Neutral Citation Number: [2020] EWHC 1062 (QB)

Case No: HQ18X03224

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/05/2020

Before:

MR JUSTICE FREEDMAN

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Between:

Argus Media Limited	**Claimant**
- and -	
Mr Mounir Halim	**Defendant**

- -
- -

Mr Gavin Mansfield QC and Mr Nicholas Goodfellow (instructed by **Lock Lorde (UK) LLP**) for the **Claimant**
Mr Mounir Halim appeared unrepresented

Hearing dates: 1 April 2020

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Approved Judgment

Judgment Approved by the court for handing down.

Mr Justice Freedman:

I Introduction and background

1. This is the renewed hearing of the application of the Claimant for a payment on account of costs against the Defendant. With the consent of the parties, it was held remotely as a telephone hearing on the morning of 1 April 2020. It was specifically considered that a video hearing was not required. Since I was the trial judge and also heard the first consequential hearing (by this stage the Defendant was in person), I was willing for the matter to be heard in this way.

2. This was an action for breach of contract and breach of confidence arising out of the employment of the Defendant with the Claimant. At trial, the main issue determined against the Defendant was the enforceability of post-termination restrictions ("the PTRs"). Proceedings were brought in September 2018 and a speedy trial was ordered which took place in December 2018. In a judgment dated 15 January 2019, I upheld claims in breach of contract and breach of confidence and granted a final injunction until 15 May 2019 upholding the PTRs. I declined to order further injunctions related to misuse of confidential information or springboard injunctions. The judgment was reported at [2019] IRLR 442.

3. On 7 February 2019, I handed down a further judgment about consequential matters in which I provided that:

   (1) the Defendant do pay 90% of the Claimant's costs of the claim, including the costs of its application for an interim injunction dated 11 September 2018: see paragraph 3 of the Order dated 28 February 2019 ("the February 2019 Order");

   (2) the Defendant do pay 60% of the costs of (i) the Claimant's 20 November 2018 application for specific disclosure, and (ii) the Defendant's 22 November 2018 application under part 18 and for permission to rely on a rejoinder (paragraph 4 of the February 2019 Order), which applications were addressed in a judgment of Pepperall J. dated 28 November 2019;

   (3) the Defendant do pay interest on those costs at 1.5% over the Bank of England Base Rate from time to time (paragraph 5 of the February 2019 Order).

4. I adjourned the application for an interim payment with liberty to restore. In making that order, I particularly had regard to the following matters indicating a postponement was required, namely:
   (1) the Claimant sought to proceed for specific financial relief arising out of the breaches found, and there was a concern about making an order which would be breached leading to the possibility of an unless order which might have impeded the ability of the Defendant to defend the financial relief proceedings;

   (2) the Defendant might renew his application for permission to appeal to the Court of Appeal: it had been refused, but at that time, he had the right to renew it; and

   (3) the Defendant had not yet availed himself of the opportunity to put in detailed financial information to support his assertion of inability to pay.

5. Subsequently, the Claimant has elected not to pursue any further relief from the Defendant in respect of financial remedies, and it was agreed in September 2019 that the Claimant would not pursue this with no order as to costs. Further, the Defendant did not renew his application for permission to appeal to the Court of Appeal, and it is now well over a year since the time expired for so doing. Further, the Defendant still has not submitted in a witness statement or in any other formal way any detailed financial information. I shall return to this.

6. Following agreement in September 2019 in respect of the financial remedies, the Claimant was able to have commenced the detailed assessment of its costs. There has been a delay between then and 24 February 2020 when the Claimant applied to restore the application for an interim payment application. In a statement of Mr Dent dated 24 February 2020 at paragraphs 13-15, Mr Dent has sought to explain the delay. This was in part due to the preparation of a schedule to justify the amount sought (albeit that this took 3 months) and partly due to an extended process of getting the consent order finalised leading to a consent order dated 18 February 2020.

