NCN: [2026] EWHC 630 (SCCO)
Case No: SC-2025-BTP-000325
SC-2025-APP-000280

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building, Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2026

Before :

SENIOR COSTS JUDGE ROWLEY

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Between :

JXX (a Protected Party by his Litigation Friend ABB)	**Claimant**
- and -	
Mr Scott Archibald	**Defendant**
-and-	
Medical and Professional Services Limited	**Third Party**

And Between :

HLA (a Protected Party by her mother and Litigation Friend HDA)	**Claimant**
- and -	
(1) LXA	
(2) EUI Limited	**Defendants**
-and-	
Premex Services Limited	**Third Party**

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Benjamin Williams KC (instructed by **Thompsons**) for **JXX**
Roger Mallalieu KC and **Simon Teasdale** (instructed by **Horwich Farrelly**) for the **Defendants in JXX and the Second Defendant in HLA**
Nicholas Bacon KC and **Matthew Waszak** (instructed by **Glaisyers ETL**) for **Medical and Professional Services Limited**
Robert Marven KC (instructed by **Slater & Gordon UK Ltd**) for **HLA** and **Premex Services Limited**

Hearing dates: **17 – 20 November 2025**

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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SENIOR COSTS JUDGE ROWLEY

Senior Costs Judge Rowley:

Introduction

1. This judgment concerns the fees involved when a Medical Reporting Organisation ("MRO") is used in a personal injury or clinical negligence claim to assist with the production of medical evidence. MROs are commercial organisations and the interface between such organisations and the legal world of personal injury claims has generated numerous reported cases during the 21st century on the tensions that manifest themselves. Previously, there have been claims management companies and After The Event ("ATE") insurance companies and, perhaps more tangentially, credit hire companies whose charges have been scrutinised in considerable detail.

2. Many of the arguments raised in this case had echoes of arguments run in previous cases. Counsel who appeared before me had appeared on both sides of these arguments in many of the reported cases and it is perhaps that familiarity with the arguments being put against them that led counsel, it seemed to me, to demonstrate that there were sufficient flaws in both sides' arguments for me to conclude that I ought not to follow either side's arguments, certainly in their entirety, in this judgment.

3. The questions posed in these cases have been aired for more than two decades now without any directly relevant High Court or higher decisions. I have said on more than one occasion during the proceedings that a determinative authority would be welcome in this area. I imagine that one, or possibly both, sides will wish to seek that determinative decision.

4. A number of the reported cases refer to the MROs as medical reporting agencies rather than organisations. Nothing appears to turn on this terminology and one of the MRO witnesses specifically states that the phrases are used interchangeably. For what it is worth, I have used MRO since they are, in my view, plainly actors in their own right, rather than simply acting as the agent of the solicitor or claimant.

Procedural Background

5. On 17 January 2025 I handed down a reserved judgment in the JXX proceedings concerning the fees claimed by the claimant in respect of the cost of medical evidence he obtained during the course of his claim for personal injuries. The essence of that judgment was recorded in the second paragraph of the order of the same date in which the claimant was put to an election as to whether to provide further information in respect of the medical evidence fees.

6. The claimant chose to provide that further information with the agreement and support of Medical and Professional Services Limited ("MAPS") and who became a Third Party to these proceedings. The issues concerning the invoices attracted sufficient attention for an application to be made by the claimant in the case of HLA v LXA and EUI Limited for it to be heard at the same time as the case of JXX. I granted that application and, in a similar vein to the joinder of MAPS, another MRO, Exam Works UK Limited (which is the parent company of Premex Services Limited ("Premex")), sought to become involved and I joined Premex to the case of HLA as a Third Party.

7. A subsequent application was made by the Association of Medical Reporting Organisations ("AMRO") to join these proceedings in July 2025, but I refused that application, albeit that I indicated that the application might be remade to an appeal court should this case be appealed.

8. At the beginning of October 2025, the parties agreed settlement in respect of the JXX bill of costs, save for the medical evidence fees. Consequently, although the hearing between 17 and 20 November 2025 was described as a detailed assessment, it relates solely to the issues raised in respect of the medical evidence fees since the remainder of the detailed assessment proceedings have concluded (other than the costs of those proceedings). Indeed, the outstanding matters are narrower than this because, in relation to the medical evidence fees, sums equivalent to the fees charged by the medical experts have also been agreed. All that remains are the fees claimed for MAPS as the MRO.

9. At the beginning of November 2025, the parties agreed settlement in respect of the HLA bill of costs, save for the medical evidence fees subject to this detailed assessment. Therefore, the hearing between 17 and 20 November 2025 solely relates to the Premex fees as the MRO since sums equivalent to the medical experts' own fees have been agreed.

10. This decision therefore relates solely to the MRO fees in these two cases. Nevertheless, the issues raised apply to very many personal injury or clinical negligence cases and the parties, including the third parties, have therefore gone to some considerable trouble to put forward their very different views on the recoverability of MRO fees.

11. No fewer than 27 witness statements were served in respect of this hearing. They were all served on behalf of the claimants and third parties. No evidence was served by the defendants, and so there was no cross examination of any witnesses for the defendant. Half a dozen witnesses were cross-examined by Roger Mallalieu KC for the defendants.

The parties' cases – in summary

12. The involvement of MROs in personal injury work began in the 1990s and quickly became an integral part of parties obtaining medical evidence. By the time HHJ Cook gave his decision in Stringer v Copley (2002), he described the use of MROs as "a common practice." He gave a brief description of the activities of an MRO in obtaining a medical report and said that there could be no objection to the fees as long as the costs involved were no more than if a solicitor had carried out the work themselves. This limitation on the extent of the fees that might be claimed was referred to by Mr Mallalieu as "the Stringer Cap." In Stringer, Judge Cook described the need for the MRO to provide a separate breakdown of their fees in order to be compared with the fees of a solicitor.

13. The defendants' case is that the approach espoused by Judge Cook is the approach that I should adopt, just as a number of other judges in reported cases have done. The defendants say that the evidence provided by the claimants and MROs in these cases is insufficient to demonstrate that the Stringer Cap has not been exceeded. Indeed, the lack of evidence makes it impossible to assess the fees in the manner required of a

detailed assessment. Consequently, although the defendants do not object to the use of MROs by claimants in principle, they say that the claimants have failed in these cases to provide the required clarification and, as such, the MRO element of the fees claimed for the expert evidence should be assessed at nil.

14. Since the fees are those of the third parties, it is they, rather than the claimants, who have led the arguments on the claimants' side. They do not accept that Judge Cook's decision is one which ought to be followed and that in order to decide upon the reasonableness of the MRO fees, a different approach should be taken. The approach of MROs to the provision of medical evidence is to add a percentage markup to the fee charged to them by the expert. Such percentages vary depending upon differing factors that are calculated on a macro level rather than for the individual case.

15. They say that MROs have never recorded their time in a manner similar to solicitors. Therefore, any comparison of the time and effort they put into obtaining the medical evidence by producing a quasi-solicitor's breakdown is entirely artificial. Accordingly, whilst an exercise had been carried out by MAPS, it was based upon a hypothetical, average case, rather than the individual cases before the court.

16. The MROs say that the court should look at the reasonableness of the aggregate invoice produced by the MRO rather than considering an artificial breakdown of the MRO's fees separate from the expert's own fees. Either such fees are reasonable and in which case they should be allowed, or if they are too high, an appropriate reduction should be made by the court.

The Defendants' Approach

17. As I have mentioned above, the defendants challenge the recoverability of fees charged by MROs based originally on the decision of HHJ Cook in the Kingston upon Thames County Court in Stringer v Copley on 17 May 2002. His judgment concerned a number of decisions made by a district judge at a detailed assessment hearing which had been appealed by the claimant.

18. In the part of the judgment headed "Medical Agency Fee", Judge Cook set out the items before him on appeal and his decision. I set it out in full because it is at the heart of this case:

> "In routine personal injury cases, where a medical report is required, it has become a common practice to instruct a medical agency to arrange a medical examination of the Claimant, to undertake the collation and obtaining of relevant medical reports, to arrange the appointment with the medical expert and the Claimant, deal with any cancellations or rearrangements, and to deliver the resultant medical report to the solicitors. Because of the specialisation, experience and expertise of the medical agency they are able to do this administrative work, at least as efficiently, expeditiously and economically as most firms of solicitors using their own fee earners. In the present case there were two medical reports on the Claimant, each obtained through a different medical agency. The first was item 22 on the bill for which an invoice was rendered by Medico-

Legal Appointments Ltd for £140 in respect of the report of Dr Davies. The second medical examination was arranged by Medplan Medico-Legal Reports for which their charge for supplying a report from Mr Muftah was £375 and appeared at item 35 in the bill. The District Judge allowed the charge of Medplan at item 35 in full, but cavilled at that of Medico-Legal Appointments Limited at item 22. On the face of it the only difference between the two invoices was that Medico-Legal Appointments condescended to particularity, while Medplan did not. The invoice of Medico-Legal Appointments revealed that the total of £140 comprised £90 [for] Dr Davies' fee together with a fee of the agency of £42.55, which, with VAT of £7.45 conveniently rounded up to £50 and a total of £140. According to the transcript the District Judge's initial reaction was, 'It is the usual story, is it not? I [have] never allowed it in the past'. This appeal has been conducted on the assumption by both parties that by those words the District Judge meant that he was disallowing the agency's fee on principle, and it is on principle, that I am invited to make a finding. From the transcript, it is not clear whether or not the District Judge did in fact disallow item 22 on principle. As I have said, he allowed item 35, to which the same principle applies, in full. He also may have distinguished between the two agencies because, in his judgment, he says, 'Muftah asked for the GP's notes' whilst in respect of Dr Davies, the District Judge recorded 'All they did is give the name'. In any event, both parties wish me to make a decision on principle, and I am satisfied that there is no principle which precludes the fees of a medical agency being recoverable between the parties, provided it is demonstrated that their charges do not exceed the reasonable and proportionate costs of the work if it had been done by the solicitors. In view of my finding, both parties accepted that this item should be restored in full.

