**IN THE COUNTY COURT AT CANTERBURY** **CLAIM No: D00CT632**

**BETWEEN:**

**WILLIAM OFFLEY HINCHLIFFE FRIEND**

Claimant

**-and-**

**PETER ROBERT MILES**

Defendant

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CLAIMANT'S REPLIES TO THE DEFENDANT'S POINTS OF DISPUTE TO THE CLAIMNAT'S BILL OF COSTS TO BE ASSESSED ON THE INDEMNITY BASIS PURSUANT TO THE ORDERS DATED 26TH MAY 2020 ORDER DATED 5TH NOVEMBER 2019 AND THE STANDARD BASIS PURSUANT TO THE ORDER DATED 5TH NOVEMBER 2019.

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| **General Point A** | **Indemnity Basis Costs**<br><br>It is noted in the Order dated 26 May 2020 at paragraph 5 that the Court ordered that:<br><br>"*The Defendant shall pay the Claimant's costs falling within the Indemnity pursuant to CPR 44.5; with such costs to be subject to a detailed assessment if not agreed; and with such assessment to be conducted on the Indemnity basis*."<br><br>It is submitted that CPR 44.5 only applies if the court is assessing costs payable under contract.<br><br>CPR PD 44 7.1(a) does not require the court to make an assessment of such costs.<br><br>This is clearly an error and is in direct conflict with the court ordering that any such costs should be subject to detailed assessment on the Indemnity Basis.<br><br>Whilst proportionality is not considered in Indemnity Basis costs, the Court and Claimant are reminded that the awarding of Indemnity Costs |

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| | is not a 'free for all' to recover 100% of the costs claimed within the Bill of Costs.<br>CPR 44.3(1) and (3) provide that where the court assesses the amount of costs on the indemnity basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount.<br><br>The Defendant also refers to the very recent case of *Louis Dreyfus Company Suisse SA v International Bank of St Petersburg (Joint-Stock Company) [2021] Costs LR 441* where Calver J confirmed that where costs are awarded on an indemnity basis, a receiving party still cannot recover sums unreasonably incurred.<br><br>The Court is asked to bear this in mind when assessing the Bill of Costs and to reduce or disallow any costs which are unreasonably incurred. |
| | **Receiving Party's Reply:**<br><br>Although costs are being assessed on the indemnity basis, the Defendant is reminded and the Court is asked to bear in mind that the Defendant fully indemnified the Claimant under contract. The Indemnity is contained within Paragraph 8 of the Schedule to the Order (Deed of Grant) dated 16 July 2013.<br><br>Costs under a contractual indemnity are presumed to be costs which (a) have been reasonably incurred; and (b) are reasonable in amount.<br><br>The Defendant is reminded of HHJ Simpkiss' Judgment at Paragraph 44: *"This was a straightforward matter that should have been resolved in a matter of a few weeks after it was agreed, but has led to strike-out applications, other proceedings and recriminations. In my judgment, the indemnity covers that and the Claimant is entitled to be indemnified on the indemnity basis because of the Defendant's conduct as set out above and to be indemnified both for the costs of the drawing up of the Deed of Grant, the negotiations for it and the referral to the county court"*<br><br>The Claimant has discharged all of his invoices rendered by his solicitors, Furley Page LLP, within this dispute. In fact, and for the Claimant, this was never even a dispute, as the Claimant was entitled to be indemnified under contract for such costs. The Defendant chose to object to the terms of the Deed and failed to engage in this process and put an end to this dispute for a period of 8 years only until ordered to do so, and played in effect *'financial chicken run'* with the Claimant in the hope that the Claimant would either concede to the Defendant's demands, or be unable to continue to fund the dispute. The Defendant was offered very good deals in 2010 to settle matters, in 2013, and again in 2018/19, but he chose to ignore numerous offers attempting to get |

