

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT**  
**HIS HONOUR JUDGE CRYAN**  
**3YU23738**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/11/2018

**Before :**

**LORD JUSTICE LINDBLOM**  
**and**  
**LORD JUSTICE IRWIN**

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**Between :**

**JOSEPH OGIEHOR**  
**- and -**  
**PATRICK BELINFANTIE**

**Appellant**

**Respondent**

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The **Appellant** appeared in person  
**Howard Cohen** (instructed by **Plexus Law**) for the **Respondent**

Hearing date: 10 October 2018  
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**Judgment Approved**

## **Lord Justice Irwin :**

### **Introduction**

1. On 15 March 2016, the Appellant, a litigant in person, disclosed a “without prejudice” offer of settlement made by the Respondent during trial. As a result, the trial was adjourned and HHJ Cryan ordered that, unless the Appellant makes an interim payment in the sum of £10,000 within a 4 month period on account of the Respondent’s costs thrown away, his claim would be struck out. Further case management directions, to follow should the Appellant make the interim payment, were also made in the order.
2. The Order was originally drawn in error to order payment of £11,000. On 2 March 2017, the order was varied by Leggatt J to require payment of £10,000 within 6 months. However, the Order was otherwise maintained.
3. This is a second appeal brought by the appellant against the order to make an interim payment. Permission to appeal was granted by Gloster LJ on 21 December 2017 in respect of grounds which are set out below.

### **The Facts**

4. These proceedings concern a personal injury claim brought by the Appellant, following a road traffic accident on 18 March 2011. Liability was admitted by the Respondent on 15 June 2011. A two-day trial was listed on 14-16 March 2016 on the issue of damages alone.
5. The claim as formulated whilst the Appellant was represented, was for damages in the region of £225,000/235,000, allowing for general damages. By the time of the relevant hearing, the Defendant’s costs already stood at just under £110,000. The Appellant had lost his representation many months before, in mid-2015. There was no realistic prospect of him instructing fresh solicitors. He had reports from two experts supportive of his claim, a consultant neurosurgeon Mr Kirkpatrick, whose latest report is dated 25 February 2014, and a consultant psychiatrist Dr Baggaley, whose latest report is dated 15 June 2015.
6. In the process of investigation, the Respondent obtained video surveillance footage on various dates between 6 January 2013 and 5 November 2014 which, the Respondent alleges, shows that the Appellant exaggerated the injuries he suffered as a result of the accident on 18 March 2011. This evidence was reviewed by the experts instructed by the Respondent and incorporated into its Counter-Schedule of Loss. On the basis of this evidence, the Respondent alleged fraud against the Appellant.
7. By contrast, the video surveillance footage was not reviewed by the experts instructed by the Appellant, he says due to his inability to pay them to do so. The Appellant had been without representation for approximately nine months prior to the trial date. The Appellant was in default of an Order to serve a revised or further witness statement addressing the video surveillance evidence. There was no evidence at all from him addressing the surveillance material.
8. On 24 February 2016, the Respondent made an offer of settlement to the Appellant in the sum of £10,000, by way of a letter marked “WITHOUT PREJUDICE SAVE AS

TO COSTS”. The Appellant did not accept this offer and the trial on quantum went ahead. The letter has necessarily been disclosed to us. It reveals that there was an earlier Part 36 offer, on 24 October 2012, in the sum of £22,500.

9. On the second day of trial, HHJ Cryan began the hearing by notifying the Appellant that he had now seen the video surveillance footage the Respondent sought to rely upon and asking the Appellant how he intended to respond. When addressing the trial judge, the Appellant revealed the contents of the Respondent’s “without prejudice” letter, despite HHJ Cryan’s efforts to warn him that the letter was “without prejudice” and he should not introduce it. The Appellant acknowledged the “without prejudice” heading at the top of the letter yet, perhaps not appreciating its significance, continued to reveal its contents. The background to this is significant.
10. Although there is no precise record of it, it is clear that there was discussion outside court between the Appellant and Mr Cohen for the Defendant/Respondent, before the hearing on 14 March 2016. That included discussion of the video surveillance evidence. It is clear that there was mention of the fact that it would be suggested the Appellant had exaggerated his claim, and that the surveillance evidence would reveal that. It is also clear that it would be put to the Appellant that he had been lying, and there was discussion in some terms of the claim being fraudulent, and that a prison sentence of up to two years for contempt might be in question.
11. We have not been provided with a transcript or audio recording of what transpired on that day. However, the facts were set out by the judge in his judgment of the following day, 15 March 2016:

