Case Number: G33BI961

IN THE COUNTY COURT AT TRURO

Date: 14 May 2024

Before:

DEPUTY DISTRICT JUDGE FENTEM

Between:

MR TANIS PARSONS

Claimant / Respondent

-and-

MR BRIAN STEVENS

Defendant / Applicant

Mr Dominic Finn (instructed by **Slater and Gordon UK Limited**) for the **Claimant**
Mr James Miller (instructed by **Kennedys Law LLP**) for the **Defendant**

Hearing date: 7 May 2024

APPROVED JUDGMENT

I direct that pursuant to CPR r.39.9(1) no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

Introduction

1. This is my decision in the Defendant's application under Part 18 of the Civil Procedure Rules 1998 ('**CPR**') for further information about one of the Claimant's disbursements following acceptance of a CPR Part 36 offer.

2. The application arises in the following way:

2.1. On 20 August 2020, the Claimant issued a claim for damages arising out of a road traffic accident that took place on 9 August 2017. The claim was immediately, and then repeatedly, stayed. Eventually, a Defence was filed on or about 18 August 2022, admitting liability but putting in issue the quantification of damages.

2.2. A disposal hearing was scheduled for late in 2022 but was vacated by consent. The claim was transferred to the Truro hearing centre on 18 October 2022. Directions were then given, again by consent, allocating the claim to the fast track and listing the matter for a trial on 22 December 2023. However, shortly before trial, the Claimant accepted the Defendant's CPR Part 36 offer ('**the Offer**'), and the proceedings were automatically stayed under CPR r.36.14(1).

2.3. It is common ground that the Claimant's costs will be determined in accordance with the costs rules in the CPR before the changes implemented on 1 October 2023, and that they will be subject to the fixed costs regime in Section IIIA of CPR Part 45 (as a claim which started, but did not continue, under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents). Under CPR r.36.20(13), the Claimant therefore became entitled to his disbursements in accordance with CPR r.45.29I.

2.4. The Claimant was given permission to rely on the reports of four expert witnesses, including Dr Francis Luscombe, a specialist in pain medicine. Dr Luscombe's report was obtained through the services of a medical reporting organisation ('**MRO**'), Premex Services Limited ('**Premex**'), which charged a disbursement of £5,880.00 plus VAT ('**the Disbursement**'). It is the Disbursement which is at the heart of the present application.

2.5. The Claimant has not yet made an application under the procedure described by Master Leonard in *Nema v Kirkland* [2019] EWHC B15 (Costs), so I am not concerned with a determination of the amount of the Disbursement. In order to distinguish it from a summary or detailed assessment, I will use the term 'determination' to describe the process by which a court determines applications under the *Nema v Kirkland* procedure.

2.6. On 12 March 2023, the Defendant made a CPR Part 18 request of the Claimant as follows ('**the Request**'):

'The following Part 18 Request for Further Information is served pursuant to CPR 44.5 and Hutchings v Transport Police Authority (2006). The Defendant (and the court) is entitled to understand the claim for costs as presented for payment between the parties; and in particular, the nature of the medical agencies' fees as per Stringer v Copley (2002) and Charman v John Reilly (Civil Engineering) Ltd (2013). The Defendant further relies upon the decision of Lords Justices Davis and Hickinbottom in Gempride Ltd v Bamrah & Lawlords of London Ltd [2018] EWCA Civ 1367, particularly at para 26 i).

The Defendant requires the further information as requested below in order to be on an equal footing with the Claimant as per the overriding objective of the Civil Procedure Rules (r1.1); and to fully understand the claim for costs which is presented for payment between the parties:-

1. *What were the fees of Dr Luscombe in respect of the medical report invoiced under reference OT/I556699 [this appears to be a typographical error: the invoice number is OT/1665599]?*
2. *What was the medical agency's fee in respect of the same invoice?*

The Defendant requires a formal signed Response to this Part 18 Request for Further Information to be served by 26th March 2023.'

2.7. The reference to CPR r.44.5 appears to be a mistake, but nothing turns on that. The Claimant replied on 22 March 2024 (**'the Claimant's Reply**'):

'As previously advised, we are not in receipt of a breakdown of the medical agency fees.

We have liaised with the medical agency regarding your part 18 request and have been provided with the attached response.

