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Case Nos: HC-2016-002613  
HC-2017-001571  
HC-2017-001367  
HC-2017-000457  
HC-2017-001759  
HC-2017-002197

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INTELLECTUAL PROPERTY LIST (Chd)**  
**Intellectual Property**

Royal Courts of Justice  
Rolls Building, Fetter Lane,  
London, EC4A 1NL

Date: 17/10/2017

Before :

**THE HONOURABLE MR. JUSTICE MARCUS SMITH**

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BETWEEN:

**FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED**

Claimant in all the above-referenced Claims

-and-

(1) **DAWN HOUGHTON also known as DAWN KEENAN**

(2) **BARCLAYS BANK plc**

Defendants in Claim No. HC-2016-002613

-and-

(1) **JOHN FAY**

(2) **BARCLAYS BANK plc**

Defendants in Claim No. HC-2017-001571

-and-

(1) **JOSHUA SAMBROOK**

(2) **GHS TAVERNS LIMITED**

Defendants in Claim No. HC-2017-001367

-and-

(1) **KATRINA QUINN**

(2) **JOSEPH QUINN**

(3) **BARCLAYS BANK plc**

Defendants in Claim No. HC-2017-000457

-and-

(1) **CHRISTOPHER CHARLES TOOTHILL**

(2) **BARCLAYS BANK plc**

Defendants in Claim No. HC-2017-001759

-and-

(1) **HALEY CANAVAN also known as HALEY KELLY**

(2) **BARCLAYS BANK plc**

Defendants in Claim No. HC-2017-002197

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**Ms. Iona Berkeley** (instructed by **DLA Piper LLP**) for the **Claimant**

**Mr. Aidan Briggs** (instructed pursuant to the **Chancery Bar Litigants in Person Scheme**) for  
the First Defendant (Mr. Fay) in Case No. HC-2017-001571.

The other Defendants did not appear and were not represented

Hearing date: 9 October 2017

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## **Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

## Mr Justice Marcus Smith

### INTRODUCTION

1. The Claimant in each of these claims is the Football Association Premier League Limited (“FAPL”). FAPL is the governing body of the Premier League. FAPL owns the copyright to:
  - i) Various logos and graphics used in television broadcasts of Premier League Football matches; and
  - ii) Films of those matches.

Collectively, I shall refer to these rights as the “Copyrights”.

2. The Defendants fall into two groups:
  - i) Barclays Bank plc (“Barclays”) – generally the Second Defendant in these claims – was joined pursuant to CPR 19.3 as a party for purely procedural reasons as the joint owner of certain of the logos at issue in the proceedings. Barclays took no active part in these proceedings. No order was sought or made against Barclays by FAPL, and nothing in this Judgment relates to Barclays.
  - ii) The remaining Defendants are, in each case, the publican who was the designated premises supervisor, that is the person responsible for the running of the premises, and therefore, the person responsible for the communication of the Copyrights to the public.

In this Judgment, “Defendants” is intended to refer to all Defendants except Barclays.

3. Each of the claims is in respect of infringement of the Copyrights by way of the unauthorised communication to the public of Premier League Football matches by the Defendants at the premises for which they were responsible. Unsurprisingly, given the identical nature of the claims being advanced by FAPL and the very similar factual circumstances underlying each claim, the Claim Forms and Particulars of Claim in each case are broadly similar.
4. In the case of each claim, FAPL applied for judgment in default against each Defendant pursuant to CPR Part 12, the Defendants having in each case failed to file an acknowledgement of service. The applications for judgment in default also had a high degree of similarity in terms of the evidence in support and the production of the necessary certificates of service.
5. Apart from the case of FAPL v. Fay, where Mr. Fay did appear and was represented by Mr. Aidan Briggs pursuant to the Chancery Bar Litigants in Person Scheme, none of the Defendants appeared before me. In each case – including that of Mr. Fay, who did not oppose judgment being entered against him, I concluded that the FAPL’s applications should succeed, and that judgment should be entered against all of the Defendants.

6. In each case, the FAPL sought its costs against the Defendants, and produced in a statement of costs which it invited me to assess on a summary basis. In each case, I made an order for costs in favour of FAPL and summarily assessed those costs.
7. Although I assessed the costs separately in each case, given the high degree of similarity between the six applications, I sought not only to achieve a proper assessment of costs in each individual case, but also sought to be consistent as between the six cases before me, so as to treat like cases alike.
8. I did so by approaching the various items listed in the statement of costs in a similar way in each case. This Judgment sets out the approach that I took. I am very grateful to counsel for their helpful submissions and to the FAPL's solicitors for producing, on extremely short notice, further witness statements to explain in a little greater detail how the FAPL's costs had, in each of the cases, been incurred.
9. Notwithstanding the substantial common ground shared by these applications, a number of the claims before me exhibited particular features specific to that case, which was relevant to the question of costs. Thus, although I adopted a method of assessing costs that was common to each case, the outcome of that method could vary according to the individual features exhibited by each case.

## OVERVIEW OF THE OUTCOME

10. The costs awarded in each case are set out in the following table. I have numbered (1) to (10) the various elements that are relevant to my assessment:

Costs (£)	Defendants					
	Fay	Houghton	Sambrook	Quinn	Toothill	Canavan
(1) Attendances	2,000	2,000	2,000	2,500	2,000	2,000
(2) Work on documents	2,713	4,000	2,137	6,933.60	2,414.50	3,183.50
(3) Schedule to Pleadings	1,342	762	188	2,142.50	1,440	815
(4) Solicitors' attendance at hearing	280	280	280	280	280	280
(5) Counsel's fees	600	200	200	1,590	200	200
(6) Court fees	780	528	783	828	783	783
(7) Investigator's costs	1,974	2,486	3,035	3,387.50	1,591	5,562
<b>(8) TOTAL</b>	<b>9,689</b>	<b>10,256</b>	<b>8,623</b>	<b>17,661.60</b>	<b>8,708.50</b>	<b>12,823.50</b>
(9) "IPEC discount"	(1,689)	(1,506)	(623)	(0)	(708.50)	(2,823.50)
<b>(10) TOTAL AFTER "IPEC DISCOUNT"</b>	<b>8,000</b>	<b>8,750</b>	<b>8,000</b>	<b>17,661.60</b>	<b>8,000</b>	<b>10,000</b>

## THE COSTS OF ESTABLISHING AN INFRINGEMENT: ITEMS (7) AND (3)

11. Although the law underpinning each claim was the same, and the factual nature of the infringement of the Copyrights similar in each case – namely, the unauthorised communication to the public of Premier League Football matches by the Defendants at the premises for which they were responsible – it is obvious that the FAPL had, in each case, to establish an infringement. This was done by the retention of an investigator, who would attend the premises where a suspected infringement was taking place, seek to establish whether the Copyrights were being infringed and (if so) obtain proof.
12. Ms. Iona Berkeley for FAPL submitted that the costs of investigation in cases such as these would be higher than the costs incurred in superficially similar cases, such as proceedings brought by Phonographic Performance Ltd for the infringement of copyright in music.<sup>1</sup> In such cases, the question whether the venue is playing music without the necessary licence can be ascertained comparatively quickly. It is simply a question of whether sound recordings subject to copyright are being played.
13. The position in these applications, it was submitted, is materially different. This is due to the Copyrights comprising a variety of different logos, graphics and filmworks. Establishing infringement involves demonstrating that these logos, graphics and/or filmworks have been communicated to the public. This has costs implications:
  - i) The length of time the investigator must attend the premises is increased, so as to enable him or her properly to capture evidence (by way of video recording) of the various Copyrights being displayed.
  - ii) The video evidence obtained by the investigator must then be reviewed by FAPL’s solicitors in order to catalogue the various Copyrights infringed. These infringements are then set out in a schedule appended to the Particulars of Claim.
14. I consider that the costs of the investigator (Item (7)) and the costs of scheduling the infringements (Item (3)) are central to the case being brought by the FAPL, and that (provided they appear reasonable) they should be recovered in full. In all six cases, I permitted the recovery of the entirety of the amount claimed in the statement of costs. The investigator’s costs in Canavan are high, but that is because there were two relevant premises which the investigator was required to visit, which necessarily and reasonably resulted in significantly higher investigator’s costs. Accordingly, I allowed the figure of £5,562 to stand in that case. But for the explanation given, I would have reduced this figure.

## **WORK ON DOCUMENTS: ITEM (2)**

15. The costs of scheduling the infringements (Item (3)) formed an element within the statement of costs detailing the work on documents (Item (2)). The documents worked on will not, in general, have been “bespoke”, but in considerable part “pro forma”. In these circumstances, I consider that the costs incurred in producing the various application documents (primarily the Particulars of Claim and witness statements) ought to be reduced to reflect this. By the very nature of these applications, being part of a string of very similar claims against different Defendants, a significant proportion of the work required to produce the necessary documentation will already have been

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<sup>1</sup> See, for example, Phonographic Performance Ltd v JJPB Ltd [2017] EWHC 1370 (Ch).

undertaken. The existing framework of template-style documents from the preceding claims then only requires relatively modest adaptation and development in order to be suitably deployed in each subsequent claim. This is clear when considering the Particulars of Claim filed and served by FAPL in each case. Typically, only eight of the 72 paragraphs were not, in all material respects, generic across all six claims; even the eight individuated paragraphs followed a formulaic approach.

