Neutral Citation Number: [2022] EWCA Civ 1388

Appeal No: CA-2021-001621
First Appeal No: QB/2020/012
County Court Claim No: E90SE026

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LEEDS DISTRICT REGISTRY
MR JUSTICE LAVENDER (on appeal from District Judge Bellamy)

Royal Courts of Justice, Strand
London WC2A 2LL

Date: 27/10/2022

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
SIR JULIAN FLAUX, CHANCELLOR OF THE HIGH COURT
and
LORD JUSTICE NUGEE

BETWEEN:

MARTA KARATYSZ

Claimant/Appellant

and

SGI LEGAL LLP

Defendant/Respondent

Robin Dunne (instructed by **Clear Legal Limited trading as checkmylegalfees.com**) appeared on behalf of the **appellant client** (the Client)

Robert Marven KC (instructed by **Weightmans LLP**) appeared on behalf of the respondent solicitors (the Solicitors)

Hearing date: 7 October 2022

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JUDGMENT

Sir Geoffrey Vos, Master of the Rolls:

Introduction

1. The argument in this case followed directly after the argument in *Belsner v. Cam Legal Services Ltd* [2022] EWCA Civ 1387 (*Belsner*). The judgments in the two cases are being delivered at the same time. This judgment assumes the decision in *Belsner* as its starting point. For the purposes of this case, it is important to note the three main things that the court has decided in *Belsner*. First, solicitors undertaking claims for their clients within the pre-action protocol for low value personal injury claims in road traffic accidents (the RTA portal) are undertaking non-contentious business within the meaning of the Solicitors Act 1974 (the 1974 Act) until legal proceedings are formally issued. Secondly and consequentially, section 74(3) of the 1974 Act (section 74(3)) does not apply to limit the costs that solicitors can recover from their clients in respect of claims pursued through the RTA portal. Section 74(3) limits the amount allowed on an assessment of costs in contentious business in the county courts to the amount which could have been allowed as between the parties to the litigation. Thirdly, CPR Part 46.9(2) (Part 46.9(2)) does not extend the ambit of section 74(3) to make it apply to non-contentious, as well as contentious, business. Part 46.9(2) provides that section 74(3) can be disapplied by a written agreement between the solicitors and their client expressly permitting payment of costs in excess of party and party costs.

2. In this appeal, the main issue to be decided is as to the amount of a solicitors' "statute bill" as it is commonly called. It may be pedantry, but I would prefer the term "statutory bill". The bill in question was submitted by the respondent Solicitors to the appellant Client on 15 January 2018 (the Bill) after the Client's personal injury claim brought through the RTA portal had been settled. That question is relevant because section 70(9) of the 1974 Act provides that the costs of an assessment are paid by the solicitors if the amount of the bill is reduced by one fifth, but otherwise by the client. District Judge Bellamy decided at a hearing on 7 January 2020, amongst other things, that the amount of the Bill (which he had assessed under section 70 of the 1974 Act) was £2,731.90. On the first appeal, Lavender J decided at [148] in his judgment of 11 June 2021 that the amount of the Bill was £1,571.50. If DJ Bellamy was right, the Solicitors will, in effect, pay all the costs of what are now three significant hearings. If Lavender J was right, the Client will pay all those costs. The Solicitors contend in their respondents' notice, amongst other things, that even if the Client is right as to the amount of the Bill, there are nonetheless "special circumstances" within the meaning of section 70(1) of the 1974 Act so that, in justice, the Client should pay all the costs. The special circumstances relied upon are that the challenge to the Bill has been entirely futile because the Client has not achieved any reduction in the amount she is required to pay. Moreover, the Solicitors submit that the court should signal, by an award of costs, that such futile litigation is to be discouraged.

3. In *Belsner*, the court has already stated that (i) it is unsatisfactory that solicitors like *checkmylegalfees.com* can adopt a business model that allows them to bring expensive High Court litigation to assess modest solicitors' bills in cases of this kind, and that (ii) the Legal Ombudsman scheme would be a cheaper and more effective method of querying solicitors' bills in these circumstances.

4. So far as the substantive dispute on this appeal is concerned, I have formed the view, for the reasons I propose to give very shortly, that Lavender J was right broadly for the reasons he gave. I do, however, intend in this judgment to make clear how solicitors should frame their statutory bills in future so as to avoid future costly disputes of this kind. I do not intend to repeat the detailed facts set out in Lavender J's lengthy judgment, to which reference should be made for an account of the complex history of this litigation.

