Case No: B54YP364

IN THE BRADFORD COUNTY COURT

Exchange Square, Drake Street, Bradford

Date: 16 June 2017

Before:

HIS HONOUR JUDGE GOSNELL

Between:

Mr John Hewitt	**Claimant**
- and –	
Michael Smith	**First Defendant**
-and-	
Winslow Utilities Limited	**Second Defendant**

Mr Colin Richmond (instructed by Parker Bird Whiteley Solicitors) for the Appellant
Mr Ross Olson (instructed by Keoghs LLP) for the Respondents

Hearing dates: 2nd June 2017

Approved Judgment

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.

.....

HIS HONOUR JUDGE GOSNELL

His Honour Judge Gosnell:

1. This appeal is brought by Mr John Hewitt who is both claimant and appellant against the decision of District Judge Hickinbottom dated 11th January 2017. It is opposed by the first and second defendants who are respondents to the appeal. On 11th January 2017 District Judge Hickinbottom refused the appellants application for relief from sanctions and ordered that the claimant's costs would be restricted to court fees pursuant to CPR 3.14. The appellant contends that he was wrong to do so. I heard the appeal on 2nd June 2017 and reserved judgment and this document is a draft of the judgment I intend to hand down on a subsequent date.

2. **The procedural history**

The underlying claim arises from a road traffic accident which occurred on 14th November 2012 when the appellant was injured in a collision with a vehicle driven by the first defendant in the course of his employment with the second defendant. Liability has been admitted with causation and quantum in dispute. Court proceedings were issued on 11th December 2015 and a defence was filed on 4th May 2015. On 10th May 2016, a Notice of Proposed Allocation to the Multi Track was sent to both parties by the County Court Money Claims Centre on form 149C. Amongst the directions contained in this notice was an order that the parties file and exchange costs budgets as required CPR 3.13 by 10th June 2016. The claim was transferred to the County Court at Huddersfield who in turn transferred the claim to Bradford. On 15th July 2016, a District Judge at Bradford directed that the claim be listed for a Costs and Case Management hearing on the next available date with an estimated length of hearing of one hour. The court staff listed the hearing to take place on 25th August 2016 before District Judge Hickinbottom. The Notice sent out by the court referred to a "case management conference" rather than a Costs and Case Management Conference.

3. It is clear that both parties prepared for a costs and case management conference as both parties filed costs budgets. The respondent's budget was filed and served on time in accordance with the previous order by 10th June 2016, the appellant's budget was filed and served late on 17th August 2016 some eight days before the hearing. The appellant also helpfully filed as composite schedule of both parties' respective budgets in a self-calculating spreadsheet on 18th August 2016 to assist the District Judge. Both parties were represented by counsel at the hearing and the District Judge dealt with a number of directions which were eventually encompassed in an order drawn by the court on 2nd September 2016. When he turned to the issue of budgeting however counsel for the respondents pointed out that the appellant's budget had been filed and served late. Counsel for the appellant was not able to provide an explanation for this default as the issue had only been raised with him just prior to the hearing. The District Judge then adjourned the issue of costs budgeting to be dealt with, along with any application for relief from sanctions, at the next case management conference. As part of the directions he had already decided to list another case management conference on the next available date after 3rd January 2017 and he postponed the issue of costs budgeting and relief from sanctions to that hearing.

4. The court listed the case management conference to take place on 11th January 2017 and the appellant promptly applied for relief from sanctions on 7th September 2016

supported by a witness statement from the appellant's solicitor Sarah Louise Bartram in which she sought to explain the error which led to the budget being filed late. This application was listed for hearing on 11th January 2017 at the next case management conference as District Judge Hickinbottom had directed. On 21st November 2016, the respondents' solicitors applied for an order extending the time for service of the respondents' medical evidence and subsequent consequential directions. This application was dealt with by District Judge Greenan on 23rd December 2016. She granted the application and made a number of other directions varying the original timetable set out in the order of 25th August 2016. It therefore transpired that although District Judge Hickinbottom had anticipated dealing with a case management conference on 11th January 2017 there was no need for him to address any further directions required because District Judge Greenan had already dealt with them at the hearing on 23rd December 2016. He therefore only had to deal with the application for relief from sanctions and then cost budgeting for one or both parties, depending on the success or failure of the application for relief. District Judge Hickinbottom then heard submissions from counsel for both parties and dismissed the application for relief from sanctions. An Appellant's Notice was filed and I granted permission to appeal on 7th April 2017.

5. **The Judgment of District Judge Hickinbottom**

The District Judge delivered an extempore judgment at the end of the hearing as is usual with applications of this nature. He recited the procedural history in a similar way to the way I have done above and then reminded himself of the three stage test in *Denton v White [2014]* EWCA Civ 906. He recorded the respondents' reliance on the judgment of Lord Justice Jackson in *Jamadar v Bradford Teaching Hospitals NHS Foundation Trust* [2016] EWCA Civ 1001in particular, paragraph 38:

> *"This was clearly a serious or significant breach by the Claimant's solicitors. Their failure to serve a budget meant that if relief were granted, there would have to be a second costs management hearing at a later date. That would add to the costs and lengthen the litigation. It would make additional demands on the resources of the court. Also, importantly it would mean that case management and costs management were done on separate occasions. In a case such as this, case management and costs management should be done at the same time"*

6. The District Judge then recorded the fact that by adjourning the issue of relief from sanctions and costs budgeting on 25th August 2016 he had immediately put the case into the position that the directions for case management and cost management were being dealt with separately, an approach which was deprecated by Lord Justice Jackson in *Jamadar*. He pointed out that he could have chosen to limit the appellant's costs to court fees only at the hearing on 25th August 2016 but chose to give them the opportunity to apply for relief from sanctions. This led him to the following conclusion:

> *"8. Because of my indulgence on that occasion, it does not seem to me that it would be right to place the Claimant in any better position than they would have been in if the matter had*

> *been dealt with on that day. I find myself in the position that I could not, even if I wished to, grant the relief the Claimant seeks, because it seems to me that to do so would immediately contradict at least the spirit if not the letter of the authority in Jamadar*"

7. He found that the appellant had committed a serious breach of the rules for which there was no good reason. On the issue of "all the circumstances of the case" he said:

> *"10. It is true to say in terms of the overall running of the case, that is to say, the granting of directions or interlocutory steps leading to a trial in due course, that there has been no hindrance. However, this hearing has been listed when it should not have been necessary because costs management should have been dealt with on the first occasion. That has resulted in extra costs on both sides and extra use of court time*"

He reminded himself of the provisions of CPR 3.9 including the two additional paragraphs and that the respondents had submitted that the appellant's costs had risen by £14,000 since the hearing in August 2016. Although he accepted there was prejudice to the appellant's solicitor if relief was refused there was no actual prejudice to the appellant personally. He therefore decided to refuse relief.

8. **The parties' submissions on the appeal**

The appellant contended in his skeleton argument that at the hearing on 25th August 2016 that District Judge Hickinbottom expressly stated that he would not have dealt with costs budgeting at that hearing in any event and adjourned costs budgeting to the next hearing in any event along with any application for relief from sanctions. I suspect this submission was made before a transcript of the hearing on 25th August 2016 was obtained. I pointed out at the appeal hearing that this submission could not stand against a fair reading of the transcript of that hearing which counsel for the appellant appeared to accept. Mr Richmond for the appellant therefore refined this argument to reliance on the fact that the respondent had requested (and the appellant had agreed) that the timetable should include a further case management conference in the early new year to enable the respondent to review the appellant's expert evidence and decide whether further expert evidence was required. The hearing of 11th January 2017 was listed for this purpose and when the application for relief from sanctions was made it was listed at the hearing in accordance with District Judge Hickinbottom's instructions. There was therefore no additional hearing caused by the application for relief from sanctions and the delayed cost budgeting. The appellant submitted that the judge fell into error in finding that the appellant's breach had caused the second hearing when this was not in fact the case. This led to the judge finding there was a significant breach when in fact there was not. Counsel for the appellant submitted that, in any event, where a party needs to apply for relief from sanctions the fact that this has caused another hearing cannot always be a reason to dismiss the application, otherwise every application would fall for dismissal on this ground alone.

9. The appellant submitted that the judge had placed too much reliance on the case of *Jamadar* where the facts were very different. He also relied on two county court decisions where relief had been granted which he contended were more similar to the current appeal. It was submitted that the appellant's solicitor had not ignored the order to file a costs budget, merely misunderstood it and had attempted to comply with her understanding of what the order meant. The appellant was also critical of the judge's approach to prejudice when it was clear there would be prejudice to the claimant by limiting the claim for costs to court fees only. It was submitted that the increase in costs between the two hearings was not important as a proportion of the costs were by then incurred costs and not subject to budgeting.

