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Case No's:
PT-2020-000041
PT-2020-000043
PT-2020-000044
PT-2020-000045
PT-2020-000047

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST

Rolls Building, Fetter Lane,
London EC4A 1NL
(Judgment delivered at a remote hearing)

Date: 04/12/2020

Before:

CHIEF MASTER MARSH

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Between:

(1) Valley View Health Centre (a firm) **(2) Coleford Family Doctors (a firm)** **(3) Bushbury Health Centre)a firm)** **(4) St Andrews Medical Centre (a firm)** **(5) St Keverne Health Centre (a firm)**	**Claimants**
- and -	
NHS Property Services Limited	**Defendant**

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John de Waal QC and Katrina Mather (instructed by **Capital Law Limited**) for the **Claimants**
Jonathan Gaunt QC and Nathaniel Duckworth (instructed by **Bevan Brittan**) for the **Defendant**

Hearing dates: 17 November and 4 December 2020

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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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CHIEF MASTER MARSH

Chief Master Marsh:

1. This is my judgment following a hearing on 17 November 2020 of applications made by the claimants in five related claims. John De Waal QC and Katrina Mather appeared for the claimants in each case. Jonathan Gaunt QC and Nathaniel Duckworth appeared for the defendant. Both the parties have referred to the defendant as NHSPS throughout and I will adopt the same abbreviation.
2. The application in each of the five claims is identical. The claimants seek judgment on admissions made in NHSPS's defence in each claim and invite the court to grant negative declarations. I will come to the terms of the five declarations that are sought in due course.
3. The claimants rely upon two statements made by Mr Stephen Meade who is a partner with Capital Law Limited, the solicitors for the claimants, and also a statement from Mr Gaurav Gupta, who is a GP and partner in the Faversham Medical Practice and Premises Policy Lead for the General Practitioner's Committee England of the British Medical Association (BMA). Mr Meade's statements have provided helpful backgrounds and summarised the basis of the claimant's application but it will not be necessary to refer to them in any detail in this judgment.

Background

4. The claimant in each case is a GP practice operated as a partnership. Each occupies premises which vested in NHSPS on 1 April 2013. On that date, pursuant to a series of statutory transfer schemes made under the Health and Social Care Act 2012, approximately 3,600 properties, including doctors' surgeries, vested in NHSPS. The transfer was from some 151 Primary Care Trusts and 10 Strategic Health Authorities. The number of GP practices that are indirectly affected by the issues that are raised in this claim is approximately 820.
5. The basis of occupation of the property in each case is disputed. When the properties were transferred to NHSPS there was often a shortage of documentation and, in some cases, there are no written tenancies and the legal basis of occupation is uncertain. The issue of concern in each case is the service charge that NHSPS seeks to recover from the claimants and other GP practices. Although not strictly test cases, each of the five claims is funded by the BMA. The five claims are said to be representative of the different types of tenancy that are found in the larger group and I am told that overall, approximately £160 million of unpaid service charges is claimed by NHSPS. Put briefly, the claims concern the effect of NHSPS's Consolidated Charging Policy, to which I will refer as "the Policy", for 2016 and 2017 and 2017/18. The Policy relates, using the term loosely, to the terms upon which GP practices are to pay service charges.
6. The claimants all rely upon a statement made by Bevan Brittan LLP on behalf of NHSPS, in a letter dated 27 September 2018. They said that the Policy documents:

> *"… provide terms incorporated into the relevant contracts where there is no express lease or where the express lease does not deal with service charges."*

7. The issues in these claims are of real concern to GPs. They face the possibility of paying substantial sums that may, in some cases, threaten their viability. The importance of the claims to GPs is made clear in Dr Gupta's witness statement. He describes there being a crisis facing the national GP community, due to the unresolved service charge disputes between GPs and NHSPS.
8. Mr Meade's second statement refers to further concerns on the part of GPs about an announcement made by NHSPS on 1 October 2020 concerning charges for Covid related costs that will be passed on to GPs. Although I can well understand that the announcement has raised concerns, it is, in fact, unrelated to the issues in these claims. It appears to be no more than an indication that GPs should budget for an estimated increase in costs of 4.75 per cent, as are related to Covid-19.

The claims

9. It is necessary to summarise each claim briefly and I will do so by referring to them using the name of the medical practice in each case.

