



Case No: **D80YJ514**

IN THE COUNTY COURT AT CENTRAL LONDON

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

11 October 2023

BEFORE:

HIS HONOUR JUDGE LUBA KC

BETWEEN:

JAN SERGIO DE ANDRADE SOARES

Claimant

- and -

JAMES WILSON

Defendant

-and-

ANEXO GROUP PLC

Third Party

Hearing date: *28 June 2023*,
Further written submissions: *1 – 9 August 2023*

The Claimant did not attend and was not represented.

Mr Roger Mallalieu KC appeared on behalf of the Defendant.

Mr Benjamin Williams KC appeared on behalf of the Third Party.

JUDGMENT

I direct that no recording shall be taken of this Judgment and that copies of this version as sealed and handed down may be treated as authentic.

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An Introduction

1. This judgment delivers the outcome of the latest battle in a wider forensic legal war.
2. On the one side stand the not inconsiderable forces of the many insurance companies of the UK motor insurance industry and their regularly retained solicitors.
3. On the other side stand the massed ranks of entities which aid and assist impecunious motor accident victims to bring modest compensation claims in the civil courts. Particularly those who act for claimants whose claims seek damages for the cost of hiring alternative vehicles on credit. The entities involved on this 'side' may include claims introducers, credit hire companies, vehicle damage experts, medico-legal services agencies, medical professionals acting as experts, and 'claimant' solicitors' firms who undertake this class of work, often in very significant bulk.
4. The individual litigants in cases in which battle has been joined between these forces, are often nominal participants in what Mr Williams described in his final written submissions as a "war of attrition". Such contests are being played out at first instance and on appeal in the county courts across the country.
5. The origins of this legal 'warfare' are to be found in the modern costs regime applicable to claims for compensation brought by those who have suffered personal injury in road traffic accidents. Under that regime, if their claims succeed, they recover not only their compensation but also, normally, their legal costs of bringing their claims.
6. Where they cannot afford to finance a legal claim from their own resources, legal aid is no longer available. Such individuals seeking recompense therefore enter into conditional fee agreements (CFAs) with solicitors who are willing to undertake these cases on what is colloquially described as a 'no win, no fee' basis.
7. The costs regime is such that, whether financed from personal funds or by a CFA, if the claim is *unsuccessful*, the person bringing the personal injury claim is ordinarily not liable to pay the legal costs of the successful defendant (such defendants' legal costs having, ordinarily, been financed or underwritten by a motor insurer). This is the effect of Qualified One-Way Costs Shifting or 'QOCS'.
8. A particular sub-category of injured party is the impecunious motorist who requires a replacement vehicle (while their own is repaired) but who cannot afford to hire a substitute vehicle at ordinary hire rates. They can obtain assistance from suppliers who will enable the provision of credit to impecunious drivers to finance their hire of

replacement vehicles in the expectation that the borrowers will succeed in subsequent claims against insured drivers. The costs of the finance and the hire will then be recovered as part of the injured driver's damages.

9. In the course of his judgment on an earlier battle in the same field of legal combat, Turner J stated that:¹

“For a quarter of a century, insurance companies and credit hire organisations have been fighting a forensic war of attrition over an ever broadening front”

10. In this latest engagement, a motor insurer whose insured holds a cost order - against a claimant protected potentially² from individual liability by the QOCS regime – seeks to enforce that costs order against a third party. They have their eye on a target beyond the individual claimant's credit hire provider, or even the solicitors who advanced the claimant's claim. Their target is a novel corporate entity to which a credit hire provider, solicitors, and other players in the motor claims field, collectively belong.
11. This represents a significant attempt to advance the aforementioned “ever-broadening front”.

