Case No: SC-2020-APP-000802

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Tuesday, 2 March 2021

BEFORE:

MASTER BROWN

BETWEEN:

TRX

Claimant

- and -

SOUTHAMPTON FOOTBALL CLUB LIMITED

Defendant

MR R MALLALIEU QC (instructed by Bolt Burdon Kemp) appeared on behalf of the Claimant
MR R DUNNE, MR P EDWARDS appeared on behalf of the Defendant

JUDGMENT
(APPROVED)

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(Official Shorthand Writers to the Court)

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THE COSTS MASTER:

1. This is my decision on hourly rates having considered all the points arising.

2. I remind myself of the matters set out in CPR 44.4 (3), previously referred to as the 'seven pillars of wisdom'. It seems to me that this must be the starting point.

3. The conduct of all the parties, including in particular, one, the conduct before as well as during the proceedings and two, the efforts made (if any) for or during the proceedings in order to try and resolve the dispute. It seems to me, as I understand the point that Mr Mallalieu QC made, it is not that there was misconduct as such on the part of the defendants. It is not that the defendants took points which they should not have taken, but a number of points were taken. Vicarious liability was put in issue and limitation was taken as defence, and the allegations made by the claimant were not admitted. The claimant was put to proof, and there were other issues taken. These were significant issues which taken to the point where a defence was served, and only after that was there some attempt to resolve it. The matter could have been resolved and he says should have been resolved at an earlier stage. There was a long period of time before settlement was forthcoming: I accept and take into account this point.

4. The amount or value of any money or property involved. As I understand it, I will be asked to look at this more closely in due course, but I do not think Mr Mallalieu shirks from the proposition that ultimately, the sums involved in this case were relatively modest, certainly for a High Court point of view. The case settled for £4,000 which is a very small sum, in my experience, for a case pursued in the High Court. It is a relatively modest sum in the context of personal injury litigation generally. It is being said that in fact, the claim in fact had a value of more than £10,000 or £15,000 and that is a matter I will look again in due course. I am conscious however that on any view this was a claim of modest value.

5. The importance of the matters to all parties. This was ultimately a claim for damages and the lower the amount of damages, it might be said, the less important; and the more the client would question whether it is worth incurring very substantial costs to pursue a claim. This is a claim however arising out of sexual abuse. There are particular

sensitivities involved in relation to such claims. It seems to me not only are there such sensitivities, but the claimant had complained some time ago about the abuse that he had received. The matter was not ultimately pursued successfully by the CPS. In this context, the expression of regret which was achieved was I a significant matter, as with an apology in defamation claim. I accept Mr. Mallalieu's point and I bear that in mind.

6. The particular complexity of the matter or difficult or novelty of the questions involved. This matter, as His Honour Judge Dight suggested out in *May v Wavell* in a somewhat different context, invites the court to consider a spectrum. It is not a binary question, is it complex, or is it not? There were complexities to the claim; the limitation point, and the issue as to vicarious liability. There is the fact that the allegations of abuse were not accepted. These are probably towards the lower end of the scale in terms of many sorts of litigation, although in the context County Court, I accept that it might well have some complexity. It was not readily apparent that it was a very complex case.

7. The time spent on the case. We will come to consider that in due course.

8. The time and place and circumstances in which work or any part of it was done. Three sets of solicitors were instructed in relation to this matter; the circumstances in which the claimant moved from one set of solicitors to another are not fully explained, but it is suggested by Mr Mallalieu that to a great degree the burden of responsibility [?transcript unclear] fell on the final set of solicitors is Bolt, Burdon and Kemp.

9. It seems to me that it is not necessary for me to address all these factor in further detail. I have however all the factors matters in mind including in particular the skill, specialised knowledge and responsibility involved.

10. I have been addressed in this particular case, by reference to what it is said other solicitors who do sexual abuse work have claimed by way of hourly rates, reference being made to various redacted retainers. Mr Dunne says the rates set out in these retainers were not awarded and that I should not, he says, take this retainer

documentation as an indication as to market rate that might apply in this sort case. I should rely upon my own experience.

