Neutral Citation Number: [2021] EWHC 1265 (QB)

Appeal Ref: QA-2020-000139
Case No: QB-2018-006940

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE ORDER OF
MASTER THORNETT DATED 12 JUNE 2020

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 May 2021

Before :

THE HON. MR JUSTICE MURRAY

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Between :

PAUL SPARKES (as personal representative of PAULINE SPARKES, deceased)	**Claimant/ Appellant**
- and -	
LONDON PENSION FUNDS AUTHORITY	**Defendant**
- and -	
LEIGH ACADEMIES TRUST	**Third Party Respondent**

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Mr Harry Steinberg QC and Ms Aliyah Akram (instructed by **Royds Withy King**) for the **Appellant**
The Defendant and the Third Party Respondent did not appear and were not represented.

Hearing date: 1 December 2020

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Approved Judgment

I direct that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE MURRAY

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:30 am on 14 May 2021.

Mr Justice Murray :

1. On 1 December 2020 I heard this appeal against the order dated 12 June 2020 of Master Thornett ("the Order") in which he dismissed the application dated 7 May 2020 ("the Disclosure Application") made by Mr Paul Sparkes, as personal representative of Mrs Pauline Sparkes deceased, for an order for disclosure and inspection of documents from a third party respondent, Leigh Academies Trust ("the Trust"). The Master gave an *ex tempore* judgment ("the Judgment"), the transcript of which is in the appeal bundle.

2. I had granted permission to appeal on 15 October 2020 following a review of the papers.

3. Mr Sparkes appealed on the grounds that the learned judge failed to apply the appropriate test under CPR r 31.17, took into account irrelevant factors and failed to take into account relevant factors, and therefore erred in the exercise of his case management discretion.

4. Neither the defendant, the London Pension Funds Authority ("LPFA"), nor the respondent, the Trust, attended or were represented at the appeal hearing. The solicitors for the Trust, Stone King LLP ("Stone King"), wrote to the court on 27 November 2020, respectfully apologising on behalf of the Trust for not attending the hearing for costs reasons. Stone King also made various observations, which it asked the court to take into account when determining the appeal, including on the appellant's statement of costs. References below to statements by Stone King are to those made in its letter of 27 November 2020.

5. At the end of the hearing, I allowed the appeal and indicated that I would provide my reasons for doing so in writing in due course. These are my reasons.

The claim

6. The claim is for fatal asbestos-related injury.

7. The appellant is the widower of Mrs Sparkes and the executor of her estate. It is his case that Mrs Sparkes contracted mesothelioma as a result of her occupational exposure to asbestos. She died on 10 March 2015.

8. The central allegation is that Mrs Sparkes was negligently exposed to asbestos while working as a teacher at Kidbrooke Comprehensive School ("the School") for the Inner London Education Authority ("ILEA") between 1970 and 1975. At some stage the LPFA assumed the liabilities of ILEA by operation of statute. The School is now known as the Halley Academy.

9. The allegations of asbestos exposure are summarised at paragraphs 7 to 9 of the Particulars of Claim ("PoC"). It is alleged that the environment in which Mrs Sparkes worked was contaminated with asbestos, which was incorporated into the fabric of the school buildings. The floor and ceiling tiles contained asbestos. The wall panels and lagging were made of asbestos. It is alleged that Mrs Sparkes would almost inevitably have been exposed to asbestos during the course of construction of a new sixth form block at the School in 1973.

10. The LPFA has made no admissions as to paragraphs 7 to 9 of the PoC or the allegations of exposure. It puts the appellant to proof that Mrs Sparkes was exposed to material or harmful quantities of asbestos and that such exposure gave rise to foreseeable harm.

The application for disclosure under CPR r 31.17

11. The appellant applied under CPR r 31.17 for disclosure from a non-party, the Trust, of a collection of documents relating to building and maintenance work carried out at the School.

