



NCN: [2024] EWHC 1100 (SCCO)

Case No: SC-2022-BTP-000834

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10/05/2024

**Before:**

**COSTS JUDGE ROWLEY**

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**Between:**

**FADILA BENDRISS**

**Claimant**

**- and -**

**NICHOLSON JONES SUTTON SOLICITORS LTD**

**Defendant**

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**Roger Mallalieu KC** (instructed by **A H Christie LLP t/a Checkmylegalfees.com**)  
for the **Claimant**

**Martyn Griffiths** (instructed by **Nicholson Jones Sutton Solicitors Ltd**) for the **Defendant**

Hearing date: 4 April 2024  
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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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**COSTS JUDGE ROWLEY**

## **Costs Judge Rowley:**

### Introduction

1. This is my reserved judgment on the claimant's application for specific disclosure dated 22 March 2024. I heard the application on 4 April 2024 and had the benefit of written and oral representations from Roger Mallalieu KC on behalf of the claimant and Martyn Griffiths on behalf of the defendant.

### The application for specific disclosure

2. There are nine categories of documents sought in the schedule appended to the application notice. Eight of those categories (and to some extent potentially the ninth) relate to an ATE premium claimed by the defendant in the sum of £392 including IPT.
3. The categories are as follows:
  1. Instructions or other communications between the Defendant, including any agents of the Defendant, and Westongate Associates Limited in respect of the Claimant and her policy of insurance with Financial and Legal Insurance Company Limited
  2. Policy recommendations made by Westongate Associates Limited in respect of any policy of insurance for the Claimant
  3. Instructions or other communications between the Defendant, including any agents of the Defendant, and Parker Colby Insurance Brokers Limited t/a Amberis in respect of the Claimant and her policy of insurance with Financial and Legal Insurance Company Limited
  4. Policy recommendations made by Parker Colby Insurance Brokers Limited t/a Amberis in respect of any policy of insurance for the Claimant
  5. Instructions or other communications between the Defendant, including any agents of the Defendant, and Financial and Legal Insurance Company Limited in respect of the Claimant and her policy of insurance
  6. If not covered by 5 the communications with an ATE insurer charged to the Claimant at item 8 in the Defendant's bill
  7. Records by the Defendant in relation to the Claimant's matter under the SRA Financial Services (Conduct of Business) Rules, including any such records, or comparable records including all transactional records under the Accounts Rules or otherwise, whether maintained by the Defendant itself or by Westongate Associates Limited,

Parker Colby Insurance Brokers Limited t/a Amberis, or any other acting as agents for the Defendant

8. Instructions or other communications between the Defendant and the agent engaged by it to explain the contract, as referred to in the Defendant's letter to the client dated 8<sup>th</sup> October 2018
9. Recordings of telephone calls concerning the Claimant's matter generally

The disclosure to date

4. This case originally proceeded in the Sheffield District Registry. On 25 September 2020, DJ Bellamy gave directions including an order for disclosure of the defendant's full file of papers. Therefore, the entitlement of the claimant to have received the documents now requested up to this point depends on whether they were in the solicitors' file of papers. I do not think realistically that any firm of solicitors would keep the sort of accounting and regulatory records sought by the claimant in their file of papers, whether that is electronic or in an old-fashioned cardboard file. Such documents are centralised and so too would be documents where the firm had been advised to alter its ATE arrangements globally as is suggested occurred here.
5. I do not think therefore that the defendant can be criticised for failing to provide any such documentation in compliance with the original order of DJ Bellamy and which I required to be undertaken once more in January. However, as Mr Mallalieu pointed out, an application for specific disclosure was not limited to documents that should be on the notional file of papers. If those documents were relevant, then centralised documentation in the custody and control of the defendant could be ordered to be disclosed by the court.
6. I have made this finding in relation to the original search because of the claimant's criticisms regarding the extent of the search that was made when carrying out the original disclosure exercise. The one query to my mind in relation to the extent of that original search relates to the online portal used in respect of Amberis. In a letter dated 15 February 2024 the defendant's costs lawyers stated the following:

"Communications with Amberis regarding the ATE took place via an online portal. Information added to that portal was sent out, but no copy was generated for the file nor can those communications be viewed historically. There is nothing to disclose there."
7. In order to provide formal evidence on this point, Justine Sutton, a director of the defendant, produced a second witness statement on 27 March 2024. At paragraph 18, she addressed the schedule to the application and stated the following:

"1-6 The Defendant has already confirmed that communications took place via an online portal that does not store messages. There is nothing to disclose, nor are these communications documents that the Defendant had but are no

longer in our control. If information is typed and sent without being stored, it never is a “document”.”