5. This judgment will now set out the essential facts and the details of the Bill and the statutory background, before dealing with the grounds of appeal raised by the Client in criticising Lavender J's decision.

Essential facts and the details of the Bill

6. The Bill numbered SB73269.1 and dated 15 January 2018 included the following four items, which totalled £2,731.90, but the total was not stated on the face of the Bill:

   i) "Basic Charges" shown as "Costs" of £1,717.00 plus VAT of £343.40.

   ii) "Success Fee, which represents 100% of our basic charges, but capped [at] 25% of your damages recovered for pain, suffering and loss of amenity excluding future pecuniary loss" shown as "Costs" of £260.42 plus VAT of £52.08.

   iii) "Medical Report" shown as "Disbursements" of £180.00 plus VAT of £36.00.

   iv) "ATE Premium" shown as "Disbursements" of £143.00.

   The "Costs" were totalled at £1,977.42. The "Disbursements" were totalled at £323.00 and the VAT was totalled at £431.48, but there was, as I have said, no overall total.

7. After the costs, disbursements and VAT that I have mentioned, the Bill had two line items: "Less monies received from Aviva" shown as £1,116.00, and "Balance payable by client, limited to 25% of damages plus ATE premium (paid)" shown as £455.50.

8. As will later appear, it seems crucial to me that the final line of the bill made it clear that the "balance payable by the client" had been "paid".

9. The brief history of the litigation and of these proceedings is as follows. The Client was injured in a road traffic accident on 27 May 2016. She entered into a CFA with the Solicitors on 26 October 2016. The terms of the CFA are not material to what we have now to decide. As was envisaged, the Client's claim against the defendant to the litigation was dealt with through the RTA portal. Liability was admitted. The damages were agreed at stage 2 of the RTA portal process in the sum of £1,250. Aviva, the defendant's insurers, paid the fixed recoverable costs of £500 plus a further £250 (plus VAT) said by Lavender J at [14] to have been paid in error (but said by the Client to have been paid because proceedings had been prepared but not issued). The total cost figure paid by the insurers to the Solicitors was the £1,116 shown on the Bill (made up of £750 in costs plus VAT and £180 for the medical report plus VAT). The Solicitors paid the Client £794.50, which was the damages of £1,250 less £455.50, made up of the capped success fee of 25% of the damages (£312.50 including VAT) and the ATE premium of £143.

10. The Claimant instructed *checkmylegalfees.com*, who sought and obtained the Bill and issued her claim for an assessment under section 70 of the 1974 Act on 15 February 2018. The Client's claim form refers to the Bill as being "in the total sum of £2731.90", and only sought the assessment of the profit costs element of that Bill. On 28 March 2018, DJ Bellamy gave directions for the assessment of the Bill said to be in an "[a]mount of £2731.90". The Solicitors applied to vary that order, but not the part that referred to the amount of the Bill. On 3 July 2019, DJ Bellamy initially decided on paper that the amount of the Bill was £2,731.90. He gave as his reasons: "I agree with C. See notes in White Book p. 2370. It is the full amount of the bill which is taken into account when determining the "1/6" [sic – an error for 1/5th]". The relevant note in the White Book upon which he relied said that the amount of the bill "includes the full amount of the bill, and disregards the added expression "say X" (*Re Carthew* (1884) 27 Ch D 485 [*Carthew*]; *Re Mackenzie* (1894) 69 L.T. 751) or the fact that a lesser figure is alone claimed (*Re Paull* (1884) Ch D 485 [*Paull*])". It may be noted that this is a slightly eccentric note, since the two cases of *Carthew* and *Paull* were heard and reported together.

11. DJ Bellamy reconsidered the amount of the Bill at an oral hearing on 7 January 2020 at which he maintained his decision that the Bill was for £2,731.90. He said that "I am not persuaded to change my mind for the reasons I gave. I do not think that this piece of paper, as it is drafted, helps [the Solicitors'] argument … It is a fairly confusing piece of paper, and I think it cannot be said with any clarity precisely what the [Bill] constitutes. **It says there is a balance payable**, but you have to do the maths. The claim form seeks an assessment of the final bill and adds it up at £2,731.90 …" (emphasis added). It will be noted at once that DJ Bellamy was, at least on one analysis, wrong to say that the Bill demanded a balance.

12. When the point came before Lavender J, a number of other points remained in dispute. He dealt with the amount of the Bill at [141]-[148] having set out the argument and analysed the authorities at [123]-[140].

