NCN: [2026] EWHC 2404 (SCCO)
Case No: SC-2025-BTP-000325
SC-2025-APP-000280

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 18/09/2026

Before:

SENIOR COSTS JUDGE ROWLEY

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Between:

JXX (a Protected Party by his Litigation Friend ABB)	**Claimant**
- and -	
Mr Scott Archibald	**Defendant**
-and-	
Medical and Professional Services Limited	**Third Party**

And Between:

HLA (a Protected Party by her mother and Litigation Friend HDA)	**Claimant**
- and -	
(1) LXA	
(2) EUI Limited	**Defendants**
-and-	
Premex Services Limited	**Third Party**

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Benjamin Williams KC (instructed by **Thompsons**) for **JXX** (and by **Glaisyers ETL**) for **Medical and Professional Services Limited**
Roger Mallalieu KC (instructed by **Horwich Farrelly**) for the **Defendants in JXX and the Second Defendant in HLA**
Robert Marven KC (instructed by **Slater & Gordon UK Ltd**) for **HLA** and **Premex Services Limited**

Hearing date: **8 June 2026**

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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SENIOR COSTS JUDGE ROWLEY

Senior Costs Judge Rowley:

Introduction

1. Following the handing down of my judgment in this matter on 17 March 2026, a hearing to deal with consequential matters was arranged to take place on 15 April 2026. Shortly beforehand, I agreed that permission to appeal would be given to all parties and any such appeal would be made directly to the Court of Appeal. That left various questions of the costs of the proceedings and which in themselves appeared likely to exceed the time allowed for the intended hearing on 15 April 2026.

2. Consequently, a further date was listed on 8 June 2026, at which I was addressed by Ben Williams KC on behalf of the claimant and the third party in JXX; by Robert Marven KC on behalf of the claimant and third party in HLA and by Roger Mallalieu KC on behalf of the relevant defendants in both proceedings. All three advocates provided their clear and helpful submissions as usual.

3. The costs of the detailed assessment proceedings excluding the Medical Reporting Organisation ("MRO") issue have already been resolved in terms of the incidence of costs at least. There still needs to be a quantification of the claimant's costs in JXX. (An agreement in HLA was reached which included such costs.)

4. Consequently, the costs in dispute arise chronologically from (a) my decision to put the claimant in JXX to an election regarding the provision of information concerning the MRO fees; (b) the joinder of the MROs in both sets of proceedings; (c) an application regarding confidential disclosure and (d) the costs of the MRO issue generally which particularly includes the costs of the preparation for and attendance at the hearing in November 2025.

Should there be any order for costs?

5. On the basis that all parties have appealed my decision, I suggested that one option, and certainly the simplest, would be to reserve the costs until such time as the fate of the appeals was known. The defendants were content with this approach, but the claimants were not. Having listed a hearing to deal with costs issues, Mr Mallalieu understandably did not contend robustly that orders for costs should still be reserved. Given that everyone was present, he accepted that it would be better for me to make a decision, even if it had subsequently to be revised.

The Starting Point

6. At the end of a detailed assessment, the court is guided as to the order for the costs of that assessment by rule 47.20, which states:

> **"47.20**
>
> (1) The receiving party is entitled to the costs of the detailed assessment proceedings except where –
>
> (a) the provisions of any Act, any of these Rules or any relevant practice direction provide otherwise; or

> (b) the court makes some other order in relation to all or part of the costs of the detailed assessment proceedings.
>
> (2) Paragraph (1) does not apply where the receiving party has pro bono representation in the detailed assessment proceedings but that party may apply for an order in respect of that representation under section 194(3) of the 2007 Act.
>
> (3) In deciding whether to make some other order, the court must have regard to all the circumstances, including –
>
> (a) the conduct of all the parties;
>
> (b) the amount, if any, by which the bill of costs has been reduced; and
>
> (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item."

