



**Judiciary of
England and Wales**

**Given the sea change in
judicial attitude, what
amounts to a robust and
persuasive justification for a
departure from guideline
hourly rates?**

March 2023

Costs Judge Jason Rowley

**Given the sea
change in
judicial
attitude...**



“I don’t
accept the
premise of
your
question”



Samsung Electronics v LG Display Co.

(6 April 2022)

(Males LJ)

5. LG has not attempted to justify its solicitors charging at rates substantially in excess of the guideline rates. It observes merely “that its hourly rates are above the guideline rates, but that is almost always the case in competition litigation”.
6. I regard that as no justification at all. If a rate in excess of the guideline rate is to be charged to the paying party, a clear and compelling justification must be provided. It is not enough to say that the case is a commercial case, or a competition case, or that it has an international element, unless there is something about these factors in the case in question which justifies exceeding the guideline rate.
8. For the most part I would accept LG’s submission that it allocated work to more junior members of the team where possible and that the allocation of work between solicitors and a single junior barrister was appropriate. Nevertheless, I would reduce the amount claimed to reflect the points made above and would summarily assess LG’s costs of the appeal in the sum of £55,000.

Athena Capital v SS for the Holy See

(26 July 2022)

(Males & Birss LLJ)

6. This court has recently held that, in the case of solicitors' fees, if a rate in excess of the guideline rate is to be charged to the paying party, a clear and compelling justification must be provided: *Samsung Electronics Co Ltd v LG Display Co Ltd [2022] EWCA Civ 466*. No such justification has been advanced in this case.

8. It is a striking feature of the present situation, that although almost every possible point has been taken on both sides in the course of this appeal, there has been no challenge either to the appellants' solicitors' hourly rates or to the brief fees and other fees charged by their counsel. However, the costs payable by the losing party on the standard basis are limited to those which are reasonable and proportionate. Where the costs of the paying party are also disproportionately high, that can make no difference. In any event the court will scrutinise cost schedules in order to keep levels of recovery within reasonable bounds.

10. I agree. It may be worth emphasising one aspect. In my experience there has been a view that the previous set of Guideline Hourly Rates (before 2021) were not directed to the heaviest work such as takes place in the Business and Property Courts. In part no doubt this was because they were so out of date. Whatever the position was or was thought to be, it changed in the current set of Guideline Hourly Rates, which were approved by the Master of the Rolls in August 2021. As my Lord pointed out in *Samsung v LG*, the current set includes a band called "London 1" which is a set of rates directed expressly to very heavy commercial and corporate work by centrally London based firms. I would add that the London 1 rates band in the current Guideline Hourly Rates is based on evidence from the Business and Property Courts themselves (see the Civil Justice Council's Final Report of April 2021). Therefore the London 1 band is directly applicable to this case and so a justification for the much higher rates was needed.

Brake v James Hay Pension Trustees

(HHJ Paul Mathews)

16 November 2022)

16. The hourly rates claimed by the Guy Parties are £736 for a grade A partner, £550 for a grade A senior associate, £403 for a grade C associate, and £350 for a grade C costs draughtsman. Their solicitors are based in the City of London, so that there are two guideline rates prescribed, London 1 and London 2. The former is for “very heavy commercial and corporate work”, and the other is for “other work”.

18. As a result, I consider that the appropriate guideline for this work is London 1 rather than London 2. The applicable guideline hourly rates are therefore £512 for grade A and £270 for grade C. The rates claimed by the Guy Parties in the statement of costs are thus in excess of the guidelines. Of course, they are just that, guidelines, and are not set in stone. But, as the Court of Appeal said in *Samsung Electronics Co Ltd v LG Display Co Ltd* [2022] EWCA Civ 466 (and reiterated in *Athena Capital Services SICAV v Secretariat of State for the Holy See* [2022] EWCA Civ 1061), if a rate in excess of the guideline rate for solicitors' fees is to be charged to the paying party, a clear and compelling justification must be provided.

FCA v Papadimitrakopoulos

(17 November 2022)

(Smith J)

27. The First Defendant's Costs Schedule, which I was taken through in some detail, identifies a total figure for the costs of this one day application as being £518,915.29. I consider that to be an extraordinarily high figure for an application that was made in circumstances where there had been two previous hearings before this court...

29.... I also note that the rates identified on behalf of the solicitors for the First Defendant are higher than the guideline hourly rates, without any attempt to justify why that is so.

32. The Second Defendant provided a Cost Schedule amounting to some £83,440. Mr George made only a minor criticism in respect of this document, pointing out that the rates of a Grade-A partner were above the guideline hourly rates, but noting that the partner had spent very few hours on the matter in any event.

