



Neutral Citation Number: [2023] EWHC 816 (KB)

Case No: QA-2017-000001

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ON APPEAL FROM THE ORDER OF MASTER ROWLEY**  
**DATED 28 JUNE 2017**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/04/2023

**Before :**

**MR JUSTICE SAINI**

**sitting with**

**SENIOR COSTS JUDGE GORDON-SAKER**  
**as Costs Assessor**

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**Between :**

**MICHAEL EARL WILSON**

**Appellant**

**- and -**

**JOHN FORSTER EMMOTT**

**Respondent**

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**Roger Mallalieu KC (instructed by Michael Wilson & Partners Ltd) for the Appellant**  
**The Respondent appeared in person by remote link**

Hearing dates: 4 April 2023  
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**Approved Judgment**

This judgment was handed down remotely at 5pm on Wednesday 5 April 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SAINI

**Mr Justice Saini :**

This judgment is in 5 main sections as follows:

I.	Overview:	paras. [1]-[6].
II.	The Factual Background:	paras. [7]-[16].
III.	The Arguments:	paras. [17]-[27].
IV.	Analysis:	paras. [28]-[31].
V.	Conclusion:	para. [32].

**I. Overview**

1. This is an appeal against a decision made by Master Rowley (“the Master”) in the course of detailed assessment of the Claimant/Appellant’s costs in the proceedings below. The decision under appeal was made by the Master in an *extempore* ruling on 18 January 2017 and the assessment proceedings concluded on 28 June 2017. It is not altogether clear why it has taken so long for this appeal to come on, but permission to appeal on a single ground was granted only relatively recently by a judge on 14 November 2022. At the conclusion of oral argument, I indicated that the appeal would be dismissed with reasons to follow. I am very grateful for the assistance of Senior Costs Judge Gordon-Saker as Costs Assessor.
2. I will refer to the Claimant/Appellant as “Mr Wilson” and the Defendant/Respondent as “Mr Emmott”. The costs orders which were the subject of the assessment proceedings were made following unsuccessful committal proceedings brought by Mr Emmott against Mr Wilson and an entity called Michael Wilson & Partners Limited (“MWP”). MWP is a BVI registered company which provides legal and business consultancy services in, among other places, Kazakhstan and Azerbaijan. Mr Wilson is the managing director of MWP. He is also an English Solicitor who at all material times held a practising certificate. Mr Emmott is a former director and employee of MWP.
3. The underlying proceedings which lead to this appeal have a complex and unedifying history. I will set out below such facts as are necessary to explain and resolve the issues before me, but it is clear the present appeal is yet another chapter in long-running litigation between Mr Wilson and Mr Emmott. That litigation has been the subject of adverse comment by the Court of Appeal on one of the parties’ trips to that court: [2019] EWCA Civ 219. It was described at [70] by Peter Jackson LJ as a “shameful waste of time and money” caused by a private dispute. He also observed that “this pathological litigation has already consumed far too great a share of the court’s resources”.
4. Returning to the present appeal, in the committal proceedings in which he succeeded Mr Wilson acted in person for various stages of the proceedings. The issue arose in the detailed assessment as to the hourly rate he was entitled to recover. That depended on whether Mr Wilson was a “litigant in person” for the purposes of CPR 46.5, or fell within the exception in CPR 46.5(6)(b) as a person “...represented by a firm in which that person is a partner”. I will refer to this below as “the exception”.

The Master held Mr Wilson did not fall within the exception, that he was a litigant in person, and was therefore limited to recovering costs of £19.00 per hour, as opposed to a commercial rate.