As you will see from the medical agency's response, at this time, they are not persuaded that they ought to disclose any further information to either us or yourselves. The medical agency is unwilling to provide commercially sensitive data as they do not consider the request to meet the test set out in PD18 1.2, in that the information does not cover matters which are reasonably necessary and proportionate to enable the Defendant to prepare its own case.

Given the Medical agencies [sic] comments, and the fact they confirm they have been successful in resisting an application made against a Claimant pursuant to CPR Part 18 Request for Further information, namely the MRO fee breakdown, we will not be pursuing the part 18 request any further.'

2.8. The Defendant has now applied to me for an order requiring a substantive response.

3. Premex is an MRO which provides services to the legal sector to assist in the resolution of personal injury disputes. It has a relationship with a number of medical experts, whom it instructs to provide CPR Part 35 reports on behalf of claimants and their solicitors. It is common ground that the Disbursement is made up of two broad elements: (i) the amount paid or payable to Dr Luscombe by Premex for his consultation and report ('**Dr**

Luscombe's Fee'), and (ii) an amount retained by Premex, representing payment for its services and administration ('**the Premex Costs**').

4. The application is made against the background of significant controversy in the County Court about whether a claimant in a fixed costs case such as the present is obliged to (or if not, whether she should as a matter of good practice or otherwise) disclose a breakdown of a disbursement paid to an MRO, in order that the defendant and the court can know what proportion of the disbursement represents a payment to the expert and what proportion represents payment to the MRO for its (non-reporting) services.

5. In considering the application, I have had the benefit of submissions by Mr Finn for the Claimant and Mr Miller for the Defendant. They can be assured that I have considered all of their arguments, even where I do not refer to any particular submission in this judgment. Each cited several decisions of the County Court in support of their position, though quite properly neither suggested that I was bound by them. They are merely illustrative of some of the approaches adopted by the district and circuit benches, and many were made in different contexts from the present circumstances, which concern a CPR Part 18 application made before an application for determination of fixed costs and disbursements. What they reveal is that there is as yet no settled practice in the County Court. To address a submission tentatively made by Mr Miller, I am unable to discern any particular 'trend' in these cases, and even if I had been able to do so, I would not have been bound to follow it if I concluded that the 'trend' was wrong. I must decide this application on the basis of the evidence and of principle.

Part 18 Requests

6. Although his skeleton argument asserted that CPR Part 18 was inapplicable, in the course of his oral submissions Mr Finn accepted that, if there was any power to order a breakdown of the Disbursement in a situation such as the present (where there is to be, or may be, a determination of costs), it was exercisable via the CPR Part 18 procedure. Mr Finn's concession is right. Given that an application for a costs determination is not a detailed assessment process, the skeleton argument's reference to detailed assessment was misplaced.

7. CPR r.18.1 and r.18.2 provide:

'18.1

(1) The court may at any time order a party to –

(a) clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in a statement of case.

(2) Paragraph (1) is subject to any rule of law to the contrary.

(3) Where the court makes an order under paragraph (1), the party against whom it is made must –

(a) file their response; and

(b) serve it on the other parties,

within the time specified by the court.

18.2

The court may direct that information provided by a party to another party (whether given voluntarily or following an order made under rule 18.1) must not be used for any purpose except for that of the proceedings in which it is given.'

8. CPR PD18 para.1.1 requires that, before an application is made, a party seeking to obtain an order of the court under CPR r.18.1 must first have served a written request for clarification or information. CPR PD18 para.1.2 provides:

'A Request should be concise and strictly confined to matters which are reasonably necessary and proportionate to enable the first party to prepare his own case or to understand the case he has to meet.'

9. The court has a discretion under CPR r.18.1 as to whether to order a party to clarify a matter or give additional information. That discretion is not unfettered, since it must be exercised in accordance with the overriding objective (CPR r.1.1). Further, given that an application will be preceded by a written request served under CPR PD18 para.1.1, I should be particularly concerned with the whether the matters raised in a request satisfy CPR PD18 para.1.2. An assessment of proportionality requires me to weigh up, insofar as these matters are evidenced or can be estimated, the benefit to the Defendant of receiving the information or clarification against the cost to the Claimant of giving it: see notes to the White Book 2024 (Volume 1) at para.18.1.10.

Section IIIA of CPR Part 45

10. Under Section IIIA of CPR Part 45, *'the only costs allowed [to the Claimant] are – (a) the fixed costs in rule 45.29C; (b) disbursements in accordance with rule 45.29I'*: CPR r.45.29B. CPR r.45.29I provides, insofar as is relevant:

'(1) Subject to paragraphs (2A) to (2E), the court—

(a) may allow a claim for a disbursement of a type mentioned in paragraphs (2) or (3); but

(b) will not allow a claim for any other type of disbursement.

