JUDGMENT : Deputy Master Williams. Supreme Court Costs Office. 7th February 2007

1. This is my reserved judgment on two general points of dispute made by the First Defendant (Arriva) as paying party. The receiving party is Mr Finster, the claimant in a road traffic accident claim against Arriva which settled in January 2006 by payment out of court of £10,000. The claim was pleaded and pursued at a value in excess of £ 1,400,000.

2. The two points of objection are entitled `exaggeration' and `proportionality' and the bill amounts to some £54,000 approximately, excluding VAT. Because of the nature of the points of dispute it is necessary for me to summarise the substantive case which led to the Bill under assessment.

The accident

3. Mr Finster's statement is my source of the accident facts but recital of it does not imply determination of the matters referred to. Mr Finster was an unemployed City metals trader. ©n 26 August 2001 he was travelling in his friend Mr Booth's car, en route to play golf. A police car pulled them over whereupon Mr Booth, the driver, stepped out. Mr Finster also began to step out. As he did so an impact occurred, vehicle on vehicle, with a bus operated by Arriva which hit the car. Mr Finster was physically shaken, and fell onto the pavement from the passenger side. The bus did not hit him directly.

4. Mr Finster developed whiplash. He went to hospital the next day as an outpatient and required painkillers for 10 days according to his statement, during which he wore a neck support. His neck began to feel better after 4 weeks. He suffered symptoms such as to interfere with his golf for 3 months.

5. Mr Finster referred to a `huge impact'. Nonetheless in personal injury general damages terms the case was modest. The Claimant's first skeleton suggests that general damages, if the loss of employment claim failed, would have been of the order of £3,500 to £4,000 (para. 6) and characterises the injuries as consisting of `minor whiplash symptoms and the minor travel anxiety/PTSD'.

6. The claim, issued almost three years later, was valued at over £1.4m which I take to be before the addition of interest. The special damages element included a large claims arising from a very highly paid job offer which Mr Finster said was withdrawn from him as a result of the whiplash.

7. The claim settled in January 2006 for £10,000 plus standard basis costs. There had been application and case management hearings en route and a three day split trial on liability before settlement. Quantum did not go to trial.

Why the claim was valued at over £1,400,000

8. Mr Finster's statement of 20 December 2004 says that he had worked in the USA between 1996 and 2000 but lost his job in June 2000. He was unemployed until December 2000. In December 2000, he worked as a copper trader but was released from that employment in June 2001. From July 2001 he was unemployed and remained unemployed when the accident took place.

9. After a telephone call (his statement gives no date) he met a man called Mr Adams to play golf on 20th August 2001. Mr Adams worked at Sucden UK Ltd which is a business which trades on the City metals market. The two men had been known to each other for `many years'.

10. During the game it was alleged that Mr Adams offered Mr Finster a highly paid job at Sucden. Details of salary and bonus payments had, Mr Finster said, been verbally finalised, (para. 20). He had been given an indication of the percentage bonus he would be receiving but his statement does not specify that or the basic salary. In the metals market one's word was, he said, one's bond, and he knew the job was his. Mr Finster said he would have started the new job on 3 September 2001 and (statement para. 21) hoped to have a long stint working there `earning a lot of money'.

11. Six days later there ensued the car accident. A week thereafter Mr Finster still felt stiff, and wanted to postpone his start date, so he contacted Mr Adams (presumably this would have been 2nd September 2001, or possibly a day earlier). He envisaged at least a month's delay and this proved unacceptable to Mr Adams, who it was said then gave the job to someone else.

12. The loss of earnings claim was calculated on the basis of salary and bonuses which Mr Finster claimed he would have received, adjusted for income from employment received (up to date of issue), and containing a significant future loss of income claim projected forward for years to come, but adjusted downwards by various percentages reflecting typically favourable contingencies which might occur in future.

The chronology of the claim

13. Mr Finster instructed solicitors just over one month after the accident. The years between 2001 and 2004 were used for preparation.

14. On 1517104 Mr Finster made a pre-issue offer to settle, in the sum of £1,300,000 (£1.3m). That was not agreed. The claim was issued on 518104 with Mr Finster as second claimant. The schedule of loss put Mr Finster's claim at a total of £1,400,004.

15. Liability was denied in a defence settled by leading counsel dated 14110/04. The defence at that stage was that the accident was caused by the actions of an untraced third party driver. Failure to mitigate was pleaded; the counterschedule required Mr Finster to prove his case, including on quantum of special damages.

16. The parties estimated in their allocation questionnaires of November 2004 that total trial time would be between 1 day and 3 hours (Claimant's estimate) and `possibly 2-3 days' (Defendant's estimate). Both sought multi-track allocation. The case was allocated to the multi track, disclosure and evidence was limited to liability, and the case was listed for a three hour trial on liability, at Central London County Court, on 21 March 2005 (order of District Judge Price dated 8112/04). The time estimate and listing was made of the court's own motion.

17. Arriva made a payment into court of £10,000 on 14/1/05. That was not accepted by Mr Finster. Arriva then offered to go to mediation but that was rejected.

18. Arriva then issued two applications dated 2811105 and 1812105. The first was an application to vacate the hearing date because Arriva wished to obtain evidence from one of the passengers in the bus who was in Japan. It was argued that the adjournment was reasonable and proportionate given the pleaded value of the claim.

19. The second was for amendments upon an issue of seat-belt (non-)wearing by Mr Finster. An order was made on 4 March 2005 which also gave leave to the defendant to issue Part 20 proceedings against Mr Booth, and re-timetabled the liability trial between all parties, this time for 2 days.

20. Directions were given on 10 May 2005 for the liability trial, including engineering evidence, and it appears that aerial photographs of the scene were arranged. On 19 May 2005 a limitation issue was directed to be heard.

21. What became a three day liability trial took place between 25/7/05 and 27/7/05 at which Mr Booth was represented by leading counsel. Judgment was given on 1518105 by HHJ Lindsay QC against Arriva with costs reserved as between Arriva and Mr Finster. (Arriva agreed to pay the costs of Mr Booth. Those costs do not form part of this assessment.)

Settlement terms

22. Matters then proceeded on quantum. On 8 December 2005 Arriva served notice on the Claimant to prove documents at trial, and on 19 December 2005 Arriva offered to allow the £10,000 in court to be accepted out of time.

23. Mr Finster counter-offered £200,000, to which Arriva's answer was that it required a decision on its £10,000 payment-in. Mr Finster then accepted the £10,000 payment on 29 January 2006 and the case settled for that sum paid out of court plus standard basis costs. The marked difference between the sum claimed (£ 1.4m) and that received (£10,000) triggered the argument which has ensued on assessment.

