IN THE LIVERPOOL COUNTY COURT

Case No: OLV28194

Court No. 10
35 Vernon Street
Liverpool
L2 2BX

Friday, 2nd March 2012

Before:

DEPUTY DISTRICT JUDGE JOHNSON

B E T W E E N:

PIOTR GLAZER

and

NATHAN REID

Transcript from a recording by Ubiqus
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MR L OCEGO appeared on behalf of THE CLAIMANT
MR E STANSFIELD appeared on behalf of THE DEFENDANT

JUDGMENT
(Approved)

JUDGE JOHNSON:

1. This is a detailed assessment of costs arising from a claim for personal injury. The personal injury claim arises from a road traffic accident on 12th August 2010. The point which has been put to the Court as one of the preliminary points in the points of dispute by the defendant is effectively that the claimant unreasonably ejected this claim from the pre-action protocol for low-value personal injury claims and, that having done that, the Court should now take that into account when exercising its discretion in relation to the amount of costs under CPR 44.5. In doing so, the Court should adjudicate that the costs effectively be limited to those costs which the claimant would have recovered under the portal regime.

2. The background to this is as follows: the claimant entered this claim into the portal on 2nd September 2010, as I understand it. The defendant admitted liability quite quickly on 16th September. The claimant then obtained a medical report in October and supplied the relevant pack to the defendant on 27th October 2010.

3. The defendant responded to the settlement pack on 18th November 2010. The defendant made a series of counter-offers. In relation to general damages, the defendant counter-offered the figure of £2,000. In relation to other losses, the defendant made offers of £150 and £25. The bone of contention here is that the defendant only offered zero in respect of the repair costs which were claimed by the claimant in the sum of £2,928.10. The defendant has written on the form, 'We wish to arrange our own inspection of both vehicles involved.'

   They say in the comments section:

   > 'We are prepared to make offers in respect of the general damages, miscellaneous expenses, SatNav and mobile phone. However, please note we are making arrangements to inspect both vehicles for consistency purposes prior to making any offer for the vehicle damage.'

4. Having received that response, the claimant's solicitors immediately write to

Admiral Insurance, the defendant insurers. They say:

> 'We note your comments in respect of the vehicle damage. We consider this to be a withdrawal of causation pursuant to rule 7.32.'

By that they mean paragraph 7.32 of the relevant pre-action protocol.

> 'If you do not agree by return, then we shall drop this claim out of the portal pursuant to paragraph 7.67.'

They reserve the right to bring this letter to the attention of the Court.

5. The insurers do not response immediately to that letter so one week later, on 25th November, the claimant's solicitors write again to Admiral. They say:

> 'We refer to the settlement pack which was sent to you on 3rd November. You have failed to make an offer for the whole of the claim as required by 7.28 of the protocol and, in those circumstances, we consider that this claim no longer continues under the low-value personal injury protocol by virtue of 7.33 and we give you notice that we will now issue proceedings under Part Seven of the CPR.'

6. There was then a letter from the defendant insurers in response dated 26th November which says:

> 'There appears to be a misunderstanding regarding the need to inspect your client's vehicle. We are not raising causation as an issue. The purpose of inspecting your client's vehicle is for consistency. Our insured informed us there was minimal damage to his vehicle. Your client's insurer also informed us that your client is not claiming as the damage is minimal. Also we were told that your client's vehicle was still drivable.'

The letter goes on to say:

> 'We are not disputing the injury which is why an offer has been put forward for general damages. We see no reason for the claim to drop out of the MoJ scheme. If you drop the claim out of the MoJ scheme, we will raise this matter at the costs stage.'

7. The claimant then proceeds to issue a Part Seven claim form. In response to that, the defendant insurers instruct Horwich Farrelly Solicitors. Unfortunately, there was no response to the claim form and so default judgment was entered. That was not a problem because the defendant was admitting liability anyway. The matter was listed for disposal and then before the matter got to the disposal hearing, a Part 36 offer made by the defendant

in the sum of £3,750 was accepted on 6th March 2011. We are here today to assess the costs arising from that Part 36 offer.

