



Case No: 7LS574445

IN THE LEEDS COUNTY COURT
CHANCERY BUSINESS
IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND
DEPENDANTS) ACT 1975

The Court House
Oxford Row
Leeds LS1 3BG

Date: 16 February 2015

Before :

His Honour Judge Behrens sitting as a Judge of the High Court in Leeds

Between :

MILES OLIVER TAYLOR **Claimant**
- and -
(1) RICHARD JENNISON BELL
(2) ROBERT CHESTER HAWORTH **Defendants**

**The Claimant acted in person but was assisted by his mother whom I permitted to address
the Court on his behalf
Richard Selwyn Sharpe (instructed by Haworth Holt Bell Ltd) for the Defendants**

Hearing date: 2 February 2015

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I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Judge Behrens :

1 Introduction

1. This is an application by Mr Taylor to vary the terms of a consent order made Judge Langan QC on or about 27th May 2008.

2. Mr Taylor is the son of Mr Peter Gardiner who died on 18th December 2006 leaving an estate valued at approximately £2 million. At the time of his father's death Mr Taylor was 17 years old. It is common ground that Mr Gardiner's will made no provision for Mr Taylor. £350,000 was left to two named charities; Mr Gardiner's personal possessions were left to his only son, Lee Gardiner, the residue of the estate was an accretion to a Discretionary Trust set up the same day as the date of the will. Mr Taylor was excluded as a beneficiary under the Discretionary Trust. The beneficiaries were Mr Gardiner's other son (excluding Mr Taylor) and remoter issue, any charity and a number of named individuals.

3. Mr Taylor made an application under the Provision for Family and Dependents Act 1975 ("the 1975 Act") for reasonable financial provision out of his father's estate.

4. Mr Taylor is a keen and talented singer. From an early age (his mother said 10) he has had a passion to be an opera singer. He does, however, have some learning difficulties which are described in a report dated 9th January 2013 of Mr Griffiths and may be summarised thus:

[Mr Taylor] presents a profile indicative of specific learning difficulties based on underlying weaknesses within his working memory and information processing speed. These weaknesses have had a negative impact on some of his literacy skills and also appear to have implications for his educational performance in terms of time management and organisation.

5. It is also significant that on 5th April 2008 (some 7 weeks before the consent order) Mr Taylor was involved in a road traffic in which he suffered multiple chest injuries and liver laceration. He was an in patient until 13th April 2008 and appears to have received treatment until at least August 2008.

6. The application under the 1975 Act was compromised and the compromise embodied in the consent order of Judge Langan QC. It will be necessary to refer to the order in a little detail later in this judgment. For present purposes it is sufficient to note that the purpose of the order was to provide reasonable financial maintenance throughout his Sixth Form College and University period. The order set out in considerable detail the maximum amount of payments that were to be made and provided that the payments came to an end on 31st August 2014. The maximum payable under the order was £210,000 and the order specified that that sum be set aside in a separate bank account.

7. For a variety of reasons – some of which are linked to Mr Taylor's accident and learning difficulties – his education did not go according to plan. It will be necessary to set out what happened later in this judgment. In the result he had not finished his University education by August 2014. The undergraduate course will not finish until the summer of 2015. Furthermore in order to further his career prospects he wishes to pursue a 2 year post graduate course at either the Royal College of Music or the Guildhall School of Music in London. In this application he is seeking a variation of Judge Langan QC's order so as to extend the funding both for the year ending August 2015 and for the post graduate course. He points out that he has so far received £112,443.21 of funding out of the estate. Whilst he is extremely grateful for the funding he has received he points out that it was £97,556.79 less than the £210,000 provided for in the order.

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8. The executors of Mr Gardiner oppose the application on a large number of grounds. At one time they suggested that Mr Taylor did not have the musical talent to undergo the post graduate course. The auditions for the course do not take place until the end of February and thus it is correct that Mr Taylor has not been accepted on the course. Mr Taylor provided reports from his music teacher – Dr Padmore – who felt he had the necessary ability. He produced a report from Dr Harrow a pathway leader at Leeds Music College who had every reason to believe that Mr Taylor would be offered a post graduate place. Furthermore the Defendants commissioned a report from Margaret McDonald an experienced mezzo soprano and singing coach. Mrs McDonald has produced two very full, clear and helpful reports in which she concluded that Mr Taylor demonstrated real vocal potential and deserved every opportunity to study on a post-graduate performance course. In the light of that evidence the executors accepted that Mr Taylor had the necessary skill to study on the course.