12. The background is as follows:

    i) As a result of her illness and death, Mrs Sparkes was unable to provide a statement. The principal witness evidence in support of the case is therefore the evidence set out in the witness statements of Mr Robert Hope and Ms Patricia McHugh.

    ii) On 12 July 2018, the appellant's solicitors, Royds Withy King ("RWK"), were informed by the Premises Manager of the Halley Academy that the School had retained "boxes of old documents" relating to building and maintenance works. These boxes had been saved from destruction in the 1990s. RWK asked the Premises Manager to copy these documents or to allow inspection on site.

    iii) The Premises Manager spoke to his own manager and, by email sent on 16 July 2018, referred RWK to the Royal Borough of Greenwich ("RB Greenwich") on the basis that RB Greenwich was responsible for "all asbestos issues" prior to the institution of the academy at the School.

    iv) The ultimate destination of the historical liabilities of the ILEA was not entirely straightforward. Further investigation by the appellant showed that the LPFA had inherited the relevant contingent liabilities.

    v) On 13 March 2019, RWK wrote to the Trust, which is the body now responsible for the School, asking the Trust to produce the documents that had been identified by the Premises Manager. In this letter, RWK made clear that it was seeking historic documents pertaining to the structure of the school and building work that had been undertaken over the years, including any document that might relate to the disturbance and/or addition and/or removal of asbestos containing materials during Mrs Sparkes's period of employment. In that letter, RWK requested disclosure or the opportunity to attend the school to inspect the documents.

    vi) The Trust sent a holding response to RWK on 25 March 2019.

    vii) Having had no substantive response, RWK sent a chasing letter to the Trust on 27 June 2019. RWK noted that it had previously been told that the documents were held at the School rather than in an archive.

    viii) On 2 July 2019, the Trust disclosed papers relating to the 1970s, a full set of which are included in the appeal bundle, amounting to about 46 pages. The

letter enclosing the papers was signed on behalf of the Trust by Mr J Taylor, Deputy Business Director.

ix) Having received what it described as a "slim file" of papers disclosed by the Trust, the appellant was of the view that it was unlikely that these were all of the relevant documents, given the reference by the Premises Manager to there being "boxes of old documents" relating to building and maintenance at the School

x) Accordingly, on 4 October 2019 RWK wrote to the Trust, for the attention of Mr Taylor, and explained, in the light of what had been said by the Premises Manager about (a) the contents and (b) the volume of the existing papers, that there may be other relevant documents. RWK confirmed that they were prepared to attend to inspect the documents on site (so as to avoid any cost to the Trust itself) and that no proceedings were being contemplated against the Trust.

xi) In response to the letter, on 14 October 2019 Mr Taylor telephoned Ms Jennifer Seavor, a Senior Associate at RWK, who was the solicitor who had signed the letter to the Trust of 4 October 2019. After the call, she prepared an attendance note, the substantive part of which reads in its entirety as follows:

> "JSS taking a call from Jack Taylor at the Leigh Academies Trust. He has received my letter. He said that they have provided all of the documentation relevant to the 1970s.
>
> I explained to him that from the information I have been given there are apparently boxes of historic documents relating to the premises which may be relevant. What I've been sent is only a small bundle. He said that he has spoken to the premises manager who has been there for many years, they have gone through all of the documents and the documents they have sent me are the only ones from the 1970s, which is the period of relevance.
>
> Jack asked if there was anything else I needed at the moment. I said not at present. I'm due to speak to the barrister about this case soon so if we think it would be helpful to see earlier documents etc I will come back to him at that stage."

xii) On 28 October 2019, having consulted counsel, RWK wrote to the Trust to explain that it required disclosure of additional documents, namely, those regarding building, maintenance, renovation, or demolition works at the School before and after Mrs Sparkes's period of employment. RWK again offered to visit the School to inspect the documents or to pay copying costs.

xiii) The Trust did not acknowledge or reply to this letter despite further chasing letters sent on 23 December 2019, 6 January 2020, and 26 February 2020.

xiv) On 7 May 2020, with the trial date for the claim approaching, the appellant filed the Disclosure Application.

xv) On 21 May 2020, RWK wrote to the Trust, by post (to the Trust's address at Carnation Road, Strood, Rochester, Kent ME2 2SX) and email (info@latrust.org.uk, which was the email address on the headed notepaper used by the Trust for its letters to RWK of 25 March 2019 and 2 July 2019), notifying the Trust of the telephone hearing of the Disclosure Application listed for 12 June 2020 before Master Thornett and enclosing the application notice, draft order and notice of hearing.