The Factual Background

12. This litigation started as a claim for damages arising from a road traffic accident (RTA).
13. The Claimant had suffered injury in an RTA which had occurred on 16 September 2016. An initial claim was made within the appropriate portal on 27 September 2016. It later left the portal because the Defendant did not admit liability.
14. The present proceedings were issued on 24 May 2017 by Armstrongs Solicitors Limited (later to become Bond Turner solicitors, operating from the same address). The claim form was endorsed with a statement of truth made by Joanne Allen, a solicitor at Armstrongs.
15. The Particulars of Claim had been settled by a Mr Alan Sellers of counsel (who thereafter continued to represent and advise the Claimant until at least September 2017). The pleading was endorsed with a statement of truth made by Olivia Riley, a legal assistant at Armstrongs.

¹ In *Mee v Jones and Select Car Rentals (North West) Ltd* [2017] EWHC 1434(QB)

² The parties were initially not agreed as to whether the claim was a personal injury claim to which QOCS applies or a mixed claim to which it would not apply. However, Mr Mallalieu's skeleton argument accepts that QOCS applied.

16. The Defendant filed a Defence denying liability. The Claimant filed a Reply. That was endorsed with a statement of truth made by Craig Nunn, a legal executive at Armstrongs. A further Reply, dealing with impecuniosity, was endorsed with a statement of truth made by Michael Newton, a litigation executive at Armstrongs. The Claimant's Updated Schedule of Loss prepared on 14 May 2018 was endorsed with a statement of truth made by the same employee. The same is true of the further Updated Schedule of Loss dated 14 August 2018.
17. The claim was valued on the original claim form as being for a sum in excess of £25,000. Its most significant element, as indicated on the Schedule of Loss prepared on 14 May 2018, was for over £97,000 in respect of credit hire charges for a replacement vehicle. But it also sought recovery of over £9500 for "additional insurance charges". The credit hire company was McAMS accident management services, which described itself as a 'trading division of Direct Accident Management Limited'.
18. The claim was in due course allocated to the fast track. In the course of the proceedings, the Claimant was debarred from contending that he was impecunious, leading him to present an amended Schedule of Loss in which the £97,000 in respect of credit hire charges for a replacement vehicle was reduced to £10,112 and the £9500 claimed for "additional insurance charges" was reduced to £1,344.
19. The claim was proceeding, pursuant to directions, towards a trial fixed for 14 March 2019. But pre-trial it was settled on terms that the Defendant would pay the Claimant a sum of £9000 for his loss. That sum was then paid.
20. As the successful party, the Claimant, who had presumably brought his claim through a conditional fee agreement (CFA) entered-into with his solicitors, was entitled to his costs. The costs claimed included not only counsel's fees but also a disbursement for the cost of an engineer's report. The report had been provided by PALS.
21. But there was then a dispute about the basis for the assessment of those costs. Initially, the Claimant succeeded in that dispute. But on appeal, concluded in May 2022, the Defendant was successful in this Court.³ The Defendant was awarded his costs of the appeal and of the initial dispute over the assessment of costs which had been conducted before a Costs Judge. The dispute had been financially significant. As a result of it, costs claimed by the Claimant at £21,895 were recovered only to the extent of £4,455.
22. That left the successful Defendant in the costs proceedings (or, in practical terms, his insurers) with the benefit of a costs order dwarfing - in amount - the costs that he had been liable to pay consequent upon settlement of the original claim. But recovery of the balance of those costs, against the Claimant personally, would normally be

³ *Soares v Wilson [No.1]*, 27 May 2022, HHJ Luba KC sitting with Costs Judge Rowley.

prevented by QOCS⁴ and, in any event, impracticable because the Claimant had been asserted to be an impecunious individual.