11. There is, of course, to my mind a real difficulty with taking these documents, and the three retainers that I have and the hourly rates claimed therein as an indication of the appropriate hourly rates. They are simply part of the picture and I do take them into account. Part of the difficulty, and I did not think Mr Mallalieu was pushing back against this point too much, is that whilst the hourly rates that are agreed between solicitor and client may to some extent be more important to the client post-LASPO, because of the liability to pay success fees, that interest this interest might well be limited by an agreement between the solicitor and client which limits the extent to which costs may come out of damages. So the extent to which this documentation and any agreement on the part of a claimant's to pay such rates, indicates the market rate, when there may well be no great interest or incentive to instruct alternative solicitors on a CFA on costs grounds is, itself, limited. I do however take these matters into account.

12. I do accept in the circumstances of this case it was reasonable to go to a firm in London – Mr Dunne did not really push against that- a firm which was experienced in and specialised in sexual abuse cases and a firm that might be dealing with other sexual abuse cases in relation to Mr Higgins.

13. Ultimately, however I have formed the view in relation to this matter that this is a case which could reasonably and adequately have been dealt with by a grade C solicitor in such a firm. Such an instruction would be sufficient to protect the claimant's interests.

14. It seems to me, if one is instructing such a firm one would reasonably expect a grade C solicitor who will be qualified and would have had experience with sexual abuse claims for up to four years, to be able to conduct the claim as the principal or main fee earner. I do not take the same view as to the generic costs aspect of the bill, in respect of which I consider a greater involvement of grade A fee earner appropriate. I do also accept that in relation to work on this particular claim, some input by way of supervision, if that is the right term, from a more senior fee earner, a grade A or a grade B fee earner, is also reasonable.

15. It does not seem to me that this case warrants the instruction of a grade A or B fee earner in respect of the main or general day to day handling of the claim and such an instruction seems unreasonable. I say that having had regard to all the seven pillars of wisdom and all the circumstances, including the particular issues arising in the claim, and the experience and expertise that a junior fee earners within such firm can be expected to have in dealing with such issues.

16. As to the rates I should apply. I think I should give rates for all the grades of fee earners. Both advocates, to whom I am grateful, have assisted me in relation to the Guideline hourly rates and the starting point, being Outer London rates. This however is just the starting point. We have the benefit also of course, what was said by the Civil Justice Council in 2014 and of the decision of Master of the Rolls, rejecting any change, and I have considered the more recent proposals for new Guideline rates.

17. I do not think there is any dispute that there should be an enhancement of the Guideline summary assessment rates. It seems to me that the extent to which they now assist in a detailed assessment is limited. I have my own experience of the appropriate rates in relation to matters such as this, not just in the assessment of costs, but also in costs budgeting. It is appropriate for me to have regard to this. I acknowledge the availability of other personal injury solicitors who could competently have dealt with this claim. I say that in the context of my finding that it was reasonable to go to a specialist solicitors who deal with sexual abuse, and to pay an enhanced rate for that. Nevertheless there are other solicitors in Kent who have substantial expertise in personal injury matters, including abuse, and where the rates may be lower who might reasonably be instructed. Such a firm may have had a somewhat higher grade of fee earner to dealing with it- so there is an element of quid pro quo about this issue.

18. I do think some enhancement is appropriate even on the proposed rates that are set out in the new GHR, CJC consultation documents. I think some uplift is appropriate having regard to the nature of case. I do not think that there is any warrant for straightforward inflationary increases from the 2010 Guideline rates, not least given the more recent proposals. There are all kinds of matters which determine, it seems to me, the reasonableness of the rate, not least of which is the availability of other firms who might have provided a competent and reasonable service.

19. I think the rates claimed are too high. I consider that the appropriate rate for a grade A is £330 an hour, and this is for work during the period[1] 2017/18/19; for a grade B fee earner, £250 per hour, for the grade C, £210, and the grade D, £135.

[1] The transcript refers to 2013 but this would seem to be an error.

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Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge