



Neutral Citation Number: [2021] EWHC 2607 (QB)

Case No: QA-2020-000214  
SCCO Ref: SC-2019-BTP-000551

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ON APPEAL FROM THE SENIOR COURT COSTS OFFICE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/09/2021

**Before :**

**MRS JUSTICE STEYN DBE**  
**(sitting with an assessor, Costs Judge/Master Brown)**

**Between :**

**BARKING, HAVERING & REDBRIDGE** **Appellant**  
**UNIVERSITY HOSPITALS NHS TRUST**  
**- and -**  
**AKC** **Respondent**  
**(a protected party by Litigation Friend MCK)**

**Robert Marven QC** (instructed by **Keoghs LLP**) for the **Appellant**  
**Simon Browne QC** (instructed by **Irwin Mitchell LLP**) for the **Respondent**

Hearing date: 12 July 2021

**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.

.....  
THE HONOURABLE MRS JUSTICE STEYN DBE

**Mrs Justice Steyn :**

### **Introduction**

1. This is a rolled up appeal, and application for permission to appeal, against the order of Master Nagalingam (“the Costs Judge”) dated 13 August 2020 dismissing the appellant’s application to strike out the respondent’s bill of costs for non-compliance with the Civil Procedure Rules (CPR) and to require the respondent to serve a CPR-compliant bill of costs.
2. There are three grounds of appeal. The appellant contends, first, the bill was not properly certified because the signatory is not identifiable. Second, the paper bill failed properly to give the name and status for each fee earner and to identify the work done by each fee earner contrary to the requirements of CPR Part 47. The third ground is closely linked to the second ground but relates to the electronic bill rather than the paper bill and extends more broadly. The appellant contends that the electronic bill failed properly to give the name, the SCCO grade, the date from which rates were effective for each fee earner and to identify the work done by each fee earner contrary to the requirement of CPR Part 47; and failed to provide other particulars required.
3. In respect of each of these grounds the appellant submits the Costs Judge was wrong in law to reach a contrary conclusion.
4. For the purposes of this appeal I sat with an assessor, Master Brown, to whom I am much indebted for his invaluable assistance. Although this is my judgment, we are in agreement, and I am most grateful to him for his contribution. The appellant was represented by Mr Robert Marven QC and the respondent by Mr Simon Browne QC, both of whom also appeared before the Costs Judge. I am grateful to them both for their clear and concise submissions.

### **Procedural history**

5. The respondent made a clinical negligence claim against the appellant arising from the treatment of a cerebral arteriovenous malformation in early 2012. The appellant admitted liability and liability costs were settled. Quantum was settled on 4 February 2019 and the settlement was approved by the court on 7 March 2019.
6. The respondent commenced detailed assessment proceedings in respect of quantum costs on 8 August 2019. The bill of costs comprised an old format paper bill for work undertaken until 6 April 2018 and a new format electronic bill covering costs thereafter. This reflected the terms of CPR 47 PD para 5.1 which requires electronic bills for costs after 6 April 2018 but permits a paper bill for costs prior to that date. The notice of commencement of assessment of the bill of costs was given on 8 August 2019.
7. The appellant served points of dispute on 30 September 2019. In their points of dispute, the appellant raised preliminary issues. The respondent replied to the points of dispute on 11 November 2019.

8. On 2 January 2020, the appellant made an application to strike out the respondent's bill of costs. However, it is important to note that the appellant was not seeking to strike out the respondent's claim for costs, only the bill in its current form. The appellant's application was supported by a witness statement from Mr Howard Dean, a partner in the firm representing the respondent, Keoghs LLP, dated 18 December 2019. At the same time, the appellant raised Part 18 Questions to which the respondent replied on 27 January 2020.
9. The respondent served evidence in response to the application in the form of a witness statement made by Mr Darren Malone, Deputy Team Leader of the Negotiations Team, employed by the respondent's solicitors, Irwin Mitchell, dated 23 March 2020 and by Vanessa Whitaker, a qualified costs lawyer and Team Leader of Irwin Mitchell's Costs Management Team. A brief statement in reply was filed by Mr Dean on 24 March 2020.
10. The preliminary issues were determined against the appellant by the Costs Judge following a hearing on 27 April 2020. In the course of his detailed and careful reserved judgment, the Costs Judge accepted, applying *Austin v East Sussex Fire and Rescue Service* (SCCO, 25 July 2017) that he had "jurisdiction to sequentially find that the current bill is defective, and so capable of standing as struck out, to be amended such that it is effective, with related costs to be met by the Claimant". No respondent's notice has been served disputing jurisdiction.
11. By order of Saini J dated 13 January 2021, the appeal was listed for a rolled up one day hearing.

### **Ground 1: certification of the bill of costs**

#### ***The legal provisions***

12. CPR Practice Direction 47 – Procedure for Detailed Assessment of Costs and Default Provisions ("CPR 47 PD") provides at para 5.21:

"The bill of costs must contain such of the certificates, the texts of which are set out in Precedent F of the Schedule of Costs Precedents annexed to this Practice Direction, as are appropriate."

13. Precedent F (Certificates for including in bill of costs) states, so far as material, having regard to the certificates given in this case:

- Appropriate certificates under headings (1) and (2) are required in all cases. ...
- All certificates must be signed by the receiving party or by his solicitor. ...

#### (1) CERTIFICATE AS TO ACCURACY

I certify that this bill is both accurate and complete and

...

[in respect of Parts ... of the bill] the costs claimed herein do not exceed the costs which the receiving party is required to pay me/my firm.

(2) CERTIFICATE AS TO INTEREST AND PAYMENTS

I certify that:

No rulings have been made in this case which affects my/the receiving party's entitlement (if any) to interest on costs.

...

The following payments have been made on account of costs include in this bill of costs:

...

*The facts*

14. The paper bill of costs filed in this case states "I certify that" and then the boxes are marked to certify each of the statements contained in Precedent F to which I have just referred, stating (most notably) that "the bill is both accurate and complete" and "in respect of All parts of the bill (Paper Bill & Electronic Bill) the costs claimed herein do not exceed the costs which the receiving party is required to pay me/my firm".
15. On the certificate, next to the word "Signed", there is a signature, and underneath appear the words "Partner in the firm of Irwin Mitchell LLP". The Costs Judge said: "I have no difficulty in agreeing with the Defendant that the signature on the certificate of accuracy to the bill does not tell me who signed the bill." It is common ground before me that the signature gives no clue as to the name of the signatory. Nor can the name of the signatory be ascertained from the bill of costs because the fee earner in respect of whom time has been claimed for checking the bill has been anonymised.
16. The appellant's points of dispute dated 11 November 2019 stated:

"Certification

The signature on the certificate is illegible. The identity and the status of the signatory has not been provided and neither the Court nor the Defendant can be certain that this Bill is accurate or complete.

Accordingly, the Defendant requests confirmation of the identity of the signatory to the bill of costs."

17. In reply, the respondent stated:

"The bill is signed, Bailey v IBC Vehicles has been complied with. There is no requirement for a print name and again the Claimant fails to understand how this is a dispute. Is the Defendant alleging misconduct?"

18. Mr Dean stated in his statement dated 18 December 2019:

“At Preliminary Point 2 of the Points of Dispute [p116] the Claimant was requested to provide the identity of the signatory to the bill of costs. The Claimant has ignored the request and as a result the Defendant and the Court do not know who has certified this bill of costs.

This is a reasonable request for information to ascertain whether the person who has certified the bill of costs is a partner, has sufficient knowledge of the claim to check the bill of costs for accuracy and completeness.”

19. Although the respondent filed evidence in response to the appellant’s application, the identity of the signatory of the bill of costs was not disclosed in either the statement of Mr Malone or of Ms Whittaker and the position remains on appeal, as it was before the Costs Judge, that the respondent has not disclosed to the appellant or the Court who signed the bill of costs.

### *The Costs Judge’s judgment*

20. The Costs Judge acknowledged that paragraph 5.21 of the practice direction to CPR 47 is mandatory and the text of the Precedent F certificates cannot be varied or altered. The certificate refers to “me/my firm” and he accepted that “there is no option to vary the certificates to reflect “me/this firm””.