8. The first six paragraphs of the schedule of documents sought by the claimant, relate to communications et cetera with Westongate Assistance Ltd (“WGAL”) and the insurers. The summary in Ms Sutton’s witness statement appears to suggest that communications with all of the insurance entities occurred via an online portal. As Mr Mallalieu submitted, in the costs lawyers’ letter of 15 February 2024, the passage immediately after the one I have set out at paragraph 14 states:

“Westongate did make the recommendation. Communication with them was not via Amberis’ portal because the recommendation was made beforehand. Requests were made on a global basis pursuant to work type so nothing has been generated or retained on any individual file and therefore there is nothing to disclose.”

9. The purpose of this passage was to explain why one insurer was proposed in the initial correspondence with the claimant and a different insurer actually provided insurance in the claim. There is a clear contradiction in how communication with Westongate took place between the description in the costs lawyer’s letter and Ms Sutton’s witness statement.
10. It is understandable therefore that the claimant is unclear as to the arrangements underlying her ATE policy. It appears to be the case that the insurance brokers WGAL recommended a change to the Amberis product underwritten by Financial & Legal (“F&I”) and for which they “may well” have received a commission when policies were incepted thereafter (see [13] below). It is of course possible that they received a commission from the previous insurers as well. The recommendation to change may have been based on any number of considerations. It is unfortunate, to say the least, that the defendant says it has no way of producing any contemporaneous documentation which might clarify these matters. It is hard to imagine that the electronic communications could not be viewed in some fashion since otherwise they would never be available in the event of a dispute between, for example Amberis and F&I.

#### The proportionality of bringing this application

11. The claimant’s schedule of costs for summary assessment in respect of this application comes to £28,535.00. The defendant’s comparable schedule claims £5,478.90. Given these figures, the size of the ATE premium (£392.00) and the words of the Master of the Rolls in Karatysz v SGL Legal LLP [2022] EWCA Civ 1388 that claimants “should be in no doubt that the courts will have no hesitation in depriving them of their costs...if they continue to bring trivial claims for the assessment of small bills to the High Court...”, I asked the advocates, particularly Mr Mallalieu, as to the proportionality of such an application.
12. Mr Mallalieu referred to the lack of alternatives available to a party in this claimant’s position. I understood this to mean the apparently widely held view that the use of the Legal Ombudsman’s scheme is not always possible, notwithstanding the endorsement of it by the Master of the Rolls. Mr Mallalieu also suggested that the extent of the costs

was really a function of the defendant's attitude in failing to provide documents when ordered to do so by the court.

13. I think it is true to say that the disclosure here was set running by (i) the defendant agreeing to respond to a Part 18 Request regarding the ATE policy (ii) stating in the Response that an insurance intermediary (WGAL) "may well have received a commission", and (iii) it transpiring that there are common owners of that intermediary and the defendant firm of solicitors. Despite the efforts of Mark Carlisle, the fee earner dealing with this case on behalf of the claimant, there is little, if any, further evidence available to the claimant or the court regarding the make-up of the ATE premium and its distribution to the insurance company or the intermediaries.
14. The lack of information received by the claimant's solicitors from enquiries to WGAL, Amberis and F&I, was, according to Mr Mallalieu, exactly why the application for specific disclosure had been brought. Records which ought to have been held by the defendant (and which were not expressly denied as existing by the defendant) had not been provided as part of the "full file of papers" ordered by the court. These records consisted of accounting and regulatory documents required to be held by the Solicitors Regulation Authority as well as the records said not to exist simply because they were created online using a "portal" and which apparently could not be saved or printed off.
15. Given the modest sum at stake in respect of the ATE premium, it might be thought that the investigations of the various insurance entities and the application for further documentation was a disproportionate approach to challenging this item in the defendant's bill of costs. The extent of those investigations certainly go some way to explaining the costs claimed in respect of this application. Mr Mallalieu suggested that, in addition to potential "secret commissions" within the ATE policy which had not been notified to his client, there might be some effect on the reasonableness of the solicitors' charges overall.
16. The bill which is in issue in these Solicitors Act 1974 proceedings comes to a total of £9,103.60 including the ATE premium. (There are profit costs of £6,468 plus VAT, Counsel's fee of £500 plus VAT, a shared surveyor's fee of £350 and the ATE premium.) It seems to me that, given these sums, the cost of this application raises concerns about justice being achieved at proportionate expense even if the entire bill is vulnerable to the claimant's arguments.
17. The uncertainty of the extent of those arguments is said by the claimant to be a feature of detailed assessment proceedings. Mr Griffiths pointed out that if proceedings were brought elsewhere to challenge, for example, secret commissions, the claimant would have to set out her case before seeking any disclosure. Mr Mallalieu countered by suggesting that the court had correctly followed the usual detailed assessment procedure here in requiring disclosure and inspection of the file before requiring the client to set out her case as to the challenges she wished to bring.
18. In respect of solicitor and client assessment proceedings generally, Mr Mallalieu is right to say that directions given for production of a breakdown, points of dispute and replies very often include an order for inspection of the solicitors' file by the client (or usually their legal representative) before the points of dispute are served. But the purpose of doing so is to enable the client and their representative to consider which, if any, elements of the solicitors' charges set out in the breakdown can be challenged in the

