Case No: E90SE017

**IN THE SHEFFIELD DISTRICT REGISTRY**

The Law Courts
50 West Bar
Sheffield, S3 8PH

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**Before**:

**DISTRICT JUDGE BATCHELOR**

**Between:**

**ANDREW ERLAM** **Claimant**

**- and –**

**RICHARD SLADE & COMPANY PLC** **Defendant**

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**MR CARLISLE** appeared for the **CLAIMANT**
**MR WEST** appeared for the **DEFENDANT**

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# JUDGMENT

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**JUDGE BATCHELOR:**

1. This is an ex tempore judgment having heard oral submissions at a hearing on 5th September 2019, hearing representations from Mr Carlisle, costs draftsman for the claimant, and Mr West, solicitor for the defendant, and further to their written skeleton arguments that had been prepared by Mr West for the defendant and counsel for the claimant prior to the hearing, and considering the very detailed three lever arch file bundle.

The factual background

2. The claimant and three other election petitioners brought a petition in the Election court to remove Lutfur Rahman as Mayor of Tower Hamlets as a result of concerns regarding suspected vote rigging. They were successful. Mr Rahman was found guilty of election offences and banned from public office. He was ordered to pay the petitioners' costs, subject to assessment, and to make a payment on account of £250,000. The defendant firm were instructed to recover the costs awarded by the election court and to carry out other work, the claimant being aware that Mr Rahman owned three properties.

3. The defendant's work for the petitioners included obtaining a freezing injunction and charging orders; representing them at a contested trial concerning the deposed Mayor's wife's claim to beneficial ownership of one of his properties; resisting a claim for judicial review; assisting them with the preparation of their bill of costs for the detailed assessment; and assisting them with the appointment of their choice of trustee on Mr Rahman's bankruptcy. I should also add in circumstances where collusion between Mr Rahman and his nominee was suspected and also that there may have been fraudulent claims in the bankruptcy. On any view of the matter this was a complicated situation and the enforcement was anything but straightforward and there were various threads to it.

4. The claimant and Mr Slade of the defendant firm had a meeting in March 2014 where estimates of costs were provided. The estimate of £50,000 was given and on a worst case scenario £80,000. The defendant does not dispute these estimates – I refer to Mr Slade's witness statement for that – that those estimates were given, but in evidence before me said that they were just that – estimates. Mr Slade never gave a revised estimate. Miss Turner, also of the defendant firm and who was assisting Mr Slade, does provide revised estimates for separate pieces of work - as I say, there were various pieces of work being undertaken – but does not provide a revised overall estimate.

The funding

5. The claimant signed a single retainer covering "all work which this firm carries out for you" on 27th April 2015. The retainer letter is incorrectly dated 23rd April 2014. All parties accept that is an error and that the retainer was signed 27th April 2015. The retainer provided for charging on a non-contingent basis by reference to hourly rate. Thereafter, on 25th January 2016, the claimant signed a CFA which was retrospective in scope and entered into when it became clear that the claimant would be unable to pay the fees on a monthly basis . So I find the CFA was entered into when paying costs became an issue. Again the document is incorrectly dated. The document, which is in the bundle at page 29, is dated 25th January 2015 but all parties accept it was in fact entered into on 25th January 2016. As I have said, the CFA was retrospective in scope

and on the face of the document covered all work from either 23rd April 2015 ( the date given in the definition of basic charges section), or 27th June 2015( the date given in the description of what is covered by this agreement on the front page ) and I will come back to that.

6. The CFA included a provision that the claimant could terminate at any time whereupon they (Mr Erlam and the others) would become liable for the defendant's basic charges. The first retainer, the private retainer, to the extent that it is relevant in light of the backdating to the 23rd April 2015 point, was terminated by virtue of the CFA. The CFA was terminated by the claimant on 15th June 2016. The claimant then instructed new solicitors to continue to seek to recover assets on his behalf and those new solicitors I will refer to as BMM, as others have in these proceedings.

History of Proceedings

7. I should set out a brief history of the proceedings. On 7th February 2018 the claimant issued Part 8 proceedings for an assessment of the invoices rendered throughout the entire retainer, or alternatively for a s.68 order for delivery up of a bill, and it is those proceedings which are now before me. The matter was originally heard by my colleague District Judge Bellamy at a preliminary issues hearing to determine the nature and status of the bills delivered and, dependent on that, whether special circumstances needed to be shown and, if so, whether such circumstances existed.