21. The Costs Judge noted that Precedent F “contains no clear requirement for the provision of the name of the signatory” and he was “unwilling to infer that references to “me” or “my” amount to an “indication”, as Mr Marven QC suggested, that a name must be provided with the signature”.

22. Although the signature on the certificate of accuracy did not disclose the identity of the signatory, the certificate confirmed that it was signed by a Partner in the firm of Irwin Mitchell LLP. The Costs Judge observed:

“171. Whilst it is permissible for a non-Solicitor to be a Partner, the mandatory wording of Precedent F of the Schedule of Costs Precedents provides that the bill must be certified by either the receiving party or their “solicitor”.

172. The reference to certification by a “solicitor” rather than a firm is quite deliberate. The question thereafter is should there be an automatic presumption that the bill has been signed/certified by an officer of the court or should there be an inquiry into this, and if the latter should that be part of the assessment process or does it need to be ordered before assessment takes place?

173. Effectively, the Claimant is asking the court to accept that the “Partner in the firm of Irwin Mitchell LLP” is a solicitor, and therefore an officer of the court. In contrast, the Defendant is

seeking to impose a presumption that certification cannot be trusted absent the naming of the person who signed the bill.

174. Mr Marven QC queries who would be disciplined if a breach of the indemnity principle was discovered? The answer to that question is that if a breach of the indemnity principle or some impropriety were discovered on assessment then the receiving party would be compelled to make available the officer of the court who certified the bill for any disciplinary procedures or processes which followed.

175. However, that concerns a hypothetical scenario which is after the event. ...

176. The point in issue here is whether or not the bill has been effectively certified in the first place? My conclusion is that it has. The Claimant has followed the wording of Precedent F to the Schedule of Costs Precedents. The certificate informs the reader that it has been signed by a Partner, and therefore it has not been signed by the client.”

23. The Costs Judge considered that, by definition, the individual who had signed the certificate “must be a solicitor” and the “only question thereafter is whether I ought to accept the bill has been certified by a solicitor or presume a wilful breach of the rules, absent the provision of a name that one could use to undertake some detective work to check against”. The Costs Judge took the view that he ought to accept the bill had been certified by a solicitor, given the absence of any requirement in rules or Precedent F that the person certifying the bill be named.
24. The Costs Judge observed that it would have taken the respondent “less effort to simply provide the name of the fee earner who certified the bill than to prepare a reply”, but nevertheless considered the respondent’s submissions on this issue were sound.

### ***The parties’ submissions***

25. The short point that arises is whether the respondent has failed to comply with the requirement in para 5.21 of CPR 47 PD and Precedent F to certify the accuracy of the bill of costs (as well as other matters) because the appellant and the court have no means of identifying the signatory of the certificate.
26. It is common ground that the bill of costs had to be signed by an individual solicitor. The appellant submits that, on proper construction, the rules implicitly require the signatory to be identified on the face of the certificate.
27. The appellant relies on *Bailey v IBC Vehicles Ltd* [1998] 3 All ER 570. The Court of Appeal held that the defendants’ request that the claimant be required to provide information proving that the indemnity principle had been observed represented pointless satellite litigation, since the information provided was sufficient to enable assessment to proceed. Henry LJ, giving a judgment with which Butler-Sloss LJ agreed, observed at 575g-j

“RSC Ord 62, r 29(7)(c)(iii) requires the solicitor who brings proceedings for taxation to sign the bill of costs. In so signing he certifies that the contents of the bill are correct. That signature is no empty formality. The bill specifies the hourly rates applied, and the care and attention uplift claimed. If an agreement between the receiving solicitor and his client (here the trade union) restricted (say) the hourly rate payable by the client, that hourly rate is the most that can be claimed or recovered on taxation (see *General of Berne Insurance Co v Jardine Reinsurance Management Ltd* [1998] 2 All ER 301). The signature of the bill of costs under the rules is effectively the certificate by an officer of the court that the receiving party’s solicitors are not seeking to recover in relation to any item more than they have agreed to charge their client under a contentious business agreement.” (emphasis added)

28. He added at 576b:

“...the other side of a presumption of trust afforded to the signature of an officer of the court must be that breach of that trust should be treated as a most serious disciplinary offence.”

29. The appellant submits that it is inherent in the requirement that an individual officer of the court must certify that the contents of the bill are correct that the individual is identified. An officer of the court must take responsibility from the outset. This is not an onerous requirement. It is no more than is required in the context of summary assessment of costs, in which context it is accepted that the name of the solicitor signing the certificate on an N260 Statement of Costs is required to be given.
30. The Costs Judge was wrong, the appellant contends, to apply a presumption that the bill had been signed by a solicitor. The presumption of trust only arises once the bill of costs has been properly certified: there is no basis for presuming that it has been properly certified. The respondent has not only failed to identify the individual signatory but has also provided no evidence that a solicitor signed the bill of costs.
31. The respondent acknowledges that the bill of costs had to be signed by an individual and, as it was not signed by the client, the individual had to be a solicitor. The respondent submits that Part 47, the practice direction and Precedent F contain no requirement that the identity of the signatory to the bill of costs must be provided and so there has been no breach of the CPR. The summary assessment costs form (Form N260) does not assist the appellant because that form expressly prescribes that the name of the signatory must be identified. Precedent F could have done the same, but it does not.
32. More broadly, the respondent relies on the reasons given by the Costs Judge for rejecting this ground. The respondent contends that the signatory is identified by saying it is a partner of Irwin Mitchell. Mr Browne submits that the effect of *Bailey* is that, in circumstances where it is clear the signatory is not the client, there is a presumption that it is a solicitor. He also suggested in his oral submission that the appellant could have asked who it was.

33. In the alternative, the respondent submits that there is a heavy burden on the appellant and a high bar to be surpassed in applying for the “Draconian sanction” of strike out of the bill of costs. To justify striking out the bill, it would have to be shown that there was a “clear and obvious” breach of the rules, making detailed assessment impossible, so as to demand a re-drawing of the bill of costs. If (contrary to the respondent’s submissions) the Court finds, by *implication*, that there is a requirement that the signatory is identified, that would not be the type of *clear and obvious* breach of the CPR that would justify striking out the bill costs on an appeal by way of review pursuant to CPR 52.21.

### *Decision*

34. CPR 47 PD para 5.21, together with Precedent F, requires the various matters specified in Precedent F, including the accuracy of the bill of costs, to be attested formally in the form of a certificate. As is common ground, certification must be by an individual and, if the bill of costs is not certified by the client, the individual must be a solicitor.
35. Certification is an important element of the bill of costs. As the Court of Appeal held in *Bailey v IBC Vehicles Ltd* (albeit considering the former RSC Ord. 62) a solicitor’s signature certifying that the bill of costs is correct is “no empty formality”. The signature of an officer of the court is afforded a presumption of trust and breach of that trust is a most serious disciplinary offence.
36. The provisions on which the appellant relies do not *expressly* require the signatory to be identified on the face of the certificate. Nevertheless, I agree with the appellant that as a matter of ordinary interpretation, bearing in mind the purpose of certification, it is implicit that the solicitor who signs the certificates must be readily identifiable on the face of those certificates. It is inherent in the concept of certifying or attesting to a matter before a court of law, at least in circumstances where the CPR requires (as it does here) that a matter is certified or attested by an individual, that the signatory should disclose their identity to the court.
37. It is unsatisfactory if the nature of the certification gives rise to any doubt as to who signed the bill. Although it is not alleged that the current bill has been mis-certified, the interpretation of the rules must recognise that there will be cases, even if (hopefully) rare, where the bill of costs is mis-certified. The risk is that in such a case, if the identity of the signatory has to be ascertained after the mis-certification has been uncovered, the firm may say it is unsure of the identity of the signatory and the purpose of requiring an individual officer of the court to certify would be lost.
38. This interpretation does not impose an onerous requirement. On the contrary, specifying the name of the signatory is a simple and wholly undemanding step, with which certificates on bills of costs ordinarily comply.
39. The respondent’s bill of costs has not been certified by an identified individual and so it has not been properly certified in accordance with CPR 47 PD para 5.21, read together with Precedent F. I consider that the Costs Judge’s interpretation of the rules, and his consequent conclusion that the bill of costs was properly certified, was wrong.
40. Moreover, while identifying the signatory as an unnamed solicitor of a specified firm would be inadequate, in this case it is not even clear that the bill of costs has been



certified by a solicitor. It no longer follows, as it once would have done, that a person identified as a partner in a firm of solicitors is themselves a solicitor. Neither of the witness statements adduced by the respondent states that the signatory is a solicitor and there is no other evidence to that effect. Indeed, the Court has not even been informed on instructions that the bill of costs was certified by a solicitor. Rather, the Court has been asked to *presume* that it must have been a solicitor because that is what the rules require. The presumption referred to in *Bailey v IBC Vehicles Ltd* is a presumption that the statements certified by an officer of the court can be trusted. It does not apply at the stage of considering whether a bill of costs has, in fact, been properly certified by a solicitor. The signatory may have been a solicitor, but there is no presumption that that is the case.

41. I reject the respondent's submission that the remedy sought is Draconian. The effect of the order sought is to require the respondent to re-submit the bill of costs, amended to remedy any defects the Court finds. As far as this first ground is concerned, the only amendment required is to provide a fresh signed certificate, clearly identifying the solicitor who is the signatory. It will take very little effort to make such an amendment. Indeed, given how little effort or cost it would have taken to have provided the name of the signatory for which the appellant asked in November 2019, I confess to some astonishment that the respondent chose instead to withhold the information and argue the point. As Henry LJ observed in *Bailey v IBC Vehicles*, "an ounce of openness is cheaper than any argument".

### **Grounds 2 and 3: The bill of costs fails to provide required fee earner information**

42. Ground 2 relates to the paper bill. The appellant alleges the paper bill is defective because it failed to give the name and status for each fee earner and to identify the work done by each fee earner, contrary to the requirements of CPR Part 47. Ground 3 relates to the electronic bill. The appellant alleges the electronic bill is defective because it fails to give the name, the SCCO grade, the date from which rates were effective for each fee earner and fails to identify the work done by each fee earner contrary to the requirements of CPR 47. The issues arising were so closely related, albeit there are differences in the legal provisions that apply to paper bills and electronic bills, that both parties addressed grounds 2 and 3 together. I shall do the same.

#### ***The legal provisions***

43. When assessing whether costs have been proportionately and reasonably incurred or are proportionate and reasonable in amount, the court will have regard to all the circumstances: CPR 44.4(1). Amongst other factors, the court will have regard to "the skill, effort, specialised knowledge and responsibility involved" and "the time spent on the case": CPR 44.4(3)(e) and (f).
44. CPR 47 PD, para 5.1 provides:

"In the circumstances provided for in this paragraph, bills of costs for detailed assessment must be in electronic spreadsheet format and compliant with paragraphs 5.A1 to 5.A4 ("electronic bills") while in all other circumstances bills of costs may be electronic bills or may be on paper ("paper bills") and compliant with paragraphs 5.7 to 5.21. Precedents A, B, C and D in the

Schedule of Costs Precedents annexed to this Practice Direction are model forms of paper bills of costs for detailed assessment. The circumstances in which bills of costs must be electronic bills are that—

- (a) the case is a Part 7 multi-track claim, except—
  - (i) for cases in which the proceedings are subject to fixed costs or scale costs;
  - (ii) cases in which the receiving party is unrepresented;  
or
  - (iii) where the court has otherwise ordered; and
- (b) the bills of costs relate to costs recoverable between the parties for work undertaken after 6 April 2018 (“the Transition Date”).” (emphasis added)

45. Paragraph 5.A4 provides:

“Where a bill of costs otherwise falls within paragraph 5.1(a) but work was done both before and after the Transition Date, a party may serve and file either a paper bill or an electronic bill in respect of work done before that date and must serve and file an electronic bill in respect of work done after that date.”

It is common ground that, in this case, an electronic bill was required in respect of work undertaken after 6 April 2018, whereas a paper bill was permissible in respect of work undertaken up to that date.

46. Paragraph 5.A1 of CPR 47 PD states that a “model electronic bill is annexed to this version of this Practice Direction as Precedent S.” Worksheet 5 of Precedent S bears the title “Legal Team, Hourly Rates and Counsel’s Success Fees”. The columns of worksheet 5 are headed:

- i) “LTM” (i.e. Legal Team Member);
- ii) “LTM Name”;
- iii) “LTM Status”;
- iv) “LTM Grade”;
- v) “Further Relevant Information”;
- vi) “LTM Rate”;
- vii) “LTM Budgeted Rate”;
- viii) “LTM Rate Effective From”; and

ix) “Counsel SF %”.

47. There are two versions of the model electronic bill attached to CPR 47 PD. One is a blank template and the other contains example data. In the version containing example data, worksheet 5 has been completed in the following form, save that I have omitted columns (v), (vii) and (ix):

LTM	LTM Name	LTM Status	LTM Grade	LTM Rate	LTM Rate Effective from
WT1	William Taylor	Partner	A	£240.00	to May 2012
WT2	William Taylor	Partner	A	£300.00	from June 2012
NLB		Medico-Legal Assistant	B	£180.00	
FD	Fiona Duggan	Legal Assistant	D	£160.00	
TI	Thomas Irwin	Costs Draftsman	D	£146.00	
NV	Nicholas Vine	Junior Counsel	JC		

48. Paragraph 5.A2 of CPR 47 PD provides:

“Electronic bills may be in either Precedent S spreadsheet format or any other spreadsheet format which—

- (a) reports and aggregates costs based on the phases, tasks, activities and expenses defined in Schedule 2 to this Practice Direction;
- (b) reports summary totals in a form comparable to Precedent S;
- (c) allows the user to identify, in chronological order, the detail of all the work undertaken in each phase;
- (d) automatically recalculates intermediate and overall summary totals if input data is changed;
- (e) contains all calculations and reference formulae in a transparent manner so as to make its full functionality available to the court and all other parties.” (emphasis added)

49. Paragraph 5.A3 provides:

“The provisions of paragraphs 5.7 to 5.21 of this Practice Direction shall apply to electronic bills insofar as they are not inconsistent with the form and content of Precedent S. Where those paragraphs require or recommend division of the bill into parts, electronic bills (unless the format of the bill already provides the requisite information, for example in identifying the costs within each phase) should incorporate a summary in a form comparable to the “Funding and Parts Table” in Precedent S to

provide the information that would otherwise be provided by its division into parts.” (emphasis added)

50. Paragraph 5.7 of CPR 47 PD, which appears under the heading “Forms and content of bills of costs – General”, states:

“A bill of costs may consist of such of the following sections as may be appropriate—

- (1) title page;
- (2) background information;
- (3) items of costs claimed under the headings specified in paragraph 5.12;
- (4) summary showing the total costs claimed on each page of the bill;
- (5) schedules of time spent on non-routine attendances; and
- (6) the certificates referred to in paragraph 5.21.

If the only dispute between the parties concerns disbursements, the bill of costs shall be limited to items (1) and (2) above, a list of the disbursements in issue and brief written submissions in respect of those disbursements.”

51. Paragraph 5.11, which appears under the heading “Form and contents of bill of costs – background information”, states:

“The background information included in the bill of costs should set out—

- (1) a brief description of the proceedings up to the date of the notice of commencement;
- (2) a statement of the status of the legal representatives’ employee in respect of whom costs are claimed and (if those costs are calculated on the basis of hourly rates) the hourly rates claimed for each such person.
- (3) a brief explanation of any agreement or arrangement between the receiving party and his legal representatives, which affects the costs claimed in the bill.” (emphasis added)

52. Precedent A: Model Form Bill of Costs in the Schedule of Costs Precedents includes in the summary the following information:

“The claimant instructed E F & Co under a retainer which specifies the following hourly rates.

