CO/4428/2012

Neutral Citation Number: [2014] EWHC 2772 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 18 July 2014

B e f o r e:

LORD JUSTICE ELIAS

MR JUSTICE NICOL

Between:
MARTIN FLORIAN BROOMHEAD

Claimant

v

SOLICITORS REGULATION AUTHORITY

Defendant

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(Official Shorthand Writers to the Court)

The Claimant appeared in person
Miss Chloe Carpenter (instructed by the Solicitor Regulation Authority) appeared on behalf of the **Defendant**

(Approved)

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1. MR JUSTICE NICOL: This is an appeal by Martin Broomhead, a solicitor, against the decision of the Solicitors Disciplinary Tribunal dated 30th March 2012.

2. The Tribunal found proved two allegations against Mr Broomhead. It rejected a third allegation. It reprimanded Mr Broomhead and ordered that he pay the costs of the Solicitors Regulatory Authority ('the SRA') which had brought the proceedings. Those costs were to be subject to detailed assessment.

3. The Appellant was employed at all material times by Bury Metro Racial Equality Council ('BMREC'). He was admitted as a solicitor in 1988 but he last had a practising certificate in 2004. His job title at BMREC was 'Diversity Officer - Racial Discrimination' and he assisted clients who wished to bring Employment Tribunal proceedings. In those proceedings the parties may be represented by counsel, solicitors, trade union representatives or any other person - see Employment Tribunals Act 1996 section 6.

4. Between 2005 and 2007, through BMREC, Mr Broomhead represented one of the clients of BMREC, Mrs Bird, in proceedings which she brought in the Employment Tribunal, the Employment Appeal Tribunal and the Court of Appeal. In November 2007 Mrs Bird complained to the Legal Complaints Service ('LCS') that the Appellant had provided inadequate professional services. Under section 37A and Schedule 1A of the Solicitors Act 1974 the Council of the Law Society may set up a scheme for determining whether professional services provided by a solicitor have not been of the quality which it is reasonable to expect of a solicitor. Mr Broomhead argued that he had not acted as Mrs Bird's solicitor and therefore the scheme did not apply to him. On 10th April 2008 an LCS Adjudicator found as a preliminary issue that he had acted as her solicitor. On 6th January 2009 another LCS Adjudicator found that the professional services, which Mr Broomhead provided for Mrs Bird, had been inadequate. He directed Mr Broomhead to pay her £800 in compensation. Mrs Bird was dissatisfied with the amount of compensation and said it should also include financial loss which she had suffered. On 7th September 2009 the LCS Adjudicator reviewed his decision and awarded her an additional £3,737.35. The Appellant sought to appeal the decisions of the Adjudicators to a Panel of Adjudicators sub-committee, but he was out of time.

5. The Appellant did not pay Mrs Bird and, as a result, the SRA brought the first charge against him which concerned failure to pay those sums which was said to be contrary to paragraph 1.06 of the Solicitors Code of Conduct 2007, because the failure was behaviour that was likely to diminish the trust which the public placed in him or the legal profession. In fact insurers did pay Mrs Bird in July 2010, but that did not affect the allegation made against the Appellant by the SRA.

6. The second allegation concerned another client of BMREC, a Mr Rehman. He, too, alleged that the professional services provided by the Appellant as a solicitor had been inadequate. In April 2010 an LCS Adjudicator again found that Mr Broomhead had acted as Mr Rehman's solicitor and that the services were inadequate. He directed the Appellant to pay Mr Rehman compensation of £500. The Appellant failed to do so. That failure was likewise said to be a breach of paragraph 1.06 of the Code.

7. The third allegation was that contrary to rule 20.05 he had failed to deal with the LCS or the SRA in an open, prompt and cooperative way in relation to the complaints of Mrs Bird and Mr Rehman.