8. The defendant accepted at that hearing that District Judge Bellamy was bound by the High Court decision in *Slade t/a Richard Slade and Company v Boodia Anor [2017] EWHC 2699 QB* which was authority for the proposition that a retainer which allowed for separate bills relating to profit costs and disbursements could not enable a solicitor to render interim statute bills. The defendant had appealed this decision to the Court of Appeal but the matter had not been heard by the Court of Appeal before the hearing determined by District Judge Bellamy. District Judge Bellamy found that the bills delivered could not be interim statute bills because charges for the defendant's profit costs and disbursements had been billed separately on separate invoices. I believe he also went on to say that they did not amount to a Chamberlain bill either.

9. The Court of Appeal then gave their decision in *Boodia [2018] EWCA Civ 266* and, allowing the appeal, found that the bills would not fail as interim statute bills simply by virtue of there being a split between profit costs and disbursements. It is important to note here that the Court of Appeal did not go further and say the bills delivered were in fact interim statute bills. The point was never before the Court of Appeal. They were only concerned with the narrow question of whether the bills being incomplete excluded the possibility of them being interim statute bills and they found that they did not.

10. The defendants then appealed District Judge Bellamy's order on the basis his decision was wrong once the Court of Appeal had determined the appeal in *Boodia*. The appeal of District Judge Bellamy's order came before Mr Justice Goss, who in the light of the above remitted the entire preliminary issue back to another District Judge, hence the matter was referred to me to hear the preliminary issue *de novo*.

11. Conscious of the spiralling cost and delay, when the matter first came back before me I urged the parties to try and reach a compromise on a pragmatic way forward, and

whilst it seemed progress in that regard might be made it was ultimately unsuccessful. I therefore heard full submissions on the preliminary issue on 5th September 2019 from Mr Carlisle, cost lawyer for the claimant, who I should add was given rights of audience by me for the purpose of the hearing should any point about that arise, and from Mr West, solicitor for the defendant. Both parties, as I say, had also submitted very helpful detailed skeleton arguments prior to the first hearing before me, for which I was very grateful. There was also, as I say, the bundle consisting of three lever arch files of documents and witness statements. I have considered the written submissions in the skeleton arguments and heard the oral submissions of the legal representatives. Both parties have said all that can be said on behalf of their respective clients and I have considered in detail the documents contained in the bundle.

12. As this is a hearing *de novo* on the preliminary issue, I am not bound by any submissions or indeed concessions made in the hearing before District Judge Bellamy. I see no reason, however, why they may not be instructive insofar as they are relevant, given a copy of the transcript of the hearing before him is contained within the hearing bundle presented to me.

13. The claimant submits I should take note of the fact that the claimant brought these election proceedings for the public good, rather than to benefit himself in any way, and that his actions to recover costs was pursued solely to recoup his expenses and not for any financial gain. I will come back to that in due course but I must say at the outset that the court, whilst sympathetic to Mr Erlam's position, cannot look into the motive for bringing or defending a claim as a reason to look more favourably upon any party when determining correct legal principles that may apply. That would indeed in my view be dangerous ground and justly open to criticism.

The Bills

14. Turning to the bills themselves. There were 18 bills – and I will call them bills for these purposes; sometimes I call them invoices – 18 bills were delivered to the claimant between June 2015 and 2016 totalling £236,607.83. A total of £92,163.56 has been paid effectively on account, using the claimant's terminology, in respect of those bills. Those sums (that is the arithmetic) are agreed by the parties. The defendant opened five different matters for the claimant and his fellow clients. First, Lutfur Rahman enforcement of judgment; secondly a judicial review file; thirdly, possession and sale of 3 Grace Street, a property owned by the Rahmans; fourthly, costs assessment; fifthly, Rahman bankruptcy. These are helpfully defined in paragraph 9 of the defendant's skeleton argument as to what they related and I do not see any need to set that out further here.

