JUDGMENT : His Honour Judge Peter Coulson QC: TCC. 9th February 2006

A. INTRODUCTION

1. The Claimants are the owners of Bengeo Hall, in Hertfordshire. During 2002 and 2003 they engaged contractors to carry out refurbishment works at the property. The Defendant was appointed as their architect. The Claimants were unhappy with various aspects of the works and apparently terminated the relevant contracts, including that of the Defendant. They subsequently became embroiled in various pieces of litigation arising out of these events. In an adjudication, the Defendant was found to be entitled to £12,000 odd by way of unpaid fees, and that prompted this claim by the Claimants for professional negligence. The maximum pleaded value of the claim may be as much as £500,000 (not least amongst the difficulties in this case is the inadequacy of the Claimants' pleadings) but much of this appears to be for damages due to the delay that occurred **after** the Claimants had terminated the engagements of both the contractor and the Defendant. In my judgment of 16 June 2005, I commented that the causation of this vital part of the Claimants' case was unhappily pleaded. It has never been amended. Thus the true value of the claim against the Defendant may be considerably less then the sums currently claimed.

2. The history of this litigation has been unhappy in the extreme. As set out in **Section B** below, I take the view that the First Claimant is principally responsible for these problems. The trial was adjourned in 2004 and, again at the Claimants' request, in June 2005. A third application was made by the Claimants' then solicitors, McFaddens, on 16 September 2005, to adjourn the trial fixed for the following month. At the hearing of the application, on 23 September 2005, various unless orders were made against the Claimants. The Claimants failed to comply with those orders. Thereafter, having changed both his solicitors and counsel, the First Claimant sought to revoke the unless orders of 23 September 2005 on the grounds that the application to adjourn made on his behalf on 16 September 2005 should never have been made.

3. There was a hearing on 13 October, and eventually, on 29 November 2005, it was agreed that the unless orders of 23 September 2005 would be revoked. It was also agreed that the Claimant's former solicitors McFaddens, would pay:
   a) the Claimants' costs of and occasioned by the application made by McFaddens on 16 September 2005, including the costs of the applications made to revoke the orders made in consequence of that application, in particular the application of 20 October 2005;
   b) the Defendant's costs of and occasioned by the application dated 20 October 2005.

   It was agreed that, following the exchange of written material between the parties, I was summarily to assess those costs.

4. The parties exchanged various documents in respect of the costs which are claimed. These included the Schedules of Costs from the Defendant (6.12.05) and the Claimants (7.12.05); McFaddens' written responses to those Schedules; the replies from the Claimants and the Defendant dated 19.12.05, including the Claimants' amended Schedules; and the letter from McFaddens' solicitors of 22.12.05. In that letter, the solicitors acting for McFaddens have complained, not without some justification, that the amount of material now provided to the court is much more appropriate to a detailed assessment of costs, rather than the sort of summary assessment usually carried out by the court.

   When I came to address the summary assessment, it seemed to me that McFaddens were suggesting (at least implicitly) that the costs which they were being asked to pay were disproportionate. That was not something which the other parties had addressed. Accordingly, in order to save yet further costs, I produced a ..... [sic] which contained some preliminary views on the issue of disproportionality, and I invited comments on them. This, unfortunately, led to a further tranche of written submissions from both the Claimants and the Defendant, dated 8 February 2006. I have, of course, had regard to all that additional material, even though it strayed beyond well beyond the specific points which I asked the parties to address. Where appropriate, I deal below with particular matters raised by the Claimants and the Defendant in these latest submissions.

5. This latest exchange has only served to confirm my conclusion that, in the light of all the detailed material with which I have been provided, and the views which I have formed as the assigned judge pursuant to CPR 44.4 and 44.5, it remains appropriate for the costs to be summarily assessed, as agreed on 29 November 2005. I have approached that task in this way:

a) I have set out the relevant facts in **Section B** below;
b) I have set out the relevant principles in **Section C** below;
c) I have set out my general conclusions as to proportionality in **Section D** below, expressly dealing with the important points raised by the parties in their documents of 8th February 2006;
d) I have undertaken the Summary Assessment at **Section E** below;
e) I have set out my conclusions at **Section F** below.

