Case No: E01CF046

IN THE COUNTY COURT SITTING AT CARDIFF

Date: 19 January 2023

Before

District Judge Phillips

Between

Ms Clair Wilkinson-Mulvanny	**Claimant**
- and -	
UK Insurance Limited	**Defendant**

Mr John Meehan (instructed by **Slater and Gordon**) for the **Claimant**
Mr Barry Cawsey (instructed by **Harvey Ingram Shakespeares**) for the **Defendant**

Hearing date: 5 January 2023

APPROVED JUDGMENT

District Judge Phillips:

Introduction

1 I am dealing with the hearing of two applications, the first issued by the claimant and dated the 25 May 2022, and the second issued by the defendant and dated the 18 July 2022.

2 The applications were originally heard by DDJ Davies on 25 July 2022 when the Judge adjourned the applications to 17 November 2022 and refused the application of the defendant to transfer the proceedings to the SCCO. He directed that the applications should instead be listed before me as Regional Costs Judge.

3 The Court then vacated the hearing on 17 November 2022 due to judicial unavailability, and the hearing was relisted before me on 5 January 2023. At that hearing the claimant was represented by Mr John Meehan and the defendant by Mr Causey.

4 At the beginning of the hearing, the defendant indicated that they were not pursuing their application dated 18 July 2022. I need not therefore deal with that application.

5 The claimant's application asks that the court determines the appropriate fees to allow for three medical reports, and whether to award any costs in relation to court fees paid by the claimant of £275 and £255. The claimant also seeks the costs of their application.

6 That application would not have justified (as has happened in this case), the parties filing skeleton arguments, and the claimant filing a bundle of authorities together with a separate bundle. What justified this was the Court also being asked to interpret the wording of CPR 45.19 (2) and the implications the court's decision would have not only in this case, but in very many other cases, were it to be followed. I am told that there is no binding authority on the point, and both parties interpret the Rule quite differently.

7 I begin by setting out briefly the factual background so far as it is relevant.

Background and the parties' brief positions

8 The claimant pursued a claim for damages arising out of a road traffic accident which took place on 3 July 2015 in respect of which the claimant suffered personal injury and loss. The claim was submitted to the RTA Portal, the defendant admitted liability and medical evidence was obtained and served. Thereafter on 25 November 21 the defendant made an offer of settlement of £16,468.99 which the claimant accepted on 16 December 21. The defendant also agreed to pay the claimant's costs.

9 All costs and disbursements have been agreed save for the following items:

a) the fee pertaining to the Maxillofacial Surgeon's report (£1250 plus VAT)
b) the fee pertaining to the further report of the Maxillofacial Surgeon (£1255 plus VAT)
c) the fee pertaining to the Consultant Psychologist's report (£725 plus VAT)
d) the court fee of £255
e) the court fee of £275

10 The defendant objects to payment of the medical reports on the basis that the invoices relied upon fail to differentiate between the direct cost of the report and the medical agencies fees. Their primary position is that medical agency fees are not recoverable and the only fee that is recoverable is that of the doctor together with the fixed fees allowable for the obtaining of the medical records. Alternatively, if any medical agency fees are recoverable, they are only recoverable to the extent that they are reasonable and proportionate.

11 The defendant submits that in order for the court to be able to determine their reasonableness and proportionality, a breakdown is required. The defendants point out that in this case the medical agency concerned initially agreed to provide such a breakdown but are now refusing to do so.

12 Whilst the defendant's skeleton argument invites the Court to order such a breakdown, this was not pursued at the hearing, not least of course because the medical agency concerned is not a party to these proceedings and had this issue been pursued, the hearing would have had to be adjourned and they would have had to have been added as a party, and given an opportunity to participate in the proceedings.

