[2024] EWCC 5

Claim No E00CL070

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 6 August 2024

Before :

HIS HONOUR JUDGE MONTY KC

- -

Between :

(1) SZ SOLICITORS (A FIRM)
(2) MOHAMMAD SAEED ZAFAR
(3) RAGHWINDER SINGH SIDDHU

Claimants

- and -
(1) MR JASWANT SINGH BHARJ
(2) MRS AMRIK KAUR BHARJ

Defendants

- -

Mr Paul Parker (instructed by **SZ Solicitors**) for the **Claimants**
Mr Stephen Boyd (instructed on **Direct Access**) for the **Defendants**

Hearing date: 2-4 April and 22-24 July 2024

- -

Approved Judgment

HHJ Monty KC:

Introduction

1. The First Claimant ("SZ") is a firm of solicitors, and the Second and Third Defendants ("Mr Zafar" and "Mr Siddhu") are the partners in that firm.

2. The Defendants, Mr and Mrs Bharj, are husband and wife, and are former clients of the firm.

3. This is a claim for fees in respect of 8 matters in which the firm acted. Whilst it is accepted that SZ acted for Mr and Mrs Bharj in respect of all of these matters, the claim is defended mainly on the basis that the fees have already been paid, either because they were paid in advance before the work to which the various invoices relate was done (the charge for the work having been agreed on a fixed fee basis) or because (in relation to the principal case in which the firm acted) it was agreed that nothing further was owed. There are numerous other disputes between the parties, including over whether there was any formal retainer or retainers in relation to any of the matters.

4. The Claimants were represented by Mr Paul Parker of counsel, and the Defendants by Mr Stephen Boyd, on direct access. I would like to pay tribute to them both for their helpful written and oral submissions.

The fees claim

5. The fees claim falls into two categories.

(1) Fees in respect of the 3CL claim

6. The principal case to which I have just referred was litigation over the ownership and occupation of a Sikh Temple, the Gurdwara Miripiri Sahib in Southall. The claim (Claim Number 3CL10076) was brought in the County Court at Central London by Sohan Singh, Mahender Singh Rathour and Jagjit Singh Boghal, and Mr and Mrs Bharj were the Defendants to that claim. I will refer to the claim as "the 3CL claim" and to the claimants therein as "the 3CL claimants".

7. The 3CL claim started in 2012, and following the trial (before me, sitting as a Recorder) in December 2014, judgment was given in the 3CL claim in February 2015. My decision was broadly in favour of Mr and Mrs Bharj, and I made a costs order in their favour, namely that the 3CL claimants pay 70% of Mr and Mrs Bharj's costs, and ordered that there should be a payment on account of those costs of £65,000. Mr and Mrs Bharj's costs were said at the time to be around £374,000. A bill of costs was produced by a costs draftsman, which was certified by Mr Zafar in the sum of £335,133.60. There was a (formal) dispute over the costs, and eventually these were agreed in the sum of £180,000. In the meantime, the £65,000 payment on account was made, but there was a meeting between Mr Zafar and Mr Bharj in July 2015 (and I will say more about that later on), following which SZ ceased to act for Mr and Mrs Bharj. Much of the work in the 3CL case had been done by Ms Kiran Bharj, the daughter of Mr and Mrs Bharj, who was employed under a training contract with SZ. The precise basis of that arrangement is another matter in dispute. In any event, it appears to have been Ms Bharj as an individual, and not as an employee of SZ, but with the assistance

and advice of the costs lawyer Mr Maskell, who negotiated the costs settlement in the sum of £180,000 after the retainer between SZ and Mr and Mrs Bharj had come to an end.

8. SZ's bill for its work on the 3CL matter was sent to Mr and Mrs Bharj on 25 June 2015. The amount said by SZ to be unpaid under that bill is £223,253.40.

(2) Fees in respect of 7 other matters

9. This part of the claim relates to fees said to be owing for 7 other matters – a mixture of litigation cases and bankruptcy petitions – in which SZ acted for Mr and Mrs Bharj between 2013 and 2015. The total said to be owing for these 7 matters is £24,816.00.

The basis of the claim

10. SZ seek their costs either pursuant to the written retainers or alternatively as damages for the work done, and as to the latter point they ask the court to assess what is a reasonable sum of money for which they should be paid the work done.

The witnesses

11. I heard evidence from (and read the witness statements of) Mr Zafar and Mr Siddhu for the Claimants, and from Ms Bharj and Mr Bharj for the Defendants.

12. The events in question date back to 2012. In assessing the oral evidence, I have at the forefront of my mind the observations about the fluidity and malleability of recollection made by Leggatt J as he then was in *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 at [15-22], and also the need to look at the contemporaneous documentation and to test the evidence against that documentation, paying particular regard to the parties' motives and to the overall probabilities; see also the judgment of Robert Goff LJ (as he then was) in *The Ocean Frost* [1985] 1 Ll Rep 1 at [57]. I do not think I need to set any of those passages out in this judgment. My task is to assess the evidence in its totality and to reach conclusions as to what is more likely than not to have happened, on the balance of probabilities. In so doing, as I have just said, I bear in mind what was said in *Gestmin* and *The Ocean Frost* (and the many other cases in which those judgments have been cited).

13. I also note at this point that I have to decide this case on the balance of probabilities, in other words, on whether a party has satisfied the court, on the basis of the evidence, that it is more likely than not that the case that party has advanced is right. The onus is on the party advancing its case to prove it on that basis.

(a) Mr Siddhu

14. Mr Siddhu explained in his witness statement how he was introduced to Mr and Mrs Bharj with a view to acting for them in the 3CL claim. He explained how he had been asked by Mr Bharj if he could offer a training contract to Ms Kiran Bharj, and that he did so. He was present at SZ's offices in July 2015 when he and Mr Zafar met with Mr Bharj to discuss fees and in particular the £65,000 interim payment for the costs which had just been received. He explained how Mr Bharj had become angry and aggressive, so much so that the police were contacted. It was as a result of all this that the solicitor/client relationship was terminated.

15. It was put to Mr Siddhu that it was not an infrequent occurrence at the firm to prepare client care letters after the event, sometimes in the face of an up-coming SRA visit, but he denied that was the case. In cross-examination, his answers about the original failure to disclose the firm's ledgers were unsatisfactory (for example, it was put to him that correspondence, which had been disclosed, did not mean ledgers, and his response was, "It may be", and he was unable to say why time sheets were not available, nor why there was no record of any interim bills or letters chasing fees which Mr Siddhu said were always paid late). I have concluded that for these reasons, I should treat Mr Siddhu's evidence with some caution.

(b) Mr Zafar

16. Mr Zafar was the senior fee-earner in relation to these matters. He is the senior managing partner at the firm. He explained that the 3CL claim was the biggest case he had ever dealt with. There were a number of unsatisfactory aspects of his evidence. He said he made attendance notes, but none have been produced, and he then said that there was no need to have many of them as Mr Bharj attended the office so frequently. He then (in my view unfairly) blamed Ms Bharj for not having produced attendance notes.

17. Of particular concern is the way in which Mr Zafar dealt with receipts from Mr Bharj. It is common ground in this case that Mr Bharj made payments to SZ, some by cheque and some by cash. There is a ledger, which as I shall go on to say is not a wholly complete record of the transactions in the 3CL claim. The ledger records some £52,000 having been received from Mr Bharj, but there is not a single document produced by way of receipt. It is Mr Bharj's case that he paid SZ around £150,000 in total (it is equally true that Mr Bharj cannot produce any clear documentary proof of these payments). I agree with Mr Boyd that it is incumbent upon the solicitors to keep proper records and evidence of receipts, and to keep proper attendance notes.

