Neutral Citation Number: [2019] EWHC 2471 (Ch)

Case No: BL-2019-001488

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**BUSINESS LIST (ChD)**

Royal Courts of Justice, Rolls Building
Fetter Lane, London EC4A 1NL

Date: 23/09/2019

**Before** :

**Kelyn Bacon QC**
**(sitting as a Deputy Judge of the High Court)**

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**Between :**

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|---|---|
| **HEALYS LLP** | **Claimant** |
| **- and -** | |
| **(1) MICHAEL DENNIS PARTRIDGE** | |
| **(2) SUZETTE ANNE PARTRIDGE** | **Defendants** |

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**John Virgo and Oliver Manley** (instructed by **Healys LLP**) for the **Claimant**
**William Edwards** (instructed by **Berryman Lace Mawer LLP**) for the **Defendants**

Hearing dates: 10–11 September 2019

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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KELYN BACON QC

**Kelyn Bacon QC (sitting as a Deputy Judge of the High Court):**

## Introduction

1. The series of applications made at this hearing concern a dispute between the Claimant firm of solicitors, Healys, and the Defendants, Mr and Mrs Partridge (the "Partridges"), concerning the payment of Healys' fees under a conditional fee agreement (the "CFA") for the pursuit of a professional negligence claim by the Partridges against Mr Francis Evans QC, Mr Andrew Maguire and Charles Gomez & Co, a firm of Gibraltarian Advocates.

2. In circumstances which I will set out further below, Healys terminated the CFA and on 2 August 2019 issued an urgent application for a freezing order, without notice to the Defendants. The order was made on the same day by HHJ Paul Matthews. The hearing before me was the return date for that order, together with the hearing of various further applications that had been filed by both sides.

3. At the conclusion of the hearing I ordered as follows, with reasons to follow:

    i) I directed that Healys' claim should continue as if it had been commenced under CPR Part 8;

    ii) I discharged the freezing injunction, and in its place I granted a proprietary injunction, with permission to withdraw funds for certain specified purposes and subject to certain conditions;

    iii) I made no order on the Partridges' application to withdraw further funds for medical or veterinary expenses.

4. This judgment sets out the reasons for those orders.

## Background

5. The claim arises from the purchase by the Partridges in 2005 of a property in Spain known as the "French Castle", partially funded by a loan by Barclays Bank. In December 2011 the Partridges sued Barclays in Gibraltar in relation to that transaction. Mr Evans, Mr Maguire and Charles Gomez & Co acted for the Partridges in the Gibraltar litigation. In December 2013 most of the claim against Barclays was struck out. In 2017 the Partridges commenced a claim in professional negligence against Charles Gomez & Co, Mr Evans and Mr Maguire. I will refer to this as the "2017 Claim".

6. The Partridges were initially represented in the 2017 Claim by Healys, on the basis of the CFA which was dated 20 November 2016. The CFA provided that if the claim was not successful there would be no charge for the work done (save for disbursements). In the event of success, however, the charge would be for work done at specified hourly rates, plus a 100% uplift. "Success" was defined as follows:

> "Success in this case will be if/when your claim for damages is decided in your favour whether by a Court decision or an

> agreement to pay you damages and whether or not the amount of any award or payment is equal to the full value of your claim."

7. The CFA as initially agreed only covered the Partridges' claim against Mr Evans. On 8 September 2017, however, when it was decided to extend the claim to Mr Maguire and Charles Gomez & Co, the CFA was amended by an Addendum to include the claims against those defendants. The Addendum also amended the definition of success as follows:

> "Success in this case will be if/when your claim for damages against any one or more of Francis Evans QC and/or Charles Gomez & Co and/or Charles Gomez and/or Andrew McGuire is decided in your favour whether by a Court decision or an agreement to pay you damages and whether or not the amount of any award or payment is equal to the full value of your claim."

8. The CFA also set out various circumstances in which Healys was entitled to terminate the agreement.

9. The 2017 Claim was mediated on 22 March 2019, and various offers were made by the defendants to those proceedings. Those offers were not accepted by the Partridges. Healys then terminated the CFA (albeit that its entitlement to do so is disputed by the Partridges) and came off the court record in relation to that claim. On 8 July 2019 the Partridges instructed Berryman Lace Mawer ("BLM") to act for them. Two days later, unbeknownst to Healys, the Partridges settled their claim against Mr Evans for a substantial sum.