8. The Tribunal found proved the first allegation (concerning Mrs Bird) and the third allegation (failures in dealing with the LCS and SRA). It dismissed the second allegation (concerning Mr Rehman). It found on the facts that the Appellant had acted as Mrs Bird's solicitor and had held himself out as a solicitor for Mrs Bird to the EAT, to counsel and to an insurance company to whom an application had been made for After The Event Insurance cover for the Court of Appeal stage of her proceedings. On the other hand, the Appellant on the facts had not acted as a solicitor for Mr Rehman and had not held himself out as Mr Rehman's solicitor.

9. So far as costs were concerned, the Tribunal ordered him to pay all of the costs of the SRA subject to a detailed assessment "as the proceedings had been properly brought". It appears to have accepted the submissions by the SRA that the Appellant had not produced sufficient evidence that he lacked the means to pay costs. It ordered a detailed assessment because the SRA had not produced a statement of its costs to the Tribunal.

10. In his grounds of appeal, the Appellant argued the Tribunal erred in finding that he had held himself out as a solicitor. It also erred in ordering him to pay costs when not all the charges were proved against him and the Tribunal knew, or should have known, that he was in receipt of benefits and it should have taken his means into account.

The Court's role on an appeal

11. Section 49 of Solicitors Act 1974 says that a person may appeal from the decision of the Tribunal to the High Court. Appeals to the High Court are governed by CPR Part 52. Rule 52.11(1) says that an appeal will be by way of review and, by rule 52.11(3), the appeal will be allowed if the decision of the Tribunal was "(a) wrong or (b) unjust because of a serious procedural or other irregularity".

12. So far as the Tribunal found that the Appellant was acting as a solicitor for Mrs Bird or held himself out as her solicitor, the Appellant alleges no procedural error. Our task therefore is to decide whether the Tribunal in this regard was "wrong". Before the Tribunal oral evidence was given by Mrs Bird, Mr Rehman, a Mrs Cohen (who worked with the Appellant at BMREC) and the Appellant. This Court, like any other court hearing an appeal from a court or tribunal which has heard oral evidence, will be slow to depart from findings of fact which were based in whole or in part on the lower court or tribunal's assessment of witnesses. The reason is simple. The Tribunal (in this case) saw and heard the witnesses give evidence. We have not. The Tribunal was therefore in a better position to make those assessments than we are.

13. When it comes to questions of costs, this court will interfere with the Tribunal's decision only if the Tribunal has erred in principle or its decision was plainly wrong - see for instance Beresford v SRA [2009] EWHC 3155 (Admin) at [118].

Was the Tribunal wrong to conclude that the Appellant was subject to the regime in

Schedule 1A of the Solicitors Act 1974?

14. Section 37A of the 1974 Act provides:

> "Schedule 1A shall have effect with respect to the provision by solicitors of services which are not of the quality which it is reasonable to expect of them."

Paragraph 1(1) of Schedule 1A says (or said at the relevant time):

> "The Council [of the Law Society] may take any of the steps mentioned in paragraph 2 with respect to a solicitor where it appears to them that the professional services provided by him in connection with any matter in which he or his firm have been instructed by a client have, in any respect, not been of the quality which it is reasonable to expect of him as a solicitor."

15. In section 87 of the 1974 Act "solicitor" is defined as a solicitor of the Senior Courts. There is no dispute that the Appellant was a solicitor within this definition since he had been admitted as a solicitor and his name was still on the solicitors' roll.

16. The Tribunal accepted the argument of the SRA that these provisions and the regime of remedies for inadequate professional services applied not only to solicitors in a solicitors' firm but also to in-house solicitors. The term "solicitor" was defined in broad enough terms for that to be the case. The Guide to Professional Conduct of Solicitors (1999) had said as much (see Chapter 4 of the Guide para 4.01) and the Solicitors Code of Conduct (2007) made provision for in-house solicitors (see Chapter 13 and especially 13.09 dealing with Law Centres, Charities and Other Non-commercial Advice Centres. Paragraph 1(1) of Schedule 1A also alluded to this possibility since it spoke of the professional services provided by the solicitor in connection with any matter in which "he or his firm" [my emphasis] had been instructed by a client. The Tribunal concluded that it would be incongruent for the inadequate professional service regime not to apply to in-house solicitors.

