Case No: JMS 1603426

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 17/02/2017

Before :

MASTER SIMONS

- -

Between :

MR ANDREW REZEK-CLARKE **Claimant**

- and -

MOORFIELDS EYE HOSPITAL NHS FOUNDATION TRUST **Defendant**

- -
- -

Mr Richard Boyle of counsel & Mr John Mistri costs lawyer for the **Claimant**
(instructed by **Elite Law Solicitors)**
Mr Richard Wilcock, Counsel for the **Defendant**
(instructed **by Acumension Limited)**

Hearing date: 10 January 2017

- -

Judgment Approved

Master Simons, Costs Judge :

Background

1. By a Consent Order made by the Northampton County Court on the 28 July 2015, judgment was entered for the Claimant in the sum of £3,250 and the Defendant was ordered to pay the Claimant's costs of the claim on a standard basis.

2. The claim was brought as a result of the Defendant's failure to refer the Claimant for imaging as it was alleged that had the Defendant done so, a pituitary tumour would have been found nine months earlier than was the case. The Claimant first instructed his solicitors, Thompsons, on the 31 July 2013 and letters of claim were sent to this Defendant, as well as two other proposed Defendants, on 20 June 2014. In a letter of response dated 14 November 2014, the Defendant's insurer admitted breach of duty, but denied causation. Proceedings had been issued against this Defendant and two other Defendants on 1st October 2014, but the claims against the other Defendants were not pursued.

3. The Claimant's solicitor made a Part 36 offer to the Defendants to accept the sum of £5,500 in settlement of the claim on 9 January 2015. This offer was rejected. On 14

January 2015 the Claimant served proceedings on the Defendant. On 28 May 2015 the Defendant made a Part 36 offer of £1,500. Following further offers and telephone discussions, a settlement figure of £3,250 was proposed by the Claimant's solicitor and was accepted by the Defendants on 8 July 2015.

4. On 29 October 2015 the Claimant's solicitors served their Bill of Costs in the sum of £72,320.85. Points of Dispute and Replies to Points of Dispute were served between the parties and this was followed by a request for provisional assessment.

5. On 21 July 2016 I carried out a provisional assessment and assessed the bill in the sum of £24,604.40.

6. On 24 August 2016 the Claimant requested an oral hearing in accordance with CPR 47.15(7) in respect of the following decisions:

   i) My finding that the bill was disproportionate;

   ii) My reduction of the After the Event Insurance (AEI) insurance premium from £31,976.49 to £2,120.00;

   iii) My reduction of the expense rates claimed;

   iv) My reduction of Counsel's fees;

   v) My reduction of four of the fees for medical reports totalling £18,036 (including VAT) to £7,500, plus VAT;

   vi) My reduction of some of the attendances on the Claimant;

   vii) My reduction of the document time claimed from 52.5 hours to 33 hours, 24 minutes.

7. The oral hearing took place this morning at which I dealt with points (iii)–(vii). I made no adjustments to my earlier decisions with regards to the expense rate and Counsel's fees. I increased the allowances that I made for the medical disbursements by £370, plus VAT, and I increased by two hours the attendance times on the Claimant. I also increased the document time by four hours.

8. This judgment deals with the issues of proportionality and the ATE premium.

The Evidence

9. Prior to the provisional assessment the Claimant's solicitors had lodged their full file of papers which I had considered when I carried out the provisional assessment. These papers were re-lodged by the solicitors prior to the oral hearing.

10. The Claimant's solicitors also provided me with witness statements from David Brown an ATE underwriting manager employed by DAS Legal Expenses Insurance Company Limited and also a witness statement from Linda Millband, a partner in the firm of the Claimant's solicitors, Thompsons.

11. At the hearing the Claimant was represented by Mr John Mistri, a costs lawyer who addressed me with regards to proportionality and the other items in issue. Mr Richard Boyle of Counsel addressed me with regard to the ATE premium issue having lodged a skeleton argument prior to the hearing.

12. The Defendant was represented by Mr Richard Wilcock of counsel. Mr Wilcock lodged with me a witness statement from Humera Raja, a solicitor from Acumension Limited, which company was conducting the costs litigation on behalf of the Defendants.

13. I have given much consideration to both the written and oral submissions made on behalf of the parties. If I have not specifically referred to a specific submission, it must not be assumed that such submission has not been taken into account in making my decision.

