



In the County Court at Liverpool

Case number M00SW218

On Appeal from Deputy District Judge Ellis (Appeal No 83 of 2024):

BETWEEN

THERESA DEMPSEY

Claimant/Respondent

and

MILTON KEYNES UNIVERSITY NHS TRUST

Defendant /Appellant

Before **His Honour Judge Graham Wood KC**

Sitting with **District Judge Baldwin, Regional Costs Judge, as assessor**

30 September 2025

Mr Simon Teasdale (instructed by Keoghs Solicitors) for the Appellant

Mr Charles Prior (instructed by Handley Law Solicitors) for the Respondent

APPROVED APPEAL JUDGMENT

Introduction

1. This is a costs appeal. It concerns the recoverability of medical agency fees in a bill of costs and the degree of specificity required on the part of the receiving party to enable a distinction to be drawn between the actual cost of a medical report, and the medical agency fees. I heard this appeal on 25 September 2025 sitting with District Judge Baldwin as a costs assessor. I am grateful for his guidance and assistance in an area where as a regional costs judge he has significant experience.

2. After hearing submissions from counsel, and with the benefit of the detailed skeleton arguments which required careful consideration, I reserved my judgment, which is now provided.

3. The Appellant is the defendant paying party, whom for ease of reference I shall describe as the Defendant, and the respondent receiving party, the Claimant.

Background

4. The original claim, in which no formal proceedings have been brought, involved allegations of clinical negligence on the part of the Defendant's hospital. No details have been provided in relation to the substance of the potential claim, but it is possible to glean from the preamble to the bill of costs that it involved the alleged failure of gynaecological surgery leading to bowel and bladder problems for the Claimant. The parties were able to reach agreement on damages in January 2023, with the Claimant receiving £50,000. The agreement included payment by the Defendant of the Claimant's costs on the standard basis, which at that stage of course were pre-action costs only.

5. Regrettably costs could not be agreed and on 1st December 2023 Part 8 costs only proceedings were commenced. The Claimant had provided a bill of costs which was dated 22 January 2023¹.

6. The claimed disbursements within the bill which have been the focus of this appeal are contained at items 26 to 29. They are:

¹ Insofar as the part 8 proceedings were not commenced until December 2023, this bill had been prepared and submitted in the course of costs negotiations prior thereto. This would make sense, as it has no case number endorsed.

Item 26: Fee for Breach of Duty Report of Mr Jackson	£5,984.00
Item 27: Fee for Condition and Prognosis Report of Mr Jackson	£3,225.00
Item 28 Fee for Psychiatrist Report of Dr Gibbons	£2,608.89
Item 29: Fee for Colorectal Report of Mr Jones	£4,506.67

VAT was also claimed in respect of these 4 items.

7. Amongst the documents and vouchers filed with the bill of costs were several from a medical agency, “Speed Medical”, who are well known and established in providing services in personal injury and clinical negligence litigation in relation to the procuring of medical records and expert reports. Several vouchers dealt with the handling of the medical records, and these are not controversial.

8. At page 29 in the appeal bundle there appears the first of four invoices covering the medical reports set out above. This related to the breach of duty report of Mr Jackson, although his name does not appear on the voucher. Instead reference is made to “*Oxford gynaecology and medic*” and the description of the specialism being “*gynaecologist*”. The following three are in a similar format, although they give the names of Mr Jackson, Dr Gibbons and Mr Jones respectively. These were clearly not the fee notes of the medical experts, but requests for payment by Speedmedical of the costs of obtaining such medical reports.

9. The points of dispute were filed on 31st January 2024. A number of issues were raised which have no relevance to this appeal. At point of dispute 7, the Defendant engaged with the question of the medical evidence fees:

“The Claimant has failed to serve copy fee notes of any expert in respect of fees claimed in this bill.

The Defendant accepts that the Claimant has served copy fee notes of agencies but does not accept they are the copy fee notes of an expert and do not comply with PD 5.2(c) to CPR 47.

In the circumstances, the Defendant and the court are not in a position to assess the fees properly or at all.”