Partner - £217 per hour plus VAT  
Assistant Solicitor - £192 per hour plus VAT  
Other fee earners - £118 per hour plus VAT

Except where the contrary is stated the proceedings were conducted on behalf of the claimant by an assistant solicitor, admitted November 2008.”

53. The itemised work includes entries such as “0.75 hours by Partner”. Fee earners are not named in Precedent A and neither their SCCO grades nor their post-qualification or litigation experience are given.

*The Senior Courts Costs Office Guide 2021*

54. The Costs Judge did not have the benefit of the SCCO Guide 2021 which was published after he gave judgment in this case. However, the passages relied on by the parties, which I have cited below, were in the same terms in the SCCO Guide 2018.

55. Paragraph 8.5 of the SCCO Guide 2021 states:

**“Model forms of paper bills of costs**

The Part 47 Practice Direction refers to the schedule of costs precedents which contains model forms of paper bills of costs. The use of one of the model forms is not compulsory but it is recommended for paper bills and, when a different form is used, a short explanation of why it has been adopted should appear in the narrative towards the beginning. Precedent A is the model which is most frequently used in practice (see Appendix A).”

56. Paragraph 9.2 of the SCCO Guide 2021 states:

**“The Jackson Report and Precedent S**

Jackson LJ’s final report on civil costs, in January 2010, made two key recommendations: A new format of bills of costs should be devised which will be more informative and capable of yielding information at different levels of generality.

Software should be developed which will (a) be used for time recording and capturing relevant information and (b) automatically generate schedules for summary assessment or bills for detailed assessment as and when required. The long-term aim must be to harmonise the procedures and systems which will be used for costs budgeting, costs management, summary assessment and detailed assessment.

Jackson LJ set out specific criteria for a new bill format. In contrast to bills in the present format (“which are turgid to read and present no clear overall picture”) the bill should provide a more transparent explanation about the work done in various time periods and why it was done. It should offer a user-friendly

synopsis of the work done, how long it took and why. It should be inexpensive to prepare (hence the proposal for automatic generation).

Bills should be prepared by reference to phases, tasks and activities (the structure since adopted in Precedent H for budgeting purposes), summarising costs and disbursements by task and phase and setting out tasks in each phase in chronological order.

The Hutton Committee was created to devise a new form of bill, capable of being completed either manually or (preferably) automatically. To meet the Jackson criteria, the bill had to offer “high-level” summaries of the costs claimed along with the facility to “drill down” into as much detail as may be needed for detailed assessment.

This evolved through pilot schemes to become Precedent S, a bill in the form of a self-calculating spreadsheet incorporating the phase/task/activity structure. A working spreadsheet Precedent S, with and without sample data, is included in the online version of the Part 47 Practice Direction...” (emphasis added)

57. Paragraph 9.3 of the SCCO Guide 2021 notes:

“Precedent S is intended, as Jackson LJ envisaged, to be completed automatically from electronic records, so ending the current labour-intensive practice of manually preparing bills without reference to existing electronic records.

...

The Part 47 Practice Direction does not require that a bill be in the form of Precedent S. It requires that the bill is in spreadsheet format and performs the same essential functions as Precedent S. It should, accordingly, report and aggregate costs based on the phases, tasks, activities and expenses defined in Schedule 2; offer summary totals in a form comparable to Precedent S; allow the user to identify, in chronological order, the detail of all work undertaken in each phase; automatically recalculate intermediate and overall summary totals if input data is changed; and contain all calculations and reference formulae in a transparent manner so as to make its full functionality available to the court and all other parties.” (emphasis added)

58. Paragraph 9.4 states:

**“The content of Precedent S**

...

Precedent S is not tied to any proprietary format: any spreadsheet format in use since about 2007 should be capable of performing its built-in functions. ...”

59. Paragraph 9.5 of the SCCO Guide 2021 notes that Precedent S comprises 17 worksheets, the last three of which contain only reference data. Of particular relevance is the guidance given in respect of worksheets 5 and 14:

**“Worksheet 5: Legal team and rates**

Worksheet 5 provides details of the receiving party’s legal team (“LTM” = legal team member), each team member’s hourly charging rates for given periods and, given that counsel’s fees are to be treated as a disbursement, any success fee applicable to counsel’s fees (solicitor’s success fees are recorded elsewhere).

This is the first worksheet from which changes by the parties in negotiation or by the assessing judge, for example to a solicitor’s hourly rate, will feed through to the relevant parts of the bill. ...

**Worksheet 14: The bill detail**

The parties, on assessment, may well have to spend much time on this page, containing as it does the detail of every time entry and disbursement. This is also where adjustments should be made on assessment (overwriting the summaries on other pages may erase the bill’s built-in formulae and stop it functioning as it should).

... On assessment, the columns of most importance will usually be:

Column D – Date the work was undertaken

Column E – The description of the work undertaken

Column F – The Legal Team Member

Columns G and H – The time spent and whether it is estimated

Column T – The external party name, if any

...

Here are some examples.

The filter arrow at column D can be used to put every individual item in the bill into data order, earliest first...

Further filtering at column F can then isolate, in date order, all the time spent by Mr Taylor, a fee earner shown in the bill as WT1 and WT2 (depending on hourly rate) during the disclosure

phase. That can be filtered further, for example using the filter arrow at column P to select activity A10 ... to identify all document time claimed by Mr Taylor on disclosure. Further filtering by reference to task, in column O, can identify document time spent by Mr Taylor on his own client's or other parties' disclosure. The “description of work” at column E will show, in each instance, exactly what was done.

Starting instead by using only the filter arrow at column P to select activity A10 will produce a traditional “documents schedule” in date order, should that be desired. Further filtering can then isolate useful information: for example, using the filter arrow at column F will show, in date order, all the document time spent by Mr Taylor, which can be filtered further, e.g. by phase or task, if desired.

Alternatively, the user could start at column F, to view only the time spent by Mr Taylor throughout the case. ...” (emphasis added)

### *The SCCO grades of fee earner*

60. The categorisation of grades of fee earners is found in the Guide to the Summary Assessment of Costs published in 2005, as amended in 2014: White Book 2021, 44SC.1.0. and 44SC.3.6. Appendix 2 states:

“The grades of fee earner have been agreed between representatives of the Senior Courts Costs Office, the Association of District Judges and the Law Society. The categories are as follows:

[A] Solicitors with over eight years' post qualification experience including at least eight years' litigation experience and Fellows of CILEX with eight years' post-qualification experience.

[B] Solicitors and legal executives with over four years' post qualification experience including at least four years' litigation experience.

[C] Other solicitors and legal executives and fee earners of equivalent experience.

[D] Trainee solicitors, paralegals and other fee earners.

*Legal Executive* means a Fellow of the Chartered Institute of Legal Executives. Those who are not Fellows of the Institute are not entitled to call themselves legal executives and in principle are therefore not entitled to the same hourly rate as a legal executive.”



(I note that in Appendix 2 to the Guide to Summary Assessment of Costs 2021, which is to be used from 1 October 2021, the “grades” or “categories” of fee earners are defined as per A to D above, save to the extent that the references at B and C to “legal executives” has been replaced with the words “Fellows of CILEX”, and “trainee legal executives” have been added to D.)

### *The facts*

61. The paper bill of costs sets out the background regarding the proceedings across 10 pages. In this background section it is stated:

“A Solicitor had day to day conduct of the matter with assistance from junior fee earners.”

62. The paper bill then sets out the rates utilised in respect of the period up to 26 July 2017 (Part 1) and from 27 July 2017 to 5 April 2018 (Part 2). Parts 1 and 2 specify the rates for:

- i) “P”: “Partner” in respect of Period C (1 April 2016 to 30 April 2017);
- ii) “S1”: “Solicitor 1 with over 8 Years Experience” in respect of Period C and Period D (1 April 2017 to 30 April 2018);
- iii) “S2”: “Solicitor 2 with over 4 Years Experience” in respect of Period A (to 30 April 2015), Period B (1 April 2015 to 30 April 2016) and Period C;
- iv) “S3”: “Solicitor 3 with less than 4 Years Experience” in respect of Period D;
- v) “O”: “Others: Trainee Solicitor, Paralegal, Litigation Assistant” in respect of Period A, Period B, Period C and Period D;
- vi) “PL SD”: “Paralegal (Special Damages, Sheffield Based Fee Earner)” in respect of Period B; and
- vii) “O COP”: “Others; Trainee Solicitor, Paralegal, Litigation Assistant (Court of Protection)” in respect of Period D.