10. **Valley View Health Centre**: Claim PT-2020-000041. This claim relates to purpose-built premises at Goff's Lane, Goff's Oak in Hertfordshire. The claimant's practice, in one form or another, has occupied the premises since 2006. The freehold is held by Broxbourne Borough Council and in 2006, a sublease was granted to the Primary Care Trust and that lease vested in NHSPS.

11. The claimant says it has occupied the premises under an unwritten periodic tenancy. NHSPS says that the claimant occupies under a tenancy at will, initially pending negotiations for a grant of a sublease and later, pending negotiations for an assignment of the defendant's interest. Those negotiations have been continuing for a lengthy period of time.

12. The claimant says it is obliged to pay only an all-inclusive service charge figure. NHSPS, however, is claiming a sum of some £218,289, which is a far greater amount than would otherwise be due on the claimant's basis of assessment.

13. The relief sought in the claim, which is mirrored with the necessary changes in each of the other claims, is for five negative declarations in the following terms:

> *"(1) The terms of the tenancy do not include the provisions of the Defendant's Consolidated Charging Policy 2016/17 or 2017/18;*
>
> *(2) There is no implied term of the tenancy that the Claimant should pay charges in accordance with the Defendant's Consolidated Charging Policy 2016/17 or 2017/18;*
>
> *(3) There is no agreement between the Claimant and Defendant to vary the terms of the tenancy by the provisions of the Defendant's Consolidated Charging Policy 2016/17 or 2017/18;*
>
> *(4) The terms of the tenancy have not been varied by the provision of the Defendant's Consolidated Charging Policy 2016/17 or 2017/18; and*
>
> *(5) The provisions of the Defendant's Consolidated Charging Policy 2016/17 or 2017/18 are not incorporated into the tenancy."*

14. **Coleford Medical Practice**: Claim PT-2020-000043. This claim concerns premises in Coleford in Gloucestershire. The claimant says they have an unwritten periodic tenancy and have occupied the premises since 1990 and that service charges are limited to a fixed figure of £14,038 per annum, adjusted by inflation.

15. NHSPS says that a tenancy implied by conduct came into being and it was a term of the tenancy that the original tenants and their successors would pay both rent and service charges. NHSPS claims arrears of approximately £242,000.

16. **Bushbury Health Centre**: Claim PT-2020-000044. This claim concern premises at Hellier Road, Wolverhampton. The tenancy, which is described as a tenancy at will, is in writing and dated 13 January 2004. It includes a defined service charge arrangement. The defendant says that the agreement created a periodic tenancy capable of being determined on six months' notice. Arrears of some £301,602 are claimed.

17. **St Andrews Medical Centre**: Claim PT-2020-000045. This claim concerns premises at 30 Russell Street, Eccles, Salford, Manchester. The practice occupies under a lease dated 10 April 2004, for a period of 15 years and the claimant says it is holding over under that lease. There are written service charge arrangements under the lease. NHSPS claims £520,107 in service charges.

18. **St Keverne Health Centre**: Claim PT-2020-000046. This claim concerns premises at Polventon Parc, St Keverne, Helston. The practice has occupied the premises since 1978. The claimant says there is a periodic tenancy which is unwritten and the rent that is inclusive of service charges. The defendant says the tenancy was implied from the conduct of the parties and some £90,140 of service charges are due.

19. In the case of Bushbury and St Andrews, there are written tenancy agreements and it is clear that any liability under those agreements is a matter of construction of the relevant agreement. In the case of the other three tenancies, the position is different and the terms of the tenancy will have to be established at a trial. I will return to look at the pleadings and the basis upon which judgment for declaratory relief is sought after looking further at the background.

Chronology leading up to the claims

20. It is necessary to set out some of the chronology for reasons that will become clear. The starting point is that on 24 August 2018, in a letter from Bevan Brittan, it was said on behalf of NHSPS,

> *"The service charge costs of each building are charged to tenants in line with their percentage occupation of the building."*

This suggested a blanket charging basis in accordance with the Policy, without regard to the terms of individual tenancies.

