



Neutral Citation No. [2022] EWHC 2946 (SCCO)

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

SCCO REF: SC-2018-DAT-005953

Royal Courts of Justice
Strand, London WC2A 2LL

Date: 17 November 2022

Before:
COSTS JUDGE JAMES

Between:
HENRY ONWUBIKO
T/A GRAYFIELD SOLICITORS

Claimant

and

(1) MOHAMMED YASEIN YOUSAF
(2) RAJESWARY RAMASAMY

Defendants

and

PG SOLICITORS
T/A EDWARD MARSHALL SOLICITORS

Additional Defendant

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.

Introduction

1. This matter has a lengthy and difficult history which is not repeated here but is best summed up by the fact that the Second Defendant was formerly employed by the Claimant and acted on his instructions in separate proceedings on behalf of the First Defendant (“The Mortgage Express Proceedings”). The Additional Defendant, PG Solicitors trading as Edward Marshall Solicitors, represented the First Defendant in these (“Solicitors Act Assessment”) proceedings. That firm has since been intervened by the Law Society and no longer trades, and the First Defendant has apparently sold his home, moved away and is uncontactable. Certainly, I have no address for him nor have I been contacted by anyone who may be advising him now.
2. The Solicitors Act Assessment proceedings gave rise to separate proceedings in another Court, and I made an Order (on 3 August 2021) that the Claimant’s Bill of Costs should be Provisionally Assessed in the SCCO, so that the County Court dealing with the other (“Fact Finding”) proceedings, would have the benefit of the Provisional Assessment when doing so. Regrettably it was not until 24 May 2022 that my decisions on Provisional Assessment were ready for service. There were a variety of reasons for this including the need for updated Points of Dispute and Replies, access to the Claimant’s files and the intervention in the Additional Defendant above referred-to, but the delay was regrettable and I of course apologise for it.
3. The Provisional Assessment, made by way of endorsement upon the Precedent G, was served upon the Claimant and the First Defendant (care of the Additional Defendant) and uploaded on CE-file (the Court’s electronic filing system which ‘pings’ parties to let them know that there is something new on the system) on 24 May 2022. It became clear that the latter service would not be effective, due to the Law Society’s intervention in the Additional Defendant firm. An attempt was therefore made to bring the decision to the attention of the First Defendant by contacting Gordons LLP, the firm instructed by the SRA to act as their agents in the intervention into the Additional Defendant.
4. Gordons LLP responded stating that they are not a representative of or successor practice to the Additional Defendant and have not taken over conduct of any matters previously dealt with by them. They added that unfortunately they have not recovered a file relating to this matter from the Additional Defendant. As they do not have the file, Gordons LLP added, they have been unable to contact the Additional Defendant’s client and will be unable to forward the Provisional Assessment on to them. They added that if the SCCO had the First Defendant’s personal contact details they would suggest contacting him direct in this regard.
5. The situation appears to be that only the Claimant can be fixed with knowledge of the outcome of the Provisional Assessment; he has not reverted to the SCCO within the relevant time limit and is now out of time to challenge the Court’s decision. I do not appear to have contact information for the Second Defendant (there is none on CE-file) and neither the First Defendant nor his former Solicitors have responded to the Provisional Assessment, which I suspect is because neither of them has even seen it. Nor am I in a position to contact the County Court hearing the Fact-Finding proceedings; unless or until that Court reaches out to me, I do not know the name of the Court nor do I have a matter number.
6. In these unusual circumstances, I have taken the Court’s decision from 24 May 2022 and reformatted it to enable this Judgment to enter the National Archives in the usual way. To be clear, the Court’s decision is almost entirely unaltered, I have simply reformatted it from Precedent G into a narrative style for this Judgment. Hence, although some words (e.g., the full text of the parties’ Points of Dispute and Replies) have been removed, and some words have been added to make the sense clear, what follows is the decision given on May 24, 2022, without any significant additions or alterations save for paragraphs 62 and 67, both of which are self-explanatory.

Provisional Assessment rulings from 24 May 2022

7. The Court has reviewed the papers in the Mortgage Express action but has not reviewed the papers in the action between the Receiving Party ('the Claimant') and the Paying Party ('the First Defendant') which need not have been filed at all. Items not challenged by the First Defendant are allowed as drawn except where otherwise indicated. Below is a table of the papers considered ahead of this Provisional Assessment.

8.

