

In the County Court at Liverpool

Case number: E00CJ227

Appeal No 06/2019

Between

**PETER ANTHONY SENIOR**

Appellant

**and**

**BLUE AIR MANAGEMENT SOLUTION SRL**

Respondent

Before **His Honour Judge Graham Wood QC**

(sitting with the Regional Costs Judge, District Judge Jenkinson as Assessor)

**Mr A Hogan** instructed by Hayward Baker Solicitors for the Appellant

The Respondent did not appear and was not represented

Hearing date: 4th September 2019

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Appeal Judgment

His Honour Judge Wood QC

**Introduction**

1. This is a costs appeal arising from a decision of District Judge Baldwin on 12th December 2018 in which he assessed the Claimant’s *necessarily incurred and proportionate costs* in a flight delay claim brought pursuant to Article 7 of EC Regulation 261/2004 (“the flight regulation”) and under the European Small Claims Procedure (ESCP) at £205. The Claimant (the Appellant) challenged the decision on two grounds, namely (1) that inadequate reasons were given for that assessment and (2) that the judge’s decision on necessity and proportionality was wrong in that it was outside the reasonable range of his discretion.

2. Although the sums involved in this appeal are relatively small, and might be considered out of proportion to the cost of pursuing it, when granting permission to appeal in February of this year, I did so not only on the basis that the learned judge’s determination on costs was arguably deficient in reasoning, but also that the need for guidance in ESCP cases on the costs approach provided a compelling reason. I also directed that this appeal should be heard by myself sitting with a costs assessor because it involved an intricate examination of proportionality issues under CPR 44 considered in the context of Recital 29 and Article 16 of the relevant European regulation dealing with ESCP cases. Accordingly, I was assisted by District Judge Jenkinson, one of two regional costs judges, who has contributed to this judgment.

3. It is to be noted that the Respondent airline has declined to participate in the appeal proceedings beyond the provision of a notice (having similarly played a limited role in the original claim following the provision of an answer). This is to be regretted, as the Respondent is the paying party and will be affected not only in respect of the small sums involved in this case, but also in similar and linked cases as a result of our ruling, and its further input would have been helpful.

4. It was indicated at the outset of the appeal hearing, in which Mr Hogan of counsel appeared for the Appellant, Mr Senior, that this appeal would be allowed in principle. As will be seen later in this judgment, the significant driver for that early indication was the recent decision of the Court of Appeal in the case of **West v Stockport NHS Foundation Trust [2019] EWCA 1220**. It was clearly not available to District Judge Baldwin at the time of his decision, and we have little doubt that it is likely to have impacted on the way in which this and other summary costs assessments were undertaken in flight delay cases under the ESCP. That decision, for reasons which will be explained, has led to the need for some guidance at the relatively modest appellate level of Designated Civil Judge for those carrying out summary assessments at first instance.

5. One issue which remained to be resolved, and on which the court heard submissions, was whether or not, if it was determined that the decision in **West** meant that the learned district judge’s approach to costs in this case was deficient, this court should carry out its own assessment of the costs to which the appellant was entitled, having succeeded in his claim for compensation. For reasons which will be set out below, and which were briefly explained in the course of exchange with counsel, we declined to undertake that exercise, and propose to remit this case to District Judge Baldwin for a summary assessment to be carried out in accordance with the guidance in this judgment.

**Background**

6. The particular flight which gave rise to this claim was due to depart from Rome airport on 12th November 2017 at 11 o’clock in the morning, heading for Liverpool, to arrive at 13.45. It did not arrive until 21.01 and was thus seven hours and 16 minutes late. In principle Mr Senior was entitled to compensation for the delay under the flight regulation, and he consulted specialist solicitors in Fareham for this purpose. Whilst the measure of loss was, under the flight regulation, a relatively modest sum for a compensable delay of four hours and 30 minutes (as found), his solicitors chose to pursue, as they were entitled, a remedy under the ESCP, rather than by the conventional small claims procedure prescribed under CPR 27. As will be seen, this provided the potential for more advantageous costs consequences.

7. The ESCP claim was defended in the first instance when an answer was provided purportedly relying on Article 5 (3) of the flight regulation, and in particular contending that there had been a bird strike on the incoming flight requiring repairs to the hydraulic brake system such as to give rise to a defence of extraordinary circumstances. 43 minutes of delay was conceded.