10. The respondents disagreed with the appellant's interpretation of the judge's comments on 25th August 2016 and submitted that the judge would have dealt with both parties' budgets if they had been served on time. Whilst it may be the case that a second case management conference was always envisaged and in fact ordered on 25th August 2016 by January 2017 the landscape had changed. By that time District Judge Greenan had dealt with all the outstanding directions and so the hearing on 11th January 2017 only dealt with the appellant's application for relief from sanctions and the respondents' budget. The respondent therefore submitted that the current appeal was factually similar to *Jamadar* for this reason. Mr Olson for the respondents submitted that the judge had correctly applied the three-stage test set out in *Denton v White* and had reminded himself of the contents of CPR 3.9. He reminded the court that this was a review of the hearing below and that an appellate court should be reluctant to interfere with the exercise of discretion by the judge below particularly on an issue of case management. Whilst he agreed that the decision was robust and had unfortunate consequences for the claimant this did not mean it was wrong, which was the appropriate test. Mr Olson distinguished the two county court cases as one of them pre-dated *Denton* and *Jamadar* and in the other there had been a prospective application for relief from sanctions.

11. **The relevant rules**

The relevant rules in relation to costs budgeting are as follows:

> *"Filing and exchanging budgets and budget discussion reports*
>
> ***3.13***
>
> *(1) Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets—*
>
> *(a) where the stated value of the claim on the claim form is less than £50,000, with their directions questionnaires; or*

(b) in any other case, not later than 21 days before the first case management conference.

(2) In the event that a party files and exchanges a budget under paragraph (1), all other parties, not being litigants in person, must file an agreed budget discussion report no later than 7 days before the first case management conference.

Failure to file a budget

***3.14** Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees."*

12. Before April 2016 CPR 3.13 read somewhat differently:

*"**3.13** Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets as required by the rules or as the court otherwise directs. Each party must do so by the date specified in the notice served under rule 26.3(1) or, if no such date is specified, seven days before the first case management conference"*

13. It is clear that CPR 3.14 carries an automatic sanction where a party fails to file a budget as ordered. This brings into play CPR 3.8 which reads as follows:

Sanctions have effect unless defaulting party obtains relief

3.8

(1) Where a party has failed to comply with a rule, practice direction or court order, any sanction for failure to comply imposed by the rule, practice direction or court order has effect unless the party in default applies for and obtains relief from the sanction

14. The subject of relief from sanctions is dealt with in CPR 3.9:

Relief from sanctions

3.9

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –

(a) for litigation to be conducted efficiently and at proportionate cost; and

(b) to enforce compliance with rules, practice directions and orders.

(2) An application for relief must be supported by evidence.

15. The Law on appeals

This is governed by CPR 52.21 which states:

"52.21(1) Every appeal will be limited to a review of the lower court...

(3) The appeal court will allow an appeal where the decision of the lower court was –

a) wrong; or

b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court"

Where the court below is exercising a discretion in making a decision the threshold test for interfering with that exercise by the appeal court is set out by Lord Woolf MR in Phonographic Performance Ltd v AEI Redifusion Music Ltd [1999] 1 WLR at 1523:

"Before the court can interfere it must be shown that the judge has either erred in principle in his approach or has left out of account or has taken into account some feature that he should, or should not, have considered, or that his decision was wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scale"

16. **Discussion**

Before embarking on an analysis of the merits of the appeal it is perhaps necessary to summarise what happened at the hearing on 25th August 2016 if only because there was a debate about what the District Judge said. The transcript reveals that the parties' counsel introduced themselves and a discussion then took place about the appropriate directions going forward based on a draft order which had been submitted. The judge refused a contested application for expert evidence and then he was told the parties had agreed that a further case management conference would be listed to enable the respondent to review the appellant's disclosed expert evidence. The judge then said "we shall not be doing very much with this budget, I can tell you that now". In my view, the judge was indicating that he was provisionally not minded to make substantial amendments to the parties' submitted budgets. I say that because at this stage he was not aware that there was a problem with the appellant's budget being filed late. He was then told by counsel for the respondent that the appellant had breached the previous order which required the budget to be filed and served by 10th June 2016. The judge invited comment from counsel for the appellant who reported that he had not been aware of the problem until the start of the hearing and he was unable to contact his instructing solicitor who was on holiday. The judge then asked counsel for the respondent whether the appellant would need to apply for relief from sanctions and she agreed he did. Counsel for the claimant said that he had no evidence

to explain the reasons for the breach and the judge said the way to deal with it was to adjourn costs budgeting to the next case management conference which he did. He did make a joke about finding other ways to avoid costs budgeting but it is clear it was a joke and in my view the judge was prepared to and would have dealt with costs budgeting if he had been asked to do so. It was clear from what he said later in the hearing that he had read and considered the budgets in advance of the hearing.