File 1	Black lever arch file of papers from first instructions to 12.01.17 (re: Mortgage Express)
File 2	Black lever arch file of papers from 12.01.17 to 15.02.18 (re: Mortgage Express)
Trial Bundle 1 of 5	White lever arch file in Mortgage Express action, prepared by Addleshaw Goddard
Trial Bundle 2 of 5	White lever arch file in Mortgage Express action, prepared by Addleshaw Goddard
Trial Bundle 3 of 5	White lever arch file in Mortgage Express action, prepared by Addleshaw Goddard
Trial Bundle 4 of 5	White lever arch file in Mortgage Express action, prepared by Addleshaw Goddard
Trial Bundle 5 of 5	White lever arch file in Mortgage Express action, prepared by Addleshaw Goddard
File 3	Black lever arch file of papers in the action between the Claimant and the First Defendant
File 4	Black lever arch file of papers in the action between the Claimant and the First Defendant
File 5	Black lever arch file of papers in the action between the Claimant and the First Defendant
File 6	Black lever arch file of papers in the action between the Claimant and the First Defendant
Pleadings, Witness Statements and Application Notices in the action between the Claimant and the First Defendant	

Claimant's preliminary point on VAT

9. The Claimant asserted that a bullet point in the Client Care Letter dated 19 December 2016 (under the heading "CONCERNS OR COMPLAINTS") which stated that, "*Your VAT number (Regulation 8(1)(g)); we are not VAT registered*" and, under the heading "CHARGES AND EXPENSES" stated: "*currently we do not charge VAT*" was purely an administrative error as the Claimant was and is VAT registered, and that at the bottom of the first page of the Client Care Letter there is clearly highlighted the Claimant's VAT number i.e., 184054411. The Claimant noted that the First Defendant had not raised a point of dispute regarding VAT, and stated they believed that this was because the First Defendant shared the same view and had conceded the point, therefore inviting the SCCO to assess the Bill with VAT.
10. The Court ruled that the client care letter is confusing. Elsewhere this has impacted upon the Claimant's recovery. However, so far as VAT is concerned, the VAT number is valid and the First Defendant has not challenged it and has indeed specifically offered VAT on numerous items. VAT is a Government Tax payable by the Claimant and it is recoverable; allow subject to recalculation where items have been reduced etc.

First Defendant's Point of Principle (1) of whether the Second Defendant was authorised to carry out litigation, to be considered by the County Court in the Fact-Finding proceedings

11. The Court ruled that to the extent that the First Defendant intends to pursue the above issue in the County Court, the SCCO has no control over what he may choose to do. The Court has seen correspondence from Mr Peter Cadman of Russell-Cooke Solicitors dated 14 October 2016, to the effect that the Paralegal in the Solicitor/client breakdown (the Second Defendant) was entitled to carry out work, under supervision from the Claimant. For the purpose of Provisional Assessment, her time has been treated as recoverable at Paralegal rate.

First Defendant's Point of Principle (2) of whether the work was carried out under a fixed fee agreement, to be considered by the County Court in the Fact-Finding proceedings

12. The Court ruled that to the extent that the First Defendant intends to pursue the above issue in the County Court, the SCCO has no control over what he may choose to do, but the Court conducted this assessment on the basis of time spent/work done by the Paralegal and Partner involved.

First Defendant's General Point (3) on "initial invoice limit" of £25,000.00 in the Client Care Letter signed by the First Defendant on 19 December 2016 to be considered by the County Court in the Fact-Finding proceedings

13. The Court ruled that, to the extent that the First Defendant intends to pursue the above issue in the County Court, the SCCO has no control over what he may choose to do. However, the Court conducted this assessment on the basis that there was no binding 'cap' on costs; the £25,000.00 was expressed as a sum to be paid on account, which was not in fact paid on account (the lesser sum of £11,000.00 was paid). As indicated by the Claimant, under "BILLING ARRANGEMENTS" the wording in the Client Care Letter is as follows; "*We will limit our invoice at the moment for £25,000.00 on account. We are however unable to cap the total costs in this matter until an appropriate time*"

First Defendant's General Point (4) on Hourly Rates – Paralegal Rate stated in the Client Care Letter as £180.00 but billed to First Defendant at £250.00. Claimant asserted that this was a 'typo' and that it was clearly stated elsewhere that the rate should be £250.00 or £350.00, referring to 'Section C of the Appendix' on this issue

14. The Court ruled that the assertion that this is a 'typo' does not assist the Claimant. The SCCO's Guideline Hourly Rates in 2016/2017 in Romford (Outer London or 'London 3') when the matter began, were:

Grade A £229-267;
Grade B £172-£229;
Grade C £165 and
Grade D £121.

15. Whilst the rate for the Claimant himself is clearly £350.00 per hour and has not been challenged by the Defendant, the rate for the Paralegal is ambiguous. The Second Defendant could not practice as a Solicitor and was only permitted to conduct litigation under the Claimant's supervision; charging a rate equivalent to Grade A (£250.00) for her work, is unreasonable. The rate offered by the First Defendant (£180.00) is within the Client Care Letter and is equivalent to a Grade B rate which, for a Paralegal in the First Defendant's position, is reasonable if not generous.
16. See *Nicky Herbert v HH Law Limited* [2019] EWCA Civ 527 where the Court of Appeal ruled on (inter alia) informed consent: the Court referred to the Solicitors' wish to rely upon CPR 46.9(3) as to whether costs should be presumed to have been reasonably incurred if they were incurred with the express or implied approval of the client and to be reasonable in amount if their amount was expressly or impliedly approved by the client, but to have been unreasonably incurred if they are of an unusual nature or amount; and if the Solicitor did not tell the client that as a result the costs might not be recovered from the other party. Held:

“If the Solicitor wishes to rebut the challenge by relying on the presumption in CPR 46.9(3) (a) or (b), the burden lies on the Solicitor to show that the pre-condition of the presumption, informed approval, is satisfied.