10. Reliance was placed upon the decision of HHJ Bird in Manchester County Court in the case of **Northampton General Hospital NHS Trust -v- Hoskins (2023)**², in which the importance of compliance with the practice direction was emphasised, but despite the concern raised, £3000 was offered for each of the two Jackson reports, namely the liability report and the condition and prognosis report.

² Dealt with in more detail below

11. Similar objections were raised in relation to items 28 and 29, the psychiatric report and the colorectal report, and offers were made in the sums of £2500 and £4000 respectively. It was said, in addition, that the costs claimed were excessive and disproportionate.

12. In her points of reply, the Claimant contended that the cost of obtaining a medical report included the work of procuring the report rather than simply the cost of the report itself. Reliance was also placed on **Stringer v Copley**³ which confirmed that the use of medical agencies who raised hourly charges to undertake such work on behalf of the solicitors was permitted as an element of profit margin. The Claimant also volunteered further information as follows:

“However, by way of full and frank disclosure, Speed Medical have confirmed that their invoice is broken down as follows:

- Expert fee
- Fixed operational fee – cost of the case handler etc dealing with the file
- Referrer commission- this is a commission fee if the law firm insist they want a separate agreement whereby a commission fee on instruction is paid to a third party marketing company usually (so the marketing agreement dictates what fee that is so varies with each firm/referrer)
- Finance fee – 6.5% pa for 3 years (we offer the 3 years deferred terms)
- Waive – the write off percentage a law firm requests so with each instruction they accumulate a fund in which they can utilise to partially reduce or fully write off any Speed medical invoice.

Speed profit costs – Expert fee under £1000 = 20% or £225 (whichever is the higher amount). Expert fee £1001+ = 20% capped at £600.”

13. So at this point the battle lines were drawn.

14. Following service of the replies, there was a provisional assessment on 3rd April 2024. In relation to the key disputed items, Deputy District Judge Ellis assessed item 26 at £5000, (adding VAT to £6000), item 27 at £3000, item 28 at £2608.89, and item 29 at £4506.67. Her order invited the parties to agree the arithmetic.

15. In response to the provisional assessment, the Defendant did two things. First, it requested an oral hearing as entitled, pursuant to CPR 47.15 focusing on the four items identified. Second, it served a request for further information pursuant to CPR 18 on the Claimant. Amongst the Part 18 questions, further information was sought in relation to the reply which purported to provide a breakdown of the Speed Medical invoices.⁴

16. The Claimant declined to provide an answer to the Part 18 request, and accordingly the Defendant applied for an order pursuant to CPR 18.1 for appropriate responses. The application was listed for a hearing before District Judge Jenkinson on 24 June 2024, but he

³ Dealt with in more detail below

⁴ See para 6 above

dismissed it. Judge Jenkinson's order was the subject of an application for permission to appeal, but the appeal was ultimately withdrawn before the oral review.

17. However, that was not the end of the matter prior to the deputy district judge's review, because by an email dated 8th August 2024 the Claimant's costs solicitors sent to the Defendant several documents which were described as itemised medical fee notes, breaking down the component parts.⁵ These documents require a little scrutiny. Taking by way of example the second of the breakdowns (bundle page 158, item 26) for the first time the actual fee as charged by the medical expert Mr Jackson is recorded. This is said to be £5376. Thereafter there are 5 separately "charged" items, described as nomination, instruction, mandate, report addendums and comments, and accounts preparation with appropriate correspondence for the various items. The total collection of these additional items comes to £5829, including the cost of the medical report. This court was told that all these items were VAT inclusive, but it is not clear that that is the case. In any event at the foot of the breakdown there is an entry described as "Speedmedical cost" in the gross sum of £7180.80. An explanation has not been provided for this figure. However, in what appears to be a footnote, the breakdown states:

"The above is a summary of the work undertaken in this matter based on the attached detailed listing. The time cost of work undertaken has been calculated using the pay band D, national grade 1 £141.60 (inclusive of VAT) hour, to illustrate the charges that would have been incurred if undertaken utilising the method of recovery or buy it had been undertaken by the instructing solicitors (sic). The actual fees charged based upon our standard fee basis model."

