Case No: E74YX378

IN THE COUNTY COURT AT MANCHESTER
On appeal from Regional Costs Judge Harris

The Civil Justice Centre
1 Bridge Street West
Manchester

Date: 22 May 2023

Before :

His Honour Judge Bird

- -

Between :

NORTHAMPTON GENERAL HOSPITAL NHS TRUST

Appellant

- and –

LUKE HOSKIN (administrator of the estate of Pippa Hoskin deceased) **Respondent**

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- -

Roger Mallalieu KC (instructed by **Acumension**) for the **Appellant**
Benjamin Williams KC and Mr John Meehan (instructed by **Clear Law**) for the **Respondent**

Hearing dates: 10 March 2023

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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.

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HIS HONOUR JUDGE BIRD

HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THIS COURT
Approved Judgment

His Honour Judge Bird :

A. Introduction

1. This is an appeal that relates to costs.

2. The substantive claim in this action was settled in November 2020 when the Claimant accepted the Defendant's Part 36 offer. The Claimant's solicitors drew up his bill of costs and served it on the Defendant on 10 January 2021 in the hope that costs could be agreed without the need for detailed assessment proceedings. All but 2 items on that Bill have now been agreed. The outstanding items are:

    a. Item 53 in the sum of £5,400 plus VAT in respect of a medical report from Mr Irons, a consultant in obstetrics and gynaecology and

    b. Item 58 in the sum of £8,775 plus VAT in respect of a medical report from Dr Khan, a consultant cardiologist.

3. An invoice for each sum, issued by Premex Services Limited, and addressed to the Claimant's solicitor was served with the bill. Premex is a medical reporting organisation. It is instructed by solicitors to provide medical reports. It maintains a panel of medical experts to whom it offers quick payment terms and other services. In exchange for those favourable payment terms and services, the experts provide reports at a lower cost than they would charge if directly instructed by solicitors.

4. The Defendant's solicitors asked for a breakdown of items 53 and 58. This was correctly understood to be a request for an explanation of how much of the claimed fee related to the individual medical report and how much related to the services provided by Premex. The request for a breakdown was rejected by Premex (and so in effect by the Claimant's solicitors) whose position is set out in a long letter dated 1 February 2021. Their position was that the invoiced amount was both reasonable and proportionate so that there was no need for a breakdown.

5. An order recording the terms on which the claim settled and including a provision that the Defendant pay the Claimant's costs which would be determined by a detailed assessment in default of agreement was approved by the court on 28 June 2021. Detailed assessment proceedings were commenced on 7 July 2021. On 9 July 2021, the Defendant (the paying party) issued an application seeking an order that the Claimant (the receiving party) provide the breakdown that had been previously refused. On 27 July 2021, the paying party served points of dispute in respect of the bill requesting details of the sums charged by the expert and those charged by Premex.

6. This is an appeal from the decision of Deputy District Judge Harris sitting as a Regional Costs Judge on 4 July 2022 when he refused the Defendant's application of 9 July 2021. Mr Mallalieu KC appears for the Defendant/Appellant and Mr Williams KC and Mr John Meehan appear for the Claimant/Respondent.

B. The main issue on appeal

7. The parties have presented their arguments in a helpful and concise manner so that the outcome of the appeal rests on the resolution of a single issue: is a receiving party required to provide a breakdown in its bill between the cost of an expert report and the costs of a medical reporting organisation ("MRO") approached to provide the report, or is it permissible for the receiving party to submit a bill which simply includes the fee charged by the MRO to provide the medical report?

8. If the receiving party is required to provide a breakdown but (as here) has failed to do so, then it seems to me that a Judge asked to make an order requiring the receiving party to provide the breakdown should do so.

C. Relevant provisions of the CPR

9. The following provisions are relevant:

a. CPR PD 47 paragraph 5.2:

> *On commencing detailed assessment proceedings, the receiving party must serve on the paying party and all the other relevant persons the following documents —*
> *….*
> *(c) copies of the fee notes of counsel and of any expert in respect of fees claimed in the bill;*
> *(d) written evidence as to any other disbursement which is claimed, and which exceeds £500….*

b. CPR PD 47 paragraph 5.12:

> The bill of costs may consist of items under such of the following heads as may be appropriate—
> …..
> (9) attendances on and communications with…. agents and work done by them…..

c. CPR 35.4(4):

> *The court may limit the amount of a party's expert's fees and expenses that may be recovered from any other party*.

d. CPR 44.3(2):

> *Where the amount of costs is to be assessed on the standard basis, the court will –*
>
> *(a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and*
>
> *(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.*

D. The Authorities

10. *Stringer v Copley*, is a decision of His Honour Judge Cook sitting in the Kingston upon Thames county court in 2002. The Judge was dealing with an appeal in respect of a detailed assessment. The District Judge had allowed a claim for £375 in respect of sums paid to Medplan Medico-Legal Reports for supplying a medical report. There was no breakdown between the cost of the expert report and the cost of services provided by Medplan. The Judge was

