Case No: HT-11-459

Neutral Citation Number: [2012] EWHC 4063 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTON COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Thursday, 22 November 2012

BEFORE:

MR JUSTICE AKENHEAD

BETWEEN:

(1) PHAESTOS LIMITED
(2) MINDIMAXNOX LLP

Claimants

- and -

PETER HO

Defendant

(1) IKOS CIF LIMITED
(2) PHAESTOS LIMITED
(3) MINDIMAXNOX LLP

Claimants

and

TOBIN MAXWELL GOVER

Defendant

MR BAJUL SHAH (instructed by Messrs Herbert Smith Freehills LLP) appeared on behalf of the Claimant

MR SEAN O'SULLIVAN (instructed by Wragge & Co LLP) appeared on behalf of the Defendant

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Approved Judgment

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1. This case has had a very chequered and contentious history. There is no need for me to set out now the substance of the 12 to 15 rulings or judgments I have already issued in this matter, almost all of which were to do with straight case management matters. It looked as if light was on the horizon and the darkness of the litigation was over when, on 9 November of this year, after litigation which in one form or another, had been going for the best part of four years between these parties, was resolved by the acceptance by the claimants of a Part 36 offer made by the defendants.

2. I am not going to summarise the history of the issues between the parties, other than to say that the claimants were related to a hedge fund, known as the IKOS hedge fund, and the two defendants were highly qualified computer experts who, over many years, helped construct and then operate the computer systems which, in these modern days very substantially help to run successful hedge funds. After they were summarily dismissed just before Christmas in 2008, proceedings were commenced and essentially the claimants' very substantial claim against these defendants was that the defendants had acted in breach of their respective contracts in failing to construct, maintain or operate the computer systems in an appropriate and careful way. In addition to that, it was said by the claimants that the defendants had misused a substantial amount of confidential information which they had and, it was said, had retained after the termination of their employment.

3. The defendants denied all those allegations but also counterclaimed for bonuses which were said to be due and not paid and/or alternatively for profit shares which were said to have been agreed. The claims on both sides ran to eight-figure sums. The case was transferred to the TCC late in 2011 and directions were given for trial by Ramsey J initially in December 2011 and a trial date was fixed for January 2013. I became the judge responsible for case managing this case in about February of this year and there were a substantial number of applications whereby each party sought orders against the other. They related to matters such as security for costs, striking out, disclosure, and other important timetabling matters.

4. By 10 August 2012 the claimants were in breach of an "unless" order made in July 2012 relating to disclosure. The defendants sought, pursuant to that "unless" order, to have confirmation from the court that the claim should be struck out and that they should be given judgment on their counterclaim. I fixed a hearing during the long vacation on 16 August 2012 for the parties to attend before me. I did that before there was any question of any breach of the "unless" order because I appreciated that there was a risk, at least, that there would be remaining residual issues between the parties relating to disclosure. Given that the timetable had already fallen behind and that the trial was due, at that stage some five months ahead, I felt that it was important to ensure that following the disclosure exercise, the parties were clear as to where they had to go.

5. On 16 August, having heard argument, particularly from the claimants' leading counsel, Mr Goulding QC, I adjourned the hearing until 24 August so as to give the claimants principally the opportunity to put in evidence and to issue an application for relief from sanctions. So it was that the matter came back before the court even further into the long vacation on 24 August 2012. So far as I recall, the hearing started at about 2.00pm and it was a hard fought, indeed a well fought, hearing. It went on until about 8.30pm at night. I gave judgment there and then but it was appreciated, after an

exceptionally long day, and given that there were, it was thought, bound to be contentious issues about costs, that I should reserve the question of costs. To save time and money, it was resolved and, indeed, I recall agreed, that representations about costs and summary assessment should be made in writing. The order is dated 24 August 2012 but it was stamped by the court on 18 September 2012. It is clear that the court reserved to itself the right and, indeed, the duty to resolve questions of the costs of and occasioned by the hearings of 16 and 24 August 2012 and all questions of summary assessment.