7. In round terms and as described in Mr Dent's statement at paragraphs 16-20, the Revised Budget of the Claimant was a sum of about £830,000. After taking account of the reduced sums ordered, the costs sought have been in the region of £740,000 plus interest. The sum sought is about two thirds approximating to a sum of £504,000. I shall revert to this in due course.

8. There are two major issues in assessing the sum, namely the reasonableness/proportionality of the sums sought in themselves and the means of the Defendant.

II The law

9. First, CPR rule 44.2(8) provides that: *"Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so"*. Such payments are *"routinely ordered"* in general litigation in the Queen's Bench Division (White Book notes para 44.2.12).

10. A leading current case is that of *Excalibur Ventures LLV v Texas Keystone Inc* [2015] EWHC 566 (Comm) at [23-24] where Christopher Clarke J said the following:

    (1) A *"reasonable sum on account of costs"* will often be one that was an estimate of the likely level of recovery subject to an appropriate margin to allow for error in the estimation: see *Excalibur Ventures LLV v Texas Keystone Inc* [2015] EWHC 566 (Comm) at [23].

    (2) In determining whether to order any payment and its amount, account needs to be taken of all relevant factors including:
        i. the likelihood (if it can be assessed) of the claimants being awarded the costs that they seek or a lesser amount, and if so what proportion of them;
        ii. the difficulty, if any, that may be faced in recovering those costs;
        iii. the means of the parties;

iv. the imminence of any assessment;
v. any relevant delay; and
vi. whether the paying party will have any difficulty in recovery in the case of any overpayment.

11. There are a number of aspects about want of means. One aspect is that if a defendant is not going to be able to honour any further payments, then it makes it burdensome for the receiving party to have to engage in an expensive exercise about the assessment of costs where the Claimant is unlikely ever to be able to recover those costs. This is referred to in the White Book in the notes at paragraph 44.4.12 citing the case of *Allason v Random House UK Ltd* [2002] EWHC 1030 (Ch) in which Neuberger J made reference to an earlier decision of Laddie J to this effect.

12. On the other hand, the question arises as to the impact of insolvency on the fairness or otherwise of an interim payment. This arises particularly in the context of whether it is just to make an order for a payment on account which may impede access to justice if there are further steps to be taken in the litigation. In this case, at this stage, there are no further steps to be taken in the litigation save for the detailed assessment.

13. The Claimant submitted that *"want of means may be relied upon in support of an application by a paying party seeking 'time to pay' (r. 40.11), however, this is separate from the question of whether to make an order under 44.2(8)."* In the context of final orders for costs, inability to pay is no defence and an insolvent debtor must take the usual consequences of its insolvency: see *Gipping Construction Limited v Eaves Limited* [2008] EWHC 3134 (TCC) at [11]. Further, the Court will order a stay or order payment by way of instalments where there is a realistic prospect of payment being achieved by interim instalments. In those circumstances, the Court is sometimes prepared to consider making such an order: see *Yoram Amsalem (trading as MRE Building Contractors) v Hugh Mark Raivid* [2008] EWHC 3226 (TCC) at [6]). In that context, the Court would expect to see evidence put forward about the means of the Defendant and any money which could be raised in order to justify a postponement.

14. As regards an interim order, these considerations are relevant, but they are not necessarily decisive. The order for an interim payment will be made, unless there is a good reason not to do so. In some cases, want of means might give rise to a good reason not to make an order for a payment on account. That might apply, as it did when the case was before the Court on the consequentials hearing, when there was an issue of access to justice in respect of the next stages of the matter. It might conceivably be relevant if a party had a greater prospect of coming into money by the time of the detailed assessment. There is no closed class of cases: it is a question of the justice in each case.

III The relevant circumstances in the instant case

(a) Means of the Defendant

15. What are the relevant circumstances of the instant case? Despite commenting on the absence of evidence from the Defendant in paragraph 33(3) of the first judgment on consequentials, it remains the case that the Defendant has not sought to put in evidence of his means. He appears to believe that the Court will simply accept his assertion that he has no resources and that he cannot raise any money.

