Neutral Citation Number [2024] EWHC 1083 (SCCO)
Case No: SC-2023-BTP-001179

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
SENIOR COURTS COSTS OFFICE

Royal Courts of Justice
Strand
London
WC2A 2LL

Date of hearing: 19 March 2024

Before:

DEPUTY COSTS JUDGE ROY KC

- -

Between:

LAUREN WAZEN	**Claimant**
- and -	
DR NASIR KHAN	**Defendant**

- -

- -

MR DARREN MALONE (costs draughtsman) for the **Claimant**
MR MARK CARLISLE (costs draughtsman) for the **Defendant**

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APPROVED JUDGMENT

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[The quality of the audio of the judge was poor.]

DEPUTY COSTS JUDGE ROY KC:

1. I am dealing with a preliminary issue as to whether and to what extent point 3 of the points of dispute is compliant with the rules as explained, certainly in the claimant's case, in a Court of Appeal decision of *Ainsworth v Stewarts Law LLP* [2020] EWCA Civ 178; [2020] 1 WLR 2664. The claimant's case is that it does, and in accordance with *Ainsworth* falls to be struck out. The defence case is that, first of all, *Ainsworth* only applies to solicitor-client not *inter partes* assessments, and secondly and in any event, the PODs are compliant.

2. POD 3 raises three challenges. First of all disclosure:

> "The items attributed to the disclosure phases are individually and/or collectively excessive. They total 96.3 hours and they have claimed a total base profit costs of £18,513.00. They claim did not reach the procedural disclosure stage. This time represents internal identification and analysis of the medical and employment records only. The first defendant offers 35 hours at guideline rates."

The next challenge is entitled "Settlement Negotiations":

> "The items attributed to the ADR settlement phase are individually and/or collectively excessive. They total 39.1 hours and they claim a total base profit costs of £14,250.50. However, much of the work on settlement was actually done by counsel, whose fees for the same phase are £3,354.16 plus VAT. The first defendant offers 20 hours at guideline rates."

Then bill drafting:

> "The items attributed to the cost of assessment phase are individually and/or collectively excessive. They total 71.2 hours and are claimed at a total base profit cost of

> £16,152.50 plus VAT. This is close to two thirds of what the first defendant spent on the entire case.
>
> The bill drafting time fails to take into account that the Claimant's firm is, or ought to be, capable of applying the industry wide technical advances that allow preparation of an electronic bill (or at least the majority of the "mechanical" work in bill preparation) by importing information from the time recording system into the costs software."

3. As regards the bill drafting challenge, I indicated in submissions to Mr Malone for the claimant that whatever the position as regards technical compliance, my preliminary view was that the claimant had no real difficulties dealing with this point. It is a fairly -- I do not say this in any derogatory way -- standard challenge in respect of limited a number of items which were readily identifiable. Crucially, in my view, consideration of these type of items does not involve identifying or pulling out file notes from a large mass of papers. Mr Malone pragmatically and sensibly did not resist that suggestion. So the claimant's challenge I dismiss as far as it still pursued in respect of that strand of POD 3.

4. That leaves exclusion of settlement negotiations. The primary question I need to answer is whether *Ainsworth* applies to *inter partes*, as opposed purely to solicitor-client assessments, given that this is of course common ground in the context of that case was a solicitor-client assessment.

5. It is clear to me that it does. Paragraph 29 refers to CPR 47. I pause there to say CPR 47 undoubtedly applies to *inter partes* assessments. Lady Justice Asplin, giving the lead judgment which the balance of court agreed, cites PD 47 8.3:

> "Points of dispute must be concise and to the point. They must follow Precedent G in the schedule of cost precedents annexed to this practice direction. As far as practicable, they must (a) identify the general points or matters of principle which require a decision before the individual items in the bill are addressed and (b) identify specific pointes stating concisely the nature or ground of dispute.
>
> Once a point has been identified it should not be repeated but the item numbers where the point arises should be inserted in the left-hand box as shown in Precedent G."

I pause there to say I attach some significance to the reference there to "item numbers", especially when the text of that practice direction is read in conjunction with the Precedent G itself, which provides a column for the paying party to identify the item numbers of specific items being challenged.

6. A further point in that regard is found, in my view, in the rules themselves -- CPR 47.14(6) -- which states:

> "Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission".