21. There is then the letter dated 27 September 2018, to which I have already made reference. At that stage, the BMA was proposing to seek judicial review and Capital Law, acting on behalf of the BMA, had written a judicial review pre-action protocol letter dated 20 September 2018. Bevan Brittan were writing in reply. The nub of the BMA's complaint was that NHSPS had adopted the Policy promulgated in the policy documents and it involved an indiscriminate and unlawful approach to the imposition of those charges upon GP practices across England, without regard to the terms of any lease in place, whether documented or not, between NHSPS as landlord and their tenants.

22. The reply to the pre-action protocol letter on 27 September 2018, is relied upon, as I have indicated, by the claimants. It is also relevant to note that in paragraph 9.1 of the letter, it was suggested on behalf of NHSPS that the issue was not, in fact, one of public law but was one of private law and at paragraph 9.1.2 of the letter, in answer to a question about how the policy was relevant to contractual tenancy arrangements, Bevan Brittan made the statement, to which I have referred earlier, which suggested that the Policy provided terms that were incorporated into the tenancies.

23. I note at this stage two points. First, it was not said by NHSPS that the Policy had any direct application to written tenancies that set out a service charge regime, as in Bushbury and St Andrews. Secondly, it was asserted that in other cases, the policy was incorporated into the tenancy, but without saying how this had come about as a matter of law. NHSPS now says the statement made in September 2018 was incorrect and that by the time the current proceedings were issued in January 2020, the position had been made clear.

24. Returning to the chronology, in a letter written on 14 March 2019, Bevan Brittan said:

> *"It is our client's position that the policy varied the contractual arrangements in 2016 to allow NHSPS to invoice tenants for service charges and the facility management charges."*

25. But then in July 2019, in a letter of 10 July 2019, Bevan Brittan said:

> *"Please note that it is not our client's position that there was a retrospective incorporation, but rather that the incorporation occurred when the policy was promulgated. It is our client's position that GP tenants agreed to the variation, by choosing to continue to occupy the premises and accept the services."*

26. By July 2019, the BMA was proposing to bring Part 8 proceedings to determine what was described as a very narrow issue, about whether incorporation of the policy had taken place. Matters then crystallised in the next exchange of correspondence.

27. Capital Law sought to summarise in a letter to Bevan Brittan of 23 July 2019 what they understood NHSPS's case to be and at paragraph 6 of that letter, they said:

> *"[NHSPS's position] is that:*

(a) the Policy is incorporated into the relevant contracts, where there is no express lease or where the express lease does not deal with service charges; and (b) in each case, the Policy is incorporated by way of a mutually agreed variation of the contractual arrangements, manifest by the promulgation of the Policy and the GPs practices continuing to occupy the premises and receiving the services."

28. Capital Law went on at paragraph 7 to say that their clients disagreed with that position.

29. The reply from Bevan Brittan on 6 August 2019, is significant. Much of the letter was taken up with explaining why NHSPS considered that Part 8 proceedings would be inappropriate. They pointed out, for example, that there were multiple issues of fact in light of the many differences between the tenancies. They went on to say, at paragraph 7:

"Whether particular tenants have, by their conduct, accepted a variation of their service charge obligations, or estopped themselves from denying it, is, again, a fact sensitive question."

It is possible to see there, a forecast of part of the case that NHSPS is now seeking to run.

30. Then at paragraph 9, Bevan Brittan said:

"Fifthly, your client has in any event, misunderstood the significance of the Charging Policy to our client's entitlement to recover service charges. As we set out in paragraph 1.1 of our letter dated 24 August 2018, it is our client's position that it has always been entitled to recover service charges on the basis later enshrined in the Charging Policy. This is so because:

9.1 - Written leases (whether still held or now lost) and oral leases, are most likely to have made provision for the landlord to recover all, rather than merely part, of the costs it incurs in providing services to and for the benefit of the tenant in the usual way.

9.2 - Where leases have risen by implication, it is likely that the conduct giving rise to them will have involved full, rather than incomplete, recovery.

9.3 - Where services have been provided to the tenant otherwise than under the terms of a lease, our client will be able to recover its full costs under that separate agreement or applying ordinary restitutionary principles."

31. This was, again, a clear forecast of the approach that NHSPS is now taking. It is right to say, however, that the approach it adopted has changed over time and the explanation of NHSPS's position over the period covered by this correspondence has not been a model of clarity.