(I note that the rates for each period A to D are given from 1 April to 30 April in the following year, with the result that the month of April is covered by two periods, with conflicting rates being given.)

63. The paper bill contains a two page chronology, following which the itemised costs are set out. No fee earners are named in the paper bill of costs. Each item of costs is specified as being referable to a time period (A-D) and one of the seven categories of fee earners referred to in the paragraph above.
64. SCCO grades are not given, although it is apparent from the descriptions of “O”, “PL SD” and “O COP” that they fall within grade D. While a partner would, perhaps, ordinarily fall within grade A, that is not necessarily the case. The descriptions of S1, S2 and S3 may correlate with grades A, B and C, respectively, but the bill of costs is not explicit as to whether the periods of “experience” referred to are “post qualification experience” and “litigation experience”.

65. The electronic bill is in the form of, and contains the same 17 worksheets as, Precedent S. Worksheet 5 (“Legal Team, Hourly Rates and Counsel’s Success Fees”) contains a table with each of the nine columns that I have identified in paragraph 46 above. The information provided in the first four columns is as follows:
- i) LTM: Unlike the model Precedent S, the respondent’s electronic bill of costs does not give the initials of any fee earners in this column, save in the case of Leading and Junior Counsel (who are given the initials MFM, MMMQ2 and MMQ). Instead it refers to “P”, “P COP”, “S1”, “S3”, “S3 COP”, “LE”, “O”, “O COP”, “CA”, “C/L”, “CD”, “PL SD” and “Costs Lawyer”. In respect of each abbreviation (apart from those of Counsel and “Costs Lawyer”) the Period (D or E) is specified.
  - ii) LTM Name: Unlike the model Precedent S, the respondent’s electronic bill of costs does not give the name of any fee earners in this column, save in the case of Leading and Junior Counsel who are identified by name. Apart from the names of Counsel, precisely the same information appears in this column as in the first column.
  - iii) LTM Status: The information given in this column is as follows:
    - a) P (Period E): “Partner from May 2018”;
    - b) P COP (Period E): “Partner (Court of Protection) from 1 May 2018”;
    - c) S1 (Period D): “Solicitor with over 8 Years Experience from 1 April 2017 to 30 April 2018” and S1 (Period E) “Solicitor with over 8 Years Experience from 1 May 2018”;
    - d) S3 (Period D): “Solicitor 3 with less than 4 Years Experience from 1 April 2017 to 30 April 2018” and S3 (Period E): “Solicitor with less than 4 Years Experience from 1 May 2018”;
    - e) S3 COP (Period E): “Solicitor 3 with less than 4 Years Experience (Court of Protection) from 1 May 2018”;
    - f) LE (Period D): “Legal Executive with over 8 years Experience from 1 April 2017 to 30 April 2018”;
    - g) O (Period D): “Others: Trainee Solicitor, Paralegal, Litigation Assistant from 1 April 2017 to 30 April 2018” and O (Period E): “Others: Trainee Solicitor, Paralegal, Litigation Assistant from 1 May 2018”;
    - h) O COP (Period E): “Others: Trainee Solicitor, Paralegal, Litigation Assistant from (Court of Protection) 1 May 2018”;
    - i) CA (Period D): “Costs Advocate from 1 April 2017 to 30 April 2018”;
    - j) C/L (Period D): “Costs Lawyer form 1 April 2017 to 30 April 2018”;
    - k) CD (Period D): “Costs Draftsman form 1 April 2017 to 30 April 2018”;

- l) PL SD (Period E): “Paralegal (Special Damages, Sheffield Based Fee Earner) from 1 May 2018”; and
- m) The “LTM Status” is given as “Costs Lawyer” for the legal team member identified as “Costs Lawyer”.
- iv) LTM Grade: Unlike the model Precedent S, the SCCO grade is not given for any fee earners in the respondent’s electronic bill of costs. Instead, the information given is “Partner”, “Partner COP”, “Solicitor 1”, “Solicitor 3”, “Legal Executive”, “Others”, “Others COP”, “Costs Advocate”, “Costs Lawyer”, “Costs Draftsman”, “Paralegal SD” and “Costs Lawyer” (with the relevant period specified). As in the model Precedent S, the LTM Grade given in respect of counsel is “LC” or “JC”, signifying leading or junior counsel.
66. The appellant raised preliminary points 3 and 4 (which correlate to grounds 2 and 3, respectively) in the Points of Dispute, alleging “miscertification as to completeness and accuracy” and failure to comply with CPR 47 PD. The appellant stated that the bill should provide, in respect of each fee earner, the name, their statement of status (including qualification and number of years PQE) and the hourly rate claimed for their work. The appellant requested:
- “...that the claimant amends the bill of costs to identify each of the fee earners for whom work is claimed in the bill and provide a statement of their status by reference to their legal qualifications and number of years of experience”.
67. The respondent’s replies to the points of dispute stated that there is no requirement to provide the names or SCCO grades of the fee earners within the bill of costs. Nevertheless, the replies gave the following information “for clarification”:
- “Partner – Grade A
- Solicitor 1/Legal Executive with over 8 Years Experience – Grade A
- Solicitor 2 with over 4 Years Experience – Grade B
- Solicitor 3 with less than 4 Years Experience – Grade C
- Costs Advocate/Costs Lawyer – Grade C
- Costs Draftsman – Grade C
- Paralegal/Trainee Solicitor/Litigation Assistant – Grade D”
68. On 2 January 2020 the appellant made a Part 18 request for the following information:
- “1) Please provide the names of each and every employee in respect of whom costs are claimed within the Bill of Costs.
- 2) Please provide the Grade of each employee named at 1) above, by reference to the grades of fee earners that have been agreed

between representatives of the Supreme Court Costs Office, the Association of District Judges and the Law Society.”

69. In response, on 29 January 2020, the respondent provided a list of 33 fee earners, giving their names and a description in the following form:

“Lauren Hurney	Solicitor with over 4 Years Experience moving to Grade A in September 2016
Kirsten Morley	Trainee Solicitor, Paralegal, Litigation Assistant
Alison Eddy	Partner
Charles Solomon (SDU)	Paralegal (Special Damages)
Richard Butler (SDU)	Paralegal (Special Damages)
Emma Cadman (SDU)	Paralegal (Special Damages)
Elizabeth Paterson	Solicitor with over 4 Years Experience
Charlotte Faldo	Trainee Solicitor, Paralegal, Litigation Assistant
Lara Mariacher	Trainee Solicitor, Paralegal, Litigation Assistant
Fiona Hamilton-Wood	Trainee Solicitor – Grade C from 3 July 2017
Sezan Taner	Trainee Solicitor, Paralegal, Litigation Assistant
Alexandra Evans	Trainee Solicitor, Paralegal, Litigation Assistant
Nicolas Cerezo	Trainee Solicitor, Paralegal, Litigation Assistant
Sally Sargesson (Costs)	Legal Executive with over 8 years Experience
Tasara Mutuka (Costs)	Grade C Experience
Rebecca Lanham	Trainee Solicitor, Paralegal, Litigation Assistant
Jodie Davis (Costs)	Legal Executive with over 8 years Experience
Letesha Reid (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Hanan Harrington (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Steven Farmer (Costs)	Costs Lawyer
Tasara Mutuka (Costs)	Costs Draftsman – Grade C
Charisse Tapang	Trainee Solicitor, Paralegal, Litigation Assistant
Kristina Szilvayova	Trainee Solicitor, Paralegal, Litigation Assistant
Richard Jervis (CoP)	Solicitor – Grade C from 1 March 2017
Julia C Lomas (CoP)	Partner
Cally Harrington	Trainee Solicitor, Paralegal, Litigation Assistant
Samuel Wilson (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Benjamin Emsley (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Kirstie Chambers (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Jennifer Davies	Trainee Solicitor, Paralegal, Litigation Assistant
Vanessa Whitaker (Costs)	Costs Lawyer”

***The Costs Judge’s judgment***

70. The Costs Judge addressed preliminary points 3 and 4 in paragraphs 189 to 252, having summarised the parties’ submissions on these issues earlier in his judgment.
71. The Costs Judge acknowledged that:

“193. Whilst a Partner is likely to be a Solicitor with more than 8 years PQE, the term Partner can be applied to a person of less experience and qualification.