(2) In a claim started under the RTA Protocol…, the disbursements referred to in paragraph (1) are—

(a) the cost of obtaining medical records and expert medical reports as provided for in the relevant Protocol…'.

11. Mr Miller accepted for the purpose of this application that CPR r.45.29I(2)(a) in principle permits the Claimant to recover the Premex Costs as a disbursement, as well as Dr Luscombe's Fee.

12. CPR r.45.29I(1) makes clear that the court has a discretion but not an obligation to allow the listed disbursements (*'may'*). The Premex Costs to some extent cover the work that would traditionally have been done by the Claimant's solicitors in instructing Dr Luscombe. If that work had been done by the Claimant's solicitors, their costs would not have been subject to quantification, because the fixed costs regime is not subject to the indemnity principle: *Nizami v Butt* [2006] 1 WLR 3307. However, determination of the Disbursement is excepted from this principle. Because the Disbursement is not fixed and because any determination will be on the standard basis, the amount payable will eventually be determined (if necessary) by reference to proportionality and reasonableness under CPR r.44.4(1)(a), with the benefit of the doubt given to the Defendant.

Evidence

13. In addition to the evidence in section 10 of the application notice (which is supported by a statement of truth signed by the Defendant's costs draftsperson), I was taken to Dr Luscombe's report, the disbursement voucher or application for payment, the Claimant's Reply and a letter from Premex to the Claimant's solicitors dated 15 March 2024 which was attached to the Claimant's Reply ('**the Premex Letter**').

14. Neither party served a witness statement. Nor have I been provided with a copy of the terms governing the relationship between Premex and the Claimant (or his solicitors).

15. Section 10 of the application notice is largely a citation of certain County Court decisions, and does not take the matter further.

16. Dr Luscombe's report is 38 pages long, including appendices. Its main body runs from pages 5 to 20. It identifies that the Claimant was examined in Plympton, Devon, on 25 August 2023 for 90 minutes and that the report was written or finalised on 4 October 2023. The detail of the physical examination takes up one page, and the opinion, prognosis and

conclusion section runs from pages 11 to 19, with a useful summary on page 20. I do not intend to suggest that the work carried out by Dr Luscombe can be reduced to a Gradgrindian calculation of the number of pages written, but the volume of the report has some illustrative value nonetheless. The report is, in my view, careful and precise. It appears to have taken into account all relevant factors affecting the matters to which Dr Luscombe had to speak, while remaining commendably and sufficiently brief for clarity. I have no doubt but that it would have been of assistance to a judge if the matter had come to trial.

17. The voucher supporting the claim to the Disbursement is dated 12 October 2023. It reads: *'Main Report with Review of Medocs // Dr Francis Luscombe (Anaesthesia and Pain Management) // £5,880.00'*.

18. The first half of the Premex Letter is worth citing in full (with my emphasis added):

> *'While the tactical approach to be taken in respect of the claim for costs overall and the response to the Part 18 request in particular is a matter for you,* ***we are presently unwilling to provide commercially sensitive data*** *in response to a request which we do not consider to meet the test set out in PD18 1.2, in that* ***the information does not cover matters which are reasonably necessary and proportionate to enable the Defendant to prepare its own case or understand the case it is required to meet*** *– the amount of the invoice is known and the Court has a fee note setting out the total 'retail' cost of the report. The 'wholesale' cost of the report will not assist it to determine the right amount which (a) the Claimant is liable for and (b) the reasonably [sic] amount of (a), which Defendant should indemnify pursuant to the order for assessment in this case. We would suggest that the fact that the Defendant has been able to advance offers towards the report fee demonstrates that the information is not necessary.* ***Providing the requested response to the Part 18 request would, in our view place a disproportionate burden of disclosure upon a commercial entity that is not party to these proceedings****.*
>
> *The recent decisions in Wilkinson-Mulvanny v UKI ([2023] (CC (Cardiff), Regional Costs Judge Phillips) and Sephton v Anchor Hanover Group ([2023] (CC (Liverpool) Regional Costs Judge Jenkinson), along with Beardmore v Lancashire CC [2019] (CC (Liverpool), HHJ Wood KC), all confirm that a breakdown is not required in order to assess a fee. We submit that the dicta in Wilkinson-Mulvanny, Sephton and Breadmore should apply, and the court should assess the fee, with just the evidence before it in the form of the MRO fee note, along with any supporting information, resolving any doubt in favour of the paying party. That is particularly so where, as here,* ***the requested information simply does not exist and/or is not in possession of the Claimant or their solicitor****. Any conduct issue for failing to serve an expert's fee should be dealt with by way of an order in respect of the costs of the assessment, and nothing more.*
>
> *Of course, the response to be provided to the Defendant is a matter for you to decide, and if you do not agree that the request should be opposed, then it is for you to decide how you go about discharging your duty under the overriding objective of the CPR to try and answer the Part 18 request. However, at this time,* ***we are not persuaded that we ought to disclose any further information to either party****.*

In the event that the Defendant applies to the Court, you will no doubt wish to consider putting forward witness evidence to demonstrate your efforts to obtain the requested information. We would be grateful if you could please keep us up to date as the matter progresses. ***If the Defendant's application ultimately proves successful, we would ask that a direction please be sought under CPR 18.2.'***

19. A number of points arise from my reading of the Premex Letter:

19.1. Premex says that the information sought is *'commercially sensitive'* but gives no further explanation to support this conclusion.

19.2. It argues that to respond to the Request would place a disproportionate burden on it. It does not explain what work would need to be done in order to respond.

19.3. Although it says that the information *'simply does not exist'*, this appears to be because it says that the Claimant's solicitors do not have access to it. A plea of non-existence is inconsistent with its request that, if the Claimant is ordered to respond to the Request, the court should be asked to make a direction under CPR r.18.2, i.e. that the information must not be used for any purpose except for that of the proceedings in which it is given. It is at the least implicit in this that Premex accepts that it is in principle able to provide the information requested. In my judgment, the statement is also a concession that, if an order would made requiring a response to the Request, Premex would provide the relevant detail to the Claimant: if otherwise, why ask the Claimant to obtain a CPR r.18.2 direction?

Parties' Submissions

20. Briefly, Mr Miller contends that:

20.1. It is not open to the Claimant to rely on the fact that Premex is a third party. Premex is the Claimant's agent or sub-agent. The instruction of an expert is quintessentially within the scope of a solicitor's job. In *Gempride Ltd v Bamrah* [2018] EWCA Civ 1367, it was held at para.26(i) that:

'A solicitor as a legal representative owes a duty to the court, and remains responsible for the conduct of anyone to whom he subcontracts work that he (the solicitor) is retained to do. That is particularly so where the subcontractor is not a legal representative and so does not himself owe an independent duty to the court.'

20.2. I should follow the reasoning of His Honour Judge Cook in *Stringer v Copley* (17 May 2002) where he said that:

> *'...whilst there is much to commend the use of medical agencies, it is important that their invoices (or "fee notes") should distinguish between the medical fee and their own charges, the latter being sufficiently particularised to enable the costs officer to be satisfied that they do not exceed the reasonable and proportionate costs of the solicitor doing the work.'*

20.3. In a case like the present, the paying party should be able to understand what she is being asked to pay, so it is material to the ultimate determination of proportionality to ask what part of the Disbursement represents the fees paid to Dr Luscombe and what proportion was retained by Premex.

20.4. The onus is on the Claimant to be open and clear about his disbursements claim and to justify it. There should be 'equality of arms' between the Claimant and the Defendant. The Claimant knows, and can find out, a fact of some importance which the Defendant does not know.

21. Mr Finn argues:

21.1. It would be pointless to require a further response to the Request. Asking the question again will not elicit a different answer, given the contents of the Premex Letter. It is implicit in the Claimant's Reply that the Claimant's solicitors do not have the power to force Premex to respond: that is the tenor of the email taken as a whole.

21.2. Courts are quite capable of conducting costs assessments and determinations in relation to MRO disbursements without a breakdown of the fees. The paying party can make submissions on reasonableness and proportionality, either by reference to the court's general experience or by reference to specifically adduced evidence.

21.3. In a determination, the court will solely be concerned with whether the global fee is reasonable and proportionate. It is therefore not necessary to require a reply to the Request.

Analysis and Decision

22. I must first address the argument that the Claimant has already answered the Request, and is unable to force Premex to tell him anything more. The former assertion proves too much: the Claimant's Reply is substantially not an answer but a summary of the Premex Letter, and if I otherwise consider that the Claimant should provide further detail I am not constrained by the content (or lack of content) of the Claimant's Reply. The latter assertion must be evidenced if I am to be satisfied that the Claimant has proved it to the civil standard.

23. Dr Luscombe is the Claimant's expert, instructed by or on behalf of the Claimant after he (and nobody else) was given the permission of the court to rely on Dr Luscombe's report. Those circumstances present a *prima facie* reason to conclude that the Claimant can tell the Defendant how much Dr Luscombe was paid for his work. The Claimant has not disclosed the terms of any agreement with Premex, and I therefore have no documentary evidence which might lead me to conclude that the Claimant is unable to compel Premex to tell him the breakdown. I do not accept Mr Finn's characterisation of the Claimant's Reply as in some way containing evidence that the Claimant is unable to compel Premex to respond. It simply makes no reference, expressly or implicitly, to the Claimant's lack of compulsive powers with respect to Premex.

24. The Premex Letter contains an assertion to that effect, but it is for the reasons I have given unsupported by anything except its own vehemence. Furthermore, in my reading, what Premex is saying in the Premex Letter is that it would, however reluctantly, disclose the information necessary to enable the Claimant to respond if an order was made. I am entitled to take it at its word.

25. For these reasons, I do not consider that the argument from lack of compulsive power is meritorious. I do not therefore need to decide whether *Gempride* is authority for the proposition that the reluctance of Premex is in any event not a permissible answer to the application because Premex is the Claimant's (or his solicitors') agent. My preliminary view is that *Gempride* was decided in a very different context, namely that of a solicitor who had certified a misleading bill of costs in reliance on the erroneous statements of a costs draftsperson. The Court of Appeal was not concerned with agency, but instead with conduct and responsibility for that conduct. It does not appear to me that the statement at para.26(i) should be divorced from that context.

26. I go on to consider whether the further information requested is reasonably necessary to enable the Defendant to understand the case he has to meet (i.e. in the determination of costs) or to prepare his own case, and whether to order a reply would be proportionate to the matters in issue.

27. CPR r.45.29I(2)(a) itself is silent as to whether *'the cost of obtaining medical records and expert medical reports'* should be assessed by reference to a global invoice only or by reference to an invoice showing a breakdown of the global fee. It does not direct the costs judge that she must only be concerned with the global fee. In the present application, I am

only concerned whether I should exercise my discretion to order a reply to the Request, so that the Defendant may have a breakdown available to him (and by extension so that any costs judge may have a breakdown available in a determination).

28. The Disbursement covers some of the work which would have been subject to fixed costs if it had been done by the Claimant's solicitors, but will fall to be determined if not agreed and is therefore subject to the principles of reasonableness and proportionality: see paragraph 12 above. Although any doubt about reasonableness or proportionality will be resolved in favour of the Defendant under CPR r.44.3(2)(b), this does not mean that there are no circumstances in which the Claimant should be obliged to give more information about a disbursement. In an application under CPR Part 18, whether I should make an order depends on the context of the application and of the case.

29. I accept that costs judges (including me) have made decisions about disbursements in fixed costs cases without a breakdown. This proves no more than that a breakdown has not historically been treated as absolutely indispensable to an assessment or determination. That is not the test I have to apply, which instead is one of reasonable necessity. Moreover, it is obvious from the County Court cases to which the parties have taken me that determinations are sometimes with great reluctance: see *Charman v John Reilly (Civil Engineering) Ltd* (22 May 2013, District Judge Woodburn), *Wilkinson-Mulvanny v UK Insurance Ltd* (19 Jan 2023, District Judge Phillips) (in which the Judge expressly *'encourage[d]'* parties to provide breakdowns in the future) and *Aminu-Edu v Esure Insurance Company Ltd* (8 March 2024, His Honour Judge Saggerson).

30. In this case, the Disbursement is £5,880 plus VAT, in the context of a claim which was allocated to the fast track; I agree with Mr Miller that the sum raises immediate concerns about its proportionality, and that a breakdown of its constituent parts may assist a costs judge in her proportionality assessment. If, for instance (without intending to affect the result of an application for determination), £1,500 was paid to Dr Luscombe, the court might well conclude that that was proportionate, but that £4,380 was not a proportionate or reasonable sum with respect to the Premex Costs. The categories of work comprising the two elements are very different. Indeed, it is not difficult to imagine the hypothetical costs judge coming to different conclusions on exactly the same global sum, depending on the breakdown. These sorts of arguments are only available to the Defendant if a breakdown is provided.

