IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 2015/CLE/gen/00341

B E T W E E N

ASHLEY DAWSON-DAMER

Plaintiff

AND

(1) GRAMPIAN TRUST COMPANY LIMITED

(2) LYNDHURST LIMITED

Defendants

AND

Before:	**Assistant Registrar Akeira Martin**
Appearances:	**Benjamin Williams KC appearing with John Minns for the Plaintiff**
	Nicholas Bacon KC appearing with Vanessa Smith for the First Defendant
Hearing Dates:	**6th, 7th and 8th August 2025**
Ruling Date:	**21st November 2025**

RULING – PLAINTIFF'S PRELIMINARY OBJECTIONS

Taxation – Preliminary Objections – Indemnity Principle – Advocate-Witness Rule – Recoverability of Foreign Lawyers' Fees – Hourly Rates of Foreign Counsel – How English legal fees should be assessed on taxation in another jurisdiction - Factors for Consideration under the RSC 1978 – Necessary and Proper – Reasonableness – Scope of Costs Order

INTRODUCTION

[1] This Ruling is in relation to the Plaintiff, Ashley Dawson-Damer's **(the "Plaintiff")** preliminary objections which were raised ahead of the taxations of the First Defendant, Grampian Trust Company Limited's **(the "First Defendant")** bills of costs filed in this action.

[2] The Plaintiff also filed bills of costs in this action which are set to be taxed. Some of the findings of this ruling will affect the taxations of those bills of costs.

[3] By an Order for Directions made 30th April 2025 and filed 10th June 2025 it was ordered, *inter alia*, that ahead of the taxations of both parties' bills of costs, a preliminary issues hearing would be heard in relation to the Plaintiff's objections on the following points:

(a) Hourly rates;
(b) Scope of Costs Order dated 15th January 2020;
(c) Recoverability of Simon Taube KC's Fees; and
(d) Indemnity Principle. **(the "Preliminary Issues Hearing")**

[4] In support of the Plaintiff's Preliminary Issues Hearing, the Plaintiff relies on her Points of Dispute to the First Defendant's bills of costs filed on 8th February 2023 and 23rd August 2019 **(the "Points of Dispute")**, the Eleventh Affirmation of Ziva Robertson filed 25th July 2025 **(the "Eleventh Robertson Affirmation')**, the Plaintiff's Skeleton Arguments dated 25th July 2025 and in support, pleadings, other filed documents, decisions of the trial judge and other correspondences.

[5] In opposition to the Plaintiff's Preliminary Issues Hearing, the First Defendant relies on its Replies to the Points of Dispute, the Second Affirmation of Kirstie McGuigan filed 4th July 2025 **(the "Second McGuigan Affirmation")** and the First Defendant's Skeleton Arguments dated 25th July 2025 and in support, pleadings, other filed documents, decisions of the trial judge and other correspondences.

[6] At the Preliminary Issues Hearing Counsel for both parties, Mr. Benjamin Williams KC **("Mr. Williams KC")** for the Plaintiff and Mr. Nicholas Bacon KC **("Mr. Bacon KC")** for the First Defendant presented comprehensive and entertaining but very useful and informative oral submissions to the Court. However, at the time of the substantive drafting of this ruling, only one out of the three transcripts from the Preliminary Issues Hearing was completed and two days before the pronouncement of this ruling, the second of the three transcripts was completed.

[7] At the 3rd November 2025 Mention Hearing, I expressed my intention to postpone the commencement of the taxation based on the disadvantage of not having all of the

transcripts to refer to. However, both Mr. Williams KC and Mr. Bacon KC agreed to move forward without the benefit of the transcripts. In that regard, this ruling is drafted and concluded based on the written evidence and submissions provided to the Court.

BRIEF BACKGROUND

[8] The background of this action has been set out on multiple occasions in various rulings and judgments. However for completeness and for ease of reference I adopt the introduction as set out by the Privy Council in **Ashley Dawson-Damer (Appellant) v Grampian Trust Company Ltd and another (Respondents) (The Bahamas) [2025] UKPC 32.**

[9] The First Defendant is the corporate trustee of a family discretionary trust known as the Glenfinnan Settlement ("Glenfinnan"). The Plaintiff is a discretionary beneficiary of the Glenfinnan Settlement. The First Defendant exercised its discretionary power by making two appointments by which approximately 98% of the trust assets in Glenfinnan were transferred into new trust vehicles of which the class of discretionary beneficiaries did not include the Plaintiff. The Plaintiff sought to set aside those two appointments on the basis that they constituted an improper exercise of discretionary power by the trustee. More specifically, the Plaintiff argued that the trustee took into account irrelevant considerations or failed to take into account relevant considerations in exercising its discretion. There was, in other words, a breach of duty by the trustee by what was labelled "inadequate deliberation" and the Plaintiff therefore argued that the two appointments are voidable (i.e. liable to be set aside) and that it was appropriate for the Court to exercise its equitable discretion to set aside those appointments.

[10] At the Supreme Court it was held, considering the Plaintiff's wealth from other sources, among other things, that the First Defendant's actions did not amount to a breach of fiduciary duty. The Court of Appeal upheld the Supreme Court's decision.

[11] The Privy Council also considered the Plaintiff's wealth from other sources, but instead held that the First Defendant's actions did amount to a breach of fiduciary duty. The Board declined however, to exercise its discretion to set aside the appointments to other trust vehicles as they were valid and not voidable appointments and the assets which were left in Glenfinnan were still substantial.

[12] The First Defendant, being successful in the action at the Supreme Court, was awarded costs and filed the First Defendant's Trial Bill on 8th February 2023 **(the "Trial Bill")**. The First Defendant also found success in an interim application heard before the trial and filed the First Defendant's Account Summons Bill on 23rd August 2019.

[13] The Plaintiff, while not successful in the overall action, found success in several interlocutory applications which led to an award of costs being made in her favor and filed the following bills setting out her costs claimed as a result:

> Plaintiff's Account Summons Adjournment Bill filed 22nd August 2019
> Plaintiff's Second Security for Costs Bill filed 9th July 2020
> Plaintiff's Specific Discovery Bill filed 9th July 2020
> Plaintiff's Simon Taube QC Application Bill filed 9th February 2023
> Plaintiff's Trial Adjournment Bill filed 9th February 2023
> Plaintiff's Section 83 Application Bill Filed April 2019

Applicable Law

[14] While the parties initially disputed which rules the taxations would be governed by, they ultimately agreed that the taxations would be governed by the Rules of the Supreme Court, 1978 **(the "RSC")** and not the newly introduced Supreme Court Civil Procedure Rules, 2022 **("CPR")** as the hearings had been heard and completed prior to the latter's coming into force.

[15] While they both agree that the taxation is governed by RSC Ord 59 r 26(2) and that the taxation should proceed on a 'party and party' basis, they differ on the test for the allowance of such costs.

[16] **RSC Ord 59 r 26(2)** states,

> **"(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed."**

[17] The Plaintiff submits that it sets out a stringent standard, allowing only such costs as were 'necessary or proper' for attaining justice or defending or enforcing the beneficiary's rights and relies on **Berry v British Transport Commission [1962] 1 QB 306, 322** and **Smith v Buller (1874-75) LR 19 Eq 473, 475** in support of her position. She adds that necessary costs are more limited than those which are reasonable as the latter allows for a margin of appreciation, but the former is an irreducible minimum and that if costs were to be considered reasonable it would be a less generous definition of the word.

[18] The Plaintiff goes on to say that what is necessary or proper will depend on the factors which are set out in **McPhee v Stuart [2018] 1 BHS J No 18** namely the care, speed and economy of case preparation; the degree of responsibility accepted by the attorney; the

importance of the matter to the parties; and the novelty, weight and complexity of the case.

[19] With respect to the care, speed and economy the Plaintiff submits that economy is not circular for example, if a party instructs a very experienced attorney charging $1,000 an hour who accomplishes a task at twice the speed of a less experienced attorney charging $700 an hour, then the more expensive attorney's fees will be the (significantly) cheaper option, and this will be something that the court will naturally take into account on taxation.

[20] Although the First Defendant points out that Ms. Robertson's own rates are higher than their equivalent on the First Defendant's side, the overall impact of the vast experience of Ms Robertson's leadership brought to the Plaintiff's case is that the Plaintiff's legal expenditure was far lower overall.

[21] The Plaintiff submits that the First Defendant's spending on this litigation was unconstrained. Hence, it cannot justify the hourly rates it claims with an appeal to overall economy. The speed of the litigation was not a factor as the litigation was not conducted on an emergency or otherwise abridged timetable.

[22] With respect to the degree of responsibility, the Plaintiff submits that the Plaintiff is a private individual with a personal stake in the litigation whereas the First Defendant is a corporate trustee and shell company with no assets of its own with no personal interest in the transaction it was defending. The First Defendant justifiably brought the litigation on itself and the Plaintiff's lawyers took on a greater responsibility than the First Defendant's lawyers which was further diluted by the 43 lawyers acting on its behalf which meant that any individual lawyer shared responsibility with many others.

[23] As for the importance factor, the Plaintiff repeats that she had a personal interest in the litigation which the First Defendant brought on itself. In those circumstances, it can hardly be heard to assert the 'importance' of it defending itself as a justification for its huge legal spend, entirely disproportionate as it is to the sums spent by the Plaintiff, even though she had all the extra burdens of being the plaintiff.

[24] In relation to whether the matter was novel, weighty and complex, the Plaintiff submits that while this was substantial litigation it was not novel. It was a trusts case of a 'traditional chancery' character. Although it was a hard fought case, there were only 9 witnesses, around 2,000 documents in the trial bundles of which only a handful were actually central, and the trial lasted only three weeks even with all the challenges resulting from the pandemic and remote attendance.

[25] The case did not begin to compare with the largest corporate and insolvency cases, where there can be millions of documents requiring special software platforms to manage, and trials lasting months. The nature of the proceedings justified experienced lawyers

conducting trusts work, charging hourly rates commensurate with such work. However, it did not justify costs at the levels associated with the heaviest commercial litigation.

The First Defendant's Submissions

[26] The First Defendant also submits that on a party and party basis all costs shall be allowed as were necessary or proper for the attainment of justice and/or defending the rights of the First Defendant and also accepts that similar factors may be taken into account on taxation following **McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart [2018] 1 BHS J No.18**. The First Defendant adds however that the costs must also be seen to be reasonable.

[27] As for the factors for consideration, the First Defendant points out that the Plaintiff acknowledges that the matter was "of considerable importance" to her which is apparent from her pursuit of the litigation and conduct in so doing. The First Defendant submits that the matter was also of extreme importance to it and to the interests of the beneficiaries that benefitted from those appointments. The Plaintiff's claim was and is unprecedented in terms of contemporary proceedings in the Bahamian courts as it has resulted in one of the largest costs claims ever made in the jurisdiction purely as a result of the Plaintiff's relentless pursuit of the claim.

[28] The First Defendant submits that the action raised issues of considerable novelty and complexity both legally and evidentially. Two of the three main issues at trial (the question of Spey's intentions in 1992 and the alleged hostility of the Family Advisers towards the Plaintiff over many years) required very detailed consideration of a timeline beginning in or around 1988 and lasting until 2004 (when the Plaintiff ceased to communicate with the First Defendant) and the thousands of documents generated during that period.

[29] The third main issue (whether Grampian's deliberations in 2006/2009 were inadequate and a breach of trust) raised an important and novel issue about the correct legal test for setting aside a trustee's decision. This issue was ultimately the subject of Ashley's unsuccessful appeal to the Privy Council. Not only did the trial judgment address these novel and complex issues of law and fact but an interlocutory decision also made new law in The Bahamas on the interpretation of s. 83(8) of the Trustee Act, an interlocutory application to which Ashley sought the joinder of the Attorney General.

[30] The First Defendant submits that the proceedings were novel, weighty and complex and bitterly pursued by the Plaintiff, which resulted in an unprecedented remote trial of significant length. All aspects of these proceedings including the pleadings, evidence, discovery and, ultimately, the trial were complex and demanding. The Plaintiff's assertion otherwise is unsustainable.

Legal Analysis

[31] Before getting into the preliminary issues themselves, it is important to set the groundwork for the taxation. As the parties now agree, the taxation should be conducted pursuant to the provisions of the RSC on a party and party basis.

[32] In **Gary A. Ritchie v. Delores Victoria Cartwright [unreported] 2019/CLE/gen/00289 dated 11th March 2024**, Winder CJ concluded that because his judgment was reserved after the trial and prior to the CPR coming into effect, his decision on costs would be governed by the RSC.

[33] In the instant case the rulings and judgment of Winder J were all handed down prior to the CPR coming into effect. Additionally, all of the bills of costs referred to above were also filed before the CPR came into force. Accordingly, all taxations will be governed by the RSC.

[34] When the respective costs orders were made, there was no indication from Winder J (as he then was) that there was to be a departure from the usual costs order of costs being assessed on a party and party basis.

[35] When conducting a taxation on a party and party basis the first consideration must be whether the item claimed was necessary and proper to conduct the litigation and if so what would be the reasonable costs thereof. When considering what is reasonable, the taxing master would have to have regard to all the circumstances of the case. This was confirmed in multiple previous decisions, such as **Grand Bahama Airport Company Limited v. Wester Air Limited** and **Lyford Holdings N.V. v. Vernes Holding Ltd. 2018/CLE/gen/1050** where in the latter case Charles J set out the factors a Court should take into account when attempting to determine what is reasonable,

> **"Costs must be reasonable. In deciding what would be reasonable the court must take into account all the circumstances of the case, including but not limited to (a) any order that has already been made; (b) the care, speed and economy with which the case was prepared; (c) the conduct of the parties before as well as during the proceedings; (d) the degree of responsibility accepted by the legal practitioner; (e) the importance of the matter to the parties; (f) the novelty and complexity of the case; and (g) the time reasonably spent on the case: McPhee (as Administrator of the Estate of Thelma Mackey) v Stuart [2018] 1 BHS J. No. 18 [unreported] applied."**

[36] The Plaintiff sought to limit the application of Order 59, Rule 26 (2) to costs being necessary and proper however, in their Points of Dispute they speak to the reasonableness of costs; although I do note that the reference was made in relation to the CPR which the Plaintiff initially had argued the taxations would be governed by, but did add that if reasonableness was a consideration, it would be the least generous interpretation of the word.

[37] Accordingly, when conducting a taxation on a party and party basis, a taxing master must take into account whether the work done is necessary, proper and reasonable for the attainment of justice. In order to determine what is necessary, proper and reasonable I have to consider several factors:

(a) any order that has already been made;
(b) the care, speed and economy with which the case was prepared;
(c) the conduct of the parties before as well as during the proceedings;
(d) the degree of responsibility accepted by the legal practitioner;
(e) the importance of the matter to the parties;
(f) the novelty and complexity of the case; and
(g) the time reasonably spent on the case.

[38] How these apply to the hourly rates will be considered under the Hourly Rates section of this Ruling and how they apply to the entries claimed in the bills of costs will be considered at the taxations.

THE PRELIMINARY ISSUES HEARING

PRELIMINARY ISSUE ONE – WHAT HOURLY RATES SHOULD BE ALLOWED?

[39] At 3.14 of the Plaintiff's Points of Dispute the Plaintiff contends,

> **"3.14 The reasonableness of the fees of the English lawyers should be considered having regard to practices in England: McCullie v Butler (No 2) [1962] 2 QB 309. The English Civil Procedure Rules (Part 44) therefore regulate what these lawyers can charge and recover. The hourly rates charged by the English lawyers should also be assessed having regard to the guideline hourly rates determined to be reasonable between the parties in that jurisdiction. The English Court of Appeal has confirmed that a strong case must be made out for departure from such rates even in the heaviest litigation (which this is not): see Athena Capital v Holy See [2022] EWCA Civ 1061. There is no case for any uplift on such rates here.**
> **e. Hourly rates claimed**
> **McKinney, Bancroft & Hughes**
> **3.15 In light of the above the following rates taken from The Bahamas Bar Association historic figures and uplifted by inflation are reasonable for work done in the following years:**

Bahamas hourly rates							
Year		**Years standing <3**	**3-6**	**6-9**	**9-12**	**12-20**	**>20**
Source							

Bahamas bar associate							
2014		**166.09**	**213.56**	**284.70**	**355.97**	**474.58**	**593.20**
2015		**167.84**	**215.82**	**287.72**	**359.73**	**479.60**	**599.47**
World Bank Group Inflation Rate							
2016	**-0.3**	**167.34**	**215.17**	**286.86**	**358.65**	**478.16**	**597.67**
2017	**1.5**	**169.85**	**218.40**	**291.16**	**364.03**	**485.33**	**606.64**
2018	**2.3**	**173.75**	**223.42**	**297.86**	**372.40**	**496.50**	**620.59**
2019	**2.5**	**178.10**	**229.01**	**305.30**	**381.71**	**508.91**	**636.10**
2020	**0**	**178.10**	**229.01**	**305.30**	**381.71**	**508.91**	**636.10**
2021	**2.9**	**183.26**	**235.65**	**314.16**	**392.78**	**523.67**	**654.55**
https://data.worldbank.org/indicator/FP/CPI.TOTLZG?locations=BS accessed02.10.24							

Taylor Wessing LLP

3.16 The England & Wales judiciary has developed a significant body of case law and practice notes to ascertain what are reasonable hourly rates to charge for litigation solicitors based in London. In 2010 the Civil Justice Counsel published guideline hourly rates following extensive industry consultations. Taylor Wessing are located in London for which there are two bands for work undertaken in central London.

Grade	Fee earner	London 1 £	London 2 £
A	Solicitors and legal executives with over 8 years' experience	409	317
B	Solicitors and legal executives with over 4 years' experience	296	242
C	Other solicitors or legal executives and fee earners of equivalent experience	226	196
D	Trainee solicitors, paralegals and other fee earner	138	126

These guideline rates were increased in 2021 as follows:

Grade	Fee earner	London 1 £	London 2 £
A	Solicitors and legal executives with over 8 years' experience	512	373
B	Solicitors and legal executives with over 4 years' experience	348	289
C	Other solicitors or legal executives and fee earners of equivalent experience	288	260
D	Trainee solicitors, paralegals and other fee earner	198	148

3.17 The guidance defines the higher band (London 1) as "Very heavy commercial and corporate work by centrally based London firms. The Plaintiff's primary case is that the instant case does not fall within this band, and is London band 2 work. In broad terms, "London 2" work encompasses work done by firms of solicitors typically representing inter alia high net worth families and trust companies in Central London and the West End. The present case is submitted to fall within this category of litigation. The hourly rates offered by the Plaintiff in this case are based on Various Plaintiffs v News Group Newspapers Ltd 2023 EWHC 827 (SCCO) paras 87-92 which was substantial privacy litigation concerning a similar period of work. This litigation was, like the present case, litigation of a "private client" nature which was in fact much heavier and more complex than the instant case.

3.18 As stated above, the approach in England is that guideline rates should be applied unless a strong case is made to the contrary. There is no case for any enhancement on guideline rates here. The Bill of Costs fails to identify the qualifications of its senior fee earners and only trainee solicitors and paralegals have been identified by qualification and experience. The First Defendant is asked to provide this information to assess the Bill of Costs properly. The First Defendant assembled an enormous legal team which resulted in an extraordinary Bill of Costs. No individual lawyers, or even law firm, has shouldered the responsibility for the Claim and as a result the Plaintiff offers London 2 guideline rates for the London legal team.

3.19 In the following table for the Plaintiff therefore offers these Guideline Hourly Rates increased by UK inflation.

England and Wales London 2 Guideline Hourly rates					
Year	Grade				
	A	B	C	D	Average increased applied
2010	317.00	242.00	196.00	126.00	
2014	354.35	270.51	219.09	140.84	11.78
2015	354.49	270.62	219.18	140.90	11.83
2016	356.83	272.41	220.63	141.83	12.57

2017	366.41	279.72	226.55	145.64	15.59
2018	375.49	286.65	232.16	149.25	18.45
2019	382.21	291.78	236.32	151.92	20.57
2020	385.46	294.26	238.33	153.21	21.60
2021	373.00	289.00	260.00	148.00	

3.20 As indicated above, the Bill of Costs fails to provide the qualifications or experience of most fee earners and the First Defendant is asked to provide this information so the correct rate can be applied to each fee earner on assessment.

