



Neutral Citation Number: [2021] EWHC 2754 (Ch)

Case No: PT-2019-LDS-000066

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Leeds Combined Court Centre
1 Oxford Row Leeds LS1 3BY

Date: 19/10/2021

Before :

HH JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

Between :

GARY THOMAS GOODWIN **Claimant**
- and -
(1) JACQUELINE CAROL AVISON
(2) NICOLA LEA SMITH
(3) EVE MARIE MOXON
(4) KELLY LOUSE TRAVIS
(5) CALLUM REECE HEALEY **Defendants**

-and-

(1) LCF LAW LIMITED
(2) EXCELLO LAW LIMITED **Third Parties**

Written submissions were received from the solicitors for the claimant and the 1st, 2nd 3rd and 5th defendants and each of the Third parties. The 4th defendant lodged no submissions.

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.

.....
HH JUDGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE HIGH COURT)

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The time and date for hand-down is deemed to be 10:30am on 19 October 2021

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HH Judge Davis-White QC :

1. This is my judgment dealing with the quantum of costs in relation to costs orders made in favour of LCF Law Limited (“LCF”) and Excello Law Limited (“Excello”) (together the “Third Parties”) in the context of third party disclosure applications made against those firms in these proceedings.

2. The proceedings themselves concerned the validity of a will of the deceased, Mr Thomas Goodwin (“Mr Goodwin”). I have already handed down a judgment dealing with the incidence of the costs in the proceedings themselves ([2021] EWHC 2356 (Ch)). I need not repeat here all that I said in that judgment. However, to put the current judgment in context it suffices to cite the following paragraphs of my earlier judgment:

“[2] By the proceedings [the claimant] sought pronouncement in solemn form in favour of a will dated 11 July 2017 of the deceased Thomas Goodwin (the “2017 will”), and pronouncement against an earlier will of the deceased dated 20 December 2005. Gary is the son of Thomas Goodwin.

[3] The precise value of the estate is uncertain, but it is probably somewhere between £3-4 million or so.

[4] The original defendants were the first two defendants, who are mother and daughter, being respectively one of the daughters and one of the grandchildren of Thomas Goodwin.

....

[7] The third to fifth defendants were later joined to the proceedings pursuant to CPR 19.8A, having acknowledged service of the claim form. They are the remaining children of the 2nd defendant. Service of defences by those persons was dispensed with on the basis of their stated intention to adopt the defence and counterclaim of their mother, the 1st defendant.

.....

[13] The agreed issues for determination at the trial were:

(1) “Is the 2017 Will valid? In particular:

(a) Was it duly attested for the purposes of section 9(1)(c) and (d) of the Wills Act 1837?

(b) Did the deceased know and approve of its contents?

(c) Was the Will procured by the undue influence of the claimant and his then girlfriend, Claire Grime?

(2) If valid, does the 2017 Will revoke the 2005 will, relied upon by the defendants?

(3) If the 2017 Will is not valid, then is the 2005 will effective?

