



Case No: CL1602608

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
London WC2A 2LL
Date: 23/1/2019

Before:

MASTER LEONARD

Between:

Frank Warren
- and -
Hill Dickinson LLP

Claimant

Defendant

Patrick Lawrence QC (instructed by Russells) for the Claimant
Nicholas Bacon QC (instructed by Hill Dickinson LLP) for the Defendant

Hearing date: 19 October 2018

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.

.....
MASTER LEONARD

Master Leonard:

1. I am undertaking the detailed assessment of four bills rendered by the Defendant to the Claimant on 29 February 2016 and 8 March 2016. Including VAT and success fees they total £922,890.03. They incorporate the costs of the Defendant and its predecessor firm, PSB Law LLP, to which I shall refer as “PSB”. The Claimant, having failed to persuade the court that he is not contractually liable to pay those bills, takes issue with their amount. To date he has made no payment against any of them.
2. The Claimant’s application for detailed assessment was made under Part 8 of the Civil Procedure Rules on about 8 April 2016. It is common ground that the application was filed within a month of the delivery of the Defendant’s four bills, and so was made under section 70(1) of the Solicitors Act 1974. In the meantime the Defendant had, on 24 March 2016, issued a CPR Part 7 claim in the Queen’s Bench Division (HQ16X01084) for the recovery of the sums billed. The Claimant sought to strike out the Defendant’s Part 7 claim on the basis that it was issued contrary to section 69 of the Solicitors Act 1974 (which prevents the issue of proceedings for the recovery of solicitors’ costs before the expiration of one month from the date of delivery of a bill, except in certain defined circumstances).
3. A SCCO order was made in standard form on 17 May 2016, providing for an initial directions hearing. That hearing was, by the agreement of the parties, vacated with the option of applying to relist following the resolution of applications pending in the Queen’s Bench division.
4. The question at the time was, accordingly, whether the parties would take matters forward in the Queen’s Bench Division or in the SCCO. They proceeded in the SCCO. The Queen’s Bench proceedings were, by an order dated 29 June 2016, stayed pending the outcome of these detailed assessment proceedings. The order read at paragraph 3:

“The parties are to apply for a directions hearing in the SCCO proceedings, at which the SCCO can determine whether to retain the Defendant’s (Mr Warren’s) Part 8 Claim or whether that matter, or part of it, is better dealt with in the Queen’s Bench Division, this Court having made no final determination one way or the other.”
5. On 28 October 2016, I made an order for the detailed assessment of the Defendant’s bills. The order recorded the fact that neither party objected to the matter being determined in the SCCO before a costs judge, and provided for the hearing of two preliminary issues; whether there had been a valid assignment to the Defendant by the Claimant’s previous solicitors of two Conditional Fee Agreements (“the CFAs”) signed by the Claimant, and whether there had been a “win” under the terms of those CFAs so as to entitle the Defendant to payment. Points of Dispute and Replies were, at that stage, limited to those two issues.
6. The CFAs related to proceedings taken by the Claimant against Ricky Burns and Alex Morrison. The Claimant had been successful in both actions but Mr Burns and Mr Morrison both ultimately became bankrupt and no money was recovered from either of them.

7. On 26 March 2018, I handed down a written judgment in which I found for the Defendant on both of the preliminary issues. Among the findings which have some relevance for the purposes of this decision were these.
8. I preferred the evidence of Ms Basha, the solicitor who had been managing the relevant litigation, to that of the Claimant, which I found to be inconsistent both with the weight of the evidence and the normal commercial realities of a solicitor/client relationship. (Paragraphs 72-75).
9. The Claimant had not, as he claimed, agreed with Ms Basha that he would not have to pay for her work unless it resulted in a “net gain” to him, alternatively (his stated case in that respect not being entirely consistent) unless he recovered costs from his opponent. Nor could he have believed that he had, because Ms Basha had made it clear on more than one occasion (Paragraphs 85 to 90) that he might be called upon to pay in accordance with his written contractual obligations regardless of recovery. Further, the Claimant had previously (paragraph 95) paid to the Defendant legal fees not recovered from an opponent.
10. There is no substance in the Claimant’s contention that he was inadequately advised as to the content and effect of the CFAs (paragraphs 79 to 83 and 143).
11. The Claimant’s motive in pursuing proceedings against Mr Burns and Mr Morrison and forcing them into insolvency was not primarily the recovery of money. He wished to protect his boxing promotion and management business by sending a message to the effect that people could not abandon their agreements with him or damage his reputation by defamatory statements. (Paragraphs 111-113).
12. I rejected the contention that Ms Basha’s move from PSB to the Defendant materially affected the terms upon which the Claimant was represented, and I accepted the evidence of Ms Basha to the effect that she had just as much effective decision-making freedom when with the Defendant as she had had with PSB (paragraph 136).
13. The Claimant gave full and informed consent to the transfer of the CFAs to the Defendant, which he saw as the best way of maintaining claims against Mr Burns and Mr Morrison that he wished to pursue for reasons other than simple financial return. There was no substance in the suggestion that the assignment of the CFAs was not in the Claimant’s best interests (Paragraphs 137-141).
14. Following the determination of the preliminary issues, directions were given for the service of full Points of Dispute and Replies with a view to moving forward to a full Detailed Assessment hearing. Bill breakdowns, Points of Dispute and Replies were served. On 13 September 2018 the Defendant filed a request for a Detailed Assessment hearing, which has been provisionally listed for 18 March 2019. Further directions will be given on 23 January, following the dismissal of the Claimant’s application for permission to appeal on the assignment point.
15. Pending that hearing I must address the Defendant’s application under CPR 47.16, issued on 6 July 2018, for an Interim Costs Certificate in the sum of £636,583.83.