English counsel

3.21 The settled test for assessing the fees of English counsel was stated by Pennycuik J (as he then was) and has been constantly applied since:

'One must envisage a hypothetical counsel capable of conducting the particular case effectively but unable or unwilling to insist on the particularly high fee sometimes demanded by counsel of pre-eminent reputation. Then one must estimate what fee this hypothetical character would be content to take on the brief...There is, the nature of things, no precise standard of measurement. The taxing master, employing his knowledge and experience, determines what he considers the right figure.

3.22 The First Defendant has chosen to instruct pre-eminent counsel at a cost premium that is not just for the Plaintiff to pay.

3.23

3.24

3.25 In light of the Supreme Court Civil Procedure Rules, 2022, the rule 72.2(3) factors that apply and the size of the legal team the Plaintiff considers the following rates are just.

Fee Earner	Qualification Call/KC	Claimed £ ph	Offer £ ph
Simon Taube KC	1980, 2000	1,000	600 but not for any period in which his conflict of interest should have been apparent, not for any period after his replacement, from which point either his instruction was not reasonable or he was appearing qua witness not counsel.
Eason Rajah KC	1989, 2011	800	500

James MacDougald	**2011**	**250**	**250**

English costs lawyers
3.26 The rates are high for the costs lawyers for the preparation of a straightforward narrative Bill of Costs with little detail, and the London 2 rates should apply as per the below:"

Fee Earner	Qualification	Claimed $ ph	Plaintiff's Offer $ ph
Philip Daval-Bowden	**Cost lawyer (senior)**	**330.00**	**275.00**
Suzanne Homes	**Cost lawyer**	**250.00**	**210.00**

[40] By the Eleventh Robertson Affirmation, Robertson averred that although some of the Plaintiff's rates were higher than the First Defendant's hourly rates, there was good reason. Notwithstanding the rates being higher, the Plaintiff's arrangements led to her expenditure being significantly lower than the First Defendant's overall.

[41] Additionally, the skill and experience of the solicitors employed by the Plaintiff are reflective in the higher charging rates which the Plaintiff will be seeking the Court's approval of.

[42] Robertson stated that she had specialized in trust disputes since 1998, shortly after qualifying as a solicitor in 1997 and that she had experience working in both the United Kingdom and offshore jurisdictions, including as a solicitor advocate. She added that she ranked in the Legal 500 Hall of Fame. The combined rate of the lawyers at McDermott Will & Emery **("McDermott")** appeared to be lower than the combined rate of the lawyers at Taylor Wessing LLP **("Taylor")**, which the First Defendant seemed to overlook.

[43] In response to the First Defendant's contention that the solicitors' hourly rates were higher than Counsel's rates, that was reflective of the well-understood position that firm rates were often higher than Counsel's rates because the work done in the firm is different. She added that firms of solicitors also have much higher overheads than Counsel who operate as sole practitioners.

[44] By way of written submissions, the Plaintiff relies on the English Guideline Hourly Rates published in 2010 **(the "2010 GHRs")** and 2021 **(the "2021 GHRs") (collectively referred to as the "GHRs")** as the starting point for the determination of hourly rates. The Plaintiff explains that the GHRs are for use in inter partes (standard) taxations, which is a more generous basis for taxations than the party and party basis, as under the standard basis assessments reasonable, rather than necessary costs are recovered.

[45] By the 2010 GHRs, the rate for work conducted by grade A in central London was £317. The guideline rate for 2021 was £373. However, adjusting the 2010 GHR for inflation through to 2021 via the Bank of England inflation calculator in fact yields an hourly rate of £395. In other words, in real terms the 2010 GHR was higher than the 2021 GHR.

[46] As such, the 2010 GHRs remain perfectly useful for work conducted between 2010 and 2020, so long as they are adjusted for inflation, as the Plaintiff has always accepted they must be. Whichever figures are used, the First Defendant's costs claimed in the present case far exceed the London GHRs

[47] The Plaintiff relies on **Samsung v LG [2022] EWCA Civ 466**, where the English Court of Appeal stated,

> **"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."**

[48] The Plaintiff submits that the same approach was taken by the English Court of Appeal in **Athena Capital** where it was reiterated,

> **"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'. Birss LJ (another judge who had spent a lifetime in the London Business and Property courts, and who indeed has now been appointed as the judge in charge of them) added:**
> **there has been a view that the previous set of Guideline Hourly Rates... were not directed to the heaviest work such as takes place in the Business and Property Courts... Whatever the position was or was thought to be, it changed in the current set of Guideline Hourly Rates... 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... Therefore the London 1 band is directly applicable to this case and so a justification for the much higher rates was needed."**

[49] The Plaintiff submits that the decisions in the aforementioned cases have since been applied in significantly larger and more complex cases such as **Merricks v Mastercard [2024] Bus LR 1830** which is thought to be the largest collective action in English history, surveying alleged market abuse by credit card providers covering decades, and leading to a claim pleaded in excess of £14 billion.

[50] In **Merricks v Mastercard**, matters were so complex that the trial was split into multiple stages, and there were three trials on various preliminary issues alone (the case subsequently settled before there were then further trials): Roth J citing Samsung, stated that the assessment of costs should pay close regard to the GHRs. Roth J took the 2021 GHRs as his starting point for dealing with costs, but allowed a 30 per cent uplift. That uplift reflected not just the extraordinary difficulty of that case, but also the fact that the guidelines had been set in 2021 and the work done for the trials was in 2023.

[51] Between 2021 and 2023 there was high worldwide inflation, because of the invasion of Ukraine. The Plaintiff submits that that factor has no bearing on the present case, where the trial was conducted at a time of very low inflation.

[52] The Plaintiff also relies on **GS Woodland Court v RGCM Ltd [2025] EWHC 285**, another complex case in England's specialist Technology and Construction Court, involving a claim for damages against seven defendants where the total costs were estimated at over £23m. Despite the complexity of the case, Constable J, also citing the Samsung case, dealt with costs prospectively by determining costs budgets and concluded that guideline rates should be used as a reference point.

[53] The Plaintiff submits that London band 2, which is for work conducted by solicitors in the City and other parts of central London which is not 'very heavy commercial and corporate work' is applicable. Based on the standards of litigation in the Business and Property courts in London, which the Plaintiff submits is the appropriate standard in the present case.

[54] There were 9 witnesses and no experts. By the relevant standard, 2,000 odd documents is in fact a very small number – and no more than 20 or so documents are in fact identified as relevant to Winder J's decision. It is commonplace for disclosure to extend to hundreds of thousands or even millions of pages of documents. Nor is a three-week trial remotely exceptional by London standards, where it is very common for commercial or chancery trials to last for far longer.

[55] The key factual issue in this case was to establish the intentions of Spey when it settled funds on Glenfinnan. That entailed some forensic reconstruction because of the passage of time. But it can hardly be said to have made the present case 'very heavy' by the standards of commercial litigation in London which in fact was unexceptional. The only special feature was the value of the trust, which exceeded $400m and that while that is relevant to the characterization of the litigation, it is not determinative.

[56] In further reliance on **GS Woodland Court v RGCM Ltd**, the Plaintiff relies on the findings of Constable J who states,

> **"it is not helpful in an over generalised way to take broad comparisons with other cases between the amount at stake and the overall costs incurred and estimated by ratio. One of course steps back and looks at the number... but making comparisons to other cases can be unhelpful. A £100 million case**

may turn on a point of contractual interpretation. The fact that £100 million is in dispute has little to do with the amount that it would be reasonable and proportionate to spend... Similarly, you could have a low-value claim that is a "death-by-a-thousand-cuts" type of case where costs may end up being "disproportionate" if only the amount claimed, and not the complexity, is considered..."

[57] The Plaintiff goes on to say that any adjustment beyond the London band 2 hourly rate should only relate to the higher grades of solicitor and any such uplift should still yield a figure which is lower than the London band 1 rate.

[58] As for the hourly rates for English counsel, while there is no set guideline hourly rates, the applicable principle is that the court will only allow rates that are necessary, and costs resulting from a 'luxury' choice must fall on the party which made that choice – irrespective of whether the evidence suggests that in fact both parties made such a choice.

[59] In support of her contention the Plaintiff relies on the case of **Simpsons Motor Sales v Hendon Corpn [1964] 3 All ER 833** and the findings of Pennycuick J which is set out in her Points of Dispute above.

The First Defendant's Evidence and Submissions

[60] By the First Defendant's Reply to the Points of Dispute, the First Defendant stated that the hourly rates would be determined based on the hourly rates agreed by the Plaintiff with her own attorneys and solicitors. The multiple fee earners involved played a very limited role undertaking only discrete tasks during the 10 year period of litigation.

[61] By the Second McGuigan Affirmation, the First Defendant averred that by the Consent Order dated 16th September 2020 **(the "Consent Order")**, the parties are entitled to recover the costs of English solicitors McDermott for the Plaintiff and Taylor for the First Defendant and accepts the recovery of the fees of McDermott in principle.

[62] The First Defendant also averred that the Plaintiff's proceedings had been drawn out and complicated given the latter's manner of pursuit which is seen from the number of interlocutory applications and the further connected proceedings issued in 2018 in The Bahamas, in Bermuda and in England.

[63] Taylor was the First Defendant's long term legal advisers prior to the action and there was no dispute between the parties that it was necessary for the First Defendant to engage foreign legal counsel. Taylor's rates and the rates of King's Counsel were considerably lower than the hourly rates claimed by McDermott and reflect the market rate for comparative Band 1 firms in London and those sets of Chambers specializing in Chancery work.

[64] There was no justification for an English solicitor to charge hourly rates higher than King's Counsel. The Associate and Trainee/Paralegal hourly rates claimed by the

Plaintiff are also correspondingly higher than one would expect to see. Accordingly, the Plaintiff's rates are both excessive and unreasonable. The Plaintiff "faux shock" and assertion that the First Defendant's costs are "wholly unjust and disproportionate" must be viewed in the context and knowledge of the costs that the Plaintiff has herself chosen to incur and her own conduct.

[65] By the First Defendant's submissions, the First Defendant submits that the Plaintiff is wrong to rely so heavily on the GHRs as they are figures for courts carrying out a summary assessment of costs and therefore only apply to Fast Track claims or interlocutory hearings where the hearing has lasted less than a day.

[66] Therefore, to attempt to apply the GHRs to the substantive costs of proceedings, ongoing for 10 years, which culminated in a 21-day trial is misconceived and incorrect. At most the 2021 GHRs and not the 2010 GHRs are not determinative and hardly even a starting point.

[67] At para. 3.15 of the Points of Dispute, the Plaintiff seeks to rely on The Bahamian Bar Association's historic figures uplifted by inflation. However, In **Lyford Holdings N.V - v- Vernes Holding Ltd 23 February 2021**, Charles Lady Justice (as she then was) held that,

> **"the scale suggested by the Defendant (The Bahamas Bar Association Fee Scale) is outdated and needs to be urgently revised to reflect the realities of the present time".**

[68] The First Defendant argues that the Plaintiff is attempting to locate the lowest possible published rates in each jurisdiction and apply them, wrongly, to the hourly rates claimed by the First Defendant while maintaining a claim for commercial hourly rates on behalf of the Plaintiff which are far higher than those objected to.

[69] The First Defendant submits that it is a general principle of law that a litigant cannot approbate and reprobate and relies on the statement of Sir Nicolas Browne-Wilkinson V-C in **Express Newspapers Plc v News (UK) Ltd [1990] 1 WLR 1320** where he stated,

> **"There is a principle of law of general application that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt one stance, cannot thereafter be permitted to go back and adopt an inconsistent stance."**

[70] The First Defendant submits that the principle applies to costs proceedings, as was seen in the case of **Eight Representative Claimants v MGN Ltd [2016] EWHC 855 (Ch)** where it was held that a paying party could not reverse its previously held position in subsequent detailed assessment proceedings.

[71] The First Defendant further submits that this case was novel, weighty and complex as the sums involved were considerable and the proceedings raised issues of considerable novelty and complexity which were bitterly pursued by Plaintiff, resulting in an unprecedented remote trial of significant length. The issues at trial were complex, both legally and evidentially. Two of the three main issues at trial (the question of Spey's intentions in 1992 and the alleged hostility of the Family Advisers towards the Plaintiff over many years) required very detailed consideration of a timeline beginning in or around 1988 and lasting until 2004 (when the Plaintiff ceased to communicate with the First Defendant) and the thousands of documents generated during that period.

[72] Additionally, the third main issue (whether the First Defendant's deliberations in 2006/2009 were inadequate and a breach of trust) raised an important and novel issue about the correct legal test for setting aside a trustee's decision. This issue was ultimately the subject of the Plaintiff's unsuccessful appeal to the Privy Council.

[73] Not only did the judgment address these novel and complex issues of law and fact but an interlocutory decision also made new law in The Bahamas on the interpretation of s. 83(8) of the Trustee Act, an interlocutory application to which the Plaintiff sought the joinder of the Attorney General.

[74] The First Defendant adds that it is perfectly legitimate for a court to compare the rates claimed by either party when considering whether the rates claimed are reasonable and relies on **Deutsche Bank AG v Sebastian Holdings Inc and Mr Alexander Vik SC-2019-BTP-000531, In the matter of Vadim Shulman -v- Igor Kolomoisky and Gennadiy Bogolyubov SC-2019-BTP-000248 24 June 2020, In the matter of General Shopping E Outlets Do Brasil *SA* 25 August 2020 FSD 58 and 59 of 2019 (IKJ)** in support of this contention.

[75] In **Orwin v British Coal Corporation [2003] EWHC 757 (Ch)** Lawrence Collins J. (as he then was) commented:

> **"In these days, where summary assessment has proved a very useful tool in doing justice and preventing unnecessary applications, I am sure that looking at the fees incurred by the opposing party has become a more important factor (although still in no way conclusive) in the assessment process than it was in 1964. I see no reason why this should not also be true in the process of detailed assessment."**

[76] The First Defendant contends that there is no reason whatsoever to allow the First Defendant's lower hourly rates than those agreed by the Plaintiff with her own solicitors/attorneys and which she contends are reasonable when seeking them against the First Defendant.

[77] As for English Counsel, the First Defendant submits that the assignment of an hourly rate was not the proper approach to the assessment of Counsel's fees. While they may be relevant, they were not determinative of the reasonableness of the overall fees charged.

Brief fees and other work would be assessed by reference to a number of factors including the hourly rate.

[78] The First Defendant also relies on Pennycuick J's 'hypothetical counsel' test in **Simpsons Motor Sales (London v Hendon Borough Council [1965] 1 WLR 112, at 117** as a starting point.

[79] The First Defendant cited **Loveday v Renton (No 2) [1992] 3 ALL ER** which was a case where counsel had spent many hours preparing certain written submissions at the request of the court. Fees (which were additional to the brief fees) were claimed by reference to the actual number of hours worked, this being at hourly rates that were based, pro rata, on the refreshers. Hobhouse J agreed with the Master's approach and found that such work should generally be included within the brief fee and that hours worked cannot as such be remunerated as they do not relate to work covered by a certificate or by actual instructions.

[80] The approach that the hourly fees was not the proper assessment to a brief fee was also followed by Cooke J in **XYZ v Schering Health Care Ltd, Re Oral Contraceptive Group Litigation [2004] EWHC 823 (QB)** who accepted that the hourly rate could be taken into account but was not determinative.

[81] In **East Sussex Fire and Rescue Service v Austin [2019] EWHC 1455 (QB)**, Lambert J heard an appeal from an assessment in which Senior Costs Judge Gordon-Saker had reduced leading counsel's hourly rate by 20 percent but had then reduced leading counsel's brief fee by an amount that was proportionally less (namely, by 10 percent). The appellant (the paying party) said that this was wrong as the reduction ought to have been the same. Lambert J dismissed this ground in the following way:

> **"The appellant's difficulty here is that, although there was discussion during the hearing of the brief fee and various formulations of hours spent in preparation, the Master acknowledged that brief fees are not calculated by reference to hourly rates and that the proper measure of counsel's fees is to estimate what fee a hypothetical but not pre-eminent counsel, capable of conducting the case effectively, would be content to take on the brief. This is a matter for the judgement of the Costs Judge using his or her knowledge and experience (see Simpsons). The Master set out the test: "effectively here we are looking at a reasonable fee for leading counsel for three weeks work, two weeks of hearing and a week of preparation." I do not therefore accept that the Master when making his reduction in the brief fee was doing so exclusively by reference to hourly rates and the number of hours of preparation involved. For this reason, this ground of appeal also fails."**

[82] The practice was also confirmed by the Privy Council's Practice Direction No.8 – Costs which states at para. 13.12,

"It should be borne in mind that the number of hours spent by counsel in preparation is rarely of assistance to the Costs Officer when assessing the amount of counsel's fees at any stage of the proceedings."

[83] The First Defendant submits that it is trite costs law that the court must take into account all the relevant circumstances, and this being so, circumstances may exist in which a reasonable brief fee may be higher than the fee that would be allowed solely by reference to time spent.

[84] The First Defendant adds that a reasonable brief fee may exceed that which would be allowed by reference to time, and factors such as 'the relevant expertise of Counsel', 'Counsel's commitment to a fixed hearing date', 'the urgency of the matter' and 'any expenses incurred by Counsel'.

[85] In relation to the Costs Lawyers, in the First Defendant's Points of Reply it does not accept that the Bill of Costs was straight forward or that it contains little detail. The First Defendant noted that the Plaintiff's costs lawyer charged GBP185.00, approximately B$234 per hour, however the Plaintiff's costs lawyer presumably undertook his work drafting the Plaintiff's Bill of Costs in 2019 whereas the First Defendant's cost lawyer was primarily involved in 2022.

[86] The First Defendant's senior costs lawyer is based in the Cayman Islands and specializes in the quantification of legal costs in the Cayman Islands and The Bahamas. The reasonable hourly rate agreed reflects this specialism and the higher overheads of operating in this jurisdiction.

Legal Analysis

Bahamian Hourly Rates

[87] It is common knowledge in this jurisdiction that the 19 year old Memo to The Bahamas Bar Association from Mr. Brian Simms dated 2nd November 2006 **(the "2006 Memo")** which was sent as a recommendation for the increase of counsel and attorney-at-law's fees from the 1984 figures, is the only recent guideline figures for hourly rates in this jurisdiction.

[88] Although the 2006 Memo was prepared some 19 years ago, some attorneys and judicial officers alike still make attempts to use the rates set out therein as a starting point and apply inflation to increase it to current standards. This usually presents a lesser figure than the rates some law firms charge their clients, as acknowledged by Charles J. (as she then was) in **OPAC (Bahamas) Ltd v (1) Duane Bennett Parnham and (2) Leigh Magdalene Parnham [2019/CLE/gen/00127]** which she referenced in **Lyford Holdings N.V. v. Vernes Holding Ltd**, where it was acknowledged that using an inflation calculator would not reflect the hourly rates more recently charged by attorneys.

[89] Moreover, there are numerous decisions in the Supreme Court and the Court of Appeal that speak to the issue that not having set guideline hourly rates may cause for judicial officers sitting as taxing masters which also makes the urgent call for guideline hourly rates to be set in stone. Accordingly, I do not see the need to belabor the point.

[90] There are some taxing masters who have used inflation in an attempt to set current hourly rates.

[91] In **Garet O. Finlayson et al v. Caterpillar Financial Services Corporation SCCivApp No. 99 of 2022**, Deputy Registrar Pennerman **("DR Pennerman")** also highlighted the difficulty with taxing masters using inflation calculators to attempt to mimic hourly rates reflective of the current hourly rates lawyers charge their clients; noting that in **Lyford Holdings N.V. v. Vernes Holding Ltd** the United States' Department of Labor CPI inflation calculator, and the Bank of England's ("UK") inflation calculator were referenced and the vast disparity in the figures produced by the respective calculators.

[92] DR Pennerman concluded that her research had revealed that the respective inflation calculators were programmed with the specific inflation data relevant to the United States and the United Kingdom and could not readily be adopted to reflect the specific rate of inflation in The Bahamas to be applied in a taxation.

[93] In **Dr. Gauri Shirodkar v The Bahamas Medical Council 2021/PUB/jrv/00003**, Klein J. also discussed the application of inflation for hourly rates, finding that the CPI inflation calculator used by the US Department of Statistics alone was a blunt instrument on which to revise fees. Klein J went on to consider the rate allowed by Charles J. in **Lyford Holdings v Vernes**.

