Claim No: QB-2020-000989

SCCO reference: SC-2020-BTP-001419

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Strand, London WC2A 2LL

Date: 17/08/2021

Before :

COSTS JUDGE LEONARD

- -

Between :

FARRER & CO. LLP	**Claimant**
- and -	
NURGUL YERTAYEVA	**Defendant**

- -
- -

Shaman Kapoor (instructed by **Farrer & Co. LLP**) for the **Claimant**
Christine Middleton (instructed by **CM Costing**) for the **Defendant**

Hearing date: 21 June 2021

- -

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.

.....

COSTS JUDGE LEONARD

Costs Judge Leonard:

1. In March 2020 the Claimant issued a claim against the Defendant in the Queen's Bench division of the High Court. The claim was for payment of a series of ten invoices rendered for legal professional services, performed under a written contract of retainer dated 27 November 2018.

2. In a Defence dated 14 July 2020, to which the Defendant signed the Statement of Truth, almost all of the matters set out in the Particulars of Claim were admitted. These included that the Defendant had instructed the Claimant to provide her with professional legal services in respect of her application for asylum in the UK; that she had been provided with the Claimant's terms of engagement; that on 27 November 2018 she had signed and returned a Letter of Engagement ("LOE"), which together with the terms of engagement formed the contract between the parties; that the Claimant had carried out the work requested by the Defendant in accordance with the contract; that the Claimant had made repeated requests for payment of invoices rendered to the Defendant in respect of the services provided, which were to be settled by a third party, the Defendant's friend Alexander Parkhomenko; that notwithstanding the unpaid bills, the Claimant continued to act for the Defendant on her assurance that the Claimant's fees would be settled in full imminently; that notwithstanding these assurances, the Defendant gave notice of the instruction of new legal representatives on 3 May 2019; and that no previous notice had been provided to the Claimant by the Defendant of the termination of its retainer.

3. The Defendant however denied that she had provided her authority and consent for each and every item of work claimed to have been carried out by the Claimant. She put the Claimant to proof of its right to claim interest, and to proof that disbursements had been paid; she denied that the invoices rendered by the Claimant were statute bills; and she put the Claimant to proof that the work said to have been carried out by the Claimant was in fact so carried out and that the costs and disbursements were reasonably incurred and fair and reasonable in amount. She requested a common law assessment of the Claimant's costs and disbursements.

4. On 11 September 2020 Master Davidson made an order by consent. The order provided for the claim to be stayed and transferred to the SCCO for a detailed assessment of the Claimant's costs pursuant to section 70 of the Solicitors Act 1974 and for the Claimant to serve a final bill. The order gave standard directions for assessment, providing for the Claimant to provide a breakdown of costs and the Defendant to serve Points of Dispute.

5. The Claimant's final bill is dated 18 September 2020. It totals £194,220.36, of which £141,048.80 represents profit costs and £53,171.56 disbursements. The outstanding balance claimed is £123,586.05.

6. Following service of the Defendant's Points of Dispute and the Claimant's Replies, another consent order was made by me on 3 February 2021. That order provided for informed consent to be heard as a preliminary issue. The purpose of this judgment is to address that issue.

7. I should mention that in view of a confidentiality agreement between the parties, two experts instructed by the Claimant have been referred to in this judgment as "Expert A" and "Expert B" rather than by name.

Informed Consent

8. CPR 46 and Practice Direction 46 make provision for the detailed assessment of costs between solicitors and their clients. CPR 46.9(3) sets out the basis upon which the assessment will be undertaken:

> "… costs are to be assessed on the indemnity basis but are to be presumed –
>
> (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
>
> (b) to be reasonable in amount if their amount was expressly or impliedly approved by the client;
>
> (c) to have been unreasonably incurred if –
>
> (i) they are of an unusual nature or amount; and
>
> (ii) the solicitor did not tell the client that as a result the costs might not be recovered from the other party."

9. Practice Direction 46, at Part 6, provides:

> 6.1 A client and solicitor may agree whatever terms they consider appropriate about the payment of the solicitor's charges. If however, the costs are of an unusual nature, either in amount or the type of costs incurred, those costs will be presumed to have been unreasonably incurred unless the solicitor satisfies the court that the client was informed that they were unusual and that they might not be allowed on an assessment of costs between the parties. That information must have been given to the client before the costs were incurred.
>
> 6.2 Costs as between a solicitor and client are assessed on the indemnity basis. The presumptions in rule 46.9(3) are rebuttable."

10. The presumptions at CPR 46.9(3)(a) and (b) may be rebutted if the client did not give informed approval. The principle was described by Mr Justice Holland, in *MacDougall -v- Boote Edgar Esterkin (a firm)* [2001] 1 Costs L.R. 118 (at paragraph 8, addressing similar provisions in the old RSC) in this way:

> "… the quality of the approval has to be such as to raise a presumption. In the course of argument I talked of 'informed' approval and even with reflection I adhere to that concept. To rely on the Applicants' approval the solicitor must satisfy me that it was secured following a full and fair exposition of the factors relevant to it so that the Applicants, lay persons as they are, can reasonably be bound by it..."

11. In *MacDougall* informed approval was lacking. The client had entered into an agreement to pay his solicitors an exceptionally high hourly rate in view of his inability

to pay them, on a monthly basis, for the conduct of ongoing litigation. Albeit a reasonably sophisticated businessman with access to external professional advice, the client had not been given a full and fair exposition of the relevant factors. Among the pertinent factors were that he had been misled in relation to the implications for the purposes of assessment between the parties; he had not been told what his solicitors would claim, as an hourly rate, against his opponent; he was not in a position to understand the likely overall cost to him of the agreement, which went well beyond anything required to compensate the solicitors for a lack of cash flow; and he had not been informed of the very significant financial implications of applying the agreed hourly rate to a substantial body of work already performed, which created a personal liability in excess of £70,000.

12. In *Herbert v H H Law Ltd* [2019] EWCA Civ 527 Sir Terence Etherton MR applied the *MacDougall* test to CPR 46.9(3). A solicitor and a client, in a modest personal injury road traffic accident claim, had entered into a Conditional Fee Agreement ("CFA") which provided for a 100% success fee. The client was unaware of the fact that the success fee had been set at 100% without reference to the litigation risk, which in that particular case was small, if not minimal. It was, rather, part of the solicitor's business model for managing such claims in the post-March 2013 statutory regime, which rendered success fees in personal injury cases irrecoverable from an opponent and capped them at 25% of specified categories of damages recovered.

13. At paragraphs 37 and 38 of his judgment the Master of the Rolls said:

> "Counsel were agreed before us… that "approval" in CPR 46.9(3)(a) and (b) means informed approval in the sense that the approval was given following a full and fair explanation to the client… we agree.
>
> There was some debate before us as to whether it is the client who bears the burden of satisfying the court that express or implied approval was not given or it is the solicitor who bears the burden of satisfying the court that it was given. We consider that where, as here, the client brings proceedings under the Solicitors Act 1974 s.70(1), it is for the client to state the point of dispute and the grounds for it. If the solicitor wishes to rebut the challenge by relying on the presumption in CPR 46.9(3)(a) or (b), the burden lies on the solicitor to show that the pre-condition of the presumption, informed approval, is satisfied. Once the solicitor has adduced evidence to show that the client gave informed consent, the evidential burden will move to the client to show why, as a result of having been given insufficiently clear or accurate or comprehensive information by the solicitor or for some other reason, there was no consent or it was not informed consent. The overall burden of showing that informed consent was given remains on the solicitor."

14. At paragraphs 53 and 54 he set out the court's conclusions:

> "… I do not consider that either HH's justification for its charging model or the 25% cap answer the point that in this country, in the context of a conditional fee agreement, the amount of a success fee is traditionally related to litigation risk, as reasonably perceived by the solicitor or counsel at the

> time the agreement was made. Across the broad range of litigation, it would be unusual for it not to be. It continues to be the case in those limited areas, such as publication and privacy proceedings and mesothelioma claims, where success fees are still recoverable from the losing party. Even taking the sub-set of low value personal injury claims, Mr Ralph's evidence goes no further than that "most" of HH's competitors have adopted the same business model and "many" of HH's competitors charge success fees in the same way. That is insufficient to avoid the need, for the purposes of informed consent of the client under CPR 46.9(3)(a) and (b), to have told the client that the success fee of 100% took no account of the risk in any individual case but was charged as standard in all cases.
>
> Nor was the 100% uplift in the present case any less unusual in nature and amount just because it was capped, as required by LASPO and the 2013 Order, at 25% of general damages for pain, suffering and loss of amenity and damages for pecuniary loss, other than future pecuniary loss. While the level of the contractual cap was not unusual, and its practical effect may have been to reduce the success fee to an amount that was not in all the circumstances exorbitant, it nevertheless remains the case that the starting point of a 100% uplift, irrespective of litigation risk, was and is unusual."

The Points of Dispute

15. The Defendant's Points of Dispute raise the issue of informed consent under a number of points of principle, and against some individual items. Point of principle 2 argues that the hourly rates recorded in the LOE and charged to the Defendant are unreasonably high for an application for asylum. They are more appropriate in high value complex commercial matters. The vulnerable Defendant, having no notion of what a reasonable rate was, did not give informed consent to the rates recorded in the retainer. The Defendant invites the Court to reduce them to the "realistic market rate" (actually the 2010 Guideline Hourly Rates for central London solicitors).

16. Point of principle 3 says:

> "… The Defendant was repeatedly requested by those at the Claimant firm to sign the retainer. The Defendant signed that and the form "Confirmation of Instruction" without either of them being properly and clearly explained to her such that she did not give informed consent to the Claimant charging the vast sums of money they have. Simply obtaining her signature to these documents does not indicate the Defendant, a non-English individual in a state of desperation seeking asylum, gave informed consent. As such these costs must fall away...
>
> Notwithstanding the lack of informed consent, the Defendant only sought the Claimant's help with her claim for asylum in the UK. This is reflected in the second paragraph of the retainer under the heading "The Scope of the Work" …
>
> … It must not be forgotten that the Defendant, a Kazakhstan national, arrived in the UK in June 2018 to attend her daughter's graduation ceremony at university. As events unfolded in her native Kazakhstan

> regarding her former husband she was fearful of a return to that country and wished to seek asylum in the UK. She had no knowledge of the English legal system, lawyers, the cost of seeking asylum, procedure or any other associated work. As such, she was an extremely vulnerable individual and very frightened. The only knowledge available to those who assisted her was that her husband was extremely wealthy…"

17. Point of principle 3 is too lengthy and discursive to reproduce in full, and it is not always clear exactly what point is being made. The key points for present purposes appear to be that the Claimant quoted fees of up to £280,000 for very limited work; that no further work was done beyond sending a letter to the Home Office and attending a formal interview, as the Home Office had not made a decision prior to the Defendant ceasing to instruct the Claimant; that pressure was brought to bear upon the Claimant to sign the LOE as an "urgent requirement" of the Claimant, so that it was signed "arguably" under duress; that there was a demand for her to pay £50,000 on account of costs and that:

> "… In the fullness of time the Defendant has realised that this sum was wholly unreasonable and excessive for the work which she had instructed Farrer & Co to carry out, namely to seek asylum, by their own admission a task to be undertaken within 10 days. The vulnerable Client had no option but to pay the sum requested given her plight, her ignorance of the legal system in the UK and her desperate state. The Defendant now submits that she was the victim of exploitation. Furthermore, the retainer and the conduct of those who encouraged the Defendant to enter into it is, in the Defendant's submission, unenforceable and, as such, no costs are payable to the Claimant firm and all monies held by the firm must be refunded together with interest."