14. All work claimed in the bill was carried out after 1 April 2013.

The Rules

> *"CPR 44.3(2)*
>
> *(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. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and;*
> >
> > *(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the Paying Party.*
>
> *(5) Costs incurred are proportionate if they bear a reasonable relationship to –*
>
> > *(a) the sums in issue in the proceedings;*
> >
> > *(b) the value of any non-monetary relief in issue in the proceedings;*
> >
> > *(c) the complexity of the litigation;*
> >
> > *(d) any additional work generated by the conduct of the paying party; and*
> >
> > *(e) any wider factors involved in the proceedings, such as reputation or pubic importance."*

Proportionality

15. In their Points of Dispute the Defendants state that the costs claimed are disproportionate and that no privately paying client would ever incur this level of expense for a claim worth £3,250. They say that the costs do not bear any relationship to the factors listed in CPR 44.3(5).

16. Mr Wilcock submitted that this was always going to be a low value claim and that the Claimant's solicitors should at the outset have taken steps to deal with the claim in a proportionate manner. Mr Wilcock submitted that the sum allowed at the provisional assessment, £24,604.40 was a proportionate amount of costs bearing in mind that this was a claim for medical negligence and that the Claimant's solicitors were under an obligation to investigate the claim.

17. In their reply to the Points of Dispute, the Claimants state that the costs claimed were reasonable and proportionate. They submitted that that the Defendants' conduct should be taken into account as they disputed the issue of causation and it was therefore necessary to issue proceedings. They conceded that the value of the claim was modest but the Defendant's negligence had led to the Claimant suffering symptoms for nine months longer than necessary and this had caused his visual field to deteriorate. The claim was of considerable importance to the Claimant. This was a clinical negligence claim which was by its nature complex. The matter required a high degree of skill and specialised knowledge in order to prove the allegations of breach of duty and causation and it was necessary to instruct experts with specialist knowledge to prepare reports namely, a consultant ophthalmologist, a consultant neurologist, an endocrinologist as well as a GP. The solicitors further submitted that the costs claimed were reasonable given that the pre-action investigations were necessary to ascertain the appropriate Defendant.

18. In oral submissions Mr Mistri submitted that this was a clinical negligence claim whereby the solicitors were obliged to investigate issues of negligence, causation and to investigate whether or not claims could be made against other Defendants. It was clear that the Claimant had suffered damage as a result of negligence and in making their investigations it was not necessary to have the amount of damages that the Claimant could recover in mind. This type of litigation is always "front-loaded" and therefore until the evidence had been obtained, the solicitors were not in a position to advise their client as to prospects of success and the value of the claim. The costs incurred were necessary in order to reach this stage.

19. In *Jefferson v National Freight Carriers Plc* [2001] EWCA Civ 2082, the Court of Appeal quoted with approval the judgment of H H Judge Alton in the Birmingham County Court on 22 June 2000 in an unnamed case:

> *"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 will be necessary and appropriate to spend on the various stages in bringing the action to trial, and the likely overall cost. While it is not unusual for costs to exceed the*

> *amount in issue, it is, in the context of modern 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."*

20. That statement by Judge Alton, although made some years ago, is even more relevant today as the rules regarding proportionality are now much more onerous.

21. I looked through the solicitor's file, both at the provisional assessment and prior to the hearing today, and I could see no evidence of any planning in the manner described by H H Judge Alton. The claim was always going to be low value and indeed there is an entry in the documents schedule annexed to the bill dated 31 July 2013 "Conducting a preliminary valuation in the light of the information obtained to date".

22. Mr Mistri was unable to produce any evidence of any planning or any consideration of the costs to be incurred in conducting this low value claim. The manner in which the case was conducted did not vary throughout the duration of the claim. An attendance noted showed that on 7 July 2014 there was a further consideration of the value of the claim which put the general damages at £2,000 to £5,000. On 15 December 2014 there was another review whereby one of the fee earners indicated that the figure they had previously considered for quantum was over-optimistic.

23. Notwithstanding the solicitors' knowledge of the low value of the claim, they proceeded to instruct expensive medical experts to prepare reports the costs of which totalled almost £20,000. The costs of some of those reports were reduced by me on the grounds that their cost was disproportionate. Furthermore, I remained to be convinced as to whether or not some of the reports were indeed necessary as significant fees were being claimed by the medical experts for preparing addendum reports and for amending their reports.

24. As Mr Mistri correctly stated, it is necessary for costs to be incurred to enable an investigation to be carried out to ascertain whether the client was able to sustain a claim for damages. However, to be recoverable from the paying party the costs must be proportionate whether or not they were reasonably or necessarily incurred.