8. It was put to me by Mr Stansfield on behalf of the defendant that there was no withdrawal of admission of causation by the defendant. The definition of admission of causation is set out in the protocol and it is replicated on the response to the settlement form itself. The defendant has ticked the three boxes saying that they admit that the accident occurred, that it was caused by the defendant's breach of duty and that it has caused some loss to the claimant, the nature and extent of which is not admitted. What Mr Stansfield has said is that the defendant did not have to admit the entirety of the loss, just that some loss had been incurred, and he points out that the defendant did make offers for the other heads of loss and that the defendant has explained why they had not put forward any more than zero for the repair costs.

9. The explanation has led to the parties being in dispute and that this is something which is envisaged by paragraph 7.34 of the protocol. 7.34 of the protocol says, and both advocates have referred to this paragraph:

> 'The defendant must propose an amount for each head of damage and may, in addition, make an offer that is higher than the total of the amounts proposed for all heads of damage. The defendant must also explain in the counter-offer why a particular head of damage has been reduced. The explanation will assist the claimant when negotiating a settlement and will allow both parties to focus on those areas of the claim that remain in dispute.'

If the matter is not settled following that counter-offer, then the claimant can proceed to stage three of the protocol in which the Court is involved in adjudicating the claim. Mr Stansfield's submission is that the defendant had put forward an amount in accordance with 7.34 in respect of the vehicle damage and that amount was zero.

10. Mr Ocego put forward on behalf of the claimant that the claimant had acted reasonably. He has set out some additional facts to be inserted into the chronology of what happened. The

claimant provided the defendant insurers with an estimate for the vehicle repairs from Assess UK, dated 6th September, totalling £2,928.10. Mr Ocego's position is that generally speaking defendant insurers do not dispute those amounts and that the claimant was hopeful that the insurer was going to send a cheque to enable him to get his vehicle repaired. Mr Ocego also points out that the defendants did admit liability as early as 16th September but yet a letter sent to the insurer requesting a cheque for the repairs was ignored by the defendant insurers. This is just over a month after the accident took place.

11. Mr Ocego makes much of the perceived delay in the defendant dealing with the question of the vehicle repairs. He says that the defendant insurers did not raise their query over the repairs until the response to stage two on 18th November which is over two months after the accident took place. Mr Ocego invites me to interpret the statement on that form as the defendant effectively reserving the right to allege later that the defendant did not cause the damage to the vehicle. His observation is that the ordinary person on the street would interpret that wording as the defendant saying that they clearly have doubts over the vehicle damage and that there is now clearly a dispute as to whether that had been caused.

12. Dealing with that point, Mr Stansfield in response said that is one thing but the defendant had already offered substantial personal injury damages to the claimant at this stage and that would be inconsistent with the defendant saying that there was no damage to the car or that there was only minimal damage to the car.

13. Going on in terms of the chronology, it is unclear at which stage the claimant's solicitors thought that the defendant insurers were saying it was only minimal damage to the vehicle. The first reference to it in the file which is before the Court today, which appears to represent the solicitors' file, is in the letter of 26th November. This is actually after the date when the claimant removed the claim from the portal. Mr Ocego says that we should look at the wording in terms of what was the third party trying to imply by the wording, bearing

in mind that there had been two months had passed since the accident in which they could have dealt with the evidence and in which they had ignored certain correspondence. He places the blame squarely at the feet of the defendant insurers who, he says, failed to act proactively in relation to this dispute and they effectively gave the claimant the option to exit the portal which they then did on 25th November. He says that the defendant insurer could have acted more quickly in response to that whereas they had waited a week from the letter of 18th November. They did not respond until that letter I have already mentioned of 26th November. Mr Ocego invites me to interpret the conduct as not unreasonable because the protocol is intended to be a speedy regime for the resolution of these disputes and the defendant has not acted in accordance with that idea of speed.

