

BETWEEN:

WILLIAM OFFLEY HINCHLIFFE FRIEND

Claimant

-and-

PETER ROBERT MILES

Defendant

CLAIMANT'S REPLIES TO DEFENDANT'S POINTS OF DISPUTE

General Point A	<p>Retainer</p> <p>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.</p> <p>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.</p> <p>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 of the retainer is not included and therefore it is unclear as to whether all work claimed is covered by the retainer.</p> <p>The Defendant requires strict proof that the Claimant, when signing the retainer, agreed to the hourly rates as claimed.</p> <p>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.</p> <p>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.</p>
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	<p>Receiving Party's Reply:</p> <p>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.</p> <p>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.</p> <p>The Claimant agreed to terms as per the retainer letter dated 11 October 2011, and agreed to the Terms of Business attached and thereby agreed to the hourly rates as claimed within the bill of costs. In terms of scope the Claimant instructed his solicitors to undertake and incur all work as claimed within the bill of costs as the matter evolved.</p> <p>The Defendant is reminded that the bill of costs has been signed and this is no 'mere formality' - <i>Bailey v IBC Vehicles Ltd [1998] 3 All ER 570 CA</i>.</p>
	<p>Costs Officer's Decision:</p>
<p>General Point B</p>	<p>Grade of Fee Earner – Hourly Rates</p> <p>It is noted that the Claimant's Solicitors are based in Canterbury, Kent, which, it is submitted, falls under National 1 of the SCCO Guideline Rates, for the avoidance of doubt these rates are:</p> <p>Grade A: £217 per hour Grade B: £192 per hour Grade C: £161 per hour Grade D: £118 per hour</p> <p>It is noted however, that these rates were set in 2010 and more recently these rates have come into question and have been reviewed.</p> <p>The Defendant notes the increases to hourly rates contained in the recent decisions of:</p>

Cohen v Fine & Ors [2020] EWHC 3278 in which a 35% uplift on guideline rates was permitted on Appeal.

Ohpen Operations UK Limited v Invesco Fund Managers Limited [2019] EWHC 2246 (TCC) as to the insufficiencies of guideline rates and also *PLK & Ors (Court of Protection: Costs)* [2020] EWHC B28 (Costs) in which Master Whalan awarded a 20% uplift on the costs of professional deputies, costs which have historically attracted guideline rates.

Clearly if these are to be relied upon then consideration has to be given to the nature of these cases in relation to the current matter and it is submitted that neither of the above two matters have any relation to the matter at hand and should therefore be disregarded.

The Defendant is also aware of the CJC Working Groups recent report and the increase to the Guideline Hourly Rates from the 1 October 2021 as follows:

A: £261 per hour

B: £218 per hour

C: £178 per hour

D: £126 per hour

It is noteworthy that the increase in rates only provides for an enhancement on the hourly rates for Grades A, B and C and not for Grade D and that enhancement should only be for heavy and complex litigation.

It is submitted that this case was no more complex than any other matter of its type and therefore does not warrant any enhancement on the suggested hourly rates above.

The Defendant submits that this was not a matter which warranted a Grade A fee earner throughout, the matter was not so complex to warrant the same and Counsel was relied upon heavily to assist throughout. It was no more complex than any other matter of this type and therefore could have and should have been dealt with by a Grade B fee earner with assistance from a Grade C or D fee earner with limited supervision from a Grade A Solicitor.

It is also noteworthy that the CJC recommended that qualified Costs Lawyers will be eligible for payment as Grade B or C depending on the complexity of the work done.