24 The relevant part of the offer letter of 19 December 2005 has been referred to in argument and is as follows: *"The Defendant offers to permit the claimant to accept the Part 36 payment of £10,000 out of time without costs penalty. In other words the defendant offers the claimant the sum of £10,000 standing in court and additionally the defendant will pay the claimant's reasonable costs on the standard basis up to the date of acceptance. "*

The points of dispute

25. I refer to the Points of Dispute and the Replies thereto which proceed as follows:

Exaggeration - Points of Dispute

"The claim was pleaded in the sum of £1.4m but the claimant accepted £10,000 in full and final settlement in early 2006. The defendant is the overall "winner" in this matter, damages were reduced by £1.39m. The defendant had originally made a Part 36 payment of £10,000 in January 2005 and this was rejected.

In early 2006 the claimant belatedly accepted the Part 36 payment made in January 2005, after unnecessarily expending a year of costs including a contested liability trial.

The claimant says there was a reluctance of witnesses to come forward and support the claim in respect of earnings. The defendant contends this should have been known to the claimant from the outset of the claim and certainly by the date of the payment into court in January 2005, as he knew that witnesses would be required to support the extravagant earnings claim.

The defendant contends that unnecessary costs have been incurred because of the exaggeration of the claim, whether it was intentional or unintentional, and that the bill of costs should be significantly reduced. The defendant refers to CPR 44.3(5)(4) which states that, when assessing costs, the court should consider the conduct of the parties including the extent to which a claimant has exaggerated his claim. The defendant also relies on the case of Painting v University of Oxford where the receiving party was heavily penalised on costs in circumstances of less extravagant exaggeration than the present case. The bill of costs is unreasonable in all the circumstances.

The offers made in respect of time and communications in the points of dispute are all subject to the exaggeration point being dealt with at assessment and the bill being reduced accordingly."

Exaggeration - Reply

"The Claimant reiterates the matters set out in the precis summary of facts. There is no adverse or issue based costs order.

The Defendant advised in their letter of the 19th December 2005 when they advised that they would permit the Claimant to accept the sum in Court "out of time without costs penalty".

The damages have not been reduced by £1.39m as the Defendant contends.

It is right that the Claimant made a claim for substantial damages based upon his high flying expectations of earnings.

There were reasonable expectations, had evidence come up to proof, that loss of earnings could have been substantial.

However for a variety of reasons, witnesses who had previously indicated they might be able to assist got "cold feet", and would not support the claim.

It is all very well for the Defendants to contend that the witnesses reluctance to give evidence should have been known to the Claimant from the outset. However this misses the point. The fact is that the witnesses at the outset were prepared to support the claim and there was no way in which the Claimant or indeed his Solicitors could have been aware that at some later date when the witnesses came to realise that they would be required to testify in court that a different complexion emerged.

The correct test to apply for these costs is whether the work done, based on the information available to the Solicitor "at the time" was carried out reasonably_ The Defendants approach is one based upon hindsight which is the wrong test.

We call upon the Defendant to produce a copy of the Painting v University of Oxford case upon which they intend to rely and to do so before the Assessment Hearing."

Proportionality - Points of Dispute
"The costs claimed are self-evidently disproportionate; more than six times the damages recovered_"

Proportionality - Reply
The reply, which I need not recite in full, quotes paragraphs 11.1, 11.2 and 11.5 of the Costs Practice Direction, and cites ***Home Office v Lownds*** [2002] EWCA Civ 365 on the point that the court should take into account the conduct of the opposing party who may reduce cost if he cooperates, and that access to justice may be impeded if lawyers felt that they could not afford to do what was necessary to conduct litigation.

The issue resolved on 23rd August 2006

26. On 23`d August 2006 argument was made on behalf of Mr Finster that in view of the wording of the letter which accompanied the offer, and the dicta of Rix J. in Aaron v Shelton [2004] EWHC 1162, I should decide that the paying party was not entitled to raise now matters of conduct (exaggeration) not raised in the letter of 19 December 2005 given the reference to the settlement offer being "without costs penalty".

27. My decision was that the offer did not debar Arriva from relying on alleged exaggeration of the claim when arguing on proportionality and reasonableness on the standard basis. My decision was not the subject of any appeal.

28. 1 observed that the settlement was an agreement to pay standard basis costs without `penalty' for late acceptance. I took the view that to hold that the costs judge was not entitled to consider allegations of an over-valued case -- and any other relevant aspect of the conduct of the case - as part of reasonableness and proportionality would deprive the notion of standard basis costs, referred to in the offer, of meaning.

29. I shall return to the offer in due course to do justice to submissions made by Mr Hooper QC in which he focussed on a different point applying ***Aaron v Shelton*** whilst being clear that he did not seek to challenge my decision at the August hearing.

30. The Claimant applied through counsel for permission to file evidence. I directed that the Claimant was to produce a statement setting out such material as he wished to rely upon in relation to the first two general points of dispute. There was permission to Arriva to serve a statement in reply In view of the fact that to a degree the issues had already been opened before me along the lines of the skeleton arguments, I reserved the case to myself. Argument on the two general points to which this judgment relates was heard on I I December 2006.

Evidence

31. I have statements from Mr Sherwood for Mr Finster and Mr Burton for Arriva. Mr Sherwood's statement includes a chronology setting out why he regards the case as having been reasonably and proportionately conducted, and exhibiting documents in support, including a limited amount of otherwise privileged material. Mr Burton's statement is more limited, by way of reply, and exhibits a copy of the schedule of loss.

32. Neither witness faced cross examination. Insofar as the statements contain facts stated within the direct knowledge of the witnesses, I do not detect any material conflict of despite the divergence of opinion which the case has caused. Mr Burton's statement concludes by saying that the Defendant regarded the claim as exaggerated `or even fraudulent', but Mr Sachdeva for Arriva did not pursue any allegations of fraud.

The Defendant's arguments

That Arriva "won"

33. Arriva's points of dispute argue that Arriva `won' the case in that they substantially defended almost the entirety of the claim. ***Painting v Oxford University*** [2004] EVVCA Civ 161 is cited as an example of a case where a litigant was awarded a small proportion of her claim, after a finding of exaggeration had been made by the judge. The Court of Appeal held that the correct approach as to costs was to have treated the defendant as the effective

winner notwithstanding that she had actually beaten a lower payment into court. By analogy the points of dispute as I understand them seek assessment on the footing that Arriva `*won*'.