14. One last point which was made in response by Mr Stansfield is that there is no automatic withdrawal from the portal under its rules if a defendant offers zero in respect of an amount. The automatic exit is under 7.32 which is where the defendant considers it should be a small claims matter or where the defendant withdraws the admission of causation, the claimant having in this case appeared to have interpreted the wording on the response form as a withdrawal of causation and has exited in accordance with rule 7.67.

15. My interpretation of the wording on form RTA1 as filled in by the defendant insurer is not that this was a withdrawal of the admission of causation. The defendant has given figures, as I have already outlined, in response to the claimant's claim. The defendant has offered zero in respect of the vehicle repairs and has given an explanation as to why they are offering zero. Mr Ocego put to me that the defendant should have offered something and when I suggested that that something could be as little as £1, he agreed that that would amount to something. I cannot see any real difference between offering zero and offering £1 and I do not think that offering zero is a failure by the defendant to comply with paragraph 7.37 of the pre-action protocol.

16. The nature of the admission made by the defendant at the beginning of the protocol procedure is that the defendant's conduct had caused some loss to the claimant, the nature and extent of which is not admitted. My interpretation of the wording which the defendant has written onto the response form is that they are disputing the nature and extent of the damage to the vehicle, not that they are disputing whether the damage was caused at all. The defendant insurer clearly wanted to inspect the vehicle themselves. Had they then found reasons for concern in terms of the causation of the damage, they could then have formally withdrawn their admission of causation. Then the claim quite rightly could have come out of the portal.

17. I feel that the claimant here has rather jumped the gun with this. They wrote to the defendant on 18th November threatening to take the claim out of the portal. They only gave the defendant insurers one week, until 25th November, before actually withdrawing from the protocol. I do not think that is long enough in terms of communicating with an insurance company. However speedy the regime is intended to be, I do not think one week is a reasonable amount of time for a response to a letter of that nature.

18. The defendant did respond the next day. The claimant could have resiled from its letter of 25th November and said, okay, now that you are confirming or clarifying that you are not withdrawing your admission of causation, we will not withdraw from the portal. The claimant did not do this. They proceeded to go ahead with the claim form a matter of three days after that letter, 29th November, and the claim was settled just under three months later by way of a Part 36 offer.

19. It seems to me that any dispute regarding the quantum of the damage to the vehicle could easily have been dealt with by the Court as part of stage three. That is what stage three is for. If the claimant had commenced the stage three proceedings, it could have ticked the box saying we would like a hearing rather than the matter to be dealt with on paper and that

would have saved costs and time for all.

20. I also take into account the overriding objective, CPR 1.3: 'The parties are required to help the Court to further the overriding objective.' I think that the claimant's solicitors should have borne that in mind when they were taking their action back in November 2010. In particular, they should have borne in mind CPR 1.1(2)(b), saving expense. Using stage three of the portal would have saved expense. They should have borne in mind 1.1(2)(c), dealing with the case in ways which are proportionate to the amount of money involved, the importance of the case and the complexity of the issue. This is not a complex case. As I said, it could have been dealt with quite easily using stage three.

21. For those reasons, I take the view that the claimant has not acted reasonably in ejecting this claim from the portal at stage two and that any costs awarded, which are on a standard basis and therefore need to be reasonably incurred and reasonable in amount, should be capped at the amount which the claimant would have recovered in accordance with the portal. Those costs are to be capped at the total which the claimant would have recovered under stage one, stage two and stage three.

In the light of that, I do not see, unless you particularly want to, much point in going through the bill on an itemised basis other than the disbursements.

MR STANSFIELD: No, indeed, Ma'am. In fact, I wondered whether it might be appropriate for my friend and I to have a few moments outside to try and agree what the calculation ought to be and if there are any particular things that we need to address you on then we could come back in and address you on them.

JUDGE JOHNSON: It should be fairly straightforward, should it not? To clarify, I am prepared to allow the costs as if the claim went to a hearing in stage three.

MR STANSFIELD: A stage three hearing.

