

Costs Judgment in relation to an appeal against three aspects of the supplementary and costs order made by the Royal Court on 28 June 2022.

[2023]GCA064

IN THE COURT OF APPEAL (CIVIL DIVISION), GUERNSEY

**ON APPEAL FROM THE ROYAL COURT OF GUERNSEY (ORDINARY DIVISION), CIVIL
ACTION 2136**

CIVIL DIVISION APPEAL No. 563

IN THE MATTER OF SECTION 29 OF THE LIMITED PARTNERSHIPS (GUERNSEY) LAW 1995

AND IN THE MATTER OF CRGF LP

BETWEEN:

CRGF GP LIMITED

Appellant

and

FONDS RUSNANO CAPITAL SA

Respondent

JUDGMENT ON ASPECTS OF COSTS

MONTGOMERY JA; WOLFFE JA & MATTHEWS JA:

Introduction

1. On 18 September 2023, this court handed down its judgment (under neutral citation [2023] GCA 048) in the appeal brought by the appellant against the Act of Court of the Royal Court dated 28 June 2022. The Court of Appeal's judgment was embodied in an Act of Court finalised on 21 September 2023, which varied the June 2022 Order. On 23 October 2023 the appellant applied to a single judge of this court for certain orders relating to costs. Despite having had the opportunity to do so, the respondent has made no submissions on this application. On 27 November 2023, the matter was referred to the full court for its consideration, given the potential significance of the issues arising. This is the judgment of the court.
2. At first instance, the Royal Court had made an order dissolving a limited partnership between the parties. The appellant's appeal was not however against the order dissolving the

partnership. That was not challenged. Instead, the appellant sought to challenge three aspects of the supplementary and costs order made by the Royal Court.

3. These three aspects were: (1) a limit put on the appellant's entitlement under the partnership agreement to certain fees; (2) an obligation on the appellant to pay an amount still to be calculated to the liquidator of the limited partnership; and (3) an obligation on the appellant to pay 25% of the respondent's recoverable costs of the proceedings. The appellant was successful on both aspects (1) and (2). Aspect (3) simply reflects the Royal Court's (overturned) decision on those two aspects.
4. The September 2023 order provided as follows in relation to costs:

"2. The appeal is allowed. The Act of Court dated 28 June 2022 is varied so that the following points are replaced in their entirety with the following text:

[...]

(c) point 4 is replaced with 'The Plaintiff [*ie* the respondent] shall pay to the Defendant [*ie* the appellant] its costs of the proceedings';

3. The Respondent shall pay to the Appellant its costs of the appeal.

4. The Appellant has leave to apply to a single Justice for further orders in relation to costs."

5. Pursuant to paragraph 4 of the order, the appellant asks the Court to consider three points of principle, which it says need to be determined so that a bill of costs can be prepared. The appellant accepts that its costs should be assessed on the recoverable, rather than the indemnity, basis. Nevertheless, it seeks orders for the following:
 - (a) An uplift in the Advocates' recoverable rate;
 - (b) Costs of external counsel, and
 - (c) Pre-judgment interest on costs.

Moreover, it seeks these three things, not only in relation to its costs in this court, but also in relation to its costs before the Royal Court.

The jurisdiction of this court in relation to costs

6. The first question is one of jurisdiction. The court has full discretion in relation to *appeal* costs under the Court of Appeal (Guernsey) Law, 1961. This relevantly provides that:

"18(1) The costs of and incidental to all proceedings in the Court of Appeal under this Part of this Law shall be in the discretion of the Court, and the Court shall have the power to determine by whom and to what extent the costs are to be paid."

This is derived in substance from section 50 of the (UK) Supreme Court of Judicature (Consolidation) Act 1925, which relevantly provides:

“(1) Subject to the provisions of this Act and to rules of court and to the express provisions of any other Act, the costs of and incidental to all proceedings in the Supreme Court [*ie* the Court of Appeal and the High Court], ... shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and to what extent the costs are to be paid.”

(This is now contained in section 51 of the (UK) Senior Courts Act 1981, but the substance is the same.) In our judgment, section 18(1) of the 1961 Law confers jurisdiction on this court to make orders of the first two kinds which the appellant now seeks, in relation to the costs of an appeal. We will have to come back to the question of jurisdiction to make the third.