There are however two matters that concern me. First, although the District Judge allowed the charge of Medplan in full, neither he, nor I, nor the paying party know how much of the sum of £375 was the doctor's fee and how much were the charges of Medplan. To demonstrate the point by taking an extreme, if the doctor's fee were only £75 and Medplan's charges [were] £300, the total of £375 would undoubtedly be unreasonable and disproportionate. It does therefore seem to me important that, whilst there is much to commend the use of medical agencies, it is important that their invoices (or 'fee notes') should distinguish between the medical fee and their own charges, the latter being sufficiently particularised to enable the costs officer to be satisfied they do not exceed the reasonable and proportionate cost of the solicitors doing the work. My second, and lesser, concern is that the invoice of Medico-Legal Appointments for £140 had concealed in it an

> element of VAT and I have doubts as to whether their account delivered in this way either amounts to a VAT invoice or is an appropriate way of dealing with VAT. The Medplan invoice made no mention of VAT, but perhaps this is because they are not registered for VAT.
>
> I add as a postscript, that in my view of my finding in respect of the Litigation Support Agency, it would appear that the fees of medical support agencies could also be treated as though the work had been done by the solicitors and charged accordingly."

19. Pausing here for a moment, I record simply that Judge Cook's concern regarding the treatment of VAT was dealt with by the Court of Appeal in Prosser v British Airways Plc [2019] EWCA Civ 547 where the provision of a service, including a medical report, required the MRO to charge VAT on the medical report element as well as on the MRO's own efforts.

20. In 2003, a year after Stringer was handed down, the then Senior Costs Judge, Peter Hurst, produced one of a number of judgments relating to the Claims Direct Test Cases (the "Tranche 2" issues judgment ([2003] EWHC 9005 (Costs))) which, amongst other issues, dealt with the question of whether a payment to Mobile Doctors Ltd ("MDL") an MRO, was irrecoverable. Having dealt with commission arrangements between MDL and Claims Direct, Judge Hurst said the real question he had to decide was "whether and to what extent the charge made by MDL for obtaining the report is reasonable and proportionate"? At paragraph 114 of his judgment, he said the following:

> "There is no doubt that MDL carries out a certain amount of correspondence, which, had they not been involved, the solicitor would have had to do. To the extent that this work is carried out at the same or a lower cost than if the solicitor had done it, it is recoverable. The judgment of His Honour Judge Cook in Stringer v Copley…is trite costs law. I agree with Judge Cook that there is no principle which precludes the fees of a medical agency being recoverable between the parties, provided it is demonstrated that their charges do not exceed the reasonable and proportionate costs of the work if it had been done by the solicitors. There may however be, within MDL's fixed charge, an element in the nature of an administration fee, which is not recoverable. Mr Charlton argues that if the fee charged is reasonable the court should look no further but merely allow the fees as claimed. I further agree with Judge Cook when he states:
>
> > '… It is important that [medical agencies] invoices… should distinguish between the medical fee and their own charges, the latter being sufficiently particularised to enable the costs officer to be satisfied that they do not exceed the reasonable and proportionate costs of the solicitors doing the work."

21. There are subsequent cases which follow the approach in Stringer in requiring the claimant / MRO to produce breakdowns to support the MRO fees and to distinguish between such fees and the fees actually charged by the medical experts. Perhaps the two best known of these decisions were given in 2023 by HHJ Bird in Northampton General Hospital NHS Trust v Hoskin in the County Court in Manchester and the then Senior Costs Judge, Andrew Gordon-Saker in CXR v Dome Holdings Limited in the Senior Courts Costs Office. They are both given at the point where the paying party is challenging the absence of documentation rather than making a decision on the recoverability of the fees where evidence has been provided. As such, they were of assistance in my last judgment where I was faced with the same procedural issue, but I do not think they add anything to the judgment of Judge Cook at this point.

22. As was said openly by the advocates on the claimants' side, the need to produce a breakdown of the MRO fees in accordance with Stringer was honoured in the breach. This did not prevent many cases from settling by negotiation. When it came to points of dispute and replies, requests for a breakdown in the points of dispute would often be met with wording similar to (but not as extensive as) the reply in the case of JXX which stated:

> "In pure cost terms, it has been proven that medical agencies provide a cheaper service than if the solicitors had undertaken the work for themselves. The CPR recognises and advocates the use of agencies. MAPS are acknowledged to provide an efficient and valuable service instructing experts for the prompt preparation of expert medical reports. Most firms of solicitors, even those dealing with a high volume of personal injury cases, do not have access to a databank of suitable experts such as is available to medical agencies. It is refuted that the use of the service leads to an unreasonable increase in the amount of costs incurred. Whilst the disbursement in respect of the report is slightly increased the conducting solicitors' profit costs are significantly reduced. Further still, medical agencies are able to vet expert reports and ensure that they are not only medically and factually accurate, but also comply with the current Rules. As they are a bulk provider of work for the medical experts, they are also able to keep down the fees charged for the actual report. As per Stringer v Copley, Cook HHJ 30 May 2002, the agency fees claimed are therefore reasonable."

23. It seems plain that these replies were written by the claimant's solicitors rather than the MRO. First, the MRO refers to itself as an organisation rather than an agency. Secondly, after the passage I have just quoted, the reply indicates that a breakdown of the experts' fees has been requested from MAPS and would be provided upon receipt.

24. The defendant criticised the approach outlined in the reply to the points of dispute in that there is simply an assumption that using an MRO is cheaper than solicitors instructing experts directly. Furthermore, there is the assertion that the MRO is able to negotiate a bulk discount with experts to reduce the fees that would otherwise be payable "for the actual report".

Using an MRO is cheaper than instructing experts directly?

25. This argument requires the claimants' side to provide evidence of the sort described by Judge Cook. Premex put forward an appendix to the first witness statement of Michael Cutler, Chief Executive Officer of Exam Works UK Ltd, which attempted to produce a breakdown of the work done by looking at the activities which had taken place according to Premex's records relating to 23 invoices across six specialties. This was described by Mr Cutler on more than one occasion in his witness statement as being a laborious and manual process, since MROs do not time record in the manner of a law firm. Gaps had to be filled in the records held by Premex in order to produce any sort of comparative data for the court.

26. I recognise the effort made by Premex to produce the sort of information required by Stringer but, in my view, it falls considerably short of the comparison contemplated by Judge Cook, and indeed, Judge Hurst. This retrospective exercise has involved considering items which were logged, but which have no associated time element, according to Mr Cutler, and estimating the time involved for each of those entries. Since there are gaps in the log (if compared with a firm of solicitors) there is further estimated time for claimed activities that were not recorded at the time and so presumably may or may not have taken place (for an unspecified period of time).

27. The fees actually charged are then divided by an hourly rate of £155 per hour to reach a figure of approximately 173 hours altogether. As this comparison has not, to my knowledge, ever previously been carried out, it might be unfair to criticise this approach. But, if the MRO uses the same rate as the solicitor would, then it is a straight comparison of the amount of time spent and that would certainly require a counterfactual description of the amount of time that a solicitor would spend. One of the advantages an MRO has in principle when comparing itself to a firm of solicitors, is that the salary cost of the individuals employed, and therefore the notional hourly rate that ought to be charged, would be lower. This was confirmed by David Ian Stothard, the Managing Director of MAPS when he contrasted running a law firm from running MAPS. It was surprising therefore that using a lower hourly rate was not the route taken by Mr Cutler.

28. Mr Cutler stated that it took over 20 hours to produce the comparison but I am afraid that I do not think that it really assists in contemplating the sort of calculation originally envisaged in Stringer given the uncertain and estimated nature of the time claimed to have been spent.

29. On behalf of MAPS, Mr Stothard also appended what was described as "an estimated Table of notional Grade D fee earner work that might have been done in the instant case," to his witness statement. He very fairly accepted that it was not based on the present case as such, albeit that by cross referring from the list of work generally done, an indication of 12.7 hours "would be a very approximate time spent per expert." He then said, even more candidly, at paragraph 28 of his statement:

> "I recognise that it is not possible to make an exact like for like comparison between the work we do and the work a notional solicitor would have done in the instant claim."