7. There is therefore a presumption that the receiving party will receive the costs of the detailed assessment proceedings. The rationale for that approach is not spelled out in the rules but is generally held to be that a detailed assessment is a matter of quantification of the costs of the successful party in the substantive litigation. If the paying party wishes to examine those costs in detail, then the starting point is that they will pay for the pleasure of doing so.

8. Mr Mallalieu was more forthright in suggesting that rule 47.20 had no place in the consideration of the award of costs in relation to the MRO issues here. His submissions were based squarely on guidance given in cases such as Fox v Foundation Piling Ltd [2011] EWCA Civ 790.

9. It seemed to me that both Mr Williams and Mr Marven accepted that these proceedings were not entirely conventional, and that as such, the presumption in rule 47.20 might have less force in favour of the successful parties. Nevertheless, they relied upon it in their submissions, both oral and written.

10. I am not entirely convinced that the logic of the claimants' position on this point was carried throughout their submissions, particularly on the discrete orders for costs which had been reserved. For some of those applications, the claimants' argument was that the reserved costs should become costs in the case in the usual way – since costs which are reserved during proceedings automatically convert to this order in the absence of any specific reconsideration (see: PD44 para. 4.2). But it seems to me that if the presumption in 47.20 applies, they should be presumed to be the receiving party's costs and not rely upon a further finding as to who the successful party had been (and therefore picked up the costs resulting from costs-in-the-case orders).

11. In any event, there may be little difference between starting with the rule 47.20 presumption and then considering all of the circumstances of the case, including the specific matters set out at 47.20(3), or to follow the provisions of rule 44.2 in determining the successful party and then considering whether some other order ought to be made, having taken into account all the circumstances. To the extent that I need

to make a decision on this point, I prefer the latter approach since the MRO issues application and hearing bore more resemblance to a stand alone application than a detailed assessment hearing in many respects.

Who has been successful?

12. All parties contended that they had been successful in these proceedings. This is so, notwithstanding the fact that they have all appealed my decision and, as was pointed out at various points in submissions, appeals are not usually the course of action of a party who consider themselves to be successful in the proceedings.

13. I am loath to precis my previous decision in case by doing so, I unwittingly provide some form of ammunition to either party as a gloss on the decision itself. Nevertheless, I plainly have to say something about the outcome, in order to deal with this decision, pending the appeal.

14. I rejected the notion of a "Stringer cap" which limited the fees payable to the MRO to the sort of work that would have been done by a solicitor who had otherwise instructed the medical expert directly. This was a central argument of the defendants and, although it was put forward as a case specific issue, I have to say that it did not ever appear to me to be quite that simple. It was said that if the MRO produced the information originally envisaged in Stringer v Copley, a decision of HHJ Cook in the Kingston County Court on 17 May 2002, then the defendants would be quite prepared to pay for such work. That argument appeared to overlook the evidence of the MROs that they did not carry out any time recording equivalent to a solicitors' practice and, as such, they could never provide the evidence requested by the defendants. To that extent, it was not a case specific point but rather led to a seemingly all or nothing binary decision for the court (and which was something the claimants were criticised by the defendants for doing).

15. Furthermore, the work for which the defendants would pay if proved in accordance with Stringer, involved matters which could still be challenged, even if evidenced, on the basis, for example, that it was administrative rather than legal work. Therefore, even if the MRO had jumped through all the hoops in demonstrating the time and effort being put into producing the report, there were still arguments to be met as to whether that work was payable by the defendants in any event. I agree, therefore, with the thrust of the claimants' arguments that the defendants' position was that little or nothing should be payable to the MRO, one way or another.

16. Equally, I rejected the claimants' argument that the fee claimed for the production of the medical evidence was a unitary disbursement which did not need to be broken down into any constituent elements but should simply be considered globally as to whether it was reasonable and proportionate.

17. In my view, that argument was lost when I put the claimant in JXX to an election as to the assessment of the medical disbursements. The claimant could decline to provide any MRO information and in which case the assessment of the disbursement would be as if it was purely the expert's own efforts. Alternatively, evidence from the MRO could be provided as to the extent of the proportion charged by the MRO of the overall fee and how that was determined.

