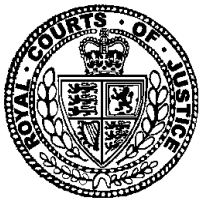

Neutral Citation Number [2025] EWHC 118 (SCCO)
Case No: SC-2023-APP-000339

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 23 January 2025

Before :

SENIOR COSTS JUDGE GORDON-SAKER

- -

Between :

TOPALSSON GmbH	**Claimant**
- and -	
CMS CAMERON MCKENNA NABARRO OLSWANG LLP	**Defendant**

- -
- -

Mr Thomas Mason (instructed by **Spring Law**) for the **Claimant**
Mr Alexander Hutton KC (instructed by **CMS Cameron Mckenna Nabarro Olswang LLP**) for the **Defendant**

Hearing dates: 16th, 17th April & 3rd September 2024

- -

Approved Judgment

.....

SENIOR COSTS JUDGE GORDON-SAKER

Senior Costs Judge Gordon-Saker :

1. The Claimant seeks an order under s.70 Solicitors Act 1974 for the detailed assessment of 27 bills rendered by the Defendant, a firm of solicitors, between August 2019 and May 2022.

2. It is not in dispute that all but the last bill were delivered more than one year before the issue of proceedings and that all but the last 8 bills were paid more than one year before the issue of proceedings. In consequence, if the bills are interim statute bills, only the last 8 could be the subject of detailed assessment and, to obtain an order for the assessment of any but the last, the Claimant would need to show special circumstances. The Claimant contends that none of the bills is an interim statute bill and that the bills constitute a "Chamberlain" bill, a series of on account bills which, taken together, amount to one single final statute bill dated 7th June 2023. The Defendant contends that they are all interim statute bills, save for the last.

The background

3. The Claimant, a company registered in Germany, supplies software. The Claimant sought advice from the Defendant in 2019 in relation to drafting a contract with one of its customers. When the customer terminated the contract in April 2020, the Claimant instructed the Defendant to act on its behalf in litigation with the customer in this jurisdiction. That litigation resulted in a judgment against the Claimant in the sum of €5m. I understand that the Claimant is pursuing an appeal. Accordingly, on 7th November 2023, I made an order that the hearing of this application should be held in private pursuant to CPR 39.2(3).

4. There were therefore two retainers. The first, in relation to the non-contentious work of advising on the agreement and amending the draft, is set out in a letter from the Defendant dated 30th July 2019. The first invoice, dated 31st August 2019 and in the sum of £15,358, contained most of the work done under that retainer. The invoice was "for legal services for the period to 8 August 2019" and included a description of the work done in a similar level of detail to that which would be set out in a bill of costs, or breakdown, for detailed assessment. The second invoice, dated 31st January 2020, was for 5.8 hours of work done on 16th January reviewing the termination provisions of the agreement.

5. On the termination of the agreement by the customer on 16th April 2020, the Claimant consulted the Defendant that day. The third invoice, dated 30th April 2020, is "for legal services for the period to" that date. As with all of the invoices, there is a detailed description of the work done. Most of the work was done by Mr Paul Silver, a partner in the Defendant's technology and outsourcing practice and the partner responsible for the work in advising on the contract and the termination provisions, and, as one would expect, was focussed on preparing a response to the termination notices.

6. The second retainer, in relation to the contentious work of the claim against the customer, is set out in a letter from the Defendant dated 7th May 2020. The letter went from Mr David Bridge, a partner in the Defendant's commercial disputes team, but identified Mr Silver as the client relationship partner. The fourth invoice, dated 31st May 2020, was "for legal services for the period" to that date. Of the 166 hours

recorded, 15 hours were done by Mr Silver and just under 23 hours by Mr Bridge. The work focussed on advising the Claimant on the merits of a claim against the customer.

7. Further invoices were rendered approximately monthly and were in the same format. There was some continuing involvement by Mr Silver, largely in relation to technical aspects.

8. The first costs estimate given by the Defendant to the Claimant was on 27th July 2020, the day before a mediation was due to start. It was in the total sum of £1,920,664 (including incurred costs of £240,000).

9. In July 2021 the Defendant filed a case management information sheet on behalf of the Claimant which indicated that the incurred costs were then £565,000 and the total costs to trial were estimated at £2.05m.

