Case No: SC-2019-BTP-000531
AGS/1704493

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Royal Courts of Justice,
London, WC2A 2LL

Date: 08/03/2021

Before :

SENIOR COSTS JUDGE GORDON-SAKER

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Between:

DEUTSCHE BANK AG	**Claimant**
- and-	
SEBASTIAN HOLDINGS INC	**Defendant/Part 20 Claimant**
-and-	
MR ALEXANDER VIK	**Defendant for costs purposes only**

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Miss Pippa Manby (instructed by **Freshfields Bruckhaus Deringer LLP**) for the **Claimant**
Mr Benjamin Williams QC and Mr Tom Morris (instructed by **Brecher LLP**) for **Mr Vik**

Hearing dates: 16, 17, 18, 19, 23, 24, 30 November, 1, 2, 3, 7, 8 December 2020 (by video)

This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 4pm on Monday 8th March 2021

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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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SENIOR COSTS JUDGE GORDON-SAKER

Senior Costs Judge Gordon-Saker :

1. This judgment sets out my decisions on items 1707 to 1734 in the Claimant's bill of costs, being the fees of Deloitte paid directly by the Claimant.

2. That Deloitte's fees would be the subject of sustained challenge has been clear for some time. On the appeal by Mr Vik from the non-party costs order, it was argued on his behalf that he should not be liable for these items at all. That was rejected by the Court of Appeal: [2016] 4 WLR 17, paras 58 and 59.

3. How Deloitte's fees would be presented and assessed was the subject of argument at the directions hearings which preceded the detailed assessment, in December 2017 (before the bill had been drafted) and November 2019.

4. In July 2019 Mr Vik served a searching request for further information in relation to these items. No order was sought requiring that information to be provided because it was accepted that the information requested was privileged. However the request did prompt the provision of some further information, although not in the form or to the extent requested.

5. Whether that information was sufficient to enable an assessment of the fees was then the subject of argument at the preliminary issues hearing in February and March 2020. I decided that it was not for the court to advise the Claimant on what evidence it should produce but that, if further evidence was to be produced, that should be done in good time: [2020] EWHC B16 (Costs).

6. In the first part of the assessment, in April and May 2020, Mr Vik argued, as a preliminary point, that he should not be liable to pay any of the fees because there was insufficient information and for 10 other reasons. I decided that the fees were properly recoverable as costs of the action, subject to a determination of whether they were reasonably incurred and reasonable in amount and subject to the disallowance of fees which should properly form part of Deloitte's overheads, such as time spent on qualitative reviews and risk assessment. My decision was given orally but my reasons were set out in a reserved judgment dated 5th June 2020 ("the June judgment") at paras 9 to 52: [2020] EWHC B24 (Costs).

7. This judgment sets out my decisions on what sums should be allowed in respect of Deloitte's fees; that is whether the sums claimed were reasonably incurred and reasonable in amount and, if not, what, if any, sums would be reasonable.

The underlying proceedings

8. I have attempted in previous judgments to describe the underlying proceedings. To avoid the reader having to refer back to those judgments, I repeat that summary here.

9. Pursuant to an order dated 8th November 2013, the Claimant is entitled to 85% of its costs of its claim against the Defendant, Sebastian Holdings Inc., to be assessed on the indemnity basis. The order followed a 44 day trial in the Commercial Court. On 10th October 2016, Mr Vik, a defendant for costs purposes only, was ordered to pay the Claimant's costs awarded against the Defendant.

10. The Claimant is an international bank. The Defendant is a company incorporated in the Turks and Caicos Islands. As Cooke J. found, the Defendant was a special purpose vehicle and "the creature company" of Mr Vik, who was its sole director and shareholder and had effective control of the proceedings.

11. The claim and counterclaim arose out of a trading relationship between the Claimant and the Defendant over 2006 to 2008. In summary, the Defendant and Mr Vik conducted foreign exchange, equities, futures and options trading through the Claimant. That trading was supported by collateral. Following the financial turbulence in 2008, and the resulting losses incurred by the Defendant and Mr Vik, the Claimant made substantial margin calls some of which were not met. The margin calls were in part due to the fact that the Defendant's trading had been under-margined due to errors and shortfalls in the Claimant's reporting and margining systems. The Claimant's claim was for the balances owing on the Defendant's trading accounts.

12. Much of the Defendant's trading had been carried out by its trader Mr Said. The Defendant contended, inter alia, that Mr Said's authority to trade had been limited by oral agreements made between Mr Vik and the Claimant and that the Claimant had allowed Mr Said to exceed those limits and to trade in transactions for which he had no authority. Further the Defendant contended that the Claimant was in breach of its obligations to record and report on Mr Said's trades and to warn Mr Vik of the risky trades that he was entering into. But for these breaches, it was said, the Defendant would not have incurred the losses flowing from Mr Said's trades. Further, because of the Claimant's errors in margining, the Defendant alleged that it had been forced to close out valuable positions, incurring further significant losses. But for those losses, it would have invested those funds in accordance with a "Hypothetical Portfolio" which would have earned substantial profits. Until trial the Defendant contended that its losses exceeded US$103bn.

13. At trial, Cooke J. did not accept that the oral agreements alleged by the Defendant had been made or that Mr Said's trades exceeded his authority. While there had been failures in the Claimant's margining systems, he found that the Defendant had been aware of those failures and had taken advantage of them. He also found, inter alia, that the Defendant had the ability to meet the margin calls and had not been forced to close out its positions. The Claimant recovered judgment for US$243m and successfully defended the counterclaim, reduced at trial to a sum still in excess of US$8bn.

14. This was a huge piece of litigation and was hard fought. There were substantial interlocutory skirmishes, including over jurisdiction. The Claimant's disclosure involved the manual review of over 1.5 million documents, with about 200,000 documents disclosed as at May 2012. The parties served 54 statements of witnesses of fact and 40 experts' reports. There were 10 joint experts' reports. The experts' reports ran to over 6,500 pages. Written opening submissions ran to over 1,700 pages. Written closing submissions ran to over 2,700 pages. The judgment ran to 428 pages. Both parties instructed teams of counsel. The Claimant is credited on the title page of the judgment with 2 Queen's Counsel and 2 junior counsel and the Defendant with 1 Queen's Counsel, 1 Senior Counsel and 3 junior counsel.

15. The costs claimed by the Claimant against the Defendant and Mr Vik are in excess of £53m. The Defendant did not serve points of dispute and, so far, has neither attended

nor been represented at the detailed assessment hearing which presently is adjourned part-heard.

16. During the hearing from which this judgment derives, the parties returned to the Commercial Court in relation to the Claimant's application to commit Mr Vik to prison for contempt of court. The result of that hearing is that the committal application remains to be heard. The conduct of Mr Vik and the extent to which he may be fixed with matters within the Defendant's knowledge have been regular refrains throughout the detailed assessment so far. In this attempt to summarise the underlying proceedings I therefore gratefully adopt the analysis of the background by Cockerill J. at [2020] EWHC 3536 (Comm):

> 15. The English trial resulted in a judgment ([2013] EWHC 3463 (Comm)) substantially in favour of DB, with SHI's counterclaim being rejected in its entirety. The Judge held (again quoting from a summary in a later judgment by the Court of Appeal in [2014] EWCA Civ 1100):
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> "substantial parts of SHI's defence and counterclaim were based on dishonest evidence and fabricated documents put forward by Mr Vik, or by SHI's only other factual witness, Per Johansson. Mr Johansson was and apparently still is engaged as a litigation consultant to SHI. Amongst other things, Cooke J found that Mr Vik had invented the alleged oral agreements with DB, and that SHI's vast counterclaim was put forward on a dishonest basis by Mr Vik and Mr Johansson relying on fabricated documents. Cooke J was also critical of SHI's conduct of the proceedings in other respects, in particular its approach to disclosure, its pursuit of hopeless arguments, and as to the evidence of two of its main experts."
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> 16. The judgment marked the start of a series of clear negative findings about Mr Vik's conduct by these courts. Cooke J described SHI's and Mr Vik's conduct as "reprehensible" and involving "impropriety…and dishonesty on Mr Vik's part". Other descriptions of him over the years have included the following:
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> i) "The whole history of the proceedings …reveals attempts by Mr Vik …to avoid liability, to deceive the court and to conceal the true state of SHI's financial affairs... Mr Vik's conduct is all of a piece and that these actions are all intended to impede enforcement of the judgment against SHI. It is hard to come to any other conclusion." (Cooke J in the CPR 71 challenge).
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> ii) Mr Vik "is a man who will do what is necessary to prevent DB obtaining its judgment debt": [2019] 1 WLR 1737 (CA), Gross LJ at [1].
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> 17. This latter description arose against a background where, nearly 7 years on from the judgment on the merits, SHI has not

paid any part of the sums due under this original judgment. Mr Vik asserts that SHI has no assets with which to pay. That is not consistent with findings made in this Court and the Court of Appeal namely that:

i) [2013] EWHC 3463 (Comm) [1461]: "all these funds were available to SHI (some US$896 million) prior to transfer and that, moreover, Mr Vik could, at a moment's notice, procure the transfer of those funds back to SHI should he have chosen to do so.";

ii) [2014] EWCA Civ 1100 at [36]-[37]: "there is no evidence to suggest that Mr Vik is not still the sole owner and director of SHI as he was in 2008…. Given the judge's findings as to the manner in which Mr Vik treated SHI and its assets as his own, it is difficult to think that there can be a more appropriate case in which to take into account that he could, if minded to do so, pay the judgment debt. However, it is not in my judgment necessary to go that far. On the basis on which I approach the case SHI could itself pay the judgment debt into court if Mr Vik chose to procure it to do so. That does not involve Mr Vik funding SHI or paying the judgment debt on its behalf. It involves Mr Vik taking steps to restore to SHI what are rightfully its assets".

18. It has been determined in earlier proceedings that as soon as Mr Vik became aware of SHI's liabilities to DB in October 2008, he began putting SHI's assets out of reach. As this Court and the Court of Appeal have held, these assets remain "rightfully" SHI's and capable of being returned to SHI by Mr Vik "at a moment's notice".

19. One specific area which has been much in focus before me and where some background is appropriate is a transfer Mr Vik procured in October 2008 of around US$730m of SHI's assets to a company called Beatrice Inc. ("Beatrice"), for no consideration. Mr Vik then transferred Beatrice itself into a Trust ("the Trust") and Mr Vik was for some time Protector of the Trust, exercising almost total control over its assets.

20. This transfer was the subject of evidence at the trial. Mr Vik claimed that the transfers to Beatrice were legitimate loan repayments or capital distributions by SHI. Cooke J did not accept this, holding that Mr Vik's account was "not susceptible of belief" [1451] (a finding which was not appealed see [2014] EWCA Civ 1100 [15-16]). He made:

"an unequivocal finding that on and after 13 October 2008, when Mr Vik had a clear idea that SHI's trading liabilities ran to many hundreds of millions of dollars, he caused US$896m of funds and assets to be transferred from SHI either to himself or to companies closely associated with him or with his family. In

particular, very substantial sums were transferred to CM Beatrice, Inc. ("Beatrice"), and to VBI Corporation ("VBI"). The judge found that Mr Vik procured these transfers for no bona fide commercial reason, and that he did so with a view to depleting SHI's assets and making it more difficult for DB to seek recovery of the amounts owed to it by SHI."

21. Cooke J further held that a disclosure statement had been fabricated in a deliberate attempt to mislead the Court about the ownership of Beatrice and that SHI had relied upon a fabricated document purporting to evidence the transfers. Mr Vik has taken issue before me with the assertion that there was a finding that he fabricated the documents in question. Technically he is right, there is no firm finding on this; however it is clear that someone whose interests were aligned with his did so; and it is clear that his explanation as to who might have done that was regarded as unsatisfactory by the judge (at [1454]).

22. After the judgment, there was a period of time when the focus turned to the obtaining of non-party costs orders against Mr Vik, following on from the non-payment of the interim costs order of about £34.5m which had been ordered to be made by 22 November 2013.

23. This was an episode which itself involved disputes about service ([2014] EWHC 112 (Comm)), the substantive order ([2014] EWHC 2073 (Comm)) and security for the costs of an appeal ([2014] EWCA Civ 1100), followed by a substantive appeal ([2016] EWCA Civ 23). During the course of this passage of arms Cooke J held that:

"the transfer of SHI's assets, on Mr Vik's instructions, has undoubtedly caused or contributed to SHI's inability to meet the costs order of 8th November 2013.

... Moreover, there was, as I have found, a strong element of impropriety in making those transfers."

24. At [80, 85] the judge recorded his finding that Mr Vik was the real party to the litigation. Later at [101] he rejected Mr Vik's evidence that a transfer previously said to be a cash distribution was, as Mr Vik contended, a loan repayment.

25. Those conclusions were endorsed by the Court of Appeal, holding at [26]:

"I have already indicated that I accept it as inherent or implicit in the judge's findings that, as at October 2008, SHI had the right to recover its funds. It has not been asserted that the ability to recover the funds has been lost in consequence of subsequent transactions in the ordinary course of business. It follows that if

> circumstances have changed such that SHI no longer has the right to recover its funds, that can only be because it has carried out further acts of impropriety with a view to avoidance of payment of the judgment which it anticipated would be rendered against it."
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> 26. Further at [36] the Court of Appeal made the finding noted above as to SHI's ability to pay – and Mr Vik's personal ability to make that happen.

The presentation of Deloitte's fees

17. Deloitte issued monthly gross sum invoices for the work done between July 2011 and November 2013. The first invoice covered 2 months. Those up to January 2012 were accompanied by breakdowns setting out the names of the fee earners, their daily rate, how many hours they had worked in the month and the number of hours that they had worked in each day.

