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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
On Appeal from the County Court at Luton & Oxford
Decisions of HHJ Bloom & HHJ Clarke
Claims F00LU431, G01LU395 & H00WD393

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/05/2023

Before :

MR JUSTICE COTTER

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Between :

(1) Scott Halborg **(2) Halborg Limited** **- and –** **(1) Albert Halborg** **(2) Eileen May Halborg** **(3) More 2 Life Limited**	**Claimants/ Appellants** **Defendants/ Respondents in Claim: F00LU431**
(1) Scott Halborg **(2) Halborg Limited** **- and-** **(1) Hollingsworths Solicitors** **(2) Gregory Hollingsworth** **(3) Stephen Taylor**	**Claimants/ Appellants** **Defendants/ Respondents in Claim G01LU395**
Scott Halborg (formerly trading as Halborg & Co Solicitors) **-and-** **Eileen Halborg**	**Claimant/ Appellant** **Defendant/ Respondent in Claim H00WD393**

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Mr M Ashdown (instructed by **Deals and Disputes LLP**) for the **Appellants**
Mr S Taylor (instructed by **Hollingsworths Solicitors**) for the **Respondents in Claim F00LU431**
Mr B Wood (instructed by **Reynolds Porter Chamberlain**) for the **Respondents in Claim G01LU395**
Mr A Nicol (instructed by **Mills and Reeve**) for the **Third Respondent in Claim G01LU395**

Hearing dates: 21 April 2023

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Approved Judgment

This judgment was handed down remotely at 10:30am on 19 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE COTTER

Mr Justice Cotter :

Introduction

1. This is a judgment on costs issues following on from an appeal hearing in relation to two county court claims. I had hoped to deal with costs issues in a short extempore Judgment after my Judgment on substantive appeals, but the hearing overran.

2. To fully understand this Judgment it is necessary to read my lengthy Judgment of 23rd June 2022 following the two day permission to appeal hearing, addendum Judgment dated 13th July 2022 and also my Judgment on the appeals.

3. The original extent of the appeals lodged in the claims was extraordinary amounting to a combined group of 24 appeals in 11 appeals notices with some 169 grounds of appeal. The applications for permission to appeal mainly related to case management decisions although some relate to civil restraint orders (one limited and one general). Eventually I granted permission on just six grounds, in all but one case[1], in relation to costs issues likely to be of very limited financial significance. They were correctly described by the Solicitor Respondents as "relatively insignificant". Mr Nicol described them as "pointless in the grand scheme of things".

4. I expressed my view that the appeals should be the subject of compromise. Ordinarily I could have expected that given the very modest amounts at stake, the Court would not be troubled further. However Mr Halborg does not conduct litigation in an ordinary manner. That, as a solicitor, he has been made the subject of both a limited and then a general civil restraint order speaks volumes.

5. To give an indication of what the court faced at the permission stage Mr Ashdown filed 79 pages of skeleton argument on behalf of the Appellant. There were 8 volumes within the appeal bundle running to some 2,527 pages; excluding two lever arch files of authorities. As Mr Wood correctly observed in his skeleton argument for the permission hearing

> "the sheer volume of material before the Court – and the number and extent of the issues sought to be raised by the applications – makes it impossible to identify what is strictly necessary to have pre-read and what else can safely be disregarded unless it is referred to during the course of submissions."

6. As I stated in the permission Judgment the taking of a wide range of points accompanied by a large amount of documentation is undoubtedly part of an established pattern of behaviour of Mr Halborg. Multiple applications, including challenges to virtually every decision of court, even administrative ones, with prolix tendentious statements accompanied by voluminous documentation are his hallmark.

[1] In respect of Appellant's Notice QA-2022-000051 dated 2nd March 2022 ground 5 was in relation to the issue of whether the judge was entitled to order the Appellants to pay interest at the Judgments Act rate on an interim costs order. This ground, which concerned a sum of £199 became academic as it was indicated that this sum would not be claimed by the Respondent.