18. The fee note is created on a hypothetical model basis, therefore, although the element of the actual fee of the consultant is clear (£5376), even if there is still no separate fee note in the name of the consultant, similar to what might be expected for Counsel's fee note. For items 27, 28, 29 breakdowns are provided in the same way.

19. Following the withdrawal of the appeal, the oral review hearing was relisted and this took place on 15th November 2024 before DDJ Ellis.

The hearing below and the judgment of the Deputy District Judge

20. On this occasion the Claimant was represented by Mr Charles Prior, as she is on this appeal, and the Defendant by Mr Nicol. It is clear that the only matters the deputy district judge was dealing with were items 26 to 29, with the argument mainly focusing on whether or not failure to comply with the Practice Direction 47 para 5.2 should result in the disallowance of the cost of obtaining the expert medical evidence.

⁵ This breakdown seems to have led to the withdrawal of the appeal by the defendant

21. However, after noting that offers had been made in respect of the disputed items notwithstanding the position in relation to PD compliance, at paragraph 4 of her judgment DDJ Ellis said:

“In my judgment, that is significant. It appears to me from that comment in the points of dispute that the Defendant accepted, at least implicitly, that the failure to comply with practice direction 47 5.2(c) did not result in any automatic sanction and certainly did not result in those disbursements being entirely irrecoverable, because if it thought otherwise the offer would have been nil.”

22. The learned deputy judge then referred to the further disclosure which had been provided of the breakdown⁶ and criticised the Defendant for not making an application for a Part 18 request *prior* to the provisional assessment, but instead delaying until after that assessment. In relation to the disclosed material, she was prepared to allow reliance to be placed upon it at the oral review, and noted the Defendant’s submissions through Mr Nicol that there had still not been compliance with the practice direction at paragraph 5.2 (c) with the provision of actual fee notes, and it was only with such clarification that the court could be satisfied as to reasonableness and proportionality. The learned deputy judge dealt with the submissions at paragraph 11:

“.....I have come to the conclusion that I do not agree with Mr Nicol's submissions on this point. The invoices from Speed Medical are at page 156 onwards in the bundle. On page 1 of each invoice a figure is provided for the medical expert's fee, and I have no reason to disbelieve that figure. I agree with Mr Prior's submission that we do know these reports were undertaken and therefore a fee has been charged. Furthermore, the Defendant did not have the breakdown at the time it filed its points of dispute yet still offered £3,000 plus VAT for each report. If this was such a fundamental issue, I ask myself why the Defendant offered anything at all. It is implicitly accepted that there was some fee incurred.”

23. She went on to address the administrative charges as set out in the additional disclosure at paragraph 12:

“Each document then provides figures for the administrative elements of procuring the expert report. There is reference to correspondence undertaken by administrative staff at Speed Medical. On the second page there is then in effect a timesheet which reflects emails, letters, et cetera, that are made and the date on which that correspondence took place, and that does correspond with the timings or the amount of correspondence that is then recorded at page 1. The rate of £141.60 per hour is given as a figure. This is above the national rate Band 1 for a Grade D fee earner, which is somebody who in effect is unqualified, but only slightly above that.”

⁶ Para 17 above

24. On the basis of the documents that she had seen, and following the case of **Stringer**, the learned Deputy judge determined that the time elements of the medical agency as demonstrated were reasonable and proportionate.

25. She then turned to deal with the individual items 26, 27, 28 and 29. Item 26 (the Jackson liability report) and item 27 (the Jackson condition and prognosis report) were left unchanged. In relation to item 28, the learned deputy judge calculated that if medical expert's fee was £1800, the balance for Speed Medical was claimed at £1330 including VAT which she believed to be too high. She reduced this to £754.67 which was thus added to the £1800 for the medical expert.

26. The learned Deputy judge took a similar approach in relation to item 29 after identifying the expert fee in the sum of £3630 which left £1778 for the agency costs which she believed was disproportionate and too high, and this was accordingly reduced to £1280 plus VAT.

27. There were no further changes made on the oral review.

The grounds of appeal

28. The grounds of appeal were amended upon receipt of the transcript. In the first ground The Defendant challenges the adequacy of the breakdowns upon which the learned deputy judge relied to arrive at her assessment of both the expert medical fee and the Speedmedical costs. It is said that the breakdowns did not reflect the actual charges, and were admitted to be illustrative only.

