Neutral Citation Number [2024] EWHC 2450 (SCCO)
Case No: SC-2021-APP-001198

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

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

Date: 20/09/2024

**Before** :

**COSTS JUDGE NAGALINGAM**

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**Between :**

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| **Guest Supplies Intl Limited** | **Claimant** |
| **- and –** | |
| **Spector Constant & Williams Limited** | **Defendant** |

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**Mr Griffiths** (instructed by **Fahri LLP**) for the **Claimant**
**Mr Benson** (instructed by **Spector Constant & Williams Limited**) for the **Defendant**

Hearing dates: 12/02/2024

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# Approved Judgment

This judgment was handed down remotely at 4pm on 27 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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COSTS JUDGE NAGALINGAM

## Costs Judge Nagalingam:

*Introduction*

1. This is essentially the second part of a judgment concerning whether a right arises for the Claimant to challenge the Defendant's bills.

2. The earlier judgment dealt with a challenge to the enforceability of the CFA agreed between the parties. The remaining decisions concern the Defendant's entitlement to raise interim statute bills, the status of the bills delivered, and whether or not payments made against those bills are such that the Claimant has either lost their statutory right to an assessment to some or all of the bills, or otherwise needs to show special circumstances.

3. I am grateful to Mr Benson, whom after some preliminary questioning, confirmed that the Defendant accepted that what they had delivered to the Claimant likely amounted to a '*Chamberlain*' bill, but because that bill (including all preceding bills in the chain) had been paid in full, the burden was on the Claimant to demonstrate that special circumstances arise if they wish to pursue a detailed assessment.

4. For the avoidance of doubt, and notwithstanding the helpful and pragmatic approach of the Defendant as to the status of their bills, my decision below nevertheless outlines my analysis of the solicitor & client agreement, and the delivered bills in order to rule on their status.

5. Mr Griffiths, on behalf of the Claimant, wished to stress that any reference to *Chamberlain* bills in the Claimant's skeleton argument was a secondary or 'fallback' argument.

6. The Claimant's primary argument is that what the Defendant delivered were neither statute bills or a *Chamberlain* bill.

7. In the event that the court were to conclude, in the alternative, that what had been delivered amounted to a *Chamberlain* bill, then the Claimant's secondary argument is they (i) didn't consent/authorise deductions to pay off the bills and/or (ii) The Solicitors Act 1974 provides consumer protections, and given that a *Chamberlain* bill finding is a matter of judicial discretion, the court should be careful not to exercise its discretion in a manner which locks a client out of those consumer protections.

### Mr Benson's opening comments

8. Mr Benson began by alerting me to a schedule of payments on a printout dated 6 February 2024 of what appears to be the Defendant's accountancy software. This shows that as at 7 June 2021 there was an outstanding balance of £19,941.58 and monies were transferred from the client account to the office account to clear that balance.

9. As of today, my understanding is that the Claimant doesn't dispute that the Defendant has received and taken sufficient monies such that, as far as the Defendant is concerned, their fees have been discharged in full.

10. Mr Benson submits that the Claimant's case rests on whether there was an authority for the Defendant to make deductions such that the bills they had issued could be considered paid. This would have an impact on the time limits under the Solicitors Act 1974, and by extension the Claimant's right to seek an assessment, if, as the Defendant submits, such an authority did arise in this matter.

11. Citing *Menzies v Oakwood Solicitors Ltd* [2023] EWCA Civ 844, Mr Benson observed the court in that case held, allowing the appeal:

> "that for the purposes of section 70(4) of the Solicitors Act 1974 "payment" of a solicitor's bill, which was no different from the payment of any other bill, was a transfer of money (or its equivalent) in satisfaction of a bill with the knowledge and consent of the payer; that a bill in this context meant a bill that complied with the requirements of section 69 of the 1974 Act, the delivery of which would give the client the necessary knowledge; that the requirement of consent did not mean that consent had to be given after the delivery of the bill if the client had already validly authorised the solicitor to recoup his fees by deduction from funds in his hands; that, further, what the client needed to consent to, in order for payment to take place, was the transfer of money, not necessarily the precise amount to be transferred; that whether the client had authorised the solicitor to recoup fees by way of a deduction from funds in hand was a question of interpretation of the written contract of retainer; that the phrase "settlement of account" should no longer be used in the context of section 70(4), since its meaning was unclear and its origin lay in cases in which there was no written contract of retainer; that, in the present case, since the conditional fee agreement had specifically authorised the solicitors to recoup their fees out of the client's compensation, "payment of the bill" within section 70(4) had taken place when, after delivery of the bill, the solicitors had made that deduction; and that, accordingly, the client's application under section 70(2) for the bill to be assessed had been made more than one year after the payment of the bill, with the consequence that the court's power to order assessment was not exercisable."

12. Mr Benson observed that in *Menzies*, a factor of particular importance was clause 1.5 of the conditional fee agreement which provided "1.5 You agree to pay into a designated account any cheque received by you or by us from your opponent and made payable to you. Out of the money, you agree to let us take the balance of the basic charges; success fee; insurance premium; our remaining disbursements; and VAT. You take the rest".

13. Mr Benson highlights that the wording of a CFA is important. He says it is not a question of permission for a pounds and pence deduction, but rather client consent or authority for the solicitor firm to make whatever deduction is necessary. In this regard, Mr Benson drew my attention to the "Discussion" section of the *Menzies* judgment, and in particular the points at paragraphs 42, 43 and 45:

> "42 In order for a transfer of money to be in satisfaction of a bill, there must be a bill to be satisfied. A "bill" in this context means a bill that complies with the requirements of section 69. The delivery of a compliant bill will give the client the necessary knowledge. The requirement of consent does not, in our view, require that consent be given after the delivery of the bill, if the client has already validly authorised the solicitor to recoup his fees by deduction from funds in his hands. What the client needs to consent to, in order for payment to take place, is "the transfer of

money", not necessarily the precise amount to be transferred. We reject the submission that the client must agree to a deduction quantified in pounds and pence. It is the process of assessment that fixes the precise amount the client is required to pay."

"43 The statute itself lays down the timetable, which is triggered by the delivery of a compliant bill. It is wrong in principle for judge-made law to qualify that timetable by the introduction of such indeterminate concepts as "a reasonable time" after delivery of a compliant bill. Either payment has taken place, or it has not."

"45 Whether the client has authorised the solicitor to recoup fees by way of a deduction from funds in hand is a question of interpretation of the written contract of retainer. In our judgment it is clear that the CFA in this case, and its accompanying documents, specifically authorised the Solicitors to recoup their fees out of the Client's compensation, up to a maximum of 25% of that compensation. Payment of the bill took place when, after delivery of the bill, the Solicitors made that deduction. It follows, in our view, that payment of the bill took place more than one year before the bill was challenged and that, consequently, the court's power of assessment was barred by section 70(4)."