7. The sheer breadth of the permission's applications meant they could not be dealt with efficiently on paper. As a result, I listed them initially for an oral hearing of one day for the first nine appeal notices and when the final two appeal notices were filed, I ordered that they be determined immediately after the first nine on the following day. In these wholly exceptional circumstances I took the unusual step of ordering the attendance of the Respondents at the permission hearing. The hearing would have been unmanageable otherwise. If permission had been granted on all or even a significant majority of the appeals lodged, because I failed to fully understand all the relevant circumstances, it would have been necessary to set aside many days of court time for the hearings.

8. Following the hearings on 9th and 10th June 2022 the order was that, save that (i) permission was granted on six grounds and (ii) the Appellants' application for permission to appeal in respect of Appellant's Notice QA2021-000292 dated 24th December 2021 was adjourned until further order (this concerned the refusal of Her Honour Judge Bloom to recuse herself and had become academic); permission was refused on all grounds.

9. I shall turn to the various attempts made to compromise the appeals in due course. I listed these appeals for one hour given the limited amounts at stake and my anxiety that further court time not be expended on these actions on a wholly disproportionate basis. Apart from the hearings in these appeals a great deal of time has been spent, in my view often wholly unnecessarily on arguments on various ancillary issues such as listing. Despite my best efforts the hearing took a day.

10. After hearing the permission applications I sat as a County Court Judge in the Trust Claim so that I could give directions to progress the underlying actions as the six appeal grounds only related to costs issues, so it was not necessary to hear them before the actions could progress.

11. The next step in Claim G01LU395 was the hearing of Defendants/Respondents strike out applications. They were heard by Her Honour Judge Walden-Smith on 30th and 31st March 2022. Just before the hearing the action was compromised between the Claimant and the Solicitor Respondents in terms embodied in the order. The Claim was dismissed with the Claimants paying the Respondents' costs in the sum of £45,000. However the agreement reached expressly did not cover the issues (and costs) to be determined on the appeal. HHJ Walden-Smith then heard the application made by the Barrister Defendant which remained live[2]. Her Judgment concluded:

> "In all the circumstances, therefore, this claim will be struck out as being one that is totally without merit as a matter of law, disclosing no reasonable grounds for bringing the claim. That is 3.4(2)(a). As a matter of my judgement, if I were wrong about that and on the basis of that which I have heard and read, this claim will nonetheless be struck out as an abuse of the court process. It is also litigation that is likely to obstruct just disposal of the underlying case"

[2] HHJ Walden-Smith noted; "the Judges who have had dealings with this matter over last years made clear their own dismay about the manner in which this case has being conducted. It is a claim and a case which, in the scheme of cases heard by me in this court, is for a relatively modest sum…. Despite this, the manner in which Mr Halborg argues his cases pulls into his orbit an unnecessarily large part of the court's very limited resources".

12. Within her Judgment the Judge considered the abusive nature of the litigation as follows;

> "Dealing then with the abuse beyond the abuse of simply arguing an academic case, in my judgment, Mr Halborg's motivation in this matter has been clear. It forms part of the whole of his behaviour through this litigation. He has, as set out in his own words, seen the involvement of solicitors and counsel in this case as a massive barrier to any settlement and, in his witness statement he has set out that the involvement of lawyers has substantially hindered Mr and Mrs Halborg who he refers to as "their purported clients", with respect to any prospect of settlement.
>
> Continuing this litigation against the Third Defendant having settled against the 1st and 2nd Defendants, is, again all part of the same course of conduct that has led to this wholly disproportionate litigation and the multitude of orders that have been made, including a multitude of costs orders made against the claimants and the civil restraint orders that have been made.
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> Mr Halborg himself, in various witness statements, says that he has perfectly justified motives for bringing these claims. I do not deny that he does so but looking at the matter as a whole, the bringing of the claim at the time that it was does suggest that this was a thinly veiled attempt to disrupt Mr and Mrs Halborg having representation during the substantive proceedings. Mr Halborg himself may not recall even why he started this litigation, but by standing back, in the way that the court can, it is apparent that there were motivations which were not relevant to the litigation itself."
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> "… in my judgement this litigation was issued for the purpose of disrupting the ability of the defendants in the underlying action to proceed appropriately in their own defence. It is therefore for ulterior purposes and, on that basis, is appropriate to be struck out as an abuse".