10. On 11 July 2019, the day after the settlement with Mr Evans, BLM wrote to Healys asking for the release of their file of papers to BLM "in connection with the above matter", the "above matter" being described as "Matter of Michael Partridge (1) Suzette Partridge (2) v (1) Charles Gomez and others Claim No. BL-2017-000544". Neither in that letter, nor in any of the following correspondence between BLM and Healys, did BLM reveal to Healys that the 2017 Claim had in fact been settled as against Mr Evans, so was being pursued only against Mr Maguire and Charles Gomez & Co.

11. On 24 July 2019 Healys agreed to release its papers to BLM on condition that its disbursements were paid in full, and subject to various undertakings, including an undertaking that BLM would use best endeavours to recover Healys' costs as part of any settlement, and would keep Healys fully informed of those endeavours. The outstanding disbursements were paid to Healys on the same day and the papers were then released to BLM. Healys was still unaware, at this point, that a settlement had already been reached with Mr Evans.

12. A week later, on 31 July 2019, Healys discovered that the claim against Mr Evans had been settled. Concerned that the Partridges were trying to avoid paying its fees under the CFA (including any success fee) Healys sent the Partridges an invoice for its fees on 1 August 2019, and then took immediate steps to apply for a freezing injunction. The application was made without notice on 2 August 2019, and the order was granted that day by HHJ Paul Matthews.

13. Among other things, the freezing order required Healys to issue and serve its claim against the Partridges by 6 August 2019, which Healys duly did. The claim was formulated as a claim under CPR Part 7 seeking payment of unpaid professional fees in the sum of £810,273.60, alternatively damages for breach of the CFA.

14. The return date was initially set for 9 August 2019. In the event, however, that hearing was adjourned by consent to the hearing that took place before me. Meanwhile, various further applications were issued on both sides:

    i) the Partridges made an urgent application seeking, in essence, an order that the freezing injunction should be construed and/or varied to permit reasonable expenditure on legal advice and representation in relation to the 2017 Claim, and expenditure on private medical treatment for Mrs Partridge and veterinary treatment for their dog;

    ii) Healys sought to amend its claim to include a claim to a lien over the proceeds of the settlement agreement with Mr Evans, and on that basis applied for a proprietary injunction for the detention and preservation of the settlement monies; in the alternative it applied for the original freezing order to be continued;

    iii) the Partridges contended that the CFA was a contentious business agreement within the meaning of section 59 of the Solicitors Act 1974, and could therefore not properly have been brought as a Part 7 claim; they therefore sought an order that the claim should continue as if commenced as a Part 8 claim.

15. At a hearing on 3 September 2019, Arnold J ordered that the freezing injunction permitted expenditure on the Partridges' costs of advice and representation in relation to any legal dispute and/or any legal proceedings, whether in England or any other jurisdiction, including the 2017 Claim; but that until the return date the Partridges should not spend any sum greater than £50,000 in relation to the 2017 Claim. He directed that the remaining applications should be heard on the return date.

16. By the time of the hearing before me, Healy's application to amend its claim was not resisted. The other issues can conveniently be grouped under three heads:

    i) the Partridges' procedural application for continuation of the claim as a Part 8 claim;

    ii) the question of whether a proprietary injunction should be granted or the original freezing injunction continued;

    iii) specific items of expenditure from the settlement monies sought by the Partridges.

17. I will deal with each of these in turn below.

## The procedural application

18. The Partridges' case as to the correct basis of the claim and the manner in which it should be continued turns on the interpretation of the Solicitors Act 1974 (the "1974 Act"), and in particular the way in which a solicitor can sue for unpaid fees that are said to be due under a CFA. Two specific questions arise. The first is what the correct procedure is for a claim for payment of solicitors' fees said to be due under a contentious business agreement. The second is whether the CFA in this case is indeed a contentious business agreement.