8. Beyond the answer, the airline did not participate further in the ESCP, as I have indicated, and no evidence was provided for the final determination. This was dealt with on the papers, as is usual practice in these claims, by DJ Baldwin in December. He did not provide a written judgment as such, but instead set out his reasoning in extensive preambles to the order. I understand that this approach is taken in Liverpool, which handles many hundreds of these cases, on a regular basis, and is intended to be efficient and proportionate, providing the relevant decision with reasonable dispatch.

9. In relation to the claim itself, the learned judge recorded the findings made on a balance of probabilities, noting the absence of any explanatory witness statement from the airline. Whilst rejecting the defence of extraordinary circumstances, he indicated, nevertheless, that even if the delay had been defensible, the airline had not discharged the burden of showing that reasonable avoidance measures had been taken, so as to satisfy the second limb of article 5 (3). The appellant therefore succeeded and was awarded the sum of £352.68. This is recorded in paragraph 1 of the resultant order.

10. In paragraph 2, the learned judge dealt with the issue of costs. This reads as follows:

*“The Defendant shall pay the Claimant’s necessarily incurred and proportionate costs assessed in the sum of £205”.*

11. No further explanation or reasoning is given for his decision on costs. However, it is the understanding of this court that such orders are frequently expressed in this way by the judges who specialise in airline work to provide determinations under the ESCP.

12. It to be noted, and significant reliance is placed upon this for the purposes of the present appeal, that the Appellant’s solicitors had filed and served a schedule of costs for summary assessment by the judge which claimed the sum of £1401.24, including court fees. The issue fee in this case was £105, and accordingly the profit cost element allowed for by the judge rounded up for VAT was £100. This, it is said, represented a deduction of 92% of the bill.

**Relevant provisions and case law on costs**

13. Although the ESCP is provided for by a separate European regulation (EC regulation 861/2007 - “the ESCP regulation”) it would be helpful to start with the CPR, and the process by which ESCP claims are dealt with in our courts.

14. CPR 78.14 provides:

**78.14**

(1) ESCP claims are treated as if they were allocated to the small claims track.

(2) Part 27 applies, except rule 27.14.

15. Part 27, of course, deals with the procedure for managing small claims whilst CPR 27.14 restricts the recoverability of costs or fees and other limited specified items. Under an ESCP claim, to which CPR 27.14 does not apply, costs recoverability is governed by the ESCP regulation.

16. Recital 29 of the ESCP regulation is relevant:

29. The unsuccessful party should bear the costs of the proceedings. The costs of the proceedings should be determined in accordance with national law. Having regard to the objectives of simplicity and cost-effectiveness, the court or tribunal should order that an unsuccessful party be obliged to pay only the costs of the proceedings, including for example any costs resulting from the fact that the other party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim or which were necessarily incurred.

17. The provision is stipulated in Article 16:

The unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

18. Accordingly, there is significantly greater scope for costs recoverability under the ESCP, making this process more attractive to those who undertake flight delay litigation. Significantly, whilst it is national law which determines how those costs are to be assessed, it is noteworthy that the principles to be applied are those of necessity and proportionality. There is no reference to reasonableness, which is a feature of costs recoverability for both standard basis and indemnity basis costs in national law.

19. Whilst the costs rules provide for the analysis of proportionality, which was a relatively new concept given prominence following the civil justice reforms and incorporated into CPR 44 (see below), to understand “necessity” which is not so elucidated in the rules, it is helpful to draw on the Court of Appeal’s decision in **Lownds v Home Office [2002] EWCA Civ 365**. This decision provided an approach for proportionality which is no longer good law, but the guidance given on “necessity” still prevails, and is considered to be useful:

“29. In assessing costs judges should have no difficulty in deciding whether, in order to conduct the litigation successfully, it was necessary to incur each item of costs. When an item of costs is necessarily incurred then a reasonable amount for the item should normally be allowed. Any item that was not necessary should be disallowed.” (Lord Woolf)

20. As stated, CPR 44.3 (5) provides a list of factors that should be considered when addressing proportionality:

(5) Costs incurred are proportionate if they bear a reasonable relationship to –

(a) the sums in issue in the proceedings;

(b) the value of any non-monetary relief in issue in the proceedings;

(c) the complexity of the litigation;

(d) any additional work generated by the conduct of the paying party; and

(e) any wider factors involved in the proceedings, such as reputation or public importance.