13 The claimant's position is that the medical agency fees are recoverable, and the Court should not order such a breakdown. In any event, the claimant suggests that the court is able without such a breakdown to allow what it considers a reasonable and proportionate sum in respect of the medical evidence obtained. Copies of the medical reports have been filed at court and the claimant invited the Court, having read the reports, to determine what it considers to be a reasonable and proportionate sum.

The claimant's submissions in greater detail

14 Mr Meehan submitted (and this is agreed), that this is a claim which did not exit the portal and so the relevant rule is CPR 45. 19

CPR 45.19 (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

CPR 45.19 (2) In a claim to which either the RTA protocol or EL/PL protocol applies, the disbursements referred to in paragraph (1) are

a) the cost of obtaining
- medical records
- a medical report reports or non-medical expert reports as provided for in the relevant protocol

b) court fees as a result of Part 21 being applicable
c) court fees payable where proceedings are started as a result of a limitation period that is about to expire
d) court fees in respect of the stage 3 procedure and
e) any other disbursement that has arisen due to a particular feature of the dispute

CPR 45.19 (2A) In a soft tissue injury claim, or a claim which consists of or includes a claim for a whiplash injury, to which the RTA protocol applies, the only sums (exclusive of VAT) that are recoverable in respect of the cost of obtaining a fixed cost medical report or medical records are as follows

a) obtaining the first report from an accredited medical expert selected via the MedCo Portal :£180
b) obtaining a further report where justified from an expert from one of the following disciplines

- Consultant Orthopaedic Surgeon (inclusive of a review of the medical records where applicable):£420
- Consultant in Accident and Emergency Medicine :£360
- General Practitioner registered with the General Medical Council:£180
- physiotherapist registered with the Health and Care Professions Council:£180

c) obtaining medical records: no more than £30 plus the direct cost from the holder of the records and limited to £80 in total for each set of records required. Where relevant records are required from more than one holder of records, the fixed fee applies to each set of records required

d) addendum report on medical records (except Consultant Orthopaedic Surgeon):£50 and

e) answer to questions under Part 35:£80

CPR 45.19(3)

In a claim to which the RTA protocol applies, the disbursements referred to in paragraph (1) are also the cost of

a) an engineers' report and

b) a search of the records of

- Driver Vehicle Licensing Authority and
- Motor Insurance Database

15 Mr Meehan submits that "the cost of obtaining a medical report" on its plain and ordinary meaning is sufficiently wide to mean that when a medical report is obtained via the involvement of a medical agency, the cost of obtaining any medical report will include not only the clinicians fee, but any charge raised by the medical agency for the services they have provided.

16 In support, he says the word "obtaining" is used 17 times within CPR 45, and in every case it is in the context of the recovery of a medical disbursement, either a report or medical records. He says the phrase "cost of obtaining " is used in respect of medical disbursement recovery in Section 2 of CPR 45 -CPR 45.12(2)(a) and in Section 3 A CPR 45 – CPR 45.29 I - (2) (a)

17 He also relies upon the decision of Woolard v Fowler (EWHC) 90051, a decision of Senior Costs Judge Hurst, sitting as a Recorder and dealing with an appeal from the decision of a Master sitting as a Deputy District Judge. That

decision was handed down on 24 May 2006. Mr Meehan concedes that this decision concerned a different costs regime but submits a costs regime where the terminology is the same. The Senior Costs Judge had to consider the recoverability of medical agency fees in the context of CPR 45.12 (then CPR 45.10), and Mr Meehan points out that the term "cost of obtaining" appeared in CPR 45. 10 just as it now appears in CPR 45. 19 The Learned Judge's decision was that the medical agency fee could be charged as a disbursement in addition to the direct cost of the expert. I was told that this decision was never appealed.

