Neutral Citation Number: [2022] EWCA Civ 630

Case Nos: CA-2021-001959
& CA-2021-001959-A

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Mrs Justice Steyn (sitting with Costs Judge Brown as an assessor)
[2021] EWHC 2607 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/05/2022

Before:

LORD JUSTICE NEWEY
LORD JUSTICE DINGEMANS
and
LORD JUSTICE LEWIS
(sitting with COSTS JUDGE ROWLEY as an assessor)

- -

Between:

AKC **(Protected party by her mother and litigation friend MCK)**	**Claimant/ Appellant**
- and -	
BARKING, HAVERING & REDBRIDGE UNIVERSITY HOSPITALS NHS TRUST	**Defendant/ Respondent**

- -
- -

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

Hearing date: 12 April 2022

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Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on 10 May 2022.

Lord Justice Newey:

1. This appeal, from a decision of Steyn J dated 29 September 2021, raises questions as to how a bill of costs must be framed.

Basic facts

2. In 2015, the appellant, AKC, made a clinical negligence claim against the respondent, Barking, Havering & Redbridge University Hospitals NHS Trust ("the Trust"). The Trust admitted liability and AKC's liability costs were agreed and met by the Trust. Subsequently, the parties reached agreement on quantum and, on 7 March 2019, an order was made approving the settlement and requiring the Trust to pay AKC's quantum costs.

3. AKC commenced detailed assessment proceedings in respect of her quantum costs on 8 August 2019. Her bill of costs comprised a paper bill for the period up to 5 April 2018 and an electronic bill as regards work undertaken after that date.

4. The Trust served points of dispute in which it raised by way of preliminary points objections to the effect that, first, the bill of costs was not properly certified; secondly, the paper bill failed to provide the name and status (including qualification and years of post-qualification experience) of each fee earner in respect of whom costs were claimed; and, thirdly, the electronic bill failed to provide the name, status and Senior Courts Costs Office ("SCCO") grade of each fee earner. AKC responded in points of reply in which she disputed the Trust's complaints, but on 18 December 2019 the Trust applied for the bill of costs AKC had served to be struck out and for her to be required to serve a new bill.

5. The Trust's application came before Costs Judge Nagalingam, who dismissed it for the reasons given in a judgment handed down on 13 August 2020. However, Steyn J, sitting with Costs Judge Brown as an assessor, allowed an appeal. She concluded in the judgment now under appeal that AKC's bill of costs was not duly certified and that neither the paper bill nor the electronic bill contained all the necessary information about fee earners. In the circumstances, Steyn J struck out the existing bill of costs and ordered AKC to serve a replacement which complied with the Civil Procedure Rules ("the CPR").

6. On 3 November 2021, AKC served a new bill of costs in pursuance of Steyn J's order. By the present appeal, however, she challenges Steyn J's decision in so far as she held that the original bill was deficient in the information it gave about fee earners. AKC no longer pursues the certification issue.

The framework

7. CPR 44.4(1) directs the Court to have regard to "all the circumstances" when assessing costs. Amongst the particular factors to which the Court will have regard are "the skill, effort, specialised knowledge and responsibility involved" and "the time spent on the case": see CPR 44.4(3)(e) and (f).

8. CPR Part 47 is concerned with detailed assessment of costs. It is supplemented by Practice Direction 47.

9. CPR 47.6 states that detailed assessment proceedings are commenced by the receiving party serving on the paying party notice of commencement, "a copy or copies of the bill of costs, as required by Practice Direction 47" and, "if required by Practice Direction 47, a breakdown of the costs claimed for each phase of the proceedings". There follows in brackets the observation that Practice Direction 47 deals with, among other things, "the form of a bill".

10. Practice Direction 47 provides for both paper and electronic bills. In general, an electronic bill must be used in respect of costs recoverable between the parties for work undertaken after 6 April 2018 on a Part 7 multi-track claim: see paragraph 5.1. However, where, as in the present case, work was done both before and after 6 April 2018, "a party may serve and file either a paper bill or an electronic bill in respect of work done before that date and must serve and file an electronic bill in respect of work done after that date": see paragraph 5.A4.

11. Paper bills must comply with paragraphs 5.7 to 5.21 of Practice Direction 47. By paragraph 5.7, a bill of costs:

> "may consist of such of the following sections as may be appropriate—
>
> (1) title page;
>
> (2) background information;
>
> (3) items of costs claimed under the headings specified in paragraph 5.12;
>
> (4) summary showing the total costs claimed on each page of the bill;
>
> (5) schedules of time spent on non-routine attendances; and
>
> (6) the certificates referred to in paragraph 5.21".