7. So far as concerns costs in *the court below*, the 1961 Law gives no express power to this court to make such orders. But it does relevantly provide that:

“14(2) For all the purposes of and incidental to the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the Royal Court ...”

This is for all practical purposes the same as section 27(1) of the Supreme Court of Judicature (Consolidation) Act 1925, from which it is plainly derived, and which made similar provision for the Court of Appeal in England and Wales. Section 27(1) was subsequently replaced by section 15(3) of the Senior Courts Act 1981, the current jurisdictional statute for the English court.

8. It is well-established that, under these provisions, the Court of Appeal has power to make orders as to costs in the lower court. In *Darroch v Football Association Premier League Ltd* [2017] 4 WLR 6, for example, the English Court of Appeal proceeded on the basis that the equivalent provision in the UK statute would have conferred power on that court to make an order concerning the costs of proceedings in the magistrates’ court from which an appeal had emanated to the extent permitted in the lower court.
9. The Court of Appeal (Civil Division) (Guernsey) Rules 1964, made under section 22 of the 1961 Law, also relevantly provide:

“12. General Power of the Court

[...]

(3) The Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.”

10. It is relevant also to note that, by section 15 of the Law,

“(1) An appeal shall not lie to the Court of Appeal under this Part of this Law

[...]

(c) without the leave of the presiding judge of the court making the order, from any order made with the consent of the parties or as to costs,

[...]”

11. In *Hindle v Kitching* [2020] GCA 002, this court commented on this latter provision as follows:

“177. ... Where a substantive appeal is successful the costs order may of course be overturned as a consequence and no leave is required under section 15(c). But where a party wishes this Court to vary the costs order made below even if the substantive appeal is dismissed, the matter falls squarely within section 15(c) and leave to appeal must be obtained from the presiding judge in the Royal Court.”

12. The appellant submits that the court has the power to make orders of the three kinds sought in relation to the costs in the Royal Court. The basis for this submission is the following:

(a) The orders sought are incidental to the order made by the court in paragraph 2(c) of its 18 September order, pursuant to the statement quoted above from the decision of the court in *Hindle v Kitching*;

(b) Rule 12(3) of the Court of Appeal (Civil Division) (Guernsey) Rules 1964 confers power to do so;

(c) It would be inefficient and wasteful if the appellant were required to return to the Royal Court to seek orders of the kind in question where the Court of Appeal was considering substantially the same issues in relation to the appeal costs.

13. In our judgment, the decision of the court in *Hindle v Kitching* has nothing to do with the matter. That merely makes clear that there is no need for leave to appeal under section 15(c) of the 1961 Law in order to challenge the costs order below when an appeal has been successful. This is because the basis for the costs decision below has *ex hypothesi* gone, and this court can make its own decision instead, under section 14(2) of the 1961 Law. Those provisions are designed to prevent the “inefficient and wasteful” need to return to the Royal Court, referred to in the appellant’s submission.

14. On the other hand, we agree that, in substituting its own decision on costs for that of the Royal Court, questions of the kinds raised by the appellant (which could have been raised in the court below if that court had found in the appellant’s favour) would be incidental to this court’s decision that the respondent should pay the appellant’s costs here and below. But that is the product of section 14(2).

15. Nor do we think that rule 12(3) of the 1964 Rules is the source of the power for this court to make orders concerning costs in the Royal Court. That jurisdiction is conferred by section

14(2) of the 1961 Law, as stated above. Rule 12(3) is a part of rule 12, which is concerned with the general procedural power of this court to conduct the appeal, on the way to its own ultimate decision to allow or dismiss the appeal. Thus, rule 12 confers power to amend documents (rule 12(1)), to receive evidence on questions of fact (rule 12(2)), and to draw inferences of fact and make decisions which ought to be made (rule 12(3)). It is not concerned with substituting decisions of the court below. If that happens at all, it happens as part of the overall decision that the court makes on the appeal, *ie* under section 14(2).