3. The disclosure sought related to two matters in which a Mr Jenkins, a solicitor, had been involved prior to the death of the deceased, Mr Thomas Goodwin (“Mr Goodwin”). The matters were ones in which legal advice had been proffered to each of Mr Goodwin and a company in which he had an interest. Essentially disclosure was sought of the relevant solicitor’s files.
4. The relevant documents and evidence were sufficiently relevant to the issues in the proceedings (e.g. knowledge and approval) that, subject to legal professional privilege, I determined (as the parties themselves agreed) that disclosure should be given and the evidence of the former solicitor to the deceased and/or his company should be admitted into evidence.
5. At the time that the relevant legal advice was given and relevant related solicitors’ files came into being, Mr Jenkins was working for a firm called Crooks Commercial Solicitors. By the time of the applications before me, Mr Jenkins was working for Excello and had taken one set of the files with him (being a then active ongoing matter) to his new firm. The files relating to the other matter had remained with Crooks Commercial Solicitors but that practice had since merged with, or been taken over by, LCF.
6. The main issue on those applications ultimately became one of whether such disclosure was prevented by legal professional privilege attaching to the relevant material in the hands of the Third Parties, which accrued to the benefit of the deceased and/or a company of which he had been involved with and, if so, whether that privilege could be and had been waived by the administrator of the deceased’s estate, appointed by the court pursuant to section 117 Senior Courts Act 1981 pending the outcome of the proceedings (the “Administrator”). That issue also arose in the context of a question as to whether Mr Jenkins, as former solicitor for the deceased (and the deceased’s company) could give relevant evidence or whether that too would be covered by the same legal professional privilege(s).
7. As I have said, ultimately the parties to the proceedings were content that the relevant documents should be disclosed and the relevant evidence be given. However, the parties to the proceedings were not the only persons potentially interested in Mr Goodwin’s estate and they were not able to agree to waive privilege attaching to the relevant company. Accordingly, there had to be what turned into a number of hearings to give legal effect to the agreed position and to ensure that there were no legal impediments. This involved, at various stages, my extending the powers of the Administrator and later requiring further evidence to satisfy myself that the powers conferred on him to waive, or bring about the waiver of, the relevant legal professional privileges had been validly exercised. Matters were further complicated by the fact, which emerged after I had made an order for disclosure on the basis that waiver had taken place, that the Administrator, although appointed by court order, had failed to take out letters of administration from the probate registry as required by the CPR.
8. This issue of disclosure (itself primarily turning on waiver of legal professional privilege) all took place during the period from the PTR up to and after the start of the trial and required the Third Parties to move speedily. The circumstances in which these

matters arose and were dealt with meant that, for the reasons given at the time, I ordered that the costs of each of the Third Parties should be paid on the indemnity basis as regards the costs of the relevant applications and on the standard basis regarding the costs of complying with my orders for disclosure.

9. On 16 July 2021 and later in August 2021, as a result of orders that I made the end result was that each of the Third Parties (referred to in the Order as the “Respondents”) should give disclosure by list pursuant to CPR Part 31.17. For the reasons given at the time, I also made provision regarding the costs of compliance with such order and the costs of the applications resulting in such orders as follows:

“(6) The Claimant shall pay the Respondents’ reasonable costs of complying with this Order, subject to detailed assessment on the standard basis if not agreed.

(7) Subject to the proviso stated in paragraph (8) of this Order, the Claimant shall pay the Respondents’ costs of the application, subject to detailed assessment on the standard basis if not agreed.

(8) The proviso mentioned in paragraph (7) of this Order is that if either Respondent should wish to seek a summary assessment of their costs under paragraph (7), or a payment on account of their costs, then they may do so by notifying the Claimant and the Court in writing to that effect at any time prior to 4pm on 26 July 2021. Should such notice be served then this Application shall be restored for further hearing by HHJ Davis-White, QC for the purpose of determining such matters. (8) The Claimant’s costs of this application and any sums paid pursuant to paragraphs (6), (7) and (8) above shall be costs in the case.”

10. In due course, I determined that the quantum of the relevant costs should be determined by a summary assessment carried out on the papers, following receipt of written submissions from the Parties and the Third Parties. A timetable for such submissions was also laid down.
11. Although the claimant was liable for the relevant costs vis a vis the Third Parties, those costs were potentially capable of being passed on to other parties in the litigation and for that reason all the parties were given an opportunity to lodge written submissions regarding the summary assessment process.
12. The result is that I have received and considered written submissions as follows:

Date	Submissions
20.08.21	claimant’s submissions regarding costs of Excello
25.08.21	1,2,3 and 5 Defendants adopt claimant’s submissions regarding costs of Excello
25.08.21	1 st , 2 nd , 3 rd and 5 th defendants’ submissions regarding LCF

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| 27.08.21 | claimant's submissions regarding costs of LCF |
| 27.08.21 | Excello's submissions in reply |
| 01.09.21 | LCFs submissions in reply |

The approach

13. I have considered and reminded myself carefully of the differences between the standard basis of assessment and the indemnity basis, The chief differences are that the latter basis of assessment is not hedged by any considerations of proportionality and that the burden of proof on the question of reasonableness of costs (in terms of their being incurred and their quantum) switches from the receiving party (on the standard basis) to the paying party (on the indemnity basis).
14. Secondly, I have taken into account the Guide to the Summary Assessment of Costs re-issued by the Master of the Rolls in September 2021 (the "Guide") and to be used from 1 October 2021. The guideline hourly rates in the previous guide were not ones that I would have adopted without more in any event, as is well recorded they were extremely out of date by 2021.
15. I should add that even had I carried out the exercise of preparing my judgment in September 2021, before the Guide came into force, I would have reached the same conclusions and would have taken the Guide into account as representing best practice and the hourly rates there advised as being the best evidence for an appropriate starting point when compared with the historic rates otherwise available.
16. It is not appropriate to set out the Guide in full nor to summarise its main provisions. I confirm that I have carefully considered it including (but without limitation) the points that it is "no more than a guide" and a "starting point" (see introduction), that a comparison of receiving and paying party's costs (or I would add, two receiving party's costs) is only a factor (as e.g. both may have incurred unreasonable costs) see paragraph 11), the guidance as to the basis of assessment (paragraphs 12-15), the provisions of CPR r44.4(3) (paragraph 16), the guidance regarding the "hourly rates" and that they are "broad approximations", not scale fees, and that fees in excess of the hourly rates set out in the Guide may be appropriate in specific cases (paragraphs 27 & 29 as well as Schedule 2).
17. I have also taken into account the authorities to which I have been referred, including *Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132; *Skatteforvaltningen (The Danish Customs And Tax Administration) v Solo Capital Partners LLP & Ors (Costs)* [2021] EWHC 1222 (Comm).

The costs of Excello

18. Excello have lodged two costs schedules.

- (1) As regards the costs of the application, awarded on the indemnity basis, they seek some £11,755 (net of VAT). The VAT claimed is a further £2,351.
- (2) As regards the costs of complying with the order to give disclosure, awarded on the standard basis, they seek costs of some £2,015 (net of VAT). The VAT claimed is a further £403.

Hourly Rates:

19. The rates claimed are as below, which are challenged by reference to the figures given in the former Guideline rates for relevant solicitors working in Leeds. The submission is that the rate should each be reduced to £217.

Grade A: £250

Grade A: £400

Grade A: £250

20. The guideline hourly rate for a Grade A fee earner in Leeds is now £260. The fees of two of the Grade A fee earners concerned (Mr Jenkins and Mr Belcher) fall well within that sum and I would not therefore alter those hourly rates. I also take into account the fact that two Grade A fee earners were involved at the same rate of £250 but that the second fee earner was brought in because of the complications which arose from the factor that there had apparently been unauthorised tape recording of meetings.
21. The £400 hour rate of the third Grade A fee earner relates to Mr Bisnought who is the COLP and Managing Director of Excello Law, based in London. On the facts of this case it seems to me reasonable and, so far as relevant, proportionate that Mr Bisnought should have been involved. I take into account paragraphs 30 and 31 of the Guide. The applicable guideline London rates are £373 (London 2) and £512 (London 1). For summary assessment purposes, I would reduce the £400 per hour claimed to £385. That is above the guideline rate, but below the rate sought. The case was one of complexity and also of importance to Excello. There had been a threat to report it to the SLA over the matter. Although its formal position was neutrality it sought to assist the court and was (apart from LCF law) the only independent party properly asserting and identifying the legal professional privilege issues that arose. As mentioned, things were also moving very quickly. Accordingly an uplift to the guideline rate is appropriate but I consider the rate claimed to be too high on the facts of this case.
22. In considering hourly rates, I also take into account as a factor (but taking into account the point made in the Guide at paragraph 11) that the claimant instructed a Grade A solicitor at £300 an hour to do much of the work in the case

Attendances:

23. As regards the relevant applications, the challenges to the hourly rates are as I have dealt with and determined. As regards timings, Excello claims:

- a. 4.2 hours (Mr Jenkins) and 3 hours (Mr Bisnough) for attendances on Excello, which the claimant (and by adoption the 1st, 2nd, 3rd and 5th defendants) submit should be reduced to one hour each.
 - b. 4 hours (Mr Jenkins), 3.2 hours (Mr Bisnought) and 48 minutes (Mr Belcher) in telephone attendances on Excello. As regards these times the claimant (and relevant defendants by adoption) submit the times should be reduced to 1 hour for each of Mr Jenkins and Mr Bisnought, with no allowance for Mr Belcher.
 - c. 1 hour 6 minutes at £250 in respect of attendances on opponents. The time is not challenged (just the rate as above).
 - d. 1 hour 36 minutes at £250 regarding attendances on others. The claimant (and relevant defendants) do not challenge the time but only the hourly rate.
 - e. 3 hours 48 minutes at £250 regarding telephone attendances on others. The claimant and relevant defendants submit that this should be reduced to 1 hour 30 minutes.
 - f. 1 hour at £250 for attendance at the hearing, which time is not challenged.
24. As regards all of the above proposed reductions, on the basis that the time claimed is unreasonably incurred or unreasonable in amount, the essential point made is the same, namely that as the stance taken by Excello was one of “simple neutrality” the reasonable time to decide/communicate that is represented by the hours submitted by the claimant’s written submissions.
25. The short answer to that is that the position was not one of “simple neutrality”. The stance taken was of neutrality but assistance was given to the court and the arguments that could be put forward on behalf of the holder of legal professional privilege were put forward. Further, the factual and legal position had to be carefully considered to arrive at a stance and, as I have, briefly, mentioned there were a number of points that rose at various points. Further, different legal solutions or proposals were put forward at various time by different Parties, each of which had to be considered. It was not a simple one-off hearing and decision but a series of stages with different factual complications arose. In all the circumstances and considering the hearings as they developed I am not satisfied that the hours put forward have been shown, on the balance of probabilities, to be unreasonable. I would therefore not reduce the claimed hours that I have referred to.

The applications: work on documents

26. Leaving aside hourly rates, which I have already dealt with, the main points arising regarding timing are as follows.
27. Two hours 20 minutes (at £250 per hour) is claimed for work on Mr Jenkin’s witness statement. The claimant (and relevant defendants) submit that this time should be reduced to 30 minutes given (a) the content of the witness statement in terms of length (b) it reflects the contents of a witness statement on behalf of LCF and skeleton argument served 3 hours before Mr Jenkins’ was served. It is suggested that the time was not incurred at all, that the filing of the witness statement was a tactical measure to raise costs, and that the time claimed is in any event unreasonable in length. I am wholly

unsatisfied that the first two serious allegations are made out which seem to me to amount to professional misconduct. I am satisfied the costs were incurred. As regards timing, I am satisfied that the timing is reasonable.

28. One hour for a PTR on 25 June is claimed. That is said by the claimant and relevant defendants, not to be work on documents and to have already been claimed under “attendance at hearing”. I am satisfied with Excello’s explanation that the time claimed for on “attendance at hearing” is with regard to a different hearing (as pointed out there were a number of hearings) so that there is no duplication. Where the amount should technically be claimed on the form is irrelevant on the merits.
29. Three hours 18 minutes is claimed regarding research on authority/privilege. The claimant and relevant defendants say that only 1 hour 30 minute is reasonable. I am not satisfied that 3 hours 18 minutes is unreasonable and have in mind the research that I had to undertake myself on the matter during the course of the applications when preparing communications to the parties as well as the point I make in the next paragraph about various different solutions to the problem being put forward by different Parties at various times.
30. Two hours 12 minutes is claimed in respect of considering letters/emails. The claimant and relevant defendants say that the reasonable time for this is 1 hour. Having reminded myself of the scope of the correspondence and the fact that the Parties did not themselves present a united approach but that other options were put forward by different Parties, I am satisfied that the 2 hours 12 minutes is reasonable.
31. Four hours 24 minutes is claimed regarding considering further emails and correspondence and legal research regarding the legal authority of the Administrator to waive privilege (both in relation to the estate and the relevant company). As I understand it the description of this element encompasses the entire narrative at numbered rows 7, 8 and 9 of the Schedule and that these are not three separate items of which the first two have no time allocated to them. Given the factual and legal complexity of whether on the facts authority to waive privilege had been conferred and properly exercised, I am satisfied that this time was incurred and that it is reasonable.
32. 0.2 hours is claimed in respect of preparing an initial schedule of costs. That schedule had to be substantially revised given the developments in the case, and a further 0.8 hours is claimed. The claimant and relevant defednants say that this further 0.8 hours should be disallowed as being unreasonable,. I am satisfied that it is reasonable and should be allowed.
33. One item appears over two rows of the Schedule (rows 12 and 13), these are not (as the claimant assumes) two different items with no claim for the first part of the description. The claimant challenges whether there was such a letter. The letter is on CE File and I am satisfied that the time claimed is reasonable.
34. A claim is made for 2 hours 36 minutes for a skeleton argument of three pages. I do not accept the claimant’s submission that this was unreasonably incurred. It was helpful to the court to know in advance Excello’s position, especially given the fast moving nature of the process. As regards the time spent I consider that an allowance of an hour and 30 minutes is reasonable and the time claimed over that is unreasonable.

35. A claim for 1 hour 6 minutes is made in respect of a hearing on 3 August 2021. This is challenged. As with the claim for the PTR (dealt with earlier in this judgment) this is a separate hearing to that claimed for under that heading elsewhere in the overall schedule and the same comments apply. It is submitted by the claimant that the hearing lasted 6 minutes less than the sum claimed but I am satisfied that there were attempts for Mr Jenkins to joining the hearing in addition to the actual time of the hearing and therefore in effect waiting time in any event. I am satisfied that there is no double claim as regards this item and that the time claimed is reasonable.
36. Finally, a further claim is made of a further 30 minutes to update the costs schedule. I am not satisfied that such time is unreasonable and that it should be disallowed so far as it exceeds 12 minutes, as submitted by the claimant.

The costs of complying with the disclosure order

37. In this case I am dealing with costs on the standard basis not the indemnity basis. The burden of proof on reasonableness shifts and the question of proportion becomes live.
38. As regards attendances, the challenge is only to the hourly rates which I have dealt with above. Mr Bishnough is charged for 6 minutes. In my judgment on the unusual facts of this case and given the urgency of the matter plus the fact that disclosure was to some extent going on or at least preparations for it going on in tandem with the applications, it was reasonable and proportionate to engage him in the compliance with the court order aspect as well. Accordingly, I would not alter the rate for him that I have already determined as being allowed.
39. Some 6 hours and 24 minutes time in going through the documents and redacting them is said by the claimants to have been unnecessary and unreasonable because the final position became that the privilege was waived so redaction of legally professional privileged material was unnecessary. However, there was an urgency in the material being made available and the legal professional privilege point was not resolved until late in the day. These costs were therefore reasonable and reasonably incurred. I allow them in full.

Extra Costs

40. Excello seeks to alter the costs claimed of an hour for a hearing that did not take place but instead to replace those costs with 2 hours 18 minutes dealing with the submissions on quantum and 1.6 hours dealing with emails and correspondence. In the draft of this judgment that was circulated prior to hand down, I indicated that I would allow those sums at £250 per hour provided that Excello within 7 days of the judgment being handed down lodged a certificate regarding such costs in the same form as that on the standard CPR form N (statement of costs for summary assessment). That form has since been lodged.
41. I should make clear that I have also considered the proportionality of the costs of complying with the order for disclosure and I consider that the costs of complying with the order for disclosure that I have awarded to be proportionate.

42. In circulating a draft of this judgment, I indicated that I hoped that the draft was clear enough to enable the parties to agree a form of order detailing the precise sums to be paid. A draft order has since been lodged and I make an order in that form.

The costs of LCF

43. LCF has lodged one costs schedule. A sum of £16,302.80 (ex Vat) is claimed. With VAT of £2,460.56, the total claimed is £18,763.36.

Hourly Rates:

44. The rates per hour claimed are as below:

Grade A: £305

Grade A: £305

Grade C: £167

Grade D: £110

45. These rates are challenged by reference to the figures given in the former Guideline rates for relevant solicitors working in Bradford. The submission is that the rates should each be reduced as follows: Grade A £201; Grade C £146 and Grade D £111. As previously, in all cases the figures I give are all ex VAT unless otherwise stated.

46. The starting point under the Guide are the following rates per hour for National 2:

Grade A: £255

Grade C: £177

Grade D: £126

47. For the same reasons that I allowed an increase over the Guideline rates for Mr Bisnough relating to the applications in this case and especially the urgency, I would allow an increase for the Grade A solicitors at LCF. However, I limit the allowance to £268. The Grade C and Grade D hourly rates claimed are well within the rates in the Guide and accordingly I would not reduce them further.

48. Attendances: As a general matter, a similar point to that made regarding Excelo being “neutral” is made here and my response is the same. Further, both the claimant and the relevant defendants say two Grade A fee earners were unnecessary and unreasonable. I disagree.