16. It appears that the Defendant is trading or seeking to trade and that he has made several business trips abroad which must have been at some cost. However, absent any detailed written evidence about resources, there is no formal evidence. The Defendant says that he saw no need to put in written evidence having regard to what happened at the first hearing of the consequentials in early 2019. In paragraph 33(3) of the judgment on the consequentials dated 7 February 2019, the Court was then understanding as to how, as a litigant in person, there was no evidence at that stage about absence of means. There is no requirement that he provides written evidence, but insofar as he makes a point about absence of means at this stage a year later, it is unsatisfactory that it is not backed up by evidence. The Defendant has simply asserted his absence of resources in correspondence. He has indicated that his resources have been spent entirely on funding this case.

17. Nevertheless, the question of his means was explored with the Defendant by the Court in the hearing on 1 April 2020 with a view to drawing out what he wanted to say. The Defendant said that he has no capital and no income and therefore is unable to pay towards the costs. He said that any order for costs now would lead to his bankruptcy. He said that he had exhausted the help of friends and relatives. He could not borrow more than £2,000. He said that he had received support from his sister-in-law in the UAE. He was still working with Afriqom and had been doing so since the expiry of his covenants in May 2019. When asked if the position would be different in say 12 months' time after the detailed assessment, he said that anything was possible, and he hoped that there might be something. However, he admitted candidly that he could not show that there was a likelihood that there would be anything. In those circumstances, the position is stark, and it does not make, or is very unlikely to make, any substantial difference whether the time for payment is at this interim stage or left to the outcome of the detailed assessment. It is equally gloomy for the Claimant as the recipient of an order. The Defendant asked the Court to exercise its discretion in his favour by not making an order for a payment on account of costs and to find a solution other than his bankruptcy.

18. In these circumstances, I have come to the following conclusions as regards the resources of the Defendant, namely:
    (1) he has not put forward any evidence as to his means as a result of which the criterion of the Defendant's means must carry little weight;

    (2) his means are not relevant to the ability of the Defendant to defend himself other than as regards the detailed assessment of costs, which on the basis of his assertions is mainly academic because he will not have the resources to make any substantial interim payment;

    (3) there is no point in including in the order a mechanism for the Defendant to apply for further time in order to give evidence so as to be able to have a more realistic time period for payment. If he wishes to have more time, and has realistic proposals, then that might afford a basis for the Defendant to seek more time to meet the order, but on the basis of the information before the Court, there is no reason to believe that this is likely to occur; and

(4) in the circumstances, his want of means does not provide a reason not to make an order for a payment on account of costs at this stage of the case.

(b) Unsatisfactory aspects of the conduct of the application for the payment on account of costs

19. The first aspect was delay of the Claimant. There is concern about delay in the following senses:

(1) There is no obvious reason why the Claimant at first chose to pursue the financial remedies. The Claimant was entitled to pursue financial remedies, but it has not been explained what then led to a change of approach. It became apparent in the summer of 2019 that it was not worthwhile and commercial to seek to pursue financial remedies against the Defendant, but it is not apparent why it took so many months to apprehend this. The Claimant has in effect postponed the start date for seeking to incept the assessment of costs by over 6 months.

(2) There was no good reason for spending over 3 months in preparing a schedule about the costs incurred. It was submitted that this was front loading the work. That is not an explanation. It was not a matter of projecting future costs: simply collating and analysing the bills already sent and presumably paid.

(3) There was then a difficulty about getting the court to deal with the order. If this were critical, it is unlikely that this could not have been resolved sooner.

20. A particular factor in support of the application is that the Claimant does not wish to have to incur the expenses of a detailed assessment which may be unrecoverable. They were estimated to be between about £47,000 and about £51,000 comprising the costs of hiring the costs draftsman and costs counsel. There were no additional estimated costs for the solicitors. In fact, this application for a payment on account has led to a costs schedule of over £54,000, that is in excess of the costs estimate for the detailed assessment itself. I shall return to that sum which seems disproportionate. For the moment, it rather negates the point about wishing to avoid the costs of a detailed assessment. It is not apparent why such large resources were devoted to the interim payment application when this even exceeded the costs estimated of an actual assessment.