MR OCEGO: That was my point. Yes.

JUDGE JOHNSON: I will allow those.

MR OCEGO: As there was an item dispute at the end of stage two, it would naturally progress in any event.

JUDGE JOHNSON: Yes. It may or may not have settled. We cannot look backwards into a crystal ball and know whether it would have settled. It did settle but I am prepared, having limited the costs, to allow those costs as if it went to a hearing.

MR STANSFIELD: Very good, Ma'am. We can do that calculation then I think and then very quickly and come back and address you if there are particular things we need to address.

JUDGE JOHNSON: Yes, or just let me know what the amount is.

MR STANSFIELD: Very good, Ma'am. Yes.

JUDGE JOHNSON: Thank you.

MR STANSFIELD: Thank you. Could we come back after 10 minutes or so?

JUDGE JOHNSON: Yes, that is fine.

MR STANSFIELD: Thank you. Can I just leave some papers?

JUDGE JOHNSON: Yes. Of course, yes.

MR STANSFIELD: [Inaudible]. Thank you, Ma'am.

Court rises.

Court resumes.

MR STANSFIELD: Thank you for the time you have allowed us, Ma'am. Although you may wonder what on earth we could have been talking about for that length of time, we have had a discussion and we're agreed that the total of the profit costs, VAT and success fee based on an allowance for stage one and two and a hearing at stage three is 2,820.

JUDGE JOHNSON: 2,820.

MR STANSFIELD: So that's profit costs, VAT and success fee. The only things that remain in issue after that then are some questions about disbursements.

JUDGE JOHNSON: Yes.

MR STANSFIELD: The disbursements appear in the bill on page seven. There is a costs draughtsman's fee which is said to be a disbursement on page nine but that wouldn't have been an allowable disbursement so that can be ignored. So the disbursements that appear are the engineer's report, the ATE premium, the medical report and the issue fee. The ones I want to address you on are the ATE premium and... Well, the ATE premium, the medical report and the issue fee.

JUDGE JOHNSON: Yes.

MR STANSFIELD: In terms of the issue fee, that's an issue fee for issuing full Part Seven proceedings.

JUDGE JOHNSON: Yes.

MR STANSFIELD: If anything is to be allowed for an issue fee, then it ought to be no more than the fee that would have been payable to get to the issue of the Part Eight claim up to stage three. We've attempted to find out what that figure is but they didn't quote it.

JUDGE JOHNSON: I also have tried to look that up and I cannot find it either, I am afraid.

MR OCEGO: [Inaudible] does not seem to be anywhere.

JUDGE JOHNSON: It does not seem to be in there, does it?

MR STANSFIELD: So perhaps we can... I mean, that fee is going to be a matter of record somewhere so if the Court's view is that that is what should be allowed for that item, then we can perhaps deal with the other items and...

JUDGE JOHNSON: Yes. This is quite recent, is it not? The latest fees order is from late last year, is it not? So it is surprising that it is not explicitly listed. I did wonder whether it is in fact the same, whether it is 225. I would have thought it was cheaper but...

MR STANSFIELD: Well, I mean, certainly, for example, I mean, a costs-only [inaudible] is £45. I think [inaudible] proceeding, I think it is-

MR OCEGO: 150.

MR STANSFIELD: Is it 150? Yes.

MR OCEGO: I think it's the same. Something sticks in my mind about it either being 150 or £200 for the hearing.

JUDGE JOHNSON: I tell you what. Why do I not just make a quick call and see if I can find out? The new claims for issue might be the person to ring.

Judge consults with court office via telephone.

JUDGE JOHNSON: Clearly not as easy an answer as we thought.

MR STANSFIELD: No.

JUDGE JOHNSON: So the engineer's report is agreed?

MR STANSFIELD: Yes, Ma'am.

JUDGE JOHNSON: £70.

Telephone call resumed.

JUDGE JOHNSON: Well, she suggested 245 so that would suggest it is the same as back then when it was the 225. I think in the circumstances I do not have much of an alternative. It should be the fee for the stage three.