32. These proceedings were issued in January 2020 seeking the relief I have indicated.

The statements of case

33. I now turn to consider the pleaded cases, in order to consider whether after the somewhat inauspicious start by NHSPS, it can be said there is any doubt about what its position is and whether any doubts have been dispelled by its pleaded case. It is convenient for these purposes to take one of the claims and I will refer to the statements of case in the Valley View claim.

34. In the particulars of claim, at paragraph 13, there is an assertion that the demands for service charge payments were a breach of the terms of the tenancy. Then, importantly, at 14, it is said:

"The consolidated charging policy takes no account of the terms upon which the claimant occupies the premises and purports to vary the same by the retrospective implication of a term that has not been agreed. There is no basis for such variation in the implied terms of the tenancy or in law."

35. At paragraph 42 of the defence, the defendant's position is set out:

"42. As to paragraph 14:

42.1 The charging policies are relied upon, in company with other communications set out in schedule 2 hereto, in support of the Defendant's contention that it has at all times been made clear to the Claimants that they would be required to pay service charges in respect of the costs referred to in paragraph 18.2 above, if and for so long as the Claimants remained in occupation of the premises.

42.2 But the Defendant does not contend that any of its charging policies have impliedly, retrospectively varied the Claimant's existing service charge obligations and the Defendant does not contend that the relevant service charges are due pursuant to the Charging Policies (as opposed to the Claimant's tenancy at will) as the Defendant has already explained to the Claimants in a letter dated 6 August 2019 the Defendant's solicitors to the Claimant's solicitors. The relevant service charges are instead due under the terms of the Claimant's tenancy at will."

36. The defence goes on, at paragraph 45:

"For the reasons given in paragraph 42 above, there is no dispute between the parties about the effect of the charging policies and, accordingly, it is denied that there is any need for the declarations sought in the particulars of claim."

37. NHSPS counterclaims on a number of alternative grounds:

(1) Under paragraph 49, service charges are claimed under the tenancy and in the alternative;

(2) Under paragraph 50.1, service charges are said to be due under a separate contract that came into being by a course of conduct or:

(3) Under paragraph 50.2, on the basis of unjust enrichment or;

(4) Under paragraph 51, on the basis of an estoppel by convention or representation or in equity.

38. NHSPS says the Policy is relevant to its ability to recover service charges, because, amongst other reasons, it is part of the course of dealing between the parties; it is not saying, however, that it is incorporated into the tenancies.

39. Mr De Waal submitted that NHSPS is treading a thin line in saying that the Policy is relevant, but no longer saying it varied the tenancies or was incorporated into them. I merely observe that legal points often involving drawing or marking relatively thin lines. The question for the court is such cases is whether the line is a real one in the sense that it is a point that has a real prospect of success or is properly arguable. The issue for the court here is whether the court should grant judgment based on the admissions in each of the five cases and grant declarations on the basis of those admissions. It is worthy of note that, in addition to judgment on the admissions, the claimants seek an order that NHSPS should pay their costs of the claim.

The law

40. It is common ground that the court has a discretion under CPR 14.3 to enter judgment on admissions. It is equally common ground that the court is not bound to do so. If the court were to accede to the claimants' applications, these claims will proceed to trial in any event, based on NHSPS's counterclaim. It has always been the case that:

(1) where there is no writing, the court will have to determine the terms upon which the claimants have occupied the respective premises; and

(2) in the case of written agreements, the court will have to construe the document to establish the scope of the service charge regime; and

(3) in each case, the court will have to determine, to the extent that it is necessary, the alternative grounds upon which NHSPS pleads its case.

41. As to the law concerning the grant of declaratory judgments, there is little between the parties. It is not in doubt that such relief is discretionary and that a negative declaration or declarations may be granted. It is notable, however, that, as a general rule, negative

declarations are to be approached with a degree of caution. It is equally not in doubt that the court may grant a declaration without a trial. Mr De Waal referred to *Patten -v- Burke Publishing Co Limited* [1991] 1 WLR 541, where Millett J, as he then was, at paragraph 543 to 544, indicated that the grant of declarations in that case was appropriate before a trial. In my experience, it is now relatively common place for declaratory relief to be granted before a trial, particularly in the case of judgment in default or on the hearing of an application under Part 24.