B. THE RELEVANT FACTS

6. The case management of this claim was originally undertaken by His Honour Judge Seymour QC. The trial was originally fixed for October 2004 but was adjourned because of the Claimants' failure to comply with the orders of the court. It was refixed for late June 2005. At a PTR on 27 May 2005, the Judge was minded to strike out the Claimants' claims as a result of their woeful non-compliance with various orders. However, Mr Mort, who has throughout appeared on behalf of the Defendant, sensibly persuaded the Judge that, in all the circumstances, it was appropriate to make various orders requiring the Claimants to take a variety of steps in the proceedings within a very short time, with the sanction of a default judgment if they did not comply.

7. The matter came before me on 7 June 2005. I made various orders so as to allow the trial of the action to take place later that month. By that stage, the Claimants had changed solicitors, and were now instructing McFaddens. The Claimant's counsel at that hearing, Mr Platford, had been involved throughout. On that occasion, there was no application by the Claimants to adjourn the trial.

8. However, just over a week later, on 16 June, there was an urgent application by the Claimants for an adjournment of the imminent trial. Because of the urgency, I rearranged my diary to hear the application that same day. The application was put solely on the grounds of the mental state of the First Claimant. I was provided with a report from a consultant psychiatrist, Dr Lewis Clein, which concluded that the First Claimant *"is in no fit state to face a nine day trial"*. At the hearing, Mr Mort vigorously opposed the application to adjourn. In all the circumstances, I concluded that an adjournment was appropriate, given the First Claimant's mental state, but that this could only be for a short period. I made it clear that, whatever the state of the First Claimant's health, there would have to be a trial in the autumn in any event. The trial was therefore re-fixed for October 2005.

9. On 16 September 2005 the Claimant's solicitors, McFaddens, made a further application to adjourn the trial. Again, the grounds were related to the First Claimant's mental well-being. However, the basis of the application was somewhat unusual. Mr Platford, who appeared before me at the hearing of the application on 23 September 2005, argued that he and his instructing solicitor had reasonable grounds for thinking that the First Claimant might be a patient under the Mental Health Act. Accordingly, they wanted the trial to be adjourned so that that matter could be investigated and determined. Again, Mr Mort, on behalf of the Defendant, opposed the application to adjourn.

10. I had expressly ordered the First Claimant to appear in person at the hearing on 23 September 2005, in person. For reasons which, even now, are not at all clear, the First Claimant did not appear. I was told that he knew about the hearing, but had deliberately chosen to go the USA. Later, he disputed that, saying – despite the existence of an e.mail to the opposite effect – that he was unaware of the order requiring his attendance. On 23 September, I made a series of unless orders, centred round the need for the First Claimant to submit to an examination by an independent psychiatrist, so that the court could determine this new, and potentially serious, issue at a hearing which was fixed for 13 October 2005.

11. In the event, the First Claimant did not submit to that examination and did not comply with the unless orders. At some stage in late September/ early October, on the First Claimant's case, he discovered the basis on which the application to adjourn of 16 September 2005 had been made. He utterly refuted the suggestion that he was, and was even capable of being, a patient under the Mental Health Act. Indeed, he was able to point to a report of a Dr Boast of September 2005 – which, for reasons which were never explained, had not been shown to me at the hearing on 23 September – which made it plain that the First Claimant was not a patient under the Mental Health Act and, indeed, "is not suffering from a mental illness".

12. In these unusual circumstances, the Claimants instructed new solicitors and new counsel. Their first aim was to set aside the unless orders, of which the Claimants were now in clear breach. There was a hearing on 13 October 2005 but, as Mr Mort correctly pointed out on that occasion, the Claimants did not have a proper application to set aside, and the grounds of any future application were wholly unclear. That was, after all, simply the date of the hearing for the determination of the First Claimant's status under the Mental Health Act. Accordingly, I made a series of orders, requiring the Claimants to make a proper application to set aside the unless orders. I expressly gave the Defendant the opportunity of agreeing to the revocation of the orders, once they had seen the detailed basis of the Claimants' application. If it did so by the date I indicated, I ordered that the trial of the whole action would take place, starting on 29 November 2005. I also awarded the Defendant its costs of the hearings on 23 September 2005 and 13 October 2005.