Paragraph 5.11, headed "Form and content of bills – Background information", stipulates:

> "The background information included in the bill of costs should set out—
>
> (1) a brief description of the proceedings up to the date of the notice of commencement;
>
> (2) a statement of the status of the legal representatives' employee in respect of whom costs are claimed and (if those costs are calculated on the basis of hourly rates) the hourly rates claimed for each such person.
>
> (3) a brief explanation of any agreement or arrangement between the receiving party and his legal representatives, which affects the costs claimed in the bill."

12. Paragraph 5.1 of Practice Direction 47 explains that "Precedents A, B, C and D in the Schedule of Costs Precedents annexed to this Practice Direction are model forms of paper bills of costs for detailed assessment". The section of Precedent A giving background information includes this:

> "The claimant instructed E F & CO under a retainer which specifies the following hourly rates.
>
> Partner - £217 per hour plus VAT
> Assistant Solicitor - £192 per hour plus VAT
> Other fee earners - £118 per hour plus VAT
>
> Except where the contrary is stated the proceedings were conducted on behalf of the claimant by an assistant solicitor, admitted November 2008."

Amongst the items of costs claimed in Precedent A are:

> "Engaged in Court 3.00 hours £576.00"
>
> "First instructions: 0.75 hours by Partner" (for which profit costs of £162.75 are sought)

13. Precedent A does not name or specify the SCCO grades of fee earners nor detail their post-qualification or litigation experience.

14. Electronic bills are required to be compliant with paragraphs 5.A1 to 5.A4 of Practice Direction 47: see paragraph 5.1. Paragraph 5.A1 explains that a model electronic bill is annexed as Precedent S and paragraph 5.A2 provides that:

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

15. Paragraph 5.A3 of Practice Direction 47 provides for "[t]he provisions of paragraphs 5.7 to 5.21" to "apply to electronic bills insofar as they are not inconsistent with the form and content of Precedent S".

16. Precedent S comprises 17 worksheets. Worksheet 5, with the description "Legal team, hourly rates and counsel's success fees", includes columns for the name, "status", "grade" and rate of each "LTM" (or legal team member). Worksheet 14, with the description "Bill detail", provides information in relation to every time entry and disbursement. Its columns include "Date", "Description of work", "LTM", "Time", "Phase Code", "Task Code" and "Activity Code". Filters can be applied to isolate, say, work done by a particular legal team member in an identified period on a specific activity (for example, activity A10 ("Plan, Prepare, Draft, Review")).

17. Practice Direction 47 has annexed to it not only a blank version of Precedent S but one populated with example data. In the latter, worksheet 5 has been completed as follows (omitting irrelevant columns):

LTM	**LTM Name**	**LTM Status**	**LTM Grade**	**LTM Rate**	**LTM Rate Effective From**
WT1	William Taylor	Partner	A	£240.00	to May 2012
WT2	William Taylor	Partner	A	£300.00	from June 2012
NLB		Medico-Legal Assistant	B	£180,00	
FD	Fiona Duggan	Legal Assistant	D	£160.00	
TI	Thomas Irwin	Costs Draftsman	D	£160.00	
NV	Nicholas Vine	Junior Counsel	JC	£146.00	

18. The introduction of electronic bills can be traced back to Sir Rupert Jackson's reports on civil litigation costs. In his first report ("Review of Civil Litigation Costs: Preliminary Report", May 2009), Sir Rupert Jackson noted that "the current form of bill makes it relatively easy for a receiving party to disguise or even hide what has gone on" (paragraph 3.2 of chapter 53) and explained that he had asked a working

group "to prepare a joint view as to the possible way in which bills might be dealt with electronically in the future" (paragraph 4.6 of chapter 53). In his final report ("Review of Civil Litigation Costs: Final Report", December 2009), Sir Rupert Jackson recommended in paragraph 6.1 of chapter 45 that "[a] new format of bills of costs should be devised, which will be more informative and capable of yielding information at different levels of generality" and that "[s]oftware should be developed which will (a) be used for time recording and capturing relevant information and (b) automatically generate schedules for summary assessment or bills for detailed assessment as and when required". In paragraph 5.3 of chapter 45, Sir Rupert Jackson had identified three requirements as needing to be met:

> "(i) The bill must provide more transparent explanation than is currently provided, about what work was done in the various time periods and why.
>
> (ii) The bill must provide a user-friendly synopsis of the work done, how long it took and why. This is in contrast to bills in the present format, which are turgid to read and present no clear overall picture.
>
> (iii) The bill must be inexpensive to prepare. This is in contrast to the present bills, which typically cost many thousands of pounds to assemble."

19. Following the publication of Sir Rupert Jackson's final report, a working party known as "The Hutton Committee" undertook work on the development of a new bill of costs. As is explained in the Senior Courts Costs Office Guide (2021), at paragraph 9.2, the bill "evolved through pilot schemes to become Precedent S, a bill in the form of a self-calculating spreadsheet incorporating the phase/task/activity structure".