42. The core principles that are appropriate here can be seen from the judgment of Neuberger J, as he then was, in *Financial Services Authority -v- Rourke* [2002] CP Rep 14, at page 6:

> *"It seems to me that when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are other, special reasons why or why not the court should grant the declaration."*

43. I also have in mind the much cited summary of the principles in the judgment of Aikens LJ at [120] in *Rolls Royce Plc -v- Unite the Union* [2010] 1 WLR 318. For the purposes of this judgment, I agree with Mr Gaunt's submission that the key principles are that declaratory relief should only be granted if, and only if:

(1) there is a real and present dispute between the parties before the court;
(2) the declaration would serve a useful purpose;
(3) there are no special reasons why the declaration ought not to be granted;
(4) the grant of a declaration is fair and just to both parties.

Submissions

44. The claimants say there is still a lack of clarity about the defendant's position. Mr De Waal points to the defendant's position being a 'moveable feast' and he is right to show, as he does by reference to the correspondence, that there has been a change of approach. However, even if there was a lack of clarity at the time the claims were issued, it is hard to see that there is now any doubt about NHSPS's position in light of the admissions. In each defence, it is set out in terms that the policy has not been retrospectively incorporated into the tenancies and that the services charges under the tenancy are not calculated pursuant to the policy. The service charge claimed is due under the terms of the tenancy, whatever it may be in each case.

45. The claimants say that even if there is no real and present dispute, the grant of declarations will serve a useful purpose. The way it is put is that the grant of declaration will clear the undergrowth or put matters beyond doubt.

46. Mr De Waal also submitted that the grant of declarations would reassure the GP community. As I have already explained by reference to Dr Gupta's evidence, and the point is also made forcibly in Mr Meade's evidence, the service charge issue is one that is causing very real concern to the GP community. However, whether justice demands that negative declarations are granted in order to reassure the GP community, is another matter.

47. Are there special reasons not to grant declarations? The defendants say there are real concerns. They say the proceedings are not straightforward. The position of each GP's practice is fact sensitive with important differences between them such as whether there writing or no writing, if there is no writing, what are the terms of the tenancy? If there is writing, what does the tenancy mean when it is properly construed? Then there are the grounds in the counterclaim that are put in the alternative, if the charges are not recoverable under the terms of the tenancy.

48. Mr Gaunt submitted that the grant of declarations could be easily misconstrued as the claimants having won the claim. Indeed, it is an important element of the applications that

the claimant seek not just declaratory relief, but also judgment for costs of the claim in each case. Regardless of whether declarations are granted, the counterclaims will proceed to trial.

49. Mr Gaunt pointed to a letter from the BMA to GPs dated 20 August 2020. By that stage, NHSPS's defences and counterclaims in these proceedings had been served and the letter reported on what was described as the belated concession by NHSPS that the policy did not vary the leases. The letter went on to add that there had been a concession that the service charges were not due "because of" the charging policy. This was not an accurate statement to make, in light of the alternative grounds upon which the counterclaims are based.

50. More worryingly, the letter goes on, after reporting that the current applications were being issued seeking declarations, that the policy does not form part of the tenancies. It then says the judgments sought would not automatically apply to any GPs practices beyond the five test claimants;

> "… however, **they would be highly persuasive evidence that other GPs practices in similar circumstances would be able to rely on to defend themselves against their landlord**." [bold in the original]

51. The letter appears to suggest, therefore, that the grant of declarations in the five cases before the court would provide a basis for other GPs practices to defend the type of claim NHSPS is putting forward.

52. The next paragraph of the letter says:

"**NHSPS has now agreed that the charging policy does not automatically form part of every tenancy and will not have legal status without prior agreement by the GP practice in each case**." [bold in the original]

53. It seems to me, that the reference to the need for "prior agreement" does not accurately summarise the case NHSPS is pursuing in its defences and counterclaims. The claims are not of enormous complexity but there are subtleties that need to be carefully explained.

54. Mr Gaunt submitted that the grant of declarations may lead GPs to believe they have a defence, when they may not do so. Perhaps recognising that the letter sent out in August was not helpful, in his reply submissions Mr De Waal suggested a form of words that could be added as a recital to the order in each case, so as to put the grant of declaratory relief in its proper context. It is unnecessary to include the proposed form of words in this judgment.