The word "specified", in my view, dovetails with practice direction and Precedent G in indicating in respect of specific items, as opposed to general challenges, the paying party is, to a degree at least, required to specify, be it by number or filtering, which particular items are under challenge.

7. Reverting to the judgment in *Ainsworth*, paragraph 29 is in my view clearly dealing with the requirement of points of dispute in general, and not just those in solicitor and client assessments. That is obvious because the rules and the practice direction are primarily directed towards *inter partes* assessments.

8. Paragraph 31 of *Ainsworth* again discusses Precedent G, which I have already referred to. Precedent G is clearly directed at *inter partes* assessments, which again to my mind confirms that this part of the judgment is focused primarily on requirements for PODs in general, not just those in solicitor-client assessments.

9. Skipping ahead Lady Justice Asplin's conclusions are contained in the section starting at paragraph 36. She held in terms CPR Part 47 applied to solicitor-client assessments. That of course is not to say that it does not also apply to *inter partes* assessments. It clearly does. She then refers again to the practice direction. Importantly in paragraph 38 says this:

> "Common sense dictates that the points of dispute must be drafted in a way which enables the parties and the court to determine precisely --"

Interposing, I place some emphasis on "precisely". Continuing:

> "-- what is in dispute and why. That is the very purpose of such a document. It is necessary in order to enable the receiving party, the solicitor in this case --"

Pausing again, "in this case" flags up that in other cases it may not be solicitors, but rather the opposing party. Continuing again.

> "-- to be able to reply to the complaints. It is also necessary in order to enable the court to deal with the issues raised in a manner which is fair, just and proportionate."

10. Pausing there, that seems to me to be the *ratio*, at least one of the *rationes* of the case. It seems to me to be the nub and thrust of the entire judgment. It is

clear on my reading of it that applies to both *inter partes* and solicitor-client assessments.

11. Paragraph 39 discusses, as Mr Carlisle very correctly points out, particular requirements for solicitor-client assessments with reference to presumptions contained at 46.9(3). However, in my judgment, that in no way dilutes the general guidance and *ratio* at paragraph 38. Rather it provides secondary ratio as to additional requirements for solicitor-client assessments. These apply in addition to the general requirements which will apply to all points of dispute, be they solicitor-client or *inter partes*.

12. Looking at the other points Mr Carlisle makes in support of his position, there are I think three of these.

13. First of all he makes the point that on the standard basis assessment the burden is on the paying party to justify and prove that costs incurred are reasonable and proportionate and recoverable, and that at least to a significant degree relieves the paying party of the need to provide any particularity from the points of dispute.

14. I do not accept that for two reasons.

15. First of all, neither Part 47 nor the practice direction draw any distinction between assessment on the indemnity or the standard basis. Of course *inter partes* assessment can also be on the indemnity basis. So the rules and the guidance in *Ainsworth*, it is my view, are both, with appropriate modifications, intended to apply to all types of assessment on whatever basis.

16. Secondly, Mr Carlise's argument in my view proves far too much. Taken to its logical conclusion it would entitle the paying party to say, "We consider all these costs excessive. We therefore require the receiving party to prove that they are reasonable and recoverable", and provide no more particularity than that. That cannot be right. On any view, there has got to be some degree of particularity. It is question of how much is one to which I will return.

17. Mr Carlisle also indicated in his submission that there is limit to the degree of particularity required. He points to the fact that one can plead in points of dispute entirely legitimately general points, such as regards proportionality or disallowance under CPR 44.11, and so forth. That is undoubtedly correct in my view. However, in my view it does not advance Mr Carlisle's argument.

18. This is because the rules and the practice direction draw a very clear distinction, as does Precedent G, between the general points and specific points. General points, by their nature, are normally not related to specific items and therefore there will be no need to particularise and it will often not be possible to do so. But the requirements for general points and specific items are, in my view, different.

19. I would add here - a theme to which I will return - that in my view this reflects the underlying practical point informing the need for particularity when challenging specific items. A lot of the time it comes down to, "Can the paying party and the court identify which documents they need to look at?", i.e. which documents need to be pulled from the underlying file to be considered. In respect of the type of general points Mr Carlisle was referring

to, that simply does not arise in most case, or at least it does not cause any difficulties if it does.