10. As the litigation progressed, the amount of outstanding fees grew and after November 2020 the outstanding balance was never less than £200,000. By November 2021 it was £1.13m. On 17th December 2021 the Defendant suspended its work under the retainer pending payment, but resumed on 28th January 2022, following a payment of £500,000. Over the period of suspension it carried out only that work which was necessary to comply with the court's timetable.

11. In March 2022 the Defendant provided a further costs estimate, in relation only to future costs, of £1,717,500.

12. The Defendant terminated its retainer in May 2022, when the outstanding balance was £1.3m. It then commenced proceedings in the King's Bench Division claiming unpaid fees and interest of £1.17m, following which the Claimant commenced these proceedings.

13. The parties have proceeded on the basis that the application should be determined on the basis of an agreed list of issues namely:

    1. The status of the bills attached to the Claim Form, are they interim statute bills or are they a series of on account bills which taken together form a Chamberlain bill?

    2. Under which subsection of Section 70 of the Solicitors Act 1974 ("the Solicitors Act"), whether (1), (2), (3) or (4), do the bills come?

    3. Insofar as the bills (or any of them) are found to come within:

       (a) Section 70(2) of the Solicitors Act, will the Court exercise its discretion to order assessment thereof or not?

       (b) Section 70(3) of the Solicitors Act, are there "special circumstances" for ordering a detailed assessment thereof or not?

       (c) Section 70(4) of the Solicitors Act, is there any legal basis for ordering a detailed assessment thereof or not?

4. At paragraph 13 of the Details of Claim attached to the Claim Form, the Claimant seeks an order for detailed assessment restricted to the profit costs and all other disbursements (excluding Counsel's fees and Court fees). Does the Court have power to make such order or is the Court restricted under Section 70(6) of the Solicitors Act to making an order for:

   (a) Assessment of all of the costs; or

   (b) Assessment of the profit costs; or

   (c) Assessment of all the costs other than the profit costs?

5. If the answer in 4 immediately above is that the court does not have the power to make the order sought in those terms, will the Claimant seek an amendment to the Claim Form and, if so, in which form?

6. Should the Court make any order for payments on account (and if so, for how much) or not?

14. Although perhaps rather more comprehensive than one might expect to see, in the event the list of issues did not fall wide of the mark. What did possibly fall wide of the mark was the enthusiasm of the parties to cross-examine each other's witnesses. The cross-examination of Mr Topal, of the Claimant, and Mr Silver and Mr Bridge, of the Defendant, lasted two and a half days (against a total time estimate for the application of 2 days) meaning that counsel's submissions were adjourned for most of a further day, 4 months later. While the oral evidence was helpful to understanding the background, in the event it was not crucial to the determination of any of the agreed issues. The lapse of time between the evidence and this judgment should not therefore be a cause for concern.

The oral evidence

15. In the circumstances, there is no real point in my setting out or summarising the evidence that was given. Insofar as it was relevant to the issues, I will refer to it there.

16. However, I should record my very clear view that where the evidence of Mr Topal conflicted with the evidence of Mr Silver or Mr Bridge, I would unhesitatingly prefer the evidence of the latter. That is not because they are lawyers, nor is it because English is not Mr Topal's native language. His fluency in English was excellent. It is because Mr Topal did not answer questions in a straightforward way. Even when presented with documents which clearly conflicted with his narrative, he stuck to his narrative simply saying that the documents did not reflect his understanding or recollection. Despite being taken painstakingly through the correspondence which showed that the Claimant had failed to pay the Defendant's fees on time, he refused to accept it.

The bills

17. The Claimant seeks detailed assessment of all of the bills rendered under the first and second retainers:

	Bill No	**Date**	**Amount**
1	4100114	31/08/2019	£15,358.29

	Bill No	Date	Amount
2	4133536	31/01/2020	£2,171.00
3	4156241	30/04/2020	£12,426.50
4	4164579	31/05/2020	£59,024.90
5	4168991	30/06/2020	£53,144.12
6	4177656	31/07/2020	£107,457.90
7	4178853	13/08/2020	£7,125.90 (disbs only)
8	4182424	31/08/2020	£22,327.50
9	4188353	30/09/2020	£87,198.75
10	4205652	10/12/2020	£37,234.50
11	4207754	22/12/2020	£43,540.00
12	4217550	31/01/2021	£107,556.10
13	4225257	05/03/2021	£90,305.70
14	4230026	31/03/2021	£40,987.50
15	4247788	31/05/2021	£11,915.80
16	4253334	30/06/2021	£848.20
17	4253488	30/06/2021	£41,178.10
18	4260646	31/07/2021	£112,528.44
19	4267424	31/08/2021	£76,274.31
20	4273109	30/09/2021	£134,644.45
21	4282728	31/10/2021	£247,354.45
22	4289363	30/11/2021	£312,192.77
23	1000-0004857	31/01/2022	£205,259.80
24	1000-0011592	03/03/2022	£189,916.54
25	1000-0018604	31/03/2022	£211,327.03
26	1000-0025184	29/04/2022	£170,137.46
27	1000-0031803	30/05/2022	£8,887.01
Total			£2,151,614.41