18. It had been agreed that time spent in excess of 8 hours per day would not be charged and, from September 2011 to November 2011, a discount of 5% of fees between £250,000 and £500,000 and 10% of fees over that had also been agreed. From December 2011 the 8 hour cap continued but the discounts were replaced by a discount of 10% on the total and, from July 2012, 15%. Details of these discounts were provided with the invoices.

19. From February 2012 the breakdowns set out the time spent by each fee earner under different workstreams. A short description was given of each workstream. The workstreams varied over time, but in February 2012 they were: leadership team and project management, preparation of trade lists, claim validation: FX and equities, counterclaim, data and systems, and valuation. From June 2012 the descriptions of the workstreams disappeared, but the overall workstream format continued.

20. From the monthly breakdowns therefore it is possible to tell who worked in that month, their seniority or grade, their daily rate (and, by simple calculation, their hourly rate), and how many hours they worked on each day of the month. From February 2012 to November 2013 the amount of time each fee earner spent on each workstream is recorded.

21. In December 2019 the Claimant served a 22 page narrative prepared by Deloitte[1] ("the Deloitte Summary") which described the work done under six key workstreams: (i) data and systems, (ii) disclosure reviews, (iii) the trade list, reconciliations and matrices, (iv) experts' reports, (v) litigation support, (vi) leadership team and project management.

22. For the purposes of the detailed assessment, Deloitte has produced further breakdowns in the form of monthly summaries. For the months up to January 2012 these identify the workstreams each month and provide broad detail of the work done in each workstream in that month, but not the amount of time spent on each workstream. Similar detail is provided in the monthly summaries from February 2012, but that is

[1] Summary of work performed by Deloitte LLP on behalf of Deutsche Bank AG in the English Action from July 2011 to November 2013: 13 December 2019

married up with the fee earners involved in, and the amount of time spent on, each workstream. However, the workstreams identified in the monthly summaries do not entirely coincide with those identified in the Deloitte Summary.

23. The Claimant's solicitors explained how these monthly summaries were prepared in a letter to Mr Vik's solicitors dated 17th April 2020:

> These documents have been prepared:
>
> i. with the involvement (to the extent possible, given the passage of time) of Deloitte fee earners who: (i) were involved in the original proceedings; and (ii) have looked back at contemporaneous working papers in preparing the summaries; and
>
> ii. under the oversight of Elizabeth Gutteridge, a Deloitte partner who has: (i) inter alia, been involved in the English proceedings since June 2012 (see the 13 December 2019 summary at paragraph [1.4]); and (ii) also looked back at her own contemporaneous working papers in overseeing this process.

24. A further explanation was given in the Claimant's solicitors' letter dated 16th November 2020. Four junior fee earners at Deloitte had reviewed a large number of emails between the Claimant's solicitors and the senior fee earners at Deloitte to identify particular tasks, work products and strands of work and they had also considered other contemporaneous documents.

25. In the course of her submissions during the hearing Miss Manby, on behalf of the Claimant, produced a large number of documents which she used to explain the work that was being done in relation to particular monthly summaries or particular experts' reports. These documents, largely emails and letters, were sent to the court in .zip folders during the hearing but, privilege not having been waived, were not sent to those representing Mr Vik. Sensibly Mr Williams QC and Mr Morris did not invoke the formal process of election under the *Pamplin* procedure,[2] but were content to allow informal disclosure to the court alone.[3] Had the Claimant been put to its election whether to disclose these documents or prove the contents by other means, what was in any event a 12 day hearing would have multiplied many times in length and become unmanageable. It is however my practice to attempt to summarise the documents that I am shown by the receiving party, for the benefit of the paying party. In this case I was reminded on a small number of occasions (although not I think in this part of the assessment) when I attempted to summarise more sensitive documents that there are continuing proceedings in the United States between the Claimant and Mr Vik.

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[2] *Pamplin v Express Newspapers Ltd* [1985] 1 WLR 689

[3] Dr Friston has described the informal approach as follows [*Friston on Costs* 3rd ed para 46.45]: One of the most striking features of election is that, in practice, it is rarely necessary to invoke it. This is because nearly all detailed assessments are dealt with on an informal basis, at least in part. In practical terms, this means that the paying party will not insist on seeing each and every document that is placed before the judge, but instead will trust the judge to carry out a proper examination of those documents and to ensure fair play. This courteous and efficient fact-finding procedure suffices for all but the most contentious of assessments.

Concessions made in relation to Deloitte's fees – initial margin

26. By paragraph 4 of the second order made on 22nd February 2013 Cooke J. ordered that the Claimant was to pay the Defendant's costs in any event of the Claimant's withdrawn allegation in defence of the counterclaim that, had the Claimant been obliged to calculate Value at Risk on the Defendant's FX portfolio, it would have been entitled to or would have calculated a single initial margin amount for each transaction which would apply throughout the lifetime of those transactions.

27. It is not in issue that the Claimant cannot recover the fees of Deloitte in relation to the calculation of the initial margin. There is however an issue as to how those fees should be calculated. The Claimant's case is that the relevant fees should be identified and deducted. Mr Vik's case is that the invoices are not sufficiently detailed to allow that. It is submitted on his behalf that the better approach is to identify the reasonable cost of each expert's report taking into account that nothing can be allowed for work touching on the initial margin.

28. In support of the Claimant's case, in their letter dated 9th June 2020 the Claimant's solicitors contended that the work done by Deloitte on initial margin was limited and would properly be reflected in a deduction of 0.5% from the whole of Deloitte's fees for the period from August 2012 to 8th February 2013.

Concessions made in relation to Deloitte's fees – summarily assessed costs

29. In its replies to the supplementary points of dispute served by Mr Vik, the Claimant makes concessions in relation to the work done by Deloitte in respect of the costs of hearings which were the subject of summary assessment. In respect of the hearing in May 2012, £222,000 is conceded. £84,000 is conceded in the bill for the July 2012 hearing. The Claimant had previously conceded £225,000 for the October 2012 hearing in the bill, but now concedes £300,000. £13,100 is conceded for the January 2013 hearing.

Concessions made in relation to Deloitte's fees – quality assurance

30. In the June judgment I indicated that time spent on quality assurance and the like should form part of Deloitte's overheads and should not be recoverable against Mr Vik. In respect of that work the Claimant has conceded £266,547.73, the details of which are set out in appendix 1 to the Claimant's supplementary replies.

Concessions made in relation to Deloitte's fees – conferences

31. In the course of the assessment of the chronological part of the bill I disallowed a number of conferences with counsel. The Claimant has conceded £37,634.80, excluding value added tax, in respect of the fees of Deloitte attendees at the disallowed conferences.

Concessions made in relation to Deloitte's fees – ending the engagement

32. £2,388 excluding value added tax is conceded in respect of time spent discussing the retirement of Mr Inglis, billed under the leadership and project management

workstream. £2,793 is conceded under the same workstream for administrative work closing down the engagement.

Mr Vik's case on quantum

33. Mr Vik's case in relation to the quantum of Deloitte's fees is set out in the points of dispute dated 26th July 2019, the supplementary points of dispute dated 21st August 2020, the skeleton argument dated 11th November 2020 and the summary of his offers in relation to the experts' reports provided to the court on 8th December 2020, together with the oral submissions of Mr Williams QC and Mr Morris.

Mr Vik's case on quantum – preliminary issue 4

34. The initial points of dispute, at preliminary issue 4, objected to the lack of detail about the fees claimed and denied Mr Vik's liability to pay the fees for 10 reasons. At objection 537, Mr Vik asserted that in the light of preliminary issue 4 he was unable to make any offers in respect of items 1707 to 1734 in the bill.

Mr Vik's case on quantum – the supplementary points of dispute

35. Following the June judgment, that Deloitte's fees were recoverable in principle, the parties agreed directions for the service of amended points of dispute and replies. The supplementary points of dispute that were then served challenge Deloitte's fees at objection 8, pages 7 to 46, under 4 headings: (i) the invoices for work done from July to December 2011; (2) the workstreams identified in the Deloitte Summary; (iii) the fees claimed for experts' reports; and (iv) other items not covered by the first three.

Supplementary points of dispute – July to December 2011 invoices

36. In respect of the July to December 2011 invoices, Mr Vik submitted that there was insufficient information in the invoices to enable an assessment of reasonableness. Time spent preparing Deloitte's terms of engagement, claimed in the July and August 2011 invoices, should not be recoverable but Mr Vik had no way of ascertaining how much time was involved. Similarly he had no way of ascertaining how many fee earners attended, or for how long they attended, the 87 meetings held with the Claimant or its solicitors over this period, or what was discussed. Where conferences had been disallowed, the costs of Deloitte's fee earners attending them should also be disallowed, but those costs were not ascertainable. The September and October invoices included work on a response to the Defendant's request for further information, reviewing legal correspondence, work done on a case management conference and on a witness statement of the Claimant's solicitor. This was all solicitors' work but Mr Vik was unable to ascertain how much time was spent or by whom. Deloitte could easily have been required by the Claimant to record and itemise its work transparently. The court should conclude that the Claimant had failed to discharge "its basic burden of proof" as to what was being done and why and these invoices should be disallowed in full.

Supplementary points of dispute – data and systems

37. From August 2011 to May 2012 Deloitte was working on the Claimant's disclosure and 1,696 hours were recorded. Given the number of tasks within this workstream and the absence of information as to how much time was spent on each task, or what each fee

earner was doing, it was contended on behalf of Mr Vik that there is insufficient information to allow a determination of the reasonableness of the fees.

38. In the alternative, Mr Vik makes several specific objections. Time spent in preparing for attendance at case management conferences should not be recoverable as costs orders were made at the hearings. It is not possible to discern from the invoices how much time was spent on this. Work done on disclosure should have been done by junior fee earners and examples are given of seemingly routine tasks being done by managers. Reviewing disclosure could have been done by the Claimant's solicitors at grade D rates or junior counsel at lower hourly rates. No details are provided as to the length of time spent preparing for or attending "expert meetings".

39. 4,089 hours were spent on data support between October 2012 and March 2013. Again Mr Vik contends that there is insufficient information to allow a determination of the reasonableness of the fees. In the alternative, he notes that 500 hours were recorded in October 2012 at senior grades on correspondence and discussions, with no indication of how much time was spent on this by each fee earner or what was being discussed. 833 hours were spent in November 2012 on reviewing disclosure, work on the trade lists and responding to the Defendant's queries, 550 hours of which were spent at assistant manager level or above. It is contended on behalf of Mr Vik that this could have been done by more junior fee earners. Work done in November and December 2012 included working on the initial margin, the costs of which are not recoverable, but which costs are not discernible.

Supplementary points of dispute – disclosure reviews

40. In addition to time spent on reviewing disclosure under "data and systems", between May 2012 and December 2012 over 1,500 hours is identified under a separate "disclosure review" workstream. Mr Vik's objection is that this work should have been done by associates, or could have been done at lower rates by the Claimant's solicitors' grade D fee earners or junior counsel. Further, the Claimants' solicitors spent about 7,000 hours on disclosure, and review of the same documents by both Deloitte and the solicitors would not have been reasonable.

Supplementary points of dispute – trade list, reconciliations and matrices

41. Work producing the list of FX trades was carried out between January and April 2012 and reviews of the trade list in July and October 2012. Between February and April 1,567 hours were spent on this. However it is not possible to identify the whole of the time spent, as the work done in January 2012 is not discernible and work done on the trade list was also carried out in June, August, September and October but under the headings "claim" and "counterclaim". Further work was done on the trade list in November and December 2012 under "data support", which included assisting and reviewing the work of Navigant. Mr Vik contends that work on the trade list should have been done by a single firm to avoid duplication. It is submitted on his behalf that insufficient information has been provided to enable a determination of the reasonableness of the fees claimed. Further, insofar as the work resulted from inadequacies or errors in the Claimant's systems, the costs were not reasonably incurred.

Supplementary points of dispute – litigation support

42. Mr Vik notes that 20,800 hours by more than 70 fee earners at a total cost of about £8m are claimed in this workstream. He submits that this work was in the nature of solicitors' work and will have overlapped with that done by the Claimant's solicitors. It would be an affront to justice for the Claimant to avoid the scrutiny which would have been afforded to this work had it been carried out by lawyers.

43. Mr Vik challenges the time spent preparing for and attending case management conferences and the hearings of applications and work done on witness statements and skeleton arguments deployed at those hearings, where the costs have already been assessed or fall outside the scope of the costs order against him. He notes that reductions of £84,000 and £225,000 have been made on the bill for the July 2012 and September 2012 hearings but submits that it is impossible to identify all of the work done by Deloitte in relation to these hearings.

44. Similarly Mr Vik argues that it is not possible to discern the number of Deloitte fee earners who attended the trial, assisted in preparing the Deloitte experts for their evidence (including Mr Sealey who, in the event, did not give evidence), were engaged in quality and risk assessments, doing work on or reviewing the experts' reports (other than the experts) or the amount of time spent on any of these activities. Again Mr Vik contends that insufficient information has been provided to allow a determination of the reasonableness of the sums claimed.

Supplementary points of dispute – leadership team and project management

45. More than £3.5m is claimed for almost 11,500 hours by more than 40 fee earners. Mr Vik points out that the work described includes work done on witness statements and skeleton arguments which fell within the interlocutory costs orders, quality and risk assessments, preparing for and attending meetings which have been disallowed, discussing the retirement of Mr Inglis and closing down the engagement. The time spent on these activities cannot be ascertained and again Mr Vik submits that there is insufficient evidence to enable an assessment of the reasonableness of the sums claimed.

Supplementary points of dispute – experts' reports – Mr William Inglis

46. Mr Inglis reported on the calculation of the claim and on the Defendant's counterclaim in respect of the Global Prime Finance prime brokerage relationship and the foreign exchange prime brokerage relationship between the parties. His time was recorded under the "leadership team and project management" workstream. Mr Vik objects that it is impossible to say how much of Mr Inglis' time was spent on the production of his report, as opposed to other work on the case.

