



NCN: [2024] EWHC 1101 (SCCO)

Case No: SC-2023-APP-000639

**IN THE HIGH COURT OF JUSTICE**  
**SENIOR COURTS COSTS OFFICE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10/05/2024

**Before:**

**COSTS JUDGE ROWLEY**

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**Between:**

**MR AARON HENSLEY**  
**- and -**  
**MORRIS LAW LIMITED**

**Claimant**

**Defendant**

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**Ian Simpson** (instructed by **JG Solicitors**) for the **Claimant**  
**David Morris** for the **Defendant**

Hearing date: 29 February 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE ROWLEY

## Costs Judge Rowley:

1. By a Part 8 Claim Form dated 18 October 2023, the claimant seeks the delivery of a statute bill of costs together with the costs of this application.
2. The application is made pursuant to section 68 Solicitors Act 1974. The wording of that provision assumes that the High Court has jurisdiction to make an order for the delivery up of a bill of costs and section 68 simply confirms that the High Court's jurisdiction includes cases where there have been no proceedings before the court. The County Court has similar jurisdiction where there have been court proceedings (and where the bill is less than £5,000).
3. Once in possession of a statute bill, the (usually former) client can decide whether or not to bring proceedings for the assessment of that bill pursuant to section 70 Solicitors Act 1974. One of the considerations of the client will be whether or not the bill of costs actually amounts to a bill which complies with the statute. For if it does not comply, then an assessment cannot be carried out and the client's remedy is to seek delivery of a compliant bill. Matters are not helped by the fact that the only requirements in the statute concerns signature and delivery and the requirements regarding the contents of the bill itself all come from case law. As with most issues concerning the interpretation of the Solicitors Act 1974, a significant element of that case law was decided some considerable time ago.
4. For example, the Court of Appeal's decision in the case of Cobbett and Ors v Wood [1908] 2 KB 420 is regularly cited where the solicitor has obtained costs from the client's opponent at the end of litigation and has only provided to the client a bill concerning any items not recovered from the opponent. The phrase usually quoted from that decision is that the bill needs to be "a complete bill of the fees, charges, and disbursements due in respect of the business done by the solicitors" in order to comply with the statute. It does not necessarily have to be in a single document provided that it is clear that the various parts are all really parts of one bill. This leads to the possibility of assessing various interim statute bills together with the final one or indeed treating certain interim bills as if they were statute bills as long as the final bill is itself a statute bill (a so-called "Chamberlain" bill). It also leads to the possibility of the fees and charges being contained in one document and disbursements in another (as per Boodia v Richard Slade and Co [2018] EWCA Civ 2667).
5. Much more recently, the Court of Appeal has considered bills in personal injury cases under the current portal et cetera arrangements in Belsner v Cam Legal Services Ltd ([2022] EWCA Civ 1387) and Karatysz v SGI Legal LLP ([2022] EWCA Civ 1388). At paragraph 46 of Karatysz, the Master of the Rolls said the following regarding statute bills:

"Properly drawn bills ought in future to state the agreed charges and/or the amounts that the solicitors are intending by the bill to charge, together with their disbursements. They should make clear what parts of those charges are claimed by way of base costs, success fee (if any), and disbursements. The bill ought also to state clearly (i) what sums have been paid, by whom, when and in what way (i.e. by direct payment or by deduction), (ii) what sum the solicitors claims to be outstanding, and (iii) what

sum the solicitor is demanding that the client (or third party) is required to pay.”

