JUDGMENT : HIS HONOUR JUDGE LLOYD, Q.C. TCC. 27th July, 2000

1. This is an application by Shepherd Construction Limited for a declaration that an adjudicator, who has begun to investigate a dispute referred to him by the Defendant, Mecright Limited, has no jurisdiction to do so. The claim is made under Part 8 of the CPR. Although Shepherd has not made a formal application for summary judgment, Mr Bartle for Mecright makes no objection to that. He does say that it would be inappropriate to make such a declaration on this application since the foundation of Shepherd's case ought not to be the subject of any summary procedure such as that contemplated by Part 8. As will become apparent such a procedure is appropriate in the circumstances and there is no difficulty in determining the application justly and thereby in conformity with Part 1 of the CPR both as regards the overriding objective and the powers of case management which require a court to identify and if practicable, to decide such an issue.

2. It is necessary to set out the background in order to understand what is in essence a short point that has arisen, made all the shorter in the light of some proper concessions made for the purpose of the proceedings by Mr. Bartle for Mecright, The facts are to be found in various witness statements: for Shepherd, a formal statement exhibiting documents from a solicitor, Sian Elizabeth Hughes and from an employee, Mr Baker; for Mecright, a statement from Mr Patrick Donnelly, a director and, as he said, its proprietor.

3. One of the disquieting features of this case related to Mr Donnelly's statement which was signed and dated 25 July 2000. In it Mr Donnelly said in paragraph 7: *"I also attach Shepherd's Response document served in the adjudication (at exhibit PD3) and Mecright's Reply (at exhibit 4). As far as the latter document is concerned, I again confirm the contents are true to the best of my knowledge, information and belief."*

   In an accompanying letter dated 25 July 2000 Mecright's solicitor said that *"exhibit 4 .. was being prepared by others and was not available at the time of sending this letter. It will be handed to the Court at the hearing.... . We apologise for any inconvenience caused... A post-it note on the title page for exhibit 4 said that it "was being prepared by James R Knowles' Birmingham and was not available at the time of sending this letter..."*. A copy of the exhibit was produced at the hearing on my inquiry. A copy had not been sent to Shepherd. Paragraph 18.3 of the Practice Direction to Rule 32 requires an exhibit to be *"verified and identified by the witness"*. Paragraph 25 provides:

   "25.1 Where

   (2) a witness statement, or

   (3) exhibit to .. a witness statement does not comply with Part 32 or this practice direction in relation to its form, the court may refuse to admit it in evidence and may refuse to allow the costs arising from its preparation.

   25.2 Permission to file a defective ... witness statement or to use a defective exhibit may be obtained from a judge in the court where the case is proceeding."

4. In view of the letter and the note Mr Donnelly's statement was not only defective but also untrue and misleading in its reference to exhibit 4. He had obviously not identified exhibit 4 or verified its contents when he signed the statement as the exhibit did not exist. It had yet to be compiled by Mecright's claims consultants, James R. Knowles. Mr Donnelly ought never to have been asked to sign such a statement. If the exhibit was in course of preparation for use in the adjudication which was running in parallel and if Mr Donnelly had approved its contents then the statement should have said that it was on its way, as it were, and an additional statement should have been signed and filed before the hearing. It was and is not acceptable for a witness statement to be delivered in bits, with the last part arriving on the morning of the hearing. Mr Bartle for Mecright acknowledged that permission was required for the statement to be submitted in evidence. I decided that of the courses open to me, as outlined by Mr Darling QC for Shepherd, it would not be right that Mecright should be refused permission to rely on the whole of Mr Donnelly's statement because of an error by its advisers but, since Shepherd had not been given exhibit 4, the part of the statement referring to it and thus the exhibit itself could not be used. The fact that adjudication matters can be heard quickly in the Technology and Construction Court should not lead to corners being cut. If more time is required applications are made and dealt with by fax (or by arrangement by telephone) and where possible within 24 hours.

5. Shepherd is, or was, the main contractor for the Walsall Bus Station which has recently been completed. It is a striking structure and has received attention in the trade press. Mecright is a specialist steelwork subcontractor. It started trading at the beginning of 1998. In October 1998 it was awarded by a letter the contract for the supply, delivery and installation of the steel trees, steel posts, rainwater pipework and rails and paint for the bus station for the sum of (_93,995. The work was to be carried out in the early part of 1999.