13. He said first that the key question was the construction of the phrase "the amount of the bill" in section 70(9). It was plain, he said, that "[s]ince a bill of costs is a demand for payment", "the amount of a bill is the amount demanded by the bill". That conclusion was not inconsistent with any of the authorities.

14. Lavender J dealt with the authorities as follows:

    i) *Breyer Group plc v. Prospect Law Ltd* (unreported, 26 July 2017, Senior Courts Costs Office) (*Breyer*) was an example of a case decided under section 70(9) in which a bill contained a demand for one amount, but also identified a larger amount which the solicitor contended that he could have charged. Master Rowley had held that the amount of the bill was the lesser amount demanded, rather than the greater amount which might have been demanded.

    ii) The older cases were decisions reached under section 37 of the Act for Consolidating and Amending Several of the Laws relating to Attorneys and Solicitors Practising in England and Wales 1843 (the 1843 Act), which was differently worded.

iii) *Paull* and *Carthew* could not be regarded as binding as to the construction of a phrase not found in the legislation under which they were decided.

iv) Even if they were binding authority, *Farrell v. Alexander* [1977] AC 59 (*Farrell*) held that, if the meaning of section 70(9) was clear (which Lavender J considered it was), *Paull* and *Carthew* should be disregarded. Sales LJ in *Bentine v. Bentine* [2016] Ch. 489 had left that question open.

v) The decision was not, in any event, inconsistent with *Paull* and *Carthew*. In those cases, Baggallay LJ had said implicitly that, if he had interpreted the bill in that case as saying "I could demand £83 3s 4d, but I only demand £78", then he would have treated it is a bill for £78. Instead he treated the bill as being one that contained **both** a demand for £83 3s 4d and an unaccepted offer to compromise that demand if the client paid £78. The facts of *Paull* were that the only figure mentioned in the bill was £361 19s 2d. The bill was a demand for £361 19s 2d, because the offer to accept less was separate from it.

vi) The White Book note was wrong to say that *Carthew* laid down a general rule that the words: "say X" in a bill must always be disregarded. *Re Hellard & Bewes* [1896] 2 Ch 229 (*Hellard*) was an example of a case in which the words "say X" were interpreted as meaning that the amount demanded was X (although North J had actually decided that the words "say £7 11s" were not the bill in that case).

15. Lavender J said at [145] that DJ Bellamy was affected by a lack of clarity in the Bill. It was a curious feature of the case that neither of the two figures contended to be the amount of the Bill were stated in it. The answer to the question "how much was being demanded by this Bill?" was that the Solicitors were merely seeking to justify their retention of the £1,116 received from Aviva and the £455.50 deducted from the Client's damages, and were not demanding more money. The Client was well aware of that fact.

16. On 26 January 2022, Asplin LJ granted the Solicitors permission to bring a second appeal against Lavender J's decision on the basis that the grounds of appeal had a real prospect of success and raised an important point of principle and practice.

<u>The statutory materials</u>

17. As I said in *Belsner*, Part III of the Solicitors Act 1974 (sections 56-75) is headed "Remuneration of Solicitors". It is divided into three sections headed respectively "Non-contentious business" (sections 56-58), "Contentious business" (sections 59-66), and "Remuneration – general" (sections 67-75).

18. Section 70 of the 1974 Act applies to assessments of costs in respect of both contentious and non-contentious business. Section 70(1) of the Solicitors Act 1974 provides that "[w]here before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no action be commenced on the bill until the assessment is completed". Section 70(6) of the 1974 Act provides that: "… the court may … order

the assessment of all the costs, or of the profit costs, or of the costs other than profit costs …".

19. Section 70(9) of the 1974 Act provides, subject to two conditions that are irrelevant here, "the costs of an assessment shall be paid according to the event of the assessment, that is to say, if the amount of the bill is reduced by one fifth, the solicitor shall pay the costs, but otherwise the party chargeable shall pay the costs". Section 70(10) of the 1974 Act provides that the "costs officer may certify to the court any special circumstances relating to the bill or to the assessment of the bill, and the court may make such order as respects the costs of the assessment as it may think fit".