*Enforcing a contentious business agreement*

19. The courts have historically exercised considerable caution when enforcing an agreement between a client and a solicitor as to the solicitors' fees. Even before the enactment of specific legislation addressing this issue, the position was as described by Fletcher Moulton LJ in *Clare v Joseph* [1907] 2 KB 369, at 376, that such agreements

> "were … viewed with great jealousy by the Courts, because they were agreements between a man and his legal adviser as to terms of the latter's remuneration, and there was so great an opportunity for the exercise of undue influence, that the Courts were very slow to enforce such agreements where they were favourable to the solicitor unless they were satisfied that they were made under circumstances that precluded any suspicion of an improper attempt on the solicitor's part to benefit himself at his client's expense."

20. The court's inquiry was therefore "directed to the question whether the agreement was fair and reasonable": Lord Alverstone CJ in the same case, at 372.

21. These concerns were addressed in the Attorneys and Solicitors Act 1870, which provided that the courts would enforce a written agreement between a solicitor and a client setting out the terms of the solicitor's remuneration, subject to certain safeguards. One of those was the requirement in s. 4 of the Act that, prior to the enforcement of an agreement "in respect of business done or to be done in any action at law or suit in equity", the taxing officer had to be satisfied that the agreement was fair and reasonable.

22. That provision and related provisions of the 1870 Act were the precursors to Part III of the 1974 Act, which sets out a series of provisions relating to the remuneration of solicitors. Those provisions draw a distinction between non-contentious business agreements and contentious business agreements.

23. Contentious business agreements are defined by s. 59 of the 1974 Act as follows:

> "(1) Subject to subsection (2), a solicitor may make an agreement in writing with his client as to his remuneration in respect of any contentious business done, or to be done,

> by him … providing that he shall be remunerated by a gross sum or by reference to an hourly rate, or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise have been entitled to be remunerated."

24. Subsection (2) provides that ss. 59–63 of the Act are not to be regarded as giving validity to various types of agreements, including (relevantly for present purposes):

> "(b) any agreement by which a solicitor retained or employed to prosecute any action, suit or other contentious proceeding, stipulates for payment only in the event of success in that action, suit or proceeding".

25. Sections 60–63 of the 1974 Act go on to set out the effects of making a contentious business agreement. The provision relied upon by the Partridges in this case is s. 61, which provides in relevant part as follows:

> "(1) No action shall be bought on any contentious business agreement, but on the application of any person who –
>
> (a) is a party to the agreement or the representative of such a party; or
>
> (b) is or is alleged to be liable to pay, or is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates,
>
> the court may enforce or set aside the agreement and determine every question as to its validity or effect.
>
> (2) On any application under subsection (1), the court –
>
> (a) if it is of the opinion that the agreement is in all respects fair and reasonable, may enforce it;
>
> (b) if it is of the opinion that the agreement is in any respect unfair or unreasonable, may set it aside and order the costs covered by it to be assessed as if it had never been made."

26. Mr Edwards, representing the Partridges, said that the effect of this section is that where the agreement is a contentious business agreement a solicitor cannot sue for his costs by bringing a CPR Part 7 claim. Instead, the court has jurisdiction under an application brought under Part 8 or Part 23, to determine whether the agreement is fair and reasonable. If it is, it may be enforced by the court; if not, then the agreement is to be set aside and the costs are simply to be assessed as if the agreement was not made.

27. Mr Edwards also relied on CPR Part 67.3(2), which provides that:

> "A claim for an order under Part III of the [Solicitors Act 1974] must be made –
>
> (a) by Part 8 claim form; or
>
> (b) if the claim is made in existing proceedings, by application notice in accordance with Part 23."

28. Mr Manley, representing Healys, disputed this construction of s. 61. While he accepted that a Part 8 or Part 23 application was the correct procedural route for proceedings that only concerned the assessment of costs, where there was no dispute as to liability to pay the costs at all, he contended that neither s. 61 nor CPR Part 67 precluded the commencement of a Part 7 claim where there was a dispute as to whether there was any liability to pay the solicitors' costs under the agreement at all.