light of the information on the file. It is therefore, in essence, an opportunity for the client to satisfy themselves that the costs claimed by the solicitors are supported by the file and, generally, therefore, reasonably incurred and reasonable in amount. Elements which do not appear to be reasonable to the client can then be challenged in front of the court. This exercise focuses the arguments thereby reducing the amount of court time involved and increasing the possibility of the parties reaching a resolution short of a hearing.

19. That is, it seems to me, a very different proposition from obtaining the solicitors' file in order to see if it may support any arguments the claimant wishes to run regarding matters such as potential "secret commissions." It may be that where large sums are at stake, applications for specific disclosure in Solicitors Act proceedings may be proportionate, but it is difficult to see in a case of this size, that this can be the case.
20. Mr Mallalieu said that in the absence of the disclosure sought, the client was left with the unpalatable choice of giving up on the secret commission etc challenge where the defendant has taken an unreasonable opposition to providing documents that it does not dispute it holds, or risking costs appearing to be disproportionate in making an application for the documents to which she is entitled.
21. It seems to me that the size of the sum which the claimant has been charged by her former solicitors for the ATE premium, a little less than £400, must have an impact on how unpalatable the choice before her might be. The sum in issue is the first factor in considering whether the costs incurred are proportionate according to CPR 44.3(5). It is difficult to see how the claimant here could have thought it appropriate to instruct her solicitors to spend the sums incurred in this application over a premium of this size.
22. At most, the claimant may be liable for £392. She already has, via the Part 18 Response, an indication that a commission was probably paid and she would have her own evidence about whether that was ever made clear to her. An argument regarding secret commissions, fiduciary duties et cetera could be made as things stand. Given the sum involved, the court would not expect to spend a long time, nor receive a lot of evidence, in deciding whether the cost of the policy had been reasonably incurred and / or was reasonable in amount.
23. There is no evidence – either documentary, or in Ms Sutton's witness statements – regarding the extent of any commission paid. Assuming for a moment that the Part 18 Response is taken as being confirmation that some commission was paid, it seems to me that the defendant is at risk of the entirety of the premium being disallowed unless it clarified the extent of that commission. This burden of proof is essentially the same as for any other entry in the breakdown of costs which is challenged. If there is no or insufficient evidence to support the item claimed, then it is likely to be disallowed. The benefit of the doubt in favour of the solicitor is not going to make any difference in these circumstances.
24. The Civil Procedure Rules now require courts to case manage proceedings in ways which potentially prevent parties from bringing the case as they would wish. Limitation on the number of witnesses and the extent of their witness statements and limiting the expert evidence that can be adduced are two obvious ways where this case management applies. Similarly, the extent of disclosure has been reconsidered from the ubiquitous

standard disclosure approach originally set out in the CPR. Dealing with cases justly and at proportionate cost can require the court to fetter the parties' activities.