The status of the bills

18. The essential principles are not in dispute. Subject to agreement to the contrary, a solicitor's retainer is an entire contract and a solicitor is entitled to payment only at the conclusion of the work or upon lawful termination. An interim bill may be rendered only (a) where there is express agreement permitting it, (b) where there is a natural break or (c) where agreement can be inferred from the parties' conduct.

19. An interim statute bill is a final bill for the period that it covers and which is rendered before the end of the retainer.

20. The Defendant's case is that there was an express agreement contained in both the first and second retainers permitting it to render interim statute bills.

21. The first retainer provided that the Defendant "will bill each matter we work on for you on a monthly basis, in order to keep you informed of the level of costs incurred." The second retainer contained words to similar effect: "We will bill you on a monthly basis, in order to keep you informed of the level of costs incurred."

22. Both retainers incorporated the Defendant's standard terms and conditions which included the following:

> 9.1 **We shall bill you monthly, unless otherwise agreed. Each bill will state the period which it covers.** If we incur any significant disbursements, we may send you a bill for those at any time. However, we reserve the right to require payment on account of costs and disbursements… (emphasis added)
>
> 9.2 Payment of any bill is due 14 days after our dispatch of the bill to you, unless alternative arrangements have been agreed with us prior to receipt of the bill. If any element of a bill is queried, that part of the bill which is not subject to query is to be paid by the due date. If you have any queries on any bill, please raise them with the Matter Partner as soon as possible. Bills should be paid by cheque or bank transfer. We do not accept cash payments or payments in cryptocurrency.
>
> 9.3 In case of late payment, we reserve the right to claim statutory interest (being currently 8% above the applicable Bank of England official dealing rate) pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
>
> 9.4 We shall be at liberty at any time to apply any sums held on account against any outstanding amounts owed by you to us, whether or not the sums on account relate to any matter where there are outstanding amounts owed by you to us.
>
> 9.5 If any amount owed to us remains outstanding for more than 14 days after the despatch of the relevant bill, then until all amounts which you owe us have been paid, we reserve the right to cease acting for you with immediate effect and to retain documents and papers belonging to you.
>
> 20.3 We may also decide to cease acting for you where there is other good reason; for example…, if you do not pay our bill or comply with our request for payment on account…. We shall give you reasonable notice of our intention to cease acting on your behalf.
>
> 20.4 If you or we decide that we shall no longer act for you, you agree to pay our outstanding charges and expenses, including those not yet billed. ...
>
> 20.7 Unless otherwise agreed or terminated earlier our Retainer shall terminate on:
>
> 20.7.1 completion of the matter; or
>
> 20.7.2 the date when we despatch our final bill to you,
> (whichever shall first occur)."

23. In my view, the words in bold in clause 9.1 did not entitle the Defendant to render interim statute bills. Although it was provided that "each bill will state the period which it covers", it was not stated that the bills would be final for that period. In the absence of a provision that the bills were "final", it would be open to the Defendant to render a bill which "covered" a particular month and subsequently render a bill in respect of further work done in the same month. "Covered" does not mean "sealed".

24. My attention was not drawn to any case in which the court has found a right to render interim statute bills in which the word "final" was not used. So, in both *Richard Slade & Co v Erlam* [2022] EWHC 325 (QB) and *Boodia v Slade* [2023] EWHC 2963 (KB) the similar wording in the solicitors' retainer provided that the monthly "bills are detailed bills and are final in respect of the period to which they relate". In both cases the solicitors were held entitled to render interim statute bills. In *Boodia*, Freedman J explained that there was no requirement that solicitors should tell their clients of the consequences of the delivery of interim statute bills because the retainer will have made clear that the bills were final:

> 59. … A contractual term which is clearly incorporated to the effect that there is an entitlement to render interim bills **which are final** for the particular stage of the work that is effective. Instead of having an entire contract, the parties are contracting so that there might be stage payments. There is no authority that requires that there should be an explanation of section 70 and how assessments work. The Solicitors Act 1974 (and prior statutes from which section 70 is derived) do not provide any such express obligation, whilst being prescriptive as to what is to be part of a bill. There is likewise no express obligation to this effect in the Code of Conduct.
>
> 60. The reasoning that there is no requirement to have informed consent in the Solicitors Act or in the Solicitors Conduct Rules as a pre-condition of an interim bill is telling. The wording of the term is sufficiently clear to tell an informed observer that the solicitor has an entitlement to render monthly bills **which are final** for the particular stage of work. (emphasis added)

25. There is nothing in either of the retainers or in the Defendant's standard terms to make clear that the monthly bills would be final for the particular stage of work.

26. The retainer letters referred to monthly billing which would "keep you informed of the level of costs incurred". In *Ivanishvili v Signature Litigation LLP* [2023] EWHC 2189 (SCCO) Costs Judge Leonard, who has unrivalled expertise in these cases, considered that similar wording was "consistent with final billing <u>at a later point</u>" [at 88].

27. There is nothing in the other provisions of the standard terms quoted above which is inconsistent with the monthly bills not being interim statute bills. In my experience solicitors' standard terms usually contain provisions about payment within a set period and entitlement to interest whether or not the bills are interim statute bills and there were similar terms in, for example, *Ivanishvili.*

28. Mr Mason submitted that the reference to a "final bill" in clause 20.7 was inconsistent with the monthly bills being interim statute bills. Mr Hutton argued that "final" there meant last in time. However it is difficult to see the logic of that. While the longstop for the termination of the retainer would be the completion of the matter, reflecting the common law position that the retainer is an entire contract, there would be no reason for a provision that the despatch of the last invoice in time should end the relationship. Apart from anything else, the client would not necessarily know that the last invoice was the last. It seems more likely that what is anticipated is a final reckoning.

29. Although the invoices themselves cannot be used as an aid to the interpretation of the contract, for completeness it is worth noting that none of them is described on their face as "final" and the client is not informed of its rights under the Solicitors Act. I add that neither is a requirement of an interim statute bill, and the presence of either would not render a bill final if there was no right to render one.

30. Accordingly, in my judgment the Defendant was not entitled to render interim statute bills.

31. In *Chamberlain v Boodle & King* [1982] 1 WLR 1443 (CA) the solicitors were found not entitled to render interim statute bills, although they had raised four bills in relation to the litigation that they were conducting. The Court of Appeal concluded that, in the absence of the right to render interim bills, the bills were part of a running account which "should be regarded as one bill in respect of one complete piece of work, although divided into parts".

32. That is, I think, consistent with what happened in the present case. The alternative would be that the bills are requests for payments on account. However, that would be less consistent with the format of the bills and the details that they contain.

33. In my judgment, therefore, the last bill, dated 30th May 2022, incorporating the earlier bills, is the final statute bill in respect of all of the work done under the two retainers.

Which subsection of s.70 is engaged?

34. If the proceedings were issued after the expiration of 12 months from the delivery of the bill, the Claimant would need to show that there are special circumstances why an order for detailed assessment should be made (s.70(3)). Otherwise, the court may order detailed assessment, but may impose terms (s.70(2)). It is not in issue that the bill dated 30th May 2022 was delivered on 7th June 2022, so within a year of the issue of proceedings.[1] Accordingly the bill falls within s.70(2).

35. In my experience where a client applies for detailed assessment within 12 months of the date of the bill, the court will usually order a detailed assessment but may impose terms. I am not aware of any case in which the court has declined to order the assessment of a bill delivered within 12 months of the issue of proceedings. By reference to other limitation periods, those provided by the 1974 Act are remarkably short or, as the Court of Appeal has recently commented, "very tight".[2] It would have to be an extraordinary case in which it would be appropriate to deny a former client the right to have the bill considered if that were requested within one year, but more than one month, after the bill was delivered. I agree with Costs Judge Rowley that where a bill is challenged within a year "a client can be confident that the assessment will be

[1] The claim form was issued on 7th June 2023. Where an act is required to be done within a fixed period "from" a specified day, the specified day is excluded. See the cases referred to in *Zoan v Rouamba* [2000] 1 WLR 1509 (CA).
[2] *Signature Litigation LLP v Ivanishvili* [2024] EWCA Civ 901, at [27].

allowed, even outside the original one month period, albeit on the likelihood of some payment on account of the costs that are to be assessed in most cases".[3]

36. Whether terms should be imposed in this case is a matter for submissions at the directions hearing following the handing down of this judgment.