29. The second ground asserts that the learned deputy judge was in error in holding that the Claimant had complied with Practice Direction 47 paragraph 5.2(c), if she had made any finding at all, on the basis that the breakdowns did not amount to fee notes as were specifically required in the practice direction.

30. The third ground challenges the learned deputy judge's conclusion on the assessment, which it is said should have been nil or at best nominal in the absence of particularisation. In an amendment to this ground it is also asserted that the learned deputy judge took into account irrelevant matters, namely the offers which had been made against the items within the points of dispute.

Relevant Law

31. Despite the lengthy bundle of authorities upon which counsel seek to rely, the applicable principles can be stated quite simply. There is no doubt that medical agency fees can be recovered in personal injury claims in respect of the work which usually includes arranging for a medical examination, obtaining and collating medical records and dealing with appointments. These agencies have the relevant expertise and specialisation with contacts, and it is generally considered that such work can be conducted at least as efficiently, expeditiously and economically as the solicitors using their own fee earners.

32. The principle was confirmed, albeit in a first instance County Court decision, in **Stringer v Copley [2002] Lexis Citation 68**, before HHJ Cook (the original editor of the authoritative textbook, *Cook on Costs*). There could be no objection in the use of such an agency provided that it could be demonstrated that their charges did not exceed the reasonable and proportionate cost of the work if it had been done by a solicitor. Where the invoice, or fee note from the medical agency showed the consultant's fees and the agency's own charges separately, the costs judge could assess them both. Where a composite fee had been charged without differentiation there was insufficient particularisation.

33. Subsequently Practice Direction 47, paragraph 5.2, which it would appear was not in force at the time of Judge Cook's decision (or at least was not referred to in a previous incarnation) provides:

5.2 On commencing detailed assessment proceedings, the receiving party must serve on the paying party and all the other relevant persons the following documents —

(a) a notice of commencement

(b) a copyof the bill of costs;

(c) copies of the fee notes of counsel and of any expert in respect of fees claimed in the bill.....

(d) written evidence as to any other disbursement which is claimed and which exceeds £500;"

34. This provision was the focus of the court's attention In **Northampton General Hospital NHS Trust v Hoskin**, another County Court case involving an appeal from a costs judge heard before HHJ Bird in Manchester (22 May 2023). The learned judge in that case held that the paying party was entitled to see the two fee notes in respect of two medical reports which were being claimed for. These reports had been obtained by a medical agency who provided an invoice without a specific breakdown. HHJ Bird came to the conclusion that without a fee note the paying party could not make a rational evidence-based decision on the fees claimed, and that the terms of Practice Direction 47 paragraph 5.2(c) were mandatory. The claims were therefore to be assessed at nil in default of compliance with HHJ Bird's

order to provide a breakdown and copies of the experts' fee notes. Specific reliance is placed upon **Hoskin** by the Defendant in the present case (see below).

35. The matter of compliance was dealt with most recently before Senior Costs Judge Rowley (with reference made to **Hoskin**) in **JXX v Archibald [2025] EWHC 69 (SCCO)** who considered that an authoritative appellate decision would be desirable on the issue. Whilst he did not make any ruling in relation to the mandatory nature of the practice direction, he concluded that where information was requested by the paying party as to the breakdown, the receiving party effectively had two choices. This was either to have the composite invoices assessed by reference to the agency work and the expert cost separately by providing such information, or on a hypothetical basis if the information was withheld, whereby the expert fee would be assessed as if there had been no agency involvement.

36. Otherwise, as Senior Costs Judge Rowley pointed out, this is an area with limited appellate guidance at higher court level.

Respective submissions

37. The court is grateful for the detailed and comprehensive written submissions contained within the skeleton arguments, which have been supplemented by oral submissions. For the purposes of this judgment, I deal with the headline points only, although the parties can be assured that all submissions have been carefully considered.

38. On behalf of the Defendant, Mr Teasdale of counsel asked the court to note that the descriptions of the four disputed items within the bill did not identify any medical agency, and it was only by reference to the accompanying invoices on Speedmedical headed notepaper that the use of a medical agency was clarified. Throughout its challenge the Defendant had been seeking compliance with paragraph 5.2 (c) and the provision of the expert's own fee note and it could never be said that the medical agency fee notes amounted to such, where there was no breakdown, and this was precisely the same situation which HHJ Bird had dealt with in **Hoskin**.

39. Even when the Claimant responded to point 7 in the points of dispute with the provision of some further information, it was not possible for the Defendant, as paying party, to understand or assess the reasonableness of the overall disbursement, because several irrecoverable items were included. After the breakdowns were provided, these were still insufficient, and did not properly particularise the disputed items.

40. In expanding the first ground of appeal, Mr Teasdale submitted that the learned judge's approach was unclear, in particular whether she was accepting that the breakdown was adequate, or whether her reasoning was that there was no need for separate components to be identified. It was submitted that whilst **Stringer** permitted the recovery of agency profit costs it was still necessary for the court on assessment to be able to separately identify the expert fee from the costs that were being charged by the agency, not least because the agency costs were not strictly a disbursement, but profit costs. Acknowledging that in the context of the fixed costs regime, medical agency and expert medical report fees were usually treated as a single recoverable disbursement, a distinction was to be drawn in the standard basis assessment where clarity was vital, and where paragraph 5.2 of the practice direction was highly significant. He referred to paragraph 18 of HHJ Bird's judgment in **Hoskin**:

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

41. Judge Bird was right, submitted Mr Teasdale, to identify that PD 47 imposed a duty on the receiving party and that the separate components must be identified, not least because this will allow the indemnity principle to be properly applied.

42. The Claimant's first attempt to provide clarification in the reply to the points of dispute, which sought to break down the invoice into 5 separate parts, did not address the problem, but in fact created the additional difficulty of including irrecoverable items, namely the referral commission, the finance fee, and what was described as "the waive", which appeared to be a form of ATE insurance premium hidden within the overall fee. Where the Claimant purported to provide a formula in that reply it was still not possible for the court to determine how that was used in relation to the calculation of the speed medical profit costs. The replies raised more questions than they answered.

43. The further breakdowns which were supplied by way of additional disclosure following the hearing before DJ Jenkinson, it was submitted, did not provide the reliability which the learned deputy judge appeared to believe that they did, and in view of the qualification which was given at the foot of each breakdown which suggested that these were figures given for illustrative purposes only, it was impossible for her to make any findings as to the component parts representative of the profit costs of the medical agency and the fee charged by the expert. Mr Teasdale submitted that the breakdowns did not in fact represent the fees charged but were illustrations of what the charges would have been if the work had been undertaken on a different basis, which did not help the court in determining what the profit costs actually were. This could never amount to a reliable breakdown, and in this respect the learned judge was in error or alternatively exceeded the generous ambit of her discretion.

44. In respect of the second ground, it was insufficient simply to rely on the fact that the expert's fee was identifiable from the bill of costs and supporting documentation, because the Practice Direction paragraph 5.2 (c) was a mandatory requirement and without fee notes from the experts themselves, it could not be said that there had been compliance. If the fee note had been supplied, the expert would be verifying his own fee, but in the present case it was impossible for the court to be satisfied in the absence of such verification as to the accuracy of the sum that was claimed. The failure to comply with the practice direction was not adequately addressed by the learned judge, and therefore she ignored a factor which would have been relevant to the exercise of a discretion. It did not matter, said Mr Teasdale, that there was no express or automatic sanction.

45. In respect of the third ground, it was submitted that the court should not be required to engage in guesswork and speculation if there were gaps in the material provided, and there had been non-compliance with the rules and practice directions. Because of the Claimant's failures this could and should have led to an assessment of the disputed items at nil, or a purely nominal sum, which would have reflected the lack of particularisation and substantiation of the claim. The learned judge should have made a finding in relation to non-particularisation, which she did not.

46. Insofar as **JXX** suggested that a hypothetical exercise could be undertaken, this, submitted Mr Teasdale, was wrong. There was a significant risk of a breach of the indemnity principle if there was a possibility of the Claimant recovering more than that which was actually charged by the expert. The irrecoverable components further compounded the difficulty for the Claimant. Further, insofar as the learned deputy judge relied upon offers that had been made against the items within the points of dispute this ignored the commercial realities, where compromises were to be encouraged, and in circumstances where the offer was clearly made to the receiving party, and not to the court. By taking these offers into consideration, the learned judge fell into error, and relied upon irrelevant matters.

47. On behalf of the respondent, Mr Prior's overarching submission was that the Defendant is restricted on this appeal, (which is a review and not a rehearing) in its challenge to the case that was advanced in the points of dispute. Reliance was placed upon **JXX** and the decision of Senior Costs Judge Rowley (above) which clearly identified the need for comparative evidence if there was to be a challenge to expert's fees and the profit costs element which was intended to represent the cost which would have been incurred by a solicitor if the work had been undertaken directly.

48. It was submitted that the court had all the material it needed at both the provisional assessment and the oral review to make a proper assessment of the recoverable fees, and it was relevant that after seeking to appeal the refusal of District Judge Jenkinson to allow the

further information requested, the Defendant withdrew that appeal, implying acceptance of the adequacy of the available material.

49. From that material the court was able to determine the precise cost of the experts and the medical agency fees, and the difficulty which arose in the case of **Hoskin** did not exist. Mr Prior relied upon **JXX**, and the two alternative bases which would have been open to the court following the approach which was commended by Senior Costs Judge Rowley. If it had not been possible to make a reasonable and proportionate assessment of the agency fees, the expert costs could have been assessed separately, and the court had not been invited to do this.

50. Dealing with the individual grounds, in relation to the first ground, again Mr Prior relied upon **JXX**. If there had been inadequate particularisation, and this was challenged on the basis of the breakdowns that were provided, the court can still carry out an assessment. It was incumbent on the Defendants to challenge this with comparative costs of experts, and it chose not to.

51. Insofar as the Defendant sought to rely upon the absence of an original fee note, in respect of ground two it is clear on the basis of **JXX** that the court was not prevented from assessing an expert's fee in the absence of such a fee note, and in any event there was no sanction provided for in the practice direction.

52. In respect of the third ground, again reliance was placed upon **JXX**, where the award of a nominal sum simply did not arise. The suggestion of a nominal sum was not raised before the learned deputy judge.

53. Mr Prior referred the court to the respondent's notice and submitted that the assessing court had a broad discretion in respect of the award of costs. In the absence of any comparative evidence, it could not be said that the assessments carried out by the learned deputy judge were outside the reasonable range of that discretion in respect of both the expert fees and the work of the medical agency.

Discussion

54. I observe at the outset of this determination that it was unhelpful for the Claimant's costs draughtsman who prepared the bill of costs to make no direct reference to the involvement of an agency when identifying the costs at items 26 to 29, even if earlier items had claimed for work carried out in "dealing with the medical agency in respect of medical

experts”.⁷ Whilst the subsequent dispute may not have been avoided altogether, at least it would have been clear what fee that was actually being charged by the medical expert, instead of the composite cost of obtaining the medical report. Whilst **Stringer** permitted the recovery of the agency fees, it also emphasised the importance of differentiation in the costs claimed.

55. Nevertheless, it is also relevant that the Defendant made no objection to the admission of the detailed breakdowns before the DDJ (and indeed this has been a reason for the withdrawal of the appeal against DJ Jenkinson’s order) who having reflected on whether fresh material should be admitted, decided that it would be unfair to the *Defendant* to exclude the detailed breakdowns (paragraph 8). Thus it was considered at the oral review that these provided some additional material on which the learned deputy judge could make her assessment.

56. It is in this context that the Defendant’s grounds of challenge should be considered, and in particular whether the learned deputy judge exceeded the generous ambit of her discretion, or made an error of law in her approach to the assessment.