18 Mr Meehan submits that following the decision, insurers involved in the conduct of personal injury claims and medical agencies involved in the obtaining of medical records entered into the MRO agreement. This was first signed in 2010 and has been reviewed periodically thereafter and provides a framework for the production and cost of reports. Paragraph 9 of the extant MRO Agreement provides:

"the compensators agree with the Medical Reporting Organisations that the cost of obtaining a medical report include the cost of the expert and the medical reporting organisation where applicable and further agree that they will not raise or continue to pursue any objection to the recoverability of such fees in any proceedings"

19 Mr Meehan's point is that it has been common industry practice for medical agencies to be utilised to obtain a medical report, with the agency fees forming part of the disbursement recovered inter- parties.

20 Mr Meehan submits that in drafting CPR 45.19 the rule drafters chose to use the same wording as that considered by Master Hurst in the Woolard decision, and nowhere in the rules does it provide that the cost of obtaining a medical report is limited only to the clinicians fee.

21 Mr Meehan further refers me to Lord Justice Jackson's final report which preceded the introduction of CPR 45.19 and 45.29 where His Lordship concluded that he was not persuaded at that time to recommend any change in the rules so as to reverse the effect of Woolard v Fowler.

22 Mr Meehan submits that on the defendant's interpretation, there is a logical inconsistency in the rules on the basis that the defendants will argue that the rules do not allow for the recovery of agency charges for obtaining medical reports or records in Section 3 or 3A claims, whereas in the lowest

value claims (soft tissue RTA's) and where the rule drafters have sought to limit costs, the rules allow for an agency charge for obtaining medical records of no more than £30. Mr Meehan argues that the correct interpretation is that CPR 45.19 (2A) (c) acts as a cap, which he argues is consistent with the aim of limiting costs in such claims.

23 Mr Meehan next refers me to the decision of HHJ Wood QC in Beardmore v Lancashire (2019) where the court was asked to consider a similar issue to that presented to this court. In that case the Learned Judge had to consider whether the claimant was entitled to recover an agency charge in addition to the direct cost of obtaining medical records in an EL/PL claim pursuant to CPR 45.29I. The Court determined that such agency charge was recoverable as a disbursement.

24 Mr Meehan submitted reliance could not be placed by the defendants upon the Court of Appeal decision in Aldred v Cham (2019) EWCA Civ 1780 for the reasons set out in paragraph 24 of his skeleton, not least because he submitted this decision did not deal with medical agency charges.

25 Mr Meehan then referred me to Powles v Hemming (2021), a decision of Deputy District Judge Akers sitting in the County Court at St. Helens on 23 April 21. I was told by Mr Meehan that it was this decision which appears to have persuaded the defendants to refuse to pay the agency charges in this case and which is relied upon by them. In that case, the court decided that the agency fees in connection with the obtaining of a psychological report were not recoverable. Whilst the Deputy District Judge was referred to the decisions in the case of Beardmore v Lancashire County Council (2019) and the later decision of the Court of Appeal in Aldred v Chan (2019) EWCA Civ 1780, Mr Meehan submits that the case was not fully argued before the Deputy and that the case has been wrongly decided

26 Finally, Mr Meehan refers me to the case of British Airways plc v Prosser (2019) EWCA Civ 547. Whilst that decision dealt with a different point, namely the recoverability of VAT, Mr Meehan suggests that the wording considered by the court in that case was the same as the wording I am asked to consider in the instant case. The decision in the British Airways case was handed down on 2 April 19 whereas the decision in the Aldred case was handed down in October 2019.Coulson LJ was sitting as member of the court that considered both cases.

27 Strictly in the alternative, if the court were to decide that the agency fee was not recoverable as a disbursement then Mr Meehan submitted that the court ought still to allow the medical report fees as claimed on the basis that the fees claimed are both reasonable and proportionate.

28 So far as the court fees are concerned the claimant understood that no order for costs had in fact been made in respect of these two applications to extend the stay imposed by the Court, but Mr Meehan queried whether what is set out at CPR 45. 19 (2) (c) was sufficiently wide to enable these fees to be recovered.