194. The failure of the Part 18 responses in assigning a grade to Sally Sargesson and Jodie Davis leaves some doubt as to whether they have achieved the status of a ‘Fellow’ of ILEX.”

72. On the other hand, the Costs Judge took the view that where a grade had been provided in the Part 18 response, it could be inferred that this was a reference to the SCCO grade because the answer was given in response to the request for the SCCO grade.
73. As far as those identified as “Costs Lawyers” are concerned, he observed:
- “The SCCO Guidelines do not specify when a Costs Lawyer may recover a Grade B or C rate by reference to a specific cut off point. Rates awarded to Costs Lawyers are therefore typically dependent on the type of work being undertaken as opposed to by reference to how long they have been a Costs Lawyer.”
74. The Costs Judge considered that the Part 18 responses went “a long way in responding to the Defendant’s desire to apply a comparative SCCO Guideline grade” but also left “some room for doubt”. He did not consider that to be a reason to order that the bill be struck out and replaced by a new bill.
75. The Costs Judge observed that paragraph 5.11(2) of CPR 47 PD does not expressly require that fee earners be named and he rejected the contention that such a requirement may be inferred. He noted that in Precedent A none of the fee earners are named and Precedent A does not provide any explicit statement of what grade each fee earner is or disclose any information about the qualifications or experience of the fee earners beyond the references to “Partner”, “Assistant Solicitor” and “Other fee earners”. The Costs Judge observed that there is a “strong inference there is only one “Assistant Solicitor” engaged in the precedent bill”. The Costs Judge concluded:

“207. As such, the Precedent A bill demonstrates that it is acceptable practice to not name fee earners or refer to ‘conventional’ grades. The Precedent A bill also demonstrates that the time of more than one fee earner may be captured under a single fee earner description.

208. Further assistance may be drawn from paragraph [29.6](2), page 542 of Cook on Costs 2020, where it states:

“A statement of the status of the fee earners involved and the hourly rates claimed has led to some misconceptions in this requirement. The description of the fee earners may be along traditional lines – partner, solicitor, trainee solicitor – in accordance with the client care letter and any agreement such as a contentious business agreement. There is no requirement for such descriptions to tie in which the four bands that the Guideline uses: just as there is no requirement for the rates claimed to tie in which the Guideline rates. The hourly rates are allowed at whatever the court considers to be the reasonable rate for the fee earner concerned.

What is important is that the bill gives some information about the experience and expertise of such fee earners so that the paying party can form his own view of the reasonableness of the rate claimed. Where the fee earner has a professional qualification such as a solicitor, chartered legal executive or barrister, the number of years of Post Qualification Experience is usually sufficient.””

76. The Costs Judge distinguished *Sharp v Aviva Insurance Ltd*. In *Sharp* Regional Costs Judge John Baldwin held that a bill of costs which did not identify the fee earners who had done the work had been mis-certified as to completeness and should be struck out, observing that paragraph 5.11(2) of CPR 47 PD “anticipates that each person for whose work costs are being claimed will have their status and the hourly rate claimed clearly identified”. The Costs Judge observed that the decision in *Sharp* rests heavily on the fact that the receiving party had claimed “blended” or “intermediate” rates in the bill of costs, which effectively hid which status of fee earner undertook each task in respect of which costs were claimed. The Costs Judge observed:

“That is distinct from the index case where the receiving party has claimed costs based on 13 different categories of fee earner, broken down to reflect status and when the work was done. The Claimant’s Part 18 responses go one step further, in naming all of the fee earners and informing the paying party which category each fee earner has been assigned to.”

77. As regards the electronic bill, the Costs Judge rejected the criticism based on the absence of fee earners’ names, on the basis that an electronic bill must have the same functionality as Precedent S, but is not required to mimic precisely the format of Precedent S. He considered that “the rules and practice directions do not impose a procedure requirement to name fee earners” and held:

“219. The served e-bill is sufficiently functional with respect to identifying what work has been done by reference to status of fee earner.

220. In arriving at this conclusion, I have considered whether fee earners names and grades amount to ‘functions’ or information. Given that the rules and practice directions do not mandate the provision of fee earners names and grades, I consider such elements to be supplementary information, such that their absence could not impact on the functionality of the spreadsheet used unless literally no other fee earner information was provided.”

78. As regards the grade, the Costs Judge observed that the practice direction speaks of “status” rather than “grade” and

“the practice direction is not prescriptive as to how a “statement of status” ought to be presented or what level it ought to include. Indeed, the practice direction’s use of the word “should” suggests that compliance is optional rather than mandatory. The

practice direction could have been drafted in terms that a statement of status must be set out. Indeed, the practice direction could have also been drafted in terms that fee earners must be named.”.

79. The Costs Judge took the view that it was unsurprising that Form N260 seeks the name and grade of each fee earner because the form is designed specifically for summary assessment and the SCCO Guideline rates are for summary assessment, designed to assist judges who are unfamiliar with assessing hourly rates. In any event, the Costs Judge considered that the application had to be determined “without importing words into the rules and practice directions that are not there”.

80. At paragraph 229 of his judgment, the Costs Judge observed:

“A receiving party who chooses to limit the information provided in a bill of costs must at all times remember that pursuant to CPR 44.3(2)(b), doubt will be resolved in the paying party’s favour. Further, one must recall at all times that if information relevant to the detailed assessment of costs only reveals itself at the eleventh hour, then any adverse costs that result can be remedied in the costs of assessment.”

81. The costs judge concluded that neither the paper bill nor the electronic bill was non-compliant by reason of the omission of names and grades of fee earners, observing:

“242. It is a matter for the receiving party as to how much detail they wish to provide in a “statement of status” but it strikes me that where that statement leaves any doubt, then the receiving party can have no complaints in an experienced or qualified fee earner being awarded a rate lower than they might otherwise be entitled to.”

### ***The parties’ submissions***

82. The appellant submits that the response to the Part 18 request shows that fee earners were not only anonymised; they were also grouped together in the bill in such a way that it is impossible to separate out the work done by an individual fee earner. The appellant disputes the Costs Judge’s characterisation of the response to the Part 18 request as going a long way towards answering the request, suggesting that it is (for example) unclear whether “Grade B experience” or “Grade C experience” is meant to signify SCCO Grade B and C, respectively, or something else, but in any event, it does not assist in establishing which fee earner did what work.

83. In respect of the paper bill, the appellant submits the Costs Judge was wrong to conclude there was no requirement to name fee earners or to identify SCCO grades.

84. The appellant emphasises the reference to the legal representatives’ “employee” (*singular*) and the requirement to specify the hourly rates claimed “for each such person” in CPR 47 PD, paragraph 5.11(2), and submits this requirement only makes sense if the name of each ‘employee’ or ‘person’ is provided. Otherwise there can be no statement of status for that person. In addition, this provision should be construed

purposively, having regard to the purpose of enabling the court and receiving party to take a view as to the hourly rates claimed. The appellant submits that the name and status of each person for whom work is claimed is key to the application of the factors identified in CPR r.44.4. If this information is not disclosed, the paying party and the court are not told all of the circumstances of the case. Even if paragraph 5.11(2) does not require the SCCO grade, as such, to be given, construed purposefully it requires each fee earner's qualifications and post-qualification experience to be disclosed.