14. Mr Benson referred to clause 5.4 of the CFA in the index matter and submits the same is materially identical to the wording in *Menzies* because there is an authority to deduct, payment was taken, and as a consequence the Claimant needs to show special circumstances.

15. Clause 5.4 of the CFA in the index matter provides:

"The Client irrevocably undertakes that SCW shall receive all sums that the Opponent is ordered to pay or agrees to pay. Out of the money received, the Client agrees that SCW can take any fees and Disbursements due to it and pay the balance to the Client."

**Mr Griffiths' opening comments**

16. Mr Griffiths sought to set out two main elements.

17. He accept what *Menzies* says but in the index matter, clause 5.4 of the CFA is two sentences and should be read as such. In particular, he submits that the irrevocable element doesn't apply to the second sentence of clause 5.4, or in the alternative he generally queries what was the intention (reminding me that it was the Defendant, not the Claimant, who drafted the CFA).

18. Mr Griffiths also referred to clause 4.3 of the terms and conditions which he submits is a similar provision.

19. In essence, it seems to me that Mr Griffiths accepts the Claimant cannot argue against the fact that clause 4.3 of the terms and conditions, and clause 5.4 of the CFA, seem to give the Defendant the authority to deduct fees from monies received – but instead asks what happens if there is a dispute?

20. Mr Griffiths queried if retention under protest would qualify as an authorised payment, the inference from his tone being no. However, for this to be of any

relevance, I would expect to have been referred to examples of where a protest was made in relation to the taking of deductions (for whatever reason), before the claim form in these costs only proceedings was submitted.

21. There is nothing in the evidence before me to suggest that deductions were made under protest. In my view, the Claimant's protests concerned the amount of fees. Having said that, I am not at all surprised that the Claimant took no issue with deductions at the time, because the Claimant's case is that those deductions were in satisfaction of demands for payments on account rather than to settle interim statute bills.

22. Regarding clause 4.3 of the terms and conditions, Mr Griffiths then invited consideration of the precise wording of the same and submits that the question of when the bill was sent is important, i.e. how can you pay for or authorise payment for something that hasn't been sent (if what was sent isn't a statute bill)?

23. Clause 4.3 provides "If we hold sufficient sums on your behalf when we have sent you our bill, you authorise us to deduct our charges from those funds".

24. In so far as the Defendant places any reliance on *Menzies*, Mr Griffiths invites focus on the element of paragraph 42 of the judgment which provides that there "must be a bill to be satisfied", i.e. a statute bill needs to have been raised, not an invoice.

25. Mr Griffiths submits the two key elements are that 1), there needs to be consent and 2), there needs to be a bill.

26. Mr Griffiths argues that the Defendant cannot point to any interim statute bills having been raised, and this is why the Defendant finds themselves in the position of needing this court to find a *Chamberlain* bill arises, because that would mean the final bill would amount to a statute bill.

27. Mr Griffiths observes it is one thing to have an agreement that permits the retention and deduction of monies to pay bills, but quite another thing to deduct monies to pay for non-statutory invoices and then retrospectively argue they were to pay bills – with the effect that the client is then statute barred from challenging those bills.

28. Of course in this particular case the Claimant would not be statute barred unless 12 months had passed since the payment of any of the bills the Claimant now seeks to challenge before their claim form was served. However, I understand the general point Mr Griffiths is seeking to make.

29. Mr Griffiths submits there is no sound basis for the court to find that a *Chamberlain* bill arises. He cites *Bari v Rosen* [2012] EWCH 1782 (QB) and observes that a *Chamberlain* bill is not created on purpose. It is the product of an accident, and a creation of the court.

30. Mr Griffiths submits that the court should not use something of its own creation, i.e. exercise discretion to find a *Chamberlain* bill arises, where the product of the exercise of that discretion is to deprive a client of their statutory rights.

31. Mr Griffiths also relies on the decision in *Masters v Charles Fussell & Co LLP* (SC-2020-APP-000266), and in particular paragraph 56 of the same which states:

> "The artificiality to which Mr Dunne referred seems to me to relate to instances where the invoices are not clearly interim statute bills because they, for example do not provide sufficient information in the manner required in the case of *Ralph Hume Garry v Gwillim*. But it does not seem to me that there is any artificiality in circumstances such as exist here where the solicitors were not entitled to render interim statute bills but have nevertheless provided their client with documents that could otherwise be described as such. In those circumstances, it would be pointless to require a final statute bill to be served, or indeed simply the re-service of all the bills that had previously been rendered."

32. Mr Griffiths submits that consumer protections are enshrined in the Solicitors Act, hence the inclusion of opportunities to challenge a solicitor's bill more than 1 month and sometimes more than 12 months after it has been delivered. He says that those protections should not be frustrated by the finding of a *Chamberlain* bill where such a finding only results from failings on the part of the solicitors.

33. In summary, Mr Griffiths sets out that the Claimant's primary argument is that the bills delivered were not interim statute bills and no *Chamberlain bill* arises. In the circumstances, the Claimant simply seeks an order for delivery of a statute bill so they may consider their position and challenge the same if so advised.

34. The Claimant's secondary argument is that no consent was given, or contractual right arose, to making deductions for invoices (i.e. documents which were not treated as bills at the time) such that they cannot be considered paid – in which case the Claimant would not need to demonstrate special circumstances but rather seek the court's discretion to order assessment.

**Mr Benson's submissions:**

35. In response, Mr Benson submits that it is not the court's role to bend the rules to do justice for one party or another. It is a factual question as to whether a *Chamberlain* bill arises or not. Thereafter, the court may address the consequences of the answer to that factual question.

36. Mr Benson observes that clause 4.3 of the terms and conditions clause 5.4 of the CFA "say what they say", and that favours the Defendant. He says there is no evidence the Claimant withdrew from those contractual commitments or objected at the time, and that is why it is the Claimant who is focused on *Chamberlain* bill arguments.

37. Mr Benson accepts that no solicitor sets out to issue or create a *Chamberlain* series of bills, and commented that the bills were "clearly *intended* (my emphasis) to be statute bills".

38. As to the status of the bills delivered, Mr Benson invited me to consider bundle pages 289-290, which shows the front and back page of the bill dated 30 March 2021, and in particular to observe references to period, date, signature, and the provision of a brief narrative. Mr Benson also invited me to note references to Part III of the Solicitors Act 1974.