49. The relevant positions regarding the time spent are as set out below. The figures represent hours:

Attendances on Party: emails/letters

LCF claim Claimant Ds1,2,3,5

Grade A (Stell).	1.8	-	-
Grade A (Montgomery)	2.7	1	0.5
Grade C (Jones)	4.1	1	1
Grade D (Kaur)	0.2	-	-

Attendances on party: telephone

Grade A (Stell).	0.8	-	-
Grade A (Montgomery)	2.0	1	1
Grade C (Jones)	2.1	1	-
Grade D (Kaur)	-	-	-

50. Although I treat it with caution the hours for both Excello and LCF are broadly similar which is a relevant factor. As I have said, this was a fast moving matter where new points arose. I allow the hours claimed in full as being reasonably incurred and reasonable in amount.

51. Attendances on opponents: the positions of the relevant persons are as follows:

	LCF	C	Ds1,2,3,5
Grade A (Stell).	3.3	-	-
Grade A (Montgomery)	1.1	1	1
Grade C (Jones)	1	1	1
Grade D (Kaur)	-	-	-

52. I am not satisfied that the hours claimed were not reasonably incurred nor reasonable in amount. It is suggested that there were limited emails from LCF but LCF would have had to keep abreast of all the correspondence and there was a considerable amount of it. I note also (but with caution) that the overall time spent by Excello and LCF on attending on opponents are not far out of kilter. I therefore allow the time claimed in full.

53. Attendances on others: the positions of the relevant persons are as follows:

	LCF	C	Ds1,2,3,5
Grade A (Stell).		-	-
Grade A (Montgomery)	0.2	0.2	0.2
Grade C (Jones)*	5.1	3	3

Grade D (Kaur) - - -

Note: * this encompasses 2 elements, letters/emails and tel.

54. I note (though with caution) that the overall hours are not dissimilar from those incurred by Excello. I am not satisfied that the hours incurred were either incurred unreasonably or are unreasonable in amount.
55. The attendance at the hearing time is not challenged just the hourly rate which I have already dealt with.

Schedule of work on documents and counsel

56. Review of application is claimed at 1 hour for one grade fee earner and 1.4 h for the other grade A fee earner. The claimant and Defendants 1,2,3 & 5 submit that 1 hour in total is reasonable. The point is made again by the claimant that all that was done was a simple determination to be neutral. However, as I have said, although technically on of neutrality the role of LCF and Excello was not one of passivity. They correctly and reasonably raised appropriate arguments, there being no other person to do so. Excello claimed half an hour for considering the application but then claimed several more hours for matters that would be involved in reviewing the application but which seem in the case of LCF to be encompassed within the one head. In my judgment, having determined that in principle 2 Grade A fee earners involvement was reasonable, I consider that the time claimed is reasonably incurred and reasonable in amount.
57. Instruction of counsel: The next issue is the involvement of counsel. The relevant defendants' position is that the instruction of counsel was reasonable but that his involvement means that the time allowed for solicitors' involvement should be reduced. The claimant attacks the instruction of counsel. Given the factual and legal complexities, the absence of any other person (except Excello) raising any issues against disclosure, and the significance of the point to the firm, I consider that LCF acted reasonably in instructing counsel in the case as it did. In that context I have reminded myself of the helpful, useful and clear skeleton argument, and the bundle of authorities lodged by counsel. I consider the costs claimed on that basis.
58. I consider that the costs claimed for instructing counsel are reasonable. There does not seem to be a challenge to the quantum as such beyond the challenge to the same as a matter of principle on the basis that it was not reasonable to instruct counsel.
59. Counsels fees :At this point it is convenient to take the issue of counsel's fee of £2,000 for advice and £2,000 for attendance at the hearing. The relevant defendants say that only the latter fee was reasonably incurred. The claimant relies on proportionality (which I have said is an irrelevant consideration given the indemnity basis of costs). He also says that the instruction was unnecessary and unreasonable in toto. I disagree with the parties given the circumstances. I consider that both fees were reasonably incurred and reasonable in amount.
60. Work on witness statement. The claim is for 0.1 hour at £350, 1.2 hours for the maker of the statement at £350 and 4.8 hours for the Grade C fee earner. The claimant raises proportionality which is not a relevant consideration given that the costs have been ordered on an indemnity basis. The claimant also submits that the only person that

should have been involved was the grade A fee earner whose statement it was. I do not accept the last point. This was a witness statement primarily exhibiting documents and explaining the position and explaining the legal issues that had been identified.

