

**IN THE HIGH COURT OF JUSTICE  
SENIOR COURTS COSTS OFFICE**

The Royal Courts of Justice  
Strand  
London

**Before SENIOR COSTS JUDGE GORDON-SAKER**

**IN THE MATTER OF**

**CXR (Claimant)**

**-v-**

**DOME HOLDINGS LIMITED (Defendant)**

**MS CAROLINE ALLEN appeared on behalf of the Claimant  
MS MARGARET McDONALD appeared on behalf of the Defendant**

**JUDGMENT  
14<sup>th</sup> AUGUST 2023  
(AS APPROVED)**

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JUDGE GORDON-SAKER:

1. By the supplementary points of dispute, the defendant points out that the claimant has failed to provide a breakdown of the fees in respect of the medical expert and indeed of the (inaudible) in circumstances where the fee notes are those of the medical reporting agency, in this case, Premex, which give no breakdown as between the fees charged by the expert and the fees charged by the agency for arranging the obtaining of the report.

2. There are a number of decisions at County Court level, including latterly the judgment of His Honour Judge Bird, the designated civil judge of Manchester, who concluded that paragraph 5.2 of Practice Direction 47, which requires the receiving party to serve with its bill “copies of the fee notes of ... any expert in respect of fees claimed in the bill” and “written evidence as to any other disbursement which is claimed and which exceeds £500”, required the receiving party to serve fee notes which would show the specific costs charged by the expert and an effective breakdown between those costs and that of the agency.

3. The learned judge referred to the well known decision of His Honour Judge Cooke in *Stringer v Copley* – I say well known, but I think unreported – in 2002 where, having held that there is no principle which precludes the fees of a medical agency being recoverable, provided that those fees did not exceed the reasonable and proportionate cost of the work if it had been done by the solicitors, commented:

“It is important that their invoices or fee notes should distinguish between the medical fee and their own charges, the latter being sufficiently particularised to enable the costs officer to be satisfied that they do not exceed the reasonable and proportionate cost of the solicitors doing the work.”

4. One can understand the logic of that. If one needs to consider whether the agency’s charges do or do not exceed the reasonable and proportionate costs of doing the work, one would need to know how much those charges are.

5. On behalf of the claimant, Ms Allen relies on two other decisions in the County Court, that of His Honour Judge Wood KC in *Beardmore v Lancashire County Council*, a decision in February 2019, when the issue was whether agency fees were recoverable as disbursements under the fixed costs regime which applied to cases which had exited the RTA and the EL/PL pre-action protocols. He concluded that agency fees were recoverable in principle.

6. In *Sephton v Anchor Hanover Group*, a decision of District Judge Jenkinson, the regional costs judge in Liverpool, handed down in April of this year, the judge was faced with an application for non-party disclosure against a medical agency for disclosure of documents relating to invoices which the agency had raised in respect of their fees for an MRI scan carried out in relation to a claimant in personal injury litigation. The court concluded, following the reasoning in *Beardmore*, that, because the fee was recoverable to the extent that it is reasonable and proportionate, the court did not need to know the apportionment between the provider and the agency.

7. So, on the one hand there are decisions which would suggest that a receiving party in a detailed assessment should provide details of the expert’s fees and the agency’s fees separately and there are decisions, on the other hand, which would suggest that, certainly in the case of fixed recoverable costs, it is not necessary to do so; and Ms Allen pins her colours

to the mast of the latter decisions on the basis that the court's task is simply to allow a reasonable and proportionate figure for the whole disbursement: that is, the expert's fee and the agency fee in obtaining the report.

8. To that jurisprudence I would add only one comment before deciding which one I will follow and that is, in relation to the invoices in this case, there is no indication in any of them as to what hourly rate has been charged in respect of obtaining the report or as to the amount of time spent and, it seems to me, that that information is or would be of great assistance to the court in deciding whether the fees are reasonable and proportionate. Absent that information, all the court would have to go on is where (inaudible) the product of the work done, which may be a medical report, it may be a letter or it may be an attendance note where, for example, the expert has attended, or a conference or telephone call.

9. It seems to me, therefore, that there are good reasons why, although not required by the Practice Direction, experts' fee notes should set out the work that was done with sufficient clarity, including the amount of time spent, to enable the court to form a view as to the reasonableness of the fee.

10. That aside, in my view, the comments of the late His Honour Judge Cooke and the reasoning of His Honour Judge Bird are the more compelling. First, the Practice Direction requires the fee notes of the expert and, second, in the absence of a breakdown of the fees of the expert and the agency, it is impossible to do the exercise which His Honour Judge Cooke suggested in *Stringer*: of deciding whether those fees are more or less than the solicitor would have charged for doing the same work.

11. Accordingly, subject to submissions, I would require the claimant to provide a breakdown of the fee notes issued by Premex so as to show the separate fees of the expert and the agency. It is unfortunate that that is arising in the course of, albeit on the first day, a detailed assessment, but there we are. An application could have been made in advance of the hearing.

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This transcript has been approved by the Judge