The Defendant is taken aback at the level of hourly rate claimed in respect of the Costs Lawyer, whilst it is understood that an Electronic Bill is more time consuming, it is part of the Costs Lawyers general job,

	<p>and the Costs Lawyer would have prepared many of these Bill's and would be fully familiar with the same. In large complex Clinical Negligence or Commercial matters it was common to see an hourly rate of no more than £165 per hour being claimed/allowed.</p> <p>However, given the recent increase the Defendant does not consider that any higher than Grade C rates as stated above should be allowed.</p> <p>The Paying Party offers: Grade A: up to £261 per hour Grade B: up to £218 per hour Grade C: up to £178 per hour Grade D: up to £126 per hour Costs Lawyer: Grade C - £178 per hour</p> <p>The offered rates are the maximum being offered, any rates claimed within the Bill of Costs lower than those stated above, shall be offered at the rate claimed unless otherwise stated.</p> <p>The Defendant will set out in these Points of Dispute the relevant rates to be applied.</p>
	<p>Receiving Party's Reply:</p> <p>The GHRs accepted for the National 1 area are:</p> <p>Grade A - £261 Grade B – £218 Grade C - £178 Grade D - £126</p> <p>Within the Guide to the Summary Assessment of Costs (2021), the Master of the Rolls commented:</p> <p><i>"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."</i></p> <p>Paragraph 28 states:</p> <p><i>"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"</i></p>

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.

The Claimant is simply aghast at the Defendant's submission that this case "*was no more complex than any other matter of its type*". This claim was a claim intrinsically linked with claim DOOCT632 and therefore simply cannot be viewed as a separate and standalone claim. **Please note that the Order of 26 May 2020 at paragraph 8 provides that "The costs of those proceedings shall be subject to a detailed assessment if not agreed; and with such assessment to be conducted on the standard basis. If there has been no agreement to costs, then the detailed assessment of the costs of both proceedings shall be managed and heard together."** The Claim to the main action (DOOCT632) was an application for the Court to determine the terms of the Deed of Grant. However, the Defendant decided to raise yet further fresh arguments leading up to the Trial/Hearing arguing that the Court did not have jurisdiction to make such an order and that this was for the Tribunal to determine – however, prior to the main Claim, the Claimant's solicitors approached the Tribunal who stated that a Claim to the Court was the correct process. Due to the argument raised, and on Counsel's advice, a fresh Claim (FOOCT621 – and not a duplicate set of proceedings) was filed at the Court if Mr Miles' argument re jurisdiction was successful, taking into account limitation.

This Claim was filed on 11 July 2019 was therefore an application for specific performance of the Defendant's obligations to enter into the Deed of Grant, and alternatively if the Defendant did not that the Court direct the Deed of Grant to be executed by someone else on the Defendant's behalf. The Claim also requested a declaration in relation to the scope of the indemnity. Due to limitation and Mr Miles' fresh argument re jurisdiction this claim had to be made to protect the Claimant, and simply put, the costs of the same are a consequence of Mr Miles' fresh arguments and further attempts to evade entering into the Deed of Grant.

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'.

The Defendant is reminded of HHJ Simpkins' Judgment at Paragraph 44. This claim simply would not have been necessary had the D00CT632 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 court ordered indemnity costs on the main claim. This is exactly the sort of case that warrants an enhancement on the GHRs.

The rates claimed by the Claimant range as follows:

Grade A - £325

Grade B - £240

Costs Lawyer - £260

Taking the above into account, it is the Claimant's submission that the hourly rates claimed are more than reasonable. It is also the Claimant's submission that the hourly rates approved by the Court on the D00CT632 claim should also apply to this claim. 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%.

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.

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 more than reasonable for a Grade A fee earner of significant experience, skill and expertise in this area to have conduct.

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.

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.

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*”.

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.

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.”