“4. The dispute between the parties, however, is a very real one because the defendant asserts that the claimant has grossly exaggerated his case and has sought, to a level which amounts to fraud according to the defendant, to mislead the medical experts and to mislead the court, and that position is one which they seek to establish by reference to the video recordings which, until I concluded watching them this morning, I had not seen.

5. The matter, when it came on before me yesterday, dealt with various case management matters and I was requested, amongst other things, by counsel for the defendant to explain the court’s powers in relation to fraudulent claims because I was told that the claimant would not listen to what was being said to him by counsel for the defendant and said he would rather hear it from the court. At that stage, I must emphasise, that I had not seen any of the video evidence and I had not a very commanding view of the case. I was aware of the defendant’s case in the counter-schedule and I explained to the claimant, in the most neutral terms possible, what the law was and how the court might react in relation to a fraudulent claim.

6. I emphasise that I was entirely satisfied that the claimant understood that I was making no judgment whatsoever about his case and, indeed, I was at pains to encourage him to continue to litigate if he had confidence in the integrity of his case. It is no

part of this court's function – and never can be or never will be – to discourage honest litigants from bringing their claims before the court.”

12. On the afternoon of 14 March it was discovered that the Appellant had not paid the court fee for the trial. The judge arranged for the PSU to assist him with a waiver application that day, which would enable the case to proceed.
13. It is the Respondent's case that, before the hearing commenced on 15 March, there was further discussion between counsel and the Appellant, in the course of which and amongst other matters, counsel warned the Appellant not to mention the “without prejudice” letter to the Court. In the course of his remarks to us, the Appellant directly denied that he had been warned about this, either outside the courtroom or inside the courtroom before the judge entered. Unusually, this Court has been supplied with an audio recording of the proceedings on 15 March, which includes a recording of conversation between Counsel and the Appellant in the courtroom before the judge entered. It is sufficient to say that the recording supports the Respondent's assertion on this point.
14. The judge dealt with events after he came into court as follows:

“9. There then followed, however, a most unfortunate event. Because I was entirely unclear what his case was in relation to the surveillance evidence which by then I had watched, I enquired of the claimant about his case. Permission had been given for the claimant to file a statement dealing with the surveillance evidence, if so advised, by the 28<sup>th</sup> August and he had not done so. There was a letter which the court's attention was subsequently drawn to, which spoke of aspects of the claimant's approach to the video surveillance but there was no statement signed under a statement of truth and no comprehensive evidence dealing with the impact of the surveillance evidence or the claimant's response, which was clearly something which would be likely to be material to any trial that was going to go ahead.

10. I asked the claimant what his position was because I had had the opportunity to note that in recent expert medical evidence before the court it was said that the claimant could not lift heavy objects and, indeed, could not drive. Yet in the video evidence which, by then which I had seen, there was clear footage of the claimant lifting relatively heavy objects, certainly much heavier objects than he had indicated he could lift; and, indeed, driving quite a bit.

11. It was subsequently drawn to my attention in relation to the driving that in his recent statement he said he was unable to drive and no longer owned a car. He had stopped driving because it was difficult for him to turn the steering wheel with his right hand and he did not feel sufficiently in control. That was his own statement and yet the video evidence showed him driving

frequently, using both hands on the steering wheel and having obvious control of the vehicle.

12. Before I had said very much on the subject at all however the claimant insisted on referring to a letter. It seemed to me that that letter might be one containing an offer, as in the light of what he was beginning to say it might be a “Without Prejudice” letter. I endeavoured to stop the claimant from pursuing that matter. He was, in effect, unstoppable. He has a loud and dominant presence in court and I was unable to prevent him from telling the court that this was a letter which had offered him £10,000 to settle the case and he went on to complain about the conduct of counsel for the defendant in approaching him in relation to that letter and saying that he was at risk of going to prison for two years.

13. Although, when I managed to intervene at some point, it was denied by the claimant that the letter was a “Without Prejudice” letter, it was in fact a “Without Prejudice” letter. It has therefore caused considerable difficulty.

14. Now I note that the PSU representative who was with the claimant endeavoured to see whether she could help on the subject, but he was not going to be stopped. It is clear that he was behaving wilfully, indeed extremely wilfully, in not being stopped. I am less sure as to whether he was behaving knowingly and wilfully, but he wished to achieve a certain effect and did not heed the court’s indications that he should not proceed until it was too late.”

15. At the time, and in submissions to us, the Appellant emphasised that the reason he mentioned the letter was the allegation of fraud. If he was mounting a fraudulent claim, he asks rhetorically, why would the Respondents offer him more money? Paragraph 4 of his Grounds encapsulates his complaint:

“4. I did not know the meaning of “without prejudice” as a litigant in person, I just knew that I was being threatened by the other side with imprisonment, and needed to defend my good character against these threats. I was therefore put at an extreme disadvantage as a litigant in person, under pressure of threats and bullying. If I had known the meaning of “without prejudice” I would not have mentioned the letter before the Judge. The other side almost certainly were prepared for the worst for me. The hearing had to be aborted through no fault of mine.”

16. Finding that the court would now ‘be faced (unless it took an extremely robust view) with the prospect of having to decide what damages might be fair knowing what offer has been made’, HHJ Cryan concluded that he had been placed in an ‘unworkable position’ and adjourned the trial hearing.

17. The Appellant does not challenge the decision of the judge to withdraw from the case, or suggest that the case should have proceeded. The challenge is to the consequential costs order.
18. In his judgment, the judge considered what had happened, in the context of all that had gone before in this litigation. He heard submissions from the Respondent, emphasising the huge costs bill which had already been built up, and the likelihood that the existing costs could never be met, never mind more costs arising from an adjourned trial. He noted that the Appellant had been unrepresented for some nine months, and noted the difficulty of presenting cases for litigants in person. He noted the difficulty with the Appellant's experts; he also noted that the Respondents were at a disadvantage because they did not know the Appellant's case on the surveillance evidence, although he had elicited some answers in the process of the hearing. The Appellant said his own experts had mis-recorded what he had said to them about his hand.
19. The video showed him lifting sizeable objects when the doctors had recorded him saying he could not. His existing witness statement, and the account recorded by his doctors, was that he could not drive. The video showed him driving on a number of occasions. Here too his doctors had mis-recorded his account. The judge observed that the inclusion of the same assertion in the Appellant's own statement on this issue was "a little more puzzling". The judge then indicated that he would give specific directions which would enable matters to be tried, if the case proceeded: essentially that the Respondent would formulate questions in writing for the Appellant to answer, which would elicit his case on these matters, and in essence take the place of a further witness statement. We note that inevitably these directions, intended to overcome the problems arising from the Appellant being unrepresented, would throw an additional burden on the Respondent's legal representatives and add to costs.
20. The judge then turned to costs. He concluded squarely that the adjournment was the fault of the Appellant. The application was for the Respondent's costs of the day thrown away, and for an "unless" order. In his judgment he said:
  - “37. I can see the force in the defendant's position. I have wondered whether it could fairly be met by an order for costs in the case or whether it could be fairly met by an order for defendant's costs in the case, which would mean that if the defendant succeeded in defending the case, he would recover his costs but not otherwise; but I do not think that either of those orders really reflects the culpability of the claimant in this matter and I cannot see that the defendant ought to be the one to pick up the costs of the wasted trial.
  38. I appreciate that in conducting himself in the way that he did, the claimant might well not have wholly appreciated the very serious consequences of what he was doing, but he conducted himself in a way which was heedless of the court's attempts to prevent him from doing so and he took that risk, and I fear that in taking that risk he has cost himself a great deal of money.
  39. The alternative to that is that it would have cost the defendant a great deal of money and it is not the defendant's fault. So, if

somebody has got to pick up the bill for it and sadly somebody has, it can only be the claimant.”

