



Case Nos: 1589/5/7/23 (T)

IN THE COMPETITION
APPEAL TRIBUNAL

BETWEEN:

INFEDERATION LIMITED
(“Foundem”)

Claimant

- v -

(1) GOOGLE LLC
(2) GOOGLE IRELAND LIMITED
(3) GOOGLE UK LIMITED

Defendants

REASONED ORDER (COSTS)

UPON the Tribunal hearing on 10 October 2025 the application by the Defendants (**Google**) to strike out, disallow or obtain reverse summary judgment on a portion of Foundem’s amended pleading (**the Application**), and allowing the Application

AND UPON the Tribunal issuing its Judgment [2025] CAT 83 on 23 December 2025 giving reasons for that decision

AND UPON Google’s application for its costs of the Application, as set out in its amended schedule of costs served on 22 December 2025 in the revised total amount of £271,806.40

AND UPON reading the submissions on Google’s costs from Foundem dated 16 January 2026 and Google’s submissions in response dated 23 January 2026

IT IS ORDERED THAT:

1. Foundem is to pay Google's costs of the Application summarily assessed on the standard basis in the sum of £100,000 within 21 days of the date of this order.
2. There be liberty to apply.

REASONS

1. Since Google was successful in the Application, Google is entitled to an order for costs in its favour, as Foundem accepts.
2. As regards the amount of costs, the Application was argued over a single day. It involved limited principles of law and reference to authority, and no complex issues of fact. There was one witness statement from a solicitor on each side, essentially referring to the history of the pleading amendments in the proceedings and some inter-solicitor correspondence. The witness statement from Google's solicitor comprised only 7 pages and 18 substantive paragraphs. While I appreciate that the Application was of considerable significance in this very substantial litigation, I nonetheless regard total costs of around £270,000 (with no VAT claimed) as wholly disproportionate and unreasonable. Although not determinative of the level of reasonable and proportionate costs, Google's costs are to be contrasted with Foundem's costs, shown on its costs schedule, in the total amount of £115,415.
3. The principal explanation for the extraordinarily high level of costs lies not in the charging rates of Google's solicitors, which are reasonable by comparison to the Guideline Rates, but (a) in the time and level of charging by solicitors for work on documents (£78,128.88 in the revised schedule); and (b) in the level of counsel's fees (£171,780 for prior advice and the briefs for the hearing).
4. It is well-established that although a party to substantial litigation may spend as much as it wishes on its lawyers, that does not mean that those costs will be recoverable from the other side. See *Re Petrofac Ltd (Costs)* [2025] EWCA Civ 1106 (*Petrofac*) at [25]:

“[...] what a party might subjectively consider reasonable to pay to advance its own interests in litigation is not the relevant test. The relevant test when assessing recoverable costs between the parties is an objective one, and is the lowest sum that the receiving party could reasonably have been expected to spend in order to have its case conducted and presented proficiently.”

This test applies to counsel’s fees as much as to the solicitors’ fees: *Petrofac* at [29].

5. As regards the work on documents, Google’s schedule unfortunately does not attribute the hours worked to particular stages but simply gives cumulative hours for the different grades of fee-earner. However, this amounts to a total of 217.40 hours, which is an astonishing amount of time given what was involved in the Application. That compares with 63.4 hours spent by Foundem’s solicitors for work on documents (including the preparation of the costs submissions). Google solicitors’ work here included legal research on “case law, precedents and tribunal approaches to limitation and strike-out applications” although Google was also being advised by two counsel who no doubt also researched and advised on the law. Furthermore, the costs in this regard were considerably raised by the fact that of the 217.40 hours, over 40% (94.5 hours) was carried out by Grade A solicitors and not delegated to more junior grades. Taking a broad brush approach, and having regard to the fact that the total charge by Foundem’s solicitors for work on documents was £39,651 (although Foundem’s solicitors’ time charging rates were substantially higher), I consider that a reasonable and proportionate charge for work on documents by Google’s solicitors was no more than £35,000.
6. As regards counsel’s fees, Foundem was represented only by leading counsel, whereas Google chose to instruct both leading and junior counsel. I do not think that Google is to be criticised for instructing two counsel, given the importance of the Application, but that should lead to a saving on leading counsel’s fees as some of the work of research and the drafting of the skeleton argument should be carried out by the junior. Instructing two instead of one counsel is not a basis for simply multiplying the fee. Moreover, the exceptionally high level of counsel fees charged is evidenced by the fact that the total fees of Google’s *junior* counsel (2010 call) of £68,860 are more than double the fees of the King’s Counsel appearing for Foundem. In my view, reasonable and proportionate total fees for counsel on the Application should not exceed £50,000.

7. Taking £21,897.52 as set out in Goggle's costs schedule for solicitors' fees other than work on documents + £35,000 for solicitors' work on documents + £50,000 for counsels' fees produces a total of £106,897.52. Looked at in the round, I consider that figure is still excessive for this particular Application, and I therefore reduce it slightly to £100,000. I note that this is a little below Foundem's total costs as set out in its costs schedule, but Foundem's solicitors were charging at rates significantly in excess of the Guideline Rates and Foundem's costs accordingly do not serve as a minimum benchmark.

Sir Peter Roth
Chair of the Competition Appeal Tribunal

Made: 27 April 2026
Drawn: 27 April 2026