25. Costs of £72,320.85 for a low value medical negligence claim are disproportionate. They do not bear any reasonable relationship to the sums in issue in the proceedings. The litigation was not particularly complex, no additional work was generated by the conduct of the Paying Party and there were no wider factors involved in the proceedings such as reputation or public importance.

26. In the points of dispute the Claimants submit that when looking at the question of proportionality I should look separately at profit costs and additional liabilities. That may well have been the case prior to the 1 April 2013 but in my judgment the position is now different. Costs must include those costs that are claimed in the Bill of Costs that are presented to the Court. CPR 44.3(2) does not make any distinction between profit costs, disbursements or additional liabilities. In my judgment this means that any item contained in a Bill of Costs may be disallowed or reduced on the ground that it is disproportionate even if it was reasonably or necessarily incurred.

ATE Premium

27. Item 47 in the bill was a legal expense insurance premium of £31,976.49 consisting of the premium of £30,166.50, plus IPT of £1,809.99.

28. Point 4 of the Points of Dispute (running to five pages and being contrary to Practice Direction 8.2 – CPR 47.9) challenged the insurance premium on a number of grounds. It stated that the premium did not comply with the requirements of s58C(2) of the Courts and Legal Services Act 1990 nor did it comply with the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No. 2) Regulations 2013. Furthermore, whilst the Defendant did not dispute that ATE insurance for the costs of reports relating to liability and/or causation was reasonable and necessary, they submitted that the amount of the premium was disproportionate. They submitted that in view of this low value claim the Claimant's solicitors should have explored alternative insurance providers.

29. The Defendants submitted that it appeared that the premium had been calculated on the basis of 200% of the cost of the medical reports. This was not reasonable or proportionate.

30. The Defendant exhibited to their Points of Dispute, copies of premiums charged in other cases where the premiums were between £595 and £3,500 plus IPT and the policies had provided an indemnity of £100,000. The Defendants acknowledged that these policies were issued prior to the introduction of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ("LASPO") which restricted the recovery of insurance premiums. However, post-LASPO the only risk related to the paying of experts' reports relating to liability or causation as opposed to pre-LASPO when the risk covered the whole of the proceedings. This meant that as the risk was now lower, post-LASPO premiums should be the same or lower that pre-LASPO premiums and certainly not higher.

31. The Defendant maintained that the premium should be disallowed on the grounds that it was disproportionate or alternatively should be restricted to no more than £500.

32. The Reply to this issue was even longer and more prolix than the Points of Dispute. In summary the Claimant stated that the policy complied with the statutory requirements. It was reasonable and necessary to take out the insurance policy and they referred to the Supreme Court's comments in *Coventry v Lawrence* (No. 3) [2015] UKSC 50 at para. 40, with the following comments made with reference to paragraphs 105 and 106 of *Rogers v Merthyr Tydfil County Borough Council* [2006] EWCA Civ 1134:

> *"In other words, the Court did not ask whether the premium was proportionate to the importance of the case and what was at stake. Instead it adopted the Lowndes approach. If the premium was necessarily incurred, it was proportionate. And it was proportionate even though it was disproportionately high when compared with the amount of damages reasonably claimed. ATE insurance was integral to the fundamental objective to improving access to justice in civil litigation. A*

> *premium that was reasonable in amount (having regard to the litigation risk) was necessary and, therefore proportionate."*

33. The Claimant also submitted that additional liabilities such as the insurance premium should be looked at separately from base costs when dealing with proportionality.

34. The Claimant rejected the Defendants' evidence which challenged the premium and submitted that the burden was on the Paying Party to advance material in support of the contention that the premium was unreasonable. No expert evidence had been produced. The examples that had been produced were not expert evidence.

35. At provisional assessment I endorsed the following on the Points of Dispute:

> *"The premium is clearly disproportionate. Based on my own experience, I will allow £2,120 inclusive of IPT."*

36. Mr Brown's first witness statement dated 1 August 2016 explains how the premium is calculated under this particular policy. He confirms that the recoverable element of the insurance policy is that part of the premium which relates to the risk of incurring liability to pay for an expert report or reports relating to liability or causation in respect of clinical negligence in connection with the proceedings. The premiums, he states, are calculated on his company's (DAS Legal Expenses Insurance Company Limited) underwriting book, not the specific prospects of each case. The specific facts of the case are not taken into account as the premium is based on insurance risk. It is not calculated based on the Claimant's ability to afford the premium. It is based on the costs risk faced by the insurer.