6. Unknown obviously to the court, on 7 September 2012 the defendants made a without prejudice save as to costs Part 36 offer to the claimants. I will come back to the wording of that because it was clarified and amended later. It was dated 7 September 2012. On 14 September 2012 the claimants' solicitors came back with several apparently legitimate queries and they said this:

> "We refer to your without prejudice save as to costs letter of 7 September 2012 which purports to be made pursuant to Part 36.
>
> Given the nature of the offer contained in your letter, we assume that it has been made as a claimants' offer in respect of your clients' Counterclaim, but it is intended to settle all of our clients' claims as well. Please confirm that this is correct or otherwise clarify the offer in accordance with CPR 36.8.
>
> The letter is marked as a Part 36 offer but goes on to state, unequivocally, 'The relevant date for expiry of this offer is therefore Friday 28 September 2012'. You will be well aware of case law to the effect that a Part 36 offer must not contain a time frame for expiry of acceptance: see C v D 2011 EWCA Civ 646, Thewlis v Groupama Insurance Company Limited [2012] EWHC 3 (TCC).
>
> If your clients' offer was intended to comply with Part 36, it should be reissued with this point corrected."

7. A few days later on 18 September 2012, the defendants put forward a clarified Part 36 offer in these terms:

> "We refer to your letter received on 14 September 2012 in relation to our clients' Part 36 offer. We confirm that our clients' Part 36 offer is made as a claimants' Part 36 offer and is intended to settle all claims in the entire consolidated proceedings, including any claims or counterclaims.
>
> Thank you for pointing out the syntactical error. We confirm that the line you have referred to in our letter should read, 'The date of expiry of the relevant period is therefore Friday 28 September 2012.' This error should not alter the substance of our clients' Part 36 offer, but, should your client contend that it does, we now restate the offer, below:

> This is an offer to settle under Part 36 of the CPR with the associated cost consequences. In particular, your clients will be liable for our clients' costs up to the date of a notice of acceptance which must be in writing in accordance with CPR 36.10, if the offer is accepted within 21 days.
>
> Our clients make the following offer for full and final settlement of the entire consolidated proceedings, including any claims or counterclaims which any party may have against the other, on the following terms:
>
> 1. Your clients, are to pay to our clients within 14 days of accepting this offer, the following sums: £4,000,000 in respect of Dr. Peter Ho, inclusive of interest; £4,000,000 in respect of Dr. Sam Gover, inclusive of interest.
> 2. The settlement sums do not include costs, which shall be payable pursuant to Part 36.
> 3. This offer is not severable. It can only be accepted in whole and not in part."

The letter goes on to give technical bank account details as to where payment might be made and it continues:

> "As set out above, this settlement does not include costs and your clients will liable to pay our clients' costs on the standard basis, to be assessed if not agreed, up to the date of service of notice of acceptance if this offer is accepted within the relevant period.
>
> If your clients do not accept this offer and fail to do better than this offer at trial, our clients will rely on CPR 36.14.
>
> In the event that your clients are of the view that this offer is in any way defective or non-compliant with Part 36 of the CPR, please let us know."

8. Now that offer it is accepted by both parties, properly, was a valid Part 36 offer, but it was not accepted within the 21 day period. On 9 November 2012 Messrs Herbert Smith Freehills wrote back to the defendants' solicitors saying this:

> "We refer to your clients' full and final settlement offer pursuant to Part 36 of the CPR dated 18 September 2012, which is intended as a full and final settlement of the entire consolidated proceedings, including any claims or counterclaims (the 'Part 36 Offer').
>
> We are instructed that the Claimants hereby unequivocally accept the Part 36 Offer.
>
> We confirm that a copy of this notice of acceptance will be filed with the court in accordance with CPR 36.9(1) and 36APD3.1."

9. Meanwhile, while all that was going on, the parties' counsel in accordance with the order made following the August hearings had, probably broadly within the agreed timetable, submitted written submissions and response submissions on the question of costs, a substantial element of which was to do with how costs should be summarily assessed. There were also other issues of principle, first as to whether there should be indemnity costs awarded to the defendants and secondly, whether in effect, the claimants should have the costs of and occasioned by the 16 August hearing on the basis of their argument that the 16 August was always going to be an aborted hearing because there was never going to be enough time for them to have prepared sufficiently to deal with the very detailed and serious matters that needed dealing with.