That Mr Finster abandoned the issue of special damages such that costs of that issue should be disallowed

34. It was argued in Arriva's skeleton that the effect of accepting an offer of £10,000 amounted to abandonment of the claim for special damages, and that costs caused by pursuit of that claim should be disallowed as if they were costs of a formally abandoned issue, applying ***Shirley v Caswell*** [2001] 1 Costs LR 1 (CA).

35. In view of the fact that payment had been made, but not accepted, in early 2005 it was said that all the costs after expiry of the original payment (8 February 2005) related to the abandoned issue and should be disallowed.

36. Mr Sachdeva's emphasis (other counsel having drafted the skeleton) cast the point in less rigid terms. He characterised the outcome as one in which it was obvious that the vast bulk of the alleged past loss and all of the future loss was effectively written off. Mr Burton's statement for Arriva at para. 7 indicates that the rationale for the £10,000 payment was a commercial one intended to exert pressure. It was not apportioned.

That this was an exaggerated claim, due to lack of planning, which unreasonably caused inflated costs (also impacting on proportionality)

37. The thrust of Arriva's argument from para. 5 of its skeleton onwards (and orally) was that in view of exaggeration by the Claimant the court should resolve adversely to the Claimant the issue of whether costs after 8 February 2005 were reasonably incurred, and conclude that they were inflated.

38. Mr Sachdeva argued that Mr Finster had not undertaken an essential part of preparation for the case by considering its likely provable value, and by making efforts to plan the case. He argued that case planning (or an absence of it) went to issues of proportionality as well as being related to unintentional exaggeration. The material on which the Claimant relied did not, he said, evidence case planning.

39. 1 was referred to Blackstone's Civil Procedure at 68.33 in support of the need for case planning and Zuckerman on Civil Procedure at 26.87. Mr Sachdeva cited ***Jefferson v National Freight Carriers plc*** [2001] EWCA 2082 in which the Court of Appeal endorsed comments by Judge Alton in an earlier case the name of which is not referred to in judgment, supportive of case planning. The comments approved were: *"In modern litigation, with the emphasis on proportionality, it is necessary for parties to make an assessment at the outset of the likely value of the claim and its importance and complexity, and then to plan in advance the necessary work, the appropriate level of person to carry out the work, the overall time which would be necessary and appropriate spend on the various stages in bringing the action to trial, and the likely overall cost. While it was not unusual for costs to exceed the amount in issue, it was, in the context of modest litigation such as the present case, one reason for seeking to curb the amount of work done, and the cost by reference to the need for proportionality."*

40. Mr Sachdeva argued that in a claim for £l.4m the manner in which one looked at evidence should be different during case planning from the approach where the claimant had a £10,000 claim. He drew a distinction between a theoretical approach which a law student aware of the principles of recovery in tort might apply, and the approach which was reasonable for professionals with a realistic evaluation of the strength of the evidence. He said that there was not adequate material upon which to base a claim for £1 .4m. I shall review the material itself later in this judgment.

41. Mr Burton's statement for Arriva, at paras. 4 to 6, sets out the effect which he says the alleged exaggeration of the claim had on the manner in which the Defendant defended, and on the costs of the case. I shall quote para. 5 and part of 6:

> *"5. Since the claimant had suffered an apparently minor whiplash injury resolving within a matter of weeks but was nonetheless claiming in the region of £1.4m, the case was notorious among those of us involved in the first defendant's defence. I clearly recall that after the first defendant's payment into court of £10,000 was not accepted it was decided to fight the case, despite the previous instructions to admit liability, because in the context of the extravagant damages claimed it was a chance worth taking and because the potential costs liability was insignificant by comparison.*
>
> *6. It follows that had the claim been more conservatively pleaded or had the claimant concluded the quantum investigations recommended by counsel before making a Part 36 offer of £1.3m and serving a schedule of special damage totalling £1.4m, the first defendant would not have contested liability. It also follows that the first defendant would not have joined the second defendant to the proceedings for the purpose of the split trial on liability [...]j"*

42. Arriva's skeleton argument invites me to rule that all costs after the 8th February 2005 were unreasonably incurred. Alternatively (or perhaps further) the suggestion is that I should disallow costs relating to special damages on the basis that that issue was abandoned. The suggestion is that I should then assess all remaining costs as if this case had been allocated to the Fast Track.

43. The case of ***Booth v Britannia Hotels*** [2003] 1 Costs LR 43 (CA) was cited in Arriva's skeleton in support of argument that if having made the proposed deductions I did not regard the final figure as proportionate to the true value of the claim, I should disallow a percentage of the costs claimed.

The Claimant's arguments

To the argument that Arriva `won'

44. The relevant submissions in relation to the argument that I should regard Arriva as having `won' were the arguments made by Mr Hooper that the starting point had to be the terms of the letter offering to settle, and its expression "without costs penalty". His argument was aimed generally but I summarise it here for convenience.

45. Mr Hooper argued that the costs had to be assessed in the light of the CPR provisions as to reasonableness, exaggeration and other conduct, and that that was to be the standard applied. Relying on ***Aaron v Shelton*** [2004] EWHC 1162 a party settling a case on the footing that they were to be adjudged on the reasonableness basis ought not to be misled. Otherwise whatever the facts of a case there would be a substantial risk that any claimant would be deprived of costs to which ***Lownds v Home Office*** [2002] EWCA Civ 365 at paragraph 39(i) recognised he was reasonably entitled to expect to recover. The paying party had committed itself to assessment of the Claimant's reasonable costs on the standard basis without more (without a greater reduction being imposed).

46. It was said that Arriva could have qualified its offer to settle but had not done so and that the court should disapprove of conduct inducing a belief in the recoverability of costs, where absent anything else the offer induced a notion of "no challenge".

47. His skeleton argument went a step further, arguing that in order to give effect to the offer I had to regard the Defendant as debarred from raising exaggeration and proportionality in the light of the use of the expression *"without costs penalty"* in the offer letter and the decision in ***Aaron.*** In view of the earlier ruling which I had made in August (at a hearing at which he had not been present) he did not press that aspect in strict terms.

48. I did not hear substantial argument on the subject of the very recent decision in ***Northstar Systems and Others v Fielding*** [2006] EWCA Civ 1660 (decided a few days prior to the hearing of this case), a case which I drew to both counsels' attention. That case doubts the decision in ***Aaron*** insofar as that case contains dicta which seem to rigidly debar a costs judge from considering conduct not raised before the trial judge or referred to in settlement. Aaron was not said to have been wrongly decided on its facts. In view of my decision in August the ***Northstar*** decision did not take matters further.