13. HHJ Walden-Smith ordered that the Claimant pay the Defendants' costs on an indemnity basis at paragraphs 78-80

> "In both cases, it is clear to me that this is a matter that does fall within the indemnity costs regime. Very much these cases are out of the ordinary. The claim itself has been struck out principally, or at least on the first grounds, that there is no cause of action that can be brought forward and therefore it is appropriate for the claim to be struck out pursuant to the provisions of CPR 3.4(2)(a). As I made clear in my judgment, the arguments that have been raised as a matter of law do not, in my judgment, withstand scrutiny and the law on this matter is clear.
>
> In those circumstances, in my judgment, it would be appropriate in the unusual circumstances of such an academic argument being raised inappropriately, in my judgment, for indemnity costs to be awarded but in the circumstances of this matter, where as a separate matter I would have, in any event, struck out this claim for the abuses which I have referred to in detail in my judgment, I would order costs on an indemnity basis.

> So far as the application itself is concerned, again, it should have been a matter that was dealt with not by being argued in full in court. It is not appropriate, as has been said, by counsel for the claimants to look at the matter with hindsight but the manner in which this has been dealt with, with respect to the application, is, again, entirely out of the norm. There has been nothing to indicate that the claimants have been willing to behave in this case in an appropriate way and, in all the circumstances, it is appropriate that the party who has been at the wrong end of that behaviour is compensated in an appropriate way, I will order indemnity costs on the application as well as on the action."

14. At the appeal hearing the Appellants succeeded on only one ground in relation to the inspection application against the Barrister Respondent. The Appeals failed entirely against the Solicitor Respondents and the Respondents in the Trust Claim.

Issues

15. Each of the Respondents sought their costs of the appeals (to include in relation to the permission hearings) on an indemnity basis.

16. Mr Ashdown conceded that;

(a) The Solicitor Respondents were entitled to their costs of the appeal hearing and "reasonable and proportionate costs of attendance at the permission hearing" on a standard basis;
(b) The Trust Respondents were entitled to their costs of the appeal hearing and "reasonable and proportionate costs of attendance at the permission hearing" on a standard basis;
(c) The Barrister Respondent was entitled to costs of the appeal hearing and "reasonable and proportionate costs of attendance at the permission hearing" on a standard basis; such costs to be reduced by 20% to reflect the success on the single inspection ground.

Relevant principles

17. The starting point is set out at CPR 44.2 (2)

> "(2) If the court decides to make an order about costs –
> (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party;"

The rule continues;

> "(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
> (a) the conduct of all the parties;
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

(5) The conduct of the parties includes –
(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim."

18. I start with what I view as a straightforward issue under 44.2 (4)(c) which arguably also falls under 44.2(4)(a) and 44.2(5)(b) and (c)

Offers

19. When granting permission on the one ground which was eventually successful I stated:

> "In relation to the application for inspection of the documents referred to in the Barrister Defendant's defence, the Judge found the application to be "wholly misconceived" for the reason she sets out at paragraph 76 and 77 of her judgment. Further it could properly have been made in the Trust Claim; a perfectly legitimate way of accessing the documents but the Claimant chose to issue it in the lawyer action. Mr Ashdown conceded that if the Judge was properly able to dismiss the application (as in my Judgment she unarguably was) then an order for standard costs was properly within her discretion. However, he argued that the Judge went too far and exceeded the generous discretion that was available to her when considering the costs of a case management order. It is arguable that the issue of costs of this application became swept up with other elements, such as in relation to the seven TWM applications that did warrant an order for indemnity costs. After careful consideration, there is sufficient merit in this argument to warrant the grant of permission to appeal. The respondents should reflect on whether they wish to make a concession that only standard costs were properly awardable"