18. Of even more concern, in my view, is the fact that a large number of payments in connection with the 3CL claim were made from an account which (as I shall explain) was set up by order in the 3CL claim to use for payments in connection with the expenses of the Gurdwara (I shall refer to this as "the Gurdwara account"). The order went on to say that any payments out of the Gurdwara account had to be authorised by Mr Bharj. Mr Zafar said that the payments which came from the Gurdwara account – as evidenced by the bank statements, some of which entries appeared in the ledger and some of which did not – were all authorised by Mr Bharj. That was denied by Mr Bharj, but in any event, no payments should have been made out of the Gurdwara account to defray costs or disbursements incurred by Mr and Mrs Bharj as defendants to the 3CL claim – yet that is what happened, and Mr Zafar inexplicably allowed it to happen. Further, in relation to payments out from the Gurdwara account, there is no proper record of the payees, and in cross-examination Mr Zafar was left guessing as to their identities when taken to some of the payments out.

19. Mr Zafar also said that the firm had sent Mr and Mrs Bharj a number of invoices, but he was unable to produce any of these either; he then said that he had not done so ("I do not remember issuing interim invoices").

20. Mr Zafar's evidence was also rather poor about the process by which the costs bill was prepared, and what documentary evidence was available to Ms Bharj and Mr Maskell,

blaming Ms Bharj for omissions and saying that she was not telling the truth on a number of points.

21. In addition to all of this, Mr Boyd in closing submissions identified further deficiencies in Mr Zafar's evidence, including the following: (a) that Mr Zafar said for the first time in cross-examination that receipts for cash payments were provided by the bank; (b) that contrary to what had been pleaded in the Particulars of Claim, the firm did not provide regular information about the costs; (c) the unsatisfactory way in which the bank had been asked for the bank statements, and their very late production; (d) the inconsistency between the two hourly rates of £150 and £250 which Mr Zafar was unable to explain; (e) various other failures to comply with the terms of the retainer letter (if, which was denied, it was a contemporaneous document) such as not giving periodic schedules of costs or sending interim bills and accepting cash payments in excess of the £500 limit set out in the letter; (f) the absence of any proper explanation for why the bills in the other 7 matters were so greatly delayed; and (g) the assertion, which in my view was without foundation, that Ms Bharj removed a number of files which included time sheets. In my judgment, Mr Boyd was right to level these criticisms at Mr Zafar and the firm.

22. I have concluded that I should approach Mr Zafar's evidence with caution, particularly when deciding whether or not the client care letters in the bundle were (as he said) contemporaneous, or (as Mr Bharj said) were created after the event.

(c) Mr Bharj

23. Mr Bharj (who is now 77 years old) was and I think still is a builder by trade, and he is very involved with the running of the Gurdwara. His first language is Punjabi, but his witness statements in this case were in English and when he went into the witness box to give his evidence, it was immediately clear that he required the assistance of an interpreter. It was explained to the court that Mr Bharj had originally provided his statements in Punjabi, and they were translated into English. The need to resolve all of those issues meant that the trial had to be adjourned part heard after 3 days (2-4 April 2024).

24. I made an order on 4 April which included the following paragraph:

> "3. The Defendants do
>
> a. By 4pm on 5 April 2024 file and serve the original statements;
> b. By 4pm on 19 April 2024 file and serve certified translations of the original statements;
> c. By 4pm on 19 April 2024 file and serve a witness statement setting out
>
> i. the circumstances in which the original statements came to be made (including, without limitation, the matters set out at PD 32 para 18.1(5)),
> ii. the circumstances in which the statements of the First Defendant dated 8 June 2018 and 2 October 2020 appearing in the trial bundle came to be made (including, without limitation, the matters set out at PD 32 para 18.1(5)) and an explanation why the

> said statements were produced in breach of PD 32 paras 18 and 23."

25. By the time the trial resumed (on 22 July 2024), Mr Bharj had emailed the court shortly before the 4pm deadline on 5 April saying that despite an extensive search, he had not been able to find the original statements. He later provided a witness statement of 11 April 2024, saying that he had searched for the originals without success, and that it was likely they had been lost or misplaced. He also explained how the 8 June 2018 statement had been produced:

> "I drafted a handwritten note and told my daughter what I wanted to say in my statement. Based on my note, she instructed the barrister on my asking, to prepare a statement for me on my behalf".

26. He said that the 2 October 2020 statement had been produced in a similar fashion:

> "The way we made the statement in 2020 was the same as how we did it in 2018".

27. On 22 April 2024, Mr and Mrs Bharj made an application for relief from sanctions, and with that application they served a new version of the 11 April statement (which this time had paragraph numbers, and a statement of truth – the differences were explained in a further statement of 23 April 2024), and certified translations into Punjabi of the 8 June 2018 and 2 October 2020 statements. The application was opposed, and both Mr Siddhu and Mr Zafar served witness statements, and in response Mr Bharj served a further witness statement of 10 July 2024, and updated versions of his 11 April and 23 April statements (the updating being the inclusion of statements of truth).

28. In his latest round of witness statements, Mr Bharj explained that his daughter cannot read or write Punjabi, and in relation to the preparation of the 2018 and 2020 statements he said this:

> "I did not say that I had given my statements to Kiran for typing. I said that Kiran had helped in preparing the statement. I had told her what I wanted to include, and she had conveyed that to the barrister. I mostly converse with Kiran in Punjabi only."

29. This saga in relation to Mr Bharj's evidence was a most unsatisfactory diversion from the central issues in the trial.

30. The position in relation to witness statements is clear.

31. Where a witness is not sufficiently fluent in English to give evidence in English, their witness statement must be in their language of choice, accompanied by a certified translation into English. The Civil Procedure Rules ("CPR") and the accompanying Practice Directions ("PD") are clear about this.

32. There is sound common sense behind these CPR and PD. As Garnham J said in *Correia v Williams* [2022] EWHC 2824 (KB) at [41]:

> "If the witness statement is not in his or her own language, there can be no confidence that it is their own evidence rather than the evidence of the drafter."

33. It is disappointingly a not infrequent occurrence that the relevant CPR and PD are not followed, and witness statements of those who are not proficient in English are provided to the court in English without a translation or a statement having first been obtained in their own language, or witness statements are obtained in English and are then translated into the witness's own language.

34. The problems caused by such failures to comply with the CPR and PD are many; statements sometimes can be prepared again from scratch in the witness's own language, but this causes delay, and can result in hearings being adjourned, as was the case here. In some cases, the result will be that permission is not given for the witness statement to be admitted at all, and that was the Claimants' submission at the start of the resumed trial on 22 July 2024.

35. CPR Part 32 deals with witness statements.

> CPR 32.4(1): "A witness statement is a written statement signed by a person which contains the evidence which that person would be allowed to give orally."
>
> CPR 32.8: "A witness statement must comply with the requirements set out in Practice Direction 32."

36. PD32 sets out the requirements for the preparation of witness statements:

> PD32: "18.1. The witness statement must, if practicable, be in the intended witness's own words and must in any event be drafted in their own language."
>
> PD32: "19.1. A witness statement should – (8) be drafted in the witness's own language".
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> PD32: "20.1. A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence it must include a statement by the intended witness in their own language that they believe the facts in it are true."
>
> PD32: "23.2. Where a witness statement is in a foreign language -
>
> (a) The party wishing to rely on it must –
>
> (i) have it translated; and
>
> (ii) file the foreign language witness statement with the court; [...]
>
> PD32: 25.1. "Where:
>
> (1) an affidavit,
>
> (2) a witness statement, or
>
> (3) an exhibit to either an affidavit or a witness statement,
>
> does not comply with Part 32 or this practice direction in relation to its form, the court may refuse to admit it as evidence and may refuse to allow the costs arising from its preparation."

> PD32: "25.2 Permission to file a defective affidavit or witness statement or to use a defective exhibit may be obtained from a Judge in the court where the case is proceeding."

37. These CPR and PD have been the subject of High Court guidance.

38. The King's Bench Guide 2022 at paragraph 10.62 provides:

> "If a witness is not sufficiently fluent in English to give their evidence in English, the witness statement should be in the witness's own language and a translation provided."

39. The Chancery Guide provides at paragraph 19.13:

> "If a witness is not sufficiently fluent in English to give his or her evidence in English, the witness statement should be in the witness's own language and a translation provided. If the witness is not fluent in English but can make himself or herself understood in broken English and can understand written English, the statement need not be in his or her own words provided that these matters are indicated in the statement itself. It must however be written so as to express as accurately as possible the substance of his or her evidence."

