THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON CENTRAL**
BEFORE: **EMPLOYMENT JUDGE ELLIOTT (Sitting alone)**

BETWEEN:

Mr M Radia

Claimant

AND

Jeffries International Ltd

Respondent

ON: **22, 23, 24, 25 and 26 March 2021, 15 and 16 April 2021 and 5 May 2021 (Partial hearing on 30 March 2021 recapped on 15 April 2021 as not in public)**

Appearances:
For the Claimant: **In person**
For the Respondent: **Mr K Wonnacott, costs lawyer with Ms J Stone, counsel**

REASONS FOR JUDGMENT ON DETAILED COSTS ASSESSMENT

1. The decision in this matter was given orally during the line by line assessment and on all other matters on 16 April 2021 save for the decision on interest which was given orally on 5 May 2021. The parties were informed of their right to request written reasons. On 18 May 2021 the claimant requested written reasons.

2. The "Costs Officers Decision" document is appended to this decision setting out the Judge's decision on each of the Points of Dispute having considered the parties' submissions on the individual points.

3. By a Reserved Judgment sent to the parties on 7 September 2017 the tribunal Ordered that the claimant pay the respondent's costs of these proceedings in case number 2201358/2015.

4. A detailed Case Management Order was made in relation to this Costs

Assessment which the parties were told would be before the Judge sitting alone as the decision on costs was made by the full tribunal and this was the assessment of the figures.

The format of this hearing

5. Day 1 was a reading day for the tribunal as the Judge hearing the Detailed Assessment was not the Judge who heard the case on liability or on the threshold decision on costs. The parties joined on day 2 and we initially convened in private on Microsoft Teams.

6. There was a discussion at the outset on day 2, as to whether this hearing should be in private or in public. I took the view that it was in private as the decision to award costs was the public decision taken by the tribunal in July/August 2017. This was the figurework arising from that decision.

7. Ms Stone for the respondent said that it was not expressly covered in the tribunal rules and I agreed that I had not seen the point covered in the Rules. The claimant's position was that he considered it to be a private hearing. Ms Stone had checked overnight and the hearing had been advertised on Courtserve so that notice had been given to the public if we needed to covert to CVP.

8. We took a break for Ms Stone and Mr Wonnacott to consider their position, the concern being that the issue of whether the hearing should be in public or in private was not a matter the parties could deal with by agreement. The respondent was more comfortable proceeding in public when there was doubt on the matter. Although the claimant said that he would commit to not appealing on the basis that the hearing took place in private, the concern for the respondent was that he may not be bound by such commitment.

9. The respondent pointed out that if the detailed assessment took place in the County Court it would be in public and as CPR rules applied to detailed assessments in the Employment Tribunal I agreed to convert the hearing to a public hearing on CVP.

10. On day 6, Tuesday 30 March 2021, it became clear during the morning, on receipt by the Judge of a message from listings, that the case had not been advertised on Courtserve overnight so was not proceeding in public. Although it was possible to have it advertised on Courtserve to be effective for 2pm the respondent had concerns that this may not be sufficient notice. I agreed to postpone and we agreed to recap what had been covered in the two hours on 30 March when we reconvened on 15 April 2021. This was done at the start of day 7.

11. The hearing was therefore a remote public hearing, conducted using CVP (Cloud Video Platform) under Rule 46. The tribunal considered it just and equitable to conduct the hearing in this way for the reason given above.

12. In accordance with Rule 46, the tribunal ensured that members of the public could attended and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended although a request was sent to the tribunal at 10:17am on the final day, 5 May 2021, to access the hearing and access details were sent at 10:26am. By this point, judgment on the final issue of interest had just been delivered and the parties were in a break to finalise the figures for judgment. The member of the public was informed by the tribunal's administration of the stage at which this hearing had reached and the member of the public did not join this hearing.

13. The parties were able to hear what the tribunal heard. From a technical perspective, there were no difficulties of any substance.

14. No requests were made by any members of the public to inspect any written materials before the tribunal.

15. The participants were told at the outset and were reminded on subsequent occasions that was an offence to record the proceedings.

The issues for this hearing

16. The issue for this hearing was the detailed assessment of the respondent's costs of these proceedings, on a standard basis followed by an assessment of the costs of this hearing.

17. In the light of the two documents submitted by the claimant at the outset of this hearing, I explained that the purpose of this hearing was the Detailed Assessment of Costs only and that this tribunal did not have the power to Reconsider the findings of the tribunal at liability stage.

Documents for this detailed assessment

18. There was a shared bundle of 377 pages containing the background documents, the Bill of Costs, the Points of Dispute and Response to the Points of Dispute and relevant fee notes. The confidential bundle contained 7,538 pages.

19. There was a Skeleton Argument from the respondent which included a core reading list for the tribunal's reading day on day 1. The Skeleton Argument had 2 appendices, of charging rates plus an overview.

20. There was an authorities bundle from the respondent containing 7 authorities. There were some supplemental authorities and documents related to interest plus a short, five-paragraph note from the respondent on this issue.

21. From the claimant the tribunal had two documents: a statement entitled "*How we got here*" and a Skeleton argument.

22. The claimant's statement complained about the findings made against him at the liability hearing in 2017 and appended to which were notes from his cross

examination and a medical document. I explained that this was not a matter for this hearing which was only to deal with the Detailed Assessment of Costs. This tribunal did not have the power to Reconsider the findings made by the original tribunal.

23. During the hearing the respondent submitted a new spreadsheet with an improved position from their point of view.

24. At 3:10pm on day 2, the claimant said that we were working from the wrong Bill of Costs and that the respondent had committed to working from a bill at £550,000 and not £691,000. I was taken to the decision of the EAT in case number EAT/0007/18 HHJ Auerbach, which in the first paragraph said: *"At the Costs Hearing the Judge was told that the costs sought were in excess of £300,000. At the Hearing of this appeal I was told that the Respondent's costs were in the region of £700,000, though they have capped what they seek at £550,000."* I was told that the EAT was told that in the Points of Dispute, the points were capped at £550,000. Ms Stone, who appeared at the EAT, said that this tribunal was not being asked to exceed that figure. The claimant thought that there was to be a completely new bill at £550,000 and we were considering the original Bill of Costs.

25. It is not in dispute that no new Bill of Costs was drawn up. The claimant referred to a spreadsheet that was introduced on Day 1 and considered on day 1 but not on day 2 by the time the point was raised.

26. My decision on this was that the detailed assessment had to go ahead, there was no new Bill drawn up, and I had informed the parties that I would in any event be standing back at the end of the detailed assessment exercise and considering overall proportionality. Looking at an end figure during an assessment was not a constructive exercise.

27. A PDF document was sent by the respondent at lunchtime on day 5 (Friday 26 March 2021) in relation to the documents entry for Part 9. There was also an Excel Spreadsheet which was difficult to negotiate.

28. On day 7 the tribunal received from the respondent their N260 for the detailed costs assessment and a chronology of the detailed costs assessment process.

29. In the afternoon of Day 7 I was sent a Schedule of the Costs as Assessed or Agreed, over the 15 parts of the bill.

30. The respondent also provided a short note on Interest with an authorities bundle and some extracts from the White Book, which had been served on the claimant on 19 March 2021. This was done to assist the claimant who, by the date of this hearing, was a litigant in person.

Relevant background

31. The respondent made an application for costs on 3 March 2017. The costs hearing took place on 31 July 2017 and that tribunal met in Chambers on 1

August 2017. The costs Judgment was sent to the parties on 7 September 2017. The costs hearing was before a two person tribunal, Employment Judge Baty and Mrs C Ihnatowicz. The third member, Mr D Carter was subject to travel difficulties outside his control. The parties consented to a two person tribunal. The tribunal awarded the respondent's costs of these proceedings, subject to this detailed assessment. The reasons for the award of costs are set out in the costs judgment and are not repeated here.

32. A detailed Case Management Order was made on 18 September 2017 by Employment Judge Hodgson making clear that the costs would be governed by the relevant provisions of the Civil Procedure Rules 1998 (CPR) including Part 47 and Practice Direction 47.

33. The total amount of the bill of costs, as set out in form N252 dated 8 November 2017, was £697,797.76.

34. The costs hearing was originally listed to take place in July 2018 but was vacated by Employment Judge Hodgson pending the claimant's appeal to the EAT against the costs judgment of 7 September 2017.

35. The claimant appealed against the Cost Order to the Employment Appeal Tribunal. This was heard in October 2019. By judgment handed down on 21 February 2020, HHJ Auerbach dismissed the appeal. The claimant sought permission to appeal to the Court of Appeal. On 20 November 2020 the Court of Appeal refused permission to appeal.

36. I held a case management hearing on 13 January 2021 and listed this for a five day costs hearing. At that hearing the claimant was represented by costs counsel Mr S Innes. The fact that the claimant had experienced counsel was one of the factors in allocating a five day hearing. An application from the claimant to amend the Points of Dispute was refused at that hearing.

37. A further brief case management hearing took place by telephone on Monday 15 March 2021 to deal with practical arrangements for this remote hearing.

The decision on costs

38. The Points of Dispute are appended to this decision with the Costs Officer's decision in each case.

The relevant law

39. This detailed costs assessment is governed by the provisions of the Civil Procedure Rules 1998 (CPR) - Part 44; Practice Direction 44; Part 47; and Practice Direction 47.

40. The tribunal applied what is commonly described as the "*seven pillars of wisdom*" in carrying out this detailed costs assessment. They are:

    a. The conduct of all the parties, including in particular

i. Conduct before, as well as during, the proceedings and

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

b. The amount of value of any money or property involved;

c. The importance of the matter to the parties;

d. The particular complexity of the matter of the difficulty or novelty of the questions raised;

e. The skill, effort, specialised knowledge and responsibility involved;

f. The time spent on the case;

g. The place where the circumstances in which the work or any part of it was done.

41. There is no costs budgeting to be taken into account in the Employment Tribunal as in the County Court or High Court and as envisaged in the CPR Part 44.4(3) paragraph (h).

42. CPR 44.3(2)(a) provides that where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred.

43. CPR 44.3(5) provides in relation to proportionality:

> (5) Costs incurred are proportionate if they bear a reasonable relationship to –
> (a) the sums in issue in the proceedings;
> (b) the value of any non-monetary relief in issue in the proceedings;
> (c) the complexity of the litigation;
> (d) any additional work generated by the conduct of the paying party; and
> (e) any wider factors involved in the proceedings, such as reputation or public importance.

44. In relation to proportionality tribunal considered the case of ***Kazakhstan Kagazy v Bagian Abdullaevich Zhunus 2015 EWHC 404 (Comm),*** which said: "*The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances."*

45. The claimant cited ***RBS Rights Issue Litigation 2017 1 WLR 4635****,* a decision of the High Court, Chancery Division, which in turn cited ***Kazakhstan Kagazy*** (above) in which Hildyard J said: "*litigants are free to pay for a Rolls Royce service but not to charge it all to the other side".* (judgment paragraph 134).

46. ***West v Stockport NHSFT 2019 EWCA Civ 1220*** said that at the conclusion of the line-by-line exercise, there will be a total figure which the judge considers to be reasonable (and which may, as indicated, also take into account at least some aspects of proportionality).

47. ***May and May v Wavell Group Ltd 2017 Lexis Citation 462*** is a decision of

HHJ Dight in the Central London Count Court and cited with approval in ***West*** at paragraph 83. At paragraph 58 HHJ Dight said:

> *"The rules do not specifically state that the assessment has to be undertaken in two stages but they do require the costs judge to apply two tests, namely reasonableness and proportionality, and it is open to the costs judge to have an eye to both as he or she undertakes an item by item assessment having in mind a figure or range of figures which would be proportionate but it is equally open to the judge to apply the tests sequentially. I suspect that in practice a costs judge will have both tests in mind when undertaking the item by item assessment but he or she will undertake a form of cross-checking when the total is ascertained to see whether it falls within the range of proportionate totals and then undertake an adjustment if it does not. I respectfully disagree with the learned Master insofar if it is right that he used his description of the new proportionality test as a blunt instrument as a reason to make a substantial reduction in the reasonable costs to bring them down to a rough and ready but proportionate amount. The rules, difficult as they may be to apply in practice, require the specific factors in CPR 44.3(5) to be focused on and a determination to be made as to whether there is a reasonable relationship between them. I doubt that the rules committee intended that a costs judge could or should bypass an item by item assessment and simply impose what he or she believed to be a proportionate global figure. In my judgment the tests of reasonableness and proportionality are intended to work together, each with their specified role, but with the intention of achieving what is fair having regard to the policy objectives which I have identified above."*

48. The principal elements considered in a detailed assessment are: (i) solicitor's hourly rate; (ii) solicitor's time; (iii) counsel's fees; (iv) expert's fees – not applicable in this case; (v) other disbursements and (vi) VAT.

49. There are four hourly rates set out in the Solicitors Hourly Guideline Rates of 2010, last reviewed in 2014. They are (A) solicitors with over 8 years post qualification experience (PQE) including at least 8 years litigation experience, (B) solicitors and legal executives with over 4 years PQE and at least 4 years litigation experience, (C) Other solicitors and legal executives and fee earners of equivalent experience and (D) trainee solicitors, paralegals and other fee earners. The Guideline Rates are once again under review, but as at the date of this hearing the 2010 Rates, reviewed in 2014, remained in place.

50. The rates differ for different parts of the country. Grade C is usually considered appropriate for a civil fast track case where the claim does not exceed £25,000. On a detailed assessment of costs Grades A and B are more common.

51. There are no guideline rates for counsel's fees. Generally preparation of a Skeleton Argument is involved in the brief fee and is not a separate chargeable item - see ***Loveday v Renton no. 2 1992 3 All ER 184.***

Overall proportionality

52. Before the parties made submissions on overall proportionality I asked if the claimant was aware of the factors that would be taken into account. He said he had some points he wanted to make but he was not aware of the factors so with the assistance of the respondent he was taken to the authorities bundle and the case of ***West v Stockport NHSFT 2019 EWCA Civ 1220*** which set out the relevant provisions of the CPR at paragraphs 70-78. The claimant was given a

short break to have a look at those paragraphs and in particular where the relevant parts of the CPR were set out, before making his submissions. The submissions for the respondent were made by Ms Stone of counsel.

53. The figure arrived at through the detailed assessment was £357,844.05 set against a total bill of £697,797.76. This was made up as to profit costs of £236,228.05, counsel's fees of £95,457.50 and disbursements of £26,158.50. From ***West v Stockport*** the tribunal can look at proportionality items as it goes along and not just at the end. I decided at the outset to look at the proportionality of the items as we went through and then to do the exercise at the end of standing back and looking at the whole matter.

The claimant's submissions

54. The claimant made the following submissions on overall proportionality. He said he knew that the respondent would say that the litigation was complex, high profile and the sum claimed was over £1m. He said that if there had been a proportionate amount to defend the claim and if a proper process had been undertaken, the respondent would have known their costs figure while they were underway and they did not. He submitted that the notion that the respondent addressed this in a proportionate way was not correct. The claimant again raised the issue of the Costs hearing in 2017 where a figure of around £300,000 was stated, yet the costs came out at around £700,000. The claimant said that there was no exercise of assessing a proportionate amount.

55. The claimant said that the respondent's approach was to take the costs award as a "*blank cheque*" in their favour. The claimant referred the tribunal to paragraph 91 of the Costs Judgment sent to the parties on 7 September 2017 which referred to costs "*in the region of £300,000 plus*" sought by the respondent. The claimant also referred to a costs warning letter dated March 2016 anticipating that the costs would exceed £200,000.

56. The claimant submitted that if the tribunal in 2017 had been told that costs were in the sum of £700,000 subject to detailed assessment, he wondered whether the same decision would have been made. He said that the original decision on costs was made on this basis.

57. I noted that the tribunal in 2017 did not take into account the claimant's means (paragraph 90) but said that if they had taken it into account, they would still have made the decision to award costs (paragraph 91). The claimant wished to refer to the decision of the Court of Appeal in his own case, on his permission to appeal application (reference A2/2020/1055 dated 20 November 2020). The respondent said it was not relevant but as the claimant was a litigant in person for this hearing, I took the view that I should see what he relied upon. He relied upon the final line of that decision of Bean LJ at paragraph 9 who said: "*Issues of the quantum of costs are matters which can and no doubt will be raised on detailed assessment."* The claimant submitted that there was a failure to provide a sound basis for the total quantum of costs and he considered that £300,000 was a starting point.

58. The claimant said that in relation to the total level of costs incurred, he said that if you looked at any particular data point, it was rare for costs to exceed £50,000 to £60,000 and were usually around £10,000. I asked where he found these data points and he said that the Chamber of Commerce had said that the average cost for defending a tribunal claim was around £8,000. I had not seen this information and it was not put before the tribunal.

59. The claimant said that this was a High Court level of costs incurred for the Employment Tribunal and that much of the expenditure was discretionary and "*way above the norm"* and he said that it was highly unusual even in the Employment Tribunal to "*rack up fees*" of £700,000.

60. The claimant, in his professionally drafted Points of Dispute, relied the ***Kazakhstan Kagazy*** case and I considered on his submission that even though reasonable, costs could still be disproportionate as per the passage quoted above.

The respondent's submissions

61. The respondent referred me to counsel's opening note which I took into account. The respondent said they were puzzled by the claimant's reference to the "*blank cheque*" because the costs were incurred before an order for costs was made. The respondent reminded the tribunal that the issue for this tribunal was what was the right amount for this detailed assessment. The respondent said that the claimant's attempt to re-open points already decided, was characteristic of his approach.

62. The issue now was whether the sum assessed of £357,844.05 was reasonable and proportionate.

63. The respondent took me to the guidance in ***West*** (cited above) – at paragraphs 87 - 93. The respondent said that some proportionality had already been assessed on the line by line basis. Part 15 of the bill related to the original drawing up of the bill of costs which forms part of that bill and is excluded from this exercise. At paragraph 90 of ***West***, if the overall figure is found to be proportionate then no further assessment is required. If it is disproportionate then a further assessment is required.

64. The tribunal has to determine whether the figure of £357,844.05 is proportionate and if that is so, then that is the end of the exercise. The costs are proportionate if they bear a reasonable relationship to the factors in CPR 44.4(5). In terms of the sums in issue in the proceedings, as asserted in the Schedule of Loss, was £1.6m. The costs assessed as reasonable were around 20% of that sum. The case went through to trial including a postponement.

65. The respondent took me to ***Cox v MGN Ltd 2006 EWHC 1235 QB*** paragraph 28, where base costs were £142,728 against the sum recovered of £50,000 and the costs figure stood. In ***Cox*** the costs were three times the value of the claim. I was taken to ***May v Wavell Group Ltd*** (above) a case in the Central London County Court on appeal from the Senior Costs Office, referred to in

West at paragraph 83. On appeal in that case, costs were increased from £35,000 to £75,000 where the asserted value in the Claim Form was between £50,000 to £100,000 and it settled for £25,000.

66. In this case the respondent pointed out that the costs are 20% of the value of the claim so are not disproportionate and bore a reasonable relationship to the £1.6m in issue.

67. The respondent said in addition, the value of non-monetary relief, there was an allegation of discrimination against a regulated body which is a serious matter.

68. On the complexity of the litigation the respondent took me to paragraph 15 of their opening note which is not replicated here. It was said to be factually, legally and procedurally complex with a mediation and a postponement on the eve of the first day of the trial, as originally listed.

69. On the issue of additional work generated by the conduct of the paying party, I was taken to paragraph 15(9) of the respondent's opening note, again not replicated here. This included a reference to the recent preliminary hearing on 13 January 2021 when the claimant sought to add a serious allegation of misconduct against the respondent three years after the Points of Dispute were served.

70. On the wider factors, it was a high profile case, the claimant accepted it was of significant importance, there was press attention, reporting in the media and serious allegations about regulatory matters.

71. Having regard to all the circumstances, unlike the High Court or County Court, the burden of preparing for trial fell disproportionately on the respondent.

72. The respondent submitted that all in all, the sum found to be reasonable of £357,844.05, was proportionate to the proceedings.

73. The respondent submitted that the past reference to £300,000 played no part in the decision making and plays no part in this tribunal's decision making. The costs decision was subject to detailed assessment.

74. In the event that it was found not to be proportionate it would be necessary to look in more detail. As we had reached the end of the sitting day I was invited to reach a decision on proportionality and the respondent would address the tribunal further should it be necessary to do so. I agreed to this approach.

<u>The claimant's reply</u>

75. The claimant was given a brief right of reply. The claimant said that his actions in the litigation were on legal advice. The respondent cautioned him against waiving privilege. The claimant said it was not his intention to waive privilege.

76. The claimant referred to the ***Kazakhstan Kagazy*** case and the passage quoted above and the ***RBS Litigation*** also referred to above. The claimant said that if

a reputable firm was asked to provide a costs estimate for a case like this, they would not set out a figure of £300,000 or anywhere near this.

The decision on overall proportionality

77. I have done the task of standing back and looking at the overall proportionality of the costs in this case, awarded on a standard basis. We have spent around 5 days going through the disputed items in the bill on an item by item basis with detailed submissions on each.

78. The overall bill has been reduced from £697,797.76 to £357,844.05. This was a case valued by the claimant in his Schedule of Loss at £1.6 million. The costs have been assessed at around 22.5% of the sum claimed in these proceedings.

79. In terms of the value of non-monetary relief in issue in the proceedings, this was an allegation of discrimination against a regulated body and a finding of discrimination is a serious matter.

80. I agree with the respondent's submission that the litigation was complex. The allegations spanned five years and there were six comparators. There were numerous allegations of direct discrimination, discrimination arising from disability, failure to make reasonable adjustments and harassment and it crossed the transition from the Disability Discrimination Act 1995 to the Equality Act 2010. As well as being a high-value claim, it carried reputational risk, which was accepted by the claimant in his professionally drafted Points of Dispute. There were three preliminary hearings and a commercial mediation.

81. The claimant's conduct of the litigation increased the complexity. By way of example, I mention the delays in disclosure of medical reports, late withdrawal of allegations and late disclosure of a substantial quantity of documents for the hearing, most of which were not referred to at the hearing. I also took into account the findings of the tribunal liability stage, at paragraph 66, in which they found that the complaints were *"needlessly complicated*" and there appeared to have been no thought or analysis on the part of the claimant or his representatives of which of the complaints, if any, ought to have been brought and under which jurisdictional headings. More detail was set out at paragraph 15(9) of the respondent's opening note.

82. There were reputational issues for the respondent and there was press interest and press reporting of the case.

83. I did not accept the claimant's submissions in relation to estimated costs sums mentioned at previous hearings. This bore no relevance to the task for this tribunal which was for a detailed assessment on a line-by-line basis. I agreed with the respondent's submission that the it incurred its costs before knowing that the tribunal would ultimately make a costs award in its favour. The respondent proceeded, as litigants normally do in the Employment Tribunal, on the basis that it would have to bear its own costs. It was not, as the claimant submitted, the respondent treating their costs as a "*blank cheque".*

84. When standing back taking everything into account, I considered that the sum assessed of £357,844.05 was proportionate to what was involved in the case. The sum in issue in this case was £1.6m, it was a complex piece of litigation, there were potential reputational issues for the respondent, a regulated body and a substantial amount of work was necessitated by the way in which the proceedings were conducted by the claimant. The sum assessed is around 22.5% of the sum claimed and case law has shown that costs can be significantly more than the sum in issue and still be proportionate.

85. I make no further reduction and my decision is that the figure of £357,844.05 is proportionate against the backdrop of this litigation and the item by item consideration of the disputed items in the bill.

The costs of the detailed assessment

86. At the outset the parties did not wish to have an opportunity to have a discussion about the costs of the Detailed Assessment and wished for those costs to be assessed. I had the respondent's N260. Breaks were taken for the parties to have a discussion about the solicitors' costs of the Detailed Assessment and they were ultimately able to agree those costs.

87. The total costs of the detailed assessment on the N260 came to £197,284.00. The hearing was originally listed for 3 days in July 2018 and was vacated a few days before the hearing because of the claimant's appeal. The respondent had prepared for that hearing. The claimant's appeal was dismissed by the EAT in February 2020. The claimant sought leave to appeal to the Court of Appeal which was refused in November 2020. The matter returned to the Employment Tribunal and a preliminary hearing for case management was held before me on 13 January 2021 with a further case management hearing on 15 March 2021.

88. Ultimately the hearing with the parties covered 7 days plus a reading day for the tribunal and a final day to deliver oral judgment on the interest point and to finalise the figure for the Judgment Debt. The claimant did not have access to the confidential bundle of 7,538 pages prepared for the Detailed Assessment showing the work done by the respondent.

<u>The respondent's overview of their costs of the detailed assessment</u>

89. The work was broken down into three components: (i) preparing replies to the Points of Dispute in January/February 2018; (ii) preparation for the detailed assessment listed in 2018 which was vacated late in the day and (iii) the work undertaken after the Court of Appeal refused permission to appeal where the substantive work commenced in January 2021.

90. There was preparation and attendance for the preliminary hearings on 13 January 2021 and on 15 March 2021 and the substantial work preparing the confidential and shared bundles for this hearing. The respondent then moved into the advocacy preparation for this hearing, including the preparation of Skeleton Arguments, appendices, authorities bundles and detailed cross-

referencing to the underlying documents and the points of dispute in readiness for the line by line arguments. The respondent prepared the N260 and had 7 days of hearing.

91. In terms of the statement of costs there are three components within that: (i) the time and fees of Practico, the costs firm; (ii) counsel who also attended the previous hearings and (iii) solicitors' costs for coordinating matters and supporting Practico and counsel.

92. The respondent said that there had been significant discounting on the time spent as they were aware of the need for proportionality and said that this exercise had already been done.

93. The claimant submitted that the Part 15 work was already dealt with in terms of the costs of the assessment and the respondent explained that this is the costs of the preparation of the bill of costs.

The assessment of the costs by section

(1) Practico's fees

94. Firstly is the work reviewing the claimant's Points of Dispute and preparing the replies. This was a substantial document, the Points of Dispute ran to 55 pages as originally drafted. There were a number of preliminary points relating to the preparation of witness evidence and the use of counsel. There was a preliminary point about a costs warning letter of March 2016 which said that costs would "*exceed £200,000*".

95. Issue was taken with almost every item in the bill but although issue was taken, the detail was sometimes difficult to follow. This required very detailed responses because the respondent was put to proof on almost every item. When the respondent received the Points of Dispute they wrote to the claimant's costs lawyers, Paragon Costs Solutions, seeking a copy of their audit trail. Where they had given totals, the respondent asked them to identify how they had arrived at their figures. On each and every point the respondent had to provide detailed replies.

96. Issue was taken with letters and telephone calls including those which were routine where charged in 6 minute units. This meant that the respondent had to deal with all of them whereas in most detailed assessment the respondent said there would be more pragmatism. The respondent said it has reduced its time in any event.

97. Practico has claimed 43.8 hours, most of the work (35 hours) being done by Mr Ioannou at the rate of £195 per hour as opposed to Mr Wonnacott's rate of £290. Mr Ioannou comes between a C and D, if looking at his experience against the Solicitors' Hourly Guideline rates, with five years' experience at the firm.

98. The claimant's open "offer" in this case was zero.

99. The claim for Practico's fees is £9,377 for this section of reviewing the points of dispute and preparing replies.

100. The claimant said what has been found during this process was that the Bill of Costs was "*uninformative*". The claimant said that his costs lawyer faced a challenge with headings such as witness statements or preparation for trial and had to understand the detail and therefore put the respondent to proof. The claimant said that the burden of time fell on his side and that the respondent was "*unable to validate"* their time. The claimant said he paid £5,000 for his Points of Dispute. He considered the respondent's cost to be disproportionate. The claimant said that the respondent had given more information during the process such as the new spreadsheet on Part 9 which the claimant's costs lawyer did not have. The claimant said that the respondent did not do a detailed enough job in the preparation of the bill of costs, so had brought costs upon themselves.

101. I asked the claimant what he said that the respondent should have charged. He said that his point of reference was £5,000 for his own Points of Dispute and he had instructed a reputable firm of costs lawyers. The respondent's charge was in addition to Part 15 of the detailed assessment.

102. The respondent pointed out that no offers had been made by the claimant to protect his position. In terms of reply, the Part 15 costs played no part in this section. The respondent said that their additional schedule was reordering and was not new information and was given to assist the running of the hearing. The bill of costs was prepared in the normal way, it is a standard format bill of costs that applies to Detailed Assessments. There is now a requirement in civil litigation in Part 7 proceedings, to present in a different format by phases and tasks, but this did not apply here. The respondent submitted that the fees charged by the claimant's costs lawyers were not relevant.

103. <u>Secondly on preparing for the detailed assessment</u> Practico discussed the Points of Dispute and replies with instructing solicitors and then prepared for the hearing in July 2018 which was listed for a 3 day case. It was a 15 Part bill and they considered how best to prepare this and the underlying materials. This was then halted about a week before the hearing. Preparations had to continue until they knew for certain that the hearing was not effective. The majority of the time spent was Mr Wonnacott's hearing preparation time at 36 hours. Mr Wonnacott was looking at ways of streamlining the case because he was not sure it would be capable of completion on the three days allocated. Mr Ioannou assisted as he had the knowledge from working on the Points of Dispute, 10 hours of his time and Ms Neighbour at £150 per hour, and 5 hours, working on spreadsheets.

104. The claimant said that there was a separate category for bundles and if this was hearing preparation it did not seem to be reflected in the description. There were further headings for consultancy and substantive preparation.

105. Mr Wonnacott said that the time spent was 30 hours more than claimed and they had reduced it to 51 hours. They were working hard to find ways of covering the matters in the 3 day allocation. I asked if anyone had thought about applying for a longer hearing allocation and was told it was discussed but not done.

106. Thirdly was general consultancy from June 2020 to February 2021 including the case management hearing on 13 January 2021 which was to deal with an application by the claimant to amend his Points of Dispute and case management for this hearing. This included dealing with the claimant's late application to amend which would have impacted the Detailed Assessment significantly, correspondence with the tribunal regarding the continuing of the stay and a conference with solicitors and counsel to discuss matters. It includes the hearing in January 2021. They also tried to facilitate a timetable for the hearing.

107. The claimant said he did not have a strong view on this. The claimant thought that general consultancy would already be included. He thought that this section should have made clear that it included attendance at the January case management hearing and he did not consider this acceptable. The respondent accepted that this should have been relabelled to include reference to attendance at the January 2021 hearing.

108. The fourth section was for the case management hearing on 15 March 2021 at which Mr Wonnacott was the respondent's representative. He claimed for 7.5 hours and Ms Neighbour claimed 0.5 hours. She sat in on the telephone hearing and has been involved in this hearing.

109. The claimant said a day's fee seemed too high. He considered about 2 hours preparation plus the hearing time would have been sufficient. The respondent prepared, attended the hearing, spoke to instructing solicitors, had to be prepared for what might happen and report back.

110. The fifth item was bundle preparation which was a substantial item at a total cost of £20,850. Practico led on the preparation of the bundles for this Detailed Assessment, as to the bundles plus indexing and pagination. They had to take instructions from the solicitors. The confidential bundle was more than 7,500 pages and some smaller bundles were lodged. Documentation totalled about 7,700 and was condensed from a much larger core file from the solicitors. Practico was provided with 4,500 emails for the bundles and documents were prepared during the course of the proceedings. They had to consider all the documentation through the course of the substantive proceedings so the documentation they had to consider was vast. It had to be prepared in a format that would assist the tribunal and in the light of the claimant challenging almost every point in the Bill. Mr Wonnacott said that the time actually spent was double that claimed in this assessment.

111. The claimant said in the context of what was allowed for the main hearing which was 10 lever arch files and he considered that relatively speaking this was a disproportionate exercise. The claimant said it was a heavy duty exercise to

generate a 7,500 bundle which he said that the respondent chose to do but he did not consider it was mandatory. He said that he did not consider the fact that Practico had already discounted was relevant and I said I was not going to take this into account.

112. In reply, Mr Wonnacott said that the Rules require the bundles to be prepared and the tribunal made an Order for this. Mr Wonnacott also disputed the analogy with the trial bundles as it is a different exercise.

113. The sixth item was for substantive advocacy preparation. Mr Wonnacott assisted with the respondent's Skeleton Argument submitted on Day 1 of this hearing with Appendices. It was preparation for a five day hearing as originally listed. Mr Wonnacott has charged for 50 hours preparation which he submitted was modest and that Ms Neighbour's involvement was integral as she has subsequently assisted at this hearing with the figurework although that was not part of this item.

114. The claimant said that this seemed to be adding some columns for spreadsheets and checking figures and summaries. The claimant said he could not understand the claim for 50 hours. He considered it was a lot of preparation for the advocacy for this case. He considered that there may have been duplication with preparation in 2018. He said that on a 7 hour day it was 11 days work at a full total of 75 hours including 25 hours for Ms Neighbour.

115. Mr Wonnacott said he spent more than 50 hours in preparation from the beginning of March and continues during the hearing in preparation for the next day. He said it was not simply a case of providing commentary on the Bill. This is an adversarial process so it is necessary to be ready to make the oral submissions.

116. The seventh item was the cost of the detailed assessment preparing the N260 which was a detailed assessment and including entering the solicitors' time and related matters. Mr Wonnacott charged for 6 hours and his colleague Mr Ioannou 10 hours at £4,140 in total. Attached was a Schedule of work done on documents and a Summary of Practico's fees for the Detailed Assessment.

117. The claimant said that this equated to just under 3 days of work and he thought a reasonable amount was a day. He thought about a day would be right "*for this form*".

118. In reply the respondent said that this was not a day's work even for an experienced team. The Schedule that had to be produced for an N260 has to be done in a certain way with work streams in the schedule and if it is not done properly, time can be disallowed. There were about 1,000 time entries to deal with.

119. The eighth item is attendance at the detailed assessment. This is for 23 – 26 March, half a day on 30 March 2021. Time for April was separate. It includes Ms Neighbour's attendance at this hearing. She was able to prepare and send to the claimant at the end of each day the figurework arising from the decisions

made. She took account of the figurework going along and adjusted the calculations. The attendance was at about 6.5 hours each day.

120. The claimant said that he "*did not have a big problem*" with this so it was allowed at £13,187.

121. The ninth item was for the hearing dates of 15 and 16 April 2021. Estimated time for these dates was £21,260 but this became less as there was some agreement on the final part of the bill, so the figure was £12,461 relating to further preparation time and attendance for these two days.

122. The claimant considered this too high given that £13,187 had been allowed for 4.5 days.

Decision on section (1) Practico's fees

123. Firstly this is for the fees for Reviewing Points of Dispute and Preparing replies. This was a very substantial piece of work on the part of Practico. The Points of Dispute ran to 55 pages. I do not share the claimant's criticisms of the drawing of the Bill of Costs which complied with the Rules. The claimant, as he is entitled to do, took issue with almost every item in the bill. There is a consequence of this, in that the respondent has to do the work in reviewing those Points of Dispute and preparing the replies. This was a massive task.

124. It took a full working week of Mr Ioannou's time at 35 hours and a substantial working day of Mr Wonnacott's time in supervision and overview. I consider this reasonable based on the task that was involved and the documents I have seen over the course of this hearing and I allow this in full at £9,377.

125. Secondly, for preparation for the Detailed Assessment in 2018, this was again a substantial piece of work. Mr Wonnacott was obliged to prepare for that assessment as Ms Stone had done for the full merits hearing when it was vacated at the last minute. The hours claimed are for 36 by Mr Wonnacott, 10 by Mr Ioannou and 5 by Ms Neighbour.

126. The area in which I make some reduction is because it appears that a great deal of work was done in trying to find a way to fit the hearing into a 3 day allocation without seeking a longer time allocation. Parties are always encouraged to inform the tribunal if they consider that the hearing allocation is either insufficient or will not require as much time as originally thought, so that hearings can be properly allocated.

127. For this reason I disallow 10 hours: 5 on the part of Mr Wonnacott and 5 on the part of Mr Ioannou. This brings a total for this section to £10,790.

128. The third section was general consultancy, preparation for and attendance at the case management hearing on 13 January 2021 and attending a conference prior to this. The hearing on 13 January 2021 was a very important hearing in that it was necessary for the respondent to defend the application to amend the Points of Dispute. It was a very late-in-the-day application and had potentially

very serious consequences for the respondent and their representatives and would have extended the time and cost of this hearing if allowed. I allow this in full at £5,190. I refer for more detail on the matter to the Case Management Order of 13 January 2021 and the reasons given for refusing the application.

129. On the fourth item, I agree that Mr Wonnacott had to prepare for the hearing on 15 March 2021, attend the hearing and report back to those instructing him. I allow 5 hours for this. I consider that it goes beyond what is reasonable to charge for Ms Neighbour in addition. There is nothing wrong with her attendance and work, but it is not reasonable for the claimant to pay for this, in this instance. This brings a total of £1,450.

130. On the fifth item, bundle preparation - we had for this Detailed Assessment around double the amount of pages than was before the tribunal for the full merits hearing in November 2016. The work done for this Detailed Assessment was of a very high standard and greatly assisted me in the task that had to be done. Without it, I find it hard to see how the work could have been done without a postponement to Order that it be done. The claimant had challenged almost each and every point in the Bill. There were occasions where I disallowed sums where there was no paperwork to support it. To prepare properly for this hearing, the respondent had to do this work and prepare these bundles. In any event it was required by the Rules and it was Ordered. It was an enormous but necessary task and it is allowed in full at £20,850.

131. On the sixth item – hearing preparation, Mr Wonnacott had to prepare as the lead advocate for a five day Detailed Assessment. He had a vast quantity of documents and had to be familiar with those documents in order to take the tribunal to the relevant pages at the relevant time. This is not a matter that can be prepared in a few hours. Even though there had been preparation for a listing in July 2018, practitioners cannot be expected to retain that sort of detail for 2 years and 8 months. Repreparation was a substantial exercise after the conclusion of the claimant's appeal process.

132. Mr Wonnacott has been the lead advocate at this hearing and his preparation has paid dividends in the smooth running of this hearing. An even longer time allocation would have been needed without his knowledge of the detail. Spreadsheets and figurework was involved and he was assisted in this by his colleague Ms Neighbour at a much lower charging rate.

133. When dealing with a multi-day Detailed Costs Assessment with almost every point in dispute and a set of papers approaching 8,000 pages, well above that which was involved in the full merits hearing, work on a Skeleton Argument and figurework and the standard to which this work has been done, potentially saving more time, I consider that the charge for preparation for this hearing was reasonable and it is allowed at £18,250.

134. On the seventh item - the cost of the detailed assessment preparing the N260, the claimant considered that only a third of the amount claimed should be recoverable. I took the view, with respect to the claimant, that as a litigant in person he was not fully aware of the work that went behind the preparation of

an N260. Mr Wonnacott claimed at 6 hours, Mr Ioannou did the main statement of costs at 10 hours and I was told that Ms Neighbour created the framework for the different sections and dealt with the underlying data at 6 hours. I allowed Mr Wonnacott and Mr Ioannou's time in full. I disallowed the third practitioner, Ms Neighbour as I considered that with the combination of Mr Wonnacott and Mr Ioannou this was reasonable for the claimant to pay but not for the third person's work. I considered that the work could have been done between Mr Wonnacott and Mr Ioannou. This is £3,240 allowed.

135. The eighth item is attendance at the detailed assessment. This is for 23 – 26 March, half a day on 30 March 2021. This was agreed as claimed at £13,187. Time for April was dealt with separately.

136. The ninth item was for the hearing dates of 15 and 16 April 2021 in the sum of £12,461 for two days set against £13,187 for 4.5 days. I found this hard to reconcile. I was told that it was for preparation time for the matters for those two days. I allowed this at a total of £6,000.

137. The total allowed for this section was £88,334 and the parties agreed that this was the figure.

(2) Counsel's fees

138. This was shown in the N260. Two fees were charged for counsel's fees, £3,855 for advice, conference and documents and £27,150 for this hearing and the preliminary hearing on 13 January 2021. During the hearing the first fee was initially reduced to £3,000. The respondent later agreed to accept £560 for this.

139. The second figure for counsel's fees was £27,150. This was made up as to the brief fee for the hearing on 13 January 2021 at £1,750, a brief fee of £10,000 for the Detailed Assessment hearing and 5 x refresher fees of £2,800 making a total of £14,000 and a half day refresher of £1,400 for 30 March 2021.

140. The claimant's position was that it was duplication to have Ms Stone and Mr Wonnacott.

Decision on section (2) counsel's fees

141. The sum of £560 was agreed by the claimant for advice for the 13 January 2021 hearing and the £1,750 brief fee for that hearing was also agreed.

142. I find that Ms Stone's attendance was of great assistance to this hearing. Given the detailed and complicated history of the case, her input was required and assisted me in understanding the costs claimed. Had Ms Stone conducted the primary advocacy, I accept that her brief fee would have been much higher. Had Mr Wonnacott dealt with this hearing alone, I would have allowed more for his fees. On a case of this nature and on costs at this level and given the complex and lengthy history of the case going back to 2015 and on a multi-day hearing, it was reasonable for Ms Stone to be instructed together with Mr Wonnacott at the cost claimed. I was assisted separately by both Ms Stone

and Mr Wonnacott on different issues. I allow counsel's fees for this hearing as claimed.

Section (3) solicitors' time

143. This was agreed at £22,000.

Conclusion on the costs of this detailed costs assessment

144. This is the assessment of the respondent's costs for this 7 day hearing for the parties (with day 1 as a reading day for the tribunal) taking place on 22, 23, 24, 25 and 26 March 2021, partially on 30 March 20201 and on 15 and 16 April 2021. Day 1, 22 March was a reading day for the tribunal and the parties were not present. The final day of 5 May 2021 was for an oral decision on the interest claim and for finalisation of the figures.

145. The final figure for the costs of the detailed assessment was £138,044.00.

Interest on the award of costs and from what date does interest begin to run?

146. The respondent produced a note on interest on costs and sought the default position of costs from the date when the Order for costs was made and at the rate of 8% under section 17(1) of the Judgments Act 1838 (as amended). They produced this to assist the claimant who is now a litigant in person, although he was professionally represented when the Points of Dispute were drafted and was represented by counsel at the preliminary hearing on 13 January 2021.

The respondent's submissions on interest

147. The respondent submitted that once decision is made to award costs, there is no further discretion. Rule 78 of the Employment Tribunal Rules of Procedure applies and the relevant CPR including CPR 40.8. The respondent went through the principles in the CPR and the authorities.

148. The respondent attached the relevant parts of the notes to the White Book setting out the rules. CPR 44.2.(6)(g) says that the order which the court may make under this rule include an order that the party must pay interest on costs from or until a certain date. The notes on r44.2(6)(g) relied upon by the respondent said:

> *"In respect of the amount payable to a receiving party under an order for costs (whether agreed or as assessed), that is to say, payable when the costs order has crystallised into a judgment debt, that party is entitled to interest on that amount at the statutory rate of 8% per annum (a rate which the court may not vary). The entitlement to such interest begins on the date upon which the order for costs was made (not the date upon which the costs were assessed) unless the court otherwise orders. The court may order that interest shall begin to run from a date before the date that judgment is given (Bristol-Myers Squibb Co v Baker Norton Pharmaceuticals Inc [2001] EWCA Civ 414; [2001] R.P.C. 45,*

CA) or after."

149. The respondent did not seek to claim for interest from any earlier than the date on which the Costs Judgment was sent to the parties on 7 September 2017. The respondent accepted that there is a discretion to depart from the date upon which interest starts to run. It could be a date before 7 September 2017 in that the respondent had expended significant sums of money in preparation for the trial and were out of pocket and they could have claimed interest running from an earlier date. The respondent accepted that it could also be a later date, for example if the claimant had paid a sum on account of costs.

150. The respondent took the tribunal to the notes in the White Book on CPR 40.8.2 and the authorities referred to. At the outset of this section the notes state:

> *"An order for payment of costs to be assessed is construed as a judgement debt within the Judgments Act 1838 section 17(1), even though, before the assessment there is no sum for which execution can be levied. It follows, as was confirmed in Hunt v RM Douglas (Roofing) Ltd 1990 1 AC 398, HL, that where an order for costs is made by the High Court, interest runs from the date on which the order is made (the incipitur date), and not from the date on which the costs are subsequently assessed or agreed (the allocatur date). Where an order for costs is made by the County Court the same applies."*

151. In ***Hunt v RM Douglas (Roofing) Ltd 1990 1 AC 398,*** the House of Lords set out the reasoning behind the rules in the Conclusion to the Judgment (Lord Ackner):

> *"It is the unsuccessful party to the litigation who, ex hypothesi, has caused the costs unnecessarily to be incurred. Hence the order made against him. Since interest is not awarded on costs incurred and paid by the successful party before judgment, why should he suffer the added loss of interest on costs incurred and paid after judgment but before the taxing master gives his certificate?"*

152. In ***Fattal and Fattal v Walbrook Trustees (Jersey) Ltd 2009 4 Costs LR 591*** the High Court (Chancery Division) said, at paragraph 25, that the combined effect of the Act and the Rules is that save where a rule or Practice Direction otherwise provides, interest will run from the date the judgment is given unless the court orders otherwise. There is nothing in the statute as amended or in the Rules, which indicates that a different order is only to be made in exceptional circumstances. The High Court said that there must be a good reason to make such an order, but it does not have to amount to exceptional circumstances. At paragraph 26 the High Court said that the most important criterion was what justice required.

153. The respondent submitted that the primary purpose was to compensate the recipient who is out of pocket. The respondent said that what has to be considered is "*money flow*" when looking at when interest should start to run. This is as set out in paragraph 27 of ***Fattal***: "*The ability of the High Court to depart from the incipitur rule was conferred in order that the court could take*

account of the fact that money would often be expended before any judgment. Conversely, where money has not been expended, for example here the bulk of the costs have been paid at a date long after the relevant judgment, justice requires that the date for the commencement of the interest is postponed beyond the date of that judgment."

154. The respondent took the tribunal to the decision of the Commercial Court in ***Involnert Management Inc v Aprilgrange Limited 2015 EWHC 2834*** which in turn cited ***Schlumberger Holdings Ltd v Electromagnetic Geoservices AS 2009 EWHC 773***. At paragraph 11 of ***Involnert***, referring to ***Schlumberger***, the Judge said: "*Mann J did not accept that the differential between the judgment rate and a commercial rate of interest provided a good reason to order such a postponement in circumstances where fixing the judgment rate is a matter for Parliament."* Thus the difference between the Judgment rate and a commercial rate of interest was said not to be a good reason to order the postponement of the date upon which interest becomes payable. The respondent submitted that the setting of the Judgment rate is a matter for legislation and is at a high rate, possibly to encourage parties to settle the matter, rather, as in this case dealing with it three years later.

155. The respondent took the tribunal to other examples cited in ***Involnert***. In ***Colour Quest v Total Downstream 2010 2 Costs LR 140*** when interest did not run, David Steel J, decided that justice required a six month postponement of the date on which interest started to run under the Judgments Act in a case where the costs were very large indeed and the claimants themselves wished to double the time allowed to them for the presentation of a detailed bill of costs for assessment. It is important to note that the "claimants" in that case refers to the receiving party in terms of costs and there was delay on their part in presenting their bill of costs. This together with the large sum of costs justified delaying the date from which interest ran, by six months.

156. In ***London Tara Hotel Ltd v Kensington Close Hotel Ltd (Costs) 2011] 2 Costs LO 197*** , Roth J ordered a four month postponement in a case where the overall costs were "substantial" and an interim payment of £400,000 had been ordered (judgment paragraph 39).

157. In ***Fiona Trust & Holding Corporation v Privalov 2011 3 Costs LO 338***, again a decision of the Commercial Court, Andrew Smith J agreed that the date from which Judgments Act interest runs should not be deferred simply because it is at a considerably higher rate than commercial rates and expressed the view that it is for the party applying for deferral to show that there is something about the circumstances of the particular case that justifies a departure from the general rule. He said at paragraph 4 of that case, "*Typically the applicant would have to show that particular features of the case mean that the application of the general rule would be so unfair to him that justice requires departure from it. This might be because a large amount of costs is likely to be outstanding for a particularly long period and the applicant cannot be expected to avoid this by assessing what costs he will have to pay and making (or tendering) a substantial payment on account."* He declined to defer the date in that case as he did not consider that there were any unusual difficulties involved in the

assessment of costs and he did not accept that, in itself, it was not a sufficient justification for deferral that the costs are likely to be unusually large. The respondent submitted that it is for the party applying for a deferral to show that there is something which justifies a departure from the norm. In ***Involnert*** at paragraph 21, Leggatt J agreed with this.

158. The respondent said that the default position in this case is that interest runs from 7 September 2017. A good reason was needed to depart from that. It could be because of a large sum paid on account or the behaviour of the receiving party. Reasons which courts have held as not sufficient to justify a departure from the default position, are that the sum is significant or that the interest is higher on a judgment debt that it would be commercially.

159. The respondent said that in this case the solicitors' costs were incurred before the Costs Order, there had been no payment on account, no offer of a payment on account or any offer to pay after the Bill of Costs was submitted. The amount offered was "*zero*".

160. In terms of the chronology, the respondent pointed out that the reason why this hearing did not go ahead in July 2018 was because the claimant appealed unsuccessfully to the EAT and the claimant asked for the costs proceedings to be stayed. The respondent wished for the costs hearing to continue and only agreed once the claimant had been given permission to appeal to the EAT. The proceedings in the EAT took longer than might have been anticipated because there was a strike out application because the claimant had recorded part of the costs hearing on 31 July 2017. The further delay was because of the claimant's unsuccessful appeal to the Court of Appeal. The respondent said that this was the opposite of the respondent delaying the case or the respondent asking for more time. The submission was that the respondent had acted expeditiously.

161. The respondent submitted that the fact that it has taken this long to come to a costs assessment was not because of any request by the respondent and there was no reason to depart from the default position. The respondent said that the claimant's means were not relevant to this matter. Means were relevant to the decision under Rule 76. On the question of interest, this is the question of justice and from when interest should run.

<u>The claimant's submissions on interest</u>

162. The claimant believed that the amount of the interest was around £130,000 over 3.5 years although the calculations had not been done when submissions were made. He also thought it was compound interest. The respondent pointed out that it was not compound interest so the claimant said he thought it would work out at about £29,000 per annum.

163. The claimant submitted that the tribunal was in "*uncharted territory*" with High Court style costs in the Employment Tribunal. He also relied on paragraph 91 of the Costs decision sent to the parties on 7 September 2017 where findings were made as to his means and prospects of being able at some point int eh

future to pay a substantial sum of costs in the region of £300,000 plus.

164. The claimant said it was agreed between the parties that the Detailed Assessment would not go ahead while the appeal process was ongoing. The claimant asked for a stay which was initially resisted by the respondent, but once the claimant had permission from the EAT, the respondent acceded to the claimant's request.

165. The claimant said that in the face of the Costs Order the he exercised his right of appeal or as he put it, his right to a "*a fair hearing".* The claimant submitted that it was not a question of him holding up the Costs process and said there was agreement on the part of the respondent.

166. The claimant also relied upon the ***Fattal*** case, specifically the final sentence of paragraph 30 of the Judgment which says: "*In some cases it may be necessary to examine the underlying financial arrangements."* The claimant said there was a huge imbalance between himself and the respondent, which is an investment bank. The claimant submitted that they had suffered no material or meaning full disadvantage by not having access to the funds. The claimant said that there was no cost to the respondent because cash is always present on their balance sheet.

167. In relation to payments on account, the claimant said he gave evidence as to his means and could not afford to make payments on account. He said he had presented evidence that he had no ability to do so. The claimant said that the respondent had received a tax deduction for these costs and would make a windfall gain. I asked the claimant how he knew this and he said it was in their accounts. He accepted it was not entered as a separate matter in their accounts but said it went back to 2017 and had been accounted for then.

168. The claimant said that the delays were due to the appeal process which was beyond his control and to be penalised in a way that made it impossible to repay the debt made it inherently unfair.

Decision on interest

169. The claimant considered that the tribunal was in "*uncharted territory*" in relation to a Detailed Assessment of this nature and in the quantum concerned. I find that this is not the case. Detailed Assessments have been a feature of Employment Tribunal Procedure since 2013. The claimant's case is by no means the first.

170. Under Rule 78 of the Employment Tribunal Rules of Procedure, there are two ways in which a detailed assessment can take place, either in the County Court applying the CPR or in the Employment Tribunal with the Judge applying "*the same principles*". Rule 78(1)(b) which says that a detailed assessment is carried out either by a County Court in accordance with the Civil Procedure Rules or by an Employment Judge applying the same principles. The principles are those of the CPR. There are a number of Employment Judges who currently sit or have spent time sitting as Judges in the County Court.

171. CPR 40.8 says:

> *1) Where interest is payable on a judgment pursuant to section 17 of the Judgments Act 1838 or section 74 of the County Courts Act 1984, the interest shall begin to run from the date that judgment is given unless –*
> *(a) a rule in another Part or a practice direction makes different provision; or*
> *(b) the court orders otherwise.*
> *(2) The court may order that interest shall begin to run from a date before the date that judgment is given.*

172. The Rules and case law authorities make clear that the default position is that interest runs from the date of the award of Costs which in this case is 7 September 2017. To depart from this requires a good reason, but not exceptional circumstances. The case law shows the sorts of reasons that the courts have accepted as good reasons, and examples of those which are not considered to be good reasons.

173. The authorities show that the fact that the Judgment rate of interest, which the tribunal has no power to vary, is higher than a commercial rate, is not a good reason to postpone the date from which interest begins to run. The case law also shows that the fact that the amount of costs is large, is not of itself enough to justify a departure from the norm.

174. On the claimant's submission on the findings made at the Costs Hearing (decision paragraph 91), these were the tribunal's comments as to what they would have considered, had they decided to take into account the claimant's means. Their finding at paragraph 90 was expressly that they had decided not to take account of the claimant's means under Rule 84. These are findings that went to the threshold decision as to whether to award costs. The claimant's means are no longer a factor for consideration when deciding the point from which interest begins to run.

175. As set out above, the claimant placed reliance on the final sentence of paragraph 30 in ***Fattal***. I considered the full paragraph in order to see the final sentence in its context. It says:

> *"Since the payment of solicitors' costs involves the payment of money which could otherwise have been profitably employed, the overwhelming likelihood is that justice requires some recompense to be made in the form of interest. If the receiving party has financed the costs from his own money or from money that he has borrowed at interest, the case for his receiving interest on his costs, at least from some date, is likely to be overwhelming. The position might be different if the finance had been advanced entirely voluntarily, interest free, from a sympathetic relative or institution, as Akenhead J contemplated in Fosse Motor Engineers Ltd v Conde Nast and National Magazine Distributors Ltd [2008] EWHC 2527 QB , or conceivably from a lender which mistakenly failed to call for interest. In some cases it may be necessary to examine the underlying financial arrangements."*

176. The claimant's submission was that it was necessary to examine the underlying

financial arrangements and this appeared to be in so far as those underlying financial arrangements related to himself. Paragraph 30 of ***Fattal*** focuses on the position of the receiving party. If the receiving party has financed the costs from his (or its) own money, the case for interest on his costs is likely to be overwhelming. It might be different if it had received cost free finance. It is on that basis that I consider and find it is necessary to look at the underlying financial arrangements and not whether the claimant can afford the interest.

177. The claimant's submission that he should not have to pay interest or have a deferral of the date from which it runs, because the respondent can afford it, is not an attractive one. The claimant's position is that as a wealthy organisation it can afford to expend this money without interest or with interest from a later date than the norm. It does not alter the fact that this respondent has spent a substantial amount on legal costs, in a situation where, to quote from ***Hunt v RM Douglas*** the claimant "*has caused the costs unnecessarily to be incurred. Hence the order made against him."* These are costs that they ought not to have expended and could have used the funds for another purpose. The fact that it may be a wealthy organisation is not a factor I take into account. I consider that courts and tribunals should not have to consider a receiving party's means and ability to withstand a heavy costs burden, when deciding such matters, other than if cost free finance has specifically been received for the costs as described in ***Fattal***. That a receiving party can afford to shoulder the costs is not a factor I take into account.

178. The claimant also relied upon the delay in the appeal process as a reason why the date from which interest begins to run should be deferred. The claimant exercised his right of appeal which he had every right to do. His appeal process ultimately failed and the respondent has remained out of these funds. The respondent should not be penalised in relation to interest to which it would otherwise be entitled, because the claimant has chosen to exercise his right of appeal. As the House of Lords said in ***Hunt v Douglas*** "*Since interest is not awarded on costs incurred and paid by the successful party before judgment, why should he suffer the added loss of interest on costs incurred and paid after judgment but before the taxing master gives his certificate?"*

179. The claimant was a litigant in person at this hearing but has been professionally represented and his Points of Dispute were professionally drafted. No point was taken within his Points of Dispute regarding interest.

180. Whilst I accept that the rate of interest is high compared to a commercial rate, I have no power to vary this. Based on the authorities which I have considered, the claimant on my finding, has not put forward a good reason as to why the point at which interest begins to run should be deferred. Interest therefore runs from 7 September 2017.

181. The interest figure was calculated by the respondent and shared with the claimant during a break and this came to a total of £104,784.61. The claimant agreed the respondent's calculation.

182. I expressed my thanks to everyone involved in this hearing for their hard work

and professionalism and for their assistance to the tribunal.

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Employment Judge Elliott
Date: 21 May 2021

Judgment sent to the parties and entered in the Register on:21/05/21

_____ For the Tribunal

Case No: 2201358/2015

IN THE CENTRAL LONDON EMPLOYMENT TRIBUNAL
QUEENS BENCH DIVISION

BETWEEN:

MR MILAN RADIA

Claimant

and

JEFFERIES INTERNATIONAL LIMITED

Respondent

REPLIES SERVED BY THE RESPONDENT IN RESPONSE TO THE CLAIMANT'S POINTS OF DISPUTE IN RELATION TO THE RESPONDENT'S BILL OF COSTS FOR ASSESSMENT ON THE STANDARD BASIS PURSUANT TO THE ORDER OF THE TRIBUNAL DATED 18 SEPTEMBER 2017

The Claimant's appeal of the Costs Order	1. The Claimant is appealing the costs order made in the Respondent's favour. Any concessions made within these Points of Dispute are without prejudice to the Claimant's appeal and the Claimant's primary submission that no costs should be paid to the Respondent. 2. The Claimant has properly considered the Bill of Costs, challenged the costs claimed therein and put forward concessions in order to narrow the issues in dispute between the parties should the costs order stand and a Detailed Assessment be required.
	Respondent's Reply 3. The Points of Dispute do not comply with the Overriding Objective and necessity to deal with a case justly and at a proportionate cost and they fail to adhere to the requirement under PD 47, para 8.2 to ensure that Points of Dispute are short and to the point. 4. Further, they fail to identify specific points, stating concisely the nature and ground of dispute. Throughout these Points of Dispute, the Claimant has submitted generic arguments, putting the Respondent to proof without justification, which has only served to increase the costs of these detailed assessment proceedings in what appears to be a *fishing* expedition.
Preliminary Point: **Standard Basis Assessment and the Respondent's approach to the litigation**	5. The Respondent benefits from a costs order following this Employment Tribunal matter, which is an exception to the normal rule that parties bear their own costs in such claims. The Tribunal deemed it appropriate for the Respondent's costs to be assessed on the Standard Basis, as defined in CPR 44. 6. The paying party accepts the liability to pay the Respondent's costs. It is submitted, however, that the approach taken by the

	Respondent's legal team in defending the claim caused the Respondent to incur costs that were unreasonable in amount, and/or unreasonably incurred, and/or which were disproportionate to the claim. On a Standard Basis assessment those costs should be disallowed, pursuant to CPR 44.3 7. This point is specifically highlighted from the outset as it will provide the context for many of the paying party's specific objections to costs claimed throughout the Bill. 8. In light of the usual rules on costs in the Employment Tribunal, the parties would have entered the litigation with the assumption of no costs recoverability from their opponent. The Respondent is a global financial company with assets in the billions of pounds. It is submitted that the combination of these two factors resulted in the Respondent paying for a comprehensive, robust defence of the claim based on the highest service level available. 9. The Respondent was entirely within its right to take this approach, but it does not follow that the same costs should be passed on to the paying party. The Bill shows that this approach resulted in costs being incurred in ways that are not recoverable on an inter partes detailed assessment. 10. There is clear and consistent evidence of a multi-fee earner, collaborative, team approach to conducting the defence. Partners, Senior Associates, Associates, a Consultant Barrister and external Counsel all contributed to the litigation, as well as significant junior assistance from Trainees and Paralegal. Costs of several E-Disclosure Consultants are also claimed. The majority of attendances include two or even three fee earners. Documents are drafted by all levels of fee earners, often on the same day, with amendments being made for days or even weeks later. There is senior supervision, evidence of instructions being drafted by one solicitor to the other, and copious inter-fee earner meetings and discussions. It is commonly accepted that all of these activities are not recoverable on a Standard Basis inter partes assessment. 11. Two additional factors must be added to this picture; firstly the extremely high enhanced rates claimed by the Respondent's solicitors, and secondly the level of involvement by Counsel who has charged over £100,000 in fees, £60,000 of which relates to the preparation of documents that were also worked on extensively by the solicitor team. 12. The paying party submits that these factors reflect a mind-set of "win at all costs", which was deployed throughout the litigation by a Respondent with access to almost bottomless financial resources. This approach provided the Respondent with the desired outcome, and also enabled the Respondent to benefit from an inter partes costs order. However, that order was expressly made on the Standard Basis. It is submitted that this approach will be one of main reasons why the Respondent's costs must be reduced or disallowed on an item-by-item basis when assessing this Bill. 13. The following two examples of correspondence demonstrate that the Respondent was knowingly not conducting the litigation at a

	reasonable and proportionate cost, or was at least unaware of the rate at which their costs were escalating: 14. The narrative of the Bill of Costs refers to a letter from the Respondent in March 2016 inviting the Claimant to discontinue the claim, otherwise the Respondent would seek a costs order if forced to trial. The Respondent advised the Claimant that their costs were significant and would exceed £200,000 if forced to continue. Adding up the Parts of the Bill of Costs to this date, the Respondent's actual costs were already in excess of £380,000 by this date, so clearly the Respondent was unaware of the level or costs already incurred and the rate at which costs were being incurred when providing a rough figure of £200,000 for the entire matter should it proceed to trial. Ultimately the Respondent's costs were over three times that sum. 15. An email from the Respondent to the Claimant on 9 March 2016 acknowledged that the Respondent's costs for preparing an application exceeded £15,000, but the Respondent conceded in an email that, in their view, their reasonable and proportionate costs for that work would be £5,000. Clearly the Respondent was aware that at best only 1/3 of the costs incurred could be deemed recoverable on a Standard Basis inter partes assessment. That application was prepared by Counsel and multiple solicitors in a manner that reflected the Respondent's general approach to conducting this litigation. 16. The paying party will refer back to this preliminary point throughout the Points of Dispute where it assists with the assessment of individual or groups of items within the £700,000 of costs claimed.
	Respondent's Reply 17. The Respondent submits that this is not a point of principle that requires determination by the Tribunal. The Claimant's submission that the costs claimed are unreasonable and/or unnecessary should be addressed to specific items that are in dispute. To the extent that the Claimant generically submits that the costs claimed are disproportionate, this is not a consideration for individual items, but only after there has been an assessment of the reasonable costs. In any event, the Respondent does not accept the costs are disproportionate nor that there should be any adjustment to the costs as assessed on account of any disproportionality ruling. 18. As the Claimant has acknowledged, this matter is an exception to the rule whereby the Tribunal ordered the Claimant to pay costs to be assessed on the standard basis. Whilst the Claimant seeks to draw the Tribunal's attention to the relevant provisions of the CPR and provide a summary of the time claimed, they have neglected to address the circumstances and nature of the claim that led to the extent of time and resultant costs that were reasonably and necessarily incurred. Ultimately, the Tribunal found that the Claimant's unreasonable conduct throughout these proceedings warranted a departure from the ordinary rule and made a costs order in the Respondent's favour.