21. There are other features of concern which emerged during the hearing and which cumulatively might go to the principle as to whether there should be an order for a payment on account of costs. The mischief is that they might indicate a greater pre-occupation on obtaining the largest sum possible by way of a payment on account than on presenting a full and accurate picture to the Court, and all despite an application put together at such a high cost. They are regrettable points, which Mr Mansfield QC was anxious to correct as part of this duty to the Court.

22. They included the following:

(1) The Claimant has estimated the total costs as about £819,000, but in the application last year, the amount estimated was about £660,000 and then about £680,000. Mr Mansfield QC very properly drew this increase to the Court's attention, but he was unable to explain the reason for the increase because this did not appear in the evidence. The absence of explanation of an increase of about £150,000 is plainly unsatisfactory.

(2) The Claimant has not correctly adjusted the figures sought to consider the fact that the percentage of the costs of the application in respect of disclosure/split trial was 60% and not 90%. Mr Mansfield QC very properly drew this to the Court's attention, and without that, the Court would have known no better. This factor has a significant, but unquantified impact, in reducing the figures sought. Correct figures were not before the Court.

(3) The amount of the estimate of the expense provided to the Court by the Claimant at an earlier stage had been about £375,000. This point emerged only in answer to a question from the Court, and as Mr Mansfield QC acknowledged, there was not a detailed and reasoned answer to explain this divergence between the estimate and the sum sought. If the Defendant had been represented by lawyers, it is likely that it would have been raised by the Defendant. The trial went on longer than expected, and there was some additional evidence, but this does not explain the massive increase in the costs. (Of some significance is the fact that there was a schedule from the Defendant of over £290,000, showing substantial expenditure on both sides.)

(c) Criticisms of the Defendant's position

24. Against all of this, there are various points for the Claimant, namely:

(1) the Defendant has had adequate time to prepare for the likelihood that an order for a payment on account would be made;

(2) he has not prepared formal evidence about absence of resources or made a proposal for payment other than an offer to which reference will be made below;

(3) since the Defendant has admitted that he has no resources nor any real prospect of obtaining substantial resources within the next 12 months, there is no point in either staying or postponing an order, nor is there any reason to give the Defendant an opportunity to put in any formal evidence;

(4) there is no evidence that the Defendant has been prejudiced by any delay;

(5) it is clear from what has been said that the Claimant will not recover the costs of a detailed assessment; and

(6) any of the features indicating that the costs sought may be too high can be visited on the Claimant by a reduction in the amount of costs allowed in the payment on account of costs.

IV Discussion

25. Having taken all of this into account, I am satisfied that although there are reasons for concern which may be reflected in the amount of the payment on account ordered, overall there is no good reason to refuse the application. There is concern about (i) aspects of the delay, (ii) the disproportionate cost of this application, and (iii) the unexplained features about the apparently excessive costs sought referred to above in the respects where this judgment has been critical of the Claimant.

26. However, these points do not individually or as a whole lead to a conclusion that there is good reason to make no order for a payment on account of costs. This would simply postpone the difficult day for the Defendant in circumstances where there is no real prospect that he will be any better able to fend off insolvency. If that is wrong and he could do so, then he has the ability to make an application for a stay or for a payment in instalments, but this would have to be based on solid evidence, which does not exist or is unlikely to exist in the light of what he told the Court in the hearing on 1 April 2020.

27. The unsatisfactory features of the Claimant's application should in the exercise of the Court's discretion be reflected in the amount allowed on the application. They give rise to concerns about the amounts sought rather than whether any amount is likely to be awarded.