30. Consequently, if, in considering whether the expert evidence fees are reasonably incurred and reasonable in amount, the MRO fees are treated as being outsourced solicitors' work – and so comparable with the instructing solicitor – the claimants

have, in my judgment, failed to put forward any cogent evidence which might remove doubt from the court's mind as to the reasonableness of the fees.

The MRO is able to negotiate a bulk discount with experts to reduce the fees that would otherwise be payable "for the actual report"?

31. The evidence put forward by the claimants in respect of the discounted fees was sparse. In particular, the example relied upon by Mr Cutler in respect of Dr Sembi's invoice, upon cross-examination, plainly showed that the discounted fees option was available to both solicitors and MROs for repeat business. There were no other terms and conditions produced in the documentation before the court which were relied upon by the claimants as demonstrating a discount available to MROs. Mr Stothard gave evidence that obtaining a commercially lower hourly rate from an expert than solicitors could was not a point which he would make.

32. A distinction between the rates available to MROs and solicitors was provided by Professor Cosker. In his witness statement, at paragraphs 6 and 7 he said the following:

> "If such instructions were to come from solicitors directly, I would need the payment terms to be in line with what I currently have with MRO's i.e. payment being made straightaway, for the business to continue to function. If I was unable to secure payment terms as they are now with MRO's, I would not be prepared to undertake this work as the risk is too high.
>
> For the very reasons set out above, if MRO's were not involved and instructions were coming directly from law firms or elsewhere, I would need to charge more to account for the uncertainty and additional work I would need to undertake in their absence."

33. These comments were made under the heading "what would [be] the impact be if MROs didn't exist." It is not apparent from Professor Cosker's witness statement whether he actually is instructed directly by solicitors. However, that point was clarified when he gave evidence in that around 60% of his work is via MROs and 40% would come directly from solicitors.

34. Having described his general preference for work from MROs rather than solicitors on the basis of their organisation and efficiency (and accepting that both MROs and solicitors were variable in this respect), Professor Cosker was asked about whether he had standard terms of engagement. His evidence was that he generally used the MRO's terms, albeit with some negotiation. This negotiation appeared to revolve generally around prompt payment terms and they were something which he had introduced to solicitors having had poor experiences with delayed or non-payment in the past. He was then asked about whether he had an hourly rate for the work that he did. The following exchanges occurred:

> "Q: Do you have an hourly rate?"

> A: Yes, I do. 450 per hour.
>
> Q:…. Is that rate the same for the likes of Lupton Fawcett and Slater and Gordon, and people like that?
>
> A: For the solicitors, it would be, yes. It is a lower rate for the agencies.
>
> Q: What is your rate for the agencies?
>
> A: I'm not entirely sure. I believe it is about 250 an hour.
>
> Q: So if you were to look back at some of your bills of costs, we would see that in the ones that involved agencies, we would see 250 an hour, and the ones that involve solicitors directly, we would see 450 an hour?
>
> A: There would be a difference, yes."

35. Professor Cosker was then asked about whether his rates have changed over time and he agreed that as he had become more senior the rate had increased. It also increased to take into account things such as inflationary pressures, although he said he had not increased his rates over the past two years. He was then asked:

> "Q: Can you recall how much it changed by the last time you did increase it?
>
> A: I think broadly since I became a consultant, it has stayed 350/375/400. Something of that order."

36. Mr Mallalieu returned to this issue later in his cross-examination. During submissions, there was a difference of view between Mr Mallalieu and the advocates for the claimant as to whether Professor Cosker rowed back on his evidence above with the following exchange:

> "Q: So, as I understand it, am I right from your evidence that if Slater and Gordon instruct you directly, you charge them £450 per hour, but if they instruct you through an agency, you charge them £250 an hour?"
>
> A: There is a difference in fee, that's correct.
>
> Q: Is that the difference in fee?
>
> A: A typical example would be if I got the case through Premex, let's say it is roughly £300 for that case. Then we would usually charge in the order of £720 to £1,000, and that reflects the vastly increased amount of work that is required to process the case directly through the solicitor, rather than through the agency."

> Q: …Are you talking here about the time being different that you might spend, which might mean that the fee is higher, or are you talking about a contractually agreed hourly rate, which is different depending on whether you are instructed by the agency or the solicitor?
>
> A: It is mainly just simply a function of time, both my time and my team's time to source the medical records, to get the other expert evidence, to get the witness statements, to just pull the whole thing together in frequently what is a very disorganised fashion."

37. When Mr Cutler was quizzed about the lack of any documentation put forward by the MROs to support the argument that they regularly achieved a discounted rate with experts, he referred to the evidence of Professor Cosker had given in the witness box. He said that Professor Cosker was just one of "many, many examples of experts who will charge us a lower rate for the services that we provide…" When it was pointed out to him that Professor Cosker's evidence was the only evidence put forward by the claimants and that there were no other examples put forward, Mr Cutler replied, somewhat wistfully, "No. I rather wish I had now."

38. Although it was not referred to at the hearing, I note from the evidence of Mr Medforth of AMRO (at paragraph 28 of his second statement) that "[i]ndividual expert fees tend to be consistent across the market, as no MRO can force any expert to work solely for them, so whilst price is important…the differentiators are predominantly, credit periods, write-off facilities and, where applicable, marketing/contract support costs." This description, in my view, chimes with the statement of Mr Stothard that seeking a lower rate from the expert than solicitors could achieve directly was not an approach he recognised. In a market where the MRO places a percentage markup on the expert's fees, it is somewhat self-defeating to seek to reduce the figure on which the markup would be applied.

39. In my judgment, the description of Mr Stothard seems to reflect the general approach, and that the expert's fees are not suppressed in order to gain a commercial advantage. The absence of any evidence of Mr Cutler to demonstrate otherwise, notwithstanding the test case nature of this litigation, also seems to me to support that view.

40. The only evidence against this conclusion is that of Professor Cosker and I have to say that I was not particularly convinced by his evidence in this regard. He was very clear about the need for prompt payment and the perils that lay in delay, both in terms of cash flow and indeed eventual recovery. By comparison, the hourly rate numbers he gave out in the witness box seem to me to be rather off-the-cuff, and when asked further questions, he retreated to the word "difference" on two separate occasions rather than reiterating the figures he gave originally and which were included in Mr Mallalieu's questions. I am in no doubt that Professor Cosker's evidence is that he expects to charge rather more for his report when instructed directly than when instructed by an MRO.

41. I am not convinced, however, that his evidence is that this may be purely a result of the hourly rates he charges rather than the need to spend additional time on those reports and which seemed to be his main concern. Moreover, there was nothing in

Professor Cosker's evidence which suggested to me that he was discounting his fees in favour of MROs. It was simply that he was penalising (some) solicitors. He confirmed that he had "dropped" some MROs and accepted that both MROs and solicitors were variable in the service provided. It appeared to me that he was quite likely to distinguish between solicitors just as he had with MROs.

42. In conclusion on this issue, I do not consider the assertion in the reply regarding the MROs' ability to reduce the experts' fees below figures which are available to directly instructing solicitors is made out on the evidence before me.

Disbursement v Outsourced Solicitors' work

43. In the Claims Direct Test Cases, Judge Hurst followed his comments on the Stringer approach (see paragraph [19] above) with a consideration of whether the fees of "medical support agencies" should be considered as outsourced solicitors profit costs or as disbursements. He said at paragraph 115:

> "I part company with the Judge [Cook] in his finding that the fees of medical support agencies 'could also be treated as though the work had been done by the solicitors and charged accordingly'. For the reasons I have already given (at paragraphs 78 to 80) I am of the view that such expenditure should be treated as a disbursement. I am reinforced in that view when it is remembered that a large part of the MDL fee is that charged by the expert. The expert's fee cannot on any reading, be part of the solicitor's profit costs…"

44. Judge Hurst revisited this issue in the case of Woollard v Fowler (24 May 2006) where he sat as a Recorder on an appeal from Master Seager-Berry, who was sitting as a deputy district judge of the County Court. He specifically stated he had not changed the view he had expressed at paragraph 115 of Claims Direct.

45. The following year, Judge Hurst found himself sitting as an assessor in the case of Crane v Canons Leisure Centre ([2007] EWCA Civ 1352). There, the Court of Appeal grappled with the question of whether the fees of an external costs draftsman who had prepared a bill could be treated as outsourced profit costs, (thereby enabling a success fee to be claimed upon those profit costs), or as a disbursement. The majority decision is summed up in the judgment of Hallett LJ at paragraph 35 as follows:

> "I respectfully agree with May LJ, therefore, for the reasons he gives, that to construe these particular provisions and determine whether or not these costs are properly described as base costs or disbursements, one must focus on the nature of the work done (whether it is solicitors' work) *and* where responsibility for the work lies."