Once the Solicitor has adduced evidence to show that the client gave informed consent, the evidential burden will move to the client to show why, as a result of having been given insufficiently clear or accurate or comprehensive information by the Solicitor or for some other reason, there was no consent or it was not informed consent. The overall burden of showing that informed consent was given remains on the Solicitor.”

17. £250.00 per hour for a Paralegal, is unreasonable per se but in addition it would not have been recoverable on a party-and-party assessment. The Claimant has not shown that informed consent was given by the First Defendant to such a rate.
18. The ambiguous Client Care Letter was drafted by the Claimant and as such is construed ‘against the draftsman’ (contra proferentem) and in favour of the First Defendant. Allow Paralegal at the ‘Grade B’ rate of £180.00 per hour.

Line-by-line assessment: Part 1: Invoice number 207 dated 20 December 2016

Point 5: Part 1, Item 1 First Defendant would agree to the claim for Paralegal work, but at £180/hour; Claimant maintained the claim to £250/hour and pointed out that Item 1 was not a profit cost item but was Counsel’s Fee.

19. The Court ruled upon item 1, an unspecified Counsel’s fee; it was not challenged but it did not appear in either of the Invoices (207 or 237) upon which this Solicitors Act Assessment was proceeding. Nor did there appear to be a Fee Note for it. Counsel’s Fee would appear (from the date, 19 December 2016) to be in respect of the Application of 20 December 2016, as to which, see below at paragraphs 25 to 39 of this Judgment. Counsel’s Fee was therefore disallowed. Item 2 (attendance upon the First Defendant of 62 units of time) recalculated at £180.00 per hour, comes to £1,116.00 plus VAT.

Point 6, Item 2: invoice no 207 dated 20/12/2016 states that all work was carried out by the Paralegal which the First Defendant confirmed was his experience and that Points in respect of claims for Partner work were made without prejudice to that position. The Claimant asserted that Item 2 contained details of work carried out by a Partner, charged at the rate of £250 on the initial invoice ‘purely as a gesture of goodwill’ and without prejudice to the Claimant’s right to recover his fees on assessment.

20. The Court ruled that Invoice number 207 dated 20 December 2016 states on its face that it comprises 32 hours at £250.00 per hour which, on the Claimant’s own case, was the Paralegal rate. Nowhere does the invoice state that there was Partner time spent/work done, nor that all time has been charged at the lower rate as a ‘goodwill gesture’. Nor does Invoice 207 contain any form of words to the effect that it is not a final Bill for the period 12 December 2016 to 20 December 2016.
21. By treating Invoice number 207 as a separate part of the breakdown, the Claimant’s Costs Draftsman evidently recognised that this invoice was an interim statute Bill as was the other valid invoice (Invoice number 237, part 2 of the Solicitor/client breakdown, see below).
22. Part 1 of the Solicitor/client breakdown contains 41.8 hours as to 23.1 hours claimed at Paralegal rate and 18.7 hours claimed at Partner rate. The Court can consider the totality of the time claimed in Part 1, in

exercising its discretion as to a reasonable amount to allow but it cannot exceed the amount of (interim statute) Invoice number 207. Given the Court's decision on Paralegal hourly rate, the amount allowed for time spent/work done in Part 1 cannot exceed 32 hours at £180.00, or £5,760.00 plus VAT and disbursements.

Point 7, Item 3 (Addleshaw Goddard, for Mortgage Express Limited) should be recalculated at Paralegal Rate

23. The parties appear to have got the numbering wrong on several of the Points of Dispute/Replies; in each case the Court worked out which was the correct item under challenge, before ruling upon it. This item was to be charged at £180.00/hour and was recalculated accordingly. To avoid confusion, the correct item number from now on.

Point 8, Item 4 (Fortis Rose for Awais Khan) should be recalculated at Paralegal Rate

24. The Court's ruling was the same as for Point 7, item 3. The Claimant asserted that the First Defendant really meant to challenge item 5, which were routine attendances upon Counsel. The Court disallowed these for the same reason as it disallowed item 1 above.

First Defendant's Points 9 through 16 on Item 6 (Documents) made various offers in respect of Paralegal and Partner time, on two bases. These were that the times claimed were excessive, and that some of the work claimed at Partner rate, had in fact been done by the Paralegal (Second Defendant). The Claimant accepted some, but rejected many offers, referring to the 'copious' and 'lengthy' documents reviewed by the Partner.