21. Whilst reasonableness does not fall to be considered, and no standard basis assessment arises in this case, it might also be said that CPR 44.4 is relevant to an assessment of proportionality of costs, with the so-called “seven pillars of wisdom”.

(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) ………………….

(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.

22. It is significant until very recently there had been no appellate guidance provided on the issue of proportionality and how it might affect costs assessment. In the case of **West**, to which reference is made above, the Court of Appeal grappled with the recoverability of ATE premiums in clinical negligence claims in the light of a great degree of inconsistency as to how these were being assessed at first instance. Often the premium would bear no relationship to the value of the claim and issues of proportionality loomed large. The Master of the Rolls, assisted by the report of assessors, gave the judgement which dealt with the correct approach to ATE assessment. However, in section 10 of his judgment, at paragraph 87 to 93, he provided more general guidance on what was described as the “*right approach to costs assessment*” dealing with issues of reasonableness and proportionality.

“87. We are anxious not to restrict judges or force them, when assessing a bill of costs, to follow inflexible or overly-complex rules. One of the matters, however, which is apparent from the many cases cited to us, and from the submissions of counsel on the hearing of these appeals, is that there is an absence of consistency in the way in which costs bills are assessed. Taking the various points made above and drawing them together, we give the following guidance on an appropriate approach.

88. First, the judge should go through the bill line-by-line, assessing the reasonableness of each item of cost. If the judge considers it possible, appropriate and convenient when undertaking that exercise, he or she may also address the proportionality of any particular item at the same time. That is because, although reasonableness and proportionality are conceptually distinct, there can be an overlap between them, not least because reasonableness may be a necessary condition of proportionality: see Rogers at paragraph 104. This will be a matter for the judge. It will apply, for example, when the judge considers an item to be clearly disproportionate, irrespective of the final figures.

89. At the conclusion of the line-by-line exercise, there will be a total figure which the judge considers to be reasonable (and which may, as indicated, also take into account at least some aspects of proportionality). That total figure will have involved an assessment of every item of cost, including court fees, the ATE premium and the like.

90. The proportionality of that total figure must be assessed by reference to both r.44.3(5) and r.44.4(1). If that total figure is found to be proportionate, then no further assessment is required. If the judge regards the overall figure as disproportionate, then a further assessment is required. That should not be line-by-line, but should instead consider various categories of cost, such as disclosure or expert's reports, or specific periods where particular costs were incurred, or particular parts of the profit costs.

91. At that stage, however, any reductions for proportionality should exclude those elements of costs which are properly regarded as unavoidable, such as court fees, the reasonable element of the ATE premium in clinical negligence cases, and the like. Specifically, therefore, if the ATE premium is assessed as reasonable, it will not fall to be reduced by any further assessment of proportionality.

92. The judge will undertake the proportionality assessment by looking at the different categories of costs (excluding the unavoidable items noted above) and considering, in respect of each such category, whether the costs incurred were disproportionate. If yes, then the judge will make such reduction as is appropriate. In that way, reductions for proportionality will be clear and transparent for both sides.

93. Once any further reductions have been made, the resulting figure will be the final amount of the costs assessment. There would be no further stage of standing back and, if necessary, undertaking a yet further review by reference to proportionality. That would introduce the risk of double-counting.”

23. It would seem that the Master of the Rolls is not here advocating a two-stage approach as such, which would lead to a final discount on a disproportionate bill, but requiring proportionality to be first considered when dealing with reasonable costs incurrence, only revisiting the question of proportionality through categories of costs if concerned about the overall total. It is a departure from a practice which is followed in numerous costs assessments throughout the country.

In relation to the duty to give reasons where there is a paper determination a small claims hearing such as this, it is necessary to return to CPR part 27 and in particular paragraph 5.4 of the associated practice direction.

**5.4** Where the judge decides the case without a hearing under rule 27.10 or a party who has given notice under rule 27.9(1) does not attend the hearing, the judge will prepare a note of his reasons and the court will send a copy to each party.

24. There is no doubt that this paragraph applies to the ESCP. It is not suggested that the form of order used was defective itself for not containing a note of reasons for the liability decision; only that the decision on costs contains no explanation of reasons.

