Neutral Citation Number: [2023] EWHC 1337 (KB)

Case No: G90MA144

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2023

Before :

MRS JUSTICE HILL

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Between :

(1) ABC **Claimant**
(2) DEF
(3) GHI (BY HER LITIGATION FRIEND, DOT)
(4) JKL (BY HIS LITIGATION FRIEND, DOT)

- and -

Defendant

(1) DERBYSHIRE COUNTY COUNCIL
(2) THE CHIEF CONSTABLE OF THE DERBYSHIRE CONSTABULARY

Re: Costs

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Peter Edwards (instructed by **R. James Hutcheon Solicitors**) for the Claimants
Steven Ford KC and Rose Harvey-Sullivan (instructed by **Browne Jacobson LLP**) for Derbyshire County Council
Dijen Basu KC (instructed by **East Midlands Police Legal Services**) for the Chief Constable of the Derbyshire Constabulary

Hearing date: 11 May 2023

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Approved Judgment

This judgment was handed down remotely at 2pm on 06/06/2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

1: Introduction

1. By a judgment handed down on 28 April 2023 at [2023] EWHC 986 (KB) ("the liability judgment") I dismissed (i) all four Claimants' claims against both Defendants under the Human Rights Act 1998 ("HRA") for breaches of their rights under the European Convention on Human Rights ("ECHR"), Article 8; (ii) GHI and JKL's claims against both Defendants for negligence; and (iii) ABC and DEF's claims against the Second Defendant ("D2") for false imprisonment and a breach of their rights under the ECHR, Article 5.

2. It is now necessary to resolve the costs issues between the parties. These issues were addressed in written submissions and at a hearing conducted by MS Teams on 11 May 2023. I was also provided with (i) a witness statement from Ruby O'Hara, solicitor for the First Defendant ("D1") dated 9 May 2023; and (ii) a witness statement from Laura Hunt, solicitor for D2, dated 25 April 2023.

2: The issues

3. The Claimants accept that, their claims having been dismissed, they should be ordered to pay the Defendants' costs. However, they contend that the case being a "mixed claim" for the purposes of the Qualified One-Way Costs Shifting ("QOCS") regime, but being "in the round…a personal injury case" (per Coulson LJ in *Brown v Commission of the Police of the Metropolis* [2020] 1 WLR 1257 at [57]), the court should not grant permission under CPR r 44.16(2)(b) for any of the costs order to be enforced against them.

4. Both Defendants seek the court's permission under CPR r 44.16(2)(b) to enforce the costs order against the Claimants to the level of 85%. D1's total costs are estimated to be in the region of £447,742.95 and D2's £317,628.20.

5. Both Defendants also seek an interim payment on account of costs under CPR 44.2(8) of £100,000.

3: The nature of the Claimants' claims

3.1: The causes of action

6. As noted at [1] above all four Claimants brought claims under the HRA for breach of their Article 8 rights. GHI and JKL also brought claims in negligence. ABC and DEF also brought claims for false imprisonment and under the HRA in respect of Article 5.

7. GHI had initially pursued a claim for a declaration and damages under the Equality Act 2010 ("the EA 2010") but this was withdrawn shortly before the trial.

8. All four Claimants had also advanced a claim under the HRA for breach of Article 6. However in post-trial submissions Mr Willems KC indicated that it was not necessary for me to determine any issues related to this claim, as this added nothing substantive to the Article 8 claims: [6] of the liability judgment.

3.2: The factual basis of the claims and the trial

9. The detailed factual background to the claim is set out at section 3 of the liability judgment, to which I refer. In summary, all the claims arose from (i) D2's removal of GHI and JKL into police protection under the Children Act 1989, s.46 on 24 May 2017; (ii) D2's arrest of ABC and DEF on suspicion of child cruelty offences on the same day; and (iii) D1's actions with respect to the s.46 removal and the obtaining of an Interim Care Order in respect of the children on 26 May 2017.

10. As noted at [5] of the liability judgment, the trial was originally listed to address both liability and quantum issues. As a result, the parties had instructed a series of medical experts to address the Claimants' personal injuries and one day of the trial timetable had initially been allocated to hear that evidence. Due to complications arising from the evidence of Shaun Barratt, as set out at [155]-157] of the liability judgment and certain issues over the instruction of the medical experts, there was insufficient time to address quantum issues. On that basis I ordered a split trial on 8 February 2023 (the penultimate day of the 10 day trial listing). By this point the parties' medical experts were all on "standby" ready to give their evidence.