MR STANSFIELD: Yes.

JUDGE JOHNSON: But all the indications are that it would still have been 225 so I will allow 225. Medical report?

MR STANSFIELD: Yes, that is in dispute. It's a report from a surgeon. I'm not sure if he is a consultant. He is certainly unknown to [inaudible]. I don't know if you've had the opportunity to look at the medical report at all.

JUDGE JOHNSON: Only briefly.

MR STANSFIELD: The physical injuries were whiplash and a bang to the knee, both of which were given a prognosis period of just over six months. The claimant has no pre-existing

conditions. The expert didn't look at any medical records. It was a totally straightforward report. Injuries and prognosis as far as the medical kind of thing and there was nothing that was outside the competence of a GP. This is exactly the sort of case that would have been appropriate to get a report from a GP on and the defendant says that an appropriate rate would be the Association of Medical Reporting Organisations' figure for a GP report with no records which would be 195.48.

JUDGE JOHNSON: What do you say?

MR OCEGO: As far as I'm aware, I believe it was Mr Carr[?] who I think we have seen in cases before who was the consultant [inaudible] from recollection. If the report extended to two-and-a-half/three pages which I have seen from GPs, I would say there's probably some merit in the argument but the report is 14 pages in length. It's an argument with the benefit of hindsight, isn't it, that the cases that I've seen that a claimant went off to his GP and got a report, it's usually insufficient and then he recommends that he goes and sees a consultant orthopaedic surgeon. So my submission is that he can't win. I think you have to base it on what is reasonable in these particular circumstances and based on the report, it's [inaudible] of prognosis, I accept that. It's a recommendation for physiotherapy. I can't be certain that a GP report would have been sufficient. I see the report in front of me and it has certainly done its job. I don't believe it should be reduced to that of a GP, only up to £195.

JUDGE JOHNSON: Thank you.

MR OCEGO: That is my opinion anyway, Ma'am, unless...

JUDGE JOHNSON: Well, I think it is appropriate to obtain a report from someone other than a GP because no one knew what was going to happen in this case; it does cut out the potential for having to have a second report. I am not going to reduce it to 195. On the other hand, 399 does seem a bit high to me so I am going to award 285.

MR STANSFIELD: Increase it, yes.

JUDGE JOHNSON: That is plus VAT, is it not?

MR STANSFIELD: Plus VAT.

JUDGE JOHNSON: Yes, plus VAT.

MR STANSFIELD: 17.5% it would be.

MR OCEGO: Yes.

MR STANSFIELD: 334.88, yes.

MR OCEGO: Yes.

JUDGE JOHNSON: And I anticipate Mr Stansfield is going to say that the ATE premium is too high.

MR STANSFIELD: Yes. I mean, there are two aspects here. One is the question of what inquiries were made into the availability of before-the-event insurance. Secondly, if this was a case where the claimant did need after-the-event insurance, what level should have been allowable for a case that proceeded under the protocol. I don't have any information at all about what inquiries were made so I can only hope that-

JUDGE JOHNSON: There were inquiries.

MR STANSFIELD: -[inaudible] inquiries were made before.

JUDGE JOHNSON: Yes, I have seen that on the file.

MR STANSFIELD: Very good, Ma'am. Then there is the question about the level of premium. This is a Templeton premium. The premium is being claimed at 901 because the substantive proceedings have been issued. The pre-issue level of this premium would be 503.50. The only issue I can raise beyond it being appropriate for it to be something less than 503.50 is that Templeton previously, or at the time when this premium was taken out, issued endorsements to their policies for cases that settled within MoJ process such that the premium was reduced to £85 plus IPT. So I think there is a valid question about whether... Well, we only have the first page of the insurance policy. We don't know what the position

is with an endorsement. The Court doesn't know whether 508.50[?] was reasonable or not but any doubt should be resolved in favour of the paying party.

MR OCEGO: If I am able to assist, Ma'am?

JUDGE JOHNSON: Yes, thank you.