17. Mr Broomhead argues on this appeal that, by section 1 of the 1974 Act a person is qualified to act as a solicitor if he has been admitted as a solicitor, his name was on the roll and he held a practising certificate. He submits that since he did not have a practising certificate at the relevant time, he was not qualified to act as a solicitor and Schedule 1A cannot apply to him.

18. In my judgment, his argument is flawed. In the first place, Schedule 1A does not apply to someone who is "qualified to act as a solicitor" but simply to "a solicitor" who provides professional services. He was a solicitor. Moreover, as Ms Carpenter for the SRA points out, paragraph 9 of Schedule 1A says that references to a solicitor in the Schedule shall include a person whose name has been removed from, or struck off, the roll. In addition, I fail to see how Parliament could have intended that default in practising as a solicitor without a practising certificate (if one is required) should

exempt the solicitor concerned from the regime of remedies for inadequate professional services in Schedule 1A.

19. The Appellant also relied on Solicitors Act 1974, section 1A. This said (in the version in force to March 2008):

> "A person who has been admitted as a solicitor and whose name is on the roll shall, if he would not otherwise be taken to be acting as a solicitor, be taken for the purposes of this Act to be so acting if he is employed in connection with the provision of any legal services-
>
> (a) by any person who is qualified to act as a solicitor;
>
> (b) by any partnership at least one member of which is so qualified; or
>
> (c) by a body recognised by the Council of the Law Society under section 9 of the Administration of Justice Act 1985 (incorporated practices)."

20. However, this provision does not assist the Appellant. As Ms Carpenter submitted, it is a deeming provision. It stipulates circumstances in which a person shall be deemed to have been acting as a solicitor "if he would not otherwise be taken to be acting as a solicitor". It is not an exhaustive description of all the circumstances in which a person may be acting as a solicitor. The section itself envisages that there will be other circumstances where a person will be taken to be acting as a solicitor.

21. The Tribunal did recognise, though, that its favourable decision on the matter of interpretation, accepting the arguments of the SRA, still left the question as to whether in fact the Appellant had acted as a solicitor for Mrs Bird. It reasoned as follows.

22. Mrs Bird wanted to instruct a solicitor to act on her behalf in relation to proceedings against her employers. Mrs Cohen recommended BMREC to Mrs Bird and said she knew the Appellant was a solicitor. He was not practising but Mrs Bird should not mention the fact. The Tribunal said Mrs Bird was not a sufficiently sophisticated purchaser of legal services to understand the significance of the term "non-practising". It was common ground that the Appellant did not specifically tell Mrs Bird that he was non-practising or that he would not be acting as a solicitor when he represented her. His case was that he was a Diversity Officer at BMREC, but, as he himself said, that did not preclude him also being a solicitor. The Tribunal thought that it would have been essential for him to explain from the outset in clear terms if he was not to act as a solicitor although he was about to undertake tasks which, to a layman, would be understood as being more commonly carried out by a solicitor. Handing out a card with the job title "Diversity Officer" would be insufficient. The Tribunal did not find either Mrs Bird or Mrs Cohen to be entirely reliable witnesses, but it was nonetheless satisfied that the Appellant had acted as Mrs Bird's solicitor by reference to the documentary evidence.

23. In particular, on 6th December 2005 the Appellant had sworn an affidavit in compliance with an order of the EAT. This began:

> "I am a solicitor of the Supreme Court and am employed by the Bury Metro Racial Equality Council as Diversity Officer (Race Discrimination) and make this Affidavit pursuant to an order of the EAT dated 23rd November 2005. I have had the conduct of this matter on behalf of [Mrs Bird] throughout the course of her proceedings against her employer…."

24. The Tribunal noted that in this formal statement he did not add that he was a non-practising solicitor. The Tribunal, having heard the Appellant give evidence, was impressed with the care that he took over his language. The Tribunal said:

> "The simple fact when all the complications and red herrings were ignored was that the Respondent was acting as Mrs Bird's solicitor in these proceedings and his behaviour in swearing his affidavit which he chose to word in the way that he did was entirely consistent with that fact."