25. There is case law on the duty to give reasons even in respect of costs decisions. In **English v Emery Reimbold and Strick Limited [2002] EWCA Civ 605** the Court of Appeal dealt with three conjoined cases where it was said that the first instance judge had failed to give adequate reasons for his conclusion. In one of the cases the issue related to costs, where the judge had made no order. At paragraph 28ff the Master of the Rolls (Lord Phillips) said

28. It is, in general, in the interests of justice that a Judge should be free to dispose of applications as to costs in a speedy and uncomplicated way and even under CPR this will be possible in many cases.

29. However, the Civil Procedure Rules sometimes require a more complex approach to costs and judgments dealing with costs will more often need to identify the provisions of the rules that have been in play and why these have led to the order made. It is regrettable that this imposes a considerable burden on Judges, but we fear that it is inescapable.

30. Where no express explanation is given for a costs order, an appellate court will approach the material facts on the assumption that the Judge will have had good reason for the award made. The appellate court will seldom be as well placed as the trial Judge to exercise a discretion in relation to costs. Where it is apparent that there is a perfectly rational explanation for the order made, the Court is likely to draw the inference that this is what motivated the Judge in making the order. This has always been the practice of the Court - see the comments of Sachs LJ in *Knight v Clifton* [1971] Ch 700 at 721. Thus, in practice, it is only in those cases where an order for costs is made with neither reasons nor any obvious explanation for the order that it is likely to be appropriate to give permission to appeal on the ground of lack of reasons against an order that relates only to costs.

**Outline of Appellant’s submissions**

26. In his skeleton argument, Mr Hogan provided a helpful exposition of the relevant costs provisions both under the European legislation, and CPR. Because his argument was drafted prior to the decision in **West**, no reference was made to that case, although he developed a submission that the approach to proportionality on costs assessment should not involve a two-stage test, because this loses sight of the reasons for the incurrence of any individual item. In oral submissions, he deferred to the reasoning of the Master of the Rolls, which provided general support for his argument on dealing with proportionality, and further submitted that the decision was determinative of the issues in this case. Without any reasons being given by the district judge, in any event his approach to the question of proportionality could not be scrutinised.

27. Mr Hogan dealt with the duty to give reasons relying on **English**.[[1]](#footnote-1) Whilst this was an independent ground of challenge to the second ground which impugned the correctness of the learned judge’s decision on necessity and proportionality, he submitted that it would be disproportionate to remit the assessment to the district judge for reconsideration, were the court to accept the validity of the second ground. In other words, it would be appropriate for this court to carry out its own assessment which would provide guidance, although limited because every case must be assessed on its own merits. If that exercise is undertaken, he reminded the court that the schedule was divided into three sections relating to incurred costs, the first dealing with work pre-issue, the second post issue when a defence was available, and the third in preparation for the paper hearing with the provision of evidence. Applying a **West** approach and the correct proportionality test, this court could consider each item in terms of necessity and proportionality and revisit the separate categories if the overall total was considered disproportionate to the sum involved.

28. In that respect, and if it was appropriate to look again at the overall proportionality, Mr Hogan submitted that the assessing judge, if minded to make any further reductions for proportionality, should exclude those elements of costs which are properly regarded as unavoidable (the irreducible minimum”) such as court fees and certain disbursements. By analogy, included in any irreducible minimum might be those costs incurred in pursuing unavoidable stages of litigation, which in the present case might include preparing Form A, or complying with certain directions of the court such as the provision of witness statements, or written submissions.

**Discussion**

29. It is appropriate to deal first of all with the absence of any reasons given by the learned district judge for his decision on costs. (Ground 1). Not only as an appellate court, but also as the Designated Civil Judge with some understanding of the work and commitment of the judges who undertake airline delay cases and the vast number of ESCP claims which must be approached in a timeous manner, I sympathise, and acknowledge the difficulty of the task in providing in most cases anything but the most peremptory of reasons, especially, as here, where the claim is virtually undefended. There can be no criticism of the order template which is used, which sets out the substantive reasoning for the decision to award damages.

30. In relation to the costs decision, I am also conscious of the fact that DJ Baldwin’s short form of costs order (ie absent any reasons in the preamble or elsewhere) is common practice where the substantive decision is incorporated into the order template. Indeed, following the rationale of Lord Phillips MR in the **English** case, in some instances the absence of any stated reasons in relation to the costs order will not necessarily be fatal to the lawfulness of the decision. An appellate court, as Lord Phillips said, will be inclined to approach any costs decision given without an express explanation, on the assumption that the judge had a good reason for making that decision, particularly where such an explanation might have been obvious, or is capable of inference.