20. The "SCCO grades" of fee earner were agreed between representatives of the Senior Courts Costs Office, the Association of District Judges and the Law Society. They are given in the 2022 White Book as follows:

> "[A] Solicitors with over eight years post qualification experience including at least eight years litigation experience and Fellows of CILEX with 8 years' post-qualification experience.
>
> [B] Solicitors and Fellows of CILEX with over four years post qualification experience including at least four years litigation experience.
>
> [C] Other solicitors and Fellows of CILEX and fee earners of equivalent experience.
>
> [D] Trainee solicitors, trainee legal executives, paralegals and other fee earners."

This is added:

> "Qualified Costs Lawyers will be eligible for payment as grades B or C depending on the complexity of the work done."

The bill of costs

21. The background section of the paper bill which AKC served on 8 August 2019 states:

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

The paper bill then gives the hourly rates claimed in respect of periods up to 5 April 2008. Where relevant, rates are given for "Partner" ("P"), "Solicitor 1 with over 8 Years Experience" ("S1"), "Solicitor 2 with over 4 Years Experience" ("S2"), "Solicitor 3 with less than 4 Years Experience" ("S3"), "Paralegal (Special Damages, Sheffield Based Fee Earner" ("PL SD"), "Others: Trainee Solicitor, Paralegal, Litigation Assistant" ("O") and "Others: Trainee Solicitor, Paralegal, Litigation Assistant (Court of Protection)" ("O COP").

22. After a two-page chronology, costs claimed are set out item by item. Entries are attributed to one of four time periods and to one or other of the seven categories of fee earners listed in the previous paragraph. By way of example, this is to be found under the heading "Issue / statements of case":

> "(PERIOD B) Solicitor 2
>
> 1 telephone call £37.50
>
> (PERIOD C) Solicitor 1
>
> 1 long telephone call:
>
> 6/3/17 – Discussing case manager and instruction of support workers : 12 minutes
>
> Engaged: 12 minutes £94.00
>
> 1 telephone call £47.00
>
> 2 letters/emails out £94.00"

23. Steyn J commented as follows in paragraph 64 of her judgment:

> "SCCO grades are not given, although it is apparent from the descriptions of 'O', 'PL SD' and 'O COP' that they fall within grade D. While a partner would, perhaps, ordinarily fall within grade A, that is not necessarily the case. The descriptions of S1, S2 and S3 may correlate with grades A, B and C, respectively, but the bill of costs is not explicit as to whether the periods of 'experience' referred to are 'post qualification experience' and 'litigation experience'."

24. In her points of reply to the Trust's points of dispute, AKC said this in response to the Trust's objections to the paper bill:

> "The status of the fee earner undertaking the work is clearly apparent within the Bill, specifically when the years PQE is clearly identified, but for clarification:
>
> Partner – Grade A
>
> Solicitor 1/Legal Executive with over 8 Years' Experience – Grade A
>
> Solicitor 2 with over 4 Years Experience – Grade B
>
> Solicitor 3 with less than 4 Years Experience – Grade C
>
> Costs Advocate/Costs Lawyer – Grade C
>
> Costs Draftsman – Grade C
>
> Paralegal/Trainee Solicitor/Litigation Assistant – Grade D"

25. Turning to AKC's electronic bill, this tracks Precedent S and its worksheet 5 ("Legal team, hourly rates and counsel's success fees") has the same columns as the equivalent worksheet in Precedent S. Unlike the model Precedent S with example data, however, the "LTM" and "LTM Name" columns do not provide the names or initials of anyone but counsel. Instead, each column refers to "P", "P COP", "S1", "S3", "S3 COP", "LE", "O", "O COP", "CA", "C/L", "CD", "PL SD" and "Costs Lawyer" and a period ("PERIOD D" or "PERIOD E"). "LTM Grade" is specified, not by reference to SCCO grades as in the populated model Precedent S, but as "Partner", "Partner COP", "Solicitor 1", "Solicitor 3", "Solicitor 3 COP", "Legal Executive", "Others", "Others COP", "Costs Advocate", "Costs Lawyer", "Costs Draftsman" and "Paralegal SD". The corresponding descriptions in the "LTM Status" column are "Partner", "Partner (Court of Protection)", "Solicitor 1 with over 8 Years Experience", "Solicitor 3 with less than 4 Years Experience", "Solicitor 3 with less than 4 Years Experience (Court of Protection)", "Legal Executive with over 8 years Experience", "Others: Trainee Solicitor, Paralegal, Litigation Assistant", "Others: Trainee Solicitor, Paralegal, Litigation Assistant (Court of Protection)", "Costs Advocate", "Costs Lawyer", "Costs Draftsman" and "Paralegal (Special Damages, Sheffield Based Fee Earner)".