13. Stone King, on behalf of the Trust, disputed the suggestion that the Trust had failed to assist in relation to the appellant's request for disclosure and draws the attention of the court to the Judgment at paragraph 8, where the Master makes a statement to that effect. Stone King also drew attention to paragraph 17 of the Judgment, where the Master referred to the attendance note prepared by Ms Seavor on 14 October 2019 of her telephone conversation with Mr Taylor, during which Mr Taylor offered further assistance if required.

14. Stone King noted the Mr Taylor left the Trust's employment on 13 December 2019, that the letters sent by RWK on 6 January 2020 and 26 February 2020 were marked for the attention of Mr Taylor, and that the letters were sent by post only. Stone King did not, however, offer any explanation of why there was no response to RWK's letter of 28 October 2019, before Mr Taylor's departure, or to its letters of 6 January 2020 and 26 February 2020. Presumably, the Trust made appropriate arrangements for matters handled by Mr Taylor to be handled another employee of the Trust following his departure.

15. Stone King said that the Trust could find no record of having received by post at its Carnation Road address the relevant correspondence, the Disclosure Application or the documentation relating to this appeal. It confirmed that it did receive the appeal documentation but complained about the timing of that receipt. The appellant said that the correspondence was sent and the Disclosure Application and appeal documentation were properly served. In the absence of evidence from the respondent and in view of its non-attendance at the hearing, I can do no more than note the respondent's comments.

The decision of Master Thornett on 12 June 2020

16. It is clear from the Judgment that the Master's principal conclusion was that the Disclosure Application was too broad, vague, and unfocused and that, if he made the order sought, it would impose a disproportionate and unfair burden on the Trust, particularly bearing in mind that it is a third party respondent. At paragraph 2 of the Judgment, the Master said:

> "On the face of this draft [order], it would seem to be a very wide request that would necessitate a considerable amount of research and consideration spanning potentially decades."

17. At paragraph 6 of the Judgment, the Master noted that the Disclosure Application was made under CPR r 31.17 and that the test was whether the disclosure sought was likely to support the case of the applicant and was necessary to dispose fairly of the claim and save costs.

18. The Master noted two points at paragraph 8 of the Judgment, namely:

    i) the passage of time between the first invitation by the appellant to the Trust to produce documentation to the first specific approach by the appellant to the Trust; and

    ii) the fact that the Trust did produce some documentation in response to the appellant's request.

19. At paragraphs 9 to 13 and 16 to 20 of the Judgment, the Master summarised various interactions between RWK and the Trust in relation to the documentation sought.

20. At paragraph 12 of the Judgment, the Master referred to "some 40 to 50 documents" having been produced by the Trust, meaning those disclosed in July 2019. He found that the Disclosure Application failed to indicate that those documents had been attended to in detail by the appellant and that the Disclosure Application failed to show that there had been:

> "… any forensic process acknowledging the efforts taken by [the Trust] … [and] then comparing and contrasting with it what further [documents] might be expected to exist".

21. At paragraph 13 of the Judgment, the Master indicated that he considered that the Trust appeared to have carried out a comprehensive disclosure exercise, and it therefore fell to the appellant to establish why more relevant documents might still exist and why the Disclosure Application was still required.

22. At paragraph 17 of the Judgment, after summarising Ms Seavor's attendance note of her telephone conversation with Mr Taylor on 14 October 2019, the Master commented that the disclosure requested from the Trust was "curiously broad", given that it was a request to a third party educational establishment in relation to the possible exposure of a teacher during a particular period of her employment in that establishment (or its predecessor at the relevant site). He contrasted this with "the case of an employee who had been working directly with asbestos materials in an identified industrial or construction process over a specific period". Given "the more unusual type of exposure in this particular case", the Master:

> "… would have expected a much more specific description and forensic analysis to have been identified to Mr Taylor as to what might be expected still to be located and provided. And from this, in the event of no further assistance, identification as to what reasonably might still be available."

23. The Master indicated at paragraph 20 of the Judgment that he considered that the Trust had reasonably concluded that it had given an "adequate and comprehensive response in July 2019" and that there was nothing more it could do to assist.

24. At paragraph 22 of the Judgment, the Master criticised the approach of the appellant to this disclosure exercise and its failure, in his view, "to provide a better and more developed focus". He said:

> "At no stage it seems to me, other than in the early generic references to 'disclosure or inspection' in the formulaic way in which lawyers might refer to it, at no stage have the claimant's solicitors … sought to take the obvious and reasonable step of breaking the impasse and asking to arrange for a specific physical inspection so that they could see for themselves what more existed or might exist. At no stage did they appear to have invited through threat of Application to the court a specific inspection."