3.3: The remedies sought

11. At [12] of the liability judgment, I noted that the Claimants claimed that they had all suffered "personal injuries, loss and damage" as a result of these events.

12. ABC's final Schedule of Loss, provided shortly before the trial, sought (i) general damages for pain, suffering and loss of amenity for psychiatric and psychological injuries, valued at £40,000; (ii) past and future treatment costs, with related travel costs, in the sum of £23,810; and (iii) an award of the sort considered in *Blamire v South Cumbria Health* Authority [1993] PIQR Q1/an award for disadvantage on the open labour market, for which a sum of £250,000 was proposed. This was sought on the basis that ABC's ability to manage the family's property portfolio had been severely impacted by her injuries.

13. The Schedule also sought (i) £818.90 in travel costs for legal appointments and court hearings; (ii) £9,085.44 for the cost of holidays adversely impacted by these events; (iii) £4,065.15 for the costs of (a) purchasing a laptop that was required for the care proceedings; (b) engaging a cleaner/cook for the period of time when GHI and JKL were being cared for by their maternal aunt and uncle; (c) two concerts that were

adversely impacted by these events; and (d) legal expenses in respect of her arrest; and (iv) aggravated damages in the region of £100,000.

14. The total claimed on ABC's Schedule was £429,630.93 plus ongoing interest.

15. DEF's final Schedule of Loss was in similar form. He sought (i) general damages on the same basis as ABC, valued at £19,070; (ii) £18,300 for past and future treatment and travel costs; (iii) a *Blamire*/disadvantage on the open labour market award estimated at £100,000; and (iv) aggravated damages in the region of £100,000. The total claimed was £238,794.12 plus ongoing interest.

16. GHI's final Schedule of Loss sought (i) general damages valued at £19,070; (ii) £28,832 for past and future treatment and travel costs; (iii) a *Blamire*/disadvantage on the open labour market award estimated at £125,000 (based on the adverse impact on GHI's education); and (iv) aggravated damages in the region of £100,000. The total claimed was £273,787.06 plus ongoing interest.

17. JKL's final Schedule of Loss sought (i) general damages valued at £17,500; (ii) £22,460 for past and future treatment and travel costs; (iii) a *Blamire*/disadvantage on the open labour market award estimated at £100,000 (again based on the impact on education); and (iv) aggravated damages in the region of £100,000. The total claimed was £240,772.19 plus ongoing interest.

18. Aggravated damages cannot be awarded for the tort of negligence: *Kralj v McGrath* [1986] 1 All ER 54, at 60-61. Accordingly, the sums for aggravated damages could only have been sought by the Claimants in their HRA claims and, for ABC and DEF, in their false imprisonment claims.

19. In opening the trial, Mr Willems made clear that the Claimants' claims were "for personal injury damages in respect of all of the…claims/causes of action". Although the claim form had sought "just satisfaction damages" in addition to personal injury damages, the opening submissions effectively made clear that the Claimants were not pursuing such a claim.

20. In the claim form / initial Schedules of Loss served in May and September 2020, the Claimants had also sought (i) declarations under the HRA; (ii) an order that the Defendants' expunge references to the safeguarding investigation from their records; and (iii) exemplary damages. These claims were not pursued at trial.

21. ABC and DEF never advanced claims for general damages for loss of liberty due to wrongful arrest or false imprisonment.

4: The legal framework

22. Proceedings "which include a claim for damages…for personal injuries" fall within the QOCS regime: CPR 44.13(1)(a).

23. By virtue of CPR 44.14 the effect of QOCs is that subject to CPR 44.15 and 44.16, costs orders made against a claimant in cases within the QOCS regime may be enforced without the permission of the court, but only to the extent that the aggregate amount in money terms of such orders does not exceed "the aggregate amount in

money terms of any orders for, or agreements to pay or settle a claim for, damages, costs and interest" made in favour of the claimant.

24. CPR 44.15 and 44.16 set out certain exceptions to the QOCS regime.

25. Under CPR 44.15, costs orders may be enforced to their full extent without the permission of the court where the proceedings have been struck out on the grounds that (a) the Claimant has disclosed no reasonable grounds for bringing the proceedings; (b) the proceedings are an abuse of the court's process; or (c) the conduct of (i) the Claimant; or (ii) a person acting on the Claimant's behalf and with the Claimant's knowledge of such conduct, is likely to obstruct the just disposal of the proceedings.