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| | his own way by force, intimidation and counter claims, made without merit.<br><br>This matter has adversely impacted on the Claimant's whole business and private life, health and wellbeing , such that the Claimant simply could/cannot move forward until the case is resolved. This is why the Claimant agreed to a cost neutral settlement in 2013 – to bring about final closure, however the Defendant continued to object the terms of the Deed of Grant.<br><br>All these costs are in effect reimbursements for the Claimant's costs incurred incidental to the completion of the Deed of Grant , indemnified by the Defendant in 2013, and no other purpose. The Claimant went to enormous lengths to seek resolution, making numerous offers along the way to reduce and minimise costs for both parties, since the start in 2005 and particularly during the indemnity period since July 2013.<br><br>The Court is also asked to bear in mind PD 47 Paragraph 8.2(b) when considering the Defendant's specific points. The directions provides that the once specific points have been identified by the paying party, the points of dispute must state concisely the nature and grounds of the dispute. The Defendant has attempted to challenge each and every item within the bill of costs simply for the sake of it, simply labelling such items as 'excessive' – this approach is insufficient to satisfy the direction and the Court is asked to dismiss any points where the Defendant has labelled items as excessive without stating concisely why with grounds to support such a challenge. |
| | **Costs Officer's Decision:** |
| **General Point B** | **Retainer**<br><br>The Bill of Costs as served provides no information as to the status of the retainer between the client and solicitor. It is assumed that the matter was funded by way of a private retainer given the invoice numbers quoted but it is not clear.<br><br>The Court and Claimant will be aware that CPR PD47 5.11(3) requires a brief explanation of any agreement between the receiving party and the legal representative.<br><br>It is essential that the retainer covers all work claimed within the Bill of Costs, as it stands it is impossible to fully consider the same as the date |

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| | of the retainer is not included and therefore it is unclear as to whether all work claimed is covered by the retainer.<br><br>The Defendant requires strict proof that the Claimant, when signing the retainer, agreed to the hourly rates as claimed.<br><br>The Claimant is asked to supply the Defendant with the date and nature of retainer and whether the Claimant agreed to the rates as claimed.<br><br>If the receiving party is unwilling to provide this information, then the Court is asked to carefully scrutinise the retainer as to its validity and if the Court finds that it is not valid then all or any part of those costs affected should be disallowed. |
| | **Receiving Party's Reply:**<br><br>The Defendant is indeed correct that this matter was funded by way of a private retainer, but the Claimant is at a loss as to where the Defendant is going with this point.<br><br>The Claimant paid all of his invoices in accordance with his solicitors' terms at the prevailing rates since the start of this case in 2005.<br><br>The Claimant agreed to terms, signed Terms of Business and agreed to the hourly rates as claimed within the bill of costs. The scope of the work was amended as the matter evolved to cover all work (objections to the terms of the Deed of Grant) as claimed within the bill of costs which the Claimant instructed his solicitors to undertake and incur such costs.<br><br>The Defendant is reminded that the bill of costs has been signed and this is no 'mere formality' - *Bailey v IBC Vehicles Ltd [1998] 3 All ER 570 CA*. |
| | **Costs Officer's Decision:** |
| **General Point C** | **Grade of Fee Earner – Hourly Rates**<br><br>It is noted that the Claimant's Solicitors are based in Canterbury, Kent, which, it is submitted, falls under National 1 of the current SCCO Guideline Rates, for the avoidance of doubt these rates are:<br><br>Grade A: £217 per hour |

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| | **Receiving Party's Reply:**<br><br>The Master of the Rolls accepted the changes recommended by the CJC working group on Guideline Hourly Rates ("GHRs"), and has asked that the recommendations be implemented, with a view that the new guide be used from 1 October 2021.<br><br>The GHRs accepted for the National 1 area are:<br><br>Grade A - £261<br>Grade B – £218<br>Grade C - £178<br>Grade D - £126<br><br>Within the Guide to the Summary Assessment of Costs (2021), the Master of the Rolls commented:<br><br>*"I would emphasise that the guide is, as it has always been, no more than a guide and a starting point for any judges carrying out summary assessment. This guide is no different to its predecessors in that it continues to offer assistance to judges. In every case, a proper exercise of judicial discretion has still to be made, after argument on the issues has been heard."*<br><br>Paragraph 28 states:<br><br>*"The guideline figures are intended to provide a starting point for those faced with summary assessment. They may also be a helpful starting point on detailed assessment"*<br><br>Accordingly the new GHRs as per the guide are a starting point for summary assessment, that is to say when assessing costs at the conclusion of a Trial which has been dealt with on the Fast Track, and at the conclusion of any other hearing which has lasted not more than one day. The rates are a starting point as they were before for essentially straightforward matters for summary assessment. This is a detailed assessment within a matter which was far from straightforward, and the GHRs 'may' be a 'helpful' 'starting point' on detailed assessment.<br><br>The Claimant is simply aghast at the Defendant's submission that this case *"was no more complex than any other matter of its type".* The parties have been in dispute for many years. Their arguments have thrown up legally interesting and unusual points of law. However, 'interesting and unusual' is not traditionally what paying parties wish to hear, as these words tend to be synonymous with 'risky and costly'. |