15. Each matter file was allocated a code and the 18 invoices delivered were then linked to the file matter to which they related by reference to the code, or at least that was the intention. Paragraphs 10-13 of the defendant's skeleton argument sets out in detail their case as to which matter the invoices raised related to, the amount of payments received and how those payments were allocated and an additional explanatory commentary. Again I do not propose to repeat that here verbatim but I rely on it by way of factual background to the said invoicing process. On any view of the matter it was complex and became more so as the different matters progressed.

Issues to be Decided

16. The issues that are to be decided by me are as follows. First, the claimant argues that the invoices raised by the defendant should be assessed pursuant to The Solicitors Act 1974, s.68 and/or 70 (whether by virtue of a final statute bill being delivered or, if I find there to be a delivered Chamberlain bill, then due to the application of special circumstances pursuant to section 70(3)(c) of the Solicitors Act 1974). The defendant argues that the claimant is out of time for seeking an assessment and that no special circumstances exist.

17. In order to determine the above, the court must determine what the invoices delivered to the claimant actually are. Were they interim statute bills, Chamberlain bills or non-statute invoices that should now be replaced with a final statute bill? Only when that issue is determined can the court then decide whether there are special circumstances, if required to be proved at all, such that would warrant an order for assessment and if so whether they apply to all or only some of the bills.

18. It must be accepted that the invoices could only be one of three things: some or all are interim statute bills; they are a single Chamberlain bill with the delivery date being the date of the final invoice delivered on 5th July 2016 or, thirdly, they do not constitute either interim statute bills or a Chamberlain bill, which would mean no statute bill has been delivered to date for the purposes of a Solicitors Act 1974 assessment. If no bill has been delivered then no special circumstances are required and a final statute bill would have to follow.

19. An issue arises between the parties as to what period of bills the CFA covers. The CFA is one document incorporating the schedules and the Law Society conditions and explicitly states that these form part of the agreement. The front page of the CFA records that it covers "all work carried out by the solicitors from 27th June 2015." However, schedule 2, under the "Basic Charges" heading, states that " these are for the work done from 23rd April 2015 until this agreement ends." As such, the claimant argues the CFA is ambiguous in relation to what period it covers and that, per the contra proferentem principle, ambiguity must be construed against the drafter of the document and as such the period should be taken to cover the entire retainer.

20. I am not persuaded by that argument at all. The effective start date as to the period of work covered by the agreement is clearly stipulated as 27th June 2015 onwards. There is no ambiguity about that. The appended Schedule 2, addressing the calculation of basic charges, is focused upon hourly rates and the overall costs cap, making clear this is a CFA lite. I find the reference to a date of 23rd April 2015 in Schedule 2 to be an error. That was clearly the date of the initial retainer letter( erroneously dated 23rd April 2014).

21. Whilst errors over documentation are something of a feature in this case, I do not believe the parties intended that the CFA should be effective for work undertaken from 23rd April 2015. The CFA was entered into by agreement once it became clear costs were escalating and the claimant would be unable to continue to pay the fees accruing on a monthly basis. Therefore there are two periods of invoicing which cover the private retainer period and the period covered by the CFA.

22. The claimant submits that in relation to the period of time covered by the CFA the invoices or bills delivered cannot be interim statute bills. A CFA, it is submitted, cannot provide for the rendering of interim statute bills because an interim statute bill is a self-

contained and final bill for the period it covers. It is payable on delivery and the timescales for assessment under the Solicitors Act begin once delivered. It seems clear to me that where a CFA is signed the liability for costs does not crystallise until the case is won ,lost or the agreement is terminated.

23. The defendant seems to argue that a "win" encompasses a "recovery" for these purposes but in the context of enforcement proceedings running under various different matter titles, I am not satisfied success can so easily and reasonably be measured in that way, and nor do the invoices appear to have been presented in that way. In the case before me, the trigger was the termination of the CFA on 15th June 2016. This point was addressed in the case of *Sprey v Rawlinson & Butler LLP [2018] EWHC 354 QB* which found that the CFA bills could not be interim statute bills. The proper construction of the CFA did not permit or anticipate the rendering of interim statute bills. I find that the liability to pay the defendant's fees arose on termination of the CFA. Invoices rendered prior to that date under the CFA were effectively for payments on account.