47. Work done by other fee earners on the Inglis report was recorded under a number of other workstreams, but again it is impossible to say how much time was spent. Accordingly it is submitted on behalf of Mr Vik that there is insufficient evidence to enable the determination of the reasonableness of the sum claimed.

48. In the alternative Mr Vik raises three specific objections to the time spent on Mr Inglis' first report. The substantial amount of work done on those parts of the structured data

in respect of which there were no specific allegations[4] was not reasonably incurred. Nor was the work done to enable Mr Inglis to conclude that he could rely on the extracted data for the purpose of quantifying the claim and counterclaim, when the experts had agreed that they were not required to identify whether the data disclosed was sufficient for that purpose. No work was required to check the transfers pleaded at paragraphs 177 to 179 of the Defence and Counterclaim as the Claimant had admitted them and the Defendant's entitlement to them would be a question of law for the court.

49. Mr Vik suggests that a reasonable amount of time for Mr Inglis' report would be 850 hours at his rate and 1,700 hours of analyst's time at manager level. The points of dispute provide a breakdown of that offer with separate figures for each part of the report.

50. Following the service of the Defendant's expert's report (Mr Davies – 300 pages and 235 pages of appendices) the experts met on 4 occasions and produced a 50 page joint memorandum. Thereafter Mr Inglis produced a reply report (265 pages and 474 pages of appendices). Mr Vik contends that it is not possible to determine the reasonableness of the time spent on this work because Mr Inglis' time over January to March 2013 included time spent on producing a 56 page witness statement and other tasks and only some of the work recorded in the counterclaim workstream related to the experts' reports.

51. In the alternative Mr Vik objects to time spent conducting further analysis as to the reliability of the structured data, as Mr Inglis had already concluded that the errors were not an impediment to the claim and counterclaim and the work was not required by the court's directions on expert evidence. Mr Vik suggests as reasonable: 150 hours of Mr Inglis' time for reading the defendant's expert's report and attending the joint experts' meetings, 300 hours at manager level, 25 hours of Mr Inglis' time to agree and draft the joint memorandum, 75 hours at manager level, 100 hours of Mr Inglis' time to draft the reply report, and 300 hours at manager level.

52. In respect of trial preparation, Mr Vik notes that it is not possible to identify how many fee earners attended the preparation sessions or for how long. He contends that no time should be allowed for this. All that Mr Inglis needed to do was to re-read his instructions and the relevant experts' reports. The involvement of other fee earners was not reasonable. In particular time spent compiling lists of cross-examination questions and the like was unreasonable. Mr Vik offers 150 hours of Mr Inglis' time for preparation and the one day that he attended court.

Supplementary points of dispute – experts' reports – Mr Thomas Millar

53. Mr Millar was instructed to report on the credit support amounts and value at risk (VaR) in respect of the FX trades made by Mr Vik and Mr Said on each business day over a 23 month period. Mr Vik notes that 2,748 hours were spent between February and May 2012 in relation to valuation, valuation models and initial VaR calculations, but submits that it is impossible to identify the amount of time spent on Mr Millar's report thereafter before its completion in December 2012. Accordingly he contends that it is not possible to determine the reasonableness of the amounts claimed.

[4] Report of Mr William Inglis 19th December 2012 para 4.33

54. In the alternative, Mr Vik submits that the Claimant's decision to instruct separate experts to calculate the Claimant's daily exposure (Navigant) and to calculate VaR was unreasonable and will have led to duplication. Both Deloitte and Navigant built separate valuation models using different frameworks. However it appeared that Deloitte spent considerably more time than the 950 hours spent by Navigant. The work done in December 2012 (1,000 hours recorded on breach point analysis, valuation and VaR) included time reviewing Navigant's valuation results and discussing concerns over their accuracy and consistency, which would not have been necessary had one expert been instructed. The December invoice also includes work done on initial margins, in respect of which Mr Vik is not liable.

55. Mr Vik suggests that the reasonable time for producing Mr Millar's report would be: 280 hours at assistant manager level for developing the model, obtaining and cleaning the data and carrying out the valuation runs (subject to the argument of duplication with the work of Navigant); 100 hours at assistant manager level to calculate the independent amounts and credit support amounts; 25 hours of Mr Millar's time to oversee this; 50 hours for Mr Millar to draft his report; and 25 hours at assistant manager level for checking, proof-reading, assembling appendices, etc.

56. Following the service of the Defendant's expert's report (Dr Drudge – 89 pages plus 11 pages of appendices) the experts met once and prepared a 7 page joint memorandum. Mr Millar then produced a 50 page reply report. Mr Vik suggests 40 hours of Mr Millar's time to read Dr Drudge's report and prepare for the meeting. The meeting lasted 4.7 hours and it would have been reasonable to have an analyst present. 20 hours of Mr Millar's time is suggested for the joint memorandum. Mr Vik suggests 43 hours of Mr Millar's time would be reasonable for the reply report with 50 hours at the assistant manager level for checking, formatting and compiling the appendices. However, 4,470 hours were recorded under the "counterclaim" workstream between January and March 2013, including 1,730 hours by 19 fee earners on work up to the experts' meeting and drafting the joint memorandum.

57. The monthly summary for June 2013 records a "significant amount of time spent by Mr Millar and his team preparing for Mr Millar's oral evidence in court". Mr Millar's time that month was recorded at 120 hours. Further, unspecified, time was spent in July 2013. For trial preparation Mr Vik suggests 75 hours of Mr Millar's time would be reasonable, including the one day that he attended court.

Supplementary points of dispute – experts' reports – Mr Andrew Robinson

58. Mr Robinson was instructed to report on the market value of shareholdings in 9 companies held by the Claimant as security. Mr Vik contends that it is not possible to discern the amount of time spent on the preparation of Mr Robinson's report and so not possible to make any determination of the reasonableness of the costs claimed.

59. In the alternative, Mr Vik submits that too much time was spent on Mr Robinson's report by senior fee earners, such as the 166 hours spent by Mr Rees, a director at £442 per hour, in November and December 2012. Mr Vik suggests that a reasonable allowance would be 275 hours for Mr Robinson to research and draft the report and appendices with 40 hours of manager time to check and format the report.

60. Following the service of the defendant's expert's report (Mr Davies – 60 pages), the experts met once and then produced a 30 page joint memorandum (with 16 pages of appendices). Mr Vik suggests 40 hours for Mr Robinson to read his opponent's report and prepare for the meeting, a day for the meeting (with a junior analyst in attendance), a further 40 hours for Mr Robinson to draft the joint memorandum and reply report, and 10 hours for a junior fee earner to check and format.

61. In respect of trial preparation, Mr Vik objects to time spent preparing Mr Robinson for cross-examination and for him attending court to observe the Defendant's leading counsel cross-examine a witness. Mr Vik suggests 75 hours trial preparation would be reasonable.

Supplementary points of dispute – experts' reports – Mr Sealey

62. Mr Sealey, an expert in computer forensic analysis, was instructed to report on the authenticity of the Hypothetical Portfolio. His report, dated 3rd April 2013, ran to 46 pages and 34 pages of appendices. Following the defendant's expert's report (Mr Surrey – 33 pages and 70 pages of appendices), the experts met once and produced a 22 page joint memorandum.

63. While some of the work done falls under the separate workstream of "Mr Sealey's report", Mr Sealey also did work recorded under other workstreams and other fee earners did work on his report under other workstreams. Accordingly Mr Vik contends that it is not possible to determine the reasonableness of the costs claimed for this work.

64. In the alternative, Mr Vik suggests that a reasonable time would be 90 hours of Mr Sealey's time for the first report, 10 hours of assistant manager time to check and format it, 40 hours of Mr Sealey's time to read Mr Surrey's report and prepare for and attend the joint meeting, 10 hours of assistant manager time to attend the meeting and 30 hours of Mr Sealey's time for the joint memorandum.

65. Again Mr Vik objects to time spent preparing Mr Sealey for giving oral evidence but suggests 50 hours for preparing for trial. In the event Mr Sealey did not have to attend.

Supplementary points of dispute – other sums claimed – experts

66. About 1,550 hours in total was recorded under this heading between June 2012 and May 2013 with, in some months, limited descriptions of the work being done. Mr Vik makes different objections in relation to each month but, in broad terms, contends that the time claimed is unreasonable either because it has not been properly explained or because it is additional to work similarly described under other workstreams.

Supplementary points of dispute – other sums claimed – Turks and Caicos Islands

67. In Deloitte's invoice for August 2013, 24 hours were recorded for work done in July by Deloitte's member firm in the Bahamas for researching and drafting a memo on the record keeping obligations of companies registered in the Turks and Caicos Islands. 18 hours were recorded for partners at US$618 per hour and Mr Vik contends that most of this work could have been done by junior fee earners.

Supplementary points of dispute – other sums claimed – October and November 2013

68. 190 hours were recorded in October and November 2013, after the trial, which included time reviewing the draft judgment and meeting with the Claimant's solicitors to discuss it. Mr Vik contends that it was unreasonable for Deloitte to be involved in this, given the legal team at the Claimant's disposal.

Supplementary points of dispute – other sums claimed – other work classified within claim and counterclaim

69. Mr Vik objects to work done under the workstreams "claim", "counterclaim" and "claim validation" which do not relate to the preparation of the experts' reports. It is said that these are too varied and numerous to enable specific objection. However, as examples, the supplementary points of dispute refer to work done on Mr Sealey's witness statement under "counterclaim". This work related to the July 2012 case management conference, the costs of which are not now recoverable. Similarly work done on the "Deloitte proxy" for inclusion in Mr Millar's third witness statement would fall within the costs of the October 2012 hearing. In each case it is impossible to discern how much of the time related to the hearing.

Mr Vik's case on the approach that the court should take

70. Relying on the observation of Leggatt J.[5] (as he then was) that the "touchstone" of reasonableness on assessment is "the lowest amount which [the receiving party] could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances", Mr Williams QC argued that there is insufficient evidence of the work done by Deloitte to apply that test.

71. Time spent by professionals charging by the hour must be properly recorded and allocated to discernible activities and, where it is not, very significant reduction in the time allowed is likely to be the result: *In re Frascati* (unreported) 2nd December 1981 (Parker J.); *Brush v Bower Cotton & Bower* [1993] 4 All ER 741 (Brooke J.); *Arab Monetary Fund v Hashim* (unreported) 30th June 2000 (Park J.).

72. Although these decisions related to the work of solicitors, the principle must hold good for other professionals, especially where the work is of a highly bespoke nature at a cost of millions of pounds. In *Brook v Reed* [2012] 1WLR 419 the Court of Appeal considered the principles to be applied when fixing the costs and remuneration of a trustee in bankruptcy. Mr Williams QC relied on the apparent approval of a passage of the judgment of Ferris J. in *Maxwell* [1998] 1 BCLC 638:

> First, office-holders must expect to give full particulars in order to justify the amount of any claim for remuneration. If they seek to be remunerated upon, or partly upon, the basis of time spent in the performance of their duties they must do significantly more than list the total number of hours spent by them or other fee-earning members of their staff and multiply this total by a sum claimed to be the charging rate of the individual whose time

[5] *Kazakhstan Kagazy Plc v Zhunus* [2015] EWHC 404 (Comm)

> was spent. They must explain the nature of each main task undertaken, the considerations which led them to embark upon that task and, if the task proved more difficult or expensive to perform than at first expected, to persevere in it. The time spent needs to be linked to this explanation, so that it can be seen what time was devoted to each task. The amount of detail which needs to be provided will, however, be proportionate to the case.
>
> …
>
> Second, office-holders must keep proper records of what they have done and why they have done it. Without contemporaneous records of this kind they will be in difficulty in discharging their duty to account. While a retrospective reconstruction of what has happened may have to be looked at if there is no better source of information, it is unlikely to be as reliable as a contemporaneous record. Office-holders whose records are inadequate are liable to find that doubts are resolved against them because they are unable to fulfil their duty to account for what they have received and to justify their claim to retain part of it for themselves by way of remuneration.

73. The Court also expressly approved the practice statement issued by Chief Registrar Baister on *The Fixing and Approval of the Remuneration of Appointees* [2004] BCC 912 which provided (at paragraph 3.4):

> It is for the appointee who seeks to be remunerated at a particular level and/or in a particular manner to justify his claim and in order to do so the appointee should be prepared to provide full particulars of the basis for and the nature of his claim for remuneration.

74. In *Re Brilliant Independent Media Specialists Ltd* [2015] BCC 113 ICC Judge Jones was required to fix the remuneration of the former joint administrators of a company appointed by the holder of a floating charge. He concluded that the sum claimed, £89,637, was plainly disproportionate and unjustified by any narrative. He fixed the remuneration at £7,500. In relation to the approach taken by the administrators, ICC Judge Jones said:

> 47. I recognise that the task of deciding the proportionality of the information to be provided is not an exact science. As a result during the hearing I allowed further information to be provided upon instructions. However, I observe that it should not be difficult to appreciate when additional information in the form of a narrative is required to provide justification for particular work. For example some activities will be standard, the length of time spent apparently reasonable and little need be narrated. In contrast tasks taking many hours or requiring high cost need to be explained, for example by briefly describing what was involved, why it was necessary and why it took the time it did.

> 48. The Practice Direction[6] provides plain guidance at para.20.4. A succinct narrative analogous to the narrative within a solicitor's bill should not be expensive or require a disproportionate amount of work. It should be available from attendance sheets kept whilst the work was carried out. I refer to this now because a lack of narrative causes difficulties on a number of occasions in this case.
>
> 49. The administrators rely upon a spreadsheet identifying: the tasks carried out within the relevant phases of the administration; the time the work was carried out, the people involved; the hours each person spent; and the total hours and costs. The spreadsheet does not provide a narrative description or explanation as required by the PD (see in particular para.20.4.2). Insofar as this is provided, it is within the witness statements, the interim progress reports and a vacation of office check list. I asked counsel to ensure that any other exhibited documentation providing a narrative was identified during or by a note after the adjourned hearing. None has been.