18. Point of principle 4, headed "Shoddy Work", is another lengthy point which might well have benefited from being broken down into separate headings. I will do my best to distil it. It refers to the claimed immigration expertise of the conducting solicitor, Ms Elena Hinchin and her colleague, in-house counsel Mr Lee Jackson and suggests that the work that needed to be done was well within the capabilities of Ms Hinchin. It takes issue with the fees of counsel, experts and other parties instructed by the Claimant:

> "… It must not be forgotten that the initial work that the Claimant firm was to undertake was merely making the application for asylum through the Home Office. Habitually lay individuals with no knowledge of the UK legal system will make these applications themselves. Whether or not those applications are successful is irrelevant. The instructions that were given to the Claimant and borne out by the terms of the retainer were to make a claim for asylum within 10 working days and that those submissions would be posted to the Home Office within 2 days of the retainer being entered into. The Claimant had no way of knowing whether or not that application would be successful and to factor into their retainer innumerable possibilities through to an appeal to the Court of Appeal was wholly unreasonable...
>
> The normal method of seeking asylum at first instance would be:
>
> (a) The solicitor would meet with the Client and obtain instructions, consider background evidence, consider case law, consider evidence from the Client.

(b) Attend the Home Office interview if the Client is vulnerable as in this case.

(c) Obtain medical records from a GP or hospital and obtain a GP or counselling report if necessary and prepare a detailed statement of evidence.

(d) Prepare detailed representations as to why the person should be granted asylum or any form of leave in the UK.

(e) Update the Client and send any chaser letters to the Home Office until a decision is made.

The Defendant submits all this work was well within the capabilities of Elena Hinchin immigration specialist at the Claimant firm without the input of any of the other fee earners or external agents. As such the Court is invited to disallow all or any of the external agents' fees as unreasonably incurred, and contrary to the retainer. The Defendant was never advised of the cost of instructing all or any of them and certainly she did not make an informed decision and consent to the level of expense now sought for them.

Additionally, the provisions of PD 6.1 to CPR 46 are also persuasive – 'if the costs are of an unusual nature, either in amount or type of costs incurred, those costs will be presumed to have been unreasonably incurred unless the solicitor satisfies the Court that the Client was informed that they were unusual and that they might not be allowed on an assessment of costs between the parties. That information must have been given to the Client before the costs were incurred.' The Claimant firm here did not provide the relevant information to the Defendant at all. These costs must fall away."

19. Against individual entries in the Claimant's costs breakdown representing the fees of counsel, Mr Husain QC, the Points of Dispute say:

> "… Leader was not required for this application for asylum, nor was the extent of his fees ever discussed with the Defendant nor did she give an informed consent to them being incurred. These are therefore costs to be borne by the Claimant firm alone."

20. Against the fees of Expert A, the Points of Dispute say:

> "… The Defendant submits that the evidence of…" (*Expert A*) "…was not helpful to her asylum claim and not relied upon. Indeed, the invoice of…" (*Expert A*) "…suggests…" (*they*) "… had to engage in conversations with "experts in Kazakhstan and Russia". As such…" (*they were*) "…not an appropriate expert to advise on in-country issues in Kazakhstan in support of the asylum claim. The Defendant certainly did not consent to…" (*their*) "…involvement or, any such consent which was inferred by the Claimant was not informed consent to…" (*their*) "… instruction. In any event, meetings with such experts are not necessary. Experts are required to assist the Court and provide detailed reports as to facts and circumstances in the country in question. Having meetings with this individual, therefore, is questioned. Offer nil."

21. The Points of Dispute also contend that the attendance of Ms Hinchin at her house on the evening of the day they first met, 23 November 2018 was unnecessary (arguing that Ms Hinchin should have invited the Defendant to the office instead) "and, arguably, only occurred in order to increase overall costs", so that that the Defendant did not make an "informed decision". The same is said as to the attendance of Mr Will Hanson, the Claimant's lead associate in the case, at a reporting interview at the Home Office in Croydon.

22. Some of the issues raised by the Defendant in her evidence, and responded to by the Claimant, seem to me to go beyond the issue of informed consent, but for completeness I have tried to address all of them.

The Claimant's Replies

23. Lengthy Points of Dispute, inevitably, lead to lengthy Replies. It would be inappropriate for me to set them out in full here, but in order to put the evidence (to which I am about to come) in context, I should reprise a summary of the asylum process, and of the strategy by which the Claimant hoped to assist the Defendant in obtaining asylum, as set out briefly by the Claimant in its Replies. That summary is expanded upon and supported by the Claimant's witness evidence and by extracts from the Claimant's file records, exhibited to the witness evidence of both parties.

24. The Claimant summarises the asylum process in this way. An applicant's claim is registered by the Home Office at an "Initial Contact and Asylum Registration" appointment, otherwise known as a screening interview. At that stage, basic questions about an applicant's circumstances and reasons for claiming asylum are asked, and their biometrics taken. The screening interview is largely an administrative process, but some preparation work, says the Claimant, is imperative.

25. Assuming that the Home Office considers after screening that an applicant should be allowed to remain in the UK while he or she claims asylum, it will proceed to schedule a substantive asylum interview.

26. Prior to this second interview, the applicant is invited to provide all evidence in support of their application. This typically takes the form of a witness statement and exhibits, supported by other evidence, which can include country reports, and other expert evidence where appropriate.

27. The Defendant stood charged with serious financial crimes in Kazakhstan, connected to even more severe allegations of criminal conduct of her former husband, Mr Zhomart Yertayev. Mr Yertayev is a high-profile and public figure in Kazakhstan, described in media reports as the head of a business empire and in the Defendant's Points of Dispute as "extremely wealthy". According to press reports, Mr Yertayev was extradited to Kazakhstan from Russia and on 17 November 2020, sentenced to 11 years' imprisonment for embezzling sums which, in sterling, would come to over £200 million.

28. Should the Defendant's asylum claim fail, she risks being deported to Kazakhstan where she would, in the Claimant's view (and on her own evidence) have been exposed

to numerous human rights violations, including the suffering of inhuman and degrading treatment in detention and the denial of a fair trial.

29. To successfully claim asylum, says the Claimant, the Defendant would have to show she was a victim of political persecution under the 1951 Refugee Convention. That would have required an analysis of the criminal allegations against her and Mr Yertayev in Kazakhstan, as well as asylum and extradition proceedings concerning Mr Yertayev in Russia (where the Defendant herself had a right of residence). The Claimant's aim was to discredit the allegations against the Defendant and demonstrate that she was a collateral target in a political attack on Mr Yertayev. Most of the work undertaken by the Claimant focused on understanding, gathering and preparing evidence in relation to the Defendant's entry to the UK and her account of the events which led to her prosecution, which on her case was politically motivated. That required expert reports and local lawyers' witness statements.

30. The Points of Dispute, says the Claimant, are entirely inaccurate in characterising the work to be undertaken by the Claimant to be the submission of an asylum claim over a period of 10 days. That work formed only a very small part of the Claimant's wider instructions, which were to prepare and submit the Defendant's evidence to the Home Office and to assist with her preparation for the upcoming substantive interview.

31. The retainer did indeed (say the Replies) set out the appeal process for the Defendant so as to establish what work was covered and to avoid any potential misunderstanding later on, should the Defendant have had to consider an appeal.

The Claimant's Evidence on the Retainer, the Working Relationship Between the Parties and Her State of Mind

32. Having reviewed in detail evidence provided by both the Claimant and the Defendant, I have concluded that in order to put the dealings between the parties in their proper context, it is best to start with the evidence of the Claimant, which (for reasons to which I shall come) I have found to be more reliable than that of the Defendant, in particular in being consistent with contemporaneous documentary records.

33. The Claimant has produced two witness statements for the purposes of this application. The first is from Elena Hinchin. Ms Hinchin is a Solicitor and a Partner in the Claimant firm and had day-to-day responsibility for the work carried out by the Claimant on behalf of the Defendant.

34. I will first set out Ms Hinchin's account of the relevant events. It begins on Friday 23 November 2018, when she was contacted by Elena Jacobson. Ms Jacobson is the CEO of Infinity Advisory and Management Limited ("Infinity"). Infinity advises high net worth individuals, their families and businesses on managing their legal affairs in the UK and internationally. Ms Jacobson is a professional contact of Ms Hinchin, who may refer clients to her.

35. Ms Jacobson asked Ms Hinchin to meet her and the Defendant at Côte Brasserie in Hampstead on the same day. Ms Hinchin was on annual leave and so initially declined, but was in the end persuaded by Ms Jacobson who explained that the Defendant was distressed and was seeking urgent advice on her immigration position.

36. Ms Hinchin, accordingly, met Ms Jacobson and the Defendant at Côte Brasserie on 23 November, partway through what she recalls was a lunch meeting. She recalls being there for between 30-40 minutes, during which time the parties conversed in Russian, in which both Ms Hinchin and Ms Jacobson are fluent.

37. The Defendant provided them with the following account of her situation. She was, she said, unhappy with her immigration advisor, Mr Innokenty Alekseev, whom she had only recently discovered was not a qualified English lawyer. On Mr Alekseev's advice, the Defendant had registered her initial application for asylum by attending a screening interview at the Home Office.

38. Ms Hinchin was not aware of what exactly the Claimant had submitted to the Home Office at that stage, but she knew, and informed the Defendant, that if she wanted to provide additional grounds to the Home Office for requiring leave to remain in the UK, she had 10 working days from the date of the screening interview in which to do so. If the Defendant had been misadvised, then she had until then to rectify or add to her asylum registration application.

39. The Defendant told Ms Hinchin that she wanted to instruct her immediately to assist. Ms Hinchin confirmed that she would be happy in principle to do so, but she would first have to agree fees with the Defendant and carry out AML checks and (as she puts it) other "onboarding" procedures, including agreeing terms of engagement and a retainer letter.

40. Ms Jacobson and Ms Hinchin provisionally discussed fees at the Côte Brasserie meeting. Ms Hinchin explained that this type of asylum case, if done properly, could be expensive, especially if expert evidence, and evidence from Russian and/or Kazakhstani lawyers, was required. She also explained that, given the complexities, it was most likely that the Claimant would need to instruct counsel as this is how Ms Hinchin would usually conduct cases of this size and complexity.

41. The barrister would, Ms Hinchin said, be someone similar in level to the Defendant's then current barrister, Samantha Knights QC, but Ms Hinchin would advise replacing her with someone she considered more experienced. Ms Hinchin put potential fees at around £250,000-£350,000 for the first stage of work, though she warned that they might end up being significantly higher depending on the circumstances. Ms Jacobson gave the extreme example of another specialist central London immigration firm charging £6 million for a complex asylum case.

42. After Ms Hinchin left the Côte Brasserie meeting, the Defendant contacted her several times that afternoon asking to meet her again, and for further advice. Ms Hinchin said that the matter could wait until the following Monday and that she would be unable to properly advise her until she had seen her Home Office documents and agreed a formal client retainer.

43. The Defendant was, however, insistent in continuing to seek reassurance and support on her case. Ms Jacobson was also pressing Ms Hinchin, via WhatsApp, to meet with the Defendant that evening, as Ms Jacobson was unable to do so herself. Eventually Ms Hinchin agreed to attend the Defendant's house on the same evening, as that was where the Defendant's immigration documents were and as she had been informed that the Claimant's fees and instruction had been agreed in principle.