25. For these reasons, I have grave doubts about the appropriateness of ordering the further disclosure sought by the claimant even if there may be documents relevant to the ATE policy arrangements. But, it is even less attractive where there is no way of knowing exactly what is relevant in the claimant's pursuit of as yet uncertain claims. It does not seem to me to be an answer to say that in detailed assessment proceedings disclosure generally precedes a party setting out its case. The putative challenge here is not the sort generally made in detailed assessment proceedings and for which work on the file can be seen via disclosure / inspection.
26. For reasons that I am now coming to, I am dismissing this application in any event, but the impact of that dismissal may only be temporary. It is for this reason that I have set out the foregoing to set a context for any future application.

Can the premium be assessed?

27. During the course of his submissions, Mr Mallalieu pointed to the lack of any formal response from the defendant as to why any relevant documents ought not to be disclosed. Mr Griffiths did not seek to dispute that his client might have at least some of the documents sought by the claimant. His argument was very much that the ATE premium did not form part of the Solicitors Act assessment. As such, applications for disclosure regarding the ATE premium were misguided.
28. In support of his argument, Mr Griffiths very much relied upon the Court of Appeal's decision in Herbert v H&H Law Limited [2019] EWCA Civ 527. In that case, the solicitors delivered two invoices to their client. One contained profit costs together with a medical report fee and a court fee. The other set out a success fee. Neither invoice included the ATE premium of £349 which was deducted separately from the claimant's damages and that transaction was set out in the cash account. The district judge at first instance took the view that the premium should have been included in the solicitors' invoice. On the basis that it had not been, the solicitors were not entitled to charge it to the claimant and so the cash account had to be adjusted to reimburse the claimant for the £349. That view was upheld by Soole J on appeal.
29. However, the Court of Appeal took the contrary view. The Master of the Rolls reviewed the authorities and commentaries in respect of when a disbursement, which should be paid from the cash account, might be described as a "solicitors' disbursement" which ought to form part of the solicitors' bill. At paragraph 66 he said:

"It follows that a disbursement qualifies as a solicitors' disbursement if either (1) it is a payment which the solicitor is, as such, obliged to make whether or not put in funds by the client, such as court fees, counsel's fees, and witnesses' expenses, or (2) there is a custom of the profession that the particular disbursement is properly treated as included in the bill as a solicitors' disbursement."
30. The Master of the Rolls referred to the fact that the insurance contract is effected between the client and the insurer and did not flow from the contract between the client

and their solicitor. He concluded in the following passage (from paragraph 68) that an ATE premium did not fall within either of the categories described above and as such was a disbursement which should be in the cash account:

“An ATE insurance premium is not a payment which a solicitor is obliged, as such, to make irrespective of whether or not put in funds by the client, comparable to court fees and counsel’s fees. It is not, technically speaking, a litigation expense at all... Nor does the evidence establish that there is a custom of the solicitors’ profession that an ATE insurance premium is to be treated as a solicitors’ disbursement to be included in the bill submitted to the client. Ms Herbert relies on the practice of including the ATE insurance premium as a disbursement in the bill presented by the successful party to the losing party when success fees were recoverable before LASPO. I agree with Mr Bacon that this does not assist at all in establishing a custom that such a premium has been treated as a solicitor’s disbursement on solicitor and client assessments. There is no evidence at all before us as to such a custom. Nor did District Judge Bellamy refer to any such custom.”

31. At paragraph 69, the Master of the Rolls considered an argument that the client and the solicitor could agree to terms which, it appears, were said to be sufficient to include the premium as a solicitors’ disbursement. The Master of the Rolls dismissed this argument:

“Even if that is the correct interpretation of the document, it misses the point as to the test for what is a solicitors’ disbursement to be included in the bill on assessment. The test is not what is agreed between an individual solicitor and the client but what every solicitor, as such, is obliged to pay irrespective of funding by the client or what is properly included in a bill of costs on assessment as a matter of general custom of the profession.”

32. Having allowed the appeal, the Master of the Rolls concluded with the following comment:

“This decision is based on the evidence before the district judge. I appreciate that the consequence is that the client will not be able to challenge the amount of an ATE insurance premium through the convenient mechanism of an assessment under the Solicitors Act 1974, section 70. That is not, however, a good reason to decline to apply the principle which is clearly binding on us, in the light of the limited evidence before us, and so create a precedent which both undermines the coherence of the principle and may have unforeseen implications in other and different cases.”