[94] Given the uncertainty surrounding the use of inflation calculators, I will assess the hourly rates based on my and other taxing masters' experiences in taxations which is in line with the **Legal Profession (Code of Conduct) Regulations** which states that one of the factors to consider in assessing whether a fee is reasonable is the customary charges of other attorneys of equal standing in like matters and circumstances.

[95] In **Dr. Gauri Shirodkar v The Bahamas Medical Council**, Klein J. on conducting a summary assessment for legal work carried out in 2023, assessed the hourly rate of a King's Counsel who was just under 10 years called at $900.00. Klein J. assessed an attorney being 10 years called at $350.00. He also noted that he had seen fees claimed from between $600-$1,200 for very senior attorneys and silks which were taxed by Registrars at various gradations in between. Klein J. acknowledged that the case raised a novel issue of statutory interpretation, which was important not only to the client but had wider public interest in that it sought to clarify whether Parliament intended to provide rights of appeal to a category of medical professionals, in this case specialists.

[96] In **Maurice Johnson v Bahamas Waste Ltd. 2022/COM/lab/00054**, Klein J. again was tasked with assessing hourly rates in a summary assessment for legal work carried out in 2024. The award of costs stemmed from an application by the defendant during the

course of trial for the admission of computer-generated evidence. He allowed the hourly rate of $550.00 for an attorney with 16 years called.

[97] In **Gateway Ascendancy Ltd. v. Bertram Alexander Wallace 2013/CLE/gen/01179**, Klein J conducted a summary assessment with respect to costs incurred when the Court considered an application to set aside the plaintiff's writ of possession on the ground that it was filed outside of the applicable limitation period. He considered the amount which was in issue in the case and the obvious significance of the matter to the parties. He allowed the hourly rate of $400.00 as a reasonable rate for counsel with just over 10 years' called.

[98] In **Patrick Tahr et al v. Hon. Elsworth Johnson (In his capacity as the Minister Responsible for Immigration) et al 2021/CLE/gen/00030**, Deputy Registrar Toote (as he then was) **("DR Toote")** considered the hourly rates to allow when assessing costs which were ordered to be fixed after granting the plaintiff leave to enter a final interlocutory judgment against the defendant who had failed to file a defence on 27th October 2022. DR Toote assessed the following hourly rates to reflect hourly rates previously awarded. For Queen's Counsel, 45 years called, he allowed $950.00, for an attorney called 11 years he allowed $450.00, for a Registered Associate, 1 year called at the time he allowed $350.00 and for an attorney called 5 years he allowed $350.00.

[99] In **Garet O. Finlayson et al v. Caterpillar Financial Services Corporation,** DR Pennerman assessed the hourly rate for an attorney over 20 years called at $550.00, the hourly rate for an attorney over 6 years but not 9 years called at $280.00 and the hourly rate for an attorney over 3 years called at $145.00.

[100] In **Johann D. Swart et al v. Apollon Metaxides et al SCCivApp No. 78 of 2012**, Registrar Humes-Ferguson (as she then was) **("Registrar Humes-Ferguson")** was tasked with taxing the Appellant's bill of costs filed in 2017 for work done around that time. Registrar Humes-Ferguson allowed the hourly rate of $750.00 - $800 for Queen's Counsel called 40 years, the hourly rate of $250.00 to a Registered Associate and the hourly rate of $175.00 to attorneys who were 6 years called.

[101] The aforementioned cases display the range of hourly rates applied by the taxing masters with consideration to the type of cases and the years that the attorney was called to The Bahamas Bar.

[102] This leads to the application of the factors to be considered. While I do not consider the matter to be novel or legally complex as the main issue was whether the First Defendant as a trustee breached its fiduciary duty, it is evident that this was a heavily litigated and factually complex trust case which required the expertise of specialized English trust attorneys and Kings Counsel.

[103] As noted by Winder J (as he then was) at paras. 43 - 45 of his judgment dated 17th January 2022, the evidence in the trial was taken within a 16 day period and the trial itself lasted 21 days. There was over 2000 pages of evidentiary documents comprised of 21

lever-arch files. The matter was factually complex in the sense that Winder J had to consider information and evidence dating back to the 1980's to gain an understanding of the numerous levels of the case in order to make his considerations. Likewise, the parties had to prepare and produce evidence from that time frame to set out their respective positions for the case.

[104] The matter was commenced in 2015 and was completed at the Supreme Court level in 2022, some 7 years, before going before the Court of Appeal and later the Privy Council. I also note however, that while the First Defendant was the overall successor in the matter, the Plaintiff was successful in 6 of the interlocutory applications it launched. There is no doubt that the matter was of significant importance to both parties as the Plaintiff wished to confirm her and her family's entitlements to trusts which she was thought to be a beneficiary to and to the First Defendant who I am sure did not want to be seen as breaching its fiduciary duty to the beneficiaries of the trust it was beholden to and who had to meet every claim made by the Plaintiff.

[105] In light of all of the circumstances and my reasoning and conclusion above I have made a determination with respect to the hourly rates of the Bahamian attorneys for the First Defendant which will be applied in the taxations which I consider to be reasonable and I set them out in the table at Annex 1 of this Ruling.

[106] A separate consideration and subsequent determination will be made with respect to the hourly rates of the Plaintiff's Bahamian attorneys ahead of the taxations of her bills of costs.

English Hourly Rates

[107] The parties agree that the hourly rates which should be applied are those that would be applied from their jurisdiction, England and rely on the findings in **McCullie v Butler [1961] 2 All ER 554** which is where the principle that the proper amount to be allowed for disbursements of a foreign agent is the proper rate of charge in the country concerned, for the performance of the necessary services through the agent employed, was derived.

[108] This practice has also been implemented by the Judicial Committee of the Privy Council as stated in its **Practice Direction 9: Costs** at para. 9.53 under the heading 'Guidelines on Fees Allowed' and the subheading 'Solicitors' that the Costs Officer will have regard to the hourly rates generally allowed in the relevant jurisdiction for the costs of attorneys/solicitors based outside the United Kingdom.

[109] In **Societa Finanziaria Industrie Turistiche SpA v Manfredi Lefebvre D'Ovidio De Clunieres Di Balsorano [2006] EWHC 90068 (Costs),** Master Gordan-Saker **("Gordon-Saker J.")**, prior to embarking on a detailed assessment, had to consider preliminary issues raised by the paying party, in relation to claims for fees incurred in Italy. A worldwide freezing order was granted restraining the English domiciled Defendants from dealing with their assets. The First Defendant's application to discharge the freezing order was granted and the First Defendant was awarded costs. Prior to the

detailed assessment, the preliminary issues were set for hearing as one half of the costs claimed was for fees incurred in Italy.

[110] Gordon-Saker J. acknowledged that there was little direct authority as to how the English Court should assess the fees of overseas lawyers and considered three authorities which were provided by Counsel in the present action which he felt was relevant to the principle,

"23. There is little direct authority as to how an English court should assess the fees of overseas lawyers. My attention was drawn to three cases, all of which pre-date the Civil Procedure Rules 1998.

24. In *Wentworth v Lloyd [No 2]* (1865) 34 Beav 455 the question arose as to how the taxing master should tax the "enormous amount of costs" that had been incurred in Australia in the examination of witnesses there. The Master of the Rolls declined to send the bill to Australia for taxation but held that:

> **"... the Taxing Master must tax this portion of the bill according to the rules and in the way in which it would have been taxed there. If any matter of difficulty should arise, he must refer for information to Australia."**

25. In *Slingsby v Attorney General* [1918] P 236 the receiving party sought to recover £3,890 in respect of the fees of American lawyers for obtaining evidence in the United States. In his written reasons the Registrar concluded:

"In this case the bulk of the evidence was taken in America, and the charges for the work done there, in my opinion, are payable unless it is very clearly shown either that the charges are excessive according to the scale of charges payable in that country or that any particular charge related to an issue not relevant to the matter before the Court." (Quoted in the judgment of Swinfen Eady LJ at p.243)

26. The Court of Appeal held that the Registrar had incorrectly reversed the burden of proof and that it was for the receiving party to show that the amount was fair and reasonable and should be allowed. There was not however any criticism of the Registrar's conclusion that the American fees should be measured "according to the scale of charges payable in that country".

27. In *McCullie v Butler* [1962] 2 QB 309 the question arose as to whether the solicitors for an unsuccessful legally-aided plaintiff could recover on a taxation against the Legal Aid Fund the fees of Scottish solicitors who had been instructed as agents to obtain evidence. In holding that such fees were allowable Diplock J (as he then was) said (at p.313):

"I should add that, just as in the case of other foreign lawyers, the proper amount to be allowed for disbursements is the proper rate of charge in the country concerned, in this case Scotland, for the necessary services of the agent employed. To avoid any difficulty for the taxing master in making up his mind on what the proper rate of charge for services is, it seems to me to be very desirable that when an item of this kind is included in the bill of costs there should be a detailed statement of the circumstances which required the services of the foreign lawyer or, in this case, the Scottish solicitor, and that there should be a detailed charge for the individual items."

[111] Gordon-Saker J. held that,

"36. In my view one has to take a common sense approach – and that is the approach taken by the Courts in *Wentworth*, *Slingsby* and *McCullie*. This work was done in Italy. The Italian lawyers have charged their fees in accordance with their local practice."

.....

42. In my judgment the answer to the first issue is that the amount of the Italian lawyers' fees must be assessed according to the rules and in the way in which they would have been assessed in Italy. But that does not prevent the paying party from contending on detailed assessment that the fees are disproportionate and unnecessary or were unreasonably incurred and so should not be allowed at all."

[112] Notwithstanding a slight distinction in the facts of **Societa Finanziaria Industrie Turistiche SpA v Manfredi Lefebvre D'Ovidio De Clunieres Di Balsorano,** as the English fees are being considered as disbursements in The Bahamian jurisdiction for work done in England but for Bahamian proceedings, I consider the case and the considerations of the judge applicable.

[113] Accordingly, the fees of the English lawyers which have already been agreed to be recovered as disbursements pursuant to the Consent Order, must be assessed according to the assessment rules in England but must also be considered to be necessary, proper and reasonable as required by Ord 59 of the RSC.

[114] That is just the starting point for this preliminary issue as the parties differ on how the English hourly rates are allowed. The Plaintiff submits that the 2010 GHRs, particularly London Band 2 are useful for the hourly rates of the First Defendant's English attorneys as the case was not a novel and complex case.

[115] On the other hand, the First Defendant submits that while the 2021 GHRs are a starting point a greater amount should be considered because the case was in fact novel and complex. The First Defendant also submits that Bahamian precedent was created by one of the interlocutory decisions in the case.

[116]I thought it wise to visit the English Judiciary's Courts and Tribunal website in an attempt to ascertain the intention behind the GHRs and the applicability to detailed assessments.

[117] Under the FAQ page of the official website, which clearly was published after the 2010 GHRs, it was explained that the GHRs were introduced to assist judges who were faced for the first time with the task of making a summary assessment of costs at the end of a short hearing as a result of the Woolf reforms and the implementation of the Civil Procedure Rules in the late 1990s.

[118]The 2010 GHRs were a simple inflationary uplift from the 2009 figures; the uplifted 2010 GHRs being accepted by the Master of the Rolls as an interim measure and as guideline, broad approximations only. The 2010 GHRs do not only apply to solicitors but also to fee earners including legal executives, paralegals and trainee fee earners or fee earners of equivalent experience. The 2010 GHRs do not apply to costs lawyers and costs clerks.

[119]The 2010 GHRs have 3 national bands with Band 2 and Band 3 effectively being the same. There are 3 London Bands, the City of London, Central London and Outer London. The rates for Outer London, Bands A and B reflect the wide range of work types transacted in those areas to reflect the differing costs of various locations, for example, salary and accommodation costs, although variations were considered likely at the time.

[120]The 2010 GHRs are applicable to fast track or multi track litigation in all civil cases where a summary assessment of costs was ordered but was not relevant to small claims costs or fixed costs regime. While there were no different rates for different types of work, it was a starting point for specialist and complex work. The rates for Outer London, Bands A and B, reflect the wide range of work types transacted in those areas.

[121]In April 2015, the Rt Hon Lord Dyson, Master of the Rolls and Head of Civil Justice issued a statement on the 2010 GHRs.

> **"I am conscious of a number of trends in the legal services market and other factors that are rendering GHRs less and less relevant. They include, but are not restricted to:**
>
> - **advances in technology and business practices and models;**
> - **the ever-increasing sub-specialization of the law which is seeing the market increasingly dictate rates in some fields (particularly commercial law);**
> - **the judiciary's use of proportionality as a driving principle in assessing costs;**
> - **the greater adoption of (and familiarity with) costs budgeting amongst the judiciary and practitioners alike.**
>
> **Not least, I hope, of such factors, is a trend towards the greater use of fixed costs in litigation. I have long advocated their wider application, and will continue to press this point to Ministers and others in the hope that this important element of the Jackson reforms is implemented.**

Less relevance is not the same as no relevance, and I am conscious that there are still many uses to which GHRs are put. They remain an integral part of the process of judges making summary assessments of costs in proceedings. They also form a part, even if only a starting reference point, in the preparation of detailed assessments. They also provide a yardstick for comparison purposes in costs budgeting. I know that for some smaller practices GHR also offer a rate to base practice charges on, and to demonstrate to clients a national benchmark. I am not therefore suggesting that the existing GHRs no longer apply. The existing rates will therefore remain in force for the foreseeable future, and will remain a component in the assessment of costs, along with the application by the judiciary of proportionality and costs management."

[122] **The Civil Court Practice** also known as The Green Book also spoke to the GHRs and their introduction from 2010

"Hourly expense rates for solicitors

[CPR 44.4 [1A]]

The method of assessing the solicitor's hourly charge based upon expense rate and uplift (referred to as 'A' and 'B') has been replaced with a simple hourly charge (before the application of any agreed success fee the subject of a conditional fee agreement). The appropriate hourly charges are set out in the Senior Courts Costs Office's Guide to the Summary Assessment of Costs (see also para CPR 48 GHR). It is to be stressed, however, that these are rates appropriate where the court is making a summary assessment of costs. They may helpful to the judge where a detailed assessment is being undertaken. However, it is a misconception to say that the GHR are the starting point for detailed assessment. They are not – see judgment of Choudhury J in *Harlow District Council v Powerrapid Ltd [2023] Costs LR 281* (see CPR 44.4 [3] below).

The guideline hourly rates were published in 2010. They remained unaltered for over a decade. A review of those rates by a working group headed by Mr Justice Stewart was commissioned by the Master of the Rolls in 2020 whose remit was to conduct an evidence-based review of the basis and amount of the guideline hourly rates and to make recommendations to the Deputy Head of Civil Justice and to the Civil Justice Council. The working group obtained evidence between 27 September 2020 and 27 November 2020 as to what had been allowed by costs judges and costs officers on detailed assessments (including provisional assessments) which they had undertaken. A report written for the use of the senior judiciary was published in draft in January 2021 which made recommendations (see CPR 44.4 [3]) and invited submissions during a consultation period which ended on 31 March 2021, prior to the publication of the Final Report on 30 July 2021. On 17 August

2021, Vos MR accepted the recommendations in full. Subsequently, the rates have been increased by in line with the Services Producer Price Index (SPPI)."

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It is important to note that the GHR apply to summary assessments. Contrary to arguments often advanced before the costs judges, they are not the starting point for detailed assessment. In *Harlow District Council v Powerrapid Ltd [2023] Costs LR 281*, Choudhury J observed that the GHR 'may also be a helpful starting point on detailed assessment' (Guide at [28]), but that the Guide was principally intended for summary assessments. Thus the Master had been correct in carrying out a detailed assessment, to apply the 'seven pillars of wisdom' in CPR 44.4(3) when dealing with hourly expense rates, and to have concluded that the GHR '... were not particularly useful in this case' [judgment para 88].

As to the 'going rate', see *Eurosail-UK 2007-4BL plc v Wilmington Trust SP Services (London) Ltd [2022] EWHC 1019 (Comm), [2022] Costs LR 965* in which HHJ Keyser in the Commercial Court allowed hourly expense rates for the solicitors in area London 1 of £650 at Grade A against a claim for £800 and £200 at Grade D instead of £257."

[123] In **EVX (a minor by her mother and litigation friend) v Smith (personal representative of the estate of Dr Peter Smith, deceased) [2022] Lexis Citation 107**, Costs Judge Brown of the Seniors Courts Cost Office held,

> **"50. Although the Guideline Hourly Rates ('the GHR') are no more than a guide and a starting point at that, for summary assessment, nevertheless they are intended to be reflective of rates actually charged; and they are, of course, generally taken as a starting point for detailed assessment."**

[124] I then went on to consider cases, from different English courts, in an attempt to determine how Courts were applying the 2010 GHRs.

[125] In **Re PLK and others [2020] Lexis Citation 325**, Master Whalan of the English Senior Courts Cost Office addressed the 2010 GHRs and their application to the assessment of costs in the Court of Protection. He also discussed raising the rates by inflation and the issues thereof.

[126] Master Whalan was tasked with considering the method of assessment of the hourly rates claimed by Deputies when assessing costs incurred in the Court of Protection, whether the GHRs applied or the CPR 44.3(3), whereby the GHRs are utilised as merely a 'starting point' and not a 'starting and end point'. The assessments appeared to have been some 8 – 9 years after the 2010 Guideline Hourly Rates.

"30. .....Every assessment is conducted by reference to the procedural guidance set out in CPR 44.3(3). Although the GHR is adopted properly as a 'starting point', most COP bills will be properly assessed by Costs Officers, who will apply the relevant GHR unless there is good reason to depart from them. Some bills – in the future, as now, a small minority of the total – will be forwarded to Costs Judges for assessment, mainly because the total sum claimed is large or because the assessment raises a particular point of difficulty or complexity. Then, as now, Costs Judges may depart from the GHR if there is a good, case specific reason for doing so. In general, however, COP assessments can be conducted by Costs Officers utilising the GHR as the reasonable hourly rate. The issue as to the appropriate status or grade of fee earner for the work in question will always be a matter for discretion of Costs Officers and/or Costs Judges."

.....

32. In support of the secondary argument the applicants have filed evidence of RPI inflation between 2010 and 2019, and of salary increases in various COP firms over the same period.

33. The Brown Shipley & Co. report entitled 'SCCO Guideline Rates and the Impact of Inflation' and dated October 2019 demonstrates an RPI inflation rate increase of 31% between 2010 and the end of 2018. The hourly rates claimed in the bills drafted by Clarion and considered in this assessment all apply RPI inflation to the 2010 GHR. Indeed, this is the only basis upon which the hourly rates are argued in the PLK, Thakur, Chapman and Tate bills. Mr Wilcock submits, as a secondary alternative to his primary argument, that the court 'is invited to apply RPI inflation to the GHR and allow the rates as claimed' (SA, paragraph 49). But the problem with this approach (at least in empirical terms) is that most official indexes of the impact of inflation prefer the CPI to the RPI rate. The official rate of UK inflation has used the CPI since 2004. Dr Friston, as Mr Wilcock acknowledges, uses CPI inflation in his table(s) at 68.3 to 68.10 in the third edition of Friston on Costs. CPI inflation from 2010 to 2019 is approximately 21%.

34. The evidence on salary increases adduced by the applicants' witnesses again suggests some considerable variation dependent upon geographical locality, the grade of fee earners and, I suspect, other firm-specific factors. At Kingsley Napley LLP salary increases between 2010 and 2020 varied between 25% and 50%, corresponding to an average increase of 33.5%. Enable Law reports salary increases averaged 32% between 2013 and 2020 (i.e. a 7 year period). In contrast, at Boyes Turner LLP, salary increases for the COP team between 2010 and 2020 total 11- 13%. Russell Caller, a director of The Professional Deputies Forum, adduces evidence of salary increases (since 2010) for private client solicitors in the regional offices of a leading firm; London 21.5%, Guildford 21.4% and Cheltenham 14.9%, producing an overall average of a cumulative 19.6% salary increase between 2010 and 2020. Again, therefore, the evidence indicates a fairly broad range of salary

increases, in circumstances where the uplifts are dictated (at least in part) by subjective factors.