6. Mr Simpson, who appeared on behalf of the claimant at the hearing of this application, submitted that the Karatysz decision was simply a continuation of the approach of the courts from the time of Cobbett and indeed earlier. Therefore, the requirement for a solicitor to provide a bill in the manner described in Karatysz did not only start from the date that decision was handed down as the words “ought in future” might suggest. I agree with that submission as it is clear from the earlier cases, such as Cobbett, that the practice of providing a complete bill for the purposes of taxation was the settled approach at the turn of the 20<sup>th</sup> Century just as much as it is in the early part of this century.
7. As a result, the defendant firm of solicitors in an application for delivery up of a statute bill can generally only defend such an application where it can show that a compliant bill has already been delivered. I have given a decision where a bill sought more than six years after the work had been completed did not have to be delivered, but that is very much an outlier. Generally, applications that are made under section 68 are either agreed before the application is heard (with an agreement that a statute bill will be delivered) or there is a hearing to determine whether a bill has already been delivered and / or whether it complies with the statute.
8. In this case, the bill relied upon by Mr Morris, who appeared on behalf of his firm, is dated 22 September 2022. It refers to professional charges for acting on behalf of the claimant in claiming compensation for personal injury and consequential loss arising from an accident on 26 June 2018. It then goes on to seek the sum of £3,750 plus VAT of £750 making a total of £4,500. The success fee is said to be calculated “@ 25% of £18,000 as per the No Win No Fee Agreement.”
9. In his second witness statement, Mr Morris clarified that the success fee is based on 100% of the basic charges and capped at 25% of the damages. That is a description that complies more readily with the requirements of the secondary legislation concerning CFAs. The brief description in the 22 September 2022 invoice is more redolent of a Damages Based Agreement where a percentage of the damages is used directly to calculate the level of fees payable. There is no suggestion that anybody sought to agree a DBA in this case.
10. In order to demonstrate that the base fees are sufficient to enable a success fee of 100% of those fees to amount to at least £3,750, the solicitor needs to provide some information as to those fees. In Mr Morris’s second witness statement, he says that a computer printout of the time recording on the file is attached to the paper copy of the bill before being sent to the client. According to Mr Morris, there is no ability to attach a signature to the electronic copy of the invoice which is emailed on the day of settlement (and when the balance of the damages is transferred) and so the paper copy of the bill is sent subsequently in the post.
11. In his submissions, Mr Morris described this point in the proceedings as being a “natural break”. I understood him to mean by this phrase the point at which the substantive claim for damages had concluded and the negotiation regarding the recoverable costs from the tortfeasor had not yet started. Mr Morris was adamant that this was the approach taken by all personal injury solicitors and the effect of this was that a final bill which

included details of the costs recovered from the tortfeasor could not be provided at the point the damages were sent to the client and the success fee deducted.

12. On the basis that the client was not being asked to pay any unrecovered base costs – in other words the solicitors would simply accept what they could recover from the tortfeasor – the client had no interest in that subsequent settlement. Consequently, there was no benefit to the client in receiving a further bill, the costs of production of which arguably would have to be met by the client. The last thing that a solicitor would want is a dispute with the client at the end of the case and therefore the only deduction, i.e. the success fee, was discussed and explained in detail at the beginning of the case.
13. According to Mr Morris, the client had sufficient information to satisfy himself of both (a) how the success fee was calculated and (b) that more than enough work was done to justify the success fee. The client had that information at the end of the proceedings. He was therefore in a position to decide whether or not to bring proceedings for the assessment of the costs and that these proceedings were unnecessary.
14. As part of the evidence provided by Mr Morris, he referred to a five star review provided by the claimant to a quality questionnaire feedback request. He then concluded “[i]t is disappointing that the claimant is now seeking to question the success fee deduction.”

### Decision

15. I have set out the final paragraph of Mr Morris’s second witness statement because it seems to me that it highlights his approach to the entirety of this application. He has focused almost exclusively on the success fee that was deducted from the claimant’s damages and does not seem to have considered any other matters that the claimant might be wishing to consider. As Mr Simpson submitted, the great majority of Mr Morris’s submissions in this case related to whether or not a section 70 assessment of the defendant’s charges would be successful or not.
16. But that is not the purpose of this application and it is not for the defendant to decide whether or not the claimant has a case to bring under section 70. Indeed, there is some old case law which suggests that even if the client was not able to bring section 70 proceedings through being time-barred, that was not an answer to an application for the delivery of the bill. All clients are entitled to a bill which complies with the Solicitors Act at the end of their dealings with their solicitor. If that is not provided because, as in this case the solicitor takes the view that the client will not wish to have a compliant bill but simply one that deals with the most obvious element of the charges, then the solicitor is obliged to provide a compliant bill when it is specifically requested by the client. As I say, it is not for the solicitor to decide whether the client has potential grounds to bring a claim for an assessment of that bill or bills.
17. Consequently, even if all that Mr Morris said was correct in terms of the work done et cetera, it does not detract from the fact that the client has sought a compliant statute bill to be provided in the absence of having received one to date. The authorities that I have cited at the beginning of this decision make it entirely clear that a complete bill is required and that is not satisfied by the bill rendered in September 2022. That bill only provides for the success fee deduction and does not attempt to provide the information

which would make it a complete bill as, for example, described by the Master of the Rolls in Karatysz.

18. In the circumstances, the claimant's application is successful for a final statute bill to be provided. Having been successful, it would be expected that the claimant will receive his costs for having to make this application in accordance with CPR 44.2.
19. In order to avoid arguments that are sometimes raised based on the Master of the Rolls dicta in Belsner and Karatysz, I will indicate at this point that I do not understand them to relate to section 68 applications. The description of expensive High Court litigation for potentially trivial claims relates to section 70 applications. In order for the client to decide whether or not to bring any proceedings, a section 68 application has to be made. There is no method of obtaining the delivery of an invoice other than via section 68 and, in itself, it is not an expensive mechanism. The costs of these proceedings may be rather higher but that is as a result of a contested application. Most of the applications that come before this court under section 68 are dealt with by consent.