26. On 2 January 2020, the Trust made a request under CPR Part 18 for the names and SCCO grades of each employee in respect of whom costs were claimed. AKC responded with the following on 29 January 2020:

> "Lauren Hurney — Solicitor with over 4 Years Experience moving to Grade A in September 2016
>
> Kirsten Morley — Trainee Solicitor, Paralegal, Litigation Assistant

Alison Eddy	Partner
Charles Solomon (SDU)	Paralegal (Special Damages)
Richard Butler (SDU)	Paralegal (Special Damages)
Emma Cadman (SDU)	Paralegal (Special Damages)
Elizabeth Paterson	Solicitor with over 4 Years Experience
Charlotte Faldo	Trainee Solicitor, Paralegal, Litigation Assistant
Lara Mariacher	Trainee Solicitor, Paralegal, Litigation Assistant
Fiona Hamilton-Wood	Trainee Solicitor – Grade C from 3 July 2017
Sezan Taner	Trainee Solicitor, Paralegal, Litigation Assistant
Alexandra Evans	Trainee Solicitor, Paralegal, Litigation Assistant
Nicolas Cerezo	Trainee Solicitor, Paralegal, Litigation Assistant
Sally Sargesson (Costs)	Legal Executive with over 8 years Experience
Tasara Mutuka (Costs)	Grade C Experience
Rebecca Lanham	Trainee Solicitor, Paralegal, Litigation Assistant
Jeremy Smith (Costs)	Grade B Experience
Rebecca Lanham	Trainee Solicitor – Grade C from 1 March 2018
Jodie Davis (Costs)	Legal Executive with over 8 years Experience
Letesha Reid (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Hanan Harrington (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Steven Farmer (Costs)	Costs Lawyer

Tasara Mutuka (Costs)	Costs Draftsman – Grade C
Charisse Tapang	Trainee Solicitor, Paralegal, Litigation Assistant
Kristina Szilvayova	Trainee Solicitor, Paralegal, Litigation Assistant
Richard Jervis (CoP)	Solicitor – Grade C from 1 March 2017
Julia C Lomas (CoP)	Partner
Cally Harrington	Trainee Solicitor, Paralegal, Litigation Assistant
Samuel Wilson (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Benjamin Emsley (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Kirstie Chambers (CoP)	Trainee Solicitor, Paralegal, Litigation Assistant
Jennifer Davies	Trainee Solicitor, Paralegal, Litigation Assistant
Vanessa Whitaker (Costs)	Costs Lawyer"

The decisions below

Costs Judge Nagalingam

27. Dismissing the Trust's application, Costs Judge Nagalingam considered there to be "no deficiency in the paper bill or e-bill which prevents the court from exercising its duty under CPR 44.4" (paragraph 198 of his judgment). "Nowhere in paragraph 5.11(2) of the practice direction to CPR 47", the Costs Judge said in paragraph 201, "does it explicitly require that fee earners be named", and such a requirement is not to be inferred, either. That approach was, in the Costs Judge's view, consistent with Precedent A in the Schedule of Costs Precedents and a passage from "Cook on Costs" (2020) which stated that there was no requirement for the descriptions given of fee earners to tie in with the four SCCO grades: see paragraphs 202-208 of the judgment. With regard to the electronic bill, the Costs Judge observed that "[n]o receiving party is required to use an e-bill format which precisely mimics Precedent S" (paragraph 214), that the "served e-bill is sufficiently functional with respect to identifying what work has been done by reference to status of fee earner" (paragraph 219), that "grades of course are simply one means by which status can be demonstrated" and "are not the only way" (paragraph 225), that Practice Direction 47 "is not prescriptive as to how a 'statement of status' ought to be presented or what level of detail it ought to include" (paragraph 230), that the "SCCO Guideline rates are for summary assessment, designed to assist judges who are unfamiliar with assessing hourly rates"

(paragraph 232) and that "[d]etailed assessment is an entirely different process" (paragraph 233).

28. Costs Judge Nagalingam concluded in paragraphs 249-252 of his judgment:

> "249. The paper and e-bill give sufficient descriptions of the status of the fee earners which fall under each category claimed. There is no procedural requirement to name fee earners, or to rank them by reference to the SCCO Guideline grades.
>
> 250. Accordingly, I do not consider that there has been non-compliance with regards to provision of a statement of status of the legal representatives' employees. Accordingly, the bill will not be struck out for this reason.
>
> 251. However, the receiving party is reminded that on a standard basis assessment of costs, the court will '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' (CPR 44.3(2)(b)).
>
> 252. It is a matter for the receiving party as to how much detail they wish to provide in a 'statement of status' but it strikes me that where that statement leaves any doubt, then the receiving party can have no complaints in an experienced or qualified fee earner being awarded a rate lower than they might otherwise be entitled to."