29. I consider that Mr Edwards' construction of s. 61 is correct. The opening words of s. 61(1) are quite specific: "No action shall be brought on any contentious business agreement …" It is necessary to give some meaning to those words. The correct interpretation, I consider, is that a contentious business agreement does not, in itself, give rise to a cause of action on the basis of which a claim for costs may be brought. Rather, the agreement must first be submitted for the determination of whether it is fair and reasonable. Only once that determination has been made can the court enforce the agreement (if it is found to be fair and reasonable) or simply proceed to an assessment of costs (if the agreement is not found to be fair and reasonable).

30. S. 61 provides in both subsections (1) and (2) that in order to obtain a determination of whether the agreement is fair and reasonable an application to the court must be made. Such an application is in my view a claim for an order under Part III of the 1974 Act, which pursuant to CPR Part 67.3(2) must be made either under Part 8 or (if made in existing proceedings) under Part 23.

31. I note that this construction is supported by *Cooke on Costs* (2019). §3.11 of *Cooke*, which was relied upon by Mr Manley, suggests that a solicitor can sue for his fees in the High Court using a Part 7 claim form (while noting that the more usual procedure will be to apply to have the costs assessed by using Part 8 or Part 23). §§8.13–14 indicate, however, that while this is the case where payment is sought of fees due under a non-contentious business agreement, the position for a contentious business agreement is different. In relation to the latter:

> "The agreement itself does not give a cause of action and before a solicitor can rely on it, he must apply to the court for leave to enforce the agreement. Equally, the client may apply to the court to set it aside. Both applications are made under CPR Part 8. The outcome will depend on whether or not the court is of the opinion that the agreement is fair and reasonable …"

32. At first blush this might appear to be an arcane procedural technicality. In fact, however, the particular procedural route reflects a point of some substance,

namely that s. 61 provides for a specific layer of protection for the client in relation to a contentious business agreement, in that no cause of action will arise under the agreement unless and until the court has determined that the agreement is fair and reasonable.

*Whether the CFA is a contentious business agreement*

33. The remaining question is whether the present CFA is a contentious business agreement. Mr Manley's position was that a "pure" CFA as used in the present case, where no fees are recoverable in the event of failure, cannot be a contentious business agreement. Relying on the definition of a contentious business agreement in s. 59 of the 1974 Act, he said that this type of CFA is not an agreement providing that the solicitor "shall be remunerated". That was reinforced, he said, by the proviso in s. 59(2)(b). He also relied on the judgment of Master Campbell in *Addleshaw Goddard v Wood* [2015] EWHC B12 (Costs), which at §§68–72 appears to have proceeded upon the assumption that a CFA would not (or at least not normally) be regarded as a contentious business agreement.

34. Mr Edwards disputed that submission. He submitted that the CFA in this case falls squarely within s. 59, being an agreement where the remuneration is specified "by reference to an hourly rate", even if that is conditional upon success. He referred to *Hollins v Russell* [2003] 1 WLR 2487, [2003] EWCA Civ 718, where the Court of Appeal observed at §93 that "it became clear that a CFA is a contentious business agreement to which section 60(3) of the Solicitors Act 1974 … applies". He also noted that in *Vilvarajah v West London Law* [2017] EWHC B23 (Costs) a CFA was treated as a contentious business agreement, and was set aside pursuant to s. 61 as being unfair and unreasonable.

35. On this point, again, I consider that Mr Edwards is correct. On the plain and natural reading of s. 59(1), a CFA is an agreement as to the solicitor's remuneration, and an agreement such as the present CFA which sets out an hourly rate is an agreement where the remuneration is set by reference to an hourly rate. It matters not, in that regard, whether the CFA provides that the remuneration is to be reduced or extinguished altogether in the event of failure.

36. If anything, the proviso in s. 59(2)(b) reinforces that interpretation. The effect of the proviso is that s. 59(1) and other provisions of the 1974 Act do not, themselves, render valid a conditional fee agreement – the point being that at the time that the Act was originally adopted, conditional fee agreements were unlawful under common law. The fact that it was thought necessary to include the proviso in s. 59(2)(b) indicates, therefore, that a conditional fee agreement might in principle fall within s. 59(1). Put another way, if the definition of a contentious business agreement in s. 59(1) completely excluded a conditional fee agreement, then the proviso in s. 59(2)(b) would have been unnecessary.