	19. The argument put forward by the Claimant as to the parties' expectations as to the recoverability of costs at the inception of the action is irrelevant and wrong in any case. Further, it seems illogical to suggest that the Respondent would have adopted a "*win at all costs*" approach if it had no expectation of recovering its costs; precisely the opposite would be the natural response. It would be unreasonable to have assumed that the Respondent would put up anything other than (a "comprehensive, robust defence", which it had no alternative but to adopt as a result of the meritless claims brought against it. 20. Similarly, the fact that the Respondent had the resources to successfully defend this claim should not mean that the Claimant should meet the costs incurred. These points appear to be an attempt to circumvent the fact that a costs order was made in the Respondent's favour. The Claimant's means have already been considered by the Tribunal when determining whether or not to make a costs order and this appears to be another attempt for them to be considered via the back door. The costs claimed within this Bill are a direct consequence of the Claimant's approach to litigation. 21. As the Points of Dispute acknowledge, there was a lot at stake for the Respondent; there was a large amount of money at stake (especially by reference to typical Employment Tribunal claims), very serious allegations were made spanning a period of 5 years with potential regulatory and reputational consequences, the Claimant adopted a kitchen sink approach to allegations and pursued litigation in an obstructive and unreasonable manner. 22. There was a very considerable amount of work to be done to defend the meritless allegations brought by the Claimant. At times this required work to be carried out urgently and a sufficiently resourced team was required, both to get the work done (particularly at peak times such as when dealing with disclosure) and to ensure that tasks were resourced appropriately and efficiently. 23. The claim was predominantly handled by one Partner (Peter Frost) and one Associate (Hannah White). As the claim lasted over a prolonged period of time, it was inevitable that different fee earners were engaged as and when it became necessary during the relevant period. By way of example, Julia Williams and then Tara Grossman went on maternity leave. Some fee earners had specific roles. By way of a further example, Sophie Jones is a member of the advocacy unit and conducted much of the witness familiarisation. Sian McKinley was a barrister on secondment to our team who provided additional assistance during the peak time of finalising statements. Emily Abrahams, a New York Associate, was involved simply to facilitate the preparation of Steve Black's witness statement in the most efficient way (as this witness was based in New York). The e-discovery team managed work according to seniority and experience and without which, this work would likely have had to be outsourced at a similar or greater expense. 24. The Respondent maintains that it was perfectly reasonable for more than one person to have input on a particular matter, particularly when dealing with key correspondence, pleadings

	and witness statements. The implication that the Respondent should approach litigation on a shoe string budget is unrealistic, especially when faced with the serious allegations made. 25. Taking the Claimant's numbered points in turn, the Respondent comments as follows: 26. A strategic decision was taken as to the figure to be relayed to the Claimant. The figure was not intended to be the exact amount or even an estimate. Further, it was considered that including the full figure may give the Claimant a tactical advantage. In any event, the Respondent is not bound by this figure and submits that it made no difference in any event. It was clear from the Claimant's approach throughout and specifically in light of the failure to respond to this letter that the Claimant intended to pursue this claim through to trial. 27. These costs related to a relatively self-contained issue, namely the instructions for the joint expert (the costs of which were largely incurred as a result of the Claimant's approach). The Respondent's approach of limiting the amount of costs to be sought was reasonable and proportionate. The Respondent did not concede that only a third of the costs incurred were reasonable and proportionate. 28. Throughout these Replies it will be evidenced that the level of costs incurred was a result of the Claimant's approach to litigation.
	Costs Officer's Decision The Claimant's submission that the costs claimed are unreasonable and/or unnecessary should be addressed to specific items that are in dispute.
General Point 2 Hourly rates	29. The Respondent claims hourly rates ranging from £160 for trainees to £667 for a Partner, for work conducted between May 2015 and September 2017. The paying party submits that the hourly rates claimed are unreasonably high for the work conducted by the receiving party in the context of this claim. In particular the relatively limited legal complexity of the claim, the narrow and largely undisputed issues of expert evidence, and the extreme reliance on Counsel at every juncture of the litigation do not justify any enhancement to the solicitors' hourly rates. It is anticipated that the Respondent will lean heavily on the value of the claim and the importance of protecting its reputation. The paying party accepts that these are relevant factors, but submits that they are largely countered by the initial submissions above and are already covered in the rates offered in these Points of Dispute. <u>Grade of fee earner rather than job title</u> 30. The paying party submits that, in addition to the rates being unreasonably and disproportionality high, the allocation of rates

	to fee earners based on their title is misleading and should not be followed in the Detailed Assessment. The applicable factors for determining an inter partes chargeable hourly rate are the individual fee earner's skill and experience, as determined by their grade. The paying party submits that the fee earners' hourly rates should vary depending on whether they are a Grade A, B, C or D fee earner based on years of post-qualification experience, and not their job title. The Senior Courts Costs Office has previously determined these grades based on dividing lines of 0, 4 and 8 years' experience after qualification. These are the applicable demarcation in a solicitors' career that justifies an increase in chargeable hourly rate on an inter partes assessment of costs. 31. As an example the paying party refers to the fee earner Hannah Mathews (HM, HM1 etc). Ms Mathews is charged as a trainee at a rate of £160 an hour initially. Following her qualification in March 2017, Ms Mathews' title immediately changes to "Associate" and she is charged at a rate of £361 per hour. Clearly Ms Mathews' knowledge, skill and experience would not have changed overnight to justify an increase in her chargeable rate of more than 100%. The title of "Associate" often reflects a qualified solicitor of several years' post-qualification experience but it appears that the Respondent's solicitors use this simply as a title for newly-qualified solicitors. This is a perfectly acceptable practice, but it should not be determinative of that fee earner's rate at an inter partes assessment. 32. Another example is Ms Sophie Jones, a Senior Solicitor charging a rate of £470 throughout the matter. Ms Jones qualified in March 2010, therefore would have had 5 years' post-qualification experience when the matter started in May 2015. This would place Ms Jones as a Grade B solicitor during the entirety of the litigation. Again the job title potentially indicates a higher level of experience and skill, which should be set to one side on this assessment. 33. The paying party has annexed to these Points of Dispute an annotated version of the Respondent's fee earner list that was provided with the Bill of Costs. The additional column demonstrates the Grade of each fee earner based on their post-qualification experience. The Court is invited to determine an applicable hourly rate for Grade A, B, C and D fee earners and then apply the appropriate rate to the fee earners' recoverable work in the Bill of Costs based on their relevant categorization by Grade, rather than by title. <u>The applicable hourly rates</u> 34. The receiving party claims the following rates split by SCCO grade fee earners: Grade A : £560 - £667 Grade B : £412 - £470 Grade C : £310 - £395 Grade D : £160 - £196 E-Discovery (not qualified) : £140 - £220

	Consultant Barrister : £310 - £395 35. These rates are unreasonably high and disproportionate to this claim. When assessing the reasonableness of the hourly rates the paying party refers to the factors set out under CPR 44.4(3)(a)-(h). 36. The paying party concedes that this was a matter of significant importance to the receiving party due to the press coverage and potential damage of reputation caused by an adverse decision from the Tribunal. However, very few other factors justify the enhanced rates claimed in the Bill of Costs. The rates claimed are intended to reflect the level of responsibility required to run a claim (see comments regarding Counsel) and in this regard the paying party rely on the case of ***Higgs v Camden and Islington Health Authority [2003] EWHC 15 (QB)***. 37. The value of the claim was not insignificant, but it alone does not justify the rates claimed. £1,600,000 is not an exceptionally high sum of damages to take it out of the norm. This figure also flowed primarily from the wages earned by the Claimant, and so did not represent a myriad of complex calculations that would have to be analysed by expert solicitors to determine risk or an appropriate settlement. Indeed the damages claimed were not addressed in the Respondent's Grounds of Resistance or three witness statements. 38. Furthermore it must be considered within the context of the parties. The Respondent is a global trading company of substantial means. Paying even the full sum of damages would not have caused any particular hardship to the Respondent company, its continued existence as a profitable business did not depend on the decision as to whether damages would have to be paid out. 39. The Respondent has indicated that the complexity of this claim justified the instruction of a City team of expert employment lawyers. The paying party submits that this claim was far from complex when the legal, factual and expert issues are considered fully. There was no dispute over the Claimant's status as a disabled person under the Equality Act 2010 at any point in the litigation. The parties instructed one joint expert with regards to the impact of the Claimant's AML, with one report provided. Ultimately, the matter revolved around factual allegations of the Claimant's employment over a 5-year period. The Tribunal was required almost exclusively to determine whether the Claimant or Respondent's witness evidence was factually accurate. Discrimination findings would flow from those factual determinations. 40. The paying party submits that it was not necessary to instruct a specialist City firm of employment lawyers to deal with a legal claim of this nature. There must be a separation between the Respondent's ability to afford the going enhanced City rates, and whether those same rates are actually reasonable and proportionate to the litigation in question. Furthermore, there is clear evidence from the Bill of Costs of research into employment law being conducted by various levels of fee earner within the Respondent's legal team (see the assessment of the Part 1 Document Schedule). Research in itself is not recoverable inter

	partes as it is assumed that a qualified lawyer knows their area of practice: ***R v Legal Aid Board Ex Parte Bruce (1991)*** refers. Notwithstanding this, the inclusion of this research underlines that this legal team did not hold the elite, expert level of knowledge and experience in this area of law to justify such an enhanced set of hourly rates. 41. The Respondent's reliance on Counsel is also pertinent to the applicable hourly rates. Uplifted rates should only be awarded where it is clear that the fee earner has gone beyond the level of responsibility and skill expected of their Grade by the SCCO. Preparing complex documentation, such as pleadings and witness statements, would be evidence of this, as would the conducting of litigation. In this matter the Respondent relied heavily on Counsel. Not only was Counsel instructed to advocate on behalf of the Respondent, but Counsel also advised on an extremely frequent basis around the main procedural steps in the litigation, and claims fees for drafting both the Grounds of Resistance, Letter of Instruction to the Expert, and the Witness Statements. These formed the pivotal documents in these proceedings. In addition to attendance at the final hearing, there are 75 separate Counsel fees claimed in the bill. Counsel's fees total £106,403. It is clear that at no point in the litigation did the team of solicitors take on the full responsibility to draft documents or make strategic decisions for the Respondent. 42. In light of the above considerations, the paying party submits that there is no justification for any enhancement on the hourly rates awarded to the Respondent's solicitors. Accepting that the matter was conducted by City firms, the applicable hourly rates for this matter should be the Guideline Hourly Rates set by the SCCO for Central London. These guidelines already factor in a significant uplift from the rates recovered by other firms outside of the City. 43. The paying party offers: Grade A - £409 Grade B - £296 Grade C - £226 Grade D - £138 44. Where any item in the Bill of Costs isn't expressly challenged in these Points of Dispute, it is assumed that the receiving party offers the time claimed for that item at the relevant hourly rate offered depending on the fee earner's Grade, and not their job title.
	Respondent's Reply 45. The Claimant's comments in respect of the hourly rates claimed are rejected. It is apparent that the Claimant seeks to draw attention to and rely on the SCCO Guideline rates; however, these have no application in relation to anything other than summary assessment and even then, they are merely guidelines.

	46. The rates, in the words of the guide, are "not scale figures: they are broad approximations only". They are not prescribed by the SCCO. They may be amended locally at any time by the Designated Civil Judge. They are not carved in stone. However, it is acknowledged that in practice the Guideline rates can sometimes provide a useful starting point and in this matter, London 1 rates of Grade A: £409, Grade B: £296, Grade C: £226 and Grade D: £138 are the appropriate starting point as conceded by the Claimant. 47. Further, the Respondent has no objection to hourly rates being assessed based on 'Grade', but rejects the Claimant's submission that reference to a fee earner's title within the Bill of Costs is somehow misleading. Regarding the list of fee earners prepared by the Claimant and for the sake of completeness, Julia Williams was admitted as a Solicitor on 1 September 2008 and so was a Grade B fee earner whilst she undertook work. Similarly, Nick Wright was admitted as a Solicitor 1 March 2012 and was a Grade C fee earner he undertook work. 48. The Respondent refers to *Cox v MGN [2006] EQHC 125 QB* and the Tribunal is asked to take into account all the circumstances including, in particular, the factors listed in CPR 44.4(3). The Respondent submits it is necessary to have regard to the solicitor's particular skill, effort, specialised knowledge and responsibility as well as assessing the case in terms of importance, complexity, difficulty or novelty. Regard should also be given to the conduct of the parties. 49. Despite what the Claimant may assert, this was not a straightforward claim. The Respondent was put to task to defend a number of serious allegations spanning of over a period of 5 years, a case which was dependent upon an extraordinary overarching allegation of a determination by Richard Taylor to remove the Claimant from his role. The Claimant proceeded to issue the claim before his grievance had been concluded. The allegations comprised direct discrimination, discrimination for a reason related to disability, failure to make reasonable adjustments and harassment. Almost every factual allegation the Claimant made was cited as a form of each of these types of discrimination. In light of the historic period that these allegations spanned, the provisions of both the Disability Discrimination Act 1995 and Equality Act 2010 were engaged. Ultimately, the Tribunal found these allegations were made without merit and were only raised in an attempt to secure an improved deal during negotiations. 50. Further, it is submitted that the Claimant's conduct during the litigation resulted in additional costs being incurred. By way of example, the Respondent encountered considerable difficulties in agreeing the list of issues, the nomination of a joint expert, the instructions to the joint expert (which required an application to be made and a preliminary hearing held as a result), the disclosure of medical records and the compliance of various deadlines ordered by the Tribunal, all as a result of the Claimant's conduct. On more than one occasion, the Claimant missed a deadline without seeking an extension or providing any reason for his failure to comply.

	51. It is submitted that the skill, expertise and knowledge of the Respondent's solicitors was instrumental to successfully defending this claim to trial. This claim was further complicated by the fact that the Claimant remained an employee during this matter, which is an unusual aspect of a tribunal claim. At various stages, the Respondent needed to consider whether a proposed course of action was consistent with the duties it continued to owe the Claimant as an employee. 52. With regard to other relevant factors to be considered, this was a high value claim in the context of those pursued in the Employment Tribunal. The Claimant was seeking damages in the sum of £1.6m. In 2016/17 the mean award for disability discrimination was £31,988. This figure is skewed by a small number of high awards, because the median figure is just £10,235. The sum claimed by the Claimant was in fact **five times** the highest award made for disability discrimination within that period, which highlights the significant sums that were in issue[1]. 53. The sum claimed did not primarily relate to the Claimant's "wages" as asserted. It primarily consisted of increased discretionary bonuses that the Claimant asserted he ought to have received were it not for the alleged discrimination. There was no straightforward calculation for a likely damages award. The Claimant named several comparators and the Respondent was required to spend significant time and costs in investigating the sums paid to those individuals and the (various perfectly acceptable) reasons why they were different from those paid to the Claimant. 54. As the Claimant has conceded throughout these Points of Dispute, it was a very important matter to the Respondent, which potentially had regulatory consequences and could have seriously detrimentally affected the Respondent's reputation, especially given the substance of the allegations (that the Respondent would have detrimentally treated someone who had had life threatening leukaemia as a result of that illness) and that the matter was widely reported in the press. 55. In response to the point regarding Hannah Mathews, she gained considerable experience throughout her training and there is no apparent reason why her hourly rate should not considerably increase with her new status. 56. The Claimant's comments regarding the use of Counsel are noted but rejected. It should be noted that Counsel's hourly rate was £280 and it was cost effective to instruct Counsel to undertake certain tasks. Counsel assisted throughout, which included suggested outlines for key documents, but it was ultimately the instructed solicitors who formulated/advised on case strategy, finalised key documents and had primary responsibility for the claim. 57. The Respondent is prepared to accept the following hourly rates, except where the rates claimed are lower than those offered:

[1] Source: Employment tribunal and employment appeal tribunal tables 2016 to 2017: https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2017-and-2016-to-2017

	Grade A: £525 Grade B: £400 Grade C: £300 Grade D: £150 58. A copy of the rates table is annexed to these Replies so as to assist the Tribunal on assessment.
	Costs Officer's Decision The paying party has offered the Solicitor's Hourly Guideline Rates for each category. The Guideline Rates have not been uprated since 2010 but are currently under review. Mr Justice O'Farrell in ***Ohpen Operations UK Ltd v Invesco Fund Managers Ltd 2019 EWHC 2504 (TCC)*** said: "*As to the first point, the hourly rates of the defendant's solicitors are much higher than the SCCO guideline rates. It is unsatisfactory that the guidelines are based on rates fixed in 2010 and reviewed in 2014, as they are not helpful in determining reasonable rates in 2019. The guideline rates are significantly lower than the current hourly rates in many London City solicitors, as used by both parties in this case. Further, updated guidelines would be very welcome".* The claimant concedes (above) that this was an important matter to the respondent and that it potentially had regulatory and reputational consequences. In terms of the value of the claim £1.6m in the Schedule of Loss 27 October 2015, is high when looking at the average/median awards in the tribunal for claims for disability discrimination. The respondent has quoted the figures in paragraph 52 above. I do not agree that it was an unusual aspect of the claim that the claimant remained employed by the respondent. This is not the most common situation but it is not "unusual" in discrimination claims. The grade of fee earner is important to know the level at which the work is done and the Guideline rates are helpful in this context. Different job titles may mean different levels of experience in different firms, eg the job title "Associate". This had been clarified in an Appendix to the respondent's skeleton argument served on 18 March 2021. The rates had been reduced in that Appendix to - in the round: A - £495; B – £375; C - £275 and D - £150. The rates conceded by the claimant are those for London 1 which apply to a City firm as instructed by the respondent. In terms of the enhancement on the City rate, the grade A is 20%, grade B is 25%, grade C is 20% and grade D is 8% reflected in the concessions made. The respondent said they had claimed suitable rates for commercial litigation. The claimant said this is not a High Court matter it is Employment Tribunal litigation. There is no doubt that this was high value and complex litigation within the context of the ET. It required specialist skill and knowledge and I find it was reasonable and proportionate to instruct a City firm. It was

	important to the respondent from both a regulatory and reputational point of view. At the same time, this is not High Court commercial litigation that justifies a significant uplift to the Guideline Rates, although some uplift is justified. I award the following hourly rates, for the Grades in the Guideline Rates A - £450 B - £350 C - £275 D - £150
General Point 3 **Use of Counsel**	59. The paying party submits that the use of Counsel is demonstrative of the excessive, unreasonable and disproportionate level of costs incurred as a result of the Respondent's approach to the litigation, addressed in the Preliminary Point above. Whilst the Respondent was entitled to instruct the solicitors and Counsel to take this collaborative, layered approach to the litigation, this does not mean however that the costs incurred are reasonable pursuant to CPR 44.3. 60. The Respondent claims a total of £106,403 of net fees for Counsel, out of the sum total of £691,637.76 of costs in the Bill. Putting aside the brief and refresher fees for the final Tribunal Hearing, there is a staggering £60,103 of net Counsel fees claimed. These additional fees form 75 different instructions and entries in the Bill between August 2015 and July 2017. This equates to over 3 instructions of Counsel per month on average. Counsel's involvement included, but was not limited to: a. preparing the ET3 Grounds of Resistance, b. attending the Preliminary Hearings, c. drafting the Respondent's three witness statements, d. drafting instructions to the joint expert, e. drafting the Respondent's application, f. attending the mediation, and g. dealing with the Respondent's costs application. 61. In short, no procedural step or legal document was completed for the Respondent without Counsel's direct involvement. 62. A specialist employment team led by a Partner charging £560 per hour and Senior Associates charging £470 per hour should not require this level of assistance from Counsel. Using the document schedules as guidance, the Respondent's Grade A solicitors (see Hourly Rates Preliminary Point) contributed £115,252.55 of net costs out of a total of £379,306.92. These experienced solicitors were responsible for over 30% of the costs claimed; yet also instructed Counsel on 75 occasions. 63. The paying party will of course make specific objections to the reasonableness and necessity of both the instruction of Counsel in principle as well as the level of Counsel's fees when considering the Bill on an item by item basis. However it is submitted that an initial consideration of Counsel's involvement within the wider context of the Bill of Costs lends significant

	support to two of the paying party's primary arguments in these Points of Dispute: 64. The matter was at no stage conducted with a view to recovering costs from the opponent due to the normal costs rules of the Employment Tribunal, and so there will be a vast discrepancy between the cost of the comprehensive legal service provided to the Respondent, and the level of reasonable and proportionate costs that can be awarded on a Standard Basis assessment between the parties; and 65. The complete reliance on Counsel to oversee, advise on and finalise every significant development in the litigation completely undermines any justification of enhanced hourly rates for the fee earners. Where solicitors are not evidencing or relying on their expertise, knowledge or skill, but relying on Counsel instead, the enhanced element of their hourly rate should not be payable by the Respondent, or passed on to the paying party.
	Respondent's Reply 66. The Respondent does not consider that this is a point of principle that requires determination by the tribunal. 67. The Claimant's objections are largely repetitive of those made in General Point 3 – Hourly Rates. The Respondent submits that it was entirely reasonable for Junior Counsel to have been involved to the extent claimed. Counsel's hourly rate is £280, which is lower than any equivalent source of advice. As a member of the team, it was efficient for Counsel to consider detailed points at length rather than a Grade A fee earner undertaking the work. Given the nature of the matter, it was appropriate to consult Counsel on issues that could have an impact on how the case would be presented to the Employment Tribunal. The involvement of Counsel was thus cost effective and served to decrease the costs now claimed rather than result in an increase. 68. The Claimant's calculations must be treated with caution. For the sake of completeness, Grade A time spent on document entries totals £84,892.57 and not £115, 252.55. A request for an audit trail in support of the Claimant's calculations was requested on 25 January 2018, however no supporting evidence has been forthcoming. 69. The manner in which the Claimant addressed the case meant that little could be agreed and matters that would ordinarily be resolved between the parties, ended up before the tribunal (notably expert selection, the instructions to the joint expert and the disclosure of medical evidence which resulted in two preliminary hearings). Since there was an ever-present risk that each issue would be litigated and all correspondence would go before a judge, it was more than usually important to involve Counsel at an early stage. 70. It should also be noted that the Claimant instructed Counsel throughout, including at all hearings, as well as at mediation.

	71. The Respondent rejects that there was a "complete reliance on Counsel" and re-iterates that it was reasonable and cost effective to have involved Counsel where it was deemed appropriate to do so.
	Costs Officer's Decision This needs to be considered on each individual point.
General Point 4 **Witness Statements**	72. The costs incurred preparing the Respondent's 3 witness statements are the best example of the excessive, unreasonable and disproportionate costs claimed in this Bill caused by the Respondent's approach to the litigation. Outside of the pleadings, these statements formed the main documentation prepared in defence of the claim. 73. The Parts of the Bill are challenged chronologically in these Points of Dispute below; however the paying party submits that the Court has to consider all of the work done preparing these documents as a whole in order to conduct a proper assessment, in light of the extremely high sums claimed. The Court is invited to make an initial assessment of all of this work and determine the appropriate level of reasonable and proportionate costs for the same. The Court could then vary that figure if it is deemed necessary once the separate document schedules are assessed, but it is submitted than an initial, global picture will be essential. 74. The global figures across the Bill are staggering: The total sum spent by the Respondent on their 3 statements is just under £165,000 – this is 24% of the total costs claimed in the entire Bill. 75. It is broken down between: a. Counsel's net fees only in relation to drafting or advising on the statements of £23,590; b. Between February and April 2016 331.44 hours of fee earner time was incurred in relation to the Respondent's witness statements, at a combined net cost of £121,731.75 as claimed in the Document Schedules of Parts 7 – 9; and c. A further 48.75 hours are claimed in for attendances on Counsel, the witnesses and the client in the body of the Bill for Parts 7 -9, at a cost of £19,387.90. 76. Witness evidence was initially obtained in summer 2015 when preparing the response to the claim. Counsel incurred her first fees preparing these statements in January 2016, and then the Respondent's team of fee earners also contributed to the drafting from February 2016. The 3 statements were served in April 2016. 77. The Respondent's 3 statements totalled a combined 121 pages in length. These are detailed recollections of the witnesses' involvement in the work events that formed the Claimant's

	allegations of discrimination. The paying party does not doubt that significant time was required to prepare and finalize these statements. However, the sums claimed in this Bill of Costs are extortionate. Whilst the lawyers had to ensure that the statements addressed each factual allegation sufficiently to support the Respondent's case, their involvement was not legally complex or demanding. The statements can be distinguished from the witness evidence of a victim in a high value personal injury claim, for example, where it is necessary to continue to update the evidence and deal with complex developments in the witnesses' health, life and wellbeing. In this claim, once the witnesses' evidence was obtained there is simply no justification for the persistent amendments and redrafting by multiple fee earners as well as Counsel. 78. The document schedules in Parts 7, 8 and 9 reveal the extreme levels of duplication between fee earners when preparing these statements. Partners, Senior Associates, Associates, Trainees, Paralegals and even a Consultant Barrister worked on the statements, in addition to external Counsel's fees of £23,590. There are many examples of inter-fee earner discussion around the statements, which should not be charged to the paying party. Considerable time is also claimed amending earlier drafts of the statement. Any work that has been corrected should not be charged to the paying party on the Standard Basis. 79. The paying party submits that it is difficult to assess the document schedules in isolation. Specific comments are made later in these Points of Dispute, however offers have not been made against the individual items. Instead it is submitted that the following global figures would be a reasonable and proportionate level of work and costs for preparing the statements: a. 10 hours of Grade A time and 45 hours of Grade C time obtaining and drafting the initial statements; b. 5 hours of Grade A time and 10 hours of Grade C time finalising the statements following Counsel's advice and any further information required from the witnesses; c. £10,000 of fees for Counsel to consider and advise on the statements. 80. This offer equates to £18,565 of solicitor costs and £10,000 of Counsel fees, or £28,565 in total.
	Respondent's Reply 81. The Respondent does not consider this issue to be a point of principle that requires determination by the Court. The Respondent's contention appears to be that the costs incurred in relation to witness evidence is unreasonable. This is refuted. Further, this is not the appropriate place to contest these costs. Any objection should be raised against the specific item that is in dispute. 82. The Claimant has been requested to provide an audit trail in support of the numbers and calculations advanced in the points

	of dispute, but has been unable or unwilling to do so. The Tribunal will note that throughout these Points of Dispute, the Claimant refers to this General Point but again, fails to identify which entries it has identified as relating to Witness Statements. This has prejudiced the Respondent's ability to respond to specific items and the Tribunal's ability to assess the reasonableness of the same. In the absence of an audit trail supporting the Claimant's calculations, the Respondent submits that these must be treated with caution. 83. In any event, the Respondent submits that the time spent in relation to witness evidence are neither "extortionate" nor "staggering". 84. There were approximately 20 separate allegations of direct disability discrimination, 17 separate allegations of discrimination for a reason related to disability, 3 separate reasonable adjustments complaints and 23 allegations of harassment spanning a period of 5 years. 85. Witness evidence was significant to the outcome of this matter, and it was appropriate that a significant amount of time be spent to address each factual allegation sufficiently to support the Respondent's case. Although the Tribunal found that the Claimant did not believe in his allegations from the outset, the Respondent was obliged to investigate each allegation and ensure that each allegation was sufficiently addressed within the witness statements. 86. The drafting of witness statements is invariably an iterative process, particularly when witnesses are being asked to recall events from many years ago which are not reasonably fresh in their minds. That proved to be the case here. A number of proofing sessions were held and the witnesses reviewed their statements in an iterative way. Their recollection of matters improved as further documents were located and more time was spent exploring the issues. 87. There appears to be an implied criticism of the length of time between starting work on the statements and serving them. It should be noted that the deadline for exchanging witness evidence had to be delayed due to the Claimant not being in a position to serve the same. 88. The Respondent made every attempt to prepare witness evidence in the most efficient manner possible. By way of example, Counsel was instructed to prepare outlines for each statement (in light of Counsel's lower hourly rate) and to ensure that Counsel had appropriate into the shape of the statements at an early stage. Further, the Herbert Smith Freehills New York office was engaged to facilitate access to Steve Black who was based in New York. 89. The Respondent refers to the serious nature of the allegations made by the Claimant, the period of time which they spanned and the importance that witness evidence played in the successful defence of this litigation as reasons in support of the reasonable costs incurred in relation to the witness evidence in this matter.

	Costs Officer's Decision This needs to be considered on an item by item basis.
Part 1	Summary 90. This Part covers the period between initial instruction on 22 May 2015 and service of the Grounds of Resistance on 28 August 2015. Over this three and a half month period the Respondent incurred £56,022.90 in net solicitor fees and £3,010.00 in disbursements, totalling £59,032.90. Recoverable costs are limited to £48,010.00 under the indemnity principle. 91. Work done in this Part includes the initial consideration of the claim and preparation of the ET3 Grounds of Resistance. The £3,010 disbursement fees all relate to Counsel's advice and contribution to preparing the ET3 Grounds of Resistance.
Procedural Steps (Conference and Counsel's fees) **6 - 18**	92. The paying party accepts the initial instruction of Counsel and the need to attend a conference with regards to responding to the claim. The General Point on hourly rates apply and it is averred that no uplifted rate should be awarded if Counsel's fee for drafting the ET3 is approved. Alternatively, any uplift in the rates should cause a significant cut to Counsel's fees. 93. The paying party submits that the initial conference on 12 August and one further conference of 0.5 hours are reasonable. There is clear duplication between the fee earners, and one senior fee earner at each is reasonable. 94. The paying party offers: 0.9 hours at Grade A 0.5 hours at Grade C 95. A consolidated fee of £2,500 for Counsel for advising and drafting the ET3.
	Respondent's Reply 96. The Respondent refers to the submissions in respect of the General Point on hourly rates. The award of enhanced hourly rates and the award of Counsel fees as claimed are not mutually exclusive. 97. It was reasonable and proportionate to hold three short conferences to identify the issues in the claim, formulate a case strategy, discuss the draft ET3 and finalise the same. 98. As the Respondent has highlighted within General Point 1 and 2, it was appropriate to assemble a team to defend the substantial allegations made by the Claimant. It was appropriate for both senior and junior fee earners to attend conferences with Counsel, with the junior fee earner tasked with taking contemporaneous

	file notes, enabling the senior fee earners to address the matters in issue and thereby avoiding the need to prepare an attendance note following the conference resulting in a saving for the Claimant. 99. The Respondent is prepared to accept the following: Grade A: 1.4 hours Grade C: 0.5 hours Grade D: 1.4 hours 100. The Claimant has failed to provide any reason for the reduction sought in respect of Counsel's fee. No concession offered.
	Costs Officer's Decision Attending a telephone conference on 12 August 2015 Grade B and Grade D and a telephone conference on 17 August 2015 Grade C and a telephone on the 26 August 2015 was Grade A, Grade C and Grade D. It totals 4.3 hours at a very early stage when considering the response. The respondent conceded the use of the Grade D fee earner on 26 August 2015. The claimant said that 2 conferences should have been sufficient and there did not need to be three fee earners involved. It should only take one fee earner. The claimant said that Grade B on 12 August for 1 hour and one hour of Grade A on 26 August. The respondent agreed one hour for Grade B on 12 August and one hour for Grade A on 26 August 2015. This is the decision. On Counsel's fee the claimant agreed £2,895 and this is the decision.
Attendances on the Client **23 - 46**	23 101. 0.5 hours at Grade A is offered for this attendance. 25, 27, 28, 29, 30, 32, 33 102. The Respondent is put to proof that these entries were progressive to the litigation and not solicitor-client in nature. The Claimant also anticipates that these were likely duplicative to other attendances on the client in this period. No offer is made. 24, 26 & 31 103. This is a triple attendance by a Partner, Senior Associate and Associate on the client via telephone, demonstrating the excessive and unreasonable team approach of the Respondent's that resulted in a clear duplication of time throughout the matter. The Preliminary Point refers. 104. The receiving party accepts that an attendance on the client was necessary in the circumstances, but submits that it would have been reasonable for only one senior fee earner to attend. The remaining work is excessive and duplicative.