21. In remarks in court following delivering his judgment as above, the judge expanded on his reasoning, as to the unless order and the order for interim payment. He asked the Appellant if there was any reason against such an order. In a series of remarks over four pages of transcript the Appellant repeated his explanation as to why he had mentioned the “without prejudice” letter. In response to further questions from the judge he did address the question of whether he could satisfy the interim payment. He said he did not have that much money, and he was on Jobseeker’s Allowance. The judge indicated he would set a “long period of time for you to get that money together from family and friends and however you want to do it. Once you have paid that, the trial can continue ...” The Appellant replied that he did not see where he was going to get the money from, but “if I get it I will pay the money”.

### **Grounds of Appeal**

22. In granting permission to appeal, Gloster LJ found the following issues to be arguable:
- i) as a matter of principle and in all the circumstances, HHJ Cryan erred in requiring the appellant to pay the costs of two days trial hearing “thrown away” as a result of his blurting out the fact that he had received an offer of settlement in the sum of £10,000 from the defendant’s solicitors;
  - ii) in making payment of the interim sum a pre-condition to the case continuing, the judge erred in principle.
23. These grounds will be addressed in turn.

### **Costs Thrown Away**

#### *The Rules*

24. Section 51(6) of the Senior Courts Act 1981 gives the court the jurisdiction to make a wasted costs order where it sees fit, by outlining that:

“In any proceedings mentioned in subsection (1), the court may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.”

25. In line with the discretionary nature of the costs regime, wasted costs orders can be made at any stage of a case (CPR rule 44.2). However, in *Ridehalgh v Horsefield* [1994] Ch.205 CA, the Court of Appeal narrowed this discretion as it held that while litigants should not be financially prejudiced by the unjustifiable conduct of litigation by their or their opponent’s lawyers, the court in the exercise of the wasted costs jurisdiction, should be astute to control the threat of a new and costly form of satellite litigation. It set out a three-stage test for when a wasted costs order was contemplated, namely:
- i) Had the legal representative of whom the complaint was made acted improperly, unreasonably or negligently?

- ii) If so, did such conduct cause the applicant to incur unnecessary costs?
  - iii) If so, was it, in all the circumstances, just to order the legal representative to compensate the applicant for the whole or part of the relevant costs?
26. As is clear from its wording, this rule and corresponding test primarily concern the conduct of a legal representative in relation to wasted costs orders. There can be no doubt that, if the conduct in issue in this case, namely the disclosure of without prejudice information to the court, was that of a legal representative, each stage of the test would be met.
27. Under the first stage of the test, it would be improper for a legal representative to disclose “without prejudice” information to the court. A member of the profession would be well aware that the without prejudice rule is:

“founded upon both the public policy of encouraging litigants to settle their differences rather than litigate them to a finish, and the express and implied or implied agreement of the parties themselves that communications in the course of their negotiations should not be admissible in evidence.” (CPR rule 31.3.40)

Disclosure of an offer of settlement would therefore undermine the very purpose of the without prejudice rule and would meet the first stage of the test.

28. The Respondent attended the second day of the trial accompanied by counsel, instructing solicitors and experts. As the trial was adjourned, the cost of attendance by these parties alone amounts to substantial costs unnecessarily incurred. Given these facts, the second stage of the test is also met. Finally, it is clearly just to compensate the Respondent for unnecessary costs incurred through the fault of an opposing legal representative.