39. As to the provision of breakdowns, Mr Benson submits these were provided on request, and referred me to paragraph 13 of his 8 February 2024 skeleton argument

where he has produced a table demonstrating when bills were sent and when breakdowns were sent.

40. As far as the Defendant is concerned, the Claimant had all the bills and all the breakdowns by April 2021.

41. Mr Benson submits that if a bill is delivered in January, and a breakdown relating to that bill is sent in February, then by February it holds the status of a statute bill (if the only detail lacking in the original was a sufficient narrative). He says there should be no requirement to re-send the January bill at the same time as sending the February breakdown.

42. Thus Mr Benson submits that, looked at as a whole, the Defendant *did* provide the level of "sufficient information" envisaged in *Ralph Hume Garry v Gwillim* [2002] EWCA Civ 1500.

43. As to the Claimant's reliance on the *Masters* case, Mr Benson submits that decision concerned a mechanism to avoid re-issuing a final bill, and is therefore broadly the same as the index case, in that in totality the Claimant has received all the information required by the Act such that there ought to be no need to re-issue already delivered bills when later providing breakdowns upon request.

44. As to notions of artificiality, Mr Benson queries how that would apply in this matter. The intention was to deliver interim statute bills, the delivered bills may therefore be treated as a chain forming a *Chamberlain* bill, there was a contractual entitlement to make deductions such that the bills are deemed paid, which all combines to require the Claimant to now show special circumstances, if they want an assessment.

**Mr Griffiths' submissions**

45. Mr Griffiths submits it is happenstance of whether a finding of a *Chamberlain* series of bills means the Claimant is held to the consequences of payments by deduction, when at the time of the deductions those bills were not statute bills.

46. Mr Griffiths further submits that nowhere is it set out what would be the narrative of a *Chamberlain* bill. *Chamberlain* bills are a tool of judicial discretion and it would run contrary to the time limits in the Solicitors Act if making a finding of a *Chamberlain* bill also meant a Claimant was out of time to challenge the bill.

47. As to whether or not the Solicitors Act is intended to protect consumers, Mr Griffiths submits that the fact an absolute right exists to challenge a bill within 1 month of delivery underlines the strength of consumer protection enshrined in the Act.

48. As to whether what was delivered could constitute an interim statute bill, the Claimant does not accept that the descriptions in the later provided time recordings are sufficient because the breakdowns are too broad and generic.

49. Mr Griffiths submits that the adequacy of work descriptions are particularly important in this case because the parties agreed to a capped retainer for the initial stages of work required, therefore the Claimant needs sufficient information to know which of the fees in the bills delivered are inside the cap and outside the cap.

## Mr Benson's counter submissions

50. With regards to the cap, Mr Benson referred me to the witness statement of Mr Aristodemou, dated 28 February 2022, made on behalf of the Claimant.

51. Paragraph 48 of this statement recounts conversations with Mr Spector of the Defendant, and that on or around 10 March 2021 it was initially indicated in a telephone call that work outside of the cap stood at around £2,500 of solicitors' fees, but by the end of that call the figure had risen to around £7,000. Mr Aristodemou proceeds to describe an e-mail (20 April 2021) and a WhatsApp message (22 April 2021) from the Defendant in which the figure for work outside of the cap had risen to £40,000.

52. Paragraph 49 of Mr Aristodemou's statement then describes:

> "Just eight days later, on 30 April 2021, Richard Spector, of the Defendant firm, sent me an email attaching their Time Ledger exported to Excel with a breakdown of costs he claims were incurred outside the cap at the discounted rate had inexplicably risen to £77,588, which represents an increase of around 94% in just eight days and an eye watering 1000% from the figure mentioned on 10th March 2021".

53. Mr Benson observed that upon receiving that breakdown there was nothing to prevent the Claimant making their application at the time. He says the Defendant is entitled to know what has changed between then and now to justify raising this line of argument?

54. Mr Benson acknowledged that queries were raised by the Claimant, via e-mail, on 4 May 2021 but that by offering and providing the colour coded spreadsheet in response, the Defendant has already gone well beyond what would be expected.

55. In this regard, Mr Benson refers to a spreadsheet which is colour coded to highlight work the Defendant deems outside of the cap, sub-divided into six categories of work which were in turn colour coded.

56. Mr Benson submits that the spreadsheet shows how work was allocated, and says the Claimant has had ample opportunity to raise queries and ask to see the files.

57. Mr Benson observed that paragraph 51 of Mr Aristodemou's statement provides comment with respect to the colour coded spreadsheet. In summary, these comments combine to either challenge why such fees would fall outside of the cap, that the Claimant was not adequately advised they would fall outside of the cap, or that the descriptions of work are such that the Claimant would have expected them to fall within the cap.

58. Mr Benson submits that the Claimant's comments at paragraph 51 of Mr Aristodemou's witness statement are too general, lack particularisation, and take no actual points which the Defendant could go away and usefully address.

59. Having reviewed Mr Aristodemou's witness statement, I don't agree with the Defendant's analysis. Paragraph 51 of the same comments on each category the Defendant elected to use to explain work outside of the cap and in terms which clearly challenge the Defendant to either provide better information or explain why the work falls outside of the cap.

60. Mr Benson referred to the client care letter from the Defendant to the Claimant dated 19 October 2020, and in particular section 4 of the same, "Charges and Expenses", and the final two sentences of the 2nd paragraph under that section which state "You are sending to us a number of emails and contemporaneous documents that we have not previously seen. We will need to review these and this work falls outside our cap as it is not envisaged in the costs budget."

61. Thus Mr Benson submits that the Defendant pro-actively warned what steps would fall outside of the costs cap.

62. In analysing the categories of work the Defendant says falls outside of the cap (which I have set out as (a) to (f) below), Mr Benson observed that in relation to (b), "WS of James Dempsey", the amount claimed outside of the cap was "modest", at £1,858. Mr Benson advised that those instructing him could not "immediately call on the relationship with that work and the cap", and indicated that the Defendant would rather "take a view" on this amount than go to assessment on it.

63. In relation to (c), " Summonses", Mr Benson explained that more summonses than were expected were required hence some costs fell outside the anticipated cap total.

64. In relation to (e), "Order & Judgment dated Dec 2020", Mr Benson explained this was work complying with a court order that wasn't budgeted for, recalling the case was budgeted for the client at a time when the Claimant instructed Ince & Co. Solicitors. Mr Benson therefore submits there is a good case for this work to be properly deemed as falling outside of the cap.

65. In addition, it seems to me likely there is an argument that (f), "C's and D's SD applications" is work that falls outside of the cap.