16. Accordingly, whilst I allowed all of the costs of the scheduling of the infringements (Item (3)), as this is a document that must be created *de novo*, I generally applied a deduction of 50% to the remaining costs relating to work on documents (Item (2)), to reflect the fact that these documents can, substantially, be recycled from precedents.
17. Where the facts warranted, I departed from this course. That occurred, most notably, in the case of Quinn. I am of the opinion that this Defendant's evasive behaviour as regards service and participation in these proceedings, and in particular, the "angry and violent" behaviour shown towards FAPL's service agents, caused the costs incurred in relation to documents (Item (2)) to be significantly higher than they otherwise would have been. For example, FAPL had to apply for an order for alternative service via email because of the inability to serve either in person or by post.
18. Similarly, Houghton involved an additional application, and I allowed £4,000 to be recovered.

#### **ATTENDANCES**

19. FAPL seeks to recover the costs incurred by their solicitors for attendances on FAPL, the various Defendants, and on the investigators they have retained to visit the relevant premises of the Defendants in order to obtain the video evidence of the Copyright infringements.
20. The costs incurred in this regard are plainly excessive. By way of example, in the application for judgment in default against Fay, FAPL sought to recover a total of £7,567.50, which equates to over 35 hours of attendances, nearly 13 hours of which relate to attendances on FAPL. I struggle to see that there can be any justification for such an extensive period of time being spent in this regard, and I have not been persuaded by Ms. Berkeley's submissions on this point. I am not minded to accede to FAPL's submission that the full amount of these costs should be recovered from the Defendants.
21. On that basis, I awarded a basic capped amount of £2,000 for attendances in relation to each application, except for the case of Quinn, which (for the reasons given in paragraph 17 above) was exceptional.

#### **OTHER COSTS: ITEMS (4), (5) AND (6)**

22. I will now address the assessment of the remaining, and comparatively minor, costs, namely: counsel's fees, FAPL's solicitors' fees for attending the hearing and the court fees.
23. In relation to counsel's fees, it is important to reflect fact that these applications were all heard together before me in the Interim Applications Court, and so counsel was only required to appear on a single occasion, and that (with the exception of Fay) the

Defendants did not attend to resist the application or the costs sought. As such, I will only award a basic rate of £200 for counsel's fees, with a minor uplift in relation to Fay, owing to the fact that counsel appeared on Mr. Fay's behalf to challenge any application for costs.

24. In each application, I will award the full £280 sought for the FAPL's solicitors' attendance at the hearing.
25. I also award costs in full for the court fees arising from these proceedings.

### **THE "IPEC DISCOUNT": ITEM (9)**

26. The Intellectual Property and Enterprise Court ("IPEC") offers a mechanism "designed to achieve the aim of providing an affordable forum, eliminating (or at least mitigating) the difficulties associated with uncertain costs in other fora".<sup>2</sup> As Section IV of the Practice Direction to CPR Part 45 sets out at Table A, the maximum amount of costs which IPEC could award for the steps undertaken by FAPL in these claims, namely filing a Particulars of Claim and making an application, would be £7,000 and £3,000 respectively. Had these claims be issued in IPEC, the maximum award of costs in relation to each application would therefore be £10,000. By comparison, the costs sought by FAPL in each case exceeded £10,000, and in all but one case exceed £15,000. In several cases, the costs exceeded £20,000.
27. Taking into account the causes of action in these claims and the nature of the relief sought, IPEC has – as was conceded by Ms. Berkeley – the appropriate jurisdiction for such matters and these claims could all have been issued there.
28. I make no criticism of FAPL for their decision to bring these proceedings in this Court, and I respect and am sympathetic to Ms. Berkeley's submissions as to FAPL's reasons for doing so, which are (it must be stressed) quite apart from any considerations as to the IPEC fixed costs regime.
29. That said, the IPEC costs regime cannot be ignored, when considering the question of costs. Whilst the choice of forum was FAPL's, I do not consider that that choice should cause the Defendants to lose altogether the benefits of the IPEC fixed costs regime. It seems to me that the total costs that I find to be recoverable (Item (8)) must (if no more than that) be viewed in the context of what would maximally be recovered in the IPEC.
30. Accordingly, I considered the total recoverable (Item (8)) against the maximum recoverable in IPEC, and – where appropriate – applied a discount so that there is a degree of proportionality between the two. Generally, this meant that I applied a discount (Item (9)) to reduce the costs of what I regarded as "standard" cases (Fay, Sambrook, Toothill) to £8,000. There were three exceptions to this: Houghton (where work on documents (Item (2)) was higher than usual for the reason given in paragraph 18); Canavan (where the investigator's costs (Item (7)) were higher than usual for the reason given in paragraph 14); and Quinn where, because of the conduct of Mr. Quinn described in paragraph 17, I considered that it was inappropriate to apply any discount at all.

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<sup>2</sup> The White Book 2017, 2F-17.10.0, Editorial Introduction to CPR Part 63, Chapter V "Intellectual Property Enterprise Court", Vol II, pp.823ff.