31. The parties are required to help the court to further the overriding objective: CPR r.1.3. Part of dealing with a case justly includes acting with a view to saving expense: CPR r.1.1(2)(b). The Defendant is therefore obliged to consider whether to accept the Disbursement or to make a counter-offer, with a view to avoiding the costs of a determination. To make an informed decision, the Defendant needs to have information. In some cases, the MRO's global fee will or ought to be enough for it to do so. I accept that in this case, given the amount of the Disbursement in the context of the pleaded value of the claim, I agree that the Defendant is justified in saying that it needs more information to consider its position.

32. In my judgment, the Defendant is reasonably entitled to be in a position to know what the calculated basis of the Disbursement is, in order that it may accept or challenge it as appropriate. I conclude that the information the Defendant seeks is reasonably necessary for it to understand the Claimant's claim to the Disbursement and for the Defendant to prepare its own case in response.

33. As to proportionality:

    33.1. I take into account that a fixed costs determination is not intended to be as intricate as a detailed assessment. The process *'inevitably contains swings and roundabouts, and lawyers who assist claimants by participating in it are accustomed to taking the rough with the smooth'*: *Sharp v Leeds City Council* [2017] 4 WLR 98 at para.41, *per* Lord Justice Briggs. A defendant must also take the rough with the smooth.

    33.2. However, (i) the Disbursement is substantial when compared to the pleaded value of the claim, and (ii) the Claimant has not offered any evidence of what the costs of providing a response might be. On the evidence and from obvious inference, Premex is capable of telling the Claimant's solicitors the sum of Dr Luscombe's Fee; indeed, there is no evidence that Dr Luscombe himself would be unable to do so. In the absence of an evidenced explanation otherwise, it is difficult to imagine how it would be an especially time-consuming or expensive exercise to provide information about Dr Luscombe's Fee.

    33.3. Therefore, it would not be disproportionate to require a response in this case.

34. Commercial sensitivity is not a sufficient reason to refuse to make an order under CPR Part 18, and has not in any event been explained or evidenced beyond Premex's assertion. I am satisfied that a direction under CPR r.18.2 would suffice to allay any concern.

35. In conclusion, therefore, ordering a reply to the Request is reasonably necessary and proportionate to the matters now at stake in these proceedings. I shall exercise my discretion in favour of requiring the Claimant, by a date to be determined when I hand down judgment, provide a response to the Request, albeit slightly tweaked. I suggest the following, but will hear submissions on the precise words:

With respect to the application for payment of the sum of £7,056.00 (including VAT) dated 12 October 2023 citing request number OT/1665599, identify the total sum paid or payable to Dr Luscombe in respect of his expert report in claim number G33BI961.

36. That ought to be sufficient to provide the Defendant with the information he needs, given that I have been told that the balance of the Disbursement will be the Premex Costs. If that is incorrect, doubtless Premex will volunteer a more detailed explanation.

37. I will give a direction under CPR r.18.2. A similar restriction on use would apply to disclosed documents under CPR r.31.22 and to witness statements under CPR r.32.12 (subject in each case to specified exceptions). A CPR Part 18 request is obviously different from these, but I see some force in the suggestion that there is a starting point that information disclosed in the course of proceedings should *prima facie* be restricted to use in those proceedings at least until used in a public hearing. Taking into account the Premex Letter, it seems to me that it is fair to restrict the use of the information accordingly.

38. Finally, the Defendant has invited me to impose a sanction for non-compliance by way of disallowing any of the Disbursement. In my judgment, a failure to comply must carry some consequence. Otherwise the order would be toothless; the Claimant could choose not to reply and leave it to a costs judge to assess the Disbursement globally. However, the proposed sanction is too draconian. It is more satisfactory to identify a specified sum that the Claimant will recover unless a reply is given. In calculating that sum I must endeavour to calculate a minimum reasonable and proportionate sum, erring squarely in the Defendant's favour out of an abundance of caution. Taking into account what I have said about Dr Luscombe's report, I will order that unless the Claimant provides a response by the date to be determined, the Disbursement shall be assessed in the sum of £1,500 plus VAT. I should follow my own prescription and give a breakdown: this allows a sum of

£1,250 for Dr Luscombe's Fee, with the £250 balance representing the Premex Costs. This is not intended in any way to fetter the discretion of a costs judge on determination.

Deputy District Judge Ross Fentem
14 May 2024