49. Mr Hooper relied on the basic principles stated at paras. 20 and 22 of ***Aaron,*** to the effect that the court must have regard to the order for costs, and that includes the form of the settlement, and it would be an abuse of process to settle on the footing that standard basis costs would be paid and only later to seek to resile and pursue greater deductions than would normally be made on standard basis detailed assessment. The dicta in Aaron were, he argued, correlated with the dicta in Lownds.

To the argument that special damages, as an issue, were abandoned

50. The first skeleton argument filed for Mr Finster and later Mr Hooper in his oral submissions and skeleton, argued that as a matter of fact there had been no abandonment of the loss of earnings issue and that there was necessarily a substantial element of consideration for the compromised loss of earnings claim.

51. Mr Sherwood at paragraph 14-16 states that Mr Finster continued to pursue his claim for lost earnings and at no stage abandoned it. He makes the observation that if the loss of earnings claim had been abandoned the award of damages would have been less than £5,000 compared with the £10,000 recovered.

To the argument that the case was exaggerated

52. On the exaggeration and case planning aspects it was said that this was a claim recoverable in law, from the outset, but the claim had been put at risk because a witness had been reluctant. That was characterised as a risk which was a part of litigation, and this was not a case such as ***Booth*** or ***Hooper v Biddle*** [2006] EWHC 2995 of which it was said that the claimant would have been doomed to fail in the essence of his claim. Mr Finster's evidence (p33 of his statement for the substantive claim) as to the *`huge impact'* of the collision had been uncontradicted and that it was said to be not surprising that such an incident led to some claimed loss of earnings.

53. The `heresy' of hindsight was to be avoided: one should judge reasonableness of expected recovery relative to matters at the time the claim was begun (Lownds para. 39 (i) expressly used the expression *"...the sum that it was reasonable for him to believe that he might recover at the time he made his claim"* to which I was referred). Put at its highest Mr Hooper's argument was that the reasonableness of the valuation was to be considered at that point in time, presumably the date of issue. I understood Mr Hooper to accept that a Claimant should re-consider the position when later key events, such as the receipt of offers to settle, occurred. He argued that the claim was not extravagant and I was urged to hold that a finding of proportionality should follow from that absence of extravagance.

54. As to case planning, the argument was that planning would have made no difference. It would not have safeguarded against the situation where the Claimant was disappointed by failure of evidence. It was said that the evidence obtained (in the form of a handwritten letter at page 2 - and I assume also the related letter at page 3- of exhibit RS 1) stated what the writer of the letter regarded as a good indication of the likely bonus levels which would have been received, and on the balance of probabilities the claim could have succeeded on that evidence. A case plan would not. have ensured that the evidence at trial would have been as planned. Further, there was in law no requirement for Mr Finster to have obtained a suitable direct comparator employee.

55. Mr Sherwood's evidence exhibits documents upon which his client relies to establish that the claim was not unreasonably overvalued. I need not quote at length. The gist is encapsulated succinctly in paragraph 4 where he states: *"It has always been accepted by those advising the Claimant that, in the context of the Claimant's short-lived physical injuries, there would need to be good evidence to prove his claim for a very substantial loss of earnings. However in the light of the witness evidence that was obtained before issue, the claim as pleaded was in no sense exaggerated. It was soundly based on the witness evidence and it was proper to conclude that it had reasonable prospects of success. "*

56. The reason put forward for the acceptance of £10,000 was that no witness statement evidence could be obtained from the gentleman who was believed to have been recruited in Mr Finster's place, and it was thought essential to be able to adduce such evidence to show actual bonus levels. The person believed to have been recruited was called Mr Carr. He was unwilling to assist, for `*confidential*' reasons. (Chronology entry dated 411106 page 8 of Mr Sherwood's statement).

57. Mr Carr did not go as far as making a statement of any kind. Sucden's Director Mr Overlander, was of no meaningful help either. Mr Sherwood was not at liberty to disclose the reason given by Mr Carr for his refusal to give evidence (chronology entry 611106 page 8 of statement).

58. As to the decision to accept £10,000, at paragraph 12 Mr Sherwood states: *"It was the Claimant's inability to secure this documentary evidence [evidence from Mr Carr] which rendered his claim for loss of earnings vulnerable and led him to accept the Defendant's offer. However in the light of Mr Adams' letters and witness statement, particularly with the other supportive statements, the difficulty in acquiring documentary evidence in support of his claim for loss of earnings could not reasonably have been anticipated. "*

Decision

(a) Did Arriva `win'?

59. In my judgment the case law on the issue of who can be said to have `won' a case is of little assistance, where the settlement was on clear terms that Arriva would pay Mr Finster's standard basis costs. The case law which deals with the "win" versus "lose" argument, namely ***Painting v Oxford*** and ***Hooper v Biddle*** focuses on the issue of what is the appropriate costs order where the court is deciding what order to make, given the outcome. In Painting v Oxford, the judge was said to have erred in the decision he made as to the very nature of the costs order where Ms Painting had recovered far less than claimed, in a case where exaggeration was found to have taken place.

60. In ***Hooper v Biddle,*** the case settled save as to determination of who should pay costs. On the basis that there had been no admission or finding of liability, and that the claim had been valued far in excess of the sum in the settlement, the court made no order.

61. In this case a different situation pertains. One matter not in dispute is that Mr Finster comes to this assessment with an agreed order for standard basis costs of the claim. To that extent the question of who "won" is now irrelevant to the form of the costs order. Subject to the making of all deductions which may be properly made by a costs judge on the standard basis, Mr Finster is entitled to his costs.

62. It would not be reasonably open to me to interfere with the terms of settlement and decide, for example, that Mr Finster `lost' and ought to be entitled to only some lesser substantive order as to costs (such as standard basis costs only up to a given date), solely and simply on the basis of a post-hoc assessment of where success lies.

63. I accept Mr Hooper QC's argument that one must have regard to the terms of the settlement. It would have been open to Arriva to settle on terms other than an outright standard basis costs order. In particular the form of the offer suggests that entitlement to standard basis costs will run up to date of acceptance of the offer. To decide that costs ought not after all to run up to that date based on a "loss" outcome to the claim would undermine its essence. It would have been open to the parties to adopt the approach in ***Hooper v Biddle,*** and settle quantum subject to an adjudication by the court as to what costs order was appropriate but they did not.

