Case No: CL1700599

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London WC2A 2LL
Date: 12/02/2019

Before:

MASTER LEONARD

- -

Between:

Eric Christopher Dunbar	**Claimant**
- and -	
Virgo Consultancy Services Ltd	**Defendant**

- -
- -

Simon Edwards (instructed by **White Dalton Motorcycle Solicitors**) for the **Claimant**
Simao Paxi-Cato (instructed by **The Virgo Consultancy Services Ltd**) for the **Defendant**

Hearing dates: 30 November 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MASTER LEONARD

Master Leonard:

1. I am, under section 70 of the Solicitors Act 1974, conducting the detailed assessment of a bill of costs delivered by the Defendant to the Claimant for work undertaken between July and November 2014. The bill amounts to £70,000 plus VAT, a total of £84,000, although an accompanying breakdown indicates that work was performed to the value of £79,985.80 plus VAT (a total of £95,982.96). The detail of the breakdown, and evidence from Ms Brown, the sole shareholder in the Defendant and the person with conduct and control of the work, indicates that work was done to an even higher value than that.

2. The bill relates to work undertaken by the Defendant in assisting with the preparation of the defence of the Claimant's son Myles Litchmore-Dunbar, who had been arrested in Crete and charged with serious criminal offences including manslaughter with intent. He was acquitted of all charges on 3 November 2014.

3. Directions given on 23 March 2017 for the purposes of the detailed assessment provided that the court would determine, as a preliminary issue, the existence and terms of a contract of retainer between the Claimant and the Defendant.

4. On 9 March 2018 I handed down a judgment in which I made a number of detailed findings. Among those findings were that a contract of retainer between the parties did exist but that its terms were never clearly defined, either in writing or verbally (paragraphs 135 and 137); that no fees were specified or agreed for the work to be undertaken by the Defendant, whether fixed or on an hourly rate basis (paragraph 142); and that it would be necessary to take further steps to address the question of what, in the circumstances, it would be reasonable for the Claimant to pay to the Defendant (paragraphs 150-151).

5. On 9 August 2018, I made a further order for directions providing that these questions were to be determined as further preliminary issues; first whether the amount that it is reasonable for the Claimant to pay the Defendant is limited to a particular sum; and second, the hourly rates reasonably chargeable by the Defendant for the work undertaken. Those are the issues addressed by this judgment. I have already made a number of other findings which have a bearing upon both issues and I will come to them.

Whether the Amount Payable Should Be Limited: Principles

6. Mr Paxi-Cato (for the Defendant) confirmed that he did not differ with Mr Edwards (for the Claimant) as to the principles to be applied in determining whether the amount payable by the Claimant to the Defendant should be limited to a given sum. For present purposes I would attempt to summarise the relevant principles as follows.

7. Costs as between solicitor and client, by virtue of CPR 46.9, are assessed on the indemnity basis. The test is whether costs have been reasonably incurred and are reasonable in amount. A number of rebuttable presumptions apply, including that costs have been reasonably incurred if they were incurred with the express or implied approval of the client, and that they are reasonable in amount if their amount was expressly or impliedly approved by the client.

8. A solicitor undertaking work for a client has a professional obligation to provide the client with an estimate of costs and to keep that estimate of costs up to date. That obligation is incorporated in the current SRA Code of Conduct 2011. The opening words of chapter 1 are as follows:

> "This chapter is about providing a proper standard of service, which takes into account the individual needs and circumstances of each client. This includes providing clients with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost."

9. This general requirement is reflected in required outcome 1.12:

> "clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them..."

and 1.13:

> "clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter…"

10. The general requirement is also reflected in "indicative behaviours" 1.14, which requires a solicitor clearly to explain to the client the solicitor's fees and if and when they are likely to change, and 1.16, which requires a solicitor to discuss how the client will pay, including possible sources of funding.

11. It is I believe common ground, and the authorities to which I shall refer make it clear, that it would be inappropriate to attempt to imply into a contract of retainer a term that a solicitor must comply with the SRA code of conduct. It did occur to me, in the course of preparing this judgment, that the Consumer Contracts (Information, cancellation and Additional Charges) Regulations 2013, which were in force at the time the Claimant agreed to instruct the Defendant, might have incorporated into the contract of retainer an obligation upon the Defendant to provide costs information, but I do not think it either appropriate or necessary to address the point. It has not been raised by either party and I do not believe that it would have any material effect on my conclusions.

