Claim No: CH 304636

IN THE CENTRAL LONDON COUNTY COURT
ON APPEAL FROM DEPUTY DISTRICT JUDGE SOLOMON

Supreme Court Costs Office
Clifford's Inn, Fetter Lane
London, EC4A 1DQ

Date: 11 October 2006

Before :

SENIOR COSTS JUDGE HURST, SITTING AS A RECORDER

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Between :

JOHN MICHAEL HUTCHINGS	**Claimant/ Respondent**
- and -	
THE BRITISH TRANSPORT POLICE AUTHORITY	**Defendant/ Appellant**

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Mr Benjamin Williams (instructed by **QM Solicitors**) for the **Appellant**
Mr Simon J Brown (instructed by **Law Direct**) for the **Respondent**

Hearing date: 22 June 2006

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Senior Costs Judge

BACKGROUND

1. This is an appeal against the judgment of Deputy District Judge Solomon, dated 4 January 2006, in which she dismissed the Defendant's application that the Claimant should respond to their Part 18 request for further information and that unless the Claimant did so, the bill of costs be assessed at nil.

2. The underlying facts are these. The Claimant sought damages for injury sustained in an incident on 1 January 2000 which occurred during the course of his employment as a Sergeant in the Defendant's employment. The Claimant had been attacked by an aggressive prisoner in the custody suite of the Ebury Bridge Police Station. The Claimant asserted that as a result of back injuries suffered in the incident, he was forced to take early retirement on medical grounds. His case was that, among other things, the confined space of the custody suite failed to afford him adequate protection. Proceedings were issued in October 2003 following unsuccessful negotiations. Liability was denied in the defence, but, following a round table meeting in October 2004, the claim was settled in the sum of £82,000, the Defendant agreeing to discharge the CRU liabilities and to pay the Claimant's costs to be assessed if not agreed.

3. The claim was funded under a conditional fee agreement dated 5 February 2001, which provided for a success fee of 75%. The Claimant's bill of costs amounted in total to £23,008.71. The Defendant, as it was entitled to do, raised a large number of objections to the bill in its Points of Dispute, and in particular disputed the entitlement to claim a success fee and the cost of ATE insurance, alleging, among other things, that the custody room was "clearly unsuitable for the task", and that the Claimant was therefore bound to win on liability.

4. The Defendant served a Part 18 request which asserted that it was designed to:

> "establish whether or not the Claimant had the benefit of legal expense insurance and to clarify the relationship between the Claimant's solicitors, the claims management company/insurance providers."

5. The Part 18 request was dated 5 October 2005, and originally ran to 13 questions:

> "1) On the date of the accident was the Claimant insured under any home buildings and/or contents insurance taken by anyone in the household?
>
> 2) If so, who were the insurers and what is the policy/roll number?
>
> 3) Did the policy include legal expense insurance?
>
> 4) Disclose the home buildings/contents insurance policy.

5) If the answer to question 3 was "yes", why was the legal expense insurance not used?

6) If the answer to question 3 was "no", did the Claimant's solicitors obtain a copy of the policy and read it themselves?

7) If the answer to question 6 was "no", how did the Claimant's solicitors know that the policy did not include legal expense cover?

8) The evidence disclosed in relation to the existence of insurance premium does not comply with CPR 32.5(2) please provide a copy of the Master Policy.

9) How was the Claimant introduced to the Claimant Solicitors firm?

10) What is the nature of the Claimant Solicitor's relationship with "Compensation Claims Service Limited"?

11) Who instructed "Compensation Claims Service Limited" to undertake the work claimed as Item 15 on the Bill of Costs?

12) In relation to Item 15 when was the work undertaken?

13) What is the nature of the relationship between "Compensation Claims Service Limited" and "Claim Advance."

6. On appeal, although the Appellant's notice challenged the whole of the Deputy District Judge's order, Mr Williams (who did not appear below) conceded that no issue arose on questions 8 to 13 inclusive of the request. He further accepted that question 4 was not apt, since it was in fact a request for disclosure. The questions before the court on this appeal were therefore as follows:

i) On the date of the accident was the Claimant insured under any home buildings and/or contents insurance taken by anyone in the household?

ii) If so who were the insurers and what is the policy/roll number?

iii) Did the policy include legal expense insurance?

iv) If the answer to question (iii) was "yes", why was the legal expense insurance not used?

v) If the answer to question (iii) was "no", did the Claimant's solicitors obtain a copy of the policy and read it themselves?

vi) If the answer to question (v) was "no", how did the Claimant's solicitors know that the policy did not include legal expense cover?