64. It does not follow that I regard myself as lacking power to disallow periods of costs, or costs in particular. categories, or costs at particular rates if such is required on the standard basis. That might occur where costs in a particular date range are unnecessarily incurred, or are not claimable costs at all, or were caused unreasonably, and are therefore not payable on the standard basis. Nor am I debarred from considering the relatively low extent of recovery, compared with the very large sum claimed, as part of the circumstances of the case. But I do not regard it as just to reverse the essence of the settlement based on who *"won"*. Mr Finster must still satisfy the court that each item of his costs is allowable on the standard basis.

(b) Whether costs of special damages should be disallowed as being costs of an abandoned issue.

65. Shirley v Caswell to which I was referred confirmed the principle that in the ordinary course of events in an assessment of costs there will be a disallowance of those costs relating to issues which are not pursued. At paragraph 60 Chadwick LJ puts it thus: *"...The costs of issues abandoned, or not pursued at trial, ought, prima facie, to be disallowed against the party incurring them on an assessment of the costs of that party by the costs judge - because, again prima facie, they are costs which have been unnecessarily incurred in the litigation. To take them into account in making a special costs order carries the risk that the claimants will be doubly penalised. They will be deprived of costs under the order; and again deprived of the same costs on an assessment or taxation. "*

66. Several factors militate against approaching this case strictly from the perspective of *"issue abandonment"* or "*non pursuit*". The first is that there was no discussion, and no agreement to withdraw or abandon the issue of special

damages or future loss. Mr Sherwood's statement avers that Mr Finster pressed on with his case at £l .4rn until he was faced with evidential problems (he never, for example, amended to reduce the claim).

67. The second factor is that £10,000 would be an overvalue if this case had settled merely on the basis of general damages. The general damages case could not reasonably have exceeded £5,000 (this appears to be essentially common ground). Mr Finster did make a gain (around £5,000) which can realistically only be attributed to settlement of his special damages claim (and its attendant nuisance value).

68. The third factor is that this court under the CPR (a code not applicable in Shirley v Caswell) has at its disposal adequate tools in the form of the principles of reasonableness and proportionality (allied with the necessity criterion referred to in Lownds if need be) to ensure that a paying party is not unfairly prejudiced.

69. It would be an unnecessary straitjacket to seek, judicially, to force a situation in which an issue was not in fact abandoned to fit a mould designed to deal specifically with that situation. If one were to adopt the "issue" model, then where a case settled out of court for a global sum, the costs judge would face the disproportionate task of conducting a post-mortem in each case to deconstruct the settlement. Adopting that approach where a simpler adequate one is available would not further the overriding objective.

(c) Exaggeration and proportionality

70. A finding of global disproportionality is sought as well as reductions in the bill based on costs escalation said to flow from exaggeration.

71. One has to go back to the rules and law. I shall not quote every rule, but shall reproduce CPR 44.4 and 44.5 here. My starting point is proportionality.

44.4(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs -
(a) on the standard.basis; or
(b) on the indemnity basis,
but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(2) Where the amount of costs is to be assessed on the standard basis, the court will -
(a) only allow costs which are proportionate to the matters in issue; and
(b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

44.5(1) The court is to have regard to all the circumstances in deciding whether costs were -
(a) if it is assessing costs on the standard basis -
(i) proportionately and reasonably incurred; or
(ii) were proportionate and reasonable in amount, or
(b) if it is assessing costs on the indemnity basis -
(i) unreasonably incurred; or
(ii) unreasonable in amount.

(2) In particular the court must give effect to any orders which have already been made.

(3) The court must also have regard to -
(a) the conduct of all the parties, including in particular -
(i) conduct before, as well as during, the proceedings; and
(ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
(b) the amount or value of any money or property involved;
(c) the importance of the matter to all the parties;
(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
(e) the skill, effort, specialised knowledge and responsibility involved;
(f) the time spent on the case; and
(g) the place where and the circumstances in which work or any part of it was done.

72. I refer to ***Lownds v Home Office*** which was cited by both sides. At paragraphs 39 and 40 the Court of Appeal stated, on the question of how to approach the question of costs proportionality in a claim where much less is recovered than was claimed:

"39. Turning to the specific points of principle raised by May LJ (paragraph 11 above), where a claimant recovers significantly less than he has claimed, the following approach should be followed: -

Whether the costs incurred were proportionate should be decided having regard to what it was reasonable for the party in question to believe might be recovered. Thus

(i) The proportionality of the costs incurred by the claimant should be determined having regard to the sum that it was reasonable for him to believe that he might recover at the time he made his claim.

(ii) The proportionality of the costs incurred by the defendant should be determined having regard to the sum that it was reasonable for him to believe that the claimant might recover, should his claim succeed. This is likely to be the amount that the claimant has claimed, for a defendant will normally be entitled to take a claim at its face value.

40. The rationale for this approach is that a claimant should be allowed to incur the cost necessary to pursue a reasonable claim but not allowed to recover costs increased or incurred by putting forward an exaggerated claim and a defendant should not be prejudiced if he assumes the claim which was made was one which was reasonable and incurs costs in contesting the claim on this assumption. "

73. I am required by ***Lownds*** to form an initial view (the so-called global view) of the issue of proportionality. A decision that costs are prima facie disproportionate does not determine the amount of costs to be allowed but it determines the manner of assessment. Global disproportionality triggers the item by item approach described in ***Lownds*** at paragraphs 30 to 32:

*"30. In his advice the Senior Costs Judge drew attention to the problems that can arise from **"double jeopardy ";** in other words from making a deduction when considering the bill item by item and then looking again at the situation as a whole and making a further global deduction. This danger will be avoided if a party receives at least a reasonable sum for the items of costs which were necessarily incurred.*

31, In other words what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which Part 44.5(3) states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonably incurred and the cost for that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary and, if necessary, that the cost of the item is reasonable. If, because of lack of planning or due to other causes, the global costs are disproportionately high, then the requirement that the costs should be proportionate means that no more should be payable than would have been payable if the litigation had been conducted in a proportionate manner. This is turn means that reasonable costs will only be recovered for the items which were necessary if the litigation had been conducted in a proportionate manner.

32. The fact that the litigation has been conducted in an insufficiently rigorous manner to meet the requirement of proportionality does not mean that no costs are recoverable. It means that only those costs which would have been recoverable if the litigation had been appropriately conducted will be recovered. No greater sum can be recovered than that which would have been recoverable item by item if the litigation had been conducted proportionately. "

What sum was it reasonable for Mr Finster to believe that he might recover at the time he made his claim?