35. I am satisfied that in 2020 the GHR cannot be applied reasonably or equitably without some form of monetary uplift that recognises the erosive effect of inflation and, no doubt, other commercial pressures since the last formal review in 2010. I am conscious equally of the fact that I have no power to review or amend the GHR. Accordingly my finding and, in turn, my direction to Costs Officers conducting COP assessments is that they should exercise some broad, pragmatic flexibility when applying the 2010 GHR to the hourly rates claimed. If the hourly rates claimed fall within approximately 120% of the 2010 GHR, then they should be regarded as being prima facie reasonable. Rates claimed above this level will be correspondingly unreasonable. To assist with the practical conduct of COP assessments, I produce a table below which demonstrates the effect of a 20% uplift of the 2010 GHR. I stress again that I do not purport to revise the GHR, as this court has no power to do so; instead this is a practical attempt to assist Costs Officers and avoid unnecessary delay (caused by individual re-calculation) in a busy department conducting over 8000 COP assessments per annum:

	Guideline Hourly Rates			
Bands	A	B	C	D
London 1	£490	£355	£271	£165
London 2	£380	£290	£235	£151
London 3	£275-320	£206-275	£198	£145
National 1	£260	£230	£193	£142
National 2	£241	£212	£175	£133

This approach can be adopted immediately and is applicable to all outstanding bills, regardless of whether the period is to 2018, 2019, 2020 or subsequently. It goes without saying that this approach is subject ultimately to the recommendations of Mr Justice Stewart and his Hourly Rates Working Group and the Civil Justice Council.

Ultimately the recommendations of the Working Group must be adopted in preference to my findings."

[127] In **Cohen (as executor of Eric Hermes, deceased) v Fine and others [2021] 4 WLR 1,** a case commenced in 2019, **Hodge J,** sitting as a High Court Judge heard an appeal requiring him to consider the proper approach to the summary assessment of costs.

[128] It is common ground that the GHRs were created for Summary Assessment of Costs but could also be used for detailed assessments. Therefore, I consider Hodge J's findings, for the purposes of my review, helpful.

[129] Hodge J discussed, inter alia, the 2010 Guideline Hourly Rates,

> **"28 In my experience of sitting in the Business and Property Courts, both in the north-west and in the Rolls Building, the present Guideline Hourly Rates are considerably below the rates actually being charged by the solicitors who practise in those courts. Likewise, the Table of Counsel's Fees bears no relationship to the fees which the courts see being charged for counsel appearing in the Business and Property Courts. In my judgment, pending the outcome of the present review, the Guideline Hourly Rates should be the subject of, at least, an increase that takes due account of inflation. Using the Bank of England Inflation Calculator, it seems to me that an increase in the (Band One) figures for Manchester and Liverpool broadly in the order of 35% would be justified as a starting point (appropriately rounded-up for ease of calculation). That would produce figures as follows (with the present rates shown in brackets): A 295 (217) B 260 (192) C 220 (161) D 160 (118).**
> **29 These are the rates which I decided to adopt in the present case (subject to the indemnity principle, which meant that the lower rates actually charged to the claimant applied in the case of the majority of the fee earners who have been involved in the present case). There are only two fee earners whose chargeable rates exceeded these revised guideline hourly rates: Ms Rocca (Grade B), who is the principal fee-earner and is charged out at £300 per hour, and Mr Hughes (Grade D), who is a paralegal and is charged out at £175 per hour. Mr Fletcher sought to persuade me to apply these actual rates rather than the rates of £260 and £160 respectively. I rejected his invitation. Whilst I acknowledge that in many cases pending in the Business and Property Courts, the specific factors identified in CPR r 44.4 would justify the application of rates higher than the guideline hourly rates, even after adjusting for inflation, that is not so in the instant case, which does not feature any of the particularly complex, specialist or high value aspects of the work typically encountered in the Business and Property Courts."**

[130] The 2010 GHRs were introduced for the use of judges conducting summary assessments for fast track litigation or one day hearings. It could be used as a starting point for detailed assessments. At the time of its implementation in 2010 the bands were geared towards geographical locations. If on a detailed assessment a judge relied on the 2010 GHRs, the rates would be considered a useful starting point which was able to be increased depending on the complexity, specialization or high value of the case.

[131] I then considered the introduction and implementation of the 2021 GHRs.

[132] In the **Guide to the Summary Assessment of Costs, 2021 Edition**, an increase from the 2010 rates was set out. The hourly rates were said to be broad approximations only and a helpful starting point on detailed assessment.

> **"29. 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 the complexity, the urgency or importance of the matter, as well as any international element, would justify a significantly higher rate. It is important to note (a) that these are only examples and (b) they are not restricted to high level commercial work, but may apply, for example, to large and complex personal injury work. Further, London 1 is defined in Appendix 2 as 'very heavy commercial and corporate work by centrally based London firms'. Within that pool of work there will be degrees of complexity and this paragraph will still be relevant."**

[133] In **Saipem S.P.A. and other companies v Petrofac Ltd and another company [2025] Costs LR 1481**, the English Court of Appeal also had the opportunity to consider the 2021 GHRs.

> **"27. The Guide makes clear, at §27, that the Guideline Hourly Rates are "broad approximations only", and that in substantial and complex litigation, other factors may justify a significantly higher rate. However, as Males LJ observed in *Samsung Electronics Co Ltd* v *LG Display Co Ltd* [2022] EWCA Civ 466 at §§4-6, it is not sufficient simply to assert that such factors are present: a clear and compelling justification must be provided:**
> **"4. [The Guide] recognises [at §29] that in substantial and complex litigation an hourly rate in excess of the guideline figures may sometimes be appropriate, giving as examples 'the value of the litigation, the level of the complexity, the urgency or importance of the matter, as well as any international element'. However, it is important to have in mind that the guideline rates for London 1 already assume that the litigation in question qualifies as 'very heavy commercial work'.**
> **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."**

28. Although, by its terms, the Guide relates to a summary assessment of costs, it is nevertheless clear that that the Guideline Hourly Rates also represent a "helpful starting point" for a detailed assessment: see §28 of the Guide. As such, if a payment on account of a detailed assessment is sought by reference to materially higher rates than in the Guide, a clear and compelling justification should be provided: see *Thames Water* at §28."

[134] In **Manek and others v 360 One Wam Ltd and others [2023] Costs LR 463,** the High Court of Justice

> **"16. I bear in mind that the updated Guideline Rates are meant to reflect heavy and complex Commercial Court and Chancery Division litigation. As it was put by Birss LJ in *Athena Capital* (*supra*) at [10]:**
>
> > **"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."**

[135] The 2021 GHRs, while still considered to be for summary assessments and a starting point for detailed assessments, were amended to increase the hourly rates and to classify the rates by the type of work done and thereafter the type of work done in the geographical locations. London 1 rates are to be used for very heavy commercial and corporate work. London 2 will be for all other work carried out by firms geographically located in either the City of London or the area at present covered by London 2.

[136] The taxations in the instant case would be considered a detailed assessment as opposed to a summary assessment. This leads to the question of whether the GHRs should be used as the starting point in the instant case and if so whether the 2010 GHRs or the 2021 GHRs should be applied.

[137] In **Various Claimants v News Group Newspapers Limited [2023] EWHC 827 (SCCO) (04 April 2023),** Costs Judge Rowley J. stated,

> **"70. I also accept the argument that the GHR may be a useful starting point in a detailed assessment as well as in a summary assessment. I**

do not, however, consider that the guidance given by Males LJ regarding the need for a "clear and compelling justification" for exceeding the GHR extends with any great force to this particular situation.

71. The GHR are provided predominantly to assist judges who do not specialise in costs cases to deal with a summary assessment of costs when faced with the successful party's summary assessment schedule and competing arguments from the advocates.

72. The relevance to the GHR being a starting point in detailed assessments is no more than a reflection of the scarcity of any other starting point. Expense of time calculations or other potential starting points, as is demonstrated here, are invariably absent. But a starting point by its very name does not suggest it is the finishing point and that is particularly so where the court has the opportunity for the parties to address it in detail in respect of the CPR 44.4 factors."

[138] In **Goodwin v Avison and others [2021] Costs LR 1323** HHJ Davis-White QC, in his judgment dealing with the quantum of costs in relation to costs orders made in the context of third party disclosure applications made against certain firms in the proceedings, acknowledged that from 1st October 2021 the 2021 GHRs were to be used.

[139] It has already been established that there is no absolute rule requiring English taxing masters to apply the GHRs in detailed assessments and that it is predominantly to assist judges who do not specialise in costs cases with the conduct of a summary assessment.

[140] Notwithstanding my mentioning above that the taxations before me would be considered detailed assessments and that the starting point is the GHRs for summary assessment, in cases where a judicial officer is not familiar with the hearing of costs cases in the English Courts, as is the scenario in this matter, the GHRs are a useful starting point which can be increased by consideration of the **English Civil Procedure Rules, Part 44, Rule 44.4** factors, known to English practitioners and Courts as the "Seven Pillars of Wisdom", which states,

""Factors to be taken into account in deciding the amount of costs
44.4
(1) The court will have regard to all the circumstances in deciding whether costs were –
(a) if it is assessing costs on the standard basis –
(i) proportionately and reasonably incurred; or
(ii) proportionate and reasonable in amount, or
(b) if it is assessing costs on the indemnity basis –
(i) unreasonably incurred; or
(ii) unreasonable in amount.
(2) In particular, the court will give effect to any orders which have already been made.
(3) The court will also have regard to –

(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 or value of any money or property involved;
(c) the importance of the matter to all the parties;
(d) the particular complexity of the matter or 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 and the circumstances in which work or any part of it was done; and
(h) the receiving party's last approved or agreed budget."

[141] Therefore, I consider it necessary to use the GHRs as a starting point. My next step would be to consider whether they will be increased based on the factors of the Seven Pillars of Wisdom.

[142] As stated under my findings on the Bahamian Hourly Rates, I have considered that based on the high value aspect of the trusts, the time that passed since the 2010 GHRs, the multijurisdictional aspect of the case which required the need of the English trust specialist attorneys and King's Counsels to assist Bahamian attorneys with trust litigation of which their long time clients were involved, the importance of the matter to the Plaintiff and the First Defendant and the time spent preparing for and litigating the case, I consider that an increase of those rates is necessary as there are compelling reasons to justify an uplift from the 2010 GHRs starting point.

[143] In view of the foregoing, the 2010 GHRs shall first be applied from 20th March 2015 and/or prior to the commencement of the action up to the 30th September 2021: the starting point being the figures set out in London Band 1 as the 2010 GHRs were set up by location and the First Defendant's English lawyers are located in the City of London with a postcode of EC4A; the reasons set out at para. 140 being a compelling justification for an increase.

Grade	Fee earner	London 1 £
A	Solicitors and legal executives with over 8 years' experience	409
B	Solicitors and legal executives with over 4 years' experience	296
C	Other solicitors or legal executives and fee earners of equivalent experience	226
D	Trainee solicitors, paralegals and other fee earner	138

[144] Subsequently, from 1st October 2021 to present the 2021 GHRs shall apply; the starting point being the figures set out in London Band 1 as that band signifies a starting point for heavy commercial and corporate work and the reasons set out at para. 140 being a compelling justification for an increase.

Grade	Fee earner	London 1 £
A	Solicitors and legal executives with over 8 years' experience	512
B	Solicitors and legal executives with over 4 years' experience	348
C	Other solicitors or legal executives and fee earners of equivalent experience	288
D	Trainee solicitors, paralegals and other fee earner	198

[145] An additional factor to consider, is the fees the paying party charges its clients as a comparator. In the more recent case of **Otto and others v Inner Mongolia Happy Lamb Catering Management Company Ltd and others [2023] EWHC 3151 (Ch)** the High Court of Justice held that this should not be the case. The High Court of Justice held,

> **"5….. in considering what to allow, that is irrelevant. "But they did it too" is not an answer to a charge rate otherwise found to be excessive. For one thing, the solicitor may be in a different band (as indeed the respondents' solicitor is, being based in London). More importantly, I am assessing the petitioners' costs, not the respondents'.**
> **6. The rates claimed by the petitioners are therefore in excess of the guidelines. Of course, as the petitioners rightly say, they are just that, guidelines, and are not set in stone. But, as the Court of Appeal said, in relation to the 2021 guideline rates, in *Samsung Electronics Co Ltd* v *LG Display Co Ltd* [2022] EWCA Civ 466, "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." This point was reiterated in *Athena Capital Services SICAV* v *Secretariat of State for the Holy See* [2022] EWCA Civ 1061. It has been applied in many other decisions at first instance since."**

[146] However, in **Schulman v Kolomoisky and another [2020] Lexis Citation 326**, Master Rowley of the Senior Costs Office, when determining the hourly rates of the second defendant, queried whether the claimant had provided details of the hourly rates paid to its solicitors by comparison. He considered the letter of engagement between the receiving party and its client before considering the Seven Pillars of Wisdom.

[147] Additionally, other English cases reviewed also considered the engagement letter provided to the Client by the receiving party in relation to the hourly rates; which I find will be useful in this matter. Therefore, in addition to the consideration of the Seven Pillars of Wisdom, I also find that it would be useful to compare the receiving party's fees to the paying party's fees and to have sight of the parties' engagement or client care letters to determine whether what is being sought is commensurate to what has been charged.

[148] Ultimately, a review of the many English cases reveals that there seems to be no unified approach with respect to the application of hourly rates in taxation as the taxing masters in those cases utilized their discretion in different ways.

[149] Further, the English cases show that judicial officers acting as taxing masters considering hourly rates in England face the same issues as those in The Bahamas. In The Bahamas, the only difference is that the guideline rates are from 2006 whereas in England, the guidelines rates are a bit more current but still does not appear to reflect the rates charged by attorneys to their clients.

[150] In conclusion and for the avoidance of doubt, the following findings have been made with respect to the hourly rates of all parties' English attorneys:

150.1 London 1 of the 2010 GHRs shall apply from March 2015 – 30th September 2021 (and where necessary prior to March 2015);

150.2 London 1 of the 2021 GHRs shall apply from 1st October 2021 – Present;

150.3 The 2010 GHRs and the 2021 GHRs shall be increased (The Band for the First Defendant's and the Plaintiff's hourly rates and the increase will be subject to those factors relevant to the circumstances leading to the particular taxation).

150.4 Both parties shall provide their respective engagement letters and/or correspondence to the clients setting out the hourly rates which were to be charged to the Plaintiff and the First Defendant.

English Counsel

[151] In **Deutsche Bank AG v Sebastian Holdings Inc [2020] Lexis Citation 229**, Master Gordon-Saker cited that the well-known passage in the judgment of Pennycuick J. in Simpsons Motor Sales (London) Ltd v Hendon Corpn [1964] 3 All ER 833 that the reasonable brief fee that should be allowed is the fee that:

> **"... a hypothetical counsel, capable of conducting the case effectively, but unable or unwilling to insist on the higher fees sometimes demanded by counsel of pre-eminent reputation, would be content to take on the brief: but there is no precise standard of measurement and the judge must, using his or her knowledge and experience, determine the proper figure."**

[152] Pennycuick J's infamous passage was also followed in the more recent cases of **Farol Holdings Ltd and other companies v Clydesdale Bank Plc and another company [2024] Costs LR 649** and **JJH Enterprises Ltd v Microsoft [2022] EWHC 1211 (Comm)**.

[153] I accept that I too am bound to follow the principle set out by Pennycuick J. in **Simpsons Motor Sales** as it pertains to the English Kings Counsel in this matter. However, I recall that there is time claimed for Counsel. Therefore, when the taxation arrives at those entries, if it is decided that that time would be allowed I will consider whether to allow the hourly rates in conformity with the findings on the assessment of English attorneys' hourly rates as set out above.

Costs Lawyers/Costs Draftsman

[154] In **Allen v Brethertons [2019] EWHC B3 (Costs)**, the Court held that where a costs lawyer had been assisted by two costs draftsmen and a litigation executive without professional qualifications, there was no breach of the 2007 Act and held, among other things, that one of the draftsmen, who had prepared a bill of costs, had engaged in a reserved legal activity but was an exempt person as she did this under the supervision of the costs lawyer, who was authorised. Therefore, the cost of the draftsman's work would have been recoverable, had a detailed assessment been ordered; but as the assessment was summary, the bill of costs was premature and was disallowed.

[155] In **Buttersworth Personal Injury Litigation Service > Division V Costs, Funding and Referral Fees > A Costs in Litigation > Bill of Costs**, the authors stated,

> **"A well-prepared bill of costs can be of invaluable assistance to costs recovery. The instruction of a Costs Lawyer/Costs Draftsman will enable the fee earner to continue to deal with ongoing litigation cases and claim time at the appropriate Grade A or Grade B rates, whilst delegating the costs recovery to the Costs Lawyer/Costs Draftsman who will usually be charging rates equivalent to a Grade C or Grade D fee earner."**

[156] In the **2014 Civil Justice Council's Costs Committee's recommendations of the GHRs**, while Lord Dyson rejected other recommendations, he accepted those on costs lawyers and costs draftsmen. Suitably qualified and regulated costs lawyers are eligible to recover guideline rates at grade C or B depending on the work. Unqualified costs draftsman—ie non-costs lawyers—always charged a grade C rate where the work justified it, on the basis of their experience (subject to them having such experience of course). This was very rarely controversial at court and should still not be controversial going forward.

[157] Therefore, for the Trial Bill the starting point for a costs lawyer and costs draftsman prior to 2021 is the 2010 GHR, London 1, Grade C and Grade D respectively and the starting point after 2021 is the 2021 GHR, Grade C and D respectively. The next step will be to

look at what the parties agreed to with their clients and then apply the Seven Pillars of Wisdom.

[158] The Band for the First Defendant's and the Plaintiff's hourly rates will be subject to those factors relevant to the particular bill of costs being taxed.

[159] Once the requested information is provided, the hourly rates for the First Defendant's English Counsel will be appended as Annex 2.

PRELIMINARY ISSUE TWO – WHAT IS THE SCOPE OF THE COSTS ORDER MADE 15TH JANUARY 2020 (THE "COSTS ORDER")

[160] By her Points of Dispute, the Plaintiff made the following objection to the First Defendant's costs claimed from the discovery process.

> **"3.7 Notwithstanding the Ruling of Mr. Justice Winder in respect of the Specific Discovery Summonses on 24 October 2019 almost a year earlier, the First Defendant did not provide the supplemental list for discovery until 8 September 2020 nor provide its affidavit as ordered pursuant to the Ruling verifying the completeness of its discovery until 17 September 2020, when the First Defendant eventually confirmed that following the three Lists of Documents provided on 7 March 2019, 10 October 2019 and 8 September 2020 it had not fully complied with its discovery obligations.**
> **3.8 The First Defendant's failure to provide meaningful discovery in an adequate or timely manner and in accordance with the order of Mr Justice Winder has led to the overall cost of the discovery exercise becoming excessive, as is illustrated by the adverse costs order having been made. In this regard and as set out above at paragraphs 3.2 and 3.3 above, the First Defendant has sought to claim in the Bill of Costs approximately B$600,000 of unentitled costs remedying and fully complying with its discovery obligations (not including the costs of providing its initial discovery in March 2019).**
> **3.9 As far back as 2013 and long after the Action was issued, the First Defendant has unreasonably refused to agree matters and delayed in providing information which it later conceded on causing unnecessary and unentitled cots it now seeks from the Plaintiff. For example, the First Defendant has claimed for costs discussing and fighting over whether it could withhold discovery of documents despite subsequently waiving privilege and disclosing the documents. Further, the unreasonable refusal and delays with discovery saw the Plaintiff forced into using the Adjournment Summons in early 2020 when such an agreement could arguably have been made at an earlier stage (as reflected by the costs order in the Plaintiff's favour in this regard). These are just some examples of the needless aggression and defensiveness that has led to the First Defendant's costs becoming so excessive."**

[161] The Plaintiff sets out supporting evidence in the Eleventh Robertson Affirmation where she averred that the objection arose from the disagreement between the parties as to the legal effect of the Costs Order which awarded the Plaintiff 30% of the costs relative to the Plaintiff's Summons dated 26th June 2019 **(the "Plaintiff's Specific Disclosure Application")** the First Defendant's Summons dated 16th August 2019 **(the "First Defendant's Specific Disclosure Application") (collectively referred to as the "Specific Discovery Summonses")** and the First Defendant's Summons dated 28th August 2019 **(the "Privacy Summons")**.

