervision will be required given the issues arising in these claims.
34. We have worked on the basis that each Claimant will provide a single witness statement. In addition to these 7 witness statements we think it likely that no more than 20 further witness statements are likely to be served across the Claimant group and that no more than 30 witness statements are likely to be served on behalf of the Defendant. We consider that the work involved in preparing the witness statements is likely to be more substantial on the Defendant's side because most witnesses will have to respond to serious allegations of wrongdoing made against them relating to events that are alleged to have taken place many years ago. Accordingly, we would allow £525,000 for the Claimants and £760,000 for the Defendant.
35. Case Management Conferences x 2. The Claimants seek £379,471.96 and the Defendant offers £265,800 per case management conference. The Defendant did not put forward a figure as such, however the Court was of the view that, having regard to likely work required, parity would be the fairest and most appropriate approach.

36. We considered that a sufficient sum should be allowed to deal with the generic issues likely to arise on the basis of the current pleadings. We have allowed for a reasonably sized and balanced legal team for both the Claimants and the Defendant. If there are further applications or associated issues the case management order provides a process for the parties to revise their budgets.
37. While noting the Defendant's offer of £265,800, the Court retains the power to review the figure in the absence of agreement. In the circumstances we would allow a figure of £200,000 for each case management conference.
38. PTR. The Claimants seek £272,341.94 and the Defendant offers £265,621.94. The Defendant seeks £324,100.00 and the Claimants have offered £200,000.
39. It is expected that the PTR will take one day. The judge and I agree that the likely issues to be resolved at a PTR should be more straightforward than the case management conferences. Again, we allow attendance for reasonable sized and balanced legal teams on the basis of parity. In the circumstances we would allow £175,000.
40. Trial Preparation. The Claimants seek £3,649,909.94 and the Defendant offers £3,150,000. The Defendant seeks £4,569,175 and the Claimants offer £3,000,000.
41. Despite the submissions made to us to the effect that there is not much difference between the parties on the figures to be allowed for this phase we do not regard the figures put forward by the parties as either reasonable or proportionate. They are based on what we regard as a combination of excessive brief fees and excessive hours and grades of fee earners having regard to the complexity and nature of the issues involved. There is as we have already noted a significant amount of experience of the issues residing in both legal teams. The expectation is that, by the stage of trial preparation, the issues to be tried are likely to be clear cut and there is little dispute as to the applicable law.
42. As far as counsel's brief fees are concerned it is not part of our function to set these or approve the composition of the counsel team. We are approving a single figure for the phase which the parties may apportion as they wish. However we do have in mind that, in determining brief fees at a detailed assessment, the Court is generally required to envisage hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particular high fee sometimes demanded by counsel of pre-eminent reputation: *Simpsons Motor Sales (London) Ltd -v- Hendon Corporation (No.2)* [1965] 1 WLR 112 (per Pennycuik J).
43. I am prepared to accept that the Claimants may have a slightly greater burden in terms of the mechanics of trial preparation but otherwise it seems to us a similar amount of work will be required on both sides. In the circumstances we would allow £1,250,000 for the Claimants and £1,100,000 for the Defendant.
44. Trial. The Claimants seek £3,098,649.88 and the Defendant offers £2,462,509.88. The Defendant seeks £2,476,380 and Claimants offer £1,621,425.
45. The parties were agreed, and we were prepared to proceed on the basis, that the anticipated length of the trial will be 45 days. This important assumption will be recorded in the costs management order.

46. We do not accept that it is necessary for each Claimant to have their entire legal team present every day throughout the trial. We propose to make reasonable allowance for the attendance of counsel and solicitors through the course of the trial based on a sensible allocation of responsibility between generic and specific issues. We also take account of the fact that the use of a transcriber has been agreed so transcripts of proceedings will be available to the wider legal teams.
47. We therefore allow for 45 days attendance for fee earners and 44 refreshers for counsel. We have concluded roughly equal resources will be deployed in Court for the duration of the trial and accordingly allow £1,100,000 for the Claimants and for the Defendant.
48. ADR. The Claimants claimed £216,669.02 and the Defendant offered nothing on the basis that it was not believed that ADR was a possibility, given the parties' entrenched positions.
49. Both the judge and I agree with the observations of counsel that these claims would not appear to be immediate candidates for ADR. However, as I observed during argument, it has often been said that there is no case which is not suitable for mediation and events can occur during litigation that may require the parties to reassess their respective positions.
50. In the circumstances we agree to allow £160,000 for the Claimants and for the Defendant. If no ADR takes place, then no recourse can be made to the budget.
51. We therefore approve total budgeted costs of £4,084,000 for the Claimants and £4,445,000 for the Defendant.