40. Whilst there is no equivalent of the King's Bench Guide or the Chancery Guide for the County Court, it is now a standard direction made in cases in the County Court at Central London, usually at the costs and case management conference, as follows:

> "If a witness is to give evidence at trial in a language other than English, the witness statement must be in that other language and must be served together with an English translation and a witness statement from the translator verifying the translation."

41. The directions order in the present case was in precisely that form; it is in effect no more than a restatement of the clear requirements of the CPR and PD which I have set out above.

42. The recent decision of Freedman J in *Afzal v UK Insurance Ltd* [2023] EWHC 1730 (KB) shows that if a witness is sufficiently proficient in English, despite it not being their mother tongue, that witness can give evidence in writing and at trial in English. Freedman J referred to the CPR, the PD, the case of *Correia* and the two High Court Guides I have mentioned, and said this:

> "39. It does seem unlikely that it was intended that a separate regime would apply in relation to the Business and Property Courts as opposed to that which would apply in other courts that were not governed by that guide.
>
> 40. This construction accords with the purpose of the relevant Practice Direction. The background to it was the concern about what would happen to witnesses who were not proficient with the English language; the problems of vocabulary and nuance that were described by the Judge at paras.8 and 9 of her judgment. That does not mean that it was intended that those who were bilingual, or those who were sufficiently fluent in English to give oral evidence

> including under cross-examination, should not be able to give their evidence in English.
>
> 41. Attention has been drawn to the practical problems that would arise if the Practice Direction had a meaning, the effect of which would be that where somebody's native language was a foreign language but they were sufficiently fluent in English to give evidence in English, that they would then have to prepare statements in that foreign language.
>
> 42. My attention was particularly drawn to the fact that there may be millions of people in England and Wales who are sufficiently fluent in English but have a different mother tongue or first language. There may be repercussions for access to justice, and indeed other considerations, in the event that they were required, notwithstanding their sufficiency in English, to provide a witness statement in their mother tongue."
>
> 43. All of these points simply give further force to my judgment that the intention of the provision at PD 32, para.18.1 does have the meaning referred to in the Business and Property Courts Guide; that a witness's own language includes any language in which the witness is sufficiently fluent to give oral evidence including under cross-examination if required.
>
> 44. It therefore follows that in my judgment the Judge was wrong to reach a conclusion that the language of the witness statement had to be the first language of the claimant, and that it was highly relevant that the claimant read, understood, conversed and gave instructions in English. If there were doubts about the proficiency of the claimant as to whether the claimant was sufficiently fluent, then that could have been tested with a view to considering whether the evidence should be excluded. There was no such exercise before the court."

43. The result is, in my judgment, very clear. If a witness is not sufficiently proficient in English to give evidence at trial in English, their witness statement must be in their language of choice, with a certified translation into their own language, and they will require an interpreter when they give their oral evidence at trial. This is clear from the CPR, the PD, and the extracts from the High Court Guides I have mentioned.

44. Mr Parker submitted that Mr Bharj was clearly not sufficiently fluent in English to give oral evidence in English. That was clearly correct. When Mr Bharj went into the witness box on 3 April, he was unable to understand or answer a simple question about his 2020 statement, and it was at that point that I called a halt to the trial. It was apparent that Mr Bharj would need an interpreter.

45. Mr Parker went on to submit that it was clear that the deficiencies in the 2018 and 2020 statements were of substance, and not merely form, for reasons which he developed in written submissions. I need not set those out here. I agree with Mr Parker that the deficiencies were substantive. The real question for the court was whether, despite that, I ought to exercise a discretion to allow the statements to be admitted. In his written submissions, Mr Parker gave several reasons why I should decline to do so. In summary, the explanations given by Mr Bharj about the drafting of the statements were implausible and, on balance, untrue, and are in any event full of comment and argument

which is not his. Mr Parker said that there was a substantial risk that Mr Bharj does not understand the content of his 2018 and 2020 statements, would not be able to deal satisfactorily with questions about them, and the court would be left in the invidious position of having to work out which parts of the statements were his and which were not. Further, when considering the relief from sanctions part of the application and the three-stage test in *Denton and Others v TH White Limited* [2014] EWCA Civ 906, the failure to comply with my 4 April 2024 order was serious and significant, there was no good reason put forward for the breach, and that in all the circumstances Mr Bharj's 2018 and 2020 statements should be excluded.

46. At an early stage on 22 July 2024, I indicated that whilst in my view there was considerable force in Mr Parker's submissions, it seemed to me that there was a risk of an unfair trial if, in all the circumstances, the statements were excluded and Mr Bharj was unable to give evidence, and that I was minded to allow the statements in, whilst reserving the costs of the application. In the light of that indication, Mr Parker (on instructions) withdrew his opposition to the application, and the trial proceeded with Mr Bharj giving evidence through an interpreter.

47. I have dealt with this matter at greater length than I ideally would have liked, because it seems to me right to emphasise that none of this should have happened. It was extremely disruptive to the course of this trial.

48. I would like to express my thanks to the interpreter, Mrs Reita Varma. Mrs Varma was extremely impressive and I am very grateful for her assistance.

49. Despite the assistance of the interpreter, and despite Mr Parker's considerable skill and patience, the cross-examination of Mr Bharj took a very long time. He was in the witness box for most of 2 days. This was in no small part because on almost every occasion when he was taken to a document, he needed it to be translated from English to Punjabi. This necessitated frequent breaks so that could happen (for example, the client care letter is 9 pages long, and he said he could not answer questions about it unless it was translated, in full, for him). That is not a criticism of Mr Bharj personally, but it is all part and parcel of the reasoning behind the rules and practice directions which I have just referred to; no witness who needs to give evidence in a language other than English, but where relevant documents in the case are in English, should be going into the witness box without those documents having been translated for them in advance.

50. More importantly, though, I have to assess the evidence given by Mr Bharj, and I do so bearing in mind what he said about how the statements were prepared. I agree with Mr Parker that this was all very unsatisfactory. There was no mention in the recent statements of the involvement of a translator, but Mr Bharj said that his Punjabi notes had been translated, and then passed on to counsel who prepared the statements. I also agree with Mr Parker that a large part of the statements are "over-lawyered" and do not seem to represent the factual evidence that Mr Bharj was, in truth, able to give about the important events in the chronology. I was also unimpressed with Mr Bharj's insistence over the accuracy of letters he sent to SZ (which I suspect were written for him by Ms Bharj), in which it was wrongly and repeatedly asserted that SZ had failed to acknowledge or respond to correspondence.

51. The recurring theme of Mr Bharj's evidence was that SZ was acting for him (and in relation to the 3CL claim his wife) on a fixed fee basis, and that he had paid SZ all of those fixed fees in advance of their having done the work, such that nothing was now outstanding. I have no doubt that Mr Bharj is mistaken about this, although the force and persistence with which he gave that evidence (in oral evidence – his witness statements were far from clear about this assertion) indicates to me that he believed his evidence on this to be correct. Further, Mr Bharj was convinced that he had reached a deal with Mr Zafar, when the interim payment of £65,000 was received from the 3CL claimants, that the receipt by Mr and Mrs Bharj of £40,000 of that payment drew a line under what was owed to SZ, but again that conviction was misplaced.

52. However, I do accept Mr Bharj's evidence that he was not given, or sent, any of the retainer letters. I will need to deal with this again below.

(d) Ms Bharj

53. Ms Kiran Bharj is a solicitor. As I have already mentioned, she had a training contract at SZ, which her father asked Mr Siddhu to arrange (Mr Bharj said in his oral evidence that he paid Mr Zafar £6,000 for this arrangement, but that was not put in cross-examination and was not in any of his statements; in any event, I do not need to make a finding about that, and I do not intend to mention it again). Ms Bharj worked for SZ between August 2013 and February 2015, and her supervising partner at the firm was Mr Zafar. Ms Bharj's understanding was that she would do most of the work on the 3CL claim, and in return would be paid a reduced salary.