26. CPR r 44.16(2)(b) makes provision for "mixed claims", namely where "a claim is made for the benefit of the claimant other than a claim to which this Section applies."

27. In *Brown* at [31], Coulson LJ (with whom David Richards LJ and McCombe LJ agreed) held that "this Section" within CPR r 44.16(2)(b) is the section of the CPR setting out the QOCS regime. CPR 44.13(1) identifies the three types of claim covered by the regime: they are claims for personal injury. Therefore, he held, "…if the proceedings also involve claims made by the claimant which are *not* claims for damages for personal injury…then the exception in r 44.16(2)(b) will apply".

28. Under the CPR r 44.16(2) exception, "[o]rders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just".

29. At [49] of *Brown*, Coulson LJ referred to the Claimant's "complete – and ultimately successful" causes of action under the Data Protection Act 1998 and the HRA and for breach of duty in respect of misuse of personal information. Of these claims, he said:

> "Those claims stood alone: they did not require any claim for personal injury or proof of personal injury damages in order to be successful".

30. He continued by considering the meaning of claims in respect of personal injuries, as follows:

> "54. The starting point is that QOCS protection only applies to claims in respect of personal injuries. What is encompassed by such claims? It seems to me that such claims will include, not only the damages due as a result of pain and suffering, but also things like the cost of medical treatment…I consider that a claim for damages for personal injury will also encompass all other claims consequential upon that personal injury. They will include, for example, a claim for lost earnings as a result of the injury and the consequential time off work.
>
> 55. In other words, a claim for damages in respect of personal injury is not limited to damages for pain and suffering…".

31. At [56] he accepted that in personal injury proceedings, another common claim will often be for damage to property. He gave the example of road traffic accident litigation where there will usually be a claim for the cost of repairs to the original

vehicle and the cost of alternative vehicle hire until those repairs are effected. He noted that such claims are not consequential or dependent on the incurring of a physical injury. They are consequent upon damage to property, namely the vehicle that suffered the accident, and therefore they fall within the mixed claim exception in CPR r 44.16(2)(b).

32. However, he continued at [57] by observing that the fact that there is a claim for damages in respect of personal injury, and a claim, for example, for damage to property "does not mean that the QOCS regime suddenly becomes irrelevant". He continued:

> "On the contrary, I consider that, when dealing with costs at the conclusion of such a case, the fact that QOCS protection would have been available for the personal injury claim will be the starting point, and possibly the finishing point too, of any exercise of the judge's discretion on costs. If…the proceedings can fairly be described in the round as a personal injury case then, unless there are exceptional features of the non-personal injury claims (such as gross exaggeration of the alternative car hire claim, or something similar), I would expect the judge deciding costs to endeavour to achieve a 'cost neutral' result through the exercise of the discretion. In this way, whilst it will obviously be a matter for the judge on the facts of the individual case, I consider it likely that, in most mixed claims of the type that I have described, QOCS protection will – in one way or another – continue to apply".

33. At [58] he held as follows:

> "It is however important that flexibility is preserved. It would be wrong in principle to conclude that all mixed claims require discretion to be exercised in favour of the claimant, because that would lead to abuse, and the regular "tacking on" of a claim for personal injury damages (regardless of the strength or weakness of the claim itself) in all sorts of other kinds of litigation, just to hide behind the QOCS protection…".

34. He cited *Siddiqui v University of Oxford* [2018] 4 WLR 62. In that case at [8], Foskett J had held that when considering mixed claims, there is a need "to ensure that the QOCS provisions are not abused by simply "dressing up" a non-personal injury claim "in the clothes of a personal injury claim to avoid the normal consequences of failure in litigation".

35. In *Achille v Lawn Tennis Association Services Ltd* [2023] 1 WLR 1371 at [37] Males LJ (with whom Edis and Baker LJJ agreed) cited *Brown* at [57]-[58] as describing "how the CPR r 44.16 discretion should be exercised in a mixed claim case", noting that Coulson LJ's judgment had "explained that the QOCS protection which would have been available for the personal injury claim if it had stood alone will be a relevant and often important factor to take into account".

