IN THE COURT OF PROTECTION

Neutral citation no: 2010 EWHC 3748 (COP)

In the matter of S
And in the matter of the Mental Capacity Act 2005

Court of Protection,
Royal Courts of Justice,
Strand,
LONDON, WC2A 2LL.

Monday, 4 October, 2010

BEFORE:

THE HONOURABLE MR. JUSTICE HENDERSON

Between:

D

Applicant

and

(1) R (the Deputy of S)
(2) S

Respondents

MR. ULICK STAUNTON (instructed by Hunters) appeared on behalf of the Applicant.

MR. PAUL MARSHALL(instructed by Judkins Solicitors) appeared on behalf of the First Respondent.

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JUDGMENT
(As Approved)

Monday, 4 October, 2010

1. MR. JUSTICE HENDERSON: I now need to deal with the costs of the application following the judgment which I handed down earlier this morning. I said in the judgment that I found the case a difficult one, and unfortunately the question of costs is not much easier than the case itself.

2. I am faced with rival submissions. First, the Deputy, represented as before by Mr. Paul Marshall, submits that Mrs D should pay all of the costs of the application and should do so on the indemnity basis, that final point not having been foreshadowed in his skeleton argument, but was added in his oral submissions to me this morning. On the other hand, Mrs D submits that I should follow the usual rule and order the costs of both parties to be paid out of the estate of the patient, Mr. S.

3. The amounts involved are, unfortunately but not surprisingly, very substantial. I am told that Mrs D's costs amount to approximately £86,000, although a relatively small portion of those costs may be attributable to a mediation which took place, and therefore not be properly recoverable as costs of the application. The Deputy's costs, I am told, amount to approximately £107,000 to which VAT has to be added, bringing them to something in the region of £120,000. One way or another, the costs of the application before detailed assessment look likely to approach, if not slightly exceed, £200,000.

4. The relevant principles which I have to apply are set out, first of all, in section 55 of the Mental Capacity Act 2005. Subsection (1) of section 55 says that:

> *"Subject to Court of Protection Rules the costs of and incidental to all proceedings in the court are in its discretion."*

So that says, as one might expect, that the court has a general discretion in the matter, but subject to specific provision made in the Court of Protection Rules. The relevant rules in the Court of Protection Rules 2007 are rules 156 to 160.

Rule 156 says that:

> *"Where the proceedings concern P's property and affairs the general rule is that the costs of the proceedings or of that part of the proceedings that concerns P's property and affairs shall be paid by P or charged to his estate."*

I pause to say that this is the general rule that Mr. Staunton, appearing as before on behalf of Mrs D, asks me to apply.

5. Rule 157 then sets out the general rule where the proceedings concerning P's personal welfare. In that case, the general rule is that there shall be no order as to the costs of the proceedings.

6. Rule 158 provides for an apportionment where proceedings concern both property and affairs and personal welfare. I am not concerned in the present case with personal welfare, so I cite those two rules only as part of the relevant background.

7. Rule 159 is important. It is headed "Departing from the general rule" and I shall read it in full:

> *"159 (1). The court may depart from rules 156 to 158 if the circumstances so justify, and in deciding whether departure is justified the court will have regard to all the circumstances, including -*

(a) the conduct of the parties;

(b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and

(c) the role of any public body involved in the proceedings."

I can say at once that there is no involvement of any public body in the present case to which I need to have regard. Paragraph (2) of the rule then continues:

"The conduct of the parties includes-

(a) conduct before, as well as during, the proceedings;

(b) whether it was reasonable for a party to raise, pursue or contest a particular issue;

(c) the manner in which a party has made or responded to an application or a particular issue; and

(d) whether a party who has succeeded in his application or response to an application, in whole or in part, exaggerated any matter contained in his application or response."