24. In the hearing before District Judge Bellamy, the defendant appeared to argue the invoices delivered under the CFA were to be treated as Chamberlain bills pursuant to the *Sprey* case. This is certainly how it appears from the transcript. I appreciate this hearing before me is *de novo* but I note the point. Of course, if such invoices are Chamberlain bills they cannot be interim statute bills – the defendants cannot have their cake and eat it.

25. By way of reference to the invoices themselves – and I am going to refer to the bundle and the page number rather than the invoice because otherwise it will take far too long – B.240 (invoice is 4838) said in its heading to be "payable as per the CFA", yet there does not appear to be any CFA triggering event on the date of that invoice or around that date, which is 18th February 2016, when the bill was delivered which permitted this invoice to be raised under the CFA. This invoice alone totals over £6,000. I am going to make further reference to some of the other bills, not an exhaustive reference but serving to highlight the various issues with the invoicing process.

26. The invoice which is an FF invoice (I will come back to that) is at B.200. The description that is given seems to cover the same as the invoice at page B.240. The defendant refers to this, described as a "fixed fee invoice", but there was no fixed fee agreement. B.203 is a fixed fee invoice which appears to span two retainers. It is not clear on the invoice which retainer it properly covered. B.204 is a disbursement bill and B.205 refers to counsel's fees but it is utterly baffling which share of the fees it refers to. B.251 and 256 refer to an "agreed reduction" but it is unexplained. B.213, judicial review proceedings – this is a CFA lite and the JR proceedings, I have no idea what was recovered in costs and I do not understand what the trigger is. In B.240, the costs assessment invoice, what is said to be the trigger event for that? B.262, a bill for the bankruptcy proceedings. There are lots of entries that don't appear to relate to bankruptcy.

27. As I say, that is not an exhaustive list but it is sufficient to make the point that I find that the billing was both complex and confusing. Indeed, when I sought clarity about these invoices during the hearing from Mr West when I was struggling to follow them, Mr West himself said that there were "that many bills in circulation it's confusing" – those were his words .The opacity of the billing became more obvious as the hearing before me progressed.

28. I then need to turn to consider whether the bills delivered under the private retainer prior to June 2015 constitute interim statute bills. The claimant says they are not; the defendant says they are. The retainer, which appears at A.21 of the bundle, in theory allowed for the defendant to render interim statute bills. It states "Bills are rendered monthly in arrears. Our bills are detailed bills and are final in respect of the period to which they relate, save that disbursements are normally billed separately and later than the bill for our fees in respect of the same period." The fact that theoretically this allowed for the rendering of an interim statute bill is not to say that the invoices that were in fact rendered, and the manner in which they were rendered, met the requirements of an interim statute bill. The Court of Appeal in *Boodia* held that the fact bills only included profit costs or disbursements did not prevent them being interim statute bills. They did not go further and say the bills delivered were in fact interim statute bills and I have already said that was because the point was never addressed by them; it was never put to them.

29. The test under The Solicitors Act for an interim statute bill is said by the defendant to not be very exacting – it must simply be signed, delivered and "bona fide complying with the Act". The leading authority on this is the case of *Ralph Hume Garry v Gwillim [2003] 1.WLR, 510* in which the phrase was interpreted as a requirement to contain sufficient narrative for the client to see what he is being charged for. There is a presumption in the solicitor's favour and so the client bears the burden of showing, if he so alleges, that the bills were not bona fide complying with the Act. The client will not be able to do so where, quite apart from the content of the bills, he otherwise has sufficient knowledge about the solicitor's charges to take advice on whether to apply for an assessment of the bill. In addition, the bills must be final bills in respect of the work they cover and they must be raised at a natural break or in accordance with a contractual right under the retainer.

30. The defendant submits the bills rendered under the private retainer pass this test; the claimant disputes this. For a retainer to provide for interim statute bills, the solicitor must make it plain that was the purpose of the bill, as decided in *Davidson v Jones-Fenleigh (1980) Sol Journal 124*. In the case of *Adams v Al Malik (2014) 6 Costs LR 985*, the court held that:

> "[In order for the bill to constitute an interim statute bill] the client must be told what rights were being negotiated and dispensed with."