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 ‘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

	<p>work required taking into account the complexity of the same is akin to a standard COP matter which is administrative in nature.</p> <p>The Guide to the Summary Assessment of Costs (2021) also confirms that <i>“Qualified Costs Lawyers will be eligible for payment as grades B or C depending on the complexity of the work done.”</i> 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.</p>
	<p>Costs Officer’s Decision:</p>
<p>General Point C</p>	<p>Proportionality</p> <p>The paying party submits that proportionality should be determined after the item by item assessment but, because of its importance, the submission is made here.</p> <p>The paying party submits that the costs claimed appear disproportionate. The Bill of Costs is to be assessed on the standard basis. With reference to CPR 44.3(2), where the amount of costs is to be assessed on the standard basis, the Court will:-</p> <ul style="list-style-type: none"> a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. <p>The claimant instructed solicitors in or around July 2019 and proceedings were issued on 11 July 2019 and the final order was made on 26 May 2020, therefore the matter proceeded for just 10 months.</p>

The Bill of Costs totals a not insignificant sum of £5,330.20 which appears excessive and disproportionate for this short period of time.

The paying party submits that the receiving party's conduct in this matter goes to proportionality.

Importance

The paying party submits the Claim had no overwhelming importance and was of no greater importance than any claim is to any Claimant.

Complexity/difficulty/novelty

The claim was not legally or procedurally complex and was a run-of-the-mill claim. There was no formal Counterclaim. The issues were straightforward.

Budgeting

This case was not subject to costs budgeting. Costs budgeting is designed so that the Court can control the level of costs expenditure. The detailed assessment is therefore the first and only opportunity for the Court to assess the reasonableness and proportionality of the receiving party's claim for costs.

The receiving party has no/limited financial interest in the costs that were being incurred and no incentive to keep costs low and proportionate. The indemnity principle is not applicable, and the reality is that the costs allowed on assessment will simply be retained by the receiving party's Solicitor.

Given that there is no limit on the costs that can be claimed, and the receiving party's Solicitors will "eat what they kill", it is vital that the receiving party's Solicitors file and Bill are scrutinised on a line by line manner to ensure that only costs that were necessary, reasonable and proportionate are allowed.

It is not the amount of costs, which was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently and with regard to all the circumstances. Expenditure over and above that level would be for a party's own account and not recoverable from the other party *Kazakhstan Kagazy Plc –v- Zhunus [2015] EWHC 404 (comm)*.

The paying party submits that, with reference to the factors set out in CPR 44.3(5), the costs claimed are disproportionate.

	<p>The sum in issue was low and always likely to be of a relatively modest amount. The Court proceedings were straightforward, the issues were not complex, there were no findings by any Court of any adverse conduct by the paying party and there were no wider factors and no issues of public importance.</p> <p>The paying party submits that proportionality should be assessed with reference to the specific facts of the case rather than generic comparison with cases that are not on all fours with the present case in terms of their nature, value and importance.</p>
	<p>Receiving Party's Reply:</p> <p>The total costs claimed are just £5,330.20 for this claim, with base costs of just £2,663.50 (excluding Vat and costs of bill preparation) for a 10 month period. The Claimant is therefore astounded that a proportionality argument is raised here.</p> <p>It is the Claimant's submission that the costs claimed are clearly reasonable and proportionate. The judge shall carry out a line-by-line assessment, assessing reasonableness of each item and may address proportionality at the same time where appropriate. Reasonableness and proportionality are conceptually distinct, but there can be overlap; reasonableness may be a necessary condition of proportionality. Conclusion of the line-by-line assessment will lead to a total reasonable figure.</p> <p>Proportionality of the total figure must be assessed with reference to CPR 44.3(5) and CPR 44.4(3). Only if that figure is disproportionate will a further assessment be needed. This should be an assessment of various categories of costs (not line-by-line) such as disclosure, specific periods where particular costs were incurred. Further reductions for proportionality should exclude 'unavoidable' elements of costs such as court fees.</p> <p>It should be noted that 'inevitable' and 'unavoidable' costs are proportionate costs if they are reasonable - <u>West v Stockport NHS Foundation Trust & Demouilpied v Stockport NHS Foundation Trust [2019] EWCA Civ 1220</u>.</p> <p>With reference to the factors contained within CPR 44.4(3), the Claimant comments as follows (it is noted that the Defendant fails to comment upon (a)(i), (ii), (b), (e), or (f) and for very good reason):</p> <p><u>(a) the conduct of all the parties, including in particular –</u></p> <p><u>(i) conduct before, as well as during, the proceedings; and</u></p>

(ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;

The Defendant's conduct has been well documented within the Claimant's replies to the DOOCT632 claim, which is intrinsically linked to this claim, hence they are to be heard together. This claim was only necessary due to the Defendant's fresh arguments raised as to jurisdiction in yet a further attempt to evade entering into the Deed of Grant. The Claim was therefore 'inevitable' and 'unavoidable'.

The Defendant is again referred to Paragraph 44 of HHJ Simpkins' Judgement. 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'.

The Defendant made yet further attempts to evade his costs liability for this claim, despite being ordered to pay the Claimant's costs of the same. The bill of costs to this claim was served personally upon the Defendant on 14 July 2021 on an informal basis in the first instance, due to the modest level of costs being claimed and in order to save costs of both parties. Despite being chased on numerous occasions, the Defendant failed to acknowledge the bill, and failed to provide any response, thereby failing to address the same and failing to make any attempts to agree costs. This necessitated in detailed assessment proceedings being commenced on 7 October 2021. On 15 October 2021, the Defendant made representations to argue that he was not even liable for costs, despite the Order of 26 May 2020, stating that these were a copy of the 1st set of proceedings, and that his representatives could not understand why the claim was issued – this was all addressed at the hearing on 26 May 2020, hence the costs order.

Based on the above and the Defendant's continued and relentless poor conduct, it is submitted that the Defendant's conduct to the assessment has already been unreasonable and improper. By failing to acknowledge the bill served, and failing to make any attempts to resolve the claim for costs, and then later contesting his liability for costs, the Defendant failed to comply with the Court Order with his sole intention to avoid and make attempts to evade his costs liability. Accordingly, assessment proceedings had to be commenced, with Points of Dispute being prepared and these Replies in response and the such inevitable costs being incurred. The Defendant within his Points of Dispute then

challenges each and every item within the Claimant's bill of costs. The Claimant respectfully requests the Court to make an appropriate Order with reference to CPR 44.11.

(b) the amount or value of any money or property involved;

As stated above, due to limitation and Mr Miles' fresh argument re jurisdiction this claim had to be made to protect the Claimant, and simply put, the costs of the same are a consequence of Mr Miles' fresh arguments and further attempts to evade entering into the Deed of Grant. If the Defendant was successful re the jurisdiction arguments, and the claim had not been made to protect the Claimant against limitation, the Claimant would have been left with nowhere to go and therefore would have essentially incurred huge costs for nothing. This was clearly the tactical approach that the Defendant was hoping for.

(c) the importance of the matter to all the parties;

The Claimant is simply aghast at the Defendant's submission that there was no overwhelming importance to this claim. As stated above it is clear how important this claim was to protect the Claimant's position, and this claim was only necessitated by the Defendant's fresh arguments as to jurisdiction which furthered his goal in his relentless attempts to evade entering into the terms of the Deed of Grant.

(d) the particular complexity of the matter or the difficulty or novelty of the questions raised;

The Defendant is attempting to treat this claim as a separate and standalone claim, however this is simply not the case. This claim was intrinsically linked to the main action, hence why the Court Order of 26 May 2020 states that such costs assessment is to be heard together with the main action costs assessment. The Claimant does not need to regurgitate the complexities of this matter which it has documented in the Replies to the main action costs assessment.

(e) the skill, effort, specialised knowledge and responsibility involved;

The technical nature of this dispute justifies the engagement of solicitors with the appropriate skill and expertise to ensure proper and efficient conduct of the litigation.