54. Ms Bharj said that the firm had a very relaxed attitude towards compliance, and that it was very rare to come across a signed retainer letter; she recalled Mr Zafar and Mr Siddhu retrospectively preparing such letters when there was to be an SRA audit or inspection. In particular, Ms Bharj said that there was no retainer letter in the 3CL claim in the 3CL files which she looked at in considerable detail with Mr Maskell (she said it was "a very tedious exercise") in order to have the bill of costs prepared. That exercise was, she says, based largely on estimated figures as there was no proper record of time spent.

55. Some unsatisfactory aspects of Ms Bharj's evidence emerged during cross-examination. She said that Mr Zafar had told her to maximise the bill of costs by using his hourly rate where possible, even though she had done the work (if that was true – and if most of the solicitor work was done by her, it does appear to be, and Ms Bharj accepted in cross-examination that this was the case in respect of quite a lot of the work which she did but which was charged as if Mr Zafar had done it – it reflects very badly on both Mr Zafar for asking her to do it, and on Ms Bharj for having done it). Ms Bharj's recollection was not perfect – she could not recall whether she did or did not attend conferences with counsel or court hearings – but I accept that it was a fair time ago. The absence of any time recording or attendance notes does not help, and Ms Bharj seemed to me to be rather uncertain about the accuracy of the bill having been taken through the process in cross-examination. Overall, I thought that Ms Bharj was a truthful witness but there were aspects of her evidence which were rather troubling, as I have indicated.

The witnesses generally

56. Overall, then, I have heard from four witnesses whose reliability as historians is to a greater or lesser extent somewhat doubtful. Nonetheless, I have formed very clear views as to what happened at the various stages of the chronology, which has enabled me to reach definitive conclusions in relation to the claim.

Findings

57. I will now set out my findings in relation to the matters in issue. I do not intend to deal with every single dispute of fact between the parties, but will concentrate on those which I need to determine in order to resolve the issues in this case.

The 3CL Claim

A. The retainer for the 3CL claim

58. It is not disputed that SZ acted for Mr and Mrs Bharj in the 3CL claim, and it is not asserted that SZ worked for free.

59. The Defendants' case, as I have indicated, is that there was no client care letter, but that each piece of work on the 3CL claim was on a fixed fee basis, that fee being agreed in advance between Mr Bharj and Mr Zafar, and the fee being paid by Mr Bharj at Mr Zafar's request before the work was done.

60. The Claimants' case is that the work on the 3CL claim was done pursuant to a client care letter dated 27 June 2012.

61. Mr Zafar said that there was a meeting on 27 June 2012 between him and Mr Bharj at which Mr Bharj was given a client authority form and a client care letter.

62. Mr Bharj agrees that there was a meeting, and that he signed the client authority form, but denies having ever seen a client care letter.

63. Mr Zafar said nothing about that meeting in his witness statement. In cross-examination, he was asked whether it was given to Mr Bharj, and he said that it was; he then qualified that by saying that it was either given to him personally, or posted to him, and accepted that he could not remember which (in the Particulars of Claim, it was asserted that it was both handed to Mr Bharj and posted to him – Mr Zafar then said that "maybe that's right"). He accepted that there was no attendance note for the meeting, but said that this (whatever "this" might mean) happened on the same occasion that the client authority form was signed. He was asked why the client care letter was not signed, and he said that he could not remember why not but it was a long letter (9 pages) and "I would suggest that he [Mr Bharj] should read it carefully." In any event, there was no client care letter addressed to Mrs Bharj, and Mr Zafar could not explain why not, but asserted that he would have sent one to her (and then he said that he could not remember if in fact he had done so and could not explain why there was no copy of such a letter available). Mr Zafar said that he had not checked to see if Mr Bharj had received the client care letter. Mr Zafar was unable, in my view, to give a credible explanation for not having followed a number of points set out in the client care letter; he had not written to Mr Bharj to say that the matter had become more complicated such that fees would now be charged on a time basis, nor had he explained

that his hourly rate had increased and that Mr Bharj needed to agree to that increase. He said that he must have overlooked that.

64. I bear in mind that Ms Bharj's evidence was that she did not see a client care letter on the file, and that the firm often prepared such letters retrospectively.

65. The bill of costs states that "The Defendants funded the case privately on terms agreed in advance." I do not think that statement takes the matter further either way.

66. I accept Mr Bharj's evidence that there was no client care letter. I thought his evidence about this was clear and believable, whereas Mr Zafar's was unsatisfactory. Had there been, it would have had to have been explained to him in Punjabi, as his English was not good enough, and it was not suggested that Mr Zafar did so, nor was it put to Ms Bharj that she had done so. There seems to me no good reason why the client care letter would not have been signed had it been given to Mr Bharj at the meeting (because he was content to sign the authority, and did so, on that occasion – in my view if asked he would have signed the client care letter, even if he did not read it or understand it). I found Mr Zafar's explanations about it highly unconvincing. In my view, and I find as a fact, the client care letter was retrospectively created in order to support the present claim.

67. I have therefore concluded that there was no written retainer.

68. Mr Parker submitted that whenever there was a document inconvenient to Mr Bharj or contrary to his case, Mr Bharj asserted that it was a "fake" and that he had not received it. This was a point which might have had some traction had it not been for the fact that I am wholly unpersuaded by Mr Zafar's evidence that the client care letter was a contemporaneous document.

69. Even if I am wrong about that, I do not accept that the firm's separate Terms of Business were incorporated into the client care letter, nor that they were part of the informal retainer which arose in the absence of a formal retainer. There is no reference to the Terms of Business document in the client care letter, but not only that, the client care letter makes it clear that it itself sets out the terms of business, because of the references to "Your acceptance of these Terms and Conditions of Business" and "these Terms of Business", and the first paragraph says, "I set out below the terms and conditions on which your case will be conducted." There are client care letters (also unsigned) in relation to some of the other matters in which SZ acted which do refer to separate Terms of Business, and I will deal with those later on in this judgment, but in my view the Terms of Business were not terms under which SZ acted for Mr and Mrs Bharj.

70. This is of significance, because the client care letter (even if I am wrong about there having been a written retainer) does not explain that SZ will be able to recover any difference between their bill and any costs recovered from the other side. The importance of this is another matter to which I will revert later on.

B. Fixed fee or time charges?

71. Mr Bharj is wrong about there having been a fixed fee agreed for each part of the 3CL litigation. In my judgment, on the evidence, what happened was that from time to time

Mr Zafar would tell Mr Bharj when they met – and there was nothing in writing – that disbursements were about to be incurred, for example counsel's fees, and that he thought SZ's costs for the next stage would be £x, and Mr Bharj would then give Mr Zafar cash or cheques to cover that or at least part of it. Mr Bharj has, in my view, mistakenly concluded that this means there was a fixed fee for the work. He is wrong about that.

72. I am fortified in that conclusion by the fact that Mr Bharj was involved in the negotiations over the costs, as I shall indicate. He would not have been, and nor could Ms Bharj have properly been negotiating as she did, had he thought that the costs were on a fixed fee basis and that he had paid them all.

73. In my judgment, SZ was entitled to charge on an hourly rate plus disbursements for the work on the 3CL claim.

C. Payments by Mr Bharj

74. There is no record of receipts produced by SZ, save for the ledger. This records SZ as having received £52,000 from Mr Bharj.

75. Mr Bharj was unable to identify what payments he had made in cash or by cheque. He produced his bank statements but could not tell me which represented payments to the firm which are not in the ledger. Nonetheless, he maintained that he paid around £150,000 to the firm, not just the £52,000 recorded in the ledger.

76. I find it impossible on the evidence to determine precisely what was paid by Mr Bharj to SZ. There is no evidence to establish that it was more than the £52,000. Mr Boyd submits that I should accept Mr Bharj's evidence, because it was for the solicitors to record what was paid to them, but in my view it is equally for Mr Bharj to establish what he paid, and he cannot do so.