37. While the two first instance costs judgments cited to me appear to have proceeded on different assumptions as to whether a CFA could be regarded as a contentious business agreement, the Court of Appeal's comment at §93 of *Hollins v Russell* unambiguously supports the proposition that a CFA will in principle be a contentious business agreement for the purposes of Part III of the

1974 Act. Mr Manley's answer was to say that this comment did not sit well with the statutory wording. It follows from what I have said above that I do not accept that submission. *Hollins v Russell* is entirely consistent with the wording of s. 59.

38. That does not of course necessarily mean that every CFA will be a contentious business agreement for the purposes of Part III of the 1974 Act. I note, for example, that the Law Society's model form CFA for personal injury and clinical negligence cases contains a specific clause providing that the agreement is not a contentious business agreement within the terms of the 1974 Act. Without expressing any view on the construction and effect of agreements containing a clause of that nature, I note that the present CFA contained no such clause, nor anything else to suggest that it should fall outside the scope of the s. 59 definition.

*Conclusion on the procedural application*

39. The procedural application is therefore well founded, and the claim should be directed to continue as if it had been commenced as a Part 8 claim.

**The proprietary injunction/freezing injunction applications**

40. The next question is whether the freezing injunction granted on 2 August should be replaced with a proprietary injunction (Healys' primary case) or continued as originally granted (Healys' alternative case).

*Proprietary injunction*

41. Healys' application for a proprietary injunction was brought pursuant to CPR Part 25.1(1)(c)(i), which provides that the court may grant an interim order "for the detention, custody or preservation of relevant property". The property in this case is the proceeds of the settlement agreement with Mr Evans. Healys' case – as set out in its amended Particulars of Claim – was that it was entitled to exercise an equitable lien over that settlement sum, given that it had a lien over its papers in the 2017 Claim which was compromised by the release of those papers to BLM. Had Healys' known that a settlement had already been reached with Mr Evans, it says that it would undoubtedly not have released its papers until its fees had been paid. On that basis, Healys' application was for an order for the detention and preservation of the settlement monies.

42. It is common ground that the correct approach to a proprietary injunction is the approach prescribed by *American Cyanamid v Ethicon* [1975] AC 396, namely that (1) the claimant has shown that there is a series issue to be tried on the merits, (2) that the balance of convenience is in favour of granting an injunction and (3) that it is just and convenient to grant the injunction. That approach differs from the requirements for a freezing injunction, in particular in that in the case of a proprietary injunction it is not necessary to show any risk of dissipation of assets: see *Madoff Securities International v Raven* [2011] EWHC 3102 (Comm) at §§127–128.

43. Mr Edwards accepted that Healys' claim to a lien over the settlement monies was at least a triable issue (albeit that the Partridges would contend that Healys did not have such a lien). For present purposes, therefore, the first part of the *American Cyanamid* test was satisfied. He contended, however, that the relief sought should be refused on the basis of the balancing exercise, for various reasons, which ultimately came down to two (related) points.

44. The first was that an absolute preservation order as sought by Healys in its application would entirely prevent the Partridges from pursuing the 2017 Claim, and indeed would prevent them from defending Healys' present claim, since they have no resources other than the settlement monies out of which their legal fees (for either set of proceedings) can be paid. The second objection was that, if the Partridges were thereby prevented from pursuing the 2017 Claim, then Healys might not be able to satisfy what could be a very substantial claim on its cross-undertaking in damages.

45. In response, Healys accepted that the order should permit the Partridges to use the settlement monies to make payments to BLM to satisfy invoices raised for fees reasonably incurred in connection with both the 2017 Claim and the present proceedings. That, in my view, deals with both objections to the grant of a proprietary injunction.