6. However, following the award of the contract, the work was changed. Mecright found that it had to incur considerable extra expenditure. One of the appendices exhibited to the witness statement of Miss Hughes contains the referral notice which was presented to the adjudicator on 6 July 2000. It sets out some of what had happened. In 1999 Mecright made applications for payment in February and March getting, as far as one can see, most (but not quite all) of what it had asked .for. By the time it made its fourth application I think they had received everything that it had applied for. The documents show that between the fourth and the fifth applications Mecright then retained an independent quantity surveyor, Mr. Ken Rawlinson. As a result of his advice Mecright's fifth application moved upwards from a figure of approximately just over £1.00,000 by about £200,000 to £336,384. The documents exhibited to the statement of Mr. Donnelly show that the points in support of the revaluation which was being made by Mr. Rawlinson on behalf of Mecright were considered by Shepherd and thought to have some potential merit since they were referred by Shepherd to the quantity surveyor under the main contract. The argument was, in essence, that the work that was actually being carried out by Mecright justified a rerating as it was not being executed under the same conditions or was not the same as the work contracted for, both under the main contract and subcontract. The objective (which would seem to be common to both subcontractor and contractor) was that if the quantity surveyor under the main contract could be persuaded of the case being advanced by Mr. Rawlinson then money would flow down through Shepherd towards Mecright and Mecright would then receive adequate compensation for the amount that it was applying for. Indeed the applications continued to be made on this new basis. They crept up in amount and so too did the payments being made by Shepherd, as the validity of Mr Rawlinson's case was apparently recognised, at least in part.

7. However, there was still a large gap between the applications and the main contract (and sub-contract) valuations. Since around the beginning of this year the work was well nigh complete it was time to bring about a reconciliation of the differences between the valuations that were being made by the respective quantity surveyors Mr Rawlinson and the quantity surveyor under the main contract. Mecright's position and case is that Shepherd was aware of the financial difficulties in which Mecright had found itself and knew that Mecright was, as they say, on its uppers. It needed money badly.

8. I do not have to decide whether Shepherd did or did not know of Mecright's position. All I have to do is to note, and it is common ground, that on 15 March 2000 a meeting took place between Mr Ford and Mr Baker of Shepherd and Mr Donnelly, who was accompanied by his adviser, Mr Rawlinson, at which, according to the evidence of Mr. Donnelly and Mr Rawlinson, an agreement was reached. It was not for the amount which either party had originally proferred at the start of the discussions. Both sides moved towards a compromise. Agreement was ultimately reached on a figure of £366,600 as the gross agreed valuation of the measured work, dayworks and variations.

9. The agreement was recorded and signed by Mr Donnelly on 15 March. The terms were:
"We, Mecright Ltd., accept the sum of £366,600 in respect of manufacture, supply, delivery and installation of steel trees, steel posts assembly, hand rails and sundry metal work carried out by us in full and final settlement of all our claims under the above contract but without prejudice to our outstanding obligations."

10. The agreement resulted in an immediate payment of about £75,000 to Mecright by Shepherd (which was promptly banked). Thereafter Mecright wrote a couple of letters voicing unhappiness that the amount was not as large as it thought it might have been. Otherwise nothing then happened until the beginning of July 2000 when, as a result of advice received it seems from James R. Knowles, it was decided to launch a request for an adjudication.

11. There are a number of remarkable and extraordinary features in this case. One is that in the notice of adjudication sent to Shepherd by James R Knowles on 3 July the dispute was said to be "your failure to make proper payment to our client on the above project". It was presented on the basis that there had been a breach of the subcontract on the part of Shepherd duly to notify Mecright of the sums to be paid and how they were to be calculated and to evaluate and pay Mecright the value of the subcontract works. £277,567.62 was claimed (including VAT). Neither in the letter describing the dispute nor in the subsequent referral notice dated 6 July was there any mention of the fact that there had been an agreement on 15 March which was obviously intended to settle the dispute which had existed about the valuation of Mecright's work. The referral notice says only that Mecright made its tenth application in January and no payment notice was received in relation to it. It continued. "However, Mecright received a payment of £320,000 gross (£304,000 net) exclusive of VAT on 21st March 2000 significantly less than the value of the work." Nothing was said about the circumstances leading this payment. I say it is extraordinary because if the purpose of adjudication is to provide a swift and summary decision about matters in dispute one expects a party seeking adjudication to present its case in full, not to hold anything back and to be open and honest in its presentation. All the more so, if there is no provision for a statement in reply.