75. Mr Williams QC advanced the argument that where a party seeks to recover from another party the costs of professional work, it needs to provide sufficient detail of the work to enable the paying party to understand what was done, when and by whom, and to enable the court to judge the reasonableness of the costs of doing the work.

76. In this case, Mr Williams QC argued, there would have been no difficulty for Deloitte in recording that detail and no difficulty for the Claimant in requiring that record to be kept. Any shortcoming in the recording of the detail should not prejudice Mr Vik who would be at risk of unjust overcharging. On the other hand, if there is a shortfall in the Claimant's recovery, there would be no injustice as the Claimant has only itself or its advisers to blame.

77. Mr Williams QC submitted that the basis of the assessment cannot be used to plug any deficiencies in the evidence. Even an assessment on the indemnity basis presupposes that the receiving party will have produced evidence as to what work was done, when, by whom and why.

78. The difficulties caused by the lack of that evidence, Mr Williams QC submitted, were illustrated in the areas where the Claimant was not entitled to costs (for example the work done on initial margin) and where the Claimant had already recovered costs (the hearings where the costs had been summarily assessed). These costs were included in Deloitte's invoices and, it is not in issue, should be removed. How can they be removed if we have no way of ascertaining how much time was spent on each item of work?

79. Where it is not possible to discern the reasonableness of the sums claimed, by reason of the lack of detail as to what was done, Mr Williams QC argued that those sums

[6] Practice Direction: Insolvency Proceedings [2012] BCC 265

should be disallowed. Where it was possible, only the irreducible minimum[7] should be allowed.

The Claimant's case on the approach that the court should take

80. On behalf of the Claimant, Miss Manby submitted that, in accordance with paragraph 36 of the June judgment, the Claimant had shown that Deloitte's fees had been actually incurred and that they fell within the scope of the costs order and had produced sufficient evidence to enable the court to decide whether they had been reasonably incurred and were reasonable in amount. She submitted that it is not the practice of the market for experts, such as expert accountants, to prepare and provide to their client itemised timesheets for individual fee earners.

81. Although, shortly before the hearing, Mr Vik produced evidence of what Dr Drudge had charged, Miss Manby suggested that his failure to produce any evidence as to what Grant Thornton had charged was telling. At the pre-trial review the Defendant estimated its experts' costs at £7.274m to 31st January 2013 with a further £4.502m estimated for the future. At the handing down hearing the Defendant's leading counsel indicated that the Defendant's costs could be about 10% higher than had been estimated. So that would put the costs of the Defendant's experts at about £13m. Miss Manby reminded me that Deloitte had the much bigger task of extracting the data from which all of the experts worked.

82. Miss Manby submitted that there are no special rules for the assessment of these fees. The requirements of CPR Practice Direction 47 in relation to work done by legal representatives do not apply to expert witnesses and the principles relating to office holders (*Brook v Reed* and *Re Brilliant Independent Media Specialists Ltd)* were not relevant.

The court's approach to the assessment of Deloitte's fees

83. The Claimant's costs are to be assessed on the indemnity basis. The court may not allow costs which have been unreasonably incurred or are unreasonable in amount (CPR 44.3(1)). Any doubt which the court may have as to whether the costs claimed were reasonably incurred or were reasonable in amount will be resolved in favour of the Claimant (CPR 44.3(3)). In deciding whether the costs claimed were unreasonably incurred or unreasonable in amount, the court will have regard to all the circumstances (CPR 44.4(1)). The court will also have regard in this particular case to: (a) the conduct of the parties before and during the proceedings and the efforts made to resolve the dispute; (b) the amount of money involved; (c) the importance of the matter to the parties; (d) the particular complexity of the matter; (e) the skill, effort, specialised knowledge and responsibility involved; (f) the time spent on the case; and (g) the place where and circumstances in which the work was done.

84. CPR Practice Direction 47 provides guidance about the procedure for detailed assessment. Paragraphs 5.12 to 5.22 set out the requirements for the contents of a bill, but relate largely to profit costs. There are no specific provisions as to the form or

[7] The term "irreducible minimum" was apparently first used in relation to costs in *Beach v Smirnov* [2007] EWHC 3499 and referred to by Christopher Clarke LJ in *Excalibur Ventures LLC v Texas Keystone Inc.* [2015] EWHC 566 (Comm). It seems therefore to have had a short life as the benchmark for calculating payments on account of costs.

content of evidence in respect of disbursements apart from the requirement in paragraph 5.2(d) that written evidence must be served with the bill of any disbursement claimed which exceeds £500.

85. I cannot accept Mr Vik's argument that there are special rules in relation to the fees of accountants. Mr Williams QC readily volunteered that *Brook v Reed* and *Re Brilliant Independent Media Specialists Ltd* related to the fees of office holders who owe particular fiduciary duties. In the present case Deloitte will owe the usual professional duties to the Claimant and both Deloitte and the Claimant will owe to Mr Vik the very limited duties owed to third parties. It seems to me that an expert accountant can owe no greater duties to his client's opponent than any other expert witness. In my view there was no duty on Deloitte to record its time in any particular way, other than by reason of anything agreed with its client, and there is no duty on the Claimant to present Deloitte's fees for assessment in any particular way, other than the obligation to provide the written evidence required by CPR PD47 paragraph 5.2(d).

86. Mr Williams QC sought to argue that, to avoid injustice, those who seek to recover professional fees need to provide sufficient detail to enable those ultimately liable to pay them to gauge the reasonableness of the fees. I do not believe that there is such a general principle.

87. However, as I indicated in the June judgment, the assessment of the reasonableness of Deloitte's fees cannot be conducted in a vacuum. There has to be sufficient detail provided to allow the court to carry out the task required by the rules and, in particular, CPR 44.3 and 44.4.

88. What is sufficient detail will vary from case to case. In the very common case, where an expert's fee is claimed supported by an invoice along the lines of "writing report (*x* hours) x £*y* = £*z*", that will usually be sufficient. The court will have the report and can form a view as to how much time was reasonably spent writing it.

89. Had the Claimant sought in its bill £22,393,670.81[8] plus value added tax in respect of the fees of Deloitte for data extraction and the reports of Mr Inglis, Mr Millar, Mr Robinson and Mr Sealey, without more, there would be an obvious difficulty in considering whether that was a reasonable sum.

90. However there is more. While we are not told in an invoice or breakdown who did precisely what on which day, for most of the work described that is not required. The court would simply not be assisted in gauging the reasonableness of the fees claimed by knowing that a particular fee earner spent a particular amount of time writing a particular email; just as, in the most straightforward case, the court would not be assisted by knowing how much time a medical expert spent looking at x-rays or medical records, as against time spent dictating the report. However where more detail is required to enable the court to determine the reasonableness of the sum claimed, that sum must be disallowed.

91. In determining reasonableness, a costs judge must use his or her experience. As far as I am aware no costs judge, past or present, has experience of assessing quite such a

[8] by my calculation. The figure quoted in Mr Vik's offer in respect of the Claimant's experts' reports is £22,393,631.47.

large sum in respect of accountants' fees. However we all have experience of assessing accountants' fees in cases where limited information has been provided as to precisely what was done; and I and, I am sure, others will have experience of assessing very substantial fees in similar circumstances.

92. The assessment of costs is not of course as precise as many think and is a great deal less precise than many assessments of damages. While the results are expressed arithmetically, almost every decision on assessment involves a value judgment as to the amount of time reasonably spent. Because of the common ground between the parties, the main issue on this assessment, where there is sufficient detail to form a judgment, is the value judgment that the court should make as to the reasonableness of the time claimed. That is inevitably rough justice or as Russell LJ. explained, more elegantly, when describing the taxation of costs: "where justice is in any event rough justice, in the sense of being compounded of much sensible approximation".[9]

93. The court's approach to this assessment should therefore be one of "sensible approximation" where sufficient detail has been provided to do that.

Common ground between the parties

94. Despite the length of the hearing, there was a surprising amount of common ground:

    i) The reasonableness of the hourly rates of the Deloitte fee earners was not challenged. In some instances it was contended on behalf of Mr Vik that work done by more senior fee earners should reasonably have been delegated to juniors.

    ii) Both parties are content for the court to adopt a broad brush approach.

    iii) It is not in issue that it would be preferable for the court to decide the amounts due by reference to the items listed in the bill, because of the court's order that the Defendant (and by extension Mr Vik) pay interest from the dates on which the Claimant paid the invoices rendered to it.

The 7 pillars of wisdom[10] and other relevant circumstances

95. Having regard to CPR 44.4(1) and (3), it seems to me that the more relevant factors in relation to the assessment of the Deloitte fees are as follows. This was mammoth[11] commercial litigation conducted at great expense by both parties. Both parties had substantial resources at their disposal and each was willing to devote huge sums to this case. The sums claimed and counterclaimed were huge. As described in the judgment of Cockerill J. quoted earlier, the conduct of Mr Vik is not irrelevant. Of particular relevance to the fees of Deloitte are the findings of dishonesty in relation to the alleged oral agreements and the dishonest basis of the counterclaim. Because of the sums involved and the issues of reputation raised collaterally, the matter was of importance to the parties and the evidence of Deloitte was crucial to both claim and counterclaim. I am satisfied that the case was hugely complex, raising difficult questions. This was a

[9] *Re Eastwood (deceased)* [1975] Ch 112
[10] The eighth, the receiving party's last approved or agreed budget, is not relevant as there was no budget.
[11] Various adjectives were used by counsel, of which "titanic" was used the most. Although I think I may have used it in a previous judgment, the connection with sinking ships is uncomfortable.

case which, in terms of the accountancy evidence, required the most specialised knowledge probably only to be found in one of the largest accountancy firms. Clearly a great deal of time was spent on the case – how much time was reasonable is the essential issue in this part of the assessment. The work was properly done in the City of London (there is no challenge to that) and had to be done in accordance with the timetable dictated by the court.

The experts' reports and Mr Vik's offers

96. The approaches taken in the supplementary points of dispute and by counsel in addressing the experts' reports separately, and the approach taken on behalf of Mr Vik in making offers tied to the experts' reports, mean that I should address them separately although my decisions will be made by reference to the items in the bill.

97. Mr Williams QC submitted that it was "jaw-dropping" that the Claimant was not able to indicate the cost of any particular report or of any particular expert. He pointed to the difficulty which the Claimant would have faced had the cost of a particular report or expert been disallowed. However it seems to me that while that difficulty would in part be due to the way that time was recorded, in part it would also be due to the fact that Deloitte provided 4 expert witnesses and inevitably there would be some overlap in work done by the supporting team.

98. Despite the drop of the jaw, Mr Vik was able to make specific offers in his supplementary points of dispute which, having been honed during submissions, were helpfully provided in a written breakdown[12] on the last day of the hearing. I will not repeat the breakdown, but the total offer for the 4 Deloitte experts is £1,627,103.83. Deducting that figure and the amount of the concessions made by the Claimant (put at £655,532.63) leaves £20,110,994.90 of which Mr Williams QC submitted only an "irreducible minimum", if anything, should be allowed given the insufficiency of the evidence. Although that irreducible minimum has not been identified it is clear that the parties are poles apart.

The experts' reports - Mr Millar's first report

99. On behalf of Mr Vik, Mr Morris argued that Mr Millar's task was easier than that of his opposite number, Dr Drudge. He did not need to calculate the Claimant's exposure valuations, which were dealt with by Mr Malik of Navigant. His report was limited to calculating the credit support amounts and value at risk. Some of his work related to calculating VaR applying the initial margin[13], and the cost of that work should be disallowed.

100. Mr Morris suggested that the bulk of the work lay in setting up the Deloitte proxy which produced the results recorded in the report. Mr Millar described the Deloitte proxy in his third witness statement, dated 5th October 2012, at paragraph 11 and following. Mr Morris contended that the models used by Deloitte were commonplace in the industry and used straightforward software. He alighted on paragraph 12, where Mr Millar explained that:

[12] Summary of Mr Vik's offers on Deloitte's reports - 8th December 2020
[13] See Mr Millar's first report paras 1.19(ii) and 1.23(iii) and (iv)

> The component models included in the Deloitte Proxy are implemented using MS Excel and Matlab; software packages which are both very widely used for financial modelling and which will be readily understood (and easily reproduced) by any competent person with experience of financial models.

101. Mr Morris also took me to the transcript of Mr Millar's evidence on day 40 of the trial where, in cross-examination, he described how the pricing library that he had used "included a set of models that I had, some of which I already had and some of which I had to tweak a little bit".[14]

102. Mr Morris also relied on the fact that Mr Millar and Dr Drudge were able to agree that the approaches taken to the valuation of VaR by both of them were reasonable and that any differences in their valuation models were unlikely to give rise to significant differences in results.[15]

103. So, submitted Mr Morris, in respect of the work done cumulatively by Mr Millar and Mr Malik, the costs of Dr Drudge's work were a useful "sense-check". Dr Drudge's invoices were disclosed by Mr Vik shortly before the hearing and, as I understand it, the total cost of his work on the valuation and first report was about £230,000.[16]

104. Mr Morris took me through the Deloitte monthly summaries with a view to establishing that it was difficult to discern precisely how much work had been done on Mr Millar's reports. Mr Morris suggested that it appeared that the valuation work had largely been done by May 2012 and that thereafter Mr Millar was largely defending what he had done. The bulk of the work in writing the report and in calculating the Credit Support Amounts had been done in November and December 2012 (the report is dated 17th December 2012). Work done in between those periods would largely have related to the wrangling between the parties at the case management conferences as to which methodology should be used and the costs of that were dealt with at the time and assessed summarily.