Specifically reference is made in the case to "a lack of discussion or explanation setting out the difference between an interim statute bill or a bill on account and there was no evidence of advice given to the client as to his right to a detailed assessment of the bills, or the fact that payments of them could affect his right to a later detailed assessment."

31. In the case of *Dr Vlamaki v Sookias&Sookias 2015 EWHC 3334(QB)* because of a lack of clarity in the retainer what the solicitors had intended to be interim statute bills and said on their face were, were not in fact held to be so. Bills may have the appearance of interim statute bills and the retainer may refer to them as such but the lay client needs to have a concept of what that means.

32. Turning to the retainer documents before me, and specifically the solicitor's terms and conditions which appear at bundle A.26-28. Paragraph 17 of the terms and conditions is headed "Entitlement to Assessment" and it states:

> "The client may be entitled to have.." – and I insert "the defendant's" – "..charges reviewed by the court in accordance with the provisions set out in The Solicitors Act 1974."

33. The terms and conditions do not tell the client that when the defendants say they deliver an interim statute bill, to be treated as a final bill, the client's time for challenge runs from the date the invoice is served. There is simply no explanation in these terms and conditions as to what rights a claimant is giving up. The defendant's complaints procedure also appears within the terms and conditions at A.27. It includes complaints about costs. It is exhausted after 28 days. By the time that process is exhausted, the client may only have two days to request a Solicitors Act assessment and that is not made clear to the client. I therefore find that the bills delivered prior to June 2015 were not interim statute bills, any more than the bills delivered post June 2015 were.

34. I should add that in the hearing before me the invoices were trawled through in depth and it became increasingly clear that in respect of much of the billing the claimant would not have had sufficient information to challenge the bills. They lacked sufficient detail and clarity so as to enable the claimant to determine whether he should seek to have them assessed. Indeed, as I have said, Mr West conceded before me and in the previous hearing that the invoices ending FF left the claimant without sufficient information to be classed as interim statute bills but were payments on account.

35. The defendant argues in the alternative that if the bills are not considered to be interim statute bills then they are a Chamberlain bill. It is accepted by the parties that if I find them to be a Chamberlain bill, then such bill would only be capable of assessment if the claimant can show special circumstances, pursuant to The Solicitors Act 1974 s.70(3), and indeed that some of the invoices would be outwith that process because of s.70(4).

Is there a Chamberlain Bill?

36. I turn to consider whether there is a Chamberlain bill in this case. I should say what a Chamberlain bill is. A Chamberlain bill is a succession of bills, each of which taken alone are not considered to be a statute bill, which culminate in a final statute bill rendered at the end of the solicitor's retainer, which encompasses all the invoices. The date of delivery of the bill will be the date of the final in the series. Pursuant to the reasoning in Chamberlain, a series of bills constituting "one continuous dealing and work done by a solicitor" is deemed a single bill which does then qualify as a statute bill.

37. The court cannot automatically construe a series of bills as a Chamberlain bill just because, as here, the court finds they are not interim statute bills. For the court to find a Chamberlain bill, the court must be satisfied that the totality of the bills in the series can be properly viewed as a final statute bill. In the case before me, as I have already said, there were five matters opened and so five separate series. The defendant asks the court to note that in relation to four of the five matters – that is judicial review, costs assessment, bankruptcy and Grace Street – there is only a single bill for fees, coupled

in two out of the four cases with a bill for disbursement. In relation to the remaining matter, the main enforcement matter, there are two bills in the series and it is submitted the court should have no difficulty in finding these constitute a Chamberlain series on the basis of the detail contained in them. The second of them was after the claimant had terminated the retainer and as such should be considered a final bill. I have to say I find that oversimplifies this case from the claimant's perspective.

38. In the case of *Rahimian v Allan Jones LLP [2016] EWHC 818 (costs)*, to which both parties have referred me, the senior costs judge held that a series of bills could not be a Chamberlain bill because it did not contain sufficient information to enable the client to seek advice as to its assessment. The key issue is not whether the client was subsequently able to issue proceedings for an assessment (after consulting specialist solicitors or costs lawyers) but rather whether, at the time of delivery, he was in possession of that information. That is crucial because time starts running against a client under s.70 of The Solicitors Act once the bill is delivered, which is why it is at the point of delivery that the client must have sufficient information.

