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The importance of drawing up bills of costs in the correct format

AKC (Protected Party) v Barking, Havering & Redbridge University NHS Trust (2022) EWCA Civ

This appeal, from a decision of Steyn J, raised questions as to how a bill of costs must be framed.

Following the settlement of the claimant/appellant's claim, her solicitors commenced detailed assessment proceedings in respect of her quantum costs. Her bill of costs comprised a paper bill for the period up to 5 April 2018 and an electronic bill as regards work undertaken after that date.

The defendant/appellant served points of dispute in which it raised by way of preliminary points objections to the effect that, first, the bill of costs was not properly certified; secondly, the paper bill failed to provide the name and status (including qualification and years of post-qualification experience) of each fee earner in respect of whom costs were claimed; and, thirdly, the electronic bill failed to provide the name, status and Senior Courts Costs Office ("SCCO") grade of each fee earner. The defendant subsequently applied for an order that the claimant's bill of costs to be struck out and for service of a CPR compliant bill of costs.

The application was dismissed by a costs judge but, on appeal, Steyn J concluded in the judgment now under appeal that the bill of costs was

IN BRIEF

The Court of Appeal upheld the decision of the judge below, striking out the claimant's paper and electronic bills of costs on the basis that they did not adequately identify each of the fee earners and their status and SCCO grade.

not duly certified and that neither the paper bill nor the electronic bill contained all the necessary information about fee earners. In the circumstances, Steyn J struck out the existing bill of costs and ordered the claimant to serve a replacement which complied with the Civil Procedure Rules.

The claimant served a new bill of costs in pursuance of Steyn J's order, but by the present appeal, she challenged Steyn J's decision in so far as she held that the original bill was deficient in the information it gave about fee earners. The claimant no longer pursued the certification issue.

The Court of Appeal reviewed the framework for bills of costs under CPR 44.4, CPR 44.7 and PD47 and dismissed the claimant's appeal.

The paper bill

The first question which arose in relation to the paper bill was whether fee earners should have been named. Whilst Newey LJ found a paper bill did not strictly have to include fee earner names, it was desirable that they should be. Doing so can be of help to both the paying party and the court, and it was hard to think of a good reason for withholding the identity of fee earners. Steyn J had been right that a paper bill must state any professional qualification of a fee earner and, unless the SCCO grade was given, the years of post-qualification experience. It followed that Steyn J was also correct that the paper bill did not fully meet the requirement to give fee earners' status. The references in the paper bill to solicitors' "Years Experience" could, be taken to refer to post-qualification experience and, on that basis, the bill sufficiently stated the "status" of "Solicitor 1" and "Solicitor 2". Nor did any problem arise in relation to the "Others" or "Paralegal (Special Damages, Sheffield Based Fee Earner)" who could be assumed not to have had any professional qualification. However, the claimant was proceeding on the basis that a "Partner" justified a high hourly rate without either confirming that the "Partner" had a professional qualification or stating the number of years of post-qualification experience. To this extent the paper bill failed to comply with paragraph 5.11(2) of Practice Direction 47.

The electronic bill

Paragraph 5.A1 of Practice Direction 47 introduced Precedent S, and worksheet 5 of Precedent S included columns headed "LTM", "LTM Name", "LTM Status" and "LTM Grade". The existence of those columns suggested an expectation that they should be populated or, in other words, that the receiving party should provide the name, status and grade of each fee earner.

On balance, it seemed that a receiving party who elected to use the Precedent S spreadsheet format must include in his bill of costs information sufficient to enable the columns of worksheet 5 to be completed. When paragraph 5.A2 of Practice Direction 47 stated that electronic bills "may be in ... Precedent S spreadsheet format", it surely could not mean that a receiving party needed to complete a Precedent S only to whatever extent he chose. It was to be inferred that a receiving party using Precedent S had to provide enough data for its worksheets to be filled in. It followed, given the columns comprised in worksheet 5 of Precedent S, that a bill adopting Precedent S must at least generally include, among other things, the "LTM Name", "LTM Status" and "LTM Grade" (which must mean SCCO grade) of each fee earner. That was not to say that a receiving party necessarily had to complete in full both the "LTM Status" and "LTM Grade" columns in worksheet 5. As Steyn J recognised in her judgment, entering fee earners' SCCO grades in the "LTM Grade" column might allow a receiving party to say relatively little in the "LTM Status" column. Recording that a fee earner was grade B, say, would without more imply that the fee earner was qualified as a solicitor or legal executive and had over four years' post qualification experience, including at least

four years' litigation experience. There could be no obligation to duplicate that information in the "LTM Status" column and so it may be enough to state in that column whether the individual in question's qualification was as a solicitor or as a legal executive.

Of course, an electronic bill did not have to use Precedent S but could instead be in "any other spreadsheet format" which satisfied the requirements of sub-paragraphs (a) to (e) of paragraph 5.A2 of Practice Direction 47. However, it was to be inferred that the "detail of all the work undertaken" which, in accordance with sub-paragraph (c), an electronic bill in "any other spreadsheet format" must allow a user to identify had to provide as much information as a duly completed Precedent S.

Any electronic bill, whether in Precedent S spreadsheet format or any other spreadsheet format, must include the name, the SCCO grade and, in so far as it added anything to the grade, the status of each fee earner except possibly in so far as the receiving party's solicitors may have outsourced work to an agency.

Even if the electronic bill was properly considered to be in "any other spreadsheet format", it should have contained as much information as a duly completed Precedent S and, in particular, the name, the SCCO grade and, where it added something, the status of each fee earner. It did not do so. It neither gave fee earners' names nor specified their SCCO grades. Steyn J was therefore correct, that the electronic bill failed to comply with paragraph 5.A2 of Practice Direction 47.

Consequences

It was very far from the case that a bill of costs which failed fully to comply with the rules should invariably be struck out, let alone treated as a nullity. Typically, a defect would, at most, warrant a lesser sanction.

In the present case, the significance of the defects in the paper and electronic bills which the claimant served was reduced by the extra information which she gave about fee earners in her points of reply to the defendant's points of dispute and in response to the its Part 18 request. Piecing together the bills, the points of reply and the Part 18 information, it was possible to work out the names of the fee earners who worked on the matter and the grades and status attributed to them.

However, even with the benefit of the points of reply and Part 18 information it was by no means always possible to say which of the 33 fee earners named in response to the Part 18 request was said to have carried out particular work. In the circumstances, Steyn J was fully entitled to decide that the appropriate course in the particular circumstances was to strike out the existing bill of costs and order the claimant to serve a replacement which complied with the Civil Procedure Rules.

Howard Dean, Partner and head of costs at **Keoghs** and a member of the costs SFT represented the defendant in this case and comments:

The Court of Appeal guidance should mean that name, qualification and PQE of all fee earners are provided in all e-bills. However, there may be a few who choose not to or seek to make the bill as opaque as possible to avoid challenges being made so as to maximise costs recovery.

The full judgment is available at: [AKC v Barking, Havering & Redbridge University Hospitals NHS Trust \[2022\] EWCA Civ 630 \(10 May 2022\) \(bailii.org\)](#)

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