20. By a letter of 4th July 2022 solicitors acting on behalf of the Barrister Respondent wrote to the Appellant's solicitors setting out his position that in relation to the inspection of documents ground of appeal the fees in totality would be "measured in the small hundreds of pounds", with the difference between the bases of assessment being "measured in a fraction of that sum". It was suggested that the appeal on this point be withdrawn on the basis of a reduction of £200. Offers were also made to compromise other aspects of the Appeal (in relation to ground covering the 2nd March 2021 application), it was suggested that the appeal on this point be withdrawn on the basis of a reduction of £200.

21. Also by a letter of 4th July solicitors acting for the Respondent in the Trust action wrote to the Appellant setting out as follows;

(a) In relation to the informal application of 15th March 2021 no costs were incurred
(b) In relation to the application of 5th July 2021. A figure of £235 plus VAT (one hour's time) was identified "but this did not form part of the statement of costs" The Appellant was therefore invited to acknowledge that the appeal was unlikely to result in any material difference to the sums payable.
(c) In respect of the application of 8th April the total costs (inclusive of VAT) were £1,609.20. The Appellant was therefore invited to acknowledge that the appeal was unlikely to result in any material difference to the sums payable
(d) In relation to the balance of the costs for the hearing it was difficult to readily separate out costs. In order to allow the case to move forward without delay a reduction of £500 was offered.

22. Finally and also by a letter dated 4th July 2022 the Solicitor Respondents repeated an offer already made in submissions dated 21st June 2022 to compromise the appeals. In broad terms they offered to accept a reduction of £1000 in their assessed costs.

23. In respect of the ground concerning inspection of documents I stated in my further judgment of 13th July 2022;

> "The Barrister Defendant has made a concession (see note of 22nd June 2022 and letter of 4th July 2022). The effect of the concession on the amount of recoverable costs (which may be minimal if any) is not for me to determine at an appeal hearing. The parties should be able to draw up a consent order. If not it is again the case that it should not occupy much of the Court's time."

24. On 1st September 2022 solicitors in the Lawyers Claim sent a joint letter asking the Appellants to

> "…engage with us now to explore a means by which the appeals can be compromised prior to the hearing due to take place some point in 2023 so we can collectively avoid further unnecessary costs being incurred."

The letter referred to the proposals that had already been made and stated that if these were not acceptable could the Appellants put forward some alternative offer.

25. On the 12th of April 2023, a further letter was sent by the Respondents expressing disappointment at the lack of any response to the letters of the 4th July and 1st September 2022. It pointed out the results of the recent hearing before HHJ Walden-Smith and asked what the Appellant's "ideal outcome" would be so as to avoid further costs.

26. There was no substantive response to the offers set out in the letters of 4th July 2022. What I referred to during the hearing as a "deafening silence".

27. Eventually by an e-mail dated 14th April 2023 the Appellants offered to compromise all the appeals on the basis of the respondents agreeing to a total deduction of £2,850 broken down as follows

(i) Mr and Mrs Halborg £600
(ii) Hollingworth and Gregory Hollingworth £1500
(iii) Stephen Taylor £750

By an email of 17th April the Appellant reduced the sum at (ii) above to £1,000.