The Application

23. The Defendant's insurers, by their solicitors, had initially given notice in February 2022 that they would, if successful in the costs appeal, seek to recover the costs of the costs assessment dispute from the solicitors who had acted for the Claimant (by then, Bond Turner). The solicitors denied that they had any liability for those costs.
24. The Defendant's insurers then resolved on a more ambitious approach. By an application made in June 2022, the Defendant's legal representatives applied for Anexo Group PLC to be made a party to the proceedings so as to enable it to be the target of an application that it should pay the Defendant's costs in the costs proceedings. What was sought was a non-party costs order or third-party costs order against the Anexo Group. The rationale was that all of those involved in the Claimant's case - Bond Turner (the solicitors), McAMS (the credit hire provider), PALS (the engineering report provider) and Mr Sellers (his counsel) – were united by their involvement with the Anexo Group and it was therefore a real party in the costs dispute.
25. By consent, and to enable the application for a non-party costs order (NPCO) to be made (but without prejudice to the merits of such application), I joined Anexo Group as a third party and gave directions in the application in December 2022. The application was originally listed to be heard in March 2023 but eventually came on for hearing on 28 June 2023.
26. The evidence in support of the application is contained in the fourth and fifth witness statements of Mr Simon Fisher, respectively made on 6 June 2022 and 22 February 2023. Mr Fisher is a Costs Lawyer with DWF Costs Limited which appears to be associated with DWF Law LLP, the Defendant's solicitors in the present claim. The thrust of his evidence goes to his proposition that the Claimant's claim was "clearly a vessel for Anexo to profit from."⁵
27. The evidence in opposition to the application is also given in two witness statements. First, the statement dated 11 February 2023 of Mr Richard James Pratt KC who is a director of the Anexo Group PLC and Chair of its Risk and Regulation Committee. Second, the statement of Dawn Catherine O'Brien, the Executive Director of Anexo Group PLC, made on 28 February 2023. The thrust of their evidence was to the effect that Anexo "played no part in [these] proceedings, nor in the earlier damages

⁴ The evidence of Ms O'Brien was that the costs order was "unenforceable" because QOCS applied: Witness Statement para [11]

⁵ Fourth Witness Statement at [20].

proceedings. It did not fund them, control them or participate in them in any way. Indeed, it did not have any knowledge of [them]...”⁶

28. I had the considerable advantage of well-structured and most ably presented written and oral argument from leading counsel for the Defendant and for Anexo. The hearing involved me being taken to a Joint Authorities Bundle almost twice the bulk of the Application Bundle and to additional authority added to it at the hearing.
29. After the hearing, I became aware that there had been a considerable number of other recent third-party costs order applications involving entities within the Anexo Group, both at first instance and at first tier appeal level. Not least, in the former category, a lengthy and considered reserved judgment of HHJ Lethem given this court and delivered shortly before his recent retirement.⁷ That itself referenced a recent decision of HHJ Gosnell, delivered a month earlier (although that case was not concerned with an Anexo Group entity).⁸ Judge Lethem said:

“I understand that these applications are being made with increased frequency to the District Bench when the Defendant is successful in defending road traffic accident proceedings. The skirmishes are becoming open war.”

30. Very shortly thereafter, HHJ Lethem’s judgment and reasoning appeared to have been expressly *not* followed in the consideration of another such application.⁹ Many other similar applications will since have been determined on the District and Circuit Bench around the country.
31. I alerted counsel to the fact that these matters had come to my attention. Both provided short supplementary submissions about them at my invitation in August 2023. I am grateful for those submissions even though they were to the effect that the other county court decisions in NPCO applications against Anexo Group members would be of no assistance to me and that, correctly, none of them concerned an application against Anexo directly.

The Anexo Group

32. The Anexo Group PLC is a company registered in England & Wales which was first incorporated on 27 March 2018. It was admitted to the Stock Exchange (AIL) on 20 June 2018. Its Head Office address is the same address as that of Bond Turner solicitors and the Anexo Group PLC is recorded by the Solicitors Regulatory

⁶ Witness Statement of Mr Pratt at [25]

⁷ *Da Silva v Rahmoune and Direct Accident Management [DAMS] Ltd (T/A McAMS)*, 22 May 2023, unreported

⁸ *Shahzad and Royal Sun Alliance v Fastrack Solutions Ltd* [2023] 4 WLUK 92, 6 April 2023

⁹ *In Codac v Ciabanu v DAMS*, DDJ Linwood, 13 June 2023, unreported.

Authority (SRA) as one of the owners of Bond Turner Limited, the incorporated styling of Bond Turner solicitors.