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| | The Defendant is reminded of HHJ Simpkiss' Judgment at Paragraph 44, which has already been referred to above. The matter was only straightforward had the matter resolved in a matter of a few weeks, had the Defendant engaged purposefully. That essentially was the benchmark view on what would have been 'straightforward' here. The fact that the Defendant objected to the terms; failed to engage; applied strike-out applications, and other proceedings and recriminations (including applications deemed totally without merit), pushing this matter for a period of 8 years clearly takes this matter way out of the *'norm'* and thus the opposite of *'straightforward'.* Due to the Defendant's conduct and this matter being objected/contested throughout by the Defendant for a period of 8 years, this resulted in the case being 'heavy & complex', and the level costs presented support the same. Due to the Defendant's stance the costs under the indemnity were 'inevitable' and 'unavoidable'. This is exactly the sort of case that warrants an enhancement on the GHRs (albeit many of the rates claimed are below the GHR level).<br><br>The rates claimed by the Claimant range as follows:<br><br>Grade A - £260 - £325<br>Grade B - £205 - £240<br>Grade C – £195 – £205<br>Grade D - £155<br><br>**Taking the above into account, it is the Claimant's submission that the hourly rates claimed are more than reasonable.** The GHRs are only a 'starting point' for straightforward matters and this was 'heavy and complex'. In any event, the highest hourly rate claimed of £325 (only from April 2019) only includes an enhancement of just 24.5% on the new GHRs. The old GHRs were divided into A & B factors, the B factor being the profit and this was always set at 50% on the GHRs. The rate of £325 only includes an enhancement of just 62% in place of the standard 50%.<br><br>The dispute justified the engagement of solicitors with the appropriate skill, specialised knowledge and expertise to ensure proper and efficient conduct of the litigation. Indeed, the Court confirmed the reputation of Furley Page LLP in such cases (transcript available) and the Claimant agreed to pay the standard charge out rates.<br><br>The Claimant is equally astounded with the Defendant's submission that this matter did not warrant the conduct of a Grade A fee earner. Due to the complexity of this matter; the significant and long history of the dispute(s) between the parties; the conduct of the Defendant in failing to engage; and the numerous applications, and other proceedings and recriminations brought by the Defendant over a period 8 years, it was |

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| | more than reasonable for a Grade A fee earner of significant experience, skill and expertise in this area to have conduct.<br><br>It is also important to note that since 2013, Mr Miles has changed his legal representation on a number of occasions. At the time of the 2013 Agreement, he was represented by Ms Daksha Thakker (Grade A – 01/12/1993) at Templetons. At some point thereafter, but by 2017, Templetons ceased to act and Mr Miles was without representation. In August 2017, Mr Miles engaged Mr David Vaughan (Grade A – 01/10/2003) at Shakespeare Martineau. By the time Mr Miles made an application to strike out the claim in December 2017, he was acting in person. Mr Christopher Davies (Grade A - £250 per hour at a time when GHRs of 2010 were £217 thereby an uplift of 15% to the GHRs) of Carpenter & Co came on the record for Mr Miles in March 2018. In September 2019, Carpenter & Co came off the record, and at a hearing in November 2019, Mr Miles was represented solely by Dr Tim Sampson under the Bar Direct Access Scheme. The Claimant's solicitors subsequently received correspondence from Wellers Reece-Jones, because Mr Davies had moved firms.<br><br>**Please note throughout these Points of Dispute, the Defendant agrees the time claimed but requests a downward change of fee earner and therefore rate claimed. The Claimant is content that this matter warranted the levels of fee earner(s) that have undertaken the work – in these instances and to save costs the Claimant will simply refer back to the reply to this point.**<br><br>In *Ohpen Operations UK Ltd v Invesco Fund Managers Ltd [2019] EWHC 2504 (TCC),* Mrs Justice O'Farrell stated *"the technical nature of the dispute justifies the engagement of solicitors with the appropriate skill and expertise to ensure proper and efficient conduct of the litigation".*<br><br>*She continued: "Solicitors providing such skill and expertise are entitled to charge the market hourly rate for their area of practice. The hourly rates charged cannot be considered in isolation when assessing the reasonableness of the costs incurred; it is but one factor that forms part of the skill, time and effort allocated to the application.*<br><br>*It may be reasonable for a party to pay higher hourly rates to secure the necessary level of legal expertise, if that ensures appropriate direction in a case, including settlement strategy, with the effect of avoiding wasted costs and providing overall value."*<br><br>The Defendant also looks to dismiss *PLK* whereby an enhancement of 20% was uplifted on the 2010 GHRs for Court of Protection ("COP") matters. However, the majority of COP work (please note that the Costs Lawyer writer also prepares bills of costs on COP matters) is deemed |