D. Payments out

77. It is not disputed that if £52,000 was the sum received from Mr Bharj – and I have held that it was – then the ledger shows that a total of £117,088.80 was received by SZ, of which £65,000 was the payment on account of costs received from the 3CL claimants, leaving £65,088.80. Of that sum, £40,000 was paid to Mr Bharj, leaving £25,088.80 which represents money paid to SZ from Mr Bharj.

78. There are also 5 items which were paid from the Gurdwara account which do not appear in the ledger, but which SZ accepts must be credited against sums it says are owing. These are £641.97, £2,070, £480, £4,500 and £500, a total of £8,191.97.

79. In addition, a cheque for £15,000 was paid out of the Gurdwara account on 3 December 2014, which appears to have been a part payment towards counsel's fees which totalled £20,000 (the balancing sum of £5,000 is in the ledger), and it is also accepted by SZ that this needs to be credited, in the sum of £15,000.

80. A payment for £3,900 came from the Gurdwara account, and it is marked on the statement as being "Legal Fees CLCC". It is likely that was a reference to Central London County Court, but there is no indication as to what proceedings this payment related to, and it does not appear in the bill of costs. I find as a fact that it is likely to

have been in connection with the 3CL claim, as no payments from the Gurdwara account have been identified in connection with any other matter, and so credit needs to be given for that as well, in the sum of £3,900.

81. I have reached the view that I do not need to determine whether the payments out from the Gurdwara account were authorised by Mr Bharj or not. I rather think that they were, but there really is no evidence one way or the other save for the say-so of Mr Bharj (who denies it) and Mr Zafar (who asserts it). It does not matter. It is accepted that where payments out from the Gurdwara account were made for Mr and Mrs Bharj's benefit to defray their costs, SZ must give credit for them. I return briefly to the question of the Gurdwara account at paragraph 149 below.

82. Finally, several different barristers were instructed on behalf of Mr and Mrs Bharj during the course of the 3CL claim (and in respect of the other matters to which I will turn shortly). In his written closing submissions, Mr Boyd listed 11 receipted payments shown on counsel's fee notes which do not appear on the ledger. These total £39,660. I accept that these fees were paid. Of these, £20,000 represents the fees dealt with at paragraph 79 above, and having deducted that sum, it leaves a further £19,660 for which Mr Boyd says SZ must give credit.

83. In response to that, Mr Parker has pointed out the following:

    (1) Item 3: £360 Emma Read 15.3.13. This appears to have been Ms Read's brief fee for a CMC on 1.2.13 (see the Bill item 15 at 1/60). The sum of £360 was received into the ledger on 8.3.13 although the ledger does not show a corresponding debit entry. However, the fact is that the sum of £360 has been credited to the Defendants in the ledger, so to deduct that sum would be to credit Ds twice.

        Mr Boyd says that as there is no debit entry, this could have been used for payment of another bill.

        I agree with Mr Parker in relation to this, for the reasons he gives. There is already a credit of £360 against the 3CL claim bill.

    (2) Item 4: £4,500 Emma Read 13.1.15. As shown in the Gurdwara account bank statements, a cheque was recorded as presented to the paying bank on 15.1.15, it bounced the same day, and then the same amount was transferred to Ms Read on 19.1.15. Ms Read's fee note records the date of 13.1.15, but records no other payment on 19.1.15. Mr Parker says this has to be, therefore, the £4,500 at item 13 of Mr Boyd's list, which I have already credited to the Defendants: see paragraph 78 above.

        Mr Boyd does not make any submissions in relation to this item.

        I agree with Mr Parker in relation to this, for the reasons he gives. There is already a credit of £4,500 against the 3CL claim bill.

    (3) Item 5: £600 Emma Read 9.3.15. This fee was paid for the Rathour matter, and not in relation to the 3CL claim. It is not to be credited against the 3CL claim bill.

Mr Boyd agrees with that. I will deal with the Rathour matter and the bill relating to it later in this judgment.

(4) Item 10: £1,020 Kola Sonaike 30.4.13. According to counsel's fee note this was for a hearing on 19 April 2013. The bill does not record a hearing on that date, that disbursement does not form part of SZ's claim in this action.

Mr Boyd says that this should be offset against the other 7 matters as it is not part of the SZ claim.

It is accepted that the sum of £1,020 should be deducted from Mr Boyd's list of additional credits.

(5) Item 11: £500 Emma Read 25.5.16. This has already been credited: see paragraph 78 above.

Mr Boyd accepts that this is correct.

84. The total sums in the sub-paragraphs above in respect of which I have found that credit must be given against the 3CL claim bill (Items 3, 4, 10 and 11) are £6,380. I agree with Mr Parker that these do not amount to "additional" credits.

85. Mr Parker also submits that there is no evidence as to the provenance of these payments, and since the evidential burden on the Defendants has not been discharged (because they have not proved that they paid them), these items should not be deducted. In my view, the position is that clearly these sums have been paid, and whilst I have been unable to determine who paid them, it seems to me that it is unlikely that SZ paid for counsel without money on account, and SZ cannot claim for these sums; further credit against the sums claimed will therefore be given in the sum of £13,280 (Mr Boyd's £19,660 less £6,380 which is the total of items 3, 4, 10 and 11).

E. The £65,000 payment on account of costs and the payment out of £40,000

86. Mr Bharj said that it was agreed with Mr Zafar, at the meeting in July 2015, that from the payment on account of £65,000, SZ would take £25,000 in settlement of the fees said to be owing which would be a final settlement of anything owed to SZ, and that meant that he was entitled to £40,000. SZ wrote him a cheque for that amount, which did not clear, and a replacement cheque was provided which did. Mr Bharj said that an argument over the cheque not clearing was what led to the breakdown in his relationship with the firm.

87. Mr Zafar, as I have previously indicated, gave a very different version of events. He said that at the July 2015 meeting, there was a very acrimonious discussion during which Mr Bharj became threatening, and that all that was agreed was to pay Mr Bharj £40,000 – which Mr Bharj was very insistent about – leaving the firm with £25,000-odd towards some of the then outstanding disbursements, but there was no full and final settlement of the firm's fees on that basis.

88. I have no doubt that Mr Zafar is right about that. There is a note upon which both sides rely. In my view, it supports Mr Zafar's evidence about the meeting.

89. The note has 8 typed lines which show what was said at the time of the July 2015 meeting to be due for counsel, the costs draftsman, and other fees. Two lines were left blank, notably "SZ Solicitors fees". The note shows that £35,425.60 was due in disbursements. There are some manuscript figures, which I accept show Mr Zafar's calculations of how – if Mr Bharj were to be paid £40,000 – the balance was to be used towards those disbursements, some of which were to be paid in full, but others were to be part-paid. I do not agree that it shows, as Mr Bharj says, that of the £65,000, SZ would take £25,000 towards its fees. This was in my view reflective of a discussion about disbursements, and not fees.

90. It is clear to me, and I find as a fact, that there was no agreement in July 2015 that SZ would accept £25,000 in full and final settlement of its fees.

91. That this is so is, in my view, equally clear from the negotiations in relation to the 3CL claim costs.

F. The 3CL claim costs

92. Working in conjunction with Mr Maskell, Ms Bharj prepared the bill of costs which was certified by Mr Zafar as the firm's costs and disbursements in the 3CL claim. The total was £335,133.60.

93. The bill of costs was first produced in April 2015, and was served on the solicitors for the 3CL claimants on 29 April 2015. They produced Points of Dispute, and Replies were produced, and notice was given of commencement of detailed costs proceedings.

94. Following the July 2015 meeting, the relationship with SZ ended, and on 18 July 2015 SZ sent Mr and Mrs Bharj a copy of their bill, in the total sum of £335,133.60. Mr Bharj responded on 20 September 2015, asserting that the costs position with SZ had been settled at the July meeting. Since, as I have found, Mr Bharj was wrong about that, it follows in my view that he was also wrong about there being nothing owing (which is a further reason for my conclusion that Mr Bharj was not right about the fixed fee, payment in advance, point).