20. CPR Part 46.9 is entitled "Basis of detailed assessment of solicitor and client costs" and provides:

> (1) This rule applies to every assessment of a solicitor's bill to a client except a bill which is to be paid out of the Community Legal Service Fund under the Legal Aid Act 1988 or the Access to Justice Act 1999 or by the Lord Chancellor under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
>
> (2) Section 74(3) of the Solicitors Act 1974 applies unless the solicitor and client have entered into a written agreement which expressly permits payment to the solicitor of an amount of costs greater than that which the client could have recovered from another party to the proceedings.
>
> (3) Subject to paragraph (2), costs are to be assessed on the indemnity basis but are to be presumed –
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> (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
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> (b) to be reasonable in amount if their amount was expressly or impliedly approved by the client;
>
> (c) to have been unreasonably incurred if –
>
> (i) they are of an unusual nature or amount; and
>
> (ii) the solicitor did not tell the client that as a result the costs might not be recovered from the other party.
>
> (4) Where the court is considering a percentage increase on the application of the client, the court will have regard to all the relevant factors as they reasonably appeared to the solicitor or counsel when the conditional fee agreement was entered into or varied.

The grounds of appeal

21. The 6 grounds of appeal raised by the Client are all connected and are directed at showing that the judge was wrong to decide that £1,571.50 was the amount of the Bill. In essence, the Client makes the following points: (i) the judge misunderstood the authorities (in particular *Carthew* and *Paull*, *Hellard* and *Breyer*), (ii) even on the judge's figures, the Solicitors had never demanded £1,571.50, because £1,116 had been received from the third party insurer, (iii) the judge decided contrary to the rationale behind section 70(9) which was to provide certainty as to who pays for the

costs of the assessment, (iv) the judge did not give adequate weight to the fact that the Solicitors had accepted that the amount of the Bill was £2,731.90, and (v) the judge was, therefore, wrong to find that the Bill totalled £1,571.50.

22. In oral argument, Mr Robin Dunne, counsel for the Client, explained that what he was really saying was that a statutory bill could not be assessed by the court unless it was complete (*Cobbett v. Wood* [1908] 2 KB 420) and there was a sufficient narrative to enable the client to identify what they were being charged for and whether to seek an assessment by the court (see the headnote and [70] in *Ralph Hume Garry v. Gwillim* [2003] 1 WLR 510 (*Gwillim*), which seems to apply to non-contentious as well as contentious business, bearing in mind that section 69 of the 1974 Act applies to both contentious and non-contentious business). He emphasised that, in this case, the Client would not be able to identify how the success fee (which was what the Client had been asked to pay) was calculated without knowing the base costs that the Solicitors claimed to have been entitled to recover. Accordingly, if the Bill could not be assessed without the details of the base costs, and if the Bill would not be valid without them, the "amount of the bill" must include the figures the court was being asked to assess, which totalled £2,731.90 in this case. There was some discussion of whether the Bill here was a gross sum bill and, if so, whether such a thing was permissible for non-contentious business. It seems to me that that point is beyond the scope of this appeal.

23. I intend to deal with these arguments under the following headings: (i) whether the judge misunderstood the authorities, (ii) whether a solicitor's bill of this type can only be assessed if it states the base costs, and whether that means that the judge decided the meaning of the "amount of the bill" contrary to the rationale of section 70(9), (iii) whether the judge did give adequate weight to the Solicitors accepting the Bill was £2,731.90, and (iv) whether the judge was, therefore, wrong to find that the Bill totalled £1,571.50.

Issue 1: Did the judge misunderstand the authorities?

24. So far as *Carthew* and *Paull* are concerned, I entirely endorse the judge's analysis. *Carthew* was a case where the Court of Appeal thought that the words "say £78" meant "[h]ere is my bill for £83 3s. 4d. If you will pay £78 without taxation I will accept it in full discharge. If you do not I will take what taxation gives me". It has little similarity to the facts of this case. As the judge said, *Paull* was a case where the reduction did not even appear on the face of the bill.

25. *Hellard* was a case where the words "say £7 11s", taken together with a pre-bill letter were interpreted as meaning that that was what was being demanded (see the judge's detailed explanation at [134]).

26. *Breyer* was a case in which, as the judge held at [140], Master Rowley decided that the amount of the bill was the lesser sum of £73,320 to which it had expressly said it was limited.

27. It is to be noted that these cases are very dependent on their facts, which does not make them particularly helpful in deciding this case. I also agree with the judge that the old cases were decided on the basis of a statutory provision that did not even contain the wording of section 70(9), and therefore are, at the very least, of limited

value. The judge thought that the critical question for the purpose of determining the amount of the bill was "what sum is, on its proper interpretation, required to be paid by the bill". As will appear, I do not think it matters whether the sum is already paid or not, though as I shall say, that should always be clearly stated on the face of the bill.