[162] The Plaintiff averred that the Costs Order related not only to the said applications but to the costs claimed by the First Defendant in remedying its defective discovery and complying with its discovery obligations. The Plaintiff also averred that the parties were directed by an order dated 21st September 2018 to give a discovery list by 28th February 2019. Two days before the deadline the First Defendant sought an extension and the First Defendant filed a limited list a day later than the agreed extension date. The Plaintiff's list was extensive.

[163] Because of the deficiency of the First Defendant's list, the Plaintiff wrote to the First Defendant seeking to rectify the deficiencies but ultimately, the Plaintiff's Specific Discovery Application was filed. The First Defendant, in response wrote to the Plaintiff explaining that a number of the documents sought were withheld on the basis of legal professional privilege and/or Section 83 of the Trustee Act **(the "Act").**

[164] The Plaintiff averred that the discussions with the other beneficiaries should have taken place long before the First Defendant was required to provide discovery and not 5 months after the discovery deadline. The decision of the First Defendant's English Counsel to travel to discuss the disclosure was after the exchange of the discovery lists.

[165] The First Defendant's Specific Disclosure Application sought the production of documents of the Plaintiff's financial circumstances from 21st December 2006 to 23rd March 2009 in six-month periods but instead should have precisely identified the categories of documents it sought to be disclosed. The Court agreed with the Plaintiff and dismissed the First Defendant's Specific Disclosure Application.

[166] At the outset of the Privacy Summons the Court made an order requiring the First Defendant to disclose the documents it sought to protect by the Act. As a result, the First Defendant belatedly agreed to provide most of the material sought by the Plaintiff's Specific Disclosure Application.

[167] In purporting to comply with its obligations pursuant to the privacy order and specific discovery order the First Defendant filed its Supplemental List of Documents which substantially increased. The First Defendant failed to file a verifying affidavit the Court had ordered to be filed and did not file it until some 11 months later. After reviewing the supplemental list the Plaintiff wrote to the First Defendant pointing out continued deficiencies which also hindered the preparation of the trial bundles. In response, the First Defendant enclosed a schedule of other documents which had been missing.

[168] Not until 2020 did the First Defendant's English lawyers inspect and review the hard copy files for the purposes of complying with its discovery obligations. Sometime later a second supplemental list of documents was filed showing that some of the documents could not have been properly withheld and were done so belatedly. The First Defendant was evidently aware that it had failed to comply with the privacy Order and specific discovery order as it later confirmed that it had fully complied with its discovery obligations.

[169] By the Plaintiff's submissions she submits that the principle relative to construing an order is that which is set out in the Privy Council's decision in **Sans Souci v VRL Services [2012] UKPC 6** where Lord Sumption, stated:

> **"... the construction of a judicial order, like that of any other legal instrument, is a single coherent process. It depends on what the language of the order would convey, in the circumstances in which the court made it, so far as these circumstances were before the court and patent to the parties. The reasons for making the order which are given by the Court in its judgment are an overt and authoritative statement of the circumstances which it regarded as relevant. They are therefore always admissible to construe the order. In particular, the interpretation of an order may be critically affected by knowing what the Court considered to be the issue which its order was supposed to resolve."**

[170] The Plaintiff submits that reference to extraneous materials is also permitted, where necessary to contextualize an order.

[171] Both parties contended that the other's discovery was inadequate which led to the Plaintiff's Specific Discovery Application and the First Defendant's Specific Discovery Application. The First Defendant's discovery should not have needed to be policed by the Plaintiff's Specific Disclosure Application. The two supplemental lists should not have been required nor should specific verification by affidavit have been necessary. The costs of these remedial steps, performed over the course of more than a year after the Plaintiff's Specific Discovery Application, amount to some $600,000.

[172] The Plaintiff submits that where a party fails to perform a task adequately on its first attempt, it is usual for it to be required to pay the costs of remedial steps. This position is very familiar in the context of amendments. A party which needs to amend its pleadings cannot simply say 'if I had pleaded properly in the first place, these costs would still have been incurred because my first attempt at pleading would have taken correspondingly longer'. The amending party is, almost invariably, required to pay the costs of the amendment in any event.

[173] The equivalent position applies here. As a result of the Plaintiff's Specific Discovery Application, Winder J directed that the First Defendant's discovery be revisited, and verified by affidavit. The costs of those remedial steps are therefore costs which are

relative to the Specific Discovery Summonses which demanded that relief – steps that would never have been required had the First Defendant given adequate discovery in the first place.

[174] The language of the Costs Order is itself submitted clearly to show this. The First Defendant was ordered to pay the costs 'in relation' to the Plaintiff's Specific Disclosure Application and not simply the costs of the Specific Discovery Summonses. The language indicates that the First Defendant was required not only to bear the costs of the Specific Discovery Summonses itself, but also all those costs relatable to it. That includes the costs of performing the remedial work which resulted from the Specific Discovery Summonses. All that work is occasioned by, and relatable to, the Specific Discovery Summonses and the relief demanded.

[175] Hence, the costs claimed in the Trial Bill for the First Defendant's post-summons remedial steps to give adequate discovery should be disallowed.

[176] While that work was obviously 'necessary' – in that the First Defendant clearly did need to re-perform the discovery exercise – it was not 'proper' in that the First Defendant should have given full discovery in its initial List served on 7th March 2019 (a list that was itself served late, even after an agreed extension).

The First Defendant's, Evidence and Submissions

[177] By the Second McGuigan Affirmation the First Defendant averred that the Costs Order related to the Plaintiff's Specific Disclosure Application and the First Defendant's Specific Disclosure Application both of which were made during the discovery exercise in the action. The wording of Winder J that "I am satisfied that the appropriate costs order would be for Grampian to pay 30% of Ashley's costs relative to the applications. Such costs to be taxed if not agreed" made it abundantly clear that it related only to the costs of the Specific Discovery Summonses.

[178] The First Defendant's discovery was first provided to the Plaintiff on 7th March 2019 as a result of the First Defendant making available for searches by McKinney of all of its potentially relevant documents in its possession, custody and control in The Bahamas of which it was aware. The First Defendant also instructed Taylor to search all potential relevant documents in its possession, custody and control in London including voluminous hardcopy Taylor files gathered from the establishment of the First Defendant in 1992 and for Arndilly before that.

[179] The Plaintiff subsequently took issue with the First Defendant's list of documents and issued the Plaintiff's Specific Disclosure Application which was heard with the First Defendant's Specific Disclosure Application and resulted in the Costs Order.

[180] McGuigan averred that the First Defendant had been advised of its right to withhold certain privileged material to protect its confidentiality as some of it contained confidential information about other beneficiaries who were not willing to consent to

their privileged documents being disclosed in Bahamian or English proceedings. This refusal was communicated to the Plaintiff in response to her various applications. The First Defendant's statutory right under Section 83(8) of the Bahamas Trustee Act 1998 was under regular review and consideration throughout the proceedings.

[181] In the event the statutory rights had to be waived the confidential information was considered and discussed with the First Defendant and the other beneficiaries. The First Defendant and the beneficiaries received advice on the mechanics of a privacy order. The First Defendant wrote to the Plaintiff on 23rd August 2019 to confirm that if the privileged documents could be protected, it was its preference to allow the Court to see the privileged documents at trial which were relevant to the 2006 and 2009 appointments and the allegations of breach of trust.

[182] A privacy order was subsequently agreed between the parties and ordered by the Court and the consideration of the privileged documents by the Court were held in private. The relevant part of the Plaintiff's Specific Disclosure Application fell away and only the matter of the said privacy order was addressed with the Court. Following the agreement, disclosure had to be made of the further documents which had previously been withheld on the basis of privilege when the First Defendant served its list of documents on 7th March 2019 and filed its supplemental list of documents containing on 10th October 2019.

[183] The First Defendant had to further consider the content of the documents to be disclosed and whether to redact confidential but irrelevant information within a document which itself was a relevant document but previously withheld from disclosure which is a permitted practice in England. If the First Defendant had provided the documents at the outset, the exercise would still had to have been conducted. Both parties carried out a cross referencing exercise. The Plaintiff viewed the cross referencing as a necessary step of the discovery process and also requested further cross referencing and sought reasons for the non-disclosure of each document.

[184] In the English proceedings, the Plaintiff used a schedule of documents produced by Taylor to identify documents the firm had withheld in those proceedings for legal professional privilege and then sought to question the First Defendant as to why it had not disclosed some of the documents, which were privileged documents in entirely separate proceedings in England between different parties. The First Defendant's legal team had to consider and search each of those documents to satisfy itself as to the position. At the time it was the First Defendant's view that it was not a genuine attempt at discovery but an attempt to build a narrative of non-compliance and cause maximum inconvenience to the First Defendant. It cannot be credibly argued that the costs incurred by the First Defendant in responding to the detailed schedules and the ongoing disclosure points were related to the Plaintiff's Specific Disclosure Application and intended to form part of the Costs Order.

[185] The Costs Order is limited to the costs of the applications which were heard together on 17th September 2019 and does not address or affect at all the First Defendant's right to

recover costs in complying with its discovery obligations post March 2019. The order to pay the First Defendant's costs was made without qualification on 18th October 2022.

[186] A large number of entries the Plaintiff seeks to dispute with this preliminary issue relates to the question of privilege and the First Defendant's decision to waive it in August 2019. The First Defendant did not choose to waive privilege as a result of the Plaintiff's Specific Disclosure Application however, it was a part of its defence strategy and something in the mind of the First Defendant's legal advisors for many years. Ultimately, as a result of the other beneficiaries confirming that they would not object to the First Defendant's waiver of its Section 83(8) right under the Act pursuant to the privacy order, the documents were disclosed.

[187] Winder J's judgment dated 24th October 2019 made it clear that there were certain categories of documents the Plaintiff was seeking as a part of her Specific Disclosure Application that he no longer needed to address as a result of the First Defendant's decision to waive privilege.

[188] In relation to the entries challenged pertaining to the discovery process prior to the Plaintiff's Specific Discovery Application being issued, the First Defendant had approached discovery from a very different perspective given the aforementioned restrictions. Once the decision was taken to waive privilege the disclosure exercise was far wider as the protection of confidentiality had fallen away due to the said privacy order.

[189] Therefore, the supplemental disclosure was a necessary part of the disclosure process and is not covered by Winder J's judgment or the Costs Order. The clear meaning of "relative to" would be to the costs incurred in connection with the applications. The parties' costs submissions after the Costs Order and after the trial make it clear that the costs being considered were those of the applications and not those of the wider discovery process of the subsequent discovery that would occur.

[190] The First Defendant adds that beyond the final costs order made in the First Defendant's favor on 18th October 2022 there is no wider order for costs encompassing the supplemental or specific discovery subsequently provided. On that basis, the First Defendant is entitled to recover the full costs of the discovery process in principle pursuant to its entitlement to recover costs of the action.

[191] By the First Defendant's written submissions it submits that the Plaintiff's Point of Dispute in respect of this Preliminary Issue is muddled, confused and contradictory as it read as if the Plaintiff is arguing that the categories of costs which the First Defendant is not entitled to recover are the costs of the First Defendant remedying alleged discovery obligations along with the First Defendant complying with its discovery obligations. It is not clear what this means but on the face of it appears to include all of the First Defendant's costs arising out of discovery. If that is the Plaintiff's case, then of course it is fundamentally misconceived.

[192] The First Defendant submits that it was only deprived of its costs of the Specific Discovery Application and in responding to the Plaintiff's Specific Discovery Application. In Winder J's costs ruling delivered on 18 October 2022, he made it clear that,

> **"it cannot fairly be said that First Defendant raised issues or made allegations on which it failed or that any issue raised by them has caused a significant increase in the length or cost of the proceedings so as to be deprived of the whole or part of its costs."**

[193] The First Defendant explained that its Specific Disclosure Application, which sought the production of documents evidencing the Plaintiff's financial circumstances was dismissed as it was considered too vague and impossible to comply without further particularization.

[194] The Plaintiff's Specific Discovery Application was granted because the trial judge agreed that the first list of documents filed by the First Defendant was deficient and therefore sought specific discovery of certain documents which were previously withheld by the First Defendant on the ground that it was privileged.

[195] Because the parties had agreed to disclose those documents ahead of the hearing and had entered into the privacy order large parts of the Plaintiff's Specific Discovery Application became redundant. This was confirmed by Winder J in the Costs Order itself. There is no wider order for costs encompassing the supplemental or specific discovery subsequently provided.

[196] As such, there is no proper basis on which the learned Registrar could deprive the First Defendant of its discovery costs, whether in complying with its discovery obligations, or in agreeing to provide discovery to Plaintiff of documents which it had initially withheld on perfectly legitimate privacy grounds.

[197] The costs of the Specific Discovery Summonses were excluded from the Bill of Costs. There is no other order for costs in the Plaintiff's favour or adverse to the First Defendant. Accordingly, the Court is invited to dismiss this Preliminary Issue. It is weak and speculative.

Legal Analysis

[198] The Plaintiff invites me to disallow entries in the First Defendant's Trial Bill which seeks the payment of costs for discovery preparations after the hearing of the Specific Discovery Summonses on the basis that the trial judge awarded the First Defendant to pay 30% of her costs relative to the applications.

[199] The Plaintiff compares the award of costs to an amendment application where the party seeking to amend is usually ordered to pay the costs which have to be incurred for the further drafting to meet the amendments which follows. The Plaintiff also argues that but for the filing of the Plaintiff's Specific Discovery Application the subsequent documents would never have been provided.

[200] The First Defendant on the other hand contends that the entries for the work done during the subsequent discovery process should be allowed because it was as a result of the Plaintiff's initial behavior with using other documents in other proceedings which led to it guarding the documents to protect the other beneficiaries to the trust in question. Once the privacy order was in place, there was no issue with producing the documents which were subject to legal privilege.

[201] I have reviewed the Costs Order and note that Winder J. ordered, at para. 4, that he was "satisfied that the appropriate costs order would be for Grampian to pay 30% of Ashley's costs relative to the applications..."

[202] Usually, when a party is awarded costs relative to an application it is for work done for the preparation of the application and the appearance at the hearing of the application. Winder J noted that he had found in favour of both the Plaintiff and the First Defendant but ultimately found that if it was not for the Plaintiff's Specific Discovery Application, the Privacy Summons would not have been moved and the material would not have been exchanged, hence the award for costs being made in favor of the Plaintiff for what I consider to be the costs for the preparation of and appearance to the hearing of the respective applications.

[203] Moreover, at para. 26 of Winder J's ruling dated 18th October 2022, he held,

> "....it cannot fairly be said that Grampian raised issues or made allegations on which it failed or that any issue raised by them has caused a significant increase in the length or cost of the proceedings so as to be deprived of the whole or a part of its costs."

[204] I take note of the fact that although this same objection was raised before the trial judge as a submission on the costs to be awarded, Winder J made no specific order to that effect and instead made the above finding.

[205] Therefore, it can be inferred that the trial judge took the view that the conduct of the First Defendant did not contribute to any delay or increased costs. Accordingly, I find that the costs relative to the preparation of the Specific Disclosure Summonses and privacy order as well as the attendance at the hearing on 17th September 2019 only are to borne by the First Defendant to be paid to the Plaintiff as intended by the trial judge. More importantly, any grievance of that order would have had to be appealed and was not an order that I could overturn.

[206] Consequently, the subsequent discovery work done after the Costs Order is recoverable in principle. Notwithstanding, I do find some merit in the Plaintiff's objection. If the documents which were subsequently released were already being considered by the First Defendant's attorneys and had to be considered further in response to and in support of the Specific Discovery Summons and Privacy Order, then how much additional work would have needed to be expended thereafter for the First Defendant to finally meet its discovery obligations? This is a question that will have to be answered at the taxation hearing in order to determine what a reasonable amount that would be allowed is.

[207] In the circumstances, I find that the subsequent discovery preparation work is recoverable in principle, subject to reasonableness and the consideration of the usual Factors which must be taken into account on taxations.

PRELIMINARY ISSUE THREE – WHETHER THE FEES OF SIMON TAUBE KC SHOULD BE ALLOWED?

[208] By the Plaintiff's Points of Dispute, the Plaintiff objects to the entries claimed for the costs of and associated with the change from Mr. Simon Taube KC **("Taube")** as leading English Counsel to Mr. Rajah KC **("Rajah")**.

[209] At pg. 13, paras. 3.23 and 3.24 the Plaintiff states,

> **"3.23 Furthermore, Mr. Taube KC had given advice to the First Defendant in the matter prior to the Action. This conflict was raised by the Plaintiff (through her English solicitors) in August 2019, following disclosure by the First Defendant which alerted the Plaintiff to the conflict. The Plaintiff's concerns about a conflict of interest were further particularized in a letter from Graham Thompson to Mckinney Bancroft & Hughes on 5 November 2019. Even though the First Defendant was aware of the conflict they applied to specially admit Mr Taube KC to The Bahamas Bar on 2 May 2019 – see item 1467 of the First Defendant's Bill of Costs. Following an application by the First Defendant for an order that Mr Taube KC ought not to be called or compelled to give evidence at Trial, the Plaintiff applied (by way of Summons dated 24 December 2019) for leave to cross-examine Mr Taube KC. The First Defendant's application was dismissed and the Court permitted the cross-examination of Mr Taube KC at Trial. As a result of Mr Taube KC's conflict, Eason Rajah KC (as he then was) had to be admitted and read in, incurring very significant costs in the months leading up to the Trial. It appears that the costs of all of this time have been claimed see, for example, items 322, 382, 1616, 1625 on the Bill of Costs.**
>
> **3.24 The Plaintiff should not be required to pay any of the costs of and occasioned with the First Defendant's change of English leading counsel (from Mr Taube KC to Mr Rajah KC). The First Respondent knowingly instructed counsel to advise in relation to the litigation who was a material witness to events which had taken place and who had given advice in relation to the 2006 and 2009 Appointments and was therefore cognizant that there was a conflict of interest. In a judgment following the Taube KC Summonses dated 3 April 2020, Justice Winder held that "Respectfully, First Defendant and Taube KC must, at some point, have contemplated whether Taube KC earlier involvement in the factual matrix of the dispute may have been a cause for some concern" and further found that "I accept that the evidence sought from Taube KC is relevant and not required for some ulterior purpose."**

Plaintiff's Evidence and Submissions

[210] By the Eleventh Robertson Affirmation the Plaintiff now averred that Taube's fees were unreasonably incurred and should be subject to a blanket disallowance as the First Defendant could have reasonably anticipated him being called as a witness for the defence when it instructed him to act as the First Defendant's advocate at trial.

[211] Robertson disagreed that Taube's fees were agreed by consent of the parties on 16th September 2020 **(the "Consent Order")**. The Plaintiff had only discovered that Taube had provided advice to the First Defendant in 2006, on the 2006 appointment, when the First Defendant served its Supplementary List of Documents on the Plaintiff on 9th October 2019. Thereafter, on 9th December 2019, Taube swore an affidavit in relation to the advice regarding the appointment of funds the First Defendant wished to make, despite professing to have no recollection of that advice.

[212] This resulted in the Plaintiff filing a summons on 24th December 2019 seeking leave to cross-examine Taube and on the 13th February 2020, Winder J heard the said summons along with the First Defendant's summons for directions on the issue of Taube as a witness.

[213] Winder J held that Taube's 2006 instruction may have had a direct and material impact on the Plaintiff's challenge to the 2006 and 2009 Appointments, that the First Defendant had waived privilege by disclosing Taube's advice and that it would be a dangerous precedent if witnesses were able to opt out of being called to give evidence by swearing an affidavit saying I don't remember. He added that the First Defendant and Taube must have contemplated whether Taube's earlier involvement may have been a cause for concern.

[214] Robertson averred that the First Defendant's reliance on the Consent Order to justify the recoverability of Taube's fees was misleading. What was actually agreed was that the parties would be entitled to recover the costs of their English lawyers but the Plaintiff made it clear that the agreement would not extend to Taube's fees.

[215] Robertson went on to say that Graham's letter dated 7th August 2020 expressly reserved the Plaintiff's position as to the recoverability of Taube's fees "now that he is no longer engaged as First Defendant's advocate". The Plaintiff understood that she could not dictate to the First Defendant who it could include on its legal team but she could make clear that she made no concession in respect of the fees of a lawyer who could not properly act in the proceedings because he was a witness.