The Statutory Provisions, the Civil Procedure Rules and Practice Directions

16. Section 70(1) of the Solicitors Act 1974 provides a client, on prompt application, with an unqualified right to detailed assessment of a solicitor's bill:

“Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no action be commenced on the bill until the assessment is completed.”

17. Where section 70(1) does not apply, section 70(2) provides for the court to make a discretionary order which may be subject to conditions:

“Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the solicitor or... by the party chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the assessment), order—

(a) that the bill be assessed; and

(b) that no action be commenced on the bill, and that any action already commenced be stayed, until the assessment is completed.”

18. It is not in issue that CPR 47 and Practice Direction 47 govern the practice and procedure for the detailed assessment of costs awarded between parties to litigation. There is a dispute about the extent to which those provisions extend to assessments between solicitor and client.

19. CPR 47.16 reads as follows:

“...The court may at any time after the receiving party has filed a request for a detailed assessment hearing... issue an interim costs certificate for such sum as it considers appropriate...”

20. “Receiving party” is defined at CPR 44.1(1), among definitions expressly applicable (unless the context otherwise requires) to Parts 44 to 47 inclusive, as “a party entitled to be paid costs”, “costs” in turn being defined to include “fees, charges, disbursements, expenses” and “remuneration”.

21. Specific provisions for the conduct of detailed assessment between solicitor and client can be found at CPR 46. CPR 46.9 and CPR 46.10 set out the principles upon which such an assessment will be conducted, and the procedure to be followed. They are supplemented by part 6 of Practice Direction 46.

22. CPR 46.9 reads:

“... costs are to be assessed on the indemnity basis but are to be presumed –

(a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;

(b) to be reasonable in amount if their amount was expressly or impliedly approved by the client;

(c) to have been unreasonably incurred if –

(i) they are of an unusual nature or amount; and

(ii) the solicitor did not tell the client that as a result the costs might not be recovered from the other party.”

23. Paragraph 6.14 of Practice Direction 46, referring to the detailed assessment hearing, reads:

“Unless the court gives permission, only the solicitor whose bill it is and parties who have served points of dispute may be heard and only items specified in the points of dispute may be raised.”

24. Paragraph 6.8 reads:

“The provisions relating to default costs certificates (rule 47.11) do not apply to cases to which rule 46.10 applies.”

25. Paragraph 6.18 reads:

“If, in the course of a detailed assessment hearing of a solicitor's bill to that solicitor's client, it appears to the court that in any event the solicitor will be liable in connection with that bill to pay money to the client, it may issue an interim certificate specifying an amount which in its opinion is payable by the solicitor to the client.”

26. CPR 46 and Practice Direction 46 make no other reference to interim payment pending the completion of Detailed Assessment as between solicitor and client, but I need to refer briefly to the rules as they were before the costs provisions of the Civil Procedure Rules were extensively revised from 1 April 2013.

27. CPR 46.9 and 46.10 replicate the pre-April 2013 provisions of CPR 48.8 and CPR 48.10, omitting references to statutory provisions that are (subject to transitional arrangements) no longer in effect. Part 6 of Practice Direction 46 is a more extensively revised version of the provisions of sections 54 and 56 of the pre-April 2013 Costs Practice Direction.

28. A number of cross-references to CPR 47 at sections 54 and 56 of the old Costs Practice Direction have been omitted from part 6 of Practice direction 46. This includes the following provision at 56.17 (1), which immediately preceded what is now paragraph 6.18:

“Attention is drawn to rule 47.15 (power to issue an interim costs certificate) ...”

29. The Defendant has made it clear that this application is made under CPR 47.16, but mention has been made of CPR 25.1(1)(k):

“The court may grant the following interim remedies...an order (referred to as an order for interim payment) under rule 25.6 for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay...”

30. Where I am required, for the purposes of this application, to interpret the Civil Procedure Rules I bear in mind the overriding objective at CPR 1.1 that cases should be dealt with justly and at proportionate cost, and my duty under CPR 1.2(b), on interpreting any rule, to seek to give effect to that objective.