37. It follows that it is not necessary for the Claimant to show that there are special circumstances. However, as the issues were fully argued and a considerable amount of oral evidence given, I should set out my conclusions, albeit not at length.

Special circumstances

38. Whether special circumstances exist is a value judgement, comparing the particular case with the run of the mill: *Falmouth House v Morgan Walker* [2011] 2 Costs 292 (Ch). Special circumstances do not have to be exceptional: *Bentine v Bentine; Stone Rowe Brewer LLP v Just Costs Ltd* [[2016] Ch 489 (CA).

39. The Claimant relied on the following:

    i) Wrongful termination.

    ii) Costs estimates.

    iii) People and hourly rates.

    iv) Errors.

    v) Queries.

    vi) Work during pauses.

    vii) Third party funding.

Wrongful termination

40. As was made clear during the hearing, wrongful termination is raised by the Claimant only as relevant to special circumstances. It is not argued that the Claimant is not liable for the Defendant's fees because of the alleged wrongful termination. However, even in that context, I have to decide whether the termination was wrongful.

41. In my view the Defendant was entitled to terminate the retainer because of the Claimant's failure to pay the invoices. Whether or not the Defendant was entitled to render interim statute bills, it was entitled to require payments on account. The bills were payable within 14 days and the Defendant was entitled to terminate the retainer "if you do not pay our bill or comply with our request for payment on account" (clause 20.3).

42. The provision in clause 9.2 that if the client queries any element of the bill, the part of the bill not queried is payable by the due date, does not absolve the client of liability to pay the queried part. The intention is to make clear that if part of a bill is queried, the

[3] *Eurasian Natural Resources v Dechert LLP* [2017] EWHC B4 (Costs) at [12].

client should nevertheless pay the remainder. The query may, or may not, lead to a credit note being issued, but the queried part has been demanded and, subject to the issue of a credit note, is still payable.

43. The state of account between the parties is set out in the schedules to Mr Bridge's witness statement dated 31st January 2024 and the repeated requests for payment are summarised in paragraph 66 of Mr Hutton's written submissions. The notice to terminate sent on 18th May 2022 was in respect of the failure to pay a sum which had been requested since 4th March 2022. In my view the Claimant was given reasonable notice of the consequences of the failure to pay, for example in Mr Bridge's email dated 9th May 2022.

Costs estimates

44. Charges which appear to be unreasonably large or which call for explanation may amount to special circumstances: *Re Norman* (1885-86) LR 16 QBD 673, *Re Robinson* (1867) LR 3 Ex 4. Clearly there was a significant difference between the first estimate of £1.95m and the third estimate of £3.7m. I appreciate that the estimates were estimates, and were subject to all of the usual caveats. I appreciate also that things happen in litigation which may affect the figures. However, at this stage, the question is not what the effect of the estimates, if anything, should be. It is whether the amount of the fees call for explanation.

45. Mr Bridge gave an explanation in his email dated 19th April 2022. However, rather like the railway announcements that a train has been delayed because an earlier train has been delayed, the explanation does itself require explanation. The explanation was that more work was done than was anticipated, but does not address the question of whether the additional work should not have been anticipated. For example, was it really not anticipated that the Claimant's customer would bring a counterclaim?

46. Clearly the fees trajectory changed. Had the retainer not been determined and had the Defendant represented the Claimant through to trial, the Claimant may well now be seeking to challenge a bill of £3.7m or more against an initial estimate of £1.95m. That would, it seems to me, justify enquiry and would amount to special circumstances sufficient to justify an order for assessment of a bill even though it was rendered more than a year ago.

People and hourly rates

47. As often happens, people get older; and, for lawyers, that means that they become more senior and may charge more for their time. This was anticipated in the retainers and in the Defendant's standard terms which explained that rates would be reviewed, generally annually, and that it may be necessary to bring in other people who would charge their current rates.

48. The Claimant's complaint is that it was not given prior notification of the changes in personnel or rates. Particular concern is expressed about Mr Harry Hall who started off as a trainee on £161 per hour and ended up as an associate on £309.75 per hour.