20. The final point, and perhaps the one Mr Carlisle places the most weight on, is the practical difficulties a paying party faces when providing particularisation without sight of the underlying file. For reasons I will come back to, I think there is a little in this but it certainly does not, in my view, justify a complete lack of particularity. Indeed, that was made clear by *Ainsworth*. I say this for the following reasons.

21. Firstly, of all these difficulties have always been difficulties in *inter partes* assessments since time in memorial. They cannot, in my view, change the contents requirements of the rules, as explained by *Ainsworth*. These restrictions will undoubtedly have been well in the minds of the Rules Committee when they drafted these rules. Also, in my view, it is fanciful to suggest that the Court of Appeal would not have them well in mind when giving the general guidance in *Ainsworth*.

22. Secondly, from experience, both judicially and as an advocate, points of dispute which provide a fair degree of particularity in terms of identifying items under challenge are the norm, certainly post *Ainsworth*. I do not see how the defendant in this case is in any different or worse a position in terms of providing particularised points of dispute than the vast majority of such defendants. If other defendants can comply, and they clearly can, there is no reason I can see why this defendant should not be able to do so.

23. That being said, as I have already indicated, I think there is something in the defence point that the restrictions a paying party inevitably face on an *inter*

partes assessment do shape what is required in terms of compliance, which must be realistic. This is reflected at paragraph 14 of the judgment of *Ainsworth*. This is referring to the judgment of his Honour Judge Klein, sitting as a High Court judge, that was sitting in first appeal in *Ainsworth* against the decision of the Chief Master, the Court of Appeal being the second appeal. Paragraph 14 says:

> "The judge also noted that: even if Practice Direction 47, para 8.2 is complied with simply by the adoption of Precedent G […] which he said it was not, it did not follow that there was no overarching obligation on the claimant [ie the paying party] to further the overriding objective; it is possible to understand why costs judges adopt a benign approach to the content of points of dispute in *inter partes* costs assessments where the burden […] is effectively on the receiving party and the paying party does not have access to the solicitor's files; but even if the Chief Master might have approached the matter in that way, it does not lead to the conclusion, amongst other things, that Mr Ainsworth is relieved from furthering the overriding objective; the case is not distinguishable on the basis that the assessment was to be conducted on the indemnity basis and Mr Ainsworth had access to Stewarts Law's files and that the Chief Master's decision was wrong."

24. My reading of the Court of Appeal judgment is that they did not disapprove of this passage from High Court judgment. The point I take from this passage, which as a matter of common sense my view is correct, is that the requirement for particularity is going to be less demanding in an *inter partes* than a solicitor-client assessment. A more "benign approach", to quote his Honour Judge Klein, is required in respect of *inter partes* assessments.

25. So I do reject the claimant's argument at their highest. They seem to me to seek to impose a requirement for particularity which is just unrealistic in *inter partes* assessments.

26. So drawing threads together, my view as to the legal position, there are six points here.

27. Firstly, the clear requirements for PODs are as described at paragraph 38 of *Ainsworth*. That seems to me to be the touchstone. I would say that is aa practical question of fairness and justice.

28. Secondly, how much particularity is required is going to be a case-specific question of fact and degree. Again, this reflects my reading of the thrust of *Ainsworth* being about the practical effect of any lack of particularity in terms of justice and fairness.

29. Thirdly, following on for that, and for reasons I have already identified, less particularity will almost inevitably be required in *inter partes* points of dispute than solicitor-client points of dispute.

30. Fourthly, in an *inter partes* points of dispute the paying party can often do no more than (a) identify which items are *prima facie* excessive and require the receiving party to justify them,; and (b) identifying as best it can what on the paying party's case would be a reasonable and proportionate amounts.

31. Fifthly, there is a distinction in my view as to the particularity required between two different things the PODs have to do. First of all they have got to identify what is in dispute. Secondly, they have to identify the nature of the challenge. The second of these logically entails identifying what is being conceded or offered.

32. As to the first requirement, in my view that will require identifying, by reference to item numbers and/or filtering in an electronic bill, which items are

under challenge. The second requirement, in my view, can be rather more broad brush. The paying party is entitled to go to say in terms, "We offer x at grade A and y at grade D", or whatever the case may be. It does not have to, at that stage, specify precisely which items are being allowed on its case and to what extent. In many cases it will not be practical to do so. For example it might be said there is duplication, in which case there is no hard and fast formula and we just have to take the two duplicate items together and say allow x for both of them, partial duplication.

