JUDGMENT : Mr Justice Jack : QBD. 23rd June 2006.

1 In my judgment handed down on 5 May 2006 I held that Mrs Wright's action against the bank failed. The main reason for its failure was that in February 2002 she had agreed a settlement of her claims. I did not consider that the bank had acted in beach of its duty to Mrs Wright in connection with that settlement or that she had any claims against the bank arising in connection with it. In addition to the settled claims Mrs Wright had one claim which she made on behalf of herself and her late husband's estate arising in connection with the surrender of a joint life policy in 1999. This was a hopeless claim. Following the handing down of the judgment Mr Clegg asked for an order that Mrs Wright pay the bank the costs of the action. This was resisted by Mrs Wright on the ground of the bank's conduct in the action, but she said that she was not ready to present her arguments. The outcome was that it was agreed that there should be written submissions in accordance with a timetable, and I should determine the issue as to costs on the basis of those written submissions without a further hearing.

2 My starting point has to be CPR 44.3(a) which provides that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order. As Mrs Wright submits, under the CPR the court is ready to make orders reflecting the conduct of the parties and success or failure on particular issues. I refer to CPR 44.3(4) to (7). Further, the Court of Appeal has considered when the order as to costs should be affected by a refusal by the successful party to engage in mediation : ***Halsey v Milton Keynes General NHS Trust*** [2004] EWCA Civ 576, [2004] 4 ALL E R 920, and in negotiation : ***Daniels v Commissioner of Police for the Metropolis*** [2005] EWCA Civ 1312.

3 In her submissions in reply to the bank's submissions Mrs Wright listed five matters which she submitted I should take into account in determining liability for costs. I will take them in turn.

I. Failure to cooperate in the conduct of the case and delay.

Some aspects of the bank's conduct of the litigation does those responsible for it little credit. It was the litigant in person, Mrs Wright, who had sometimes to drive it forward against the bank's inaction. The main matter on which Mrs Wright relies as causing a delay (alleged to be 30 weeks) was inspection. But in his order of 22 March 2005 the Master did not make an order against the Bank: he ordered costs in the case. On 25 May 2005 he ordered that the Bank pay Mrs Wright her travel and subsistence costs but otherwise again costs were in the case. On 28 September 2005 he ordered costs in the case save that he gave Mrs Wright her costs of issuing the application notice. Nonetheless I consider that the bank's conduct in relation to disclosure seen as a whole should be reflected in the order which the court makes as to the costs of the action. I consider that it is appropriate to disallow the bank the costs which the bank incurred in relation to disclosure of its documents. Mrs Wright complains that the case took almost 21 months to come to trial from the issue of proceedings. While I agree that it should have taken less, the period is not exceptional. I consider that the disallowance of the bank's costs relating to disclosure is a sufficient order under this head.

II Failure to disclose documents and making an incomplete and inaccurate disclosure statement.

This is sufficiently covered by my order at I.

III. Wasted costs in relation to the Claimant's application to amend the Particulars of Claim.

The costs of the amendment were dealt with by Burton J. He ordered that they should be costs in the case. Mrs Wright complains that she was relying on the LAUTRO rules which were not the relevant rules but that this only emerged during the evidence of Mr Goldberg late in the trial. In my view it is essential that a regulated financial body should make clear which rules were applicable to it : that is something peculiarly within its knowledge. It is lamentable that the bank did not correct Mrs Wright, but let her proceed on an incorrect basis. I have little doubt that this was because the bank's advisers had not enquired into the position. It would be appropriate to disallow the bank's costs in relation to the regulatory claims in so far as they related to claims under rules were it not that that would leave the costs judge with the very difficult task in assessing them. I should deal with this myself and will disallow £5,000 from the Bank's costs on account of it. I appreciate that that is a 'rough and ready' estimate, but it is appropriate to adopt such an approach. Mrs Wright asks for a wasted costs order against the bank's representatives. There would be no point in making such an order: what Mrs Wright wants is to reduce what she has to pay the bank.

IV. The bank's conduct on preparation for the trial.

This is not a matter that was expressly raised in Mrs Wright's submissions of 19 May 2006. Consequently the bank made no submissions in answer. In her submission of 8 June 2006 Mrs Wright stated under this heading "The Defendant is silent in his submissions regarding trial preparation and the Claimant refers the Honourable Judge to her chronology in this regard." The chronology refers to correspondence concerning trial bundles and skeleton arguments. I do not consider that there is anything here that I should reflect in costs.

V. Mediation.

Directions were given for ADR in the order of 28 September 2005. On 21 November Mrs Wright rejected the bank's suggestion of mediation on the ground of cost, but by letter of 28 November 2005 stated she was prepared to attend without prejudice discussions. On 13 December 2005 Mrs Wright suggested dates for a meeting in January. Subsequently 11 January was agreed. Telephone negotiations prior to the meeting were agreed. Mrs Wright booked a room in a hotel in Brighton for the meeting. On 6 January the bank cancelled the meeting and gave further dates. On 12 January the bank proposed 1 February and Mrs Wright rebooked the hotel. She asked for a cheque for half the cost. On 26 January the bank's solicitors wrote that they were taking their client's instructions as to any offer to be made. On 27 January Mrs Wright received the cheque. On 31 January the solicitors told Mr Moray Jones, litigation friend for Mrs Wright, by telephone that they had not entered into telephone discussions because the bank had no proposals to make because it did not see that it was liable in any way, but was prepared to discuss the case to see if there was a risk to the bank, in which case the bank would buy off that risk. On 30 January Mr Moray Jones wrote saying in that case a meeting was pointless and the case must proceed to trial. The solicitors replied the next day by fax repeating that a meeting would be useful to examine the issues to establish what risk, if any, the bank faced. Mrs Wright replied that she was not prepared to attend a meeting on that basis. On 2 February the solicitors asked for the return of the cheque. On 6 February Mrs Wright wrote saying she did not believe the bank was acting fairly or in accordance with the over-riding objective. On 6 February she stated she was willing to meet the bank at her home. On 10 February the solicitors wrote suggesting 28 February, or dates in March (trial 20 March). On 13 February Mrs Wright replied saying the dates were not acceptable and did not accord with the order of 28 September 2005. The matter did not

proceed further. In my view there was nothing unreasonable in the bank taking the position that it would not make any offer but was prepared to meet to discuss the case to see, in effect, whether it should make an offer. I do not think that such a meeting would have been a "mini-trial". Mediation often involves looking at the strengths and weaknesses of the parties' cases and it is in the light of such discussion that settlement may be achieved. Accordingly I consider that the bank's conduct in relation to a negotiated settlement was reasonable. It should not be reflected against the bank in costs. I have borne in mind in particular **Daniels v Commissioner of Police for the Metropolis** [2005] EWCA Civ 1312, paragraphs 26 and 33.

VI. The form of the paragraph 2 of bank's defence : paragraph 3 of my judgment.

This is my own heading. It is a matter referred to in paragraphs 1.1.08 and .09 of Mrs Wright's submissions of 19 May 2006 but not in those of 8 June. Although I have been critical of the bank in this, I do not consider that it is something which ultimately has affected the costs of the action and I should not deprive the bank of any costs on account of it.

4 **Conclusion** : There will be an order in these terms : "*The claimant will pay the defendant the costs of the action to be subject to detailed assessment, if not agreed, save that the defendant shall not have its costs relating to disclosure of its documents and there shall be a further deduction from the defendant's costs of £5,000"*

Patricia Mary Wright appeared in person.
Mr Simon Clegg (instructed by DG Solicitors, Birmingham) for the Defendant.