44. At the Defendant's house Ms Hinchin read the Home Office papers, which confirmed that the Defendant had until 3 December 2018 to submit additional grounds for claiming asylum. Ms Hinchin advised, accordingly, that the Defendant would have to move quickly in order to submit any further submissions to the Home Office ahead of the deadline. She did not mention the retainer or its terms, other than to say that the Claimant's relationship with the Defendant would need to be agreed and formalised before the Claimant could properly start work.

45. Ms Hinchin denies putting any pressure on the Defendant to instruct the Claimant. She recalls advising the Defendant that, whoever she decided to instruct, she should act quickly, given the upcoming Home Office deadline of 3 December 2018.

46. Ms Hinchin and the Defendant arranged to meet at the Claimant's offices on the following Monday, 26 November 2018, at 3pm. At some point before then (Ms Hinchin does not recall exactly when) the Defendant explained that Mr Alexander Parkhomenko, whom she described as a very close friend, confidant, and business associate of hers, would be paying the Claimant on her behalf. The Defendant made it clear that Mr Parkhomenko was authorised to act as her agent and that Ms Hinchin should contact Mr Parkhomenko when seeking instructions on (or approval of) fees, who would in turn seek confirmation from the Defendant to pay the same.

47. The purpose of this meeting on 26 November 2018 was to explain to the Defendant the terms of the Claimant's retainer; and to discuss her case in more detail. Shortly before the meeting Ms Hinchin asked her secretary, Alice Lane, to print two copies of the draft LOE. Ms Hinchin took those copies to the meeting. This was done at the Defendant's request, as she said that she did not have a printer at her house and that her preference was to discuss the LOE in person. At the meeting, Ms Hinchin went through the draft LOE line by line with the Defendant. Although it was written in English, Ms Hinchin explained its terms in Russian.

48. In the meeting Ms Hinchin explained that the Defendant had the right to terminate the retainer at any time and that, subject to the Defendant's consent, the Claimant would be paying a 10% commission to Infinity for introducing the Defendant. Ms Hinchin then telephoned Ms Jacobson so that the Defendant could hear their conversation, which they held in Russian. She explained, with Ms Jacobson on the phone, that the Claimant has a professional relationship with Infinity under which it agrees to pay 10% commission to Infinity on the total amount charged for work that Infinity refers to the Claimant; that the 10% commission is a cost borne by the Claimant, not the Defendant, who would continue to be charged at the Claimant's usual rates for a case of this nature. The Defendant confirmed she was happy with this arrangement.

49. Mr Russell Cohen, a senior partner in the Claimant's Private Client team, also attended part of the meeting. Mr Cohen attended because he had ultimate oversight of the Claimant's immigration team (which sits within its private client team). He was involved at that stage because this was a sensitive case for the Claimant to take on, given that the Defendant was facing serious allegations in Kazakhstan of financial crime. Ms Hinchin explained to the Defendant at the meeting that Mr Cohen was not an immigration practitioner and would have no substantial involvement in the day to day running of the Defendant's case, which she would manage with her team. Mr Cohen spoke to the Defendant in English (being unable to speak Russian) and Ms Hinchin translated into Russian anything the Defendant wanted clarification on.

50. At the meeting, Ms Hinchin and the Defendant also discussed the Defendant's case and the Claimant's proposed strategy. They went through Home Office documents and criminal case materials that had previously been sent on to Ms Hinchin by Ms Jacobson. Ms Hinchin again explained in general terms (but in more detail than previously) how she runs such cases, the asylum process itself, and the likely evidence involved. She advised that a specialist barrister, Raza Husain QC, should be instructed, given the legal and factual complexity of the Defendant's case, whose costs would be charged in addition to the Claimant's own estimated fees.

51. Ms Hinchin explained that she considered Mr Husain to be possibly the leading barrister working in the area of asylum, and advised that his involvement would be hugely beneficial to the Defendant's case, given its size and complexity. She further explained that it looked likely that the Claimant would need to contact the Defendant's lawyers in Kazakhstan and/or Russia in order to obtain evidence relating to the criminal charges against her and her husband, as well as political and legal experts to support her factual evidence whose fees would be payable in addition to the Claimant's fees.

52. Ms Hinchin advised the Defendant that she should send her statement of additional grounds to the Home Office by 29 November 2018. The deadline was 3 December 2018, and with the 1 and 2 December 2018 being a weekend, she needed to send it by the 29 November 2018 in order to ensure that it arrived ahead of the deadline. Failing to file her statement of additional grounds by 3 December 2018 would not, says Ms Hinchin, in itself have resulted in the Defendant's deportation, though it could have negatively affected the prospects of her application when it later fell for determination.

53. During the meeting, the Defendant provided her own views on the case, and expressed no issue with anything Ms Hinchin explained to her. In respect of the Claimant's fees, Ms Hinchin explained that the Defendant had the option to go to other firms, who would prepare her asylum claim for significantly less money. In doing so she might risk compromising on the quality of her asylum application, although she could succeed nonetheless. Ms Hinchin also explained that there are several ways to prepare a claim. The Claimant takes what is seen as the most risk averse approach, but asylum cases can be won with a less thorough approach to evidence.

54. The Defendant clearly stated that she wanted to take the absolute safest approach and that she wanted a '10 out of 10' job. Her asylum application was a priority and she wanted to instruct the Claimant. She did not raise any concerns about the level of the Claimant's fees, or her ability to pay them, until after she terminated the retainer.

55. The Defendant did however question the value of Infinity's continuing involvement and asked whether she needed to continue to instruct Infinity in order to be able to instruct the Claimant. Ms Hinchin explained that this was not necessary and that the Claimant and Infinity provided entirely separate services. At the Defendant's request, Ms Hinchin called Ms Jacobson to explain that the Defendant felt that Infinity's services were not required and that the Defendant was terminating Infinity's retainer.

56. At the end of the meeting Ms Hinchin agreed with the Defendant that she would finalise the retainer letter and send the Defendant a copy for her final review and signature. The draft LOE had been prepared by Mr Hanson, and a marked copy produced by Ms Hinchin shows the amendments made following parties' discussions in the meeting.

57. The amendments included that Mr Parkhomenko would be a primary point of contact; that the Claimant's estimated fees would be £200,000-£280,000 (not including counsel and third party fees); and that the Defendant would make an initial payment on account. They also recorded the 10% commission on the Claimant's fees payable to Infinity.

58. Following the meeting, in the morning of 27 November 2018, Ms Hinchin sent an internal email to Mr Cohen with the revised (and final) version of the LOE, in which she reported:

> "fee agreed for stage 1 without any satellite litigation (such as third country) is £200-280, excluding counsel etc."

59. Later that morning, Ms Hinchin sent the Defendant a final version of the LOE by email for her review. As the Defendant had no printing facilities she attended the Claimant's offices and met Ms Lane, who provided the Defendant with a hard copy of the Claimant's LOE, confirmation of instruction letter and the Claimant's Terms of Engagement. The Defendant signed the LOE, along with a separate confirmation of instruction of the Claimant, the latter confirming that the Claimant had requested that the Defendant transfer £50,000 on account of future fees and costs.

60. On 29 November 2018, at their request, Ms Hinchin sent the Defendant and Mr Parkhomenko a pro forma invoice for £50,000 to be held on the Claimant's client account. She explained to the Defendant, in an email of that date, that the £50,000 was:

> "… for funds which we will hold on account for you, until the end of our engagement. We have agreed that this money will be used to offset our final invoice or be returned to you, in the event of a remainder".

61. Mr Parkhomenko responded the same day with:

> "Got the invoice, will make a transfer tomorrow. Thank you very much!"

62. Ms Hinchin's account of the events of 23 and 26 November 2018 is supported by a witness statement provided by Ms Jacobson, who is careful to make clear that she (by which I take her to refer to Infinity) stands to recover a 10% commission on any fees recovered from the Defendant by the Claimant. I will summarise the extent to which her evidence adds to or deviates from that of Ms Hinchin.

63. Ms Jacobson explains that she was contacted on WhatsApp by Mr Alekseev, a professional contact, on the evening of 21 November 2018. Mr Alekseev was then the Defendant's immigration adviser. He had contacted Ms Jacobson because he was not an English qualified lawyer and he wanted to arrange proper legal representation for the Defendant in her asylum claim. Mr Alekseev sent to Ms Jacobson documents relating to the Defendant's asylum claim, and asked that she consider the matter on an urgent basis because the Defendant had just formally registered her asylum claim at the Home Office and would need immediate legal advice.

64. Ms Jacobson suggested that she contact Ms Hinchin, whom she regards as one of the leading practitioners in complex asylum claims, very impressive with clients (with particular expertise with high net-worth clients) and with a deep understanding of

immigration and asylum cases concerning CIS states (which as I understand it are Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, and Uzbekistan). Russian also being Ms Hinchin's native language, as it is the Defendant's, Ms Jacobson considered Ms Hinchin, with whom she had worked before on complex immigration cases, the best solicitor for the Defendant's case.

65. Ms Jacobson then arranged the Côte Brasserie meeting which Ms Hinchin, as she herself relates, was reluctant to join (being on annual leave), but was persuaded to do so by Ms Jacobson. Ms Jacobson recalls that both she and Ms Hinchin explained to the Defendant that this type of case, if done properly, could be expensive and that specialist counsel would need to be instructed. Among the complicating factors was that the Defendant appeared to have a valid Russian residence visa, which meant that she would have to demonstrate to the Home Office that it was not safe for her to return to either Russia or Kazakhstan.

66. To Ms Hinchin's initial estimate of fees of around £250,000—£350,000, but possibly significantly higher, Ms Jacobson added that she had seen one complex asylum case quoted at £6 million by another firm. The Defendant said that she had approached Gherson Solicitors (among others) but had not instructed them and that she had paid Mr Alekseev professional fees amounting to hundreds of thousands of pounds.

67. At the end of the meeting, Ms Hinchin said that she saw no issue in principle with the Claimant acting for the Defendant if the Defendant so chose, subject to conflict clearances and the appropriate checks. She said that the Defendant would also be required to sign a retainer letter formalising the terms and scope of the instruction.

68. That afternoon, the Defendant sent to Ms Jacobson a WhatsApp message asking for Ms Hinchin's phone number. Ms Jacobson provided it, assuming that the Defendant had decided to instruct Ms Hinchin. Ms Jacobson was subsequently told by the Defendant that she had requested that Ms Hinchin attend her house that day to assist her further, but that Ms Hinchin was reluctant to attend (again, as she was on annual leave). Ms Jacobson ended up calling Ms Hinchin and persuading her to do so as, due to travel commitments, Ms Jacobson was herself unable to assist.

The Defendant's State of Mind

69. Ms Hinchin and Ms Jacobson offer their impressions of the Defendant herself in similar terms. Ms Hinchin says that the Defendant at all times appeared to be highly intelligent and sophisticated. At the Côte Brasserie meeting she was understandably distressed. It appeared that she had been misled and wrongly advised in relation to the process and procedure of preparing and submitting her asylum application. Moreover, she had been estranged from her husband and some of her children, and was facing serious criminal allegations abroad. Nonetheless, it was clear that she fully understood what was discussed at the meeting.