25. The Court ruled that the offer from the First Defendant (26 hours 12 mins) would take the Claimant over the 32 hours at Paralegal rate, that they were entitled to charge as per the Invoice upon which Part 1 of the Solicitor/Client breakdown was based (given 74 units of timed and routine attendances other than documents). As such, it might have been considered moot as to how much the Court viewed as reasonable, since the maximum recoverable would be the balance of 32 hours less 7.4 hours at Paralegal rate i.e., 24.6 hours at £180.00 or £4,428.00.
26. However, the Court was tasked with exercising its discretion and reviewed the papers accordingly. In File 1 on Wednesday December 21, 2016, the Claimant emailed the Second Defendant at 15:55 stating,
- "I have to be honest. I have not read this matter as I had completely left it in your capable hands. But I think I am gonna have to review it thoroughly tonight and tomorrow we talk about the Application."*
27. Under cover of that email, the Claimant forwarded an email from Lee O'Sullivan at Addleshaw Goddard, copied to Olgan Gonduz at Fortis Rose (amongst others) which was sent at 14:04 and states:

"Dear Henry, I am writing further to our call a few moments ago. You said to me that:

- (i) You have not seen or read any of the statements of case*
- (ii) You signed the Application notice dated 20 December 2016*
- (iii) You are not aware of your client's Notice to Admit Facts – or the basis upon which he now seeks to rescind one of those admissions*
- (iv) You are not aware of the issues which will be determined at Trial*
- (v) You do not have all the papers because they have been retained by your client's previous Solicitors*
- (vi) You are not aware of DI's amended statement of case*

(vii) *You had not seen your client's own witness statement (which was served undercover of a letter from your firm, and which I discussed with you on Monday). [19 December 2016].*

You also appeared to indicate that a Paralegal at your firm had been dealing with this matter. Please confirm who the actual fee earner is, and provide me with the details of his/her professional status, and who is responsible for supervising their work (I assume that is you, as principal?)

I said to you that:

- (i) I would send you the Pleadings. My PA will send these directly, once they have been scanned.*
- (ii) The Trial has been listed for a 5-day Trial commencing on 16 January 2017 (not the 19 January as appears in your Application)*
- (iii) Your Application seeks (although not properly framed) summary determination of the issues on which we are going to Trial.*
- (iv) If you proceed with the Application, I will seek wasted costs against you personally. Please note that my counsel has already been instructed on the Application. I will give you 24 hours. during that time, I will do my best to keep the costs of dealing with this Application to a minimum. If the Application is not withdrawn by you by 2 p.m. tomorrow (i.e., 22 December 2016) I will be seeking all costs from you in respect of it.*

I also invited you to read the pleadings and offered to speak should you wish to discuss any aspect of the case. I have to say, Henry, this is the most ill-conceived Application I have ever seen."

28. There is an email from the Claimant to Lee O'Sullivan at 11:06 on 22 December 2016 stating, "*Many thanks for the telephone contact yesterday in relation to the above matter. I am grateful for the paperwork which you have sent over to me and which I am currently reviewing. I will shortly be taking instructions from my client and will revert to you in due course...*"

29. Finally, there is an email from the Claimant to the Second Defendant at 13:33 on 22 December 2016 stating,

"I have read the following documents.

- 1. Claim form and particulars of claim of the claimant dated 22 October 2014*
- 2. D1's defence and Additional claim dated 28 November 2014*
- 3. D2's defence dated 20 November 2014*
- 4. D2's Reply to D2's defence and counterclaim dated 19 January 2015*
- 5. Notice to Admit facts issued by the Claimant against D2 dated 27 September 2016*
- 6. The Settlement Agreement dated 18 July 2013*

In all of the above pleadings and statements of case, one thing is clear – the validity or otherwise of the Settlement Agreement is in dispute and the Trial has been listed for the 16 – 21 January 2016. [sic – obviously meant 16 – 21 January 2017].

Our client's Application notice is seeking summary disposal of the claimant's claim on the basis that the claim had been settled by the Settlement Agreement and that nobody had brought this to the attention of the court before now. This is incorrect. There are so many other adjunct issues to be decided at Trial which our Application did not deal with, and those issues cannot be disposed of by our Application. I am therefore minded to withdraw the Application this afternoon subject to anything you may say." The Second Defendant responded (at 13:49 on 22 December 2016) stating that, "*I am in agreement with you then I have no choice but to accept your decision."*