66. It also seems to me that the Defendant is in some difficulty in demonstrating that 100% of the costs relating to (a), "Emails, documents or mixed categories", and (d) "C's application dated 26.11.2020", fall outside of the cap.

**Mr Griffiths' counter submissions**

67. In response, Mr Griffiths argues there is no prejudice here because the Defendant has already been paid, save an assessment may be required.

68. The hardship is on the Claimant, who is out of pocket and will remain so unless and until an assessment is carried out.

69. With respect to the colour coded breakdown produced by the Defendant, Mr Griffiths accepts some work has gone into the same and that it was produced in response to queries raised by the Claimant. However, Mr Griffiths considers that the document produced "misses the target" because it isn't sub-divided in a way that reliably informs the Claimant whether the work described was within the cap or not.

70. He observes that in response to raising that protest, the Defendant essentially said that the Claimant should go away and work it out for themselves. This places too great an onus on the Claimant.

71. In Mr Griffiths' view, the colour coding is not sufficient to inform the Claimant whether fees were incurred inside or outside the cap. Further, even within the highlighted sections, the descriptions of work are too vague to enable the Claimant to answer such a question.

72. Mr Griffiths sought to remind me that the spreadsheet was produced because of a dispute as to whether the Defendant's claimed fees fell inside or outside the cap.

73. Mr Griffiths accepts he can only rely on what is in the hearing bundle. He does not claim that his skeleton argument is evidence, and confirms that the Claimant has not put in any new evidence since the June 2023 hearing, save that there is one new witness statement but that relates to an application which is not being heard hence he has not referenced that statement or asked the court to consider the same.

74. As to inspection, Mr Griffiths asks how would a lay client know they could inspect their solicitor's files, and where does such a right arise where the client doesn't consider the bills to be paid.

75. In so far as inspection is concerned, it seems to me the Defendant has only ever made rather vague references to such a possibility, and not explained to the client what is meant by such a reference. Perhaps more importantly, I cannot see any such right to inspect clearly expressed in the funding documentation in the event of a dispute.

76. As to the Defendant's spreadsheet, Mr Griffiths wished to make clear the Claimant has less of an issue with the inadequacy of the colour coding, and is more concerned with the inadequacy of the narrative descriptions.

77. Mr Griffiths sought to remind me that one of the bases of the claim inadequate narrative descriptions. He observed that the spreadsheet was not specially produced for these proceedings, and the addition of colour coding doesn't change the narrative descriptions, nor does colour coding explain why each item has been allocated to a particular category.

78. For the avoidance of doubt, paragraphs 79 to 85 below are my own observations, rather than Mr Griffiths' submissions.

79. The spreadsheet/breakdown was a document which already existed. It was then colour coded after the event in an effort to distinguish between fees, which according to the Defendant, fell inside the cap and outside of the cap.

80. There is then a whole separate issue regarding authority to incur fees outside of the cap in terms of the amounts spent / requirement to provide estimates / amounts of those estimates.

81. Mr Spector briefly gave evidence that he had written to the Claimant to explain when costs were to be incurred outside of the cap. However, it is one thing to state as such but another to not say how much in fees those steps would take, or fail to provide estimates.

82. That is why, and perhaps unusually, I made an order for a bundle of correspondence regarding costs outside the cap to be filed within 28 days of this hearing, namely that "the parties shall file an agreed bundle of correspondence between the above named

parties limited to only those communications in which costs outside of the cap are mentioned".

83. In the event, what I have received is a small bundle marked "D's bundle of correspondence". I summarise the same as follows:

11/12/2020 – e-mail to the Claimant in which it is stated "In relation to the various witness summonses you would like to send, which you may recall that Nick considered unnecessary, please note that the costs of this work will be additional to the framework agreed as it does not form part of the costs budget."

05/01/2021 – e-mail to the Claimant which stated "I attach our engagement letter. As you will see we have capped our fees at £117,000 plus VAT in respect of all costs set out in the costs budget. If we undertake work, such as the applications for witness summons, which is not one of the steps set out in the costs budget then those fees are outside of the cap. As agreed in the CFA we are charging at 80% of our normal hourly rate. The cap does not include reviewing emails that you sent to us after we had carried out our initial review."

01/04/2021 – e-mail to the Claimant which stated "As I have explained the success fee is outside the cap as the cap was clearly only in respect of any costs envisaged in the costs budget. The success fee does not form part of the costs budget. The CFA sets out that the mechanism for calculating the success fee is to take our fees incurred at normal rates and to calculate 25% of those fees".

06/04/2021 – e-mail from the Claimant to the Defendant which stated "I'm extremely disappointed at the opportunistic turn you have taken given the outcome, which was very largely due to the work that I, myself undertook and gave massive input on. However, if you really think you're right here then carry on but do not say I have not given you warning. Please send through all invoices with the full detailed work carried out that make up the invoice amounts. Please send through your firms policy and procedures for making a complaint and the person to first contact".

06/04/2021 – e-mail to the Claimant which states "I am very disappointed as you appear now to be seeking to go back on what was agreed. I have instructed counsel to review the position so that I can be sure if our position is correct or not. Counsel should come back to me by Monday. I suggest that I come back to you after counsel's review and I will either maintain our position or change it in line with counsel's advice. I suggest that we wait until then and if after then you are still unhappy then we can move the process forward as per your e-mail below."

30/04/2021 – e-mail to the Claimant which substantively deals with delays in the first payment from D&D London, but also states "In the meantime I attach our invoice for the 20% uplift" and "I also attach a spreadsheet that we have compiled splitting the work inside and outside the cap".

04/05/21 – e-mail from the Claimant to Defendant (which has been referenced above) in which the Claimant complains that the sums to be claimed outside of the cap have rapidly escalated from being stated as £7,229 on 11 March 2021, to £77,588 by 28 April 2021, and in circumstances where the Claimant considered the case concluded in February 2021.

84. The Defendant's response of the same date states "We will be transferring over our fees to office in accordance with clause 5.4 of the CFA. As I have explained before our invoice explains how you can challenge our fees."

85. I remind myself that the Part 8 claim form in this matter is dated 21 September 2021 and was sealed on that date. Given the parties' e-mail exchanges of 4 May 2021, it is clear to me that where the Defendant's bills cannot be deemed paid before 4 May 2021, the Claimant would not be statute barred from seeking an assessment no matter what I decide – save the Claimant is seeking to avoid any scenario where they need to demonstrate special circumstances.

86. Mr Griffiths reiterated paragraph 48 of Mr Aristodemou's witness statement in so far that is demonstrates the changing total of the amount being charged outside of the cap, with reference to the WhatsApp message screenshot and e-mail exhibited to that statement.