Uplift of recoverable rate of costs

16. Rule 3(2) of the Court of Appeal (Costs and Fees) (Guernsey) Rules 2012 currently provides for a maximum recoverable rate of fees for an advocate of £268 per hour, “unless the Court orders otherwise”. Rule 3(3) provides for that figure to be increased on 1 January each year by a percentage equal to the annual percentage increase in the Guernsey retail prices index to the previous 30 September. It appears that this was 7.9% to September 2022, and that therefore the maximum recoverable rate is currently £309 per hour. But, as noted, rule 3(2) confers power on the court to order “otherwise”. The appellant seeks an uplift on the hourly rate under that power. It seeks a similar uplift in relation to costs incurred in the Royal Court, under the equivalent rules governing costs in that court.
17. It does not appear that these particular provisions have ever been considered by the Court of Appeal before. (The point was briefly raised before the court in *Molard International (PTC) Ltd v Rusnano Capital AG* [2020] GCA 003, which we discuss further below, but the court left the matter to be dealt with on taxation.) Instead, the appellant referred to decisions of the Royal Court and the Court of the Seneschal of Sark.
18. In *Barclay v Latrobe-Bateman* 2009-10 GLR N-1, the Lieutenant Seneschal of Sark (Patrick Talbot QC) held that recoverable advocates’ costs should be increased by 42% above the statutory maximum because of “the clear importance of the case, and the difficulty and novelty of the plaintiffs’ legal arguments”.
19. *Re a Guernsey Company* is a case where the judgment (from 2011) is unpublished save in an anonymised version. Lieutenant Bailiff Patrick Talbot QC allowed a similar uplift to the *Barclay* case because of “the size of the case, and the importance of the Company to the parties, and the relative novelty of the legal arguments”.
20. In *Jackson v Dear*, unreported, 8 July 2013, the same Lieutenant Bailiff allowed an uplift of up to 93% after accepting a submission from the receiving party that “this case raised novel and complex questions of company law, especially in relation to derivative actions and the associated procedure, for the first time in Guernsey and ... was regarded by all the parties as being of very great personal and financial importance to them, it was an exceptional case ... ”
21. In *Zaleski v GM Trustees Ltd*, Guernsey Judgment 16/2016, McMahon DB referred to (and indeed quoted from) *Jackson v Dear*. But he also quoted from *Broadhead v Spread Trustee Company Ltd*, Guernsey Judgment 10/2015, where Lieutenant Bailiff Marshall QC had said:

“49. The statutory limit on Advocate’s recoverable fees is a salutary constraint on the costs of litigation in a small jurisdiction such as Guernsey. It encourages economy by those with strong cases and realism by those with weak cases. It acts as a brake on the tendency of litigation costs to spiral out of control, such that a paying party may face the possibility of an unpredictable bill of a huge, possibly even ruinous, amount, so that the costs themselves become such a large aspect of the litigation that they prevent a sensible settlement of the case on its merits from being achieved. In my judgment, these salutary effects were intended to be, and should be, carefully upheld. It should only be in the most clear and rare of cases that an uplift in the prescribed maximum should be ordered. In my judgment this is not such a case.”

22. In *Zaleski*, having quoted that passage in full, McMahon DB commented:

“30. That is a statement to which I align myself. Any uplift will be a rarity. ...

31. In my view, this was not an action that involved issues beyond the normal diet of the Guernsey Bar warranting awarding any uplift on the prescribed maximum hourly rate for costs on the recoverable basis. Whilst it was not a comparatively simple claim, as Advocate Hay has suggested, it was not large-scale commercial litigation. It was expected to be a two week trial with expert valuation evidence and that is roughly what it turned out to be. The overall loss to the Trust was put at a little over £18 million, which is certainly a significant amount, but it is not as large as in some other cases and the way in which the Plaintiff wished to put his case was more about himself than generally. Complexity cannot, in any event, be resolved simply by reference to quantum because a small value claim can raise questions of importance or novelty. In short, I can see no reason for departing from the statutory maximum in this case.”

23. In the present case, the appellant submits that this was a case of “the greatest importance to Mr Erochkin [the beneficial owner of the appellant company] personally”, who “faced fraud allegations which, had they succeeded, would have ruined him”, and also financially, as “[t]he fees claimed represent the reward for years of effort during the most productive part of his life”. It also submits that the first instance proceedings were “an unusually complex set of commercial proceedings involving difficult questions concerning the remedies available upon the liquidation of [a limited partnership] under the Limited Partnerships (Guernsey) Law, 1995”.