25. The Master's conclusion at paragraph 23 of the Judgment was therefore that:

> "… this application is hopelessly vague and lacking in specificity. It is unworkable from a Respondent's viewpoint and it is disproportionate to expect a third party to try to respond to it. … I cannot, sympathetic as I am to the principle as to how certain documentation could be relevant, today grant this application as it stands. Neither am I able to identify a shape or form of an order that could be intelligible."

26. For those reasons, the Master in the Order dismissed the Disclosure Application.

The legal framework

27. The appellant acknowledges that this is an appeal from a case management decision by the Master. A judge is accorded a reasonable range of discretion in making such decisions, making it difficult, in general, to mount a successful challenge on appeal.

28. The threshold test for interference on appeal with the exercise of discretion by a judge of first instance was summarised by Stuart-Smith LJ in *Roache v News Group Newspapers Ltd* [1998] EMLR 161 at 172 as follows:

> "Before the court can interfere it must be shown that the judge has either erred in principle in his approach or has left out of account, or has taken into account, some feature that he should, or should not, have considered, or that his decision was wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scale."

29. This passage was described by Lord Woolf MR in *AEI Rediffusion Music Ltd v Phonographic Performance Ltd* [1999] 1 WLR 1507 (CA) at 1523 as setting out the "conventional approach" to an appeal of this type.

30. The basic provisions for non-party disclosure are set out at CPR r 31.17. The power to make such an order derives from section 34 of the Senior Courts Act 1981. Any such application must be supported by evidence: CPR r 31.17(2).

31. CPR r 31.17(3) provides:

> "The court may make an order under this rule only where— "
>
> (a) the documents of which disclosure is sought are likely to support the case of the applicant or adversely affect the case of one of the other parties to the proceedings; and
>
> (b) disclosure is necessary in order to dispose fairly of the claim or to save costs."

32. The principles applicable to third party disclosure are discussed in detail by Eady J in *Flood v Times Newspapers Ltd* [2009] EWHC 411 (QB) at [22]-[36]. The principles relevant for this appeal include the following:

i) the jurisdiction is potentially intrusive and therefore the court must ensure that it is not used inappropriately, even where the application is not opposed: *Flood* at [29];

ii) the court retains a discretion even where the relevant criteria are met: *Frankson v Home Office* [2003] EWCA Civ 655, [2003] 1 WLR 1952 at [13];

iii) ordering disclosure against a non-party is the exception rather than the rule: *Frankson* at [10]; and the jurisdiction should be exercised with caution: *Re Howglen Ltd* [2001] 1 All ER 376 (ChD) at 382h;

iv) where a party seeks a class of documents, the relevant test must be satisfied for each document in the relevant class; the burden cannot be put on the respondent to identify those documents within the class that do, and those that do not, meet the necessary condition of relevance: *Three Rivers District Council v Governor and Company of the Bank of England (No 4)* [2002] EWCA Civ 1182; [2003] 1 WLR 210 (Chadwick LJ) at [36];

v) for the purposes of CPR r 31.17(3), documents "are likely to support the case…" if they "may well" do so as opposed to it being "more probable than not" that they will do so, this being a higher test than the "real prospect" test applied, for example, under CPR r 24.2 or CPR r 52.6: *Three Rivers DC (No 4)* at [32]-[33].

Grounds of appeal

33. The grounds of appeal are:

i) Ground 1: the judge failed to apply the appropriate test under CPR r 31.17;

ii) Ground 2: the judge failed to consider the potential importance of the objective documentary evidence;

iii) Ground 3: the judge considered irrelevant matters and failed to consider relevant matters; and

iv) Ground 4: the judge erred in the exercise of his discretion.

Submissions

34. In relation to Ground 1, Mr Harry Steinberg QC, leading counsel for the appellant, submitted that the Master misunderstood what was sought by the Disclosure Application. The Master described the class of documents sought as "extraordinarily broad" or "hopelessly wide". However, the appellant was simply seeking documents held in boxes at the School relating to building work and maintenance work at the School that might show the presence, use or removal of asbestos materials. This was repeatedly explained to the Trust in correspondence, for example, in RWK's letter to the Trust dated 28 October 2019. The Trust wrongly considered that only documents from Mrs Sparkes's period of employment (1970-1975) could be relevant.