105. Mr Morris submitted that it was impossible to know how much work had been done by Mr Millar and his team in defending the Deloitte methodology, but all of it should be included in the costs of the case management conferences.

106. In response, in relation to Mr Millar's first report, Miss Manby submitted that the report speaks for itself and she commended it to me. She pointed out that, although we have been told what Dr Drudge charged, we have not been told what Grant Thornton charged, although it would presumably be the bulk of the £13m estimated for the whole of the Defendant's experts' evidence. Mr Millar's report was backed up by complex documents and complex calculations.

107. As is apparent from Mr Millar's evidence at trial, the pricing engine was created for this case from scratch by Deloitte, although some of the models used within it were already in existence. There was no industry standard methodology for calculating VaR. Mr Millar therefore had to take the Disclosed Methodology, a description of that which

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[14] Transcript – day 40, p.23 lines 6-8
[15] Joint experts' memorandum of Mr Millar, Mr Malik and Dr Drudge 8th February 2013
[16] Skeleton argument on behalf of Mr Vik, para 122

the Claimant had used, to create a methodology which broadly approximated with it. Dr Drudge however did not seek to recreate the Claimant's approach, he had just used his own methodology.

108. The outcome of the expert evidence was that the court preferred the evidence of Mr Millar and concluded:

> … that the calculations produced by Mr Millar's DM model represent VaR, calculated in accordance with the methodology which DBAG customarily used with its counterparties and that the results were commercially reasonable and therefore represent DBAG's contractual entitlement to margin in the relevant periods (subject only to any minor alterations necessary to take account of the Dual Currency Range Trade).[17]

109. As to the detail of the work underlying Mr Millar's first report I was referred by Miss Manby to a number of documents which were disclosed to the court but not to Mr Vik's legal representatives. I had the benefit of Miss Manby's speaking note on Mr Millar's first report, which was disclosed, and which I need not repeat here.

The experts' reports – Mr Millar's subsequent reports

110. Mr Millar had to consider Dr Drudge's report, prepare for the joint meeting, prepare the joint memorandum and prepare his reply report. Mr Morris relied on Dr Drudge's charges of about £28,000 for considering the Millar and Malik reports (44 hours) and attending the experts' meeting, and about £12,500 for preparing the reply report (23 hours replying to the reports of both Mr Millar and Mr Malik).

111. Mr Morris took me through the joint memorandum and suggested that Mr Millar would have needed to spend no longer than 40 hours reading Dr Drudge's report and preparing for the meeting and no more than 20 hours for work on the memorandum. The issues were well within the knowledge of both experts, they were agreed that both methodologies were reasonable and the methodological differences were not unduly complex. Mr Morris suggested that there would have been no need for other members of the Deloitte team to be involved.

112. In respect of Mr Millar's reply report, while it set out different calculations, they used the same models. Mr Morris suggested 43 hours of Mr Millar's time to draft the reply report with 50 hours of assistant manager time in addition.

113. In reply, Miss Manby submitted that the joint memorandum was far from straightforward. It was not clear that Dr Drudge's work was the full extent of the work done on VaR by the Defendant and there was no evidence as to what the Defendant's other experts had done or had charged. Miss Manby took me to some evidence of Dr Drudge's liaison with the Defendant's other experts. She submitted that Dr Drudge's fees were not a useful yardstick given that he had approached the matter in a different way, using his own methodology. The areas of agreement and disagreement had to be considered carefully and further calculations had been required.

[17] Judgment of 8th November 2013 para 549(vi)

114. In response Mr Morris submitted that while Grant Thornton had relied on Dr Drudge's calculations, he had not relied on any work done by them.

The experts' reports – Mr Millar's trial preparation

115. Mr Morris submitted that it was impossible to work out from the monthly summaries how much time was spent on trial preparation. However Mr Millar had spent thousands of hours by this point, by trial he should have been the complete master of his brief and he would simply need to re-read his reports and those of his opposite number. Mr Morris suggested that 75 hours would be reasonable for that, including attending court on the one day that he gave evidence. Dr Drudge's time for preparing for and attending court was 41 hours. It was not reasonable for Mr Millar to attend cross-examination preparation sessions with his team.

116. In reply, Miss Manby took me to a number of documents, which were not disclosed, to show the extent of the work done in preparation. While the Claimant would have some difficulty in identifying the time spent within Deloitte preparing for cross-examination, there was one meeting, scheduled for 90 minutes, held at the Claimant's solicitors' offices on 21st May 2013 with the 4 Deloitte experts "to discuss the role of experts at trial and to answer any practical questions you may have about your forthcoming cross-examination".[18]

The experts' reports – Mr Robinson's first report

117. Mr Robinson's task was to report on the market value of shareholdings in 9 companies on 3 dates. The companies were all incorporated overseas and most of them had limited trading on stock exchanges. The shareholdings had been used as security by the Defendant for its trading through the Claimant.

118. The sources of information used in the valuations are listed in appendix 1.2 of the report, largely annual reports, the relevant stock exchanges and financial information provides such as Bloomberg.

119. Mr Morris suggested that Mr Robinson should have done most of the work himself and repeated the suggestion in the supplementary points of dispute that 275 hours of Mr Robinson's time and 40 hours of a junior analyst's time (at manager level) for checking and formatting the report would be reasonable.

120. In reply Miss Manby observed that we do not know what Grant Thornton had charged for carrying out the company valuations. She relied on the description of the detailed analysis that had been necessary in appendix 1.2 of the report.

The expert's reports – Mr Robinson's subsequent work and trial preparation

121. Mr Davies of Grant Thornton provided the equity valuation evidence on behalf of the Defendant. His report, which ran to 70 pages, adopted a different approach to valuation. The joint memorandum was 30 pages long with 16 pages of appendices. Mr Robinson then produced a very short reply report which included a revised valuation for one of the shareholdings.

[18] email Tom Snelling (Freshfields) to the Deloitte experts 20/5/13 15.50

122. It is suggested on Mr Vik's behalf in the supplementary points of dispute that 57.5 hours of Mr Robinson's time but more than 350 hours by other fee earners was spent in total, including time spent in February 2013 cutting down a 17 page draft reply report to 3 pages. 40 hours of Mr Robinson's time and 10 hours for a junior fee earner checking and formatting is suggested as reasonable.

123. The monthly summaries for June and July 2013 suggest 82 hours of Mr Robinson's time in preparation for trial, including attending court to watch the Defendant's leading counsel's cross-examination of another witness. Mr Morris submitted that this outing was unreasonable. Mr Robinson attended court to give evidence for half a day. For trial preparation and attendance Mr Morris suggested that 75 hours of Mr Robinson's time would be reasonable.

124. Miss Manby submitted that time spent researching the company valuations was better delegated to more junior fee earners. The careful approach taken by Mr Robinson was vindicated by the judgment:

> It is thus clear that Mr Robinson's approach reflects the correct position in law and the instructions given to Mr Davis have resulted in his valuation being provided on a wrong basis.[19]

125. How Mr Robinson chooses to spend his time is up to him. However I have no hesitation in concluding that the attendance by Mr Robinson and his team to watch the Defendant's leading counsel "in action" was not reasonably incurred between the parties.

The experts' reports – Mr Sealey

126. Mr Sealey, a forensic computer expert, was instructed to report on the authenticity of the Hypothetical Portfolio. That largely involved considering the report of Mr Racich who had examined and reported on the hardware said to have contained the Hypothetical Portfolio files and examining copies of the files which had been extracted from the hardware.

127. Following exchange of reports, Mr Sealey met with his opposite number, Mr Surrey, and they produced a 20 page memorandum. During the trial they produced a further 2 page memorandum, following the oral evidence of Mr Johansson, which avoided the need for the experts to give evidence.

128. Mr Vik has offered 90 hours of Mr Sealey's time for drafting the report plus 10 hours of an assistant manager's time, 70 hours of Mr Sealey's time and 10 hours of assistant manager's time for the joint meeting and joint memorandum and 50 hours of Mr Seeley's time for trial preparation. That has been calculated at £96,600 (before any discount).

129. Both Mr Morris and Miss Manby relied on the lack of evidence for Mr Sealey to examine; Miss Manby arguing that more work was required to see if the conclusions could be reached despite the lack of data. More work was then required during the trial

[19] [2013] EWHC 3463 (Comm) para 1380

as the result of Mr Johansson's evidence. Mr Sealey was stood down only on the Friday before the Wednesday that he was due to give evidence.

The experts' reports – Mr Inglis' first report

130. Mr Inglis was instructed to report on the Claimant's loss claims and the Defendant's loss claims in respect of both the Global Prime Finance prime brokerage relationship and the Foreign Exchange prime brokerage relationship. In particular he was asked to consider the effects of the errors and inaccuracies in the Claimant's internal systems and records.

131. Mr Inglis concluded that he had been able to obtain sufficient information from the unstructured data and other disclosure to identify and correct the errors in the structured data for the purposes of the loss calculations. He was therefore satisfied that the errors did not prevent a proper and accurate calculation of the losses.

132. Mr Inglis' report supported the value of the Claimant's claim under the GPF agreements at US$125m, and under the FX prime brokerage arrangement at US$119m. The latter was US$2m less than that contended by the Claimant.

133. In respect of the Defendant's counterclaim, Mr Inglis considered (1) the effect of a number of alleged trading limits in respect of the Defendant's FX trading on 6 different FX alternative scenario trade populations (2) the direct losses alleged under 6 loss scenarios, based on different assumptions as to which parts of its case the Defendant established (3) the loss of profits alleged under 6 scenarios (4) the margin calls under the FX agreements (5) the margin requirements under the GPF agreements and (6) whether the Defendant's hypothetical portfolio was realistic.

134. The first report runs to 314 pages with a further 570 pages of appendices and exhibits.

135. Mr Williams QC accepted that there will be "significant allowances" for this work, although that would require approximation because of the Claimant's failure to require Deloitte to bill properly. Mr Inglis had spent 914 hours working on this case between February and December 2012 (when the report was served), all recorded under "Leadership and Project Management" and further, unspecified, time between July 2011 and January 2012. Much of this time however appeared to be related to case management conferences and witness statements and it was impossible to say how much time had been spent on the report. Similarly, while significant time was recorded by Mr Inglis' team, it was impossible to say how much related to the report.

136. One of the criticisms of Mr Inglis' work made on behalf of Mr Vik was that his team had carried out "a very substantial amount of work on the remainder of the Structured Data in respect of which there are no specific allegations".[20] In my view that work was not done unreasonably. There was a wholesale challenge to the accuracy of the Claimant's systems and a tendency for the Defendant's case to change. While considering the accuracy of some of the structured data, it would be prudent to consider the accuracy of all of it.

[20] Mr Inglis' first report 19th December 2012 para 2.4

137. Similarly it is argued on behalf of Mr Vik that although Mr Inglis and Mr Davies had agreed that the order for expert evidence did not require them to identify whether or not the data disclosed was sufficient to enable them to quantify the parties' claims, Deloitte had done considerable work to render the Claimant's data reliable. However it seems to me that there is a difference between whether the data disclosed was sufficient and "whether and to what extent [the Claimant's] structured data demonstrated that errors and inconsistencies had the effect of rendering [the Claimant's] systems unreliable or inaccurate", which was the work required by the order and of which complaint is now made.

138. In respect of the work done on the first report, Mr Vik offered 850 hours of Mr Inglis' time and 1,700 hours at a manager's rate. That equates to £855,206 plus value added tax.

139. On behalf of the Claimant Miss Manby pointed to the lack of evidence as to what Grant Thornton had charged. The work that underlay Mr Inglis' report was enormous: from checking the accuracy of the Claimant's data through to preparing complicated calculations on a number of alternative scenarios. I had the benefit of Miss Manby's speaking note on the background to the report and sections 8 (alternative scenarios) and 14 (the Hypothetical Portfolio), which was disclosed to Mr Williams QC and Mr Morris, and which I need not repeat here.

140. In reply Mr Williams QC suggested that it was for the Claimant to show that Mr Vik was still connected with the Defendant to be able to produce evidence of Grant Thornton's fees. It seems to me that I cannot draw any conclusion from the absence of evidence as to what Grant Thornton charged, beyond the fact that I do not have any evidence to make a comparison. However it seems to me to be fairly obvious that the task faced by Deloitte would have been significantly greater than that faced by the Defendant's experts. Not only did they have to produce the information upon which both sides' experts worked, they also had to explain the information to the Defendant's experts.

The experts' reports – Mr Inglis' subsequent work to trial

141. Following exchange of reports, Mr Inglis had to read Mr Davies' report, prepare the joint memorandum and produce a reply report. Mr Williams QC accepted that Mr Davies' report was substantial. As against the 500 hours or so of Mr Inglis' time recorded between January and March 2013, Mr Vik offered 275 hours plus the time spent in meetings, made up of 150 hours for reading Mr Davies' report and meeting preparation, 25 hours for agreeing and drafting the joint memorandum and 100 hours for the reply report. In addition, he offered 675 hours at the manager rate. After a 15% discount, that would give a total of £257,167.

142. During the course of the hearing the Claimant's solicitors produced a list of meetings between Mr Inglis and Mr Davies in 2013. There were 16 meetings, of which 8 took place in the first 3 months of the year.

143. The joint memorandum runs to 50 pages. As one might expect, there are some areas of agreement but there remained many areas of disagreement and a number of areas where further work was required. Mr Williams QC suggested that hundreds of hours of work were simply not needed for this. I disagree. The memorandum is a pithy summary.

However, reading the detail, it is clear that there must have been considerable work, including a great degree of analysis and recalculation, underlying it.

144. Mr Inglis' reply report, dated 20th March 2013, ran to 264 pages plus 400 pages of appendices and exhibits. Mr Williams QC took me through it and suggested that for many of the sections little work would have been necessary and that only small adjustments had been made.