The Letter of Claim of 17 July 2018

31. Following judgment on the preliminary issues the Defendant wrote to the Claimant’s solicitors on 6 June 2018 proposing, among other things, that the Claimant make an interim payment against its four bills in the sum of £698,766.96. (This figure appears to have been based upon a miscalculation of the total costs claimed, since corrected). They responded on 14 June taking issue with the Defendant’s figures and notifying the Defendant that they would be writing separately in relation to claims that the claimant would be “advancing against you by reference to your/PSB law’s negligent conduct of the Burns and Morrison actions”.
32. A letter followed 17 July 2018, headed “Letter of Claim sent pursuant to the Professional Negligence Pre-Action Protocol”.
33. The letter alleges that the Claimant believed that Ms Basha and “her employers” (which I take to mean PSB and the Defendant) would not, or probably would not, enforce their entitlement under the CFAs, and that Ms Basha knew that he thought so but also knew that they probably would. Whilst acknowledging that the Defendant was concerned to uphold his reputation and was not solely interested in financial return, it alleges that he would not have continued with the litigation against either Mr Burns or Mr Morrison if he had known that he would be likely to end up with a bill for £1 million with nothing in return. The letter alleges a comprehensive and fundamental failure to provide information and advice as to the costs that were being and were to be incurred in both actions, and as to the question whether it was proportionate and/or prudent to proceed.
34. It is alleged that in obtaining the “safeguard CFAs” referred to at paragraphs 36 to 39 of my judgment of 26 March 2018, in the absence of any prospect of substantial recovery from either Mr Burns or Mr Morrison, the Defendant stood to gain by protecting or creating an entitlement to seek costs from the Claimant when there was no prospect of recovery from his opponents, and so acted in conflict of interest.
35. The letter argues that proper advice would have allowed the Claimant to avoid a situation in which he would become liable for the costs sought by the Defendant, having obtained nothing in return, and that he is entitled to set off his consequent claim for damages against the Defendant’s claim for costs under its CFAs.

36. The letter also complains of a lack of advice as to the effect of PSB's ceasing to practice, and the implications of the assignment of the CFAs from PSB to the Claimant, again in relation to cost against benefit, and as to whether the move to the Defendant might have any effect on the attitude to recovery of costs from the Claimant in the event that nothing was recovered.
37. Referring to the SRA Code of Conduct, the letter asserts that the Claimant was not advised as to the risk of a situation whereby the insolvency of either Mr Burns or Mr Morrison might mean that he would be left liable for all the Defendant's costs, including success fee, without having received any financial benefit. It states that the Claimant understood, from his dealings with Ms Basha, that "no win, no fee" meant exactly that; that it was not explained to him that non-recovery could constitute a "win"; and that "crucially, it was not his understanding of the agreement between him and Ms Basha as to the basis of the work she would carry out".
38. Advice given to the Claimant as to costs is criticised as inadequate or misleading. It is said that Ms Basha's history of taking a flexible approach to billing was capable of lulling the Claimant into a false sense of security. No weight was attached and no advice given, it is said, as to the implications of the fact that neither Mr Burns nor Mr Morrison appeared to be good for any substantial adverse judgment. Rather the Defendant and PSB simply submitted the CFAs to the Claimant and relied upon the historical relationship between him and Ms Basha.
39. The letter raises the same points in a number of different contexts, but essentially it is said that the Claimant had no accurate knowledge as to the level of spending and no opportunity to question or challenge the same, so as to understand or appreciate the risks involved in his actions against Mr Burns and Mr Morrison. He was deprived of the opportunity to evaluate the merits of continuing against either of them. The actions were, it is said, to the benefit of the Defendant rather than the Claimant.
40. As for quantification, it is said that the Claimant is left with a claim in damages which can be set off so as to extinguish, or very substantially reduce, the claim for fees advanced by the Defendant.

The Points of Dispute

41. The Claimant's general Points of Dispute to all four bills cover much of the same ground as his Letter of Claim. They also raise the sort of detailed points that can only properly be addressed on a full detailed assessment hearing. For present purposes it is appropriate to bear in mind that they may result in reductions to the Defendant's costs (albeit less than would be the case on a standard basis assessment between parties) and to focus on the major points.
42. A few of those points can be disposed of quickly. The Claimant maintains an argument about the validity of the assignment of the CFAs which, following the dismissal of his application for permission to appeal on that point, is unsustainable. He also takes issue with the Defendant's right to recover PSB's costs and with the certification of the breakdown of the costs of PSB supplied by the Defendant. I have already found that PSB validly assigned to the Defendant the right to recover fees for the work done by PSB, and certification referred to is required in assessments

between opposing parties to demonstrate that the indemnity principle has been satisfied. It is not required on a solicitor/client assessment.

43. That leaves the following, to my mind, as the pertinent issues, to which (given lengthy Points of Dispute and Replies) I shall refer in necessarily broad terms.

The Points of Dispute in the Claim Against Mr Burns

44. The Claimant takes issue with the costs information provided to him from time to time by the Defendant, claiming that he was aware only of an early estimate of in the region of £110,000 (excluding VAT and a 100% success fee claimed by the Defendant). He claims that he is entitled to rely upon that estimate and that had he received appropriate advice regarding escalating costs he would not have continued with his proceedings against Mr Burns to a contested trial. He explains his failure to query an updated figure, as at 22 August 2014, of £335,723.14 (again excluding VAT and success fee) on the basis that it might have been a “strategic move” by the Defendant and that his understanding was that he would not be charged by the Defendant at all if costs were not recovered from Mr Burns.
45. The Claimant unfavourably compares the costs billed by the Defendant with those of Mr Burns’ legal team and complains of the fact that Knowles J ordered that he recover only a limited amount of costs from Mr Burns and in particular that on assessment of costs, a Costs Judge should assess reasonableness and proportionality as if the Claimant’s pleaded claim was less than £100,000, rather than (as it was) £1.8 million. This is blamed upon the Defendant’s failure “to effectively justify the principal head of claim”.
46. The Claimant submits “that consideration should be given to exclude any costs relating to negligent actions on the part of...” (the Defendant and PSB) “arising from a Letter of Claim as served by the Claimant and Hill Dickinson dated 17 July 2018... The submissions detailed below may be amended upon conclusion of the Claimant’s professional negligence claim against the Defendant”.
47. The Claimant takes issue, given the hourly rates charged, with the “level of service” provided by the Defendant and suggest that this issue is relevant for the determination of reasonable costs.
48. The Defendant in its Replies concedes the Claimant’s next point, that the relevant CFA does not cover any costs relating to a counterclaim brought by Mr Burns, but argues, in effect, that the counterclaim added nothing significant to the costs of the claim.
49. The 100% success fee claimed by the Defendant is challenged as unreasonable and too favourable to the Defendant. 43% is offered.

