

A provincial matter

The streets may not be literally paved with gold, but London is still the hub of the legal world and the fees charged by solicitors in London are reflective of that. The latest SCCO Guideline hourly rate for a Grade A Solicitor in the City of London is £409 per hour, as against £217 for a similarly qualified solicitor in Manchester or Birmingham. If one adds a 100% success fee for a case dealt with under a Conditional Fee Agreement, this means a potential difference of £384 per hour where a case has been handled in London. Where a client chooses to instruct London solicitors and is paying the costs themselves, this is, of course, a matter for them, but where the party paying the Bill is an unsuccessful Defendant with no say in the choice of the Claimant's solicitors, one can see that arguments as to reasonableness are bound to follow. Why should the paying party, it is argued, pay a premium on the costs purely because the Claimant chose to instruct solicitors in London, particularly when the claim could just have easily been dealt with by solicitors not based in London? The answer, as with most issues in costs, is that it depends and the recent case of [Higgins v Ministry of Defence \(2010\)](#) provides a good example of the factors upon which the answer depends.

The Claimant was 82 years of age when he was diagnosed with terminal cancer caused by asbestosis. His consultant mentioned to the Claimant the name of a firm of solicitors, Field Fisher Waterhouse (FFW), who may be able to help make a claim against his former employers on his behalf. The day after this discussion, the Claimant's daughter contacted FFW and they accepted instructions to act on behalf of the Claimant. Due to the Claimant's ill health, he was very frail and had informed that he had less than 6 months to live, the Claimant advised FFW that he wanted the claim dealing with as quickly as possible. A detailed attendance was undertaken to include taking full details for a witness statement, a CFA was entered into, a medical report obtained and a letter of claim served on the Defendant together with the medical report, a schedule of loss and the witness statement. In light of the Claimant's condition, the Defendant was asked to deal with the claim as quickly as possible and an offer of settlement in the sum of £100,000 was made less than 2 weeks after the Letter of Claim. Following some discussion regarding contributory negligence the claim settled for £112,500. The time from FFW being first contacted to settlement was just over 3 months. 2 months later the Claimant tragically died.

Costs were claimed in the sum of £15,976.13, of which profit costs amounted to £12,695.78 and disbursements were £2,221.80. The main area of dispute was the hourly rate. FFW are based in the City of London and sought an hourly rate of £345 for a Grade A fee-earner. The Defendant argued that it was unreasonable to instruct a City of London firm to deal with this case as the Claimant could reasonably have instructed solicitors more local to where he lived, in Broadstairs in Kent. It was accepted that FFW had the necessary expertise to deal with a claim of this nature but, it was argued, so did other firms who could reasonably have been instructed at a substantially lower cost.

The matter came before Principal Costs Officer O’Riordan for assessment and he held that it was objectively reasonable for the Claimant to instruct FFW and, therefore, the hourly rates should be allowed as claimed. The Defendant appealed and the matter came before Master Campbell who dismissed the appeal. The Defendant appealed for a second time and the matter came before Tugendhat J for determination. The ground of appeal was stated to be:

‘Decision to allow hourly rates applicable to Central London firm of solicitors – The Costs Officer was wrong to allow as reasonable the instruction of [FFW], when the Claimant could have instructed local solicitors of equal competence who would attract far lower hourly rates under guideline rates.’

The principal to be applied in deciding this issue was set out by the Court of Appeal in the case of *Wraith v Sheffield Forgemaster (1999)*. In that case, the Court of Appeal had set out a number of factors which were relevant in determining whether it could be said that the decision of a litigant to instruct London Solicitors, as opposed to a local firm of solicitors, was reasonable in all of the circumstances. Master Campbell had set out that list of factors and then went on to consider the same. It was common ground that the matter was of high importance to the Claimant. The urgency of the matter added a degree of complexity to the claim but there were no other particular features of the claim which took it outside the norm for cases of this nature. The Master did not consider that the claim had any connection with London but he did find that FFW were accessible to the Claimant, notwithstanding their location, due to having attended him at home. Finally, it was accepted that the Claimant did not undertake any enquiries as to the likely cost of other firms dealing with the claim, whether via the Citizen’s Advice Bureau or the local Law Society, but Master Campbell held that this did not affect the reasonableness of the Claimant’s choice:

'I do not consider Mr Higgins can be criticised for following [his consultant's] advice...or that his decision to do so was objectively unreasonable...it would not be objectively reasonable to expect an 82 year old man who had just been informed that he was incurably ill, to undertake a trawl of local solicitors, in circumstances where an experienced consultant had given him the name of FFW as solicitors who specialised in this field. Had his health been better and had time been on his side, there may have been more force in [the Defendant's] submission [that he should have done that].'

(at paragraph 15)

On appeal, the Defendant argued that the Claimant should reasonably have made himself aware of the comparative costs of instructing other more local firms of solicitors. By reference to the decision of Teare J in [A v Chief Constable of South Yorkshire \(2008\)](#) it was argued that a failure to do so rendered the choice of London Solicitors and unreasonable one.

Tugendhat J did not agree. Upholding the decision of Master Campbell, he held that the Master had correctly exercised his discretion after having considered all of the various factors in the case. It was correct that the test was whether the Claimant's choice of solicitors was objectively reasonable and, in particular, it was correct that there was a duty on the Claimant to take reasonable steps to mitigate their legal costs:

'It is not in dispute that a reasonable litigant will normally be expected to investigate the hourly rates of solicitors whom he might instruct, and that he will normally be expected to consider a number of other factors, including the time and costs associated with geographical location, before choosing whom to instruct, and to take advice on these and other matters before he does so. He must keep down the costs of litigation, and that may well mean that if he goes to London solicitors who charge London rates for a case which has no obvious connection with London, and which does not require expertise only to be found there, then he may not recover costs on the basis of those rates.'

(at paragraph 26)

However, due to the particular features of this case, and in particular the Claimant's age, health and the recommendation of an experienced consultant, it was held that it was reasonable, in all of the circumstances, not to have made any further enquiries. The choice to instruct FFW was a reasonable one and their hourly rates would be allowed.

Whilst the decision in this case is fact sensitive, it is a helpful reminder of the general principles to be applied when considering the reasonableness of London hourly rates. The starting point almost seems to be that instruction of London Solicitors without a good reason is prima facie unreasonable. However, if a litigant can show factors which support the reasonableness of the decision, this may persuade a Court to allow the much higher hourly rates for London Solicitors. Whilst this argument is sure to continue to be run on Detailed Assessments, this judgment does, at least, provide a good example of the application of this potentially contentious issue.

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Cases Cited:

Higgins v Ministry of Defence [2010] EWHC 654 (QB)
<http://www.bailii.org/ew/cases/EWHC/QB/2010/654.html>

Wraith v Sheffield Forgemasters [1998] 1 WLR 132
<http://www.bailii.org/ew/cases/EWCA/Civ/1997/2285.html>

A v Chief Constable of South Yorkshire [2008] EWHC 1658 (QB)
<http://www.bailii.org/ew/cases/EWHC/QB/2008/1658.html>