70. The Defendant, says Ms Hinchin, spoke and read English sufficiently competently. She demonstrated her ability to converse in both English and Russian in numerous meetings with the Claimant and her counsel, Raza Husain QC. Ms Hinchin however nearly always communicated with the Defendant in Russian, as it is her first language.

71. Ms Hinchin describes the Defendant as a high-profile and successful businesswoman: a lawyer in Kazakhstan, and impressively accomplished in other areas. The Defendant was, Ms Hinchin says, formerly a Board Member at RBK Bank OA, one of the largest banks in Russia, where she was regularly presented with corporate and other official documents for her review and approval. She and her husband were members of the Kazakhstan "intelligentsia" and would regularly organise various high profile charity events attended by sophisticated businessmen. In 2016, the Defendant debuted as a TV presenter on the Russian channel RBK. The Defendant was very well travelled, having spent time in Russia, Dubai, France, and England among other countries.

72. Ms Hinchin says that, based on their communications throughout the Claimant's retainer, it was apparent that the Defendant fully understood the Claimant's advice and gave instructions with informed consent. The Defendant informed her that, prior to instructing the Claimant she had approached other well-known immigration practitioners (for example, Fladgate LLP), which typically charge fees which are similar to (and often higher than) the Claimant's fees in this case. She would accordingly have expected the Defendant to have had a reasonable basis of comparison of the likely fees of the Claimant.

73. Ms Jacobson also describes the Defendant, according to background information supplied by Mr Alekseev and in the media, as a well-known member of what might be described as Kazakhstan's intelligentsia. The Defendant confirmed at the Côte Brasserie meeting that she was a lawyer in Kazakhstan as well as a non-executive director of a large Kazakhstani bank, Bank RBK JSC. Ms Jacobson already knew she had worked as a TV presenter.

74. Ms Jacobson says that during the Côte Brasserie meeting, the Defendant, while in a state of understandable distress at the time, remained in full control of the conversation, and understood perfectly well what was explained to her. This was illustrated she says by the fact that, despite Ms Hinchin and Ms Jacobson considering themselves fluent in Russian, the Defendant corrected their language several times, and criticised Ms Jacobson's choice of footwear.

The Letter of Engagement

75. The pertinent terms of the LOE signed by Mr Cohen of the Claimant firm and by the Defendant on 27 November 2018 are as follows:

> "… As I understand them, your objectives in instructing us are to advise you in respect of your asylum claim in the UK. Depending on the circumstances, you may also be looking to obtain further protection in the UK on the basis of a Human Rights claim and other form of protection as may be available under the 1951 Refugee Convention, the European Convention of Human Rights and UK applicable laws (for example Humanitarian Protection or Discretionary Leave).
>
> In the first instance, we have agreed that we will write to the Home Office as necessary and to ensure that you do not miss the current 10 working-days deadline to make some submissions. We explained to you that these will be posted on Thursday, 29 November 2018.
>
> Please let me know if I have misunderstood the position.

In the course of this retainer we expect to:

- liaise with you and/or your representatives and/or other 3rd parties, as may be required from time to time. This includes your extradition legal team, your chief legal advisor and counsel instructed in relation to your matter;

- assist you to collate all required information and/or evidence to the best of our abilities;

- receive all necessary information and documents for the preparation of your application;

- review and comment on the same;

- advise as to available and recommended options, and give strategic advice;

- draft future applications, legal representations and other relevant documents;

- book any necessary appointments and submit and/or post applications on your behalf to the Home Office; and

- attend appointments and/or interviews with you where possible and/or needed.

The above is a non-exhaustive list.

We will continue to liaise and correspond with other members of your legal team and your representatives and assist all parties as may be required. On the conclusion of your application, we will also continue to collate any relevant evidence which may come to light during the time your application is pending and prepare updating material for the Home Office, should this be needed.

In the event that decision making by the Home Office in respect of your application is substantially and unreasonably delayed and Judicial Review proceedings are necessary as a result, we will also assist and advise in relation to these proceedings.

Should your application to the Home Office be granted, we will continue to act for you in respect of remaining matters which will need to be finalised after you are granted an immigration status in the UK. In the event that the Home Office refuses your application, we will continue to act for you in respect of any challenges and appeals you may wish to bring against such decision. Subject to your instructions, we will continue to act for you until all available remedies are exhausted or until a result is reached which you consider to be satisfactory.

We have already discussed complications which may arise in your matter and have agreed to address and explore these further once we are instructed. As we have explained, this may mean that litigation be required in relation to certain preliminary aspects of your case…

… We will be acting for you. Our duties and responsibilities are owed only to our named clients and we do not accept responsibility for my work to anyone else. Solicitors do, however, owe duties to the Court and other authorities which may on occasion override our duties to our clients.

We understand that our principal point of contact will be yourself and your Alexander Parkhomenko. Unless you tell us otherwise, we will assume he is authorised to give instructions on your behalf and that we can provide him with information confidential to you…

… We believe that your best interests are served if one partner has overall responsibility for you as a client. I will be that partner although it may not always be appropriate for me to do the work personally. I will, however, always be available if you would like to discuss the way we are working for you.

On this occasion day-to-day responsibility will be taken by Elena Hinchin, whom you have met, supported by Will Hanson, an Associate in our Disputes team with experience in this area. As agreed, we will instruct counsel in relation to your matter where necessary. We may also need to consult others here; if anyone else becomes substantially involved we will let you know. In any event you should feel able to contact any of the people named to ask about your work…

… We have agreed that work in relation to your matter will be charged at an hourly rate. The details of and applicable hourly rates for those likely to be involved in your work are:

- Russell Cohen, Partner- £600

. Elena Hinchin, Partner - £480;

- Lee Jackson, Counsel - £420;

- Will Hanson, Associate - £315; and

- David Whitworth, Paralegal - £200.

These rates are exclusive of VAT (which will be added when it becomes applicable, when your asylum and/or residence application is concluded). Further details of the way we charge are included in the enclosed Terms of Engagement…

… We will endeavour to keep you up to date of the likely cost of work on a regular basis (no more than monthly unless otherwise agreed). The scope of work for this matter could vary considerably, depending on the circumstances that arise during the course of the matter. Much will depend on how events unfold in Kazakhstan, Russia and the UK, the situation concerning a third safe country (potentially, Russia, France and Dubai in your case), the possibility of having to travel to other jurisdictions, the amount of evidence that needs to be collated and complexity of legal proceedings.

The cost of the matter and the time taken to complete it will also depend on your ability to provide instructions in a timely fashion, to respond to queries raised whether by me or the other parties and your input into provision of information and evidence.

However, in general terms, the more contentious the matter, the greater the necessary time commitment and the higher the costs. Although it is difficult to

provide an accurate fee assessment at this point, I expect that the core aspects of work relating to your asylum claim will cost in the region of £200,000 - £280,000 at first instance, for work done up until but excluding the need to lodge an appeal (not including Counsel and other third-party fees - see below). For the avoidance of doubt, this estimate does not encompass all aspects of the work referred to above. As agreed, this estimate is based on all information and instructions we have to date, without additional complicating factors and on the assumption your asylum claim is straightforward (for example, if third country issues do not arise and Judicial reviews and other satellite proceedings do not take place).

I will let you know in good time with an explanation of any additional costs.

In due course, I hope we will have a reasonably clear idea of what can be achieved at what effort and what risk, and I will then be able to provide you with a clearer idea of the options that face you, including the respective costs of pursuing them. Clause 4 of our enclosed Terms of Engagement contains further information about our charges.

We expect to incur expenses of third parties such as counsel, investigators and experts in various areas, during the matter which it will be your responsibility to meet. Their fees would be in addition to my estimates above and can often increase the cost of a matter significantly. We will endeavour to let you know in good time the expected cost of before instructing them. This matter is likely to involve litigation. Special considerations therefore apply which we have discussed with you and which will be discussed with you further…

… As we explained to you, on this occasion we have an arrangement with Elena Jacobson under which we pay 10% of fees received from you in respect of work for which she introduced you to us. Our advice to you is independent from any relationship we have with Elena Jacobson and you are free to raise questions on all aspects of the transaction if you wish. Any information you disclose to us is confidential and shall not be disclosed to her without your consent.

… Given the size and complexity of the work being undertaken for you, we believe it is appropriate for us to agree a limit on the exposure that this firm should have to you. This will be the aggregate of our outstanding invoices, unpaid disbursements and unbilled work-in-progress, less any money held by us on account of costs (see below). In the event that the exposure limit is reached, we shall not be obliged to continue to work for you until steps are taken to reduce the exposure. The exposure limit for you is £10,000.

I should emphasise that the limit is there for the benefit of the firm rather than you and your liability to us to meet our fees and disbursements shall not be reduced if for any reason we do not operate within the limit even though we are entitled to do so….

… I hope all this is clear, but if you have any queries about this letter or the enclosed booklet please get in touch with me as soon as possible…"

The Defendant's Evidence on the Retainer, the Working Relationship Between the Parties and Her State of Mind

76. The Defendant's own evidence comes in two parts. The first is a statement to which the Claimant has had the opportunity to respond in accordance with the court's directions. The second is a further statement, served without direction or permission, challenging Ms Hinchin's and Ms Jacobson's evidence paragraph by paragraph. The Claimant has not taken issue with the inclusion of that evidence in the hearing bundle, or sought to put in further evidence by way of response. That, in my view, was wise, as neither statement, on proper analysis, assists the Defendant to any material extent.

77. The Defendant says that both she and her former husband (Mr Yertayev) had been extremely successful in their chosen careers, both being high-profile and attracting significant media attention. However, very serious charges of alleged embezzlement were raised in Kazakhstan against Mr Yertayev after they had left Kazakhstan to reside in Moscow. Whilst the Defendant was on holiday in Paris, having boarded a train to London to attend a graduation ceremony for her daughter, she became aware that criminal proceedings had been issued against her by the Anti-Corruption Agency of Kazakhstan for alleged fraud. She later understood that a warrant was also issued for her arrest, although she had done nothing wrong.

78. The Defendant was, and remains, in extreme fear of being returned to Kazakhstan as she believes that she would be arrested, subjected to torture and denied the right to a fair trial.

79. When she arrived in London, the Defendant was desperate to seek asylum, but knew nothing of UK procedures, nor any English lawyers who could assist. She asked Mr Parkhomenko, whom she describes as her ex-husband's business partner, and he gave her a telephone number for Mr Alekseev. The Defendant met Mr Alekseev and they signed an agreement. Later on, while at the Home Office with Mr Alekseev, submitting her asylum application she learned that he could not be her legal representative as he did not possess the appropriate licence or qualifications and was moving to Austria. The Defendant was shocked: she says that she had paid Mr Alekseev £70,000.

80. Mr Alekseev asked the Defendant to get in touch with Ms Jacobson and Ms Hinchin. He said that they would be assisting him on the case as he was currently in Vienna. The Defendant called Elena Jacobson on 23 November 2018.

81. The Defendant does not remember exactly where she first met Ms Jacobson and Ms Hinchin, but it is clear that in her evidence she is describing the Côte Brasserie meeting. As she puts it, Ms Jacobson and Ms Hinchin were trying to calm her down and to persuade her that they would do everything in their capacity to keep her in Great Britain, but indicated that to do so she must hurry to sign an agreement with them. They insisted that she must send a witness statement to the Home Office before 29 November 2018 if she was not to have "serious issues" with the UK immigration authorities. Although she does not recall fees being discussed at this point, she says that Ms Jacobson scared her in subsequent telephone conversations with references to fees in the millions of pounds.