### *Litigants in Person*

29. In this case however, the court is dealing with a litigant in person. The question here is whether the three-stage test is met in light of the conduct of this Appellant.
30. In its recent judgment in *Barton (Appellant) v Wright Hassall LLP* (Respondent) [2018] UKSC 12, the Supreme Court provided some guidance on the standard of compliance to be expected by a litigant in person:

“Turning to the reasons for Mr Barton’s failure to serve in accordance with the rules, I start with Mr Barton’s status as a litigant in person. In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower



standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR rule 1.1(1)(f). The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him: *R (Hysaj) v Secretary of State for the Home Department* [2015] 1 WLR 2472, para 44 (Moore-Bick LJ); *Nata Lee Ltd v Abid* [2015] 2 P & CR 3. At best, it may affect the issue “at the margin”, as Briggs LJ observed (para 53) in the latter case, which I take to mean that it may increase the weight to be given to some other, more directly relevant factor. It is fair to say that in applications for relief from sanctions, this is mainly because of what I have called the disciplinary factor, which is less significant in the case of applications to validate defective service of a claim form. There are, however, good reasons for applying the same policy to applications under CPR rule 6.15(2) simply as a matter of basic fairness. The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter’s legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take.” (Lord Sumption, para 18)

31. In *Nata Lee Ltd v Abid* [2015] 2 P & CR 3, Briggs LJ (as he then was) described cases ‘at the margins’ as those ‘in which the fact that a party is a litigant in person has some consequence in the determination of applications for relief from sanctions.’ This court must therefore consider whether this is a case “at the margin” and whether the disadvantage the Appellant suffered by virtue of being a litigant in person is one which he could not have reasonably been expected to overcome.
32. The inadmissibility of “without prejudice” material is a very specific rule of evidence in the Civil Procedure Rules. It is a relatively complex provision of these rules and may not be immediately accessible to a lay person. In *Sang Kook Suh and another v Mace (UK) Ltd* [2016] EWCA Civ 4, this court found that a litigant in person would not have been aware of the without prejudice rule and on the facts of that case ignorance should not be held against them. In considering whether the Appellant, Mrs Suh, had waived her without prejudice privilege to the issues discussed in a meeting with the Respondent’s solicitor, Vos LJ found:

“I do not think there is any evidence to suppose that Mrs Suh even knew what the term "without prejudice" meant, let alone

that she was calculating the use of it to tell lies. Mrs Suh was, on any analysis, an innocent abroad in litigation terms.” (para 28)

33. In this case, however, the Appellant had been warned expressly outside the hearing not to reveal the letter in court. Even as he began to do so, as the judge said, all those present made efforts to stop him: the judge himself, the barrister for the Respondent and the PSU representative. As the judge found, the Appellant ploughed on heedlessly and was “in effect unstoppable”. This may well have sprung from his feelings at the suggestion of fraud. It may well be that he had no full or developed understanding of the law concerning “without prejudice” letters. However, in my judgment he must have known that he was doing something that he should not do. The evidence is clear that many present tried energetically to pre-empt him. In my view therefore, the Appellant’s conduct, even as a litigant in person, was improper and satisfied the first limb of the test in *Ridehalgh v Horsefield*.
34. There can be no issue about the second limb of the test: his action caused considerable unnecessary costs.
35. Turning to the third limb of the test, it appears to me unarguable that the judge was correct to order that the Appellant should bear those costs.
36. The final question to be considered is whether the judge was wrong to make the “unless” order.

### **Interim Sum as a Pre-Condition to Continuing Proceedings**

37. The court’s discretion to make orders subject to conditions is governed by CPR Rule 3.1, the relevant parts of which state:

“(3) When the court makes an order, it may –

- a) make it subject to conditions, including a condition to pay a sum of money into court; and
- b) specify the consequence of failure to comply with the order or condition.

....

(5) The court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a Rule, [or] practice direction ...”