87. Mr Griffiths submits that the rapid escalation in sums described as being outside of the cap calls for an explanation and therefore amounts to special circumstances.

88. Mr Griffiths submits that the Claimant understood the client care letter said that the cap would account for work detailed in the budget, but that the funding documentation thereafter failed to adequately explain the amount of charges outside of the cap, and provided no estimate for costs outside the cap. Instead, the Defendant just went ahead and incurred costs outside the cap with no regard for the resultant additional expense to the Claimant.

89. Mr Griffiths submits that the subsequent lack of estimates or agreement to the incurring of uncapped costs means that some explanation is now required, which is a special circumstance.

90. Mr Griffiths argues these are not small sums. The categories of costs said to fall outside the cap are substantial.

91. In this regard, I find that this is essentially an argument that even if I find the breakdowns sufficiently distinguish between costs inside and outside the cap, the costs incurred outside the cap were not with the Claimant's explicit or implied consent such that an opportunity to challenge those costs should arise.

92. In further addressing the Defendant's reliance on *Menzies*, Mr Griffiths relies on his skeleton argument (at paragraph 26 of the same) where he submits that *Menzies* provides for circumstances in which a transfer of money will constitute a payment for the purposes of s.70 of the Act, but observes that a prerequisite for payment is that a bill has been delivered. Citing paragraphs 41 and 42 of *Menzies* (which are reproduced below for ease of reference):

> "41 …We are content to adopt the meaning proposed by Aldous LJ in Gough, namely that payment for the purposes of section 70 is a transfer of money (or its equivalent) in satisfaction of a bill with the knowledge and consent of the payer.
>
> 42 In order for a transfer of money to be in satisfaction of a bill, there must be a bill to be satisfied. A "bill" in this context means a bill that complies with the requirements

of section 69. The delivery of a compliant bill will give the client the necessary knowledge".

93. With regard to the Defendant's 'outside of cap' category for witness statements, Mr Griffiths accepts that if, for example, there are 12 summons/more summonses than had been expected then some would be outside of the budget and therefore outside of the agreed cap.

94. Mr Griffiths accepts that specific disclosure applications likely fall outside of the cap but submits the Claimant is still entitled to take issue with the lack of estimates or the absence of prior agreement regarding any costs incurred outside of the cap.

95. In terms of what the cap was intended to cover, Mr Griffiths observed that where it is based on the Precedent H, one would naturally expect the Precedent H to represent the costs of going to trial, which is then to be contrasted with the actual stage of settlement.

## ***Decision***

96. The background to this matter is set out in my judgment dated 18 July 2023.

Client care letter, terms and conditions, and the CFA.

97. The first issue which falls to be considered is the relationship between the retainer and the status of the bills, to include the effect of any payments, and ultimately the resultant impact on whether a right to seek an assessment arises.

98. The client care letter is dated 19 October 2020, and encloses a separate terms and conditions document.

99. Under the charges and expenses section of the client care letter, confirmation is given of the Defendant's unwillingness to enter into a no win, no fee agreement. Instead a discounted CFA is referenced, also dated 19 October 2020.

100. This section also references a cap of £117,000 plus VAT "in line with the Approved Claimant's Costs Budget dated 18 May 2020" and said to be "limited to the steps set out in the Costs Budget after the CMC".

101. The client care letter goes on to confirm that "..if we are required to or instructed to carry out additional steps that falls outside of the above mentioned Costs Budget, this work will not form part of the cap and there will be additional charges in respect of it. You are sending to us a number of emails and contemporaneous documents that we have not previously seen. We will need to review these and this work falls outside our cap as it is not envisaged in the cost budget".

102. In relation to "bills", the client care letter records:

"The bills we raise in this matter must be paid promptly and in accordance with our terms and conditions enclosed. If our fees are not paid in full as stipulated, we reserve the right to immediately cease working on the matter".

103. Thus save for any intervening effect from the terms and conditions or CFA, the client care letter alone does not create a clear agreement for the raising of interim statute bills.

104. Under the section "Undertakings", there is reference to the making of payments out from funds received. However, this section in isolation does not address the issue of consent to make deductions. It simply alludes to the fact that work cannot be commenced, or will not be continued, until cleared funds are in the Defendant's account.

105. With regards to estimates, the client care letter simply states "Please refer to the CFA and Costs Budget".

106. Given that the basis of the capped costs was the Claimant's budget which was already set in stone before the Defendant was instructed, one would expect the CFA to address the estimates of work outside of the cap. It is not clear how reference to the costs budget would inform the Claimant as to the amount of fees that might be incurred outside of the agreed cap.

107. The section marked "Raising Queries" does not mention costs or fees, and is rather focused on raising issues with the quality of service.

108. I now turn to the accompanying terms and conditions document. This is a single page document, albeit in a small font, setting out 17 distinct clauses and signed by both parties on 19 November 2020.

109. Clause 3.5, under the fees section, states:

> "We reserve the right to seek payment on account of fees and disbursements where considered appropriate. If a payment on account is not made when requested we reserve the right to suspend any further work until payment is made or at our discretion to determine our retainer with you."

110. That language is consistent with the retainer letter, with regards to the consequences of not making payments upon request.

111. The "DELIVERY OF BILLS CLAUSE" is worth setting out in full. It provides:

> "4.1 We reserve the right to deliver bills to you from time to time at appropriate stages of a matter, or at regular intervals ("interim bills") for work carried out on your behalf.
>
> 4.2 If an interim bill has been delivered which is unpaid after 30 days we reserve the right to decline to act any further until paid and if not paid within two months then we reserve the right to determine our retainer with you in which matter you will remain liable to pay the full amount of work done to that date.
>
> 4.3 If we hold sufficient sums on your behalf when we have sent you our bill, you authorise us to deduct our charges from those funds.
>
> 4.4 Accounts are to be settled on presentation.

4.5 You agree that if you do not pay any or part of our fees we are entitled to secure those monies by way of a charge under section 73 of the solicitors act 1974."

112. The language of this section is not sufficiently explicit such that I consider the Claimant could have expected to have received interim statute bills such that they would be considered final for the period covered, and that the statutory time limits to challenge the same would run from the date of delivery.

113. There is no additional explanation as to what is meant by "appropriate stages of a matter" and no agreement in the client care letter to raise bills at "regular intervals", such as monthly for example.

114. Clause 4.2 is consistent with clause 3.5 and the retainer letter, in that a failure to keep up to date with payments will likely result in work being paused or otherwise terminated.