7. Mr Williams submitted that his clients were entitled to ask questions (v) and (vi), but also accepted that the Claimant could legitimately refuse to answer them.

8. Mr Williams accepted that the purpose of the Defendant's original request for information was to find a technical point upon which they could argue that no costs whatsoever were payable. He submits, however, that now the CFA Regulations have been revoked, so that technical points will not, in respect of agreements made after 1 November 2005, result in a complete inability to recover costs, the point of principle remains that the paying party is entitled to know whether a Claimant has acted reasonably in entering into the particular funding arrangement.

9. Having heard the submissions of both Counsel I granted permission to appeal on the basis that there are compelling reasons why the appeal should be heard. Those reasons are that satellite litigation in relation to costs is continuing unabated, despite the Court of Appeal's decision in *Hollins v Russell* [2003] EWCA Civ 718. Those representing paying parties continually seek new ways of challenging claims for costs, and in particular additional liabilities. Although the Costs Practice Direction does envisage that there might be occasions when a Part 18 request for further information might be made, the indications are that such requests are now being made with increasing frequency, and, as has already been demonstrated in this case, can include questions which are entirely inappropriate.

THE RELEVANT LAW

10. CPR 44.15 sets out the requirement to provide information about funding arrangements:

> "44.15(1) A party who seeks to recover additional liability must provide information about the funding arrangement to the court and to other parties as required by rule, practice direction or court order."

11. The Costs Practice Direction sets out the information to be provided:

> "19.1(1) A party who wishes to claim an additional liability in respect of a funding arrangement must give any other party information about that claim if he is to recover the additional liability. There is no requirement to specify the amount of the additional liability separately nor to state how it is calculated until it falls to be assessed ..."

12. The Practice Direction goes on to require a party who has entered into a funding arrangement to give notice in Form N251. The Direction then sets out the information which must be provided:

> "19.4(1) Unless the court otherwise orders, a party who is required to supply information about a funding arrangement must state whether he has –

> entered into a conditional fee agreement which provides for a success fee …; taken out an insurance policy to which Section 29 of the Access to Justice Act 1999 applies … ; or more than one of these.
>
> …
>
> (3) Where the funding arrangement is an insurance policy, the party must state the name and address of the insurer, the policy number and the date of the policy, and must identify the claim or claims to which it relates (including Part 20 claims if any).
>
> …
>
> (5) Where a party has entered into more than one funding arrangement in respect of a claim, for example a conditional fee agreement and an insurance policy, a single notice containing the information set out in Form N251 may contain the required information about both or all of them."

13. CPR 44.5 sets out the factors to be taken into account in deciding the amount of costs and Section 11 of the Costs Practice Direction supplements that rule. So far as relevant the Practice Direction provides:

> "11.7 … when the court is considering the factors to be taken into account in assessing an additional liability, it will have regard to the facts and circumstances as they reasonably appeared to the solicitor or counsel when the funding arrangement was entered into and at the time of any variation of the arrangement.
>
> 11.8(1) In deciding whether a percentage increase is reasonable the relevant factors to be taken into account may include –
>
> …
>
> (c) what other methods of financing the costs were available to the receiving party.
>
> …
>
> 11.10 In deciding whether the cost of insurance cover is reasonable, relevant factors to be taken into account include:
>
> (1) …
>
> (2) the level and extent of the cover provided;
>
> (3) the availability of any pre-existing insurance cover;

(4) whether any part of the premium would be rebated in the event of early settlement;

(5) the amount of commission payable to the receiving party or his legal representatives or other agents."

14. CPR Part 47 deals with the procedure for detailed assessment of costs. Rule 47.9 deals with points of dispute and the consequences of not serving them. CPD Section 35 supplements that rule, the relevant paragraph for the purpose of this appeal being CPD 35.7:

> "(1) Where the receiving party claims an additional liability, a party who serves points of dispute on the receiving party may include a request for information about other methods of financing costs which were available to the receiving party.
>
> (2) Part 18 (further information) and the Practice Direction supplementing that part apply to such a request."

15. CPR 18.1 sets out the court's powers in relation to obtaining further information:

> "(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."

16. The Practice Direction supplementing Part 18 provides:

> "1.2 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."