12. Mr J.E. Price was appointed as the adjudicator on 5 July. On 11 July Shepherd replied to the request for an adjudication pointing out that there had been the agreement whereby the disputes had been settled. After Shepherd's solicitors had written that letter James R Knowles wrote to the adjudicator on 12 July 2000 in which it was maintained for the first time that the agreement reached had been made under duress, namely that Shepherd had taken advantage of Mecright's straightened financial circumstances by compelling it to take effectively what it was being offered. Annexed to the letter was a "detailed submission relating to the circumstances and proof of duress." The submission was quite long. Prominent amongst the documents was a statement made by Mr Donelly dated 20 April 2000, i.e. some six weeks before the request for adjudication. Thus it appears that the request for adjudication was lacking in candour and was misleading as to what was in reality Mecright's real complaint, a dispute which had not apparently existed at the date of the request for adjudication. This manoeuvre, as well as the casual approach to the preparation of Mr Donnelly's witness statement, calls into question the way in which a party such as Mecright is being served. I trust that it is not typical (which of course I have no means of knowing) and therefore will not serve as a warning to others who have to deal with those are advising the Defendant.

13. The step led to these proceedings, and I have to decide therefore today whether, as Mr. Bartle has rightly said, it would be appropriate for a declaration to be granted which would have the effect of preventing the continuance of the adjudication. Shepherd say the settlement agreement of 15 March means that there is no dispute under the subcontract capable of being referred to adjudication and that the claim that the agreement was entered into under duress is not a dispute capable of referral to adjudication.

14. The issues as presented to me really boils down to whether the question of whether the agreement was entered into under duress is a matter which prevents me from granting the declaration sought. It is common ground that there was an agreement. Equally, the settlement agreement is an agreement which but, for the plea of economic duress, would have the effect of extinguishing all the disputes that then existed on 15 March so that there could be no dispute capable of being referred to adjudication thereafter in relation to valuation.

15. The subcontract incorporated the terms of DOM/1. Clause 38A.1 of DOM/1 applies where a party exercises its right under Article 3 to refer "any dispute or difference arising under this Subcontract to adjudication". In my judgment where parties have reached an agreement which settles their disputes there can thereafter be no dispute about what had been the subject matter of the settlement capable of being referred to adjudication under a provision such as clause 38A.1 or otherwise for the purposes of section 108 of the Housing Grants Construction and Regeneration Act 1996. The prior disputes have gone and no longer exist. Therefore on 3 July there was no dispute about any of the matters which were the subject of the notice of adjudication (just as there was no dispute about whether the

agreement had been entered into under duress). Thus Mecright had no right to apply for adjudication and the adjudicator had no authority or jurisdiction to deal with the notice of 3 July.

16. Similarly, although Mr. Bartle reserved the point (but he would have grave difficulty in contending to the contrary) I should make it clear that in my judgment a dispute about a settlement agreement of this kind could not be a dispute under the subcontract since the effect of a settlement agreement is one which replaces the original agreement to the extent to which it applies. Here the agreement has the effect of replacing Shepherd's obligations to value and to pay Mecright under the sub-contract the value of the work. The only subsisting obligation to pay that apparently was not extinguished was the obligation to release retention as and when the time arose. So there could be no dispute under the subcontract. Indeed it was also part of Shepherd's case, and in my judgment correctly accepted by Mr. Bartle, that the effect of the settlement agreement is that a dispute about it is outside section 108, since a settlement agreement is not a construction contract within the meaning of section 108. Mr Darling referred to an extract from a judgment of His Honour Judge MacKay in **Lathom v Cross** which is to be found in the Construction Industry Law Letter where he seemed to be of the same view. A dispute about an agreement which settles a dispute or disputes under a construction contract is not a dispute under that contract. The word "under" in the Act was plainly chosen deliberately_ It has been followed in this subcontract. It is not, nor is it accompanied by words such as, "in connection with" or "arising out of" which have a well-established wider reach.

17. The issue therefore is: if the effect of the agreement is that it settles a prior dispute or disputes so that there is no dispute, does it still mean that unless and until it has been decided by a court or arbitrator (since under DOM/1 requisite power) whether the be avoided on the grounds of duress, the adjudicator may still continue? In my resolved by the application of an arbitrator may have the settlement agreement is to economic judgment this issue is to be basic principle.