28. The Defendant has characterised the approach of the Claimant as being vindictive, intending to drive him into bankruptcy rather than approach the matter with a commercial solution. He says that the whole of the action has been that way, and the abandonment of the financial remedies hearing shows that no loss has been suffered as a result of his actions, and indeed that he has not been in competition with the Claimant. He shows how in correspondence, he identified that he has no resources in order to make an interim payment, and yet the Claimant persisted with making this application. He points to how he offered not to carry out business in competition with an aspect of the Claimant's business instead, and how much business the Claimant would have saved as a result of this promise.

29. He says that the Claimant has acted unreasonably in refusing his offer. He takes the view that the reaction of the Claimant has been to be derogatory to and about him, and that the Court should not condone this. He takes particular exception to the suggestion of the Claimant that he may emigrate in order to escape justice, and he points to the fact that had that been his intention, he already would have left.

30. This application for an interim payment has the appearance of a party wanting to demonstrate that those who seek to defy the covenants of the Claimant will be dealt with very firmly. That includes taking them to trial and seeking to obtain and enforce costs orders. However harsh that may seem with protestations about the Defendant's impecuniosity and the relative inequality of power between the Claimant and the Defendant, it is the prerogative of the Claimant to seek to protect its business from unlawful competition and to enforce its strict legal rights. I do not accept that the Claimant has acted improperly in seeking to enforce the PTRs. In fact, the findings in

the judgment following the trial were to the effect that the Defendant was intending to compete with the business of the Claimant. The fact that the financial remedies were abandoned does not show that there was no competition. It is more likely to indicate that the undertakings given and the subsequent injunction may themselves in large part be the cause of avoiding loss. It may also be that there was a belated recognition on the part of the Claimant that it was uneconomical to pursue the financial remedies in addition to the entitlement to the costs which had been awarded.

31. Further, I am unimpressed by the Defendant's argument that the Claimant ought to have accepted the offer of the Defendant. This would be like taking a second set of covenants. Having regard to the Defendant's failure to observe the PTRs, as I found, the Claimant could not reasonably be expected to have greater confidence in entering into such a bargain. It is not grossly disparaging for them to say as much. Moreover, the Claimant is entitled to test the question of whether the Defendant has greater assets than he is admitting to having, if it wishes, by seeking to convert the judgment as to costs into money orders and to seek to enforce the same.

32. I am nonetheless concerned about the extent to which the Claimant's claim to costs may be found to be excessive, especially but without limitation in the respects set out above of which I have been critical. There is concern about the apparently excessive and disproportionate sums claimed in respect of the hearing for a payment on account, and it is particularly striking to find those costs greater than even the projected costs of the detailed assessment. I have come to the view that whilst these matters are relevant to the exercise of the Court's discretion generally in respect of an interim payment as to costs, they do not provide a good reason why there should be no order on account of costs, but they should affect the quantum to be ordered.

V Quantification of the costs

33. The Claimant in its skeleton argument at paragraph 28 says the following:

> *"…The budget document in the bundle* ("the Revised Budget") *has been revised since the version served and lodged in January 2019, as the earlier version was incorrect in certain respects. C seeks a sum which reflects two thirds of the total of its Revised Budget [10/156] which totals £829,444.43. This corresponds to a sum of £504,591.96. This is intended to allow for an appropriate margin of error in the amount that C is likely to recover on assessment (Dent/4/19) [9/125]."*

34. Even this requires explanation. First, it is not explained why the earlier version of costs totalling about £660,000 and about £680,000 was incorrect, how is it that the sum now sought contains a sum of at least about £150,000 higher, that is an increase of well over 20%?

35. Secondly, the two thirds sought is not on about £830,000, but it is on that figure minus 10% to take into account the order of the Court reducing 10% of the costs of the Claimant. That is an error in the wording of paragraph 28, but not one of substance. The more serious error is not accurately to apply the 40% deduction required in respect of the costs of the disclosure/split trial application heard by Pepperall J on 28 November 2020, which forms part of the overall costs. Such schedule as was in the papers was far too small to

reflect the costs, as Mr Mansfield QC pointed out. The correct sum was not put before the Court.