12. The authorities to which I have been referred by both parties show that failure by a solicitor to provide a client with adequate costs information in accordance with the Code of Conduct may reduce the amount payable to the solicitor by the client, as well as the amount recoverable between opposing parties in litigation. The issue turns upon the solicitor's professional, rather than contractual obligations.

13. The effect upon recoverable costs of a failure by a solicitor to keep a client adequately informed in relation to those costs was considered by the Court of Appeal in *Garbutt v Edwards* [2005] EWCA Civ 1206. In that case, the defendants had been ordered to pay the costs of the claimants. The defendants argued that the contract of retainer between the claimants and their solicitor was unenforceable because the solicitor had not given an estimate of costs in accordance with the professional

obligations imposed by the then current conduct rules, the Solicitors' Practice Rules 1990.

14. The defendants raised that argument because, in accordance with the indemnity principle, the order for costs required them only to indemnify the claimants for those legal costs that the claimants themselves were liable to pay. It followed that had the defendants' argument succeeded, they could have escaped any actual liability to pay, on the basis that there was nothing to indemnify.

15. The court found that failure by a solicitor to give an estimate did not in itself render a contract of retainer between a solicitor and a client unenforceable. It did however have an effect on recoverable costs. At paragraph 49 of a judgment with which Tuckey and Brooke LLJ agreed, Arden LJ set out these principles:

> "Where there is simply no estimate at all for the costs in dispute, then the guidance that I would give is that… the costs judge should consider whether and if so to what extent the costs claimed would have been significantly lower if there had been an estimate given at the time when it should have been given. If the situation is that an estimate was given, but not updated, the first part of the guidance given in *Leigh v Michelin Tyre plc* [2004] 1 WLR 846 can be applied here. The guidance was as follows, at para 26:
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> > 'First, the estimates made by solicitors of the overall likely costs of the litigation should usually provide a useful yardstick by which the reasonableness of the costs finally claimed may be measured. If there is a substantial difference between the estimated costs and the costs claimed, that difference calls for an explanation. In the absence of a satisfactory explanation, the court may conclude that the difference itself is evidence from which it can conclude that the costs claimed are unreasonable.'
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> However, the above guidance is at a very general level. Like the court in the Leigh case, I would stress that the guidance given above is not exhaustive since it is impossible to foresee all the differing circumstances that might arise in any individual assessment."

16. Although the Court of Appeal was addressing the amount recoverable between opponents in litigation, the underlying point is that if the amount payable by the receiving party to his or her own solicitor would have been lower had adequate costs advice been given, costs unreasonably incurred as a result will be irrecoverable from an opponent. Exactly the same, of necessity, applies as between the solicitor and the client. A solicitor will not, on assessment, recover costs that have been unreasonably incurred as a result of failure by the solicitor to provide adequate costs advice.

17. The principles identified in *Garbutt v Edwards* have been considered and developed in a number of detailed assessments between solicitor and client.

18. In *Mastercigars Direct Ltd v Withers LLP* [2007] EWHC 2733 (Ch) and *Mastercigars Direct Ltd v Withers LLP* [2009] EWHC 651 (Ch) ("Mastercigars No 2") Morgan J considered the importance of any estimate of costs given by a solicitor to a client, and

considered the extent to which that estimate might limit the amount that the client should pay the solicitor.

19. In his first *Mastercigars* judgment he considered, at paragraph 92, the appropriate application of the principles identified in *Garbutt v Edwards* and *Leigh v Michelin Tyre plc*:

> "In a case where a solicitor does not give his client an estimate, the result will not generally follow that the solicitor is unable to recover any costs from his client. In a case where a solicitor does give his client an estimate but the costs subsequently claimed exceed the estimate, it will not follow in every case that the solicitor will be restricted to recovering the sum in the estimate. What these two decisions of the Court of Appeal repeatedly state is that the court may "have regard to" the estimate or may "take into account" the estimate and the estimate is a "factor" in assessing reasonableness. For the reasons given by Arden LJ in Garbutt's case at para 50, these two cases do not themselves provide very much detailed guidance as to how one should react on the facts of a particular case because it was felt by the Court of Appeal it was impossible to foresee all the differing circumstances that might arise in any individual assessment".