Steyn J

29. Steyn J agreed with Costs Judge Nagalingam that a paper bill need not specify the SCCO grade of each fee earner (see paragraph 103 of her judgment). Unlike Costs Judge Nagalingam, however, Steyn J considered that each fee earner must be named in a paper bill (paragraph 94) and that "the description of each fee earner's status should encompass their professional qualification (if any) and (if the SCCO grade is not given) their number of years of post-qualification experience" (paragraph 101).

30. In Steyn J's view, the fact that paragraph 5.11(2) of Practice Direction 47 "requires both the status and the hourly rate to be given on an individual basis, rather than by reference to categories of fee earners," implies that each fee earner has to be named (paragraph 94 of the judgment). Steyn J also thought that, if fee earners were not named, bills would be "intolerably opaque" and "the paying party and the assessing judge [would be] unable to consider 'all the circumstances' when reaching conclusions as to the amount of costs likely to be or to be awarded when applying CPR 44.4" (paragraph 95). Further, Steyn J said in paragraph 102:

> "As a matter of ordinary language, and particularly in the context of costs, a legal professional's status is indicated not only by their professional qualification but also by their level of

> experience. An interpretation of the rules and practice direction which enables receiving parties to withhold such basic information would be liable to result in bills of costs becoming less transparent, which in turn would be likely to inhibit the ability of paying parties to make offers and of the court to assess costs."

31. In relation to the present case, Steyn J said in paragraph 104 of her judgment:

> "I consider that [AKC's] paper bill did not comply with the requirements to specify, in respect of each individual named employee, their hourly rate(s) and status, including, for any fee earner with a professional qualification (such as a solicitor or Fellow of the Chartered Institute of Legal Executives), the number of years of post-qualification experience".

32. While Steyn J saw the proper interpretation of paragraph 5.11(2) of Practice Direction 47 as "very finely balanced", she had "much less hesitation" in relation to electronic bills (paragraph 105 of the judgment). She held that an electronic bill must include both the names (or at least initials) of fee earners and their SCCO grades (paragraphs 109 and 111). With regard to names/initials, Steyn J said in paragraph 109:

> "This is part of the 'detail' which must be provided whether the Precedent S spreadsheet format or another spreadsheet format is used. Who has undertaken each item of work is a key part of the detail and, without it, the bill is opaque. In order to be fully functional, the spreadsheet must enable the paying party and the court to see what work any particular fee earner has undertaken, in the way described in the SCCO Guide …."

As for SCCO grades, Steyn J said in paragraph 111:

> "In Precedent S there are columns for both status and grade, reflecting the fact that these descriptions seek different information. In this context, … the word 'grade' is a term of art meaning SCCO grade. While the SCCO rates may be more material on summary assessment than on detailed assessment, they are relevant, at least as a starting point, and are invariably relied upon by parties, in the context of detailed assessment; and the SCCO grades provide basic information as to post qualification and litigation experience which is important in considering matters such as whether the rates claimed are reasonable, whether the work should reasonably have been delegated or is excessive in time. While I have found that it is not a breach of paragraph 5.11(2) not to provide the SCCO grades in the paper bill, electronic bills are required to be more informative and more transparent than was required for paper bills to be compliant."

33. In the circumstances, Steyn J concluded in paragraph 108 of her judgment:

> "In my judgment, [AKC's] electronic bill of costs failed to provide the detail of all the work undertaken in each phase and failed to provide the reference formulae in a transparent manner. [AKC's] electronic bill of costs does not meet the 'full functionality' requirement."

34. Further, Steyn J did not consider that AKC's provision of further information pursuant to CPR Part 18 cured the deficiencies. She said in paragraph 113:

> "[AKC] has provided the names of fee earners in the part 18 response and has gone some way towards providing their SCCO grades, albeit the grades remain unclear in relation to a number of fee earners (either because the grade has not been provided at all or sufficiently clearly). But the provision of a list of fee earners separate from the electronic bill of costs does not remedy the breaches which I have found. Even with such information, neither the [Trust] nor the court is able to filter items of work by reference to individual fee earners."

The paper bill

35. The first question which arises in relation to the paper bill which AKC served on 8 August 2019 is whether fee earners should have been named. Echoing Steyn J, Mr Robert Marven QC, who appeared for the Trust, argued that such an obligation emerges from paragraph 5.11(2) of Practice Direction 47. Paragraph 5.11(2) refers to the background information included in a bill of costs setting out "a statement of the status of the legal representatives' employee in respect of whom costs are claimed and (if those costs are calculated on the basis of hourly rates) the hourly rates claimed for each such person". The status and hourly rates of "*each* … person" in respect of whom costs are claimed are thus to be given and, so Mr Marven submitted, that requirement will not be satisfied if a bill merely provides the status and hourly rates of a group or category of employees. Status and hourly rates has to be supplied on an *individual* basis and, as part of that, with the relevant person's name.