33. Anexo Group PLC is the ultimate parent company for the Anexo Group of companies which together provide legal and related services to motorists and others. The PLC does not itself trade or provide services to the public. Those services are provided by other Group members. They include:
- Bond Turner (solicitors);
 - Direct Accident Management Limited (which provides post-accident assistance services and trades under the brands and names DAMS, McAMS, CAMS and EDGE);
 - Professional and Legal Services Limited or PALS (which produces specialist medical and engineering reports); and
 - IGCA 2013 Limited (which administer after-the-event insurance policies for Bond Turner clients).
34. Several of these entities have, as the above account of the facts shows, been concerned in this particular Claimant’s case.
35. The working model of the Anexo Group PLC is well explained in its *2021 Final Results* report (‘the 2021 report’) dated May 2022 and in the *2022 Interim Results* report (‘the 2022 report’) dated September 2022. These demonstrate that the Group operates in the niche market of combined provision of credit hire and legal services together with ancillary services. Its model brings these together in a single group structure. Mr Alan Sellers is the Executive Chairman and has “pioneered this niche”. The 2021 report describes the Legal Services Division of the Group as Bond Turner and identifies that its “advocacy is led by Alan Sellers”.
36. The 2021 report explains that “Anexo is an integrated credit hire and legal services group which acts for the Non-Fault Motorist, particularly ‘impecunious’ claimants, by providing replacement vehicles at commercial credit hire rates” and that “The Group uses its in-house litigators to recover hire and repair charges from the at-fault motorist’s insurers.” (the reference to ‘in house’ litigators in this context can only be to Bond Turner). It explains that it is able to do this because of “UK case law that has affirmed the impecunious claimant’s legal right to recover credit hire costs.” The volume of work is illustrated by the handling and funding of over 10,000 new credit hire cases in the 2021/22 financial year and the settlement by Bond Turner of over 6000 claims in the same period.
37. The working model shown diagrammatically in the 2021 report is that of “direct capture” of impecunious non-fault RTA motorists. This is achieved by Anexo sales representatives approaching sources such as recovery agents, body shops and vehicle workshops to pick up new clients. There is ‘effective screening’ to capture the desired clientele i.e., the impecunious motorists. Those prospective customers are then referred for credit hire to EDGE/DMS/CAMS or McAMS and for their legal claim to

Bond Turner (working with PALS, IGCA 2013 and an entity described as Been Let Down? Advocacy as necessary).

38. The 2022 report records that as at 20 June 2022 the Group “employed 633 legal staff” (again a reference primarily to Bond Turner) and had funded over 5000 new cases in the first six months of that calendar year. The vast majority of cases settle, and the model is highly successful. Less than 2% of cases fail after the issue of proceedings.
39. There is nothing the least irregular or unlawful about the Group or its operations. Nor does any criticism arise from the fact that its working model produces very significant incomes from profits counted in the millions. However, it can be well understood why the Group’s activities and its model – centred on advancing these very high numbers of claims on behalf of impecunious litigants under QOCS costs protection – has triggered considerable interest on the part of the motor insurance industry and those who provide services to those insurers.

The Application in more detail

40. The application before the Court is that Anexo Group PLC should pay the costs ordered against the Claimant in the *costs* proceedings and in the appeal in those proceedings. It is not, and cannot be, an application that the Group pay the costs incurred by the Defendant in the *claim* itself. That claim was settled on terms that the Defendant pay the Claimant’s costs.
41. The rationale for the application is, put in this way: “It is likely that the proceeds of this claim all flow, save for the very limited personal injury and vehicle damage, to Anexo through a mix of special damages, legal costs and disbursements”. The ‘special damages’ (credit hire) go to McAMS, the legal costs (solicitors fees) go to Bond Turner and the disbursements (experts reports and counsel’s fees) go to PALS and Mr Alan Sellers. They are all associated with Anexo.
42. The evidence in support included an extract from Bond Turner’s website which, under the header “Our Group”, states that “As part of the Anexo Group we are an integrated legal services provider supporting clients across England and Wales” and explains that “As part of the Anexo Group, we are able to offer a niche support structure and claims service to our clients. Through it, we can provide in-house solicitors, barristers, and accountants, and easy access to a wealth of medical experts and rehabilitation providers.”
43. The evidence in reply emphasises that the present Claimant has never been a client of Anexo Group PLC. Indeed, it had not even been incorporated at the date of his accident or as at the commencement of its claim. True it is that he engaged what is now Bond Turner to provide him with legal services, but Bond Turner is and remains not only a separate legal entity but an independent solicitors firm regulated by the SRA. The Group did not itself provide any legal services to the Claimant or engage in