95. Ms Bharj was then heavily involved in negotiating a settlement of the outstanding costs liability of the 3CL claimants, with the assistance of Mr Maskell. Each side made offers to settle. It is clear from the correspondence that Ms Bharj discussed the offers with Mr Bharj. Eventually it was agreed that the costs would be settled in the total sum of £180,000, which left £115,000 owing after the payment on account. This was set out in a consent order as being the sum due.

96. Mr Bharj says that this was never paid.

97. However, on 28 October 2020, Sohan Singh's interest in the Gurdwara was transferred to Mr and Mrs Bharj, and then Mrs Bharj, Ms Bharj and Datarjit Singh Bharj became the registered owners of the building which houses the Gurdwara. HMLR's title register shows that the value stated as at that date was £500,000.

98. It was put to Mr Bharj that at least part of the consideration for that transfer represented the £115,000 still owing, but Mr Bharj denied that, saying that he had paid £152,000 for the property. He said, "their solicitors said, pay us £152,000 and we will transfer title

to you, so we did. The £115,000 was not discussed at all. We did not want to have a dispute so we forgot about it." I found this evidence difficult to accept. I think it is quite probable that part of the consideration for the transfer was the writing off of the balance of the costs.

99. In any event, it seems to me that Mr Parker is right when he says that it is impossible to reconcile Mr and Mrs Bharj's assertion that there was a line drawn after the July meeting over costs with the pursuit of a much higher figure for costs in the 3CL claim costs dispute. It seems to me that this emphasises that the Claimants are right when they say that there was no agreement as asserted by Mr and Mrs Bharj that nothing more was owing.

G. Is an assessment required, or is this a simple contractual damages claim?

100. Section 74(3) of the Solicitors Act provides:

> "(3) The amount which may be allowed on the assessment of any costs or bill of costs in respect of any item relating to proceedings in a county court shall not, except in so far as rules of court may otherwise provide, exceed the amount which could have been allowed in respect of that item as between party and party in those proceedings, having regard to the nature of the proceedings and the amount of the claim and of any counterclaim."

101. The relevant rule is CPR 46.9:

> "(1) This rule applies to every assessment of a solicitor's bill to a client except a bill which is to be paid out of the Community Legal Service Fund under the Legal Aid Act 1988 or the Access to Justice Act 1999 or by the Lord Chancellor under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
>
> (2) Section 74(3) of the Solicitors Act 1974 applies unless the solicitor and client have entered into a written agreement which expressly permits payment to the solicitor of an amount of costs greater than that which the client could have recovered from another party to the proceedings."

102. Mr Boyd says that because there is no written agreement between the parties, any potential recovery of fees by SZ is limited to a total of either £65,000, being the sum actually received, or £180,000, being the sum agreed to be due from the 3CL claimants.

103. He also says that even if there was a written retainer (and I have found that there was not), the client care letter does not say anything about costs over and above those recovered from the 3CL claimants, and so once again, the recovery is limited as above.

104. Mr Parker says that section 74(3) only applies to an assessment, and this is not an assessment but a claim for damages.

105. I do not agree with that proposition. It is well established that the ability of a solicitor to recover costs from a client is subject to the significant oversight of the provisions in the 1974 Act. It is in my judgment wrong to assert that because solicitor and own client costs are contractual a solicitor can recover costs at the contractual rate.

106. Section 74(3) is contained within Part III of the 1974 Act, under the general heading "Remuneration of Solicitors". Section 74(1) provides:

> "The remuneration of a solicitor in respect of contentious business done by him in the county court shall be regulated in accordance with sections 59 to 73, and for that purpose those sections shall have effect subject to the following provisions of this section."

107. Sections 59 to 73 deal with contentious business agreements, the ability of a solicitor to recover fees under such an agreement, and the availability of the costs assessment process for the client.

108. Section 61 gives the court the power to enforce or set aside a contentious business agreement.

109. As it happens, in this case, since I have held that there was no written retainer, there was no contentious business agreement, since that must be in writing: see section 59(2).

110. Section 69 sets out how a solicitor must wait one month before bringing an action to recover "any costs due to a solicitor". There is no requirement that the bill must relate to a contentious business agreement (as opposed to being a bill for contentious business work).

111. Section 70 then sets out the procedure for assessment of the bill.

112. Mr Bharj had raised the section 74(3) point in his 2018 witness statement.

113. In the present case, by order of District Judge Worthington of 21 May 2020, it was ordered:

> " the Defendants may proceed with their claims (a) for a detailed assessment of all 8 bills under Part III of the Solicitors Act 1974, the court being satisfied that their claim was made in existing proceedings by application notice in accordance with Part 23 pursuant to CPR 67.3(2)(b) and alternatively, for an order that the said bills be assessed at common law by a district judge who is also a costs judge."

114. Drawing those strands together:

    (1) The Defendants have pleaded in their Amended Defence that they seek an assessment.

    (2) The Defendants have the permission of the court to ask that the bill be assessed.

    (3) It does not matter, in my view, whether that assessment is carried out by a costs judge or by me in the course of this trial.

    (4) Mr Parker's position was that I should indeed proceed to assess the costs if that was required in order to achieve finality. Mr Boyd also said that I should do so, although his position is that nothing is due or alternatively that the material provided by SZ is so unsatisfactory that I should assess the costs due as zero.

Neither of them suggested that I did not have the jurisdiction to carry out an assessment.

(5) In my view, section 74(3) is clearly in play because this trial is the most appropriate and cost-effective way of conducting that assessment. It would not be in accordance with the over-riding objective for this court to shuffle that responsibility off to a costs judge when I am in the best position, having heard all of the evidence, to assess the costs myself.

(6) The limitation imposed by section 74(3) is to the effect that the Defendants cannot be charged any more than those costs which could have been recovered from the 3CL claimants.

(7) That sum is not limited to the £65,000 interim payment which was actually recovered, but extends to the £180,000 because – under the consent order – that in my view is (in the words of the sub-section) "the amount which could have been allowed … as between party and party" in the 3CL claim. There can be no better evidence of what "could have been allowed" than a consent order setting out what was actually agreed. There is no basis for restricting recovery to £65,000.

115. It seems to me, that for these reasons, I should proceed to assess SZ's bill, in the light of my findings of fact and the application of section 74(3).

116. But before I consider assessing the costs, I need to set out the costs which potentially are to be assessed.

H. What costs are owing?

117. This is a purely mathematical exercise, as set out below.

Amount paid by the Defendants	£52,000
Credits as set out in Section D above	£8,191.97
	£15,000
	£3,900
	£13,280
Credit for part of payment on account	£25,000
Total credits:	**£117.371.97**
Limit on SZ's recovery	£180,000
Less Total above:	(£117.371.97)
Total costs owing:	**£62,628.03**

I. Assessment of the costs

118. The principles I apply are those set out in CPR 46.9. Costs are to be assessed on the indemnity basis but are presumed to have been reasonably incurred if they were incurred with the express or implied approval of the client, and to be reasonable in amount if the amount was expressly or impliedly approved by the client. Costs will be

presumed to have been unreasonably incurred if they are of an unusual nature or amount and the solicitor did not tell the client that as a result the costs might not be recovered from the other party. This means in practice that the Defendants bear the burden of showing that the costs are not reasonable.

119. I also take into account that the certification of a bill of costs gives rise to a rebuttable presumption that SZ was not seeking to recover any more than it had agreed to charge its clients (see *Bailey v IBC Vehicles Ltd* [1998] 3 All ER 570 at 575) and that to rebut the presumption, the Defendants must show that "there are no circumstances on which the solicitor would be able to look to the client for payment" (see *Meretz Investments NV v ACP Ltd* [2007] EWHC 2635 Ch at [21]). In the present case, I am satisfied on the evidence that the Defendants have rebutted the presumption which would otherwise permit SZ to rely entirely on the bill of costs, for this reason: I am greatly concerned by the evidence about work having been charged out at his own rate when in fact the work was done by Ms Bharj, and thus should have been charged at a lower rate.