36. On the other hand, Practice Direction 47 nowhere states in terms that fee earners must be named in a paper bill. Had that been the intention, it would have been easy enough to say so, for example by inserting the words "name and" before "status of the legal representatives' employee" in paragraph 5.11(2). That, however, was not done. Moreover, Precedent A, which paragraph 5.1 of Practice Direction 47 identifies as one of the "model forms of paper bills of costs for detailed assessment", does not name fee earners and, in one instance, clearly refers to them as a group. Hourly rates are given, not by name, but for "Partner", for "Assistant Solicitor" and, most strikingly, for "Other fee earners". Nor, in my view, does the need to supply the status and hourly rates for "each such person" in accordance with paragraph 5.11(2) lend significant support to Mr Marven's contentions. Take Precedent A. That, it seems to me, can be said to state the hourly rates of *each* of the "Other fee earners" by the compendious reference to "Other fee earners". Likewise, a bill which, for instance, said that £X per hour was claimed for "Grade B solicitors" could fairly be described as stating the status and hourly rates claimed for "each such person".

37. It is also, perhaps, relevant that paragraph 5.11(2) of Practice Direction 47 reflects guidance which was given in respect of bills long before the advent of electronic bills at a time when it may have been more common for a piece of litigation to be handled by just a few individuals within a firm of solicitors and, hence, the case for identifying fee earners individually by name might have been less compelling. Thus, paragraph 1.3 of Supreme Court Taxing Office Practice Direction (No.2 of 1992) explained that a bill should contain, first, a narrative and, then, "a statement showing the status of the fee-earners concerned and the expense rates claimed for each". Paragraph 5.11(2) of Practice Direction 47 uses very similar language.

38. In practice, fee earners are very commonly named even in paper bills, and it is desirable that they should be. Doing so can be of help to both the paying party and the Court, and it is hard to think of a good reason for withholding the identity of fee earners. On balance, however, I agree with Mr Simon Browne QC, who appeared for AKC with Mr Matthew Waszak, that a paper bill does not strictly have to include fee earners' names. In this particular respect, therefore, I take a different view from Steyn J. I do not think that the omission of fee earners' names rendered the paper bill which AKC served in August 2019 deficient.

39. Steyn J also, however, held that the paper bill did not comply with paragraph 5.11(2) of Practice Direction 47 because it failed to give the "status" of all fee earners. Steyn J considered that "the description of each fee earner's status should encompass their professional qualification (if any) and (if the SCCO grade is not given) their number of years of post-qualification experience" and that the paper bill served by AKC did not do so.

40. Mr Browne submitted, and I would accept, that paragraph 5.11(2) of Practice Direction 47 cannot require a receiving party to specify any qualifications or post-qualification experience of a fee earner where none is relied on. If a receiving party is not suggesting that a fee earner had a relevant qualification, nothing need be said on the subject. The receiving party does not have to spell out the *absence* of any qualification or post-qualification experience.

41. Subject to that caveat, however, Mr Browne accepted that Steyn J had been right that a paper bill must state any professional qualification of a fee earner and, unless the SCCO grade is given, the years of post-qualification experience. It follows, as it seems to me, that Steyn J was also correct that the August 2019 paper bill did not fully meet the requirement to give fee earners' status. The references in the paper bill to solicitors' "Years Experience" can, I think, be taken to refer to post-qualification experience and, on that basis, the bill sufficiently stated the "status" of "Solicitor 1" and "Solicitor 2". Nor does any problem arise in relation to the "Others" or "Paralegal (Special Damages, Sheffield Based Fee Earner)" who can be assumed not to have had any professional qualification. However, AKC was proceeding on the basis that a "Partner" justified a high hourly rate without either confirming that the "Partner" had a professional qualification or stating the number of years of post-qualification experience. To this extent, in my view, the paper bill failed to comply with paragraph 5.11(2) of Practice Direction 47.

The electronic bill

42. Paragraph 5.A1 of Practice Direction 47 introduces Precedent S, and worksheet 5 of Precedent S includes columns headed "LTM", "LTM Name", "LTM Status" and "LTM Grade". The existence of those columns suggests an expectation that they should be populated or, in other words, that the receiving party should provide the name, status and grade of each fee earner.

43. As, however, Mr Browne stressed, Practice Direction 47 does not expressly stipulate that an electronic bill must contain the information needed to fill in the columns of worksheet 5 of Precedent S. Neither does it even insist on Precedent S being used. Paragraph 5.A2 states that electronic bills must be in either Precedent S spreadsheet format or any other spreadsheet format which satisfies sub-paragraphs (a) to (e) of paragraph 5.A2. Further, sub-paragraphs (a) to (e) are not entirely easy to interpret. By sub-paragraph (c), "any other spreadsheet format" must allow the user "to identify, in chronological order, the detail of all the work undertaken in each phase", but the sub-paragraph does not expand on what "detail" is required. As for sub-paragraph (e), that provides for "any other spreadsheet format" to contain "all calculations and reference formulae in a transparent manner so as to make its full functionality available to the court and all other parties". Steyn J attached significance to the references to "a transparent manner" and "full functionality", but it is doubtful whether sub-paragraph (e) is of any real assistance with the issues raised by the present appeal. The focus of sub-paragraph (e) appears to be on ensuring that the workings of a spreadsheet are knowable and, hence, that the Court and all other parties can make full use of whatever "functionality" the spreadsheet has, not on quite what information the spreadsheet must contain.