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| | 'straightforward' and therefore no more than the GHRs are allowed by the SCCO. The Defendant is therefore of the view that this case and the work required taking into account the complexity of the same is akin to a standard COP matter which is administrative in nature.<br><br>The Guide to the Summary Assessment of Costs (2021) also confirms that *"Qualified Costs Lawyers will be eligible for payment as grades B or C depending on the complexity of the work done."* Accordingly, and at the very least the rate claimed by the Costs Lawyer is recoverable at an hourly rate of £178 if Grade C and £218 per hour at Grade B. The Costs Lawyer qualified in 2011 and has over 17 years' experience and 10 years PQE.<br><br>The Claimant is astounded to note the Defendant's assertion that the Costs Lawyer *"would have prepared many of these Bill's",* almost to imply that this was an everyday occurrence. This matter was pushed by the Defendant for 8 years, and the Costs Lawyer was therefore required to consider and decipher over 5,000 individual time entries going back to 2013 with therefore numerous hourly rate changes per fee earner (18 different fee earner(s)/rates). Upon consideration of individual time entries, the Costs Lawyer was required to allocate each and every recoverable entry into an appropriate phase, task and activity, within 58 separate parts, divided into costs on the indemnity basis and costs within the Defendant's dismissed application to strike-out, with those costs claimed in line with the many invoices rendered to the client so as to adhere to the indemnity principle. The bill of costs consists of 182 pages with a costs claim of £271,354.39.<br><br>It has been the Costs Lawyer's own experience that far greater bills of costs have been prepared in terms of value in say commercial matters and alike which have amounted to bills being prepared in the £millions in terms of value, however despite the quantum of such bills, they are actually very simple to prepare – this bill of costs was significantly complex to complete and required a Costs Lawyer of significant experience to complete the same, accurately and efficiently. |
| | **Costs Officer's Decision:** |
| | **Part 1** |
| Point 1<br>**Items 4-9** | **Claimant** |

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| | same for assessment to ensure accuracy and reflection of the Order of 26 May 2020. |
| | **Costs Officer's Decision:** |
| | **Part 56** |
| Point 171<br>**Items 1495-1510** | The entirety of this party is in relation to costs recovery and should not form part of the Claimant's claim for costs.<br><br>**The Paying Party offers:**<br>**Nil** |
| | **Receiving Party's Reply:**<br><br>This work all formed part of the bill preparation process. This was not your standard 'run of the mill' personal injury bill of costs after a year or 2 of litigation. This was a very complex matter, heavily litigated for 8 years with a history of dispute between the parties running as far back as 1982 – in turn the preparation of the bill of costs was complex and required appropriate consideration and preparation to present the same for assessment to ensure accuracy and reflection of the Order of 26 May 2020. |
| | **Costs Officer's Decision:** |
| | **Part 57** |
| Point 172<br>**Items 1511-1513** | **Bill Preparation**<br><br>Item 1511 – A staggering 64 hours 30 minutes is claimed by the Costs Lawyer for preparing the Bill of Costs, this is massively excessive and unreasonable. The Costs Lawyer has been involved throughout and will already have costed a large part of the file when preparing the |