13. The Claimants made a formal application to revoke the unless orders on 20 October 2005. The Defendant did not consent to the orders being set aside and so the hearing on 29 November 2005 dealt only with the Claimants' application, and not the trial itself. Part way through that hearing, at which McFaddens were represented, a formal statement was made to the court on their behalf that they accepted that the application that they had made on 16 September 2005 had been inappropriate.

14. As a result of this express concession, the parties then reached agreement on a variety of points. Amongst those agreements were McFaddens' liability to pay the Claimants' costs of the applications of 16 September 2005 and 20 October 2005, and the Defendant's costs of the application dated 20 October 2005. As previously noted, it was also agreed that I would summarily assess those costs.

C. THE RELEVANT PRINCIPLES RELATING TO COST ASSESSMENT

15. The parties are agreed that the costs that McFaddens should pay should be assessed on the standard basis. CPR 44.4(2) provides:

"Where the amount of costs is to be assessed on the standard basis, the court will –
(a) only allow costs which are proportionate to the matters in issue; and
(b) resolve any doubt which it may have as to whether costs were unreasonably incurred or reasonable and proportionate in amount in favour of the paying party."

16. CPR 44.5 provides:

"(1) The court is to have regard to all the circumstances in deciding whether costs were …
(i) proportionately and reasonably incurred…
(3) The court must 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; and
(g) the place where and the circumstances in which work or any part of it was done."

17. The relevant principles that any court must bear in mind when undertaking a summary assessment were summarised by the Court of Appeal in ***Lownds v Home Office*** [2002] EWCA Civ 365; [2002] 1 WLR 2450. In that case, Lord Woolf MR emphasised the importance of the proportionality test. He said:

"31. In other words what is required is a two-stage approach. There has to be a global approach and an item by item approach. The global approach will indicate whether the total sum claimed is or appears to be disproportionate having particular regard to the considerations which CPR r44.5(3) states are relevant. If the costs as a whole are not disproportionate according to that test then all that is normally required is that each item should have been reasonably incurred and the cost for that item should be reasonable. If on the other hand the costs as a whole appear disproportionate then the court will want to be satisfied that the work in relation to each item was necessary and, if necessary, that the cost of the item is reasonable. If, because of lack of planning or due to other causes, the global costs are disproportionately high, then the requirement that the costs should be proportionate means that no more should be payable than would have been payable if the litigation had been conducted in a proportionate manner.

This in turn means that reasonable costs will only be recovered for the items which were necessary if the litigation had been conducted in a proportionate manner.

32. The fact that the litigation has been conducted in an insufficiently rigorous manner to meet the requirement of proportionality does not mean that no costs are recoverable. It means that only those costs which would have been recoverable if the litigation had been appropriately conducted will be recovered. No greater sum can be recovered than that which would have been recoverable item by item if the litigation had been conducted proportionately."

18. In ***Bryen & Langley Ltd v Martin Boston*** [2005] EWCA Civ 973, the Court of Appeal criticised the Judge at first instance for undertaking a summary assessment of costs by relying, principally, on a comparison between the costs summary produced by the paying party and the costs summary produced by the receiving party. Rimer J said, at paragraph 54 of his judgment, that: *"…whilst a reference to the paying party's costs summary may perhaps provide a helpful cross-check in the course of the assessment exercise … I consider that it is wrong in principle for a Judge to conclude that, because the paying party's costs are much the same as the receiving party's, the latter's costs can be assumed to be costs which it is reasonable for the paying party to pay."*

19. Accordingly, I adopt the two stage approach identified in these authorities. I ask myself first whether the costs claimed are disproportionate. I then, secondly, go on to consider the reasonableness of the costs claimed.