18. Mr Williams described the result of that application – referred to as a disclosure application by the parties – as something of a mixed bag but, in my view, it was a clear success on the part of the defendant (Mr Archibald). If no evidence had been provided regarding the MRO's fees, it would have set a potentially problematic precedent for the MRO. The claimant and / or MRO's decision to provide some evidence was then the first step towards my eventual decision based on evidence provided in relation to those MRO charges. The defendant was, in my view, plainly successful in the thrust of the application it brought and so I award the defendant his costs of that application.

19. At the main hearing in November 2025, Mr Mallalieu, as mentioned above, described the choice for me as a binary one, of either allowing the disbursements in full (subject to reasonableness and proportionality) or to disallow them entirely in the absence of a Stringer breakdown. I came to a different conclusion and so it could be said that neither side was successful. On that basis, an order that there should be no order as to costs might be appropriate.

20. Whilst I acknowledge that this is a possibility, it does not seem to me that it accords with the overall result of my decision. It is not the sort of score draw that might leave the court to conclude that neither side has ultimately been successful.

21. In my judgment, the claimants and MROs have clearly been successful on most of the issues raised between the parties. In addition to the Stringer cap issue, I found for them in relation to administration-type fees and funding costs. The only point on which I did not find in favour of the claimants / MROs was what they described as the 25% cap.

22. As a result, the claimants have walked away with an order in their favour for payment of sums by the defendants which they would not have received but for the pursuit of this litigation. Although they have not succeeded on every issue, they have required the defendants to "write a cheque" in their favour and so fall squarely within the definition of a successful party under CPR 44.2 in accordance with the guidance given in cases such as Fox.

23. Consequently, in relation to the joinder of the MROs and the general costs thereafter, I conclude that the claimants were the successful party. That leads to the question of whether there is a difference between the claimants themselves and the MROs. This was a distinction raised in respect of certain arguments during submissions, for example in respect of the validity of an offer said to have been made in accordance with Part 36 by Medical and Professional Services Limited ("MAPS"). The importance of this issue dissipated during the hearing as it was accepted that the Part 36 consequences under CPR 36.17(4) did not seem to apply to a party who was not actually bringing the claim. Having withdrawn the contention that 36.17(4) did apply, there was no real argument that the offers could not be taken into account as to the award of costs. Accordingly, the distinction between claimants who were individuals and those who were MROs rather waned. For the avoidance of doubt, and for the purposes of these proceedings, I treat the claimants and the MROs both as being successful parties.

Considering all the circumstances

24. Having decided to make an order for costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may decide

to make a different order. In deciding whether to make that decision, the court needs to consider all the circumstances.

Offers

25. The case of JXX was the second time I had dealt with a detailed assessment where the medical disbursements were challenged in a significant way by the insurers of the defendant. In both cases, the MRO was MAPS. In the first case, involving a Mr Poulter, the hearing came to an abrupt end when not only were the MRO fees abandoned, but also all of the underlying experts' fees. Part of the agreement reached by the parties in concluding the assessment, was that the evidence provided in that case regarding the MRO fees could be used in other cases. It was subsequently deployed in JXX as part of the disclosure application to support the argument that the MRO fees in JXX ought to be disclosed.

26. The decision in Poulter to abandon all of the medical fees illustrated the tactical nature of the long running issues about the assessment of MRO fees. I have set out this background because, it seems to me, it is relevant when considering the criticism of the claimants in these cases that the defendants had made no offers to settle the MRO fees – at least once it was apparent that the MROs were to become involved following the order I made on the disclosure application in JXX.