145. In reply Miss Manby pointed to the different approaches taken by Mr Inglis and Mr Davies. They had used different methodologies. Mr Inglis also had to cope with the changes to the Defendant's pleaded case and, even where he simply restated his conclusions, he will have had to check them in the light of Mr Davies' report and their discussions.

146. In answer to the criticism of the time spent on interest calculations, Miss Manby pointed to schedule 2 of the order made by Cooke J. on 10th October 2012[21] which required interest to be calculated on a number of different bases from a number of different dates.

The experts' reports – Mr Inglis' preparation for trial

147. Mr Williams QC calculated that between April and July 2013 Mr Inglis had spent 646.5 hours on trial preparation and attending trial. Mr Vik offered 150 hours for that and a further 25 hours for agreeing the second joint memorandum with Mr Davies (together with 75 hours of managers' time). Mr Davies and Mr Inglis had given evidence on a single day, 9th July 2013. As with the other experts, it was contended on behalf of Mr Vik that what would have been required of Mr Inglis was a re-reading of the reports. Time spent in mock cross-examination should not be recoverable.

148. In reply, Miss Manby pointed to the wide range of issues which Mr Inglis had to address and the scope of the expert evidence provided for by the directions ordered by the court. Because the agreed areas for cross-examination narrowed significantly shortly before and at trial, the scope of the oral evidence at trial became limited.

149. It was also the width of the range of issues which required Mr Inglis to be supported by a team. It would not have been possible for one person to deal with all of these issues in the time available.

The experts' reports – conclusions

150. In respect of Mr Millar's evidence, the calculations required clearly involved a considerable amount of work. That was so not only in performing the calculations but also in creating or modifying the models used. I think that a direct comparison with the time spent by Dr Drudge is unhelpful because he approached the task in a different way. I am satisfied that significantly more time should be allowed than has been suggested on Mr Vik's behalf. That said I am also satisfied that the time spent is too long to be reasonable even on the indemnity basis. The time apparently spent preparing for the trial is an obvious example. Experts should of course spend time preparing to give their evidence and that should largely consist of re-reading their reports, their instructions, the underlying evidence and their opposite number's reports. But they are giving

[21] October order one

evidence as independent experts. If they choose, or are asked, to spend time in mock cross-examination or in preparing for the questions that they may (or may not) be asked, that is a matter for them or their client. Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.[22] Time spent polishing performance is not time reasonably spent.

151. In respect of Mr Robinson's evidence, I am satisfied that his task was greater than was suggested on behalf of Mr Vik. These were not straightforward valuations of domestic companies. I cannot accept Mr Morris' submission that this work was not properly done by a team. The considerable research that would have been required would better be performed by more junior fee earners. However again it seems to me that the time claimed, in particular by his team, is still too high to be reasonable.

152. In respect of Mr Sealey's evidence, I accept that it was of considerable importance. The Hypothetical Portfolio lay at the heart of the valuation of the counterclaim. Cooke J. referred to the experts' conclusions[23] on the road to reaching his conclusion that the Hypothetical Portfolio was, at least in part, a fabrication.[24] However the time set out in the monthly summaries that is identifiable to the work done by Mr Sealey and those assisting him is, in my view, too high to be reasonable. While the time offered by Mr Vik would, for expert evidence on computer analytics in an ordinary case, appear generous, as the offer makes clear, this is not an ordinary case. Mr Morris suggested a figure of £10,000 to £15,000 for computer analysis "usually". The sum claimed is of course in large part due to the hourly rates which are much higher than would ordinarily be charged for this sort of work. Given what was at stake, in my view a painstaking approach was justified.

153. In respect of the evidence of Mr Inglis, again I accept that this was a mammoth task. Icebergs were referred to at several points throughout counsel's submissions. The calculations of the claims and the counterclaim and the opinions on the likelihood of the Hypothetical Portfolio are the small part above the waterline. They were buttressed by a huge amount of work in analysing the documents disclosed by the Claimant. As an example one can but imagine the work required in checking and correcting the errors in the Claimant's structured data. However, imagining it is of course my job.

154. In respect of the trial preparation, while I agree with Mr Williams QC that the cost of time spent in mock cross-examination is not reasonably incurred, the breadth of Mr Inglis' work will have required a substantial amount of time. The time offered for this by Mr Vik is at the lower end of the band of reasonableness.

155. While Mr Vik is offering a substantial amount of time in respect of Mr Inglis' work overall, to my mind it severely underestimates the tasks required. Tethering the offers to the reports conceals the work which was not directly part of the report preparation but which was necessary to produce the information upon which the reports were based.

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[22] CPR PD 35 2.1
[23] [2013] EWHC 3463 (Comm) para 1536
[24] [2013] EWHC 3463 (Comm) para 1551

Submissions on the detail in the monthly summaries

156. I was addressed, at length, on the details set out in each of the monthly summaries. It would be impractical to record those submissions, which descended to the details of the work done by many of the individual fee earners, in other than the broadest terms.

157. In broad terms, the principal submissions on behalf of Mr Vik were:

i) There was insufficient detail in the July 2011 to January 2012 summaries to enable assessment. The detail had been created after the event. As the preamble to the summaries explained, somebody had exercised judgement to determine how the tasks had been summarised, but there was no explanation of how the judgement had been exercised.

ii) Allocating time to particular workstreams will largely have been guesswork.

iii) Although some meetings with the Claimant or its solicitors had been identified, there were no details as to how many fee earners from Deloitte had attended or how long they had spent preparing for or travelling to and from the meetings. By reference to the Claimant's solicitors' attendance notes of conferences considered earlier in the assessment, too many people had attended.

iv) No adequate costs control was exercised by the Claimant's solicitors or Deloitte.

v) In the earlier invoices, there was no explanation of the expenses claimed. No explanations were given or vouchers produced for travelling and hotel expenses. Where the trip was not short, business class fares should not be recoverable.

vi) The cost of negotiating and preparing engagement terms was not recoverable.

vii) Work done on the complaint in New York was not recoverable.

viii) The Claimant should have been able to identify the parts of its systems which were relevant and the relevant employees, thereby reducing the amount of time spent on disclosure. Much of the work on disclosure should have been done by the Claimant; for example the identification and retrieval of telephone call recordings.

ix) Work that was amended after discussions with the Claimant's solicitors was not reasonably incurred.

x) Work done on litigation support and disclosure will have duplicated work done by the Claimant's solicitors. The Claimant's solicitors spent over 800 hours on disclosure. There was no need for multiple fee earners to read the same documents.

xi) Work was not properly delegated. Too high a proportion had been done by the more senior fee earners. Work on disclosure, much of which was non-technical, could have been done my more junior fee earners or by junior lawyers at lower rates than the Deloitte junior fee earners. A reasonable rate for a junior lawyer would be £135.

xii) The work done on initial margin, the costs of which were not recoverable by the Claimant had not been adequately identified or excluded.

xiii) There had been no explanation of the methodology used to create the trade lists. The lists were relatively straightforward and should have been created in a short time. However 1,567 hours were identified in the monthly summaries, of which 634 hours were at the manager rate. There would have been more time as work done on trade lists before February 2012 was not identified.

xiv) The experts' reports should largely have been the work of the named experts, rather than teams of assistants.

xv) Attendance by Deloitte's fee earners at the trial would have been reasonable only on the days when the experts were giving evidence on technical issues. However there were no details of who had attended, when, why, or for how long. It was unreasonable for time to have been spent reviewing the daily transcripts or summary documents.

xvi) Deloitte's time appeared to be claimed in rounded hours.

xvii) The time spent on interest calculations was obviously excessive. Interest should have been calculated once the sums due had been determined.

158. In response, Miss Manby submitted that the court could have confidence that the work was done. The time spent had been recorded and the work done had been identified, even if the amount of time spent on each task was not clear. In relation to each of the monthly summaries Miss Manby showed me examples of the work that was being done either by reference to the orders and witness statements in the core bundle or by reference to documents which had not been disclosed, such as emails and drafts circulating between Deloitte and the Claimant's solicitors.

159. Miss Manby submitted that the technical nature of the case required Deloitte to have an input into areas where experts may not often tread, such as correspondence between the parties' solicitors. Conversely the technical nature of some of the documents disclosed required consideration by specialist accountants rather than lawyers.

160. Little work had been done on initial margin, which took up only 2 sub-sub-paragraphs of the Re-re-amended Reply and Defence to Counterclaim. Nothing was done before August 2012 and the Claimant's case on the point was withdrawn on 5th February 2013, after the experts had met but before the joint memorandum was prepared. Most of the work done in initial margin had been done by Navigant rather than Deloitte. The Claimant's concession of 0.5% of Deloitte's fees for the period when initial margin was in issue was therefore reasonable.

161. In relation to the trade lists, the court had set a timetable and the obligation was on the Claimant's experts to produce them and try to agree them with the Defendant's experts. A huge amount of work was done to reconcile them.

162. Time had been charged in 15 minute units, which is standard practice among accountants.

163. In relation to the points raised in submissions on behalf of Mr Vik, my views are:

i) Obviously it would be preferable if there were more detail in the invoices. However there is sufficient information to enable me to decide whether the work was reasonably done and the reasonable amount that should be allowed.

ii) Inevitably the allocation of time to particular workstreams has involved a value judgement by somebody after the event. However that does not mean that it is unhelpful.

iii) In the chronological part of the bill I disallowed 4 consultations at which Deloitte fee earners were present: 27th June 2012; 23rd November 2012; 29th November 2012; and 21st June 2013. In reaching my decisions on the sums to allow, I have made some discounts for attending meetings with Freshfields and disallowed some time for preparation, travelling and the numbers of fee earners likely to be present. Given that I have adopted the broad brush which the parties have anticipated, I cannot give a breakdown of those deductions.

iv) I am not satisfied that there was no adequate costs control by the Claimant. I am not surprised that I have not been shown any overall estimates or budgets for this work, although I have seen estimates given by Deloitte for particular projects and tasks. Clearly this was going to be a huge undertaking and the work that would be required would have been uncertain. Both sides were willing to devote substantial resources to this litigation. However I doubt that either side exercised no control.

v) Inevitably expenses would be incurred. Where these appear unusual or I have no explanation I have disallowed them.

vi) The cost of negotiating terms is properly part of a professional's overheads rather than the costs of litigation.

vii) Work done in respect of other proceedings would not be recoverable in these proceedings, unless it was of use and service in these proceedings.

viii) I have previously decided (preliminary issue 4) that the work done by Deloitte is recoverable in principle and that, given the size of the task, the Claimant could not reasonably have done this work in-house.

ix) In principle, work done correcting or altering work that has already been done may be reasonably incurred. It is not always possible to get things right first time, especially where there is considerable complexity. Whether the further work was reasonable depends on the circumstances.

x) Deloitte were not performing the same tasks as the Claimant's solicitors, but they would reasonably have some involvement in each other's work. For example it would have been reasonable for Deloitte to have involvement in the correspondence with the Defendant's lawyers about disclosure and about the methodology used by the experts. In relation to disclosure, Deloitte and the Claimant's solicitors were performing different functions. Deloitte were

filtering it technically and the Claimant's solicitors were filtering it in relation to whether and how it needed to be disclosed.

xi) There does seem to be a disproportionate amount of work done by more senior fee earners. While I accept that much of the work will have been technical and complex, it should have been within the abilities of relatively junior fee earners. The decision to instruct Deloitte to carry out the work on data, systems and disclosure was reasonable. It would have been reasonable for this work to be carried out by junior fee earners of Deloitte, rather than sub-contract it to outside lawyers. Again, this was technical filtering.

xii) I am satisfied that the work done by Deloitte on initial margin was relatively limited.

xiii) The amount of work done on trade lists does appear to be more than was reasonable. I have taken that into account in the fees that I have allowed.

xiv) While a single expert would be giving evidence, it was reasonable, given the size of the task, for the work underlying the report to be done by others. Had all of the work been done by the named expert, doubtless there would be an argument that there should have been delegation.

xv) A schedule of Deloitte fee earners attending trial was created after the event during the detailed assessment.[25] According to the Claimant's solicitors the schedule was created by reference to contemporaneous records and the recollections of those involved. It seems to me that is the best evidence of what happened. It was reasonable for some Deloitte fee earners to be present where evidence was being given which was relevant to the work that they had done, including during the evidence of witnesses of fact. I do not think that it was reasonable for more than 2 fee earners to be present for each witness. I have made what I consider to be appropriate reductions in the numbers of hours that I have allowed for the relevant months. It would also be reasonable for some other members of the Deloitte team to read a summary of the evidence. Some time for Deloitte fee-earners reading the transcripts would be reasonable.

xvi) The time appears to be claimed in 15 minute units which, in my experience, is standard practice for accountants.

xvii) The court had directed calculations of interest as well as damages. However interest calculations should be relatively straightforward for accountants.

Items not challenged in the points of dispute

164. Miss Manby complained that Mr Vik was seeking to challenge items or raise objections which were not made in the points of dispute or the supplementary points of dispute. As Mr Morris expressly stated that Mr Vik was not challenging anything which was not raised in either version of the points of dispute, I concluded that I did not need to determine the issue. Accordingly, in reaching my decisions, I have not taken into account challenges which were not pleaded.

[25] As appendix 1 of Freshfields' letter to Brecher dated 1st December 2020

The benefit of the agreed discounts

165. Mr Vik claims the benefit of any discounts agreed between the Claimant and Deloitte. Miss Manby submitted that Mr Vik was not entitled to the benefit of the discounts provided that the amount allowed did not exceed the Claimant's liability to Deloitte.

166. The principle of individual application expounded in *Friston on Costs*[26] would suggest that Mr Vik's argument is correct. If Deloitte has charged £2,000 for 10 hours, with a discount of 10%, the Claimant's liability would be £1,800 and it could not recover more than that from Mr Vik. If only 6 hours were allowed at £200 per hour, £1,200 would be recoverable before any discount. That is less than the Claimant's liability of £1,800. However it is more than the Claimant's liability *for the work that has been allowed as reasonable* after application of the discount (£200 x 6 x 90% = £1,080).