5. CPR 46.5 provides as follows (with my underlining of the exception):

- (1) This rule applies where the court orders (whether by summary assessment or detailed assessment) that the costs of a litigant in person are to be paid by any other person.
- (2) The costs allowed under this rule will not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.
- (3) The litigant in person shall be allowed –
  - (a) costs for the same categories of –
    - (i) work; and
    - (ii) disbursements,  
which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;
  - (b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and
  - (c) the costs of obtaining expert assistance in assessing the costs claim.
- (4) The amount of costs to be allowed to the litigant in person for any item of work claimed will be –
  - (a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or
  - (b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46.
- (5) A litigant who is allowed costs for attending at court to conduct the case is not entitled to a witness allowance in respect of such attendance in addition to those costs.
- (6) For the purposes of this rule, a litigant in person includes –
  - (a) a company or other corporation which is acting without a legal representative; and
  - (b) any of the following who acts in person (except where any such person is represented by a firm in which that person is a partner) –
    - (i) a barrister;
    - (ii) a solicitor;
    - (iii) a solicitor's employee;
    - (iv) a manager of a body recognised under section 9 of the Administration of Justice Act 1985; or
    - (v) a person who, for the purposes of the 2007 Act, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act).

6. The Practice Direction to CPR 46.5 provides as follows:

3.1 In order to qualify as an expert for the purpose of rule 46.5(3)(c) (expert assistance in connection with assessing the claim for costs), the person in question must be a –

- (a) barrister;
- (b) solicitor;
- (c) Fellow of the Institute of Legal Executives;
- (d) Fellow of the Association of Costs Lawyers;
- (e) law costs draftsman who is a member of the Academy of Experts;
- (f) law costs draftsman who is a member of the Expert Witness Institute.

3.2 Where a self represented litigant wishes to prove that the litigant has suffered financial loss, the litigant should produce to the court any written evidence relied on to support that claim, and serve a copy of that evidence on any party against whom the litigant seeks costs at least 24 hours before the hearing at which the question may be decided.

3.3 A self represented litigant who commences detailed assessment proceedings under rule 47.5 should serve copies of that written evidence with the notice of commencement.

3.4 The amount, which may be allowed to a self represented litigant under rule 45.39(5)(b) and rule 46.5(4)(b), is £19 per hour.

## **II. Factual Background**

7. A former client of MWP had engaged MWP in connection with various natural resource transactions in Kazakhstan and elsewhere, including the purchase and on-sale of interests in certain oilfields in Kazakhstan, to a company known as Max Petroleum (“Max”). Mr Emmott acted in relation to that transaction on behalf of MWP as its employee and director.
8. Shortly before conclusion of the transaction, certain parties who are said to have been important to the success of the transaction were awarded shares in Max. A substantial number of shares in Max were issued to Eagle Point Investments Limited (“Eagle”), a Bahamian international business company, which is said to be directly or indirectly owned by a trust in which Mr Emmott is interested.
9. Mr Wilson’s position in other proceedings is that the Max shares issued to Eagle were for the benefit of Mr Emmott, and that as he was involved in the transaction as an agent and employee of MWP, the shares ought to have come to MWP. It is MWP’s case that Mr Emmott was involved with other parties in diverting the Max shares to himself, in breach of his contractual and fiduciary duties to MWP.