18. Mr. Bartle accepts, rightly, that the agreement is not inherently unenforceable and invalid, i.e. that it is void. It may be avoided at the option of a party (in this case Mecright) if it is able to establish that it was entered into under economic duress. In my judgment unless and until a court or arbitrator (if appropriate) reaches a decision to that effect the agreement stands. It cannot be deprived of its effect simply because one party elects to avoid it. In any case no election was made by Mecright until 12 July. Since the settlement agreement of 15 March stands and governed the relationship of the parties on 3 July it must follow that, for the reasons I have already given, a purported reference to an adjudicator relating to a failure to value and pay the works properly prior to 15 March 2000 is invalid or of no effect since there was no dispute on 3 July capable of being referred to an adjudicator about any such matter. Any disputes that existed on 15 March had been extinguished by the settlement agreement, and no new dispute had arisen thereafter, and certainly not the dispute that was the subject of purported notice of 3 July. That notice came out of the blue and was evidently invented as a tactical device to circumvent the problems that an adjudicator could not decide any dispute about the settlement agreement as it was not a dispute under the subcontract and, of course, that no such dispute existed, as the views of Mr Donnelly expressed in his statement of 20 April had deliberately not been brought to the attention of Shepherd. Thus the settlement agreement plainly bound both parties so Mecright had no right to seek adjudication and acted in breach of the subcontract in doing so.

19. Mr. Bartle's case in part is that Mecright should be given the benefit of the doubt, as it were, although he did not put it in so many words, and the adjudication should be allowed to proceed. If the adjudicator made a decision in favour of Mecright, i.e. if the adjudicator, for example, took the view that the amount arrived at in the settlement agreement did not do full justice to Mecright's work, then Shepherd ought then to raise the issue of the settlement agreement, which in turn would lead to Mecright advancing its case as to whether the agreement was made under economic duress and was voidable. Therefore on enforcement there would be a full investigation of whether or not the agreement was entered into under economic duress and whether, for example, it was still voidable having regard to Mecright's conduct since 15 March.

20. I do not accept this approach. In my view it runs contrary to the philosophy which I believe underlies the 1996 Act and the notion of adjudication, which is that it should be concerned about matters which are of immediate practical effect, namely they should not be questions that might prove to be academic but should result in a decision which one party will be obliged to comply with and which will not then be subject then to some nullifying mechanism other than by the ultimate arbitration or litigation. I therefore do not consider it to be in any way inappropriate for Shepherd now to seek by way of a Part 8 application a declaration that they have a valid agreement and that the effect of the valid agreement is to preclude a reference of the kind that was made on 3 July. It is indeed the right course to take, just as it would be the right course for Mecright to say at this stage: "We (let us say in Part 20 proceedings, that is to say by way of a former counterclaim) wish to say that the agreement ought to be set aside," and for that issue then to be determined by the court. If that issue were determined in favour of Mecright it might then be entitled to seek adjudication on what in effect would have been or should have been the final account. That seems to me to be entirely consistent with the Act, that the adjudicator should only be concerned with matters under the subcontract. As I have said the word "under" in the Act is limits the type of dispute that a party has a right to refer to adjudication. It has been followed in this subcontract. Matters which precede the making of the subcontract, such as questions as to whether a contract was entered into on a false basis or as the result of a misrepresentation or on the basis of promises which did not materialise are not within the jurisdiction of an adjudicator. By the same token, an adjudicator is not to be concerned about matters which fall outside the subcontract, such as the settlement agreement.

21. For these reasons it seems to me that it is perfectly right at this stage for Shepherd to ask for a declaration as to the parties' rights and liabilities. If a party has no right to seek adjudication the other party is equally entitled to have the absence of any correlative duty in law declared by the court. Indeed an intervention of this kind, if correct, avoids the waste of management and other time and of considerable expense, or even if not correct, either wholly or in part, will provide a surer foundation for the adjudication. It is not necessary nor may it be desirable to wait until the adjudication is concluded and then to question the authority of the adjudicator. Equally it was wrong of Mecright to seek adjudication until it had established that the settlement agreement was not only voidable but was of no effect for when it sought adjudication on 3 July it was bound by the settlement agreement. Accordingly, in my view Shepherd is entitled to the declaration sought by the part 8 claim.

[End of revised and approved transcript]

MR. DARLING: My Lord, I am grateful, I ask for a declaration in the terms of the order brought in the proceedings. We have filed a copy of the statement of costs and served it on my learned friend. I ask for the casts of the action to be summarily assessed. We have prepared a schedule, which I hope your Lordship has. What it shows is a total figure of is £7,162.50. My learned friend also put in a schedule which came out at just over £5,000.

JUDGE LLOYD: Am I certain that they were prepared on the same basis?