31. However, it seems to me that that cannot be said to apply in the present case, even though arguably proportionality is engaged where a schedule of costs exceeds the damages awarded almost fourfold. The decision of the Court of Appeal in **West** must, in my judgment, provide a context in which any such costs decision falls to be scrutinised. In other words when proportionality is engaged as an issue, the judge carrying out the assessment must be able to show that he has followed the approach advocated by Sir Terence Etherton MR in that case. In the circumstances which prevailed here, with a substantial reduction from the costs which were sought in excess of £1400, to the eventual award, the proportionality exercise ought to be scrutable by a reviewing court, even though I accept that in some instances (probably few and far between) a proportionality reduction might not require any reasoning. Such might arise where there is only a modest reduction from the bill, or perhaps where a substantial figure is claimed without any supportive evidence in the form of a schedule etc.

32. Accordingly, it must now be considered that this short form of decision is unacceptable. The appeal should succeed for lack of reasons. The question which then arises is how I should approach the second ground of challenge, which seeks to argue that the learned judge’s assessment was outside the reasonable range of his available discretion. In this respect, as I have indicated, it was submitted that not only should this court regard the assessment as an unreasonable one, on the application of the principles considering those costs which were necessarily incurred and proportionate, but also that the appellate court should undertake the exercise itself. This would provide guidance for practitioners undertaking similar work, it is said, by way of a worked example even though any award would not be binding on other assessments.

33. This court indicated, in exchanges with counsel, that it was not considered appropriate for it to carry out a summary costs assessment of the necessary and proportionate costs incurred in pursuing the claim, if District Judge Baldwin’s decision was deemed to be defective for lack of reasoning. There were a number of reasons for this.

34. First, although I have had the benefit of sitting with an experienced regional costs judge, who has also in the past dealt with flight delay claims, neither of us have the advantage of dealing regularly with the issues which arise in these cases, nor are we able to identify suitable comparators in other cases. Second, as the “trial judge”, DJ Baldwin is singularly better placed to determine not only proportionality, but also those individual items of cost which were necessarily incurred. Whilst assessing courts are encouraged to apply a broad brush on summary costs assessment, that broad brush is far better wielded by the judge who has made the substantive determination, rather than by a court one step removed. Third, whilst consistency of approach is commendable, an appellate court decision providing a worked example in an ESCP claim, particularly where there is no input from any paying party, would have the potential to distort if relied on in other cases, bearing in mind that questions of necessity and proportionality fall to be decided by reference to the particular features of any individual case. In other words, as a worked example it would be of limited assistance. Fourth, the district judge in this case is extremely experienced in costs assessment, and the senior judge in the flight delay judicial team, and we have little doubt that aided by the guidance provided in **West**, as well as the specific guidance which I will set out in this judgment, he could provide an efficient and compliant assessment applying the necessary principles. Finally, it is relevant that if the Defendant in the present case were to take issue with any summary assessment by this appellate court, to challenge that assessment it would be necessary for the pursuit of a second appeal to the Court of Appeal, which is significantly less proportionate than requiring DJ Baldwin to undertake a further paper exercise, and reserving a further right of appeal to this court.

35. In the circumstances, it is unnecessary to engage further in the second ground of challenge, or to make a determination, as is sought, that this was an assessment of costs which no reasonable court could have arrived at. To do so would be to pre-judge further assessment which is to be undertaken.

36. However, as I have already indicated, some guidance should be provided as to how the question of costs assessment should be approached in these ESCP claims. This guidance takes into account the scarcity of court resources, including the limited amount of time available to judges dealing with the claims even as paper exercises, and the need to ensure that the **West** approach as commended by Sir Terence Etherton MR is adaptive, and tailored, if appropriate, to the material in any individual case. It is also necessary to bear in mind that the assessment threshold is necessity and proportionality, and that reasonableness is not a considered factor, although in most cases this will not make a material difference.

37. If a schedule of costs is provided, although I understand this is not always the practice, those costs should be considered first of all on a line by line basis. This is to deal with the necessity of every item which is said be incurred, although it will also enable the judge to address the proportionality of the particular item at the time.