[216] Robertson described the First Defendant's attempt to classify Taube as being in a consultancy role only as a recent one as prior to, Taube was referred to as being part of its counsel team and has continued to charge a brief fee rather than a consultancy fee.

[217] Robertson noted that the First Defendant was claiming a higher daily rate for Taube than for Rajah who was specially admitted to replace Taube. She went on to say that counsel

claiming approximately the same as the lead advocate in a case should not be seen to be acting in a supporting role. Robertson added that it was wrong for the First Defendant to be claiming the fees of an advocate who, because he was a witness to the very events that the proceedings were concerned with, should never have been instructed to act in that capacity.

[218] The Plaintiff submits that fees claimed for Taube who was instructed as an advocate, became and then was rebranded as a witness, should be disallowed.

[219] The Plaintiff submits that McGuigan's, Taube's or Rajah's belief that Taube did not need to testify was irrelevant and that the matter was res judicata as between the parties as Winder J had already ruled that Taube had to give evidence.

[220] The Plaintiff relies on **R v Secretary of State for India ex parte Ezekiel [1941] 2 KB 169, 175** where Humphreys J held that for a barrister to be both witness and counsel is 'irregular and contrary to practice. A barrister may be briefed as counsel in a case or he may be a witness in a case. He should not act as counsel and witness in the same case.'

[221] This principle is reflected in the **Bahamas Bar (Code of Professional Conduct) Regulations, Regulation VIII**, which states,

> **"If the attorney is a necessary witness he should testify and the conduct of the case should be entrusted to another attorney."**

[222] In the present case, Taube testified and there was no suggestion from Winder J that his testimony was irrelevant or even inessential. In these circumstances, he should never have been instructed and it was nothing short of extraordinary that that instruction continued even after Winder J's order.

[223] In the alternative, the Plaintiff submits that Taube's fees should be disallowed for the period following Winder J's order, when his status as a witness was incontrovertible and any attempt to portray him as a mere 'consultant' for this period is both hopeless and in any event irrelevant. Any 'consultancy' was clearly *qua* counsel, when Taube's position as a witness precluded him from acting as such.

[224] For the same reason, on this alternative case, Rajah's fees for reading-in as the replacement advocate should be disallowed. It appears clear that this resulted only from Taube ceasing to act in that capacity. If Taube's fees for reading-in prior to Winder J's order are recoverable (contrary to the Plaintiff's primary contention) then Rajah's fees for reading in thereafter are duplicative.

First Defendant's Evidence and Submissions

[225] By the Second McGuigan Affirmation the First Defendant provided a brief background of Taube's involvement in the proceedings. McGuigan explained that in August-September 2006, Taylor instructed Taube as counsel to advise on English tax and trust

issues relating to the First Defendant's proposal to appoint part of the trust funds of the Glenfinnan Settlement in favor of the children of Lord Portalington. The proposal ultimately led to the First Defendant's appointment dated 21st December 2006 which was an issue in the action.

[226] In about April 2014, Taube was first instructed by the First Defendant to represent it against the Plaintiff's claims. Taube considered whether there was a conflict given his previous involvement in 2006 and concluded that in 2006 his legal advice had related to UK tax issues and legal questions, including questions regarding the drafting of the proposed new trusts.

[227] Following the First Defendant's disclosure in October 2019, the Plaintiff received copies of Taube's advice connected to the proposed 2006 Appointment which led the Plaintiff to subpoena Taube to give evidence at trial. After being notified of the subpoena Taube again considered whether there was any conflict and came to the same conclusion, however Taube recommended that the First Defendant should take urgent advice from another suitable leading counsel, Rajah, about the issues raised by the Plaintiff, in particular, whether it was in the First Defendant's interests for him to continue to act as its leading advocate at trial.

[228] Rajah confirmed that he saw no issues of conflict between Taube's personal interest and his duty to the client or the court. The Plaintiff never suggested that Taube was negligent and her Counsel admitted to the Privy Council that Taube's advice was right when referring to it.

[229] McGuigan averred that it was a professional requirement of a barrister that he or she maintains his or her ability to act as independent counsel and a compromise of that independence does not automatically require or entitle a barrister to cease to act. It is also a core duty of a barrister to act at all times in the best interests of their client which requires the barrister to continue to act unless the compromise to his independence is so serious that it would not be in the best interests of his client for him to do so.

[230] She went on to say that Taube's ability to act as an advocate would have been compromised if he was required to give evidence as a witness and on that basis he concluded that it would not be in the First Defendant's best interest for him to continue as an advocate if it was possible to replace him.

[231] McGuigan added that there was clearly no legal conflict however when Taube was called as a witness it was not practical for him to run the case as advocate. Because of the knowledge of the case however, it was still in the First Defendant's best interest to continue in a consultancy role as it was originally intended to be prior to Brian Moree KC **("Moree KC")** being appointed Chief Justice.

[232] The terms of the Consent Order were agreed in correspondence after Taube had stepped down as advocate. By the 16th July 2020 letter from Mckinney to Graham, the First Defendant agreed to the suggestion that the costs of the parties' foreign lawyers should be

treated as recovered in principle and confirmed the terms of the Consent Order subject to para. (b), the purpose of which was to "make clear that the fees and costs of Taube's advising the First Defendant both before his admission to the Bahamas Bar in June, 2019 and after withdrawing as the First Defendant's advocate in April, 2020 are recoverable in principle.

[233] McGuigan avers that there is no reason for the parties to depart from the terms of the Consent Order as in addition to the surrounding correspondence it was the parties' intention to be able to recover, as against each other, the costs of one English KC in addition to an English KC acting as an advocate. The Plaintiff instructed Richard Wilson KC and Christopher McCall KC and the First Defendant instructed Taube and Rajah. The issue raised by the Plaintiff does not impact that agreement as the First Defendant allowed the Plaintiff's two English KC's.

[234] The Plaintiff allowed certain costs of Taube whilst Moree KC was acting as advocate and again when he reverted to the non-advocate adviser role. However, by the 3rd April 2025 letter the Plaintiff appeared to have changed her position which seems inconsistent and like an opportunistic attempt to get around the terms of the Consent Order now that she has been ordered to pay the First Defendant's costs.

[235] By the First Defendant's submissions, it submits that by the Consent Order it is clear that the Court has already approved the instruction of Taube as the Consent Order was agreed after the Court's ruling on Taube. The parties' resources, and the resultant costs, were evenly matched and the intention of the Consent Order was to allow, to whosoever the victor may be, the costs of this level of representation to be recovered.

[236] The First Defendant highlights that the Plaintiff now contends that none of the time claimed by Taube should be recoverable which differs from what is pleaded in her Points of Dispute. The First Defendant submits that the Plaintiff's objection should be limited to her Points of Dispute as pleaded i.e.: the costs of and associated with the change of English leading counsel rather than the entirety of Taube's fees.

[237] In the event however, that the Court entertains an argument that is not pleaded, the First Defendant submits that the Plaintiff's opposition to the recovery of any of Taube's fees must depend on a proper interpretation of the said Consent Order.

[238] The First Defendant submitted that contrary to a number of misapprehensions in the Plaintiff's evidence Taube had no conflict of interest at any stage of the proceedings, the issue that arose was that Taube could not effectively act as an advocate if he was required to give evidence, there was no recusal application and Taube was not recused by the Court.

[239] The parties' Summonses were issued to determine whether Taube was required to give evidence when he had no recollection of the events in question. Once it was determined that he could be called to give evidence by the Plaintiff, Taube understandably stepped down as advocate but remained as part of the First Defendant's legal team.

[240] The First Defendant also submits that the Plaintiff was well aware of Taube's involvement before receipt of the First Defendant's supplemental discovery in October 2019, adding that this was a further example of the Plaintiff attempting to rewrite history.

[241] The Plaintiff has never suggested that Taube has been negligent, and indeed, it was recently submitted to the Privy Council by the Plaintiff's counsel that "that advice was right" when referring to Taube's advice from 2006. As the Court appreciates, it is a core duty of a barrister to act at all times in the best interests of their client. That requires the barrister to continue to act unless the compromise to his independence is so serious that it would not be in the best interests of his client for him to do so.

[242] The First Defendant submits that by the 7th August 2020 letter, the Plaintiff limited her right to challenge the reasonableness of Taube's fees *"now that he was no longer engaged as your client's advocate"* (which is clearly a prospective question of quantum alone) and limited her reservation to the recoverability of his fees after stepping down as advocate. There was no suggestion that the Plaintiff was reserving the right to challenge the entirety of Taube's fees on the grounds of an alleged conflict. Accordingly, the Plaintiff is now estopped from doing so in these taxation proceedings.

[243] If the First Defendant had replaced Taube with an entirely new second English KC to assist Rajah, this would be recoverable. It does not make any sense that because the second English KC is Taube, his fees should be irrecoverable.

Legal Analysis

[244] The Plaintiff has expanded her argument on the recoverability of Taube's fees, now contending that there should be a blanket disallowance with respect to Taube's fees. She relies on Winder J's language in his 3rd April 2020 decision that the First Defendant should have contemplated Taube's involvement becoming a cause for concern. The Plaintiff also argues that there was never an agreement to Taube's fees being recoverable by way of the Consent Order.

[245] Alternatively, the Plaintiff also argues that any of Taube's fees being claimed after Winder J's decision on 3rd April 2020 should be disallowed, or that Rajah's fees should be disallowed for reading in as the allowance of both Taube and Rajah for reading in would be a duplication. She provides a different interpretation of the letters exchanged between the parties prior to and after the Consent Order.

[246] The First Defendant submits that Taube's fees were agreed to be recoverable in principle based on the letters exchanged between the parties prior to and after the Consent Order. It is also submitted that the Plaintiff's objection should be limited to her Points of Dispute.

[247] It is clear that the Plaintiff's evidence and written submissions have supplemented the Plaintiff's Points of Dispute. As the First Defendant submits that the Plaintiff's supplemental arguments should not be taken into consideration, I find it necessary to

determine whether the arguments should be limited to those contained in the Points of Dispute.

Points of Dispute

[248] Notably, the RSC does not make provision for the filing of Points of Dispute and in turn, Replies thereto. This is a practice expressly provided for in the English Civil Procedure Rules.

[249] Nonetheless, in my past experience as a practitioner I am aware that ahead of taxations, paying parties have prepared objections to a bill of costs and the receiving party has prepared replies thereto, to assist with not only the taxation process moving quickly but to also have any arguments in writing in the event that a taxation review is launched. As taxing master I have also seen the practice conducted.

[250] Suitably, Points of Dispute and Replies are welcomed in taxations both under the RSC and the newly enforced Civil Procedure Rules, 2022.

[251] As there is no provision for the exercise in the RSC, I take guidance from the English rules' express provisions on Points of Dispute and its case law.

[252] Under the **English Civil Procedure Rules, 1998, Rule 47.9** gives the paying party and any other party to a detailed assessment, the option to dispute any item in a bill of costs by serving points of dispute on the receiving party and any other party to a detailed assessment. **Rule 47.9 of the English CPR** states,

> **"47.9.—(1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute on—**
>
> **(a)the receiving party; and**
>
> **(b)every other party to the detailed assessment proceedings."**

[253] **Rule 47.14 (16) of the English CPR** limits the paying party's arguments at a detailed assessment hearing to what is set out in the Points of Dispute. It states,

> **"47.14 (6) Only items specified in the points of dispute may be raised at the hearing, unless the court gives permission."**

[254] In **Ainsworth v Stewarts Law LLP [2020] EWCA Civ 178**, the English Court of Appeal agreed with Senior Costs Judge, Chief Master Gordon-Saker's **("Gordon-Saker J.")** decision to dismiss one of the appellant's point of dispute on the basis that he was entitled to decide that it was not possible to conduct a fair hearing on the basis of the Points of Dispute as pleaded.

[255] Lady Justice Asplin (**"Asplin LJ"**), giving the approved judgment of the English Court of Appeal, considered Gordon-Saker J.'s findings where he stated,

> **"10. The purpose of points of dispute is really to prevent that work being done on the hoof in the course of a hearing. The solicitors are entitled to know specifically which items are challenged and the reasons for the challenge. Insofar as the claimant states that all entries are disputed, it seems to me that it would be beholden on him to explain why each particular entry is challenged and whether he is asserting that no time should be allowed or reduced time should be allowed or whether the work should have been done by a different grade of fee earner. But, as pleaded, the points of dispute, it seems to me, do not raise a proper challenge to the documents items and certainly do not raise a challenge which can be properly answered by the defendant without a considerable amount of time being spent in looking at the papers to reply to that challenge and that, it seems to me, is a process, which if it is to be done, should be done in advance of the hearing rather than at the hearing."**

[256] Asplin LJ went on to discuss how the Points of Dispute should be drafted,

> **"37. Accordingly, 47PD.8 para 8.2 is directly relevant. It makes it absolutely clear that points of dispute should be short and to the point and, therefore, focussed. Furthermore, sub-paragraphs (a) and (b) leave no doubt about the way in which the draftsman should proceed. General points and matters of principle which require consideration before individual items in the bill or bills are addressed, should be identified, and then specific points should be made "stating concisely the nature and grounds of dispute." Such an approach is entirely consistent with the recommendations and observations made in the Review of Civil Litigation Costs: Final Report, 2009 to which we were referred.**
>
> **38. Common sense dictates that the points of dispute must be drafted in a way which enables the parties and the court to determine precisely what is in dispute and why. That is the very purposes of such a document. It is necessary in order to enable the receiving party, the solicitor in this case, to be able to reply to the complaints. It is also necessary in order to enable the court to deal with the issues raised in a manner which is fair, just and proportionate.**
>
> **39. As I have already mentioned, the complaint should be short, to the point and focussed. As para 8.2(b) of 47PD.8 indicates, that requires the draftsman not only to identify general points and matters of principle but to identify specific points stating concisely the "nature and grounds of the dispute". In the case of a solicitor and own client assessment, it seems to me, therefore, that in order to specify the nature and grounds of the dispute it is necessary to formulate specific points by reference to the presumptions contained CPR 46.9(3) which would otherwise apply, to specify the specific items in the bill to which they relate and to make clear in each case why the item is disputed. This**

need not be a lengthy process. Having explained the nature and grounds of dispute succinctly, the draftsman should insert the numbers of the items disputed on that ground in the relevant box. The principle is very simple. In order to deal with matters of this kind fairly, justly and proportionately, it is necessary that both the recipient and the court can tell why an item is disputed. The recipient must be placed in a position in which it can seek to justify the items which are in dispute."

[257] Upon concluding the Court's judgment, Asplin LJ held, adopting the findings of Gordon-Saker J. that the matter could not be conducted fairly "on the hoof" and was likely to take too long and dismissed the appeal. She further held that Gorden-Saker J. was entitled to take the course he did which was well within the ambit of the proper exercise of his discretion.

[258] Consequently, any paying party wishing to present Points of Dispute to a receiving party on a taxation, should set them out by specifying and inserting the item number being objected to and setting out concise, general points addressing the nature and grounds of the dispute. If a paying party fails to make a specific point in its points of dispute a taxing master is not entitled to consider the objection at the taxation.

[259] As for the instant case, the Plaintiff is limited to the argument set out in her Points of Dispute which is that the Plaintiff should not be required to pay any of the costs of and occasioned with the First Defendant's change of English leading counsel, from Taube to Rajah.

[260] In para. 3.23 of the Points of Dispute, the Plaintiff stated that as a result of Taube's conflict, Rajah had to be admitted and read in, incurring very significant costs in the months leading up to the Trial. Therefore, I consider that this particular objection is limited to whether the legal fees claimed for the admittance of Rajah and subsequently his reading in to represent the First Defendant as leading Counsel should be allowed.

[261] I have considered the parties' helpful background of the proceedings and evidence, particularly the letters between the parties and the Consent Order and I find that, Taube's fees and Rajah's fees are recoverable in principle as both parties agreed by the Consent Order to:

"treat as disbursements the fees and costs of their:
(a).....
(b) English Queen's Counsel engaged to assist with this matter other than as advocate, limited to one per party."

[262] The question therefore for determination at the taxation is whether they will be allowed, which will depend on the nature of the entry in the bill of costs and will also be subject to

reasonableness, the Factors and the evidence provided to the Court in support of those entries.

[263] As the English lawyers' fees are considered disbursements, evidence must be provided at the taxation supporting and particularizing the engagement of McDermott for the Plaintiff and Taylor for the First Defendant. This could be by letter of engagement, email or telephone attendance or some other means. Adopting the findings of Lyons J. in **Hurt and another v Scheck, Exuma Harbour Estates Limited v Siegel, Raymond, Brent Ltd. and another [2008] 3 BHS J. No. 20**,

> **"15.(2) As a general rule the foreign attorneys' costs must have been generated as a result of a request from the Bahamian lawyer (as principal lawyer) to the foreign lawyer for the foreign lawyer to perform a specific task for and on behalf of the Bahamian lawyer that the Bahamian lawyer could not reasonable do himself. In general this is for work carried out in the foreign lawyer's jurisdiction. The costs of the foreign attorney billed as a disbursement from the local attorney's bill of costs, are subjected to the same test as all costs. Matters of relevance, reasonableness (both as to need and time spent, necessity etc. are considered.)"**

[264] Accordingly, the English lawyers' fees are recoverable as disbursements but the actual amount allowed will depend on the evidence presented by the paying party and whether the amount claimed is reasonable after considering various factors.

[265] Notwithstanding my finding that the Plaintiff is limited to the arguments set out in 3.24 of the Points of Dispute, I do think it necessary to consider the advocate-witness rule as the Plaintiff's argument is premised on Rajah having to take over from Taube as a result of him stepping down as lead Counsel to be cross-examined, while still remaining as a part of the First Defendant's legal team.

[266] I considered the cases of **Phoenix v Metcalfe (1974) 48 D.L.R. 631, Nottage v Finlayson and Progress Farms Ltd. BS 1992 SC 26, HK and Secretary of State for the Home Department [2006] UKAIT 00081** of the Canadian, Bahamian and English jurisdictions. They all acknowledge that while it is frowned upon for an attorney to be both an advocate for a client and a witness in that client's case, as it can be seen to prejudice the interests of justice as well as a breach of the Counsel and Attorney's duty to the Court, there is no absolute rule prohibiting a person from being both a witness and an advocate.

[267] In the Bahamian jurisdiction, where a person is admitted to The Bahamas Bar as Counsel and Attorney, there is no distinction between Solicitor and Barrister. As a result, it is not uncommon for a Counsel and Attorney on a litigation team to swear an affidavit while sitting as second chair in a matter.

[268] In the grand scheme of things, it all boils down to the wishes and interest of the Client, who would essentially need to consent to the Counsel and Attorney's continued representation of the case if called as a witness. In the instant case, Taube chose to step down as lead advocate. Despite this, the First Defendant, in exercising its constitutional rights to the Counsel of its choosing, elected to continue to keep Taube on its legal team as it no doubt was beneficial to them based on his knowledge of the matter.

[269] Therefore, as previously mentioned, the question that now remains to be answered, is whether, depending on the nature of the entry, the legal fees (disbursements) will be allowed.

[270] Accordingly, having regard to the points of dispute and all of the evidence of both the Plaintiff and the First Defendant, I find that:

1. The Plaintiff is limited to her arguments as set out in 3.23 and 3.24 of her Points of Dispute.
2. Both Taube's and Rajah fees are recoverable in principle as disbursements and whether they will be allowed will be considered at the taxation.

PRELIMINARY ISSUE FOUR – WHETHER THE INDEMNITY PRINCIPLE HAS BEEN BREACHED?

[271] The Plaintiff invites the Court to direct the First Defendant to demonstrate that it has indeed paid its lawyers' legal fees in order to confirm that there is a proper liability for the Plaintiff to indemnify it.

[272] In her Points of Dispute at pg. 2, para. 2, the Plaintiff states,

> **"2. Indemnity principle**
>
> **2.1The Bill of Costs totals B$332,776.75 and contains, for example, extraordinary claims for costs including (in respect of the one-day hearing on 8 February 2019) the attendance of 2 Bahamian attorneys, 1 English solicitor and English leading counsel in court at the same time. The court is asked to satisfy itself that there has been no breach of the indemnity principle in respect of the Bill of Costs and that the hourly rates, time claimed and total costs were proper liabilities of the First Defendant, were charged to it in full and paid by it. The court is also asked to satisfy itself that the amount of costs payable is not dependent upon the outcome of the Action, and that any funding arrangement was lawful in this jurisdiction."**

[273] At 2.2, the Plaintiff goes on to discuss whether the First Defendant was able to claim any costs of or occasioned by the hearing which took place on 23rd January 2019 which veers away from the argument of whether there was an agreement by the First Defendant and its attorneys to pay legal fees. Therefore, I do not think it necessary to set paras. 2.2 and 2.3 out.