17. The judge did not explore with either party whether he could still deal with costs management even though the appellant was technically in breach. This is perhaps unfortunate as it is clear that budgets had been exchanged eight days prior to the hearing and both parties were presumably ready to deal with the issue as there had been some discussions prior to the hearing and the budgets were not particularly lengthy or complex. Counsel for the respondents did not advance any prejudice caused by the delay in service of the budget nor did she contend that she was not ready to deal with the issue if the judge decided to do so. It was not contended to the contrary on the appeal either. This was therefore a somewhat technical and in my view opportunist objection by the respondents as I can see no reason why the court could not have dealt with costs management on that occasion if the judge had decided to do so.

18. I am conscious of the fact that the order was not appealed and it is no part of my function in this appeal to say whether the judge was right or wrong in his decision on 25th August 2016. I suspect he was technically right to adjourn the issue because the costs budget was late, the sanction set out in CPR 3.14 would normally apply and the appellant's counsel was not able to explain the delay or apply for relief from sanctions in the face of the court as he had no evidence he could put before the court as to the reasons for the breach. I think it is however relevant to the exercise of discretion in the decision under appeal that absent the technical objection by the respondents the court probably could and would have dealt with costs management at the original hearing.

19. This brings me to an assessment of whether the judge was right to reach the conclusions that he did in his judgment. The first issue is whether his assessment of the seriousness or significance of the breach was correct. He based his assessment mainly on the dicta of Lord Justice Jackson in *Jamadar* as the decision to adjourn the costs budgeting had caused case management and costs management to be conducted separately and a further hearing had to be convened when costs budgeting should have been dealt with at the first hearing. I am attracted by the argument put forward by counsel for the appellant in this case that the fact that a fresh hearing must be arranged to deal with an application for relief from sanctions and, if successful, costs budgeting, cannot be a conclusive reason for dismissing an application for relief. If that was the case, all separately listed applications for relief from sanctions would be effectively hopeless before they had begun. The need to list a fresh hearing is however clearly a factor which must be taken into account and weighed in the scales as indeed it was in *Jamadar and Mitchell*.

20. The assessment of the seriousness and significance of the breach is a process which involves both an analysis of the nature of the breach and the consequences caused by it. In the leading judgment in *Denton v White* this was addressed in paragraph 26:

> 26. "*Triviality is not part of the test described in the rule. It is a useful concept in the context of the first stage because it requires the judge to focus on the question whether a breach is serious or significant. In Mitchell itself, the court also used the words "minor" (para 59) and "insignificant" (para 40). It seems that the word "trivial" has given rise to some difficulty. For example, it has given rise to arguments as to whether a substantial delay in complying with the terms of a rule or order which has no effect on the efficient running of the litigation is or is not to be regarded as trivial. Such semantic disputes do not promote the conduct of litigation efficiently and at proportionate cost. In these circumstances, we think it would be preferable if in future the focus of the enquiry at the first stage should not be on whether the breach has been trivial. Rather, it should be on whether the breach has been serious or significant. It was submitted on behalf of the Law Society and Bar Council that the test of triviality should be replaced by the test of immateriality and that an immaterial breach should be defined as one which "neither imperils future hearing dates nor otherwise disrupts the conduct of the litigation". Provided that this is understood as including the effect on litigation generally (and not only on the litigation in which the application is made), there are many circumstances in which materiality in this sense will be the most useful measure of whether a breach has been serious or significant. But it leaves out of account those breaches which are incapable of affecting the efficient progress of the litigation, although they are serious. The most obvious example of such a breach is a failure to pay court fees. We therefore prefer simply to say that, in evaluating a breach, judges should assess its seriousness and significance. We recognise that the concepts of seriousness and significance are not hard-edged and that there are degrees of seriousness and significance, but we hope that, assisted by the guidance given in this decision and its application in individual cases over time, courts will deal with these applications in a consistent manner.*"