115. Clause 4.3 is clearly of some importance, given the parties' differing positions as to the impact on the payments taken. However, because the status of the "bill" referred to in clause 4.3 is unclear, I do not consider any such deductions made can be deemed in satisfaction of an interim statute bill where thus far no right to raise such interim statute bills has been demonstrated by the Defendant.

116. Thereafter, the terminology of settling 'accounts' does not assist where 'account' is not defined elsewhere. At best, it can be taken to mean when an actual bill is raised then the expectation is it will be paid without delay.

117. Clause 4.5 is concerned with how any monies owed will be recovered, as opposed to any right to raise interim statute bills.

118. Clause 7 deals with the settlement of bills by instalments. It therefore suggests circumstances whereby following completion of a matter, the Defendant retains a discretion to have their bills settled by instalments. Whilst I am not aware of the Claimant placing any reliance in clause 7, it strikes me the inclusion of such a clause at the very least infers some form of "reckoning up" and the issuance of a final bill when a matter is completed.

119. Clause 9 covers "ASSESSMENTS" and briefly addresses either using a complaints procedure or applying to the court for an assessment. However, that assumes the bill in question has the status of a statute bill, and in circumstances where I have thus far seen nothing to demonstrate an agreement for the raising of interim statute bills one must assume clause 9 refers to a final statute bill.

120. I now turn to the CFA document dated 19 October 2020. Throughout my consideration of the client care letter and terms & conditions, I have also considered the "INTERPRETATION" section of the CFA. Nothing in the same assists the Defendant in terms of whether there was an agreement to raise interim statute bills.

121. The CFA does define the distinction between the discounted rates and the normal rates, and the circumstances in which one or the other might be payable.

122. Clause 4.3 of the CFA demonstrates some consistency with clause 4.1 of the terms & conditions, in that it states an intention to "bill the Client" on a monthly basis, i.e. at

regular intervals. It proceeds to explain that such bills will be based on the discounted rates.

123. Clause 5.1 of the CFA then explains that if the Claimant wins their claim, they will be liable for the Defendant's fees at the normal rates.

124. This demonstrates that by definition, bills issued using the discounted rates could not be considered final for the period they covered until the outcome of the litigation was known and if the "win" clause of the CFA was triggered, or not as the case may be.

125. Clause 7 addresses the success fee, and the circumstances under which that additional sum also becomes payable. None of the bills delivered to the Claimant during the life of the action included any sum calculated for a success fee. Indeed it couldn't, unless and until the win clause had been activated given the success fee was to be calculated on the normal rates, not the discounted rates.

126. Clause 11 of the CFA addresses the Claimant's right to apply for an assessment, and sets out:

> "The Client has the right to an assessment by the court of the amount of the fees, Success fee and/or disbursements which are payable by the Client under this agreement, by making an application under section 70 of the Solicitors Act 1974. But there are time limits for that application, including an absolute right to an assessment if the Client applies to the court within one month of delivery to the Client of the bill of costs, and a gradual reduction of the right the longer it is left thereafter, which SCW will inform the Client about if asked. The Client is of course welcome to seek advice from another law firm about this but would have to pay for that."

127. This clause is informative, but does not create a right to raise interim statute bills. Indeed, the reference to the delivery of "*the* bill of costs" in the singular might otherwise infer the delivery of a single bill at the end. In reality, a "bill of costs" is something that is produced for a detailed assessment. It is arguably distinct from a statute bill. As such, it is also possible this clause could cause confusion.

128. In my view, there is nothing in the client care letter, terms and conditions, or the CFA, whether read in isolation or collectively, that demonstrates an agreement to raise interim statute bills, whether explicitly or impliedly.

129. If anything, the text of these documents, in my view, all point to the raising of requests for payments on account in anticipation of the raising of a single final bill at the end.

Payments

130. Having drawn that conclusion, the Defendant's fallback position is that the effect of their actions has been to raise a *Chamberlain* bill, which by 7 June 2021 was deemed paid in full as far as the Defendant is concerned.

131. That means that had the Claimant brought their claim by 7 July 2021 then they would have had an absolute right to a detailed assessment (on the Defendant's case and in light of my finding above). However, because the claim was not brought until

September 2021, and the Defendant says their bills have been paid in full, the Defendant argues special circumstances still need to be demonstrated by the Claimant.

132. The only sections of the funding documents that address payment by deduction are clause 4.3 of the terms and conditions document (which I have set out above), and clause 5.4 of the CFA.

133. The clause 4.3 authority to make such a deduction only applies to bills.

134. Within clause 4.3, there is no reference to interim statute bills, and the retainer documents collectively fail to adequately address what was intended to be meant by "bill" for the purpose of the agreement. In my view, the Claimant was therefore entitled to take the reference to "bill" to mean the final bill raised at the end of the matter.

135. Clause 5.4 of the CFA refers to how monies an opponent is ordered to pay or agrees to pay is used. That is the Defendant will receive all such monies, "take any fees and Disbursements due to it and pay the balance to the Client".

136. Whilst I appreciate that this clause may apply to the consequences of interim applications, it falls under the section "WHAT HAPPENS IF THE CLIENT WINS", and the definition of "win" in the CFA is that the claim is "finally" decided in the client's favour. As such, I can very well see why a lay client would interpret clause 5.4 of the CFA as applying to the deduction of monies held in satisfaction of a final bill raised at the end of a matter.

137. I take heed of paragraphs 41 and 42 of *Menzies*, which are quoted above. The issue of prior authority to make deductions in specified circumstances matters little if the circumstances envisaged do not arise. In this case, and to quote from *Menzies*, "In order for a transfer of money to be in satisfaction of a bill, there must be a bill to be satisfied".

138. As such, even if a *Chamberlain* bill is established, the relevant applicable sections of the Solicitors Act vary in their requirements (absolute right, discretionary right, or special circumstances) based on whether payment is deemed made or not.

139. Accordingly, the status of the bills delivered needs to be considered.

Status of the bills

140. In terms of the bills delivered to the Claimant, the claim form sets out 7 bills with a net total sum of £236,811.18 inclusive of VAT. In order to draw comparison with the capped amount, the figure exclusive of VAT and calculated success fee claim of £38,306.40 is £159,035.85. That is to be contrasted with a capped figure of £117,000 plus VAT.

141. The bills are dated 29 October 2020, 26 November 2020, 23 December 2020, 28 January 2021, 25 February 2021, 30 March 2021, and 28 April 2021.

142. Each bill follows an identical format and in terms of a bill narrative, simply states the period covered and "Our Professional Fees in relation to Dispute with South Place Hotel and D&D Lnd Ltd".