	105. 1 hour at Grade A is offered. 35 – 40 106. The Respondent is put to proof as to the reasonableness of each of these long letters or emails out. In particular the paying party notes that several entries in the document schedule also refer to dealing with emails, and so it is not clear how much is being claimed throughout the Bill of Costs in relation to each item of correspondence. 41 – 46 107. The reasonableness of the routine items are questioned, given the significant level of personal attendances on the client in this period. 108. 3 items at Grade C are offered.
	Respondent's Reply Item 23 109. The Claimant has provided no reason in support of the reduction sought. The time is maintained as claimed. Items 25, 27, 28, 29, 30, 32 and 33 110. Sufficient detail has been provided in relation to each attendance to enable the Claimant to ascertain that these attendances were neither of solicitor/client nature or duplicative of the other attendances within this period. 111. The time claimed totals 2.5 hours for 6 separate telephone attendances addressing the complex Grounds of Resistance, the ET3, correspondence to the Employment Tribunal (including documents that had been requested) and advising the client on the procedural aspects of the claim. 112. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 0.63 hours Grade B: 0.34 hours Grade C: 1.2 hours Items 24, 26 and 31 – 28 July 2015 113. The Claimant's submission is refuted. The Respondent re-iterates that it was appropriate for a team to work on this matter in the circumstances. This attendance related to the Grounds of Resistance, which was a comprehensive 28-page document in response to the substantial allegations made by the Claimant. In the circumstances, it was appropriate for several fee earners to attend the call to cover the vast issues that needed to be addressed.

	114. In the spirit of compromise, the Respondent is prepared to concede the Senior Solicitor's time. Items 35-40 115. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. The Claimant has failed to provide any examples in support of his stance. 116. Upon review of the document entries, the Claimant will note that no time has been claimed for dealing with the correspondence to the client on or around the dates of the timed correspondence claimed within this section. Timed correspondence totals 1.75 hours over a three-and-a-half-month period, equating to 30 minutes per month. Further, the majority of the time claimed was undertaken by a Grade D fee earner in an effort to keep costs to a minimum. 117. The Respondent submits that in the absence of a legitimate challenge and/or concession, the time should be allowed as claimed. Items 41-46 118. The Claimant has failed to provide any justification for the reductions sought. A total of 7 routine communications is claimed over a three-and-a-half-month period. The Respondent maintains the time claimed is reasonable and no concession is offered.
	Costs Officer's Decision The respondent said that the descriptions in the Bill were clear as to what was being discussed and why. The respondent does not accept overreliance on Counsel. The claimant has offered 1.8 hours and the respondent will accept 6.9. There were telephone attendances and the detail of the claim, Grounds of Resistance, letter to the ET, instructions to counsel and finalising the GoR plus routine items. The ET3 was filed on 28 August 2015. The claimant's position was that partner time on this phase was too high and that 3 hours was disproportionate and it should be one third of the partner time. The claimant suggested a two third reduction in partner time. The respondent said it was a high value claim and the partner was leading on it. The claimant offered 0.9 at Grade A, 0.6 Grade B, 2.6 Grade C and 1 hour at grade D. This was accepted by the respondent and this is the decision.
Attendances on the witness **49**	49 119. The paying party accepts that witness evidence was required from Mr Taylor in order to finalise the Grounds of Resistance and agrees to the time claimed in principle, but draws to the Tribunal's attention the duplication of this work in later Parts of

57	the Bill of Costs when the witness statements are prepared. General Point 4: Witness Statements refers. 57 120. No evidence was served from these witnesses. No offer.
	Respondent's Reply Item 49 121. Noted. However, the Respondent denies that the time claimed amounts to duplication. Item 57 122. Marc Bailey was the Head of Jefferies Bache, the commodities and foreign exchange business that Jefferies bought in 2012 and interviewed Richard Taylor following the grievance filed by the Claimant. Victoria Carr was the temporary HR generalist supporting Research and had discussed the matter with Richard Taylor around the time the grievance was filed by the Claimant. 123. The Respondent submits it was entirely reasonable to discuss the matter with these two parties regardless of whether witness evidence was filed on their behalf. Both individuals were scheduled to leave Jefferies shortly after this attendance and it was therefore reasonable to explore what relevant evidence they may have prior to their departure. 124. No concession offered.
	Costs Officer's Decision Allowed as offered at £788.
Attendances on the Claimant **52 - 55**	125. The paying party notes that time is claimed in the Documents Schedule for "attending to emails" on several occasions, in addition to time claimed for long letters on the parties including the Claimant. 126. The Respondent is put to strict proof that the time claimed for these items is supported by the Respondent's file of papers, and that it is also not duplicated by the time claimed in the Documents Schedule. 127. Items 52 and 53 combined appear to relate to the preparation of a letter sent to the Claimant on 28 August 2015. The letter is 1 page in length, but with only half a page of text. The content is relatively straight forward, in that it refers to the directions in the case ahead of the Preliminary Hearing, requests the Claimant's List of Issues and Schedule of Loss, and encloses the Grounds of Resistance. Despite this, 1.5 hours is claimed for preparing the same at a cost of £240. The paying party submits this is demonstrative of the excessive time spent by the

	Respondent when preparing the majority of the correspondence to the Claimant throughout this Bill of Costs. It is arguable that a letter of this brevity and simplicity should be claimed as a routine item of correspondence. 128. Furthermore, it is submitted that the same excessiveness is likely to be revealed when the Court considers the time and costs claimed for preparing long letters to other parties once that correspondence is evidenced at the Detailed Assessment. 129. The paying party offers: Grade D - 0.2 hours
	Respondent's Reply 130. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. The Respondent confirms that the time claimed within the Document Schedule is not duplicative of the time claimed on the parties. 131. The Claimant's suggestion that this correspondence should have been prepared by a Grade D fee earner and claimed as a routine item is unrealistic. The time claimed includes consideration of the pertinent issues to be addressed, which included the proposed timetable for the exchange of documents in advance of the preliminary hearing. It was reasonable for the Partner to have prepared this important letter. 132. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 1 hour Grade B: 0.2 hours
	Costs Officer's Decision The parties agreed 48 minutes at Grade D and 12 minutes at Grade B for items 52-55. Items 55 was agreed. Item 57 – attendances on two individuals to take instructions for the preparation the response at Grade B. The claimant was willing to concede this and had he not it would have been awarded in full.
Employment Tribunal **59 - 65**	133. The Respondent is put to proof that these long letters are on the file and the time claimed for preparing the same is not excessive or unreasonable. 134. The paying party offers: 0.8 hours at Grade C

	Respondent's Reply 135. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. The Claimant has failed to provide any justification for the reduction sought. 136. The Respondent maintains the time claimed is reasonable and no concession is offered.
	Costs Officer's Decision This was dealing with an opposed application for an extension of time for the ET3, the application was opposed. The extension of time was granted. The claimant conceded this as claimed.
Attendances on Counsel **67 - 79**	137. These items are claimed in addition to the 3 telephone conferences with Counsel during this period. Those conferences were sufficient for obtaining Counsel's advice at this initial stage, particularly as Counsel drafted the Grounds of Response on behalf of the Respondent. The further attendances claimed here are excessive and should be disallowed. 138. Administrative work obtaining fee quotes should be disallowed. 139. The paying party accepts there would have been some instruction of Counsel ahead of the conferences, and offers: 2 hours at Grade C
	Respondent's Reply 140. As the Claimant has acknowledged, it was necessary to prepare comprehensive instructions to Counsel from the outset to address the Claimant's lengthy and detailed complaint (comprising of 94 paragraphs and 17 pages). 141. In advance of the third conference with Counsel, further instructions were provided on 24 August 2015 to assist with the preparation of the Grounds of Resistance. Further instructions were subsequently provided following the conference on 26 August 2015 in response to queries raised by Counsel for the purposes of finalising the Grounds of Resistance. 142. The routine communications related to obtaining Counsel's availability to attend each conference and providing documents to enable Counsel to fulfil her instructions.

	143. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 0.1 hours Grade C: 3.33 hours Grade D: 0.83 hours
	Costs Officer's Decision The parties agreed 1 hour at Grade C and 1.5 at Grade D.
Document Schedule (pp. 53 – 58) **81 - 87**	144. Of the £56,022.90 of solicitor costs incurred, £48,838.60 is claimed in the document schedule, primarily in relation to drafting the ET3 Grounds of Resistance. The remaining costs appear to relate to the initial consideration of the Claim Form and the instructions from the client, save for some clear examples of non-recoverable administrative or research work. Non-recoverable in principle 145. Work that is non-progressive, solicitor-client in nature or administrative cannot be recovered from the paying party on the Standard Basis. Furthermore it is assumed that a qualified solicitor is familiar with aw in their specified field of practice, and so should not charge for researching the same. ***R v Legal Aid Board Ex Parte Bruce (1991)*** refers. Given that the Respondent's legal team holds itself out as City Firm level specialists charging rates of over £300 for any qualified solicitor, this rule is even more relevant here. 146. These items should be disallowed in full. A non-exhaustive list of these includes: 12.09.15 (p. 56) : 0.6 hours of Trainee time identifying, locating and ordering a transcript of a judgment 18.08.15 (p. 57) : 0.43 hours of Trainee time reviewing the filing formalities for the ET3 24.08.15 (p. 57) : 0.38 hours of Trainee time again checking online filing arrangement s for the ET3 (a duplication of the above as well as being administrative) 23.07.15 (p. 53) : 2.88 hours of Senior Associate time preparing instructions to a trainee and conducting basic research into the definition of disability and the Equality Act 2010. This amounts to a duplication of work between fee earners, whilst legal research is not recoverable between the parties as solicitors are assumed to have knowledge of their area of practice. Indeed this belies the specialism used to justify the enhanced rates charged by the Respondent's legal team. 24.07.15 (p. 53) : 2.15 hours of a Senior Associate conducting further disability discrimination research. This entry and the one highlighted above amount to £2,364.10 of net solicitor fees researching an area of law into which they have qualified and practised for over 6 years at this stage.

	Grounds of Resistance 147. The Grounds of Resistance is a 28 page document. More specifically it contains 27 pages of text, presented in a significantly indented format. The purpose of the document was primarily to set out the Respondent's account of the Claimant's period of employment, particularly where it varied from the facts as alleged in the Claim Form. The Claimant's status as being disabled under the Equality Act 2010 was agreed, and there is very little further legal argument within the document. The allegations of discrimination were plainly denied on a factual basis. 148. The paying party calculates that 104.41 hours of work is claimed in the document schedule in relation to the drafting of the Grounds of Resistance, at a net cost of £38,093.10. These figures are entirely unreasonable in amount, excessive to the work done and disproportionate to the claim. This equates to over 3.8 hours drafting each of the 27 pages of text, at a cost of £1,410 per page. These costs must be placed in the wider context of the other work conducted when preparing this document. Counsel's fees, a conference with Counsel and attendances on the client bring to total net cost of preparing this document to £42,647.60. This is separate and in addition to further time claimed considering the Claim Form and obtaining Counsel's initial advice. 149. There is clear evidence of duplication of fee earner input, supervision and inter-fee earner discussion in relation to this document which should be disallowed on assessment. 10.9 hours of Grade A time is claimed, 30.82 hours of Grade B time, 42.17 of Grade C time and 20.52 hours of Grade D time. The paying party will avoid incurring unnecessary costs addressing each individual item within the document schedule, but can prepare an annotated version for the Detailed Assessment if required. 150. To assist the court in reducing these costs, the following examples of unreasonable, excessive, disproportionate or simply non-recoverable work are provided: 28.07.15 (p. 54) : 4.80 hours of Senior Associate time including preparing instructions to a trainee; discussions with a trainee, a Partner and an Associate; and an unspecified period of attending to emails. The initial work is duplication, followed by inter-fee earner discussions and supervision. The emails are not identified, are incorrectly claimed in the document schedule, and could well be non-recoverable time spent considering incoming emails or emails between the fee earners. This doubt should be resolved in the paying party's favour. 29.07.15 (p. 54) : 3.58 hours of Senior Associate time that includes discussions with IT (overhead or administrative costs) and discussions with another fee earner. 29.07.15 (p. 54) : 11.36 hours of Associate time working on the Grounds of Response. This is an exorbitant period of time drafting a document of 27 pages that is not completed for another month, and for which 5 other fee earners as well as Counsel have claimed time drafting on later dates. The Respondent is put to proof as

	to what work was specifically done in those 11 hours, and must demonstrate that it was progressive without being amended or duplicated by later efforts. If not, it must be disallowed in full. 31.07.15 (p. 55): 3.46 hours of Associate time considering and amending ET3. Amendments to documents demonstrate that previous work was incomplete or incorrect. The Respondent should not be liable to pay the costs of the Respondent correcting their own errors, or alternatively the costs of the error. 04.08.15 (p.55) : Several items relating on this date to an attendance between a Partner, Senior Associate and Associate on each other totalling 5.39 hours. This is a clear inter-fee earner discussion amounting to duplication and supervision due to the team approach. On a Standard Basis assessment this is not reasonable or proportionate to this claim. 17.08.15 (p. 57) : 1.65 hours of Trainee time taking instructions and amending the document. This is clear supervision and duplication of efforts between the Associate and Trainee, followed by amendments that should not be charged to the paying party in any event. 28.08.15 (p. 58) : 4.65 hours of Associate time and 2.83 hours of Trainee time finalising and filing the Grounds of Resistance. It is incomprehensible that this level of costs were incurred conducting progressive work on this document after several months of drafting by all Grade of fee earner and Counsel. However if true, it surely renders a large portion of the earlier work in the document schedule unnecessary and irrecoverable. Furthermore there is clear duplication if two fee earners were required to file the document in unison. 151. It is clear the Respondent's team approach to conducting this litigation resulted in extreme examples of duplication, supervision, inter-fee earner discussion, amending of incomplete or incorrect drafting, and generally excessive time spent by several Grades of fee earners when contributing to this document. These costs were unreasonably incurred, and are unreasonable in amount. The court must also take into account the instruction of Counsel to draft and finalise this document in the days before it was filed. 152. The Respondent offers the following in relation to the entire documents schedule: Grade A – 10 hours Grade B – 10 hours Grade C - 30 hours Grade D – 15 hours 153. The offers total £15,900.
	Respondent’s Reply 154. The Claimant’s attempt to simplify the work that was undertaken in the initial stages of this claim is disappointing and only serves

	to highlight the lack of understanding of the work that was required. 155. The Claimant's reference to the case of *R v Legal Aid Board Ex Parte Bruce (1991)* is noted. However, that matter concerned whether advice provided by an unqualified person may be recovered from the Legal Aid Board as a disbursement by a solicitor. It has no relevance to the present matter. 156. When considering the recoverability of legal research, the Claimant is reminded that the complaints made spanned a considerable period of time which not only engaged the relevant provisions of the Equality Act 2010 but also engaged the relevant provisions of the Disability Discrimination Act 1995. The factual matrix was also unusual in that at the time of the claim (and at many of the times referred to in the five year period the claim spanned) the Claimant no longer suffered any ill effects as a result of his illness. The Respondent submits that legal research is recoverable in the circumstances. 157. In response to the examples relied upon by the Claimant, the Respondent comments as follows: 12.09.15 (p. 56): Presumably the Claimant is referring to the entry dated 12.08.2015. 0.6 hours consists of the trainee locating the HSF report that was prepared following the Capgemini issue, as well as locating a pertinent judgment for the purposes of formulating the Grounds of Resistance. 18.08.15 (p. 57): The trainee time was not solely spent reviewing the filing formalities for the ET3, but also included responding to various queries relating to ACAS early conciliation and outstanding information relating to the ET3. 24.08.15 (p. 57): Time spent checking the filing arrangements of the ET3 is not administrative in nature and is an important step to ensure compliance with the initial stages of defending this claim. 23.07.15 (p. 53): The time claimed includes finalising the review of the grievance outcome. The instructions prepared to the trainee related to the preparation of a comparative ET3/grievance response table. This relates to a completely different task and is not duplicative of the work undertaken by the senior solicitor. Further, the delegation of this task has resulted in a saving to the Claimant. 24.07.15 (p. 53): The Claimant's attempt to attribute this entry and the above entry to solely legal research is disingenuous. The time claimed included a review of the comparison ET3/grievance table and formulating a case strategy in light of the same. 158. The Grounds of Resistance will be made available to the Tribunal for consideration at detailed assessment. It was necessary to provide a comprehensive response to the Claimant's detailed 17-page document which consisted of 94 paragraphs that comprised

	of complaints of disability discrimination, discrimination comprising direct discrimination, discrimination for a reason related to disability, failure to make reasonable adjustments and harassment. The complaints spanned a period of 5 years which required a considerable level of resources to investigate and respond to the complaints diligently. 159. The Claimant is requested to provide an audit trail of its calculations of the costs that it has assigned to the drafting of the Grounds of Resistance. These figures and subsequent calculations are unsubstantiated and should be treated with caution. 160. The Respondent refers to the General Point on Hourly Rates and maintains that a core team of fee earners comprising of varying levels of experience was reasonable, proportionate and instrumental to the successful defence of this claim. Where appropriate, tasks were delegated to junior fee earners in an attempt to keep costs to a minimum. Of the time claimed, approximately 15% was carried out by Grade A, 27% by Grade B, 37% by Grade C and 21% by Grade D fee earners. 161. The Claimant considered the claim to be of such complexity that a Grade A fee earner had conduct of the matter in the first instance. The Respondent is now benefitting from a considerable cost saving as the majority of work was delegated as evidenced by the above apportionment. It is entirely reasonable that there be some level of supervision, especially given the importance of the Grounds of Resistance. 162. Further, the Respondent maintains that inter fee earner discussions are recoverable in principle and refers to *TUI UK Ltd v Tickell & Others [2016] EWHC 2741 (QB)*. 163. In response to the examples relied upon by the Claimant, the Respondent comments as follows: 28.07.15 (p. 54): The Respondent maintains that preparing instructions to a trainee does not amount to duplication and is recoverable in principle. The Respondent refers to the above submissions in support of the time claimed. 29.07.15 (p. 54): The Claimant appears to have misunderstood the reference to "IT", which in this context clearly refers to Ian Thomas, a fee earner at Herbert Smith Freehills who had been involved in the Capgemini matter, and not "information technology", who would not have been in a provision to provide background to the Capgemini matter. The majority of the time relates to reviewing pertinent documents and formulating case strategy. 29.07.15 (p. 54): Prior to this date, only 3.71 hours had been spent drafting the Grounds of Resistance. This entry reflects the significant time that was required to prepare the first draft of this document. The Claimant's suggestion that any update to this document should result in the time claimed being disallowed in full is unreasonable. It is common practice for such an important

	and lengthy document to be prepared and updated as further points and issues are identified. 31.07.15 (p. 55): The Claimant's objection only serves to highlight a lack of understanding of the work that is required to prepare a document of this nature. The Respondent refers to the above submission and maintains the time claimed is reasonable. 04.08.15 (p.55): The time claimed does not relate solely to inter fee earner discussions but also includes time spent on instructing Counsel (not claimed elsewhere). With regards to inter fee earner discussions, the Respondent refers to previous submissions in support of the same. 17.08.15 (p. 57): This relates to updating the draft Grounds of Resistance. By delegating this work to a trainee, the Claimant has benefited from a saving. 28.08.15 (p. 58): For clarity, the Respondent did not spend "several months" preparing this document. The first entry for preparing this document occurred on 27.07.2015 and it was served one month later on 28.08.2015. This is yet another example of the Claimant's attempt to present the time claimed as unreasonable. The Respondent re-iterates that the delegation of work has resulted in a saving to the paying party. 164. Upon review of the Document Schedule, the Tribunal will note that time did not relate to just the consideration of the Claim Form and preparation of a response as suggested by the Claimant, but also included the following: a. Consideration of extension application/postponement of hearing. b. Review of the grievance complaint. c. Work in relation to the Agenda for Case Management at the Preliminary Hearing. d. Identifying potential witnesses. e. Addressing the Claimant's (unsubstantiated) allegation of conflict of interest. f. Preparing for conference with Counsel. 165. The Respondent offers the following in relation to the entire documents schedule: Grade A: 12 hours Grade B: 28 hours Grade C: 38 hours Grade D: 23 hours
	Costs Officer's Decision The claimant offers 65 hours reflecting the fact that there was work to do, but rejects the balance. The claimant offered Grade A at 10 hours, Grade B at 10 hours, Grade C at 30 hours and Grade D at 15 hours. The points at paragraph 164 a – f above were considered. The respondent

	claimed 128 hours reduced to 98 hours. This was at Grade A at 12 hours Grade B at 28 hours Grade C at 38 hours and Grade D at 20 hours. I considered that 98 hours for the work involved was too high on a standard basis. This essentially is the worked related to the preparation and filing of the ET3 with the surrounding work and I accept that there was a great deal of work to be done. I did not accept the claimant's submission that it was a "concise ET3". It was 110 paragraphs in length and dealt with a period when the law changed from the Disability Discrimination Act 1995 to the Equality Act 2010 so there were some additional legal issues to consider. I allow 10 hours at Grade A, 18 at Grade B, 25 at Grade C and 15 at Grade D.
Part 2	Summary 166. The Respondent incurred £23,972.95 of net costs including £21,222.95 of solicitor costs between 1 September 2015 and 30 September 2015. Work done within the Part includes service of the Respondent's Request for Further Information, preparation for and attendance at the Preliminary Hearing on 17 September 2015 and initial investigations into a medical expert following that hearing. The £2,750 disbursement is Counsel's brief fee for the hearing.
Conference with Counsel **90**	167. The receiving party disputes the need for a full 1 hour telephone conference between the Partner and conference ahead of the Preliminary Hearing, in light of Counsel's continued involvement in the claim. The Court will note that Counsel drafted the ET3 and also contributed to the preparation of the documents for this hearing including the List of Issues. 168. The Respondent is put to proof that this conference was progressive and not duplicative between Counsel and the solicitor.
	Respondent's Reply 169. The conference with Counsel was necessary to review the Claimant's draft Case Management Agenda and List of Issues (which were only received late in the day on 14.09.2015), formulate a response, including a revised draft List of Issues and a draft list of directions that was intended to consolidate each parties' draft agenda. The Respondent's costs were increased by the Claimant's approach to these matters, particularly the List of Issues. 170. The time claimed is reasonable to address the above issues and undertake final preparations before the preliminary hearing.
	Costs Officer's Decision

	This was a telephone conference with counsel on 16 September 2015, the day before a case management hearing on receipt of the claimant's Agenda for that hearing. Counsel was instructed for the case management hearing. The telephone conference was with a Grade A fee earner. The claimant did not object to the time spent but objected to the level of fee earner and said it should be a Grade C. The respondent would accept a Grade B and this was agreed by the claimant. This item was agreed at 1 hour at Grade B.
Attending the Preliminary Hearing & Counsel's fee **94 & 95**	171. Counsel was briefed to attend the Preliminary Hearing. Counsel had already been heavily involved in all aspects of proceedings to that date and did not require support from a solicitor. To the extent that a fee earner was required to take a note of the hearing and obtain any instructions on the day, a Grade D would have been appropriate. 94 172. The paying party offers 5 hours at Grade D. 95 173. The fee is excessive given Counsel's previous and continuous involvement in this claim, £2,000 is offered.
	Respondent's Reply Item 94 174. The Respondent maintains that Hannah White's attendance is reasonable. It should be noted that no documents were agreed between the parties prior in advance of the hearing and therefore it was appropriate for the conducting fee earner to attend. Item 95 175. The Respondent maintains that Counsel's brief fee is reasonable, but is prepared to accept £2,500.
	Costs Officer's Decision The respondent's position was that it was unrealistic to suggest a trainee should attend with counsel at the preliminary hearing. There was agreement on attendance of 5 hours for a Fee Earner at Grade C. The parties agreed counsel's fee at £2,250.

Attendances on the Client **100 - 107**	100 176. This attendance is described as an update call. The Claimant assumes this is solicitor-client in nature, not progressive to the litigation and should be disallowed in full. 101 177. The Respondent is put to proof that this attendance was progressive and not solicitor-client in nature. 103 178. The Respondent is put to proof that the length of this correspondence justifies the 1 hour of Partner time claimed. Any correspondence of solicitor-client in nature should not be charged inter partes. 105 - 107 179. The total of 13 routine attendances on the client over 22 working days is excessive, particularly in light of the longer timed attendances in the same period. The work conducted in this period was primarily procedural and so the client's input should have been minimal compared to the initial response to the claim. The receiving party anticipates many of these items will be solicitor-client in nature. 180. The receiving party offers: 0.2 hours at Grade A 0.3 hours at Grade C
	Respondent's Reply Item 100 181. The telephone call addressed the draft Request for Further Information and strategy that was to be adopted in relation to the same, which was progressive to the litigation. Item 101 182. This telephone attendance related to the proposed instruction of experts and strategy in relation to the same, which was progressive to the claim. Item 103 183. The Respondent's file of papers will be available for the Tribunal's consideration at detailed assessment. The Respondent maintains the time claimed is reasonable. Items 105 - 107 184. In the spirit of compromise, the Respondent is prepared to accept the following: 185. The Respondent is prepared to accept:

	Grade A: 0.8 hours Grade C: 0.1 hours
	Costs Officer's Decision The claimant offers 0.2 at Grade A and 0.3 at Grade C and could not agree with the amount of time spent at partner level. The respondent said Grade A at 0.8 and Grade C at 0.1. I saw the pages of the confidential bundle from pages 2246 to 2258 to show that the work had been done. I consider that partner involvement was appropriate and award 0.5 at Grade A and 0.3 at Grade C.
Attendances on the Experts **110 – 113**	186. Insufficient detail is provided in these compound entries. The Respondent is put to proof of the number and length of calls to the potential experts.
	Respondent's Reply 187. The Respondent's file of papers will be available for the Tribunal's consideration at detailed assessment. The Respondent maintains the time claimed is reasonable.
	Costs Officer's Decision This is work that can quite suitably be done by a trainee. It is not legally demanding work and is relatively administrative. I allow 2 hours at Grade D. Item 113, the time is conceded by the claimant at 0.75 but at Grade D.
Attendances on the Claimant **116 - 118**	188. There is no letter dated 29 September 2015 on the paying party's file of papers. Assuming this entry relates to the letter dated 1 October which addresses experts, the paying party submits this is an item of routine correspondence. The letter contains less than half a page of text, and simply updates the Claimant on the Respondent's attempts to contact experts. 189. Offer for all items combined: Grade C - 0.2 hours
	Respondent's Reply 190. The Tribunal had ordered at the Preliminary Hearing on 17 September 2015 that by 1 October 2017 the parties must each provide to the other the names and addresses of three suitable medical experts. By 1 October 2017 the Respondent had not been able to locate an appropriate expert, despite its best efforts. It

	therefore wrote to the Claimant to detail its efforts to comply and request the Claimant's list of names. The Claimant's attempt to simplify the letter in an attempt to reduce to an item of routine correspondence is rejected. 191. The Claimant has not denied receiving the 3 routine letters claimed and yet has only offered 2 units for both timed and routine communications. This is yet another example of the Claimant's unreasonable approach. 192. In the spirit of compromise the Respondent is prepared to accept 0.6 hours.
	Costs Officer's Decision I allowed 0.5 at Grade C for item 116. Items 118-122 were conceded by the Claimant.
Document Schedule (pp. 59 – 60) **124 - 126**	193. A total of 33.21 hours is claimed at a cost of £15,466.05. This equates to over £700 spent per day across the 22 working days in this period. Reading in 194. Between 2 and 7 September a Partner (PF) spent 8.38 hours at a cost of £4,692.80 reviewing documents that had already been finalised and served in the litigation. Clearly this is yet another fee earner reading-in to the matter. This work is not progressive and it should be disallowed in full. The paying party should not be liable for work caused by a change-over of Partner in the Respondent's litigation team. Similarly the discussions with the Associate and Senior Associate in this period should be disallowed for the same reasons. These items total £6,238.10; which is 40% of the total costs claimed in this document schedule. Case Management Agenda, List of Issues and Directions 195. The Respondent spent £4,207.85 preparing a case management agenda, draft directions and a list of issues ahead of the first Preliminary Hearing. This is another excessive sum caused by an unreasonable duplication of efforts between a Partner and Associate. These documents were primarily drafted by the Claimant. Whilst there appears to have been some disagreement on the documents, both the sums spent and the 9.55 hours incurred are disproportionate to the final documents produced. Medical Experts 196. There are several entries referring to discussions regarding a medical expert. This time should be disallowed in principle for being inter-fee earner in nature. Notwithstanding this, the receiving party further queries the purpose and substance of those discussions given that the final entry on 29 September 2015 suggests that the Associate only then began identifying potential experts. The Respondent it put to proof to evidence attendance

	notes demonstrating the purpose of the various entries discussing and considering medical experts prior to 29 September 2015. The Claimant notes that the substantive discussions between the parties regarding the expert did not start until November 2015. 197. The receiving party offers the following in relation to the entire documents schedule: Grade A – 1.5 hours Grade B – 0 hours Grade C - 8 hours Grade D – 0 hours 198. The offers total £2,421.50
	Respondent's Reply 199. During this short period of time, a considerable amount of work was undertaken to ensure the claim progressed in accordance with the procedural timetable. <u>"Reading in"</u> 200. The Partner's contribution was integral to the successful defence of this claim. Time spent reviewing key documents was for the purposes of (and necessary to) formulating a case plan and strategy and therefore was evidently progressive to the claim. Likewise, time spent discussing the same with team members contributed to identifying the issues to be raised in the Respondent's Request for Further Information. <u>Case Management Agenda, List of Issues and Directions</u> 201. In addition to preparing the Request for Further Information, it was necessary to undertake preparation for the preliminary hearing. This included but was not limited to reviewing the Claimant's Case Management Agenda, List of Issues, drafting List of Issues, draft directions, preparing bundles and drafting instructions to Counsel. The Claimant did not "primarily draft" those documents. The Respondent prepared the first draft of the Case Management Agenda and sent it to the Claimant on 28 August 2015. At the same time, the Respondent requested that the Claimant prepare the first draft of the List of Issues in the normal way, by 4 September 2015. The Claimant responded only on 7 September 2015 at 19:08, to say he would provide these documents by 10 September 2015 (just 7 days before the Preliminary Hearing). These had not been received by 18:11 on 11 September 2015, and the Respondent was required to chase. In fact, the documents were not received until 14 September. The Respondent was then required to prepare the draft list of directions, and review and amend the draft List of Issues. The List of Issues sent back to the Claimant on 16 September had a great number of points for the Claimant to address: the issues outstanding were significant enough that even following this Preliminary Hearing, and a further period to agree it, an additional Preliminary Hearing was required. Again, the Claimant's approach to these matters increased the Respondent's costs.