36. Thirdly, as noted above, there was a failure to draw to the attention of the Court the projected costs to the Court of a sum of about £375,000 and no explanation as to how the costs would in the end be well over twice that sum. Taking into account this point, it is rather disturbing to have read in paragraph 27 of the Claimant's skeleton that "[the Claimant] has adopted a conservative approach when approaching the amount of interim payment" of just over £500,000.

37. This is a case where the Court is entitled to take the view that it ought to be particularly cautious about the sum sought. It ought to start with the sum of £660,000 in the light of the failure to explain the increases. From that, there stands to be made the 10% and the 40% deductions, but it is not known what amount should be deducted by 10% and what amount by 40%. The Court therefore has not been provided with the information on which to make this deduction.

38. Should the Court use the deduction of one third as sought by the Claimant? However, that does not seem to be enough for the following reasons:

    (1) The combination of the above errors gives rise to concerns that the amounts claimed may not be accurate and may require considerable caution and adjustment.

    (2) The amounts put forward to the Court in the estimate to the Court of about £375,000 without explanation about the difference (save for an overrunning of the trial by a few days and additional preparation during the trial) have been disturbing. Without an explanation, a starting point of the lesser sum of about £375,000 may be required. It is recognised that the trial was longer and that in view of the vigorous way in which the trial was fought that greater preparation may have been required during the trial than may have been forecast.

    (3) The sums claimed appear to be high for a trial of this nature. It is noted that it was a very toughly fought case and that it was intricate both factually and legally. However, in my judgment, on a standard assessment of costs, there is a concern that it raises questions as to reasonableness and proportionality. I shall make specific findings below that the costs sought for this application for a payment on account of costs are neither reasonable nor proportionate. The Court is entitled to say that this is a further factor to put the Court on alert as to the reasonableness and proportionality of the costs as a whole.

    (4) The Claimant says that the matter was a speedy trial, and that that adds to costs because there is not time to be as discerning as to what work is strictly necessary. Whilst there is some force in that point, this is outweighed by the effect of a speedy trial being that the case is over within a relatively short period of time and there is less time to incur costs.

    (5) It is said that there was a highly experienced team on the other side, but the reality is that whereas the Claimant had experienced Leading and Junior Counsel, this was met on the other side by Junior Counsel alone, albeit of slightly more senior in call than Junior Counsel for the Claimant. It was also indicated that at solicitor

level, the case was being conducted on a more limited budget than for the Claimant.

(6) It is said that the case had a complexity in part due to the way in which the Defendant fought the case, not always being straightforward with the Court, and conducting such an in-depth analysis that large costs were likely to result. It did have a complexity, but that is not to say that the complexity was fully justified in all the circumstances. These are considerations for later in the process.

(7) Since the Defendant is a litigant in person, there has not been testing of the amounts sought by the other side in the same way as would happen in adversarial litigation where the other party was represented. Thus, the criticisms have come either from the Court or by Counsel for the Claimant drawing the attention of the Court to matters, albeit after the preparation of the Claimant's skeleton argument.

39. I now refer to the sum claimed for this application. Even without doing a detailed assessment, this appears to be disproportionate and unreasonable, given that it exceeded even the figures estimated for a detailed assessment. They were in the context of seeking a payment on account against a litigant in person rather than against some army of lawyers. Even incurring all that expense, there were the unsatisfactory features of the preparation of the case to which I have drawn attention. Having come to these conclusions about the application itself, the Court is entitled to be concerned that just as these costs have been excessive, so too there might be criticisms of the costs of the action as a whole.

40. In all the circumstances, I have come to the view that the Court should start with the sum of £660,000 less 10% and a further unknown reduction to take into account the fact that some of the moneys are to be reduced by 40%. If the starting point would then be 50% rather than one third of these sums, this will give rise to an uncertain sum well below £300,000. In my judgment, the extent of the need for examination of the costs both as to proportionality and reasonableness is such that the Court should then take a conservative view at this stage of the costs.