9. Mr Selwyn Sharpe raised a number of legal challenges to the order. He pointed out that this was a consent order where both sides were legally represented. He accepts that there is jurisdiction to vary the order but contends that such an order should only be made if the circumstances set out in Barder v Calouri [1988] AC 20 are made out. He also referred to the importance to be attached to agreements referred to X v X [2002] 1 FLR 508. He submitted that Mr Taylor could not surmount these obstacles with the result that the application must fail.

10. If, contrary to his prime submission, it is appropriate to vary the order Mr Selwyn Sharpe submits that the estimates of Mr Taylor's expenses are exaggerated. He also points out that there are other sources of funds available to Mr Taylor. These include support from his mother, government loans, maintenance grants and income from earning.

11. Finally Mr Selwyn Sharpe pointed out that as at the date of the application there was only £38,479 in the estate account. When he gave evidence Mr Bell explained that the requirement to maintain the separate bank account was for the purpose of ensuring that sufficient moneys remained to satisfy the maintenance award. When it became apparent that the full amount of the award was not going to be claimed distributions were made to the discretionary beneficiaries. He was not able to give me the dates of the distributions. As a matter of arithmetic these distributions must have amounted to something like £59,000 (£97,556 - £38,479).

12. The Defendants' costs schedule in defending this application amounts to £23,267.99. In the light of the sums in the estate account I have to say that I regard such expenditure as both unfortunate and disproportionate. I cannot accept that it was necessary to go into such detail into Mr Taylor's financial position and into his ability to study on the post graduate course. I would have expected it to have been possible to bring relevant matters to the Court's attention at a far lower cost.

2 The order of Judge Langan QC

13. The Order contained a number of recitals including:

UPON it being agreed between the parties that all payments set out in the following order are to be conditional on the Claimant attending a full time course of training up to and including postgraduate level in music academic study or some other form of professional qualification
...

AND UPON it being agreed between the parties that the terms of this Order are in full and final satisfaction of all claims for income and capital and of any other nature whatsoever by the Claimant against the Defendants

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1. Pursuant to section 2 of the above named Act that there shall be paid out of the net estate of the Deceased to the Claimant periodical payments as follows:
 - a) From 1 January 2007 to 31 August 2009 the Estate to pay to the Claimant sums for his maintenance at the rate of £8,856 per annum for living expenses together with fees for Harrogate College (up to a maximum of £8,575) together with singing and piano lessons up to a maximum of £2,736 per annum
 - b) From 1 September 2009 to 31 August 2009 the Estate to pay to the Claimant sums for his maintenance at the rate of £9,000 per annum for living expenses together with University tuition fees up to a maximum of £3,145 together with Halls of Residence Accommodation Fees up to a maximum of £4,680 per annum
 - c) From 1 September 2010 to 31 August 2011 the Estate to pay to the Claimant sums for his maintenance at the rate of £9,000 per annum for living expenses together with University tuition fees up to a maximum of £3,145 together with a contribution towards student rented accommodation up to a maximum of £6,500 per annum.
 - d) From 1 September 2011 to 31 August 2012 the Estate to pay to the Claimant sums for his maintenance at the rate of £9,000 per annum for living expenses together with University tuition fees up to a maximum of £3,145 together with a contribution towards student rented accommodation up to a maximum of £6,825 per annum.
 - e) From 1 September 2012 to 31 August 2013 the Estate to pay to the Claimant sums for his maintenance at the rate of £9,000 per annum for living expenses together with University tuition fees up to a maximum of £6,400 together with a contribution towards student rented accommodation up to a maximum of £7,166 per annum.
 - f) From 1 September 2013 to 31 August 2014 the Estate to pay to the Claimant sums for his maintenance at the rate of £9,000 per annum for living expenses together with University tuition fees up to a maximum of £6,400 together with a contribution towards student rented accommodation up to a maximum of £7,525 per annum.
2. Pursuant to section 2(3) of the above named Act £210,000 shall be set aside by the executors of the estate and apportioned within a separate bank account specifically for this purpose to ensure that sufficient moneys remain available to satisfy the maintenance liability to the Claimant detailed in paragraph 1 above.