29 In relation to the reference in the defendant's skeleton to the case of Charman, Mr Meehan said this was a case of Regional Costs Judge Woodburn, a copy of whose Judgment had not been placed before the court. However, in that case the Judge had still assessed what the judge thought was a reasonable and proportionate fee to allow for the report as opposed to simply not allowing anything.

30 The reference in the defendant's skeleton argument to alleged misconduct on the claimant's solicitors behalf had only been raised by the defendant the day prior to the hearing. Mr Meehan submitted this was too late, and in any event the circumstances of this case got nowhere near to the court been able to make a finding of misconduct under CPR 44. 11

The defendant's submissions in greater detail

31 Mr Causey on behalf of the defendant began by referring the court to the defendant's skeleton argument and submitted that the decision of Master Hurst in Woolard predated the introduction of CPR 45, and HHJ Wood QC had not derived a great deal of assistance from Master Hurst's decision when deciding Beardmore v Lancashire (2019).

32 He also questioned what assistance the court could derive from the final report of Lord Justice Jackson. He submitted that the Court of Appeal decision in the case of Aldred v Cham (2019) EWCA Civ 1780 supersedes anything said by Lord Justice Jackson.

33 In relation to the MRO Agreement, he submitted that the agreement itself makes clear that it does not apply in soft tissue injury claims and he suggested

that parties were invited to sign up to it but he did not know how widespread this had been.

34 Mr Causey submitted that CPR 45 was a self-contained code and CPR 45. 18 and CPR 45. 19 sets out the costs that are recoverable. The defendant argued that any agency fees were not recoverable, and it was only the doctors fee itself that was recoverable. The defendants argued that any medical agency cost was subsumed within the fixed costs that were recoverable by the solicitors.

35 Mr Causey submitted that the decision of British Airways plc v Prosser (2019) 4 All ER was not helpful as that decision dealt with the recoverability of VAT. He submitted that the key case was that of the Court of Appeal in Aldred v Cham (2019) EWCA Civ 1780 his relying in particular in what is set out at paragraphs 46 to the end of the judgement.

36 The defendant's case is that nowhere in CPR 45. 19 are medical agency fees mentioned, and therefore the defendants submit they are not recoverable.

37 As to the amounts to allow in relation to each of the three medical reports in issue, Mr Causey complained that there was no breakdown of the amount of time spent in preparing the reports, and the court did not have before it any breakdown of the costs charged by the doctor and that charged by the medical agency. He suggested that a reasonable amount to allow for the first Maxillofacial report was £420 and no more than £420 for the second report on the basis that there had not been a great deal for the doctor to do when preparing such a report. He arrived at these figures noting that the maximum allowable for an Orthopaedic Report was £420

In relation to the psychological report, he suggested as no guidance could be obtained from CPR 45.19, the court should award what it considers to be a reasonable sum disallowing any medical agency fee

My conclusion

38 I have set out in reasonable detail each parties submissions, taking into account the likely interest in this decision, and my wishing to make clear the points argued before me at the hearing.

39 It is unfortunate that there is no authority on point and that a decision of a Deputy District Judge has led to this issue being litigated.

40 Dealing firstly with the defendant's reliance upon Aldred v Cham (2019) EWCA Civ 1780, the first thing to note is that this case dealt with the recoverability of the cost of counsel's advice as to the quantum of a proposed settlement of a RTA claim in a case where the claimant as a child. The question for the Court was whether that is a claim for a disbursement which should be allowed in addition to the fixed recoverable costs because in the words of the relevant rule, it was "reasonably incurred due to a particular feature of the dispute".