27. The costs of these proceedings are significant and the prospect of the plug being pulled on these cases by the claimants accepting offers, even considerably below the sums contended for, seems to me to have been a real risk in the light of Poulter. Therefore, whilst I fully appreciate the claimants' argument that the defendants have forced the claimants to these hearings by not making any offers in respect of the MRO fees, I do not think that those criticisms have any great weight in the circumstances of this case. Similarly, although MAPS made offers to accept sums in respect of their fees which ultimately were bettered by the amounts I have allowed, I do not think they add greatly to the claimants' arguments on these points. If the offers had been accepted, the long running uncertainty as to MRO fees would simply have continued.

28. In any event, neither the absence of defendants' offers, nor the presence of claimants' offers can possibly provide a circumstance which might make the court decide to make a different order from the costs being awarded to the claimants.

Size of reduction?

29. Mr Marven's skeleton argument put forward the proposition, in relation to HLA at least, that if the aggregate fees claimed for the medical disbursements were compared with the sums ultimately allowed, there was only a reduction of 12%. This was obviously affected by the fact that the experts' fees themselves were unchallenged. Very fairly, Mr Marven also set out the reduction in the MRO fees from those claimed to those allowed and which represented approximately a 40% reduction in the MRO fees.

30. It seems to me that this latter comparison is more appropriate in respect of the issues at stake. In the normal context of a detailed assessment, such a reduction would be a significant factor and is one of the specific elements to be considered as to the possibility of making some other order under rule 47.20. Nevertheless, as Mr Williams submitted, it would usually be the case that such a reduction would not turn a successful

party into an unsuccessful party, but that there might be some reduction from a 100% order in the successful party's favour. This was particularly so, in circumstances where the defendant had not made an offer: see e.g. TRX v Southampton Football Club [2022] EWHC 3392 (KB).

Evidence

31. In some ways, the central issue in these cases has been about the question of evidence. Mr Archibald's original application sought evidence from JXX regarding the MRO fees. By the time of the November hearing, no fewer than 27 witness statements were served on behalf of the claimants in the combined cases and half a dozen of those witnesses gave oral evidence. The defendants were critical of some of the evidence given in terms of its self-serving nature and the defendants in turn were criticised for not providing any evidence whatsoever in these proceedings. On more than one occasion in my judgment I queried the absence of any evidence in respect of certain matters, notwithstanding the number of witness statements filed and witnesses called. Those queries have in turn led to criticisms in the appeal notices of the decision about the extent of the evidence on which conclusions were reached.

32. As I have said above, the decision of the MROs to provide evidence in accordance with the original directions set in train the decision I reached in March 2026. Having decided to provide evidence about the method in which fees are actually calculated and the underlying business decisions that supported that approach, but only at a macro level, rather than on a case-by-case basis, I have pondered whether the limitations on the evidence provided ought to sound in costs. I have concluded that this should not be the case.

33. To the extent that any limitation in the evidence has affected the ultimate decision to their detriment, then that is a matter which the claimants have to bear. (There does not appear to be any suggestion that the claimants have benefitted from any lack of evidence). If there was sufficient evidence to justify the decision, then it seems to be a form of double jeopardy to reduce the award of costs in addition. If there was insufficient evidence to support the decision, then the order for costs will be set aside in any event.

Conclusion regarding the general costs of the proceedings

34. I have set out the circumstances which I consider potentially to be relevant as to whether I should make some other order in respect of the costs of the proceedings. Insofar as they relate to the MRO issues, I have concluded that they do not affect the general rule that costs follow the event and consequently I award the costs to the claimants, including the MROs, without any percentage reduction.

Costs of the Disclosure Application

35. As I have already set out above, I consider Mr Archibald was successful in this application. Having considered subsequent events, it does not seem to me that those events detract from the general rule. In particular, my decision required the separation of the MRO fees from the experts' own fees as contended for by the defendant. The ultimate sums allowed having considered that evidence does not alter the success in the

disclosure application itself and, as such, I award the defendant the costs of that application.

Costs of the Joinder Applications

36. These reserved costs would be converted into costs in the case without any specific order. That would give them to the claimants and the MROs and I consider that to be the correct order in any event. For the avoidance of doubt, I award the costs to the claimants and the MROs.