10. Following the breakdown of the relationship between MWP, Mr Wilson and Mr Emmott, the parties engaged in an arbitration resulting in a substantial financial award in favour of Mr Emmott payable by MWP. On 5 December 2014, Mr Emmott obtained a freezing order (“the Freezing Order”) against MWP in aid of that award from the Commercial Court in London, preventing MWP from making payment to any party other than as provided for within an exception clause in the order. So, in the normal form, the Freezing Order did not prohibit MWP “from dealing with or disposing of any of its assets in the ordinary and proper course of business”.
11. Following certain large payments made by MWP of funds from its bank accounts, Mr Emmott made an application alleging conduct in contempt of the Freezing Order by MWP, and by Mr Wilson (as the party controlling MWP). Mr Emmott argued that the payments made were in breach of the Freezing Order and were not made in the ordinary and proper course of the business of MWP. At first instance, MWP and Mr Wilson were held by Andrew Smith J to be in contempt. On 10 August 2015, Andrew Smith J ordered MWP and Mr Wilson to pay substantial fines and costs. Mr Wilson was also ordered to be committed to prison for contempt.
12. MWP and Mr Wilson successfully appealed these orders which were set aside by the Court of Appeal: see [2015] EWCA Civ 1028. The Court of Appeal held there was no breach of the Freezing Order and made an order on 14 October 2015 directing that Mr Emmott pay the costs of MWP and Mr Wilson in respect of the appeals and below. Mr Emmott made an application to the Commercial Court seeking a stay of execution of that aspect of the order. The application was struck out by an order of 26 February 2016 with the direction that Mr Emmott pay Mr Wilson’s costs of the application.
13. Bills of costs were prepared in respect of MWP and Mr Wilson in respect of these various costs orders in their favour. Points of Dispute were served by Mr Emmott. The matter proceeded to a detailed assessment before the Master on the 18 and 19 January 2017. At that hearing the Master held that MWP was not to be treated as a litigant in person and that the time spent by it was to be indemnified by reference to hourly rates for work reasonably undertaken pursuant to Re: Eastwood [1975] Ch 112. The Master concluded that MWP was “...to be treated as a party represented by solicitors, rather than as a litigant in person”. He held that MWP could recover a commercial hourly rate in respect of work done on its behalf by Mr Wilson of £275.00 per hour.
14. The Master decided that Mr Wilson’s position was different. The Master held that Mr Wilson was a litigant in person within CPR 46.5(6)(b); and that he did not fall within the exception. I will return to the Master’s reasons in more detail below but it followed from his conclusion that Mr Wilson was confined to an hourly rate of £19.00 per hour, that applicable to a litigant in person. That ruling gives rise to this appeal in which Mr Wilson argues that he fell within the exception. I note that the Master also held that Mr Wilson, as a litigant in person, had not demonstrated, on the evidence, financial loss to justify additional costs recovery within CPR 46.5(4)(a). There is no permission to appeal against that ruling.
15. To complete the procedural history, I should note assessment of costs was part-heard, with a further assessment subsequently being undertaken by the Master on the papers

without attendance of the parties. It was finally concluded at a telephone hearing on 28 June 2017 at which the assessed sums were confirmed. The Master decided that there should be no order as to costs of the detailed assessment proceedings.

*The Master's reasons*

16. The Master's reasons were concise and I will set them out in full:

“The question is whether or not Mr Wilson is a litigant in person or whether he has been represented by Michael Wilson & Partners and therefore by extension by CJ Jones, who are his London agents. It seems to me that there is a clear distinction between Michael Wilson & Partners Limited as a business which employs lawyers and then uses those lawyers to act on its behalf in the **Re Eastwood** style and somebody who is an employee, albeit the most senior employee, using the resources of the company for his benefit. It may be that he was entitled to do that but there is nothing to show that that is the case, and it seems to me, I say, clearly distinguishable from the company who employs people and then uses them on its own behalf. So the fact that the resources may all come from Michael Wilson & Partners does not seem to me to mean that Mr Wilson can say that he is being represented by them: there is no client care letter or anything else that I have seen to suggest that he is being represented by the firm. That leads me on, I think, to the question of whether a director and employee is analogous to a partner in a firm. Whilst there are different kinds of partners, it seems to me the rule clearly assumes that a partner is someone who has a financial stake in the business and as such is putting the time that he would otherwise put into that business into the litigation on which he is named. It doesn't seem to me that even a sole director is in the same position as a partner because on the face of it, there is no loss to himself as a stakeholder in the business in running this particular litigation. He makes it very clear that he is a director and employee and has no shareholding in MWP and as such, I don't think that he comes within 46.5(6)(b) and therefore I consider him to be a litigant in person. I think this is the point where I should stop, so you can tell me whether he suffered a loss...”

(As noted above, the claim for actual losses failed and there is no appeal against that finding).

**III. The Arguments**

17. The appeal is on the following grounds:

- (i) Mr Wilson was and is an employee and director of MWP which carried out business as legal advisors and business consultants;
- (ii) Mr Wilson acted as an English solicitor with a current practising certificate in the course of his employment with MWP; and
- (iii) Mr Wilson's position as a director of MWP is “analogous” to that of a partner within a firm of solicitors, and so falls into the exception provided for in CPR 46.5(6)(b).