MR OCEGO: Knowing unfortunately this inside out and backwards which I think I will take to my grave unfortunately, in terms of the Templeton insurance policy, it is suspected that this [inaudible] which is based on some evidence which isn't before the Court in the first instance. It was a pilot scheme, just for everybody's benefit and knowledge, that was run by Templeton when the MoJ process come into force because they probably had the foresight that cases that effectively would stay within the MoJ [inaudible] cases, that what you're actually insuring against in that process is very limited.

JUDGE JOHNSON: Yes.

MR OCEGO: There is not going to be an adverse costs order as such and so on and so forth. If work obviously is going to be more speculative and further develop to a point beyond the four corners that we have already, we have judgments already preliminary in terms of these. That in terms of reducing the premium so to speak, the Court of Appeal decision in *Rogers v Merthyr Tydfil* is quite clear. It's that it's not the Court's job to act as an adjudicator when it's an underwriter's job to effectively provide a premium. This is a premium that was advised to the client, fully aware of it, the schedule has been disclosed to the defendant. But, more importantly, just to diffuse that submission, the points of dispute simply ask whether checks were taken in relation to BTE, that there was attempt to reduce the premium at any point at all. So the points of dispute simply say all we want is confirmation that legal expense inquiries will be taken before it was taken out but that's the end of it. The premium hasn't been challenged in terms of amount. In the circumstances, what I would say is that stage two, which has been claimed in the bill of costs, obviously the reason for that is that

proceedings had been issued and proceedings effectively by what I consider to be the wording here which I was thinking could have probably a little bit of ambiguity possibly. But stage two effectively is proceedings where liability has been admitted. It's whether we now consider if stage three are proceedings.

JUDGE JOHNSON: Yes.

MR OCEGO: Sorry to put the cat among the pigeons but obviously the point that my friend raises over the Templeton pilot scheme is a very valid point because I accept that it happened. I don't accept that it happened with everybody.

JUDGE JOHNSON: Yes.

MR OCEGO: But this is the policy that was taken out. The difficulty that I've got in terms of conceding that stage one should be payable is a matter for the Court to consider whether stage three is in fact proceedings. If stage three is effectively an oral or paper hearing, then surely that must be deemed to be a final hearing under the CPR.

MR STANSFIELD: The interesting point is that the schedule of insurance sets out two separate things. One for cases that are allocated to the fast-track and one for cases that are allocated to the multi-track. Of course, this case is neither.

MR OCEGO: I don't suggest that.

JUDGE JOHNSON: Neither.

MR STANSFIELD: Even under the proceedings are issued, this case is neither.

JUDGE JOHNSON: Yes.

MR STANSFIELD: But certainly under the... I appreciate it's somewhat artificial but we are looking at what would have happened had this been on that schedule of insurance, it still would not have been allocated to the fast-track or to the multi-track because it would have been a stage three protocol case. I don't have the ability to make concessions on the part of the defendant in this regard.

JUDGE JOHNSON: No, of course not.

MR STANSFIELD: But I can see that if you might be minded to allow the 475 plus IPT and while I can't concede to that, I could perhaps understand why the Court might feel that that was an appropriate amount to allow.

JUDGE JOHNSON: Yes. There is a little bit more information on the policy in this file but it does not appear to have any endorsement of the nature that you have described so in the absence of any evidence about that, I am not prepared to reduce it to £85. I am going to have to work with the schedule of insurance which is here. I am trying to think what I would have done if this had come before me as either a disposal or a stage three hearing.

MR STANSFIELD: Yes.

JUDGE JOHNSON: My inclination would be that the 901, or the 850 including the tax, 901, would be high and therefore not reasonable, even if the insurers' interpretation is that 'proceedings' would include a hearing of that nature. Certainly if it was a summary assessment before me, I would reduce that to the next level down which is 475 or 503.50 including tax. That is what I am going to do.