any contract or other direct dealings with him. It was not a party to the dispute about costs or in the appeal in which that dispute was resolved. In any event, although charges were incurred and recovered for McAMS and PALS, those were sums recovered in the *claim*. The only group member which participated in the *costs proceedings* and the associated appeal was Bond Turner. At the time of his involvement, Mr Sellers was a member of the Bar in private practice and had not by then become a founder of the Group. Indeed, Anexo Group PLC had no knowledge of these particular proceedings until the present application was made.

The Legal Framework

44. The QOCS regime itself recognises the possibility of an adverse costs order being enforced *against a claimant* where part of their claim was made for the financial benefit of another person. CPR 44.16(2)(a) expressly provides that:

- (2) Orders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just, where –
- (a) the proceedings include a claim which is made for the financial benefit of a person other than the claimant....

45. CPR PD 44.12.2 provides in relation to that rule that:

Examples of claims made for the financial benefit of a person other than the claimant or a dependant within the meaning of section 1(3) of the Fatal Accidents Act 1976 within the meaning of rule 44.16(2) are subrogated claims and claims for credit hire. (Emphasis added)

46. Indeed, CPR 44.16 goes yet further. It expressly provides for the possibility of recovery of those costs *from the third-party beneficiary* of the claim. It reads:

- (3) Where paragraph (2)(a) applies, the court may, subject to rule 46.2, make an order for costs against a person, other than the claimant, for whose financial benefit the whole or part of the claim was made.

47. This is supplemented by the explanation given in CPR PD 44 at paragraph 12.5:

The court has power to make an order for costs against a person other than the claimant under section 51(3) of the Senior Courts Act 1981 and rule 46.2.

48. The present application is such an application. Section 51 of the Senior Courts Act 1981 (previously known as the Supreme Court Act) provides as follows:

- (1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in ... (c) the county court, shall be in the discretion of the court.
- (2) Without prejudice to any general power to make rules of court, such rules may make provision for regulating matters relating to the costs of those proceedings including, in particular, prescribing scales of costs to be paid to legal or other representatives or for securing that the amount awarded to a party

in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs.

(3) The court shall have full power to determine by whom and to what extent the costs are to be paid. (Emphasis added).

49. The operation and application of these provisions has led to a significant corpus of caselaw.¹⁰ I gratefully adopt the following distillation of the principles to be taken from it as offered in HHJ Lethem's recent judgment. I have omitted the references and many quotations and stripped the principles back to their fundamentals:

- 1) The discretionary power to order costs under Senior Courts Act 1981, s 51(1) is wide. The House of Lords has held that there was no justification for implying a limitation to the effect that costs can only be ordered to be paid by the immediate parties to the proceedings.
- 2) Such an order is only applicable in exceptional circumstances. However, in *Dymocks*, Lord Brown held that: 'Although costs orders against non-parties are to be regarded as "exceptional", exceptional in this context means no more than outside the ordinary run of cases that parties pursue or defend claims for their own benefit and at their own expense. The ultimate question in any such "exceptional" case is whether in all the circumstances it is just to make the order' (para 25).
- 3) The overarching test is whether it is just in all the circumstances to make such an order.
- 4) Judges must be alert to the possibility that an application against a non-party is motivated by resentment of an inability to obtain an effective order for costs against a ... litigant [personally] and should resist attempts by defendants to use the non-party costs jurisdiction to side-step the general costs principle (*Symphony Group*). Thus, a lack of reciprocity in costs recovery is not, of itself, a basis for making a non-party order.
- 5) It is possible to view the jurisdiction as identifying two threads of caselaw, the 'real [party]' approach and 'intermeddling' in the conduct of litigation either of which may lead to a non-party costs order.
- 6) The court should consider if the non-party funds the proceedings and substantially also controls or is to benefit from them and is thus a 'real party' to them. *Dymocks* had earlier used the term 'management of the action' as opposed to control.
- 7) Funding is not a prerequisite to making an order, it is only part of the evidential matrix. Mere funders may have an interest in the outcome of litigation. In modern litigation that alone is unlikely to lead to non-party costs order. It has to be recognised that there is a public interest in the post LASPO world in facilitating access to justice through funding.
- 8) The court will consider the extent which a non-party benefit from the litigation. Sometimes referred to as the 'real party' or 'effective party' test. The non-party does not have to have the sole or even dominant interest. If they have something to gain that may be sufficient depending on circumstances of the case. It is sufficient if they are, in reality a party as opposed to the party.
- 9) One should consider the extent to which the non-party causes costs to be incurred.
- 10) Following on from the above, the court should consider the quantum of costs that were engendered by the actions of the non-party.

¹⁰ Not least the decisions in *Phillips v Symes (A Bankrupt)* [2008] UKHL 1, [2008] 1 WLR 180; *Symphony Group Plc v Hodgson* [1994] QB 179; *Deutsche Bank AG v Sebastian Holdings Incorporated* [2016] EWCA Civ 23 and *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2004] 1 WLR 2807

- 11) Another important aspect is the extent to which the non-party controls or influences the litigation interest. This is sometimes referred to as intermeddling.
- 12) It important to understand that these are pointers to the decision the court must make. They are not hard and fast preconditions to making a non-party costs order. It is not the case that both control and funding of the litigation must be present.

50. Although counsel before me placed emphasis on particular passages of the cases to which they each took me, I did not understand them to be in any disagreement as to the applicable general principles.

51. Having read the authorities cited to me for myself, I am content to treat as directly applicable in this case the self-direction adopted by HHJ Lethem in his case that:

Stepping back from the foregoing it is plain that each case turns on its own facts. The decision is always fact sensitive and involves the application of a broad discretion across the facts of the individual case. Since the decision involves an exercise of discretion, limited assistance is likely to be gained from the citation of other decisions at first instance in which judges have or have not granted an order of this kind. They will be indicative not definitive. I am not involved in an exercise of slavishly applying previous decisions decided on different facts. Two decisions of the Court of Appeal in 2016 have expressed concern that such applications are in danger of becoming over complicated by authority (see *Deutsche Bank AG* and *Andrew Turvill*). The only immutable principle is that the discretion must be exercised justly and thus the single question is whether in the circumstances it is just to make a discretionary order requiring the non-party to pay costs because of the nature of its involvement in the litigation.

The submissions of the parties

52. The Court has had the advantage of particularly full and well structured skeleton arguments which have been read and re-read in the preparation of this judgment. The Court also had the benefit of well-crafted and detailed oral submissions.

53. Having that material well in mind, I shall confine myself only to a relatively brief summary of the way in which each parties' case was advanced against the factual background and the evidential material to which I have already referred relating to the Anexo Group PLC.

54. Mr Mallalieu submitted that I should look to the 'reality' as disclosed by the evidence before the Court as to the structure and operations of the Anexo Group and the actualities of the instant litigation. The Claimant was a member of the Group's target cohort – impecunious motorists. He was provided with credit hire by McAMS, a group member. His financial liability to McAMS dwarfed all other elements of his claim for damages. The terms on which he took finance from them¹¹ required him to do all they required of him by way of co-operation, including allowing them to use his name to enforce rights or remedies. He was provided with legal services by Bond Turner, another Group member, presumably under a CFA, the terms of which he was

¹¹ At clauses 5 and 10 of their agreement

bound to comply with. He was obligated to PALS, another group member, for the cost of the engineer's report and, of course, to Mr Sellers (a Group founder) as his barrister.