	202. In addition, it was necessary to address the Claimant's (unsubstantiated) allegation that Herbert Smith Freehills were conflicted and therefore should not act for on behalf of the Respondent. Medical experts 203. The Claimant will note that research into potential experts was carried out on 17 September following the Preliminary Hearing and not just on 29 September 2015. Thereafter, it was reasonable for team members to discuss the suitability of potential experts (16 consultant haematologists were approached). It is entirely unreasonable for the Claimant to seek to challenge the costs prior to November 2015 on the basis that "substantive discussions" did not begin until then. The Claimant sought an expert at the Preliminary Hearing and the Respondent immediately started work to locate an appropriate expert following that hearing in line with the tribunal's order, as detailed in the 1 October 2015 letter. The Claimant cannot rely on his own delay in this regard. 204. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 10 hours Grade C: 13 hours
	Costs Officer's Decision I considered that there was a large amount of duplication. I awarded 5 hours at Grade A, 2 hours at Grade B and 8 hours at Grade C. Any doubt in my mind was resolved in favour of the paying party.
Part 3	**Summary** 205. In the month following the Preliminary Hearing, the Respondent's incurred £10,789.05 dealing with the directions of the Employment Tribunal. Specifically, disclosure preparation began and the Respondent took steps to identify a joint expert.
Procedural Steps (Attendances on Counsel and Counsel's fees) **128 - 133**	206. The paying party accepts that it was reasonable to obtain Counsel's advice in relation to disclosure, given the high importance that such documentation would play in resolving this dispute. However issue is taken with the over-reliance on Counsel as demonstrated by the Respondent's 3 separate advices received within 4 days. It is submitted that these fees demonstrate the excessive and unreasonable building of costs by the Respondent that should not be recovered inter partes. It would have been appropriate for the Respondent's to have taken stock of the disclosure issues and attend on Counsel on one occasion. Absent of any detail in the Bill of Costs or the Note of Fees, these advices appear duplicative and excessive. 207. The paying party offers £420 for Counsel's fee and 0.6 hours at Grade A for an initial attendance on Counsel

	Respondent's Reply 208. The Respondent submits a total of 1.16 hours is both reasonable and proportionate to address the initial stages of disclosure, given its importance and impact on the claim. 209. The Respondent submits that Counsel's fee of £840 is a reasonable amount to address initial disclosure. No concession offered.
	Costs Officer's Decision The use of counsel is accepted and the time was accepted, save that the claimant did not accept the use of the Grade A fee earner. Given the claimant's concessions and my view that the use of the Grade A fee earner was appropriate, this is awarded as claimed.
Attendances on the Client **137 – 143**	210. The Respondent is put to proof that these attendances and routine items were not solicitor-client in nature. 211. The Respondent offers: Grade C – 0.3 hours Grade D – 0.3 hours
	Respondent's Reply 212. The Claimant is referred to the description of the timed attendances, which contains sufficient detail as to what each attendance related to. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 213. No concession is offered.
	Costs Officer's Decision Item 137 is allowed as claimed. Item 139 was not challenged. Item 141 is allowed as claimed Items 142-143 were not challenged. Item 146 was not challenged.
Attendances on experts	214. The Respondent's long attendances appear to be compound entries. The time is not broken down as required in the CPR, so the Court nor can the paying party properly assess the

148 – 153	recoverability of the costs. In light of this doubt, the time must be disallowed.
	Respondent's Reply 215. The Claimant is requested to identify the relevant provision of the CPR that provides that such time should be disallowed. The Respondent's file of papers will be made available for the Tribunal to consider the reasonableness of the time claimed. 216. No concessions offered.
	Costs Officer's Decision This section was conceded by the claimant.
Attendances on the Claimant / Ashfords **156 - 163**	157 217. The Bill refers to amending a letter, therefore time should be disallowed in principle. Furthermore the letter of 7 October is only 2 paragraphs in length, identifying the Respondent's 2 preferred experts. An Associate / Grade C should not require 0.79 hours to prepare this at a cost of £126.40. That is unreasonable and excessive. This is another example that could properly be categorised as a routine correspondence. 158 & 159 218. These items relate to a 1 page letter sent on 9 October, which simply lists the identities of 16 experts contacted by the Respondent and then confirms the Respondent's preferred 2 experts. The 2.49 hours claimed at a cost of £398.40 for this letter is extremely excessive and disproportionate to the work done. This should have been prepared quickly by a trainee. The letter required no expertise and hardly any legal knowledge. 156 219. The letter of less than 1 page in length did not require half an hour of Partner input when drafting. The paying party accepts it had to address the issues between the parties at that stage with regards to expert instructions, but a Partner could have prepared the same within 2 units of time. 220. The routine items are accepted at the applicable rate. 221. Offer: Grade A – 0.5 hours Grade C – 0.4 hours
	Respondent's Reply Item 157

	222. The letter was updated rather than amended. The content of the letter was important, chiefly to propose two experts to be instructed on a joint basis and request the Claimant's suggestions, in the absence of any response to the Respondent's previous requests. Further, the letter was prepared by a trainee and not an Associate as asserted by the Claimant. Items 158 & 159 223. This 2-page letter was prepared in response to the Claimant's request for the identity of the 16 consultant haematologists that had been contacted and the reasons for choosing the two experts proposed by the Respondent. Further, this correspondence was prepared by a trainee. In any event, in the spirit of compromise, the Respondent is prepared to accept 1 hour. Item 156 224. This 2-page letter was prepared in response to the Claimant's letter dated 15 October 2015, which criticised the selection of experts proposed by the Respondent, listed 3 additional potential experts and requested an extension of time for agreeing the joint expert, as well as request a response to the Request for Further Information. The content of the letter was important and warranted a considered response. In the spirit of compromise, the Respondent is prepared to accept 24 minutes. 225. The Respondent is prepared to accept the following: Grade A: 0.7 hours Grade C: 0.1 hours Grade D: 1.4 hours
	Costs Officer's Decision 2 hours at grade D for the correspondence at items 157-159. The partner rate is claimed in full at item 156. Items 161 and 163 were conceded by the claimant.
Document Schedule (pp. 61 – 62) **169 - 172**	226. The Respondent claims a total of 18.39 hours split across four fee earners at a cost of £7,045.35 for this month. The Respondent corresponded with the Claimant and professionals regarding the potential expert instruction, dealt with initial disclosure and considered the Claimant's response to the Request for Further Information. Non-recoverable inter-fee earner work 227. 2.67 hours of Partner and Associate time is claimed at a cost of £1,143.75 for internal team discussions or emails, including preparation of instructions to a trainee. This is a duplication of efforts, and includes supervisory work. It is not recoverable inter partes and should be disallowed in full.

	Non-progressive work 228. 0.73 hours is claimed by the Partner and Associate either considering the solicitors instructed by the Claimant, or generally attending to emails. This is vague or non-progressive in nature. Any doubt should fall to the paying party and these items and should be disallowed in full. Research 229. 3.77 hours including 1.77 hours of Partner time is claimed researching Tribunal fees. This is administrative in nature, and in any event it is assumed that solicitors know the relevant law in their field. This work, at a cost of £1,071.20, should be disallowed in full. Medical Expert 230. 6.31 hours of Partner, Associate and Trainee time is claimed at a cost of £2,612.95 for dealing with the medical expert. The Court will note that this is in addition to the 4.35 hour claimed in the Part 2 Document Schedule. There is clear evidence of inter-fee earner discussions or duplication of efforts in relation to this work. Also, time is claimed drafting letters regarding the expert in the schedule, presumably in addition to time claimed against the relevant party in the body of the Bill. The Respondent is put to strict proof of the progressive nature of each entry. If attendance notes don't demonstrate that progressive, non-duplicative work was performed in this period, the paying party submits the time should be disallowed. Disclosure 231. The paying party notes that 4.15 hours is claimed dealing with the Respondent's disclosure. This must be considered in the context of the further time claimed in the following Parts of the Bill, so that the Court can approve a reasonable and proportionate sum for this work. 232. The receiving party offers the following in relation to the entire documents schedule: Grade A – 1.5 hours Grade B – 0 hours Grade C - 3 hours Grade D – 1 hours 233. The offers total £1,429.50
	Respondent's Reply 234. The Respondent submits that an average time of 4.5 hours spent per week on documents addressing the potential expert instruction, initial disclosure and the Claimant's response to the Request for Further Information is both reasonable and proportionate to undertake the work that was reasonably required. 235. The Respondent maintains that inter fee earner discussions are recoverable in principle.

	236. The Claimant has failed to provide an example of the entry/entries that it considers to be non-progressive, although it is noted that the disputed time totals 0.73 hours and/or 3.5% of the time document time claimed. Assuming the Claimant is referring to the Partner entry dated 22.10.2015, it was necessary to review correspondence received from the Claimant's newly instructed solicitor in order to prepare a response on the issues that needed to be addressed, including the joint instruction of the medical expert. 237. The Claimant's submissions in respect of the medical expert are noted. The Respondent can confirm that the time claimed in the document schedule has not been claimed elsewhere and the file of papers will be made available for the Tribunal's consideration. In light of the difficulties encountered in obtaining the Claimant's agreement, time spent discussing suitable experts was both reasonable and proportionate. 238. The Respondent is prepared to accept the following: Grade A: 4 hours Grade C: 6 hours Grade D: 2.4 hours
	Costs Officer's Decision I cannot see the justification for a Partner researching an issue on Tribunal fees in 2015 (long before the Supreme Court's decision which led to the removal of tribunal fees). Fees were a matter for the claimant and it is not reasonable or proportionate for the claimant to have to pay for the respondent to look in to this matter. That is disallowed. That reduces 1 hour of partner time at item 169 and two hours of trainee time removed at 172. Items 169-172 taking account of the point above, the time is disallowed as follows to 3.6 hours for Grade A fee earner , Grade C time to 6 hours and Grade D to 2.5 hours.
Part 4	**Summary** 239. Over 1 month the Respondent incurred £46,644.90, of which £41,695.65 related to solicitor costs.
Procedural Steps (Counsel's fees and attendances) **174 – 192**	174 - 178 240. These entries appear to relate to the List of Issues. Whilst the paying party accepts there was some dispute between the parties as to the content of this document, it was eventually only 8 pages in length. Counsel, the Partner and Trainee claim £1,546.60 in relation to that document in these items alone, which must be

	considered in addition to the document time claimed for considering and drafting the List of Issues. 241. The duplicative approach is a further example of the unreasonable and excessive costs of the Respondent. <u>179 – 180</u> 242. These descriptions provide no explanation of the work done by Counsel over and above the fees claimed specifically for work in that period. In light of this doubt, the costs should be disallowed in full. In any event they add to the excessive fees charged by Counsel. <u>181 – 184</u> 243. The 3-person attendance at the second Preliminary Hearing was unreasonable and excessive. In light of Counsel's instructions, the Associate's time is challenged in full. The Grade D time for taking a note is reasonable. Counsel's fee should be assessed in light of the continued involvement of Counsel throughout the matter, and should be limited to a reasonable sum depending on the allowances for Counsel's other advices in this Part. <u>185 – 190 and 192</u> 244. These entries are non-specific and the paying party doubts the purpose of the advices. Counsel's fee for a "letter" demands an explanation. No offers are made for these items. <u>191</u> 245. The Letter of Instruction to the expert was 6 pages in length; 3 pages of background instructions and 3 pages of a suggested format for the report. There was nothing complex or out of the usual for this joint draft letter of instruction. Multiple fee earners also claim time for drafting this document in the Documents Schedule, including the Partner. This work was within the abilities of the solicitors and so no fee should be paid to Counsel for duplicating the work. 246. The Claimant offers as a compromise for these entries: 0.6 hours at Grade A 1.8 hours at Grade D £450 for Counsel's fees
	Respondent's Reply <u>Items 174 - 178</u> 247. These attendances not only related to the Claimant's updated draft List of Issues, but also addressed the Claimant's response to the Request for Further Information, Schedule of Loss and strategy to address the difficulties encountered as a result of the Claimant's unreasonable stance with regards to agreeing a joint expert. The eventual length of the List of Issues does not indicate the difficulties faced in agreeing it (indeed it proved so difficult that a second Preliminary Hearing was required, which is highly

	unusual and reflects the Claimant's approach to this litigation). Both the time and Counsel fees claimed are reasonable and proportionate to address the issues cited above. Items 179 – 180 248. The advice provided on 4 November 2015 related to the issues to be addressed at the preliminary hearing and strategy in respect of the same. 249. The fee claimed on 5 November 2015 is for preparing the updated List of Issues. Items 181 – 184 250. As the fee earner with conduct, it was reasonable for Hannah White to attend both the conference with Counsel and the preliminary hearing, especially given that the purpose of the hearing was to seek to finalise the List of Issues, the instruction of the medical expert, and to revisit the timetable to the final hearing and the importance of complying with the same. 251. The advice provided on 6 November 2015 addressed the proposed expert (which was not agreed between the parties), the content of the draft joint letter of instruction (which was not agreed between the parties) and the reply to the Request for Further Information. Items 185 – 190 and 192 252. The Respondent is prepared to concede the fee claimed at item 185. 253. The fee claimed on 13 November 2015 relates to the detailed letter to the Claimant of the same date. This was an important letter that addressed the appointment of a joint expert, which was a contentious issue. The Respondent submits that it was reasonable for Counsel to have reviewed the same. 254. Counsel's fee claimed at item 187 in the sum of £140 relates to reviewing the detailed 3-page letter addressing the difficulties encountered in agreeing a joint expert as a result of the Claimant's approach. The Respondent maintains that the fee claimed is reasonable. 255. The conference on 17 November 2015 was held to address the ongoing difficulties encountered in agreeing a joint expert as a result of the Claimant's approach and failure to provide a suitable reason for objecting to the proposed expert. 256. On 30 November 2015, Counsel advised on the Claimant's failure to disclose medical records, the steps to be taken to obtain the same and the merits of making an application. Item 191 257. The Respondent submits that it was cost effective for Counsel to prepare this lengthy and detailed letter of instruction. It would have been more expensive for solicitors to have prepared it. Further, only 0.25 hours is claimed by the Partner within the

	document schedule for reviewing the draft letter of instruction. The Respondent submits that this does not amount to duplication and is a reasonable step to be taken given the importance of the letter of instruction and the issues addressed therein. No concession offered. 258. The Respondent is prepared to accept the following: Grade A: 1.28 hours Grade C: 1.97 hours Grade D: 2.25 hours 259. In respect of Counsel's fees, the Respondent is prepared to accept £1,845 with a view to narrowing the issues between the parties.
	Costs Officer's Decision Item 174 is allowed. Item 175 is allowed. Item 176 is counsel's fee which is allowed. I consider that there is duplication by having a Grade A Fee earner and counsel involved on the List of Issues on 4 November 2015 and I disallow partner time on a standard basis. Item 177 is disallowed for Grade A and replaced with Grade C. Counsel's fee's allowed at items 178-180. Item 181 is allowed and 182 is disallowed as this is duplication of attendance at the telephone preliminary hearing. Counsel's fee was conceded for the PH on 6 November 2015 , item 183. 185 was conceded. Items 187 and 189 and 191 were conceded by the claimant. Item 190 was disallowed, the email could not be located. Item 192 was disallowed as there was no documentary support.
Attendances on the Client **196 - 217**	260. In 1 month there are 15 long attendances and 8 items of routine correspondence claimed against the Respondent, suggesting a prima facie disproportionate level of communication to be recovered inter partes. The Respondent is put to proof that these communications were not solicitor-client in nature. 198, 203, 204, 296 261. On 18 November there appears to be three separate attendances on the Respondent. Both the Associate and the Trainee attend a 30 minute meeting, whilst the Associate and the Partner calling the client separately in addition. The dual attendance is duplicative and must be disallowed. The Trainee's progressive input in particular is challenged. It is further submitted that two telephone attendances on the same day are duplicative of the meeting and/or each other, and excessive in nature. 199 & 205

	262. Another dual attendance on the client by the Associate and Trainee, which is likely to be duplicative and non-progressive. The Court will note that the Partner engaged the client on the same topic for 0.75 hours just the previous day. 200 & 197 263. This appears to be a duplication of advice ahead of the Preliminary Hearing, first provided by the Associate on 5 November and then the Partner on 6 November. It is likely to be solicitor-client in nature. 208 – 211 264. The Respondent is put to proof that the file contains these long letters which support the time claimed as being reasonable. In light of the excessive time claimed for long letters to the Claimant, which have been addressed specifically in these Points of Dispute, the paying party reserves its position. 265. The Paying Party offers: Grade A – 0.5 hours Grade C – 1.7 hours Grade D – 0.1 hours
	Respondent's Reply 266. A total of 7.15 hours is claimed (comprising of both timed attendances and routine correspondence) during a period in which a preliminary hearing was held, the parties sought to agree the List of Issues, advise the client on the Claimant's response to the Request for Further Information, advise on the Schedule of Loss, advise on the instruction of the proposed expert and provide ongoing advice in relation to disclosure. Items 198, 203, 204, 296 267. The Claimant is mistaken. These items relate to two separate attendances. One attendance relates to the important issue of disclosure (items 198, 204 and 2016). The Respondent is prepared to concede the trainee's attendance. 268. The second discussion was only attended by the Associate (item 203) and in the absence of any objection to the time claimed, the Respondent assumes that this item is conceded. Items 199 & 205 269. At this stage of proceedings, it was imperative to fully advise the client of their ongoing disclosure obligations. The Respondent maintains that the attendance of the conducting fee earner and trainee is both reasonable and proportionate. Items 200 & 197 270. The attendance on 5 November 2015 addressed the List of Issues and expert, which had yet to be agreed between the parties, as well the Request for Further Information. Advice was provided and instructions were obtained in respect of the same.

	271. The attendance on 6 November 2015 related to the preliminary hearing itself. The Respondent maintains that this attendance does not amount to duplication and should be allowed as claimed. Items 208 – 211 272. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 273. The Respondent is prepared to accept the following: Grade A: 2.13 hours Grade C: 3.86 hours Grade D: 0.66 hours
	Costs Officer's Decision This was agreed at 1.5 hours for Grade A, 2.5 hours for Grade C and 1 hour for Grade D.
Professor Cavenagh **219**	274. The Claimant does not understand the purpose of this letter but submits that it is not likely to be progressive to the litigation. No offer is made.
	Respondent's Reply 275. In light of the issues between the parties with regards to agreeing a joint expert, the Respondent maintains that this letter was progressive to the claim as the Respondent carefully considered whether it could agree to the Claimant's suggested expert. No concession offered.
	Costs Officer's Decision The claimant conceded this item.
Attendances on the Claimant / Ashfords **222 - 230**	223 & 224 276. This letter primarily summarises the chronology of correspondence between the parties in relation to the potential experts. 1.7 hours for preparing the same is an unreasonable and disproportionate sum, particularly in light of the duplication with the Respondent's earlier letters. 226 277. Another example of excessive time claimed for a 1 page letter of relatively straight forward content. It should not take a Grade C 0.81 hours to request an update on the Claimant's medical record position.

	278. The paying party offers for all items combined: Grade A – 0.3 hours Grade C – 1.0 hour
	Respondent's Reply <u>Items 223 & 224</u> 279. In light of the Claimant's unreasonable stance with regards to agreeing a joint expert, it was necessary to outline the position in respect of the expert witness and request reasons in support of the stance adopted, failing which the Respondent provided notice of their intention to apply to the tribunal to determine the same. <u>Item 226</u> 280. This letter was necessitated by the Claimant's failure to disclose medical records in accordance with the Tribunal's directions. This letter was not merely a request for an update but set out the Claimant's failure to comply with subsequent extensions and failure to provide notification as to when the records would be received, as well as requesting a response to six separate points arising from the same. 281. It is noted that no objection has been raised in respect of the routine items. 282. The Respondent is prepared to accept the following: Grade A: 0.35 hours Grade C: 3.3 hours
	Costs Officer's Decision Item 222 was conceded by the claimant. On items 223 and 224 there were clearly difficulties in appointing the joint medical expert which ultimately required the involvement of the tribunal at a hearing in March 2016. I considered that it was necessary for the letter to be sent. In relation to the time spent, I allow 1.25 hours for 223-224 at Grade C. On items 225 no issue is taken. On item 226, 0.5 hour is allowed. 228-230 were conceded by the claimant.
<u>Attendances on the Employment Tribunal</u> <u>232 - 235</u>	283. These entries appear administrative in nature and should not have been conducted by a fee earner. 284. No offer.
	Respondent's Reply

	285. Conceded.
	Costs Officer's Decision Items 232-233 are conceded by the respondent. Point 235 was conceded by the claimant.
Attendances on Counsel **237 - 246**	286. The Respondent is put to proof that these long attendances on Counsel don't duplicate the telephone advices claimed in the chronology of procedural steps in this part. The paying party further anticipates that the time claimed for long letters will be excessive to the work done, as evidenced by the correspondence sent to the Claimant. Furthermore, these items highlight the over-reliance on Counsel for every step of this litigation, and so no Grade A time is justified. 287. The paying party offers: Grade C – 0.7 hours Grade D – 0.2 hours
	Respondent's Reply 288. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. It should be noted that the Partner's time consists of only 0.2 hours and is reasonable given the difficulties encountered in obtaining the Claimant's medical records. 289. The Respondent maintains the time claimed is reasonable.
	Costs Officer's Decision Items 237 and 238 – allowing only 0.4 at Grade C. Point 239 is conceded by the claimant. Point 240 is disallowed as it is overreliance on counsel. Point 242 is allowed. Point 243 is allowed at 0.2 at Grade C Point 244 is allowed and was also conceded by the claimant. Point 246 was conceded by the claimant.
Documents Schedule (pp. 63 - 68) **248 – 253**	290. Over a period of 21 days the Respondent's solicitor team incurred £34,025.35 in document schedule costs alone. The time claim equates to a just short of a full 7 hour working day preparing documents for each of the 21 days straight. Whilst the paying party accepts that the work done in this period was onerous,

	these figures are demonstrative of the duplicative approach taken by the Respondent leading to excessive and unreasonable costs. 291. The time claimed can be summarised by task: 1.7 hours (Partner and Trainee) : preparing to obtain Counsel's advice; 94.57 hours (Partner, Associate, Trainee) : dealing with Disclosure including attendances on the client claimed in this schedule in addition to the body of the Bill of Costs, and considering and discussing strategy generally; 35.9 hours (E-Discovery Executive and Senior Executive): Administrative work manipulating the electronic data and managing the Respondent's files. 4.61 hours (Partner, Associate, Trainee) : Considering potential experts 0.25 hours (Partner) : Preparing instructions to the expert 1.25 hours (Partner and Associate) : Considering the Claimant's medical records 292. The paying party submits that there are many examples of fee earner duplication or inter-fee earner discussions within the document schedule regarding disclosure. The schedule is also devoid of detail; therefore it is not clear exactly what the fee earners were doing in many of the lengthy entries. For example many are included as simply "Attending to disclosure". It is submitted that any clear examples of duplication or supervision must be disallowed in principle. The Court is then invited to stand back and take a view as to the remaining disclosure time claimed in this Part and the considerable sums claimed in the Document Schedule in Part 5 as well for preparing the Respondent's disclosure. 293. The work conducted by E-Disclosure fee earners appears administrative in nature, and should not be recovered inter partes. These are not qualified legal fee earners, and there is no evidence of them bringing specialist knowledge to the litigation. The paying party also queries whether their time is duplicative of the disclosure disbursements claimed in this Bill. 294. The paying party reserves its position on the time claimed in this document schedule, as it will be necessary to review the Respondent's file and attendance notes covering Part 4 and 5 of the Bill in order to determine exactly what level of recoverable fee earner work was conducted when preparing the Respondent's Disclosure.
	Respondent's Reply 295. The Claimant is requested to provide an audit trail in support of their submissions and supporting calculations. Presumably these calculations have already been carried out and therefore no additional expense will be incurred as a result. The Respondent submits that these should be treated with caution. 296. There appears to be some inaccuracies with the Claimant's calculations, by way of example, the time claimed by the E-

	Discovery Executive and Senior Executive totals 35.7 hours, less than the sum submitted by the paying party. 297. In any event, of the time claimed, approximately 7% was carried out by the Partner, 21% by the Associate, 48% by Trainees and 24% by the E-Discovery fee earners. 298. Taking the Claimant's summaries in turn, the Respondent comments as follows: 299. Preparing to obtain Counsel's advice – the time identified amounts to 1.7 hours, comprising of 1.52 hours by the Trainee and 0.18 hours by the Partner. The time also includes addressing issues following a conference with Counsel. The majority of work has been delegated to the Trainee with the Partner's involvement limited with a view to keeping costs down. 300. Dealing with disclosure – the Respondent submits that disclosure was an onerous task, spanning over 5 years and required a team in order to meet the client's disclosure obligations. In addition to the E-Discovery personnel, the team comprised of one Partner, one Associate and two Trainees. This is far from excessive or unreasonable. The nature of this task required some level of inter fee earner discussions, which the Respondent maintains is reasonable in all the circumstances. Further, tasks have been delegated where appropriate. By way of example, the first level review was undertaken by Trainees. With regards to attendances on the client, time is claimed for undertaking preparation rather than the attendance itself. If the Claimant provides an example, the Respondent will be happy to prepare a further response. Given the importance and size of the disclosure task, it is entirely reasonable to have spent time dealing with strategy. 301. E-Discovery Executive and Senior Executive - the Respondent submits that the time claimed is an important part in the disclosure process and recoverable in principle inter partes. Further, had this work not been carried out in-house, it would have been outsourced and most likely at a similar or greater expense, and that cost would be recoverable in principle inter partes. Herbert Smith Freehills has inhouse capabilities in order to be able to progress disclosure at a good pace and without wasting costs. 302. Considering potential experts – the Respondent re-iterates that the process of agreeing a joint expert was complicated by the Claimant's unreasonable stance which necessitated the work that was carried out. 303. Preparing instructions to the expert – the 0.25 hours claimed is reasonable. 304. Considering the Respondent's medical records - the 1.25 hours claimed is reasonable. The records amounted to a full lever arch file of documents. 305. In addition to the above task, work was undertaken in preparation and following the preliminary hearing on 6 November 2015, which was complicated by the fact that a number of issues remained outstanding as a result of the Claimant's unreasonable approach.

	306. The Claimant submits that there are many examples of duplication but has failed to provide any examples. In the absence of any examples, the Respondent is unable to respond. The Respondent maintains that some level of inter fee earner discussion was required to formulate a strategy with regards to disclosure and instruct/supervise Trainees accordingly so that the work could be progressed in the most cost effective manner and that such time is recoverable inter partes. 307. With regards to the Claimant's submission that there is a lack of detail, it should be noted that the entries to consist only of "Attending to disclosure", amounts to 18.15 hours and/or approximately 12% of the time claimed and should not prevent the Claimant from making a reasonable offer. 308. The Respondent does not accept that it is "necessary" for the Claimant to review the Respondent's file of papers in order to make a reasonable offer on the time claimed. The Respondent reserves the right to make further submissions upon receipt of any additional arguments advanced by the Claimant. However, in an attempt to narrow the issues between the parties, the Respondent is prepared to accept the following: Grade A: 8 hours Grade C: 26 hours Grade D: 90 hours
	Costs Officer's Decision The paying party accepts the work done was onerous (paragraph 290 above). There was use of an eDiscovery team alongside trainees. The claimant considered that there was "immense duplication". The claimant said that one team should be disallowed. The respondent said that the claimant had not been assisted by his costs lawyers who drafted the points of dispute and had not given the detail. The respondent said it did not only relate to disclosure. On the trainees/eDiscovery team point: The eDiscovery team did the electronic searches and the trainees reviewed for relevance, these were very different roles. This was an enormous task and I find that there was proper and reasonable use of the eDiscovery team. The use of the Grade C Fee Earner was also appropriate for considering whether the documents were disclosable. The disclosure work was done in November and December 2015. This item considers November 2015. I considered the summary at page 180 of the shared bundle for November 2015 and award as follow: 10 hours of Grade A Partner time, necessary in a substantial and complex case such as this for the supervision and expertise. 25 hours at Grade C. 45 hours of Trainee time at Grade D and 30 hours of the eDiscovery team at Grade D at the rate predominantly claimed of £140.

Other disbursements **255 – 256**	309. These appear to be internal overhead charges of the Respondent's solicitor. No disbursement voucher is provided for the fee of more than £500. In light of this doubt, and the likelihood of these being overhead charges that are not recoverable inter partes, no offer is made.
	Respondent's Reply 310. The Respondent submits that these fees are not so common that they can be considered internal overhead charges. Generally the hosting and process of electronic documents for disclosure purposes would be outsourced and a disbursement for these costs would be properly recoverable inter partes. The fact that Herbert Smith Freehills can provide these services in house does not make them internal overhead charges.
	Costs Officer's Decision These are data hosting charges. This is an overhead charge and should form part of hourly rate.
Part 5	**Summary** 311. Over 1 month the Respondent incurred £45,180.43 of which £40,630.05 related to solicitor costs.
Procedural Steps (Counsel fees and attendances) **258 – 265**	312. The Respondent is put to proof regarding the purpose, content and progressiveness of each of these attendances with Counsel. The Bill of Costs and fee notes contain insufficient information to justify the time and costs claimed, and any doubt must be resolved in favour of the paying party. 313. The sheer number of attendances on Counsel throughout this matter indicates that these telephone discussions were further examples of Counsel's hand-holding of the solicitors. The dual attendance on 21 December further suggests that these costs are duplicative and excessive, particularly when the document schedule is considered alongside the timed attendances. 314. No costs should be recovered unless it is clear from the file that each telephone conference dealt with a new issue, and progressed the Respondent's case, without there being duplication of work already performed. 315. No offers are made due to the lack of supporting detail provided.

	Respondent's Reply 316. The Claimant's objections are rejected. 317. Item 259 is conceded. 318. Item 260 relates to reviewing the position with regards to the disclosure of the Claimant's medical records, including a review of draft correspondence. The Respondent maintains the work was progressive to the claim and the fee is reasonable. 319. The Respondent submits that there is sufficient information provided for item 261 to enable the Claimant to consider the same. 320. The attendance with Counsel on 21 December 2015 addressed various issues including but not limited to the Claimant's medical records, disclosure and witness evidence. The attendance was progressive to the claim and the time claimed is reasonable. Further, given the importance of the issues addressed, it was reasonable for there to be input from both the Partner and Associate. 321. The Respondent is prepared to accept the following; Grade A: 0.55 hours Grade C: 0.75 hours Counsel's fees: £490.00
	Costs Officer's Decision Item 259 was conceded by the respondent. I agreed with the claimant that items 263 and 264 was duplicated by fee earner and is allowed at Grade C. The remainder is allowed.
Attendances on the Client **269 - 273**	322. The Respondent is put to proof that the file supports the time claimed as being reasonable and not solicitor-client in nature. 323. The Paying Party offers: 324. Grade A – 0.1 hours 325. Grade C – 0.2 hours
	Respondent's Reply 326. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 327. Again, the Claimant has failed to provide any reason in support of the reduction sought. No concession offered.

	Costs Officer's Decision The claimant conceded items 269, 270, 272, 273.
Attendances on the Claimant / Ashfords **276 - 285**	276 328. The Partner claims 1.08 hours preparing a one page email to the Claimant regarding the disclosure of medical records. This must be considered alongside the 0.33 hours considering the initial correspondence from the Claimant as claimed in the Documents Schedule. The time and costs claimed are extortionate, with the drafting alone exceeding £600 for an email that simply sets out the position regarding an extension for disclosure of medical records. The time must be reduced to a reasonable and proportionate level. 0.2 hours at the Grade A rate offered would be suitable. 277 - 279 329. These letters are not reflective of the Claimant's file; the Respondent is put to proof. 280 330. The paying party accepts that this is a genuine long email of 2 pages in length. However there is also over an hour of Partner and Associate time claimed in the Document Schedule for considering and noting the responses to the Claimant's amendments, which formed the majority of this email. In light of this duplication, 0.3 hours at Grade C would be appropriate. 331. The paying party offers: Grade A – 0.2 hours Grade C – 1.1 hours Grade D – 0.3 hours
	Respondent's Reply Item 276 332. The Claimant's objection is noted but incorrect. This letter was not merely a request for disclosure but was prepared in response to the Claimant's failure to disclose medical records in accordance with the Tribunal's deadline and failure to communicate the inability to comply with the direction despite knowing that he was unable to do so. This letter was necessitated by the Claimant's conduct and will be made available for the Tribunal's consideration at detailed assessment. Item 277 - 279

	333. Each detailed letter consists of 2-pages and will be made available for the Tribunal's consideration at detailed assessment. Item 280 334. The Claimant's submission that the time claimed in the document schedule amounts to duplication is rejected. The Respondent maintains the time claimed is reasonable and the letter will be made available for the Tribunal's consideration at detailed assessment. 335. The Respondent is prepared to accept the following: Grade A: 1.28 hours Grade C: 2.84 hours Grade D: 0.1 hours
	Costs Officer's Decision Item 276 is allowed at 0.5 hour, as it is reminiscent of previous correspondence on the same issue. Items 277 to 279 allowed at 1 hour at Grade C. Item 280 is conceded. Items 282-288 were conceded by the claimant.
Documents Schedule (pp. 69 - 71) **290 – 295**	336. Over the month of December 2015 the Respondent's solicitor team incurred £37,575.20 in document schedule costs alone. The time claim equates to a just short of a full 6 hour working day preparing documents for each of the 21 days straight. Whilst the paying party accepts that the work done in this period was onerous, these figures are demonstrative of the duplicative approach taken by the Respondent leading to excessive and unreasonable costs. 337. The paying party puts the Respondent to proof as to the accuracy and progressive nature of the time claimed in this schedule, particularly in relation to Disclosure. For example, the Partner claims 7.67 hours of time on Christmas Eve considering the Claimant's disclosure. The paying party expects that a detailed attendance note will demonstrate the work done on that day, with any doubt resolved against the Respondent. 338. The time claimed can be summarised by task: 123.54 hours (Every level of fee earner) : dealing with Disclosure 2.78 hours : witness evidence 0.28 hours : Expert evidence 339. The paying party refers to and repeats the submissions made in response to the Document Schedule in Part 4. There are clear examples of administrative or duplicative work here. 340. The Respondent is put to proof of the progressive work done in this period, with any doubt resolved in the paying party's favour.