46. There is, however, a question as to how the question of reasonableness in relation to the fees incurred can be monitored by Healys. At the hearing, I was told by Mr Edwards that the Partridges would shortly be obtaining advice from leading counsel as to the merits of proceeding with the 2017 Claim against Mr Maguire and Charles Gomez & Co, and it appears that advice in consultation has in fact now been obtained. It is, in my view, appropriate to make the permission to use the settlement monies for the purposes of pursuing the 2017 Claim conditional on the provision to Healys of a note of that advice, as well as a copy of any written advice provided by counsel on this point. I consider that this strikes the right balance between the Partridges' interests in being able to pursue the 2017 Claim if there is merit in doing so, and Healys' interests in ensuring that the settlement fund is not depleted by unreasonable expenditure. That does not imply that BLM cannot be trusted to be the judge of what is reasonable; rather it simply recognises that there is an inevitable element of subjectivity in any such assessment, and Healys should be entitled to see the relevant material in order to form its own judgment.

*Freezing injunction*

47. Given my decision to order a proprietary injunction application, it is not necessary to determine Healys' alternative application for the freezing injunction to be continued. That injunction should therefore be discharged.

48. It is, however, appropriate for me to make some comments on the parties' arguments in respect of the continuation of the freezing injunction, not only because this was fully argued at the hearing, but also because it has a bearing on the form of the order in this regard.

49. Mr Edwards contended forcefully that the freezing injunction should be discharged on the basis that Healys had failed in its duty of full and frank disclosure. The main basis for that submission was the objection that Healys had failed to identify Part III of the 1974 Act as being relevant to its claim. Had it done so, it would (Mr Edwards said) have been apparent that the CFA that formed the basis of Healys' claim was either a contentious business agreement, in which case no Part 7 claim would lie, or if it was not a contentious business agreement then the provisions of s. 69 of the 1974 Act would apply, under which no action may (without the permission of the Court) be brought by a solicitor to recover its costs until a month has elapsed from the date of the bill of those costs. In this case Healys' invoice for its costs was only issued on 1 August 2019. Mr Edwards therefore submitted that in either case Healys' claim against the Partridges was not brought on a proper basis.

50. As I have already explained, I agree that the CFA is indeed a contentious business agreement within the meaning of s. 59 of the 1974 Act, and therefore that a particular procedure – as set out in s. 61 of the 1974 Act – must be followed in order to make a claim for costs under that agreement. I would not, however, have discharged the freezing injunction on this basis, had it been necessary to decide this point. Given the circumstances that I have set out above, Healys application for a freezing injunction was necessarily made in some haste, and the particular procedural requirements of the 1974 Act – whether for contentious business agreements, under s. 61, or for other agreements, under s. 69 – were not appreciated by Healys at the time. There is, however, no suggestion Healys deliberately withheld information in this regard, at the time that the injunction was sought. The procedural issue is, moreover, something that can be corrected now, as I have done, and it is not suggested that Healys would have been (in principle) unable to obtain its freezing injunction if it had commenced its claim via the correct procedural route.

51. Mr Edwards also said that Healys had failed in its duty to make full disclosure of the defences that might be raised by the Partridges to the claim for costs, including not only the possibility of a defence based on wrongful repudiation of the CFA, but also a challenge to the fairness and reasonableness of the CFA within the meaning of s. 61 of the 1974 Act, and other points concerning the level of fees charged by Healys.

52. Again, I would not have regarded these as sufficient grounds to discharge the order. The evidence before HHJ Matthews specifically explained that the Partridges intended to argue that Healys was not entitled to terminate the CFA, and Healys' attendance note of the hearing of 2 August 2019 also records that the judge noted that the Partridges might deny that there was "success" under the terms of the CFA. There was therefore no doubt that the main lines of defence, so far as Healys was aware at the time, were drawn to the judge's attention. What was not discussed was the possibility of an argument under s. 61 of the 1974 that the CFA itself was not fair and reasonable. But the reason for that was that, as already discussed, Healys did not appreciate the relevance of s. 61 at the time that the application was filed.

53. Even if the judge had been aware that there was likely to be a dispute as to whether the CFA was fair and reasonable under s. 61, I do not accept Mr

Edwards' suggestion that this would have painted an entirely different picture of the situation. It was common ground that the effect of a successful challenge to the fairness and reasonableness of the CFA would be that the costs due to Healys would fall to be assessed as if the CFA had not been made; it would not be that no costs would be due at all. That is a difference of degree which, I consider, does not materially alter the assessment of the strength of Healys' claim.