120. I am also not particularly assisted by the bill of costs because it does not seem to me to be a sensible course to look at each item on a bill for over £335,000 when (a) it was agreed that the costs which the 3CL claimants should pay were £180,000, and (b) SZ's recovery is limited to that £180,000 because of section 74(3).

121. A further reason for not taking the bill of costs as entirely reliable is that it was, on the evidence, largely a matter of reconstruction without any time sheets and on the basis of incomplete information.

122. It seems to me that the right approach is to reduce the costs by 20% to reflect these points. In so doing I have not forgotten the provisions of section 70(9) of the 1974 Act, under which the costs of any assessment will be paid by the client unless the solicitor's costs are reduced by more than one fifth in which case the solicitor will pay the client's costs of the assessment process. The costs of this claim itself (and whether section 70(9) applies) will have to be dealt with separately on the basis of the overall result.

123. I therefore assess the recoverable costs in respect of the 3CL claim at £50,102.42 (being 80% of £62,628.03).

The other 7 matters

124. I do not accept that there were retainer letters in relation to any of these matters either. I agree with Mr Boyd that those which are said to relate to these matters, and which are in the trial bundle, were also created after the event. It is notable that the invoices for these other matters were produced many months, if not years, after the work was done.

125. It is not however disputed that the work set out in these invoices was indeed carried out, but Mr Bharj again says that the work was on a "fixed fee with payment in advance" basis, in the same way as he said applied to the 3CL claim costs. For the same reasons I gave for rejecting that in relation to the 3CL claim costs, I do so in respect of these other matters. There is no evidence that any of this work was paid for other than Mr Bharj's assertions, which I do not accept. In my view, Mr Bharj is mistaken about this, as he was in relation to the 3CL claim costs.

126. Mr Bharj also says that all of the work represented by the bills for 6 of these 7 matters was covered in the 3CL claim bill, and so SZ are seeking to "double-recover" for these costs.

127. I therefore need to look at each of the 7 matters separately, but I can do so relatively briefly.

A. Bill SZ0177/16

128. This is in relation to work connected with Mr Bharj's bankruptcy petition brought against a Mr Sajid in the High Court.

129. The petition was not brought until 2015 (after the last date covered by any work on the 3CL claim) and so cannot be double recovery, and Mr Bharj does not assert that point in relation to this bill. There is evidence of the work done in the bundle. That goes for most of the other 6 matters as well but in any event it is not disputed that work was done on these 7 matters.

130. Since the work was done, and there is no evidence that it has been paid for, the amount under this bill is recoverable. I see no reason to reduce it on assessment.

B. Bill SZ0178/16

131. This relates to a petition brought against Sohan Singh, one of the 3CL claimants. Again this work related to 2015, after the last date covered by any work on the 3CL claim) and so cannot be double recovery.

132. Since the work was done, and there is no evidence that it has been paid for, the amount under this bill is recoverable. I see no reason to reduce it on assessment.

C. Bill SZ0179/16

133. This relates to a petition brought against Mahender Singh Rathour, another of the 3CL claimants. Again this work related to 2015, after the last date covered by any work on the 3CL claim) and so cannot be double recovery.

134. Since the work was done, and there is no evidence that it has been paid for, the amount under this bill is recoverable. I see no reason to reduce it on assessment.

135. I now need to deal with the £600 payment to Ms Read: see paragraph 83.(3) above. Mr Boyd says that a credit of £600 is to be given against Bill SZ0179/16, because the £600 was in relation to the Rathour matter. However, Mr Parker says that (although SZ conceded at the trial this should be credited) it should in fact not, because the total pleaded as claimed in respect of these 7 other matters, £24,816, excludes it.

136. I have re-done the calculations (see the table below) and I think Mr Parker is wrong about that.

137. The bills for the 7 matters are at Appendix 4 of the Particulars of Claim and are as follows:

Bill SZ0177/16	£3,120

Bill SZ0178/16	£1,488
Bill SZ0179/16	£2,238
Bill SZ0180/16	£4,758
Bill SZ0181/16	£5,916
Bill SZ0182/16	£5,952
Bill SZ0183/16	£1,344
Total	**£24,816**

138. Thus it can be seen that since the Rathour bill (Bill SZ0179/16) includes the £600, which has been paid, there should be a credit for that sum against it.

D. Bill SZ0180/16

139. The work relates to an injunction application against Sukwinder Singh, another of the 3CL claimants. The bill shows that it was for a hearing on 8 March 2013.

140. There is no corresponding entry for this work, which was in the 3CL claim, in the bill of costs.

141. Since that is so, it seems to me that it is recoverable. I did consider whether I should reduce it by 20% on assessment because work done by Ms Bharj may have been charged at Mr Zafar's rate. I have decided not to do so, because the hours for Mr Zafar and for Ms Bharj are separately set out, and there was no evidential challenge to the hours worked.

E. Bill SZ0181/16

142. This work relates to an injunction application against Sukwinder Singh, for a hearing on 18 April 2013. This may well have been the return date for the injunction hearing on 8 March 2013.

143. It is recoverable for the same reasons given in relation to SZ0180/16.

F. Bill SZ0182/16

144. This relates to a claim brought in the County Court at Central London which has been referred to as the TOLATA claim. It has its own claim number, and is not double recovery in that it is a separate claim from the 3CL claim.

145. It is recoverable.

G. Bill SZ013/16

146. This relates to a claim brought by Sohan Singh against Mr Bharj in the County Court at Brentford. It is not double recovery.

147. It is recoverable.

H. Approach to assessment in relation to the other 7 matters

148. I see no reason in principle to reduce any of these 7 bills. I did consider whether I should reduce the 2 injunction bills by 20% because work done by Ms Bharj may have been charged at Mr Zafar's rate. I have decided not to do so, because the hours for Mr Zafar and for Ms Bharj are separately set out, and there was no evidential challenge to the hours worked.

Other matters

149. I am not going to make any findings as to whether, as Mr Bharj asserts, Mr Zafar wrongfully used money in the Gurdwara account for his own purposes. I have already said that the use of the Gurdwara account to fund Mr and Mrs Bharj's 3CL claim litigation costs was not permitted and should not have been allowed to happen. But any dispute over those funds is not within the scope of this claim, as the proper claimants would have to be all of those entitled to a beneficial interest in the Gurdwara monies.

Consequential matters

150. Following the circulation of my judgment in draft form, I have received written submissions from Mr Boyd and Mr Parker in respect of all consequential matters, and my decisions on those are set out below.

(a) Costs of the claim

151. The general rule is set out in CPR 44.2(2)(a) and (b). The unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order. In deciding what order, if any, to make about costs the court will have regard to all of the circumstances including the conduct of the parties, whether a party has succeeded on part of its case, even if that party has not been wholly successful, and any admissible offers to settle other than those made under part 36 - see CPR 44.2(4).

152. There are no offers which I am asked to take into account.

153. The court has a wide discretion as to costs, but always the starting point is to identify the successful party.

154. The Claimants have succeeded in their claim for fees, albeit in a lower amount than sought in the Particulars of Claim. The Claimants are the successful parties.

155. However, since the Claimants did not file their costs budget in time, and were refused relief from sanctions, their costs are limited to the £10,000 issue fee and the £1,175 trial fee (although they are also entitled to the costs thrown away by the adjournment of the trial – I shall deal with those below).

156. Mr Boyd contends that as the Defendants have succeeded in reducing the bills by more than 20%, the "one-fifth" rule in section 70(9) of the 1974 Act applies. I have briefly referred to that section at paragraph 122 above.

157. Section 70(9) provides:

> "Unless—
> (a) the order for assessment was made on the application of the solicitor and the party chargeable does not attend the assessment, or
> (b) the order for assessment or an order under subsection (10) otherwise provides,
> the costs of an assessment shall be paid according to the event of the assessment, that is to say, if the amount of the bill is reduced by one fifth, the solicitor shall pay the costs, but otherwise the party chargeable shall pay the costs."