41. In the exercise of the Court's discretion, at this stage of the exercise, in my judgment, the sum which will be ordered for a payment on account of costs will be the sum of £250,000.

VI The costs of the application for a payment on account of costs

42. As regards the costs sought of this application, the Court has spent a significant part of the hearing getting to understand matters which ought to have been fully explained from the outset and without the contradictions and absence of cogent explanations which have occurred in the course of this case. The Court was considering a deduction from the costs to reflect these unsatisfactory matters including the conduct of the proceedings seeking the payment on account of costs. However, this gives rise to the possibility of double counting if there was a percentage reduction to reflect conduct and then separately reductions to the extent that the Claimant could not show at the detailed assessment stage that its costs were reasonable and proportionate.

43. This possibility can be avoided by simply ordering that the Claimant has its costs to be the subject of a detailed assessment, and that on the assessment, conduct as well as the reasonableness and proportionality of the costs are left to the costs judge. It is established that taking into account conduct in respect of costs (CPR 44.2(4) and (5)) serves different functions from considering reasonableness and proportionality on a detailed assessment (CPR 44.3(2)). Nevertheless, the Judge is entitled to leave conduct as well as reasonableness and proportionality to a detailed assessment: see *Hussain v Amin* [2012] EWCA Civ 1456 at paragraph 12 citing *Drew v Whitbread plc* [2010] 1 WLR 1725 and the White Book 2020 at paragraph 44.2.26.

44. I am satisfied that in this case, due to numerous matters of concern, it is better that there should be a detailed assessment of the costs of the application for a payment on account of costs. The costs judge will have a better appreciation of the issues because they will be assessing the costs of the action at the same time and will be able to see the concerns in the context of the costs as a whole.

45. The matters of concern include the following (but they are in no way comprehensive, and the costs judge may identify matters of their own):

(1) the sum of about £54,000 sought seems extremely high and indeed excessive (a) as a figure in itself, (b) in the context of an application against a litigant in person who has not thus far been generating any substantial documents for himself, (c) it is greater than the sum estimated for a detailed assessment of c£47,000-£51,000, which by this application, the Claimant seeks to avoid;

(2) there seems to be no good reason why it was necessary to have both Leading and Junior Counsel or to generate Counsel's costs between them of the amounts sought;

(3) the costs of preparing the original schedules which apparently led to a delay of 3 months seem unnecessary in that it was simply necessary to explain the bills that had been sent and presumably paid;

(4) for reasons set out above, there is no coherence between the various estimates and schedules and no explanation for the differences. This all casts doubt on the utility of the work undertaken by the Claimant's solicitors;

(5) whilst Counsel showed commendable frankness in raising matters and in response to questions from the Court, the inability to provide explanations to the matters which are central to the quantum claimed was unsatisfactory. This raises questions both as to the reasonableness of the sums claimed and to conduct, and is particularly disturbing in the context of seeking to justify an application mounted at such a high cost; and

(6) whilst this was not a budgeted case, it was unsatisfactory that the estimate of £375,000 which had been provided was a matter which only came to light because of a question asked in the hearing, and for which there was no explanation other than in very general terms.

46. I had considered coming to a rough and ready solution which would have involved very large reductions in the costs sought by reference to conduct and by also

reasonableness and proportionality. However, overall, I have concluded that it is better that these matters be examined in a more detailed way. There might be satisfactory responses to some of the questions, albeit that it is unsatisfactory that the application has generated so many questions which at this stage are unanswered. The costs judge should consider (a) conduct, and (b) reasonableness and proportionality, and the order which should made should state this expressly. I am satisfied that the totality of all these features provides a good reason why there should not be a summary assessment of these costs at this stage. It is better for these costs to be assessed when they can be seen in the context of the actual costs assessed of the action. Further, it is also a good reason in my judgment why there should not be an order for a further payment on account of costs of the application for a payment on account of costs.

The Court would be grateful if a draft order would be prepared to reflect this judgment.