15. It will thus be seen that the order contemplated that the fees and maintenance would cover 2 years at Harrogate College and 5 years university fees (presumably 3 years as an undergraduate and 2 years as a post graduate).

3 History of Mr Taylor's education

16. Margaret McDonald sets out the history of Mr Taylor's education in her report. In summary as a result of his injury he was unable to take his exams at Harrogate College in 2008. He did, however start an intense course of lessons with Dr Padmore.

17. In the result between 2009 and 2011 he attended Leeds College of Music and achieved a BTEC ND Music. During this period he incurred no fees and for the most part lived at home.

18. In 2011 he attended the Royal Northern College of Music for a BMUS (Hons Course). The course was academic and it proved difficult. He failed the academic part of his 2nd year exams.

19. In 2013 he joined the Leeds College of Music in the 2nd year. The course is a 4 year course and he will not graduate until the summer of 2015.

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20. As already noted he wishes to undertake a 2 year post graduate course starting in September 2015.

4 Moneys paid by the executors

21. Mr Bell has provided a schedule showing payments made under the order. As already noted they amount in total to £112,443.21. No payments have been made in respect of any period after 31st August 2014.

22. On 30th June 2010 Mr Taylor wrote to Mr Bell explaining that he was attending the Leeds College of Music incurring no fees and that he was living at home. He pointed out that for the period between September 2009 and August 2011 fees and accommodation totalling £17,470 would not be claimed. He accordingly asked for the payments to be re-allocated to the period from 2014 to 2016 to ensure he could complete his studies as envisaged. Mr Bell responded that whilst the Trustees had some sympathy with Mr Taylor they had no power or authority to agree any amendments to the Court order.

23. Although Mr Taylor kept Mr Bell informed as to the state of his education he made no further request for a variation until he issued this application in August 2014.

5 Mr Taylor's needs and assets

24. Mr Taylor has produced a Schedule of annual expenses and anticipated expenses for the 3 years from 2014 to 2017. This totals £23,833 for 2014 to 2015, £34,326 for 2015 – 2016 and for 2016 – 2017.

25. Mr Taylor was required during the course of the proceedings to produce full details of his financial situation. These demonstrate that Mr Taylor has no capital, that he has received some support from his mother both financial and in providing him with board and lodging. He has taken advantage of the student loan scheme though he believes this will not be available for postgraduate studies. He believes that he will be able to obtain a government grant/loan to cover the cost of his college fees whilst a postgraduate. He is aware that some scholarships/bursaries are available from each of the post graduate colleges in London. However he cannot apply for bursaries until he has been offered a place. Furthermore he is aware that competition for bursaries/scholarships is very fierce.

26. At one time during the course of Mr Taylor's cross-examination Mr Selwyn Sharpe suggested that he was irresponsible with money. I do not accept that suggestion.

6 Needs of other beneficiaries

27. No evidence has been filed suggesting that any of the other beneficiaries have any need.

7 The law

7.1 Legislation

28. There is express power to vary a periodical payments order in section 6 of the 1975 which provides so far as relevant.

(1) Subject to the provisions of this Act, where the court has made an order under section 2(1)(a) of this Act (in this section referred to as "the original order") for the making of periodical payments to any person (in this section referred to as "the original recipient"), the court, on an application under this section, shall have power by order to vary or discharge the

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original order or to suspend any provision of it temporarily and to revive the operation of any provision so suspended. ...

(3) Where the original order provides that any periodical payments payable thereunder to the original recipient are to cease on the occurrence of an event specified in the order [(other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner)] or on the expiration of a period so specified, then, if, before the end of the period of six months from the date of the occurrence of that event or of the expiration of that period, an application is made for an order under this section, the court shall have power to make any order which it would have had power to make if the application had been made before the date (whether in favour of the original recipient or any such person as is mentioned in subsection (2)(a) above and whether having effect from that date or from such later date as the court may specify) ...