38. The condition must be one which is capable of being complied with and an impecunious party should not be ordered to pay into court a sum of money that they are completely unable to raise. In *MV Yorke Motors v Edwards* 1981 WL 186796 (Unreported), the Court of Appeal was dealing with a case involving the sale of a Rolls Royce motor car. It was alleged to be a fraudulent sale, in that the Defendant had (it was said) no title to sell. The Claimant sought summary judgment on the ground that there was no defence, under the relevant rule then in force, RSC 0.14. The Court of Appeal had upheld a finding that there was one arguable line of defence. The Court then went on to consider the order made below that the Defendant should pay into court £12,000, a very large

sum of money in February 1981, before he should be permitted to continue to defend the action.

39. It is helpful to quote the reasoning of Brandon LJ as follows:

“It seems to me that, in imposing conditions on giving leave to defend under Order 14, a judge must take into account all the circumstances of the case, including the financial situation of the defendant, and that it cannot be right to impose upon a defendant as a condition of leave to defend a condition which, for all practical purposes, makes it impossible for him to do so. I can well understand a judge on the material that he had before him at the time – merely the fact that there was a legal aid certificate and a nil contribution – thinking that a payment of £12,000 was a reasonable condition for him to impose in justice to the plaintiff and without injustice to the defendant. I say that because the mere fact that a defendant has a nil contribution for the purposes of the legal aid scheme does not mean that he has no assets. He may have a home of his own which is worth many thousands of pounds, or even £100,000, and his own home is not taken into account in calculating his means for the purposes of the legal aid scheme. But we have, as I indicated earlier, more information now. We know that he has not got such a home. At any rate, that is his evidence and it is uncontradicted. I think, for the purposes of this appeal, we must accept it and, therefore, we are in position to see that the imposition of a condition to pay £12,000 is a condition impossible of fulfilment by the defendant.

On the other hand, it seems to me that it would not be right in this case to give the defendant unconditional leave to defend. One of his defences is, as I think, quite worthless, and the other is, as the judge thought and as I also think, shadowy. In those circumstances, it seems to me that there ought to be a condition imposed, firstly, to protect the plaintiff to some extent and, secondly, to impose a test of the good faith of the defendant. The fact that the man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives, all of whom can help him in his hour of need. I do not think it necessary to infer that, because the defendant does not at present own any money or have in his hands any money, he is precluded altogether from obtaining some money; although I would accept that he would have great difficulty in obtaining a sum as large as £12,000.”

40. The court went on to reduce the sum to be paid in to £3,000, and extended the time to pay.

41. When the matter came to the House of Lords (*M.V. Yorke Motors v Edwards* [1982] 1 WLR 444) their Lordships upheld the decision of the Court of Appeal, and dismissed the appeal. In his leading speech, Lord Diplock quoted the central passages from the judgment below, and went on to say:

“My Lords, in the Court of Appeal, it was conceded by counsel for Mr. Yorke, and Brandon L.J. in his judgment accepted the concession as correct, that if the sum ordered to be paid as a condition of granting leave to defend is one which the defendant would never be able to pay, then that would be a wrongful exercise of discretion, because it would be tantamount to giving judgment for the plaintiff notwithstanding the court's opinion that there was an issue or question in dispute which ought to be tried. The same concession was repeated in the respondent's written case, which contained the following submissions as to the proper limitations upon its applicability:

“(i) Where a defendant seeks to avoid or limit a financial condition by reason of his own impecuniosity the onus is upon the defendant to put sufficient and proper evidence before the court. He should make full and frank disclosure. (ii) It is not sufficient for a legally aided defendant to rely on there being a legal aid certificate. A legally aided defendant with a nil contribution may be able to pay or raise substantial sums. (iii) A defendant cannot complain because a financial condition is difficult for him to fulfil. He can complain only when a financial condition is imposed which it is impossible for him to fulfil and that impossibility was known or should have been known to the court by reason of the evidence placed before it.”