Infrastructure Services v Energia Termosolar

(27 January 2023) (Cockerill J)

3. It is a very large statement. There are three grade As listed, one of whom is charged out at £1,170 and the next one at £890, the third one at £710, and there is also a grade B at £710. This is against the perspective where London 1, which is the most expensive rate within the guideline hourly rates, goes £512 for band A and £348 for band B.
5. For all that one can say, this is a matter of great importance to the client and there is a lot of money in issue, that is effectively always the case in litigation in this court and London 1 is effectively designed to deal with that sort of litigation. I might give a small amount of extra headroom in relation to that, but only a small amount. So we are looking at a reduction in the order of half in any event, just on the basis of hourly rates.

Summary assessments

9. Taking these matters into account, I would make an order for payment on account of £100,000.

27. Accordingly, I do not attempt to recalculate the schedules of costs, but stand back and weigh the criticisms of the costs claimed that I consider are justified against the overall figure. There was simply too much time spent, by too senior levels of lawyer, at charge-out rates exceeding the guidelines without sufficient justification. Taking everything into account, in my judgment the appropriate overall figure at which summarily to assess these costs (including counsel's fees and the court fee) is £5,500.

33. I am invited by Mr Hunter to make a summary assessment of costs on the basis that the hearing of the application was a one day hearing. In my judgment, it would be appropriate to make a summary assessment of the Second Defendant's costs and I will summarily assess those costs in the figure of £70,000 to be paid within 14 days by the FCA.

9. So I am going to bring this down quite heavily. Starting from the indication that this is about twice as big as it ought to be and then taking into account these other things, I will give £75,000 of costs.

Future Properties v Favorite Restaurants

(9 November 2022)

(Roth J)

32. ...but the grade C solicitor was charged at the rate of £200 per hour for work in 2020 and £210 an hour for work in 2021.

- The guideline line rate, as I again indicated in the recent order directing this hearing, is not insignificantly less: it is £178 an hour. Given that most of the work for this case on the part of the claimant's solicitors was done by the grade C solicitor, the difference mounts up.
- The guideline rates were only published on about November 2021 and I do not think the learned judge can be criticised for failing to have had regard to them.
- However, they do provide valuable information to the court now as to what were the reasonable rates for solicitors of various grades in Essex at the time. Although the rate of charge for the grade C solicitor here at £200 or £210 an hour is not vastly above the guideline rate, I consider that there is nothing especially complex or difficult about this case that could justify any material difference from the reasonable rates reflected in the guidelines.
- On that matter of the rates the judge said simply this: "The rates claimed strike me as being entirely reasonable."

Future Properties v Favorite Restaurants

(9 November 2022)

(Roth J)

37. Standing back, and having regard both to the point about the hourly rates for grade C and the question of discount, for the judge's order that the defendant should pay £20,000 plus VAT, I think it is appropriate to substitute an order that the defendant pay £17,000 with no VAT.

**..., what amounts
to a robust and
persuasive
justification ...**

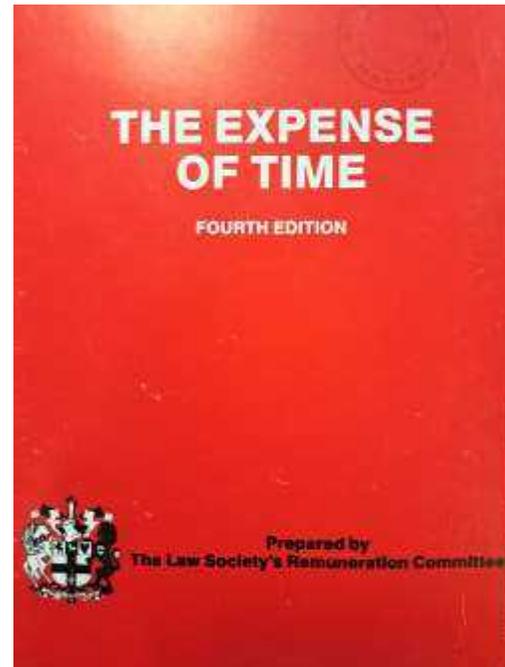


From
where do
your
figures
come?

Expense of Time Calculation?

"It recommends a simplified system suitable for near innumerate solicitors. It is a triumph that so many firms have put its provisions into practice."

Er...that's it



From
where do
your
figures
come?

What about the 7 Pillars of Wisdom?

- 1. Conduct of all the parties*
- 2. Amount or value*
- 3. Importance to the parties*
- 4. Complexity, difficulty, novelty*
- 5. Skill, effort, specialised knowledge*
- 6. Time spent on the case*
- 7. Place / circumstances*

From
where do
your
figures
come?

Counsel's Hourly Rates?



..., what amounts
to a robust and
persuasive
justification ...

*If you can't say where your
figures come from, how can
you present a robust /
persuasive justification?*



**...for a
departure from
guideline hourly
rates?**

Fixed Recoverable Rates?

“...in the end we have to make a value judgment, based on discretion and experience...Our figure may not be *the* right figure, and indeed such a figure probably does not exist, But we hope that it will be *a* right figure; one which is reasonable in all the circumstances and which is fair...”