	For example on 7, 8 and 9 December the Trainee incurs 24.39 hours dealing with the Respondent's disclosure. These are block, compound entries which are difficult to assess. The descriptions include work that is clearly not recoverable: attending internal meetings, arranging for copies to be made, discussing the documents with other fee earners. Unless the Respondent can demonstrate which of these entries relate to the work that may be recoverable, it is submitted that no costs should be awarded. 341. The paying party reserves its position until a full consideration of the Respondent's file for Parts 4 and 5 of the Bill are possible at assessment.
	Respondent's Reply 342. The Claimant's query as to the accuracy of the time claimed is refuted and the Claimant is reminded that the Partner has certified that the Bill of Costs is accurate. 343. The Respondent refers to and repeats the submissions made in response to the objections to the document entries claimed in Part 4, with specific reference to the task of disclosure. 344. The Respondent re-iterates that the team assembled to deal with the onerous disclosure task was reasonable. The time claimed is far from excessive or unreasonable given the importance and scale of the task at hand, and the timeframe in which it needed to be completed. The nature of this task required some level of inter fee earner discussions, especially since the majority of work was delegated to junior fee earners in order to save costs. 345. Despite the Claimant's submission that there are clear examples of administrative or duplicative entries, no examples have been provided and in the absence of such, the Respondent is unable to respond. 346. The Respondent does not accept that it is "necessary" for the Claimant to review the Respondent's file of papers in order to make a reasonable offer on the time claimed, and the Respondent reserves the right to make further submissions upon receipt of any additional arguments advanced by the Claimant. However, in an attempt to narrow the issues between the parties, the Respondent is prepared to accept the following: Grade A: 12 hours Grade C: 45 hours Grade D: 54 hours
	Costs Officer's Decision The disclosure phase of the proceedings continued into December 2015 and it was an extensive exercise with sensitivity, for example in relation to comparator information and with high importance on accurate redaction of documents that would go into the public domain and covered a number of years. In addition the respondent had to consider disclosure from the claimant and they were beginning to prepare their documents for taking witness statements. The eDiscovery team was again involved

	in relation to the documents for witnesses, that is Grade D so trainee level. I have also considered the claimant's submission as to considering the time spent in the context of the time spent on disclosure in November 2015. In terms of the time spent, I allow 10 hours of partner time at Grade A 30 hours at Grade C, 30 hours of trainee time at Grade D and 10 hours of e Discovery team time at the rate claimed of £140.
Other disbursements **297 - 298**	297 347. These appear to be internal overhead charges of the Respondent's solicitor. No disbursement voucher is provided for the fee of more than £500. In light of this doubt, and the likelihood of these being overhead charges that are not recoverable inter partes, no offer is made. 298 348. Another overhead charge of the Respondent's solicitor. No offer.
	Respondent's Reply Item 297 349. The Respondent invites the Tribunal to exercise its discretion pursuant to CPR PD 47 para 5.22 (5) to allow the cost of copying disclosure documents. The Respondent refers to the submissions in respect of the General Points and Proportionality. The Respondent had no alternative but to defend a number of allegations spanning over 5 years that had no reasonable prospect of success. 350. The Respondent should not be expected to bear the costs of copying the extensive disclosure documents requested by the Claimant. Item 298 351. The Respondent submits that these fees are not so common that they can be considered internal overhead charges and reiterates the submissions above.
	Costs Officer's Decision Item 297 was conceded by the respondent as being internal copying charges. They did not concede photocopying generally. Item 298 is disallowed.
Part 6	**Summary**

	352. £14,567.10 is claimed in this Part covering the month of January 2016, including £8,885.85 of solicitor costs. Due to the Indemnity Principle, the Respondent's recoverable profit costs are limited to £8,880. 353. In this period the Respondent corresponded with the Claimant regarding the proposed instruction of a joint medical expert, and then prepared an application in relation to the same following the Claimant's failure to agree. Counsel incurred fees preparing the expert instructions, drafting the application, advising by telephone and also drafting the witness statements. Counsel's fees total £5,681.25 for the month.
	Respondent's Reply 354. Counsel's fees within this part total £5,600 and not £5,681.25, as stated by the paying party. For completeness sake, the total costs claimed for this amount totals £14,561.25.
Procedural Steps (Counsel's fees & attendances): **300, 301, 303, 305, 306, 307, 308, 310, 311, 312** **And** **302, 304**	300 – 305 355. The fees for drafting the expert instructions are agreed, subject to significant deductions being made to the duplicative fee earner time preparing the same. 356. The telephone attendances fees are agreed, but the Court will note that this highlights the over reliance on Counsel in this matter. 306 – 308 357. It is assumed that the review of papers relates to the subsequent application prepared by Counsel. In light of the ongoing involvement of Counsel and the telephone conferences the previous week, these further fees appear excessive and duplicative. 358. The paying party offers £1,500 as a compound fee for this application. 302 & 304 359. Counsel prepared the application, and so two separate telephone attendances by different fee earners appears excessive. The paying party offers 0.2 hours at Grade C. 310 – 312 360. The receiving party relies on the General Point 4: Witness Statements. These fees are the first of Counsel's total charges of over £23,000 for preparing the statements. No specific offers are made in relation to these fees in light of the global offer made for witness statement preparation. 361. The Claimant offers a compromise: 362. 0.2 hours at Grade C 363. £1,850 for Counsel's fees

	Respondent's Reply Items 300 – 305 364. The Respondent notes that Counsel's fees are agreed. Items 306 – 308 365. The Claimant's objections are noted, however work undertaken in the previous week related strictly to the preparation of the draft letter of instruction. 366. These fees strictly relate to the Respondent's application in relation to the instructions for a joint expert. The application was not straightforward given the dispute between the parties with regards to not only the content of the joint letter of instruction but also disclosure of the Claimant's medical records. Further, this application was necessitated as a result of the Claimant's unreasonable stance and failure to comply with the Tribunal's directions. 367. In the spirit of compromise, the Respondent is prepared to accept £2,500. Items 302 & 304 368. The Respondent maintains that a total of 0.4 hours to discuss this urgent and important application is reasonable in the circumstances. No concession is offered. Items 310 – 312 369. In any event, the Respondent refers to the submissions in response to General Point 4 – Witness Statements and the importance of witness evidence in successfully defending this claim. The papers will be made available for the Tribunal's consideration at detailed assessment. No concession is offered.
	Costs Officer's Decision The following items are agreed between the parties: Item 300 - 305 as claimed. Also agreed as claimed are: 316, 318, 320, 321, 324. Item 326 at 1 unit (6 mins), 327 at 2 units, 328 at 2 units, 330 as claimed, 332 as claimed, 334 as 2 units, 336-339 as claimed. Items 305-308 are counsel's fees for dealing with an application to the tribunal due to the failure to agree the instructions to the joint medical expert. The claimant relied upon an email of 9 March 2016 between solicitors at which the respondent's solicitor said they would be seeking the costs of the application and they proposed limiting the amount sought to £5,000. This email of 09.02.2016 was sent as a final attempt to reach agreement. No agreement was reached. The respondent is not bound by any figure stated in that email. The claimant's proposals in relation to the

	instructions to the expert were not upheld by the tribunal and I find that in these circumstances the respondent's counsel's fees are allowed in full. Items 310 -312 – the claimant conceded these items. Documents: 341-343: The Trainee time at grade D is reduced to 5 hours, the Grade C time is reduced to 7.5 and the remaining time is as claimed. Item 345 is disallowed as part of overheads.
Attendances on the Client **316 – 321**	370. The Respondent is put to proof that the long letters are not solicitor-client in nature. 371. The routine items are offered at Grade C.
	Respondent's Reply 372. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment.
	Costs Officer's Decision See above
Attendances on the Claimant / Ashfords **324 – 330**	326 373. This email consists of 2 paragraphs and a one line question regarding the instruction of the expert. The paying party concedes it will be liable for the work of the Respondent, but excessive time must be disallowed. This should be a routine item of correspondence. 327 374. The paying party assumes this is the email eventually sent on 18 January. 1 hour to draft a 1 page email is excessive. 0.3 hours would be reasonable. 328 375. This should be limited to a routine email. 376. The paying party offers: Grade C – 0.6 hours
	Respondent's Reply Item 326 377. In the spirt of compromise, the Respondent is prepared to accept 0.2 hours.

	Item 327 378. The Claimant's offer is rejected. This detailed email included a 16-point response to the Claimant s lengthy email dated 12 January 2016. The Respondent is prepared to accept 0.8 hours. Item 328 379. This was a detailed email that set out the Respondent's position in respect of the proposed amendments to the draft joint letter of instruction, including a summary of pertinent case law and outlining the Respondent's intention to proceed the matter in the absence of agreement. The Respondent is prepared to accept 0.3 hours. 380. In summary, the Respondent is prepared to accept the following: Grade C: 1.67 hours
	Costs Officer's Decision See above
Attendances on Counsel **334 – 339**	381. 6 routine attendances in a month are excessive when claimed in addition to the two telephone conferences. Furthermore, the long telephone attendance appears to duplicate the telephone conferences claimed earlier. 382. The paying party offers 2 routine items at Grade D to arrange the telephone conferences.
	Respondent's Reply 383. The timed attendance addressed the strategy to be adopted in light of the Claimant's failure to respond to multiple requests for a response to the proposed joint letter of instruction. 384. With regards to routine items, the time claimed is reasonable given that issues including but not limited to the draft joint letter of instruction, the application in relation to the joint expert instructions and the preparation of witness evidence. 385. In respect of time claimed on Counsel, the Respondent is prepared to accept the following: Grade A: 0.2 hours Grade C: 0.6 hours Grade D: 0.1 hours
	Costs Officer's Decision See above

Document Schedule (pp. 72 – 73) **341 – 343**	386. A total of 22.87 hours is claimed at a cost of £6,774.90. This work is primarily in relation to the instruction of the joint medical expert, and preparation of the Respondent's application in relation to the same. Non-specific or non-progressive items 387. Several entries claim time for generic attending to emails or attending to discussions with other fee earners. These should be disallowed in full. There is insufficient information for the court to properly determine what the emails or discussions relate to, and any doubt must be resolved in the paying party's favour. The emails, if progressive, should be claimed against the relevant party. Furthermore inter-fee earner discussions are not chargeable inter partes and demonstrate a clear duplication of work. £2,444.15 of these costs, amounting to 35% of the document schedule, falls under this category. Application 388. The Respondent's application was drafted by Counsel at a charge of £2,730 in three fees between 24 and 26 January 2016, causing the 13.9 hours of fee earner time in relation to the same to be largely duplicative and excessive. The paying party accepts that some work was required around preparation of the bundle and documents in support of the application, but this should be limited to Grade D input. In particular the Court should not that 0.12 hours of Partner time and 0.23 hours of Associate time are claimed on 27 January 2016 for a discussion about the application, which had already been filed the previous day. 389. The receiving party offers the following in relation to the entire documents schedule: Grade A – 1 hour Grade B – 0 hours Grade C - 5 hours Grade D – 0 hour 390. The offers total £1,777.00
	Respondent's Reply 391. The paying party is reminded that the majority of the work undertaken during this period (the draft joint letter of instruction and subsequent application) was required as a result of the Claimant's conduct, in addition to time spent considering disclosure received. 392. Again, the Claimant has failed to provide any specific examples and therefore the Respondent is only able to respond to the non-specific objections. 393. The Claimant's submission that time spent attending to emails and discussions with fee earners should be disallowed in full is rejected. The Respondent's file of papers will be made available

	for the Tribunal's consideration at detailed assessment. The Claimant's submission that 35% of the time claimed relates to non-specific or non-progressive items is rejected and he is requested to identify such entries. Assuming this relates to any entry containing a reference to attending to emails or inter fee earner discussions, these entries also include other tasks that were carried out. 394. With regards to work relating to the application, the paying party has failed to identify the 13.9 hours that is referred to. It was reasonable for the Partner and Associate to have input and finalise the application. The majority of time relates to the Trainee preparing the bundle and accompanying documents in support of the application (which the Claimant concedes is reasonable but has offered no time for). 395. The Respondent is prepared to accept the following: Grade A: 1.1 hours Grade C: 9 hours Grade D: 9.2 hours
	Costs Officer's Decision See above
Other disbursements **345**	396. Internal overhead of the Respondent's solicitor firm. No offer.
	Respondent's Reply 397. The Respondent submits that these fees are not so common that they can be considered internal overhead charges and the submissions made above are repeated.
	Costs Officer's Decision See above
<u>Part 7</u>	**<u>Summary</u>** 398. In February 2016 the Respondent claims £35,416.25 in total, including £20,884.70 of solicitor profit costs. Due to the Indemnity Principle, the Respondent's recoverable profit costs are limited to £19,400. 399. Save for a small amount of work in relation to the Second Preliminary Hearing and some disclosure, all costs in this Part relate to the preparation of the Respondent's 3 witness statements. The Court will note that these witness statements were not finalised until April 2016, and the paying party draws

	attention to the significant volume of costs also claimed for preparing these statements in Parts 6, 8 and 9.
Counsel's fees **347 – 351**	400. The paying party refers to General Point 4: Witness Statements. No offers are made against these fees specifically. The paying party does note, however, that these successive entries are very minimal in terms of detail and any doubt as to the recoverability of the work must be resolved in the paying party's favour. The Respondent is put to proof as to the specific work done to the witness statements and the advice provided for these fees, as there is a significant possibility that it relates to amending previous drafts. Furthermore, the witness statements were not completed for a further 2 months, with extensive work done by both Counsel and solicitors in that subsequent period.
	Respondent's Reply 401. The Respondent refers to the submissions in response to General Point 4 Witness Statements and re-iterates that the file of papers will be made available for the Tribunal's consideration at detailed assessment. The Respondent re-iterates that witness evidence was updated and further issues were identified and additional information emerged. 402. In the interim, Respondent can confirm the following: a. Item 347 – this fee relates to the initial draft of Richard Taylor and Steve Black's witness statements. b. Item 348 – this advice relates to the draft witness statements. c. Item 349 – Counsel prepared a detailed advice as to the merits of the claim. d. Item 350 – this fee was incurred for updating the advice. e. Item 351 – this fee relates to the preparation of Jon Ions' witness statement 403. In the spirit of compromise, the Respondent is prepared to accept £14,500.
	Costs Officer's Decision Item 349: This was counsel's advice on strategy and merits. This is allowed in full. Items 347, 348, 350 and 351 were conceded by the claimant on the basis that this set the framework for the witness statements and that he could make further submissions on further time claimed.

Attendances on the Client **357 - 365**	404. There is insufficient information provided in these entries to enable the Claimant to properly assess whether the time claimed preparing the long letters or emails is reasonable in amount, or was reasonably incurred. 405. The Respondent is put to proof that the file of papers supports the time claimed for these attendances. 406. As a compromise, the paying party offers: Grade A – 0.2 hours Grade C – 0.5 hours
	Respondent's Reply 407. The Respondent submits that there is sufficient detail provided to enable the paying party to consider and make a reasonable offer against the time claimed. The Claimant's offer equates to 29% of the time claimed. This is both unrealistic and unreasonable. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 408. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 0.9 hours Grade C: 1.2 hours Grade D: 0.1 hours
	Costs Officer's Decision The claimant conceded items 360, 364, 365. Items 357 and 359 are allowed. Item 361 is allowed at 2 units. Items 363-365 were conceded by the claimant.
Attendance on Steve Black (witness) **368**	409. The paying party refers to General Point 4: Witness Statements. No offers are made against these fees specifically. 410. The paying party does accept that a substantial attendance on the witness would have been required, and if the Court is to consider this particular item, it is submitted that the time may be reasonable providing an attendance note evidences the attendance.
	Respondent's Reply 411. The Respondent refers to the submissions in response to General Point 4 Witness Statements and re-iterates that the file of papers

	will be made available for the Tribunal's consideration at detailed assessment. 412. This was the first attendance on Steve Black to obtain instructions for the purposes of preparing a 17-page witness statement. This witness statement addressed a number of issues including Steve Black's relationship with the Claimant, Richard Taylor and yearly bonuses spanning from 2009 to 2014, as well as specific meetings that occurred between December 2014 and February 2015. 413. The Claimant's submission that a 2 hour attendance is "substantial" and "would not have been required" is unreasonable and unrealistic. 414. The Respondent submits that the 2-hour attendance claimed is reasonable and no concession is offered.
	Costs Officer's Decision Item 368 is allowed for attendance of 2 hours on the witness SB at Grade B. Items 371 was conceded by the claimant.
Attendances on Counsel **373 - 376**	415. The paying party assumes that all attendances relate to the witness statement work conducted by Counsel. Reference is made to General Point 4 and the paying party's comments relating to items 347 - 351 above.
	Respondent's Reply 416. The Respondent refers to the submissions in response to General Point 4 - Witness Statements and re-iterates that the file of papers will be made available for the Tribunal's consideration at detailed assessment. 417. The Respondent submits the time claimed is reasonable and in the absence of any specific objection, no concession is offered.
	Costs Officer's Decision Item 373 is disallowed as it is considered duplication. Items 375 and 376 are allowed.
Document Schedule (pp. 74 – 76) **378 - 383**	Witness Statements 418. The paying party calculates that 60.43 hours of the 67.96 hours claimed in this schedule relate to the partial preparation of the Respondent's witness statements (£15,244.50 of £18,481.80). General Point 4: Witness Statements refers. A global offer has

	already been put forward for this work. The offer below relates to the remaining items. Remaining time 419. Other that witness statements, time is claimed in relation to disclosure, and preparation for the upcoming hearing. 420. There are clear examples of inter fee earner discussions which are not recoverable. These may also be supervision (e.g. 24 02 16 - "Update Discussion with PF") 421. The receiving party offers the following in relation to the entire documents schedule: Grade A – 1 hour Grade B – 0 hours Grade C - 1 hour Grade D – 1 hour 422. The offers total £773.00
	Respondent's Reply 423. Once again, the paying party has failed to provide evidence in support of his calculations. Further, in the absence of specific objections the Respondent is only able to respond to the generic objection at this stage. 424. The Respondent refers to the submissions in response to General Point 4 – Witness Statements. During this period, considerable but reasonable work was carried out on the witness statements of Steve Black, Richard Taylor and Jon Ions, which consisted of a total of 121 pages. 425. Of the time claimed, 11% relates was incurred by the Partner, 14% by the Senior Associate, 9% by the Associate and the remaining 66% by Trainees and Paralegals. Upon review of the time claimed, the Tribunal will note that the Partner's time is limited to reviewing the draft witness statements and addressing strategy in respect of the same. The Senior Associate's time was spent preparing and updating the draft witness statement of Steve Black. The Associate's time was spent reviewing and updating the draft witness statement of Richard Taylor. The Trainee and Paralegal's time was spent preparing bundles to accompany witness evidence and dealing with disclosure. This evidences the Respondent's reasonable approach to delegate tasks where it considered appropriate to do so. 426. With regards to the remaining time, the only example provided totals 0.03 hours, which the Respondent is prepared to concede in an attempt to narrow the issues in dispute. 427. The Respondent is prepared to accept the following: Grade A: 14 hours Grade C: 5 hours Grade D: 39 hours

	Costs Officer's Decision The respondent has relied heavily on counsel in relation to witness statements and there is a substantial amount of solicitor time some of which is considered duplication. The time involved across fee earners was 68 hours. The Grade A time is disallowed because of the involvement of counsel. The Grade B time is allowed. The Grade C time is allowed. The Grade D time is allowed at 25 hours.
Other disbursements **385**	428. Internal overhead of the Respondent's solicitor firm. No offer.
	Respondent's Reply 429. The Respondent submits that these fees are not so common that they can be considered internal overhead charges. The submissions above are repeated.
	Costs Officer's Decision Item 385 is disallowed as overheads.
Part 8	**Summary**
Counsel's fees **388, 389, 390, 396, 397, 400, 402, 403, 404, 405**	430. These fees demonstrate the highly excessive reliance on Counsel by the Respondent's solicitor team, and the duplication of costs caused as a result. Over the month of March, Counsel incurred 10 separate fees at a combined sum of £7,470. Counsel advised the solicitors on 21, 22, 23 and 24 March, with no information provided as to the content or subject matter of that advice. 390 431. Counsel's fee for this Preliminary Hearing is over 25% higher than her fee for the initial Preliminary Hearing, without any justification. The paying party submits this should be limited to the same as the fee in Part 2; and offers £2,000 for the brief. All other fees 432. The Respondent and Counsel is put to proof as to the content and purpose of these entries. Insufficient information is provided to enable the paying party to make a realistic offer as to what was reasonably incurred or reasonable in amount. For example: 433. What letter/s was/were prepared at 389 and 397?

	434. Why are there multiple telephone conferences days after the Preliminary Hearing, particularly as a fee earner also attended the same? 435. The paying party acknowledges that some of this work may have been justified but the lack of information in the fee notes and Bill of Costs creates significant doubt, particularly in light of the over reliance on Counsel throughout the litigation, which must be resolved in the paying party's favour. 436. The paying party's position is reserved.
	Respondent's Reply 437. The Respondent refers to the response to General Point 3 – Use of Counsel and submits that fees of £7,470 is reasonable in light of the work that was required during this period. <u>Item 390</u> 438. The Respondent maintains that the brief fee claimed is reasonable. This was not a straightforward preliminary hearing. Prior to the hearing, the Claimant had refused to disclose medical records to the Respondent, which were to be disclosed to the medical expert. This issue was only agreed at the very last minute. 439. There was also a dispute between the parties as to the content of the letter of instruction to the joint expert. At the hearing, Counsel expressed the Respondent's concern that the Claimant insisted on introducing matters that were not relevant and appeared to be prejudicial to the background. The Tribunal agreed and expressed concern that irrelevant material would be introduced. The Tribunal also expressed concern about the importance of complying with deadlines. 440. The Respondent re-iterates that the brief fee is reasonable but is prepared to accept £3,000 in an effort to narrow the issues between the parties. <u>All other fees</u> a. Item 388 – this attendance related to obtaining further instructions from the client and advising on case strategy. A detailed 4-page attendance note will be provided for the Tribunal's consideration at detailed assessment. b. Item 389 – this detailed draft letter to the paying party addressed the proposed expert, index for the hearing and proposed directions. c. Item 396 – reviewing instructions received from Steve Black for the purposes of updating witness statement. d. Item 397 – this letter was prepared in response to the Claimant's correspondence regarding bonus payments. e. Item 400 – this conference addressed the trial bundle index, witness evidence, the Counter Schedule and case

	strategy. A detailed 3-page attendance note will be made available at detailed attendance in support of the fee claimed. f. Item 402 – this fee relates to the preparation of draft without prejudice and without prejudice save as to costs letters to the paying party. g. Item 403 – this conference addressed the trial bundle index and case strategy. h. Item 404 – this fee was for preparing advice in response to the instructing solicitor's queries regarding the witness statements of Steve Black and Jon Ions. i. Item 405 – Counsel advised by email in relation to correspondence with the medical expert (including an allegation by the Claimant's solicitors that the Respondent was inducing a breach of the Data Protection Act), the disclosure of a small number of additional documents, and Jon Ions' witness statement. 441. In the spirit of compromise, the Respondent is prepared to accept £2,880.
	Costs Officer's Decision The claimant conceded item 387. Item 388 is allowed at £140 because of duplication. Item 389 is allowed at £280 because of duplication. Item 390, the brief fee for 16 March 2016 is allowed at £3,000. Item 391 is disallowed. Item 393 is allowed. Items 396 and 397 were conceded by the respondent. Items 398 is disallowed. Item 399 is allowed at 0.5 hr. Item 400 is allowed at £840. Item 401 is disallowed as there was insufficient to support it. Item 402 is disallowed because of the time already spent by counsel assisting the solicitors at the outset for the taking of the statements. Item 403 is disallowed because the solicitor was present. Item 404 is allowed. Item 405 is allowed.
Attendances on Counsel and at Court **387, 391, 393, 398, 399, 401**	387, 391, 398, 399, 401 442. The paying party refers to the Point of Dispute above in relation to Counsel's fees for these advices. Insufficient information is provided to justify these attendances on Counsel, and absent of this the paying party considers these attendances duplicative and excessive. No offers are made. 393 443. It was unreasonable for a fee earner charging £395 to attend the hearing in addition to Counsel. The paying party offers 4 hours at Grade D.
	Respondent's Reply

	444. Taking each item in turn, the Respondent responds as follows: a. Item 387 - this attendance related to obtaining further instructions from the client and advising on case strategy. A detailed 4-page attendance note will be provided for the Tribunal's consideration at detailed assessment. b. Item 391 – this conference addressed final preparation in advance of the Respondent's application. c. Items 398 and 399 - this conference addressed the trial bundle index, witness evidence, the Counter Schedule and case strategy. A detailed 3-page attendance note will be made available at detailed assessment in support of the fee claimed. d. Item 401 – this conference addressed the trial bundle index, witness evidence, the Counter Schedule and case strategy. A detailed 3-page attendance note will be made available at detailed assessment in support of the fee claimed. <u>Item 393</u> 445. The Respondent maintains that it was reasonable for the conducting fee earner to attend the Respondent's application. No concession offered. 446. The Respondent maintains the time claimed is reasonable. No concession offered.
	Costs Officer's Decision See above
<u>Attendances on the Client</u> **<u>410 - 421</u>**	447. There is insufficient information provided in these entries to enable the Claimant to properly assess whether the time claimed preparing the long letters or emails is reasonable in amount, or was reasonably incurred. 448. The Respondent is put to proof that the file of papers supports the time claimed for these attendances. 449. As a compromise, the paying party offers: Grade A – 0.5 hours Grade C – 0.5 hours
	Respondent's Reply 450. The Respondent submits that there is sufficient detail provided to enable the paying party to assess the time claimed and make a reasonable offer. The paying party has failed to provide any justification for the reductions sought.

	451. The file of papers will be made available for the Tribunal's consideration at detailed assessment. 452. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 1.95 hours Grade C: 0.7 hours In-house Counsel: 0.5 hours
	Costs Officer's Decision Items 410-412 were conceded by the claimant. Item 414 – 416 are allowed. The claimant conceded items 417-421.
Attendance on witnesses **424 - 431**	453. The paying party refers to General Point 4: Witness Statements. No offers are made against these fees specifically. 454. The paying party does note that the lengthy attendances on these witnesses at this stage highlights the concerns with the significant level of costs incurred by the Respondent drafting these statements prior to March 2016.
	Respondent's Reply 455. The Respondent refers to the submissions in response to General Point 4 – Witness Statements. 456. The Respondent can confirm that prior to March 2016, the following time was spent drafting the following witness statements: a. Jonathan Ions – 0 hours. b. Richard Taylor – 3.7 hours c. Steve Black – 7.5 hours 457. The Respondent maintains that the time claimed is reasonable, however in the spirit of compromise, the Respondent is prepared to accept the following: Grade C: 17.5 hours Grade D: 2.5 hours In-house Counsel: 6.5 hours
	Costs Officer's Decision Item 424 was conceded by the claimant. Item 426 and 427 are allowed. Item 428 is disallowed. Items 430 and 431 is allowed at Grade C.

	Item 434 is allowed. Item 435 was conceded by the claimant. Items 437-439 were allowed.
Attendances on the Claimant / Ashfords **442 - 448**	442 & 443 458. The Respondent's email is 1.5 pages in length, setting out a proposal regarding the expert instructions and some preparation ahead of the hearing. 1.88 hours at a cost of £742.60 over two days is entirely disproportionate to the content and detail of this email. 459. The paying party wishes to draw to the Tribunal's attention the admission within this letter that the Respondent's costs for the application exceeded £15,000 at that stage, but the Respondent was willing to concede that a reasonable and proportionate sum to seek from the Claimant would be £5,000. The Claimant submits that this is evidence that the Respondent knew that, at best, their reasonable costs were only 1/3 of the costs incurred. In light of the submissions raised throughout these Points of Dispute a reasonable amount would likely be even less than £5,000 offered, however this is pertinent in that it reflects the Claimant's wider submissions that the Respondent knowingly conducted this matter "at all costs" without any intention of acting proportionately. 460. As a compromise, the paying party offers against all items: Grade C – 1.4 hours Grade D – 0.3 hours
	Respondent's Reply Items 442 & 443 461. This detailed email was prepared in a final attempt to reach an agreement in relation to the instructions for the joint expert and also addressed the index for the hearing, as well as proposed directions. 462. With regards to the costs of the application, the Respondent took the view on a relatively self-contained interlocutory matter that they would seek a smaller sum than the costs actually incurred. The Respondent submits that the approach of limiting the amount of costs to be sought was reasonable and proportionate, not that only a third of those costs were reasonable and proportionate. 463. The paying party has not raised any objection to the routine items claimed but the total time offered amounts to less than the routine items claimed. This is yet another example of the paying party seeking a reduction without any justification. 464. The Respondent is prepared to accept the following:

	Grade C: 3.56 hours Grade D: 0.6 hours
	Costs Officer's Decision Items 442 and 443 are allowed at 0.5 hr because of the prior involvement of counsel. Item 444 is allowed. Items 446-458 are allowed. Item 450 is disallowed as duplication.
Attendances on Counsel **450 - 459**	465. The paying party refers to the challenges to Counsel's fees in this part above. The paying party accepts the instruction of Counsel for the Preliminary Hearing as work that was reasonably incurred, and offers: Grade C - 0.5 hours
	Respondent's Reply 466. The Respondent maintains the time claimed is reasonable, however in the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 0.4 hours Grade C: 1.8 hours
	Costs Officer's Decision Item 452 is allowed as it was in preparation for the hearing on 16 March. Item 453 is disallowed. Item 454 is disallowed. Item 455 is disallowed. Items 457-459 were conceded by the claimant.
Document Schedule (pp. 77 – 82) **461 - 468**	Witness Statements 467. The paying party calculates that 112.52 hours of the 158.56 hours claimed in this schedule relate to the partial preparation of the Respondent's witness statements. These hours equate to £44,885.80 of profit costs incurred by Grades A, C and D fee earners. General Point 4: Witness Statements refers. A global offer has already been put forward for this work. The offer below relates to the remaining items.

	468. The remaining time claimed relates primarily to the preparation of the Respondent's further disclosure, the Trial Bundle, and consideration of the expert report. 469. There is further clear evidence of duplication and supervision between fee earners in this work, with express fee earner discussions claimed in the schedule. 470. The receiving party offers the following in relation to the entire documents schedule, save for the witness statement items: Grade A – 4 hours Grade B – 0 hours Grade C - 8 hours Grade D – 11 hours 471. The offers total £4,962
	Respondent's Reply 472. Once again, the paying party has failed to provide evidence in support of the calculations and in the absence of such, they should be treated with caution. Further, in the absence of specific objections the Respondent is only able to respond to the generic objections at this stage. 473. The Respondent refers to the submissions in response to General Point 4 – Witness Statements. In addition to the preparation of witness evidence, the following work was also undertaken during this period: a. Considering the Claimant's medical records. b. Preparing bundles for the preliminary hearing c. Preparing for conferences with Counsel d. Preparing the supplementary disclosure list e. Preparing draft trial index f. Undertaking post hearing tasks g. Considering brief/refresher fee h. Considering Professor Marks' medical report i. Considering the Claimant's request for an extension of time in relation to witness evidence. 474. The Respondent is prepared to accept the following: Grade A: 16 hours Grade C: 65 hours Grade D: 25 hours In-house Counsel: 10.5 hours Consultant Barrister: 7.5 hours
	Costs Officer's Decision There is a considerable amount of preparation work for proofing witnesses when counsel has already done a great deal of preparation work to assist the solicitors with this. If the solicitor needed to re-prepare this is not recoverable on a standard basis.