24. It further submits that the appeal decided “a previously untested legal point relating to the scope and application of section 29(2)” of the 1995 Law, “an important and previously untested point concerning Court of Appeal service procedure” and “points novel in Guernsey concerning the interplay between the sanctions regime and access to justice”. It refers to the trial of nine days (with a further one day hearing a year later), the two year wait for the judgment, and a nine month wait for the judgment on consequential matters, with a quantum said to be worth US\$23 million.

25. We accept that this litigation was personally important to Mr Erochkin. But we do not think that it was more so than the very many cases of litigation brought or defended by persons who have a lot to lose personally. This will include those claiming damages for serious

personal injury, for serious damage to their reputation, or physical damage to their home, or to other important property, or the loss of their savings. Some of these may be of small financial value, but still of major importance to the parties themselves.

26. We accept that it was important to Mr Erochkin financially as well. But, although the value of the claim was put at US\$23 million, that is not by today's commercial standards a huge sum. Indeed, *Zaleski* was a breach of trust case apparently worth £18 million in 2016, which (at today's exchange rate) was also worth about US\$23 million. Yet in that case no uplift was awarded.
27. We accept that this case involved interesting and novel points about commercial legislation, although the legislation concerned is not, as it happens, very new. The 1995 Law is now nearly thirty years old. There were also new points about procedure, although that happens all the time, because changes to procedure happen all the time. In any event, novelty is not an automatic basis for charging clients higher fees. It is a normal feature of the advocate's professional function to consider, advise on, and make submissions about, novel points of law.
28. Over the last two hundred years or so, Guernsey has evolved from a basically agrarian and fishing economy to one based largely, though by no means entirely, on international finance. As a result, the standard of living of ordinary people has been lifted immeasurably. The legislation has been modernised accordingly. Novel questions of law have inevitably arisen from time to time, in both non-commercial as well as commercial contexts. This is not extraordinary. It is ordinary evolution, from generation to generation.
29. In modern times, Guernsey lawyers and their clients may agree as between them whatever fees the market will bear for the work that they do. But the legislature has, for its own policy reasons, which this court will not question, put limits on the charges which successful clients are permitted to recover from their unsuccessful opponents. What the lawyers and clients may agree does not therefore automatically bind third parties. As the appellant rightly says, the law undoubtedly allows for the court to order "otherwise". But, as McMahon DB said in *Zaleski*, that "will be a rarity". The point about the rule is that it is *the rule*, and not *the exception* to the rule.
30. A trial of nine days, or even ten (with the additional day's argument a year later), is nowadays not extraordinary, just as *Zaleski* (two weeks) was not. Guernsey is a sophisticated international commercial jurisdiction, not a rural petty debts court. The two years' and then nine months' wait for judgments are highly regrettable, but they do not demonstrate greater legal complexity. What they demonstrate is a shortage of judicial resources, which (as we understand) is now being addressed.
31. This case is just not the Holy Grail of international commercial litigation which the appellant submits it is. It is undoubtedly a worthy dispute between international parties, which takes place here because of the use of a Guernsey legal vehicle. This is as it should be. But it was not "an unusually complex set of commercial proceedings involving difficult questions". At first instance it involved the presentation of the facts and an argument about the true construction of provisions of the 1995 Law. The Bailiff unfortunately misdirected the jurors

on the law, and this court corrected the mis directions. But there is nothing unusual in that. Every judge gets the law wrong sometimes.

32. If the legislature considers that cases such as this should benefit from higher recoverable rates than the rest of (often equally important) Guernsey litigation, then it can of course say so. On the facts of this case, we see no justification for any uplift. Even if we had, it would not have been for anything like the 42% requested. It would have been for a maximum of say 10 or 15%.