74. I do not read the use of the word "might" by the Court of Appeal in paragraph 39(i) of **Lownds** as suggesting that the value is that which stands some chance, however slight, of being recovered. To be useful the decision must be interpreted as referring to the sum which the claimant believes he reasonably might recover.

75. Argument was made by Mr Hooper that the point in time at which one must apply the valuation set out in paragraph 39(i) of Lownds is the point at which the claim is begun. Given the view which I shall express later, I do not regard resolution of the issue in principle as to the appropriate date for valuation as necessary for my decision. The view I express below on that issue is accordingly not central to this judgment but the point appears to be a novel one such that it is appropriate for a view to be expressed.

76. The decision in Lownds contains the expression *"the sum that it was reasonable for him to believe that he might recover at the time he made his claim"*. Interpreting the dictum narrowly would lead to the conclusion that a party who values his claim reasonably but afterwards discovers that his valuation has become unrealistic, will gain a benefit when it comes to the test of global proportionality. The value considered by the court will be constrained to be that appertaining at the outset, provided only that it was reasonable at the time.

77. Judgments are not to be interpreted as statutes. The Court of Appeal in Lownds should not in my judgment be understood as intending to prevent a costs judge from considering what the valuation of a claim was at any given stage in litigation as part of the background against which a global view of proportionality can be formed.

78. If it had proved necessary I would not have held myself constrained to consider only the valuation at time of commencement. The approach taken by a Claimant must vary as the litigation progresses to take account of the circumstances, and the overriding objective would demand that proportionality be kept in view. If the value of a case changes, the litigant should tailor his approach to keep it proportionate. The. costs judge should be entitled to consider whether the Claimant generally did so.

The material supporting the valuation

79. Materially all the supportive material going to the subject of salary and bonus relied on by the Claimant and exhibited to the statement of Mr Sherwood was already in the hands of the Claimant by date of issue and the material in hand did not advance much further by the time the case settled in 2006. I heard submissions in relation to the quality of that material. There were the following items of an evidential character relevant to quantum:

Obtained before issue of claim

(i) Letter from Mr Adams written for the claim, dated 8110101, headed company paper.
(ii) Letter from Mr Adams written for the claim, undated, handwritten. Stamped as received 11/1/02.
(iii) Letter from Mr Adams written for the claim, typed but not on company paper, dated 20/3/03.
(iv) Statement of a Mr John Mansfield dated 1519/03 (Sucden employee)
(v) Statement of a Mr Graham Freeman dated 17/9/03 (employee of Capital Search and Selection).

(vi) Statement of Mr Graham Powis dated 17/9/03 (employee of Triland Metals).
(vii) Statement of Mr Adams dated 15/3/04 (of Sucdens).
(viii) Statement Mr Lee Pridie dated 2617104 (employee of Barclays).

Obtained after issue of claim

(ix) Statement of Mr Finster (Claimant) dated 20112/04.
(x) Statement of Mr Christian Sanders dated 29/9/05 (employee of Sucdns).

80. Mr Finster's statement was signed after issue (December 2004) but he was the claimant and his instructions were available before issue. There is therefore effectively one statement (that of Mr Sanders) which post-dates commencement. It takes matters little further and indeed undermines the quantum of the claim by evidencing that Mr Sanders' salary is below that allegedly offered to Mr Finster and stating that he does not recall any job being advertised for a Senior Aluminium trader in Autumn 2001.

Mr Finster's statement (item ix above)

81. Mr Finster exhibits no evidence whatsoever relating to the job offer. No contemporaneous written material is referred to from Sucden in relation to the alleged job offer - for example no written offer, no letters arranging start dates or appointments with Human Resources at Sucden, no letter referring to the conversation on the golf course and asking Mr Finster to confirm acceptance, no letter of termination when the job offer was withdrawn. Given that the offer was allegedly withdrawn very close to the start date one would have expected something to have arrived by then telling Mr Finster where to attend on his first day and what material to bring to enable payroll to be set up. Often employers require proof of identity but there is no sign of communication about that either.

82. There was in evidence no contemporaneous written confirmation going in the other direction from Mr Finster to Sucden accepting the job, or referring to it at all. Mr Finster's statement does not go as far as stating the agreed salary and bonus rate or basis for the bonus discussed.

83. Any litigant taking a reasonable view of this statement would see it as weak. It was likely to face real problems as to credibility and also problems as to whether he could have mitigated loss by at least starting the job and then, if it proved too difficult, taking sick leave (mitigation of loss was an issue in the case), or by obtaining medical advice as to how long he would need to delay work before starting so that he did not present his employer with an uncertain delay. I do not have to decide as to its truth or falsehood, the issue for me is what view can reasonably be taken as to its strength as far as it relates to the likely recoverable sum. A reasonable litigant would have seen that it realistically fell short of what was required for a £1 .4m claim from a minor whiplash, but I must also look at the totality of the material from the other sources.

(i)-(iii) Letters from Mr Adams written for the claim, dated 8/10/01,1111102 and 2013103.

84. Mr Adams and Mr Finster had known each other for many years (Mr Finster para. 15), and played golf together, so that Mr Finster evaluating his own evidence would be expected to have borne in mind that Mr Adams might not have been viewed as a neutral witness.

85_ On 8110101 Mr Adams wrote a letter (page 1 of exhibit RS 1) to the solicitors acting for Mr Finster in which he stated that the basic salary had been agreed at £96,000 with a yearly bonus `somewhere in the region of 30% to 70%', and related that the job had been given to someone else (unnamed), in view of what was referred to as the seriousness of Mr Finster's injuries. That letter necessarily implies a salary range including bonus on a percentage basis, of between £124,800 and £163,200 (albeit that those figures are not stated).

86. Its appearance (which gives an impression of being typed amateurishly) ought to have raised some concern in the mind of a reasonable litigant as to whether it would be credible. Mr Adams describes himself as a Director at Sucdens, a description of himself which he does not repeat in his later signed statement and later correspondence. The document bears Sucden's logo.

87. On or about 11 January 2002 (letter page 2 of exhibit RS 1 which does not bear a date other than the solicitors' office stamp) Mr Adams wrote again for the purposes of the claim. The letter this time was handwritten and not on company paper and says that the bonus received would have been £50,000 for the period 119/01 to 1112101 based on an unnamed person who was said to have taken Mr Finster's job. Why a large City firm would resort to handwritten notes on blank pages is a question which a reasonable Claimant would have posed when considering the credibility of that material.