MR OCEGO: Yes, I think certainly for my purposes, my friend is quite right. I think interpreting this certificate has to exclude reference to the fast-track and multi-track. I think in the absence of anything else the only thing we can do effectively is say the stage [inaudible] is appropriate.

JUDGE JOHNSON: Yes, so 503.50.

MR OCEGO: Indeed.

MR STANSFIELD: In that case, I think you have assessed the costs in the total sum of 3,965.60.

It will now be necessary for us to very quickly address you on the principle of costs of the detailed assessment. The position is that one offer has been made by each side. The offer

made by the defendant was in the sum of £3,769.58. The counter-offer made by the claimant was £5,500. The parties' positions have been set out very clearly throughout.

The defendant's position was that this was a case which shouldn't have exited the MoJ process. The defendant's view in correspondence was that costs should be capped at what would have been payable up to the end of stage two. As a compromise, the figure that the defendant put forward was based on the predicted costs figure that would be payable had it exited the process but still stayed before the issue of proceedings. Obviously the calculations of course is based on allowing for a stage three hearing. As a result, the total sum that has been allowed differs very slightly from the offer that the defendant made. It is slightly higher, likely because of the success fee which is payable under the rules in a case going to a stage three hearing. Obviously I don't suggest that the figure that the court expenses [inaudible] is wrong but one has to appreciate the slightly artificial nature of the process that has been applied. And I think really what we have to go back to here is what was the central argument in this case and who won it and I hope it's not inappropriate for me to say that the central argument was was this case reasonably taken out of the protocol or the process or not. The Court has resolved that argument in favour of the defendant and that is why the bill has been reduced to the level that it has been reduced to.

The rules on costs are contained in CPR 47.18 and 47.19. CPR 47.19 provides that where a party makes an offer which complies with certain conditions, i.e. it's in writing and it's expressed on a without-prejudice basis save as to the costs of the detailed assessment proceedings, the Court will take that offer into account in deciding what order to make about costs. It's very important to note that CPR 47.19 and CPR 36 are not analogous. If you don't meet the Part 36 offer, you have not beaten it and the Court can effectively ignore it. CPR 47.19, if your offer complies with this requirement in 47.19, the Court will take it into account in determining what order to make. So it's another way of saying that the

Court's discretion in terms of what it does about costs is very much wider than in a Part 36 offer. So that is 47.19.

47.18 sets out the general rules. It's obviously for the receiving party, which is my friend, to get the costs of the detailed assessment unless the Court makes another order and in deciding whether or not to make another order, the Court has to take into account all the circumstances, including the amount by which the bill has been reduced, whether it was reasonable to claim or dispute particular items and the conduct of the parties.

We come back to the fact that there has been a single issue at the detailed assessment stage. Obviously if the defendant had failed on that, there would have been a full detailed assessment and the situation might be quite different but this single issue has been disposed of by the Court today and it was disposed of in favour of the defendant. Really I think that that operates almost to the exclusion of all other considerations under CPR 47.18. There is only one thing that the Court needed to determine. It has determined it in favour of the defendant. It's very difficult to see why costs would not follow the event from that and why the defendant should not have the costs of the detailed assessment procedure.

It is that issue that has led to us being here today. The claimant was absolutely unequivocal that as far as they were concerned they were entirely correct to withdraw the matter from the protocol. The offer that they made shows that as far as they were concerned there was no basis for negotiating costs other than on the normal fast-track basis. As I say, that is why we are here.

If the Court could go on and consider the impact of CPR 47.18, the bill claimed at £8,628.76 has been reduced by more than half, that's a level of reduction which would have to be marked in costs in my submission in any event. Finally, I think one has to consider the fact that we're here because the Court has found that the claimant behaved unreasonably in the first place in exiting the matter from the protocol.

So for all those reasons, I submit that the appropriate order for costs of detailed assessment is that the claimant should pay the defendant's costs of the detailed assessment procedure. Thank you.

JUDGE JOHNSON: Thank you. What do you say?