Fees for external lawyers

33. We turn now to consider the question of fees for external lawyers. Again, with one exception, discussed below, there are no decisions of this court that we are aware of bearing on the question. But there is the leading case of *Ladbroke plc v Galaxy International Limited*, Guernsey Judgment 11/2009, a Royal Court decision by Lieutenant Bailiff Richard Southwell QC (who was previously a member of the Court of Appeal). In that case about half the costs of the successful plaintiff derived from the costs of English solicitors. These costs were challenged as a matter of principle, but also on the basis that external lawyers could not recover a higher hourly rate than Guernsey advocates.
34. Importantly, the judge paid tribute to the quality of the representation which the parties had enjoyed from their Guernsey advocates. He also made clear that he was not dealing with the question of costs of foreign lawyers as expert witnesses of foreign law. He similarly made clear that it was agreed between the parties that the costs of foreign lawyers employed by Guernsey advocates could be recovered under the rules. This case was not about them.
35. First of all, the judge held that that the Royal Court does have a discretionary power, by virtue of section 1(1) of the Royal Court (Costs and Fees) (Guernsey) Law 1969, to permit the recovery of fees and disbursements of external lawyers, in circumstances in which such fees and disbursements have been reasonably incurred and are reasonable in amount. Next, he made the point that the public interest in Guernsey in legal services is served by the existence of the Guernsey bar.
36. In particular, the judge said this:

“18. The Guernsey public interest lies, in my judgment, in the existence of a well qualified trained and experienced body of Advocates, capable themselves of handling the great majority of legal proceedings, both civil and criminal, effectively, efficiently, in a reasonable time and at a reasonable cost. The existence of such a body of Advocates is essential to all who live in Guernsey, or engage in business and other activities in Guernsey, or use Guernsey for the purposes of trusts, investments, insurances and the like. Such persons are entitled to expect that when legal assistance is needed such Advocates will be available in Guernsey to give this assistance. They are also entitled to expect that, if they are ordered to pay costs incurred in proceedings in Guernsey, such cost will not be unduly or unreasonably increased by costs relating to the use of external lawyers as well as Guernsey Advocates and their employees.”

37. As a result, he concluded that:

“19. In the majority of cases, both civil and criminal, the use of external lawyers will be unnecessary, and should not be allowed on taxation. The public interest lies, as indicated above, in developing, training and maintaining sufficient expertise among Guernsey Advocates to deal with the majority of cases. This is a point of no little importance. In a small jurisdiction such as Guernsey it would be easy for it to become customary to sub-contract the preparation of cases to external lawyers whether in England or elsewhere. If that were to happen it would weaken the Guernsey profession and damage the public interest which I have defined. The actual advocacy in the Courts of Guernsey could not be sub-contracted, since only Guernsey Advocates have the rights of audience in the Guernsey Courts. In my judgment it is vital that rights of audience remain only with Guernsey Advocates. To extend rights of audience to external lawyers would be likely greatly to weaken the Guernsey profession, causing considerable damage to the public interest.

20. In my judgment, therefore, the public interest of Guernsey requires that in the majority of cases only the fees and disbursements of Guernsey Advocates’ firms should be allowed.”

38. Nevertheless, that was not the end of the story. The judge went on to say this:

“21. But that is not to say that in appropriate and exceptional cases (which will be relatively few) the fees and disbursements of external lawyers should not be allowed on taxation. I will try to give some examples of what are likely to be such appropriate and exceptional cases ... ”

39. There were then a number of examples given, at [22]. These included (i) “highly specialist fields of law, which arise rarely for decision by the Guernsey Courts”, (ii) cases where “the existing knowledge held by the external lawyers of the client litigants and of the facts which underly the disputes are made available to the Guernsey Advocates conducting the cases for those litigants” (although “in the great majority of cases there can be no justification for duplication of costs by the use of both Guernsey Advocates and external lawyers in ... Guernsey proceedings”), (iii) cases where it is necessary to establish “what are the relevant principles of English or other laws”, (iv) cases involving “taking the advice of the best lawyer or lawyers available”, who would probably be “a specialist Queen’s Counsel or barrister in England” (though less commonly a solicitor), and (v) cases “involving a large number of documents [where] Guernsey Advocates may have to obtain help from large firms in England (or perhaps elsewhere) in the management of the document base”.