18. In support of these grounds, Leading Counsel for Mr Wilson relied on the principle that solicitors representing themselves in proceedings are entitled to the same costs as if they have employed a solicitor. He referred to the well-known case which established what has been called “the *Chorley* principle”: The London Scottish Benefit Society v Chorley, Crawford and Chester (1884) 13 QBD 872. I was also referred to Halborg v EMW Law LLP [2017] EWCA Civ 793 at [15].

19. Leading Counsel took me to Malkinson v Trim [2002] EWCA Civ 1273, where Chadwick LJ at [11] analysed the six elements of reasoning underlying the *Chorley* principle:

‘...First, that a person wrongfully brought into litigation ought to be indemnified against the expense to which he is unjustly put – see the observation of Sir William Brett, Master of the Rolls, (1884) 13 QBD 872, at page 875. Second, the need is for indemnity, not punishment or reward – see the reference in the judgment of Mr Justice Denman, (1884) 12 QBD 452, at page 455, to the general rule, laid down by Baron Bramwell in *Harold v Smith* (1860) 5 Hurlstone & Norman 381, that costs are allowed only by way of indemnity, in the sense that a party cannot be allowed to recover by way of costs expenditure which he has not incurred. As Baron Bramwell put it in the earlier case, *ibid* at page 385: “Costs as between party and party are given by the law as an indemnity to the person entitled to them: they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them.”. Third, application of those two principles leads to the conclusion that a person can recover the cost of employing a solicitor to assist him in the litigation – see per Sir William Brett, Master of the Rolls, at (1884) 13 QBD 872, at page 875, and per Lord Justice Bowen, *ibid* at page 877. Fourth, an ordinary litigant – that is to say, a litigant who is not a solicitor – cannot recover, as costs, compensation for the expenditure of his own time and trouble. That is because “it is impossible to determine how much of the cost is incurred through his own over anxiety” – per Sir William Brett, Master of the Rolls, at (1884) 13 QBD 872, at page 875; or, as it was put by Lord Justice Bowen, *ibid* at page 877, because “. . . private expenditure of labour and trouble by a layman cannot be measured. It depends on the zeal, the assiduity and the nervousness of the individual.”. Fifth, those considerations are of no weight where the litigant is himself a solicitor. “Professional skill and labour are recognised and can be measured by the law.” – per Lord Justice Bowen, *ibid* at page 877. And, sixth, a rule of practice which enables a litigant who is a solicitor to recover, as costs, compensation for his own time and trouble is beneficial, because it is likely to lead to a reduction in the amount which the unsuccessful opponent will pay under an order for costs...”.

20. Reliance was also placed upon Chadwick LJ’s observations in Malkinson at [14]:

“If a solicitor can charge for his own time, and for the time of those he employs (who may include an assistant solicitor), should the position be different if some or all of the work is carried out by one or more of his partners, or by employees of the firm. For my part, I can see no reason why it should be. The time of one partner is of value to another partner, because each partner contributes to the profits of the firm. The time of employees of the firm has to be paid for out of the profits in which each partner is interested. To adopt and adapt the observation of Lord Justice Bowen which I have just set out, I would think it absurd to permit a solicitor to charge for work in the litigation when done (a) by another solicitor (or a solicitor in another firm), or (b) by his clerk (or an employed solicitor in his own sole practice) or (c) by himself; but not to permit him to charge for the same work when done (d) by employees of the firm of which he is a partner or (e) by one or more of his partners. The reasoning which led this Court to the conclusion which it reached in the London Scottish Benefit Society case must lead to the same conclusion in a case where the solicitor litigant carries on his practice as a solicitor in partnership. The successful litigant is entitled to an indemnity; there is no difficulty in measuring the cost of legal professional time and skill; and there is likely to be some saving of costs if the work is done within his own firm rather than if he is encouraged, in practice, to instruct another firm”.