39. In the *Rahimian* case the client described the billing as "confusing" and had concerns about the levels of billing throughout. Once he had instructed specialist cost lawyers( one year after the final invoice was delivered) and they had considered the solicitor's files, he did have sufficient knowledge to make a decision as to whether to challenge the fees. Importantly, however, it was said he did not have that knowledge when the invoice was delivered.

40. The claimant in the case before me describes the billing as "confusing and difficult to follow" and indeed his evidence is that concerns regarding the billing during the retainer are what subsequently led him to terminate the contract. It is the claimant's argument that, when viewed as a whole, the bill (consisting of all the component invoices) is not sufficiently clear and did not contain sufficient information for him to consider, at the date of delivery (which for these purposes is the key date), whether to seek advice about whether to challenge it and he submits this is for the following reasons, which I shall consider in turn.

41. First, the individual invoices which make up the purported Chamberlain bill contain separate invoices for profit costs and disbursements and it is difficult for a lay client to cross-reference each and reconcile the various documents. There can of course be separate invoices for profit costs and disbursements but the client must be able to understand clearly what invoice disbursements relate to and to cross-reference them back to work done around that disbursement. When the two are separately invoiced and not invoiced at the same time this becomes a more difficult exercise for the client to undertake. In this respect the narrative on any invoice is crucial and in this case was sadly lacking and I have already referred to some of the invoices for disbursements where it is totally unclear as to what they relate to or what they may relate to - disbursement invoices frequently didn't seem to have a heading with them.

42. Secondly, the invoices make no distinction between the private retainer and the CFA period and the claimant cannot be certain as to which items belong to which retainer. This is crucial because, as I have already said, the CFA signed was a CFA lite, which meant that any liability under this part was capped to the sums recovered from the opponent. A final statute bill would, by its very nature, set out clearly items under separate headings for periods of differing retainers. That is a standard statute bill.

43. Thirdly, it is impossible to ascertain what the work actually relates to. Whether it is for the charging order, freezing injunction, bankruptcy and so on. The claimant could not be expected to know whether he should challenge the costs if he could not appreciate the work undertaken in respect of those distinct areas. The five matters were not all as clearly distinct from one another, as is suggested by the defendant. Furthermore, the work under the general enforcement matter encompassed various aspects of enforcement but the client needed to know what particular aspects of enforcement any particular invoice specifically related to, otherwise he cannot know whether the charges appear reasonable to him. Again, the lack of detailed narrative on the invoices failed to provide him with the requisite required information. The bills require minute analysis beyond what would be reasonably expected of a lay client, in my view.

44. Fourthly, there are some invoices with 'FF' after the number. I was told this means they are fixed fee invoices. However that it a total misnomer. "Fixed fee" suggests an agreement reached between a solicitor and the client before the work commences. This is not what "fixed fee", in the context of this case, apparently meant. Rather in this case the defendant "fixed" the invoice after the work was completed. The defendant acknowledges there was a lack of sufficient narrative on these invoices but asserts the claimant had sufficient information to consider assessment because of other documentation, including explanations of what work was done.

45. I do not accept the onus is on the claimant to cross-reference for himself various other documents and correspondence to try and work out for himself what invoiced work related to. The onus is on the solicitor sending out the invoice to ensure that the client has sufficient information, provided in a comprehensive and comprehendible manner, so as to fully appreciate what the invoice relates to and that simply did not happen in this case. This is particularly so in a case where there were both various matter numbers and separate invoices being prepared for costs and disbursements. Furthermore the disbursement invoices, as I have mentioned, are not headed so it is not easy for the client to determine which part of the invoices they apply to.

46. It seems clear to me that when a Chamberlain bill is being considered one looks at all the invoices in the series and asks the question whether this is a final statute bill, i.e. the Chamberlain bill requires the qualities and capabilities of a final statute bill which must include that it can be in a state whereby the court could have it assessed. Many of the bills presented to this claimant have no narrative. Whereas that would be acceptable on a disbursement bill ( with the proviso it must still be clear what the disbursement related to). Limiting the narrative to little more than a description of hours worked is not enough. This is not a situation where there was no proper narrative in the bill but a detailed narrative was contained in an accompanying letter. The witness statements of both parties do not suggest there was other detailed information given to the claimant that would remedy or rectify the lack of narrative in the bills, to my mind.