20. He added, at paragraphs 98 and 102:

> "Solicitors are entitled to reasonable remuneration for their services: see s 15 of the Supply of Goods and Services Act 1982. In considering what is reasonable remuneration, the court will want to know why particular items of work were carried out and ask whether it was reasonable for the solicitors to do that work and for the client to be expected to pay for it…
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> … (*Wong v Vizards* [1997] 2 Costs LR 46) …is an authority at first instance, prior to *Leigh v Michelin Tyre plc*, of a case where there was reliance by a client on his own solicitor's estimate. The judge in that case… indicated that 'regard should be had' to the level of costs the client had been led to believe he would have to pay. The question was then expressed as to whether it was reasonable for the client to pay much more than the estimated costs. In my judgment, the proper response to this decision is to hold that the court in that case was finding that, for the purpose of assessing reasonable remuneration payable to the solicitor, it is relevant as a matter of law to ask: 'what in all the circumstances it is reasonable for the client to be expected to pay?' Thus, even if the solicitor has spent a reasonable time on reasonable items of work and the charging rate is reasonable, the resulting figure may exceed what it is reasonable in all the circumstances to expect the client to pay, and to the extent that the figure does exceed what is reasonable to expect the client to pay, the excess is not recoverable."

21. Section 15 of the Supply of Goods and Services Act 1982 has been replaced by section 51 of the Consumer Rights Act 2015, but its effect, for present purposes, is the same.

22. In *Mastercigars No* 2 Morgan J (at paragraphs 47 and 54) considered the burden upon a client to demonstrate that a solicitor's failure to provide adequate costs information had had adverse consequences:

> "…my formulation of what is required does not go so far as to require the client to prove on the balance of probabilities that he would have acted differently…the way in which the estimate should be reflected on the costs concerned was left to the good sense of the court… it is not necessary for the client to prove detriment in the sense of showing on the balance of probabilities that it would have acted in a different way, which would have turned out more advantageous to the client. In a case where the client satisfies the court that the inaccurate estimate deprived the client of an opportunity of acting differently, that is a relevant matter which can be assessed by the court when determining the regard which should be had to the estimate when assessing costs. Of course, if a client does prove the fact of detriment, and in particular substantial detriment, that will weigh more heavily with the court as compared with the case where the client contends that the inaccurate estimate deprived the client of an opportunity to act differently and where the matter is wholly speculative as to how the client might have acted...
>
> …The court should consider the deductions which are needed in order to do justice between the parties. It is not the proper function of the court to punish the solicitor for providing a wrong estimate or for failing to keep it up to date as events unfolded. In terms of the sequence of the decisions to be made by the court, it has been suggested that the court should determine whether, and if so how, it will reflect the estimate in the detailed assessment before carrying out the detailed assessment. The suggestion as to the sequence of decision making may not always be appropriate. The suggestion is put forward as practical guidance rather than as a legal imperative. The ultimate question is as to the sum which it is reasonable for the client to pay, having regard to the estimate and any other relevant matter."

23. From those authorities I can distil the following principles which have a bearing on this case.

24. If, on the assessment of costs between a solicitor and a client, it is found (a) that the solicitor has never provided the client with an estimate of the costs that the client was likely to pay and (b) that if a proper estimate had been given, the client would have paid less than the solicitor is claiming, it may be appropriate to limit the amount payable by the client to the solicitor to an amount that it is reasonable, in all the circumstances, to expect the client to pay. That may be less than would otherwise be payable for work reasonably done by the solicitor at a reasonable rate.

25. In order to demonstrate that it is right to limit the solicitor's recoverable costs in that way, it is not necessary for the client to prove on the balance of probabilities that he or she would, if adequately advised, have acted in a different way which would have turned out more advantageous to him or her. It may be sufficient that the failure to

provide adequate advice deprived the client of an opportunity of acting differently, though that is likely to carry less weight, particularly where it is not possible to do more than speculate as to the way in which the client might have acted, if properly advised.

26. The ultimate aim will always be to identify the sum that, in all the circumstances, it is reasonable for the client to pay.

Findings Already Made

27. The following findings, made in my judgment of 9 March 2018, have a bearing upon the question of whether the amount reasonably payable by the Claimant to the Defendant should, on the principles I have outlined, be limited to a particular sum. All paragraph references that follow refer to that judgment.