Conclusion upon admissible offers

28. It is clear that the Appellants should have accepted the offers of the 4th July 2022 (and in the case of the Solicitor Respondents previously made on 21st June 2022). The Appellant has failed to beat those offers (no submission was made by Mr Ashdown that this was not the case in respect of the single successful ground and it would be disproportionate and wrong in principle for me not to make an assessment that is indeed the case at this stage). However matters go much further than simply failing to beat an admissible offer (not being a Part 36 offer). In my judgment it was wholly unreasonable not to accept them and it was a further reflection of Mr Halborg's general and overarching failure to conduct litigation reasonably. I had made it as clear as I could that that the future of the appeals should be the subject of compromise given the very modest amounts at stake. Their future progression was clearly going to be a disproportionate distraction within this litigation with its most unfortunate drawn out history. Each of the Respondents took this fully on board but the Appellants did not. They made eminently reasonable suggestions that were not even afforded the courtesy of a response. Mr Ashdown's argument that it was reasonable not to accept the offers because they suggested the appeals be dismissed leaving the Appellant open to costs orders ignores this complete failure to engage (despite being pressed to do so). A compromise could have been reached to preserve any costs issues whilst dismissing the appeals. As it is the Appellants have very largely lost. I well recognise the high bar for an order on the indemnity basis, but this conduct clears it. Indeed as I suggested to Mr Ashdown during his submissions it was a paradigm of unreasonable conduct.

29. Accordingly each of the Respondents should have their costs of the appeal on an indemnity basis from the date when the offer should have been accepted.

30. For the avoidance of doubt I reject the submission that the Barrister Respondent's costs of the appeal hearing should be reduced by 20% to reflect success on the issue. The appeal should never have got as far as a substantive hearing. I will reduce the costs by 5% to reflect very limited unnecessary work before and at the Appeal hearing. I do not regard this as de minimis.

31. I now turn to the balance of the arguments which supported the Respondents' claims for indemnity costs.

Respondents in the Trust action

32. I have had the benefit of considering in detail all of the grounds and arguments advanced by the Appellants and take into account that arguments/submissions were made by the Appellant's Counsel (who saw some merit in them).

33. True it is that overall, the conspicuous lack of success on appeal further evidences Mr Halborg's underlying approach to litigation generally. Mr Taylor submitted that it also must be borne in mind that he is a solicitor. Mr Halborg vigorously, and in my judgment

often indiscriminately and unmeritoriously, challenges virtually everything said may be said or done by an opposing party or a Judge which he does not agree with. He appears astonished when someone does not do what he suggests they must do. Overall his conduct is out of the norm. However, I have to carefully analyse these appeals and assess if the basis for an indemnity order is made out. As Mr Ashdown correctly stated, neither the fact of so many grounds having been advanced nor refusals of permission will ordinarily justify a punitive order of itself without more. I have carefully considered all relevant matters including all aspects of conduct but I do not think it appropriate to award the Trust Respondents' costs of the appeal throughout on an indemnity basis. Costs from 5th July 2022 shall be on an indemnity basis due to the failure to accept the offer of 4th July 2022 or even respond/negotiate.

34. I will return to issues in relation to the permission hearing.

The Lawyer Respondents

35. Mr Wood and Mr Nicol both submitted that the Respondents which they represented should receive their costs of the whole appeal process on an indemnity basis as the whole lawyer claim (and its conduct) had been abusive and without merit "from beginning to end" and as a result "out of the norm" (adopting the phrase used by the Court of Appeal in **Excelsior Commercial** [2002] EWCA Civ 879). They relied on the order/findings of HHJ Walden-Smith. Mr Wood submitted that they were a binding determination of the conduct/merits of the action as a whole. Put simply it should never have been commenced.

36. Mr Ashdown submitted that it would be wrong as a matter of principle to "read across" from HHJ Walden-Smith's judgment and, in effect, that I should ignore it and reach my own conclusion solely in relation to the appeals.

37. I reject the submission made by Mr Ashdown that I should not take the order and judgment of HHJ Walden-Smith into account as relevant conduct (which is broadly defined under CRPR 44.2(5)). Indeed it would be wrong for me to reach any other conclusion about the merits of an action which has already been struck out as without merit and an abuse (it is a highly unusual state of affairs for an appellate court to be considering an issue such as this after an action has been struck out as an abuse).