82. The Defendant's evidence in relation to her meeting of 26 November with Ms Hinchin at the Claimant's offices largely focuses on her disposing of the services of Ms

Jacobson. Her account of how that happened is rather different from that of Ms Hinchin, but that is not really to the point for present purposes. She refers in her evidence to a written agreement with Ms Jacobson, printed out and ready for signature at the Claimant's offices, but I think that she must be confusing this with the draft LOE.

83. The Defendant also seems, in her evidence, to confuse the introduction fee paid by the Claimant to Infinity with fees sought by Infinity from the Defendant herself for Ms Jacobson's time. I will come back to that: for present purposes it is sufficient to note that in her second statement, the Defendant denies any knowledge of the commission arrangement expressly referred to in the LOE.

84. The Defendant says little of substance about the matters discussed in the 26 November meeting other than that Ms Hinchin did not go through the LOE with her "line by line" or explain all the details of the documents the Defendant was signing. The Defendant was assured, she says, that the average cost of services in London for the preparation of a witness statement (which she also describes as "the minimum costs") would be about £200-280,000, which she initially assumed to be an inclusive figure covering all costs and which she understood she would have to pay if she was not to be deported. In her second statement the Defendant says that she asked whether the fees indicated were normal and was advised to go check elsewhere if she wished, but to remember that she had limited time and must act quickly. Ms Hinchin told her that the fees of the Claimant were "standard fees across town" and that the Claimant agreed to provide a discount, knowing that it was not possible to go elsewhere because of time pressure.

85. In her second statement the Defendant also implicitly accepts that Ms Hinchin was not referring to the preparation of a witness statement by 29 November but says that Ms Hinchin did not clearly explain that the urgency related to "additional grounds" paperwork. She has since discovered, she says, that the Claimant could have requested more time on her behalf.

86. The Defendant signed the LOE, she says, as she could not believe the possibility of British lawyers tricking her. She believed that she would not be able to find another lawyer since she was told she had until 29 November 2018 to send a witness statement to the Home Office to avoid deportation. This is, the Defendant says, how and why she signed the LOE.

87. With regard to the LOE itself, the Defendant says that she signed all documents without reading them. She focused only on the main value of the contract. This was because of her state of mind (she describes herself as a "vegetable" who just wanted help); her limited English, when she was under pressure and did not have the time or energy to look for translators; her reliance upon the reputation of English solicitors after her bad experience with Mr Alekseev; and her unfamiliarity with UK immigration law.

88. The Defendant says that she was informed by Ms Hinchin that she was a specialist immigration lawyer with extensive experience so the Defendant expected she would be able to deal with the matter, and did not realise at the outset that Ms Hinchin would need to involve a whole team of lawyers at her office together with numerous experts and a QC.

89. The Defendant says that from the first meeting, she said that her ex-husband was under arrest and they had a big financial problem. She is now aware that the investigations

and enquiries which the Claimant firm attempted to carry out were completely unnecessary to address her asylum claim. They were more interested in the Defendant's ex-husband and his financial affairs than in her asylum claim. Any instructions they obtained from the Defendant were not, she says, informed instructions, nor was her informed consent given, as no thorough explanation was given as to why it was necessary to carry out the work that they did. The Defendant also believes that the Claimant deliberately delayed in progressing her claim.

90. Now, says the Defendant, she is aware that the Claimant involved many individuals in discussions, conferences, reporting and the like which she did not consent to, nor were they essential to her asylum claim. She did not receive thorough advice as to why all these attendances and individuals were necessary to assist with her claim, so was never in a position to give her clear consent to any of those attendances and the work carried out by the Claimant. At every turn the Claimant and those they chose to instruct were charging exorbitant costs which were not explained to the Defendant, who could not have given her informed consent as she was misled as to the normal cost.

91. Now the Defendant knows, she says, that a claim for asylum is based on facts surrounding the country which the applicant leaves. Her current adviser has dealt with the asylum claim and relied upon a country expert's report. A barrister was not needed. The Defendant says that she does not understand how "size" or complexity could play any part in her asylum claim. Her witness statement (which has been submitted to the Home Office by her current advisers) only needed to describe events in Kazakhstan and needed only one expert report to support it, which she now knows should cost about £8,000.

92. The Defendant denies that she was ever a Board member of a Russian bank or, she says, of any bank. She was, she says, an independent board member of a bank in Kazakhstan, which she describes as a different status. She had not, prior to instructing the Claimant, sought assistance from other law firms, as she did not have time.

93. As for Mr Parkhomenko, the Defendant says that he was only a business partner of her ex-husband. He was never a friend of the Defendant, nor a close business associate. He had a power of attorney from the Defendant to handle monies in her Russian account and was only authorised to make payments by agreement with the Defendant. That arrangement lasted until her bank was stripped of its licence and funds could not be recovered from her account. She had no further contact with Mr Parkhomenko after that.

94. The Defendant also refers in evidence to her Russian bank going bankrupt: exactly what happened and when is not entirely clear, other than that at some point her source of funding was cut off or disappeared. It would appear from the evidence of Ms Hinchin that the Defendant's assets were frozen, and that she persuaded the Claimant to continue working unpaid on the basis that she could obtain funds from other sources.

Conclusions

95. Before I deal with disputed individual items or groups of items, I will set out and explain my conclusions on the role of Mr Parkhomenko, which has a bearing on informed consent; on the extent to which the Claimant's fees and disbursements might be

characterised as "unusual"; and on whether these last two issues affect the extent to which the Defendant is bound by the contract of retainer between the parties.

96. It is necessary at this point to address some issues of principle. Applying the guidance of the Court of Appeal in *Herbert v HH Law Ltd*, the Defendant has raised issues of informed consent. The questions then to be answered are (bearing in mind that the overall burden of establishing informed consent remains with the Claimant): (a) whether the Claimant has adduced evidence to discharge the initial burden of showing that the Defendant gave informed consent, and if so (b) whether the Defendant has discharged the consequential evidential burden of showing that the information given to her was insufficiently clear, accurate, complete or otherwise inadequate to establish informed consent.

97. In every aspect of the informed consent case raised by the Defendant I am, for reasons I shall explain, quite satisfied that the answers are, respectively, (a) yes and (b) no.

98. That is first because where the evidence of Ms Hinchin and Ms Jacobson conflicts with the evidence of the Defendant, I prefer the evidence of both Ms Hinchin and Ms Jacobson. Their evidence is clear, credible and reasonably consistent. There are minor inconsistencies: Bank RBK JSC is a Kazakhstani bank, for example not a Russian one (and it was at the heart of the allegations of fraud levelled at the Defendant), but that is to be expected of two people recalling the same events as accurately as they reasonably can. Ms Hinchin's evidence in particular is consistent with the documentary record, and it recounts the sort of dealings one would expect between solicitor and client in a case of this kind.

99. The Defendant's evidence, in contrast, is vague, muddled, riven with inconsistencies, inconsistent with contemporaneous records and in parts plainly misleading. I do not want to be unfair to the Defendant, so I stop short of saying that she is deliberately untruthful. It is sufficient to observe that she has been through some very difficult times and that, perhaps in consequence, her perception of events seems to be quite distorted, so that she is giving evidence of what she wants to believe rather than what happened.

Conclusions: The Role of Mr Parkhomenko

100. The Defendant denies, in her evidence, that Mr Parkhomenko was a friend of hers, and yet she has signed a statement of truth to a Defence which admits that he was. The Claimant's files also record her referring to Mr Parkhomenko as a friend.

101. I accept Ms Hinchin's evidence to the effect that the Defendant described Mr Parkhomenko to her as a trusted friend and confidant and confirmed that he had her authority to instruct the Claimant on her behalf. Mr Parkhomenko's authority was recorded, accordingly, in the LOE. I also accept Ms Hinchin's evidence to the effect that on 26 November 2018 she went through a draft of the LOE with the Defendant line by line and agreed the amendments incorporated in the final, signed version.

102. Notably those amendments included the substitution of Mr Parkhomenko for Ms Jacobson as a point of contact, with the authority to give instructions and receive confidential information; the sum agreed to be paid on account; and the addition of the passage dealing with Infinity's commission. This is consistent with Ms Hinchin's evidence, not with the evidence of the Defendant.

103. I accept that, as Ms Hinchin confirms, she was, as instructed by the Defendant, in regular contact with Mr Parkhomenko until he ended contact shortly before the Defendant terminated the Claimant's retainer. Mr Parkhomenko was, she confirms, fluent in Russian, with good English. He assisted with various matters including sourcing experts and arranging translators. He never questioned the level of the Claimant's fees or invoices, or any third party fees.

104. My impression is that the Defendant is attempting to recast Mr Parkhomenko's role because she cannot otherwise deny authority for expenditure authorised by him (to which I shall come). Notably, however, she does not specifically deny that he had her authority to instruct the Claimant. Plainly he did.

Conclusions: Whether the Claimant's Charges or Services Were "Unusual"

105. Strictly speaking, whether this issue falls under the heading of "informed consent" is questionable. It has to do with the presumption of unreasonableness at CPR 46.9(3)(c) rather than the presumptions of reasonableness at (a) and (b), and it does not turn on consent as such. In this particular case, however, these considerations would appear to overlap. The question of "unusual" costs and disbursements has been addressed in evidence and submissions, so I will address it now, before going on to consider specific issues of consent.

106. It should be borne in mind that the presumption of unreasonableness at CPR 46.9(3)(c) rests on two factors; first of all, that the relevant cost or disbursement is unusual in nature and amount, and second that the solicitor does not advise the client that, as a result, (my emphasis) the unusual costs might not be recovered from the other party.

107. The words "as a result" seem to me necessarily to show that the presumption will apply only where there is a possibility of recovering costs from another party, as in most litigation. In an asylum claim, recovery of costs seems to me to be, at best, highly unlikely, so my primary conclusion would be that CPR 46.9(3)(c) has no application. If I am wrong about that, I remain of the view that the CPR 46.9(3)(c) presumption does not apply, because it is wrong to characterise either the Claimant's charging rates or its approach to the work to be done as "unusual".

108. The Defendant says that when she arrived in the UK she did not have any knowledge of the sort of charges that will normally be rendered for an asylum claim. Now, she says, she knows that an adviser, like her current adviser, Kadmos Consultants Ltd, will charge about £10,000, and that it is sufficient only to get a country report from one expert at a cost of £8,000.

109. As Mr Kapoor for the Claimant points out, I have no evidence by which to judge a "normal" level of fees and disbursements for an asylum claim. This assertion is based, it would seem, on nothing more than the Defendant's specific experience of instructing Kadmos Consultants Limited.

110. I would go further than Mr Kapoor and suggest that there is no evidence before me as to what is the "normal" or "standard" cost of an asylum claim because there is, and can be, no such thing. There might be some sort of average cost (though I have no evidence as to that either) but it would not follow that anything above that is "unusual" for the purposes of CPR 46.9(3)(c).

111. One might as well speak of a standard cost for conducting personal injury litigation, which may be relatively cheap or extremely expensive. The cost will depend on the facts of the case and the client's instructions. The notion of judging the Claimant's hourly rates, or the scope of work undertaken, to be unusual by reference to a comparison with a small immigration practitioner based in Harrow and acting on much more limited instructions, is simplistic to the point of fatuity.