30. In the Court's judgement, several conclusions followed from the foregoing. Firstly, the Application was ill-founded and was withdrawn under threat of Wasted Costs against the Claimant personally, which indicates that Mr O'Sullivan of Addleshaw Goddard viewed the fault as lying, not with the First Defendant but with the Claimant.
31. Secondly, the Claimant's supervision of the Second Defendant was (at this stage) very 'hands-off' as he signed the Application without having seen the underlying documents in the case and without knowing the subject matter of the main case.
32. Thirdly, despite evidently deciding that the Application was hopeless and withdrawing it, the Claimant has signed as accurate and complete a breakdown of costs claiming its preparation from the First Defendant.
33. Finally, despite on his own evidence (in contemporaneous correspondence on the files lodged at the SCCO for the Provisional Assessment) having done nothing of substance on the file prior to 21 December 2016, the Claimant certified as accurate and complete a breakdown of Solicitor/client costs that claims 17 hours and 48 minutes, or £6,230.00, for his own time between 13 and 21 December 2016.
34. The last 4 hours and 48 minutes claimed for the Claimant's time, were spent on 21 December 2016 (after the date of Invoice 207) considering whether to withdraw the Application i.e., reading what Lee O'Sullivan had sent through on that date (task continued on 22 December 2016 – see Part 2).
35. As such, the Court ruled that the Claimant was not entitled to any Documents time by the Partner in Part 1 of the Solicitor/client breakdown as the time was either not spent as claimed (all time before 21 December 2016) or was spent sorting out the issues created by the under-supervised Second Defendant's misguided Application (time on 21 December 2016).
36. As to the Second Defendant, the Court reviewed the contents of pages 305 to 318 of the Trial Bundle, which comprise the Application Notice dated 16 December 2016, which was issued on 20 December 2016 and withdrawn two days later under threat of Wasted Costs.
37. The Application is of brief gist and refers to a Mediation Agreement in July 2013, which Mr Yousaf believed was binding upon the parties and had not (yet) been brought to the Court's attention. The information on page 2 of the N244 is eight lines long and there is a similarly brief draft Order and a Witness Statement which runs to three-and-a-half pages.
38. Taking that Application out of the equation (as the costs were clearly wasted and – in the Court's judgement - were the responsibility of the Claimant) and disregarding lengthy claims for time spent/work done reviewing papers given that very little had, at that time, arrived, two or three hours' worth of work on Documents by the Paralegal at most, was reasonable especially given a very lengthy in-person attendance upon the First Defendant at item 2, which was unchallenged.
39. The rest of the Paralegal's time, like all of the Partner's time, did not – in the Court's judgement - stand up to scrutiny for various reasons, including the fact that you cannot bill your own client for drafting a Client Care Letter (especially one that misstates the position on VAT and is ambiguous as to the main fee earner/Paralegal's hourly rate). As such, 3 hours at Paralegal rate (£540.00 plus £108.00 VAT) was allowed on documents in Part 1.

40. Item 7 was the Court Fee to issue the above referred-to hopeless Application and was disallowed.

Line-by-line assessment: Part 2: Invoice number 237 dated 5 January 2016

Point 17, Part 2 (Item 8) the First Defendant challenged the hourly rate and sought Paralegal rate (£180/hour). The Claimant maintained the higher rate (£250/hour).

41. The Court's ruling on item 8, attendance on 4 January 2017 on an Application to strike out PP's case due to non-disclosure, was to allow it at the Paralegal rate of £180.00/hour, so £1,080.00 plus £216.00 VAT. Item 9, Counsel's fee, was unchallenged and was allowed as drawn.

42. However, item 10, £100.00 travel expenses, was disallowed. It was not on Counsel's fee note and nor was it in Invoice number 237. The Claimant is in Romford and this Hearing was in the Romford County Court. As such, no travel expenses should have been incurred and no vouchers were produced, therefore this was disallowed.

Point 18, Item 11, the First Defendant challenged the hourly rate and sought Paralegal rate (£180/hour). The Claimant maintained the higher rate (£250/hour).

43. The Court's ruling was that Item 11 should be recalculated at the Paralegal rate of £180.00/hour. Further, whilst item 12 was not challenged, according to Counsel's fee note, the fee was reduced by £1,000.00 as a gesture of goodwill (this happened in January 2018). Hence the Court allowed Counsel's fee at the reduced sum of £11,500.00 plus VAT. Item 13 (Travel Expenses) was disallowed on the same basis as item 10 above.

Point 19, Item 14, the First Defendant objected to paying for correspondence with a Partner on the basis that he said there had not been any; the Claimant stood by its claim.

44. The Court ruled that there was some limited contact from the Partner; confusion has arisen because the email address litigation@grayfieldsolicitors.com was used by both the Partner (rarely) and the Paralegal; the Partner's separate email address (henry@grayfieldsolicitors.com) was not used for these items. As such, the First Defendant's assertion that there was no contact was understandable, but incorrect.

Point 20, Item 14, the First Defendant challenged the hourly rate and sought Paralegal rate (£180/hour). The Claimant maintained the higher rate (£250/hour).

45. The Court allowed this as calculated by the First Defendant, plus 3 routine items at Partner rate.

Point 21, Item 15, the First Defendant challenged the hourly rate and sought Paralegal rate (£180/hour). The Claimant maintained the higher rate (£250/hour).