33. At the previous hearing of this case, when giving directions, the question of the premium being included as a disbursement in the breakdown of costs was briefly aired.



At the time, there did not appear to be an issue regarding dealing with matters concerning the premium at the detailed assessment hearing. On that basis, there was no need to deal with the preliminary issues sought by the claimant regarding the ATE premium since they would all be ventilated at the hearing.

34. The written and oral arguments of Mr Griffiths, however, make it clear that that is not the approach now urged upon me by the defendant. He made reference to the description of Solicitors Act proceedings in Jones v Richard Slade and Company Ltd [2022] EWHC 1968 (QB) as being a “wholly statutory jurisdiction” and concerned the assessment of the profit costs, success fee and disbursements. The nature of the challenge to the premium sought by the claimant here was, in his submission, a completely different proposition. These proceedings should not permit the extension to them sought by the claimant just because that extension was not expressly excluded by the statute.
35. Mr Mallalieu sought to counter this in two ways. The first was simply to point out that the defendant had categorised the premium as a (solicitors’) disbursement in the statute bill. That bill was detailed and so also stood as the breakdown to be assessed. It had been signed by a partner at the defendant and there had been no attempt to amend the bill to exclude the premium. It was therefore an unattractive argument for the defendant to say that the bill it had drafted could not be assessed in its entirety.
36. The second argument was a temporal one. The decision of Ritchie J in Edwards & Ors v Slater & Gordon UK Limited [2022] EWHC 1091 (QB) made it clear that the cash account could not be signed off, and therefore the assessment concluded, until any dispute regarding the cash account was determined. If the premium was excluded from the assessment of the statute bill, it would have to be dealt with when determining the cash account. There was no reason for the claimant to have to wait until some later point to receive the disclosure that should have been provided already.
37. Mr Griffiths’ response to the first point was that, as a matter of law, the premium was not a solicitors’ disbursement and so was not capable of being assessed in the Solicitors Act assessment. The fact that the defendant had erred in including it in the bill did not detract from that point.
38. In respect of the second argument, Mr Griffiths kept his powder relatively dry in simply submitting that any dispute in the cash account ought to be included in the points of dispute and the defendant would respond to it in the normal way.
39. Although Mr Mallalieu queried rhetorically whether the terms of the agreements with the insurance entities might oblige the solicitor to pay the premium without being in funds, I did not take him to be seeking to persuade me that the general Herbert dicta did not apply to this premium.
40. In my judgment, the fact the defendant has claimed the ATE premium as a disbursement in its bill does not prevent the conclusion that it should be excluded from the assessment under s70 in accordance with Herbert. In my view, the Court of Appeal’s guidance at paragraph 69 (see [31] above), plainly prevents a client and their solicitor from altering the general position in an individual case. Whether, and in what manner, that figure should be deducted from the bill may be a matter for argument, not least if the effect of

the one fifth rule in s70(9) depends upon it. But that can be dealt with separately, as it was in Bentine v Bentine [2013] EWHC 3098 (Ch) albeit in different circumstances.

41. I do not think the challenge to the ATE premium should be set out in the points of dispute. Not only will this potentially make the points of dispute unwieldy but since such points are generally negative in nature, it will not help to set out the claimant's positive case as to why there is a dispute regarding the cash account. I consider it to be important that a positive case is set out so that the defendant can respond in a similar fashion. It may be that the claimant is not yet able to do this and indeed I noted from correspondence with the various insurance entities that further enquiries and complaints were being made. The cash account can only be determined once the assessment of the statute bill has taken place and, as such, I consider there can be a staggered approach to the pleadings here. The points of dispute need to be dealt with now, but the cash account pleading can be scheduled for later. Indeed, subject to the parties' views, it might not be required until the assessment of the bill has been completed.
42. To some extent these comments deal with Mr Mallalieu's point that if the ATE issues are going to be decided at some point, the claimant should have the documents now. I am not convinced that the claimant is yet able to settle upon her challenge to the ATE premium based on her other enquiries. Moreover, I would like to think that the first part of this judgment will lead the parties to reflect upon the extent of the documentation actually needed. This should include the defendant considering the decision of Ritchie J upon the starting position of the Court of Appeal in Herbert.