MR. DARLING: No, I am not sure that they are.

JUDGE LLOYD: I would not like to say comparisons on statements of costs are odious, but they must be on the same basis.

MR. DARLING: My Lord, that is right. It comes to this, that the preparation of attendance on the client...

JUDGE LLOYD: Basically is it not a matter for Mr. Bartle to tell me what objections he has, unless of course this is a matter which you are anticipating.

MR. DARLING: I am sorry, my Lord?

JUDGE LLOYD: Mr. Darling, if you have discussed this you know the points that are likely to be taken.

MR. DARLING: No, I do not.

JUDGE LLOYD: Otherwise I think it is much more efficacious to ask the party who is liable to pay what grounds there are for questioning the statement.

MR. DARLING: I was going to make it clear that the these are the costs of the entire action.

JUDGE LLOYD: I know. This is a Part 8 claim and they have emerged. I have understood that.

MR. BARTLE: My Lord, my observations are these. The issue which your Lordship has had to decide is a very short one. That being the case, while it is clear that as far as the Defendants were concerned they had understood the position to be that the question of duress was a matter that your Lordship would be asked to consider the fact is, as my

learned friend made clear in his skeleton, that was not the position at all. Your Lordship was being asked to deal with the question of whether the existence of the agreement itself prevents there being adjudication and your Lordship has answered it shortly on the basis of principle. In the light of that my submissions are that the hours which have been spent by the Claimants in relation to this short point are excessive and your Lordship should therefore take account of that in respect of the costs.

JUDGE LLOYD: Can we be quite clear about this because it is part of an action. one would have thought that -- and this was prepared sometime yesterday morning by which time they had had Mr. Donnelly's statements and exhibits, which may account for the 13.2 hours attendances on documents.

MR. DARLING: My Lord, to be fair we had not had them at that stage.

JUDGE LLOYD: That is a point which Mr. Bartle would probably like to know.

MR. DARLING: Yes. I think the points, good and had, should be before your Lordship.

JUDGE LLOYD: It is fair to say that Masons have come from Manchester on this occasion, so that it is a very long way to come and to wait, so that the 8 hours estimated might have assumed that we would be longer. But one other part of the hours would come out on the brief, on brevity.

MR. BARTLE: My Lord, on the basis of the way the case has been presented to you then I find it difficult to understand how the total number of hours which are set out in the statement have been reasonably incurred in respect of the application before you.

JUDGE LLOYD: Action as well.

MR. BARTLE: My Lord, I know it is an action, but the reality is we have particulars of claim and we have two very short witness statements.

JUDGE LLOYD: Yes. Just taking the first group, attendances on client of six hours between two people, in deciding whether to launch this action in the context of the adjudication, in informing oneself about where the documents are before we actually look at the documents themselves, those figures on the face of it do not appear to be out of the ordinary. I fear if you make a submission of this sort, which is a perfectly proper submission, then it does require one to look at each of the heads and say are these figures reasonably properly incurred. It may, however, simplify matters if I were to say of course in these circumstances I can always make an interim payment on account and leave the rest to be the subject of a detailed assessment rather than a final amount, because in many cases the difference between the payment on the account and the detailed assessment can be bridged by an agreement between the parties, particularly with the sums at stake in this case. On the other hand, one is urged not to take that course on an application which is, like this one, lasting less than two hours. Are there parts that you would want to fasten on and say really this is too much? I mean attendance on opponents I would have thought is something which is capable of being agreed.

MR. BARTLE: Of course.

JUDGE LLOYD: That is fine, so we can take that one out, attendance on third parties, whoever they may be.

MR. BARTLE: My Lord, it is the total of 14 hours in relation to documents which is the major part.

JUDGE LLOYD: I have assumed that that would be explicable on the basis of the documents that I have seen, although I will not pretend that I have spent 13 hours looking at the documents. On the other hand of course the documents which I have actually seen, many of them are common to the parties in the application, so that they may properly form part of what the clients told solicitors to put them in the picture as to what the nature of their case was. There is that. Is there anything else?

MR. BARTLE: The second matter is, as your Lordship has said, solicitors have chosen to come from Manchester and are charging travelling and waiting time when it would have been possible to appoint agents in an application like this, which in my submission does not require the attendance of the solicitors concerned.

JUDGE LLOYD: There is only one and this is the lower of the two fee earners. It is not unusual in this court for people to come. You might by the same token say why was the application not made to Judge McKay or whoever it may be.