41 The Court of Appeal sets out in some detail the background to the Fixed Costs Regime. I do not repeat this but do take it into account. Having considered the submissions of both parties, the Court concluded that counsel's advice was not recoverable. The fact that the claimant was a child was nothing whatever to do with the dispute. The costs of counsel's advice was not necessitated by any particular feature of the dispute. It was caused by a characteristic of the claimant himself. The Court reached its conclusion based on the plain words of CPR 45.29I (2) (h). If the Court was wrong on that conclusion, the Court also decided that counsel's fee was not recoverable under CPR 45.29I (2) (h)

42 This decision does not greatly assist me in relation to the issue that I have to decide, namely the recoverability of medical agency fees in the obtaining of a medical report. The same applies in my judgment to the decision of the Court of Appeal in British Airways plc v Prosser (2019) 4 All ER

43 The decision of Master Hurst in Woolard v Fowler (EWHC) 90051 does in my judgment assist the Court, as whilst it dealt with the interpretation of CPR 45.10, the wording of the Rule is replicated in CPR 45.19 in relation to "the cost of obtaining a medical report". In that case, the Learned Judge concluded that such medical agency fees were recoverable. At paragraph 12 of his judgment, Master Hurst says:

" It is not controversial that, outside the Part 45 predictable costs regime, the fees of medical reporting agencies are recoverable, provided they are reasonable and proportionate and do not contain an administration fee."

The Judge goes on to say that "there is nothing in the protocol that discourages the use of medical agencies by solicitors".

44 The Judge continues in paragraph 41 of his judgment by saying:

" In my view, the drafter of the Rule and the Rule Committee were well aware that the obtaining of medical reports and medical records involves additional expense and correspondence and that frequently medical reporting agencies are used for this purpose..... The test on all assessments is one of reasonableness and proportionality but there seems to be no reason why an agency should not be used to obtain an engineer's report if, in all the circumstances, it was reasonable and proportionate to do so."

45 In paragraph 44 pf his Judgment, the Judge says
" The use of medical agencies has been widespread for a number of years. In cases outside the predictable costs regime the system operated without undue difficulty, provided the fees claimed have been reasonable and proportionate. These fees have, by general and established custom, been treated as disbursements. The advent of the predictable costs regime does not, in my judgment, mean that the court's approach to such fees should alter, so that they are treated in a different way under the predictable costs regime. The difficulty with that proposition is demonstrated by Mr Bacon's point that until the case has settled it is not known whether or not the predictable costs regime will apply".

46 Woolard v Fowler was a 2006 decision, before the introduction of CPR 45.19, and it is therefore important in my view to see what has happened since that time. I do not accept that one can simply look at CPR 45 as a self-contained code, ignoring the context in which that Rule was drafted and introduced.

47 In that regard, the publication of the final Report of Jackson LJ (on 14 January 2010) is in my view relevant in relation to not only what His Lordship said in relation to this issue, but also on the basis that subsequently in 2013 we see the introduction of CPR 45. The rule drafters and the Rule Committee would have been well aware of the content of the Report when CPR 45 was drafted and approved by the Rule Committee.

48 The 2010 MRO Agreement (which again pre-dates the introduction of CPR 45) is also relevant despite the restriction relied upon by the defendant. The copy in the claimant's bundle is dated the 2nd April 2012. The restriction refers to the applicability of the agreement as set out in the Definitions section (it providing that as from 1 October 2014 the Agreement will not apply in soft

tissue injury claims (as defined In the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents) where the fixed fee provisions set out in CPR 45.19 and 45.29I instead apply to the cost of obtaining a medical report or medical records.

Paragraph 9 of the Agreement provides:

"The Compensators agree with the Medical Reporting Organisations that the cost of obtaining a medical report includes the cost of the expert and the Medical Reporting Organisation where applicable and further agree that they will not raise or continue to pursue any objection to the recoverability of such fees in any proceedings".

49 In my judgment, the restriction referred to does not exclude the applicability of the Agreement in relation to what is set out at paragraph 9. What that restriction does is to provide for payment of the fixed fee provisions set out in CPR 45.19 and 45.29I relating to the cost of obtaining a medical report or medical records or the disbursements mentioned, but not to exclude what is set out at paragraph 9.