143. The word "bill" does not appear on any of the documents described above. They are all referred to as invoices, with the only difference being the invoice date, invoice number, period covered and additional information where relevant.

144. The 29/10/20 invoice covers the period 29/09/20 to 29/10/20. The 26/11/20 invoice covers the period 30/10/20 to 26/11/20. The 23/12/20 invoice covers the period 27/11/2020 to 23/12/20. Thus taken as a group of three invoices, they present as being final and complete for the periods they purport to cover.

145. However, the 28/01/21 invoice also purports to cover work on 23/12/20 and up to 28/01/20. This is the first example of two invoices which cover work done on the same date, which suggests the earlier invoice cannot have been complete for the period it was intended to cover.

146. The 25/02/21 invoice covers the period 29/01/21 to 25/02/21. However, the 30/03/21 invoice is stated to also cover work from 23/02/21 and up to 30/03/21, albeit this invoice is marked as being in reference to the success fee. This is the second example of an invoice including a date range for work covered by an earlier invoice. It is also unclear why, if the 30/03/21 invoice was intended to relate to a success fee only, is it limited to a date range that excludes work undertaken before 23/02/21.

147. The final invoice is 28/04/21 which is said to cover the period from 25/02/21 to 28/04/21. This is therefore the third example of an invoice which also covers dates which appear in at least one earlier invoice.

148. There are thus at least 3 examples of invoices in which there is a crossover of dates covered by the same. At the time, none of these invoices were accompanied by a time ledger such that it could be established if any work was done on the dates which appeared in more than one invoice.

149. The "NOTICE TO CLIENTS" on the reverse of each invoice does not refer to bills, let alone statute bills. It outlines the options to raise a complaint or refer to the Legal Ombudsman. It also refers to "the right to have our charges reviewed by a court, under Part III of the Solicitors Act 1974", followed by some information about time limits. The notice erroneously informs clients that the right to an assessment is lost after one year from delivery, because that is only correct if the status of the invoice is that of a statute bill, and the bill has been paid.

150. Notwithstanding the fact I have already concluded that no contractual right to raise interim statute bills arises in this matter, I am satisfied that what the Defendant delivered does not qualify as an interim statute bill in any event.

151. The Defendant's table demonstrating the dates on which bills were delivered (and later breakdowns delivered) only serves to underline the inadequacy of, or arguably absence of, a narrative to the bills sent. It demonstrates an implicit acceptance on the part of the Defendant that what they delivered were not compliant statute bills, and the provision of a breakdown weeks or months later, and only upon request, was an effort to repair the damage.

152. Thus not only are none of the bills stated to be as such, but none of the bills include a sufficient narrative, as per *Garry*.

153. Further, the bills which purport to cross over on certain dates could not be taken to be final for the period covered. That is in addition to the fact that by virtue of being invoiced at discounted rates pending the outcome of the underlying litigation / activation of the CFA win clause, the invoices/bills could not be finalised anyway.

154. As to the later production of a time ledger or spreadsheets, I do not accept that a compliant statute bill can be produced on a piecemeal basis. For example, the provision of a breakdown on 6 January 2021 relating to invoices delivered on or around 29/10/20, 26/11/20 and 23/12/20 is not sufficient.

*Chamberlain* bill and payment

155. One key component of the claim form is that whilst the 7 invoices delivered total £236,811.18, the Claimant says they have only made payments amounting to £216,989.60. Thus even if a *Chamberlain* bill is established such that the 28 April 2021 is considered the final bill in the chain, there would still be a shortfall of £19,821.58.

156. It may be that I recorded the figure provided by Mr Benson incorrectly, but clearly the transfer of a sum of £19,941.58 from the client account to the office account would have cleared the shortfall referred to above.

157. As such, if a *Chamberlain* bill is established then the Defendant argues it would be deemed paid such that the Claimant would need to demonstrate special circumstances. That is because the claim form would be deemed served some 3 and half months after the bill was paid off in full.

158. It is noted that the Defendant is critical of an apparent "*volte face*" by the Claimant with respect to their stance as to whether a *Chamberlain* bill arises. With respect, that is either a decision for the court, or for the parties to agree on either an unconditional basis or with consequences consented to by the parties.

159. Whilst the Claimant may well have at one stage been receptive to agreeing to treat the invoices delivered as a chain of bills such that a *Chamberlain* bill was created, they understandably were not so receptive where the Defendant's stance was to say that meant the Claimant needed to establish special circumstances.

160. I also note that at paragraph 3 of Mr Spector's witness statement dated 11 October 2021, he expressed the view "Although I consider that special circumstances could not be shown I do not have any particular problem with the bills being assessed and so, if the Claimant wishes to have an assessment I do not object. I hope therefore this dispenses with any satellite dispute about special circumstances or the need to deliver any further bills/cash account".

161. Only the parties know how close they came to achieving a sensible compromise but I record this court has already been put on notice that both parties have points they wish to raise at a later date about the costs of this part of the costs only proceedings.

162. In the index matter, no natural breaks have been identified such that different portions of work could be treated as being charged and assessed separately. In the event, the Defendant delivered invoices on a monthly basis.

163. In *Bari v Rosen* [2012] EWHC 1782 (QB) the court determined that invoices which were not interim statute bills because of a lack of contractual entitlement could in any event still amount to a *Chamberlain* bill. This conclusion is supported by *Sprey v Rawlinson Butler* [2018] EWHC 354.

164. However, each case must be taken on its own facts.

165. In this regard, I agree with Mr Benson that the cited example of Costs Judge Rowley's unreported decision in *Charles Russell Speechlys v Pieres* should not be looked at as a 'solicitor-friendly' decision but rather on its own terms. In that case, it was held that three of the six invoices delivered contained insufficient narratives to qualify as statute bills, but that collectively the invoices amounted to a *Chamberlain* bill because the final invoice raised was compliant with the statutory requirements of the Solicitors Act.

166. Similarly, one does not read the decision of Senior Costs Judge Gordon-Saker in *Rahimian v Allan Jones* (also unreported) and conclude it to be a 'client-friendly' decision. In that case, the majority of invoices raised contained no description of the work done such that between September 2011 and February 2014 there was no narrative, but narratives were provided from February to July 2014. The judge concluded that the absence a sufficient narrative, looking at the chain as a whole, meant that no statute bill could be constructed from the chain.

167. I agree with Mr Griffiths' general observation that the case law, when looked as a whole, and appreciating only limited references are made above, does not combine to set out a defined criteria that must be met in order for a *Chamberlain* bill to arise.