(f) the time spent on the case;

This claim was conducted over a 10 month period, and was only necessary due to the Defendant's fresh arguments raised as to jurisdiction. The Defendant raised the same to further his attempts to

	<p>evade entering into the terms of the Deed of Grant, which he continued to evade and failed to engage in the process for a period of 8 years.</p> <p><u>(g) the place where and the circumstances in which work or any part of it was done; and</u></p> <p>N/A</p> <p><u>(h) the receiving party's last approved or agreed budget.</u></p> <p>N/A</p>
	<p>Part 1</p>
<p>Point 1 Items 1-2</p>	<p>Counsel's Fee</p> <p>The Defendant submits that given that this matter was dealt with by an experienced Grade A solicitor, that all work undertaken by Counsel, should have been dealt with by the Grade A solicitor.</p> <p>The Defendant see's no reason why Counsel needed to be instructed to consider correspondence, prepare the Part 8 Claim Form and to consider witness evidence, this is all work which should have been undertaken by the fee earner.</p> <p>The Paying Party offers: Counsel: Nil Grade B: 2 hours</p>
	<p>Receiving Party's Reply:</p> <p>Again, the Defendant is attempting to consider this claim as a separate and standalone claim. This is simply not the case, this claim was intrinsically linked with claim D00CT632, and that is why they are to be heard together on assessment. Had this been a separate and standalone claim, with counsel not having been previously involved, Counsel's time in preparation would have been huge bearing in mind the long history of the matter and 8 years that Mr Miles pushed this. By virtue of his involvement in the main action, he was able to deal with this claim economically and at a modest level.</p> <p>The Claim had to worded very carefully so as to protect the Claimant on limitation and to protect the indemnity.</p>

	In any event, Counsel utilised a modest hourly rate of £250, which is actually £11 per hour less than a Grade A guideline rate. This has actually saved expense, and such costs would have been greater had the Grade A conducting fee earner undertaken the same.
	Costs Officer's Decision:
Point 2 Items 7-8	Claimant The Defendant is content with the time claimed, but at Grade B rates. The Paying Party offers: Grade B: 18 minutes
	Receiving Party's Reply: The Claimant refers to the Replies to General Point B.
	Costs Officer's Decision:
Point 3 Items 11-12	Counsel For the reason stated in Point 1 above. The Paying Party offers: Nil
	Receiving Party's Reply: Please see Claimant's Reply to Point 1. Counsel's involvement was most certainly required for this matter and the main action – this claim being intrinsically linked to the same, and

	cannot be dealt with separately and as a standalone claim of separate issues.
	Costs Officer's Decision:
Point 4 Items 9-10	Court The Defendant is content with the time claimed, but at Grade B rates. The Paying Party offers: Grade B: 12 minutes
	Receiving Party's Reply: The Claimant refers to the Replies to General Point B.
	Costs Officer's Decision:
Point 5 Items 4-6	Documents A total of 3 hours 24 minutes is claimed for grade A, the time claimed is excessive and/or should have been delegated to a lower grade fee earner. Item 4: 48 minutes is claimed for drafting proceedings and speaking with Counsel, time has already been allowed at Point 1 above, no further time should be required – Offer Nil Item 5: Clearly this is just an exercise in attending Court to issue a claim, this is not Grade A fee earner work and should be reduced – Offer 2 hours 30 minutes Grade D Item 6: Reduce to Grade B. The Paying Party offers:

	<p>Grade B: 6 minutes Grade D: 2 hours 30 minutes</p>
	<p>Receiving Party's Reply:</p> <p>Item 4: The Defendant will note that due to Counsel's involvement in the main action, there is no claim for preparing instructions to Counsel. In the circumstances discussions/communications were clearly required with Counsel and the client to deal with the preparation of this claim. To offer Nil for this work is 'bizarre' as without communicating with Counsel, and advising the client and obtaining instructions the work could not be completed – the same was of the utmost importance to protect the Claimant's position bearing in mind the further fresh evasive arguments raised by the Defendant as to jurisdiction and the issue of limitation.</p> <p>Item 5: The work claimed here does not solely relate to issuing the claim at court. In any event the importance of issuing such claim before limitation was evident, and it was clearly the Defendant's intention and tactical approach to create this risk to the Claimant and further attempts to evade entering into the terms of the Deed. The other work related to necessary communications with Counsel, the Court and the client.</p> <p>Item 6: The Claimant refers to the Replies to General Point B. It is simply not unreasonable for the conducting fee earner to consider the Notice. The Notice would mean nothing to a Grade D fee earner with no involvement in the case. What should the conducting fee earner do here – identify that a notice has been received from the Court on his case; but refuse to consider it; instruct a Grade D fee earner to read it; and then report back on what it says?</p> <p>To narrow the issues, the Claimant offers:</p> <p>Grade A – 2.5 hours Grade D – 0.5 hours (for issuing claim at court)</p>
	<p>Costs Officer's Decision:</p>
	<p>Part 2</p>

<p>Point 6 Items 13</p>	<p>Counsel</p> <p>The Defendant is content with the time claimed, but at Grade B rates.</p> <p>The Paying Party offers: Grade B: 12 minutes</p>
	<p>Receiving Party's Reply:</p> <p>The Claimant refers to the Replies to General Point B.</p> <p>The Defendant has argued above that Counsel should not have been instructed, and yet now agrees with communications with Counsel?</p>
	<p>Costs Officer's Decision:</p>
	<p>Part 3</p>
<p>Point 7 Items 17-19</p>	<p>Claimant</p> <p>The Defendant is content with the time claimed, but at Grade B rates.</p> <p>The Paying Party offers: Grade B: 24 minutes</p>
	<p>Receiving Party's Reply:</p> <p>The Claimant refers to the Replies to General Point B.</p>
	<p>Costs Officer's Decision:</p>

<p>Point 8 Item 20-21</p>	<p>Defendant</p> <p>The Defendant is content with the time claimed, but at Grade B rates.</p> <p>The Paying Party offers: Grade B: 12 minutes</p>
	<p>Receiving Party's Reply:</p> <p>The Claimant refers to the Replies to General Point B.</p>
	<p>Costs Officer's Decision:</p>
<p>Point 9 Items 22-27</p>	<p>Steve Dean (Process Server)</p> <p>A total of 30 minutes if claimed for Grade A and a further 24 minutes for Grade B, time claimed is excessive or duplicative.</p> <p>Item 22 – Offer Grade B</p> <p>Item 23 – Offer Grade B</p> <p>Item 24 – This is clearly duplicative of Item 23, it was wholly unnecessary for a second Grade B solicitor to attend with the Grade A simply to discuss the documents to be served – Offer Nil</p> <p>Item 25-26 – Offer Grade B</p> <p>Item 27 – The Defendant is content with the Process Servers fee claimed.</p> <p>The Paying Party offers: Grade B: 36 minutes Process Server: £120.00</p>
	<p>Receiving Party's Reply:</p>

	<p>Item 22 – The Claimant refers to the Replies to General Point B. Item 23 – The Claimant refers to the Replies to General Point B.</p> <p>Item 24 – Conceded</p> <p>Item 25-26 – The Claimant refers to the Replies to General Point B.</p> <p>Item 27 – Noted</p>
	<p>Costs Officer’s Decision:</p>
<p>Point 10 Items 14-16</p>	<p>Documents</p> <p>1 hour is claimed for Grade A, time claimed is excessive and/or should have been delegated.</p> <p>Item 14 – It is considered that an experienced Grade A solicitor should be fully versed with the CPR in respect of the service of a claim form, therefore the Defendant should not be burdened with the time for the same – Offer Nil</p> <p>Item 15 – Preparation of a bundle for the process server and searching maps etc is not Grade A fee earner work and should have been delegated, the time claimed for the same is also excessive – Offer 24 minutes Grade D</p> <p>Item 16 – Reduce to Grade B</p> <p>The Paying Party offers: Grade B: 6 Minutes Grade D: 24 minutes</p>
	<p>Receiving Party’s Reply:</p> <p>Item 14 – Conceded</p> <p>Item 15 – The description does not state that a bundle was prepared for the Process Server, it states that a bundle of correspondence was completed for Counsel. The description also make clear that total time was 1 hour 18 mins, however only 36 minutes related to this claim, the</p>