28. The Defendant did not at any time give the Claimant any overall estimate of costs and declined to discuss costs until after the work undertaken by the Defendant had been completed (paragraph 145).

29. The Defendant never provided the Claimant, until after the work undertaken by the Defendant had been completed, with any indication of accrued fees (paragraph 144).

30. Before the work undertaken by the Defendant had been completed, the only specific agreements reached between the parties as to the payment of costs were that the Claimant would pay to the Defendant an initial £10,000 as a deposit against costs and disbursements and that the Claimant would arrange the funding of accommodation and travel expenses in Crete for the Claimant's representatives while working there (paragraph 143).

31. Evidence produced by the Defendant in support of its claim that an initial fixed fee retainer had been agreed with the Claimant, followed by work at an agreed hourly rate, was rife with inconsistencies and inaccuracies (paragraph 124) and the evidence of its key witness, Ms Brown, was unreliable (paragraph 127). In contrast, the evidence of the Claimant and his wife Ms Dunbar, whilst not completely free of inaccuracies, was generally truthful, straightforward, frank and fair (paragraph 128).

32. The Defendant was aware that the Claimant's means were limited and that he was struggling to raise the €30,000 he had agreed to pay the original Greek legal team (paragraphs 59, 95 and 96).

33. The first indication given to the Claimant by the Defendant of the total amount the Defendant would ask him to pay for the Defendant's services was in December 2014, when the Defendant named a figure of £30,000 without indicating whether that did or did not include the £10,000 he had already paid on deposit (paragraph 145). I would contrast this with the actual amount eventually billed which, as noted above, was £84,000, although the Defendant claims to have performed work to a significantly higher value.

34. The Defendant was initially (paragraphs 25 and 138) instructed to offer support from the UK, working with a Greek legal team which had already been appointed by the

Claimant to represent his son. They were an English-speaking lawyer, Zoe Lama, instructing a senior advocate, Mr Theocharis Dalakouras, for the trial.

35. The Defendant, in September 2014, effectively sacked the Greek legal team without the knowledge or authority of the Claimant or Mr Litchmore-Dunbar, an act which caused great confusion and distress to the Claimant and his family at the time. The Defendant then took over from Ms Lama the role of lawyer preparing the defence and briefing an advocate for the trial, something which the Claimant had little choice but to accept (paragraphs 59-76, 140 and 141).

36. The Claimant had agreed with the original Greek legal team a comprehensive fee of €30,000 to include trial preparation and advocacy at trial (paragraphs 27 and 148). The alternative advocate instructed by the Defendant initially quoted a fee of in the region of €15,000 but ultimately charged €20,000 which was paid directly by the Claimant's wife (paragraph 79).

37. There were differences between Mr Edwards for the Claimant and Mr Paxi-Cato for the Defendant as to the extent to which I had already accepted the evidence of the Claimant, or to which I should accept it, in relation to other matters that have a bearing on the amount which the Claimant should have to pay.

38. I have already made it clear that in almost all respects I accept the evidence already given by the Claimant and of Ms Dunbar, his wife, and that where it conflicts with the evidence of Ms Brown, the key witness for the Defendant, I prefer the evidence of the Claimant and Ms Dunbar. Their evidence has been tested in cross-examination, and much of it has a bearing upon the amount which the Claimant should have to pay.

39. I will confirm, if only to eliminate any remaining uncertainty, that I have, on the evidence I have heard, reached the following conclusions.

40. I have recorded (paragraph 27) the Claimant's evidence to the effect that he had agreed a fee of €30,000 with the first Greek legal team; that he anticipated that the £10,000 he had paid to the Defendant would be sufficient to meet its costs; that had he been told that a further £10,000 might be incurred he would have had serious misgivings about proceeding with the Defendant; and that if he had been told that a further £30,000 or more would be needed, he would immediately have stopped any involvement with the Defendant. I accept all of that.

41. I also accept that, as he confirmed on cross-examination, when first notified of a figure of £30,000 in December 2014, the Claimant was not happy with that figure. I have found that he was at the time willing to accept it in order to put traumatic events behind him (although he did not know whether it included the £10,000 already paid), but also that it does not follow that he is under any obligation to pay that amount. He did not, at the time, know either that the Defendant had, without authority, sacked the original Greek legal team or that the Defendant was in fact going to render a much larger bill (paragraphs 146-148).