49. A client should be notified in advance of changes to rates or to those with day to day conduct of the case. Apart from anything else, that would be polite. However, the

Claimant did receive monthly bills from which it would see not only who was doing the work, but at what rate and how much work they were doing. I do not think that this would amount to a special circumstance and it is unlikely to have any impact on the assessment of the bills.

Errors

50. Gross blunders in a bill may amount to special circumstances: *Re Norman* (1885-86) LR 16 QBD 673.

51. However, I am not persuaded in this case that any errors were such as to justify an order for detailed assessment which would not otherwise be made. The principal complaint is that work done under the second retainer was invoiced as done under the first retainer.

52. In fact there was a clear cut-off between the first retainer for non-contentious work and the second retainer for contentious work. All that happened is that Mr Silver carried on billing for his involvement under the second retainer using the matter number for his involvement under the first. It was purely a matter of the Defendant's internal file references and the Claimant could not have become confused that work being done in respect of the claim against the customer was being done under the first retainer.

Queries

53. While the Claimant raised queries about the Defendant's fees, that was not until March 2022, and then largely in relation to the third estimate. I do not think that the queries that were raised then add anything to the question of whether the level of fees justify further enquiry which, in my judgment, they do because of the estimates that were given.

Work during pauses

54. The simple explanation for this is that over the periods that the Defendant paused work, because of the Claimant's failure to pay its fees, the Defendant nevertheless did work which was required by the court's timetable. This was done for the Claimant's benefit and doubtless with its knowledge. It cannot I think amount to a reason why there should be a detailed assessment.

Funding

55. The Claimant funded the litigation in part with contributions from its insurer and in part with the assistance of the German government. It is submitted on its behalf that the Defendant's involvement with or knowledge of these arrangements amounted to a special circumstance.

56. I have difficulty in seeing that. Both retainers were conventional, in that the Claimant was directly liable for paying the Defendant's fees and that liability was not dependent on or conditional on external funding. Clearly the Defendant knew of the arrangement with the insurer and of the Claimant's hope that it would obtain government funding. However it was not directly involved in the arrangements.

Special circumstances – decision

57. If I am wrong about the nature of the bills, then it seems to me that there are special circumstances which would justify the assessment of those bills rendered between 30th June 2021 and 16th May 2022, namely that the Defendant's fees justify enquiry given the costs estimates that were provided to the Claimant.

Whether a detailed assessment can be ordered in respect of profit costs and the costs of Integreon only

58. Section 70(5) of the 1974 Act provides that:

> (5) An order for the assessment of a bill made on an application under this section by the party chargeable with the bill shall, if he so requests, be an order for the assessment of the profit costs covered by the bill.
>
> (6) Subject to subsection (5), the court may under this section order the assessment of all the costs, or of the profit costs, or of the costs other than profit costs and, where part of the costs is not to be assessed, may allow an action to be commenced or to be continued for that part of the costs.

59. The Claimant seeks an order for the assessment of the Defendant's profit costs and all other disbursements excluding counsel's fees and court fees. In particular, the Claimant is concerned about the substantial fees of Integreon, the third party disclosure provider.

60. On behalf of the Claimant, Mr Mason submitted that Integreon's fees are in reality a profit cost. He drew an analogy with the costs lawyers' fees charged as profit costs in *Crane v Canons Leisure Centre* [2017] EWCA Civ 1352. The difficulty with that argument is that in *Crane* the work done by the costs lawyers was charged as profit costs. In the present case the fees of Integreon have been charged as disbursements.

61. However, it seems to me that it is not necessary to shoehorn what was charged as a disbursement into the profit costs. The Claimant is not unhappy with counsel's fees (and I understand that the same counsel are continuing to act for it) and nor is it unhappy with the court fees. It would be absurd to force the Claimant into an assessment of either. They would be included in the breakdown and then not challenged in the points of dispute. Their only effect would be in increasing the size of the bill when calculating whether one-fifth had been disallowed for the purposes of considering the incidence of costs under s.70(9).

62. It seems to me that s.70(6) permits the court to exclude either the profit costs or categories of costs other than profit costs. The obvious intention is to permit the court to order assessment of those parts of the bill which the client wishes to challenge and to allow the solicitor to sue for the other parts. In the absence of "all" before "costs other than profit costs", the court may order an assessment of some or all of them.

63. Accordingly in my judgment the court has the power to make the order which the Claimant seeks.

A payment on account

64. Whether the Claimant should make a further payment as a condition of an order for detailed assessment will be a matter for submissions at the hearing following the handing down of this judgment.