	<p>reminder related to the application to Strike-Out on D00CT632. Full and appropriate details had to be provided to the Process Server, and it is not unreasonable for the conducting fee earner to have completed such work.</p> <p>Item 16 – The Claimant refers to the Replies to General Point B.</p>
	<p>Costs Officer’s Decision:</p>
	<p>Part 4</p>
<p>Point 11 Items 32-34</p>	<p>Claimant</p> <p>The Defendant is content with the time claimed, but at Grade B rates.</p> <p>The Paying Party offers: Grade B: 18 minutes</p>
	<p>Receiving Party’s Reply:</p> <p>The Claimant refers to the Replies to General Point B.</p>
	<p>Costs Officer’s Decision:</p>
<p>Point 12 Items 38-39</p>	<p>Counsel</p> <p>The Defendant is content with the time claimed, but at Grade B rates.</p> <p>The Paying Party offers: Grade B: 12 minutes</p>
	<p>Receiving Party’s Reply:</p>

	The Claimant refers to the Replies to General Point B.
	Costs Officer's Decision:
Point 13 Item 37	Court The Defendant is content with the time claimed, but at Grade B rates. The Paying Party offers: Grade B: 6 minutes
	Receiving Party's Reply: The Claimant refers to the Replies to General Point B.
	Costs Officer's Decision:
Point 14 Items 35-36	Defendant The Defendant is content with the time claimed, but at Grade B rates. The Paying Party offers: Grade B: 12 minutes
	Receiving Party's Reply: The Claimant refers to the Replies to General Point B.
	Costs Officer's Decision:

<p>Point 15 Items 28-31</p>	<p>Documents / Court Fee</p> <p>The Defendant is content with the time claimed, but at Grade B rates.</p> <p>The Paying Party offers: Grade B: 42 minutes</p> <p>Item 47 – Court fee is accepted</p>
	<p>Receiving Party’s Reply:</p> <p>The Claimant refers to the Replies to General Point B.</p>
	<p>Costs Officer’s Decision:</p>
	<p>Part 5</p>
<p>Point 16 Items 40-41</p>	<p>Preparing and checking the Bill of Costs</p> <p>The Defendant is content with the time claimed, however item 41 should be reduced to Grade B and Item 40 should be allowed at Grade C rate as per General Point B.</p> <p>The Paying Party offers: Grade B: 24 minutes Costs Lawyer: 2 hours</p>
	<p>Receiving Party’s Reply:</p> <p>The Claimant refers to the Replies to General Point B.</p>
	<p>Costs Officer’s Decision:</p>

<p>General Point D</p>	<p>Proportionality post item-by-item assessment</p> <p>The paying party submits that proportionality prevails over necessity and reasonableness. Following the item by item assessment, the Court should consider whether the resultant figure is proportionate. If it is not, the Court should make an appropriate further reduction, to categories of costs that continue to appear disproportionate (excluding unavoidable items like Court fees). This approach was confirmed by the Court of Appeal in <i>West v Stockport NHS Foundation Trust (2019)</i>. The paying party requests the Court to proceed on this basis.</p>
	<p>Receiving Party's Reply:</p> <p>Noted. It is the Claimant's position that the total base costs claimed are already proportionate to the claim.</p>
	<p>Costs Officer's Decision:</p>

Served this 9th day of November 2021

SIGNED*Richard Waters*.....

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