33. Sixthly, when identifying which items are under challenge, I fully accept that a degree of grouping or clumping together of items under challenge is acceptable. Again, that is clear from Precedent G itself. However, there are limits to quite how broad that type of grouping can be if it is not to fall foul of the touchstone requirements identified in paragraph 38 of *Ainsworth*. Again, the level of particularity required is going to be a case-specific question of fact and degree.

34. I turn then to the question of whether in respect of point of dispute 3 it is complying with reference to those matters I have set out. In particular, does it meet the requirements crystalised at paragraph 38 of *Ainsworth*?

35. I will first of all address this question in respect of the disclosure challenged. I will then address in respect of the ADR challenge, although more briefly for reasons to which I will return.

36. I note that in respect of disclosure no item is identified by item number or by filter. In contrast to Precedent G, the column in the PODs into which item numbers should be inserted is simply blank.

37. I also note that even the offer, which I accept can be fairly broad brush, is really too broad brush. The 96-odd hours claimed constitutes different fee earners, whereas the PODs simply offer 35 hours without distinguishing between fee earners. So it is actually not even clear what is being offered or conceded. Even if the paying party's position re the number of hours were accepted, it would remain unclear how much in money terms that would translate into.

38. Indeed, the problem goes deeper than that. There is generally a relationship between the grade of fee earner and the reasonableness of the time claimed. This can manifest itself at several levels, the most obvious being that a more senior fee earner would generally be expected to perform a given task more quickly than a more junior one. The reasonableness of time is context specific. It cannot be assessed in an abstract vacuum. Because of the undifferentiated nature of the paying party's proposed allowance, it very difficult to assess its reasonableness even on its own terms.

39. In my view, this is just far too broad brush. As I remarked during proceedings with Mr Carlisle, it reads more like the type of submission one sees to in summary assessments, as opposed to a detailed assessment. Indeed, even in a summary assessment one would expect it to be identified how much time in respect of each (grade of fee) earner was being offered for the reasons I have already identified.

40. I return to the practical guidance at paragraph 38 of *Ainsworth*.

41. Firstly, Is this lack of particularity fair to the claimant? Does it enable the claimant to reply to the complaints? In my view, the answer to both of these

questions is no.

42. The claimant simply does not know which items are being challenged or conceded. She does not know which documents to produce. She therefore has had to produce the entire file containing all the underlying documents to support of these 96.3 hours. Mr Malone cannot possibly be expected to know which documents he is going to have to justify which ones he is not going to have to justify. He cannot fairly, in my view, be expected to prepare to justify in granular detail a mass of documents equating to 96.3 hours.

43. Secondly, does it enable the court to deal with the issues raised in a manner which is fair, just and proportionate? Again, in my view, it does not. I would have to look through all of these documents, cross-referencing the electronic bill. I would then have to try and ascertain for myself which ones might be said to be excessive. That is not proportionate and it would be incredibly time-consuming, especially without any guidance whatsoever as to what particular items are under challenge. It would also not be fair and just in that it would require me to adopt an overly inquisitorial role in what is an adversarial hearing. Whilst a degree of this is inherent in the detailed assessment procedure, there are limits to which the court can adopt a inquisitorial role without creating a real risk of unfairness.

44. Taking these two points together, again with very much an eye on the practical justice of the situation, reveals that the PoDs do not serve the purpose which they are required to perform. If I were to attempt the quasi-inquisitorial exercise described above, as a matter of fairness I would have to give Mr Malone the opportunity to address me on those items, the documents

related to those items, which I have identified as being potentially excessive. In my view that is precisely the type of on-the-hoof exercise that *Ainsworth* is crystal clear should not be entertained or undertaken. *Ainsworth* is, in my view, equally clear that in those circumstances the only proper course is to strike out that element in the points of dispute.

45. As regards ADR, the same points apply. They apply with somewhat less force, because we are looking at 39.1 hours rather than 96.3 hours, but they apply nevertheless. In any event, neither party has suggested that I should take a different approach between disclosure and ADR. Both submissions have been to the effect that, so far as *Ainsworth* compliance, they stand or fall together. In my view, they fall together.

46. Therefore, notwithstanding the force of submissions by Mr Carlisle, in my view POD 3 in the points of dispute, in respect of disclosure and ADR, falls to be struck out.