55. Thus, Mr Mallalieu submitted, the majority of the original claim was to the financial benefit of Anexo through its constituent members. In effect, Anexo had established a one-stop-shop for impecunious motorists involved in RTAs and the individual group member companies were operating 'under the overall Anexo umbrella'. As such, Anexo had - directly or indirectly - what he described as 'a material and substantial financial interest in the outcome'. In his skeleton argument he went so far as to contend that 'Anexo facilitated the bringing of this claim'. Its interest, he contended, was 'obvious'.
56. However, recognising that the instant application related only to the costs of the *costs* proceedings (in which only the Group member Bond Turner had an immediate interest), he submitted that Anexo, as the 'parent company' of those solicitors had a 'financial interest' in the costs dispute including the appeal generated by that dispute. Bond Turner were not at arms-length but were, as Anexo and Bond Turner had each themselves described that firm, the Group's "in house" legal team. As he pithily put it in oral argument, the Group profits from cases being run through Bond Turner when they are successful. It followed, he contended, that when they go wrong the Group should pick up the costs. The economic reality, he submitted, was that the *costs* dispute was an argument between Bond Turner (i.e., Anexo's in-house lawyers) and the Defendant's insurers.
57. Mr Williams, on the other hand, points out that Anexo Group PLC is simply a 'holding' company. Bond Turner, the only group member directly concerned in the *costs* dispute is itself a separate company. Anexo had no involvement itself in the litigation or the costs dispute and knew nothing of either. It had not caused any costs to be incurred in the claim. It had not caused or contributed to the dispute about *costs*, and it had not involved itself in funding that dispute or the claim. It was not either the or a 'real party' to the claim or the costs dispute.
58. Mr Williams drew particular attention to the fact that there was no NPCO application brought against Bond Turner, despite one having previously been mooted. While it may have acted for the Claimant under a CFA, and while that obviously gave the firm a commercial interest in the outcome on costs, that would be no basis for the making of a non-party costs order against it. If the Defendant could not make out an application for a NPCO against Bond Turner, he argued, how could it succeed in a claim against one of its corporate owners? All Bond Turner had done was to engage in a dispute about the costs that their client might recover under the costs order *he* held to *his* benefit in *his* claim.

Discussion and conclusion

59. Despite the calibre of the submissions advanced in support of this application, and despite the length of time I have taken in consideration of and in reflection upon the application, I have no hesitation in concluding that it must be dismissed.
60. In reaching my decision, that it would not be just to grant the order sought, I am substantially accepting the submissions made on behalf of Anexo (as briefly summarised above), but my own reasoning can best be expressed as follows.
61. First, despite the present Claimant being precisely the sort of person who might have been ‘captured’ by Anexo, as a result of its client-capture working model, he was not in fact brought – even notionally - into its purview until a late stage in his litigation. Anexo had not even been incorporated when the Claimant had his accident, sought a hire vehicle on credit, instructed solicitors, agreed terms with them, and initiated his claim or served his Particulars of Claim. Those core facts are not altered by the entities with which he engaged having been later brought into the newly established Anexo Group.
62. Second, the undisputed evidence is that Anexo Group PLC knew nothing of the Claimant individually, even after its establishment. It not only knew nothing of his individual claim or of his precise arrangements with his solicitors, but it had no knowledge of the dispute being pursued in relation to the assessment of the costs of his claim or the appeal in those *costs* proceedings. It certainly did not fund, direct, control or in any way manage that dispute which led to the costs order in the costs proceedings which it is now said to be just that it should meet, despite its not being a party to the proceedings.
63. Third, notwithstanding the language used in the published materials produced by both Bond Turner and Anexo about the Group having “in house” lawyers, the Claimant had instructed a firm of solicitors independently regulated as a discreet entity by the SRA. It is registered with the SRA as managed and controlled by individuals not including Anexo. Bond Turner and Anexo are separate legal entities. The solicitors at Bond Turner would have been acting in breach of their obligations and their professional duties, both to their client and more generally had they disclosed to Anexo, as one of the firm’s owners, the instructions they had received or were receiving from their client about his claim or the costs dispute arising in it. This description of ‘separate’ companies has nothing to do with the ‘corporate veil’ or any need to pierce it. If I had been satisfied that Anexo had in fact ‘pulled the strings’ and directed Bond Turner to use the Claimant’s name in pursuit of its own interests rather than or in addition to his, nothing about the separate corporate status of the two companies would, I consider, have deprived me of the jurisdiction of making a NPCO against it, had I considered it just to do so.