37. I have to say that I did not entirely understand the defendants' approach to these two applications. It was suggested by Mr Marven that the "concerns" expressed by the defendants to the applications were put forward in the hope that I would consider the applications to be problematic and to refuse those applications. I am not convinced that is the correct analysis but on both occasions it was difficult to discern why the defendants were quite as keen to ensure consideration of CPR Part 19, for example, in circumstances where the defendants plainly wished to bring matters to a head generally, in any event.

Costs of the Confidential Disclosure application

38. All parties' submissions in relation to this application were that the costs involved were insignificant compared with the other elements. As far as the court is concerned, a consent order was provided establishing a confidentiality ring regarding information to be provided by the MROs. It all appeared to be very sensible and was approved without demur. It seems to me that costs in the case would have been the appropriate order if I had been asked at the time. I make that order now. Depending upon any variation in the circumstances, following the appeals, the successful party will receive costs related to this application. (For the avoidance of doubt, that is currently the claimants and the MROs).

Method of assessment

39. All the advocates agreed that a summary assessment of costs, regardless of the incidence of those costs, would be the correct approach. Summary assessment schedules were filed and served shortly before the hearing on the whole of the claimants' side. That, according to Mr Mallalieu, was a surprise to the defendants because the claimants had been suggesting a detailed assessment was appropriate and so the defendants had expected no more than the principle of the costs to be determined. Mr Mallalieu further suggested that giving the parties a period of time in which to see whether they could resolve the quantum of costs based on orders I made in principle would be beneficial.

40. I indicated at the hearing that I was not convinced that a summary assessment was the appropriate way forward. Whilst costs judges are, by their very name, comfortable dealing with the assessment of costs, the summary assessment schedule is not a document designed to deal with providing much information in respect of costs claimed in the hundreds of thousands of pounds. Summary assessments based on relatively brief submissions by parties is necessarily a blunt tool, or a broadbrush. I fully appreciate that such assessments are regularly carried out by High Court Judges in large sums and indeed some court procedures essentially mandate this to occur. I do not

accept, however, that this approach necessarily has to be followed, particularly where a specialist court is seized of the matter.

41. The costs claimed by the two claimants' groups are well into the hundreds of thousands of pounds. As such they are many multiples above the paper assessment limit of £75,000, under CPR 47.15. If litigants in other between the parties' assessments can expect a detailed assessment hearing over £75,000, it is not obvious to me why that should not be the case here, simply because the order giving rise to the costs to be assessed, arises from detailed assessment proceedings. As I have already said, the costs involved here are not really from detailed assessment proceedings in any event.

42. Moreover, there are specific challenges which will need to be considered. One that was aired briefly at the hearing was the fact that, in one case, leading counsel represented both the claimant and the MRO whereas in the other, two leading counsel, one supported by a junior, represented the claimant and MRO. Mr Mallalieu set out clearly that, if his clients were ordered to pay the costs, this was a point that his clients would be taking. It seems to me that seeking to deal with this in a summary fashion, simply exacerbates the bluntness of the required approach.

43. Consequently, in relation to the claimants' costs, I am ordering them to be assessed on the standard basis by way of a detailed assessment if not agreed. I do not believe that I have seen a schedule for Mr Archibald's costs in relation to the original disclosure application and so express no view as to whether I would be more amenable to dealing with those on a summary assessment basis if that were both sides' preference.

44. Since all parties are seeking some variation to the existing substantive decision, there has to be a statistically high prospect of the order of the costs being disturbed to a greater or lesser extent. All relevant parties are commercial organisations and, on the face of it, are able to await the Court of Appeal's decision without any payments on account or quantification of any summary assessment (Mr Archibald). In relation to the JXX costs, there is a significant challenge to the extent of counsel's fees. These various points seem to me to be good reasons not to make any order for a payment on account of costs under CPR 44.2(8). It is a matter for the parties as to whether they wish to have bills of costs drawn up and served until such time as the Court of Appeal has given its judgment.