50 Whilst I accept that such Agreement may not have applied across the entire insurance industry, I am told by Mr Meehan that in this case, the defendant's insurer was a party to the Agreement, (something which was not challenged), and it does in my view demonstrate an almost invariable practice of medical agency fees being paid as a disbursement.

51 In closing, I was referred by Mr Meehan at the hearing to the respected publication of Friston on Costs where the author whilst acknowledging that there is no binding authority on this issue, says that "there is an informal and seemingly durable industry consensus that (whilst now partly superseded by CPR 45) is so rarely disregarded as to be almost a rule of practice." Interestingly, the author continues by saying that the consensus arose out of an appeal from the decision of Master Hurst in Woolard v Fowler which was disposed of by way of a mediated agreement, the MRO Agreement.

52 I next turn to consider the decision of HHJ Wood QC in Beardmore v Lancashire County Council (2019). That case involved a PL (not RTA) claim where the claimant had tripped and sued the local authority. The decision deals with an appeal from a District Judge. His Honour at paragraph 2 of his Judgment describes the discrete point the subject of the appeal as "the recovery of medical agency fees incurred in obtaining medical records as

disbursements". There was much argument before the Court as to the distinction between the position in a RTA case (where such fees were allowed) and an EL/PL case (where the defendant argued they were not allowed). The Learned Judge decided that in a public liability case CPR 45.29I does allow the recovery of such fees. It can be seen therefore that the decision is not dealing with the issue that I am required to deal with in this case, and therefore whilst persuasive and of general assistance, it goes no further than that.

53 I lastly turn to consider the decision of DDJ Akers in Powles v Hemmings (2021). It is clear from the brief judgment given, that many of the arguments raised before me were not raised before the Deputy. The Deputy was referred to the decision of HHJ Wood QC in Beardmore v Lancashire County Council (February 2019) and to the later decision of the Court of Appeal in Aldred v Chan (October 2019) and decided that the medical agency fees were not recoverable.

54 I have alluded to the fact that there is no authority specifically on this point, and that in my judgment it is not appropriate, as the defendant invites me to do, to treat CPR 45 as a self-contained code and to ignore the other factors I have referred to.

55 If I take into account those factors, I come to the conclusion that when drafting this particular Rule, "the cost of obtaining a medical report" does include the cost of any medical agency fees incurred in the obtaining of such report. It appears to have been common practice of many claimant firms of solicitors to instruct medical agency companies to obtain such evidence, and for defendant insurers to pay such fees. I remind myself that had claimant solicitors not done so, they would have course have incurred the costs of themselves undertaking such work.

56 Had the drafters of the Rule and the Rule Committee wanted to limit the fees recoverable to those only paid to the doctor, they could have quite easily made this clear in the Rule. They chose not to do so, despite the decision of Master Hurst in Woolard v Fowler in 2006, the Final Report of Jackson LJ published in January 2010 when His Lordship specifically said that he did not at that time recommend any change in the Rules so as to reverse the effect of Woolard v Fowler, and also the MRO Agreement initially signed as I understand it in April 2010 (as subsequently reviewed). Instead, they chose to use the same wording " the cost of obtaining a medical report" as was

contained in CPR 45.10 the meaning of which was considered by Master Hurst and referred to by Jackson LJ in his Final Report.

57 In reaching my decision I do not take into account the Charman decision referred to by the defendants in their Skeleton Argument, there being no copy of any approved Judgement before the court.

58 I am also not persuaded that there are any grounds for the Court making a finding of misconduct against the claimant's solicitors (as the defendants invite me to do in their Skeleton Argument) and am surprised that this was raised so late in the day. To be fair to Mr Causey, it is not an issue that he pressed at the hearing.