21. This is clearly not a binary approach, in the sense that a breach is either serious or it is not. In assessing the seriousness and significance of the breach there may be several factors to be considered not all of which will support the same conclusion. In the present case, the filing and service of the budget was over two months late and so this factor clearly points towards a serious breach. It should however be recorded that the budget was filed eight days before the hearing which was, before 2016, considered sufficient time to consider and comment on an opponent's budget. Whilst I accept that the hearing on 25th August adjourned the costs management issues I think it is only fair to consider what prejudice there would have been to the respondents if the hearing had been allowed to proceed as planned. If the respondents had not raised the issue of the appellant being late in filing and serving the budget I doubt the District Judge would have been too concerned by it provided neither party had been disadvantaged

by the delay. In my view costs management would have taken place at the hearing on 25th August 2016 and been concluded by the District Judge in relatively short order.

22. Even if the court is limited to considering what in fact did occur because of the decision to adjourn the costs budgeting the court should consider whether the application for relief from sanctions has actually added to the costs of the litigation and placed additional demands on the resources of the court. In this case, it would be right to take into account that the application was listed to be dealt with at the same time as a pre-planned case management conference at which the previous case management decisions would be reviewed and if necessary, varied. Whilst I accept that in the event those case management decisions were not actually considered on 11th January 2017 this was only because the respondents had issued an application in November 2016 seeking a variation of certain directions. It would be wholly unfair if the appellant were treated as if it had caused a stand-alone hearing when in fact it only became a stand-alone hearing due to the respondent's prior application (which itself took up court time) dealing with the issues in advance.

23. The judge clearly felt he was bound by the spirit if not the letter of the authority in the Court of Appeal decision in *Jamadar.* Whilst the guidance in that case was clearly binding on him, he would only be compelled to reach the same decision if the facts were the same or very similar. It seems to me there are two very important distinctions between this case and *Jamadar.* In that case the claimant had come to the costs and case management hearing having not filed and served a budget at all. His counsel attempted to submit an unsigned draft which had not previously been served. Understandably counsel for the defendant protested as he had been given no time to consider it and take instructions. In the present case, the budget was filed and served eight days before the hearing. The budgets had been considered by both parties, there had been some discussions about the contents and the appellant had filed a helpful schedule containing both sets of figures. The objection about the appellant's budget being late was only raised minutes before the hearing started by counsel for the respondents. Both counsel appeared to have been properly instructed and capable of dealing with costs management if they had been asked to do so. The second difference is that the application for relief from sanctions (and costs management) were listed to be heard at the same time as a case management conference which had been conceded by both parties to have been reasonably required. This contrasted with *Jamadar* where a stand-alone hearing was listed to deal with the application for relief from sanctions which, if successful, would have required a second hearing to deal with the costs management of the claimants claim. Whilst *Jamadar* was clearly a relevant and useful authority to consider, in my view, it did not compel any particular result in terms of the success or failure of the application given the different factual circumstances.

24. It is clear that sometimes a court can find that whilst there has been significant delay in complying with a rule or order this may not amount to a serious or significant breach where the consequences in terms of the progress of the litigation are not substantial. In *Altomart Limited v Salford Estates (no 2) Limited* [2014] EWCA Civ 1408 the respondent was about seven weeks late in filing a Respondent's Notice in an appeal. The appeal was not however listed until 10th or 11th November 2014 so the appellant was not really disadvantaged by the respondent's delay. Having analysed the principles in recent authorities Lord Justice Bick found:

> *"22. Applying the Mitchell principles as expounded in Denton, the first question for consideration was the seriousness and significance of the breach of the rules which had given rise to the need for the application. In terms of the lapse of time the delay was considerable, but it was clear that it was likely to have had little, if any, effect on the course of the proceedings. Neither party suggested, for example, that it would lead to an adjournment of the hearing and there was no reason to think that the need to allow additional time for argument would be likely to interfere with the court's other business. In those circumstances I did not think that the delay could properly be regarded as serious or significant in the sense in which those expressions were used in Denton. That suggested that relief should probably be granted: see Denton, paragraph 28.*
>
> *23. As I have already said, it did not seem to me that the explanation given for the delay was very persuasive, but, since the delay itself had had no real effect on the proceedings and had caused no substantive prejudice to Salford, I did not consider that to be of great significance. Altomart accepted that it should bear the costs occasioned by its need to seek the court's indulgence. There was nothing else in its conduct of the proceedings or in the circumstances more generally that militated against granting relief and it would not have been appropriate to refuse relief simply as a punitive measure. I was therefore satisfied that the application should be granted."*