25. The EAT had clearly thought he was acting as Mrs Bird's solicitor because, in its judgment, it referred to him as such. The EAT were not the only ones who thought that was his role. The Appellant issued instructions to counsel to represent Mrs Bird in the EAT and the Court of Appeal. The SDT did not have the instructions, but in his advice counsel referred to BMREC as Mrs Bird's solicitors and the Appellant as his instructing solicitor. The Appellant did nothing to correct that impression. Furthermore, on 17th September 2007 the Appellant completed an application form for ATE insurance. The declaration of truth had to signed by "Solicitor (Legal Representative)". The Appellant signed it and did not delete the word "Solicitor".

26. The Tribunal concluded that the Appellant had acted as Mrs Bird's solicitor and had held himself out as such to the EAT and to the insurer. It also found that Mrs Bird assumed that he was acting as her solicitor and he did nothing to correct that assumption.

27. In this case the Tribunal was meticulous in its review of the evidence and submissions by the parties. It took a nuanced approach to the assessment of witnesses. It gave detailed and careful reasons for its conclusions. In our view they are unimpeachable.

Finding of Inadequate Professional Services

28. In his original grounds of appeal the Appellant did not challenge this part of the Tribunal's decision. The day before the hearing of the appeal, he served a skeleton argument which, for the first time, did dispute this part of the findings.

29. He submitted that Mrs Bird's complaint of inadequate services was an afterthought and made only so that she could "get paid out". The Tribunal was disparaging of her evidence and, he submitted, it should not have found that the services he provided to her were inadequate.

30. Not only is this complaint late but it has no foundation at all. Once again the Tribunal examined for itself the complaints about the professional services which the Appellant had provided. It did not accept that all of them were justified. Where it did, its findings looked at all the evidence (not only that of Mrs Bird) and its conclusions adverse to the Appellant largely rested on evidence which was independent of her. These conclusions were not wrong.

Costs: failure to take account of the Appellant's means

31. The Tribunal has a broad power to determine the costs of the proceedings before it - see the Solicitors Act 1974 section 47(2) and the Solicitors (Disciplinary Proceedings) Rules 2007 rule 18.

32. Before exercising its discretion to order a solicitor to pay the costs of the proceedings, the Tribunal can take into account the solicitor's means. If, for instance, the Tribunal's order will deprive the solicitor of his or her livelihood, it may properly investigate how any order for costs would be paid - see Merrick v Law Society [2007] EWHC 2997 at [62]. In this case, of course, the Tribunal's substantive order was to reprimand the Appellant. That did not, as such, deprive him of his livelihood. Nonetheless, exceptionally, a Tribunal may even then take the solicitor's means into account - see D'Souza v the Law Society [2009] EWHC 2193 (Admin) at [18].

33. Mitting J in SRA v Davis [2011] EWHC 232 (Admin) at [21] proposed that the means of an individual against whom a costs order is proposed should be investigated by the Tribunal. If the solicitor asserted that he was impecunious and, for that reason, no order should be made, it was incumbent on him to lay sufficient information before the Tribunal to persuade them that that is indeed the case. The position was analogous to a defendant in a criminal case who wished to argue that the court should not impose a financial penalty because he would be unable to pay it. Mitting J suggested that if the solicitor admitted the charges, then he should produce his evidence of means to the Tribunal and the SRA before the hearing. He thought that would be unduly burdensome if the solicitor intended to contest the charges.

34. At one stage in his written submissions it seemed that the Appellant was arguing that the Tribunal was obliged to grant him an adjournment if it considered the evidence of his means which he produced at the hearing was inadequate to show he was impecunious. At other times in his oral submissions the Appellant disavowed such an argument.