Submissions

42. Mr Edwards pointed out that at no time did the Defendant gave the Claimant any information about his accruing, accrued, or estimated liability for costs. The only

figure ever discussed was £10,000 to be paid on account. He was left with no idea at all of his exposure. This, Mr Edwards submitted, was a flagrant breach of professional standards and a fundamental failure of professional duty, which has a bearing upon the amount that it is reasonable for the Claimant to pay.

43. Worse still, he submits, is that in attempting to justify its position the Defendant, understanding the weakness of its position, produced false evidence to bolster its case.

44. A solicitor who makes an honest effort to provide a client with a reliable estimate of costs in accordance with professional standards may well, if it proves to be wrong, recover only costs limited to the amount of that estimate. A solicitor who gives no costs advice at all should not he says be in a better position.

45. Mr Edwards submits that it is evident that had the Defendant had complied with its duty to provide adequate costs advice, the Claimant would have avoided incurring any liability for costs on the sort of scale now sought by the Defendant. He describes the Defendant's conduct, both in the course of acting for the Claimant and in the course of these proceedings, as outrageous and argues that it would be entirely against the principles identified in *Garbutt v Edwards*, *Mastercigars* and other relevant authorities to allow a solicitor in such circumstances to make any further recovery of costs from the Defendant.

46. As to a reasonable amount to be paid by the Claimant, Mr Edwards says this. At the time the Claimant first instructed the Defendant, he had agreed a fee of €30,000 with a Greek legal team to cover representation through to trial. At current exchange rates of €1.26 to £1.00, that would have been £23,809. If he had been properly advised on costs, he would never have instructed the Defendant at all.

47. Following the sacking of the Greek legal team by the Defendant, the Defendant took over the role of Ms Lama and instructed a substitute advocate for whose services the Claimant had to pay €20,000. The Claimant's liability should therefore be limited to the £23,809 he was expecting to pay the Greek legal team, from which one must subtract the additional £10,000 he paid to the Defendant, and the €20,000 necessarily paid to the new Greek advocate. These figures should not include VAT, as the Defendant never, at any stage, explained to the Claimant the impact of VAT on fees.

48. In short, the Claimant should, submits Mr Edwards, have to pay to the Defendant no more than he has paid already.

49. Mr Paxi-Cato argues that the Claimant's account of what he would have done, as recorded at paragraph 27 of my judgment of 9 March 2018, is given with hindsight. The question is what he would have done at the time.

50. Mr Paxi-Cato refers me to the evidence of Ms Brown for the Defendant to the effect that it was difficult to arrive at any precise estimate of costs. No one has suggested that she could, for example, have said in July 2014 the cost would be limited to £30,000. The Claimant's son's liberty was at stake. Mr Litchmore-Dunbar was facing the possibility of 20 years in a foreign prison, and his family wanted to do everything it could for him. Any estimate of costs can be superseded by events.

51. He also submits that it is evident from an email sent by the Claimant to the Defendant 3 March 2015 that he understood that the £10,000 already paid was not included within the figure of £30,000 given in December 2014, and that he would, as a lay person, have equated figures in Euros with figures in sterling.

52. Mr Paxi-Cato also made some submissions to the effect that some mishandling of Mr Litchmore-Dunbar's case by the original Greek legal team emerged during the course of the trial.

Whether the Amount Payable Should Be Limited: Conclusions

53. Mr Paxi-Cato's challenges to the Claimant's evidence are addressed by the conclusions I have set out above.

54. I must disagree with one of Mr Edwards' primary submissions. I accept that Ms Brown was not a truthful witness and that a number of the documentary records relied upon by the Defendant give a misleading account of the dealings between the parties. My reasons for those conclusions are fully set out in my judgment of 9 March 2018.

55. It seems to me however that the conduct of the Defendant in the course of this litigation has no bearing upon the amount which it is reasonable for the Claimant to pay for work undertaken between July and November 2014. One must look at what was happening at the relevant time.

56. As to that, I am unable to accept the Defendant's attempted justifications for failing to give any estimate of costs. It would have been perfectly possible to give estimates based upon the information known to the Defendant from time to time. That is what the Code of Conduct requires. In any case, it would not have been difficult to make enquiries with the Greek lawyers as to, for example, the likely length of trial.