167. While it may be that the discounts that were agreed were negotiated on the basis of the work anticipated and may not have been available had less work been anticipated, we have no way of knowing what discounts may have been available for the amount of work now found to be reasonable. We do however know that discounts of 5% for fees over £250,000 and a further 5% over £500,000 were agreed at the outset.[27] Given the size of this project it is reasonable to infer that the further discounts would have been agreed.

168. But whether they would have been or not, the court's task is to allow what was reasonable. If a leading accountancy firm was willing to do this work at discounted rates, one can infer that a reasonable rate would be the discounted rate and not the undiscounted rate.

169. The sums that I have allowed below in respect of each invoice are before the application of any discount. I leave it to the parties to calculate the amounts that should go in the bill as assessed after deducting the appropriate discount.

The 8 hour cap

170. Similarly Mr Vik should be allowed the benefit of the agreement that where a fee earner had worked more than 8 hours in a day, only 8 hours would be chargeable.

171. Where the court has allowed fewer hours, it is impossible to say whether the disallowed hours would have fallen on a day when the cap was breached or not. Fewer people may have been working longer days, so the cap applied more often, or the same number of people may have been working shorter days and the cap may have applied less often.

172. The just approach, it seems to me, would be to apply a discount for each invoice calculated as the percentage that the reduction allowed in the invoice because of the cap bears to the total time charges in the invoice. So for example, for July and August 2011 there should be a discount of 4.8 per cent (being 9,185 as a percentage of 190,984).

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[26] 3rd ed. Para 18.11ff

[27] Deloitte's letter to Freshfields 15th August 2011

The concessions made by the Claimant – Initial Margin

173. The concession made in relation to work done on initial margin, 0.5% of Deloitte's invoices for the months August 2012 to 8th February 2013, is explained in the Claimant's solicitors' letter dated 9th June 2020. In broad terms, Deloitte had used Navigant's initial margin calculations and they were used by Mr Millar only in the calculations for a limited number of trades in 2 margin approaches. Mr Inglis had then inputted Mr Millar's margin approaches in his own calculation.

174. Rather than take the Claimant's broad estimate of the work done on initial margin, I have made my own in arriving at the total numbers of hours that I have allowed. In doing so I have accepted that the amount of work done on initial margin was limited.

The concessions made by the Claimant – CMCs

175. The Claimant's concessions made in the replies to the supplementary points of dispute are explained in the letter from the Claimant's solicitors dated 18th November 2020.

176. I appreciate the argument on behalf of Mr Vik that, without an explanation of all of the work done, one cannot determine precisely what work was done in relation to the hearings the costs of which were summarily assessed. However, even where there is granular detail of the work done, one can never be certain that work claimed in a bill for detailed assessment had not already been allowed in a schedule for summary assessment, because the way of presenting the information in the schedule is different.

177. I am satisfied that the Claimant's explanation looks to be a sensible and reasonable approach, producing figures which probably are reasonably accurate. Accordingly, I am satisfied that Deloitte was not involved in the February 2012 CMC and that the figures conceded by the Claimant for the May 2012, July 2012, October 2012 and January 2013 CMCs should be taken as the appropriate deductions for the work, the costs of which have already been allowed. I bear in mind that what was summarily assessed were the costs of preparing for and attending the CMCs, not the expert work that was directed as a result of the CMCs. For the avoidance of doubt, in arriving at the times that I have allowed I have not made any notional discount for the work now conceded.

178. The approach of deducting the figures conceded from the (lower) figures determined by the court to be reasonable may lead to a slight adjustment in Mr Vik's favour. That would however be the just result given that the problem was not of his making.

Concessions by the Claimant - quality assurance, Mr Inglis' retirement, shutting down the engagement

179. I have adopted the same approach in relation to these concessions.

Concessions by the Claimant - disallowed conferences

180. While I am satisfied that the Claimant has conceded the correct sum for the disallowed conferences, a further reduction should be made for preparation and the limited amount of travelling time that would have been required. It seems to me that it would be reasonable to assume that the same amount of time would have been spent in

preparation as attending at the meeting. In arriving at the times that should be allowed, I have made no deductions for the disallowed conferences. Accordingly a total of £75,269.60 (2 x £37,634.80) should be deducted from the relevant invoices.

Deloitte's fees – the amounts allowed invoice by invoice

181. For the months before February 2012, where the work is not listed by workstream, I have allowed the amount that I consider to be reasonable for each band of fee earner. From February 2012, when the work is divided by workstream, I have allowed the amount that I consider to be reasonable for each band of fee earner within each workstream.

182. As I have already indicated, in my view it was reasonable for the Claimant to instruct Deloitte to do this work. In broad terms, the costs claimed were reasonably incurred and, in large part, reasonable in amount given the size of the tasks undertaken. However I have no doubt that some of the work done exceeded the bounds of reasonableness. Too much time was spent. Based on my experience and the documents that I was shown by the Claimant during the course of the hearing, I have allowed what I consider to be reasonable for the work that was reasonably required. The reductions vary depending on the tasks being performed and the factors that I have attempted to identify above. I have dealt with this in a broad brush way, but I have not adopted an overall percentage reduction.

183. In arriving at the decisions set out below I have reminded myself that this assessment is on the indemnity basis and that any doubt that I have as to the reasonableness of the amount of the costs claimed must be exercised in the Claimant's favour.

184. Item 1,707 – July and August 2011

Rate £	Hours allowed	Amount allowed
591	20	11,820
438	30	13,140
336	220	73,920
199	100	19,900
183	9	1,647
15	120	1,800
expenses		2,500
Sub-total £		124,727
Rate US$		
612	1	612
503	70	35,210
340	75	25,500
218	70	15,260
expenses		3,000
Sub-total US$		79,582

185. This included setting up, so a significant amount of senior fee earner time was reasonable. Time has been disallowed for negotiating terms and considering proceedings in the United States. Work done in the United States related to considering

and searching the Claimant's systems there. Expenses allowed relate to Mr Cankett's fortnight in the United States, but not business class flights.

186. Item 1,708 – September 2011

Rate £	Hours allowed	Amount allowed
591	18	10,638
438	12	5,256
336	150	50,400
199	150	29,850
183	200	36,600
15	196.5	2,947.50
Sub-total £		135,691.5
Rate US$		
612	0.5	306
503	100	50,300
340	100	34,000
218	100	21,800
Sub-total US$		106,406

187. In September 2011 the principal work was data and systems, understanding the Claimant's systems, extracting the data and assisting with disclosure. There is, as one would expect, little partner time. However the amount of senior manager time is obviously out of kilter to the junior fee earner time, even though in this period there would still be something of a learning curve in relation to the Claimant's systems. I have moved some of the senior time to the assistant manager rate. There has been no explanation of the expenses, which I have disallowed.

188. Item 1,709 – October 2011

Rate £	Hours allowed	Amount allowed
591	12	7,092
438	12	5,256
336	120	40,320
199	175	34,825
183	200	36,600
15	200.5	3,007.50
97	150	14,550
Sub-total £		141,650.50
Rate US$		
503	100	50,300
340	135	45,900
218	140	30,520
Sub-total US$		126,720

189. Similar comments apply to this month as to September. The amount of associate time (except for Mr McMillan) is minimal. Yet it seems to me that more of the work described under "Data and systems", although not all of it, could have been done by

associates. Again, there has been no explanation of the expenses claimed (though now incurred only in the United States).

190. Item 1,710 – November 2011

Rate £	Hours allowed	Amount allowed
591	17	10,047
438	50	21,900
336	200	67,200
199	225	44,775
183	200	36,600
15	122	1,830
97	200	19,400
Sub-total £		201,752
Rate US$		
503	18	9,054
340	25	8,500
218	50	10,900
Sub-total US$		28,454

191. The principal work in November 2011 remained data and systems, data extraction and disclosure. Work began on the scope of the expert evidence. Work in the United States wound down. Again there is, in my view, an imbalance between senior and junior fee earners.

192. Item 1,711 – December 2011

Rate £	Hours allowed	Amount allowed
591	12	7,092
438	14	6,132
336	190	63,840
199	170	33,830
183	300	54,900
153	120	18,360
Sub-total		184,154

193. The work done in this month, preparation of the trade lists, work done to explain the data and systems, preparation for the experts' meetings and initial work on the expert evidence will have required more senior input.

194. Item 1,712 – January 2012

Rate £	Hours allowed	Amount allowed
597	55	32,835
442	95	41,990
340	480	163,200

205	765	156,825
189	855	161,595
158	359	56,722
100	60	6,000
expenses		295
Sub-total		619,462

195. The principal work in January 2012 was preparation of the trade lists and work on the claim and counterclaim. Work started on valuations and the models to be used. The continuing work on data and systems and disclosure was focused more on the results of the earlier work, rather than data extraction and disclosure. That justifies more senior input.

196. Item 1,713 – February 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	125	74,625
442	80	35,360
340	325	110,500
100	120	12,000
Trade lists		
205	175	35,875
189	215	40,635
158	85	13,430
100	1	100
Claim validation		
340	150	51,000
205	525	107,625
189	550	103,950
158	180	28,440
100	100	10,000
Counterclaim		
340	115	39,100
205	75	15,375
189	40	7,560
158	75	11,850
Data & systems		
597	1.5	895.50
340	110	37,400
205	160	32,800
158	120	18,960
100	100	10,000
Sub-total		797,480.50

197. The work done on leadership and project management included virtually all of the partner time and, in addition to supervision, covered the expert work. Given the specialist nature of the work described in the other workstreams I think that there is limited scope to argue that more of the work should have been delegated to the more junior fee earners.

198. Item 1,714 – March 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	100	59,700
442	95	41,990
340	265	90,100
100	125	12,500
Trade Lists		
205	200	41,000
189	250	47,250
158	75	11,850
Claim validation		
340	125	42,500
205	455	93,275
189	400	75,600
158	250	39,500
100	70	7,000
Counterclaim		
340	115	39,100
205	75	15,375
189	150	28,350
100	65	6,500
Data & systems		
340	20	6,800
205	145	29,725
158	35	5,530
Valuation		
597	10	5,970
340	125	42,500
205	400	82,000
189	245	46,305
100	25	2,500
Sub-total		872,920

199. Item 1,715 – April 2012

Rate £	Hours allowed	Rate allowed
Leadership		
597	70	41,790
442	45	19,890

340	135	45,900
100	90	9,000
Trade Lists		
205	80	16,400
189	125	23,625
158	65	10,270
Claim validation		
340	190	64,600
205	370	75,850
189	370	69,930
158	200	31,600
100	265	26,500
Data & systems		
340	7	2,380
205	40	8,200
100	65	6,500
Valuation		
597	7	4,179
340	45	15,300
205	255	52,275
189	195	36,855
Sub-total		561,044

200. The leadership workstream included time at the meetings with the Defendant's experts. These would have required considerable preparatory work. The work on the trade lists was largely completed in this month and the lists were exchanged with the Defendant's experts. All of the work under data and systems was done at senior manager and manager level. Some of the work described is routine and so is allowed at an associate rate.

201. Item 1,716 – May 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	150	89,550
442	110	48,620
340	310	105,400
100	160	16,000
Claim validation		
340	45	15,300
205	375	76,875
189	200	37,800
158	75	11,850
Counterclaim		
340	40	13,600
205	60	12,300
189	60	11,340

Disclosure review		
205	60	12,300
189	175	33,075
158	175	27,650
100	200	20,000
Data & systems		
442	1	442
340	17	5,780
205	325	66,625
189	165	31,185
158	160	25,280
Valuation		
597	3	1,791
340	80	27,200
205	385	78,925
189	300	56,700
Sub-total		825,588

202. A fairly significant part of the work described in the monthly summary under "Leadership" related to the May CMC, in respect of which the Claimant has made a concession which has not been taken into account in the figures above. A further concession has been made in relation to the retirement of Mr Inglis. However I have no doubt that a significant amount of time recorded under Leadership related to the supervision of the other work done this month and also in relation to the expert evidence and experts' meetings.

203. Item 1,717 – June 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	75	44,775
340	85	28,900
205	0	0
100	70	7,000
Claim		
597	1	597
340	55	18,700
205	195	39,975
189	150	28,350
158	50	7,900
Counterclaim		
597	12	7,164
442	14	6,188
340	195	66,300
205	305	62,525
189	395	74,655
158	85	13,430

100	2	200
Litigation support		
597	12	7,164
442	0	
340	185	62,900
205	335	68,675
189	160	30,240
158	155	24,490
100	75	7,500
Experts		
597	30	17,910
340	7	2,380
Disclosure review		
597	18	10,746
205	30	6,150
189	100	18,900
158	65	10,270
100	60	6,000
Sub-total		679,984

204. Item 1,718 – July 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	200	119,400
442	35	15,470
340	30	10,200
205	2	410
100	100	10,000
Claim		
597	9	5,373
442	6	2,652
340	140	47,600
205	200	41,000
189	185	34,965
158	42	6,636
100	10	1,000
Counterclaim		
597	20	11,940
442	85	37,570
340	295	100,300
205	370	75,850
189	400	75,600
158	135	21,330
100	20	2,000
Litigation support		
597	10	5,970

442	0	0
340	110	37,400
205	285	58,425
189	70	13,230
158	180	28,440
100	70	7,000
Experts		
597	9	5,373
Disclosure review		
597	10	5,970
340	75	25,500
205	35	7,175
189	2	378
Expenses		1,649.03
Sub-total		815,806.03

205. The work listed under Leadership included time preparing for the July CMC which will fall to be deducted. In addition to work on the hypothetical portfolio, the monthly summary would suggest a significant amount of work was done by Deloitte on the Defendant's witness statements in the "Counterclaim" workstream, which seems surprising.