28. I do not think that the judge misunderstood the authorities.

Issue 2: Can a solicitor's bill of this type only be assessed if it states the base costs, and did the judge decide contrary to the rationale behind section 70(9)?

29. The foundation of the Client's argument was, as I have said, that a statutory bill could not be assessed by the court, in this kind of case at least, unless it stated the base costs that the Solicitors claimed to be entitled to charge and the success fee flowing from those base costs that the Client was expected to pay. It was those figures that could be assessed under section 69 of the 1974 Act, not whatever discount or reduction the Solicitors had agreed to give.

30. Mr Robert Marven KC, counsel for the Solicitors, accepted that the assessment was of the base costs, but said that this case was no different from the normal situation. If solicitors said in their bill: "our profit costs on the agreed rates amount to £10,000, but we will charge you £7,000", the amount of the bill was £7,000. The clients in such a case, argued Mr Marven, both knew what they were being charged (£7,000) and could decide on an informed basis whether to seek an assessment. Those clients would know that the solicitors' breakdown of the costs when served under CPR Part 46.10(2) would show how the £10,000 was made up. The clients would also know that they would have to succeed in reducing the bill by more than £3,000 + £1,400 (one fifth of £7,000) if they were to avoid paying the costs of the assessment under section 70(9). Mr Marven submitted that a bill would be valid even if it did not state the base costs, but merely made clear what sums it expected to be paid. Mr Dunne responded by saying that the client could not know whether to seek to assess the success fee in this kind of case unless the base costs were stated in the bill, so that Mr Marven's example was not in point.

31. In my judgment, this interesting debate misses the point of what the court has to decide. The only question we have to decide is as to the proper meaning of the words "the amount of the bill" in section 70(9). The question of whether a statutory bill properly needs to state the base costs from which the amount ultimately charged is derived is a separate one.

32. A provision to the same effect as section 79(3) has been in place since at least section 37 of the 1843 Act, which provided that "the costs of [a taxation] shall … be paid according to the event of such taxation; that is to say, if such bill when taxed be less by a sixth part than the bill delivered" the taxing party pays. That, like section 70(9), was a simple provision setting a target for those challenging lawyers' bills. If the bill was not reduced by the stated proportion (then a sixth, now a fifth), the challenging party paid the costs. That was the rationale of both section 37 of the 1843 Act and of section 70(9) of the 1974 Act.

33. The Client submits that the proper question to ask in order to determine the "amount of the bill" under section 70(9) is not "what sum is demanded by the bill?", but "what

is the totality of the bill which the court is required to assess?". I can see that both formulations have merit if one were identifying the amount of the bill for the purpose of the assessment itself. But section 70(9) is, as I have said, simply about fixing a rule of thumb for determining which side pays the costs of what can be a complex and expensive exercise. It is true, as the Client argues, that clients need certainty. It is true also that clients need to receive a bill that is complete (as held in *Cobbett*) and that has a sufficient narrative to identify what they were being charged for and whether to seek an assessment (as held in *Gwillim*). But those requirements, whether they are of law or good practice, do not determine the amount of the bill for the purposes of section 70(9). For that purpose, the question is simply: did the clients get a reduction of what they were being asked to pay of more than a fifth?

34. The Client submits that the proper question is not "what sum is demanded by the bill?", but "what is the totality of the bill which the court is required to assess?" It is certainly important for the Client and the court to know the totality of the bill that it is being asked to assess. In Mr Marven's example, the court is being asked to assess a bill of £7,000, which was going to be justified by showing how fees of £10,000 could have been charged. In this case, the court was being asked to assess a Bill of £1,571.50, which was going to be justified by showing how base costs of £1,717 and a success fee of £260.42 (both plus VAT) could have been charged.

35. In reality, the proper question might be more clearly phrased, in respect of the category or categories of costs being assessed, as "what is the total sum that the bill is demanding be paid to the Solicitors, whether or not all or part of that total sum has actually been paid?". It matters not whether the costs charged in the bill have been paid or not, so long as that fact is made clear on the face of the bill. I also do not think that it matters that the costs stated have been paid in whole or in part by a third party, whether insurer or not, again so long as that fact is clearly stated on the face of the bill.