46. The work done by the costs draftsman was undoubtedly solicitors' work in Hallett LJ's view. At paragraph 36 she described the facts in the case as showing that Rowley Ashworth (the solicitors) and Costings (the costs lawyers) interacted as follows:

> "It was the type of work Rowley Ashworth were retained to do. Rowley Ashworth may have chosen to delegate their work, but they never relinquished control of it and responsibility for it. At every stage of the process Costings' work was under Rowley Ashworth's supervision. Costings drafted a schedule of costs with a view to negotiating a settlement; this was subject to approval by Rowley Ashworth. Costings drafted a bill of costs; this was checked and signed by a Rowley Ashworth partner. Rowley Ashworth instructed Costings to draw up [replies to] the points of dispute (which they approved) and to conduct the detailed assessment before the costs officer. For this, Costings required rights of audience and instruction by a qualified litigator. They were, therefore, deemed to be temporary employees of Rowley Ashworth and, as such, assisted Rowley Ashworth in the conduct of the litigation. Finally, had there been any failure on the part of Costings, Rowley Ashworth could have been held accountable. Given that background, for my part, I am satisfied that Costings' work is properly described as work done 'on behalf of the solicitors' and their fees are properly described as base costs…"

47. In coming to the conclusion that the test to be applied related to whether or not the work was "solicitors' work", Hallett LJ described the essential difficulty in categorising disbursements in these terms:

> "No one suggests that what marks out a disbursement is the fact that the costs have been incurred by the instruction of and/or payment to an outside body. It is common ground that, as the law stands, had Rowley Ashworth chosen to use a solicitor agent, for example, their fees would have been charged as profit costs, and not as a disbursement. Conversely, delegation of work to an independent fellow professional of what might be solicitors' work, for example, the provision of advocacy services, does not inevitably render the costs [to be] profit costs: barristers' fees are expressly included in the definition of disbursements."

48. As this description by Hallett LJ makes clear, it can be very difficult to establish whether fees incurred by someone who is not working in the firm of solicitors should properly be characterised as outsourced solicitors' work or a disbursement. The focus needs to be "on the nature of the work done (whether it is solicitors' work) *and* where responsibility for the work lies."

49. Judge Cook in Stringer does not say expressly that he is treating the MRO fees as a disbursement but his final comment that "the fees could also be treated as though the work had been done by the solicitors and charged accordingly" makes no sense otherwise. Judge Hurst specifically says that the fees are a disbursement. The only suggestion that the work is to be counted as outsourced solicitors' work is the repeated judicial requirement to provide particularity of the work done to be able to compare it to the costs if the solicitors had obtained the reports themselves. But that would seem to confuse the manner in which the reasonableness of the quantum of the

fees may be considered and the way in which the fees are claimed in the bill in the first place.

Is it solicitors' work?

50. Prior to the advent of MROs, there was no intermediary option for solicitors to use and so there was no option but to instruct experts directly. That would involve a letter of instruction and it might, but by no means inevitably, mean obtaining the records. Some experts would obtain the records themselves on the basis they knew the system better than those instructing them. There was no evidence before me that the direct instructions received from solicitors today were materially different.

51. Once MROs came into being, the solicitors had an alternative to direct instruction. The Stringer description of what an MRO does echoes the work done by solicitors. But much of the perceived value provided by an MRO does not materialise in an exercise where the assumption is that the only work done consists of some correspondence or other communications. Certainly, the maintenance of expert databases, and the organisation of rooms and appointments was not likely to be done by the solicitors and nor would any form of deferred payment mechanism or write off facility come into play.

52. Furthermore, for work to be solicitors' work, it assumes, in my view, that the work would be recoverable if the solicitor had done that work. The letter of instruction remains a matter for the solicitor, even if an MRO is used, at least in the sort of cases typified by the two cases before the court. But the work thereafter – the marshalling of the evidence and expert – is described as "administrative work" in Stringer .

53. In detailed assessments, paying parties regularly seek to categorise work which they do not consider to be payable as being "administrative" in nature. This tends to mean that the work could have been carried out by a secretary or other non-fee earning member of staff. A description of "administrative work" as used by Judge Cook to describe the work that would otherwise have been done by a solicitor is therefore problematic.

54. Similarly in Prosser, reference is made to a fixed "admin fee" being charged of £30 for obtaining records in the fixed costs environment, which is reflective of the fixed fees recoverable both before and after the recasting of large parts of Part 45 in October 2023.

55. Indeed, in the Claims Direct Test Cases, when Judge Hurst "deconstructed" various fees including the fee charged by MDL, he said, at paragraph 117 of his judgment:

> "The principle is clear, namely that the administration element of any fee charged by MDL is not recoverable. It will therefore be necessary for the receiving party to obtain from MDL in every case, a properly broken down fee note showing the actual fees paid to the expert, the amount charged for correspondence and telephone calls and the administration element. In deciding what proportion of that fee is recoverable. The court will have to take into account the solicitor's correspondence with MDL

> which would not have occurred had they not chosen to instruct MDL.

56. Consequently, a breakdown provided under the Stringer guidance would not just have to produce a lesser sum than the hypothetical solicitor's charges, but it would be vulnerable to the challenge that the work was not in fact legal work in any event. The somewhat surprising conclusion might therefore occur in that nothing was recoverable even though the original something claimed was less than the solicitor would have charged.

57. The challenge that the work done was administrative rather than solicitors' work would, on the Crane test, point towards the fee being a disbursement.

Where responsibility for the work lies

58. So too, in my view, does the second part of the Crane test concerning the responsibility for the work. The comparison of the MRO being sent a letter of instruction and / or simply a request to obtain a medical report and that report subsequently being received bears little comparison with the interaction between Rowley Ashworth and Costings described in Crane. Once the expert has been chosen from options on the database, or, presumably simply specified by the solicitor, the MRO would be left to get on with organising the date of examination, the gathering of the medical records etc until such time as the report is provided to the solicitor. The responsibility for the contents of the report plainly lies with the expert, not the solicitor. That point, together with the point made by Judge Hurst in Claims Direct that the majority of the MRO fee note is the expert's own fee, points heavily towards the MRO fee being a disbursement rather than an outsourced solicitors' cost.

59. Does this characterisation actually matter? Mr Mallalieu contended that the same test applied whichever way the fee was categorised. To the extent that the fee has to be reasonable in amount, that must be correct. The need for a breakdown of the MDL fee in Claims Direct by Judge Hurst suggests that he thought there was no difference (since he had already decided the fee was a disbursement.) Here, I must depart from Judge Hurst. In my view, the importance of the distinction is that it leads the assessment away from a comparison of time and effort spent by the MRO with the hypothetical time costs of the non-required solicitor.

60. For the reasons given to this point, I have concluded that the MRO fees are a disbursement rather than outsourced solicitors' work. It flows from that conclusion that I do not consider the fees are limited by a comparison with a hypothetical solicitor's work in obtaining the medical evidence and as such there is no purpose in requiring an MRO to provide a breakdown equivalent to that produced by solicitors in their bill of costs.

The Defendants' Approach on Quantum

61. This does not mean the end of the defendants' argument, however. As Mr Mallalieu described it, the claimants have sought to put before the court a binary decision of either allowing the costs as claimed, or to disallow them entirely. His first point on this was that the absence of any real attempt at time recording the activities undertaken would appear to prevent the court from allowing something rather than

everything (or nothing). This was a nuanced argument because, as I have described above, the production of some form of time recording by the MRO would not necessarily lead to that sum being allowed, even if it were below the hypothetical solicitor's equivalent. It would simply be the gateway to further arguments, for example, regarding administration work rather than legal work.

62. Mr Mallalieu's second point regarding the claimants' approach concerned the lack of any breakdown of the MRO fee, even on the claimants' case, in order to justify the percentages claimed. The claimants' argument was that in the absence of any such breakdown there could be no scope for a "deconstruction" of the fees claimed in the manner carried out in the Claims Direct Test Cases. The defendant's position was that in the absence of a breakdown, the claimants were unable to distinguish between recoverable elements of the MRO fee and those which were irrecoverable. Since the court could not be sure as to the extent of recoverability of the fee, it would still have to be disallowed.