17. The Court of Appeal in *Sarwar v Alam* [2001] EWCA Civ 1401 gave guidance as to the practice for a solicitor enquiring about BTE cover:

> "45. In our judgment, proper modern practice dictates that a solicitor should normally invite a client to bring to the first interview any relevant motor insurance policy, any household insurance policy and any stand-alone BTE insurance policy belonging to the client and/or any spouse or partner living in the same household as the client. It would seem desirable for solicitors to develop the practice of sending a standard form letter requesting a sight of these documents to the client in advance of the first interview. At the interview the solicitor will also ask the client, as required by

> paragraph 4(j)(iv) of the Client Care Code … whether his/her liability for costs may be paid by another person, for example an employer or trade union."

18. The judgment in *Sarwar* has been the subject of further examination by the Court of Appeal in *Myatt & Ors v The National Coal Board* [2006] EWCA Civ 1017. At the time of the hearing of this appeal the Court of Appeal's judgment had been reserved. Accordingly, the judgment in this appeal was also reserved pending the handing down of the *Myatt* decision, and the parties were given leave, if so advised, to make further written submission in the light of that decision.

19. I mention for the sake of completeness that in *Hollins v Russell* the Court of Appeal dealt at some length with the question of disclosure of CFAs, and other documents, and the effect of the certificate on the bill in the light of the decision in the Court of Appeal in *Bailey v IBC Vehicles Ltd* [1998] 3 All ER 570. The discussion in the *Hollins* judgment is at paragraphs 55 to 73.

SUBMISSIONS

20. Mr Williams made it clear that he was not challenging the certificate (which is not included in the bundle) on the bill signed by the Claimant's solicitors, but he argued that the certificate is not an indication that no other method of funding exists, it is merely a certificate that the solicitor thinks that he or she has carried out a sufficient search for evidence of insurance. The question he seeks to answer is: is the solicitor's search for evidence in this case adequate in all the circumstances? This is dealt with by the Court of Appeal in *Sarwar* at paragraph 51:

> "51. [Counsel] for Mr Sarwar, submitted that the test of the adequacy of a solicitor's inquiries and advice should be the same as the test applied when determining whether a solicitor has been professionally negligent. Thus the client would either recover the cost of the premium or have a claim against his/her solicitor for breach of duty. We deprecate any attempt to equate the question of reasonableness that a costs judge has to decide with the question whether the claimant's solicitor has been in breach of duty to his/her client. If a solicitor gives advice which proves unsound, it will not necessarily follow that the advice was negligent. The advice will necessarily be based on information provided by the client. If the information is inadequate or inaccurate, the advice may prove to be unsound without any question of fault on the part of the solicitor."

21. Thus, says Mr Williams, a solicitor may properly certify his bill, even if the information obtained is inadequate or inaccurate. The purpose of the Part 18 request was merely to ascertain if alternative funding was available, and was not intended to be a challenge to the certificate on the bill.

22. In summary, Mr Williams' arguments are these:

i) The paying party has a legitimate interest in the existence of alternative methods of funding, including BTE.

ii) The facts as to the existence of BTE are likely to be within the receiving party's knowledge and not the paying party's.

iii) There is, ordinarily, no disclosure in costs proceedings, so that paying parties must rely on their opponents to volunteer information about their funding options.

iv) Requests for information about BTE are contemplated by CPD 35.7, which, uniquely, identifies that subject as an issue on which further information may be sought, suggesting that such Part 18 enquiries are legitimate.

v) As such, receiving parties should answer reasonable requests for information about their insurance position.

vi) Such requests put no pressure on receiving parties as, if their claims have been properly presented, the position would have been looked at by the solicitors at the start.

vii) The obligation for solicitors to investigate alternative methods of funding arises in every case by virtue of Article 4 of the Solicitors Costs Information and Client Care Code 1999, as well as under Regulation 4 of the CFA Regulations 2000, where they still apply.

23. Mr Williams suggests that in Road Traffic Act cases different considerations may apply, because the liability insurers will usually know the identity of the claimants' insurer and will be well aware of the extent to which other insurers incorporate BTE insurance into their policies. Outside the RTA field however, this knowledge is not generally available to liability insurers, and, if legitimate enquiries are not permitted, paying parties will be precluded from making reasonable and proportionate enquires to enable them to understand the case they have to meet. He submits that such a request is not an attempt to obtain disclosure by another name, and that it must be reasonable to ask the questions: do you have insurance? With whom? And is there any legal expenses insurance? He argues that the paying party does not have to show that there is some good reason to suppose that there is in fact BTE present. The paying parties have a legitimate interest in knowing the receiving party's pre-existing insurance arrangements. Those arrangements are within the receiving party's exclusive knowledge, and there is no obligation to disclose on the receiving party. Therefore, if the paying party must show good reason to question the receiving party about his insurance arrangements, the paying party is put in the position where he cannot know the answer unless he asks the question, but he can only ask the question if he can first show, on cogent grounds, what the answer probably is.