(Proceedings continue)

47. The bill has been properly certified, saying apportionment has been applied, and certainly I have no base whatsoever to go behind that. The question is whether it has been accurately applied, apportionment in these cases I should observe being more of an art than a science perhaps.

48. Looking then at the point of dispute itself it says in respect of the second defendant:

> "The claimant indicates that there is no claim cost against the second defendant."

That does not appear to be right. In any event

> "The claimant in synopsis sets out a separate allegation in the second defendant. It is highly unlikely, the first defendant suggests that these would not have had an impact in the course of both the experts' liability evidence and the time spent in pre- action, issues/statements of case, disclosure, witness statements, et cetera."

Pausing there, I do not see how the involvement of the second defendant could have affected the expert evidence. The question of the second defendant's involvement had nothing to do with the expert evidence. There was a question of legal principle applied to the factual relationships between the parties and whether or not that gave rise to vicarious liability and/or an non-delegable duty. I continue.

> "There has been no attempt it seems to apportion out the costs to the extent that they were increased by the involvement of the second defendant."

In my view, that is simply incorrect. There has been an attempt.

49. The point of dispute continues:

> "Pending further detail as to how any such apportionment has already been applied the 1st Defendant will say that the assessed costs should be reduced by a margin of 10% to reflect costs as against 2nd Defendant, to which the Claimant is not entitled."

50. In my view, the asserted 10 per cent reduction is not properly founded. Its basis is not properly articulated in the point of dispute. It is just too general and broad brush. It is invited me to make an arbitrary reduction, I have no

proper, principled, empirical or logical basis to do that. It would involve a risk of double jeopardy, given that some apportionment has been applied already. Again, there needs to be more particularity to be identified which items are said should have been apportioned and have not been, or should have been apportioned differently.

51. I recognise and sympathise with the difficulty a paying party has on this issue, which is maybe even more acute in relation to generic challenges. Again, however, rules prescribe the requirements. It is not an unusual point to crop up and paying parties do deal with it. It would have been open to the paying party for example to raise Part 18 questions as to how the apportionment exercise has been carried out, and so forth. That either would have provided more detail, enabling further particularity in the points of dispute, enabling a challenge to be made or, if the responses by the claimant have not been satisfactory, adverse inferences could have been drawn, bearing in mind where the benefit of the doubt and the burden of proof lies.

52. But I am afraid, even making every possible allowance, it is just too broad brush. Again, it is more of a summary assessment submission than a proper point of dispute for detailed assessment.

(Proceedings continue)

53. The starting point in the guideline hourly rates in my view are a reasonably strong starting point, much stronger than the previous 2010 iteration. I say that because whilst the previous 2010 rates were very much designed for and aimed at summary assessments, the new ones are not. That is because, when one looks at the report that generated the new rates and the evidence base, it

was actually based on the range rates awarded in this type of hearing in this court, which is generally going to be multitrack cases, rather than those which would be awarded on fast-track summary assessment.

54. Against that I do not think *Samsung Electronics Co Ltd & Ors v LG Display Co Ltd & Anor* (Costs) [2022] EWCA Civ 466 applies to detailed assessments, which is a different exercise than summary assessment. In summary assessment, when we see the need for compelling justification in adopting the guideline rates, because the court simply will not be equipped to allow any uplift or mark-up or enhancement without such material. I do not see the position being the same on detailed assessment. Also on its facts *Samsung* was starting with commercial rates. The relevant guideline rate was a commercial rate. It was a commercial case with nothing to take it out of the norm for commercial cases. So that again seems factually slightly different.

55. As regards hourly rates here, I am not going to slavishly go through all the factors. I will highlight what seem to me to be the important ones.

56. This was a case of some complexity; it was relatively complex. Clinical negligence cases tend to be compared to personal injury cases generally. There were six experts reasonably instructed. It was certainly of considerable significance to the claimant. The outcome for very have been easily fatal, so this was no doubt a very harrowing experience. The level of damages agreed, £300,000, is substantial. Certainly it is nowhere near the top end, in terms of value or complexity, but equally it is no doubt it does have some degree of that.

57. I have also taken into account the make-up of the fee earners; the fact that most of the work was done at Grade B and D, with minimal input from Grade A, and the various factors and shape of the case generally.