The Points of Dispute: The Claim Against Mr Morrison

50. The Claimant’s general Points of Dispute in relation to the claim against Mr Morrison repeat the above arguments with the exception that there was no counterclaim, nor is reliance claimed on any particular estimate of costs. The Claimant’s case emphasises rather that a claim in which default judgment was obtained and the assessment of

damages was unopposed, culminated in final invoices for £264,532.09; that the Defendant should have taken steps to manage costs more effectively given Mr Morrison's known lack of means; and that (again) the Defendant would not have proceeded had he been appropriately advised as to the amount of costs accruing against an opponent from whom there was no prospect of recovery.

51. The Claimant takes issue with success fees claimed by both the Defendant and by counsel (100% and 75% claimed respectively, 25% offered) and that there is criticism (as in Mr Burns' case) of what would appear to be a generic form of risk assessment.
52. I should say that there are full replies to all of the points taken in respect of both actions, in particular that the Claimant was an experienced litigant with a full understanding of the way in which costs accrue in litigation; that he was adequately advised on costs in the way he wished to be advised; and that having been made aware, in the course of the proceedings, of levels of costs consistent with the Defendant's bills he raised no query and made no complaint.

The Defendant's Submissions

53. Mr Bacon for the Defendant explains that the sum of £636,583.83 is sought from the Claimant on an interim basis primarily because it represents the total amount of Default Costs Certificate obtained by the Claimant against Mr Burns and Mr Morrison at the conclusion of his litigation against them.
54. Those certificates, says Mr Bacon, were obtained by the Defendant on the instructions of the Claimant. It follows that he regarded each of the sums certified as reasonably recoverable costs as between himself and, respectively, Mr Burns and Mr Morrison. It is not now open to him to argue that anything less than those amounts is payable by him to his solicitors.
55. The sum sought represents just under 69% of the Defendant's bills. The preliminary issues have been determined in the Defendant's favour, and this being a solicitor/client assessment on the indemnity basis, subject to the presumptions set out at CPR 46.9 the court can be satisfied that the final costs certificate in favour of the Defendant will be for a sum comfortably in excess of that.
56. The Claimant's solicitor Ms Gallagher (in a witness statement for the purposes of the application) states that a review of the documentation disclosed by the Defendant to the Claimant in the course of these proceedings, certified by the Claimant as complete, shows no record of instructions from the Claimant to the Defendant in relation to the Default Costs certificates or for that matter in relation to the commencement of detailed assessment proceedings against Mr Burns and Mr Morrison. She argues, on that basis, that there is insufficient evidence to conclude that the Defendant was in fact acting on the Claimant's authority.
57. To this Mr Bacon says that the witness statement of Mr Little of the Defendant firm, submitted in support of the application, confirms that both Default Costs Certificates were obtained on the instructions of the Claimant, and that Ms Gallagher does not purport to have taken instructions on the point from the Claimant himself.

The Claimant's Submissions

58. Mr Lawrence for the Claimant argues that the court has no jurisdiction to make the order sought by the Defendant. If, contrary to that submission, jurisdiction does exist the court should decline, he says, to make any order.
59. He points out that the Defendant's application for an Interim Costs Certificate was not made, as required by CPR 47.16, after the receiving party made a request for a detailed assessment hearing. The Defendant's application was dated 22 June 2018 and issued on 6 July 2018, whereas the request for a detailed assessment hearing was not filed until 13 September.
60. In any event, he argues that these proceedings are not governed by CPR 47 but by CPR 46.10. The term "receiving party" at CPR 47.16 self-evidently, he says, refers to a party with the benefit of a costs order in its favour. The term does not make sense in the context of a solicitor/client assessment. It may not be possible to identify the receiving party until the detailed assessment has concluded, depending for example upon what has been paid to date by the client against the amount of the solicitor's costs as assessed. In fact, Practice Direction 46 (at paragraph 6.18) refers only to the grant of an interim certificate in favour of the client.
61. Mr Lawrence does not argue that the court has no power to make an order for an interim payment in any solicitor/client assessment. He submits rather (referring to *In Re Brockman* [1909] 2 Ch 170 and *Szekeres v Alan Smeath & Co* [2005] EWHC 1733 (Ch)) that it has no such power where the client has applied for an assessment within the one-month period laid down by section 70(1) of the Solicitors Act 1974. That is because the section provides for an unqualified and absolute right to an assessment, and that no action shall be commenced upon the solicitor's bill until the assessment has been completed.
62. Section 70(1) also expressly provides that the court shall not require any sum to be paid into court. It would follow, he submits, that the 1974 Act must be read as prohibiting the more generous remedy of ordering that money should pass from the client's hands to the solicitor's. This can be contrasted with section 70(2), applicable where an application for assessment has been made by the client after the expiry of one month from delivery of the bill, in which case the court has broad powers to impose such terms as it thinks fit.
63. The prohibition on the commencement of proceedings until the assessment is completed is, says Mr Lawrence, also significant for the purposes of this application. If a solicitor were entitled to bring proceedings he would be able to invoke the interim payment provisions of CPR 25 which, absent proceedings for recovery, has no application.
64. As to the appropriate exercise of discretion (should I find that I do have jurisdiction) Mr Lawrence refers me to the Letter of Claim dated 17 July 2018. He argues that the Defendant has caused the Claimant to incur a liability of (on the Defendant's case) almost £1 million in two actions for the prospects of actually recovering any money from the defendants were, to the Defendant's knowledge, negligible.