24. The Defendant's Points of Dispute in this case state that the Defendant received no notice of funding. Certainly no notice of funding has been produced during the course of this appeal. Some correspondence has been produced, which I understand was before the District Judge.

25. 8 February 2005 – Claimant's solicitors to Defendant's solicitors:

> "We did in fact write to Miller Fisher [the Defendants previous solicitors] on 17 May 2001 advising that we had entered into a conditional fee agreement with our client with litigation insurance from Claims Advance.
>
> Furthermore we can confirm enquiries were made as to whether alternative insurance was available – this was confirmed in the negative."

26. 22 February 2002 – Defendant's solicitors to Claimant's solicitors:

> "We are aware that the Claimant had a mortgage with Abbey National Plc and we can safely assume that the Claimant had a home insurance policy with Abbey. It is our experience that the Abbey National Plc Home Insurance includes "family legal protection" (legal expense cover). Given this information please disclose the household policy, which ought to be on your file if you have complied with the proper practice as advocated in *Sarwar v Alam* [2001] EWCA Civ 1401.
>
> With regard to the insurance premium schedule please confirm who the underwriters of this policy are and let us have a copy of the policy mentioned on the schedule so we can assess reasonableness of the same given the scant detail provided by the schedule."

27. 24 March 2005 – Claimant's solicitors to Defendant's solicitors:

> "Underwriters for Claims Advance are NIG.
>
> We can confirm that enquiries were made as to whether alternative insurance was available. This was confirmed in the negative."

28. 11 May 2005 – Defendant's solicitors to Claimant's solicitors:

> "You say enquiries were made in relation to alternative insurance, however they were confirmed in the negative. You confirmed that there was no alternative insurance?"

29. 27 June 2005 – Claimant's solicitors to Defendant's solicitors:

> "This matter was dealt with by David Slingsby and the usual enquiries with the client were made regarding alternative insurance."

30. Following the decision in *Myatt* Mr Williams submitted that it had no bearing on this appeal, since the issues raised in this appeal were not in fact considered in *Myatt*. Paragraph 79 of that judgment states:

> "What we have said in paras 71 to 78 should not be interpreted as giving encouragement to defendants to embark on fishing expeditions in the hope that, if they ask a sufficient number of questions, they may be able to show that the claimant's solicitor did not discharge his Regulation 4(2)(c) duty. We refer to the salutary words of this court in *Hollins v Russell* at para 81 that the court should not require further disclosure unless there is a genuine issue as to whether there has been compliance with Regulation 4."

31. Mr Williams argues that this merely reiterates the principle that a receiving party is not ordinarily required to disclose the funding advice his solicitor gave him. What the Appellant in this case is seeking is not disclosure of advice but the provision of relevant facts relating to the receiving party's pre-existing insurance position. He submits that the request is one which is "reasonably necessary and proportionate to enable the party to prepare his own case or to understand the case he has to meet." Furthermore no privilege attaches to the receiving party's pre-existing insurance arrangements.

32. Mr Brown suggested that this appeal was about the proposition that, in any CFA case, the solicitor for a receiving party could be required to produce relevant insurance policies to the paying party, and if this became possible it would inevitably happen in every case and lead to still more satellite litigation. There is, he suggests, already adequate provision in the CFA Regulations, and in the obligations set out in *Sarwar*.

33. Mr Brown spent some time taking me through the judgment in *Hollins* in relation to disclosure, in which the earlier authorities were examined in some detail. Mr Brown's argument was that a request for information was akin to a request for specific disclosure, in that, instead of seeking disclosure of relevant attendance notes, the paying party was seeking to obtain the information contained in the relevant note. The purpose and effect of the procedure were the same and thus the Court of Appeal guidance in *Hollins* was relevant. On behalf of the Appellant, however, Mr Williams no longer seeks disclosure as set out in the original request, nor, on his case, is he trying to get behind the solicitor's certificate on the bill. The information which is now sought is very much more limited.