(5) An application under this section may be made by any of the following persons, that is to say--

(a) any person who by virtue of section 1(1) of this Act has applied, or would but for section 4 of this Act be entitled to apply, for an order under section 2 of this Act, ...

(6) An order under this section may only affect--

(a) property the income of which is at the date of the order applicable wholly or in part for the making of periodical payments to any person who has applied for an order under this Act, or

(b) in the case of an application under subsection (3) above in respect of payments which have ceased to be payable on the occurrence of an event or the expiration of a period, property the income of which was so applicable immediately before the occurrence of that event or the expiration of that period, as the case may be, and any such property as is mentioned in paragraph (a) or (b) above is in subsections (2) and (5) above referred to as "relevant property".

(7) In exercising the powers conferred by this section the court shall have regard to all circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.

(8) Where the court makes an order under this section, it may give such consequential directions as it thinks necessary or expedient having regard to the provisions of the order...

(10) For the avoidance of doubt it is hereby declared that, in relation to an order which provides for the making of periodical payments which are to cease on the occurrence of an event specified in the order [(other than the formation of a subsequent marriage or civil partnership by a former spouse or former civil partner)] or on the expiration of a period so specified, the power to vary an order includes power to provide for the making of periodical payments after the expiration of that period or the occurrence of that event.

29. It is to be noted that the power to vary in section 6(1) is expressed in quite general terms. Save that the order must be made out of "relevant property" the discretion appears to be quite general. Under subsection (7) the Court is required to have regard to all the circumstances of the case including any change in any of the matters the Court was required to have regard under section 3. The section 3 factors are well-known and I shall not lengthen this judgment by setting them out in full. Under subsection (10) it is made clear that the Court has power to extend the period for which periodical payments are made beyond the period provided for in the original order.

7.2 Authorities

30. Mr Selwyn Sharpe cited 4 authorities in his skeleton argument in support of his submissions that there is a heavy onus on Mr Taylor in seeking to set aside the consent order of Judge Langan QC (paragraph 9) and that Mr Taylor could not overcome the hurdles necessary before such an order can be made (paragraph 17).

31. Two points can be made before considering the authorities. First, Mr Taylor is not seeking to set aside Judge Langan QC's order. He is seeking to vary the periodical payments under the express power in the 1975 Act. Second, none of Mr Selwyn Sharpe's authorities are decisions on applications to vary a periodical payments order or, in fact, even decisions under the 1975 Act. As will appear in more detail below I do not get much assistance from these authorities.

Barder v Calouri [1988] A C 20

32. This was a divorce case. The wife was awarded care and control of the children and by consent the husband agreed to transfer the matrimonial home to her. The wife subsequently killed the children and committed suicide. The husband sought leave to appeal out of time. Leave to appeal was granted. The judge set aside the consent order on the ground that it was vitiated by mistake. His order was overturned by the Court of Appeal but restored by the House of Lords. In the course of his speech Lord Brandon at p 43B – E set out the conditions necessary for a court to exercise its discretion to grant leave to appeal out of time from an order for financial provision or property transfer made after divorce on the ground of new events. The conditions are summarised in paragraph 8 of Mr Selwyn Sharpe's skeleton argument and paragraph 23(d) of Francis on Inheritance Act Claims:

- (a) the new event invalidates the basis or fundamental assumption upon which the order was made;
- (b) the new event occurred within a relatively short time ;
- (c) the application was made promptly;
- (d) the grant of leave does not prejudice third parties.

33. The short answer to this authority is that it relates, as Lord Brandon made clear, to applications for leave to appeal out of time against an order for financial provision order on divorce. Mr Taylor's case concerns an in time application to vary a periodical payments order made under section 2(1)(a) of the 1975 Act. As section 6(3) of the 1975 Act makes clear the application can be made at any time up to 6 months after the expiration of the order. Thus conditions (b) and (c) are inconsistent with section 6(3). Condition (a) is inconsistent with section 6(7). The discretion under section 6 is not so circumscribed.