35. It should have been immediately apparent to the Master that this was a misunderstanding. Documents from an earlier period, when asbestos material may have been installed, or from a later period, for example, an asbestos survey showing its removal, *may well* have supported the Appellant's case.

36. The Master did not analyse or even consider the nature of the documents that were being sought or their potential relevance. This was a failure to apply the appropriate test and therefore wrong in principle.

37. In relation to Ground 2, Mr Steinberg noted that Mrs Sparkes was not able to provide a statement as a result of her illness and death. The case therefore rested on the evidence of others. In that context, relevant contemporaneous or quasi-contemporaneous documents, if available, were particularly important. It was the appellant's case that Mrs Sparkes was exposed to asbestos during the course of her employment at the School. The best evidence in support of that case was likely to be documents generated during the course of the building works.

38. Mr Steinberg submitted that it was highly likely that these documents would include asbestos surveys after the implementation of the Control of Asbestos at Work Regulations 1987. These documents would either confirm that Mrs Sparkes would have been exposed to asbestos during the course of her work or, conversely, that the School had no significant asbestos legacy and/or took proper precautions. Either way, the documents would clearly be relevant and necessary for the just disposal of the case.

39. With a trial date in November 2020 and repeated requests having been ignored by the Trust, the appellant was compelled to make the Disclosure Application. He had no other way of obtaining the documents. The Order, if allowed to stand, would deprive the parties, and ultimately the court, of documents that would probably amount to the best evidence in the case.

40. In relation to Ground 3, Mr Steinberg submitted that the Master had placed too much weight on matters having little bearing on the criteria under CPR r 31.17(3).

41. Mr Steinberg gave the following examples, drawn from the Judgment:

i) The Master placed inappropriate weight on there having been a significant lapse of time before making the Disclosure Application. Having regard to the appellant's statement in support of the Disclosure Application, it was difficult to see why the Master did so. The appellant had naturally attempted to resolve the matter without making an application.

ii) The Master was wrong to find that there was nothing in the Disclosure Application to suggest that there were further relevant documents. The potential relevance of the documents sought was explained in the statement supporting the Disclosure Application.

iii) The Master was wrong to say that the appellant had not taken any steps to arrange a physical inspection. RWK had repeatedly offered to pay the copying charges or inspect the documents on site. It was difficult to see what more RWK could have done on the appellant's behalf to facilitate this.

iv) The Master was wrong to find that there was no evidence as to the "practicality" of disclosure by the Trust, and his conclusion that he could not make the order sought by the Disclosure Application "intelligible" was difficult to understand. Given that the relevant documents were retained at the School in a number of boxes, it was difficult to see what was impractical or unintelligible about the appellant's proposed order.

42. In addition to these matters, Mr Steinberg submitted that the Master failed to consider highly relevant factors such as the potential importance of the documents sought and the procedural fact that the trial was listed to start in November 2020.

43. In relation to Ground 4, Mr Steinberg said that he relied on his arguments in relation to the first three grounds. He submitted that where there was a limited quantity of potentially highly relevant documents sitting in boxes at the School, the decision to dismiss the Disclosure Application was unreasonable.

44. In its letter of 27 November 2020 Stone King made no specific submissions on the grounds of appeal. It relied on the Master's conclusion that the Trust had by July 2019 done all that it could reasonably have been expected to do in response to the appellant's requests for disclosure.

Discussion and analysis

45. Acknowledging the broad discretion that the Master should be accorded in making a case management decision, I am nonetheless forced to the conclusion that he was wrong in his application of the test under CPR r 31.17(3) to the relevant facts, took into account irrelevant factors, gave insufficient weight to relevant factors, and failed to balance the relevant factors fairly in the scale. His decision was wrong, and therefore the Order had to be set aside.