MR. BARTLE: My Lord, that is the point that I make. One knows very well that this firm has offices in London and could easily have attended by a solicitor in London. I am not objecting obviously either to rates or the hours. The question is whether it is appropriate to add on to that a further £1,000 for somebody to attend.

JUDGE LLOYD: It would not be a further £1,000, because it would take some time, certainly with the current traffic, to come from Clerkenwell to the court and back again.

MR. BARTLE: Therefore it is a matter for your Lordship as to whether it is reasonable in the circumstances to come to London.

JUDGE LLOYD: I have to say of course if you did use agents then the time would undoubtedly go up because if they had asked somebody in the London office, the London office I would have thought would have to understand what the case

was about. So there is a balancing exercise there. I see your point, but there is that. Whether that actually is going to reduce the hours by something significant I do not know. Is there anything else?

MR. BARTLE: Those are the only comments I make. I have no arguments on the rate. One knows very well that the rates that are being charged are not London rates. That was an observation, not part of my submissions. 20

JUDGE LLOYD: The third course that I can take, Mr. Darling, is to say how about X or I can say how about Y, payment on account and a detailed assessment.

MR. DARLING: We would respectfully urge your Lordship to resolve this once and for all today, to bring this part of the story to an end. The range within which your Lordship is going to be deciding the costs will be a small band and therefore we would prefer finality on the basis that that inevitably involves an element of rough justice. But I think I have good answers to all my learned friend's three points, which are in relation to the Manchester London point: (1) in the context of the urgency of this case to hand it over to an agent would be inappropriate; (2) there would not in fact be any significant saving in any event, we would have a higher rate in handover time and you would have the handover time with the solicitor briefing the agent and the agent being briefed. I was going to say that nothing below, the attendances at court could seriously be questioned.

My learned friend then made -- it is two points rather than three. In essence his point came down on excessiveness to attendances on documents. He was not able to make any realistic attack on the three items above it. So the question then becomes whether your Lordship should give any discount and, if so, what discount to those attendances on documents. There are three points about that. First, when you are doing something as urgently as this is being done, it is not surprising it takes awhile. Secondly, there is a fair amount of paper. It involved drafting witness statements, it involved getting documents out, it involved collating matters. That is a substantial job, particularly when you are doing it at this speed and this pressure of time. So I do respectfully say that there should not be any discount.

May I finally say by way of a general point that for an action of this speed done in this time a total of just over £7,000 for the whole costs of the action I respectfully say cannot be a disproportionate amount in any sense at all. Of course one of the things that adds to the time is the fact that even though no claim was made for the cost of the adjudication it was all being done simultaneously and all being done in the same time frame and therefore that added further difficulty and complexity to the process.

DECISION ON COSTS (Revised) JUDGE LLOYD:

1. I have to deal with the claimant's statement of costs,which comes to £7,162.50. The point has been made by Mr. Bartle, with some reason, that the figure for attendance on documents is rather high and that perhaps the case might well have been handled on an agency basis by Masons' London office rather than from Manchester. Mr. Darling says, I think rightly, that given the urgency of this case it would not be appropriate to have it dealt with by two offices.

2. A summary assessment of costs is not, strictly speaking, an assessment on an indemnity basis but in determining whether a party is entitled to costs claimed one has to bear in mind, amongst other things, whether the litigation was really necessary. From what I have said I have no doubt that litigation was necessary and well justified and ought not to have been needed in the first place. Furthermore in view of the pending adjudication it had to be launched and pursued with speed. It was therefore entirely reasonable for it to be conducted by Masons' Manchester office directly at every stage, including today. It would not have been sensible to used the London offices as any saving on travelling time and fares would have been eroded if not wholly off set by some one in London having to be read up the case so as to be able, if necessary, to take instructions from Shepherd and to instruct Mr Darling QC.

3. In addition a client in the position of Shepherd is entitled to expect continuity. Accordingly, in approaching the Claimant's statement of costs I am not disposed to reduce it on that ground.

4. However, Mr. Bartle is right in saying that for costs of the action, even allowing for the fact that those acting for the Claimant had to familiarise themselves with the documents, the figure for attendances on documents is on the high side. Accordingly I intend to reduce that by approximately £600.

5. I will assess the costs at £6,500. 23

MR. PAUL DARLING, Q.C. (instructed by Messrs. Masons, Manchester M2 3SS) appeared for the Claimant.

MR. PHILIP BARTLE (instructed by Messrs. Knowles) appeared for the Defendants.