D. PROPORTIONALITY

20. The Defendant's costs of the application dated 16 September 2005 were claimed in the sum of £ 11,306.94. The Claimant, who I ordered to pay those costs on 13 October 2005, argued that that was too high. I summarily assessed those costs in the sum of **£9,650**. The Defendant's costs of 13 October 2005, which the Claimant also had to pay, were originally claimed at £6,376. Again the Claimant said that those were too high and they were summarily assessed at **£5,700**.

21. As against that, the Claimants now seek an order that McFaddens should pay the sum of **£19,518.85** in respect of their own costs of the hearing on **13 October 2005**. As I understand the draft bill, these costs were all incurred following the replacement of McFaddens by the Claimant's new solicitors. In other words, they are (or at least should be) comparable to the Defendant's costs of £5,700, as summarily assessed by the court.

22. I consider that the sum of £19,518.85 is wholly disproportionate to the work necessary to prepare for and attend the hearing on 13 October 2005. The comparison above (even if it can only be taken as a rough guide) makes that point crystal clear. I am in no doubt at all that the majority of the figure of £19,518.85 is made up of costs which would have been incurred in any event, as a result of the Claimants' decision to instruct an entirely new team of lawyers. Confirmation of this view can be found in the detailed submissions from the Claimants' solicitors of 8 February. For the reasons set out below, that is not something for which they should be compensated under this order.

23. In truth, I regard the Claimants' application to be reimbursed costs that are four times those of the Defendant (in circumstances where the Claimants described those costs as too high and unjustified) to be entirely opportunistic. It is not proportionate, either to the work necessary for that hearing or to the likely real value of the case overall. Moreover, I consider the First Claimant's conduct, which I must take into account pursuant to CPR 44.5, to be thoroughly reprehensible in a number of ways, as outlined above. To take just one example, these costs would never have been incurred if the First Claimant had complied with just some of the previous orders of the court over the past 18 months.

24. The Claimants' solicitors argue, both in respect of this hearing and the costs of the application of 20 October, that regard must be had to the importance to the First Claimant of correcting the flawed basis of the original application of 16 September. I do take proper account of the importance to the First Claimant of clearing his name of any suggestion of mental illness. But, in my judgment, this point cannot be over-stated: the First Claimant has himself relied on his own mental condition on two previous occasions (once in these proceedings, and once in other proceedings, the documents from which were shown to me on 16 June) in order to seek the indulgence of the courts when he has breached (or has been about to breach) the terms of existing orders.

25. The other over-arching point made by the Claimants is the suggestion that the application of 16 September was negligent, with the result that the costs of the change of solicitors, and all that went with it, should now be borne by McFaddens. I am not in a position, and expressly decline, to make any finding as to negligence. That would require an investigation which is outside the terms of the order of 29 November. Furthermore, it would also necessitate a finding that, but for the inappropriate application of 16 September, the Claimants would not have changed solicitors, and the costs of new solicitors getting up to speed on the case would never have been incurred. Not only can I not make a finding to that effect on the material that I have, I would also comment that, from the documents I have seen, such a conclusion seems most unlikely; the First Claimant was patently unhappy with McFaddens some time before he found out about the basis of the application of 16 September. The change of solicitors may well have happened anyway.

26. As to the costs of and occasioned by the application of **20 October 2005**, I note that the Defendant's costs are put at **£31,824.75** and that the Claimant's costs are just short of that at **£29,772.04**. In view of the likely value of this claim overall, and the relatively simple basis of the application, I am driven to conclude that both these sets of costs are also disproportionate, although for different reasons.

27. As regards the costs claimed by the Claimants for the hearing on 29 November, I consider that there is again a major element within the figures claimed of costs that would have been incurred by the Claimants in any event, as a result of their decision to change their legal team. I do not regard those costs as recoverable under the terms of the order of 29.11.05 for the reasons which I have explained. Again, the conduct points are also directly relevant: the First Claimant is the author of his own misfortunes because of his wilful disregard of the court's earlier orders.