	The Grade A fee earner did need to review the witness statement on a case at this level. This cannot be left entirely in the hands of a Grade C fee earner. Across this entire section, not just for the witness statements but including all matters, I allowed 15 hours at Grade A, 35 hours at Grade C, disallowing Grade B as included at Grade C, and allowing 20 hours of trainee time at Grade D.
Other disbursements **470**	475. Internal overhead of the Respondent's solicitor firm. No offer.
	Respondent's Reply 476. The Respondent submits that these fees are not so common that they can be considered internal overhead charges. The submissions made above are repeated.
	Costs Officer's Decision Disallowed as part of overheads.
Part 9	**Summary** 477. This Part runs from 1 April 2016 to 4 May 2016. The Respondent incurred £141,239.05 of solicitors costs and £42,166.70 of disbursements in this period, with the solicitor costs limited to £133,955 due to the indemnity principle. 478. Work done included the finalisation of the Respondent's witness statements, consideration of the Claimant's one witness statement, additional disclosure, preparation of questions to the expert and preparation for trial.
Procedural Steps (Counsel fees and attendances) **472 – 492**	Counsel fees 473, 480, 484, 492 479. These four fees compromise Counsel's £25,000 brief for the final hearing. The Court is referred to the Procedural Steps argument for Part 12 below, where Counsel's brief is addressed in full in relation to these items and the preparatory work ahead of the re-listed Tribunal Hearing. 476, 478, 482, 483, 487, 488, 489 480. No specific offer is made against these fees as they relate to preparation of the witness statements, General Point 4 above refers. Solicitor attendances

	472, 477, 481, 485, 486 481. Insufficient information is provided to allow for a proper assessment of these entries. On the assumption that they relate to witness statements, no offer is made.
	Respondent's Reply Counsel's Brief fee - Items 473, 480, 484 and 492 482. The Respondents submits that Counsel's brief fee is reasonable, reflecting the potential value of the claim, the importance of the matter to the parties and complexity of the issues involved. The Tribunal is requested to take into consideration the following factors: a. There was extensive documentation to review (consisting of 10 lever arch files containing almost 3,400 pages and a further two bundles of inter partes correspondence. b. There were a number of witnesses on behalf of the Respondent. c. It was necessary to cross examine a medical expert. d. The Claimant's witness statement was considerably long, comprising of 62 pages of single space small font text. e. The Claimant's cross examination was necessarily lengthy, spanning several days. f. The claim was needlessly complicated, with the List of Issues comprising of 8 pages and containing up to 63 allegations of some form of harassment, direct and indirect discrimination. 483. The Respondent refers to the above points and maintains the brief fee as claimed. Counsel's fees - Items 476, 478, 482, 483, 487, 488, 489 484. The Respondent refers to the submissions in response to General Point 4 – Witness Statements. To assist the Tribunal, further detail in respect of the fees claimed have been set out below. a. Item 476 – work was undertaken on the witness statements in preparation of the conference with the instructing solicitor on 6 April 2016. b. Item 478 - this attendance addressed Richard Taylor's updated witness statement and queries arising from expert evidence, which was necessary for the purposes of updating witness evidence. c. Item 482 – this fee relates to updating Steve Black's updated witness statement. d. Item 483 – this fee relates to updating Richard Taylor's witness statement. e. Item 487 – this conference addressed outstanding queries for the purposes of finalising witness evidence. f. Item 488 – this fee relates to finalising Jon Ions' witness statement. g. Item 489 – this conference addressed queries raised by Richard Taylor in respect of his witness statement, for the purposes of finalising the same.

	485. In respect of the above fees, the Respondent is prepared to accept £3,875. Solicitor attendances – Items 472, 477, 481, 485, 486 486. Taking each attendance in turn: a. Item 472 – this conference addressed Professor Marks' medical report and the merits of seeking clarification on a number of points, the Claimant's request for an extension of time in relation to witness statements, strategy and the merits of mediation. A 3-page attendance note will be provided to the Court in support of the time claimed. b. Item 477 – this attendance addressed Richard Taylor's witness statement and queries arising from expert evidence. A 3-page attendance note will be provided to the Court in support of the time claimed. c. Item 481 – this attendance related to the additional disclosure and the contents of the trial bundle. d. Items 485 and 486 - this conference addressed outstanding queries for the purposes of finalising witness evidence. 487. The Respondent is prepared to accept the following: Grade A: 1.25 hours Grade C: 1 hour Consultant Barrister: 3.5 hours
	Costs Officer's Decision Item 472 is allowed. The brief fee of £25,000 was split into 4 tranches. At the time of the hearing counsel was 13 years call. This was for a seven day hearing. I agree that it would have been appropriate to instruct a silk on a claim of £1.6m, for a bank, with media attention and reputational issues. The claimant conceded the brief fee. This deals with items 473, 480, 484 and 492. New material emerged during the course of taking statements which meant that counsel was involved in further advice on witness statements. At the same time the level of counsel's involvement lead me to the view that there was either overreliance on counsel or duplication. For this reason counsel's fees are halved in relation to this for items 476, 478, 482, 483, 487, 488 and 489. Item 477 is reduced to 1 hour. Item 481 is disallowed. Item 486 is disallowed as duplication.

Attendances on the Client **494 – 524**	488. All attendances in relation to the witness evidence are subject to the paying party's general objections and offer for this work. General Point 4 refers. 489. The Respondent is put to proof that any remaining long attendances are supported by evidence of progressive work on the file, and are not solicitor-client in nature. No offer is made.
	Respondent's Reply 490. The Respondent refers to the submissions in response to General Point 4 – Witness Statements and re-iterates that the file of papers will be made available for the Tribunal's consideration at detailed assessment. 491. The Respondent submits the time claimed is reasonable and in the absence of any specific objection, no concession is offered.
	Costs Officer's Decision Items 496 to 499 were conceded by the claimant. After I had looked at the documents in the confidential bundle the claimant conceded item 500. Item 501 was allowed in the light of the last minute postponement of the full merits hearing by the tribunal. Items 502 -504 are disallowed as they can be dealt with in the meetings with the witnesses when statements are taken. These items are not recoverable on a standard basis. I accept that there was some additional disclosure from the claimant at this time and it was necessary to have some discussion about statements in the run up to exchange but I accept the claimant's point as to the amount of time and possible duplication. Items 505-512 are reduced by one third. Items 514 – this is reduced to 2 units. Item 515 is disallowed as duplication with work done at Grade A level. Item 516 is disallowed. Items 517-524 were conceded. Items 527, 529, 531,533 were conceded. Item 536 was the fee of the expert Professor Marks is allowed as half of the expert fee.

Attendances on the witnesses **525 - 535**	492. General Point 4 refers, no specific offers are made for these attendances.
	Respondent's Reply 493. The Respondent refers to the submissions in response to General Point 4 – Witness Statements and re-iterates that the file of papers will be made available for the Tribunal's consideration at detailed assessment. 494. The Respondent submits the time claimed is reasonable and in the absence of any specific objection, no concession is offered.
	Costs Officer's Decision Items 527, 529, 531,533 were conceded. Item 536 was the fee of the expert Professor Marks is allowed as half of the expert fee.
Attendances on the Claimant / Ashfords **539 - 552**	495. The Respondent is put to strict proof that the time claimed for these items is supported by the Respondent's file of papers, and that it is also not duplicated by the time claimed in the Documents Schedule. 543 496. This entry does not match any letter on the Claimant's file of papers. 544 497. The Associate's email is 2/3 of a page long, addressing several issues ahead of the final hearing. The time for drafting is again excessive. The email should have taken no longer than 2 units to prepare. The Court will note that the Partner also claims time

	considering these emails outs in the document schedule; that is supervisory work and should be disallowed in full. <u>545</u> 498. No email of this date is on the Claimant's file. Assuming it relates to the email dated 12 April, 2 units is reasonable. <u>546</u> 499. This entry is non-specific and does not allow the paying party or the Court to properly assess the costs claims, particularly in light of the additional routine items claimed and the time in the document schedule relating, incorrectly, to emails. Doubt should be resolved against the Respondent, and the entire 1.43 hours disallowed. <u>547</u> 500. This is a half page email discussing the placing of certain documents within the trial bundle, and a confidentiality issue. The length of the email could justifiably categorise it as routine, but the Claimant will compromise and offer 2 units. Any additional time allowed would be excessive, especially in the context of the many hours of time claimed on the same day in the Documents Schedule for dealing with this bundle. 501. As a compromise, the paying party offers against all entries: Grade C – 2.8 hours
	Respondent's Reply 502. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 503. Taking the Claimant's points in turn, the Respondent responds as follows: <u>Item 544</u> 504. As the Claimant highlights, this detailed email addressed various issues including the Claimant's supplementary disclosure, the Claimant's request for disclosure, the draft bundle index and witness evidence. In the spirit of compromise, the Respondent is prepared to accept 0.6 hours. <u>Item 545</u> 505. The time claimed relates to the detailed one-page email. The Respondent maintains the time claimed is reasonable. <u>Item 546</u> 506. The time claimed relates to email correspondence sent to the paying party on this date relating to disclosure, which has not been claimed elsewhere. In an attempt to narrow the issues between the parties, the Respondent is prepared to accept 1.2 hours.

	Item 547 507. Dealing with the bundle itself and preparing correspondence in respect of the same are two entirely separate tasks. This detailed email not only addressed the placing of certain documents within the trial bundle but also provided reasons why certain documents had been redacted in response to the Claimant's queries. The Respondent is prepared to accept 0.4 hours. 508. It is noted that no objection has been raised in respect of the routine items claimed. 509. In summary, the Respondent is prepared to accept the following: Grade C: 6.7 hours Consultant Barrister: 0.1 hours
	Costs Officer's Decision The claimant challenged the telephone attendances in April 2016. There was a telephone attendance for 18 April 2016 (item 541). It is not unusual for there to be three telephone conversations between solicitors in the month before the hearing. This appears to be routine. I allow item 541 in full. The other two items are for half an hour each but with no record, I reduce the time by half so items 539 and 540 are allowed at 0.5 hr in total. Item 543 – was disallowed as there was no record of the correspondence. Item 544 – is allowed at 0.5 hour Item 545 – is allowed. Item 546 is allowed at 8 units Items 547 and 548 are allowed. Item 550 – was conceded by the claimant Items 551 and 552 were conceded by the claimant
Attendances on Counsel **554 – 576**	510. All attendances in relation to the witness evidence are subject to the paying party's general objections and offer for this work. General Point 4 refers. 511. The Respondent is put to proof that any remaining long attendances are supported by evidence of progressive work on the file, and are not duplicative of the fee earners' time claimed dealing with disclosure and trial preparation, or Counsel's own fees and the fee earners' time advising in telephone conferences. 512. As a compromise, the Claimant offers: 1 hour at Grade C 1 hour at Grade D

	Respondent's Reply 513. The Respondent refers to the submissions in response to General Point 4 – Witness Statements and re-iterates that the file of papers will be made available for the Tribunal's consideration at detailed assessment. 514. The Respondent submits the time claimed is reasonable and in the absence of any specific objection, no concession is offered.
	Costs Officer's Decision Item 554 is disallowed due to duplication (see item 477). There was a large amount of telephone discussion between solicitor and counsel but it was in the run up to the hearing. It is a case in which a Silk would have been justified and discussions that might have taken place between a leader and a junior. I disallow 1 hour at Grade C and the remainder is allowed through to item 565. Item 567 is allowed. Item 568 is allowed at 0.75 hours. Item 569 was conceded by the respondent. Item 570 was conceded. Item 572 is disallowed. Items 573-567 were conceded by the claimant.
Document Schedule (pp. 83 – 92) **578 - 588**	515. The Respondent claims just under 400 hours of fee earner time in this period, which covers 23 working days, at a total cost of £124,148.55. These figures amount to over 17 hours of continuous fee earning on the matter per day, in addition to the timed attendances claimed in the body of the Bill for this Part. This is an extremely excessive and disproportionate approach to the conducting the litigation, clearly resulting in the Respondent incurring unreasonably high levels of costs. The engagement of 11 different fee earners in this period in addition to Counsel further demonstrates the duplicative team approach taken by the Respondent, causing there to be clear examples of supervision, inter-fee earner discussions and excessive time within this schedule. The Respondent should be put to proof that this level of time and costs were incurred in such a short period of time, particularly where large entries lasting several hours are claimed with minimal information regarding the work done.

	Witness Statements 516. The paying party calculates that 158.49 hours of the 399.63 hours claimed in this schedule relate to the finalisation of the Respondent's witness statements. These hours equate to £61,601.45 of profit costs incurred by Grades A, C and D fee earners. General Point 4: Witness Statements refers. A global offer has already been put forward for this work. The offer below relates to the remaining items. Trial Bundles and Trial Preparation 517. 142.32 hours are claimed preparing the Trial Bundles in this period, in addition to a further 63 hours of other work generally relating to preparation for the final hearing listed in May. The paying party accepts there was substantial documentation to deal with ahead of the hearing, but again the level of excessive or duplicative time claimed is clear the schedule. It is also unclear why the Respondent took conduct of preparing the bundles over the Claimant. There are multiple strategic meetings between fee earners, or very vague entries of fee earners considering relevant information. The paying party challenges the progressive nature of this time, and submits that attendance notes must be reviewed before any time can be awarded. There is likely to be further examples of duplication, supervision and inter fee earner discussions. Furthermore, the strategic input of the solicitor team is queried given the continued and extensive work of Counsel, including a £25,000 brief fee for the hearing. Disclosure 518. The Respondent claims over 27 hours addressing supplemental disclosure. The Respondent is put to proof as to the level of work required dealing with these documents over and above the initial disclosure and the preparation of the Trial Bundle. A significant portion of the work was conducted by a Consultant Barrister. This appears duplicative of the external advice provided by Counsel during the same period. 519. The receiving party offers the following in relation to the entire documents schedule, save for the witness statement items: Grade A – 5 hours Grade B – 0 hours Grade C - 25 hours Grade D – 40 hours 520. The offers total £13,215
	Respondent's Reply 521. The Claimant's query as to the accuracy of the time claimed within a short period is refuted and is reminded that the Partner has certified that the Bill of Costs is accurate.

	522. Once again, the Claimant has failed to provide evidence in support of the calculations regarding time spent on witness statements, trial preparation and disclosure. In the absence of such, they should be treated with caution. Further, in the absence of specific objections the Respondent is only able to respond to the generic objections at this stage. 523. The paying party will appreciate that this period of time immediately preceded the beginning of a 7-day trial, when one would expect a significant amount of time to be incurred, especially as the Respondent relied upon more witnesses than the paying party and was tasked with the preparation of trial bundles. Further, additional work had to be undertaken as a result of the Claimant's conduct, which will be outlined below. 524. During this period, the Claimant failed to comply with the Tribunal's deadline for the service of witness evidence. The paying party requested an extension of time but subsequently failed to serve witness evidence within the extension requested. In addition to dealing with the Claimant's failure to comply with the Tribunal and subsequent deadlines, the Respondent also updated and finalised three detailed witness statements, undertook witness preparation ahead of the trial and considered the Claimant's detailed 62-page witness statement. It is noted that no time has been offered in respect of witness preparation and time spent for considering the Claimant's witness evidence. This highlights the Claimant's lack of appreciation of the work that was reasonably required to successfully defend this claim. 525. The Tribunal ordered the Respondent to have primary responsibility for the creation of the joint bundle of documents – see paragraph 6 of the Case Management Summary dated 17 September 2016. This is the usual position in the employment tribunal and was not challenged by the Claimant. 526. As the Claimant has rightly conceded, there was substantial documentation to be dealt with, predominantly as a result of the allegations pursued by the paying party over a considerable period of time. This made the task of preparing trial bundles a time consuming and burdensome task. This was further exacerbated by the Claimant's request that the trial bundle be updated to include documents which formed part of his supplementary disclosure (which consisted of 430 additional documents). Not only did this increase the time in preparing the bundle (which amounted to just under 3,400 pages and/or 10 lever arch folders) but also increased the time that had to be spent on the trial bundle index. The Claimant's insistence on including a large amount of irrelevant documents in the trial bundle significantly increased these costs. 527. The Respondent submits that time spent on case strategy in preparation of the trial is reasonable and proportionate. Further, where there has been a significant amount of delegation (approximately 43% of work was undertaken by Trainees, Paralegals and the E-Discovery team) it is reasonable for there to be discussions for the purposes of imparting instructions and ensuring that delegated tasks are carried out accordingly, still resulting in a saving to the paying party.

	528. The Respondent refers to the above submissions and re-iterates that the considerable amount of time related to the Claimant's supplementary disclosure. Of the 5.85 hours spent on disclosure by the Consultant Barrister, 2.04 hours related to the Claimant's supplementary disclosure. The Respondent submits this is reasonable and proportionate given that this work was reasonably required as a result of the Claimant's request. 529. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 30 hours Grade B: 4 hours Grade C: 90 hours Grade D: 135 hours Consultant Barrister: 58 hours
	Costs Officer's Decision This is the work across 11 separate fee earners from 1 April to 4 May 2016 in the immediate period before the full merits hearing. On item 578 the respondent conceded 2 hours as duplication. The report from the expert witness Professor Marks was received and considering what questions to ask the expert. This was highly significant to the ultimate findings made as to the claimant's credibility. There was continuing work on the witness statements. As there was additional disclosure from the claimant this had to be put to the witnesses and redaction made and introduction into bundles. There was further disclosure from the respondent at the claimant's request for handwritten notes from the key witness. There was some preparation for a commercial (not a Judicial) mediation. There was consideration of the claimant's witness statement and new regulatory issues/allegations which arose in the claimant's witness statement. Issues on confidentiality. Trial preparations. Cast list, chronology, summary of allegations, opening note and so forth. The claimant said that a significant "chunk" of the work was on the respondent's witness statements, for example 13 hours on 20 April 2016 – although this also said "and trial bundle". The claimant said he could only see 3 entries in relation to the medical report. There was a large amount of time on trial bundles. <u>The respondent's witness statements</u> The claimant said that the respondent had spent 158 hours on their witness statements in this section and they were claiming 78.8 hours. This was not a hugely useful exercise when the maths was in the claimant's favour. Both parties appreciated the significance of witness evidence – the claimant in his points of dispute point 37 above said "*The Tribunal was required almost exclusively to determine whether the Claimant or Respondent's witness evidence was factually accurate. Discrimination findings would flow from those factual determinations.*" It is a very substantial amount of time on witness statements.

	The claimant submitted that on witness statements in this section, I should award 4 hours at Grade A, 6 at Grade B, 6 at Grade C and 0 at Grade D. I accepted the significance of the witness evidence, as was clear from the tribunal's findings on liability and accepted that work was done amending the statements as new disclosure was made as the case unfolded. I allow 7.5 hours at Grade A for supervision and overseeing, 18 hours at Grade C, 12 at Grade B and 2 at Grade D. I was not hugely convinced of the contribution made by the trainees when the bulk of the work is done by the Grades B and C fee earners who were working with the witnesses. <u>Considering the claimant's witness evidence</u> This is a witness statement of 333 paragraphs. The time spent on it was 15.6 hours across 3 fee earners. The claimant accepts it had to be read. A document was produced analysing the claimant's evidence and this was shown in the confidential bundle at pages 6693-6708. The claimant said in this section he agreed I should award the time claimed for Grades A and B but that Grade C should be reduced to 3 hours. I award 4 hours at Grade C. <u>Disclosure</u> This was additional disclosure from the claimant and disclosure of the key respondent witnesses' handwritten note book. The claimant did not object to the time claimed for Grades A and B which were allowed. On Grade C – the claimant said that two of the time entries and it should be reduced to 8 hours. On Grade D – I was persuaded that there was an important task for the trainees to do on redaction and further documents were added to the bundle. This is reduced to 12 hours. <u>Expert report</u> This was considering the medical expert's report. It was conceded by the claimant. <u>Inter solicitor bundles</u> This was a bundle of 1502 pages and concerned the conduct of the parties in the litigation. It was not prepared on the Order of the tribunal and it was prepared by the respondent as a matter of caution in the event that something came up that they wished to refer to. It involves 26 hours of trainee time. I consider that this is something that the respondent can do if they choose to, but it is not awarded against the claimant on a standard basis. It is disallowed. <u>Settlement Agreement</u> This was preparing a draft settlement agreement in advance of the mediation. This was covered in the mediation section and was conceded by the respondent. <u>Respondent's additional disclosure</u>

	This additional disclosure has already been dealt with and is disallowed. This is for trainee time. <u>Cast list</u> This is for preparing a cast list. The claimant was prepared to concede this subject to my view on the matter. I saw the cast list and considered that 5.2 hours was beyond what was reasonable. I allow 2 hours for this. <u>Chronology and List of outstanding questions.</u> I saw both documents. The claimant considered that the Grade A should be 1 hour. The claimant considered that the Chronology should have been 2 hours of time and he thought the first draft came from his side and an hour on the questions as it should have been drawing on the existing knowledge of the case. I allow 1 hour for the partner on supervision and overseeing of these 2 items and 4 hours of Grade B time, two hours on each aspect. <u>Trial preparation</u> This was considering the compliance issue that had been raised, the defence summary, discussions about timetable and the opening note. The opening note is a matter for counsel but has to be considered by the solicitor, 23 pages in length. This was claimed at 4 hours. Witness familiarisation was included in this. This is disallowed. The claimant conceded the partner time at Grade A. The claimant said he conceded 4 hours of Grade B time on the opening note. After deducting time spent on witness familiarisation, this left 7.5 hours of Grade B time. Time was spent on inter team discussions. I award a total of 8 hours of Grade B time. The Grade C time was claimed at 34.6 hours. This time seemed to include duplication. On two occasions the fee earner claimed around 8 hours a day and it was unclear what she was doing. I reduced this to 10 hours in total. The Grade D time was conceded. <u>Trial bundles</u> The claimant introduced a great deal of additional documentation that comprised a further lever arch file. There was difficulty in agreeing the bundles. Redaction was necessary. There is a need for careful checking. The index had to be updated. It is a routine but essential and time consuming task. The respondent conceded the Grade B rate at 12 hours on compiling the bundle. The respondent agrees it should be at Grade D so those 12 hours are allowed at Grade D. The respondent wished to include 15 hours at Grade C as there had been an entry earlier on where the Grade C had included this time in the witness statement category. The claimant said that putting the Grades to one side, it was around 130 hours which was 16 working days on an 8 hour day, or 2.25 uninterrupted

	weeks. I award 70 hours at Grade D and 7 hours at Grade C for checking and supervision. Trial bundles total at 0.3 at Grade A was conceded by the claimant. There was a further heading of Various the Grade A considering strategy and internal discussions. It was not categorised and not itemised. The respondent referred to it as "bolt on". I disallowed it.
Other Disbursements **590, 591**	530. These charges appear to be internal administrative fees of the solicitor firm. Overhead charges should not be charged to the paying party on a Standard Basis assessment. Furthermore these are not evidenced with disbursement vouchers. No offer.
	Respondent's Reply Item 590 531. The Respondent invites the Tribunal to exercise its discretion pursuant to CPR PD 47 para 5.22 (5) to allow the cost of copying documents for the purposes of preparing the trial bundle. The Respondent refers to the submissions in respect of the General Points and Proportionality. The Respondent had no alternative but to defend a number of allegations spanning over 5 years that had no reasonable prospect of success. 532. The Respondent should not be expected to bear the costs of preparing bundles in a meritless claim which it successfully defended, particularly where the unreasonable size of those bundles was due to the Claimant's conduct of the proceedings. Item 591 533. The Respondent submits that these fees are not so common that they can be considered internal overhead charges. The submissions above are repeated.
	Costs Officer's Decision Under CPR Practice Direction 47.5.22 (5) the cost of making copies of documents will not in general be allowed but the court may exceptionally in its discretion make an allowance for copying in unusual circumstances or where the documents copied are unusually numerous in relation to the nature of the case. Where this discretion is invoked the number of copies made, their purpose and the costs claimed for them must be set out in the bill. Item 590 – the claimant considered that there was nothing unusual about the number of documents. There were 10 lever arch files amounting to 3,335 pages. The claimant had asked to include a great deal of material which the respondent did not consider relevant but agreed to include. The item had been reduced to give credit for the claimant's part payment. Sets of documents have to be produced for the three members of the tribunal, the witness stand, one for the other side and one for the

	respondent. This is about 6 sets. In addition there will be copies of the witness statements at about 120 pages. This is approximately 22,000 pages at 0.25 is approximately £5,500. Given the amount already paid by the claimant I award photocopying charges at £3,000. Item 591 is disallowed as part of overheads.
Part 10	**Mediation** 534. The Respondent claims £18,970.75 from 22 March to 26 April 2016 preparing for and attending a one day mediation. This sum reflects 50% of their total costs incurred for that period.
Attendance at Mediation **593 – 597**	535. The attendance of a Partner, Consultant Barrister and external Counsel at the mediation is excessive and disproportionate. Whilst the Respondent was entitled to authorise all three to attend, the paying party submits that it amounted to unreasonable costs being incurred. In particular, the paying party queries the need for both a Consultant Barrister and external Counsel. The paying party accepts the Partner's attendance, particularly where the client's instructions may have been required during the day, but sees no reasonable purpose to make an offer against the second fee earner. In particular it is noted that minimal time is claimed preparing for the mediation by the Consultant Barrister in the documents schedule, so there is clear doubt as to the progressive input that could have been provided over and above that of Counsel or the Partner. 536. The paying party offers: Grade A – 3.4 hours Counsel - £840
	Respondent's Reply 537. The Respondent is prepared to concede the Consultant Barrister's attendance.
	Costs Officer's Decision I queried whether the costs of the mediation was recoverable in principle. The Points of Dispute were prepared when the claimant was represented and the point was not taken. The respondent has claimed half its mediation cost and they have conceded the cost of the consultant barrister, item 595. The claimant said that he wished to take the point and as he is now a litigant in person I agreed that he could take the point. He was aware that this would take additional time. He had referred to the mediation in the final paragraph of his Skeleton Argument for this hearing but had not said in terms that he challenged the principle of recovery of costs of

	a mediation. His point was the that respondent's terms were not acceptable to him so that the mediation was not going to succeed. This is not the same point. For the respondent I was taken to National Westminster Bank v Feeney EWHC 90066 and paragraph 20 (decision of Master Campbell) and considered that it was recoverable. The claimant referred to an authority of Northern Oxford Golf Club v A2 Dominion Homes 2013 EWHC 813 which we all eventually accessed on-line. This concerned an unsuccessful mediation in 2010. The claimant relied upon paragraphs 15 and 16 of the Judgment. There was a mediation agreement in that case and a separate letter dealing with costs. The Feeney case was cited at paragraph 18 and there was no suggestion that it was wrongly decided. In the Northern Oxford Golf Club case the parties had reached an express agreement as to how the mediator would be paid. At paragraph 17 I saw that the Master had allowed some of the costs of the mediation but not other parts (paragraph 17). I considered that the costs of mediation are in principle recoverable, subject to any express terms agreed. There was a mediation agreement in the present case. I did not have this in front of me but was told that the only reference to cost was the mediation fee to be paid by the respondent and this was not claimed against the claimant. My decision based on the case law is that the costs of mediation are in principle recoverable and the respondent is not seeking to recover anything that is not recoverable. They do not seek the fees of the mediation which they agreed to bear. In both authorities cited, the costs of the mediation were recoverable. The claimant conceded items 601-614 but not 612 the mediation fee. Counsel's fee was also conceded, items 593 and 597. I allow item 594 is allowed, partner attendance, due to the significance of the case. There was 11 hours of Partner time in preparation, 11.7 Grade C, 1.25 at Grade B and 2 hours of trainee time. The claimant queried whether this was covered by counsel's advice on strategy; I said it was a different exercise for the mediation. I took the view that there was a significant amount of preparation necessary and consideration of strategic and legal issues. I allow 7 hours at Grade A, 5 hours at Grade C and 1 hour of trainee time. I disallow the 1.25 hours at Grade B.

Documents Schedule (pp. 93 - 94) **616 – 619**	538. There appears to be duplication between the Partner, Consultant Barrister and Associate when preparing for the mediation. In particular the paying party submits that no Associate time should be recovered for preparing for the mediation as they did not attend, and all Consultant Barrister time is duplicative (the previous Point of Dispute refers). 539. The paying party offers: Grade A – 10 hours Grade D – 1.5 hours 540. This offer totals £4,297
	Respondent's Reply 541. The Claimant's submission is rejected. By the same analogy, any work carried out in preparation of a hearing should be disallowed if the fee earner who carried out that did not attend. This submission is unrealistic and unreasonable. In any event, Hannah White did attend the mediation but those costs were not charged to the client and are therefore not sought from the paying party. 542. The Respondent denies that the time claimed amounts to duplication. Preparation carried out by the Associate was progressive to the claim and furthermore, was carried out at a lower hourly rate than the Partner, resulting in a saving to the paying party. 543. The Respondent maintains the time claimed preparing for this mediation is reasonable, however in the spirit of compromise the Respondent is prepared to accept the following: Grade A: 10 hours Grade C: 7.5 hours Grade D: 1.96 hours
	Costs Officer's Decision See above
Part 11	**Summary** 544. This Part totals £2,302.50 incurred between 1 May and 1 August 20. The recoverable costs are limited to £1,500 of profit costs plus disbursements due to the Indemnity Principle.
Procedural Steps (Counsel's fees and attendances)	621 545. The lack of information in these entries again creates doubt as to the progressive nature of these costs. The paying party believes

621 – 623	Counsel's advice was purely in relation to the delayed listing of the Tribunal, and so submits that no expert advice was provided to the Respondent for this fee. It appears to cover a call of only 2 units with the Associate on 11 May, yet £140 is charged. This is grossly excessive in any event. 623 546. No Counsel fee is claimed on the same date as this entry, and therefore the entry must be disallowed due to the doubt created by this inconsistency and the lack of information provided in the Bill of Costs.
	Respondent's Reply Item 621 547. Conceded. Item 623 548. This attendance related to waiver of privilege. A detailed 2-page attendance note in support will be made available for the Tribunal's consideration at detailed assessment. No concession offered.
	Costs Officer's Decision This covered the period when the hearing should have taken place but was postponed by the tribunal at the last minute and the work related to this. The respondent conceded item 621. I disallowed items 649 and 650 as part of overheads. The claimant conceded items 632, 637, 639 and 647. I allowed 623 one tel con with counsel. Items 627 and 628 were allowed as necessary to speak to the client. Item 630 is allowed. Item 635 was conceded by the respondent. The documents entries were at 641 – 647 641 is allowed. 642 and 645 are disallowed. Item 643 is allowed. 644 and 646 are allowed. 649 and 650 were disallowed as considered part of overhead.
Attendances on the Client	

627 - 632	549. The Respondent is put to proof that any long attendances are supported by evidence of progressive work on the file, and are not solicitor-client in nature. No offer is made.
	Respondent's Reply 550. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment.
	Costs Officer's Decision See above
Documents (pp. 40 - 41) **641 – 647**	551. The Respondent is put to proof that these entries are progressive. The majority appear to be inter-fee earner, supervisory or duplicative in nature. 552. The paying party offers: Grade A - 0.3 hours Grade C – 0.3 hours 553. The offers total £164.10
	Respondent's Reply 554. The Respondent maintains the time claimed is progressive, however in the spirit of compromise the Respondent is prepared to accept the following: Grade A: 0.62 hours Grade C: 0.6 hours
	Costs Officer's Decision See above
Other disbursements **649 - 650**	555. These are internal overhead charges of the solicitor firm and so are not recoverable inter partes. No offer.
	Respondent's Reply 556. The Respondent submits that these fees are not so common that they can be considered internal overhead charges. The submissions above are repeated.