59 My conclusion is that the medical agency fees are recoverable as a disbursement, but if I am wrong in respect of that conclusion, the Court is still able in my judgment to allow what it considers to be a reasonable and proportionate sum in respect of the three medical reports in dispute. I agree that it would have been helpful to the Court to obtain a breakdown of the invoices, showing clearly the fees paid to the doctor, and those charged by the medical agency. I would encourage such a breakdown to be given. It would also have been helpful if the invoices provided information as to for example, the amount of time spent by the doctor in seeing the claimant and in preparing the report, the time spent in reading any documentation sent to the doctor including the number of pages of medical records perused and so on. However, the absence of such information does not prevent the Court from assessing what it considers to be a reasonable and proportionate sum, the Court having had the benefit of reading the reports (and the invoices in support), and taking into account the guidance in CPR 44.3 and 44.4. This of course is a standard basis assessment, and any costs allowed need to be proportionate with the Court resolving any doubt in favour of the paying party.

60 Dealing with the first Maxillofacial Report, the invoice appears at page 3 of a separate bundle filed by the claimant's solicitors, and the report starts at what is wrongly numbered 18. The invoice gives no information as to time spent, but simply states "Consultant medical report with review of medical records- £1125 plus VAT"

61 The substance of the report (excluding the front page, contents page, details of the author and the declaration) is short (4 pages). Doing the best I can on the evidence that is before the Court and using my experience as both a

District Judge and Regional Costs Judge, in my judgment a reasonable and proportionate fee for such report should be £800 plus VAT and that is the sum I award. I reject the defendant's comparison as to what the Rules allow for an Orthopaedic Report, my not believing that is an appropriate comparison to use.

62 In relation to the second Maxillofacial Report, the invoice appears at page 4 of the bundle and the report starts at page 20. The invoice again provides the same lack of information and the description is " Consultant medical report - £1255 plus VAT"

63 The substance of the report (excluding what I have referred to above) is again 4 pages. Much of the report is a repeat of what appears in the first report, although I note that there was a re-examination. In my judgment the appropriate sum to allow for this report is £550 plus VAT

64 Dealing with the Psychological Report, the invoice appears at page 1 and the report starts at page 31. The invoice again gives a minimal amount of information. It simply says "Consultant Psychologist medical report with review of medical records -£725 plus VAT" The report again is not lengthy, but I accept of course that as before, time would have been spent in considering the medical records (although I have no idea as to how extensive they may have been). I must allow what I consider on the evidence to be a reasonable and proportionate sum and doing so I allow £650 plus VAT

65 That leaves the dispute in relation to the court fees paid in connection with applications issued by the claimant for an extension to the stays imposed in this case.

a) The first fee of £275 relates to an application issued by the claimant's solicitors dated 20 April 2021 listed for hearing on 3 June 2021 before DJ James when neither party attended. The District Judges' order is silent as to costs, and adds the ability of either party to apply to set aside, vary or stay the order pursuant to CPR 3.3 (5) (6). No such application was made, and it appears to me to be clear that in a case where the order is silent as to costs, no costs are recoverable in respect of this particular fee.
b) The second fee of £255 relates to an application issued by the claimant's solicitors dated 15 October 2021 listed for hearing on 28 January 2022, but then vacated upon receipt of an email from the claimant's solicitors

on 26 November 2021 informing the Court that the case had settled and asking that the hearing is removed from the Court diary. In those circumstances, my view is that costs are recoverable. I accept the suggestion that the provisions of CPR 45.19 (2) (c) are sufficiently wide to enable recovery to take place. Had the case eventually proceeded to a Stage 3 hearing, such costs would have been recoverable, and I see no reason why they should not be recoverable when an application to extend the stay was filed at Court but then not proceeded with because the case settled.

66 I shall arrange for this judgment to be circulated to the parties and for a date to be notified to the parties when the judgment can be formally handed down. That hearing will proceed by video hearing (CVP). If either Mr Meehan or Mr Causey are unable to attend the hearing, I am prepared to release them on the basis that the parties are represented by other fee earners who will be able to deal with the issue of costs and any other consequential matters. The parties should endeavour to agree the terms of any order prior to the hearing.