36. *Achille* at [26] also made clear that the term "proceedings" in CPR r 44.13 refers to all of the claims made by a claimant against a single defendant, when one such claim is a claim for personal injury.

5: Submissions and analysis

5.1: Is this a "mixed claim"?

37. Although there was initially some points of difference on the issue, the parties eventually agreed that this was a "mixed claim" within CPR r 44.16(2)(b).

38. That was plainly correct because: (i) following *Achille*, "proceedings" refers to all the claims made by a claimant against a single defendant, when one such claim is a claim for personal injury; (ii) all four Claimants had brought a claim for damages for personal injury against each Defendant; (iii) all four Claimants had also brought claims which were not claims for damages for personal injury against each Defendant, in that they had all sought aggravated damages against each Defendant (and ABC had sought special damages unrelated to personal injury in the form of the heads of claim referred to at [13] above); and (iv) the exception in CPR r 44.16(2)(b), as interpreted in *Brown* at [31] (see [27] above), therefore applied.

39. On that basis the overarching question for me to address is whether it is "just" in the exercise of my discretion to grant permission under CPR r 44.16(2) for the Defendants to enforce their costs orders against the Claimants, and if so, to what extent. Although Mr Ford KC and Mr Basu KC sought to persuade me that the discretion under CPR r 44.16(2) is to be exercised by reference to the general costs discretion under CPR r 44.2, guidance as to the manner in which the specific discretion under CPR r 44.16(2) should be exercised was set out by Coulson LJ in *Brown* at [57]-[58], as affirmed in *Achille* at [37].

5.2: Can these proceedings fairly be described "in the round" as a personal injury case?

40. Following *Brown* at [52], it is necessary for me to determine, first, whether in Coulson LJ's words, these proceedings "can fairly be described in the round as a personal injury case". Mr Edwards contended that they can. In my judgment he is correct. I have reached this conclusion for the following reasons.

41. First, by the time of the trial it was clear that the Claimants were not pursuing their claims for just satisfaction damages under the HRA other than those that reflected personal injury damages, exemplary damages or any claim under the EA 2010 (although that in itself would potentially have involved an element of personal injury damages, pursuant to the principle in *Sheriff v Klyne Tugs* [1999] ICR 1170). The expunging order referred to at [20] above and declarations under the HRA were also not advanced.

42. Rather, the negligence, HRA and false imprisonment claims were pursued at trial almost exclusively for the purpose of obtaining personal injury damages. The summaries of the final Schedules of Loss set out at [12]-[17] above make clear that the majority of the heads of claim (general damages for pain, suffering and loss of amenity, treatment costs and claims relating to the lost capacity to work due to injury) fall within the broad definition of claims in respect of personal injuries set out by Coulson LJ in *Brown* at [54] (see [30] above).

43. Second, even before the trial the parties appeared to understand that the Claimants' claims were focussed on their claims for personal injury damages: in submissions for

a case management hearing dated 12 November 2021, Mr Ford described the claim as "fundamentally a personal injury claim"; and neither Defendant referred in their opening submissions to the non-financial remedies referred to at [41] above. During the trial Mr Willems described the Schedules of Loss as "effectively personal injury Schedules" and it was noted by Mr Basu that the Defendants had responded to them as such.

44. Third, the negligence claims advanced by GHI and JKL could not have been brought at all if they did not have a personal injury element, the same being a necessary element of the tort. The fact that the HRA and false imprisonment claims did not require any claim for personal injury or proof of personal injury damages in order to be successful (to quote *Brown* at [49]: see [29] above) is of limited relevance on the facts of this case, because the only remedies the Claimants sought at trial in respect of these claims were personal injury damages. Further, it is clear from *Brown* that it is the nature of the loss claimed which is relevant for these purposes and not the nature of the cause of action.

45. Fourth, all of the disclosure between the parties, all the witness statements and all the expert evidence was necessary for the determination of the personal injury claims. None of the other remedies referred to at [41] above would have generated a need for any additional evidence, even if they had been pursued to trial.

46. Fifth, Mr Ford was right to emphasise that the "route" to personal injury damages under the HRA is not as straightforward as in a common law negligence claim, because the same can only be recovered under the HRA, section 8(3) if the court is satisfied that such damages are "necessary to afford just satisfaction" for the harm done (see *Alseran v MOD* [2019] QB 1251 at [935]-[946]). However, this legal issue does not change the fact that the Claimants had in fact sought personal injury damages in their HRA claims.