47. During the hearing before me we carried out, as I say, a minute analysis of the bills and it fairly quickly became apparent that the exercise was anything but straightforward and clear-cut. In conclusion, to be a Chamberlain bill it needs a narrative or, in the absence of a narrative it needs to be shown a narrative was not required and neither has been demonstrated to me. The invoices cannot be treated as a series which, taken together, can be treated as a final statute bill which the court could assess or upon which the claimant could have sought advice as to assessment. The information the claimant was

given was confusing. I do not find there to be a Chamberlain bill delivered in this case and a statute bill should be prepared in accordance with s.68 of The Solicitors Act.

Special Circumstances.

48. On that basis I do not need to consider special circumstances but it may be helpful if I add that if I am wrong about my determination that these invoices should not be treated as a Chamberlain bill, and had a Chamberlain bill been found, that it is accepted that, on the basis of the timeline, special circumstances would need to be shown before an order for assessment will be made, pursuant to s.70(3) of The Solicitors Act 1974. It may assist the parties if I also address that.

49. Nine of the invoices have been paid in full for more than a year and cannot therefore be saved by special circumstances because they fall within s.70(4) of The Solicitors Act 1974. In relation to the remainder, I will consider whether special circumstances would exist had I found a Chamberlain bill. The test is set out in *Falmouth House Freehold Company Ltd v Morgan Walker [2010] EWHC 3092 (ch):*

> "Whether special circumstances exist is essentially a value judgment. It depends on comparing a particular case with a run-of-the-mill case in order to decide whether a detailed assessment in a particular case is justified, despite the restrictions contained in s.70(3)."

50. The judge in that case repeated the guidance given in *Re Robinson 1867 LR 3Ex 4* which made it clear that "an unusual charge of a large amount requiring explanation to justify it" was a sufficient ground for a finding of special circumstances.

51. In the *Falmouth* case the Costs Judge below stated that when he looked at the various invoices he "could not marry anything up". In other words he was not satisfied that the invoices gave proper details of what had been charged or why. In essence, he considered that the bill "called for an explanation." Those words could so easily be applied, in my view, to the claimant in this case. Even the lawyers looking at the case at this hearing were struggling to marry anything up clearly and coherently. How much more difficult it must have been for the lay client.

52. One of the special circumstances I find in this case is indeed the costs estimate. The claimant was given a cost estimate on a worst case scenario of £80,000 – that is not disputed. The costs that the claimant faces exceed £200,000. Clearly the estimates were wholly inadequate. At no stage was the claimant given a further overall estimate. He was given separate updates of five different matters. It is not for the claimant then to start calculating for himself where he is up to - he should have coherent and comprehensive information provided by the solicitors – and the fact that this bill so far exceeds the estimate the claimant was provided with I find to be a good reason for special circumstances.

53. In *Mastercigars v Withers(1) 2007 EWHC 2733(ch)* Mr Justice Morgan made it clear that:

> The estimate is to be used as a "useful yardstick" by which the reasonableness of the cost claim can be measured.

The judge also noted that the greater the difference between the estimate and the bill, the more the court would require an explanation to explain the disparity.

54. In this case the explanation should be in the form of the provision now of a s.68 statute bill.

55. Large bills also require explanation. On any view of the matter this was a significant bill. There were five related matters, all arising from the same index events being billed. The complexity of the billing in my view created confusion to the lay client which is another reason why special circumstances ought to exist.

56. I am not and would not have been persuaded by the argument that there was an agreement to assess – that is dealt with in some correspondence between the defendant's solicitors EM and EMM the new solicitors. That is not a binding contract and I was not and would not have been persuaded by it. I have already commented on the submission made that the claimant took these proceedings for public good and that therefore I should find in his favour on that point. Again, I am not persuaded on that and would not have been satisfied that amounted to special circumstances despite I accept the public goodwill that the claimant offered by his actions. However I do not accept I should be influenced by that.

57. I just make those observations because I thought it might be helpful if I did.

58. That concludes my decision. The order I will make is that a final statute bill should be served in accordance with s.68 of The Solicitors Act 1974.

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*This Judgment has been approved by the Judge.*