The elements of an MRO Fee

63. At paragraph 56 of his witness statement, Mr Cutler sets out no fewer than 56 bullet pointed phrases which he describes as being additional services essential to the securing of compliant medical evidence. They are set out in three columns which I have replicated under the following headings;

i) Preparation of evidence

Liaise with multiple treatment providers / arrange appointments / obtain records / Preparation of bundles / medically qualified team to ensure clinical governance and support / consideration of part 35 questions / Availability for Court / Preparation of joint reports / Electronic instruction / review of instructions / Reporting tools / Verification of Expert rooms / Conferences / Addressing any corrections / Court deadlines team

ii) Business compliance

Data Protection including full ISO 27001 / GDPR Compliance / Monitor records request for GDPR compliance / Quality control / Compliance / Review of Solicitor Terms / Ethical assessment and management framework / A2A functionality capacity with Solicitors / Maintain secure platform to share data / Review of business terms / Quality checks / Crucial data retention / fit and proper persons checks maintained in respect of all key individuals / Cyber security including Cyber Essentials Plus certificate / GMC alerts / Complaints / Clinical governance framework / Fully documented and tested business continuity and disaster recovery / Valid ICO registration

iii) Financial

Credit Control / Fee Concerns / Fee queries / Purchase ledger team / Waive / Budget team / Prompt payment

iv) Expert database

Referrals consideration and assistance / Maintain Expert profiles / Maintenance of CVs / Ongoing recruitment / Maintenance of Expert T&Cs / Proof of insurance

v) Others

Cost dispute team / legal team / Ability to send documents electronically / Certification assistance / Conflict review / Caldicott Guardian / Storage / Identifying key individuals at practices

64. There is plainly a certain amount of repetition in these various bullet points. Furthermore, a number of them relate to the running of the business of the MRO and not the provision of a service specifically connected with the preparation of medical evidence, et cetera. Nevertheless, the following elements were repeatedly addressed in the evidence and submissions as being major elements of the MRO offering:

i) Obtaining the medical evidence – although this is the very purpose of the MRO, as indeed the name describes, there was comparatively little discussion of it. In addition to obtaining the records, the MRO may arrange consultation rooms and / or the expert's diary. The same sort of marshalling applies in respect of subsequent conferences with the legal representatives, joint reports, and attendances at court. The administration of these activities was a key component according to the medical experts of their use of MROs.

ii) Experts' database – the ability for the MRO to provide details of potentially suitable experts, regardless of the specialty or location, was seen by the solicitors as something which they could not realistically replicate. The ability of the MRO to add a desired expert to their database and therefore their terms of engagement, was prized by solicitors who wished to instruct a particular expert, but without having to pay the fees immediately.

iii) Prompt payment – all of the evidence from the experts and the solicitors valued the financial burden taken on by the MRO in paying the expert within a matter of months, but not requiring payment and reimbursement from the solicitors until the case had concluded.

iv) Write off ("waive") facility – where fees had not been recovered in full, the possibility of writing off the unrecovered balance in at least some cases was also highly valued.

65. The defendants did not challenge the first two aspects of the MRO fee, save for the Stringer argument in relation to the first element. However, the third and fourth aspects were described as being funding costs and were said to be irrecoverable as a matter of law.

The recoverability of funding costs?

66. In Hunt v R.M. Douglas (Roofing) Limited (1987) NLJ 1133, the taxing officer had disallowed the "on cost of funding disbursements during the currency of the action" based on National Westminster Bank rates. The appeal against that decision was dismissed by the High Court Judge and so a second appeal was brought to the Court of Appeal. The "funding cost" occurred whether money had to be raised to fund the

litigation or money which the litigant already had could have been used elsewhere were it not for the litigation.

67. It was the appellant's argument that once he was entitled to the base fees it was appropriate for him to receive a full indemnity which reflected the cost of funding the litigation. This might be by a sum calculated by reference to the interest that was either paid on a funding loan or the loss of interest in money used for litigation rather than other purposes. Purchas LJ, giving the lead judgment, described the parties' arguments thus:

> "Mr Burke [the appellant's counsel] was at pains to emphasise the distinction between interest as a measure of the expense of providing the money and interest on money in the ordinary sense of the word. Mr Goldblatt, on the other hand, submitted that however attractively Mr Burke might put the proposition, what in fact he was claiming was interest on the sum awarded in respect of the base costs during a period when, under statute, it was not payable because it was prior to the date of the order when interest became payable [under the Judgments Act 1838]."

68. The issue of the court's entitlement to award interest prior to a judgment has since been rectified by CPR rule 44.2(6)(g). That was one of two exceptions, cited by Mr Mallalieu to the general principle that the cost of funding is not recoverable. The other was described as the few remaining circumstances in which ATE premiums are recoverable pursuant to statute.

69. Mr Mallalieu relied upon Purchas LJ's conclusion to his decision that:

> "…by established practice and custom funding costs have never been included in the category of expenses, costs and disbursements envisaged by the statute and RSC O.62. To include them would constitute an extension of the existing category of "legal costs" which is not under the prevailing circumstances warranted."

70. Mr Mallalieu pointed to the evidence of various witnesses who accepted that the funding costs of the delayed payment and the write off facility came at a cost to the MROs. It did not matter for the defendants' argument as to how much those funding costs were. If they could not be disentangled from the remainder, then the court would have to disallow everything so as to avoid allowing an irrecoverable item of the MRO fee.

71. Robert Marven KC, who appeared on behalf of the claimant in HLA as well as Premex, responded for the claimants generally in relation to this issue. He submitted that the case of Hunt did not support the weight placed on it by the defendant in suggesting that primary legislation was required in order for the cost of funding to be recoverable. He pointed to the fact that the issue in Hunt had been reversed by the revision of the CPR.

72. In respect of this particular point, my understanding has always been that the funding of the cost of litigation is a matter for the litigant. Therefore, if a bank loan had to be taken out in order to fund that litigation, then that is a matter for the party and not something which could be recompensed in the event of a successful outcome. In the same way, questions as to the depths of the pockets of the opponent, subject to the specific circumstances in which security for costs could be sought, were not ones which had to be answered.

73. That traditional view has clearly been constrained by the change in the CPR, enabling pre-judgment interest to be paid on costs (and specifically on disbursements in Jones & Ors v the Secretary of State for Energy and Climate Change (the "Phurnacite" litigation) [2014] EWCA Civ 363. Nevertheless, that the general rule against recovering the cost of funding still survives, was demonstrated by Mr Mallalieu in his reply by reference to the recent decision of the Supreme Court in the Federal Republic of Nigeria v Process & Industrial Developments Ltd [2025] UKSC 36. The lead judgment makes specific reference to Hunt when stating, at paragraph 16, that:

> "The task of the court making a costs award is to identify the reasonable amount which party ordered to pay costs should pay, which is not the same as the sums which the receiving party has paid its lawyers and excludes the costs of funding the litigation, such as the cost of borrowing or the sums paid to commercial litigation funders."

74. Mr Marven's primary position, however, was that an arrangement whereby the MRO paid the expert more promptly than it received reimbursement from the solicitor / original tortfeasor was not any form of funding cost in any event. He drew a comparison with the traditional arrangement of solicitors pursuing matters on behalf of their clients who did not charge those clients until the end of the case on the basis that it was an entire contract. Interim payments have become possible over time, but the general sense of the solicitor being paid at the end did not amount to that solicitor funding the litigation on behalf of the client.

75. Similarly, the agreement by the experts themselves for payment terms of a year, for example, did not mean that the expert was providing credit for that year before payment was made. It was striking, in Mr Marven's view, that the defendant did not seek to argue that the expert was providing credit in cases where the solicitors instructed them directly and yet where there was a third party involved, it was described as funding. In reply, Mr Mallalieu's position was that a plain description of the delay in payment by the solicitor for an expert's fee that had been commissioned in return for a payment to the paying third party as part of a cost of its service was disbursement funding.

76. In my judgment, the response of the defendants to Mr Marven's primary point is not convincing. The market for MROs to provide medical reports is not simply one of providing good administration so that experts, claimants and medical records converge at the same point in order for an efficient report to be produced. Those acting on the claimant side of the case are all dependent upon fees being paid at the end of the case by the opponent. It is inescapable that the costs will be incurred some time before that payment is likely to be made. Those experts who accept instructions directly from solicitors either build something into their fees for this delay in payment

or are simply prepared to wait for their fees to be paid. The same is true in respect of the solicitors whose fees not only will not be paid until the end of the case, but will only be paid at all if the claimant is successful (assuming that the almost ubiquitous use of a Conditional Fee Agreement ("CFA") is in operation). Whilst there is the possibility of claiming a percentage in the form of a success fee for deferment of payment under a CFA from the client, that is, in my experience, relatively rare, and is often swallowed up by the risk element where such a fee is actually claimed.

77. In the circumstances an MRO is simply factoring into its terms and conditions an expectation that income will lag expenditure by a distance. As with the other participants, cash flow will eventually appear in cases coming to fruition and will pay for expenditure incurred in newer cases. The purpose of the terms and conditions is to provide medical evidence; it is not to provide credit even though that is, in effect, a byproduct of the agreement. In my view, this is an entirely different proposition from the cost of a disbursement loan from a bank or other litigation funder.

78. In his witness statement, Mr Stothard described the staggered nature of payment in the following terms (at paragraph 35):

> "I believe that in our market, law firms typically also benefit from commercial terms, which include the deferment of payment for fees and the ability to seek a write off of certain fees or part fees, for example, when our full fee is not recovered in a case. I do not waive the confidentiality of our specific agreements with our law firm customers. However, I can confirm that our deferment terms vary from payment at end of case to requiring payment before delivery of a report. Similarly, the value of any write off facility is a matter of commercial negotiation in the context of the value of the business supplied to the company. While I am sure that these are valuable parts of the agreement for any law firm customer of a company like MAPS, I do not regard them as a service in themselves, but rather a commercial element of the wider contractual relationship."