65. That he describes as extraordinary: the only plausible explanation, he suggests, is that all concerned were (or at least the Claimant was) proceeding on the assumption that the Defendant and PSB would not expect to be paid if the actions bore no fruit. I have, he says, found this assumption on the Claimant's part was unfounded as a matter of law, but it leaves the Defendant exposed to the complaint that it did nothing to inform the Claimant of the wholly uneconomic nature of the litigation which he was conducting. Nor did the Defendant comply with its obligation to provide adequate costs information. This gives rise, he says, to a powerful set-off and counterclaim which would give a good answer to any application for an interim payment, even if the court could entertain it.
66. Mr Lawrence refers to correspondence between the parties dating from April 2016, when the Defendant, having issued its claim in the Queen's Bench division, was pressing for a resolution of the issues between the parties in that forum, whereas the Claimant, having issued his application for detailed assessment under section 70(1), was pressing for the issues to be resolved in the SCCO. The Claimant, at the time, suggested that the relevant case law indicated that significantly contested allegations of professional negligence are not suitable for resolution in the course of a detailed assessment. The Claimant, says Mr Lawrence, agrees. The matter should await the outcome of the Claimant's professional negligence action.
67. In the course of submissions I queried whether the issues raised in the Claimant's Letter of Claim are not capable of resolution in detailed assessment proceedings by identifying the amount that it is, in all the circumstances, reasonable for the Claimant to pay, applying the principles identified by Morgan J in *Mastercigars Direct Ltd v Withers LLP* [2007] EWHC 2733 (Ch) and *Mastercigars Direct Ltd v Withers LLP* [2009] EWHC 651 (Ch) ("*Mastercigars No 2*"), a task undertaken regularly and frequently by Costs Judges in the SCCO. Mr Lawrence argues that the Claimant's Letter of Claim, in particular in alleging that Ms Basha knew that the Claimant's understanding of their payment arrangements was wrong (and so that the Defendant ran up costs for its own benefit rather than the Claimant's) raises issue that are not suitable for resolution on *Mastercigars* principles.
68. Mr Lawrence argues that the Claimant's purported approval of the sums claimed against Mr Burns and Mr Morrison by way of costs cannot, in all the circumstances, be described as informed approval. He refers me to *Macdougall v Boote Edgar Esterkin* [2001] 1 Costs LR 118 and to *Herbert v HH Law Ltd* [2018] 2 Costs LR 261. In any case, he argues, the costs incurred were massively in excess of the very limited estimates given, were on proper analysis of an unusual nature or amount and, as such, were never going to be recovered from the parties to the underlying litigation even if they had been capable of paying.

Conclusions on Jurisdiction

69. I am grateful to both parties' counsel in assisting the court in picking through provisions of the Civil Procedure Rules which, as Mr Lawrence rightly says, are on the face of it not always easy to reconcile. Having done so I am unable to accept that section 70(1) of the 1974 Act prohibits the issue of an Interim Costs Certificate in detailed assessment proceedings between a solicitor and a client, and it seems to me that the rules, on careful examination, do provide for it. These are my reasons for that conclusion.