Treasury Sol v Regester (1978)

...for a
departure from
guideline hourly
rates?

No Departure?

Court of Protection

Determining Officers



TIME	FLIGHT	WILL	TO	REMARKS
12:10	KE 580	12:10	TOKYO	CANCELLED
12:15	MU 366	12:15	DALIAN	CANCELLED
12:25	KE 6088	12:25	MOSCOW	CANCELLED
12:30	CA 140	12:30	FRANKFURT	CANCELLED
12:30	CZ 682	12:30	ROME	CANCELLED
12:35	CI 542	12:35	BORDEAUX	CANCELLED
12:45	OZ 161	12:45	JERSEY	CANCELLED
12:50	UA 5132	12:50	BRUSSELS	CANCELLED
13:25	OZ 721	13:25	SHANNON	CANCELLED
13:35	KE 245	13:35	AMSTERDAM	CANCELLED
13:45	KE 3103	13:45	PARIS	CANCELLED
13:55	SU 1941	13:55	GENEVA	CANCELLED
14:05	CZ 538	14:05	TAIPEI	CANCELLED
14:15	CI 204	14:15	MADRID	CANCELLED

Departure from the GHR

It's not where you start, it's where you finish

“The guideline rates are not scale figures: they are broad approximations only.”

Departure from the GHR

What is “very heavy commercial and corporate work by centrally based London firms”?

“In substantial and complex litigation an hourly rate in excess of the guideline figures may be appropriate for grade A, B and C fee earners where other factors, for example the value of the litigation, the level of complexity, the urgency or importance of the matter, as well as any international element, would justify a significantly higher rate.”

“Within that pool of work there will be degrees of complexity and this paragraph will still be relevant.”

Departure from the GHR

Grade of fee earner

Paturel v Marble Arch Services Ltd [2005] EWHC 1055 (QB)

10. In relation to the second of the two substantive grounds Mr Ring submits that he has never been a legal executive and had never claimed to be one. He had, however, had 15 years of prior litigation experience, as the deputy master found, and as he had set out at Item 2 of the reply to points of dispute. I accept his submission that it is the experience of the representative which is of particular relevance here, experience frequently being as valuable if not more valuable in this area than an academic or professional qualification. The guidelines relied on by Ms Ackland are not binding instruments and the considerable experience of the assessors in this appeal is that litigation experience of this length, prior to qualification, would always be recognised and taken into account in determining the appropriate grade of fee earner and hourly rate. I therefore see no error in the deputy master's decision to allow the rate applicable to a Grade B fee earner.

Departure from the GHR

*Can't see the **W**ood **F**or t**H**e trees?*

31. Where all or part of the work on a case is done in a different location from that of the solicitor's office on the court record, the appropriate hourly rate for that part should reflect the rates allowed for work in that location, whether that rate is lower or higher (provided that, if a higher rate is claimed, a decision to instruct solicitors in that location would have been reasonable). The location of a fee earner doing the work is determined by reference to the office to which s/he is, or is predominantly, attached.

In our view, the system of direct application of the approach to taxation of an independent solicitor's bill to a case such as this has relative simplicity greatly to recommend it, and it seems to have worked without it being thought for many years to lead to significant injustice in the field of taxation where justice is in any event rough justice, in the sense of being compounded of much sensible approximation.

Timescales



Change to E-Filing

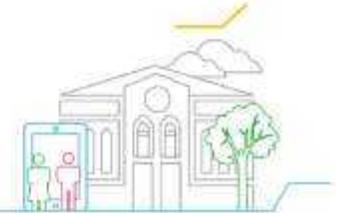
E-Filing does not currently have any ability to verify that the correct Payment By Account (PBA) number has been entered by the user. This has resulted in a high number of incorrect charges being processed against PBA accounts.

To rectify this, we are making changes to the system. With effect from 03 April 2023 the PBA number entered onto the system will be verified before the payment will be processed. The verification process links each individual PBA number to the correct user domain details held within the E-Filing data base. This change will mean that only users with a matching domain name will be able to make a payment using the firm's PBA number.

This change will prevent third parties from being able to make filings which require payments, and we are aware that this change may impact the way that Senior Courts Costs Office (SCCO) users file in E-Filing. If you are likely to be affected, you will want to consider other options for payment such as the use of card payments or to set up an E-file account. More information about this can be found on this link [HMCTS E-Filing service for citizens and professionals - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/hmcts-e-filing-service-for-citizens-and-professionals)

If you have any questions about this change, please contact the SCCO at scco@justice.gov.uk

For general CE-File guidance, please visit [HMCTS E-Filing service for citizens and professionals - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/hmcts-e-filing-service-for-citizens-and-professionals)



Justice matters

The Court office at The Senior Courts Costs Office, 7th Floor, Thomas More Building, Royal Courts of Justice, Strand, London, WC2A 3LL is open between 10:00 a.m. and 4:30 p.m. Monday to Friday. When corresponding with the court, please quote the SCCO reference number.



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