47. Sixth, both Mr Ford and Mr Basu highlighted aspects of the Claimants' evidence suggesting that their primary motive for bringing the claims was not to secure damages, but their belief in the need to hold the Defendants to account. I had already observed in the liability judgment at [436] that through the litigation they had tested the rationale for the decisions taken by the child protection professionals in great detail. However, again, this does not detract from the fact that the Claimants did in fact seek personal injury damages in their HRA claims.

48. Further, the agreed expert evidence that would have been adduced had the trial proceeded to deal with quantum issues was to the effect that all four Claimants had suffered psychiatric/psychological injuries, although the duration and extent of those injuries was in dispute. Accordingly these were evidentially sound personal injury claims and the Claimants cannot, in my judgment, fairly be accused of "tacking on" weak personal injury claims to other causes of action (to quote *Brown* at [59]) or of simply "dressing up" a non-personal injury claim "in the clothes of a personal injury claim" to avoid the normal consequences of failure in litigation (to quote *Siddiqui* at [8]).

49. Seventh, the main element of the claim that did not relate to personal injuries was the claim for aggravated damages advanced by each Claimant. However, although the sums sought under this head were large, these claims generated no need for additional

evidence. The factual basis for the claim would, inevitably, have been explored for the purposes of the Claimants' personal injury claims in any event. Had the trial proceeded to deal with quantum issues, this matter would have been addressed by way of brief submissions on the basis of the very short narratives on the issue set out in each Defendant's Counter-Schedule of Loss.

50. Eighth, to the extent that ABC's Schedule also sought just under £14,000 in special damages unrelated to personal injury (see [13] above) this was a modest sum in the context of the overall value of the claim. It is akin to the examples of the cost of repairs or alternative vehicle hire in a road traffic accident case given by Coulson LJ in *Brown* at [56] (see [31] above). This claim generated only a handful of questions for ABC in cross-examination.

5.3: Are there any "exceptional features" of the non-personal injury claims?

51. Having found that this can fairly be described in the round as a personal injury case, following *Brown* at [57], the "starting point" for the exercise of my discretion is that QOCS protection would have been available for the personal injury claim, and it is expected that a 'cost neutral' result would be achieved through the exercise of the discretion unless there are "exceptional features of the non-personal injury claims". I therefore disagree with the Mr Ford and Mr Basu's submissions to the effect that once the automatic application of QOCS under CPR r 44.14 has been lost, a judge has a wide discretion; and should adopt a starting point that 100% of the costs should be enforced, looking to see if there are particular features that justify a reduction below 100%.

52. As noted above, the only "non-personal injury" claims pursued at trial were the claims for aggravated damages and ABC's claim for special damages unrelated to personal injury. The "non-personal injury" claims initially pleaded but not pursued at trial were the claims for (i) declarations under the HRA; (ii) an order that the Defendants' expunge references to the safeguarding investigation from their records; (iii) exemplary damages; (iv) just satisfaction damages under the HRA beyond personal injury damages; and (v) damages under the EA 2010 beyond personal injury damages.

53. In *Brown* at [57] Coulson LJ gave as an example of the sort of matter that might constitute an exceptional feature of a non-personal injury claim "gross exaggeration of the alternative car hire claim". While I permitted Mr Basu to cross-examine ABC and DEF about their own conduct, on the basis that the same can be relevant to just satisfaction awards under the HRA, including where such awards relate to personal injury damages (see *Alseran* at [916]), neither Defendant suggested that any of the Claimants had grossly exaggerated their claims for aggravated damages or other non-personal injury claims.

54. Ms O'Hara's witness statement was critical of the Claimants for (i) their pursuit of a specific disclosure application dated 7 March 2022 and an application to provide further information under CPR Part 18 dated 19 July 2022; and (ii) their insistence on intermediary reports and a Ground Rules Hearing in respect of the evidence of GHI and JKL. However, my understanding is that the Claimants' positions on these various interlocutory issues were all approved by the court. On that basis they cannot properly be used as examples of the Claimants' adverse "conduct" for costs purposes.