64. Fourth, Anexo cannot, in my judgment, be the just recipient of a NPCO simply by reason of the fact that it is *an* owner or even the *majority* owner of the Claimant's solicitors unless the circumstances are such that those solicitors would themselves have been made subject to a NPCO had the application been directed against them. In this case, it simply has not been demonstrated that Bond Turner would rightfully have been made subject to a NPCO themselves. There is no evidence before me of the terms on which the Claimant instructed Bond Turner. Even if it be assumed that it was on a CFA, that agreement was not before me. I have no evidence as to who took the decisions to press the *costs* dispute or resist the appeal brought in it. That includes an absence of any evidence about what, if any, involvement the Claimant had himself in such decision making.
65. I understood Mr Mallalieu to accept that, in the ordinary course, the fact that solicitors have a financial or economic interest in what is recovered as to damages and costs in a case funded under a CFA does *not* expose them to liability to a NPCO. Certainly, he took me to authorities that establish exceptions (such as where the CFA is invalid or enforceable) but there is no evidence of any irregularity here. I consider that even if the prime beneficiary of a dispute about the quantum of costs to be recovered in settled litigation like this might in many cases be the solicitor, rather than the client, that does not alter the fact that it is the client's costs that are being recovered or disputed. It is client who ordinarily bears the liability for his solicitors' costs. As already indicated, I have no details of any specific agreement made between Bond Turner and their client in this case, but I have no reason to believe that it was exceptional, unusual, or out of the norm. The authorities binding on me underscore good policy reasons for concluding that NPCOs should not ordinarily be made against solicitors seeking to maximise the outcomes of litigation, pursued in the names of their clients, even if, as in respect of costs, they are ultimately pocketed by those solicitors. As Lord Woolf has said: "The existence of a CFA should make a legal advisers' position as a matter of law no worse, so far as being ordered to pay costs is concerned, than it would be if there was no CFAs. This is unless, of course, the CFA is outside the statutory protection."¹²
66. Fifth, it does not follow from the fact that Bond Turner may have a financial or economic interest in the outturn of a particular case that an entity which is one of its owners, and which may ultimately benefit from any overall profit made by Bond Turner, is in any sense either *the* party or *a* party with a financial interest in the particular case. That would place all owners of solicitor's firms in the potential frame for receipt of a NPCO. Anexo is itself owned by others. Logically, if the applicant here is right, they might also potentially be exposed to a NPCO.
67. Sixth, the reality here is that the application boils down to an assertion that the Anexo Group PLC can be treated as having a notional stake in any piece of litigation consistent with its working model and run through one or more of its Group members, because it is an ingredient in a *modus operandi* that generates profit for the Group. I do not accept that it is just to make it subject to a NPCO on that footing in this case.

¹² Hodgson & Ors v Imperial Tobacco Ltd & Ors [1998] 1 WLR 1056.

There is no evidence before me to show how or in what way any outcome for Bond Turner from the costs dispute in this particular litigation would have fed into what the holding company received from Bond Turner in the financial year in which the litigation concluded or at all.

68. Having reached the above conclusion on the merits of the application, I need not deal in any detail with Mr Williams' subordinate contention that the application should in any event have been refused on procedural grounds because it was made without any advance notice having been given to Anexo. The absence of notice had, in the event, not prejudiced Anexo or caused it any difficulty in the preparation or presentation of its response to the application. I would not have dismissed the application on the basis of want of notice.

Outcome

69. For the reasons given above, the application will be dismissed. The parties are invited to agree a minute of order reflecting that outcome. I will deal with any consequential matters at the formal handing-down of the judgment.

HHJ Luba KC

11 October 2023