Conclusions

55. It seems to me that the legal principles I have summarised are closely intertwined and they are, to no small degree, different ways of articulating the same underlying considerations. They reflect the cautious approach the court adopts when a party requests declaratory relief. For example, the presence or absence of a real and present dispute about the issue in question is clearly closely related to the utility or otherwise of granting relief. Similarly, doing justice to both parties is influenced by whether there is a dispute and the utility in granting the declaration.

56. I have concluded that it would not be right to grant the declarations the claimants seek. My reasons, in summary, are:

(1) At the time the applications were issued, there was no dispute about incorporation of the policy into the tenancies or retrospective variation of the tenancies. The policy is relevant to the defendant's case on service charges, but in a different way to the way was suggested in earlier correspondence. If there was doubt about NHSPS's position at the time the claims were issued, about which I have some doubt, the position became crystal clear upon service of the defences. It seems to me, however, that the date of issue of the claims is not the relevant date for these purposes. The relevant date is the date of issue of the applications when the claimants applied for judgment on the admissions. If there was adequate clarity, as I think there was at that date, then plainly, there was no longer a dispute.

(2) There is no utility in granting the declarations. The words used in the defences put the position clearly. Those words can be reported to GPs by the BMA without fear of contradiction or it being suggested reporting those words is inaccurate. It is wrong to suggest that declarations are needed and will be useful to set GPs' minds at rest, accepting, of course, that the claims for service charges are very worrying.
(3) In some cases an admission contained in a statement of case could be regarded as being inferior to a declaration, because the court has power under the CPR to give permission to withdraw an admission. In theory, that is the case here. However, in practice, I think it is inconceivable that the court would grant permission, particularly in light of the central importance of the admissions and, indeed, the reliance upon the admissions at the hearing by NHSPS.
(4) Mr Gaunt initially submitted that the BMA has an ulterior purpose in pursuing the applications, namely, that it will be used to encourage GPs not to pay service charges. However, he rightly stopped short of saying there is a risk that orders granting declarations might be misused. The BMA is, of course, a highly reputable organisation and I entirely accept that it would not in the BMA's interests to misuse the declarations, if granted. That said, I have real concerns about the statements made in the BMA's August letter. The letter shows there are difficulties in communicating both sides of NHSPS's case; one side being that the policy did not vary the tenancies and was not incorporated, the other being that the policy is central to its entitlement to recover service charges. I consider there is a real risk that if the declarations are granted, only one side of the case will be reported and that GPs might be unwittingly misled.
(5) I consider that, even if the absence of a dispute and the lack of utility are not of themselves sufficient reasons for declining to grant declarations, there are special reasons here why it would not be appropriate to grant declaratory relief. I am satisfied that the sort of recital Mr De Waal mentioned in the course of submissions would not be appropriate. Indeed, the very fact that such a 'health warning' might be necessary in the orders, suggests of itself there is a risk that the orders and declarations might be misunderstood.
(6) Looking at the claims and the applications in the round, and stepping away from the considerations I have discussed just now, it seems to me that the requirements of justice, looking from both sides, do not make out a compelling case to grant the declarations and, indeed, there are good reasons not to do so. I will therefore dismiss the applications.

(There followed further submissions)

57. Having given judgment earlier this morning, I am now dealing with a question of costs. The claimants have been unsuccessful on their applications and the only issue for me is whether there are considerations here which would militate against the usual outcome applying, in other words, is there a reason why the successful party, NHSPS, should not obtain an order for costs?
58. It seems to me, notwithstanding what Mr De Waal has said, there are no good reasons why the court should not make an order for costs against the claimants. The applications have not prospered and the unsuccessful party will generally be ordered to meet the costs.
59. NHSPS has invited the court merely to record in a recital that costs would normally have been ordered to be paid by the claimant, but not, in fact, to make an order, on the basis that NHSPS says it wishes to pursue an application under section 51 of the Senior Courts Act

1981 for an order for costs against the BMA. I do not consider it would be right to adopt that approach.

60. Mr De Waal has made it absolutely clear that if an order for costs is made, it will be met by the BMA, not by the practices and I can see no good reason why the court should not proceed in a conventional way, which is to make an order for costs against the claimant in each of the claims. It is only if the order for costs is not met that NHSPS would have a platform for seeking a third party costs order.

61. I will therefore make an order that the claimant in each case pays the defendant's costs and I will now consider whether those costs should be summarily assessed or subject to a detailed assessment.