70. When considering the effect of section 70(1), it seems to me to be right not to conflate the application for an order for detailed assessment with the assessment itself. They are in my view separate, self-contained proceedings.
71. The application for an order for assessment, as required by CPR 67, is made under CPR Part 8, and it concludes when the order is made. The application may be dismissed, or it may conclude in an order for detailed assessment. If an order for assessment is made, the detailed assessment proceedings will be governed by CPR 46 (and insofar as applicable, CPR 47: I will come to that).
72. The Part 8 application will bear its own costs, which must be provided for if either party is to recover them. Precedent L, the standard form of order for assessment, contains a provision to the effect that the costs of the application will fall within the costs of the assessment. That is the order most commonly made when assessment is ordered, but that is entirely a matter for the discretion of the court. If the Part 8 proceedings and the detailed assessment proceedings were one and the same, no such order would be necessary.
73. Section 70(1) ensures that a client who makes a timely application for the detailed assessment of a solicitor's bill will obtain an unconditional order to that effect. As Mr Bacon points out, it says nothing about the quite separate procedure to be followed after the required order for assessment is made. For that, one must look to the Civil Procedure Rules. On the interpretation urged on me by Mr Lawrence, section 70(1) would operate to prevent a solicitor, in the course of a lengthy detailed assessment, obtaining an order for the interim payment of (for example) an amount that is not actually in dispute but which the client refuses to pay. That to my mind would import into section 70(1) an additional provision with a potentially unjust effect.
74. If one looks at section 70 as a whole, it seems to me right to conclude that section 70(1)'s prohibition upon the commencement of any action by the solicitor for recovery of fees does not point to any particular intention as far as interim payment is concerned. I say that because section 70(2) empowers the court to combine that prohibition with the imposition of conditions, which might well include a requirement for interim payment. It is in fact standard for any order for assessment to contain such a prohibition, which is incorporated in Precedent L. The real intention seems to me to be not to prevent a solicitor receiving what is clearly due, but to ensure that the same bill is not the subject of proceedings before two courts exercising different jurisdictions.
75. Nor does it seem to me to be evident that 70(1) effectively bars an application for an interim payment under CPR 25.1(1)(k). The application of CPR 25.1(1)(k) is not expressly confined to proceedings under CPR Part 7. One of textbooks referred to by Mr Lawrence in his submissions, *Civil Costs: Law and Practice* (Dr M Friston, 2nd edition, 2010, at 18.100) accepts that the court may exercise the CPR 25.1(1)(k) jurisdiction in solicitor/client assessment proceedings.
76. As for the extent to which CPR 47 applies to solicitor/client assessments, Mr Bacon has referred me to a note at paragraph 46.10.2 of the "White Book" which reads:

“The procedure set out in Pt 47 (Detailed Assessment of Costs and Default Provisions) applies subject to the provisions of this rule and to any contrary order made by the court.”

77. That is an editorial footnote and not in itself a source of law. Nor does it cite any specific authority for what it says. I have concluded however that if one has regard to the specific provisions of CPR 47, its accuracy is, at least in part, indisputable.
78. Sections II III and IV of CPR 47 are headed “Costs Payable by One Party to Another”. They contain provisions which seem to me to be intended (or mostly intended) to apply only to costs awarded between opposing parties, such as the default costs certificate procedure under CPR 47.11 (which, as paragraph 6.8 of Practice Direction 46 makes clear, has no application on a solicitor/client assessment).
79. Parts VI and VIII of CPR 47 apply to specific proceedings (the detailed assessments of costs payable from a fund and appeals from costs officers) and have no bearing on solicitor/client assessments.
80. This leaves parts I, V and VII of CPR47. Part I, headed “General Rules About Detailed Assessment”, is evidently intended to have some application to solicitor/client assessments because it provides at CPR 47.3(1)(c) that a costs officer has no jurisdiction to assess costs between a solicitor and client except in specified circumstances.
81. Part V is headed “Interim Costs Certificate and Final Costs Certificate” and includes CPR 47.16. It is not expressly limited to costs between the parties. The wording of the Pre-April 2013 Rules and Practice Directions suggests that 47.16 is intended to apply to solicitor-client assessments, and I have seen nothing to suggest that the intention behind the rules has changed since. Notably a Final Costs Certificate is issued in the same enforceable form (N256) whether the detailed assessment has taken place between parties or between solicitor and client.
82. Part VII provides for the costs of detailed assessment proceedings, expressly subject to statutory provisions, rules or practice directions to the contrary. Again, it is not expressly limited to costs between the parties.
83. The Costs Precedents appended to Practice Direction 47 include standard forms of application and orders in proceedings under section 70 of the 1974 Act, Precedent L and Precedent P (a model detailed breakdown of a solicitor’s bill for use in solicitor/client assessments).
84. It seems to me to be right to conclude that at least parts I, V and VII of CPR 47 and the corresponding parts of Practice Direction 47 apply to solicitor/client detailed assessments except in so far as they are inconsistent with CPR 46 or Practice Direction 46 (or for that matter CPR 67 and Practice Direction 67) or with the primary statutory provisions governing solicitor/client assessments.
85. I have already considered the primary legislation. The remaining question is whether CPR 47.16 is inconsistent with CPR 46 or Practice Direction 46.