34. Mr Brown submits that CPD 35.7 does not envisage an enquiry as to whether other sources of funding were in fact available, and suggests that the Direction was drafted so as not to extend too far the paying party's right to information. He also suggests that paragraph 37.5 is inconsistent with CPD 40.14 dealing with the detailed assessment hearing:

> "The court may direct the receiving party to produce any document which in the opinion of the court is necessary to enable it to reach its decision. These documents would in the first instance be produced to the court, but the court may ask the receiving party to elect whether to disclose the particular document to the paying party in order to rely on the contents of the document, or whether to decline disclosure and instead rely on other evidence."

35. He relies on paragraph 48 of *KU v Liverpool City Council* [2005] EWCA Civ 475:

> "... It is sufficient for present purposes to say that a Practice Direction has no legislative force. Practice Directions provide invaluable guidance to matters of practice in the Civil Courts, but insofar as they contain statements of the law which are wrong they carry no authority at all."

36. He suggests that a paying party in relation to BTE insurance is in the same position as the paying party in *Bailey v IBC* in relation to hourly rates. It is, he argues, inappropriate to use this procedure where the Claimant's solicitors had provided a copy of the CFA, and had informed the paying party that they had made enquiries about before the event insurance with negative results.

37. He suggests that certain of the questions in the request for further information amount effectively to cross-examination.

38. Following *Myatt* Mr Brown submits that the decision supports the Respondent's position in this appeal. He too refers to paragraph 79 of *Myatt* (quoted above) as confirming that the signature on the bill is sufficient to satisfy the court and the paying party as to compliance with Section 4 of the Conditional Fee Agreements Regulations 2000, subject only to the paying party showing genuine reason for going behind the signature. He argues that fishing expeditions are not permitted and that this term applies to applications for disclosure and to request for further information. The use by the Court of Appeal of that term was intended to encompass all methods by which the paying party seeks to go behind the signature of the bill.

39. Mr Brown also relies on the decision of HH Judge Inglis sitting in Nottingham County Court in *Stevenson v Blue Anchor Leisure*. Mr Williams appeared for the Defendant in those proceedings.

40. Briefly the facts are that the claimant, Judith Stevenson, sustained injuries in a tripping accident. She entered into a CFA with her solicitors and the claim was settled without the necessity for proceedings. The parties could not agree the costs and costs only proceedings were commenced. The Defendants made a Part 18 request, which the District Judge refused. The form of the request was similar, if not identical, to the one used in this case.

41. The appeal focussed on the factual question whether alternative funding for the litigation existed. Having recited the arguments HHJ Inglis stated:

> "39. I am inclined to take a narrow rather than a wide view of [paragraph 35.7 of the Costs Practice Direction]. It is a request for information about other methods which were available, not that might have been. Where there was an existence of a before the event legal expenses policy, for example, it is difficult to see that the detailed assessment of a conditional fee agreement bill could proceed without information about what that policy said and, in fact, in practice without the policy itself being produced, but I do not think that Part 35.7,

> in its terms, lends support to the view that information from which the existence or non existence of a policy can be ascertained should be the subject matter of disclosure.
>
> ...
>
> 41. Although I have taken the narrower view on the scope of that paragraph than the wider view that might be available and for which Mr Williams contends, I read up that the court, in its general case management powers, can, in an appropriate case, order disclosure so that the justice of any particular case can be met. But on the question of 35.7, I do not regard it, of itself, as lending support to the view that it should be routine for questions directed to the existence of alternative means of funding, rather than to the nature of it, being asked and answered.
>
> ...
>
> 53. Even in such a case [where someone may be expected to have comprehensive household insurance], I do not think that paragraph 35.7 is designed to achieve disclosure of details of a policy that may or may not include before the event insurance cover, where the claimant's case is that it provides for no such cover. I think that the paragraph is designed to deal with a situation where there is such cover, where details of it are required in order for the court to evaluate the merits of it not having been used. I do not think that the practice on detailed assessment or justice to the paying party makes it appropriate for the court, as a matter of routine, to compel the claimant to disclose information about the steps that led to the claimant solicitors conclusion that there was no relevant cover, at least in a case where there is nothing in the facts of the case to raise any issue that the solicitor's assertion that there was no cover is wrong."

The Judge accordingly dismissed the appeal.