I see no reason to dissent from those submissions. They summarise conveniently the reasons why the judge and the Court of Appeal made leave to defend conditional upon the provision by Mr. Edwards of security in the sums that they respectively ordered. The only material indicative of Mr. Edwards's financial circumstances that was before Boreham J. was the fact that he had been granted a legal aid certificate with a nil assessment — a circumstance which was not inconsistent with his being the owner of a house of considerable value. It was this consideration, no doubt, that influenced the judge in restricting the security to £12,000 in a case in which, if no question of the means of the defendant had been involved, he would, in my view, have been fully justified in requiring the whole sum of £23,250 claimed to be paid into court or otherwise secured as a condition of granting leave to defend. The additional evidence that was adduced before the Court of Appeal disclosed that Mr. Edwards did not have a house of his own, but was living with his father in his father's house in Swaffham, Norfolk, and was unemployed and in receipt of supplementary benefit. It was the fact that he did not own a house (which had not been known to Boreham J.) that caused the Court of Appeal to reduce the amount of security required from £12,000 to £3,000. There was evidence before the Court of Appeal that Mr. Edwards had been engaged in buying and selling

second-hand motor vehicles, apparently mainly on a cash basis, and as Brandon L.J. pointed out:

“The fact that the man has no capital of his own does not mean that he cannot raise any capital; he may have friends, he may have business associates, he may have relatives, all of whom can help him in his hour of need.”

All that Mr. Edwards himself had sworn was: “I do not have £12,000 nor is there any likelihood of my raising that *or any similar sum*” (my emphasis). I can see no reason why the Court of Appeal should not be entitled to infer that, although it might be difficult, it would not be impossible for Mr. Edwards to find security, if his defence were put forward in good faith; nor do I see any ground on which this House could interfere with the way in which the Court of Appeal exercised the discretion (which had devolved upon it in consequence of the additional evidence which had not been before the judge) by fixing £3,000 as the appropriate amount of security.

I would accordingly dismiss this appeal.”

42. That authority has been relied on in similar contexts over the years since.

### **Conclusions**

43. The increase in the numbers of litigants in person has been notable in recent years, as the availability of legal aid has so markedly declined. This makes the transaction of business in the courts ever more difficult, perhaps particularly in the County Court, where so many litigants act in person, and where there is such a press of business. The judges will always wish to assist litigants in person, as HHJ Cryan sought to do in a number of ways. But it is inevitable that problems will arise, nevertheless.
44. While litigants in person will always attract the assistance of the court, they are not and cannot be a privileged class, relieved of their obligations under the Civil Procedure Rules. Judges will show common sense and often flexibility, but in the end must enforce the Rules, and have a proper eye to the legitimate interests of the other parties to litigation, including as to costs. That is a fundamental obligation, as the overriding objective makes clear: “enabling the court to deal with cases justly and at proportionate cost”; see CPR 1.1(1).
45. In my judgment it was entirely proper here to order the Appellant to make an interim payment of costs, before permitting him to continue to pursue his claim. The judge was fully familiar with all the circumstances. There had been significant previous failures by the Appellant, some of which he could have been expected to remedy, even though unrepresented. Perhaps most important, he really should have given a detailed and timely answer to the surveillance evidence.
46. The judge was right to consider the problems faced by the Appellant on his substantive case. That was precisely what the Court of Appeal and the House of Lords did in *M.V. Yorke Motors v Edwards* (“one of his defences is, as I think, quite worthless, and the

other ... shadowy"). It was also relevant to consider the very large costs already incurred by the defence.

47. Against that background, the judge needed to take into account the Appellant's means, including the possibility that he might raise the money from others. This again was precisely what was approved by the House of Lords in *M.V. Yorke Motors v Edwards*. The judge did so here, and responded by setting the figure at £10,000, less than 10% of the Defendant's costs already accrued, and allowing a long time for the deposit of the money.
48. For those reasons, it appears to me that the order of HHJ Cryan was not wrong, and I would dismiss the appeal.
49. I add one further comment. In my view it would be wise in such circumstances to ensure that the litigant in person is brought to the witness box, sworn and gives evidence as to his means and the possibility of raising the necessary sum, rather than simply rely on assertions from the well of the Court.

**Lord Justice Lindblom:**

50. I agree.