57. The fact is that the Defendant never tried to give an estimate, or any other advice on costs, until the retainer had concluded. As I have already found, Ms Brown avoided the subject of costs in her dealings with the Claimant. If she attempted any cost planning at all (and the evidence indicates that she did not) she did not share it with the Claimant.

58. The Claimant first met Ms Brown on 30 July 2014. By 4 August, the Claimant had a plan for, and some control over, legal costs. He had secured the agreement of the original Greek legal team to take matters through to trial for an inclusive fee of €30,000. On the evidence that was an agreed fee, not an estimate. Even if the figure given were only an estimate, it remains the best guide to what he would have paid for their services had they continued to represent Mr Litchmore-Dunbar through to the trial.

59. He had also raised and paid to the Defendant £10,000 on the understanding that it would be sufficient to secure the services of the Defendant to play a secondary, supporting role in the UK.

60. Ms Brown's actions completely undermined the Claimant's financial planning. Had she not sacked the original Greek legal team without the Claimant's knowledge or consent they could, and probably would, have continued to represent Mr Litchmore-

Dunbar through to trial, with the Defendant playing the supporting role that the Claimant had asked for. Costs could have been managed accordingly.

61. I need, in this context, to address Mr Paxi-Cato's criticism of the original Greek legal team. That is I understand based on an allegation of a breach of confidentiality, made in a witness statement by Ms Brown for the Defendant, itself based upon an alleged statement made by a witness during Mr Litchmore-Dunbar's trial. I can attach no evidential weight to it.

62. Even if I could, it would be beside the point. Had Ms Brown, at the relevant time, had either authority or justification for sacking the original Greek legal team (which she did not) the Claimant could have replaced them with another Greek legal team at, on the available evidence, comparable cost, rather than having the Defendant replace them at over three times the cost plus the new advocate's fees.

63. Having sacked the original Greek legal team and stepped into the shoes of Ms Lama, it was incumbent upon the Defendant at the very least to assist the Claimant in identifying and managing any additional costs likely to be incurred as a result. The Defendant made no attempt to do so and now claims costs far in excess of any figure quoted by any Greek lawyer and far beyond any figure that the Claimant would ever have agreed to pay.

64. The Claimant did not know that the Defendant would do that until it was too late for him to prevent it. That is because the Defendant did not comply with its professional obligations to give him adequate costs advice, even though the Defendant knew that the Claimant was struggling to raise even the €30,000 he had agreed to pay the original Greek legal team.

65. At no time during the currency of the Defendant's retainer with the Claimant was he aware of any obligation to pay, for Mr Litchmore-Dunbar's defence, more than the combination of the €30,000 he had agreed to pay to the original Greek legal team, and the additional £10,000 he had agreed to pay the Defendant. He did not authorise, expressly or impliedly, any expenditure above that level and the Defendant did not give him the opportunity to do so.

66. It seems to me that the proper conclusion to draw is that any costs claimed by the Defendant which would oblige the Claimant to pay more than that total amount, have been unreasonably incurred.

67. I do not doubt that the Defendant did a great deal of work on behalf of Mr Litchmore-Dunbar. The point is however that the Claimant did not give informed consent either to the Defendant's sacking the original Greek legal team, or to the increased cost attendant upon the Defendant then acting in Ms Lama's place. That is exactly the sort of circumstance in which what is reasonably payable by a client to a solicitor may be much less than what would otherwise be payable for the value of the work done.

68. I turn to the figures. The proposition that the Claimant, who at the relevant time was instructing Greek lawyers and attempting to raise funds for his son's defence, would have been so economically illiterate as to fail to understand the difference in value between euros and sterling seems to me to be rather insulting. I reject it. Mr Edwards'

approach of converting figures in euros to sterling at contemporary exchange rates seems to me to be right.

69. This is my calculation. The Claimant's total exposure to legal costs should, for the reasons I have given, first be limited to the sum he had agreed to pay the original Greek legal team, which at then-current exchange rates I have rounded up from £23,809 to £24,000, plus the £10,000 that the Claimant understood and accepted that he would, in addition, have to pay to the Defendant for its assistance with the case.

70. That comes to £34,000. I agree with Mr Edwards that VAT should not be added to that figure, because VAT was never mentioned.