112. Miss Hinchin is in my view entitled to compare the level of fees typically charged by the Claimant for matters such as this with rival firms such as Fladgate, who like Ms Hinchin act for high net worth clients and charge accordingly. There is no proper basis for characterising the hourly rates rendered by such firms as "unusual". From my own experience I am aware of the high fees that may be claimed in complex asylum and extradition claims, and this was a complex claim, for reasons to which I shall come shortly.

113. In short, I find no reason to characterise the Claimant's hourly rates as "unusual". They are characteristic of specialist central London firms representing high net worth clients. As for the scope of the services offered, for the reasons I shall set out under the heading of informed consent, they represented an approach to the case that the Defendant, knowing that simpler and less expensive options were available, wished to take. There is nothing unusual about following a client's instructions, or charging accordingly.

Conclusions: The Signing of the LOE

114. The Defendant denies reading the finalised LOE, or any other documents she signed. If that were true (and I do not accept that it is) it would not, on established principles, free her from the contractual arrangements to which she agreed. Nor could it offer any proper basis for a finding to the effect that she did not give informed consent to those contractual arrangements. That would be the case even if the Defendant did not, by virtue of her discussions with Ms Hinchin on 26 November, already know what the finalised LOE said.

115. To the extent (which is not entirely clear) that the Defendant says that due to her limited command of English, she would not have been able to understand the LOE if she had read it, then I prefer the evidence of Ms Hinchin to the effect that the Defendant was capable of understanding it. Attendance notes on the Claimant's file of consultations with Mr Husain QC support Ms Hinchin's evidence that the Defendant at the time had a workable command of English, better than she is now prepared to admit. Her witness evidence does not appear to have been prepared with the assistance of a translator, and I do not accept that her request for a translator at the hearing before me reflected a real need.

116. The Defendant says that she did not have time to get a translator, but one of Mr Parkhomenko's functions was to obtain translators when needed. Had the Defendant needed or wanted a translator, she could have obtained one with a single telephone call to Mr Parkhomenko. In any case, her evidence fails to address the fact that her discussions with Ms Hinchin before the LOE was signed took place in her own language. Her limited command of English was not a factor.

117. As for the Defendant's state of mind, it is common ground that she was in a state of distress. She was not, however, a "vegetable" as she describes herself, nor incapable of

making informed decisions. It would take medical evidence to establish that, and I do not have it.

118. In any case the Defendant's evidence in this respect is belied by the fact that, having satisfied herself that the Claimant could do everything that she needed, she saw fit to dispense with Infinity's services. Notably she also instructed the Claimant to investigate the possibility of suing Mr Alekseev, discussed in more detail below. The Claimant's file records extensive dealings with a client who knew what she wanted and set out to get it. It supports the evidence of Ms Hinchin and Ms Jacobson to the effect that the Defendant was sufficiently in control of her situation to make informed decisions.

119. I have accepted that the Defendant is a sophisticated and intelligent woman with significant and varied business experience. Obviously her legal qualifications are not UK qualifications but they add to the evidence of her capabilities. The Defendant now attempts to distance herself from her own experience, abilities and qualifications, for example, by arguing that because she was an independent director of a bank she was not actually a director. That is self-contradictory. Her role may not have had to do with the bank's day to day business but it will by definition have carried much responsibility. A person capable of performing such a role, however distressed or worried she may be, does not sign contractual documents without reading or understanding them.

120. The suggestion by the Defendant that she was pressurised by Ms Jacobson and Ms Hitchin into entering into a contract of retainer with the Claimant is transparently untrue. It was she who forced the pace, not Ms Hinchin. All Ms Hitchin did was warn the Defendant, quite rightly, that a limited amount of time was available for filing a statement of additional grounds.

121. It is characteristic of the way in which the Defendant's case is presented that, having pressured Ms Hinchin into interrupting her leave for the second time to attend the Defendant's home on the evening of 23 November, the Defendant now complains that Ms Hinchin should instead have told her to attend the Claimant's office (which is what Ms Hinchin was asking her to do) and characterises the visit as a device to run up costs. There is no substance in that.

122. The Defendant's evidence also confuses the filing of additional grounds by 3 December with the filing of a full witness statement by 3 December. In her second statement she blames that on a failure by Ms Hinchin to advise clearly on what was to be done. I do not accept that Ms Hinchin is responsible for the Defendant's inaccurate evidence. I bear in mind the equally inaccurate assertion in the Points of Dispute to the effect that the Claimant did no work beyond sending a letter to the Home Office and attending an interview, which must have been based upon the Defendant's instructions and can scarcely be blamed on Ms Hinchin.

123. When the Defendant says that she now knows that the Claimant could have requested more time for filing grounds, she does not (in common with her other assertions as to how asylum claims are supposed to be made) identify the source of that information. Nor for example does she address whether that is likely to have worked, or would have been a good idea. It seems to me that any competent solicitor, newly instructed, with a workable deadline expiring in a few days, will advise the client to meet it rather than to ask for more time and hope for the best.

124. The Defendant comes from a background of extreme wealth. The Claimant's file records her explaining, in the context of the charges brought against her in Kazakhstan, her personal reasons for moving around funds to the value of about $23 million. She is the sort of client that one would expect the Russian-speaking Ms Hinchin and her rivals in similar firms to represent.

125. One would equally expect the Defendant (at least until she ran into financial difficulty) to instruct a firm such as the Claimant or one of its rivals, and on the evidence it is more likely than not that the Defendant did have an idea of the sort of charges that would be rendered by such rivals. The Claimant's file records the Defendant's confirmation that Mr Alekseev took her to a meeting and a further consultation with Samantha Knights QC as well as to see a solicitor at Fladgate. Notably, the Defendant stated that Mr Alekseev told her that he could undertake the asylum claim for £90,000 and that she could save money by instructing him rather than Fladgate. She was by no means entirely uninformed.

126. Ms Hinchin advised the Defendant that she could instruct less expensive solicitors for the asylum claim. My conclusion is that, as with the dispute with Infinity and the investigations into suing Mr Alekseev, she instructed the Claimant in the knowledge that less expensive solicitors would be available.

Conclusions: The Scope of the Service to be Rendered by the Claimant

127. With regard to the services to be rendered by the Claimant, the likely cost of those services and alternative approaches, as in all other matters I prefer the evidence of Ms Hinchin to that of the Defendant. Ms Hinchin made it clear to the Defendant that it was not essential to her claim to undertake all of the work proposed by the Claimant. The point was to maximise the chances of success, but that would come at a cost, which she explained and which is consistent with the amount actually billed.

128. The Defendant says, variously, that she was told that the fee estimate of up to £280,000 recorded in the LOE was the average cost for preparing a witness statement; that it was a minimum cost; that it represented a massive discount; and that she was told that she could check the price for other services, but was discouraged from doing so for lack of time.

129. That evidence is inherently inconsistent, and I do not accept any of it. The Claimant's file records support Ms Hinchin's evidence to the effect that the Defendant was advised that she could go about her asylum claim in a less thorough and less expensive way, although it might affect the prospects of success of her claim. Mr Husain QC subsequently gave her the same advice, and the Defendant made it clear that she attached such priority to the asylum claim that she wanted the most thorough job possible done. The assertion in the Points of Dispute that the success of an asylum claim is "irrelevant", is bizarre: the success of the claim was crucial to the Defendant, as she says herself.

130. The approach recommended by the Claimant focused not only upon affairs in Kazakhstan but upon the personal position of the Defendant and her ex-husband. Her case was that she and her husband were being targeted for political reasons and the strategy recommended by the Claimant was aimed at establishing that.

131. As the LOE made clear, that involved obtaining support from experienced counsel as well as experts and lawyers abroad, such as the Russian lawyers who had acted for her ex-husband. It was, as I have said, quite right to describe the Defendant's asylum claim as a complex one, given that the aim was to establish that the criminal charges against the Defendant and her ex-husband were politically motivated, and the complications attendant, for example, on the Defendant's right of residence in Russia; the whereabouts of members of her family; and the possibility that she had entered this country illegally (it would seem that by the time the Defendant travelled to London from Paris she was aware that she would be arrested in absentia, as ordered by a Kazakhstani court on the date of travel).

132. As Ms Hinchin pointed out at the time, it would have been possible to sidestep the complexities so as to prepare an asylum application on a limited budget. That is not what the Defendant wanted from the Claimant, nor was it incumbent upon the Claimant to encourage the Defendant to take such an approach.

Conclusions: Informed Consent to the LOE and the Scope of Work

133. I do not believe that from the outset the Defendant indicated to the Claimant, as she implies, that she was facing financial difficulty. Her evidence in this respect is vague, not to mention inconsistent with the general thrust of her evidence to the effect that the Claimant was attempting to exploit her wealth. Her position was rather that it would be necessary to obtain her funds from Russia. It was later that she ran into difficulty with the freezing of assets and, it would seem, the collapse of the bank. If she anticipated any difficulties in meeting the Claimant's estimated fees at the outset, she kept that to herself.

134. It seems to me that as at the time the retainer was signed, the Claimant had taken all steps one could reasonably expect, in the limited time available, to obtain the Defendant's informed consent both as to the terms of the LOE itself and the scope of the work proposed to be undertaken by the Claimant. The Defendant fully understood the nature of the services being offered by the Claimant and the attendant potential cost, and she chose to avail herself of those services. As Ms Hinchin points out, the Defendant did not once take issue with the Claimant's fees and disbursements until after she had, without warning, terminated the retainer.

135. I regard the allegation that the Claimant exploited the Defendant as a gross and unfair distortion. She complains that the Claimant and Mr Husain focused on her wealth, but her money, and her use of it, was at the heart of the case against her. As she has admitted in her defence, the Defendant encouraged the Claimant to continue working (well beyond the maximum exposure provided for in the LOE) on promises of imminent payment which were never kept. It would not be unfair to characterise that as exploitative.

136. For those reasons, I do not accept that the Claimant, by virtue of offering inadequate or misleading advice to the Defendant about the appropriate method or potential cost of making an asylum claim, thereby failed to obtain informed consent from the Defendant either as to the terms of the LOE or as to the scope and potential cost of the work to be undertaken by the Claimant.

137. The Defendant is bound by the terms of the LOE. As to the work done, as the Defendant admits in her Defence, the Claimant acted on her instructions. It is not admitted that she authorised every step taken, and to the extent that individual tasks are challenged they will be addressed in this judgment.

Ms Sheizon's Statement

138. Before turning to individual items, I need to mention that the Defendant has produced a witness statement from Ms Sheizon, her current immigration adviser. As with the Defendant's second statement, it was served without direction or permission. The Claimant is not objecting to its admission into evidence and only points out (rightly) that its evidential value, for present purposes, is minimal to none.

139. Ms Sheizon's statement refers to the events at the beginning of May 2019, when Ms Sheizon was first consulted by the Defendant. Ms Sheizon refers to a fixed idea on the Defendant's part that Ms Hinchin had threatened in a telephone conversation to arrange her deportation if she did not pay the Claimant's outstanding fees.

140. Whilst I have no reason to doubt Ms Sheizon's evidence, nor her observation that the Defendant was severely distressed, the Defendant herself has offered no evidence to support the proposition that this purported threat was ever made. For that reason, I could attach little or no weight to the allegation (if that is what it is) even if it were not inconsistent with the evident professionalism exhibited by Ms Hinchin throughout the course of the retainer. Such conduct would have been profoundly and uncharacteristically stupid on Ms Hinchin's part. Such a threat could never have been made good and if, for example, the Defendant had recorded the conversation, that could have ended Ms Hinchin's career. I do not find the possibility that Ms Hinchin might have behaved in that way to be remotely credible.