21. In Malkinson the Court of Appeal considered the extent to which introduction of the CPR had affected the previous position under Order 62 rule 18 of the Rules of the Supreme Court 1965 directly excluding in all circumstances a practising solicitor from being treated as a litigant in person. Chadwick LJ explained at [19]:

“At first sight, therefore, the effect of RSC Order 62 rule 18(6) – which excluded a litigant in person who was a practicing solicitor from the ambit of that rule – has been reversed. Solicitors are now to be treated in the same way as other litigants in person. In particular, the costs to be allowed to a solicitor litigant in person are to be subject to the two thirds restriction. Attention is drawn to the change by a comment in Note 48.6.1 to Civil Procedure (Spring 2002): “The previous exemption for a solicitor acting on his own behalf has been removed . . .”. But it is accepted that CPR 48.6(6)(b) must be read subject to section 52.5 of the Practice Direction about Costs (set out at 48PD.3 on page 1002 of Civil Procedure). The paragraph is in these terms: “Attention is drawn to rule 48.6(6)(b). A solicitor who, instead of acting for himself, is represented in the proceedings by his firm or by himself in his firm name, is not, for the purposes of the Civil Procedure Rules, a litigant in person.”

22. I drew to the attention of the parties the decision of Patten J in Hutchinson v Joseph [2003] EWHC 413 (Ch); [2003] 3 Costs LR 358, as a useful summary of the principles to be derived from these cases. It is not in dispute that CPR 48.6(6)(b) (pre-amendment of the CPR in April 2013) is now expressed in the language of CPR 46.5(6)(b).
23. Leading Counsel for Mr Wilson persuasively argued that his position as a director and employee of MWP is “analogous” to the position of a partner in a firm of solicitors in England, and so falls within the exception. He submitted that Mr



Wilson's remuneration by MWP is determined following discussions with its owners in relation to the success of MWP and the cash flows available to it. It is said that the time of the employees, consultants and management of MWP is therefore of value to Mr Wilson and where their time is diverted away from the main business of MWP in acting as legal advisors and business consultants, Mr Wilson suffers consequential loss.

24. It was submitted on behalf of Mr Wilson that he is in the same position described at [14] of Malkinson, i.e. the partner in a firm with a concern in its profits impacted by the diversion of staff time and resources to the litigation in hand, where there is no difficulty in measuring the cost of legal professional time and skill, and there is likely to be some saving of costs if the work is done within his own firm. It is said that "in effect MWP acted for Mr Wilson" in the underlying proceedings, its resources and staff committed to his representation. We were taken to Mr Wilson's several witness statements before the Master: statements of 7 February 2016, 17 May 2016 and 26 July 2016.
25. In response, Mr Emmott's starting point is that MWP is not a firm of English solicitors, but a BVI commercial corporate entity, so the exception cannot apply. As to Mr Wilson's evidence that "I acted (and continue to act) as an English solicitor with a current practicing certificate, in the course of my employment with MWP, representing myself in my capacity as a director of MWP", Mr Emmott says that there is no suggestion Mr Wilson is a shareholder in MWP or is stakeholder in the business. He also challenges Mr Wilson's evidence that "the fees generated by and from the employees (as well as patent holders) of MWP is of value to me because they contribute to the success and cash flows of and available to MWP, in relation to which, after discussions with the owners of MWP, I am remunerated". Mr Emmott says this statement is not supported by any documentation. In particular, Mr Emmott argued that no employment contract between Mr Wilson and MWP is exhibited that might entitle him to more than his salary as a managing director.
26. Overall, Mr Emmott argues that CPR46.5(6)(b) requires two conditions to be satisfied before a solicitor, acting for himself in litigation, can be treated other than as a litigant in person. First, he must be "represented" by a firm. Secondly, he must be a "partner" in that firm. Mr Emmott says the appeal fails on both points. Mr Emmott referred to the fact that by his own admission in evidence Mr Wilson was represented by himself and not by any other person or firm in his evidence. Mr Emmott argued that in any event "represented by" in CPR 46.5(6)(b) must mean represented in the relevant proceedings. This must mean being "on the record" in those proceedings. Mr Emmott submitted that only English firms of solicitors (which on Mr Wilson's own admission, MWP is not) regulated by the Law Society (which I take to mean the SRA) can be on the record as representing a party in proceedings before the High Court of England and Wales. He argued that a director is not analogous to a partner. Mr Emmott said that Mr Wilson has no financial interest in the business and there was no loss to him in running the litigation.
27. Accordingly, Mr Emmott submitted that the Master was correct in finding that Mr Wilson could not bring himself within the exception in CPR 46.5(6)(b) and must