79. This quotation links the issue that I have just described regarding the delay in reimbursement of the MRO by the solicitor for fees paid by the MRO to the expert with the write off facility also provided. Such a facility was described in both the MAPS and Premex arrangements with their solicitors. The expectation was that if the case was entirely unsuccessful, then the cost of the disbursements would be met by any ATE insurance policy taken out by the claimant. Only those disbursements which were not recovered in successful cases, for example, an unsupportive report or one which was obtained in a specialty where the court ultimately did not give permission for such evidence to be used, might need to be written off. In such circumstances, the solicitors would be able to credit the cost of such evidence against an agreed figure for which the MRO would waive payment.

80. In respect of Slater and Gordon's facility with Premex, Mr Nils Stoesser, the Chief Executive Officer of Slater and Gordon UK Limited, made the following comments in response to the suggestion that the waive facility was primarily directed at cases where there had been reduced recovery not unsuccessful claims:

> "Correct. That is correct. And it is – and this is one of our challenges as the law firm, because we are taking all the risk, we are not recovering all of our exposure when we in theory are winning / in practice are winning. I can see that by looking at the waive facility, because in this agreement, for example, the waive facility, in terms of the existing facility, was over 3 million. Today it is like 160,000 with this particular supplier."

81. Ms Victoria Beel, a solicitor at Slater and Gordon, as well as being an Operations Director, also gave evidence in respect of the waive facility. She said that it was insufficient to cover all aspects of the fees incurred with Premex that could not be recovered from third parties or from ATE insurers by unsuccessful claims. Careful husbandry of the facility was required, as she described in the following passage:

> "It might be helpful for me to set out the waive facility, if we were to allow free use of the waive facility, [then] we would exceed quite quickly and early on in the year, the amount of the waiver that was used. It has to be very carefully managed to make sure that it is not used very early on in the year. So, for example, if you want to use the waive facility, a solicitor can't simply use the waive facility of their own volition. It has to go through an approval process before somebody can use the waive facility on a particular file."

82. Whilst the waive facility in respect of Premex and Slater and Gordon was relatively straightforward, matters were complicated in respect of Thompsons and MAPS by a further agreement in respect of cash flow between the two organisations. The original agreement from 2013 required Thompsons to pay the MAPS invoice on the earlier of 18 months from the date of that invoice or the conclusion of the case. However, since Thompsons are the major user of MAPS' services, a further agreement was entered into on the same date, which included terms specifically designed to assist MAPS' cash flow. In essence, Thompsons agreed to make regular payments regardless of whether the daily or monthly figures were justified by the recovered fees for the various invoices in order to smooth out the MRO's cash flow. This resulted in Mr Mallalieu valiantly summarising the evidence of Mr Stothard as follows:

> "Q: So that appears – and I think you have already addressed this, that appears to work on the premise that rather than this just being a credit against future payments due from Thompsons, there is actually a positive payment back from MAPS to Thompsons, at the same time as Thompsons are paying money to MAPS in terms of the daily/monthly payment.
>
> A: Exactly, as I said before, the cash moves."

83. The defendant's criticisms of the waive facility were added to the arguments concerning the deferment of payment in describing the fees charged by MAPS or Premex as including cost of funding elements because they involved an appreciable element of the cost to the MRO of providing the service.

84. I do not accept those criticisms. I have already described why I do not think that the staggering of payments is sufficient to amount to any form of credit agreement. It seems to me that the waive facility strengthens the point that the market in which the MROs operate with solicitors requires terms generally to establish an attractive package for solicitors to use the services of an MRO. The specific cash flow arrangements between Thompsons and MAPS accentuate the commercial relationship between the two organisations. The main agreement which they entered into appears to be the one which MAPS uses with other firms. The additional "preferred supplier agreement" simply reflected the ongoing relationship between Thompsons and MAPS.

85. For these reasons, I do not consider that the MRO fees contain any irrecoverable funding costs in the manner contemplated by Hunt v Douglas Roofing. They simply reflect a commercial relationship between the MRO and the firm of solicitors.

86. This is a convenient moment for me simply to mention for the benefit of the parties that, having considered the redacted agreement between Premex and Slater and Gordon handed up during the hearing, I am satisfied that the redacted elements do not impact upon the issues in these cases. I mention this here simply because the redacted terms also reflect a wider relationship between the two contracting organisations.

Can / should the MRO Fee be deconstructed?

87. I have already dealt with the elements which the defendants say should be excised from any recoverable MRO fee. There remains, however, the argument that, whilst those elements may be recoverable in principle, they are potentially unreasonable in themselves, and that cannot be established unless there is a breakdown of the elements within the fee. Nicholas Bacon KC, on behalf of MAPS, described deconstruction in the following terms:

> "The pricing of MRO fees is not set by reference to elements which you add together to [reach] a greater total. It is a fee set by reference in the MAPS case to the market through its matrix, and in Premex's case, as explained by Mr Cutler at paragraph 26 of his statement, to what the market bears, having undertaken the appropriate research, negotiation, arm's length negotiation and so on. And once one recognises that the fee is not set by constituent elements, there is no basis for the court to start to deconstruct it as though it were. You have my wider points that to do so in every case would be utterly disproportionate, cause massive expense, and invite further satellite litigation about the product of what has been produced through the deconstruction exercise. It would be endless."

88. Mr Mallalieu's description of Mr Bacon's submission in his own reply submissions was:

> "It was said in essence, that because the agencies have chosen not to have a system which allows – and therefore they are unable to tell us, we are told – the constituent elements of their charges, that in effect, there is nothing we can do about it.

> Because that is the model they have chosen to operate, we just have to accept it, and therefore the court has to adopt a non-conventional approach of assessing these matters, just on a global market basis."

89. These submissions reflect comments made by the witnesses as to the difficulty or impossibility of disentangling the constituent elements of the MRO fee. This was said in the context of the quasi solicitor's breakdown but was also referred to, as set out above, regarding whether there was any element to be taken account of regarding, for example, the deferred payment arrangements.

90. The stark difference of approach was criticised by the defendants as leaving no middle ground for the court. As will be seen, I do not entirely accept that categorisation of the situation, but I do think that there is no realistic scope for any attempt to deconstruct the elements of the MRO fee. It seems to me to be a little surprising that a commercial organisation would not have analysed its cost base to see which, if any, costs might be reduced or the relevant element dealt with in some other way which would lessen the cost and thereby increase the profit. However, there is no evidence before the court of any such analysis.

The Claimants' Approach

91. The claimants say that there is no need to deconstruct the MRO fees in any event. What was described by Mr Mallalieu as the non-conventional global approach was, according to all of the claimants' advocates, in fact, the conventional method of simply deciding whether or not the fee claimed as a whole was reasonably incurred and reasonable in amount. There was no need to distinguish between the expert's fees and the MRO fees, but simply to look at the aggregate figure as set out in the MRO invoice.

92. Benjamin Williams KC, who appeared on behalf of JXX, took the lead for the claimants in relation to the approach they say the court should adopt. He was forthright in decrying the approach of deconstructing MRO fees where that does not occur in respect of any other disbursement. He took the example of counsel's fees, which he said no doubt actuarially contain a deferment element on the basis that counsel will very often not be paid until rather later in the case. Yet there is no suggestion of counsel's fees ever being deconstructed, or even simply reduced to excise that deferment element.

93. This led Mr Williams into pointing to the absence of any evidence from the defendant in this case, notwithstanding the in-house resources that the defendant's insurers could put towards arguing about the reasonableness of the MRO fees. This was echoed by Mr Bacon subsequently when he referred to the fact that everyone knew that insurer defendants also used MROs to provide medical evidence in many cases (and a point made by Mr Cutler at paragraphs 9 and 78 of his witness statement).

94. Mr Williams queried rhetorically, "where is the evidence that the MROs are inflating the overall cost of medical evidence"? He then carried on:

> "You can't say: well, that is a misplaced question because it is circular because there are MROs in every case, because the

> evidence is there are not MROs in every case. The evidence is that there are still many cases in which solicitors instruct experts directly, and it would be very easy for major liability insurers to put in evidence and say where MROs are used, costs are materially higher than in cases where they are not used. They are well placed to put in expert specific evidence: well, we see many reports from this orthopaedic surgeon, and here is a bar chart that shows what he charges in cases where there is no MRO, and here is a bar chart which shows what he charges in the case where there is an MRO and the one bar is much higher than the other."

95. I would have rather more sympathy with this argument if it were the case that the expert produced a fee note, which incorporated any MRO fees, particularly if they said that the fee charged was the same whether or not an MRO was involved or whether the necessary administration, et cetera was carried out from the expert's own resources. In such circumstances, it would be possible to say that the fee for the expert's report could be compared with other experts' reports.

96. However, that is not the case here. The court has been provided with the figures for the expert's evidence and separate figures for the MRO fees. It is the MROs' own evidence that their fees are based on a percentage mark up applied to the experts' fees.

97. By contrast, there is no evidence other than from Professor Cosker that the report fee charged by the expert to the MRO is any different from the fee that would be charged to a solicitor. I have set out above why I do not think Professor Cosker's evidence should be preferred to that of Mr Stothard and others.