141. It may be that the Defendant was at the time distressed and panicked by the possibility that she could not afford to see her asylum claim through, compounded by the fact that she had allowed the Claimant to carry on working on promises of payment that she did not (and perhaps could not) keep, and in consequence had misunderstood something Ms Hinchin had said.

142. Equally it may be that the Defendant's distress was contributed to and her judgment affected by what must have been a profoundly painful incident in March 2019 when a daughter attempted suicide. I cannot know. Ms Sheizon's evidence does seem to me however to illustrate the fact that even when the Defendant's stated recollection of events is entirely frank it is not particularly reliable.

Specific Items: Counsel's fees

143. I accept that the Defendant understood and gave informed consent to the instruction of Mr Husain QC. Samantha Knights QC (also from Matrix Chambers) had previously been instructed, on behalf of the Defendant, by Mr Alekseev (and the fact that the Claimant's file records the Defendant suggesting that Ms Knights had been misled by Mr Alekseev into believing that he was a solicitor belies her claim not to have understood at the time the distinction between a solicitor and a barrister).

144. I accept Ms Hinchin's evidence to the effect that in the meeting of 26 November 2018 Ms Hinchin recommended that Mr Husain, whom she saw as possibly the leading advocate in the area of asylum, replace Ms Knights as advising barrister. Evidently the Defendant accepted that advice. She admits that she trusted the advice of Ms Hinchin, even if she now tries to characterise it as exploitative and improper.

145. The Defendant authorised the instruction of counsel in the LOE and she understood at the time of signing the LOE that Mr Husain was to be instructed. That was consistent with the very thorough approach to the asylum application recommended by the Claimant and authorised by the Defendant. For the reasons I have already given, I am quite satisfied that every appropriate step was taken to ensure that the Defendant was fully and properly informed when taking that decision.

146. I do not believe that the Defendant was unaware that the cost of instructing counsel would be additional to the fees quoted by Ms Hinchin. That was explained to her by Ms Hinchin before the LOE was signed by the Defendant, and it was repeated in the LOE itself.

147. The Defendant now says that she did not consent to the instruction of counsel, which is clearly untrue; that his instruction came as a surprise, which it evidently did not; and that instructing him was contrary to the contract of retainer, which it plainly is not.

148. She also says that she was unaware of the level of fees that would be incurred on instructing Mr Husain. His fees total £20,370. This is described in the Points of Dispute, with characteristic melodrama, as "staggering", which (again) it is not. The figure may readily be compared with the £20,000 that, according to the Defendant in a meeting of 14 March 2019, Mr Alekseev had told her he had paid to Samantha Knights QC for one brief meeting and one consultation.

149. It is not a necessary component of informed consent that a client be advised in precise terms of the prospective cost of instructing counsel, but evidently the Defendant had a reasonable idea of the level of fees that were likely to be involved. One has to bear in mind also that although the LOE offered an estimate only for the Claimant's fees, Ms Hinchin had in the Côte Brasserie meeting already offered an overall estimate of up to £350,000, or even more.

150. The Defendant authorised the instruction of Mr Husain and attended several consultations with him. The proposition that the instruction of counsel was unnecessary has no substance: it rests, again, upon a quite insupportable proposition that there is only one appropriate way in which to go about an asylum, which would exclude the use of counsel. That is not so, and it is what the Defendant wanted. The Defendant wanted all available resources to be put into her asylum claim, and that included the instruction of prominent counsel.

151. The Defendant now complains about the frequency and length of her consultations with Mr Husain, but she did not do so at the time. Nor did she take issue with the level of counsel's fees when they were billed in February and March 2019. She continued to promise payment. I have seen nothing to suggest that if the Defendant had been aware in advance of the exact cost of instructing Mr Husain she would have declined to do so. On the contrary, with the evidence indicates that she would have authorised those fees without hesitation.

Disputed Items: Experts' Fees

152. The Defendant says that she understood that Ms Hinchin, as a specialist immigration lawyer with extensive experience, would be able to deal with the case for her and that she did not realise that she would require a team of lawyers, together with experts and counsel. The first intimation that she had of any experts' fees was in an email from Mr Hanson on 19 February 2019.

153. I do not accept that. I have already found that the Defendant was aware of the terms of the LOE, which explained that others within the Claimant firm would assist and the need for support from experts, foreign lawyers or other third parties who might be retained to assist the claim. I also accept Ms Hinchin's evidence to the effect that she told the Defendant on both 23 and 26 November 2018 that experts and Russian and Kazakhstani lawyers would be needed to support her case.

154. Ms Hinchin explained to the Defendant the importance of obtaining expert evidence to support her case that she could not return to Kazakhstan (of which she is a national) or Russia (where she had a valid residence permit). That would include showing that the criminal allegations against the Defendant were baseless and politically motivated; and that, should the Defendant return to either of these countries, she would be subjected to numerous human rights abuses, including inhuman and degrading treatment, unlawful detention, and the denial of a fair trial. The Claimant therefore sought legal and political experts who could report to the Home Office on the Defendant's behalf about these issues in Kazakhstan and Russia. She says, and I accept, that the procurement of experts is usually done before an applicant's main statement is drafted, which is why this was a priority at the outset of the Claimant's instruction.

155. Ms Hinchin explains that the Claimant took a "two part" approach to instructing experts in this case. The first part would be for the expert to provide a report on wider and more general issues, and the second part was to apply that analysis to the specific facts of the Defendant's case. The Claimant had received large volumes of criminal case materials from Russia and Kazakhstan which took some time to translate, organise and analyse. Before this was done, the experts could not provide a complete opinion. In order to prevent delay therefore, the Claimant instructed the experts to progress the report as far as they could without the underlying documents, which would later be revised once the underlying evidence was available. This was she says clearly explained to and agreed with the Defendant on several occasions. An attendance note from the Claimant's file records a telephone conversation on 6 February 2019 in which the Defendant was pressing for progress and Ms Hinchin was explaining the two-stage approach, designed to minimise delay.

156. The Defendant says that she was not properly informed of the cost of experts, in accordance with the terms of the LOE. I address this when considering the position in relation to each of the experts with whose fees the Defendant takes issue.

Disputed Items: Expert B

157. Mr Hinchin explains that Expert B is an intelligence company with expertise in Kazakhstan. Expert B was instructed to prepare an expert report on the political aspects of the Defendant's case, supporting her case that the allegations against her were politically motivated, rather than based on any meritorious claim. Expert B's

involvement was, she says, of particular value because they were able to use their in-country network to uncover evidence that would not be available through public source searches or general country reports.

158. In an email dated 11 January 2019, Ms Hinchin recommended to Mr Parkhomenko that the Claimant instruct two experts she believed to be crucial to the Defendant's case. One was an expert on Russia, who could give an opinion on the Russian legal system, the relationship between the Russian Federation and Kazakhstan and the political context. The other was Expert B, which could report on Kazakhstan matters relevant to the Defendant's asylum application. Ms Hinchin provided fee quotes for both, and Mr Parkhomenko approved them. Ms Hinchin mentioned that an expert in human rights and prison conditions in Kazakhstan would also be needed, but suggested that she first have access to relevant materials prepared by Russian lawyers (I believe this to be a reference to Mr Yertayev's Russian lawyers), which might avoid duplication and save cost.

159. With regard to Expert B, Ms Hinchin said:

> "… we have now met the expert twice and…" (*they have*) "…given u…preliminary view. I think that…" (*they are*) "…an exceptional quality expert…." (*Ms Hitchin explained her reasons for saying so by reference to Expert B's specific areas of expertise, contacts, and ability to obtain information confidentially, and continued*) "… fee estimate is £20,000-£25,000 plus travel expenses (as… will travel to KZ to meet with some… contacts)…"

160. As to the fees of both recommended experts, Ms Hinchin said:

> "… I would like to go ahead and instruct both these experts asap (today or tomorrow if I can) as these are an essential part of the case and will form our strategy to a considerable degree…. However, to do so, I need confirmation of fee approval from you please (as these expenses are in addition to our legal fees)."

161. Mr Parkhomenko replied:

> "Elena, rates are unescapable, so, please do."

162. In his email to both Mr Parkhomenko and the Defendant on 19 February 2019, Mr Hanson provided a broad update in relation to expert evidence. He reported that Expert B had produced a useful first report and recommended that they travelled to both Kazakhstan and Russia to undertake further research. As to the cost of that research, he passed on the expert's opinion

> "… that the total cost of the second phase of the report (including a week's travel to Moscow, Almaty and Astana) would be £20,000. Our view is that the further travel and research would be important and beneficial for your case, though of course it is up to you if you would rather not incur further expense on this. Would you mind confirming whether you are happy for these further fees to be incurred, before we respond…"

163. Ms Hinchin confirms that Mr Parkhomenko agreed these fees by telephone. Mr Hanson confirmed that in an email to Mr Parkhomenko on 26 February 2019.

164. The Defendant complains that Expert B was instructed before she was advised of their potential fees. She says that she did not receive proper advice as to those fees and their level, so could not have given informed consent to them. This ignores the authority that the Defendant had conferred upon Mr Parkhomenko.

165. Mr Hanson made it clear in his email of 19 February 2019 that Expert B had completed the first phase of their work and that the fees to which he referred were for the second phase. If the Defendant had in any way been surprised or dissatisfied at that, one would have expected her to say so at the time, and she did not. The obvious conclusions are first that she was quite content for Mr Parkhomenko to authorise the instruction and the fees of experts, and second that she most probably knew what had been discussed with and authorised by Mr Parkhomenko, because he would have told her. Ms Hinchin says, in fact, that the Defendant was particularly pleased Expert B was involved, as she had previously met the reporting expert and had been impressed.

166. In any event Mr Parkhomenko was authorised, both by the Defendant's direct instructions to Ms Hinchin and in accordance with the terms of the LOE, to instruct the Claimant. If the Defendant was in any way dissatisfied with the way in which he went about that (and she has given no such indication) that would be a matter to be resolved between her and Mr Parkhomenko. It would not relieve her of the obligation to meet fees approved by her authorised agent, nor is it open to her to argue that there was any absence of informed consent on her part, where authority was sought and obtained from her authorised agent.

167. Ms Hinchin points out that (excluding VAT) ultimately Expert B billed within the level of fees approved by Mr Parkhomenko following her first email of 11 January 2019. Both the Points of Dispute and the Defendant, in her evidence, refer to Expert B charging commission, but that is a misreading of the words " Expert Witness Commission" in one of Expert B's invoices: no commission was paid or payable.

168. The Defendant's suggestion that Expert B's fees were inflated, and that it was only necessary to obtain a "country report" for £8,000 is, as I have already observed, based on a simplistic notion of the appropriate way to undertake an asylum claim, offered on the authority of no one other than the Defendant herself. Expert B's fees were commensurate with the particular work that Expert B was instructed to do.

169. I accept, as Ms Hinchin says, that the Defendant was kept fully apprised of Expert B's instruction, the nature of the work to be undertaken by Expert B and the likely fees involved, either directly or through Mr Parkhomenko. At each stage, appropriate authority was obtained by the Claimant to incur Expert B's fees.