86. Mr Lawrence argues that the wording of CPR 47.16, in permitting an application for an interim costs certificate to be made after a request for detailed assessment hearing has been filed by the receiving party, indicates that it is not intended to apply to solicitor/client assessments. After all, he says, one may not know who the receiving party is until the conclusion of the assessment process. That is a fair point, but it seems to me that on full analysis the rules do leave room for the application of CPR 47.16 to solicitor/client assessments.
87. CPR 47.14 requires the receiving party to file a request for a detailed assessment hearing, whereas CPR 46.10(5) provides that either party may file the request. It may well be that CPR 47.16 has no application to a solicitor/client assessment under CPR 46 if the request for a hearing was not filed by the receiving party. Even if that is right, it would not however necessarily follow that CPR 47.16 has no application at all. The term “receiving party”, unless the context requires otherwise, does apply to solicitor/client assessments under CPR 46. It is sufficiently widely defined to apply to either the solicitor or the client, depending upon which if them is entitled to payment. In most solicitor/client assessments the identity of the receiving party will be fairly obvious by the time a detailed assessment hearing is requested. If it is not, then it will self-evidently not be appropriate to issue an Interim Costs Certificate.
88. On the rules as worded, I have concluded that if the receiving party in a solicitor/client assessment can be identified, and if that receiving party has filed a request for a detailed assessment hearing under CPR 46.10(5), then that receiving party can apply for an interim costs certificate under CPR 47.16. That conclusion is consistent with the overriding objective, in particular the requirement to deal with cases justly, so that (to revert to my earlier example) where a client refuses to pay the undisputed part of a solicitor’s costs pending the completion of a detailed assessment, the court can avoid injustice by issuing, under CPR 47.16, an interim costs certificate for the undisputed sum pending the final outcome.
89. Mr Lawrence points out that if CPR 47.16 were to apply in detailed assessment proceedings between a solicitor and client, then paragraph 6.18 of Practice Direction 46 (in providing specifically for an interim payment to a client) would, on its face, seem to be otiose. Mr Bacon counters with the observation that if CPR 47 generally did not apply, then paragraph 6.8 (excluding the default costs certificate provisions of CPR 47.11) would, equally, be otiose.
90. Both points demonstrate that the correct application of the rules is far from obvious, but to my mind an answer can be found in reading the relevant paragraphs of Practice Direction 46 as offering guidance on the appropriate application of the Civil Procedure Rules.
91. On that reading neither paragraph is otiose. Paragraph 6.18 offers guidance as to the appropriate exercise of the court’s power, under CPR 47.16, to make an interim award of costs to a receiving party, where it is evident that the receiving party is the client rather than (as would more usually be the case) the solicitor. Paragraph 6.8 makes it clear that, as the heading to section III of CPR 47 indicates, the default provisions of that section are intended only to apply to assessments between opposing parties.
92. I need to address Mr Lawrence’s objection to the application having been made before the Defendant filed an application for a detailed assessment hearing. That does

not seem to me to raise any real procedural obstacle. CPR 46.16 empowers the court to issue an interim costs certificate at any time after the receiving party's request for a detailed assessment is made. It says nothing about the timing of the application. Even if the application had been made prematurely, CPR 3.10 would (and in the circumstances, should) overcome any purely technical objection.

93. The Defendant is the receiving party in this particular case, and the Defendant has filed a request for a detailed assessment hearing. My conclusion, for the reasons that I have given, is that I am empowered by CPR 47.16 to issue an interim costs certificate.

The Amount (if any) to be Paid: The Letter of Claim of 17 July 2018

94. The questions that remain for me to determine are (a) whether it would be right for the Claimant to make any interim payment to the Defendant pending the final determination of the issues between the parties; and (b) if it would be right for a payment to be made, what the amount should be.
95. Mr Lawrence submits that no payment should be ordered pending the resolution between the parties of the issue raised in the Claimant's Letter of Claim of 17 July 2018. He also says that the Letter of Claim raises issues that are not suitable for resolution within the detailed assessment proceedings.
96. This argument seems to me to have some potentially contentious procedural implications. The Claimant has chosen, over more than two years and at considerable expense to both parties, to pursue a solicitor/client assessment. That is a process at the conclusion of which the court is, in accordance with Practice Direction 46, to issue an enforceable certificate of the amount payable as between him and the Defendant. Following the determination of the preliminary issues identified by the Claimant at the outset, directions have been given and court time has been set aside with a view to completing that process in March 2019.
97. It has not been put to me (notwithstanding that the Points of Dispute seem to suggest it) that the conclusion of that process should now await the resolution in another forum of matters raised afresh in the Letter of Claim, and it is not difficult to identify the potential objections to that.
98. Procedural concerns aside, it seems to me in any event that there is nothing in the Letter of Claim that could not have been raised by way of a preliminary issue in these detailed assessment proceedings. In fact, many of the issues raised in that letter have been put to the court in the course of the determination of the preliminary issues, and much of its content seems to me to be inconsistent with the findings I have already made.
99. That includes the allegation that the Claimant had an expectation that he would not be charged absent recovery from his opponents and that Ms Basha, knowing of that expectation and that it was unfounded, allowed him to run up costs for his solicitors' benefit rather than his own.
100. The charging arrangements between the parties, and their understanding of those arrangements, have been very thoroughly explored at the instigation of the Claimant. Ms Basha and the Claimant have both given evidence and been cross-examined for

the purposes of identifying them. I have already found that Ms Basha made it perfectly clear to the Claimant that he might well be charged in full regardless of recovery from his opponent and that he could not have believed in the existence of any agreement to the contrary. Not only did he know that he might have to pay his solicitors' irrecoverable costs, on at least one occasion he actually did so. That seems to me to leave no room for him to argue that it was reasonable for him maintain any expectation to the contrary, much less that Ms Basha, the Defendant or PSB could in some way be bound by any such expectation or assumption on his part.