58. Against that it is agreed that the starting point is the 2021 previous guideline rates. For Grade A, the relevant guideline rate £373. The Grade A carried out 3.9 per cent of the work. The Grade B, 39.3 per cent of the work. This does seem to me to be a case where, whilst within the remit of a Grade B, a Grade A would have been justified and that does reflect on the reasonable rates for both of them. Putting it another way, if the Grade A had been the main fee earner, there would have been little if any mark-up. However, it is different because the Grade B was.

59. The Grade A was obviously very much in an oversight/supervisory capacity. For a complex case, that does justify some mark-up. So I allow, instead of the £373, £400 for Grade A.

60. The Grade B was obviously the lead fee earner with primary responsibility in a case of relative importance, complexity, value and so forth. As I said the instruction of a Grade A would have been justified. So in my view that again justifies a mark-up from the guideline rates. The guideline rate is £289. In my view a mark-up to £340 is justified for the Grade B.

61. Grade C, the guideline rate was £244. I have seen little to justify a mark-up there, though perusing the bill it is apparent there was some degree of specialism in some of the Grade C work. I am going to give a blended rate here, adopting a broad-brush approach. Grade C is claimed (leaving aside the quantum analyst) at to £310. That is too high. I can only find mark-up

justified on the basis of the material I have been shown, so I am going to allow £265 there.

62. Grade D, the guideline rate is £139. That is all I allow. The nature of the Grade D's work does not really change with the features of the case I have identified as justifying a mark-up of the higher grades. I simply see nothing which would justify any movement away from or enhancement to the guideline rate for a Grade D in this case.

(Proceedings continue)

63. The Grade D is conceded.

64. In my view item 1228, Grade A, use of Grade A is not necessarily and not reasonable. There no obvious reason why the Grade B with conduct of the case could not sign the bill. I allow 2 hours for the Grade B in total.

65. As regards item 1225, I am sorry I appreciate it is not an easy job but it looks far beyond what is reasonable and, even as far as reasonable, it is far beyond what is proportionate. I take into account that this has been done by a Grade C lawyer, so it should be done rather more quickly than by a Grade D. If it is the type of laborious line-by-line task, which cannot be done quickly, then that should be delegated to a Grade D. Against that I make some allowance for the fact that there did need to be apportionment applied, a slightly complicated exercise, but it is still far too high. I am allowing 27 hours for item 1225.

(Proceedings continue)

66. As I have indicated I am just being pragmatic in a fairly broad-brush summary assessment. Whatever reductions I make in terms of reasonableness are going to be eclipsed and superseded by the fact that any reduced total is going to be disproportionate in respect of assessment. The assessment has gone a little over half a day. It might have gone longer but it was never going to be more than one day. In respect of the bill of £187,000-odd, to be reduced down maybe £160,000, £165,000, I think it is fair for any extra work generated by the paying party is relevant to proportionality and I take that into account to a degree. A slightly limited degree because whatever else may be said in criticism of the points of dispute they were not the type of 30-page points of dispute, pouring over every item, which itself would generate a lot of work.

67. Obviously as a value judgment I am going to allow £12,000 plus VAT plus the court fee.

(Proceedings continue)

Permission to appeal

68. I should say I am not one of those judges who always refuses permission. Occasionally I will grant it. But I am not going to here I am afraid.

69. I agree that it is a point of some importance and that there would be some benefits to have appellant authority further clarifying how *Ainsworth* applies in *inter partes* assessments. However that, in my view, is not a compelling reason by itself.

70. The primary threshold is, is there a real prospect of success? On ground one, I do not consider that there is. I take the view that whilst precisely where one

draws the line for particularity is not easy, these particular PODs were, on any view, clearly on the wrong side of it. That also, in my view, amounts to the wider practical importance point, in that the proposed appeal would be an unsuitable vehicle for that, simply because it is not a borderline case. Any further guidance would be *dicta*, rather than binding, that could cause more harm than good.

71. As regards that decision is perverse for me to strike out the points. Again, no real grounds of success for two reasons. First of all, assuming I am right about *Ainsworth*, *Ainsworth* all but compels that. Secondly, I was never asked to do anything else. No alternative points of dispute for example were proffered.

72. I also take into account the general difficulties of challenging the exercise of discretion in relation to ground two. It is never going to be a fruitful case for an application for permission to appeal. Permission is refused.

(End of judgment)

(Proceedings continue)

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