46. The Court ruled that, for item 15, correspondence with Addleshaw Goddard for Mortgage Express, given the Application withdrawn on 22 December 2016, and a lot of pointless correspondence (e.g., Paralegal writing to say the case has settled, when it had not) it would allow half of it as being progressive and reasonable. At Paralegal rate, this came to £180.00 plus £36.00 VAT.

Point 22, Item 16, the First Defendant challenged the hourly rate and sought Paralegal rate (£180/hour). The Claimant maintained the higher rate (£250/hour).

47. The Court ruled that, for item 16, correspondence with Fortis Rose, given the Application withdrawn on 22 December 2016, and a lot of pointless correspondence (as above) it would allow half of it as being progressive and reasonable. At Paralegal rate, this came to £180.00 plus £36.00 VAT.

Point 23, Item 17, the First Defendant challenged the hourly rate and sought Paralegal rate (£180/hour). The Claimant maintained the higher rate (£250/hour).

48. The Court ruled that, for item 17, correspondence with Court, the time should be allowed, but at Paralegal rate of £180.00/hour (so, £54.00 plus £10.80 VAT).

Point 24, Item 18, the First Defendant challenged the hourly rate and sought Paralegal rate (£180/hour). The Claimant maintained the higher rate (£250/hour).

49. The Court ruled that, for item 18, correspondence with Counsel. 59 units between 21 December 2016 and 13 January 2017 is an excessive and unreasonable level of contact. Given the Application withdrawn on 22 December 2016, and a lot of pointless correspondence (e.g., Counsel repeatedly writing to ask the Paralegal questions which she could not/did not answer) allow 30 units as being progressive and reasonable. At Paralegal rate, this is £540.00 plus £108.00 VAT.

Point 25, Item 19, Documents: Reviewing matters generally: First Defendant asserted that times claimed are excessive and show substantial duplication not only with part 1 but also as between Partner and Paralegal, with all the work actually done by the Paralegal, offering 5 hours for paralegal and 1 hour for partner. The Claimant made a substantially higher counter-offer.

50. Given the issues with time spent/work done on Documents in Part 1, the Court reviewed with anxious scrutiny the claim for documents in Part 2 and made the reductions set out below. The Paralegal worked from home and it was clear that the main files were either there with her or were with Counsel.

51. The Documents sent to the Claimant by Mr O’Sullivan of Addleshaw Goddard were sent for the purpose of considering Mr O’Sullivan’s deadline for withdrawing the Application, in default of which deadline, his client would seek Wasted Costs against the Claimant personally. That is not something that the First Defendant should have been billed for. There was also evidence on file that the Claimant was away/travelling during the runup to the start of the Trial (between 28 December 2016 to 5 January 2017).

52. There were 26 separate documents entries, all of which were considered and decided as follows (some appear after later Points of Dispute, but the Roman Numerals stop at XXVI or 26):

I 22/12/16 (Paralegal) – To do with the withdrawn Application; wasted. Disallow.

II 22/12/16 (Partner) – As above.

III 3/1/17 (Paralegal) – Allow 5 hours as offered by PP.

IV 3/1/17 (Partner) – Disallow.

V 3/1/17 (Paralegal) – See next item; this is not a review challenged by PP.

VI 3/1/17 – (Partner) – Ditto.

Point 26, Item 18, Drafting instructions to counsel: First Claimant said excessive and duplicative and offered a reduced amount, to which the Claimant offered a small concession but mainly stood by its time spent/work done as claimed.

53. The Court ruled as follows:

V 3/1/17 (Paralegal) – Allow as offered by Claimant 1 hour

VI 3/1/17 – (Partner) – Disallow

VII 5/1/17 – (Paralegal) – Allow as offered by Claimant 2 hours

VIII 5/1/17 – (Partner) – Allow as drawn 30 mins.

IX 5/1/17 – (Paralegal) – Allow 2 hours claimed.

Point 27, Item 19, Undertaking lengthy preparation for trial: First Claimant again said excessive and duplicative and offered a reduced amount, to which the Claimant offered a small concession but mainly stood by its time spent/work done as claimed.