35. If and so far as the submission is pursued, I do not accept it. Mitting J in Davis was saying that a solicitor who contested the charges could not reasonably be expected to make disclosure of his means in advance of the hearing. He was not saying the solicitor, in the event of a finding of guilt, would be entitled to an adjournment to put his financial evidence before the Tribunal. Whether to grant an adjournment (a further adjournment in this case) would be a matter for the Tribunal to consider in its discretion. The usual assumption is that the solicitor must come to the Tribunal together with all the material he wished to put before the Tribunal. In this case, the advice which the SRA gave to the Appellant in their letters of 22nd and 27th March 2012 was to that

effect and it was correct. What Mr Broomhead took with him was a letter from Job Centre Plus dated 20th March 2012. This said he was being allowed Employment and Support Allowance from 15th march 2012. This is a non-means tested benefit and the fact the Appellant was receiving it did not say anything inferentially about his means. The letter did say he was not entitled to income-related ESA "because you have as much or more money coming in than the law says you need to live on."

36. In the course of his submissions on costs to the Tribunal, the Appellant provided further information as to his means but Ms Carpenter made submissions (summarised by the Tribunal in paragraph 35 of its decision) to the effect that the Appellant had not provided sufficient information or evidence for the Tribunal to be satisfied that he was impecunious. In particular he had not produced any bank statements and had not provided a statement regarding any capital assets.

37. The Tribunal made no express finding on these rival submissions as to the Appellant's means. It would have been better if they had done so. However, I am prepared to infer, as Ms Carpenter submitted, that we should assume that on this issue, at least, the Tribunal preferred and adopted her submissions. In my view, on the information available to the Tribunal it was entitled to reach this conclusion. Accordingly this ground of appeal fails.

Costs: failure to discount for the fact that one of the three charges brought by the SRA had not succeeded

38. Before the Tribunal the SRA submitted that there should be no discount. First, the allegation which failed (that concerning Mr Rehman) had been unsuccessful on its specific facts. The investigation of these had formed a limited part of the whole case. Second, in any event, the SRA submitted, all of the charges had been properly bought.

39. The Tribunal accepted the second of these arguments. It is not clear whether it accepted the first, but I am not prepared to infer that it did. It said simply:

> "The Tribunal would make an Order for costs against the Respondent [i.e. the Appellant before us] as the proceedings had been properly brought."

40. The SRA had proved two of the three charges they brought. Undoubtedly the charges on which the SRA succeeded had occupied the principal part of the time before the Tribunal. The argument as to whether the Appellant was subject to the regime in Schedule 1A of the 1974 Act was also common to the first two charges. Nonetheless, Mr Rehman had been called to give evidence exclusively on the charge which the SRA had failed to substantiate and Mrs Cohen and the Appellant, in part, had had to give evidence on that matter as well. The part of the proceedings on which the SRA had failed could not be dismissed as trivial. The position in this case is therefore different from Bereford v SRA [2009] EWHC 3155 (Admin) where no discount was made because "the allegations on which the Appellant succeeded were but a small fraction of a very serious whole" - see [120]. Had the Tribunal made a similar finding in this case the position may well have been different.

41. I would not take issue with the finding that all three charges were properly brought. The propriety of bringing unsuccessful charges is a good reason why the SRA should not have to bear the costs of the solicitor. The SRA is, after all, a regulator and should not be dissuaded from carrying out its task fearlessly because of a concern that it would have to pay costs if unsuccessful - see Baxendale-Walker v The Law Society [2008] 1 WLR 426 at [39] (always assuming that the charges are properly brought).

42. However, while the propriety of bringing charges is a good reason why the SRA should not have to pay the solicitor's costs, it does not follow that the solicitor who has successfully defended himself against those charges should have to pay the SRA's costs. Of course there may be something about the way the solicitor has conducted the proceedings or behaved in other ways which would justify a different conclusion. Even if the charges were properly brought it seems to me that in the normal case the SRA should have to shoulder its own costs where it has not been able to persuade the Tribunal that its case is made out. I do not see that this would constitute an unreasonable disincentive to take appropriate regulatory action.