168. I also agree with Mr Benson where, in citing *Richard Slade v Erlam* [2022} EWHC 325 (QB), he submits I ought to be cautious in deciding whether a *Chamberlain* bill arises based on the consequences of that decision. The net effect of the circumstances either gives rise to a *Chamberlain* bill or it doesn't. The consequences for the parties are then just the natural product of that decision. In that respect, I disagree with Mr Griffiths that the consequences for the Claimant "should weigh heavily in the balance" were I to decide that a *Chamberlain* bill arises.

169. Taking all of the relevant factors into account, my conclusion is that a *Chamberlain* bill has not been established in this matter.

170. The absence of a contractual right to raise interim statute bills is not fatal to the Defendant here.

171. However, the fact that none of the invoices contained a sufficient narrative, and my rejection that the information necessary for a statute bill can be provided on a piecemeal basis, and the fact that 5 of the 7 invoices contain dates which cross over such that at least 3 of the invoices cannot be deemed final and complete for the periods they are deemed to cover, all lead me to conclude that no statute bill has been delivered.

Discretion or special circumstances

172. I am acutely aware of proportionality in these assessment proceedings and, had I concluded that a *Chamberlain* bill arose in the circumstances of this case, I do not consider a further hearing would have been required as to whether special circumstances arise.

173. In so far in that may be of assistance, I comment below as to how I would have ruled had I concluded that a *Chamberlain* bill arose.

174. At the outset, I reiterate my acceptance of Mr Benson's observations that the Claimant cannot point to any authoritative finding that the exercise of the court's discretion to construct and conclude a Chamberlain bill should not by default deprive a former client of the right to challenge a bill.

175. On the facts of the index matter, Mr Benson is also correct to point out that the Claimant would not have been deprived of the right to seek an assessment. Rather they would have been required to demonstrate special circumstances.

176. However, in my view, and as is so often the case, special circumstances are unique to the facts of a particular case.

177. In this matter there are a number of factors which combine to lead me to the conclusion that even if a *Chamberlain* bill were established, special circumstances do arise, such that I would have ordered an assessment.

178. Firstly, the fact that the retainer was based on a cap which was linked to or based on an existing budget set whilst the Claimant was with another firm of solicitors requires some scrutiny of what was intended to be included and excluded from the cap.

179. With regard to the spreadsheet produced, the high point of the Defendant's argument is that essentially the provision of a colour coded table removed all uncertainty as to what costs were inside and outside the cap.

180. The spreadsheet is of some relevance, because it is a contemporaneously produced document made in light of queries at the time, and not long after the event. However, the spreadsheet itself is in fact the time ledger which was produced in any event. All the Defendant has done is go through that document and colour coded it, for the following categories:

    1) Emails, documents or mixed categories

    2) WS of James Dempsey

    3) Witness Summonses

    4) C's Application dated 26.11.2020

    5) Order & Judgment dated Dec 2010

    6) C's and D's SD applications

181. One must then consider the extent to which the lay Claimant would understand these category descriptions and the extent to which the Claimant could reasonably have

definitively concluded whether the work done fell inside or outside the cap based on the time ledger alone.

182. The Defendant's argument that the Claimant could have asked to inspect the Defendant's files is all very well, but that requires the lay Claimant to step into the mind of the person who created the spreadsheet and colour coded it.

183. It was the Defendant who created the retainer with a cap. The lay client Claimant then signed up to it. Is it unreasonable for Claimant to then ask for the presentation of a bill/s which makes it clear which fees are inside and outside the cap? For example, if the 'inside the cap' fees were £150,000 plus VAT, the natural reading of the retainer is that such work would be subject to the cap, and a charge not exceeding £117,000 plus VAT would follow. If the 'outside the cap' fees were say £75,000, one would not be unreasonable in seeking a clear demonstration that fees within the cap have not been erroneously charged outside of the cap.

184. For example, with regard to the witness statement of Mr Dempsey, if the Defendant cannot unambiguously demonstrate that such work falls exclusively outside of the cap, then how is the lay client Claimant supposed to arrive at a definitive conclusion without seeking further or better information, potentially in the form of a breakdown of costs.

185. By way of further example, the Defendant's explanation in relation to "Witness Summonses", which are said to have caused £4,791 of costs to be incurred outside of the cap, lacks clarity. The response indicates that the Defendant factored in the cost of witness summonses within the cap, but then decided that all summonses above a certain number (which as far as I am aware has not been communicated to the Claimant) would be chargeable outside of the cap. One has sympathy with a Claimant who faced with those circumstances might wish to have more information.

186. Secondly, the budget in question was to the conclusion of a trial but the underlying dispute was resolved several phases earlier than the trial phase, yet the full amount of the cap is claimed. That also requires some scrutiny.

187. Thirdly, the Defendant places great faith in their colour coded schedules. However, the original schedule was not created for these costs only proceedings. It is a spreadsheet of work done, which has later been colour coded in a belated attempt to explain what work was inside and outside of the cap.

188. The Claimant ought to be afforded the opportunity to interrogate how the work has been coded and consider if such work properly falls outside of the cap.

189. Fourthly, I agree with the Claimant that there are numerous examples of where the belated disclosure of the descriptions of work done do not assist in identifying if that work properly appears outside of the cap or not.

190. Finally, it is not at all clear on what basis, or under what control mechanism, costs outside of the cap were being incurred. The Claimant's evidence is that their expectation was such costs would be minimal and indeed in early discussions the Defendant gave this impression too. However, over a series of phone calls, e-mails and WhatsApp messages, the Defendant communicated a rapid escalation in the 'out

of cap' costs, with apparently no or little adequate explanation as to why, and in my view leaving a question mark over the extent to which authority was given for that rapid increase in fees.

191. Thus whether I was exercising my discretion under section 70(3)(a), (b) or (c), I would have concluded that I either ought to exercise my discretion and order assessment, or conclude that special circumstances have been established such that an assessment should be permitted to continue.

192. In the event, both those conclusions are redundant because I find that there was no right to raise interim statute bills, that what were delivered did not amount to interim statute bills, and that the invoices delivered do not amount to a series of bills forming a *Chamberlain* bill such that the Claimant could rely on the final invoice as representing a final bill.

*Next steps*

193. Accordingly, an order will follow which permits for delivery up of a final statute bill, delivery up of a cash account, and costs reserved in relation to the costs of the Claimant's application so that they may be dealt with at the same time as addressing the costs of the 20 June 2023 hearing.

194. No order for assessment is necessary at this stage because no statute bill has been served yet, and pursuant to section 70(1) of the Solicitors Act 1974, the Claimant is automatically entitled to an order that the bill be assessed if they make a new application before the expiration of one month from the delivery of that bill.