38. I see no reason why the appeal process should be immune from the overall evaluation. Why should a successful respondent be deprived of what would otherwise be an indemnity order in respect of any step in the wholly misconceived and abusive litigation which has caused unnecessary cost? It does not require me to re-open any order; rather it is a question of evaluation at this stage. I observe that the conspicuous lack of success on appeal is consistent with the approach to the litigation generally. It must not be forgotten that the discretion to award indemnity costs is ultimately to be exercised so as to deal with the case justly. Ringfencing the costs of unsuccessful appeals in the present case would not be just. The launching, and conduct, of the abusive and unmeritorious claim, of which the appeals formed part, can properly be viewed as exceptional and has caused the Respondents to incur wholly avoidable costs which should be met by an indemnity order. I was not surprised by HHJ Walden-Smith's order as I expressed surprise as to the nature of the claim at the permission hearing. In this regard, there is no material difference between the claims against the Solicitor Respondents as opposed to the Barrister Respondent (save that it was even more

unreasonable/abusive to carry on against the Barrister Respondent once the action against the Solicitor Respondent had been compromised). The claim should never have been commenced at all.

39. The only wrinkle in this analysis is that there was one meritorious ground in relation to inspection[3]. This was out of 169 grounds, 86 of which were considered at the permission hearing (including grounds in relation to the civil restraint orders) and of minimal value. Some limited work was done by Counsel and Solicitors on behalf of the Barrister Respondent in relation to this ground before and at the permission hearing. I make a 5% deduction in this regard (which on the figures claimed[4] is significant enough that it should be made).

Permission hearings

40. I will not repeat what I set out about the progression of the appeals and my order that the Respondents attend the permission hearing. It was for very good reason as was demonstrably evidenced by the conduct of the hearing. The hearing would have been unmanageable and the appropriate scrutiny of the merits of the grounds advanced could not have been achieved without their assistance.

41. The relevant costs rule is 52CPD B;

> "8.1 Attendance at permission hearings**:** Where a respondent to an appeal or cross-appeal attends the hearing of an application for permission to appeal, costs will not be awarded to the respondent unless–
> (a) the court has ordered or requested attendance by the respondent;
> (b) the court has ordered that the application for permission to appeal be listed at the same time as the determination of other applications;
> (c) the court has ordered that the hearing of the appeal will follow the hearing of the application if permission is granted; or
> (d) the court considers it just, in all the circumstances, to award costs to the respondent."

42. Each of (a)-(d) is disjunctive. I would also observe at this point that an appeal against the making of a CRO does not fall outside this rule. Rule 8.1(a) applies and in any event I consider it just, in all the circumstances, to award costs in relation to the permission hearings to the Respondents. They provided assistance to me and enabled the efficient disposal of the issues. I repeat that Mr Halborg is no ordinary litigant and the Court was at risk of being overwhelmed by the overall approach taken. Further the approach taken by the Respondents was proportionate to issues the Court had to grapple with. Mr Halborg chose to make the issues so diverse and overly complex.

43. It was Mr Ashdown's submission that my order was not "carte blanche" for the Respondents to incur "vast costs" and to treat the hearing (in terms of preparation) as a rolled-up hearing. In my judgment they did not. The input through written and oral submissions was proportionate to the nature of the hearing. The overly extensive

[3] It is an unusual feature that if the relevant order of the Judge under appeal had been costs in the case then they would have been assessed on an indemnity basis
[4] At least £45,463.12

grounds and Mr Ashdown's comprehensive skeleton arguments required a very significant amount of time to digest and analyse. As for his submission that it was not reasonable for there to be solicitor and counsel at the permission hearing; that is a matter for detailed assessment[5].

Appeals against civil restraint orders

44. Where an application is made for permission to the relevant Judge under a civil restraint order and permission is refused, any application for permission to appeal will be determined without a hearing (CPR PD 3C2.8).

45. Mr Ashdown submitted that 16% of the grounds concerned refusals to grant permission within these actions under the CROs and that although the Court chose to order an oral hearing of these grounds, the Respondents should not be entitled to costs in relation to them.