158. Mr Parker has a arithmetical challenge here. He says that the Defendants have not achieved a reduction of more than 20% of the maximum recoverable sum of £180,000, so the one-fifth rule does not apply. His reasoning is that the sums I have found to be due on the 3CL claim bill are £50,102.42 + £117,371.97 = £167,474.39, a reduction of £12,525.61 (£180,000 - £167,474.39), which is less than 20% of £180,000.

159. I need first to observe that the one-fifth rule applies to the amount of all of the 8 bills since they are the subject of a single claim, and not only to the maximum amount the Claimants can recover under the 3CL Claim bill. Secondly, the £180,000 limit is imposed because of section 74(3) of the 1974 Act. The one-fifth rule expressly applies to "the amount of the bill". That is clear from the wording of the section, and (if required) the analogy here is that where costs are not recoverable because of a defect in the retainer, those costs are still part of the bill for the purposes of the one-fifth rule: see the decision of the Court of Appeal in the conjoined appeals in *Wilsons Solicitors LLP v Bentine* and *Stone Rowe Brewer v Just Costs Limited* [2015] EWCA Civ 1168.

160. The real calculation is therefore:

> The amount I have found to be due on the bills is £50,102.42 (the 3CL Claim bill – paragraph 123 above) + £24,216 (the other 7 matters, having deducted the £600 for Ms Read's fee on the Rathour matter – paragraphs 137-138 above) + £117,371.97 (amount already credited or to be credited to the 3CL Claim bill – paragraph 117 above) = £191,690.39.
>
> The amount sought under the bills totalled £248,069 (as set out in the Particulars of Claim).
>
> 20% of £248,069 = £49,613.80
>
> Reduction achieved by the Defendants: £248,069 - £191,690.39 = £56,378.61

161. Therefore, the Defendants have achieved a reduction on assessment of more than 20% of the bills.

162. However, I am in agreement with Mr Parker that the one-fifth rule in section 70(9) has no application to the present claim.

163. As I observed earlier in my judgment, the retainer for the 3CL Claim was not a contentious business agreement (as it was not in writing) and the same applies to the other 7 matters for the reasons I have already set out above. This is therefore SZ's claim for fees for contentious business not under a contentious business agreement and, unlike claims governed by Part III of the 1974 Act, it is a free-standing claim in its own right capable of being brought by a Part 7 Claim Form. On this point, see *Healys LLP v Partridge* [2019] EWHC 2471 (Ch) at [29-32] and Friston on Costs (4th Ed.) at paragraph 40.17. Whilst District Judge Worthington's order gave permission to the Defendants to proceed to an assessment in the SCCO, they have not done so. What I was carrying out, therefore, was a common law assessment. As explained in Practical Law UK "Practice Note: Solicitor/client costs in dispute resolution: overview", there is no equivalent to the one-fifth rule in a common law assessment. I agree.

164. I have therefore concluded that the Claimants are entitled to their costs of this claim (limited to the issue fee and the trial fee).

165. I reach that conclusion even though I have borne in mind what the costs order would have been had the one-fifth rule applied (as suggested in the Practice Note to which I have just referred).

166. If, contrary to my conclusion above, and if the one-fifth rule did apply here, I would have had no hesitation in disapplying it, for reasons which I can state briefly (since I have held that the rule has no application).

167. Not only did the Defendants use the 3CL claim bill in its full amount to extract a costs order against the 3CL claimants, yet asserted in the present claim (wrongly, as I have held) that the costs they were liable to pay were substantially less, they also insisted that nothing at all was owing, that they had been paying as things went along on a "fixed fee/paid in advance" basis, and that in any event they had reached a settlement at the July 2015 meeting, and lost on all those issues.

168. I have considered the points raised by Mr Boyd (that the Claimants acted improperly by post-dating retainer letters, that the evidence of Mr Zafar and Mr Siddhu was unsatisfactory, that SZ's record-keeping was thoroughly lax, and that in fact the Defendants had paid SZ more than they were prepared to give credit for) but it seems to me that none of these affect my conclusion. It was always open to the Defendants to make an offer.

169. In my judgment, these amount to special circumstances within section 70(10) of the 1974 Act which enable the court to make such costs order as it may think fit. The appropriate order, even if I were to have held that the one-fifth rule applied in principle, would therefore have been to disapply that rule, and order that the Defendants pay the costs.

(b) Costs of the adjournment

170. I have already ordered that these should be paid by the Defendants on the indemnity basis. I am asked to assess those costs, which I reserved when I made my order on 4 April 2024.

171. Having read the submissions on each side, my views are these. The adjournment lost the best part of 1 day – I do not agree with Mr Boyd that it was only half a day, even though Mr Bharj did not go into the witness box until 11.59am – and Mr Parker not surprisingly had to read into the case again for the July resumption. I reject the suggestion that the trial would have adjourned in any event. Had the trial over-run, it would have continued on 5 April and any subsequent days.

172. Following the adjournment, there was a substantial amount of work done by Mr Parker and SZ in response to the various versions of Mr Bharj's statement and the application for relief.

173. I am not persuaded that I should award any costs by reason of the fact that Mr Bharj's evidence took longer than it might otherwise have done. That would have occurred in any event had Mr Bharj produced statements as he ought to have done in Punjabi, and those costs should be regarded as costs of the case.

174. There are two principles at play here.

175. First, a solicitor who acts for themself is not a litigant in person (CPR 46.5(6)) and can recover profit costs in accordance with the long-standing Chorley principle (*London Scottish Benefits Society v Chorley* [1884] 13 QBD 872): see for example *Boyd & Hutchinson v Joseph* [2003] EWHC 413, *Robinson v EMW Law LLP* [2018] EWHC 1757 (Ch), *Malkinson v Trim* [2002] EWCA Civ 1273, and *Halborg v EMW Law LLP* [2018] 1 WLR 52. Mr Boyd did not suggest otherwise.

176. Secondly, the difference between standard and indemnity costs is potentially substantial, because if there is an order for indemnity costs, the conduct out of the norm which justifies such an order means that "the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party". See CPR 44.3(3) as well as *Lejonvarn v Burgess* [2020] EWCA Civ 114 at [90]; *Denton and Others v TH White Limited* [2014] EWCA Civ 906 at [43]; *Optical Express Limited and Others v Associated Newspapers Limited* [2017] EWHC 2707 (QB) at [52]; and *Kellie v Wheatley and Lloyd Architects Limited* [2014] EWHC 2886 (TCC) at [17].

177. I have concluded that I should assess the costs of the adjournment as being £20,550.00 comprising (a) Mr Parker's fee on 3 April (£4,200) and SZ's profit costs of £3,975; (b) the costs considering and responding to Mr Bharj's evidence and application being SZ's profit costs of £3,975 plus counsel's fees of £4,200; (c) one day for Mr Parker's reading back into the case, £4,200.

(c) Costs of the Defendants' application(s)

178. It is agreed that SZ should pay the Defendants' costs of and occasioned by the applications of 10 August 2020 and 26 February 2024. I will summarily assess those at £770, being (a) £275 as there seems only to have been one fee paid plus (b) Mr Boyd's fees in connection with those applications (which from his fee note appear to be £495). It is not said by Mr Boyd in his written submissions that any litigant in person time was spent in this regard.

(d) Interest

179. Mr Parker seeks interest on the bills, from 18 July 2015 in respect of the 3CL claim bill, and from 26 November 2016 in respect of the other 7 matters (that being the date when those other 7 bills were rendered).

180. Mr Boyd says that no interest should be paid given my findings as to the Claimants' evidence and the large reduction in fees.

181. The answer to Mr Boyd's point is that it was open to the Defendants to protect themselves by making an offer or paying something. They did neither. Instead they persisted in wrongly maintaining that nothing at all was due.

182. Mr Boyd also says that there should be no interest because "account should be taken of the fact that the court was responsible for the long delay in getting the case on for trial." Any delays in the court system is not a reason for refusing interest to a receiving party. Again, the way for a paying party to protect itself is to make an offer or a payment.

183. I will therefore award interest as Mr Parker suggests, at 3% over base rate for the relevant periods.

(End of judgment)