	Costs Officer's Decision See above – treated as overheads and disallowed.
Part 12	**Summary** 557. This Part totals £109,717.60 incurred between 9 August and 11 November 2016. £32,188.50 of this are disbursements, with the remaining £77,529.10 reflecting the solicitors' costs. The 7 day Tribunal Hearing and final preparation is covered by these costs.
Procedural Steps (Counsel's fees and attendances at the Tribunal or on Counsel) **652 - 685**	Counsel's fees 652 – 666 558. Counsel has charged £13,230 over 11 items (between 652 and 666) in preparation for the first day of the Tribunal. This must be assessed alongside the £25,000 brief fee charged earlier in Part 9 of the Bill of Costs. Whilst the delayed listing would require some additional work to be performed, it does not justify Counsel spending 50% of the brief fee again in the build up to day 1. The Court is reminded of the continued involvement of Counsel throughout this litigation, which would have provided Counsel with first-hand knowledge of all issues and evidence is dispute at the final hearing. 559. In total Counsel's fees for preparing for the first day are £38,230. This is a grossly excessive and disproportionate sum for this matter. The Respondent's Counsel was preparing for the same hearing as the Claimant's Counsel. Claimant's Counsel, Mr Massarella, charged a brief fee of £10,500 and was of slightly more experience (1999 call compared to 2003). The paying party submits that the Respondent should recover no more than the £10,500 charged by the Claimant's Counsel in preparation for this hearing, to cover the four tranches of the brief fee and all fees in this Part up to item 666. 667 560. It is unreasonable for Counsel to charge an additional preparation fee on the first day of the Tribunal. This work is incorporated in the brief fee. No offer. Refreshers (670, 673, 676, 679, 682, 684) 561. These fees are unreasonably high and disproportionate to the claim, reflecting the issues raised with the brief fee. The paying party submits that £1,250 per day would be a reasonable allowance, reflecting the sum charged per refresher by the Claimant's Counsel for the same hearing. Attendances by solicitors (664, 665, 668, 669, 671, 672, 674, 675, 677, 678, 680, 681, 683, 684) 562. The dual attendance of a Partner and Associate alongside Counsel is duplicative, excessive and unreasonable on an inter partes standard basis assessment. Counsel conducted this claim from the outset, had full knowledge of the issues in dispute and did not require that level of support from the solicitor team. The

	paying party queries the differing lengths of attendance by each fee earner on the same day, but makes the assumption that the Associate's longer days implies that they were conducting any additional work required in the Tribunal over and above Counsel's involvement. This suggests the Partner simply attended to witness the hearing, quite possibly at the client's request. The paying party submits that one fee earner attending with Counsel at a Grade C rate for 8 hours a day is reasonable.
	Respondent's Reply <u>Counsel's fees</u> <u>Items 652 – 666</u> 563. Firstly, the fees claimed between items 652-666 total £11,830 and not £13,230 as stated by the Claimant. 564. Secondly, the final hearing was adjourned due to a lack of resources available to the Tribunal. Therefore, it was necessary for Counsel to re-read and update the initial preparatory work that has been undertaken months earlier. Whilst the delay may not be Claimant's doing, this claim was unreasonably commenced and pursued by the Claimant. The Respondent should be expected to bear the costs as a result. 565. Within this period, Counsel undertook the following work: a. Preparing summary of Defence to assist the witnesses in their preparation for giving evidence. b. Reviewing Preparing suggested agenda for conference with the instructed solicitor. c. Preparing an updated cast list, chronology, the Respondent's authorities and a suggested timetable. d. Preparing notes to assist witness preparation. e. Updating the Respondent's opening note (which consisted of 24 pages). f. Updating the cast list, chronology and agreed list of issues. <u>Item 667</u> 566. The Respondent re-iterates that due to the delay, it was necessary for Counsel to undertake additional preparation that would not have been required had the final hearing proceeded in the first instance. The Respondent submits that the additional preparation is reasonable in all the circumstances and no concession is offered. 567. In the spirit of compromise, the Respondent is prepared to accept £6,610. <u>Refreshers – Items - 670, 673, 676, 679, 682, 684</u> 568. The Respondent maintains that the refresher fees are reasonable, reflecting the potential value of the claim, the importance of the matter to the parties and complexity of the

	issues involved. The refresher fees were based on just over a 10 hour day to account for attendance time and overnight preparation. No concession offered. <u>Attendances by solicitors (664, 665, 668, 669, 671, 672, 674, 675, 677, 678, 680, 681, 683, 684)</u> 569. Given the complexities, the potential value of the claim and the importance of the matter to the parties, the Respondent submits that it is entirely reasonable for the Partner and Associate who had conduct from the start, to have attended the trial. The Associate's longer days reflect finalising a detailed attendance note of the hearing each day after tribunal, as well as any additional work required. 570. No concession offered.
	Costs Officer's Decision Item 652 was conceded by the respondent. The claimant said that between September 2016 and the start of the hearing there were £13,230 of counsel's fees charged for 47 hours of rereading. The claimant took the point that repreparation was necessary, but thought that more than a day was excessive and the repreparation started 5 weeks before the hearing. The claimant agreed the items 658 and 659 for the pre-hearing conference with counsel. He thought this was sufficient for the repreparation for the hearing. There was no formal repreparation fee agreed between solicitors and counsel's clerk. The claimant had instructed new counsel who took a different approach to the previous counsel and counsel were jointly trying to see what could be agreed. The amount of counsel's fees charged during this period is just over half as much as the original brief fee. There is a heavy reliance on counsel by the expert solicitors in the field. I allow one of the original tranches of brief fee plus the conference plus a further 4.5 hours. This is £6,250 plus the conference at £2,240 plus 4.5 @ £280 = £1,260. The total is £9,750. The refresher fees are allowed as I considered that it would have justified instructing a Silk. The solicitor attendance was at Grade A and Grade C every day. The Grade C was note taking for counsel amongst other things. I allow the Grade A attendance on day 1 only. It is a matter for the client if they wish the Grade A to be present throughout. The Grade C can confer with the Grade A during breaks and overnight. Otherwise the solicitor attendance at Grade C is allowed at a maximum of 10 hours per day. It is not just the time of attendance at the tribunal but also travel and work done at the beginning and end of each day.

Attendances on the Client **689 - 691**	571. The Respondent is put to proof that any long attendances are supported by evidence of progressive work on the file, and are not solicitor-client in nature. No offer is made.
	Respondent's Reply 572. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 573. No concession offered.
	Costs Officer's Decision The claimant conceded items 689-695.
Attendances on the Witnesses **698 - 700**	574. The paying party queries what preparation the Partner conducted with the witnesses, and whether this was progressive solicitor work. No offer is made and the Respondent is put to proof to demonstrate details of the attendances.
	Respondent's Reply 575. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 576. No concession offered.
	Costs Officer's Decision The respondent conceded items 698 and 700. Items 703-705 were conceded by the claimant. Items 708-711 were not disputed in the Points of Dispute so are allowed as claimed.
Attendances on Counsel	577. The attendances on Counsel should be disallowed as duplicative; the paying party's objection to the Partner's attendance at Trial above, and allegations of overreliance on Counsel are repeated.

713 – 716	578. The paying party offers: Grade C – 0.3 hours Grade D – 0.1 hour
	Respondent's Reply 579. The paying party has provided no reason why it considers the attendances on Counsel to be duplicative. Further, the Partner's attendance at trial has no relevance to the discussions addressing trial preparation, including the cast list and chronology. 580. No concession offered.
	Costs Officer's Decision The Grade A fee earner did not attend the conference on 28 October 2016. Items 713 and 714 were disallowed as these matters could have been covered at the conference via the Fee Earner who attended. Item 716 was an email of 13.10.2016 regarding a potential specific disclosure application. I saw internal solicitor email correspondence in the confidential bundle but not the email itself so it was disallowed. Items 718-720 were conceded.
Document Schedule (pp. 94 -95) **722 - 726**	581. There are several examples of inter-fee earner discussions or supervision throughout this schedule, which should be disallowed. Client and witness preparation documents or meetings do not appear to be progressive to the litigation, and the paying party submits that this work is solicitor-client in nature so not recoverable at assessment. The larger, non-descriptive items also create a doubt as to the content and progressive nature of the work done, such as the 11.48 claimed by the associate preparing for trial on 2 November, considering Counsel was briefed at that point. The paying party notes further non-recoverable items where references are made to administrative logistics for the solicitor team, or press coverage considerations. 582. The paying party offers as a compromise: Grade A – 3.4 hours Grade C – 7.5 hours Grade D - 10.6 hours 583. This totals £4,548.40
	Respondent's Reply 584. With regards to the 11.48 entry on 2 November 2016, the Respondent can confirm that the following work was undertaken:

	a. Attending witness familiarisation for Steve Black by video conference and preparing associated correspondence b. Organising key documents for the tribunal, including but not limited to both opening notes, the reading list and chronology and liaising with Counsel in respect of the same. c. Reviewing Counsel's draft opening note. d. Reviewing comments received from Richard Taylor in respect of witness evidence and addressing the merits of amending statements in light of the same. e. Arranging for additional material to be added to bundles, which included various documents received from the paying party up to 15.25. f. Obtaining instructions from the client regarding the proposed timetable for trial. g. Reviewing updated witness statement received from the paying party at 15.37; thereafter updating the client and Counsel in respect of the same. h. Corresponding with the joint expert regarding attendance and papers. i. Corresponding with the paying party regarding confidentiality arrangements and preparing redacted copies of the witness statements to retain confidentiality regarding financial details. 585. The Claimant's remaining objections are generic in nature. 586. The Respondent submits that 46.36 hours claimed from 22 September to 10 November 2016 is a reasonable amount of time to have incurred in preparation for a 7-day trial. 587. Given the volume of work that was reasonably required to defend this claim to trial, it was necessary and reasonable for the Respondent to dedicate a core team of members to undertake preparation for trial and engage in some level of discussion. Further, the Respondent maintains that witness preparation is not solicitor-client in nature, but is progressive for the purposes of preparing for trial, where witness evidence was of great importance. 588. The paying party has neglected to acknowledge that a considerable amount of time was spent considering additional disclosure received from the paying party on 13 October, 1, 2 and 7 November 2016 which subsequently also had to be added to and paginated within 5 sets of bundles. 589. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 8 hours Grade C: 20 hours Grade D: 10 hours
	Costs Officer's Decision Shortly into this period, 9 August 2016 to 11 November 2016, which includes the period of the trial, the claimant issued a second claim and it is accepted that none of those costs are recoverable. There was some consideration of the fact that the claimant sought to add the second

	claim into the first and this is addressed in this bill. There was a third claim and again the costs of this are not included here. There was an updated witness statement from the claimant, correspondence with the expert witness, there was further documentation added by the claimant and consideration of this was necessary and there was reference made by the claimant in relation to making a specific disclosure application which was not ultimately made. The respondent considered that the document attracted legal advice privilege. There was a pre trial conference with counsel, consideration of the opening note and updating of trial bundles and redaction. There was press and public attendance at the hearing. Settlement options were also considered. <u>Documents on part 12</u> <u>For disclosure</u>, there was 3.3 hours of Grade C time and 36 minutes of Grade A time. The claimant said there was inter solicitor discussion about an email and an email drafted by the Grade C which he wished me to consider in the confidential bundle. There was email correspondence of 12 October 2016 with documents attached. This concerned the claimant's potential intention to apply for specific disclosure of a confidential report and involved the fee earners finding out more about it and considering the issue. The respondent could not produce the "drafting detailed email to PF regarding the same", so I disallowed one hour in relation to this. I allowed the remaining items in that section, items 722-723 minus the 1 hour just mentioned. <u>For trial preparation</u>, the respondent had conceded some items and removed the figures. The balance claimed as Grade A at 8 hours and Grade C at 15.1 hours and the description was set out in the Part 12 Documents Schedule and covered just over a 6 week period. The claimant said on 11 October 2016 this was part of Witness Briefing and again on 28 October. There was nearly 4 hours of Grade A time for the skeleton argument cast list and chronology. I considered this duplication and disallowed it. On 2 November 2016 there were 2 hours of Grade A time and the claimant was not sure why this time was required. On trial preparation the claimant said that there were large items titled "trial preparation" and this had reoccurred here and Grade C again claiming for witness familiarisation. The respondent conceded witness familiarisation and had removed the amount of time they had already conceded. The claimant's position was that the Grade A time was very high on trial preparation Item 722 Grade A for considering skeleton, cast list and chronology was reduced to 1 hour. Item 723 for trial preparation for the Grade A fee earner is allowed at 1.15 hour for the 2 November 2016 by removing 1 hour.

	Items 723 for trial preparation for the Grade C fee earner – at 15 hours – put at trial preparation. I agreed with the claimant that there was a degree of generic description and a substantial amount of time involved so I reduced the 15 hours to 10 hours. Bundles 2.4 hours at Grade C and 10.8 at Grade D The claimant thought that the time was high for updating the bundle and was about another day and a half of time to update the bundle with a few new documents and was considered by the claimant to be excessive. The respondent said that the work undertaken was by the Grade D was updating and pagination and new indexes and 5 sets of documents. I agreed with the respondent that when there were 5 sets of documents this close to trial and updating needed to be done, it is an appropriate task for a Grade D and as I have said before, it is routine but time consuming, detailed and essential to the smooth running of the trial so was allowed at both Grades C and D. Confidentiality and Strategy The claimant conceded the Grade A time 0.08 and 0.15 but queried the Grade C time on "considering settlement figures". This was about preparing for any potential settlement figures for day 1. This was theoretical work as there were no settlement figures. The respondent took me to an email from the claimant on 31 October 2016 asking whether it would be "*worth us having a brief WP discussion in the next day or so?*" (confidential bundle page 7305). I allowed the 1 hour claimed for the Grade C fee earner as I considered it necessary for the respondent to consider what they might say to the claimant in a without prejudice discussion.
Part 13	**Preparing Costs Application**
Attendances on the Client **731 – 737**	590. The Respondent is put to proof that these attendances and items of correspondence were not solicitor-client in nature, particularly following conclusion of the main action.
	Respondent's Reply 591. This attendance addressed the proposed application for costs. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 592. No concession offered.
	Costs Officer's Decision The figures were agreed for parts 13 and 14 save for 1 item upon which a decision was needed. Ms White became a Grade B from

	a Grade C on 1 March 2017 and therefore her rate increased and the respondent asked for her rate to be allowed at Grade B in these parts. The respondent's position is that to instruct somebody new would be inefficient from a costs perspective. The claimant thought it was about internal promotion and I explained that this was not the case with the Grades. The claimant said that if it was Grade C work previously it should remain Grade C work. I agreed with the claimant that in terms of this costs assessment if the allocation is at a Grade C, the allowable rate should remain at a Grade C. The appropriate rate is for Grade C even if Ms White continued to do the work. The respondent wished to make a submission that the work justified a Grade B fee earner. The claimant said it made a difference of £200 and queried whether it was proportionate for me to hear the submission. I said that if the respondent wished to make a submission I must hear it and similarly could not restrict the claimant if he wished to make a submission. The work was for routine telephone attendances, 6 routine letters out and 2.6 hours on the telephone and dealing with correspondence from the trainee and discussion with the trainee on discussion about means. The fact that these were described as routine matters and were matters that were appropriately done by a Grade C earlier in the litigation meant that I allowed it at Grade C. The same point was raised in relation to the Grade D fee earner who became a Grade C during the period. Item 744 was conceded by the respondent at Grade D. Items 751 and 752 were allowed at Grade D.
Attending on Counsel **742 – 745**	593. The paying party notes that no Counsel fee is claimed in this part, but a fee for February 2017 is claimed in Part 14 at an 80% level. Any correspondence with Counsel in relation to that fee must surely be limited to a similar maximum recovery Notwithstanding this; the paying party submits that item 746 is an inter-fee earner attendance between the Costs Lawyer and Associate, with no involvement of Counsel in any event. 594. The paying party offers: Grade C – 0.3 hours
	Respondent's Reply 595. The Respondent is prepared to accept the following:

	Grade C: 0.4 hours
	Costs Officer's Decision See as agreed above
Documents **748 - 756**	596. The paying party raises the familiar issues with the inter-fee earner discussions and correspondence claimed amongst these items. This work must be disallowed on an inter partes assessment as being unreasonably incurred and duplicative. 597. The paying party offers: Grade A – 1 hour Grade C – 0.3 hours Grade D – 0.5 hours 598. This amounts to £545.80
	Respondent's Reply 599. The Respondent maintains the time claimed is reasonable, however in the spirit of compromise the Respondent is prepared to accept the following: 600. Grade A: 2.46 hours 601. Grade C: 1.5 hours 602. Grade D: 1.32 hours
	Costs Officer's Decision See as agreed above
Part 14	**Costs Application (80% maximum claimed)**
Procedural steps (Counsel fees and attendances) **758 – 776**	Counsel's fees 603. Counsel claims a further £6,108 across 6 instructions in this Part. Given that 80% has been claimed, the actual fees incurred were £7,635. Counsel was instructed to prepare the Respondent's costs application and attend the 1 day hearing of that application. In light of Counsel's continued and uninterrupted involvement in all aspects of the main action, the additional preparation required would have been minimal. The Respondent is put to proof as to the recoverability of the individual fees and advices claimed in

	this Part from Counsel. The paying party submits that a reasonable sum for all of this work and the hearing brief is £3,000. Solicitor Attendances 604. The attendance of the Partner "AT1" at this late stage is unreasonable, particularly given that PF oversaw the majority of the litigation and then attended the costs hearing. AT1's time is duplicative, and the paying party challenges the level of progressive input that AT1 could have provided in any event. 605. The comments in relation to Counsel's knowledge of this claim are repeated, as is the fact that Counsel prepared all documents for this hearing and attended the same. The paying party challenges the reasonableness of any fee earner attending this application hearing in addition to Counsel, let alone a dual attendance of a Partner and Associate. In particular the Court will note the entirely disproportionate costs that the dual attendance caused the Respondent to incur. The Partner's costs alone mirror Counsel's brief fee. Adding the attendances and Counsel's brief together brings the costs of that one day hearing (without any preparation included) to over £12,200. This is entirely excessive and disproportionate; for example the paying party refers the Court back to the Claimant's brief fee of Counsel for a 7 day hearing being only £10,500 in comparison. 606. The Paying party offers a Grade D attendance to take a note of the hearing (8 hours).
	Respondent's Reply Counsel's fees 607. It is not accepted that Counsel's involvement throughout the claim is reason enough to warrant a reduction to the fees claimed. 608. The Respondent maintains that all preparation work (totalling £1,308) and the brief fee (totalling £4,800) is reasonable. Preparation work included various attendances on the merits of making an application, the strategy in respect of the same and preparation of the detailed 4-page application for costs, which required a detailed summary of the proceedings case law in support of the Respondent's position. Preparation also included a review and assessment of various documents pertinent to the Claimant's financial means. 609. In an effort to narrow the issues between the parties, the Respondent is prepared to accept £4,808. Solicitor Attendances 610. The Respondent maintains that given the issues involved and the importance to the parties, it was reasonable for a Partner to have engaged in pre-hearing attendances with Counsel. It is noted that a Partner attended the hearing alongside Counsel on behalf of the paying party. Presumably that Partner also engaged in discussions with Counsel prior to the hearing. In light of the

	above, the Claimant's offer of a Grade D attendance only is unreasonable. 611. The Associate attended to take a comprehensive note of proceedings and enable the Partner to assist Counsel throughout the hearing. 612. No concession offered.
	Costs Officer's Decision The figures were agreed save for the same point as with Part 13 where Fee Earner was uprated from Grade C to Grade B. In the interests of proportionality the respondent conceded the Grade C rate. The Grade D rate was also retained at Grade D.
Attendances on the Client **780 - 795**	613. The costs application was a purely legal issue requiring minimal input from the Respondent directly. Counsel was instructed to draft the application and attend the hearing, and all relevant documentary evidence would have been in the Respondent solicitor's possession. The paying party submits that the majority, if not all of these attendances on the client in this period would have been solicitor-client in nature and therefore not recoverable from the Claimant. 614. The Respondent is put to proof as to the content and detail of all long attendances and routine letters. 615. No offer is made.
	Respondent's Reply 616. The Respondent's file of papers will be made available for the Tribunal's consideration at detailed assessment. 617. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 0.48 hours Grade B: 2.9 hours Grade C: 0.31 hours
	Costs Officer's Decision See above, as agreed between the parties.

Attendances on the Claimant / Ashfords / RadcliffesLeBrasseur **797 – 804**	618. The time claimed for these long attendances is excessive and unreasonable. 619. The paying party offers: Grade A – 0.2 hours Grade C – 0.5 hours
	Respondent's Reply 620. A total of 1.52 hours is claimed for corresponding with the Claimant's various representatives regarding the costs hearing. The time claimed is reasonable. 621. No concession offered.
	Costs Officer's Decision See above, as agreed between the parties.
Attending on Counsel **811 - 823**	622. The three entries on 7 September purely relate to the solicitors informing Counsel of the reserved judgment of the same date. This is not progressive, recoverable work of the application and should be disallowed in full. Similarly the attendance on Counsel on the day following the hearing is likely to be a 'debrief' with no progressive inter partes relevant. Those costs should be disallowed. 623. The number of attendances on Counsel is excessive again, given that Counsel prepared the application and attended the final hearing. 624. The paying party offers as a compromise: Grade A – 0.2 hours Grade C – 1 hour
	Respondent's Reply 625. The Claimant's suggestion that recoverable work stops as soon as the hearing has concluded is unreasonable. The attendances on 7 September address various issues arising from the reserved judgment and the outstanding matters to be addressed in light of the same. 626. Even when Counsel prepares an application and attends the final hearing, there is a degree of preparation that requires input from the instructing solicitor.

	627. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 1.96 hours Grade B: 1.1 hours Grade C: 0.44 hours
	Costs Officer's Decision See above, as agreed between the parties.
Document Schedule (pp. 96 - 98) **825 - 832**	628. The paying party raises the familiar issues with the inter-fee earner discussions and correspondence claimed amongst these items. This work must be disallowed on an inter partes assessment as being unreasonably incurred and duplicative. 629. Addressing some examples in detail, the first 3 entries should be disallowed in full, as the Partner is considering emails. It is not clear which emails these are, but the paying party submits this is either supervisory work, or duplicative of other work conducted within the team. 630. The numerous entries for preparing for the costs hearing are disputed, as Counsel was instructed to attend the same for the Respondent and so the input of the solicitor(s) is unnecessary and unreasonable. The items in the schedule are also devoid as to detail explaining the progressive work done in preparation for the hearing in any event, so doubt must be applied in the paying party's favour. 631. The paying party accepts that some costs are recoverable for preparing the hearing bundle, but there are clear examples of administrative work, particularly where the associate is arranging for work to be done. Checking of that work is also supervisory and duplicative. 632. The note of the hearing should have been prepared by the Grade D fee earner offered above. 633. The 4 entries on 7 and 8 September following receipt of the costs judgment consists primarily of inter-team meetings and updates on that outcome. This is not recoverable or progressive work. 634. As a compromise, the paying party offers: Grade A – 1 hour Grade C – 5 hours Grade D – 8 hours 635. This is an offer of £2,643
	Respondent's Reply

	636. The Respondent re-iterates that it was entirely reasonable for the instructing solicitor team to assist in the preparation of the final costs hearing. 637. Careful consideration was given to the Claimant's witness evidence and supporting documents pertaining to the Claimant's means. Further preparation included but was not limited to addressing issues pertaining to the confidentiality club, the preparation of the trial bundle index, preparation of the summary of costs, preparation of the final bundle, consideration of the additional documents provided by the Claimant and updating the bundle accordingly, consideration of the skeleton arguments and reviewing the judgment. 638. The note of the hearing formed advice provided to the client. It was reasonable for this to have been prepared by the Partner. 639. The Respondent rejects the Claimant's submission that the document entries are devoid of detail. It is noteworthy that no examples have been provided in support. 640. Nonetheless, in the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 4 hours Grade B: 7.5 hours Grade C: 6 hours Grade D: 8 hours
	Costs Officer's Decision See above, as agreed between the parties.
Part 15	**Preparing the Bill of Costs**
836 - 840	641. The Respondent's solicitors have incurred 53.98 hours on the Bill of Costs in addition to instructing a specialist Costs Firm to draft the document. This is an unacceptable duplication of fees; particularly considering that the solicitor's costs of £19,905.13 exceed the specialist's disbursement of £17,500. 642. Costs Lawyers should be instructed in place of, rather than in addition to solicitors preparing Bills of Costs. It is reasonable to claim some senior fee earner time considering and approving the draft Bill of Costs, as they have to sign the document off as being accurate, but no costs should be allowed for preparing the Bill in addition to the Costs Lawyer fee. 643. The fee earners' time includes identifying and collating information for the Bill of Costs. This appears to be administrative file management that should be disallowed in full. To the extent that it may relate to the instruction of the Costs

	Lawyer, this is duplicative and equates to inter-fee earner communication. 644. The paying party also notes that a Costs Draftsperson (KN) claims 5.64 hours in addition to the external Costs Firm instruction, a further clear duplication of work. 645. Notwithstanding the above, this is far from the most detailed or complicated Bill of Costs. The attendances and long letters/calls contain minimal information justifying the time claimed, for example no detail is provided for any of the conferences or telephone conferences with Counsel. The document schedules are similar, as another example there is no detail explaining how each relevant entry progressed the drafting of the Respondent's witness statements. The Respondent's approach to drafting has hindered the paying party's ability to properly assess the Bill. 646. The paying party offers: 647. Grade A – 2 hours (expressly for checking the final Bill of Costs) 648. The £17,500 disbursement can be agreed on the provision that no further fee earner time is recovered save for the 2 hours offered above.
	Respondent's Reply 649. The Respondent notes that the Bill preparation fee in the sum of £17,500 is conceded. 650. With regards to the solicitor's time, the paying party is mistaken. The time claimed clearly states that it relates to "*Checking, approving and identifying/collating information for Bill of Costs*". No time relates to the preparation of the Bill of Costs. 651. To prepare the Bill of Costs, it was necessary to identify and collate the relevant papers. This work is recoverable on an inter partes assessment. 652. In terms of time spent checking and approving the Bill of Costs, the Claimant's offer of 2 hours is entirely unrealistic and unreasonable. The solicitor must certify that the Bill of Costs does not offend the indemnity principle. Given the weight that is placed on such a signature, *Bailey v IBC Vehicles Ltd [1998] EWCA Civ 566*, it is essential that the Bill is checked in detail. This is a 99-page Bill of Costs consisting of 1,265 timed entries and a further 114 entries relating to disbursements which totals £144,672.08. 653. Further, the Bill has been split by invoices requiring a greater degree of scrutiny than otherwise would be required. 654. In the spirit of compromise, the Respondent is prepared to accept the following: Grade A: 5 hours Grade B: 10 hours

	Grade C: 5 hours Grade D: 4 hours
	Costs Officer's Decision
Point of Principle: Proportionality	655. The Respondent's costs are subject to the post-1 April 2013 test of proportionality. On conclusion of the assessment, the Court is invited to stand back at the sum allowed and consider whether that sum is proportionate to the claim. 656. The Court is invited to consider the factors listed on CPR 44.3(5), 44.4(1) and the overriding objective in CPR 1.1(2), and if the costs awarded are still disproportionate, to limit that total to a proportionate sum. 657. The paying party submits that consideration of the relevant factors, which have been addressed throughout these Points of Dispute but particularly in the General Points, demonstrate the Bill of Costs as claimed is clearly disproportionate to this matter.
	Respondent's Reply 658. The Claimant's standard and non-specific submissions in respect of proportionality are rejected. 659. In providing further explanation as to the proportionality of the costs, the Respondent will address the various factors set out in CPR 44.3(5) as below: <u>The sums in issue in the proceedings</u> 660. The Claimant sought discretionary bonuses in the sum of £1,601,792 (exclusive of interest), as well as a claim for damages for injury to feelings in the region of £15,000. The Bill of Costs totals £691,637.76, equating to approximately 43% of the sums sought by the Claimant, before interest. The Respondent submits that the costs incurred bear a reasonable relationship to the sums in issue in the proceedings. <u>The complexity of the litigation</u> 661. As the Respondent has previously highlighted, this was an unusually complex matter consisting of approximately 20 separate allegations of direct disability discrimination, 17 separate allegations of discrimination for a reason related to disability, 3 separate reasonable adjustments complaints and 23 allegations of harassment spanning a period of 5 years. These complaints engaged both the provisions of the Disability Discrimination Act 1995 and Equality Act 2010. This resulted in the eight-page list of issues which required additional time to be spent by the Tribunal to review the same. The Tribunal found

	that the paying party had "needlessly complicated" the complaints made[2]. 662. These claims were legally complicated, with considerable case law (18 cases were referred to within the Claimant's closing submissions). Unusually for matters heard in the tribunal, there was live expert medical evidence which addressed the short and medium-term impact of high dose chemotherapy for Acute Myeloid Leukaemia. Further, there was a significant amount of medical records to review, in addition to a considerable amount of disclosure which resulted in the trial bundle consisting of just under 3,400 pages. 663. The Respondent also submits that the fact that the Claimant remained an employee during the litigation added a further layer of complexity that is not usual in such circumstances. Please see further above. <u>Any additional work generated by the conduct of the paying party</u> 664. The Tribunal found that the Claimant's complaints had no prospects of success and stated, *"in view of our findings in relation to the merits set out above, we similarly accept that it was unreasonable conduct on the part of the Claimant to bring the proceedings under the first claim in the first place"*[3]. 665. The Respondent clearly set out its views on the lack of merits within the detailed Grounds of Resistance. Further, on 24 March 2016, the Respondent wrote to the Claimant on a 'without prejudice save as to costs' basis once again, setting out detailed reasons why it considered that the Claimant's complaint had no prospects of success. The Claimant ignored this correspondence and failed to acknowledge the same. 666. As highlighted above, the Tribunal criticised the Claimant's approach as to how the complaints, if any, should be brought which resulted in a "needlessly complicated" eight-page list of issues. 667. The Claimant also adopted an obstructive and uncooperative approach to litigation which did not assist the parties nor the Tribunal in furthering the Overriding Objective in accordance with CPR 1.1. The Respondent refers to the following examples: 668. The Claimant delayed engaging with the Respondent in identifying a joint expert, which initially included no justification for rejecting the Respondent's proposed experts. Further, the Claimant refused to confirm that his proposed expert was suitably qualified and had no prior connection to the Claimant. This was eventually ordered by the Tribunal at the preliminary hearing held on 6 November 2015. 669. The Respondent made numerous attempts to agree the draft letter of instruction to the joint expert, to no avail. The Claimant provided a detailed response on 12 January 2016 (comprising of 16 points), despite the deadline for the Claimant to be examined

[2] Paragraph 66 of Employment Judge Baty's judgment dated 31 July 2017.

[3] Paragraph 62 of Employment Judge Baty's judgment dated 31 July 2017.

	by 22 January 2016. The Claimant's proposed amendments were not neutral and insisted on the inclusion of additional questions which the Respondent reasonably considered to be irrelevant, partisan and/or tendentious. As a result, the Respondent was left with no alternative but to make an urgent application to the Tribunal. 670. The Claimant initially failed to agree to disclose medical records, which he was ultimately ordered to do so by the Tribunal. This resulted in considerable correspondence between the parties. Further, the Claimant made no effort to expedite the process despite impending deadlines ordered by the Tribunal. 671. The Claimant failed to adhere to multiple deadlines ordered by the Tribunal and/or subsequently extended between the parties. These included the disclosure of documents and exchange of witness statements. This resulted in further correspondence between the parties. 672. The Claimant burdened the whole process with large amounts of irrelevant material. Prior to the final hearing, the Claimant insisted on including sought to include a further 430 documents to the trial bundle which led to a significant increase in costs to prepare the same. 673. Counsel for the Claimant withdrew some of the allegations from the long-agreed list of issues on the morning of the second day of the hearing, later that day and also during closing submissions. These allegations should never have been made, were not sustainable and could have been withdrawn far earlier without putting the Respondent to the cost and expense of disclosing documents and preparing witness evidence in relation to the same. The Tribunal found "*we consider that these late withdrawals were also unreasonable*"[4]. 674. In addition to the above criticisms, the Tribunal found that "*the fact that the Claimant either did not tell the truth or mislead the Tribunal and sat on the serious allegations both amount to examples of unreasonable conduct on his part*"[5]. 675. The Respondent submits that the Claimant's conduct generated a considerable amount of additional work that otherwise could and should have been avoided. <u>Any wide factors involved in the proceedings, such as reputation or public importance</u> 676. This was a matter of significant importance to the Respondent due to the press coverage and potential damage of reputation caused by an adverse decision from the Tribunal. 677. In light of the aforementioned points, when considering all the circumstances of the claim, it is unreasonable to make any adjustment to the costs as assessed.

[4] Paragraph 67 of Employment Judge Baty's judgment dated 31 July 2017.

[5] Paragraph 49 of Employment Judge Baty's judgment dated 31 July 2017.

	Costs Officer's Decision Please see the main body of the Reasons to this Judgment for the decision on Proportionality.