8. There is little, if any, existing authority on the approach that the court should adopt in applying rules 156 and 159. Mr. Marshall submits that some assistance can be obtained from old case law, because those cases underpinned the previous practice of the Court of Protection which is reflected in rule 156. I think he also says that the cases are anyway helpful because they exemplify

the kind of circumstances that may justify a departure form the general rule under rule 159.

9. I agree that some assistance can be obtained from the old cases, but caution is needed and the assistance is only limited. I say that because the general rule now has statutory force and it applies unless, in terms of rule 159 (1), the court is satisfied that circumstances justify a departure from it. Those circumstances are not exhaustively listed, as the word "including" shows, so the court has to have regard to all the circumstances of the case in deciding whether they justify a departure from the general rule. However, it is important not to lose sight of the fact that the general rule is the starting point and a good case has to be made out for departing from it. It is not the case that the court has an entirely unfettered discretion. On the contrary, there is a prescribed starting point and a discretion to depart from it in appropriate circumstances.

10. The more important of the two cases to which I was referred by Mr. Marshall is In re Cathcart [1892] 1 Ch 549, which was decided by three Lord Justices sitting as Judges in Lunacy. It was subsequently affirmed by the Court of Appeal: see [1893] 1 Ch 466. In re Cathcart was a case where a husband had presented a petition for an inquiry into the mental condition of his wife, and after a hearing lasting no fewer than seventeen days it was found by a majority of the jury that the wife was at the time of the inquisition of sound mind and capable of managing herself and her affairs. The expenses of the inquiry were very substantial and the question naturally arose of how they were to be borne. The petitioning husband applied to the court to exercise its discretion, then contained in section 109 of the Lunacy Act 1890, by directing that all of the

costs of the proceedings should be paid by his wife. She made a counter application that her costs should be paid by the petitioner. The court held, to quote from the headnote, that upon the evidence that there were sufficient grounds to justify the petitioner in instituting the inquiry, and under the circumstances of the case, the wife should pay her own costs and the petitioner ought to receive two thirds of the amount of his costs of all the proceedings to be taxed on a party and party basis out of the property belonging to the wife.

11. The leading judgment was given by Lindley LJ, who pointed out at an early stage that an inquiry into a person's state of mind is not like ordinary litigation, and that there may be circumstances where it is both justifiable and right to institute and prosecute an inquiry as to a person's capacity, even where the result is to establish the person's sanity. He then quoted section 109 of the 1890 Act, and commented that the matter being thus left to the discretion of the court he did not think it right to attempt to lay down any principles or rules by which the free exercise of the court's discretion should be fettered. However, he went on to make a number of valuable observations and mentioned certain matters which in his judgment it would be essential for the court to take into consideration. The matters listed included: thirdly, the reasons for instituting any proceedings, assuming the person in question to be insane; fourthly, the relation in which the petitioner stands to the alleged lunatic, and the objects and conduct of the petitioner; and fifthly, the respective means of the parties and the amount of the costs. He added that there might be other factors as well, and if there were they too should be taken into account.

12. For present purposes I need do no more than cite the part of his judgment relating to the fourth of those matters, namely, the relation in which the petitioner stands to the alleged lunatic and the conduct of the petitioner. Lord Justice Lindley said this at 560:

> *"The relation in which the Petitioner stands to the alleged lunatic and the Petitioner's objects and conduct are the last matters to which I will refer. It is plain that these matters, although not relevant to the inquiry into the state of mind of the alleged lunatic, are very important in considering the question of costs. An unsuccessful inquiry promoted by a stranger for purposes of his own, perhaps mainly in the hope of getting costs, ought to be regarded very differently from an unsuccessful inquiry promoted, perhaps most reluctantly, by a husband or wife or some kind relative or intimate friend acting bona fide in the interest of the alleged lunatic and for the protection of himself and his property. Between these extremes there is room for many differences of degree; but it would be hopeless for the promoter of an inquiry which resulted in a verdict of sanity to ask the Court to order his costs to be paid by the alleged lunatic, unless the Court came to the conclusion that there were reasonable grounds for the inquiry; that the inquiry was really desirable; that the Petitioner was under the circumstances a proper person to ask for it; and that he acted bona fide in the interest of the alleged lunatic."*

Lindley LJ then referred to two cases which supported those principles and continued:

"If, however, the Court is satisfied on all these points the Court ought, I think, to give the Petitioner his costs, unless there is some reason why he should not have them, or at any rate the whole of them, which is quite conceivable."