88. The above was followed by a further letter from Mr Adams dated 20 March 2003 and states that Mr Finster `could have received the following pay structure, £96,000 basic salary, £50,000 bonus for the last quarter of 2001, £150,000 bonus for 2002 and £50,000 for the first quarter of 2002 [sic].' It repeats that it is based on Mr Finster's equivalent replacement who is again not named.

89. This letter is typed on blank paper. Again it gives an amateurish impression in terms of the manner in which it is typed and laid out. Mr Adams this time describes himself as "LME Desk manager" rather than as "Director".

90. If one takes the 2002 figure of £150,000 and adds that to the salary of £96,000 the expected income for 2002 which one arrives at becomes £246,000 which is very much higher than the figure one arrives at based on Mr Adams' first letter on 8110/01. That contradiction is a matter which ought to have raised a concern as to credibility.

91. Looking at the three letters, their net effect is to raise concerns. Where a £1.4m claim was being planned, these letters on any reasonable basis would have underscored the need for credible and detailed evidence to be gathered before issue. It is possible that such was the effect, since efforts then ensued to approach witnesses for the substantive statements which I review below.

(iv) Statement of Mr John Mansfield dated 1519143 (Sueden employee)

92. Mr Mansfield was a long term acquaintance of Mr Finster (of 15 years' standing). He says he had worked at Sueden for just over a year before his statement in 2003. It follows that nothing he says in his statement could be based on contemporaneous knowledge of the case in his workplace. His evidence is that he "*understands that Paul was offered a job",* and it also follows that when he mentions that he works with the person who has the job that Mr Finster was offered he is relying on information he has been given. He gives no evidence as to quantum of salary or bonuses. His statement viewed reasonably did not take matters significantly forward as to quantum.

(v) Statement of Mr Graham Freeman dated 17/9/03 (employee of Capital Search and Selection).

93. Mr Freeman was not (it seems) connected with Sucden and he does not refer to personal knowledge of Mr Finster. He gives background information about "open outcry" metals trading and as to the rarity of very well paid jobs such as that said to have been offered to Mr Finster. He gives no evidence of quantum, and his knowledge of Mr Finster's situation is that he states he has been told that Mr Finster was offered a job (para. 7). Apart from general background he takes matters no further.

(vi) Statement of Mr Graham Powis dated 17/9/03 (employee of Triland Metals).

94. Mr Powis states that he has known Mr Finster for a number of years. They used to work together until both he and Mr Finster were made redundant. He confirms that in the metals trade jobs are often found by word of mouth and are difficult to find. That is the effective sum total of his evidence.

(vii) Statement of Mr Adams dated 15/3/04 (of Sucden).

95. He describes how he has known Mr Finster for 15 years and had "done some business" with Mr Finster in the past. He describes how the type of job in this case is rare and how this job was advertised by word of mouth, with four (unnamed) people being approached for it. (None of them produced a statement.)

96. He describes a typical day in the job, and states that (para.10) *"The basic salary for a senior trader position is about £96,000 per annum. Bonuses are discretionary but can range from between £100,000 per annum to around £400,000 per annum. Paul's salary was agreed at £96, 000 plus bonuses. "*

97. It is evident that the annual value of Mr Finster's package is this time placed (in effect) between F-196,000 per annum and £496,000 per annum, which correlates poorly with what Mr Adams wrote in his earlier letters, which were themselves not internally consistent. In my judgment a sensible litigant would have been concerned as to whether Mr Adams was likely to be a credible witness on that aspect.

98. Mr Adams is silent as to the details of the conversation with Mr Finster. He does not put in evidence the name of the person who took Mr Finster's job. He exhibits no documents. A litigant evaluating the valuation in contemplation of issuing a claim for f 1.4m would have doubted whether a court would accept that a job offer worth up to £.496,000 per annum was made without the slightest paper or email trail coming into existence before the employee was to start the job.

(viii) Statement Mr Lee Pridie dated 26/7/04 (employee of Barclays).

99. Mr Pridie was not an employee of Sucden. His statement indicates that he, as a senior copper trader at Barclays, recovered 100% of his salary as bonus in the preceding year, and that bonuses can exceed salary. He describes the nature of his current job which was that of telephone trader in metals and not a job on the open outcry market.

100. He does not state any figure for his salary. As far as it goes, therefore, that statement is evidence supportive that broadly speaking in the trade the annual bonus can equal or exceed salary but does not shed light on the specifics of Mr Finster's case.

The sum reasonably expected.

101. Armed with the above, Mr Finster issued his claim. In my judgment the submission of Mr Sachdeva which drew a distinction on the one hand between a claim value in a theoretical sense and on the other hand a realistic valuation based on consideration of the strength of the evidence, was quite apt. Mr Hooper QC sought to persuade me that the claim was not defective, that it was justified on the evidence. In my judgment the nature of the justification on the evidence was more theoretical than practical. It was in essence a £1 .4m claim based on a very sparsely described conversation during a game of golf, uncorroborated by other material which one would have expected to emanate from Sucden. It was a claim which by its nature and size required the clearest of credible evidence.

102. Mr Sachdeva's submissions as to the benefits of case planning, especially in an apparently large claim, are ones which I accept, but I do not propose to elevate that notion to a mandatory requirement for evidence of planning which is not present in the court rules. Nonetheless the dictum in Jefferson v National Freight Carriers plc [2001] EWCA 2082 quoted earlier in this judgment merits the respect due to it, and it seems to me that a more critical approach to evaluating the strengths and weaknesses of this claim as part of case planning at an early stage should have avoided the problem which arose. That is because any evidential problems would have surfaced and been found to be fatal to the quantum of the claim at an earlier stage. No case plan was in evidence before me.

103. A long period had elapsed during which evidence had been gathered on Mr Finster's behalf. At the end of that time the evidence amounted to the barest of material and taken as a whole, it was not evidence which in my judgment entitled Mr Finster to believe he might (that is, `reasonably might') recover £1.4m.

104. However Mr Finster did have evidence that would have been unable to work for a month or so. As a man with an earnings history and skills, who was looking for work and had contacts, it would not necessarily have been unreasonable for him to suggest that he suffered a setback to his job-hunting (and a loss of income as a result) for several weeks. Furthermore he did have a good case on liability.