44. Even so, it seems to me, on balance, that a receiving party who elects to use the Precedent S spreadsheet format must include in his bill of costs information sufficient to enable the columns of worksheet 5 to be completed. When paragraph 5.A2 of Practice Direction 47 states that electronic bills "may be in … Precedent S spreadsheet format", it surely cannot mean that a receiving party need complete a Precedent S only to whatever extent he chooses. It is, I think, to be inferred that a receiving party using Precedent S has to provide enough data for its worksheets to be filled in. It follows, given the columns comprised in worksheet 5 of Precedent S, that a bill adopting Precedent S must at least generally include, among other things, the "LTM Name", "LTM Status" and "LTM Grade" (which must mean SCCO grade) of each fee earner. That is not to say that a receiving party necessarily has to complete in full both the "LTM Status" and "LTM Grade" columns in worksheet 5. As Steyn J recognised in paragraph 112 of her judgment, entering fee earners' SCCO grades in the "LTM Grade" column may allow a receiving party to say relatively little in the "LTM Status" column. Recording that a fee earner was grade B, say, will without more imply that the fee earner was qualified as a solicitor or legal executive and had over four years' post qualification experience, including at least four years' litigation experience. There can be no obligation to duplicate that information in the "LTM Status" column and so it may be enough to state in that column whether the individual in question's qualification was as a solicitor or as a legal executive.

45. There is one respect in which the conclusions expressed in the previous paragraph might be thought to be inconsistent with the model Precedent S populated with example data. The "LTM Name" column in worksheet 5 of that has been completed

for most fee earners, but not for every one. Names have been entered for the "Partner", "Legal Assistant", "Costs Draftsman" and "Junior Counsel", but in the case of the "Medico-Legal Assistant" the "LTM Name" column has been left blank. The "Medico-Legal Assistant" is identified only by the initials "NLB" in the "LTM" column.

46. The omission of the name of the "Medico-Legal Assistant" is something of a puzzle. One possibility is that it is simply a slip. The best explanation may, however, be that suggested by Mr Marven: that the bill proceeds on the basis that the receiving party's solicitors outsourced the work in question to an agency with the result that it was not appropriate to insert the name of an individual. (As Mr Marven pointed out, *Crane v Canons Leisure Centre* [2007] EWCA Civ 1352, [2008] 1 WLR 2549 shows that delegated work can sometimes be charged for by way of profit costs rather than disbursements.) It seems, therefore, that even a bill in Precedent S format need not necessarily include anything in the "LTM Name" column of worksheet 5 in respect of work delegated to an outside agency.

47. Of course, an electronic bill does not have to use Precedent S but can instead be in "any other spreadsheet format" which satisfies the requirements of sub-paragraphs (a) to (e) of paragraph 5.A2 of Practice Direction 47. However, it is, I think, to be inferred that the "detail of all the work undertaken" which, in accordance with sub-paragraph (c), an electronic bill in "any other spreadsheet format" must allow a user to identify has to provide as much information as a duly completed Precedent S. After all, unless "detail" as used in sub-paragraph (c) is so understood, there is scant guidance in Practice Direction 47 as to what information an electronic bill in "any other spreadsheet format" must supply; "any other spreadsheet format" will represent a substitute for Precedent S; and electronic bills were clearly introduced with a view to making bills more informative. On top of that, as was pointed out to us by Costs Judge Rowley, the "Guidance Document to the New Format Bill of Costs" which the Hutton Committee published in July 2015 noted in paragraph 12.4 that "[t]he new form calls for tabular presentation of the *identity*, any initials used for abbreviation, status and hourly rate(s) of the various members of the legal team" (emphasis added). It is fair to say that this document (which we raised with counsel during the hearing) pre-dated the pilot schemes which were run before Precedent S was finally adopted, but there is no reason to suppose that electronic bills, when introduced, were in this respect intended to provide less information about team members.

48. Steyn J said this in paragraph 96 of her judgment about the desirability of being able to identify the work done by specific fee earners:

> "Without a breakdown of work undertaken by individual fee earners, it is impossible to know whether, for example, two different fee earners within the same status category each spent one hour working on a letter, on consecutive days, or whether only one fee earner spent two hours across two days working on it. This kind of information is capable of revealing that work has been duplicated, in whole or in part. It is also impossible to detect, for example, if a claim has been made that an individual fee earner undertook, say, 10 hours work on disclosure on a day when a claim has also been made for the same fee earner's attendance at a one day hearing, giving rise to questions about

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

I agree.