MR OCEGO: I disagree. I'm not going to be too optimistic in terms of my submission on costs but I will start I think by saying this: in terms of the bill being reduced by half, the bill hasn't been reduced because the bill hasn't been assessed. What has been allowed are in essence fixed costs. So the point that the bill has been reduced by an amount in excess of 50% is wrong as the bill hasn't been assessed.

The other point is that unfortunately when you have parties at loggerheads with these sort of points is that there has to be some clear determination and there is only one way that either party could ever get there. So when you have a point which is born out of what is changing law, and I accept that is a matter for the Court to determine these by exercising discretion, but both parties would never reach a resolution if these things weren't tested.

So for me, I don't think that this particular point as a preliminary issue, which is what it was, is any different to an interlocutory hearing. Effectively we've had a way of determining what the way forward would be. There were points of strength in terms of the claimant's argument that I put forward and it would be unfair to say that there was a blatant disregard for the protocol. It's that it was a matter of interpretation. Yes, all solicitors do want to exit the portal at the first earliest opportunity. That is the litigators in all of our hearts, I'm afraid.

So as far as I'm concerned, submissions can be made in terms of how much the bill has been reduced by which I think is irrelevant on the basis that it's fixed costs. It's a preliminary point that needed to be determined otherwise both parties would effectively sit and gather dust and after each party has drawn a line in the sand, they do nothing but eyeball each

other for many years to come. It's a lesson that could be learnt I think on both sides going forward. It is no more than an interlocutory hearing to deal with a preliminary point, in my opinion. What I believe should happen on the basis that the defendant's offer wasn't sufficient in the first place, and they had drawn a line in the sand, they should have put a bit more protection on their offer. It is the old argument that yes, it's a bit unfortunate it's been beaten but it is black and white, it has been beaten.

So for all of those reasons, the appropriate order in this case is that both parties have learnt a lesson from what I believe to be an interlocutory hearing and we walk away having had a good fight this afternoon and it should be no order for costs.

JUDGE JOHNSON: Thank you. Well, I have to take into account 47.18 in the CPR. The receiving party is entitled to the costs unless the Court makes some other order. In deciding whether to make another order I must have regard to the conduct of the parties, the amount by which the bill has been reduced and whether it was reasonable for a party to claim the costs of a particular item or dispute that item.

In relation to the conduct of the parties, I do think it would be unfair for me to now say that because the claimant conducted itself in a way which I found to be unreasonable in the actual claim, for me to effectively penalise the claimant twice on that I think would be wrong. I think this means the conduct of the parties in relation to this issue which is the detailed assessment proceeding today.

The amount by which, if any, the bill of costs has been reduced. I do not agree that the bill of costs has not been reduced. What I was at pains to point out earlier in the hearing was that what I was not doing is awarding fixed costs, that I was limiting. I know it is semantics but I was limiting the costs to the maximum of the fixed costs and then there was no point in assessing the bill because any assessment of the bill would have come out at that, which had clearly got to that limit, it would never be reduced below that limit. So I do find the bill has

been reduced.

Whether it was reasonable for a party to claim the costs of a particular item or dispute that item. Well, that amounts to the same thing really.

As I said, I do think it would be unfair, having heavily penalised the claimant in terms of the amount of the bill, now to also heavily penalise the claimant in terms of the costs of the detailed assessment proceeding. I think it probably was reasonable for the claimant to come and argue this point. It needed to be determined. Clearly, bearing in mind the offer which had been made by the two parties, it was not going to be resolved outside of court and it needed someone to make a decision on it. I think that it was reasonable for the claimant to come to court to argue this point that we have spent some time on this afternoon. I agree, I think the appropriate order for today is no order as to costs.

MR OCEGO: I'm very grateful, Ma'am.

JUDGE JOHNSON: Can I just check the figure then? A total for the costs of the action of 3,965.60.

MR STANSFIELD: Yes, Ma'am.

MR OCEGO: Yes.

JUDGE JOHNSON: Thank you.

MR STANSFIELD: Thank you, Ma'am.

MR OCEGO: I am grateful. Thank you very much.