#### Call recordings

43. The ninth category of documents sought by the claimant relate to call recordings which she assumes are in the defendant's possession given the standard rubric on its correspondence that "all incoming and outgoing telephone calls are recorded for training and monitoring purposes." There is no denial by the defendant that it has such records. Nor has it said that they would be time consuming or otherwise costly to produce.
44. Whilst Mr Mallalieu said that they may be relevant to the ATE policy, he accepted that the request was wider than that. The schedule seeks "[r]ecordings of telephone calls concerning the Claimant's matter generally." I asked Mr Mallalieu whether that description really amounted to a request for specific disclosure and he was firm in indicating that it was a specific category of document that was sought.
45. The reason for this category is dealt with at paragraphs 49 to 52 of the witness statement of Mark Carlisle. He records that the defendant has declined to respond to his questioning of whether there are in fact any records. He gives an example of where a call recording may help understanding of the ATE and funding arrangements. He then queries the number of calls with the claimant (6 timed calls running to a total period of 2 hours and 52 routine calls). He says that there is little documentary evidence on the file to support the time claimed – although it is not entirely clear to me whether this is solely in relation to the timed attendances. Finally, he records that the claimant's recollection is that there were few calls that went beyond administrative matters and few were of the length said to have taken place. He concludes by saying that if "call recordings exist, they will provide insight not only as to whether or not the times claimed are accurate, but also whether the claims are reasonable."

46. As was discussed at the hearing, I have previously given a decision on the disclosure of call recordings (Turner v Coupland Cavendish [2023] EWHC 2721 (SCCO)). That judgment is the subject of an appeal (by other solicitors). I was told at the hearing that there was no indication that the case would be coming on for hearing in the near future. After the hearing, I made some enquiries. Whilst I did not establish any hearing date, I was informed that the appeal against the call recordings decision was not part of the appeal because permission had not been given by the appeal judge on that issue.
47. In Turner, the application for specific disclosure ran into the ground, as I described it, because of what I perceived to be procedural flaws. As Mr Mallalieu submitted, that is not the case here because there is an application supported by evidence. There is little in response to the application and so, once relevance is proved, and in the absence of any indication that it would be disproportionately time consuming etc, the order, according to Mr Mallalieu should be made.
48. In the other case, I also queried how easy it would be to locate the recordings in the absence of any evidence as to where or how they might be stored. There is no evidence in this case either on this point.
49. Nevertheless, it seems to me to be plain that I should not accede to the claimant's request. There are 52 routine items claimed at a total of £1,092 plus vat. In the ordinary course of a detailed assessment, the drafter of points of dispute might be expected to look through the routine items disclosed and make an offer of, for example, 40 routine items. The time involved in considering the relevant part of the file and drafting the point of dispute would be economically viable.
50. But if the claimant's approach here was to be adopted, Mr Carlisle would be spending £30 per item simply to listen to the recording before deciding whether even to challenge it. Even if the call were, say two minutes long rather than six minutes, the time recorded by the listener would still be a minimum of 6 minutes. Similarly, whilst it might be that the trainee solicitors used by Mr Carlisle for the application would undertake the exercise (even though more than 90% of the time claimed in the claimant's schedule relates to work done by Mr Carlisle himself), that would still represent £20 for every £21 routine item claimed. There is then the time for considering the challenge or challenges to be brought, the drafting of that challenge and, quite possibly, re-listening to some of the calls in order to quote passages in support of the points made.
51. It is simply disproportionate to adopt the approach suggested by Mr Carlisle of gaining insight into the calls and whether they are reasonable by listening to them all over again. I raised with Mr Mallalieu the number of calls involved if the routine items were included, rather than just the timed calls, but I did not understand him to move away from the wording of the schedule and the evidence of Mr Carlisle. Since 52 of the 58 telephone calls are expressly claimed as routine items, the defendant is simply claiming that they do not exceed 6 minutes. There is no warranty that they will last at least that long. Consequently, for the great majority of the calls, there is no "accuracy" to be considered in any meaningful way.
52. I suspect that if only the timed call recordings had been pursued, I might still have been doubtful that listening to them was a reasonable approach, but as that is not the order sought, there is simply no doubt in my mind that the ninth category is entirely contrary

to the overriding objective. There is no saving in expense in incurring more costs than are at stake before even being able to consider whether to challenge any particular item.

**Conclusion**

53. I dismiss the claimant's application for specific disclosure, both in relation to the ATE documentation and in respect of the call recordings.