101. The Claimant may well have placed some confidence in the prospect that Ms Basha would, as she had before, forego all or part of her firm's costs against Mr Burns and Mr Morrison in consideration of a continuing working relationship. That might have happened, had the relationship between the parties not broken down. Following that breakdown, the Claimant has already tried and failed to elevate that pragmatic commercial understanding into a binding arrangement to the effect that he would never have to pay anything he did not recover. The Letter of Claim reads to me as an attempt to revive that unsuccessful case by putting it in a different way, which for the reasons I have given I do not regard as viable.
102. I have also rejected the Claimant's claim to have been inadequately advised on the terms of the CFAs and the proposition that PSB's ceasing to practice, or Ms Basha's move to the Defendant from PSB, had any material effect upon the relationship between the Claimant and his solicitors. The Letter of Claim seems to me to have nothing new to say either respect. Following the refusal of permission to appeal on the Claimant's challenge to the validity of the assignment of the CFAs, his complaints about the "Safeguard CFA", which is of no effect, fall away.
103. As far as I can see this leaves as the only live issue the Defendant's alleged failure to provide adequate information on costs, a matter eminently suitable for determination in the course of a solicitor/client assessment and not in itself an obstacle to an interim costs certificate in a sum which takes adequate account of the issue.
104. It is difficult to identify any real case in that respect from the Letter of Claim. Applying *Mastercigars* principles to identify the amount that it is reasonable for a client to pay, one considers, for example, the extent to which a client relied upon advice given by the solicitor as to costs, and the extent to which the inadequacy of advice given deprived the client of an opportunity of acting differently or otherwise had a detrimental effect.
105. To my mind the Letter of Claim says nothing of substance about the degree of financial risk the Claimant was really willing to undertake to protect his business. That would include the risk of exposure to his opponent's costs in the event of failure, as well as exposure to his own costs in the event of success without recovery. Evidently he was willing to undertake a degree of risk in both respects, because for example (on his own evidence) he was warned within days of signing the relevant CFA that an ATE insurer would be unlikely to support his claim against Mr Burns unless Mr Burns had more than the modest assets that Ms Basha knew of.
106. When considering what if any amount should be awarded by way of an Interim Costs Certificate one normally takes a broad view (without coming to any final conclusion) of the likely outcome based upon the Points of Dispute. In so far as they do not repeat

the allegations and assertions made in the Letter of Claim, the Claimant's Points of Dispute do give me more to work with. I will refer to the key points.

The Amount (if any) to be Paid: The Points of Dispute

107. In relation to costs information, the Points of Dispute seem to me to suffer from the same weakness as does the Letter of Claim in failing to address what must, in the circumstances, have been the real risks to be assessed by or behalf of the Claimant. They do, however, raise real issues which I will address below, in my summary of conclusions.
108. The Claimant's complaint about the Defendant's level of service, made in relation to both actions, is too broadly put to carry much weight and the evidence I have already seen indicates that the Claimant, who worked closely with Ms Baha for years, received the level of service he required.
109. As for success fees, in signing the CFAs the Claimant authorised his solicitors' success fees. He received a copy of the CFA of the only counsel for whom a success fee is sought, Adrienne Page QC (and was specifically advised that her fees, in common with his solicitors', would be payable whether he recovered it from his opponent or not: paragraphs 28 and 89-91 of my judgment of 26 March 2018 refer).
110. Under CPR 46.9, it is still open to the Claimant to challenge the success fees he evidently approved on the basis that they are of an unusual nature or amount, and as such potentially irrecoverable. The Points of Dispute do not however raise that challenge and (Mr Lawrence's submissions notwithstanding) the Claimant is, in accordance with Practice Direction 46 paragraph 6.14, bound by them. In short, I can find no effective challenge in the Points of Dispute to any of the success fees sought by the Claimant.
111. As against Mr Burns, the suggestion that the Defendant is responsible for the Claimant's part-recovery of costs is not supported by any particulars of their alleged failures. In any case, I have read the relevant judgment and the Claimant's chief difficulty seems to have been that Knowles J found his disclosure in support of the larger part of this claim to be inadequate and his evidence on the relevant issues unreliable. For present purposes I can attach no weight to this allegation.
112. As regards the fact that the CFA against Mr Burns does not cover his counterclaim, the Defendant's position may well be consistent with the authorities in relation to the treatment of the costs of a counterclaim, but I do not have enough information to take a firm view. For present purposes it seems to me that I should bear in mind at least the possibility of a significant reduction to the costs claimed by the Defendant.

Conclusions on the Amount to be Paid

113. I am not convinced by the Defendant's submission that the sum of £636,583.83 (the amount of the Default Costs Certificate obtained against Mr Burns and Mr Morrison) is the right figure to incorporate into an Interim Costs Certificate. Whilst the evidence indicates that the Claimant authorised the steps taken by the Defendant to recover as much as possible by way of costs and damages from Mr Burns and Mr Morrison

respectively, I have not identified any evidence that any specific sum was discussed with him or authorised by him.

114. The Claimant pursued Mr Burns for sums of over £2 million to a four-day trial with leading counsel on both sides. He says that he relied upon an estimate of £110,000, excluding VAT and 100% success fee, for the total cost of the action. In the circumstances, it seems to me to be difficult for the Claimant to resist the payment of at least that amount. Further, he appears to have accepted much higher estimates at a later stage with equanimity. His stated reasons for doing so are not convincing.
115. The position in relation to Mr Morrison is less clear. His defence effectively collapsed at a relatively early stage: he seems to have run out of money. I have found it difficult, from the information presently before me, to identify the costs information supplied by the Defendant from time to time. I do not however lose sight of the fact that the Claimant was, again, determined to protect both his reputation and his business.
116. On the limited information I have to date, it seems to me right to order the issue of an interim costs certificate in the sum of £350,000. It seems to me highly unlikely that the amount ultimately due to the Defendant would be any less than that.