54. The Court ruled as follows:

X 6/1/17 – (Partner) – Disallow

XI 8/1/17 – (Paralegal) – Allow as drawn 30 mins

XII 9/1/17 – (Paralegal) – Allow as drawn 30 mins

XIII 9/1/17 – (Partner) – Disallow

XIV 9/1/17 – (Paralegal) – Allow as drawn 2 hours

XV 10/1/17 – (Paralegal) – Allow as drawn 2 hours 30 mins

XVI 11/1/17 – (Paralegal) – Allow 4 hours across this item and the below items on 12 and 13/1/17

XVII 11/1/17 – (Partner) – Allow 1 hour across this item and the below items on 12 and 13/1/17

XIX 12/1/17 – (Paralegal) – Allow as drawn 1 hour

XX 12/1/17 – (Paralegal) – see XVI above

XXI 12/1/17 – (Partner) – see XVII above

XXV 13/1/17 – (Paralegal) – see XVI above

XXVI 13/1/17 – (Partner) – see XVII above

Point 28, Item 18: Reviewing bundle on 11, 12 and 13/1/17. The First Defendant asserted that the hearing on 5/1/2017 was for summary judgment. The evidence was all in place and the bundle was essentially the trial bundle. It is wholly excessive to claim 12 hours looking at the bundle on top of the time claimed as “preparation for trial”, which must involve consideration of the bundle; a lower offer was made, to which the Claimant countered, offering to accept twice the amount offered by the First Defendant.

55. The Court ruled that on this item (XVIII 11/1/17, 12/1/17 and 13/1/17 – Partner – 12 hours) it would allow 3 hours as offered by the First Defendant for the Paralegal (in effect moving 3 hours over from Partner rate to Paralegal rate). No Partner time was allowed.

56. The file does not indicate that the Claimant/Partner undertook any or any significant preparation for Trial, but if he did so, given that the Paralegal instructed Counsel and attended the Trial behind Counsel, it was unreasonable.

Point 29 Item 18 Skeleton 12/1/2017: The First Defendant asserted duplication between the Paralegal (who did the work) and the Partner, in addition to which the drafting was done by

Counsel so that the time was excessive as well. The First Defendant made an offer, to which the Claimant made a counteroffer.

57. The Court ruled as follows:

XXII 12/1/17 – (Paralegal) – Allow as drawn 2 hours

XXIII 12/1/17 – (Partner) – Disallow

XXIV 13/1/17 – (Partner) – Allow as drawn 30 mins

Point 30, Item 18 Documents Totals: The First Defendant offered 5 hours Partner and 26 hours 48 minutes Paralegal time on Documents, to which the Claimant countered with 34.3 hours for Partner and 32.5 hours for Paralegal.

58. The above rulings arithmetically amount to:

Partner – 2 hours at £350.00 per hour i.e., £700.00 plus VAT (£140.00)

Paralegal – 25.5 hours at £180.00 per hour i.e., £4,590.00 plus VAT (£918.00)

Point 31 Item 18 Time totals: The First Defendant calculated the total including time spent, documents, calls, and letters (against the claim of £38,480.00) at £14,679.00. The Claimant asserted that the arithmetic was wrong and that the First Defendant's offers added up to £15,352.00, which offer was rejected; the Claimant would accept £31,855.00 as a compromise.

59. The Court's rulings were transposed into the below tables to give a total allowed for the Claimant's time spent/work done in part 2 of £12,613.00 ex VAT.

Part 3 – Costs of Appeal

60. These were conceded by the Claimant (and hence disallowed by the Court) upon the First Defendant pointing out that he had never instructed the Claimant in any Appeal.

Part 4 – Costs of the costs

Point 33, Part 4: The First Defendant agreed these unless there was a substantial reduction in the Bill in which case the SCCO was asked to award costs of assessment to the First Defendant (to which the Claimant simply responded 'Noted').

61. The Court ruled that Part 4 should not have been included in the breakdown; the Claimant would only recover his costs of detailed assessment if he beat the '1/5 rule' under the Solicitors Act 1974, which he clearly has not done; the costs allowed are less than 30% of costs as drawn. Part 4 was disallowed.

62. The difficulties referred to in the Introduction, in bringing the Court's rulings to the attention of the First Defendant, are no doubt a factor in there having been as yet no claim from him for his costs of the Solicitors Act Assessment; to be clear he has not only won on the 1/5 rule, but he has also reduced the Claimant's costs by more than two thirds and accordingly he is awarded his costs of this exercise, on the Indemnity Basis.

63. The following tables have been copied across from the Precedent G.

Henry Onwubiko t/a Grayfield Solicitors v Mr Muhammad Yasein Yousaf Assessed costs (by reference to solicitor/client breakdown):