46. In my view, the appeal succeeds on all four grounds, essentially for the reasons put forward by Mr Steinberg.

47. In RWK's initial correspondence with the Trust, it did appear that the request for disclosure made to the Trust was limited to the period of Mrs Sparkes's employment

in the 1970s. The Trust was responsive to this, providing the roughly 46 pages of documents, copies of which were sent to RWK on 2 July 2019. Given what it had been told by the Premises Manager about there being boxes of materials held at the School, RWK was understandably sceptical that all relevant material had been located, leading to further correspondence and the telephone conversation between Ms Seavor of RWK and Mr Taylor of the Trust on 14 October 2019.

48. At that point, Ms Seavor seemed to accept Mr Taylor's assurance that RWK had received all relevant papers from the "period of relevance". She indicated, however, to Mr Taylor that she would be discussing the matter with counsel and would revert if further documents were required. Up to that point, the Trust's response to the appellant's request for disclosure cannot be criticised.

49. In its letter of 28 October 2019, after consulting counsel, RWK made clear to the Trust that the appellant also needed disclosure of all documents regarding building, maintenance, renovation, or demolition works at the School before and after Mrs Sparkes's employment, which might be relevant to the question of Mrs Sparkes's possible exposure to asbestos. RWK again offered to visit the School to inspect the documents or to pay copying costs. In effect, from this point onwards, the Trust failed to engage with the appellant's broader, but still reasonable, disclosure request.

50. The Master noted in the Judgment the Trust's engagement with the disclosure request until 14 October 2019, including the provision of documents in July 2019, and concluded that it had acted reasonably and nothing more could reasonably have been expected of it in the absence of a more focused disclosure request. With respect to the Master, however, it is clear from RWK's letter of 28 October 2019 that the scope of what was requested was widened, but not unreasonably so.

51. For the reasons given by Mr Steinberg, documents regarding building, maintenance, renovation, or demolition works at the School, both before and after Mrs Sparkes's period of employment, were potentially relevant, satisfying the "may well" test referred to in *Three Rivers (No 4)*. Properly understood, the Disclosure Application did not seek to require the Trust to undertake a disproportionate, onerous, vague, or unfocused search. All the potentially relevant documents were in boxes at the School's premises, and RWK was offering to pay copying costs or to attend and physically inspect the boxes themselves.

52. Moreover, it is clear that there was a reasonable possibility that in those boxes there would be documents that were decisive of the claim, one way or the other, and therefore that disclosure was necessary in order to dispose fairly of the claim and/or to save costs.

53. Because the Master appears to have misunderstood the scope of what was requested in the Disclosure Application, which in my view is clear from the statement supporting the Disclosure Application, he did not exercise his discretion on a proper basis and therefore made the wrong decision.

Conclusion

54. For those reasons, I allowed the appeal.

Costs

55. As to costs, the normal rule under CPR 46.1 in relation to an application for disclosure from a third party is that the court will award the third party costs of the application and of complying with any order made on the application. The court may, however, make a different order, having regard to all the circumstances.

56. In this case, I consider that it is appropriate to make a different order in relation to costs. The Trust has not put forward any good reason why, from the end of October 2019 onwards it failed to engage with the appellant's reasonable and several times repeated request for disclosure, which included reimbursing the Trust for its copying costs or attending to conduct a physical inspection, further minimising cost to the Trust.

57. Had the Trust engaged properly with the request, the appellant would not have had to make the Disclosure Application. I bear in mind that the respondent did not attend the hearing before Master Thornett and so did not actively oppose the Disclosure Application. But the appellant should not have had to make the Disclosure Application in the first place.

58. Given the potential importance of the documents regarding which disclosure was sought to the appellant's claim against the LPFA, the appellant was justified in making the Disclosure Application. The appellant has been put to further cost by having had to appeal the Order.

59. I reviewed the appellant's statement of costs and summarily assessed it. The amounts sought all seemed reasonable to me, having regard to the importance of the disclosure sought, the importance of the claim (the matter involving the death of Mrs Sparkes), and the work necessary to prepare the Disclosure Application, attend the hearing before Master Thornett, prepare the appeal and attend the appeal hearing before me.

60. I considered the comments on the appellant's statement of costs that were made by Stone King's in its letter of 24 November 2020 to the court. Nonetheless, I considered that the amount sought was reasonable, given the work that was required. Accordingly, my order of 1 December 2020, in addition to allowing the appeal, setting aside the Order, and giving new directions under CPR r 31.17 to the Trust to disclose relevant documents at the School within 14 days of my order, included an order that the Trust pay the appellant's costs, summarily assessed.