[274] At pg. 3, para. 3 a. the Plaintiff also states,

> **"The Bill of Costs covers the period from 27 February 2014 to 30 November 2022 (with time from March to November 2022 comprising costs associated with taxation). The total of B$9,219,002.14 includes, for example, extraordinary claims for costs including the attendance of 2 Bahamian attorneys, 3 English solicitors and 3 English barristers each day in court (e.g. on 5 February 2021 items 526 and 2099) at the Trial and the hiring of a castle for over 124,000 for Trial accommodation. The Court is asked to satisfy itself that there has been no breach of the indemnity principle in respect of the Bill of Costs and that the hourly rates, time claimed and total costs were proper liabilities of the First Defendant, were charged to it in full and paid by it. The Court is also asked to satisfy itself that the amount of costs payable is not dependent upon the outcome of the litigation, and that any funding arrangement was lawful in this jurisdiction."**

Plaintiff's Evidence and Submissions

[275] By the Eleventh Robertson Affirmation, the Plaintiff avers that the First Defendant is a shell company without assets of its own and that the First Defendant has avoided the question of the identity of the person or persons who have underwritten its Defence. If a third party has de facto paid for the costs of that Defence, that information ought to be disclosed.

[276] By the Plaintiff's submissions, she submits that the indemnity principle, which mandates that costs are payable to a party only by way of indemnity for sums they have paid their lawyers, or are liable to pay them, should be enforced against the First Defendant.

[277] While the Plaintiff accepts that there are many instances where funds are furnished to the party by a supporter, such as an insurer or a trade union which would enable them to pay their attorney and not offend the indemnity principle, she queries whether it was the First Defendant who has paid its lawyers' legal fees and seeks transparency if it was not. If it is a third party and not the First Defendant who paid the latter's legal fees, with no right of recourse against the First Defendant, then there will be no loss to the First Defendant for the Plaintiff to indemnify.

[278] The Plaintiff submits that the English case law, which places weight on a lawyer's certification of a bill of costs as payable by their client, is irrelevant as the bills of costs in the present case do not bear a certificate in the English manner and in any event the

English certificate would not answer whether the First Defendant was liable to pay its legal fees, but rather whether it has actually paid those bills when they must by now have been paid.

[279] The Plaintiff also submits that in the English cases relied on by the First Defendant, there was no suggestion that the bills had actually been paid by someone other than the plaintiff and in any event, the English cases stressed the importance of transparency. In **Bailey v IBC Vehicles [1998] 3 All ER 570**, 576a Henry LJ (along with Judge LJ who made similar observations), having stated the importance of the bill's certificate, nonetheless stated that proof of compliance with the indemnity principle should be disclosed, stating:

> **"in what is hoped will be the new ethos of litigation, where by co-operation the parties ensure that costs are spent resolving the essential issues in the action rather than in satellite litigation, an ounce of openness is cheaper than any argument'.**

[280] The Plaintiff relies on **Dickinson v Rushmer [2002] 1 Costs LR 128** in support of the proposition that even where the bills of costs have an English-style certificate, the court will make further enquiries where a 'genuine issue' is raised, and the latter simply requires that there is some factual assertion raised which places compliance with the indemnity principle in question.

[281] The Plaintiff further submits that there was need to raise an issue in the instant case, as she was of the view that the First Defendant does not have the means to pay its lawyers' legal fees itself, and as a result, is asking the Court to confirm the source of the funds to ensure that the First Defendant is indeed out of pocket which would require indemnity at the Plaintiff's expense.

First Defendant's Evidence and Submissions

[282] By the Second McGuigan Affirmation, McGuigan a Partner of the English Firm Taylor averred that she had led the litigation in the action on behalf of the London team since 2014, adding that Taylor had acted on the First Defendant's behalf since its incorporation in 1992 which resulted from advice given to the predecessor trustee on restructuring of the 1973 Settlement which held the wider family wealth for many decades prior to 1992.

[283] McGuigan averred that McKinney acted on the First Defendant's behalf and that it had been McKinney's client since September 2014. Any advice rendered to the First Defendant by McKinney or Taylor would be followed by an invoice addressed to the First Defendant who would be liable for the fees.

[284] McGuigan confirmed that the First Defendant's costs did not exceed the costs that it had actually paid to Taylor and that the bills of costs were duly signed by the First Defendant's Bahamian attorneys, McKinney.

[285] She also confirmed that there was no agreement, express or implied, between Taylor or McKinney or any other third party, precluding the First Defendant from paying the legal fees and expenses in any circumstances and that there was no breach of the indemnity principle and therefore no genuine issue to raise in that regard.

[286] By the First Defendant's written submissions, the First Defendant submits that the Plaintiff did not sufficiently make out her case that the indemnity principle had been breached or that the costs claimed were not payable by the First Defendant or that the costs were not pursuant to any unlawful retainer.

[287] Beginning with the case of **Harold v. Smith [1860] H&N 381** from which it submits the indemnity principle originates, the First Defendant relies on several cases which defined and described the indemnity principle.

In **Harold v. Smith**, Bramwell B stated:

> **"Before stating the principle on which the Master acted on this taxation, it may be as well that I should state what we consider the principle upon which he ought to have acted. I think the question is one of considerable importance, and therefore, although it is only a question of reviewing taxation of costs, I go into it at some length.**
>
> **Costs as between party and party are given by the law as an indemnity to the person entitled to them: they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them. Therefore, if the extent of the damnification can be found out, the extent to which costs ought to be allowed is also ascertained. Of course, I do not say there are not exceptional cases, in which certain arbitrary rules of taxation have been laid down; but, as a general rule, costs are an indemnity, and the principle is this, — find out the damnification, and then you find out the costs which should be allowed."**

In **Adams v London Improved Motor Coach Builders Limited [1921] 1KB 495** Bankes LJ at pgs. 499 to 501 stated:

> **"Although the plaintiff gave no written retainer to them the solicitors issued a writ on his behalf, took all the necessary steps to bring the action to trial, and instructed counsel both during the preliminary stages and at the hearing of the action. The Union acted as the plaintiff's agent in retaining and instructing the solicitors, and the solicitors accepted the retainer and**

instructions on the plaintiff's behalf and were entitled to be paid their costs out of the funds contributed to by him."

.....

The next question is upon what terms were they employed? Both the plaintiff and Mr. Evershed were asked some questions about that. But if, as I think, it is essential to the defendants' case that they should establish that the terms upon which the solicitors were engaged included the term that under no circumstances should they look to the plaintiff, it seems to me that the evidence falls entirely short of what was necessary to establish that case .....When once it is established that the solicitors were acting for the plaintiff with his knowledge and assent, it seems to me that he became liable to the solicitors for costs, and that liability would not be excluded merely because the Union also undertook to pay the costs. It is necessary to go a step further and prove that there was a bargain, either between the Union and the solicitors, or between the plaintiff and the solicitors, that under no circumstances was the plaintiff to be liable for costs. In my opinion the evidence falls short of establishing that necessary fact, without which the defendants are not entitled to succeed. On these grounds I think that the learned judge's decision is right."

In **Lewis v Averay (No 2) [1973] 1 WLR 510** the defendant had been successful, having been supported by the Automobile Association, and the question was whether the Legal Aid Fund was required to pay the costs in those circumstances where the claimant had been supported by Legal Aid. Lord Denning MR, with whom Phillimore and Scarman LJJ agreed, at pg. 513 stated:

"In the first place, Mr Hames stresses the words 'costs incurred by him'. Those words appear in the Act in two or three places. Mr Hames suggests that in this case the costs were not incurred by Mr Averay, but were incurred by the Automobile Association; because the Automobile Association undertook the appeal and instructed their solicitors and paid them. I cannot accept this suggestion. It is clear that Mr Averay was in law the party to the appeal. He was the person responsible for the costs. If the appeal had failed, he would be the person ordered to pay the costs. If the costs had not been paid, execution would be levied against him and not against the Automobile Association. The truth is that the costs were incurred by Mr Averay, but the Automobile Association indemnify him against the costs. This is borne out by a letter of April 11, 1972 ... "

In **Davies v Taylor (No 2) [1974] AC 225** the House of Lords considered this question. Viscount Dilhorne, at pg. 230 (c) to g stated:

"In Adams ... a somewhat similar question arose for consideration. There a trade union gave legal aid to one of its members and instructed a firm of solicitors to act for him. The plaintiff gave no written retainer to the

solicitors, but, having succeeded in the action, was held entitled to judgment with costs [he then cited Bankes LJ at page 401 — see above and from the judgment of Atkin LJ at pages 502–503].
In this case the solicitors, no doubt first instructed by the insurance company, were the solicitors on the record as solicitors for the respondent. They acted for him and, in the absence of proof of an agreement between him and them or between them and the insurance company that he would not pay their costs, they could look to him for payment for the work done and his liability would not be excluded by the fact that the insurance company had itself agreed to pay their costs."

In **R v. Miller & Glennie [1983] 1WLR 1056** Lloyd J, as he then was, said this at pg 1061:

"I would hold, following Adams v. London Improved Motor Coach Builders Ltd. [1921] 1 K.B. 495, and the other cases I have mentioned, that costs are incurred by a party if he is responsible or liable for those costs, even though they are in fact paid by a third party, whether an employer, insurance company, motoring organisation or trade union, and even though the third party is also liable for those costs. It is only if it has been agreed that the client shall in no circumstances be liable for the costs that they cease to be costs incurred by him, as happened in Gundry v Sainsbury [1910] 1 K.B. 645 ."

[288] The First Defendant proffers that each of the above cases were considered by Vos J (as he then was (now the Master of Rolls) in **Popat v. Edwin Co LLP [2013] EWHC 4524**, where he confirmed that the indemnity principle, had not been altered or removed. He held:

"35. The question that the court has to answer in deciding in any particular case, where there is a party claiming to be indemnified with respect of costs is whether that person has paid or become liable to pay the costs. The question of who actually discharges the costs is not the relevant question, as the cases show. In every case that I have cited the costs were actually discharged by some third party, by the insurer, by the Automobile Association, by the union or by someone else. It matters not that the third party has paid. What matters is whether, as Lord Phillips said, the party claiming indemnity has "become liable to pay" those costs.

36. In this case it is absolutely clear, in my judgment, as it was to the Master, that Ms Popat was liable to pay the costs, had become liable to pay the costs at all stages up to the time when the Medicare discharged the liability. Then Mr Sage submits that: "that discharge changes everything". In my judgment, however it cannot because the crucial question is what would have happened if the trustee had not paid the bill that was rendered to it in respect of the costs for which Ms Popat was also liable. In that event, Mr Sage accepted that it would be open to solicitors to render a further bill to Ms Popat and she would have been obliged to pay that bill. She was, therefore, liable to pay

the solicitor's costs in question and the indemnity principle is not, in my judgment, violated."

[289] The First Defendant contends that there was not a single argument advanced or factual assertion made by the Plaintiff to the effect that the First Defendant, as a client of Taylor and McKinney, was not liable to pay either law Firm and the fees and disbursements they have charged or that, following the authorities above, under no circumstances the First Defendant would be liable for the costs. Accordingly, no issue actually arises under the indemnity principle at all.

[290] The First Defendant also contends that it is liable to pay Taylor and McKinney for the fees and expenses they have incurred as their clients and offered to make copies of the invoices available to the Court (without waiver of any privilege) should the need arise so that the Court alone can consider them.

[291] The First Defendant contends that it is important for the Court to appreciate that the bills of costs have been signed by McKinney, confirming and certifying the same and relies on **Bailey v IBC Vehicles Ltd [1998] 3 All ER 570**, where the Court of Appeal explained the importance of a solicitor's signature to a bill of costs:

> **"In so signing he [the solicitor] certifies that the contents of the bill are correct. That signature is no empty formality ... The signature of the bill of costs under the Rule is effectively the certificate by an officer of the Court that the receiving party's solicitors are not seeking to recover in relation to any item more than they have agreed to charge their client."**

[292] The First Defendant further submits that the Court can only be expected to look behind this signature if the paying party raises a 'genuine issue' demanding explanation and evidence as was held in **Hazlett v Sefton Metropolitan Borough Council [2001] 1 Costs LR 89 at paras. 19 to 21**:

> **"19. In our judgement, it is reasonable to assume in those circumstances that where the complainant has a solicitor acting for him in pursuing his complaint, he will be liable to pay his solicitor's costs of doing so. In other words, there is normally a presumption that the complainant will be personally liable for his solicitor's costs and it should not normally be necessary for the complainant to have to adduce evidence to that effect. Such an approach would be consistent with that adopted in the case of R v Miller where, although the factual circumstances were different, the wording of the relevant statutory provisions in the 1973 Act is very similar to the wording of s 82(12) of the 1990 Act. The complainant will therefore be able to rely on the presumption that he is liable for his solicitor's costs where there is no effective challenge to it.**

20. Where however, there is a genuine issue raised by the defendant as to whether the complainant has properly incurred costs in the proceedings, the position will be different. A defendant may, for instance, have grounds for believing that the complainant will not be liable to pay his solicitor's costs, whether because he has entered into an unlawful and unenforceable conditional fee arrangement with his solicitor or for any other reason. In those circumstances, where the defendant has raised a genuine issue as to whether the complainant has properly incurred costs in the proceedings, the complainant will be at risk if he continues to rely on the presumption that he is liable for his solicitor's costs. If he does not then adduce evidence to prove that he has properly incurred costs in the proceedings and the defendant can show by evidence or argument, that he has not, he would be most unlikely to succeed in recovering his costs.

21. The need for the complainant to give evidence to prove his entitlement to costs rather than relying on the presumption in his favour will not, however, arise if the defendant simply puts the complainant to proof of his entitlement to costs. If the defendant simply puts the complainant to proof of his entitlement to costs, the complainant would be justified in relying on the presumption in his favour. It would be necessary for the defendant to raise a genuine issue as to whether the complainant is liable for his solicitor's costs before the complainant should be called upon to adduce evidence to show that he is entitled to his costs It will be for the trial judge to decide whether or not the defendant has raised an issue which calls for proof by the complainant of his liability to costs. Prior notice of the issue to be raised by the defendant should be given to the complainant in sufficient time before the hearing to enable the complainant to deal with it properly at the hearing and to avoid the necessity of an adjournment at the defendant's expense."

[293] The First Defendant adds that the Plaintiff has not raised any genuine issue and that she merely asked the Court to satisfy itself that there has been no breach of the indemnity principle which it says is simply putting the First Defendant to proof. The First Defendant contends that that was not sufficient to overcome the usual presumption as is perfectly clear from **Hazlett v Sefton Metropolitan Borough Council** and that it is not the role of the Registrar, absent any genuine issue being raised, to investigate an issue which was not properly raised and which has been certified to have been complied with by an Officer of the Court.

[294] The First Defendant goes on to say that the Plaintiff's own belief in this argument is belied by her agreement to make an unconditional interim payment on account of the First Defendant's costs in the sum of $3 million.

Legal Analysis

[295] The Plaintiff submits that the First Defendant, a penniless shell company's failure to reveal the source of its funds to her throughout the litigation and now at the taxation proceedings raises a genuine concern that the First Defendant is unable to pay its legal

fees. If she is correct in her assertion, that the First Defendant is unable to pay its legal fees, then the First Defendant is in breach of the indemnity principle and there is no basis for her to pay the costs set out in the First Defendant's bills of costs.

[296] The Plaintiff further submits that in the absence of this knowledge and a certified bill of costs, as the latter is not applicable in this jurisdiction, a client care letter issued to the First Defendant by its attorneys should be shown to the taxing master as satisfaction of an agreement to pay or even payment of legal fees.

[297] The First Defendant on the other hand contends that the paying party only needed to satisfy the Court that there was an agreement between itself and its attorneys to provide legal representation and to incur liability for payment resulting from that legal representation and that such agreement could be, in addition to a statement setting out the same, confirmed by the certification of a bill of costs.

[298] The First Defendant submits that the Plaintiff did not satisfy the steps necessary for invoking the indemnity principle, which was to provide evidence to the Court that there was no agreement to pay the legal fees or that there were no funds to pay the legal fees and that the Plaintiff simply raised the suspicion.

[299] The RSC vests a Registrar with the discretion to order the production of any document which may be relevant to a matter, when wearing the hat of a taxing master. **RSC, Order 59 Rule 13** states,

> **"13. The Registrar may, in the discharge of his functions with respect to the taxation of costs —**
>
> **(a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so directs;**
>
> **(b) require any party represented jointly with any other party in any proceedings before him to be separately represented; When order for taxation of costs not required**
>
> **(c) examine any witness in those proceedings;**
>
> **(d) direct the production of any document which may be relevant in connection with those proceedings."**

[300] The effect of the Rule was discussed in The Supreme Court White Book 1997, by the author's interpretation of the UK equivalent Order 62 Rule 20.

> **"Effect of rule – Normally all documents which support a bill of costs will be before the taxing officer. O. 62 r.29 (7) sets out the documents which must be lodged with every bill of costs unless the taxing officer directs otherwise. The provisions of r.20 (d) therefore give the taxing officer power to order the production of documents outside the scope of O.62, r. 29(7) if he considers them relevant.**

.....Mr. Justice Owen in Silverstone Records Limited v. Gary Mountfield, review of taxation, March 1994 unrep. Summarized the situation: The relevant law to be gathered from the above decisions seems to be:

(1) For taxation purposes 0. 62 provides a self contained code.

(2) Although in this code there is no right to discovery of privileged documents, a master may order the production of any relevant document in connection with the proceedings under O.62, r. 20(d). As r. 29 requires disclosure of documents relied on, privileged documents, if relied on, must be disclosed to the Court...

(3) A privileged document upon which the claiming party does not rely may be a relevant document. Exercise of this power which is discretionary in respect of a privileged document requires a prior weighing of the public policy on which the privilege was founded against the gravity of the charge made...

(4) Upon a direction being given whether in respect of a document relied on in the taxation or in respect of a document not relied on but giving grounds for believing that an unjust claim is being made, a claiming party has a discretion either to disclose and continue or not to disclose and discontinue."

[301] **Order 59 Rule 19 (5) (b) of the RSC** states,

> **"(5) A party who begins proceedings for taxation must at the same time lodge in the Registry —**
>
> **(b) unless the Registrar otherwise directs, the bills of costs together with all necessary papers and vouchers."**

[302] This Rule is in conformity with the usual practice of the receiving party providing documents to support the amount claimed for an item in the bill and would usually consist of pleadings, submissions, evidentiary documents and invoices for service, filing fees and copy fees (non-exhaustive). Therefore, it would give me the authority to request a client care letter if I find favor with the Plaintiff's objection.

[303] Order 59, gives directions on how a bill of costs should be lodged. **Order 59 Rule 23 (2) of the RSC** states,

> **"(2) Before a bill of costs is left for taxation it must be indorsed with the name or firm and business address of the attorney whose bill it is."**

[304] This Rule is not to be confused with the English equivalent of Order 62, rule 29(7) (c)(iii) however, which requires an English solicitor who brings proceedings for taxation to sign the bill of costs, certifying that the contents of the bill are correct.

[305] Notwithstanding, the indorsement of the name or firm and business address of the attorney filing the bill of costs is usually deemed as sufficient to a taxing master that the

receiving party is represented by that attorney and the bill is taxed without any inquiries on the representation.

[306] This was implied by Hanna-Adderley J. in **Incorporated Trustees of St John's Particular Church of Native Baptists In The Bahamas v Freeport Commercial And Industrial Limited and another [2024] 1 BHS J. No. 111** where she stated,

> **"18. In this regard, although Order 62 rule 25 of English Rules, which our Order 59 rule 23 is based on, provides for one solicitor applying to have the costs of another solicitor taxed where an agency relationship exists between the two separate solicitors, our Order 59 rule 23 (2), makes no allowance for the same. If Parliament intended for it to be permissible for one attorney to leave for taxation the costs of another attorney under any circumstances, it would have stated so in Order 59 rule 23 (2) as was done by the English Parliament in Order 62 rule 25.**

[307] In a 2024 decision from the Bahamian Court of Appeal in **Johann D. Swart et al v. Apollon Metaxides and Silver Point Condominium Apartments SCCivApp No. 78 of 2012 ("Swart v. Metaxides")**, Registrar Kristina Wallace-Whitfield **("Registrar Whitfield")** was tasked with considering and applying the indemnity principle.