13. He then went on to consider the respective means of the parties and the amount of the costs, saying they were matters which in his view could not be disregarded. He said the court ought to endeavour to do what is fair and just in each particular case, and observed that either party may by his conduct render an inquiry much more expensive than it might otherwise have been.

14. The second case to which I was referred was the decision, again of two Lord Justices sitting as Judges in Lunacy, in In re William Frederick Windham (1862) 4 D. F. & J. 53. That case concerned an inquiry about the sanity of a young man with large property on the application of a number of his relations. The inquiry was proceeded with and again the verdict of the jury, by a majority, was that he was of sound mind.

15. The particular point for which Mr. Marshall cited this case was some observations made by Turner LJ about the importance of motive on the part of the person initiating the relevant inquiry. At 66 he drew a distinction between the case of lunatics and the case of infants, and continued:

"In the one case personal interest may influence the proceedings, in the other it rarely does so and in cases of lunacy therefore it becomes more especially necessary to examine the motives with which the proceedings have been instituted in order to ascertain as far as can possibly be done whether they have been instituted with a view as to

the welfare and benefit of the unfortunate individual who may be the subject of the application, or have originated in personal motives or feelings on the part of those by whom they have been commenced. In several cases which have come before us we have refused the application for the inquiry, although the lunacy was clearly proved, upon the ground that it could be attended with no benefit to the lunatic. In some of those cases where it has appeared to us that the application was made from improper motives we have refused it with costs. For my part I do not hesitate to say that those who institute a proceeding of this nature from improper motives ought, in all cases, to be subjected to the payment of all the costs at whatever stage of the proceedings the motives may become apparent, assuming, of course, as I am now doing that there is jurisdiction for that purpose."

16. That, I think, is all I need to say by way of background about the rules which have to be applied and the little assistance that can be gleaned from the authorities.

17. In support of his submission that the costs should come out of the patient's estate, Mr. Staunton relies on the detailed history leading up to the issue of the present application. The details are set out in paragraphs 4 and following of his skeleton argument, and I will do no more than summarise the main stages in the history.

18. In January 2008 the Deputy issued two applications in the Court of Protection, one of them being for an order that a statutory will should be made in favour of herself and her sister, and the other relating to contact between Mrs D and

Mr. S. The application for a statutory will did, of course, presuppose that Mr S lacked capacity to make a will for himself. While those proceedings were on foot the Deputy arranged for Mr. S to be examined by Dr Cook and asked her to express an opinion on the question whether he had capacity. I have referred in my judgment to Dr Cook's examination and the conclusions which she reached. Since she concluded that he did have testamentary capacity, the application for a statutory will was abandoned and instead the Deputy's solicitors prepared a form of will which was produced to Mr. S and which he then executed. Dr Cook duly satisfied herself that he did, indeed, have the necessary capacity to do so.

19. Only some nine months later, however, the Deputy issued the present proceedings in the Chancery Division on her father's behalf, without apparently having taken any steps to obtain further medical evidence, and even though Mr. S has, at all times, made it abundantly clear to everybody that he did not seek to recover the £549,000 odd that he had given to Mrs D.