43. Accordingly, I do think the Tribunal erred in principle by appearing to take the view that the propriety of the proceedings was of itself a justification for imposing costs on the Appellant, even in respect of the charge which he had successfully resisted. Ms Carpenter relied on Levy v SRA [2011] EWHC 740 (Admin) at [43]. In that case the solicitor admitted the charges which the SRA brought but disputed that they were part of a dishonest course of conduct. He was successful in that regard, but the Tribunal still required him to pay the costs of the proceedings. This Court held that the proceedings had been properly brought and this decision was within the discretion which the Tribunal enjoyed. It may be that the decision in that case could be explained because the charges were all admitted and the issue was the degree of culpability. However, if that is not a valid ground of distinction then I respectfully disagree for the reasons which I have already given.

44. Doing the best I can, I estimate that there should have been a reduction of 20%. Accordingly, I would allow the appeal only to the extent of varying the Tribunal's costs order so that Mr Broomhead is required to pay 80% of the SRA's costs before the Tribunal, to be subject to detailed assessment if not agreed.

LORD JUSTICE ELIAS: Miss Carpenter, can you draft the order? We do not have an associate present in court. Thank you.

45. MISS CARPENTER: My Lord, that leaves the question of costs of the appeal for today. What I would submit on that is that obviously there were three grounds of appeal and Mr Broomhead has had success on one of those grounds, but on a very narrow ground. What we had is a very broad, wide ranging appeal on the jurisdiction point. There are five appeal bundles before your Lordship. If you can imagine how much smaller the appeal would be in terms of the paperwork if the appeal had only been on the point on which Mr Broomhead has succeeded. One would only have needed the transcript of the costs part of the hearing right at the end, which was less than half a file, the decision and the pleadings. One would not need the contemporaneous documents we have, the whole bundle or any other transcripts of the

whole hearing. The costs have been substantially added to by the approach Mr Broomhead has taken to the appeal.

46. What I would submit your Lordship should consider doing is an issue-based approach to the costs, which as you are aware is open to you under the costs rules. What I would submit is that the SRA having succeeded on two issues, and Mr Broomhead having succeeded on one, an issue-based approach would give the SRA its costs on two thirds, Mr Broomhead his costs on one third and cancelling that out the SRA gets one third of the costs of the appeal. That is a rough and ready suggestion. I know that the courts do not like to give issue-based awards because they are very complicated to work out and by costs judges in due course. That is my rough and ready suggestion.

47. As well as the points I have already made, the other points I would emphasise on my submission on costs is Mr Broomhead's conduct of the appeal, which is a relevant feature. As you have seen Mr Broomhead has not co-operated with this appeal at all. He issued the appellant's notice in 2012 and basically did nothing. He did not put in a skeleton, he did not respond to correspondence; and he was repeatedly written to asked for the material. I have the correspondence bundle if you would like to see it. It is not very big.

48. LORD JUSTICE ELIAS: I do not think we will be assisted by going through it. We appreciate he has not really done anything until the last minute.

49. MISS CARPENTER: Sadly that is a repetition of the way he conducted the proceedings below, which you will have seen from the tribunal's findings at paragraph 3, where they noted that he only provided the witness statement the evening before the hearing. This has been an unfortunate characteristic throughout. I do rely on that in addition as a separate reason why the SRA should get at least a third [?] costs of this appeal.

50. LORD JUSTICE ELIAS: It is the grand total of £21,000 and you are saying you should get a third of that?

51. MISS CARPENTER: A third of that.

52. LORD JUSTICE ELIAS: Let us hear what Mr Broomhead has to say.

53. THE CLAIMANT: Firstly, my Lord, I am a litigant in person so my costs are going to be minimal of which the respondents know. That is the first point. The second point about the amount of bundles that were done, they are disbursements. We did not need seven bundles. We could have got the documents in one slimline bundle. The fact that the respondents chose to issue seven bundles is for them.

54. LORD JUSTICE ELIAS: That is not entirely accurate. You have been a lucky man in some ways, because if we had no documents from the respondents we would have struck this case out because we did not have the material to decide it. You did not comply with the orders in any way at all. I do think seven bundles was too much, but you could have at least discussed that with the respondents and talked about what you wanted in. You could have said, "I don't think there is any purpose in other documents

coming in". You would have been a party at least to making it plain that you did not think they were of any use and would assist the court. You have not involved yourself at all. It is not very attractive to come along now and complain about the bundles they have provided when this morning you very fairly accepted that you were grateful for the fact that they have put material before the court actually to enable your appeal to go ahead.