85. The appellant relies on the above points in relation to the electronic bill, too, but also submits that whereas there is room for argument about what the rules require for paper bills, the position is made clear and express in respect of the electronic bill. Whether or not the particular spreadsheet format used in Precedent S is adopted – and the appellant acknowledges it does not have to be – an electronic bill is required to have the detail and functionality provided by Precedent S. This means, the appellant submits, that it must contain the same level of information as is provided for by Precedent S, including the names of fee earners and their individual times claimed. It is impossible to discover whether there has been duplication of effort without knowing which individual fee earner, as opposed to which category of fee earner, has done each item of work.
86. The appellant contends that the Costs Judge did not explain the basis on which he considered that “grade” in Precedent S means anything other than SCCO grade or why, if it has a less specific meaning, it is required in addition to “status”. The difficulties that would be caused if a receiving party used a term such as “grade B” to mean something other than SCCO grade B, which the Costs Judge acknowledged, ought to have led to the conclusion that the appellant's approach to the requirements of an electronic bill is correct. Any other conclusion would tend to undo the intended benefits of the electronic bill, as identified by Sir Rupert Jackson in his Review of Civil Litigation Costs.
87. The appellant submits that it would not be onerous to provide the additional details sought and suggests that it is likely to have taken more effort to anonymise the electronic bill than to provide an automatically generated bill containing the information sought. The difficulties caused for the appellant by the lack of detail in the bill are explained in the statement of Mr Dean.
88. The respondent submits the Costs Judge was right to reject these grounds for the reasons he gave. The respondent emphasises that the Costs Judge considered the bill could be assessed. There is no (or no clear) breach of the rules and so the appellant is asking the court to rule the Costs Judge's exercise of discretion was wrong.
89. The respondent notes the term “status” in CPR 47 PD, para 5.22(2) is not defined and emphasises the appellant's concession that there is room for argument as to its meaning. It is not enough that some costs judges might prefer more detail, such as names and SCCO grades, to be given if that is not what the rules require. The fact that there is a column in Precedent S for names and grades does not amount to a requirement in the rules that those details should be given. Each item of work is given individually and, on a detailed assessment, the costs judge will have the case papers.
90. The respondent also emphasises the evidence of Mr Malone that in other cases it has proved possible to settle the costs with bills of costs containing this level of information, demonstrating that the appellant and the court are well able to form an opinion as to



reasonable and proportionate costs to be recovered on the basis of a bill of costs in the form and with the level of detail provided.

### *Decision*

91. In respect of the paper bill of costs, the key question is what is required by paragraph 5.11(2) of CPR 47 PD. In particular, does this provision require the following information to be set out in the bill of costs: (a) the name of each fee earner; (b) each fee earner's SCCO grade; and (c) each fee earner's professional qualification and years of post-qualification experience (if any)?
92. The starting point is that paragraph 5.11(2) does not expressly require the names of fee earners to be provided. Nor does it expressly require a fee earner's SCCO grade or years of post-qualification experience to be set out. The issue is whether, applying ordinary rules of interpretation, having regard to the purpose of the provision, such requirements are implied.
93. It is clear on the face of paragraph 5.11(2) that the hourly rate and "status" of "each" fee earner must be provided in the bill of costs. While paragraph 5.7 states that a bill of costs "may consist" of the sections specified, including a "background information" section, as appropriate, and paragraph 5.11 uses the word "should" rather than "must", in my judgment, in any case where costs are claimed in respect of a legal representative's employee(s), the effect of paragraph 5.11 is to *require* each employee's status and hourly rate to be included in the bill of costs. The language of the provision, considered in context, is mandatory. In this regard, I agree with the view expressed by District Judge Baldwin in *Sharp v Aviva* at [30] that the receiving party should anticipate an appropriate sanction being imposed if the bill does not set out the hourly rate and status for each fee earner.
94. In my judgment, paragraph 5.11(2) requires both the status and the hourly rate to be given on an individual basis, rather than by reference to categories of fee earners, and it follows that each fee earner should be named in the bill. First, this follows from the language of paragraph 5.11(2) which refers to the status of the "employee" (singular) "in respect of whom costs are claimed" and to the "hourly rates claimed for each such person".
95. Secondly, the provision must be interpreted purposively. A bill of costs in which claims are made for work done by reference to categories of fee earners, rather than by specifying the work undertaken by each individual fee earner, is intolerably opaque. It results in the paying party and the assessing judge being unable to consider "all the circumstances" when reaching conclusions as to the amount of costs likely to be or to be awarded when applying CPR 44.4 (see *Sharp v Aviva* at [30]).
96. Without a breakdown of work undertaken by individual fee earners, it is impossible to know whether, for example, two different fee earners within the same status category each spent one hour working on a letter, on consecutive days, or whether only one fee earner spent two hours across two days working on it. This kind of information is capable of revealing that work has been duplicated, in whole or in part. It is also impossible to detect, for example, if a claim has been made that an individual fee earner undertook, say, 10 hours work on disclosure on a day when a claim has also been made for the same fee earner's attendance at a one day hearing, giving rise to questions about

the accuracy of the claim. Such anomalies are hidden if work is claimed by reference to categories of fee earner. In addition, the provision of the names of fee earners enables the paying party to check the expertise and experience of individual fee earners, when considering whether the rate claimed is reasonable.

97. Given the paying party's exposure to the costs of detailed assessment the paying party has a strong incentive to reach an agreement, but it is more difficult for a paying party to make offers if the bill of costs is opaque.
98. I have borne in mind the contraindications contained in Precedent A, namely that the model is not populated with names of (fictional) fee earners and reference is made to "Other fee earners". Ultimately, I have reached the conclusion that these indications in Precedent A are insufficient to compel an interpretation which is inconsistent with what I consider to be the proper interpretation of paragraph 5.11(2).
99. The word "status" is not defined. In my judgment, the statement in *Cook on Costs* at paragraph 26.2 (quoted in paragraph 75 above) that in a paper bill the "description of the fee earners may be along traditional lines – partner, solicitor, trainee solicitor", and that there is no requirement for such descriptions to tie in with the SCCO grades, is correct. However, I also agree with the authors' suggestion, in the same passage, that it is important that the bill should provide information about the experience and expertise of each fee earner, in particular, the number of years of post qualification experience for fee earners with a professional qualification.
100. First, paragraph 5.11(2) uses the word "status" rather than "grade". I recognise that the word "status" can be used to refer to "grade status". Nevertheless, the word "grade" is a term of art, in this context, which is readily understood to refer to the SCCO grades A-D and so the omission of any reference to grades is of some significance. Secondly, the descriptions of status given in Precedent A (which paragraph 5.1 describes as a "model" form of paper bill of costs for detailed assessment) are along traditional lines: "partner", "assistant solicitor" and "other fee earners"; and no information is given regarding SCCO grade. While it is good practice to specify each fee earner's SCCO grade - and, if it is not given, a paying party may request such information and the court may order its provision – I do not consider that the rules and practice direction require fee earners' SCCO grades to be specified in a paper bill of costs.
101. Thirdly, bearing in mind that the court is required when assessing whether the costs claimed are reasonable and proportionate to take into account all relevant circumstances, including "the skill, effort, specialised knowledge and responsibility involved" (CPR 44.4), and that the paying party will take into account the same information when making offers to settle the costs bill, in my judgment, to comply with paragraph 5.11(2) the description of each fee earner's status should encompass their professional qualification (if any) and (if the SCCO grade is not given) their number of years of post-qualification experience.
102. I have borne in mind that the absence of information regarding fee earners' experience in Precedent A weighs against there being such a requirement. On the other hand, such information is ordinarily provided and regarded as necessary information in their assessment by paying parties and assessing judges: see, for example, *Sharp v Aviva* and *G v Kingston upon Hull City Council* (18 September 2013). As a matter of ordinary language, and particularly in the context of costs, a legal professional's status is

indicated not only by their professional qualification but also by their level of experience. An interpretation of the rules and practice direction which enables receiving parties to withhold such basic information would be liable to result in bills of costs becoming less transparent, which in turn would be likely to inhibit the ability of paying parties to make offers and of the court to assess costs.