57. I start with ground 1. Whatever inadequacy there may have been in relation to the breakdowns and their usefulness in determining all aspects of the costs associated with obtaining the medical evidence (profit costs and the medical fees themselves), there is no doubt that the fee actually charged by the individual expert was properly identified. In these circumstances, in my judgment it is difficult to see how there could be any criticism levelled against the learned deputy judge in relying upon those figures as the basis of her assessment of that aspect. If a problem lay with the agency fees, and the adequacy of their understanding, it could not be said that the *medical report* fee was “illustrative”. In the absence of any challenge relating to the reasonableness and proportionality of the actual fee assessed for the medical expert, in my judgment the learned deputy judge was well within her discretion, subject to any argument which may arise in relation to ground 2, to award an element for the medical experts’ fees on the basis of the clarification provided by the detailed breakdowns. Further I am unable to accept that the learned deputy judge could not take into account, in the exercise of her broad discretion, that allowances had been made by the defendant paying party in relation to all these items claimed which included a sizeable element in respect of the medical reports themselves. There is no indication that the judge was persuaded that this alone should preclude any objection to the medical expert fee, as opposed to regarding it as one of several factors which might be relevant.

58. However, a different consideration applies in relation to the agency fees. Prior to the provision of the detailed breakdowns, the Claimant’s reply to the relevant point of dispute, and the subsequent approach were opaque. Not only did the costs draughtsman seek to rely

⁷ Item 23 by way of example

upon information provided by Speedmedical as to the breakdown of the original invoice “*by way of full and frank disclosure*” by identifying 5 separate items, 3 of which were irrecoverable as costs *inter partes*, but also proposed calculation of Speedmedical’s profit costs which was subsequently abandoned and not relied upon at the oral review. Thus the receiving party was effectively telling the court to ignore the response to the points of dispute and to use the detailed breakdowns to make its assessment, but, as indicated, these breakdowns posed more questions than they actually answered. Further, having sought to explain the process by which Speedmedical did actually calculate its profit costs, and then to have provided a detailed breakdown with profit costs which were said to be *illustrative* only, not only was the Claimant providing an unreliable basis for assessing those profit costs, and creating a confusing picture for the court, but also there was a real risk that in making the assessment the court could be including irrecoverable elements and thus breaching the indemnity principle. This risk, in my judgment, could not be obviated simply by making a deduction between the clearly identifiable medical expert’s fee (inclusive of VAT) and arriving at a balance to understand what the claimed profit costs were. On this point I agree with Mr Teasdale that the detailed breakdowns, in the light of the information which had been previously provided, did not enable the judge to make any assessment which could be considered to be reasonable and proportionate. Whilst the use of a broad brush in many circumstances is to be commended, this requires a clarity which simply does not exist here.

59. I bear in mind that any doubt which arises in relation to the profit costs element should be resolved in favour of the paying party. Although the case of **Stringer**, albeit a first instance decision, has become the plank upon which the recovery of medical agency fees has been supported over many years, it cannot be ignored that HHJ Cook in that case expressed the proviso that such fees were only recoverable if the charges did not exceed the reasonable and proportionate cost of the work if it had been done by the solicitors. The exercise which might have been undertaken has been frustrated by the opacity of the material relied upon by the Claimant paying party in this case.

60. Nor, in my judgment, does the case of **JXX** provide a solution for the Claimant. The costs judge in that case indicated that if the medical agency chose not to justify its charges by way of evidence it “was likely that the composite fee would be reduced on assessment.” It seems to me that the decision in **JXX**, relied upon by the Claimant, should not be used to compel a costs judge when assessing these elements, to undertake an impossible exercise, forcing the court to use broadbrush principles.

61. In the circumstances, ground 1 is established in relation to the agency fees, but not the medical reports. There was simply no adequate breakdown for the recoverable components of the profit costs of the medical agency, and the learned deputy judge had no basis upon which she could make any assessment. Whilst the learned judge was in error in regarding the breakdown as adequate to arrive the assessments she did, there is little point in this appellate court remitting the matter for a further assessment. The court is empowered to make its own assessment (the receiving party would not be entitled to adduce any further evidence on the

profit cost element) and in this respect, in my judgment, it is appropriate to make a nil assessment of that element.