be treated as a litigant in person.

#### **IV. Analysis**

28. As appears from his concise reasons, the Master decided the issue before him on a narrow factual basis, based on the evidence before him. He appears to have accepted that he could apply the exception by analogy. That is, in a situation where the firm said to have represented the solicitor was not an authorised and regulated English firm of solicitors and the solicitor in question was not a partner in such a firm. Accordingly, the Master did not decide the legal issues as to the meaning of the terms “partner”, “represented by”, or “firm”, each of which are points taken by Mr Emmott. I note they also seem to have been points taken by Mr Emmott’s costs lawyer below.
29. Leading Counsel for Mr Wilson correctly submitted there was no Respondent’s Notice seeking to uphold the Master’s decision on these other grounds concerning construction of the language of the exception. That said, I see considerable force in the points made by Mr Emmott which I note were reflected in the decision of Paul Walker J, the judge who originally refused permission to appeal on the papers. He observed:
- “At material times you were a solicitor, but you were not represented, and could not have been represented, by a firm in which you were a partner. No such firm existed. It necessarily follows that under CPR 46.5(6) you were a litigant in person. Further, your role differed from that of a partner. During the relevant period you were employed by MWP. You continued to be paid by MWP in accordance with your contract of employment. I can discern no clear basis on which there could be a computation of financial loss to you flowing from your work in representing yourself”.
30. No case was shown to us where the exception has been applied by analogy. Nothing said in this judgment is to be taken as a ruling that the exception can in law be invoked by analogy. Putting that point to one side, in my judgment, there was no error in the Master’s approach to the facts. He was right for the concise reasons he gave to reject the submission that Mr Wilson fell within the exception. He was entitled to conclude on the evidence before him that the analogy was not made out. When one considers the case law Leading Counsel took us to, the Master was right to observe that underlying the principle is an assumption that a partner (or a person said to be equivalent) is someone who has a financial stake in the business (here, MWP) and as such is putting the time that he would otherwise put into that business into the litigation in which he is named. He was right in my judgment to state that even a sole director is not in the same position as a partner because at the level of principle there is no loss to that person as a stakeholder in the business in running this particular litigation.
31. The Master underlined that Mr Wilson made it clear in his evidence that he was no more than a director and employee and had no shareholding in MWP. I have not overlooked the evidence as to how Mr Wilson says in his witness statements that that he might have been financially better off as a result of fees and “cash-flows” generated by other employees of MWP. Those vague assertions are not a satisfactory basis for Mr Wilson to argue that he had some stakeholder interest in MWP. The Master was right not to give that evidence weight. The position of Mr Wilson seems to me to be the equivalent of a person who has no ownership interest in a business

enterprise but may or may not be able to ask the true owners for a bonus at the end of the year if things have gone well. Overall, the Master was entitled to conclude that Mr Wilson did not come within the exception preserved in CPR 46.5(6)(b).

**V. Conclusion**

32. It follows that Mr Wilson is a litigant in person and was confined to a claim of £19.00 per hour. The appeal is dismissed. Costs of and occasioned by the appeal assessed in the sum £285.00 are payable to Mr Emmott, but are not to be paid if there is any outstanding sum in excess of this owed to Mr Wilson under earlier orders.