37. Mr Brown also states that the premium is based on the assessment of a basket of cases. It would be impossible to individually rate a premium specific to the facts of a single case. The basket is necessary in order to spread the risk which allows the insurer to keep the premiums at a level which represents a fair reflection of the risk to them whilst keeping them at a reasonable level for the Paying Party.

38. The particular policy in this case is based on a two stage model. Stage A applies from the policy start date to the issue of proceedings and Stage B applies from the date of issuing proceedings. The premium is made up of both a recoverable and non-recoverable element so as to be compliant with the Recovery of Costs Insurance Premiums in Clinical Negligence Proceedings (No. 2) Regulations 2013. The premium is deferred and is self-insuring. DAS calculates the premium on the actual spend in respect of liability and/or causation reports. The recoverable element of Stage A premium for clinical negligence cases is rated at 200% of the estimated costs of liability plus IPT at the prevailing rate. The use of a 200% rating comes from the company's historical experience that there is a failure rate of 75%.

39. When the proceedings are issued, Stage B of the premium becomes payable and it this is payable in addition to the Stage A premium. The same rating methodology is employed to calculate Stage B and the applicable rating is 25% of any additional experts' reports obtained in respect of liability and/or causation. The insurance risk at Stage B is significantly reduced with a failure rate of 20%.

40. Mr Brown's second witness statement dated 23 December 2016 comments upon the witness statement of Mrs Raja disclosed by the Defendants. Mr Brown does not accept that it is appropriate for any comparison to be undertaken in relation to the comparative premiums produced by the Defendants. Mr Brown goes into some detail as to why the comparisons are inappropriate and further states that no evidence has been produced to show that the companies that have issued these alternative policies would have been available for this particular Claimant.

41. The witness statement of Linda Millband, a partner in Thompsons sets out in detail as to why her firm uses this particular ATE policy for their clients. She states that she has considered insurance policies offered by other insurers, but has come to the conclusion that this particular policy was considered the best available. One of its advantages is that the premium is deferred and that the premium is staged which means that the premium would be cheaper for claimants in the majority of cases that will settle prior to the issue of proceedings. Furthermore, the fact that premiums are staged provide an incentive for defendants to settle cases earlier in the knowledge that this avoids increased stages of the premium becoming payable. In addition, full delegated authority is given to the solicitors which makes the issuing of the policy quicker and administratively effective.

42. Ms Millband states that in each case the client is informed that Thompsons are not insurance brokers and that the client is free to choose any other ATE insurance provider if they preferred. Furthermore, Thompsons has no financial interest in the policy providers.

The Parties' Submissions

43. Mr Boyle's first submission was that the premium claimed at £31,976.49 in the bill had been incorrectly calculated and that the correct amount of premium was £22,255.23. This figure was calculated by adding up the costs of all the pre-issue reports relating to breach/liability/causation, multiplying that total by 200% (in accordance with Mr Brown's first witness statement), then adding IPT at 6% making a total Stage A premium of £21,013.44.

44. Stage B was calculated in a similar way save that the multiplier was 25% making a total Stage B premium of £1,242.79. Adding Stages A and B produced a total of £22,255.23.

45. Mr Boyle could provide no explanation as to why the certified Bill of Costs contained such a substantial error.

46. Mr Boyle submitted that the policy did comply with the regulations and indeed this appears to have now been conceded by the Defendant.

47. With regard to the issue of proportionality the Points of Dispute accepted that a policy was reasonable and necessary and consequently in accordance with *Rogers* the costs should be regarded as proportionate.

48. The policy in this case was block-rated which meant that the method of calculating the premium did not relate to the facts of the individual case but instead to the basket of risks that the ATE insurer holds for cases across its book. This method of

calculating ATE premiums had been approved by the Court of Appeal in *Rogers*. Furthermore, the Court of Appeal in *Rogers* cautioned judges against making broad brush reductions to ATE premiums which are assessed on a block-rated basis.

49. Mr Boyle referred to CPR 44.3(5) and submitted that when considering proportionality one had to look at factors other than the value of the claim. One of the factors was the complexity of the litigation. This was complex litigation as it related to medical negligence that required the evidence of five medical experts. Furthermore, it was necessary to look at wider factors such as the necessary cost of insuring which was an important element of providing access to justice.

50. Mr Boyle submitted that the Court should not interfere with a block-rated ATE premium without the assistance of expert evidence. The documentation provided by the defendant could not amount to expert evidence.

