

JONNY GOULD

Claimant

and

EVOLVE MEDIA LIMITED

Respondent

Under the CIArb/IMPRESS Arbitration Scheme Rules and  
Under the Arbitration Act 1996

**FINAL AWARD**

1. Details of the dispute between the parties, of my appointment and of other relevant background matters were recited in my first Award dated 14 May 2018. That award determined all issues except for the issue of costs, which was reserved to my further award. This Award determines the issue of costs.
2. With the consent of the parties I have determined the issue of costs without a hearing and on the basis of the submissions made to me in writing. The submissions from Mr Lewis on behalf of Mr Gould were set out in his email dated 17 May 2018; the submissions on behalf of Evolve were set out in an email dated 22 May 2018 from Ms Jessica Miller.
3. In the event, the without prejudice correspondence referred to in paragraph 43 of my first Award was deemed not to be relevant to my determination of the issue of costs and so was not put before me.
4. The parties have agreed that as a matter of principle, an award of costs should be made to Mr Gould. The amount of that award however is not agreed and the parties have asked me to determine it.

5. Mr Lewis informed me that his time on the case had been 5.2 hours and the time of his paralegal assistant, Simone, had been 3.6 hours. He acknowledged that under Rule 11(b) I am required to approach the assessment of costs on the basis that, in ordinary circumstances: (i) the hourly rate of a lawyer acting for a claimant should be reasonable and proportionate having regard to the nature of the claim and (ii) that the rate should not exceed £300 per hour. He acknowledged also that of the 3.6 hours worked by Simone, 2.3 hours could fairly be characterised as non-chargeable administrative work. The wording of Rule 11(b) is that the charging rate of the claimant's solicitor 'shall not exceed £300 per hour'. No reference is made to VAT. As the effect of Rule 11(b) is to impose a cap on the chargeable rate, and as the language is plainly mandatory, I interpret it to mean that the chargeable rate, inclusive of any VAT, is not to exceed £300 per hour.
6. Ms Miller submitted that to award costs on the basis of the hours charged for, even on the reduced maximum figures, would be neither reasonable nor proportionate for a case in which Evolve *had 'sought to be, for the most part, entirely co-operative and agreeable where appropriate.'* She asked me to come to a fair and equitable conclusion as to the amount of costs to award Mr Gould.
7. Mr Lewis told me that his hourly charging rate was £450 per hour and that of Simone was £150 per hour, in each case plus VAT. If, as I am required to do, I must assess his hours at the rate of £300 per hour, it seems that I should also reduce proportionately the rate for Simone, otherwise the charge for her work will be disproportionately high. I proceed therefore on the basis that the hourly rates should be, respectively, not more than £300 and £100 per hour, in each case inclusive of VAT.
8. Taking Mr Lewis' chargeable time as 5.2 hours and Simone's as 1.3 hours, I am quite satisfied that the hours charged for the work done on Mr Gould's case are reasonable and reflect work reasonably required to be done in this case. I accept that some part of this chargeable time would have been taken up in dealing with challenges made by Ms Miller to the accuracy of some of the matters asserted in the original Statement of Case, challenges that were in some cases well founded and so did require to be dealt with. On the other hand, I accept also that some of this time would have to been taken up in dealing with the situation that arose when

(unwittingly, as I accept) without prejudice correspondence was sent to me by Ms Miller.

9. I accept also that the adjusted chargeable rates set out above are reasonable, and although they are the maximum permitted by Rule 11(b), they should not be reduced further. This case was conducted on Mr Gould's behalf by a specialist defamation solicitor in a firm based in the West End of London. The adjusted rates cannot be said to be unreasonable for such a level of representation.
10. Accordingly, an assessment of reasonable costs, calculated on this basis would be: 5.2 x £300: £1,560, plus 1.3 x £100: £130. The total therefore is £1,690, inclusive of VAT.
11. It does not however follow that the sum arrived at as an assessment of reasonable costs is the same as the figure that it is reasonable and proportionate to award. The costs awarded must be both reasonable and proportionate. The 'reasonable' figure arrived at is not far off twice the sum awarded in damages. I do not suggest that because the costs exceed the amount awarded they are for that reason alone disproportionate. This is not an altogether unusual state of affairs in small scale litigation. I take into account also that in addition to claiming damages, by these proceedings Mr Goud was seeking the vindication of his name and appropriate retractions and apologies, all of which he has succeeded in obtaining. I do consider however that some reduction to the figure of £1,690 is required in order to arrive at a sum that is both reasonable and proportionate. This is a case where only a modest sum of damages has been awarded, in proceedings that were straightforward and proceeded on the basis of the papers alone.
12. Further, under Rule 11(a) the maximum sum of costs that may be awarded against a publisher is £3,000. It seems also that this figure must be read as inclusive of any VAT. In most cases where a claimant is legally represented, and particularly where the arbitration is not conducted on paper but proceeds to an oral hearing, £3,000 will be by quite some margin less than the costs that will have been incurred. It seems to me therefore that I can properly draw the inference that an intended consequence of Rule 11 is that awards of costs to claimants made in IMPRESS arbitrations may well in reality be only a proportion of the actual costs, even if those actual costs were reasonably incurred. This conclusion supports my view that it would not here be

proportionate to award costs of £1,690 where the damages recovered were only £900.

13. In these circumstances I propose to reduce the figure of £1,690 to £800. Accordingly, I determine that the reasonable and proportionate figure to award by way of costs is £800. This figure is inclusive of VAT.

### **Award**

I AWARD AND DIRECT that:

Evolve do within 21 days of the date of this Award pay to Mr Gould the sum of £800 towards his costs of these proceedings.

Signed



Farrars Building  
Temple  
London EC4Y 7BD

Ian Ridd FCI Arb  
Arbitrator

Dated: 29 May 2018