Part 1 – invoice 207				
Item	As drawn	VAT	As allowed	VAT
1 – Counsel’s fee	687.50	137.50	0	0
2 – Client	1,550.00	310.00	1,116.00	223.20
3 – Addleshaws	140.00	28.00	72.00	14.40
4 – Fortis Rose	95.00	19.00	54.00	10.80
5 – Counsel	145.00	29.00	0	0
6 – Docs Partner	6,230.00	1,246.00	0	0
6 – Docs Paralegal	4,150.00	830.00	540.00	108.00
7 – Court fee	255.00	0	0	0
Total part 1:	2550	8300	666.00	356.40
Part 2 – invoice 237				
Item	As drawn	VAT	As allowed	VAT
8 – Hearing	1,500.00	300.00	1,080.00	216.00
9 – Counsel	3,000.00	600.00	3,000.00	600.00
10 – Travel	100.00	0	0	0
11 – Hearings	6,000.00	1,200.00	4,320.00	864.00
12 – Counsel	12,500.00	2,500.00	11,500.00	2,300.00
13 – Travel	400.00	0	0	0
14 – Client	1,305.00	261.00	969.00	193.80
15 – Addleshaw	630.00	126.00	180.00	36.00
16 – Fortis Rose	570.00	114.00	180.00	36.00
17 – Court	85.00	17.00	54.00	10.80
18 – Counsel	1,635.00	327.00	540.00	108.00
19 – Docs Partner	15,505.00	3,101.00	700.00	140.00
19 – Docs Paralegal	11,250.00	2,250.00	4,590.00	918.00
Total part 2:	29675.00	6196.00	7213.00	1442.60
Part 3 – invoice 242 (conceded)				
Item	As drawn	VAT	As allowed	VAT
20	1,575.00	315.00	0	0
Total part 3:	1,575.00	315.00	0	0
Part 4 – Costs of Assessment (disallowed and should not have been included)				
Item	As drawn	VAT	As allowed	VAT
21	1,060.00	212.00	0	0
Total part 4:	1,060.00	212.00	0	0
Grand total:				
Total part 1:	00	00	0.00	00
Total part 2:	0.00	0.00	0.00	00
Total part 3:	1,575.00	315.00	0	0
Total part 4:	1,060.00	212.00	0	0

Total:	26350	5270	0.00	0.00
---------------	--------------	-------------	-------------	-------------

As to:

Details (as drawn)	Amount	Details (allowed)	Amount
Profit costs	53,425.00	Profit costs	14,410.00
VAT thereon	10,685.00	VAT thereon	2,882.00
Counsel's fees	16,187.50	Counsel's fees	14,500.00
VAT thereon	3,237.50	VAT thereon	2,900.00
Disbursements	755.00	Disbursements	0
VAT thereon	0	VAT thereon	0
Total:	755.00	Total:	34,692.00
Received on account by Claimant:	From First Defendant at outset		11,000.00
	From Fortis Rose after Trial		14,250.00
	From First Defendant for Counsel's Fees		10,000.00
TOTAL ON ACCOUNT:			£0.00
BALANCE DUE TO FIRST DEFENDANT:			£558.00

64. There is a lack of clarity (the Claimant did not file a Cash Account) with regards to who paid the balance of Counsel's fees; if the Claimant paid them then the above figure should be correct, but if the First Defendant paid any of them himself then they should be reimbursed to him as well.

Doubt

65. Based upon the Claimant's file of papers, the Court is in grave doubt that the Partner spent anywhere near as much time as claimed within the Solicitor/client breakdown. The First Defendant has stated throughout that all of his dealings were with the Paralegal and this is borne out by the file. It is also clear from the file that the First Defendant was told a Paralegal would be running the matter with Partner supervision; the First Defendant neither knew about nor agreed to this level of Partner input.

66. The Court is mindful that this is an assessment on the Indemnity Basis. Whilst the Court is in considerable doubt as to whether the majority of Partner time was even spent, there is no doubt that it would not have been reasonably spent, at or anywhere near the level claimed.

67. For the Paralegal (who had conduct of the matter) and the Partner (who was supervising in a 'hands off' manner) both to read an entire 1,370-page Bundle prepared by Addleshaws Goddard, and both to spend days preparing for a Trial that only the Paralegal attended behind Counsel, would be unreasonable even on the Indemnity Basis.

68. To be clear, this is not a case of the Court being in doubt as to the reasonableness of the Claimant's costs, which doubt should be resolved in the Claimant's favour. There is no doubt that the costs were unreasonable; there is grave doubt that most of them (so far as the Partner is concerned) were ever actually incurred. The parties had 28 days to seek an Oral Hearing and the Claimant would have had an opportunity to speak to this issue at such a Hearing if a timely request had been made. The Claimant's file was retained

in Court pending that time limit, which ran out in June 2022. However, the 28 days will not start to run against the First and Second Defendants until they have sight of this Judgment.

Fixed fee?

69. On the key question of whether there was a 'fixed fee' agreement at £11,000.00 plus VAT plus disbursements, that is a matter for the County Court to decide in the Fact-Finding proceedings. To the extent that it may assist, from the Claimant's file, the matter clearly got off to a bad start, with the Application (which was withdrawn under threat of Wasted Costs) and with the First Defendant narrowly avoiding strike-out. The costs figure arrived at after an Indemnity Basis assessment (£14,410.00) suggests that it is possible that such an agreement could have been made.
70. Put another way, the likelihood of the Claimant writing down costs of £53,425.00 (as claimed) to £11,000.00 may have seemed remote. The likelihood of the Claimant writing down costs of £14,410.00 to that figure in light of the problems with the Application, may seem much less remote.
71. The fact-finding issue is not for this Court, but hopefully the above calculations and indications will assist.