10. This judge was away for much of September but on his return and going into October was heavily engaged in other matters which took up his time. Towards the end of October, and therefore before the Part 36 offer had been accepted, the solicitors for the defendants wrote to my clerk but not copying the solicitors for the claimants, politely inquiring when my ruling on costs was going to arrive. An example of this is from Mr Dickens of Wragge & Co, the defendants' solicitors on 31 October copied to Mr Fisher of Wragge & Co, which said to my clerk:

> "Would it be possible to let me know when his Mr Justice Akenhead expects to be in a position to hand down his written judgment, and his ruling on costs, in relation to the hearings of 17 and 24 August 2012 (Claimants' application for relief from sanctions)?
>
> My notes from the hearing reflect that His Lordship said that it was was unlikely he would be able to consider the parties' submissions on costs until the end of September, but I do not recall him suggesting when we might receive the written judgment.
>
> If you are able to give me an indication of when we are likely to receive His Lordship's decision that would be helpful and much appreciated."

11. My clerk then sought to ascertain that the court had received all the written submissions and further copies were provided. Early in the week commencing 12 November 2012, my clerk and I heard from the administration here that the case had settled so my clerk inquired again as to whether or not a judgment was expected. Mr Dickens wrote again on 14 November (again not copied to Herbert Smith Freehills), that is after the Part 36 offer had been accepted. I should say that this email was also addressing the final approved judgment from the hearings of 16 and 24 August and I had recently finalised corrections of that. The email goes on:

> "I note that the approved judgment does not deal with the issue of parties' costs in respect of the two hearings. I trust that his Lordship has the parties' submissions on costs as we recently submitted these on request, however, if further copies are needed please let me know. Please would you enquire as to when His Lordship will provide his ruling on costs?"

12. So it was that I commenced work towards the end of last week, over the weekend and on Monday 19 November, to produce the judgment, which is not very long but because of the lapse of time it took me five to six hours of work to produce a ruling on the costs issues. Having reviewed all the arguments, I decided that it was appropriate that the defendants should have all their costs but on the standard basis. I rejected the suggestion there should be indemnity costs and I rejected the argument that the defendants should be responsible for the costs said to have been thrown away because of the hearing of 16 August 2012.

13. I dealt with the summary assessment by looking at the defendants' cost bills in some detail and producing an assessment which decided that the claimants should pay the defendants £86,000 on the standard basis within 14 days. I sent that, as is usual, in draft form to counsel and earlier today, or possibly late yesterday, I received corrections. When I received the corrections from the claimants' junior counsel, he kindly provided a number of perfectly sensible suggestions by way of corrections but sought a finding that the judge should not hand down the judgment on costs because the settlement reached between the parties under Part 36 disposed of questions of costs, including the costs of the August hearings, saying in effect there was therefore nothing for the judge to decide. Mr Shah, junior counsel for the claimants, attached some written submissions which were supported by some authorities.

14. So it is that when the light was emerging from over the horizon and indeed the sun had come out on this litigation, it went behind a cloud and I have heard substantial argument today as to whether or not I should hand the judgment relating to costs down. I have heard extensive arguments. I am not going to repeat the argument in great detail but I hope that I will cover all the points that have been made.

15. There is no doubt that there was a Part 36 offer. That is the offer of 18 September 2012. It was an offer which complied with the provisions of CPR Part 36.2. There is no suggestion that it does not in any way do so. But a Part 36 offer must make it clear on its face that it is intended to have the consequences of section 1 of Part 36. CPR 36.2(2)(c) says that:

> "The offer must specify a period of not less than 21 days within which the defendant will be liable for the claimant's costs in accordance with rule 36.10 if the offer is accepted."

16. These references, in the context of this case, must be reversed in the sense that the offer was made here by the defendants to the claimants whereby the claimants were to pay the defendant in full and final settlement of both claim and counterclaim. Undoubtedly the offer letter of 18 September 2012 did that. That offer was accepted. In Gibbon v Manchester City Council [2010] 1 WLR 2081 Moore-Bick LJ, with whom Sir Anthony May, then president of the Queen's Bench Division, and Carnwath LJ agreed, set out at paragraphs 5 to 7, some general and important comments on Part 36:

> "4. It can be seen from Part 36 as a whole, as well as from the extracts cited above, that it contains a carefully structured and highly prescriptive set of rules dealing with formal offers to settle proceedings which have specific consequences in relation to costs in those cases where the offer is not accepted and the offeree fails

to do better after a trial. In cases where there has been no Part 36 offer or a Part 36 offer has been bettered the judge has a broad discretion in dealing with costs within the framework provided by Part 44. Rule 44.3(4) provides that when exercising its discretion as to costs the court will have regard to the general rule that the unsuccessful party should pay the costs of the successful party, but will also have regard to the conduct of the parties and any payment into court or admissible offer to settle made by one or other party which falls outside the terms of Part 36. In seeking to settle the proceedings, therefore, parties are not bound to make use of the mechanism provided by Part 36, but if they wish to take advantage of the particular consequences for costs and other matters that flow from making a Part 36 offer, in relation to which the court's discretion is much more confined, they must follow its requirements.