Disputed Items: Expert A

170. The Defendant says that she does not recall Expert A and that she did not consent to their instruction nor to any fees that they would charge. This is notwithstanding that in his updating email of 19 February 2019 to the Defendant and Mr Parkhomenko, Mr Hanson said:

> "… We also met with…" (*Expert A*) "… who we felt was less strong on the issues we wanted to cover, so we have not instructed…" (*Expert A*) "…to prepare a report at this stage. We are currently researching other options…"

171. This email was obviously written on the understanding that both the Defendant and Mr Parkhomenko knew who Expert A was. If either of them had been surprised by that understanding or by the mention of Expert A, one might have expected them to say so, and evidently they did not say so.

172. The true position would seem to be set out in the evidence of Ms Hinchin, who explains that Expert A is an academic whose expertise includes geopolitics and migration regimes in Russia and Kazakhstan, and politics in Central Asia more widely. The Claimant approached Expert A as someone who could potentially opine on human rights abuses in Kazakhstan as well as the Russian asylum process. The latter point was of particular relevance as Mr Yertayev had been granted asylum in Russia before it was subsequently (and, Ms Hinchin believes, probably unlawfully) revoked.

173. A preliminary call on 20 December 2018 and two short subsequent meetings on 11 January and 13 February 2019 were held between the Claimant and Expert A. It was ultimately decided that Expert A would not be suitable, as they were unable to demonstrate that they had sufficient knowledge of the matters on which the Claimant had sought their opinion.

174. Ms Hinchin confirms that the Defendant was aware of and consented to the Claimant approaching Expert A to test their suitability as a witness. When the Claimant initially approached Expert A, Expert A had indicated that their reports usually cost within the region of £6,000, which Ms Hinchin confirmed afterwards on the phone with the Defendant. Ms Hinchin also confirmed to the Defendant that Expert A would be charging for their time in meeting, and the Defendant agreed to that. Ultimately Expert A charged £2,200 for the preliminary research they had done on the Defendant's case and for two meetings.

175. There is little by way of documentary evidence before me in relation to the authorisation of Expert A's fees, but Ms Hinchin's account is consistent with the approach evidently taken by the Claimant in relation to other experts, of obtaining authority for fees in advance. As I have observed, such documentary evidence as I do have indicates that the Defendant did in fact know about the involvement of Expert A. No issue of informed consent arises.

Disputed items: The Dispute with Infinity

176. This is the first of a series of items which, it would appear, are disputed on the basis that the Defendant instructed the Claimant only to assist her with her asylum claim. I am not quite sure whether this is based on the proposition that she simply did not ask the Claimant to deal with anything else, or that she should not have to pay for any work performed by the Claimant at her request but not specifically covered by the LOE. Neither proposition stands up to examination.

177. Infinity sought fees of £7,000 from the Defendant for Ms Jacobson's time. At the Defendant's request (in fact, at her insistence) Ms Hinchin, who explained to the Defendant clearly that she could not represent the Defendant against Infinity, played the role of a mediator and in that role was able to negotiate a settlement of £5,000.

178. Now the Defendant says that this was nothing to do with her, because it was a dispute about the commission payable by the Claimant to Infinity, which is to confuse two

different issues. She also says that she was never informed of the commission arrangement, yet elsewhere in her evidence says that Ms Hinchin told her not to mention the commission arrangement. Both cannot be true, and both are in any event entirely inconsistent with the express references to the commission arrangement in the LOE.

179. The Defendant also says that she only agreed to pay £5,000 to Infinity when "pressured" by Ms Hinchin to pay up or go to another lawyer. That is, again, a distortion. As the Claimant's file records, the Defendant accepted the settlement on the basis that if she did not pay, she would probably end up spending a comparable sum on legal representation. She made that pragmatic and sensible decision without any pressure from Ms Hinchin, as the Claimant's file shows.

180. The Defendant was properly informed of the commission arrangement, both verbally and in writing, and she was also aware that Infinity was seeking payment for services rendered directly to her by Ms Jacobson. She asked Ms Hinchin to help her resolve that. Ms Hinchin was reluctant to do so, first because of conflict of interest and second because, as she told the Defendant, the sum of money in issue was small and costs could quickly become disproportionate. Ultimately however she was, without putting herself in a position of conflict, able to broker a deal between the Defendant and Infinity. The Defendant requested those services, and she is responsible for paying for them.

Disputed Items: Tremark Associates Limited

181. This is another item disputed by the Defendant on the basis that it had no bearing on her claim for asylum, notwithstanding that she expressly authorised the relevant expenditure.

182. The Claimant's file records the fact that the Defendant wished to sue Mr Alekseev in order to recover the money that she had paid him. Ms Hinchin advised that this needed to be cost-effective and the Defendant agreed. Mr Hanson suggested that a tracing agent could be used to obtain useful background information, and advised that the cost would depend upon the thoroughness of the investigation. On 8 March 2019, Mr Hanson sent an email to the Defendant advising that Tremark Associates Limited ("Tremark"), an investigator regularly used by the Claimant, could supply a background report on Mr Alekseev at a cost of either £195 plus VAT or £275 plus VAT, depending upon how quickly the report was produced. The Defendant chose the higher fee.

183. Now the Defendant says that Tremark's fee was not explained to her as "being extremely high" and that as she has no idea what fee she should pay for a background investigation into Mr Alekseev, she did not make an informed decision as to the level of fee to pay.

184. I can find nothing in this. The notion that the Defendant could not provide informed consent to Tremark's fee merely because she had no expertise in the fees to be charged for this sort of investigation is insupportable. In any case, the Defendant offers nothing to substantiate her assertion that Tremark's fee was "remarkably high": it seems perfectly reasonable to me. The Defendant authorised the work, and she must pay for it.

Disputed Items: Mr Hanson's Attendance at Croydon

185. The Defendant complains about being charged for the attendance of Mr Hanson at two interviews in Croydon, when he was not allowed to join her. She says that the Claimant, with appropriate immigration expertise, should have known this and characterises the cost (as ever) as deliberate overcharging. She argues that as she did not understand that the attendance of Mr Hanson on these occasions was not in her interest, she did not authorise it on an informed basis.

186. Ms Hinchin says that she advised the Defendant that in her view the Claimant's attendance was important given the risks involved in the Defendant's case. What would ordinarily be a routine appointment was complicated by the fact that the Defendant had received a "BAIL 201" notice on 14 February 2019 stating that she had been granted immigration bail.

187. Ms Hinchin believed this had been issued in error, but it nonetheless gave rise to the increased risk that the Home Office might detain the Defendant at the reporting appointments, or that the Defendant would be questioned on issues that she might need immediate assistance with. Under the circumstances it was appropriate to have someone in close proximity on standby. Ms Hinchin was also mindful of the service-level expectation of the Defendant, given that she had previously complained about being sent to the Home Office unaccompanied by her previous representative.

188. Ms Hinchin advised the Defendant that it would be more cost efficient for Mr Hanson to attend this than for Ms Hinchin to do so. She took the view that he would be able to provide support and comfort to the Defendant, who otherwise would have to attend the appointments alone. She made it clear to the Defendant that it was ultimately her decision whether she wanted to be accompanied and, if so, by whom.

189. It was agreed that Mr Hanson would attend in case there were any issues. Ms Hinchin warned the Defendant that Mr Hanson might be refused entry into the Home Office building itself. It was her experience that whilst solicitors are often allowed to attend such appointments, their entry is also sometimes refused.

190. Mr Hanson was refused entry on both occasions, though at the first appointment on 4 March the police outside the Home Office building told him (as the Claimant's file records) that the Defendant could call him if she had any issues and they would allow him to assist her. On each occasion, Mr Hanson remained close by and in contact with the Defendant, so he could provide her with assistance should she have questions, or run into difficulties. Fortunately however, the appointments ended up being straightforward. Ms Hinchin recalls that the Defendant was grateful for Mr Hanson's attendance at what were inevitably stressful appointments for her.

191. The Defendant's consent to Mr Hanson's attendance is further confirmed in her WhatsApp exchange with him on 31 March 2019 ahead of the second appointment: a message from Mr Hanson to the Defendant reads:

> "… I'm intending to join you again for your reporting appointment tomorrow morning in Croydon, in case there are any issues (though I expect it will be straightforward again)…"

192. The Defendant responded with a suggested meeting time. Ms Hinchin states that as the first two reporting events were uneventful, the Claimant then advised the Defendant that they did not think it was necessary for Mr Hanson to continue accompanying her.

193. The Defendant now dismisses this work as unnecessary, but she has dismissed almost all the Claimant's work as unnecessary. In fact, this cautious and supportive approach was very much part of the level of service the Defendant wanted. She did authorise the work. It was undertaken in her interest and the suggestion of deliberate overcharging is as unfair as the various other accusations levelled by the Defendant at the Claimant.

Summary of Conclusions

194. I find the Defendant's evidence to be unreliable and I prefer the evidence offered on behalf of the Claimant. I do not believe that the Defendant's recollection of events is sound, and the version of events she has presented is highly distorted.

195. The proposition that either the Claimant's agreed charging rates or the overall costs and disbursements incurred on the instructions of the Defendant should be judged to be unusual in nature and amount by reference to a notional standard cost for an asylum claim is entirely unsupported by evidence and is, in my view, insupportable in principle.

196. I do not accept that the Claimant's hourly rates, as agreed in the Claimant's letter of engagement, are, properly judged in context, of an unusual nature or amount.

197. Nor do I accept that the scope of the work undertaken by the Claimant, or the Claimant's fees and disbursements overall are, properly judged in context, of an unusual nature or amount.

198. I do not accept that the retainer arrangements agreed between the Claimant and the Defendant lack any element of informed consent. I do not accept that the Defendant signed the Claimant's letter of engagement without knowing or understanding its contents. I do not accept that at any relevant time, she was in such a state of distress that she was unable to make an informed decision on her relationship with, or the instructions to be given to, the Claimant.

199. I find that the Defendant (as she admits in her defence) instructed the Claimant to provide the services which the Claimant did provide, and that the overall level of costs and disbursements incurred as a result is commensurate with her instructions.

200. The Defendant is a sophisticated, intelligent and highly accomplished person with a background of very significant wealth. She understood the level of service the Claimant proposed to offer, she wanted that level of service and she was prepared to undertake the expenditure attendant upon that level of service, because she wanted to give her asylum application every chance of success.

201. I find no substance in the proposition that the fees of Mr Husain QC should be disallowed on the basis that the Defendant did not give informed consent to those fees. Mr Husain was instructed with a view to making the strongest possible application for asylum. The Defendant understood that; she understood that his fees would be in addition to those quoted by the Claimant; she had a reasonable idea of the likely level of fees; and she agreed to all of that. It was not a condition of informed consent that she

be notified of Mr Husain's fees in advance, and had she been so notified she would, on the evidence, have agreed to them.

202. I do not accept that any of the individual items or groups of items in the Claimant's breakdown challenged by the Defendant on informed consent grounds (whether fees or disbursements) were incurred without her informed consent, or that any of the disbursements incurred by the Claimant on the Defendant's behalf were incurred without her informed consent.

203. On the evidence, the Defendant turned to less expensive advisers because she could not pay the Claimant for the services that she had authorised (although, as she admits in her defence, for some time she persuaded the Claimant to keep working, unpaid, on her assurances that she could).

204. I regard the allegations of overcharging, exploitation and other misconduct levelled by the Defendant at the Claimant to be unfair and untrue. They are based upon distortions of the facts. It is regrettable that they have been made at all.