28. As regards the Defendant, I say at once that its conduct of the litigation has generally been impeccable, and I have received considerable assistance throughout this saga both from Mr Mort and his instructing solicitors. But I am bound to note that the amount claimed as a result of the application on 20 October 2005 is twice the costs that the Defendant incurred in respect of the application on 16 September 2005, even though that involved two hearings before the court (23 September and 13 October), compared to just one (29 November) as a result of the 20 October application.

29. The Defendant's solicitors say that this is not a helpful comparison, because there was much more work involved to prepare for the hearing on 29 November. I accept that there was more work, which is why my summary assessment, set out below, produces a considerably higher figure for the later application. But, in my view, the basis of the Claimants' application was reasonably clear by 13 October; all that changed was the addition of points of detail. The costs of the application of 20 October are prima facie disproportionate, and the comparison with the Defendant's earlier costs, whilst being far from determinative, is of some assistance in confirming that view.

30. The other factor relevant to proportionality was the decision of the Defendant to use the hearing on 29 November to fight the application, rather than have a trial on the substantive issues. As I indicated on at least two separate occasions during the argument on 13 October 2005, once the application to set aside had been properly formulated, the Defendants should have acceded to it. It was overwhelmingly likely that, on the basis put forward by the Claimants, the court would find that the orders of 23 September had been made on a false premise and had to be set aside. The express concession made by McFaddens on 29 November can have come as no surprise; indeed, I had anticipated just such a result during the arguments on 13 October.

31. The Defendant's solicitors argue in their submissions of 8 February that their stance of opposing the application was reasonable, and they set out in some detail the matters they rely on. Some of them, such as the suggestion that the First Claimant "almost certainly lied about his knowledge of the order", fall outside the terms of the order of 29 November. I cannot make any findings on such issues; if relevant to credibility, they must await cross-examination at the trial.

32. But, more importantly, what these submissions ignore is the fact that, if the Defendant had acceded to the application (even knowing that there was at least some prospect that it might be able to defeat it) there would have been a substantive trial commencing on 29 November 2005 and the whole action would now be over. The Defendant had complained long and loud that it wanted the trial of the action to be heard,

and that it was the Claimants who were, by their continued default, preventing the trial from happening. Indeed, I was provided with a witness statement from Mark Farmer of the Defendant, dated 3.11.05, which sought to identify the losses to the Defendant as a result of the delays to the litigation. And yet, when I re-ordered my list so as to give the Defendant the express opportunity to have a trial on the merits at the end of November (which was, after all, only the month after the trial would have taken place but for McFaddens' ill-fated application to adjourn) the Defendant declined that opportunity. That is therefore something which I must take into account when considering questions of conduct and proportionality.

33. Accordingly, I now turn to the summary assessment of the costs looking at the items individually but ensuring, in the words of Lord Woolf in ***Lownds***, that: *"No greater sum can be recovered than that which would have been recoverable item by item if the litigation had been conducted proportionately."*

E. SUMMARY ASSESSMENT

E1 The Claimant's Costs

E1.1 The Defendant's Costs of the Application of 16 September 2005

As previously noted, the Defendant's costs of the application of 16 September 2005 (to include the costs of the hearings on 23 September and 13 October) have been summarily assessed and paid by the Claimants. Pursuant to the order made on 29 November 2005, the Claimants are entitled to be reimbursed those costs by McFaddens. Accordingly, McFaddens must reimburse the Claimants for the costs paid to the Defendants of £9,650 and £5,700, making a total of **£15,350**.

35. It is my understanding that these costs have already been paid in full. However, as I have mentioned, an important point arises from these figures. The Defendant's costs for the period after 23 September, and leading up to the hearing on 13 October, were in the sum of £5,700. Accordingly, the sum of £5,700 represents the Defendant's costs for a period for which the Claimants now seek from McFaddens the sum of £19,518.85. That is almost four times as much. I have made the point that this claim is not proportionate. For the avoidance of doubt, I am bound to conclude that, on this basis alone, it is not reasonable either.

E1.2 The Claimant's Costs of the Application of 16 September 2005

36. As noted, the sum claimed is £19,518.85. It is made up of £11,965 in respect of solicitor's fees; £5,875 in respect of counsel's fees; and £1,678.85 in respect of expenses and disbursements.