[308] In **Swart v. Metaxides**, Metaxides filed a Motion seeking a stay of the taxation proceedings for Swart's three bills of costs until proof of payment was produced for the three bills of costs and for five other bills of costs which were already taxed, a stay of the enforcement of enforcement of the Certificate of Taxations for the five previously taxed bills and to set aside the Certificates of Taxations previously issued for the five bills of costs.

[309] The Learned Registrar Whitfield dismissed Metaxides' Motion in its entirety. With respect to the indemnity principle, Registrar Whitfield was not satisfied that there was a breach of the indemnity principle. In her discussion on the indemnity principle, she considered a number of cases including **Adams v London Improved Motor Coach Builders Limited** and **Bailey v IBC Vehciles Ltd.** which both parties have referred to and stated as follows:

> **"37. Secondly, I do not agree with counsel for Metaxides that in the absence of proof of payment, the Swart Group is in violation of the indemnity principle.**
> **38. The Swart Group submits that proof of actual payment is not required, rather it is the liability to pay. They further submit that Metaxides is not entitled to a copy of its engagement letter. Evidence of payment, they submit, is not a prerequisite for taxation proceedings to commence, rather the Taxing Master's overarching consideration, once the taxation proceedings have commenced is reasonableness.**

39. May LJ, in the case of General of Berne Insurance Co. v Jardine Reinsurance Management Ltd and others [1998] 2 All ER 301, discussed the indemnity principle. He stated:

> **"...[s 60(3) of the Solicitors Act 1974] ... is said to enshrine a common law principle to which the label 'the indemnity principle' has been given. The principle is simply that costs are normally to be paid in compensation for what the receiving party has or is obliged himself to pay. They are not punitive and should not enable the receiving party to make a profit. Another guiding principle of taxation is that contained in Ord 62, r 12, which provides that on a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party. Thus amounts which the receiving party is obliged to pay his own solicitors may nevertheless not be recovered on a taxation on a standard basis if they were not reasonably incurred or not reasonable in amount. [Emphasis added]**

40. The Privy Council, in the case of Kenneth L. Kellar and anor. v Stanley A. Williams [2004] UKPC 30 stated:

> **"17. The parties agreed on the basic proposition that costs were taxed between party and party on the indemnity principle, that is to say, the costs recoverable by the receiving party are limited to those which he is liable to pay to his own solicitor, subject to the limitation that they were reasonably incurred and were reasonable in amount..." [Emphasis added]**

.....

43. The facts of Adams v London Improved Motor Coach Builders Ltd. [1921] 1 KB 495, as gleaned from the headnote of the case, are as follows:

> **"The plaintiff was a member of a Trade Union which provided, amongst other benefits, legal aid for members in connection with their employment. The plaintiff had duly paid all his contributions to the Union and was entitled to the benefits. The Union's funds were allocated to, amongst other objects, that of providing the legal aid mentioned above. According to the usual practice the plaintiff laid his claim against his employers, the defendants, for wrongful dismissal before the executive council of the Union, and they decided to give him legal aid, and instructed a firm of solicitors, who were the general solicitors to the Union, to act for him in the matter. The plaintiff gave no written retainer to the solicitors. There was no agreement with the solicitors that the plaintiff was not to be liable to them for their costs. They issued a writ on his behalf, and conducted the action to trial, instructing counsel on his behalf during the preliminary stages and at the trial. The plaintiff recovered judgment in the action against the defendants:- Held, that the plaintiff was entitled to judgment with costs. By Bankes and Atkin L.JJ.: On the ground that the Union,**

acting on the plaintiff's behalf, engaged the solicitors to act for him, and they became his solicitors, and he was liable to them for payment of their costs, there being no agreement with them that he should not in any circumstances be liable to them for their costs; and that liability was not excluded upon the assumption that the Union also undertook to pay the solicitors costs.

44. Lord Justice Bankes, in considering the indemnity principle, stated: "The principle upon which costs as between party and party are allowed is that the costs are awarded to the person claiming them as an indemnity. That being the principle, it follows that anyone who is not in a position to claim to be indemnified is not entitled to an order for party and party costs…"

45. Bankes LJ's determination that the solicitors were engaged to act for the plaintiff by the Union was arrived at by considering the following: who engaged the solicitors? He found that it was the Union. The Union having engaged the solicitors, on whose behalf were the solicitors engaged? He found that they were engaged to act for the plaintiff. Upon what terms were they employed? He found that it was essential to the defendants' case that they "establish that the terms upon which the solicitors were engaged included the term that under no circumstances should they look to the plaintiff". He then said: "… When once it is established that the solicitors were acting for the plaintiff with his knowledge and assent, it seems to me that he became liable to the solicitors for costs, and that liability would not be excluded merely because the Union also undertook to pay the costs. It is necessary to go a step further and prove that there was a bargain, either between the Union and the solicitors, or between the plaintiff and the solicitors, that under no circumstances was the plaintiff to be liable for costs..." [Emphasis added]

46. In the more recent case of Michael Radford and anor. v Alejandra Frade et. al. [2018] EWCA Civ 119, McCombe, LJ relied on the case of Adams and stated as follows:

> **"36. The decision in Adams is clearly determinative of a large number of cases where solicitors may be instructed on a litigant's behalf, without formal retainer by the litigant…For the reasons given by Bankes and Atkin LJJ in that case, the facts indicate that, absent any other retainer during the course of the solicitor/client relationship, 'the ordinary deduction from the employment of a professional man…is that the person accepting the agent's services is bound to renumerate the agent'…" [Emphasis added]**

47. Both sides rely on the case of Bailey v IBC Vehicles Ltd. [1998] 3 All ER 570. In that case a costs order was made in favour of the plaintiff who had been injured during the course of his employment with the defendant company. The claim was settled before trial and the defendants agreed to pay damages and costs. The plaintiff's Bill of Costs was submitted but objected to by the defendants who requested that the plaintiff provide evidence that the Bill was not in breach of the indemnity principle. The District Judge (sitting as the Taxing Master) found that the defendants were entitled to the discovery. The plaintiff's appealed that decision to a judge of the High Court.

The Judge disagreed "on the basis that there was nothing in the available information which could lead to an inference that the indemnity principle had not been observed by the plaintiff's solicitors."

48. On appeal, the Court of Appeal acknowledged the submission of the plaintiff before the Taxing Master that he "lacked jurisdiction to make the order for discovery". The Court of Appeal said:

> **"This submission was rejected, and was not renewed before us..." as counsel for the plaintiff accepted that: "...The taxing officer is exercising a judicial function, with substantial financial consequences for the parties. To perform it, he is trusted properly to consider material which would normally be protected from disclosure under the rules of legal professional privilege. If, after reflecting on the material available to him, some feature of the case alerts him to the need to make further investigation or causes him to wonder if the information with which he is being provided is full and accurate, he may seek further information. No doubt he would begin by asking for a letter or some form of written confirmation or reassurance as appropriate. If this were to prove inadequate he might then make orders for discovery or require affidavit evidence. It is difficult to envisage circumstances in which the party benefiting from the order for costs will not have been anxious to provide the required information, but if all else fails, it would theoretically be open to him to order interrogatories. However, if the stage has been reached where interrogatories might reasonably be ordered, the conclusion that the receiving party had not been able to satisfy the taxing officer about the bill, or some particular aspect of it, would seem inevitable. This jurisdiction having been acknowledged, an emphatic warning must be added against the over enthusiastic deployment of these powers, particularly at the behest of the party against whom the order for costs has been made. As [the High Court judge] recognised, the danger of 'satellite litigation' is acute. As far as possible consistent with the need to arrive at a decision which does broad justice between the parties, it must be prevented or avoided, and the additional effort required of the parties kept to the absolute minimum necessary for the taxing officer properly to perform his function..." [Emphasis added]**

49. The authorities are clear that the test of what may be recovered on taxation is governed by the indemnity principle and does not relate to only costs actually paid, but also costs liable to be paid, subject to the reasonableness of those costs. Counsel for Metaxides did not submit any evidence that the Swart Group entered into an arrangement with their attorneys that they would not be liable for the costs incurred in the litigation."

[310] In **TRX v Southampton Football Club Ltd [2022] EWHC 3392 (KB)**, Stacey J, also considering **Adams v London Improved Motor Coach Builders [1921] 1 KB 495**, held

that the burden rested on the paying party to show that the receiving party was not liable to its solicitor for work done. She held,

> **"60. It is now 103 years since the Court of Appeal ruled in Adams v London Improved Motor Coach Builders [1921] 1 KB 495 that once it is established that a firm of solicitors is acting for a party, a presumption arises that the client is liable to pay the solicitor. A client would be liable to pay their solicitor's costs where there was no agreement with them that he should not in any circumstances be liable to them for their costs (per Atkin LJ at page 503). Adams has been consistently followed since then and remained good law. See, for example, Meretz Investments NV & Anor v ACP Ltd [2007] EWHC 2635 (Ch) where Warren J expressed it in more modern language that in order to rebut the presumption, it has to be shown that there are no circumstances in which the solicitor would be able to look to the client for payment.**
>
> **61. The burden of rebutting the presumption rests with the paying party and in order to do so, it must be shown that the party was simply not liable to the solicitor for the work done on his or her behalf. It is not enough that someone else was going to pay the bill, or that they could never have afforded to pay, or that the solicitor was never likely to ask for payment. What must be shown is that the party was simply not liable to their solicitor for the work done."**

[311] It follows that on taxation, it is presumed that the paying party will be indemnifying the receiving party for work done as a result of the litigation. These costs must of course be reasonable. In this jurisdiction, once the name of the Firm is endorsed on a bill of costs, there is a presumption that there is an agreement between the receiving party and the Firm and that the receiving party is liable to the Firm for the payment of legal fees. No additional signature by an attorney of the Firm is necessary as there is no requirement for a bill of costs to be formally be certified by its attorney.

[312] A Registrar has the discretion to pierce the presumptive veil and require a receiving party to provide evidence of the agreement between the receiving party and its attorneys only if the paying party is able to show that the receiving party was not liable to its attorneys for the work done. The lack of ability to pay or the fact that someone else was going to pay or even the fact that the attorneys did not ask for payment, were not sufficient factors which could be used to adduce a claim that the indemnity principle has been breached.

[313] Therefore, to satisfy the claim that the First Defendant was in breach of the indemnity principle, the only thing that the Plaintiff would need to prove is that the First Defendant was not liable to its attorneys for the work done in these proceedings. What she says is a genuine issue which would require the piercing of the presumptive veil i.e. her having no idea of the source of payment, is irrelevant. What is also irrelevant is the signing of the bills of costs by an attorney in McKinney. The indorsement of the name of the Firm on the bill of costs is sufficient, which I have confirmed has been done.

[314] In consideration of all of the evidence before me, I find that the Plaintiff has not provided any evidence which would controvert the First Defendant's factual assertion that it has an agreement with McKinney to represent it in these proceedings and that it is liable to its attorneys for the work done. In the absence of such evidence, I am unable to exercise my discretion to order that the receiving party should present any evidence as to the source of payment of its legal fees or any document between the First Defendant and McKinney confirming their agreement.

CONCLUSION

[315] The taxations are governed by the RSC on a party and party basis which requires the Court to consider whether the entries are necessary, proper and reasonable.

[316] The matter is not legally complex but is factually complex based on the reasoning set out throughout this ruling. The Bahamian hourly rates and English hourly rates shall reflect the same.

[317] The English Hourly Rates are subject to the 2010 Guideline Hourly Rates and the 2021 Guideline Hourly Rates, to be applied in the manner set out throughout this ruling.

[318] The Costs Order does not prevent the First Defendant from claiming costs for work done subsequent to its making; such costs being recoverable in principle and subject to the relevant taxation factors for consideration.

[319] The Plaintiff is limited to her Points of Dispute on the issue of whether Taube's fees are recoverable. Taube and Rajah's fees are recoverable in principle pursuant to the Consent Order and letters exchanged prior and subsequent to and subject to the relevant taxation factors for consideration.

[320] The First Defendant is not in breach of the indemnity principle.

[321] The Plaintiff, being unsuccessful on three of the four of her objections, is ordered to pay 85% of the First Defendant's cost of the application, to be taxed if not agreed. For clarity, the reduction was in relation to the issue on hourly rates which neither party was fully successful on.

Dated this 21st day of November 2025

Akeira D. Martin
Assistant Registrar

HOURLY RATES ALLOWED FOR GRAMPIAN'S TRIAL BILL

ANNEX 1

McKinney, Bancroft & Hughes:

Fee-Earner	Hourly Rate (B$) Claimed	Hourly Rate Allowed (B$)
Brian Moree QC (from 7 March 2014)	$800.00	$750.00
Brian Moree QC (from 1 May 2015)	$900.00	$800.00
Brian Moree QC (from 1 December 2016)	$1,000.00	$850.00
Sean N. C. Moree (from 7 March 2014)	$450.00	$350.00
Sean N. C. Moree (from 1 January 2016)	$500.00	$400.00
Sean N. C. Moree (from 1 December 2016)	$550.00	$450.00
Sean N. C. Moree (from 29 March 2017)	$600.00	$500.00
Sean N. C. Moree (from 17 September 2018)	$650.00	$550.00
Sean N. C. Moree (from 14 September 2021)	$750.00	$600.00
Sean N. C. Moree (from 1 July 2022)	$800.00	$650.00
Vanessa L. Smith (from 7 March 2014)	$175.00	$150.00
Vanessa L. Smith (from 1 January 2015)	$200.00	$175.00
Vanessa L. Smith (from 29 March 2017)	$300.00	$225.00
Vanessa L. Smith (from 17 September 2018)	$350.00	$250.00
Vanessa L. Smith (from 18 July 2019)	$450.00	$300.00
Vanessa L. Smith (from 14 September 2021)	$500.00	$375.00
Ashley N. Sands (from 1 February 2019)	$325.00	$325.00
Ashley N. Sands (from 7 January 2020)	$425.00	$400.00

Knijah Knowles (from 11 June 2018)	$300.00	$300.00
Knijah Knowles (from 19 February 2020)	$375.00	$400.00
Erin M. Hill (from 14 June 2019)	$275.00	$275.00
Erin M. Hill (from 7 October 2019)	$300.00	$300.00
D'Andra A. Johnson	$275.00	$275.00
Peteche Bethell	$200.00	$200.00
Andrew C. D. Smith	$175.00	$175.00
Miguel A. Darling (from 28 August 2019)	$125.00	$125.00
Miguel A. Darling (from 5 November 2019)	$200.00	$200.00
Miguel A. Darling (from 23 February 2022)	$250.00	$250.00
Alexandria K. Russell	$125.00	$125.00

ANNEX 2

Taylor Wessing LLP:

Fee-Earner	Hourly Rate (GBP)	Hourly Rate Allowed (GBP)
Mark Buzzoni (up to 31 August 2014)	£545.00	£545.00
Mark Buzzoni (from 1 September 2014)	£560.00	£560.00
Mark Buzzoni (from 1 September 2015)	£590.00	£590.00
Mark Buzzoni (from 1 July 2016)	£620.00	£620.00
Mark Buzzoni (from 1 July 2017)	£650.00	£650.00
Mark Buzzoni (from 1 July 2018)	£670.00	£670.00
Andrew Hine (from 1 September 2015)	£590.00	£545.00
Andrew Hine (from 1 July 2016)	£620.00	£560.00
Kirstie McGuigan (up to 31 August 2014)	£530.00	£485.00
Kirstie McGuigan (from 1 September 2014)	£545.00	£490.00
Kirstie McGuigan (from 15 July 2015)	£570.00	£495.00
Kirstie McGuigan (from 1 July 2016)	£600.00	£500.00
Kirstie McGuigan (from 1 July 2017)	£630.00	£510.00
Kirstie McGuigan (from 1 July 2018)	£650.00	£515.00
Kirstie McGuigan (from 1 July 2019)	£715.00	£520.00
Kirstie McGuigan (from 1 July 2021)	£795.00	£525.00
Kirstie McGuigan (from 1 July 2022)	£855.00	£560.00
Steven Kempster (up to 31 August 2014)	£530.00	£515.00
Kate Silbermann (from 1 September 2015)	£415.00	£335.00
Kate Silbermann (from 1 July 2016)	£450.00	£340.00
Kate Silbermann (from 1 July 2017)	£480.00	£345.00
Kate Silbermann (from 1 July 2018)	£505.00	£415.00
Caroline Tayler (from 1 September 2014)	£345.00	£325.00

Caroline Tayler (from 15 July 2015)	£380.00	£330.00
Caroline Tayler (from 1 September 2015)	£415.00	£330.00
Caroline Tayler (from 1 December 2016)	£450.00	£335.00
Caroline Tayler (from 1 July 2017)	£480.00	£340.00
Caroline Tayler (from 1 July 2018)	£505.00	£415.00
Caroline Tayler (from 1 July 2019)	£585.00	£420.00
Caroline Tayler (from 1 July 2020)	£605.00	£425.00
Caroline Tayler (from 22 April 2021)	£615.00	£430.00
Caroline Tayler (from 1 May 2021)	£650.00	£435.00
Caroline Tayler (from 7 December 2022)	£800.00	£550.00
Sacha Somerston (from 1 July 2018)	£325.00	£236.00
Sacha Somerston (from 1 July 2019)	£380.00	£245.00
Sacha Somerston (from 1 August 2020)	£410.00	£250.00
Sacha Somerston (from 1 July 2021)	£485.00	£255.00
Sacha Somerston (from 1 July 2022)	£560.00	£350.00
Laura Pick (from 1 July 2019)	£400.00	£250.00
Daniel Foley (from 1 July 2019)	£360.00	£236.00
Trainee Solicitor (Private Client – 2014/2015)	£185.00	£145.00
Trainee Solicitor (Private Client – 2015/2016)	£195.00	£150.00
Trainee Solicitor (Private Client – 2016)	£205.00	£150.00
Trainee Solicitor (Private Client – up to 31 August 2017)	£205.00	£155.00
Trainee Solicitor (Private Client – from 1 September 2017)	£195.00	£155.00
Trainee Solicitor (Private Client –from 1 July 2018)	£200.00	£160.00
Trainee Solicitor (Private Client – from 1 July 2019)	£220.00	£165.00

Trainee Solicitor (Private Client – from 1 September 2019)	£230.00	£170.00
Trainee Solicitor (Private Client – from 1 July 2019)	£230.00	£175.00
Trainee Solicitor (Private Client – from 1 March 2020)	£220.00	£180.00
Trainee Solicitor (Private Client – from 1 August 2020)	£225.00	£185.00
Trainee Solicitor (Private Client – from 1 October 2020)	£225.00	£190.00
Trainee Solicitor (Real Estate – from 1 October 2020)	£235.00	£195.00
Trainee Solicitor (Tax – from 1 October 2020)	£235.00	£195.00
Trainee Solicitor (Private Client – from 1 September 2020)	£235.00	£195.00
Trainee Solicitor (Private Client – from 1 March 2021)	£225.00	£200.00
Trainee Solicitor (Private Client – from 1 January 2022)	£245.00	£230.00
Trainee Solicitor (Private Client – from 1 July 2021)	£235.00	£225.00
Trainee Solicitor (Private Client – from 1 July 2022)	£255.00	£230.00
Elizabeth Hancock (Trainee Solicitor – 2018/19)	£205.00	£160.00
Alexandra Cummings (Paralegal – 2018/19)	£195.00	£145.00
Jamang Akash (Paralegal – from 1 July 2020)	£200.00	£150.00

Shakir Kamal (Paralegal from 1 July 2019)	£195.00	£145.00
Shakir Kamal (Paralegal from 1 July 2020)	£200.00	£150.00
Jessica Nobes (Paralegal – from 1 July 2019)	£195.00	£145.00
Sarah Palmer (Paralegal – from 1 July 2019)	£195.00	£145.00
Zain Shaheed (Paralegal – from 1 July 2019)	£195.00	£145.00
Ben Waring (Paralegal - from 1 July 2019)	£195.00	£145.00
Emily West (Paralegal - from 1 July 2020)	£195.00	£150.00