> *"satisfied that there is no principle which precludes the fees of a medical agency being recoverable between the parties, provided it is demonstrated that their charges do not exceed the reasonable and proportionate costs of the work if it had been done by the solicitors."* (emphasis added)

11. He went to express some concern that:

> *"although the District Judge allowed the charge of Medplan in full, neither he, nor I, nor the paying party know how much of the sum of £375 was the doctor's fee and how much were the charges of Medplan. To demonstrate the point by taking an extreme, if the doctor's fee were only £75 and Medplan's charges £300, the total of £375 would undoubtedly be unreasonable and disproportionate. It does therefore seem to me important that, whilst there is much to commend the use of medical agencies, it is important that their invoices (or 'fee notes') should distinguish between the medical fee and their own charges, the latter being sufficiently particularised to enable the cost officer to be satisfied they do not exceed the reasonable and proportionate cost of the Solicitors doing the work."* (emphasis added)

12. There is no reference in the decision to any relevant CPR provision then in force and the parties did not take me to the provisions as they then were.

13. HHJ Cook's decision was described by the then Senior Costs Master, Master Hurst in *Claims Direct Test Cases Tranche 2* [2003] EWHC 9005 as "trite costs law". In my judgment the provisions of PD 47 paragraph 5 are consistent with the decision.

14. I am not invited on this appeal to consider the merits or otherwise of obtaining medical reports through medical reporting agencies such as Premex (the point is made clear by Mr Williams KC at paragraph 11 of his skeleton argument).

15. Other authorities were cited but, in my view, they do not take the matter any further.

E. The Arguments on the main issue

16. In summary, Mr Williams KC submits that there is no requirement for a breakdown of Premex's fee. He suggests that if there was such a requirement, the PD would spell it out. He submits that the Premex fee note as presented is sufficient.

17. Mr Mallalieu KC submits that in order to conduct a detailed assessment the Judge needs to be able to distinguish between agency fees and expert fees. PD 47 facilitates that exercise in

plain and clear terms. Premex is not an expert and so its invoice cannot sensibly be regarded as an expert fee note.

F. Determination

18. In my judgment the language of PD 47 is very clear and admits of no doubt. Paragraph 5.2 applies if the receiving party is asking the paying party to pay for the cost of an expert. If that is the case, then the receiving party is required to provide a copy of the expert's fee note(s). The effect is that the precise cost charged by the expert (recorded in the fee note) is known.

19. Seized of that information the paying party can make a decision about the fee. In doing so it may well consider what the "going rate" for a similar report is. Without the fee note the paying party cannot make a rational, evidence based decision, about whether to accept that aspect of the bill, reject it or make a counteroffer. The court is in the same position.

20. If, as here, the paying party seeks to recover the fees of a medical reporting organisation in addition, it seems to me the same points apply. If the paying party (and potentially the court) is to make a decision about MRO fees it needs to understand what they are.

21. The points made by His Honour Judge Cook in *Stringer* apply with equal force today as they did in 2002. A Judge faced with the task of assessing items 53 and 58 as they presently stand is faced with an impossible task. Absent a breakdown the Judge risks permitting the type of "extreme" identified by His Honour Judge Cook.

22. I am satisfied that it is clear that PD 47 imposes a duty on the receiving party to provide the fee note of any expert instructed and, where such costs are claimed details of the costs of any MRO. Premex is not an expert. Its invoice cannot be described in any sensible way as a fee note and is in any event not the fee note of the expert.

23. Once this conclusion is reached, in my view it follows that the appeal must be allowed. The Deputy District Judge was in my view wrong to refuse the order sought. If the paying party is entitled to receive the breakdown (as I have found), as a general rule it is entitled to an order vindicating that right. The court should manage its proceedings in a way that facilitates the just disposal of any matter it has to decide. Here, making the order would have facilitated that aim by ensuring that the court had before it all relevant and necessary information needed to conduct the detailed assessment. It was not suggested that it would be difficult, let alone disproportionate to provide the breakdown so that no reason to depart from the general rule was advanced. By refusing the order, the Deputy Judge left the Judge who would conduct the detailed assessment without the information they needed.

G. Outcome

24. Having allowed the appeal, in my view I am in a good position to determine the application. I am satisfied that an order ought to be made. I will require the receiving party to provide a breakdown between the Premex costs and the expert costs and to provide copies of the experts' fee notes. That should be done within 14 days of the date of the order that follows from this judgment. I propose to order in addition, given what in my view is a clear failure to comply with PD 47, that in default of compliance with the order that items 53 and 58 each be assessed at zero.

HIS HONOUR JUDGE BIRD SITTING AS A JUDGE OF THIS COURT
Approved Judgment