98. As a result, the simple answer to Mr Williams' rhetorical query about the evidence which shows that MRO fees inflate the experts' fees is in fact the MROs' own evidence. According to that evidence, between 20% and 104% increases on the experts' fees have been claimed in the JXX case and generally 35% or 45% mark ups have been claimed on the experts' fees in HLA's case.

99. The evidence of the MROs is that the percentage claimed in any particular case is not reflective of the time spent on that case, and indeed other than general parameters such as the type of report, the percentage is not really relevant to the individual case at all. The percentages charged overall are intended to make the MRO profitable on a global basis. As was made clear in the evidence, MAPS simply state that they will charge a reasonable fee and the actual percentage charged in any particular case was governed by a matrix which was an internal document rather than one shared with the solicitors who instructed them.

100. It is said by the claimants that there is a competitive market between the MROs for the business of solicitors acting for claimants and that regulates the percentages charged. Reference was made to the "hard negotiating" regarding the waive facilities and the fact that Premex had altered the waive facility to reflect a change in the profile of the cases taken on by Slater and Gordon.

101. I can accept that there is a competitive market in terms of matters such as the waive facility between the MRO terms offered to solicitors. Indeed, the comment from Mr

Medforth on behalf of AMRO specifically mentioned this sort of matter. But the extent of the fee charged on top of the expert evidence is not, in my view, a similarly competitive issue. This is because of the "tripartite relationship" as Mr Cutler described it. He described the processes regarding recovery of fees in the following, vivid terms:

> "So we have a contract with the law firm, the law firm contracts to pay us. Unfortunately, then the law firm has to enter into an adversarial process to recover our fees, and inevitably it gets to a position sometimes where those fees are not recovered in full. And it is a constant bugbear for me as the leader of that business that those costs are subject to costs draftsman negotiation, and ultimately assessment at court where judges, with the greatest respect to the court and to the judges, making reasonably arbitrary decisions on whether a value of an invoice is reasonable or not, and oftentimes not with reference to anything that the defendant produces by way of comparative invoices, simply because those invoices seem too high. It is really frustrating. We have to pay the expert and all of our operating costs on day one. We wait for payment for a number of years, and then we don't recover all of our costs in those cases."

102. When discussing the problems associated with the new recoverability of additional liabilities from defendants, Professor John Peysner, then of Nottingham Law School, memorably described the tripartite relationship as resembling parents buying training shoes for their children. Those who benefited from the purchase were not those who were responsible for payment of it. It may be a bugbear to Mr Cutler that the defendant has a say in the reasonableness of his product, but that is the system of assessment.

103. I do not think there is anything in the claimants' argument that competition between MROs for the business of solicitors which supports the proposition that the MROs' charges are inherently reasonable. Since that argument is unsuccessful, then it is difficult, if not impossible, to compare invoices between one expert and another with any certainty that either of the invoices is reasonable. That may be the case, but equally the invoices might have been increased by MRO fees which might be considered unreasonable in themselves.

104. For these reasons, I do not accept the claimants' approach that the court can simply compare one invoice with another in circumstances where the fee note under assessment has been increased by an unknown percentage for the MRO's efforts.

Imperilling the future of MROs?

105. The application for joinder by AMRO was, at least in part, said to be a reflection of the importance to MROs generally of decisions in these cases. I indicated at the time that matters such as the viability of MROs, if their business models were interrupted, were not ones which, as a court of first instance, I should be considering in any more than a tangential way. Such matters of policy would be for an appellate court.

106. Nevertheless, a good deal of the evidence provided relates to the broader question of the utility of MROs in the production of medical evidence and the potential impact of a decision which went against the claimants as a whole. Mr Bacon suggested that I was wrong to ignore such evidence, albeit that he did not elaborate upon why that was so. Mr Marven talked of an adverse decision imperilling the future of MROs. I queried the word "imperil" during submissions and it appeared that the various counsel on the claimant side took that query as to whether there was any adverse impact at all and so felt obliged to respond to it in that manner. I was, in fact, simply querying the rather apocalyptic terminology of "imperil". It is plain that an adverse decision to MROs would have a detrimental effect on their businesses. Nevertheless, I remain of the view that it is not for me to provide a decision dealing with the sort of policy matters dealt with by the Court of Appeal in respect of ATE Insurance in Rogers v Merthyr Tydfil County Borough Council [2006] EWCA Civ 1134.

107. There is no dispute that there is a place for MROs in the personal injury field. This was positively stated by Mr Mallalieu during his cross-examination of a number of witnesses. It would have been surprising if he had been instructed to take any other course given the use of MROs by defendants in personal injury cases and, to my understanding, by insurers in other contexts.

108. The evidence provided in these cases suggests that MROs are in fact less prevalent than I might otherwise have thought. They are clearly used in many cases, but the evidence of the experts, and indeed the MROs themselves was that a significant percentage of instructions are still sent directly by the solicitor to the expert.

109. In any event, I did not consider myself to be greatly assisted by the numerous witness statements which provided a generalised view that the end of MROs would cause difficulties. The questions posed of the solicitors and experts seemed to assume that if one piece of the personal injury jigsaw was removed, everything else would remain the same, so that a worse outcome overall would necessarily result.

110. But the same might have been said prior to the introduction of the lower value personal injury portals at fixed fees which, if suggested before they were implemented, would undoubtedly provoke (and my recollection did so provoke) many comments that the figures were unsustainable and yet the portals still deal with thousands of cases every year. Similarly, during the "costs wars", there were numerous claims referral agencies whose business models were considered by the courts. If it had been suggested to solicitors that they would obtain case leads from a referral agency on which they would be required to use a CFA, but with no success fee – so that there was no prospect of winners paying for losers via that mechanism – there would be many who would suggest that such an approach could not work. Yet, at one point, The Accident Group ("TAG") provided hundreds of solicitors with cases on that basis and the end of the scheme came from the demise of TAG and not from solicitors pursuing claims on such CFAs.

111. These are but two illustrations of the fact that there are many component parts in the bringing of personal injury claims and I regard the questions posed of experts and solicitors and then dealt with in their witness statements to be too simplistic to be of any great weight.

Quantification

112. All of the advocates took me to a passage of purple prose in Cook on Costs 2025 regarding the issues before me. It was plainly written on the assumption that experts discounted their fees to MROs in a way that, in my judgment, has been disproved by the evidence in these cases. The one apposite question in the quoted passage concerned the ability of the court to quantify the reasonable MRO fee once any evidence was produced. HHJ Bird in Northampton General Hospital NHS Trust v Hoskin appeared to suggest that, with the benefit of, at least, a fee note from the expert, the court would be able to make a "rational, evidence-based" decision. I have received rather more evidence than contemplated by Judge Bird regarding the MRO fees and yet quantifying the reasonable and proportionate sum for the defendant to pay is not, at least in my view, straightforward.

113. Nevertheless, I do not consider that I am anywhere near the position trailed beguilingly by Mr Mallalieu in his review of the authorities. Seemingly, in passing, he referred to the judgment of Nourse LJ in Hunt v Douglas Roofing, where he (Nourse LJ) first quoted the taxing master who had said:

> "In any event, it is in my view, quite impossible to allow an item of unspecified amount and one that is insupported [sic] by any evidence that it has actually been incurred."

114. Nourse LJ then continued:

> "The observation expresses two cardinal requirements of any taxation of costs and I would be loath to think that this or any other court would do anything to relax either of them in the slightest degree. The job of the taxing master is difficult enough without his having to worry his head over an item as foggy and suppositional as this."

115. The items claimed are of specific amounts and are supported by some evidence. I therefore consider that I need to worry my head over such items.

116. MROs are tasked with obtaining various pieces of evidence from experts such as attendances at conferences with Counsel or at court, but the paradigm involvement is in the procurement of a medical report and that is the example I will use.

117. The solicitors engage the MRO as a third party to procure the evidence of the expert. This may, as a preliminary matter, involve identifying suitable experts who might be instructed from the MRO's database. The necessary records are gathered, an appointment or appointments are made and any necessary chasing is carried out. Once the report has been produced and is seen to be compliant with, for example, Part 35, it is provided to the solicitors. This is essentially the Stringer description of an MRO's activities. It is plainly worth a sum of money since it would, in general terms, otherwise have been carried out by a solicitor if the MRO were not engaged. Obtaining medical evidence in a personal injury claim is obviously reasonably incurred: it is solely a question of the amount that is reasonable. There is therefore a fee to be paid and it is one which ought to incorporate some element of profit since, again, the solicitors would charge at hourly rates, which include a profit element.

118. Added to these activities are the costs of the expert database being maintained. In days gone by, solicitors regularly running personal injury cases would know local experts who could be instructed in most cases. These days there is very often little geographical nexus between the solicitor and client and it is unrealistic, in my view, to consider even large personal injury firms would be able to maintain a database of experts around the country who may be suitable. It is apparent in the largest cases, that the same cadre of trusted experts are repeatedly instructed because they have the confidence of the solicitors from previous work. But outside that, the MROs provide a resource that solicitors cannot realistically maintain. In the smallest cases, the rules positively push solicitors towards using MROs, no doubt in part because they can provide a range of experts.