42. Mr Williams' position is that *Stevenson* was wrongly decided, and is, in any event, not binding on this court. He submits that in this case a Part 18 request has been submitted. Neither party suggests that it is irrelevant, nor that it would lead to disproportionate expense. It is perhaps worth mentioning that in the case of Stevenson:

> "The claimant's objected and object now to answer those questions, though as they say they could easily have done so on

> the information that is already available to them." (paragraph 12)

43. Mr Williams argues that outside costs proceedings the fact that the request was neither irrelevant nor disproportionate would compel a reply to the Part 18 request. He accepts that there may be, in costs proceedings, a special reason why a reply should not be required, for example because of difficulties caused by privilege or an established evidential presumption such as the *Bailey* principle. In this case he says there are no such considerations and the Appellant's request for information, in its limited form, should be granted.

CONCLUSION

44. The Deputy District Judge in her judgment thought that the request was an attempt to go behind the certificate on the bill of costs, and was also an attempt to obtain disclosure. She concluded:

> "... Nothing has been raised in this case which points to a real question as to whether there was any before the event insurance and indeed there is a complete statement of prior advice which says that there isn't and there is a statement in correspondence which says that there isn't. This case attempts to raise the kind of satellite litigation and the kind of further detail around completely straightforward bills of costs which the law absolutely deplores and therefore I will not allow the request of 1 – 7."

45. The District Judge read from a number of authorities, and stated:

> "The reason I have read this out is because it is absolutely clear that put at the highest, this is a fishing expedition. See the number of "ifs" in this paragraph, "in the event that", "may", "they may be able to prove", "if they had insurance, that might enable the defendant", so what they are saying is if we can show that there was any before the event insurance and that there was a failure to make reasonable enquiries, then we could avoid liability on the basis it was not binding and also that we might not have to pay the legal expenses insurance."

46. There is no doubt that, in these proceedings, the attempt to obtain further information was a brash and ill considered attempt to uncover information which would enable the Defendant to challenge the Claimant's bill on a technical point, in the hope of being able to demonstrate that the CFA Regulations had not been complied with, and that therefore no costs at all were payable. The hearing before the Deputy District Judge was, to say the least, unfocused. The appeal before me was argued by Mr Williams on more principled grounds, very different to the submissions put before the District Judge. As I have indicated the original 13 questions have effectively been reduced to six, of which two are ineffective. The District Judge's description of the request as a fishing expedition is entirely understandable given the way in which the case was argued before her.

47. Given the arguments put forward by Mr Williams, however, I am of the view that it may be helpful to give some guidance as to how CPD 35.7 may be expected to operate. The starting point is the overriding objective, and in particular the requirement of proportionality. The extent of satellite litigation in relation to costs issues is well known, and the court will not willingly do anything which is likely to promote further satellite litigation. A paying party must however be in a position to understand the claim for costs being made against it, and is entitled to challenge items which it feels to be disproportionate or unreasonable. Cases to which the CFA Regulations do not apply may still be the subject of challenge, but if such a challenge is successful this will not result in the whole of the costs being irrecoverable.

48. CPR 44.15 requires a party who seeks to recover an additional liability to provide information about the funding arrangement to the court and to other parties. CPD Section 19, which I have quoted above, is quite clear as to what is required.

49. If the Practice Direction is complied with (it was not in this case) what further information may legitimately be requested? Mr Williams suggests: (i) do you have insurance; (ii) with whom; and (iii) do you have any legal expenses insurance? If the receiving party has complied with the requirements of CPD 19.4(3) the paying party ought to have sufficient information as to the policy in respect of which the premium is claimed, but this information will not reveal the existence or otherwise of any BTE policy.

50. With great respect to His Honour Judge Inglis I differ from him in my conclusion and am of the view that the Appellant in this case is, to a very limited extent, entitled to further information. The questions which I regard as reasonable and proportionate are those identified by Mr Williams, namely:

    i) does the Claimant have insurance?;

    ii) with whom; and

    iii) does the Claimant have any legal expenses insurance?

51. In my judgment it would be disproportionate to allow the other questions contained in the request for further information even after excluding those already abandoned by Mr Williams. Those questions are not reasonably necessary to enable the paying party to prepare for the detailed assessment or to understand the case which it has to meet. Those matters may of course be raised as part of the points of dispute and argued on assessment.

52. In those circumstances this appeal succeeds to that limited extent. Given the way in which the original request for information was put, and the way in which it was argued before the Deputy District Judge, my provisional view is that it would not be appropriate to award the costs of the appeal to the Appellant. I will, however, hear submissions on this point if the parties so wish.