20. Mr. Staunton submits that the Deputy was under a duty to follow the detailed provisions of the Code of Practice to the Mental Capacity Act, and this morning he has taken me through a number of provisions in that Code which indicate, as a matter of good practice rather than a mandatory requirement, that appropriate steps should be taken to satisfy oneself about a patient's lack of capacity before embarking upon proceedings on that person's behalf. Nevertheless, the proceedings were started, as I have said, in January 2009 and the matter was then pursued in correspondence, when (and again I have been taken through the relevant correspondence). it does appear to me that the

Deputy's solicitors, Judkins, rather missed the point of the objections which were being put to them by Hunters, and instead of focusing on the question whether the Mr S actually had capacity to decide whether the proceedings should be initiated, they looked instead at the underlying merits of the issue of alleged undue influence and possible defences to it. The two questions are, of course, entirely different, because as I pointed out in my judgment, and as is common ground, a person of full capacity may decide for good reasons or bad not to pursue a claim where he does, in fact, have a strong case on the merits.

21. What the Deputy did do was obtain an order from Senior Judge Lush on 27 April 2009 authorising her to take and conduct the Chancery proceedings, but unfortunately, as it seems to me, her solicitors have steadfastly refused to supply copies of that application and the supporting evidence, so it is still entirely unclear whether Senior Judge Lush was, in fact, informed that in April 2008 Mr. S was agreed to have had testamentary capacity, and what if anything he was told about the difference between the position on that date and the position in January 2009. The fact that no response has been received to that request does encourage the suspicion that the Master was not informed about those important matters, and was simply asked to make his decision on the basis of a review of the merits of the proceedings. In any event, it was in the light of the failure to receive any response to that request that Mrs D, through her solicitors, then sought a further opinion from Professor Howard, who had already stated his view that the patient had testamentary capacity the previous year. This then led to Professor Howard's second report, dated 10 June 2009.

22. The matter then came before me in October 2009, and at that point the Deputy's stance was an intransigent one. Her submission was simply that Mrs D's application should be rejected and the Chancery proceedings should be allowed to proceed, because they had good prospects of success. However, after discussion with counsel I acceded to the submission for Mrs D that it would be appropriate to appoint a special visitor to investigate the position, and an order was then agreed between counsel setting out the specific questions on which the special visitor was to give his opinion, and the material which should be provided to him. That material was comprehensive in nature, in contrast to the less than adequate material in some respects which had been provided to Professor Howard before he gave his second report.

23. Pursuant to these directions the special visitor, Dr Barker, then provided his report in early December, a few days before the restored hearing which had been listed before me on 8 December. Dr Barker's report was to the effect that Mr. S lacked capacity, and he raised for the first time the important suggestion that he might well have been suffering, not only from a severely impaired memory, but also from damage to the frontal lobe of his brain.

24. At the hearing in December the stance of the Deputy was again that the application should be dismissed without more ado, because Dr Barker had taken a different view from Professor Howard, and a schedule of costs was produced with a view to seeking a final order at that stage. The difficulty with this approach, however, was that Dr Barker's report had only very recently been produced and Professor Howard had not yet had an opportunity to consider it, or at any rate not in any detail. I was given to understand that he

would wish to put various questions to Dr Barker, and on that basis I made an order providing for questions to be put to Dr Barker, both by Professor Howard and if so advised by the Deputy, and for the matter to be restored before me at the beginning of February 2010. Certainly it was my intention at that point that there would be no further expert evidence, apart from answers to the further questions which I had authorised, and that the matter would be dealt with on the basis of the evidence which had already been obtained and cross-examination as well if necessary.

25. I pause at that point, because it seems to me that down to this date there can be no real criticism of Mrs D's activity in bringing this application before the court, or of the way in which she reacted to the information, or lack of information, supplied to her by the Deputy and the Deputy's solicitors. It is true to say that Mrs D had then, as she still has, a very strong personal interest in the outcome of the application, but that is often the case in matters concerning the property and affairs of a person who is or who is alleged to be lacking capacity. It is also the case that the Deputy herself has a financial interest in the matter, although not such an immediate or substantial one as the interest of Mrs D. The reason for this is that she stands to benefit under the existing will as the legatee of one half of her father's estate. So if £550,000 odd can be recovered for the estate she stands in due course to inherit half that amount, although it must be remembered that some or all of that sum may be needed to pay for care of Mr. S during his lifetime.

26. However, Mrs D's financial interest, while I bear it in mind, does not detract from the basic point that the issue of Mr. S's capacity was one that had to be

determined; and it also seems to me that the Court of Protection was the appropriate place for it to be determined, given the special expertise of that court in dealing with issues of this nature. If Mrs D had not brought the matter before the court, it would, in my view, have been the duty of the Deputy to do so herself, and I think that Judkins may have overlooked this point in the rather intransigent line which they adopted in correspondence.

27. In any event, for the reasons which I have outlined, I see no reason thus far to depart from the general rule laid down in rule 156. I therefore propose to order that the costs down to and including the hearing before me on 8 December 2009 should be paid out of the estate.

28. Thereafter, however, matters seem to me to take on a rather different complexion. I have set out in the judgment some of my criticisms of the procedural, I might almost call it the unilateral, declaration of independence on the part of Mrs D and her instructing solicitors, whereby, without returning to the court, they decided not to put any questions to Dr Barker, which had been what I envisaged when I made my order in December, but instead arranged for two further interviews between Professor Howard and Mr. S to take place, one in January and one in March, which led to the third and the fourth reports by him, and then also to the instruction of Professor Beaumont on behalf of the Deputy. The reason why Professor Beaumont had to be instructed was that Professor Howard's further reports, although not the subject of any prior authorisation, were plainly highly material. They could not simply be ignored, and fairness required that an equivalent opportunity should be afforded to the Deputy to obtain advice from an expert of equivalent

standing to Professor Howard. That in due course was done, but it had the unfortunate result of leading to a proliferation of expert evidence, which was not what I originally envisaged and made the case a good deal more complicated than it need have been.

29. A further problem, or group of problems, is that Professor Howard's own instructions were deficient in a number of respects and he, himself, failed to comply with a number of elementary requirements, making it clear precisely what he had read and what he had been told. These unfortunately cannot be brushed aside as mere technicalities, because they go to the very heart of the issue which I had to decide. Mr. Marshall submits, with considerable force, that in view of those deficiencies Professor Howard was never actually in a position to put to Mr. S the precise issue on which he needed to express an opinion. What is more, Professor Howard was not aware even of something as elementary as the contents of the statements of case until he gave evidence in the witness box. The result, as I said in my judgment, is that his reports give the appearance of being considerably more solidly based than, in fact, they are. This only became apparent at the hearing and in the course of cross-examination.

30. Responsibility for those deficiencies must lie with Mrs D and her advisers, and although I am not concerned at the moment to pinpoint precisely where it must lie, it is certainly not something that can be laid at the door of the Deputy.

31. The result, in my view, is that the ultimate hearing was substantially longer and more complicated than it should have been. I consider that, in deciding to prosecute the matter in this way after the directions that I had given in

December, Mrs D must, to a considerable extent, be regarded as having continued at her own risk. It seems to me that at this stage her own very strong personal interest in the matter begins to assume a preponderence in the overall picture which it did not have earlier on.

32. Nevertheless, it is still right to recognise that the case was on any view a difficult one. I did not make up my own mind about the right answer until I had reviewed all the evidence in the course of writing my judgment. It is equally clear that even as recently as March of this year, when Professor Howard had his last interview and made his fourth report, Mr. S's views about the matter remained as clear and forceful as they had always been. In my view a court hearing was probably always going to be necessary to resolve the matter, bearing in mind Mr S's admitted testamentary capacity in 2008, the eminence of Professor Howard, and the clear nature of the conclusions which he reached. It is true that those conclusions were partly based on the flawed and unsatisfactory nature of some of the material placed before him, but nevertheless his clinical judgment still deserves the greatest respect, and it was only after some hesitation and considerable reflection that I thought it appropriate to disagree with his assessment.

33. At the end of the day, I have a balancing exercise to perform. I think it would be wrong to say that Mrs D should continue to have all of her costs out of the estate since last December. On the contrary, I think she was then substantially proceeding at her own risk; but I bear in mind that the matter did still need resolution, and I think that a contested hearing with cross-examination was

probably unavoidable, although it should have been a shorter and more focused hearing with a good deal less expert evidence involved.

34. In the circumstances, I think the right order is that Mrs D should bear all of her own costs from December 2009 onwards (the cut off date should be after the hearing before me on the 8th) and that she should also pay 75% of the costs of the Deputy for the same period. I do not think it appropriate to order costs on the indemnity basis, despite the criticisms which I have made of Professor Howard's report. I am not satisfied that this case is sufficiently abnormal to justify that further degree of penalty, and the fact that I have departed to a substantial extent from the general rule is in my judgment a sufficient penalty so far as Mrs D is concerned.

35. Accordingly, the order I propose to make is that the general rule should apply down to and including the hearing on 8 December last year. Thereafter Mrs D should bear all of her own costs and should pay 75% of the Deputy's costs on the standard basis.

36. MR. MARSHALL: My Lord, in the circumstances can I ask that you make a further order that there be an interim payment on account of costs. The reason that I ask for that as you will readily understand is that an order for costs existing, immediate order, the fact that assessment for taxation was to by the event is nothing to the point, it is a plain issue of quantification and it is an entitlement, and the position is no different because of what you have ordered under Rule 159, from the position under Part 43, I think it is 43.8.

37. MR. JUSTICE HENDERSON: Well certainly the normal practice is to make an interim order in ordinary litigation and I do not at the moment see why I

should adopt a different approach once I have decided to depart from the general rule here.

38. MR. MARSHALL: Quite, and the consequence of your order I think taking into account the letter that my learned friend already has referred you to, is that taking account of the costs incurred on the part of those instructed for the Deputy up to December leaves for the sake of argument £87,000 being the balance of costs down to today. 75% of that I suppose comes in at £62,0000, slightly under, £61,000. For the sake of argument and to make it simple, I think commonly the view is that something of the like - in the order of 60% is the usual practice of the court, and I would invite you to order that an interim payment on account of costs of £36,000 be made.

39. MR. STAUNTON: My learned friend's solicitors well know of course Mrs D simply does not have the wherewithal to satisfy any costs without having to sell her home. At least two points, is there really any justification in making an order for an interim payment, rather than leaving simply the question of the final amount of costs to be determined on the detailed assessment? In my submission there is no real advantage to be gained by the Deputy in having an order for an interim payment against Mrs D, because the money will not be received for some considerable time, she will have to take steps to sell her home. Therefore the question of discharging that liability can be left to be dealt with after a detailed assessment of the costs being agreed. Because absent that all that is happening is that you are giving rise to an existing current liability which the Deputy could then use no doubt to bring about a position of insolvency and therefore avoid the ability of Mrs D to continue

with the Chancery Division proceedings. That is the real reason why an interim payment is sought. If you are against me on that you have two different points, firstly the amount, you do not have a particularly clear and satisfactory picture before you as to the amount of the Deputy's costs incurred post the 8 December, so that you have to adopt the relatively rough and ready approach that my learned friend invites you to do so. You ought therefore to adopt a more cautious approach to their figures. In my submission you should be looking at something in the region of £25,000. There never is any precise figure.

40. MR. JUSTICE HENDERSON: No, well it is very much a broad brush approach one has to adopt.

41. MR. STAUNTON: Yes. The costs are quite high, £107,000 plus VAT, £120,000 or thereabouts. One does wonder what is going to happen on a detailed assessment. Pulling myself up on my boot straps, look at my solicitor's costs, we are the applicants and we are £83,000, so I think unfortunately there may be a very significant reduction in the total costs of the Deputy. You have to adopt the rough and ready approach as to what proportion of those are before or after the cut off date, then you make your further reduction to allow for all the uncertainties, so you should be thinking of something in the region of £25,000 in my submission.