5. Part 36 is drafted as a self-contained code. It prescribes in some detail the manner in which an offer may be made and the consequences that flow from accepting or failing to accept it. In some respects those consequences reflect broadly the approach the court might be expected to take in relation to costs; in others they do not; for example, rule 36.14(3) allows the court to award a claimant who has obtained a judgment at least as advantageous as his offer interest on the sum for which he has obtained judgment at an enhanced rate of up to 10% over base rate, costs on the indemnity basis and interest on those costs at an enhanced rate as well.

6. Basic concepts of offer and acceptance clearly underpin Part 36, but that is inevitable given that it contains a voluntary procedure under which either party may take the initiative to bring about a consensual resolution of the dispute. Such concepts are part of the landscape in which everyone conducts their daily life. It does not follow, however, that Part 36 should be understood as incorporating all the rules of law governing the formation of contracts, some of which are quite technical in nature. Indeed, it is not desirable that it should do so. Certainty is as much to be commended in procedural as in substantive law, especially, perhaps, in a procedural code which must be understood and followed by ordinary citizens who wish to conduct their own litigation. In my view, Part 36 was drafted with these considerations in mind and is to be read and understood according to its terms without importing other rules derived from the general law, save where that was clearly intended."

17. CPR Part 36.10 deals with the cost consequences of the acceptance of a Part 36 offer. Again, in the context of the current case one needs to read the word defendant for claimant here. Part 36.10 states:

> "(1)Subject to paragraph (2) and paragraph (4)(a), where a Part 36 offer is accepted within the relevant period the claimant will be entitled to the costs of the proceedings up to the date on which notice of acceptance was served on the offeror."
>
> "(3) Costs under paragraphs (1) and (2) of this rule will be assessed on the standard basis if the amount of costs is not agreed."
>
> (4)Where –

(a) a Part 36 offer that was made less than 21 days before the start of trial is accepted; or
(b) a Part 36 offer is accepted after expiry of the relevant period, if the parties do not agree the liability for costs, the court will make an order as to costs."

18. There has been some authority about the circumstances in Part 36.10(4) where a court will make an order as to costs and cases such as Kunaka v Barclays Bank Plc [2010] EWCA Civ 1035 indicate in very broad terms, at least, that the discretion is to be used in at least relatively exceptional circumstances. Kunaka was a case of a litigant in person suing a bank who did make an offer; the Court of Appeal was at least sympathetic to Mr Kunaka's position and did not apply the full rigours of the cost consequences of CPR Part 36 for a delayed acceptance. Lang J in Lumb v Barry Hampsey [2011] EWHC 2808 (QB) refers to the Kunaka case and in paragraph 6 suggests that the test to apply is whether it will be unjust for one party to pay the other party's costs after the expiry of the relevant period.

19. CPR 36.11 deals with the effect of the acceptance of a Part 36 offer:

"(1) If a Part 36 offer is accepted, the claim will be stayed.
(2) In the case of acceptance of a Part 36 offer which relates to the whole claim the stay will be upon the terms of the offer…
(5) Any stay arising under this rule will not affect the power of the court –
(a) to enforce the terms of a Part 36 offer;
(b) to deal with any question of costs (including interest on costs) relating to the proceedings."

I stop there simply to say that certainly, where a standard Part 36 offer is made, costs will be on the standard assessment basis and if the parties ultimately cannot agree on the costs they will be decided by the costs judge. That is the usual practice.

20. It has been argued therefore, that the court really has no jurisdiction save in exceptional circumstances to involve itself in the costs consequences of the acceptance of a Part 36 offer. Generally, it is argued by Mr Shah with some force, that the Part 36 offer means what it says. If it is accepted then it covers all costs (which are capable of assessment) of the party whose offer is being accepted, in this case the defendants, up to the time of the acceptance. Therefore, he says there is no room for the court, whether it has reserved costs issues to itself or not, to get involved. There is no need to get involved because there is a code in CPR Part 36 backed up by the costs rules about how the costs can be assessed.