103. Accordingly, I agree with the Costs Judge that the respondent was not required to specify the SCCO grade of each fee earner in the paper bill of costs. I also endorse his observation that, if a receiving party chooses not to provide such information, doubt will be resolved in the paying party's favour.
104. However, for the reasons that I have given, I consider that respondent's paper bill did not comply with the requirements to specify, in respect of each individual named employee, their hourly rate(s) and status, including, for any fee earner with a professional qualification (such as a solicitor or Fellow of the Chartered Institute of Legal Executives), the number of years of post-qualification experience. Accordingly, I allow the appeal on ground 2 to the extent I have indicated.
105. Whereas the proper interpretation of paragraph 5.11(2) is very finely balanced, it is with much less hesitation that I have concluded that ground 3 is well founded. The bill of costs for detailed assessment was required to be in "electronic spreadsheet format and compliant with paragraphs 5.A1 to 5.A4", in respect of work undertaken after 6 April 2018. In order to meet the requirements of paragraph 5.A2 of CPR 47 PD electronic bills must either be in "Precedent S spreadsheet format" or "any other spreadsheet format" which, like Precedent S:
  - "(a) reports and aggregates costs based on the phases, tasks, activities and expenses defined in Schedule 2 to this Practice Direction;
  - (b) reports summary totals in a form comparable to Precedent S;
  - (c) allows the user to identify, in chronological order, the detail of all the work undertaken in each phase;
  - (d) automatically recalculates intermediate and overall summary totals if input data is changed;
  - (e) contains all calculations and reference formulae in a transparent manner so as to make its full functionality available to the court and all other parties."
106. The practice direction does not require parties to use any particular proprietary format. But whichever spreadsheet format is used, the electronic bill must, amongst other requirements, allow the user to identify "the detail" of all the work undertaken in each phase, in chronological order and must contain all calculations and reference formulae in a "transparent manner".
107. The rules with respect to electronic bills reflect the aims described by Lord Justice Jackson in his Keynote Address to the Law Society's Civil Litigation Conference on 21 April 2016:

“2.1 The problem. The current form of bill of costs has a long and distinguished pedigree. It is based upon the style of a Victorian account book. Despite those historic virtues, the format is neither helpful nor appropriate in the twenty first century. **The current form of bill makes it relatively easy for a receiving party to disguise or even hide what has gone on. What is required is a bill which (a) gives relevant information to the court and to the paying party and (b) is transparent. ...**

2.3 Conclusions reached during the Costs Review. The need for reform was clear. FR Chapter 45 sets out the three requirements which any new bill would need to meet:

(i) **It must provide a transparent explanation about what work was done and why;**

(ii) It must provide a user-friendly synopsis of the work done, how long it took and why;

(iii) It must be inexpensive to produce.

2.4 Recommendations. FR chapter 45 para 5.4-5.8 argued that a new bill of costs should be developed which was capable of being automatically generated from time-recording software. **It would contain all the necessary information required for the paying party – or a judge – to understand the receiving party’s costs in a clear, transparent and intelligible way while producing considerable savings in time.**

2.5 I therefore made the following two recommendations:

“106 A new format of bills of costs should be devised, which will be **more informative** and capable of yielding information at different levels of generality.

107 Software should be developed which will (a) be used for time recording and capturing relevant information and (b) automatically generate schedules for summary assessment or bills for detailed assessment as and when required. The long term aim must be to harmonise the procedures and systems which will be used for costs budgeting, costs management, summary assessment and detailed assessment.

2.6 Acceptance of the recommendations. Following publication of the Final Report the Judicial Executive Board announced that it accepted the recommendations. The Judicial Executive Board expressed no reservations about the recommendations for a new form bill of costs, although everyone accepted that this was a long term project and likely to be achieved after the main implementation date.” (Bold emphasis added)

108. In my judgment, the respondent's electronic bill of costs failed to provide the detail of all the work undertaken in each phase and failed to provide the reference formulae in a transparent manner. The respondent's electronic bill of costs does not meet the "full functionality" requirement. I have reached this conclusion for the following reasons.
109. First, the respondent's electronic bill does not include the names (or initials) of fee earners. This is part of the "detail" which must be provided whether the Precedent S spreadsheet format or another spreadsheet format is used. Who has undertaken each item of work is a key part of the detail and, without it, the bill is opaque. In order to be fully functional, the spreadsheet must enable the paying party and the court to see what work any particular fee earner has undertaken, in the way described in the SCCO Guide (see paragraph 59 above).
110. In this case, the respondent used the Precedent S spreadsheet format but did not provide the information sought in the columns headed "LTM" or "LTM name". Filling the column which seeks the name of each legal team member with a code indicating a status category has the same effect as if the respondent had left the column blank. It is impossible to filter the work undertaken by reference to individual fee earners. This lack of transparency may hide claims where more than one fee earner at the same level has duplicated the work of another.
111. Secondly, the respondent's electronic bill does not include the grade for each (or indeed any) fee earner. In Precedent S there are columns for both status and grade, reflecting the fact that these descriptions seek different information. In this context, as I have said, the word "grade" is a term of art meaning SCCO grade. While the SCCO *rates* may be more material on summary assessment than on detailed assessment, they are relevant, at least as a starting point, and are invariably relied upon by parties, in the context of detailed assessment; and the SCCO *grades* provide basic information as to post-qualification and litigation experience which is important in considering matters such as whether the rates claimed are reasonable, whether the work should reasonably have been delegated or is excessive in time. While I have found that it is not a breach of paragraph 5.11(2) not to provide the SCCO grades in the paper bill, electronic bills are required to be more informative and more transparent than was required for paper bills to be compliant.
112. I have addressed the concept of "status" in the context of paper bills. If the electronic bill had included the SCCO grade of each fee earner in the "grade" column, the information the respondent has provided in the "status" column – save to the extent that it is not provided in respect of named individuals – would suffice. But as the SCCO grades have not been given, the required information regarding fee earners' experience cannot be discerned from either the status or the grade columns. Although a bill of costs is not required to be in Precedent S spreadsheet format, in my judgment, paragraph 5.A2 requires the same level of detail to be given even if a different spreadsheet format is used, and that includes giving each fee earner's SCCO grade.
113. In the grade column of the respondent's electronic bill of costs, the respondent has not provided any grades. Although the grade column has been filled by repeating information provided in other columns, the effect is the same as if the grade column had been left blank. The respondent has provided the names of fee earners in the part 18 response and has gone some way towards providing their SCCO grades, albeit the grades remain unclear in relation to a number of fee earners (either because the grade

has not been provided at all or sufficiently clearly). But the provision of a list of fee earners separate from the electronic bill of costs does not remedy the breaches which I have found. Even with such information, neither the appellant nor the court is able to filter items of work by reference to individual fee earners.

114. In my judgment, the Costs Judge was wrong to conclude that because a bill of costs does not have to be in Precedent S format, there is no requirement in the practice direction that electronic bills must disclose the status and SCCO grade in respect of each individual named fee earner. It is apparent from paragraph 5.A2 that the same level of detail, and the same functionality, is required whatever spreadsheet format is used. A contrary conclusion would undermine the intended benefits, in terms of transparency and functionality, of the new rules for electronic bills.

### **Supplementary matters**

115. Ground 3 also incorporated matters which were pursued before the Costs Judge as separate preliminary point 5, alleging lack of particularisation in a variety of respects. However, as the argument at the hearing focused on the matters I have addressed above, and I have allowed the appeal on ground 3 in any event, I consider it unnecessary to address these supplementary matters in this judgment. It seems to me that any remaining matters arising under this head should be capable of agreement following discussion between the parties. However, if the parties seek directions on any of these supplementary matters, I will consider them following hand down of this judgment.

### **Conclusion**

116. For the reasons I have given, I grant permission to appeal on all three grounds; the appeal is allowed on grounds 1 and 3 and, to the extent indicated, on ground 2.