51. Mr Boyle also submitted that the documentation supplied by the Defendant contained a number of premiums that were for policies issued pre-LASPO. The post-LASPO policies produced are entirely different. Some policies do not include any non-recoverable elements and some do not provide an indemnity to the Claimant for the value of the premium if the case is lost. He set out in his skeleton argument a number of reasons why no consideration should be given to the comparisons provided by the Defendant.

52. Mr Boyle referred to the witness statement of Ms Millband and said that the solicitors had considered the ATE market and considered that the ATE policy used in this case was appropriate. The Defendant has produced no evidence to suggest that alternative policies would have been available to this Claimant and at what cost.

53. Mr Wilcock accepted that it was necessary and reasonable for the Claimant to insure. He submitted that when taking into account the amount of the premium, the particular policy was unreasonable and the amount of the premium was disproportionate.

54. He submitted that the post-April 2013 proportionality test allowed the Costs Judge when considering proportionality to use his judicial experience where he considers it appropriate to substitute a lower and proportionate amount. This is consistent with recent decisions.

55. The appropriate test to apply is not whether the amount is reasonable, the test is whether the amount is reasonable and proportionate.

56. Mr Wilcock submitted that in this case the choice of policy was unreasonable. There had been no evidence to indicate whether the solicitors considered that the use of this particular insurance policy was suitable in this particular case. There was no evidence of any thought given by the solicitor as to why they were advising the client to pay such a substantial premium where the case was of limited value. The evidence that had been produced by the Claimant was generic and not specific to this particular case.

57. Mr Wilcock explained that the reason why some of the comparative premiums that had been put forward by the Defendants related to policies that were pre-LASPO. Although those pre-LASPO policies insured much greater risks, nevertheless the

premiums were very similar to those post-LASPO when the risk and the limit of liability to the insurer was substantially reduced.

58. Mr Wilcock rejected the submissions made on behalf of the Claimant that it was necessary for the Defendants to produce expert evidence. He submitted that it was not necessary for expert evidence to be provided to show that the amount of premium was disproportionate. This was so whether or not the premium was £31,976.49 or £22,225.23. In either case the premium was disproportionate to this low value claim.

59. Mr Wilcock referred to CPR 44.3(5). The premium was not proportionate as it did not bear a reasonable relationship to the sums in issue in the proceedings. The Claimant's very best case was that the claim was worth approximately £5,000 so that a premium in excess of the £30,000 bore no relationship whatsoever to that sum.

60. There was no non-monetary relief in issue and the proceedings were not complex. This was a modest medical negligence claim but was not complex. The Defendants' conduct was not a relevant factor as within a short time of their receiving the letter of claim they admitted liability even though they did not admit causation. The Defendant's conduct could not be criticised. There were no other wider factors.

My conclusions on ATE premium

61. A major difficulty that the Claimants have is that they cannot tell me what the insurance premium is. The amount claimed in the bill is £31,976.49 (including IPT) and a certificate has been produced identifying this amount. The Bill of Costs has been certified as being true and accurate.

62. I am now told by Mr Boyle that the amount of the insurance premium is wrong and that the correct premium is £22,225.23. This is a submission made by Mr Boyle. It is made on the basis of his own calculation taking into account the methodology explained in Mr Brown's first witness statement. Although I have two witness statements from Mr Brown and one witness statement from Ms Millband, I have no evidence from them as to what the actual premium is. Furthermore, I have no explanation as to why the Bill was certified as being true and accurate when it clearly was not.

63. In these circumstances I would be justified in disallowing the premium in its entirety as I do not know what it is. Mr Boyle's calculation is a submission and is not evidence.

64. The only evidence that has been submitted is a schedule of insurance which shows a premium of £30,916.50. This premium is disproportionate. In my judgment this case is clearly distinguishable from *Rogers* which was decided pre-LASPO. *Rogers* concluded that if the Court decided that it was necessary to incur a premium then that should be adjudged as a proportionate expense. At that time the definition of proportionality was different to what it was after the 1 April 2013. Since that date regulations specifically state that costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. Consequently in my judgment a different test has to be applied than the test that was being applied in *Rogers*.

65. The witness statements from Mr Brown provide a background to this particular policy and the method of calculation of premium. Ms Millband's evidence deals with the reasons why her firm chose this particular policy for insuring her firm's clients' cases. None of the witness statements deals with this specific case and whilst it is clearly acceptable for insurers to deal with insurance on the basis of a basket of cases, the amount of costs which the paying party has to pay has to be an amount that is reasonable and proportionate to that particular case.