21. Mr O'Sullivan argues, however, that what we have here is a general rule which does not cover costs which the judge has specifically reserved to himself, not only for decision as to what overall the costs consequences should be but also where the judge has reserved to himself or herself, the summary assessment of those costs. In my judgment there is something in what both parties say. First of all, it must be the overall policy of CPR Part 36 and generally the rules of court to encourage parties to reach a full and final settlement. Although there are many ways of parties seeking to do that, the court provides Part 36, which, if followed by the parties will broadly provide a procedure whereby a case, a claim or a counterclaim can be settled and, if the parties

cannot then agree on costs, the rules lay down the consequences and a procedure whereby the assessment may be made.

22. Therefore Mr Shah is right up to a point that the offer that was made did cover all the costs, in principle, and that would cover the costs which flow from the 16 and 24 August hearings. They had all been incurred before the offer was made and certainly before the offer was accepted and therefore in the ordinary course of events there could be no dispute that the defendant would be entitled to its costs on the standard basis for all those costs. That seems to me to be in line with the principle and the policy of CPR Part 36. It would be unfortunate if CPR Part 36 had to be read in a way that a CPR Part 36 offer was deemed in some way to exclude costs which had otherwise been reserved for decision by a judge, or a master or a registrar.

23. However, the impact of CPR 36.11 is simply but importantly to stay the proceedings so that the proceedings do not otherwise go ahead. Part 36.11(5) says:

> "Any stay arising under this rule will not affect the power of the court --
> (a) to enforce the terms of a Part 36 offer;
> (b) to deal with any question of costs (including interest on costs) relating to the proceedings."

24. Therefore what the court has to bear in mind is, if it is to exercise that power, that it must only do so broadly to enforce the terms of a Part 36 offer but also to deal with questions of costs relating to the proceedings. Here, in effect by agreement between the parties, this court reserved to itself, amongst other things, the obligation and right summarily to assess the costs of specific hearings. There were other issues to be dealt with but the summary assessment of costs in this case involves my decision in the judgment not yet formally handed down, that costs should be on a standard basis. That order was entirely consistent, unbeknownst to me, with the acceptance of the Part 36 offer whereby the defendants are to be entitled to all their costs on a standard basis.

25. Deciding that, coincidentally, involves at least with hindsight enforcing the terms of the accepted Part 36 offer. If, however, I was to decide, for instance, that the defendants should have their costs on the indemnity basis, I would not then be enforcing the terms of the Part 36 offer because that would involve payment only of standard costs. So any judgment I gave about indemnity costs could not have been enforced because that would contradict the accepted terms of the Part 36 offer. Similarly, if I was to decide that the defendants should not have all their costs but, for instance, should pay the claimants' costs of the 16 August hearing, again, that would not have been enforceable in the light of the acceptance of the Part 36 offer. Both parties must be taken to have known, when they made and accepted the offer respectively, what the costs consequences were, namely that the claimants would pay, on a standard assessment basis, all the defendants' costs of the action, the claim and counterclaim, up to that point. Both parties rightly accept, however, that is subject to orders of the court previously made about costs orders and payment of costs which were, in this case, on an indemnity basis. But that was history.

26. The court does retain the right in the light of the overriding objective, at least, and in particular also of the wording of CPR 36.11(5) to deal with any question of costs where

it is simpler, cheaper and more expedient for the court to deal with it and it seems to me that, as the judge who was closely case managing this case from February through to now in November 2012, I am (unfortunately but particularly) well-placed to carry out a summary assessment. That is fair so far as the parties are concerned because, if time had permitted, I would always have liked to produce this judgment some weeks ago and co-incidentally that would then have been before the Part 36 offer was accepted. There is no unfairness particularly to the claimants in that order for the summary assessment standing. I have the advantage which the costs judge will not have of having been intimately involved with the detail, the heaviness and the urgency of the hearings in August and to have a very good feel, I hope, for what might legitimately be counted as the reasonable costs of the defendants in the case.

27. There is in the overall context of the rules, no unfairness. Indeed, it is fair and sensible that I deal with it. It is within CPR Part 36.11(5). It is not inconsistent with the Part 36 offer and its acceptance and therefore I propose not to hand the judgment down that I was going to hand down which deals with the liability for the costs, but I will now incorporate below what were paragraphs 18 and 19 of that draft judgment and so there will be an order that by way of summary assessment the claimants should pay the defendants £86,000 within 14 days.