61. The claimant and the relevant defendants submit that a grade a fee earner at 1h 30 was the maximum that was reasonable.
62. In my judgment the Grade A fee earners' times were reasonably incurred and are reasonable in amount. It seems to me appropriate that both Grade A fee earners should have been involved. As regards the Grade C fee earner, I consider that the time spent is unreasonable (taken in conjunction with the time taken by the maker of the statement) and would reduce the time allowed in respect of that fee earner to 2.5 hours.
63. Preparation and revision of schedule of costs For preparation of the initial costs schedule the costs claimed are 0.1 hours (grade A fee earner) and 1.9 hours (grade C fee earner). For updating the costs claimed are 0.2 hours (grade A fee earner) and 1.2 hours (grade C fee earner).
64. The claimant submits that grade A fee earner involvement is unreasonably incurred. He also submits that the times incurred by the grade C fee earner are unreasonable in amount and disproportionate. He suggests As I have pointed out proportionality does not enter the picture save that the updated bill of costs included (as work on documents) the costs of complying with the court order. As regards those costs, proportionality does enter the picture. The relevant defendants do not challenge the initial or subsequent Grade A fee earner involvement and quantum. As regards the grade C fee earner the claimant submits the time costs should be limited to 18 minutes (initial bill) and 12 minutes (update). The relevant defendants submit that the reasonable time should be limited to 30 minutes initially and that on updating the time should be limited to 30 minutes of a grade D fee earner.
65. I consider that the Grade A fee earner involvement was reasonable and that the time spent was reasonable. I also consider that it was proportionate.
66. As regards the grade C fee earner it seems to me reasonable and proportionate to have involved him throughout so I reject the defendants' submission that only the time of a grade D fee earner should be allowed on the updating.
67. As regards the time spent by the grade C fee earner, I also take into account the times claimed by Excello regarding costs schedules. In my judgment a reasonable (and so far as relevant proportionate) time would be 1 hour for the grade C initially and 30 minutes for the grade C on the updating. I adjust the claim accordingly.
68. Review and comment on draft orders: The claim is for 1.8 hours of grade A grade C time. The relevant defendants take no point on this item of claim. The claimant submits that it is excessive unreasonable and disproportionate. I would allow this element of the claim in full as not being satisfied that it was either unreasonably incurred or unreasonable in amount.
69. Submission and correspondence regarding authority: the claim is for 1.8 hours (grade A) and 6.5 hours (grade C). The item relates to the work done regarding capacity to waive privilege and (as I understand it) also in light of the failure of the administrator to

take out letters of administration. The claimant challenges this item on the basis that the claimant was unaware of the item (but has apparently misunderstood what the item is). Similarly the relevant defednants have misunderstood what the time refers to and have challenged it on the basis that counsel was instructed and presumably applied the authorities. Having also considered the claim of Excello, I am not satisfied that this claim is unreasonably incurred or unreasonable in amount and would allow the claim in full.

70. Compliance with order The claim is for 6.2 hours (grade C) and 3.6 (grade D). This relates to compliance with the order for disclosure. It seems to me that it was still necessary to review the files and not simply hand them over. LCF has made the point that two batches of disclosure occurred, one prior to resolution of the legal professional privilege issue and one after. The latter involved a further 3 electronic case files and one hard copy, the electronic files having to be accessed through a data room as being too large to email.
71. The claimant asserts that what is reasonable is limited to 1hour 30 minutes of grade C time. The relevant defendants assert that a reasonable time would be limited to Grade C 1 hour and Grade D 1 hour 30 minutes.
72. Given disclosure appears to have been conducted in two stages and given the need to review the files in any event and as a matter of urgency, I am satisfied that the time costs were reasonably incurred and reasonable in amount as well as being proportionate.
73. As with the Excello costs claim, I hoped that the draft of this judgment as circulated was clear enough to enable the parties to agree a form of order detailing the precise sums to be paid. An Order has since been lodged and I make an order in those terms.