55. THE CLAIMANT: With respect, my Lord, that again is not strictly true. What happened was I rang the SRA and I spoke to the person dealing with it, a Mrs Bullet [?], and I said to her, "Listen I haven't got the facilities to provide the bundles - a lot of photocopying is going to be needed. Could you assist me in doing that?" I appreciate the acceptance. So with respect, my Lord, that is not strictly true. The fact that the bundles have been produced is a matter of disbursements. It is £5 a page: seven bundles times whatever. It's not all that much. It's certainly not thousands and thousands of pounds. In any event, my Lord, the simple truth is this: I was entitled to bring this appeal and I was successful on one ground. That shouldn't prejudice me in respect of my costs.

56. In so far as my alleged conduct in the Solicitors Disciplinary Tribunal was concerned, again I was in the same position, but there was no loss as a result of any so-called conduct on my behalf.

57. LORD JUSTICE ELIAS: We will rise. Do you want to say anything about the figures?

58. THE CLAIMANT: I am not agreeing the figures; of course not.

59. LORD JUSTICE ELIAS: You say "of course not". It is not your task just to disagree for the sake of it.

60. THE CLAIMANT: You have ordered detailed assessment haven't you?

61. LORD JUSTICE ELIAS: No, we have not. We would not normally order a detailed assessment. That just adds costs to the whole process.

62. MR JUSTICE NICOL: Have you seen the schedule?

63. THE CLAIMANT: I have not seen any costs schedule.

64. MISS CARPENTER: Mr Broomhead was given a schedule earlier in the week with the correspondence.

65. THE CLAIMANT: I was not handed one at all. I have not seen anything.

66. MISS CARPENTER: We have another one.

67. LORD JUSTICE ELIAS: You better have a few minutes to look at the costs schedule. Have you got a spare copy?

68. MISS CARPENTER: Yes. (same-handed)

69. LORD JUSTICE ELIAS: We will rise while you have a look at that and then come back in a few minutes.

(Adjourned)

70. THE CLAIMANT: I have had a look at the costs schedule, Sir, and I do not agree to it. I therefore ask for a detailed assessment.

71. LORD JUSTICE ELIAS: No, I am afraid that is not how it works. You are allowed to say, "Look this is too much or that's too much". You can focus on particular matters. Let me make it plain: we do not as a matter of course in a one-day case send matters off for detailed assessment. Shall I tell you why? Partly this is in your interest as much as anyone else's. If a case goes off for detailed assessment that again involves the costs of the costs draftsman and taxation. All of that involves time and trouble and effort. It is not a very sensible way of conducting litigation. The procedure is, in a rough and ready way, that the court tries to fix what it considers is the appropriate costs to save everyone that trouble.

72. THE CLAIMANT: First of all, I would need to spend a good afternoon reading these.

73. LORD JUSTICE ELIAS: I am sorry. We have looked at it and we have to say to you that the figure we are going to order we think would be less than you would get if you were to go to a costs taxation - let me tell you that. We think the figure should be £6,000. That is less than a third of the figure that has been put forward by the Law Society as the sum which they would have claimed, had they succeeded on every point. We think that the suggestion that was put forward by the Law Society, that they should get a third of their costs, was in fact quite generous to you, given that you succeeded on what (if we looked at in terms of time and involvement) would have been a relatively minor part of the case. I know it is of some substance to you and I am not belittling it. But in terms of the costs incurred it would not have been a significant amount. I think that if we say £6,000 - I know that is a lot of money and litigation is expensive - that is a figure we think, in all the circumstances, is one which is justified. At the same time it is certainly not extravagant in terms of the costs that usually arise in cases of this nature. You do not have to bear the costs involved in going through the costs taxation, which would have arisen otherwise. You succeeded in part, but failed in part and that is the order that we make.

74. THE CLAIMANT: Before you rise I have just one application and that is for leave to appeal.

75. LORD JUSTICE ELIAS: No, we refuse that. Thank you very much.