49. Querying the weight to be attached to Practice Direction 47, Mr Browne cited *U v Liverpool City Council* [2005] EWCA Civ 475, [2005] 1 WLR 2657, *An NHS Trust v Y* [2018] UKSC 46, [2019] AC 978 and *In re NY (A Child)* [2019] UKSC 49, [2020] AC 665. In *U v Liverpool City Council*, Brooke LJ, giving the judgment of the Court of Appeal, said in paragraph 48:

> "The status of a practice direction has been authoritatively delineated by Hale LJ in *In re C (Legal Aid: Preparation of Bill of Costs)* [2001] 1 FLR 602, para 21, May LJ in *Godwin v Swindon Borough Council* [2002] 1 WLR 997, para 11, and Dyson LJ in *Leigh v Michelin Tyre plc* [2004] 1 WLR 846, paras 19-21. It is sufficient for present purposes to say that a practice direction has no legislative force. Practice directions provide invaluable guidance to matters of practice in the civil courts, but in so far as they contain statements of the law which are wrong they carry no authority at all."

Echoing that, Lady Black observed at paragraph 98 of *An NHS Trust v Y* that "a practice direction cannot establish a legal obligation when none already exists" and Lord Wilson said in *In re NY (A Child)* at paragraph 38 that "practice directions, even including those which are stated to supplement the [Family Procedure Rules 2010], are not made pursuant to that or any other statutory authority". However, CPR 47.6 specifically cross-refers to Practice Direction, providing for service of "a copy or copies of the bill of costs, *as required by Practice Direction 47*" and "*if required by Practice Direction 47*, a breakdown of the costs claimed for each phase of the proceedings" (emphasis added in each instance). In the circumstances, Practice Direction 47 does not merely "provide invaluable guidance to matters of practice" but carries authority.

50. The upshot is that, in my view, any electronic bill, whether in Precedent S spreadsheet format or any other spreadsheet format, must include the name, the SCCO grade and, in so far as it adds anything to the grade, the status of each fee earner except possibly in so far as the receiving party's solicitors may have outsourced work to an agency.

51. There was some debate before us as to whether AKC's August 2019 electronic bill was "in … Precedent S spreadsheet format". Mr Browne submitted that, while the bill had much in common with Precedent S, there were also differences and that it was to be seen as in "any other spreadsheet format" rather than "Precedent S spreadsheet format". However, the August 2019 electronic bill appears to have the same worksheets and columns as Precedent S and to have been described as a "Precedent S" bill when served and filed. In the circumstances, I am inclined to think that AKC is to be regarded as having adopted "Precedent S spreadsheet format".

52. The point does not matter, however. Even if the electronic bill is properly considered to be in "any other spreadsheet format", it should have contained as much information as a duly completed Precedent S and, in particular, the name, the SCCO grade and, where it added something, the status of each fee earner. It did not do so. It neither gave fee earners' names nor specified their SCCO grades. I agree with Steyn J, therefore, that the electronic bill failed to comply with paragraph 5.A2 of Practice Direction 47.

Consequences

53. It is very far from the case that a bill of costs which fails fully to comply with the rules should invariably be struck out, let alone treated as a nullity. Typically, a defect will, at most, warrant a lesser sanction.

54. In the present case, the significance of the defects in the paper and electronic bills which AKC served in August 2019 is reduced by the extra information which AKC gave about fee earners in its points of reply to the Trust's points of dispute and in response to the Trust's Part 18 request (see paragraphs 24 and 26 above). Piecing together the bills, the points of reply and the Part 18 information, it is possible to work out the names of the fee earners who worked on the matter and the grades and status attributed to them.

55. However, even with the benefit of the points of reply and Part 18 information it is by no means always possible to say which of the 33 fee earners named in response to the Part 18 request is said to have carried out particular work. While, as Mr Browne explained, the application of filters may help to limit the possible candidates, he did not dispute that the name and grade of the specific fee earner responsible for an item of work cannot necessarily be identified.

56. In the circumstances, Steyn J was, as it seems to me, fully entitled to decide that the appropriate course in the particular circumstances was to strike out the existing bill of costs and order AKC to serve a replacement which complied with the Civil Procedure Rules.

Applications to admit new evidence

57. We had before us applications for us to admit by way of new evidence the replacement bill which AKC served in pursuance of Steyn J's order and the points of dispute which the Trust served in response to that bill. We looked at both documents de bene esse, but did not find either document of assistance. We therefore refuse the applications.

Conclusion

58. I would dismiss the appeal.

59. I should like finally to thank Costs Judge Rowley for his valuable advice.

Lord Justice Dingemans:

60. I agree.

Lord Justice Lewis:

61. I also agree.