X v X [2002] 1 FLR 508

34. This was a divorce case. It was an application by a husband requiring the wife to show cause why an order should be made giving effect to an agreement relating to financial relief that had been made between the parties. It is not necessary to refer to the facts in detail. Mr Selwyn Sharpe relied on the authority principally for a statement by Munby J in paragraph 103 of his judgment:

The fact that the parties have made their own agreement is a very important factor in considering what is the just and fair outcome. The amount of importance will vary from case to case.

The court will not lightly permit parties who have made an agreement between themselves to depart from it. The court should be slow to invade the contractual territory, for as a matter of

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general policy what the parties have themselves agreed should, unless on the face of it or in fact contrary to public policy or subject to some vitiating feature of the type referred to by Ormrod LJ, be upheld by the courts.

A formal agreement, properly and fairly arrived at with competent legal advice, should be upheld by the court unless there are good and substantial grounds for concluding that an injustice will be done by holding the parties to it (I adopt Ormrod LJ's formulation in preference to that of Thorpe J: his references to "the most exceptional circumstances" and "overwhelmingly strong considerations" seem to me, with respect, to put the matter perhaps a little too high).

35. It is true that Judge Langan QC's order was made by consent. It is also true that it contains a recital to the effect that it is made in full and final settlement of all claims. However Mr Taylor's application is not an application to set aside the order. It is an application for the court to exercise the statutory power in section 6 of the 1975 Act to vary the order for periodical payments. There is nothing in the order which purports to exclude that power. Indeed it is by no means clear that the Court's power under section 6 can be excluded. To be fair Mr Selwyn Sharpe did not submit that it could be excluded.

Edgar v Edgar [1980] 1 WLR 1410

36. This was another case involving financial relief following a divorce. A wife claimed a lump sum notwithstanding a provision in an earlier deed of separation that she would not seek any further capital or property provision from the husband. The trial judge made a substantial lump sum award against the husband. The Court of Appeal allowed the appeal. The case was considered in detail by Munby J in summarising the law in paragraph 3 of his judgment in X v X and I need say no more about this decision. It does not assist Mr Selwyn Sharpe.

Brennan v Bolt Burden [2005] QB 303

37. This was a complicated procedural wrangle in a personal injury action. The issue in the case related to the nature of the mistake necessary to render a compromise agreement in personal injury litigation void.

38. Mr Taylor does not suggest that there was any mistake when Judge Langan QC's order was made. Thus this case is of no assistance.

8 Discussion

39. I accordingly reject the suggestion that Mr Taylor has any specific hurdles to overcome before I can exercise the discretion under section 6. I proceed on the basis that I have an unfettered discretion and that I must have regard to all the circumstances of the case including any change in any of the matters that the Court was required to take into account when the consent order was made.

40. To my mind the most important circumstances are:

1. That the expressed purpose of the order was to provide maintenance for Mr Taylor until the end of his post graduate studies
2. That a maximum total sum of £210,000 out of an estate of £2 million was set aside for that purpose