42. The second way of dealing with what in my submission seems to be a manoeuvre on the part of the Deputy simply to bring about bankruptcy on the part of Mrs D would be the question of the time you allow for payment. Now normally it is fourteen or twenty eight days. The simple fact is that Mrs D

cannot satisfy any such order within that timeframe. As has been explained to my learned friend's solicitors, they know that Mrs D is already fully extended on her mortgage relative to her earnings, she cannot simply remortgage her property, the only way she can discharge this significant liability is to sell it. Now it seems to me you can deal with this in two ways. Either by today giving a much more generous period of time to pay or simply requiring the permission of the court before they can enforce the order for an interim payment. If you are going with the former of those then you are looking at a position where Mrs D has to sell her property and I am no expert in the state of the property market, but I would imagine a period of some six months from today to achieve a sale may not be unreasonable. My Lord, unless I can be of any further assistance.

43. MR. MARSHALL: My Lord, very briefly, the position on the costs, it was canvassed as long ago as December 2009 in relation to the position following Doctor Barker's report, that an application for costs would be made against Mrs D, and I made that clear in terms in the skeleton argument. So this cannot come as a surprise. It is unsatisfactory, to use that rather worn expression, that to date Mrs D has been prosecuting these proceedings it appears instructing Hunters, they having taken precautions to obtain charges over their property to secure their costs, that she now comes before you by Mr. Staunton and says well I am sorry, I cannot meet any order as to costs at all, should an immediate order for payment to be made. That is simply unsatisfactory, and she no doubt must have been advised as to certain possible eventualities in the likelihood of your judgment. I object mildly to my learned friend's suggestion that the reason for making an application is to secure Mrs D's insolvency. I can tell

your Lordship I know nothing about that at the moment as I stand here, I am disadvantaged, I was told my solicitor or somebody from the office would be coming, but they have not come.

44. MR. JUSTICE HENDERSON: Well normally the court does not enquire into the motives, it simply takes the view that an order for costs has been made, it is a question of quantification, and the idea is to order payment pretty much straight away of the minimum which the court takes the view will be recovered.

45. MR. MARSHALL: Exactly, my Lord, and I have told your Lordship, and it is in the correspondence what the amounts involved are, in broad brush terms. There aren't schedules of course, because schedules are not ordinarily provided at this stage. I am told by my solicitors and indeed it is in inter-solicitors' correspondence, that global costs down to today are £107,000. If one takes the slices off that follow from your judgment we are talking in the order of £60,000, unless there is some material accuracy in what has been said, and there is nothing to suggest that, and I have made a suggestion that comes somewhat in the order of just below 50% I think, no sorry, slightly in excess. If your Lordship, my learned friend says £25,000 I would be content if your Lordship was order £30,000.

46. MR. JUSTICE HENDERSON: Well I must say £30,000 is the figure I have in mind, Mr. Marshall.

47. MR. MARSHALL: As to timing of payment of course it is open to Mrs D to make an application should she consider it necessary and appropriate on evidence.

48. MR. JUSTICE HENDERSON: Yes, what I feel inclined to do, my reaction to this is to give her effectively double the usual fourteen days; bearing in mind that the trial of the action is anyway due to start in November, I repeat my oft expressed hope that the matter might be capable of settlement. If I allow twenty eight days that puts the parties under slightly less pressure than fourteen days would.

49. MR. MARSHALL: My Lord, I would not resist that.

MR. JUSTICE HENDERSON: Well in that case then that is what I propose to do. I see no reason not to make an interim order in the usual way. I think the appropriate figure is £30,000, bearing in mind the lack of any detailed schedules or evidence before me, and that it is intended to be a fairly conservative estimate of the minimum amount recoverable. I will direct payment within twenty eight days rather than the usual fourteen days.