40. These are examples of their time, and must obviously not be read as some kind of statute. The judge himself clearly did not intend that. The judge then went on to consider the question of the *rates* at which the fees of the external lawyers might be recovered:

“22. ... In my judgment those who tax costs in Guernsey proceedings should be careful not to allow fees of external lawyers at rates higher than those permitted for Guernsey Advocates and their employees, except in the relatively rare cases where

this can clearly be seen to be reasonable. Litigants in Guernsey are in the great majority of cases entitled to anticipate that, if they lose and are ordered to pay costs on the recoverable basis, they will not have to pay costs relating to the use of external lawyers well in excess of those appropriate for Guernsey Advocates and their employees.”

41. We respectfully agree. In the event the judge allowed rather less of the external lawyers’ fees than were claimed, and at no more than the rates allowed for Guernsey lawyers. The same point has been raised on one occasion before this court, in *Molard International (PTC) Ltd v Rusnano Capital AG* [2020] GCA 003. There the court said this:

“48. The Appellants submitted that, in the event of our awarding costs in their favour, we should go on to give directions that there should be an uplift on the standard hourly rates allowed on the recoverable basis, that it was reasonable for the parties to use English counsel in relation to the proceedings and as to the rates at which the cost of English counsel should be recoverable.

49. Rusnano submitted that it was not necessary for the Court of Appeal to deal with such detailed matters at this stage; they should be considered as part of the taxation of costs in due course.

50. In view of our decision that the costs orders are in favour of Rusnano, we propose to accede to Rusnano’s submission. We therefore do not comment on the various submissions made by the Appellants as to the appropriate rates and the involvement of English counsel other than to say that, given the possible relevance of the Rule [in *Saunders v Vautier*] (which is a rule of English law), it was in our judgment entirely reasonable for both parties to obtain advice from English counsel and we see no reason why the reasonable costs of such counsel should not be recoverable.”

So, to the limited extent that the court gave any direction there on the question whether the fees of external counsel should be allowed, this was clearly based, and *only* based, on Lieutenant Bailiff Southwell’s third point, that it concerned a point of English law. That is of little or no significance here, where it is Guernsey law that was in play.

42. Here the appellant seeks recovery of the fees of Steven Elliott KC and Eleanor Campbell, two highly reputable commercial counsel from London. Mr Elliott KC is also a respected academic author, in the fields of equity and unjust enrichment. In relation to Mr Elliott KC, it is made clear that his services were “inherited” from the appellant’s previous Guernsey advocates, and that he provided a measure of continuity when the change in advocates occurred between the first instance and the appellate proceedings. It is argued that the case involved “highly complex and nuanced arguments concerning contract law and statutory interpretation”. It is also said that both counsel represented “an efficient manner of researching the relevant English law principles applicable to these proceedings”. We accept the former point, so far as it goes. But “continuity” has a limited importance. It cannot justify counsel being involved throughout, and in particular attending hearings.
43. As to the costs of researching the relevant English law, we do not accept that this would provide a basis for allowing the fees of external lawyers, at least on the facts of this case.

This case did not involve any English law as such. It involved a dispute about the 1995 Law. That is a Guernsey statute, on which Guernsey advocates are competent – indeed, solely competent – to advise. Likewise, any issues of contract law which arose were issues in relation to the Guernsey law of contract. To the (again, limited) extent to which larger principles of partnership law were involved, we accept that there might well be a benefit in looking at the more substantial caselaw available in English law in order to decide what the law is in Guernsey. But it is often the case, in a jurisdiction such as Guernsey, that assistance may be obtained by looking at caselaw from England & Wales (and, indeed from other jurisdictions). At least in the ordinary run of cases, a Guernsey advocate may be expected to undertake such research where that is required in order to assist in determining the law of Guernsey.