62. Whether the medical report fees as assessed are recoverable, of course, depends upon ground 2, to which I now turn.

63. It is important not to overlook the fact that the costs practice directions have a purpose, which is to require existing evidence for the claiming of fees and disbursements. Paragraph 5.2 covers the fee notes of all experts or counsel in respect of whom a fee note may have been supplied. Whilst it is not clear whether the appointed expert ever provided a fee note for the medical agency, it is not in dispute that the Claimant receiving party, who submitted her bill of costs, had never received a fee note directly from the medical expert. In such circumstances it would not be possible for the Claimant to serve fee notes which did not exist, unless it was suggested that in some way the practice direction required the receiving party who used a medical agency, rather than choosing to rely upon its own fee earners, to obtain any fee note between the agency and the expert directly from the agency.

64. My interpretation of paragraph 5.2 is somewhat less literal than that applied by HHJ Bird, whose decision, whilst helpful, is not binding on this court. In my judgment the requirement that it imposes is to serve the fee notes of the experts which are actually in the *possession* of the receiving party. Here the Claimant has provided fee notes from the medical agency rather than directly from the medical expert, because her own solicitors had not instructed the expert directly. She was not choosing to rely upon the fee note of the expert, so much as the fee note of the agency. Further, paragraph 5.2 (d) cannot be ignored, which also imposes an obligation on the receiving party to provide written evidence of other disbursements which exceed £500. Insofar as the agency costs are not profit costs but disbursements, it is clear that they would fall into this category, and in this regard their fee notes were provided.

65. Thus I find myself, respectfully, taking a different approach to HHJ Bird. However, there is one distinct feature of the present case, which does not appear to have existed in **Hoskin**, which justifies such a different approach. A principle appears to have been taken by the receiving party in that case that the breakdown between the agency fees and the medical report fee to enable proper identification of the respective costs of each would not be provided. In the present case the Claimant's costs solicitor has made an attempt, albeit one which for the reasons stated above was not entirely adequate, to provide an appropriate breakdown.

66. Further, in respect of this ground of challenge, I am unable to accept that once it is possible to identify and to reasonably and proportionately assess the medical report fee, non-compliance with the practice direction carries an implied sanction that recovery of that

medical report fee should be precluded. As I indicated above, these practice directions must be interpreted purposively, and if the evidence is provided that enables the assessment, in my judgment that is sufficient. I cannot accept that it could have been intended that any failure in the provision of a medical fee note directly from the expert providing the report would disentitle recovery of the proved cost by other means.

67. In the circumstances, in my judgment even though there is no clear finding from the learned deputy judge as to the effect of non-compliance with paragraph 5.2(c) and indeed what obligations it imposed upon the Claimant, it is implicit that she was satisfied that she could make the assessment on the basis of the material which the Claimant had provided in relation to the medical fees. Further, if this amounts to an error of law, that is not making a finding directly on the point that was raised as to paragraph 5.2 (c), in my judgment this court, substituting its own determination in that regard, would come to the conclusion that the practice direction did not compel the Claimant to provide the medical report fee note which was not in her possession, and that in any event she was not prevented from recovering the expert fees in such circumstances.

68. In respect of ground 3, the question of nil, or nominal assessments no longer arises in respect of the entirety of these four items, in the light of the foregoing determination. I have partially allowed this appeal on the basis of the first ground in respect of the agency fees but not the cost of the expert reports themselves, and rejected the challenge on ground two. A nil assessment has been applied in relation to the medical agency costs for reasons that have been set out above.

69. Therefore, on partially allowing this appeal, the VAT inclusive costs of the medical experts to be substituted for the determination of the learned deputy judge on items 26 to 29 should be as follows:

Item 26:	£5376	(DDJ award £6000) ⁸
Item 27:	£2688	(DDJ award £3600) ⁹
Item 28:	£1800	(DDJ award £2554.67) ¹⁰
Item 29:	£3630	(DDJ award £4448) ¹¹

⁸ Judgment para 15

⁹ Judgment para 16

¹⁰ Judgment para 17

¹¹ Judgment para 18.

70. By my calculation, this means that the learned deputy's award for these 4 items has been reduced from £16,602.67, to £13,494 on this appeal, both figures inclusive of VAT.

71. I invite the parties to agree the terms of any final order, and the issue of costs. If agreement cannot be reached, I am happy to receive written submissions in the first instance limited to two sides of A4. If necessary, and of the matter cannot be resolved on the papers, I am happy to have a short telephone hearing to resolve any outstanding matters.

HHJ Wood KC,

14th November 2025