28. I now turn to the summary assessment. The defendant's costs were £57,963.84 for the period up to and including the hearing of 16 August and £49,787.04 costs up to and including the hearing on 24 August, these sums including VAT at 20%. There has been no specific challenge by the claimants in their costs submissions about the amount of time logged in the summary costs bills, the allocation to particular fee earners or the amount of Counsel's fees. What has been said is that 70% would usually reflect what a standard assessment by any costs judge would produce; indeed in other costs arguments, there has been some acceptance of such a broad brush approach. The claimants argue that there should be a reduction for the fact that the defendants lost on four of the eight alleged non-compliances but that argument is unsound in circumstances in which, as here, the defendants acted reasonably or not unreasonably in raising all eight of them; indeed, two or three of the four complaints were answered in effect by the witness statements put in by the claimants to the effect that there were no further documents and the defendants readily accepted in argument that they could not go behind that.

29. The parties have in effect left the Court to make a summary assessment. Having looked at the two bills, I summarily assess the costs payable by the claimants to the defendants at 80% of the total, rounded down to £86,000. Broadly my reasons are that the hours claimed seem to me to be broadly reasonable except the total amount of hours for work done on documents and other work not covered by the other heads of solicitors work (some 92 hours) would be reduced in all probability on a standard assessment by about 20-25 hours; some of the Grade A allocations of work would for standard assessment purposes be downgraded to Grade B levels of fees. The need for five and three solicitors to attend the first and second hearings respectively would not be justified on a standard basis as reasonable; two would be allowable. I am confident that for reasons such as these a reduction of 20% is justified.

30. I would just like to add this. Reference has been made, quite rightly by Mr Shah to the case of Gurney Consulting Engineers v Gleeds Health Limited and another [2006]

EWHC 536 TCC, decision of HHJ Peter Coulson QC, as he then was, about the impact of late information to the judge dealing with a particular judgment, relating to a settlement. I do not intend to take the matter any further as a matter of conduct but I do think that it is very important that parties, when they have settled cases, do promptly inform the judge, particularly where the judge has reserved to himself or herself a judgment. It may be a judgment relating only to costs. It may be relating to a more substantive matter. But the reason for this is as explained by Nourse LJ in HFC Bank Plc v HSBC Bank Plc (referred to in the Gurney case) when he said this:

> "The parties and their legal advisors have apologised to the court through counsel. Their apologies having been accepted we propose to take no further action in this case beyond stating, with the concurrence of the Master of the Rolls, that, in a case where judgment has been reserved it is the duty of the parties and their professional advisers to inform the court immediately they become aware of any developments which may make it unnecessary for judgment to be delivered. The foundation of that duty is not the personal inconvenience caused for members of the court, acute though that may be. It is the requirement that should be obvious to all that the court's resources should be properly and efficiently deployed. These observations apply just as much to cases where judgment is reserved at first instances as to cases in which judgment is reserved in this court."

Coulson J said at paragraph 18 of his judgment:

> "Many, perhaps most cases are better settled than fought all the way through to a final judgment. That principle holds good even after the conclusion of the trial itself, and if a late settlement means that the judge has done a good deal of work which thereby goes to waste, then that is simply an inevitable consequence of the process: judges just have to learn to live with that risk. There are, however, rules which govern the parties' conduct in such cases, which are designed to prevent, as far as possible, the waste of judicial resources and just as importantly, to avoid detriment to other court users. In the present case, the parties did not comply with the rules".

31. I do think that it was very important, given that both parties' solicitors and indeed counsel have informal links with the court and in particular with the clerk to the particular judge, that they informed the judge, not only directly of the settlement but if there was going to be an argument about whether the settlement covered the question of costs or not, it was important that this issue did not only emerge as an issue on the day of the hand down of the judgment in question. Certainly, I have no reason to think that I would have reached any different conclusion than I have done in effect deciding that I can summarily assess these costs but certainly a substantial amount of the court's time reviewing the rights and wrongs of the arguments about what overall costs should be allowed as opposed to the summary assessment would have been saved. A lot of judicial time could have been saved. Therefore I do very much hope that, in future, solicitors and counsel will, even if there is doubt or dispute as to the scope of the

settlement, inform the court. The court does not have to be informed of the details of the settlement or the possible settlement but at least given sufficient information to work out whether it is appropriate to continue work on a judgment. I will call for a transcript and I would propose to therefore publish this judgment which I have given because I hope it is of interest generally in connection with Part 36 but also on the latter issue.