



Informing Progress - Shaping the Future

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An early look at the application of the new guideline hourly rates

Rushbrooke UK Ltd v 4 Designs Concept Ltd (2022) EWHC 1416 (Ch)

In the context of an application for a wasted costs order against the applicant's solicitor, a Deputy High Court Judge has made some interesting and potentially helpful comments regarding the new guideline hourly rates for solicitors' costs.

Having declined to award the costs payable by the claimant on an indemnity basis, the judge proceeded to assess the costs summarily, pursuant to CPR 44.6 and PD 44 para 9.2.

The first issue was the hourly rate of £350 claimed by the respondent's solicitor, a grade A fee-earner, practising in Bristol. The judge noted that grade A fell in national band 1 of the costs guideline hourly rates, and the relevant rate was therefore £261. The second issue was that there was no evidence of delegation to a less expensive fee-earner for those parts of the work which could properly be done by such a fee-earner.

The judge commented that both criticisms of the respondent's costs schedules by the applicant had some force.

"The new costs guideline hourly rates came into force in October 2021. They are of course merely guidelines, but they represent a consensus view of what average work should cost in particular areas of the

IN BRIEF

A Deputy High Court Judge comments on the new guideline hourly rates and how they should be applied.

He also looks at the issue of the delegation of work to more junior lawyers.

country (so taking into account regional variations) and the experience and expertise of the relevant fee-earner. I see nothing in the present case to suggest that the work done here was above average either in difficulty, or in complexity, or in novelty, or in importance to the client, or in some other way" (emphasis added). This was typical business work.

The judge added that secondly, he was "unhappy with the notion that everything here has been done by a single grade A fee-earner. One of the important skills of a solicitor is to know how to delegate less important work to less expensive fee-earners. Sometimes it is said that, well, there was no one else to delegate to (I do not know whether that is the case here). The answer to that plea, of course, is that, as between himself and his solicitor, the client is quite entitled to insist on the grade A fee-earner doing everything.

On the other hand, as between him and his opponent, he or she is not necessarily entitled to require the opponent to pay for it. At that stage the question is instead whether the costs are reasonably incurred and reasonable in amount. And reasonableness takes account of potential delegation. Moreover, it is not for the paying party to have to identify work which could have been done by a more junior fee-earner.

In my former experience over 30 years as a practising commercial litigation solicitor, there were no litigation cases that I was involved in in which no work whatsoever could have been delegated to a more junior lawyer. In the present case, for whatever reason, it seems that it has simply not been considered. For example (and it is only an obvious example), there was no need for the grade A fee-earner to attend at the hearing and sit behind experienced counsel, who did all the advocacy. A grade C or D fee-earner would have been fine".

The judge considered that the quantum of costs claimed by the respondent was too high for both excessive rates and failure to delegate. Taking a "broad-brush" approach he reduced the costs from £8,988, including VAT to £7,920.

On the facts of the case, the applicant's solicitor was made jointly liable with the applicant for those costs.

Howard Dean, Partner and Head of Costs at **Keoghs** and a member of the Costs SFT comments:

"Since the publication of the final report of the CJC GHR working group, we have been left wondering what do the GHRs represent? This much needed judgment indicates that they represent the average hourly rates for typical commercial litigation with no more than average difficulty, complexity, and importance. One would hope that cases that are less than average in comparison to the typical commercial litigation case will be allowed less and above average more than the GHRs upon assessment."

The full judgment is available at: [Rushbrooke UK Ltd v 4 Designs Concept Ltd \[2022\] EWHC 1416 \(Ch\) \(15 June 2022\) \(bailii.org\)](#)

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