54. Leaving aside the arguments about full and frank disclosure, Mr Edwards' only other objection to the continuation of the freezing order was an argument that the risk of dissipation had not sufficiently been shown by Healys. I do not accept that submission and consider that, had I needed to decide the issue, there was and remains sufficient evidence of a risk of dissipation in this case.

55. In the first place, it is evident that the Partridges avoided revealing to Healys the fact of the settlement with Mr Evans, in circumstances where Healys ought to have been told that this had occurred. That suggests an attempt to avoid precisely what has now occurred, namely a claim by Healys to its cost out of the proceeds of that settlement.

56. Secondly, I accept Mr Virgo's submission that inadequate explanations have been provided for several large withdrawals made from the settlement funds since those were received, in particular a payment to the Partridges' daughter, apparently to repay sums borrowed from her over a period of time, and a payment said to have been to clear a debt in relation to threatened bankruptcy proceedings. Healys' repeated requests in correspondence for explanations of these payments went unanswered, and the explanations eventually given by Mr Partridge in his witness evidence do not sufficiently explain the basis for these payments. Nor has any adequate explanation been given for a transfer of £250,000 to the bank account of the Partridges' daughter.

57. Thirdly, the Partridges' requests for permission to withdraw large sums for expenditure that is not the subject of any real evidence, which I discuss below, also give rise to concerns that the assets available to them are likely to be rapidly dissipated if they are not the subject of an interim injunction.

58. The reason for discharging the freezing injunction is, therefore, not that it should in principle not have been granted, but rather that it is no longer necessary given the proprietary injunction that I have ordered.

59. It follows that the order should simply provide for the discharge of the freezing injunction. There is (contrary to Mr Edwards' submissions) no basis to order that it should be revoked and treated as never having been granted.

**Specific expenditure requests**

60. The original freezing injunction provided for withdrawals from the settlement monies of £1000 per week for each of Mr and Mrs Partridge to cover their living expenses. It has subsequently transpired that the Partridges are currently living with Mr Partridge's mother and do not pay any accommodation costs. On that

basis I have reduced the expenses allowance to £500 per week for each of Mr and Mrs Partridge.

61. Two further expenditure issues merit comment. First, a suggestion was made in correspondence and in the evidence that the Partridges would need to meet legal expenses in relation to Spanish proceedings in which they are seeking to evict the current tenant of the French Castle. No evidence was, however, provided of any specific expenditure that is going to be required in that regard. I therefore do not consider that it is necessary to make specific provision for this in the order.

62. Secondly, the Partridges sought a variation of the freezing injunction to allow periodic withdrawals of large sums rather than weekly withdrawals of their living expenses. The reason given for this was that they wished to pay for veterinary treatment for their dog and private medical treatment for Mrs Partridge. The issue of variation of the freezing injunction falls away with the discharge of that injunction. In any event, by the time of the hearing, the request regarding veterinary expenses was not pursued as it appeared that the expense had been met by the Partridges without further provision for this having been necessary. As to the issue of Mrs Partridge's private medical treatment, no evidence was produced to support this (for example consultant's reports or a quotation from the relevant hospital for the costs of treatment). I would therefore not have considered it necessary or appropriate to provide for this in the freezing injunction; nor do I consider it necessary to make provision for this in the new proprietary order granted following this hearing.

## Conclusion

63. For the reasons set out above, the Partridges are correct to say that the CFA was a contentious business agreement to which s. 61 of the Solicitors Act 1974 applies. The claim should, accordingly, have been commenced as a CPR Part 8 claim rather than a Part 7 claim. I have therefore directed that it should continue as if commenced under Part 8.

64. The freezing injunction is to be discharged, and replaced with a proprietary injunction which permits withdrawals of up to £500 per week for each of Mr and Mrs Partridge for their ordinary living expenses, plus payments to BLM to satisfy invoices raised for fees reasonably incurred on the Partridges' behalf in connection with either the 2017 Claim or the present proceedings.

65. I have made various further directions relating to the determination of this claim. These include in particular an order that the claim should be expedited in order that, if it is well-founded, as much as possible of the settlement monies will remain available to meet the claim.