105. 1 accept what Mr Hooper QC said to the effect that some loss was to be expected after this accident. Moreover a claim which has merit in liability terms necessarily brings with it some settlement value. In my judgment if this claim had been valued at around the fast track/multi track border in financial terms, that is, at around £15,000, I would not expect arguments as to overvaluation to have had merit or to have arisen. Mr Finster's income when he obtained a job at IFX in December 2001 was, he says, £80,000 for 7 or 8 months, which can plausibly be used a guide to the level of loss a delay in finding employment of a few weeks would have represented.

106. I must decide whether the bill of costs put at around £54,000 strikes me as globally disproportionate given a claim value of that order of magnitude. Claim value versus size of bill is not the sole criterion but is a good starting point where the bill exceeds the reasonable claim size. I remind myself that a modest claim is more likely to risk incurring costs which exceed the claim, and that the object of proportionality is not to require lawyers to conduct cases at uneconomic rates.

107. This was not a complex or novel claim demanding of particular special skills by the lawyers. It was of the level of importance to the claimant which any modest injury claim would be, that is to say significant but not overwhelming if one considers a reasonable valuation. Matters were dealt with in Central London, which of course tends (by being in London) to increase reasonable costs.

108. Mr Finster's conduct is relevant: he rejected an offer of mediation and did not accept (at first) the payment in of £ 10,000. He did not make any counter-offer at the time. The impression he surely gave was that he intended to press his high value claim.

109. The Defendant's conduct is relevant. It made efforts to settle. However it did increase costs by the manner in which it switched to an escalated mode of defence once Mr Finster had not accepted the payment. But in that regard I remind myself of paragraph 39(ii) of Lownds to the effect that a defendant is `normally [..] entitled to take a claim at its face value.' The Defendant showed restraint in that it did not adopt the form of defence which it ultimately did until after Mr Finster had shown himself willing to refuse a £10,000 payment and as being prepared to pursue his £1.4m claim.

110. I do not regard a total bill of £5,249.50 for attendances on the Claimant alone as indicative of proportionate litigation given the realistic value of the claim. The brief fee of £4,500 plus £1,250 per day refreshers for trial, even considering that the brief fee included a fee for amending the particulars of claim, strikes me as a matter at least suggestive of a lack of proportionality. I am satisfied therefore that this bill appears globally disproportionate.

111. I remind myself that the Lownds procedure is a means to assess the bill, not a decision as to the quantum of the bill and that in principle if all items were to be justified, none would be disallowed. The case of Booth v Britannia Hotels [2003] 1 Costs LR 43 was referred to in the skeleton arguments, but I do not derive assistance from it to any significant degree. It was a case which stressed that each case turns on its facts, was decided under the RSC, and related to a case of deliberate exaggeration. Furthermore it suggests an approach of disallowing a global percentage from the bill, which is difficult to reconcile with the item by item approach required by Lownds. It is however an example of the duty of the costs judge, preserved in the CPR and arguably implicit in the former RSC, to ensure that bills are not disproportionate to claim value.

112. Lownds requires the adoption of a sensible standard of necessity when applying the item by item approach, not one which would pose difficulty for a competent lawyer to achieve, and the approach which I shall take when detailed assessment resumes will be that the standard is that to be expected in the conduct of a modestly valued routine road traffic accident case at the fast track/multi-track borderline (a separate hearing to assess quantum could well have been expected and a multi-track allocation would not have been unusual). I find in favour of the paying party on the question of global proportionality.

Effect of overvaluation on bill items

113. The `exaggeration' point and the arguments pursued by Arriva invite me to reduce the bill to reflect the impact of overvaluation, separately from the general proportionality point.

114. The evidence of Mr Burton is relevant at paras. 4 to 6 of his statement. The position he sets out is that his client decided to fight the case when the £10,000 was not accepted in early 2005, because the cost of doing so was insignificant compared with the claim size. He goes on to say that if the claim had not been pleaded at the value which it was, liability would not have been contested and the costs of trial and all the attendant costs would not have been incurred.

115. Mr Howcroft (costs draftsman for the Claimant) expressed scepticism in submissions supplementing those of Mr Hooper QC, arguing that this claim would have been defended by Arriva irrespective of the alleged exaggeration.

116. I note that this claim was disputed by the Defendant from the start, in the form of a straightforward defence which led to a time estimate being placed (for liability only) on the case by a District Judge for Mrs (on the papers). That may have been an optimistic time estimate, but I am satisfied that liability issues alone could have been disposed of in a day in any event. A multi track allocation would, however, have been probable for reasons I have already stated.

117. When Mr Burton says that it was decided to contest liability once the £10,000 payment was rejected, that cannot be literally correct, since for months before that date Arriva had already been defending this case. I am however satisfied that Mr Burton's intended sense is that Arriva committed itself to a more rigorous (and costly) defence, once the Claimant had not accepted the payment into court, without counteroffer. Mr Finster gave the impression of being committed to his valuation. Arriva made amendments the result of which was to expand the trial from what would have been a one day hearing into a three day trial. Arriva was from that point defending this case as a high value claim which would justify defensive arguments not cost-effective for a lower value claim.

118. I shall allow, for trial costs, the reasonable costs equivalent to a one day liability trial and I shall hear submissions as to the appropriate costs to allow for that day upon the resumed hearing. I have well in mind, in so deciding, what was said in Lownds at paragraph 40 of that judgment, which I have quoted at paragraph 72 above.

Other matters

119. The Lownds item by item approach is the best means to identify any further Claimant's costs occasioned by or increased by the escalated defence (by which I include the Part 20 claim against Mr Booth which was in effect a defensive measure) as well as to ensure proportionality generally. I shall hear argument on resumed hearing when individual items fall to be considered.

120. The issues of liability and quantum of costs of the hearing leading to this judgment are reserved to conclusion of assessment. I extend the time for seeking permission to appeal to the conclusion of this assessment. The adjourned detailed assessment will be listed on the first available date before me with time estimate 1 day for completion of assessment. If the parties consider that a longer estimate is appropriate they should inform the court office so that consideration can be given to a longer listing.

CERTIFICATE

I certify this written Judgment as the approved and authentic version.

DEPUTY MASTER VICTORIA WII.LIAMS, COSTS JUDGE

Note of Order (does not form part of judgment):

1) Re-list for completion of assessment on the first available date with time estimate 1 day.

2) Time for seeking permission to appeal is extended to conclusion of assessment.

3) Costs reserved.

Mr Hooper QC (counsel) and Mr Howcroft (costs draftsman) (instructed by Shoosmiths) for the claimant
Mr Sachdeva (counsel) (instructed by Davies Lavery) for the first defendant