44. We emphasise that there is nothing to stop clients from instructing whomever they like to advise them. Our concern here is with what can properly be put at the door of the unsuccessful parties. As Lieutenant Bailiff Southwell said in the *Galaxy* case, such parties
- “are ... entitled to expect that, if they are ordered to pay costs incurred in proceedings in Guernsey, such cost will not be unduly or unreasonably increased by costs relating to the use of external lawyers as well as Guernsey Advocates and their employees.”
45. The appellant points out that Rusnano also employed English counsel during the first instance proceedings. This takes the appellant nowhere. Either the employment of external counsel is an expense which is properly recoverable from the other party, or it is not. It is what it is. The fact that your opponent does so too will not turn employment of external counsel which is not a properly recoverable cost into employment that is.
46. It is also submitted that the services of Mr Elliott KC “represented a cost efficiency rather an extravagance”. But, if Mr Elliott KC was doing much or even most of the work because he was more “cost efficient”, an issue arises as to what added value was represented by the Guernsey advocates, especially when they also seek a significant uplift on the local maximum recoverable rate. It seems to us that there must be a real risk of double counting here.
47. On a separate note, the appellant claims the costs of employing Ogier Luxembourg for advice on lawful methods of service on service in Luxembourg. This is different in character. Insofar as service required to be effected in Luxembourg, it was clearly appropriate to seek advice from a lawyer qualified in that jurisdiction as to the lawful methods by which service could be effected there. We accept this claim in principle, and direct that the reasonable costs of this limited advice, not exceeding the recoverable maximum rate in Guernsey, be allowed.
48. In the result, we direct that, on taxation, the reasonable fees of Mr Elliott KC, not exceeding the recoverable maximum rate in Guernsey, in providing continuity on the handover from the former to the present advocates should be allowed. We do not consider that his fees in carrying out research on English law should be allowed, or the fees for his attendances at hearings.
49. We disallow the fees of Ms Campbell entirely. There has been no explanation of what she contributed, apart from the research into English law element, which we have not allowed in

the case of Mr Elliott KC. In addition, there is nothing here to show that this was the kind of case where (to the extent that anything were allowed at all) it needed two external counsel. We emphasise that, if parties seek to claim something which requires a positive order of the court, it is up to them to provide a cogent basis, evidential and legal, for such order.

Pre-judgment interest on costs

50. The Guernsey court's power to make to make costs orders is found in section 18(1) of the 1961 Law, derived from section 50 of the Supreme Court of Judicature (Consolidation) Act 1925. In England & Wales there was formerly no power to award interest on an award of costs before the date on which the award was made, although interest ran thereafter: see *Hunt v RM Douglas Roofing Ltd* [1990] 1 AC 398, HL. The Civil Procedure Rules 1998 ("CPR") in England now provide that the court has power to order that an award of costs should carry interest from a date earlier than the date of the order: CPR rules 40.8, 44.2(6)(g). This could be the date that the relevant costs were incurred. There is no similar rule in Guernsey.
51. The Judgments (Interest) (Bailiwick of Guernsey) Law 1985, section 2, provides that every judgment debt of the court should bear interest at 8% per annum. In *Public Trustee v Red River Properties Ltd* 2020 GLR N-2, Lieutenant Bailiff Sir Richard Collas held (relying on the *Hunt* case) that awards of costs amounted to judgment debts within this provision, and hence attracted interest. However, the judge also made the following comments (not reported in the Guernsey Law Reports Note, but to be found in the full text of the judgment online):
- "13. The costs regime in England and Wales is different and more complex than in Guernsey. Specifically, a Court in England and Wales has a discretion to order interest from a date other than the date on which judgment is given (Rule 40.8 of the Civil Procedure Rules) and from a date before judgment (Rule 44.2(g)). The power to make rules of court that prescribe the period of time when interest shall run is given by section 17 of the Judgments Act 1838.
14. That is not so in this jurisdiction where the Court has no discretion. Interest is payable as of right under the terms of the 1985 Law cited above. The Royal Court may prescribe the rate of interest by Rules of Court but it may not alter the period of time when interest is payable. Any alteration to the legal position, such as an amendment to give the Court a discretion as to the period of time when interest shall run would require primary legislation."
52. As the judge says, the English costs regime is different, and rules have been made to confer a jurisdiction to award pre-judgment interest on costs which did not previously exist in England. The previous position was contained in the primary statute on costs jurisdiction, which is essentially the same as that now in force in Guernsey. But Guernsey does not have the subsequent English rule changes. As the judge said, a change in the law to allow pre-judgment interest on costs would require legislation. We conclude that the court has no power to make the third order sought by the appellant.

Disposition

53. Accordingly, we must refuse the application for each of the orders sought, except in the limited respects indicated relating to the costs of external lawyers.