46. The submission (which had been foreshadowed, in an e-mail from Mr Halborg) did not initially differentiate between the Respondents and it appeared to me that Mr Ashdown quickly appreciated that his difficulty was that neither Mr Wood[6] nor Mr Nicol had made any detailed written or oral submissions in respect of these grounds. As Mr Wood argued the Court had, for understandable reasons, not sought to "disentangle" the permission applications and the Respondents should not suffer an arbitrary reduction. Mr Nicol describe the prospect as "Kafkaesque". In my judgment there is no real basis whatsoever for a reduction in respect of the costs incurred by either Respondents in the lawyer claims.

47. Mr Taylor was more engaged with the grounds. This is not surprising as he represents Mr and Mrs Halborg who are still locked into the trust litigation with their son and have heard him ventilate the possibility of yet more litigation against them (beyond the two claims in existence). So both the limited and general civil restraint orders are of very considerable significance in terms of protection from unmeritorious applications/claims.

48. It is necessary to bear in mind that appeals against the making of the orders are not covered by this argument and that I ordered the permission hearing to cover all the appeals. I adopted what Mr Wood described as the "omnibus approach", largely because the permission appeals (and the matters consequential upon them) were interwoven within the history of the litigation. However ordinarily the costs of Mr Taylor's written submissions on the CRO permission appeals would not have been recoverable. Having considered matters in the round I will deduct 5% from the Trust Respondents costs in relation to the permission hearing alone[7] to reflect this issue.

Conclusion

49. The Appellants are to pay the Solicitor Respondents' costs of the appeal (to include preparation for and attendance at the permission hearing) to be assessed on an indemnity basis.

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[5] CPR 44.3 (3). It is to be noted that Mr Ashdown appeared with his instructing solicitor (Mr Halborg).

[6] Mr Wood had been expressly neutral

[7] Which are sought in the sum of £31,392.95

50. The Appellants are to pay 95% the Barrister Respondents' costs of the appeal (to include preparation for and attendance at the permission hearing) to be assessed on an indemnity basis.

51. The Appellants are to pay 95% of the Trust Respondents' costs of the appeal up to and including the permission hearing, and 100% through to 5th July 2022, to be assessed on the standard basis, and 100% of costs thereafter to be assessed on an indemnity basis.

Costs schedules

52. The Solicitor Respondents sought costs in the sum of £76,597.25 to cover three stages; the initial permission hearing, the costs caused by the further analysis of permission issues and the appeal. The Barrister Respondent sought £58,305.10 to cover the same three stages.

53. On behalf of the Trust Respondents the figure in the filed schedule for the three stages was £39,836.48. However, Mr Taylor sought to amend the schedule to increase it by £3,500[8] to reflect the fact that what had been listed as one hour hearing has taken much longer (over five hours). I accept that this was beyond what can properly be considered as part of the swings and roundabouts of the length of shorter civil hearings. I allow an increase to the schedule of £3,500 from the schedule figure; so the schedule seeks £43,336.48. Whether and to what extent the extra sum is recoverable is a matter for assessment and I express no view.

Interim costs

54. Mr Wood sought an interim payment on account of costs in the sum of £50,000, Mr Nicol and Mr Taylor both argued for £30,000. Mr Ashdown argued that the sums were excessive given the assessment process to come.

55. I take into account the basis of taxation and the reductions as set out above.

56. I award, as a reasonable sum on account of costs, interim payments on account of cost of:

    (a) The Solicitor Respondents in the sum of £ 45,000
    (b) The Barrister Respondent in the sum of £30,000
    (c) the Trust Respondents in the sum of £30,000

57. Mr Ashdown asked for 56 days for payment of these sums. This is too long. I allow a further 28 days from the date this judgment is handed down.

58. I leave it to the parties to draw up a suitable order.

[8] £2,500 in respect of Mr Taylor's fee and £1,000 for Hollingworths