37. I consider that the amount of time spent by the partner, at an hourly rate of £195, in respect of the preparation for the hearing on 13 October 2005, to be unreasonable. Specifically, I consider that it was unreasonable for a partner to spend 6 hours 24 minutes dealing with documents and wholly unjustified to spend 16 hours 42 minutes in attendance on the First Claimant. I am also baffled as to how the partner then spent a further 2 hours 30 minutes with the Third Defendant, given that it is a company acting through the First Claimant.

38. In addition, I consider that it was unreasonable for the partner to spend 12 hours 48 minutes in attendance on counsel, which apparently included two conferences within one week, each of over 3 hours in length. It was unreasonable too for a trainee to spend 5 hours on the same activity. I consider that, whilst it was appropriate to instruct Leading Counsel for the hearing itself, it was not reasonable for all the preparatory work to be done by a Leader.

39. It must be remembered that, at the hearing on 13 October 2005, the Claimants had produced very little in the way of documentation, and there was little in writing which set out a clear and comprehensive case as to why the orders of 23 September 2005 should be revoked. That was, rightly, one of Mr Mort's complaints at the hearing.

40. Although a Witness Statement was filed with the Court at this hearing, it was not served on the Defendant and was quickly superseded by later, longer Statements. The Statement set out, in relatively short order, the basis of the Claimants' position. But, as with the Claimants' solicitors' correspondence at this time, it was too concerned about peripheral matters, like the alleged difficulties in respect of privileged documents and confidentiality. Indeed, the whole issue of privilege, which was easily resolved in the event following a discussion at the hearing on 13 October, loomed much too large in the Claimants' approach throughout this period.

41. For all these reasons, I consider that each of the different claims for the hours spent in preparation for the hearing are overstated by 60% or even 70%.

42. Further, the claim for almost £1,300 in respect of photocopying, is wholly unreasonable. If these amounts were incurred on photocopying, then it was photocopying that would always have been necessary following the change in solicitors. It cannot be recoverable under the terms of the order for the reasons that I have explained.

43. I do accept that, in all the circumstances, the Claimants' costs for the hearing for 13 October 2005 were always going to be higher than those of the Defendant. However, I consider that their respective costs should have been at least broadly comparable, particularly given that, in terms of product, the only difference between the two sides was the filing by the Claimants of an unserved Witness Statement which was thereafter superseded. For the reasons that I have explained, the costs claimed are not comparable at all. Bearing in mind the principles of both proportionality and reasonableness, and making appropriate deductions to the hours claimed, I would summarily assess the Claimant's costs of the hearing of 13 October 2005 in the total sum of **£7,800**.

E1.3 The Claimant's Costs of the Application of 20 October 2005

44. The sum claimed in respect of this hearing is **£29,772.04**. This is made up of £18,180.50 in respect of solicitors' fees; £8,130 in respect of counsel's fees; and £3,461.54 in respect of disbursements. I consider that these figures were not proportionate and not reasonable. Again, I am in no doubt that it includes a large element of costs that would always have been incurred following the change in the Claimants' legal team.

45. Many of my criticisms of the statement of costs repeat the points made above. I consider it wholly unreasonable that a partner, at £195 per hour, spent 15 hours 48 minutes attending on the documents, which were not particularly difficult or voluminous. The same point applies to the trainee's time on the same activity of 7 hours 30 minutes. After all, this was a very short point: if the application to adjourn was made on a false premise, should the court revoke the orders that had been made on the basis that that application was properly made?

46. Likewise I consider that 14 hours 12 minutes attendance by the partner on the First Claimant to be excessive and I am frankly mystified as to how the same partner could have spent an additional 7 hours 54 minutes attending on the Second Claimant as well. I consider that the 19 hours 36 minutes attendance on opponents was excessive and quite unjustified. Again, I conclude that the hours claimed are unreasonably over-stated by something like 60%.