25. The respondent would no doubt say that *Altomart* is not a comparable case because the delay in filing the respondent's notice did not cause a hearing to be adjourned and re-listed for an application for relief from sanctions to be made. This is technically correct but in my view in the present case the adjournment was only caused by the respondents taking a technical point on the appellants delay in filing the cost budget when the delay caused them no prejudice at all or at least should have caused them no prejudice at all. The warning given by the Master of the Rolls in Denton may be apposite:

> *"43. The court will be more ready in the future to penalise opportunism. The duty of care owed by a legal representative to his client takes account of the fact that litigants are required to help the court to further the overriding objective. Representatives should bear this important obligation to the court in mind when considering whether to advise their clients to adopt an uncooperative attitude in unreasonably refusing to agree extensions of time and in unreasonably opposing applications for relief from sanctions. It is as unacceptable for a party to try to take advantage of a minor inadvertent error, as it is for rules, orders and practice directions to be breached in the first place"*

26. The judge dealt with the issue about the reasons for the breach quite briefly commenting that the failure to appreciate a change in the rules cannot amount to a good excuse. The appellant's solicitor had thought the seven-day time limit in CPR 3.13 which I have recorded above as the rule before 2016 still applied but of course she had to concede that she failed to properly read the Notice dated 10th May 2016 which was clear on its terms. I agree with the judge's findings on this issue.

27. There are perhaps two other specific issues I should comment on: the increase in costs between the hearing on 25th August 2016 and the hearing on 11th January 2017 and the way the judge dealt with the prejudice to the claimant. I have to accept that the overall costs both estimated and incurred that the claimant put forward to the court for budgeting purpose had increased by £14,000 between the two hearing dates. It is perhaps unfortunate that there was a five-month delay between hearings but this was caused by the judge's understandable wish to list the application for relief from sanctions at the case management conference he had already decided to convene. It cannot be the case however that the increase in costs was either caused by the delay or by the adjournment of costs budgeting. It must have been caused by a change in the way the litigation was being or was about to be conducted as a result of events which occurred in the intervening period. If that is right those costs would have been incurred anyway and perhaps have been subject to an application for variation of the budget in any event.

28. I can understand why the appellant feels the judge was somewhat unsympathetic when he found that the appellant personally would not be prejudiced although his solicitors might be by the order that the costs be limited to court fees. The judge was technically correct but it would I think be right to consider prejudice incurred by the appellant's solicitor by such an order although I doubt it would carry much weight. I make that comment as this issue does not appear to have troubled the higher courts much when dealing with the many cases on relief from sanctions since *Mitchell.*

29. Standing back from the situation and taking all relevant factors into account I take the view that the judge placed too much weight on the authority of *Jamadar* virtually considering that it bound him to refuse the application for relief from sanctions. I have explained earlier in this judgment how that case can be distinguished factually from the present appeal. Whilst the judge was entitled to take into account that the need for an application for relief from sanctions had taken up additional court time he should have borne in mind that it was originally intended that it be dealt with as part of a pre-arranged case management conference where directions should be reviewed generally. I have explained why I am uncomfortable with the concept that the need to take up court time with a further application provides a knock-out blow against an application for relief from sanctions. This discomfort increases when the court reaches the conclusion (as I have) that the need for the adjournment of the hearing only arose because the respondents took a technical point on the appellant's late filing of the budget in circumstances where they could have overlooked the delay and proceeded with the hearing without any prejudice to them. This would then have obviated the need for the adjournment and the subsequent application for relief.

30. For these reasons I have reached the conclusion that District Judge Hickinbottom was wrong to refuse the application for relief from sanctions as I think fairness demanded that it should be granted for the reasons I have already outlined. I have some considerable sympathy with him however. He may well not have recalled the

circumstances surrounding the adjournment of the original hearing and it may well have not occurred to him at the time that he had intended to deal with the application for relief at the same time he dealt with other case management directions. With the benefit of all the history however I have reached a different conclusion and consider this is the right decision.

31. This Judgment will be handed down on a date to be fixed by the court in public. The time for appealing the Judgment shall not start to run until it is handed down. CPR Practice Direction 40E shall apply. If the parties can agree the form of an order and any consequential directions arising from this Judgment then the attendance of counsel and solicitors will be excused.