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3. That the payments were scheduled over a 7 year period from 1st January 2007. The timetable assumed that by the end of August 2014 Mr Taylor would have completed his post graduate education.
4. That the timetable anticipated at the time of the order has proved to be inaccurate. In particular his entry to university was delayed because he had to take the 2 year course in Leeds to qualify. The course is now a 4 year course. Thus he still has one year to complete his undergraduate course and a further 2 years of post graduate course.
5. That it is not suggested by the executors that Mr Taylor is a malingerer or that he has not devoted himself to his singing. There are a number of reasons for the timetable proving inaccurate. These include his accident which affected his exams at Harrogate College, his learning difficulties which affected the academic part of his course at the Northern College of Music and the fact that the undergraduate course now lasts 4 years rather than the 3 years anticipated in the order.
6. That Mr Taylor is plainly a talented and committed singer and has good prospects of being offered a post graduate place in singing.
7. That only £112,443 out of the £210,000 set aside for Mr Taylor's maintenance has in fact been used for that purpose. As Mr Taylor pointed out in his letter of June 2010 no sums at all were paid for University fees and accommodation for the period between 1st September 2009 and 31st August 2011.
8. That Mr Taylor's financial circumstances are such that financial provision is reasonably required by him to enable him to complete his post graduate studies. It is, of course, possible that Mr Taylor will continue to receive some support from his mother; that he will qualify for government support for his fees and/or obtain a scholarship or bursary from his college. Equally he may earn some money from bar or professional work. Even taking all this into account I am quite satisfied that, looked at objectively he is likely be in need of further financial support during the time when he is undertaking the post graduate course.
9. That the sum of £38,479 remained in the hands of the executors at the time this application was made. At one time I wondered whether the executors could be criticised for distributing the £59,000 which was not used for the purpose of maintenance. On reflection I accept Mr Bell's evidence that no such criticism is justified. The purpose of setting aside the £210,000 was:
 - specifically for this purpose to ensure that sufficient moneys remain available to satisfy the maintenance liability to the Claimant detailed in paragraph 1 above.As Mr Bell pointed out the order referred specifically to the schedule of payments set out in paragraph 1 of the order. Furthermore the sums specified in the order were the maximum payable in any one period. Thus once the maximum sum was not paid the executors were no longer required to keep any unpaid balance in the account.

Furthermore whilst Mr Taylor did request a variation in June 2010 he did not repeat the request until the application was made in August 2014. Thus Mr Bell was justified in being surprised when it was made.
10. That there is no evidence of need or any other compelling evidence by any other beneficiary.

9 Conclusion

41. When I take all the above factors into account I take the view that this is an appropriate case for a variation of Judge Langan QC's order under section 6 of the 1975 Act. In view of the funds currently held by the executors it is plainly not possible to make an award of anything like the £90,000 claimed by Mr Taylor.

42. Doing the best I propose to award the sum of £6,500 for the year ending August 2015 and the sum of £7,500 for each of the next 2 years. I shall not specify the precise use to which the sums are to be put though I note that the sum for this year will cover the course fees and the singing lessons and the sum for the next 2 years will go some way towards the rent.

43. The award for the next 2 years will be conditional on Mr Taylor attending a full time post graduate course of training. Thus if his application for the post graduate course is unsuccessful the award will not be paid. If, for some reason, he is awarded a deferred place it will be necessary to apply for a further variation of this order. I would, however, hope and expect the parties to be able to agree a suitable variation.

10 Costs

44. I have not heard any detailed argument on costs. I have no idea what offers (if any) have been made by the executors to Mr Taylor. It follows that the views expressed in this section are provisional. They are also written on the basis that there are no relevant offers.

45. Mr Taylor is in principle entitled to an order for his costs of this application out of the estate. Mr Taylor is however a litigant in person and is thus only entitled to those costs at litigant in person rates. There is no schedule of costs prepared by Mr Taylor and thus I have no idea how many hours have been spent in the preparation of this hearing or what fees and expenses he has incurred. I note from the executors' costs schedule that Mr Taylor has been ordered to pay the executors costs amounting to £1,335. I do not know if this sum has been paid. If not any costs due to Mr Taylor should be set off against that sum. It may be that a suitable compromise would be for Mr Taylor to waive his claim for costs and for the executors to waive the claim for £1,335.

46. The executors would also normally be entitled to an order for their costs out of the estate. They were after all necessary parties to the application and a court order was required. As already noted I am concerned at the level of costs claimed in the costs schedule. This was, after all, a County Court claim raising a not very difficult issue. I am concerned both at the extent to which the claim was defended and as to the actual costs incurred. I am far from convinced that it was necessary for the executors to instruct an expert in the light of the reports that had been received and the fact that any award would be conditional on Mr Taylor being awarded a place. I am far from convinced that this application justified a Grade A fee earner even though Mr Bell was one of the executors. Thus I am not satisfied that Grade A rates should apply. The hours spent also seem excessive. Equally Counsel's fees seem high.

47. My provisional view is that I am prepared to allow the executors to take costs totalling £15,000 inclusive of VAT and disbursements out of the estate. Any costs over and above that figure are in my view disproportionate and unreasonable.