66. Mr Mistri was unable to produce any evidence to indicate that the choice of the insurance policy was anything other than a mechanical exercise carried out by the fee earner. Although it was quite clear from the moment the instructions were taken that this was going to be a low value claim, no consideration appears to have been given as to the proportionate costs of running the case. If the solicitors decided that they needed to utilise the services of five separate medical experts, it should have been obvious to them that if they were going to utilise this particular insurance policy then this would likely mean an expensive premium. No consideration was given by the solicitors as to whether or not this particular policy was appropriate to this particular low value case. Whilst it may well be that this type of policy is appropriate for many of Thompsons' cases it cannot be the case that it is suitable for every case. Thompsons would have been aware that there are many other insurance products on the market that may have been more appropriate to this particular low value case, but no attempt was made by them to investigate this.

67. I also question the methodology of calculation of the premium. This is based on the cost of the medical reports whether or not the costs of those reports are reasonable. Where, as in this case, I have considered that the cost of the medical reports is unreasonable and disproportionate in amount, the Claimant is seeking to recover part of a premium that includes an uplift of 200% of those parts of the fees that are unreasonable. As the premium is deferred, surely the basis of calculation should be on the reasonable amount of the fees for the medical reports, not the actual cost. Furthermore, it is often the case that the fee claimed for a medical report includes the fee charged by a medical agency. I query whether any attempt is made by the solicitors or the insurers when calculating the premium, to distinguish between the actual cost of the report and the fee paid to the medical agency.

68. In the points of dispute the Claimants submit that additional liabilities should be excluded from the test of proportionality. That may well have been the case prior to the 1 April 2013 but in my judgment the position is now different. Costs must include those costs that are claimed in the Bill of Costs that are presented to the Court. CPR 44.3(2) does not make any distinction between profit costs, disbursements or additional liabilities. In my judgment this means that any item contained in a Bill of Costs, including any ATE premium, may be disallowed or reduced on the ground that it is disproportionate even if it was reasonably or necessarily incurred.

69. Costs incurred are proportionate if they bear a reasonable relationship to the sums in issue in the proceedings. This insurance premium claimed bears no reasonable relationship to a claim which at best amounted to £5,000 but settled at £3,250. The Claimants say that I should also look at the complexity of the litigation, the conduct of the Defendant and wider factors. I do not consider that this litigation was complex. In my judgment this was a routine low value medical negligence case. Proceedings were issued not as a result of the complexity of the case but because of the solicitors

concerns about limitation. The case was settled shortly after proceedings were served. The fact that there were a number of medical experts instructed does not make a case complex.

70. I do not accept that as this issue of proportionality relates to an insurance premium it means that this is a wider factor that I have to take into account when dealing with the question of proportionality. One of the reasons that I have given as to why I consider that this premium was disproportionate is that there was a failure on the part of the solicitors to give any consideration as to other options. The facts are case specific. I am not deciding that this type of policy is inappropriate for low value cases. What I am deciding is that in this particular case no thought was given as to whether or not this policy was appropriate. This issue should have been part of the planning described by H. H. Judge Alton to which I referred in paragraph 19 of this Judgment.

71. I reject Mr Boyle's submission that I should not give consideration to the evidence of alternative policies that have been produced by the Defendants. I accept that this evidence does have its limitations but what is clear from the evidence is that there are alternative products available on the market that the Claimant's solicitors could have considered when dealing with this particular low value medical negligence case.

72. Having decided that the amount of the premium is disproportionate I am, as recommended by Lord Jackson, entitled to stand back and decide what a proportionate premium is. At provisional assessment I decided that £2,120, inclusive of IPT, was a reasonable and proportionate premium. I decided upon this figure based upon firstly the comparative premiums that had been submitted by the Defendants and secondly upon the basis of my own judicial knowledge of dealing with detailed assessments in similar cases. This latter basis has not been challenged by the Claimants.

73. Although, as I have indicated above, I am perfectly entitled to disallow the premium, I have decided not to interfere the decision with the decision that I made at the provisional assessment, so the sum of £2,120 inclusive of IPT should be allowed. I make this decision on the basis that, as has been conceded by the Defendants, it was reasonable for the Claimant to have taken out an appropriate ATE policy.

Final Conclusions

74. Having made my decisions that the Bill is disproportionate and the amount of insurance premium is disproportionate, I must now stand back and decide as to whether or not as a result of my decisions that the costs as a whole that have been allowed are still disproportionate. Although I have made some small increases to the amounts allowed at provisional assessment I am satisfied that the sums that have now been allowed are reasonable and proportionate.