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| | Schedule's of Costs, the narrative to the Bill of Costs is lacking in any real information.<br><br>The Paying Party would not expect a Bill of this size to take anymore than 30 hours given the work already undertaken.<br><br>Item 1512 – 2 hours is excessive for considering the Bill of Costs given the fee earner was in constant contact with the Costs Lawyer throughout, this is also clearly estimated as the time would have been included prior to the Bill being checked – Offer 1 hour<br><br>Item 1513 – Unnecessary communication with the Claimant – Offer Nil<br><br>**The Paying Party offers:**<br>**Grade B: 1 hour**<br>**Grade C (Costs Lawyer): 30 hours** |
| | **Receiving Party's Reply:**<br><br>Please see the Claimant's replies to the Hourly Rates point above.<br><br>Item 1511 – The Defendant's submission that the Costs Lawyer would have *"already have costed a large part of the file when preparing the Schedule's of Costs, the narrative to the Bill of Costs is lacking in any real information."* is counterfactual. The Statement of Costs was a completely different and separate document, and was prepared in a way that was most cost efficient. The preparation of the bill of costs required consideration of each and every time entry on this matter, and to decipher those recoverable items and incorporate into Precedent S. The Costs Lawyer actually incurred in excess of 70 hours but limited the time claimed. This was a complex bill of costs and an very extensive exercise. Such is the detail contained within the bill of costs, in response to the same the Defendant prepared Points of Dispute running into 104 pages, containing 173 separate points and 15,677 words. It is likely that the Defendant incurred close to 30 hours in just preparing the Points of Dispute.<br><br>A claim of just 64.5 hours equates to just 9 days of work on the basis of a 7 hour day – this is clearly reasonable for a bill of this size and complexity. The Defendant's offer represents a suggestion that the bill of costs could have been completed in just 4 days – this is completely unrealistic and self-serving.<br><br>In terms of the narrative, this matter was litigated for 8 years, and it would have been a completely disproportionate exercise to regurgitate the long history of the matter, when both sides are well aware of the |

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| | same. Equally all supporting information/documentation will be available for the Court's consideration at the assessment.<br><br>The Defendant's offer of 30 hours is not only derisory but rather insulting. The Defendant's approach to the bill of costs has been one to challenge each and every item and to offer 50% - this is again true for this item. Had the Claimant claimed 30 hours for bill preparation, the Defendant's point would have been exactly the same but with an offer of 15 hours.<br><br>Item 1512 – 2 hours claimed to consider a substantial bill of costs of this size is perfectly reasonable.<br><br>Item 1513 – This work all formed part of the bill preparation process. This was not your standard 'run of the mill' personal injury bill of costs after a year or 2 of litigation. This was a very complex matter, heavily litigated for 8 years with a history of dispute between the parties running as far back as 1982 – in turn the preparation of the bill of costs was complex and required appropriate consideration and preparation to present the same for assessment to ensure accuracy and reflection of the Order of 26 May 2020. |
| | **Costs Officer's Decision:** |
| | Part 58 |
| Point 173<br>**Items 1514-1524** | **James Squire, Bidwell's Fees**<br><br>The Paying Party is unclear as to why there has been such heavy involvement with James Squire, it is understood that he is a property expert, however he seems to have been instructed and used as a consultant advising throughout the claim.<br><br>Give the heavy reliance on Counsel who is an expert in these cases and the reliance on an experienced Grade A solicitor and internal property team it is not considered that it was necessary or reasonable for the Claimant to incur a staggering £21,432.34 plus VAT.<br><br>In these circumstances the Paying party is prepare to offer 50% of the costs claimed as being reasonable in respect of these proceedings.<br><br>**The Paying Party offers:** |

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| | **£10716.17 plus VAT** |
| | **Receiving Party's Reply:**<br><br>In the first instance, the Claimant invites the Defendant to consider the Witness Statement of James Squier in these proceedings, dated 10 February 2020.<br><br>In brief James Squier is a Fellow of the Royal Institute of Chartered Surveyors and has over 35 years' experience as a land agent. He has acted as surveyor to the Claimant, for approximately 20 years providing advice on his property interests, its use and development.<br><br>In about June 2010, Mr Squier was instructed by the Claimant to assist with the conduct of settlement negotiations. The Claimant has paid Mr Squier's fees at his prevailing rates charged, which are half those of a solicitor, thereby saving the Defendant costs under the indemnity.<br><br>The fees claimed are reasonable, and every effort was made on behalf of the Claimant to resolve the dispute, however the Defendant failed to engage – he cannot now therefore be surprised with the level of costs he chose to inflate. |
| | **Costs Officer's Decision:** |

Served this 22nd day of September 2021

SIGNED ……

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