71. From that £34,000 one must deduct what the Claimant has already paid. That is first the £10,000 he has paid to the Defendant, and second the €20,000 he has paid to the Greek advocate who replaced Mr Dalakouras which at then-current exchange rates comes to £15,873. I have again rounded that figure up, to £16,000.

72. The Claimant has, in summary, paid £26,000 of a total of £34,000 that it is reasonable for him to pay for Mr Litchmore-Dunbar's defence. Any costs in excess of that £34,000 have been incurred because of the Defendant's breaches of duty, were not authorised and were not reasonably incurred. They exceed what it is reasonable for the Claimant to pay. It follows that any further costs payable by the Claimant to the Defendant should be limited to (£34,000- £24,000): £8,000 inclusive of VAT.

Hourly Rates

73. Given the conclusions I have reached, the question of an appropriate hourly rate for the work undertaken by the Defendant may be academic. I have however been asked to address it, and it can be dealt with fairly quickly. The submissions focused on an appropriate hourly rate for the work undertaken by Ms Brown on behalf of the Claimant.

74. Referring to *Various Claimants v MGN Ltd* [2016] 11 WL UK 226, *Brush & Another v Bower Cotton & Bower* [1993] 1 W.L.R. 1328, *Global Marine Drillships v R Bella (Costs)* [2011] 2 Costs LR 183 *and Q (by her mother and litigation friend M) v Kingston upon Hull City Council* (unreported, 28 June 2013) Mr Paxi-Cato submits that one should have regard to the guideline hourly rates for civil work, bearing in mind the particular experience of the relevant individual and the circumstances of the case that might justify departing from the guidelines.

75. Notwithstanding that she is not a solicitor or an ILEX fellow, Ms Brown has, says Mr Paxi-Cato, a level 2 Immigration and Asylum Accreditation from the Law Society and is also Police Station accredited. She has amassed 25 years' experience working as a fee earner in serious criminal litigation. Meetings with the Claimant took place in the Defendant's London office, so he submits that London rates are justified, and that in all the circumstances Ms Brown should be treated as a grade B London fee earner. This justifies the claimed hourly rate of £177. One must also, he says, have regard to the sheer amount of work done by the Defendant.

76. Mr Edwards for the Claimant submits that Ms Brown's regular work appears to have been legally aided criminal and Asylum work. A rate of between £60 and £70 per

hour, roughly equivalent to the rates paid by the Legal Aid Agency at the time, would he suggests be more than adequate.

77. I see no reason to confine Ms Brown's hourly rate to a legal aid rate. This was not a legal aid case. She claims to have reached an agreement with the Claimant based upon hourly legal aid rates, but I have found that she did not, and the rates referred by her were not legal aid rates anyway (paragraph 56). What Ms Brown recovers in legally aided cases, and whether they form the bulk of her work, does not really seem to me to be to the point.

78. To my mind the best starting point is, as Mr Paxi-Cato says the guideline hourly rates. They are of course only a starting point, and there may be many reasons for departing from them. That said, where (as here) the parties of operated in a complete vacuum, with no hourly rate agreed at all, they do assist.

79. I am unable to agree that London rates are appropriate. Ms Brown, at the relevant time, travelled to the Defendant's London office for part of every week, but she was based in Barry.

80. Nor do I accept that a grade B rate is the appropriate starting point. I say that because it seems to me that Ms Brown brought very little relevant experience to the case. She does not have any expertise in Greek law, and the advice I have seen from the Defendant on the Greek legal system is of the generic sort available on the Internet.

81. Ms Brown's most useful role would appear to have been in the gathering of evidence. I do not suggest that her efforts in that respect had no value, but again she cannot have brought any special expertise to the task: Ms Riberio-Addy, then an unqualified volunteer, seems to have been doing much the same thing.

82. Under the circumstances it seems to me that in setting an hourly rate, one should bear in mind the National 2-3 Grade D rate of £109. Simply awarding that rate would not, however, reflect the sheer effort involved in working within a foreign legal system, including travel abroad, in a case of crucial importance to the Claimant. Whilst I disagree with Mr Paxi-Cato to the extent that one must not confuse the volume of work done with the appropriate hourly rate payable for that work, it seems to me, doing the best I can (and putting aside breaches of duty or limits on recoverable costs), that an hourly rate of £135 would be appropriate.