38. When the total figure is arrived at which will include court fees and potentially disbursements, the assessing judge would consider whether that total is proportionate, having regard to the factors set out in CPR 44.3 (5) and CPR 44.4 (1). If considered disproportionate, following the **West** guidance, the judge would revisit the various categories to consider whether in those categories a proportionality reduction can be made. The categories will usually relate to the stages of the litigation, and in a flight delay claim that may be easily discernible, as here, being pre-issue, post issue, and hearing preparation. It may be open to a judge to regard a significant amount claimed at the hearing preparation stage as disproportionate, where such as in the present case, there is no meaningful engagement by the airline defendant and liability is a “slamdunk”[[2]](#footnote-2).

39. If there are further reductions to be made on a proportionality basis when revisiting the categories, excluded from consideration should be those elements which are properly regarded as unavoidable such as court fees. In this respect, it is not considered, as was contended for in the present case, that the costs incurred in pursuing the unavoidable stages of litigation, i.e. preparing the form A, or submitting witness statements, should be regarded as unavoidable, or an irreducible minimum.

40. The resulting figure is then the final amount of costs to be allowed. By applying this process, the way in which the figure has been arrived at will be clear and transparent. There should be no further stepping back, or the making of any further deduction for proportionality, because that, as the court in the **West** case indicated, would amount to double counting.

41. I am conscious that following this exercise has the potential to impose an additional and onerous burden on those district judges undertaking decisions in ESCP flight delay claims. However, precisely how the exercise should be taken by reference to an individual case will depend on a number of factors. I understand, as I have indicated above, that schedules are not routinely provided. There is scope for insertion on the form A of the amount of costs which are claimed. If the basis on which the costs are claimed is not broken down, or is lacking in detail, and yet provides a total which is considered to be disproportionate, the court could take a significantly broader approach. Where there is detail provided, or where there is a schedule, it is unnecessary for the judge carrying out the assessment to provide a separate written decision relating to how any final order for costs has been calculated. It would be sufficient, it seems to me, that any deductions are annotated on the schedule in respect of costs on the line by line assessment, with a further annotation made to individual categories which have been reduced for proportionality reasons. The schedule can either be annexed to the final order or simply referred to, e.g. *the court has determined that the necessary and proportionate costs are £x as referred to in the annotated schedule /form A retained on the court file*. How any judge deals with his/her decision on the recoverable costs in a successful ESCP claim[[3]](#footnote-3) is down to individual preference, provided that it can be clearly established that an exercise has been undertaken, and that the reasoning is scrutable.

42. In the event that insufficient detail has been provided, or perhaps only a global sum claimed, it would not be inappropriate for the judge to record this as the basis of a significant proportionality reduction, perhaps in the preamble without more. Equally if there is only a relatively modest reduction for proportionality, perhaps because it is considered that one particular category is excessive, say in an uncontested paper hearing, it may be sufficient to record this in the decision/template order as a simple and single basis for deduction without reference to any annotated schedule. Each case will depend upon its own particular facts, and the basis upon which costs have been claimed.

**Conclusion**

43. The appeal is allowed accordingly, and the matter is remitted to DJ Baldwin for further consideration, in particular undertaking a costs assessment which is **West** compliant.

44. The Appellant is entitled to his costs of the appeal. It seems to me that the recoverability of those costs is derived from the ESCP regulation, in other words involves considerations of necessity and proportionality.

45. I do not intend to make any significant reduction to the statement of costs as presented. However, following guidance which I have specifically endorsed above, and after undertaking a line by line assessment, the only reduction which I propose to make is in respect of the preparation and perusal by a partner which is currently claimed on the basis of 6 hours, including 4 hours meeting with counsel and attending the appeal hearing, as well as briefing and liaising with counsel. In my judgment this was excessive and unnecessary in a case which was largely based on legal argument, counsel-led and did not require significant solicitor input. I reduce this by four hours.[[4]](#footnote-4) Otherwise I do not make any proportionality reduction to any aspect. Although the resultant total, which I calculate to be £6557.40 is a substantial one, bearing in mind that a relatively small sum of money involved, I accept that this was an important appeal which dealt with a point of principle and in respect of which guidance has been provided.

*HH Judge Wood QC*

11/9/2019

1. *supra* [↑](#footnote-ref-1)
2. As Mr Hogan described it in the course of submissions to us. [↑](#footnote-ref-2)
3. Bearing in mind, also, that a successful defendant would be entitled to the same exercise if claiming costs [↑](#footnote-ref-3)
4. £1041.60 including VAT [↑](#footnote-ref-4)