119. Furthermore, there are compliance and similar costs for matters described in the bullet points recreated above at paragraph 63. At the end of his oral evidence, Mr Cutler, having decried the idea of providing a quasi-solicitors breakdown, talked of:

> "recovering the costs of all the other good stuff that we do. We spend a heck of a lot of money on compliance, for example, and onboarding of experts…"

120. Also included within the recreated bullet points are "waive" and "prompt payment" which point towards the financial aspects of the service provided by an MRO. It is difficult to see that much value can be given to these two elements, notwithstanding their desirability for the experts and the solicitors, given the evidence of Mr Stothard. Nevertheless, the bullet points as a whole point towards elements which go towards justification of the percentage claimed.

121. As I indicated above, I am a little sceptical of the apparent inability of large commercial organisations to be able to provide specific information regarding their costs base. A minimum £200 charge is made for smaller invoices by Premex and it might be thought that the existence of that figure to reflect the "minimum cost for the basic overheads", according to Mr Cutler, might also suggest that some costs base analysis is carried out.

122. But there is no such information before the court and, in its absence, the court has to paint with broad strokes. Since the MROs indicate that they do not calculate the percentage uplift on a case-by-case basis, but on a more macro level, it seems to me difficult for them to complain if the recoverable fees are dealt with on a similarly "swings and roundabouts" basis. Indeed, when the evidence strayed into the fixed recoverable costs cases under Part 45, reference was specifically made to dealing with cases in this fashion. Not only was that a feature of the fixed figures, but it also reflected the subsidising of the less remunerative charges for the whiplash injury reports by the markups received on other reports.

123. The percentage uplift claimed on the report of experts used by Premex is either 35% or 45% for most of the evidence obtained. The percentage markup applied by MAPS is most commonly 53% but is also claimed at 30% for some fees and the outliers range from 20% to 104%.

124. For the sake of completeness, I record the existence of an invoice claimed at £610 by MAPS where the underlying expert's fee was £3500, i.e. a reduction in the fee of

83%. Despite Mr Stothard's enquiries, he was unable to explain why that loss-making reduction had occurred. He confirmed that manual overriding of the percentage applied was possible by certain members of staff, but the person concerned was unable to recall why that had occurred in this particular case. It is an outlier of outliers and neither sought to lay any great weight on something which seemed most likely to have been an error.

125. The general Premex mark up increased from 35% to 45% during the course of the HLA case. This was said to be a result of a change in the profile of cases run by Slater and Gordon. The percentages claimed in JXX by MAPS are historical and do not coincide with the percentages claimed at the time Mr Stothard produced his evidence. The variation in both MROs' fees in their respective cases illustrates the difficulty with any attempt to follow the rationale of the MRO involved as a method for allowing a reasonable fees.

126. A 10% increase in the Premex mark up is a significant change, in my view. It suggests that later cases are making up for shortfalls previously made and not simply an overall level of profitability on the current cases. The lack of any historical data available to MAPS itself is a considerable surprise to me. On the face of it, the claimant / MRO has no ability even to confirm that the rates were correctly charged at the time, let alone whether they were the general rates or had been varied because of the market pressures which are said to underpin the reasonableness of the figures.

127. To draw things together at this point, there a number of elements which the MROs have shown which go into the fees that they charge on a broad basis. Although there is competition between them for the business of solicitors acting for claimants, that competition suffers from the tripartite tension described by Professor Peysner and Mr Cutler. Those ultimately paying for the great majority of the fees charged by the MROs have no say in the competition between MROs. Even the suggestion that market feedback regarding fees agreed with defendants was fed into discussions as to rates seems to me to be of limited value. The MRO evidence, particularly from Mr Cutler, was that until the Stringer point started to be taken more actively by defendants, virtually all fees were recovered without difficulty.

128. Disagreements caused by the tripartite tension is the trigger for the court to be involved. In the unusual event of there being a dispute between the claimant and their solicitor regarding the fees of medical evidence obtained, a judge would have to conclude whether the composite fee charged was a reasonable one between solicitor and client.

129. But in a between the parties' assessment, the court's task is to determine what a reasonable (and proportionate) sum for the paying party to pay would be. That does not generally mean that the court considers that the costs have not actually been incurred. Normally, it is a matter of whether all or only some of those costs claimed between the parties should be laid at the paying party's door. As Mr Cutler put it:

> "Fundamentally -- there is nothing free here. The underlying costs that are being incurred as part of providing the service are real costs. You can argue about the margin being made and those kinds of things, but they are all real costs. It is just a question of who bears them, Is it the client, is it ourselves, is it

> the defendant, because they are all underlying costs as part of bringing the claim."

130. Therefore, my task is not necessarily to assess whether the full sum is reasonable in itself, but merely whether it is reasonable between the parties. On many occasions in a detailed assessment, an item might be reasonably incurred on the client's instructions (and therefore payable by the client) yet is not reasonable between the parties. A simple example would be a speculative medical report obtained to determine whether symptoms the client said related to the accident could be linked by such evidence. The cost of an unsupportive report would rarely be recoverable ultimately from a defendant in such circumstances.

131. Similarly, a reasonably incurred disbursement may not be fully recoverable if the court decides it is unreasonable in amount. Whether that is so in these cases, is the issue I need to decide.

132. Here, the evidence is that the majority of markups are between 30% and 53%. The Premex model also makes a minimum charge of £200 which can be a considerably higher percentage if converted from a fixed sum.

133. Mr Bacon, in an echo of Brooke LJ in Rogers v Merthyr Tydfil County Borough Council [2006] EWCA Civ 1134 (in turn referring to Lord Hoffmann's query in Callery v Gray [2002] UKHL28) floated the suggestion that costs judges did not necessarily have the expertise to value the percentage mark up – in the same way the Court of Appeal cautioned them against trampling over the underwriting decisions of ATE insurers, particularly in block rated cases. Furthermore, the macro element of the charging meant that aspects which involve "strategic considerations which travel beyond the dictates of the particular case" (Rogers paragraph 105) also suggested that I should not interfere with the figures claimed.

134. I do not accept the general thrust of this argument, however delicately it was put. There is no realistic alternative for a claimant who brings a claim and wishes to be insured than to use ATE insurance. But, as was demonstrated by the evidence here, many solicitors instruct experts directly, at least in some cases, and so there is no force to the argument that the MRO market will disappear simply by the courts expressing their views as to the reasonableness of the fees charged.

135. Moreover, costs judges are used to considering the reasonableness of percentages claimed, unlike insurance premiums, and so the task is not a novel one. My task is to consider, on the evidence before me, whether the percentages claimed are reasonable in amount between the parties.

136. The defendants raised some concern about any percentage being charged on more than the expert's own labours, for example on travelling costs or other disbursements. I consider that the percentage should apply to everything (including disbursements etc) for reasons of simplicity and practicality. The percentage mark up is intended to achieve an overall sum and allowing it only on certain elements would, in my view, simply justify a higher sum on those elements.

137. Where there is a limitation to the receiving parties' evidence, the court needs to take a cautious approach. I think that is the situation here and I am not persuaded that even

the range of 30% to 53% generally charged can be considered reasonable, let alone the outlier percentages, some of which result from fixed sums having been claimed. The general range of 30% to 53% plainly reflect variations resulting from ongoing commercial relationships between the solicitors and MROs rather than any case specific factors. There is nothing wrong with those relationships but they are not any basis on which to allow any particular percentage between the parties. Having spent a considerable time reviewing the evidence and submissions in this case, both as documentation and in this decision, in my judgment, a mark up figure of 25% between the parties would be a reasonable percentage. More than that would be a matter for the claimants, their solicitors or the MROs. Any mark up claimed of less than 25% would be limited to that percentage.

138. As a final word, one advantage of a maximum recoverable percentage fee is that it can easily be stated on the MRO invoice, unlike the quasi-solicitors' breakdown, which might assist all sides as well as the court in the future.

Postscript

139. Whilst preparing this judgment, the parties made me aware of the decision of Moody J in Motor Insurers' Bureau v Santiago [2026] EWHC 513 (KB) handed down on 19 February 2026. There were similar arguments run there and the claimant / respondent was successful in persuading Moody J to uphold the approach of HHJ Dight CBE in assessing the interpreter fee note of Professional and Legal Services ("PALS") in its entirety rather than deconstructing it in any way.

140. I have not asked the parties to provide any detailed submissions on Santiago. The judges in that case were both provided with nine alternative quotations and were content to assess the fee note against those alternatives in an entirely unremarkable fashion. There were no alternative quotations provided here. Nor was there any evidence provided to the judges in Santiago about the extent of the PALS' fees in the way that I have received evidence of the MRO fees. Whilst the decision is interesting and clearly on similar territory, I do not think that it assists me in these cases nor is it binding on me, given the case specific differences.