47. In general, I consider that it was unnecessary for the partner and the trainee to spend so much time attending counsel, given there had already been two conferences before the hearing on 13 October 2005. I accept the criticism made by those representing McFaddens that there was too much reliance on Leading Counsel. Again I think it would have been reasonable for a Junior Counsel to be involved for much of the preparation, even if it was again reasonable to instruct Leading Counsel for the hearing on 29 November 2005.

48. The disbursement charges are much too high and some of the items, such as an accountant's report, some couriers, and the travel disbursements, are simply unjustified. They had nothing to do with the application on 29 November 2005.

49. In their submissions of 8 February, the Claimants' solicitors complain that the costs were increased because of the detailed questions that they were asked to answer by the Defendant's solicitors. In my judgment, this point is simply not open to the Claimants, given their solicitors' original refusal to answer these questions at all, and what can fairly be described as the reluctant dribble of information that followed thereafter. Indeed, it was as a result of the solicitors' disputatious correspondence to the court on this very topic that led me to write to both sides pointing out the complete lack of co-operation which it revealed.

50. As noted above, I conclude that the Claimant's claim is disproportionate and unreasonable. I must reflect these conclusions in the summary assessment. In my judgment, the Claimant's costs should be assessed in the sum of **£14,250**, which is slightly under half the sum claimed.

E1.4 Summary in Respect of the Claimant's Costs

51. By reason of the facts and matters set out above, McFaddens must pay to the Claimants the following sums by way of costs:
a) £15,350 (paragraph E1.1 above);
b) £7,800 (paragraph E1.2 above);
c) £14,250 (paragraph E1.3 above).

That makes a total of **£37,400**. The £15,350 has already been paid, leaving an amount due for the Claimants' own costs of **£22,050**. As I understand it, the sum of £20,000 has already been paid on account. Thus a net further sum of **£2,050** is due to the Claimants.

E2 The Defendant's Costs

52. The sums claimed by the Defendant in respect of the application of 20 October 2005, to include the hearing on 29 November 2005, amount to £31,824.75. This is made up of £21,493.75 in respect of solicitor's fees, £9,934 in respect of counsel's fees and £397 in respect of copying and travel.

53. I have made the point that I consider these costs to be disproportionate in the circumstances. As to the question of reasonableness, I consider that it was unreasonable for the Defendant's solicitors to involve seven different fee-earners on this case. I believe that that led to inevitable duplication, despite what is said in the submissions of 8 February. I also consider that it was unreasonable that these fee-earners spent 9 hours attending on the Defendant, and over 15 hours attending on the Claimant's solicitors. There is, in addition to all this, a claim for over 35 hours attendance on others, it being entirely unclear who these others are and what work was done. I regard that, too, as unreasonable.

54. I consider that it was wholly unreasonable for the Defendant's solicitors to spend 70 hours at work on the documents. I simply cannot understand what documents there were that required such attendance, given the relatively straightforward matters raised by the application to revoke the order of 23 September 2005. I have, in the past, remarked on the modest level of costs incurred by the Defendant's solicitors and their focussed and effective case management. In this instance, however, despite the points made in the submissions of 8 February, I conclude that the large number of hours cannot be justified. Each of the items of claimed hours must be reduced for the purposes of the summary assessment by 60% to reflect the costs that I consider to be reasonable.

55. I note that McFaddens take the point that the Defendants spent more on their counsel than the Claimants, even though it was the Claimants who were seeking to set aside the unless order, and it was only they who had instructed a Leader. There is force in that objection, although I do not believe Mr Mort's brief fee itself to be unreasonable. I do, however, consider that there was too much non-court reliance on Mr Mort.

56. In all the circumstances, I consider that the Defendant's costs should not be more than the costs incurred by the Claimant. The work that each party should have carried out was roughly comparable: the Claimants setting out why the orders should be revoked and the Defendant answering those points. The deductions that I make should therefore also be similar. In the circumstances it seems to me proper to summarily assess the Defendant's costs in the same figure as that of the Claimants, namely **£14,250**.

F. CONCLUSIONS

57. Accordingly, for the reasons set out above, McFaddens must pay the further sum of **£2,050** to the Claimants by 17 February 2006. They must pay the sum of **£14,250** to the Defendants, also by 17 February 2006.