55. The following "conduct" factors were also relied on by one or both of the Defendants: (i) the Claimants' refusal to consider a split trial; (ii) their refusal to agree that Cheryl Hayward could give evidence remotely; (iii) their advancing of the "extraordinary proposition" that the *Bolam* test did not apply to the negligence claim against D1, on which their position shifted several times (see the liability judgment at [200]-[202]); (iv) the fact that in their witness evidence ABC and DEF made allegations of bad faith by the Defendants' witnesses which were not put to the witnesses in cross-examination; (v) their lack of engagement with a "drop hands" offer sent by D2 shortly before the trial; and (vi) the fact that ABC's father was said to have substantial private means, whereas the Defendants are both public bodies who face significant pressures on resources.

56. In my judgment none of these factors constitute "exceptional features" of the litigation that should sound in costs against the Claimants. Moreover, none of them relate exclusively or even directly to the non-personal injury claims: all these issues were applicable to the personal injury claims too (and indeed issues (i) and (iii) were only really applicable to the personal injury claims).

57. Reliance was also placed on the fact that the Claimants pursued their claim under the EA 2010 until very shortly before the trial: it was not withdrawn until 16 January 2023. Moreover, on 7 December 2022 the Claimants had sought to amend their Particulars of Claim to expand this claim to include JKL as well as GHI. I accept Ms O'Hara's evidence that this gave the Defendants very little time to consider the proposed additional claim and the evidence that might be necessary to meet it. The original and proposed amended claim were then abandoned on 16 January 2023.

58. This fits within a wider pattern of advancing a series of non-personal injury claims (in fact all those referred to at [41] above) and, perhaps, a lack of clarity until trial about which of the non-personal injury claims were actually being pursued. However, again, I am not satisfied that this was "exceptional" for the purposes of *Brown* at [57].

59. I take a different view in relation to the issues relating to Mr Barratt's evidence, as set out at [155]-161] of the liability judgment, on which Mr Ford and Mr Basu placed significant reliance.

60. I accept Mr Barratt's evidence that he was not unduly influenced by the documentation he had been sent, for which the Claimants' solicitor apologised. However, this issue generated understandable concerns during the trial and contributed directly to the need to order a split trial.

61. I also accept Mr Edwards' assurance that pre-trial conferences were held with Mr Barratt. However, the manner in which his evidence developed under relatively straightforward cross-examination (with no disrespect whatsoever intended to Mr Ford or Mr Basu) strongly suggested that his evidence had not been sufficiently tested before the decision was taken to rely on it.

62. This issue was, in my judgment, an "exceptional" feature of the case. Mr Barratt's evidence had been relied on to found the Claimants' case on liability and thus to support all of the non-personal injury claims referred to at [52] above, which were maintained until relatively close to or throughout the trial. On that basis it is appropriate to take it into account in the exercise of the CPR r 44.16(2)(b) discretion.

63. The non-personal injury claims did lead to the Defendants incurring some additional costs over and above the costs they would have incurred in relation to the personal injury claims, but the level of those costs was, in my judgment, very modest in the context of the claim overall.

64. This issue does not justify enforcement of the Defendants' costs against the Claimants to anything close to the 85% figure sought by the Defendants.

65. Doing the best I can, in the exercise of my discretion under CPR r 44.16(2)(b), I consider an appropriate level of enforcement to be 5%. In my judgment that figure properly respects the spirit of the QOCS regime and the starting point of the need for a costs neutral result in relation to the personal injury claims, but makes an appropriate allowance for the exceptional nature of the Mr Barratt issues insofar as they impacted on the non-personal injury claims.

5.4: An interim payment of costs

66. Under CPR 44.2(8), where the court orders a party to pay costs subject to detailed assessment, it "will" order that party to pay a "reasonable sum on account of costs, unless there is good reason not to do so".

67. There is no good reason not to order an interim payment of costs.

68. The figure of £100,000 proposed by each Defendant would have been a reasonable sum had I been persuaded that enforcement of the costs order to the level of 85% was appropriate.

69. On the basis that I only consider enforcement of the costs order to the level of 5% to be appropriate, on a pro rata basis, an order for an interim payment of £5,875 to each Defendant is appropriate.

70. I am not aware of any reason why the standard time for payment of 14 days under CPR 44.7 should not apply.

6: Conclusion

71. Accordingly for these reasons I order that (i) the Claimants shall pay the Defendants' costs, to be assessed if not agreed, but permission is granted to enforce those costs under CPR r 44.16(2)(b) only to the extent of 5% of those costs; and (ii) the Claimants shall make an interim payment of £5,875 to each Defendant within 14 days.