206. The sum claimed in the bill for this invoice was reduced by £84,000 plus value added tax to reflect work done for the July CMC. The figures above are based on the monthly summary, not the invoice, and so before deduction.

207. Item 1,719 – August 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	120	71,640
340	30	10,200
205	0	0
100	62	6,200
Claim		
597	2	1,194
340	65	22,100
205	80	16,400
189	27	5,103
Counterclaim		
597	20	11,940
442	50	22,100
340	605	205,700
205	560	114,800
189	640	120,960
158	135	21,330
100	33	3,300

Litigation support		
597	40	23,880
442	2	884
340	135	45,900
205	265	54,325
189	220	41,580
158	100	15,800
100	40	4,000
Experts		
340	35	11,900
205	6	1,230
Disclosure review		
597	40	23,880
340	0	
Expenses		758.40
Sub-total		857,104.40

208. Item 1,720 – September 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	80	47,760
442	0	0
340	41	13,940
100	80	8,000
Claim		
597	6	3,582
340	25	8,500
205	140	28,700
189	35	6,615
100	16	1,600
Counterclaim – VaR etc		
597	90	53,730
340	455	154,700
205	580	118,900
189	250	47,250
Counterclaim - Losses		
597	60	35,820
442	105	46,410
340	315	107,100
205	295	60,475
189	75	14,175
100	3	300
Litigation support		
597	50	29,850
442	0	0
340	225	76,500

205	45	9,225
189	280	52,920
Experts		
597	1	597
Disclosure review		
597	2	1,194
Sub-total		927,843

209. The sum claimed in the bill for this invoice was reduced by £225,000 plus value added tax to reflect work done for the October CMC. The figures above are based on the monthly summary and so before deduction. The Claimant now concedes £300,000 and so the figure allowed for this item is £627,843, subject to the further deduction of the agreed discounts.

210. Item 1,721 – October 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	135	80,595
442	0	0
340	80	27,200
100	145	14,500
Claim		
340	17	5,780
189	8	1,512
Counterclaim – VaR etc		
597	105	62,685
340	595	202,300
205	480	98,400
189	255	48,195
Counterclaim - Losses		
597	58	34,626
442	120	53,040
340	205	69,700
205	340	69,700
189	20	3,780
Litigation support		
597	40	23,880
442	2	884
340	170	57,800
205	220	45,100
189	485	91,665
100	95	9,500
Data support		
442	32	14,144
340	80	27,200
205	135	27,675

189	105	19,845
158	25	3,950
100	1	100
Valuations		
442	16	7,072
205	5	1,025
189	40	7,560
Sub-total		1,109,413

211. The time under "leadership" included substantial work on the reports of Mr Inglis and Mr Millar, although the work done by the latter was included under "Counterclaim - VAR".

212. Some of the work done this month, especially under "litigation support", related to the October CMC but has been catered for by the reduction conceded to the previous invoice. Apart from that, the amount of time spent on litigation support appears obviously too high.

213. Item 1,722 – November 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	85	50,745
442	100	44,200
340	180	61,200
205	70	14,350
100	195	19,500
Claim		
597	1	597
340	110	37,400
205	40	8,200
189	95	17,955
Counterclaim – VaR etc		
597	105	62,685
442	19	8,398
340	650	221,000
205	530	108,650
189	300	56,700
158	2	316
Counterclaim - losses		
597	125	74,625
442	155	68,510
340	250	85,000
205	430	88,150
189	6	1,134
158	1	158
Litigation support		

597	45	26,865
340	85	28,900
205	70	14,350
189	260	49,140
100	105	10,500
Experts		
597	5	2,985
340	70	23,800
205	100	20,500
189	12	2,268
Disclosure review		
205	15	3,075
189	105	19,845
100	90	9,000
Data support		
340	115	39,100
205	180	36,900
189	125	23,625
158	140	22,120
100	85	8,500
Valuations		
597	28	16,716
442	100	44,200
340	6	2,040
205	180	36,900
189	165	31,185
100	20	2,000
Expenses		1,000
Sub-total		1,504,987

214. Again, the time on litigation support appears obviously too high and includes work on the New York complaint.

215. Item 1,723 – December 2012

Rate £	Hours allowed	Amount allowed
Leadership		
597	115	68,655
442	145	64,090
340	210	71,400
205	190	38,950
189	10	1,890
100	185	18,500
Claim		
340	85	28,900
205	45	9,225
189	110	20,790

100	9	900
Counterclaim – VaR etc		
597	70	41,790
442	15	6,630
340	410	139,400
205	160	32,800
189	185	34,965
Counterclaim - losses		
597	95	56,715
442	85	37,570
340	190	64,600
205	225	46,125
189	60	11,340
158	0	0
Litigation support		
597	35	20,895
340	35	11,900
205	6	1,230
189	115	21,735
100	30	3,000
Experts		
597	1	597
340	135	45,900
205	120	24,600
189	60	11,340
Disclosure review		
189	12	2,268
100	40	4,000
Data support		
340	100	34,000
205	125	25,625
189	15	2,835
100	10	1,000
Valuations		
597	16	9,552
442	35	15,470
340	8	2,720
205	85	17,425
189	60	11,340
Sub-total		1,062,667

216. Item 1,724 – January 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	145	86,565
442	35	15,470

340	60	20,400
205	16	3,280
100	135	13,500
Claim		
597	0	0
340	65	22,100
205	3	615
189	10	1,890
Counterclaim – VaR etc		
597	95	56,715
442	12	5,304
340	350	119,000
205	210	43,050
189	485	91,665
158	1	158
Counterclaim - losses		
597	80	47,760
442	165	72,930
340	235	79,900
205	255	52,275
189	35	6,615
100	48	4,800
Litigation support		
597	85	50,745
442	75	33,150
340	215	73,100
205	235	48,175
189	490	92,610
100	25	2,500
Experts		
597	15	8,955
442	15	6,630
340	50	17,000
205	22	4,510
Data support		
340	150	51,000
205	275	56,375
189	95	17,995
100	120	12,000
Valuations		
597	20	11,940
442	30	13,260
205	85	17,425
189	40	7,560
100	6	600
expenses		1,000
Sub-total		1,270,482

217. Item 1,725 – February 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	130	77,610
442	105	46,410
340	50	17,000
205	90	18,450
100	110	11,000
Claim		
597	3	1,791
340	25	8,500
Counterclaim – VaR etc		
597	72	42,984
442	53	23,426
340	330	112,200
205	250	51,250
189	420	79,380
Counterclaim - losses		
597	110	65,670
442	130	57,460
340	520	176,800
205	340	69,700
189	620	117,180
100	125	12,500
Litigation support		
597	60	35,820
442	70	30,940
340	150	51,000
205	205	42,025
189	255	48,195
100	125	12,500
Experts		
597	10	5,970
442	18	7,956
340	25	8,500
Data support		
597	0	0
340	160	54,400
205	250	51,250
189	95	17,955
158	4	632
100	120	12,000
Valuations		
597	25	14,925
442	22	9,724
205	95	19,475

189	10	1,890
Sub-total		1,414,468

218. Item 1,726 – March 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	165	98,505
442	125	55,250
340	100	34,000
205	170	34,850
100	175	17,500
Claim		
597	1	597
340	90	30,600
Counterclaim – VaR etc		
597	50	29,850
442	66	29,172
340	330	112,200
205	405	83,025
189	255	48,195
Counterclaim - Losses		
597	80	47,760
442	110	48,620
340	415	141,100
205	475	97,375
189	605	114,345
100	40	4,000
Litigation support		
597	55	32,835
442	55	24,310
340	150	51,000
205	215	44,075
189	195	36,855
100	195	19,500
Mr Sealey’s report		
442	155	68,510
340	32	10,880
Data support		
340	120	40,800
205	200	41,000
189	90	17,010
100	135	13,500
Valuations		
597	3	1,791

442	10	4,420
205	15	3,075
Sub-total		1,436,505

219. Item 1,727 – April 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	190	113,430
442	85	37,570
340	60	20,400
100	150	15,000
Counterclaim – VaR etc		
597	65	38,805
442	4	1,768
340	285	96,900
205	355	72,775
Counterclaim – losses		
597	55	32,835
442	175	77,350
340	350	119,000
205	350	71,750
189	450	85,050
100	25	2,500
Experts		
597	20	11,940
442	30	13,260
340	175	59,500
Litigation support		
597	45	26,865
442	70	30,940
340	285	96,900
205	400	82,000
189	460	86,940
158	60	9,480
100	450	45,000
Valuations		
597	5	2,985
442	10	4,420
205	15	3,075
189	2	378
Sub-total		1,258,816

220. The time under experts and litigation support is obviously too high to be reasonable.

221. Item 1,728 – May 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	110	65,670
442	110	48,620
340	45	15,300
100	110	11,000
Claim		
597	2	1,194
340	35	11,900
Counterclaim – VaR etc		
597	45	26,865
442	9	3,978
340	400	136,000
205	240	49,200
189	12	2,268
Counterclaim - losses		
597	30	17,910
442	140	61,880
340	500	170,000
205	320	65,600
189	250	47,250
Experts		
597	70	41,790
340	25	8,500
100	25	2,500
Litigation support		
597	50	29,850
442	60	26,520
340	310	105,400
205	410	84,050
189	700	132,300
158	25	3,950
100	380	38,000
Valuations		
597	0	0
442	0	0
205	0	0
Sub-total		1,207,495

222. The time spent on litigation support is obviously too high to be reasonable and includes the costs of attending trial. The only work described under valuations is attending court to observe the Defendant's counsel and preparing for Mr Robinson's evidence. I have allowed some time for preparation in June. The work in this month was not reasonably done.

223. Item 1,729 – June 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	93	55,521
442	65	28,730
340	75	25,500
100	85	8,500
Claim		
340	45	15,300
Counterclaim – VaR etc		
597	70	41,790
442	5	2,210
340	225	76,500
205	50	10,250
Counterclaim – losses		
597	105	62,685
442	85	37,570
340	425	144,500
205	420	86,100
189	225	42,525
158	15	2,370
Litigation support		
597	60	35,820
442	95	41,990
340	260	88,400
205	350	71,750
189	580	109,620
158	45	7,110
100	350	35.000
Valuations		
597	40	23,880
205	60	12,300
189	55	10,395
expenses		
Sub-total		1,076,316

224. In various places the monthly summary refers to substantial time being spent preparing the witnesses for their oral evidence. Clearly the witnesses needed to prepare for giving evidence by re-reading their reports and those of their opposite numbers. Because the reports were prepared by a team, that would involve other fee earners. However time spent in mock cross-examination is not, in my view, time reasonably incurred.

225. Item 1,730 – July 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	70	41,790
442	30	13,260
340	90	30,600
100	105	10,500
Claim		
340	28	9,520
Counterclaim – VaR etc		
597	48	28,656
442	13	5,746
340	180	61,200
205	70	14,350
189	20	3,780
Counterclaim - losses		
597	70	41,790
442	45	19,890
339	275	93,225
204	305	62,220
189	165	31,185
157	90	14,130
Litigation support		
597	45	26,865
442	45	19,890
340	260	88,400
205	330	67,650
189	500	94,500
158	5	790
100	200	20,000
Valuations		
597	50	29,850
205	95	19,475
189	35	6,615
Sub-total		855,877

226. I have no doubt that the time claimed under litigation support will have included a considerable amount of time spent reviewing trial transcripts. Much of that will be unreasonable, given the attendance of Deloitte fee earners at court. Again I have the same concern about cross-examination preparation of the Deloitte witnesses.

227. Item 1,731 – August 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	28	16,716

442	90	39,780
340	35	11,900
100	55	5,500
Claim		
340	3	1,020
Counterclaim – VaR etc		
340	50	17,000
205	65	13,325
189	45	8,505
Counterclaim – losses		
442	16	7,072
339	115	38,985
204	35	7,140
189	10	1,890
157	35	5,495
Litigation support		
597	10	5,970
442	12	5,304
340	130	44,200
205	55	11,275
189	160	30,240
Valuations		
597	0	0
205	2	410
Sub-total £		271,727
Rate US$		
Turks & Caicos		
618	4	2,472
350	0	0
281	8	2,248
Sub-total US$		4,720

228. The work done in respect of the reporting obligations of companies in the Turks and Caicos Islands would have been straightforward and should have been done at a more junior level.

229. Item 1,732 – September 2013

Rate £	Hours allowed	Amount allowed
Leadership		
597	3	1,791
340	8	2,720
100	20	2,000
Litigation support		
597	3	1,791
442	12	5,304
340	35	11,900

205	8	1,640
Sub-total		27,146

230. Item 1,733 – October 2013

Rate £	Hours allowed	Rate allowed
Leadership		
597	10	5,970
442	8	3,536
340	30	10,200
205	5	1,025
Sub-total		20,731

231. Item 1,734 – November 2013

Rate £	Hours allowed	Rate allowed
Litigation support		
597	20	11,940
442	15	6,630
340	10	3,400
205	4	820
Sub-total		22,790

232. The recalculation of the interest to the judgment date should have been relatively straightforward. While I think that it was reasonable for some of the Deloitte fee earners to read the judgment to check for errors of substance, the time claimed is obviously too much to be reasonable.

Postscript

233. The assessment of the fees of Deloitte has been time consuming and expensive. How they should be assessed was the subject of earlier hearings. What sum should be allowed engaged the parties in this hearing for 12 days. Where parties adopt the positions that the parties in this case have adopted, it is difficult to see how detailed assessment could be other than time consuming and expensive. It may be that a better solution in a case such as this, where the expert evidence will be very substantial, would be for the parties to invite the court to make a costs management order[28] in relation to the costs of all or some of the experts. Cases such as this are, of course, rare.

[28] Which it may do in any case: CPR 3.12(1A).