36. I do not, therefore, think that the judge decided the case contrary to the rationale or any other principle provided for in section 70(9). The judge did what he was supposed to do in the circumstances of this case. He decided the amount of this Bill on its proper interpretation by asking himself what the Bill was actually demanding to be paid (or to have been paid) by way of fees. In reality, it was a simple question once one understood that the last line of the Bill told the reader that the balance payable by the Client was "limited to 25% of damages plus ATE", £455.50, which had been paid. On that basis, the only sensible interpretation of the Bill as a whole was that it was demanding whatever had already been paid, namely £1,116 by Aviva plus £455.50 by the Client, totalling £1571.50 – notwithstanding that that sum is not stated on the face of the Bill as it should have been.

<u>Issue 3: Does it matter that the Solicitors never demanded £1,571.50?</u>

37. I can deal with this point shortly. The Client argues, as I have said, that the Solicitors had never demanded £1,571.50, because £1,116 had been received from the third-party insurer. This is, I think a bad point for the reason I have just given. The "amount of the bill" must be the same whether or not that amount has been paid and whether or not some of it has been paid by a third party. It would make no sense for the amount of the bill to vary according to the identity of the paying party.

Issue 4: Did the judge give adequate weight to the Solicitors accepting the Bill was £2,731.90?

38. The Client relies on the Solicitors' acceptance of the larger sum as being the amount of the Bill that was being assessed by DJ Bellamy. The judge clearly understood that, when the assessment began, the Solicitors accepted that the Bill was for £2,731.90, as opposed to a lesser sum (see [25], [26], [124] and [125] of the judgment). He also recorded at [31] that the Solicitors had responded to the points of dispute by saying that the Bill was "limited to £1,571.50 in that this is the amount of the payment which it requires".

39. It is true that it took some time for the Solicitors to identify the real points in dispute, but that was really because of the complexity of all the other points raised (which gave rise to a 35-page judgment below). It is not suggested that the failure to identify the point now at issue gives rise either to a *res judicata* or to an estoppel, merely that it would be wrong to allow them to resile from their original position as to the amount of the Bill.

40. In oral argument, it appeared that Mr Dunne was really saying that the Solicitors' acceptance that the assessment was to be of the sum of £2,731.90 bolstered his point about the base costs needing to be stated so they could be assessed within the court process. That is true, but it does not, as I have tried to explain, answer the question as to what the words "the amount of the bill" in section 70(9) are intended to mean.

41. Had the Solicitors applied to withdraw an admission under CPR Part 14.1(5) (which neither the Client nor the Solicitors asked them to do once the point was eventually raised), they would inevitably have been allowed to do so, bearing in mind the form of the Bill and the other arguments before the court. The question as to the amount of the Bill is, in truth, a mixed question of fact and law, and, as has been recognised all along, this is a test case. In such a situation, it is and was inappropriate to seek to rely on statements made before the issues were properly defined.

42. I think the judge gave adequate weight to the Solicitors' initial acceptance that the Bill was for a higher amount.

Issue 5: Was the judge wrong to find that the Bill totalled £1,571.50?

43. It will already be apparent that I do not think that the judge was wrong. The judge was right broadly for the reasons he gave, although I would refine the question that needs to be asked in the way I have stated at [35] above.

Conclusions

44. Both sides have argued that the consequences will be grave if the case is decided against them. I believe these points are much overstated on both sides.

45. The Client allowed *checkmylegalfees.com* to bring this costly case on her behalf, when she had almost nothing to gain. As Lavender J demonstrated at [42], she recovered £177.50 before DJ Bellamy, which was all that was really at issue except massive sums by way of costs. The process whereby small bills of costs are taxed in the High Court is to be discouraged. It is far more economic to use the Legal

Ombudsman scheme which is a cheaper and more effective method of querying solicitors' bills in these circumstances. Moreover, whilst it has not been necessary to decide whether there were "special circumstances" in this case under section 70(10), because the Client has not succeeded on her appeal, there remains a lesson to be learned from this case. Firms such as *checkmylegalfees.com* and their clients should be in no doubt that the courts will have no hesitation in depriving them of their costs under section 70(10) if they continue to bring trivial claims for the assessment of small bills to the High Court, even if those bills are reduced on the facts of the specific case by more than one fifth under section 70(9). The critical issue is and always will be whether it is proportionate to bring this kind of case to the High Court. In this case, it was not.

46. The Client argues that certainty is needed. I agree. Properly drawn bills ought in future to state the agreed charges and/or the amounts that the solicitors are intending by the bill to charge, together with their disbursements. They should make clear what parts of those charges are claimed by way of base costs, success fee (if any), and disbursements. The bill ought also to state clearly (i) what sums have been paid, by whom, when and in what way (i.e. by direct payment or by deduction), (ii) what sum the solicitor claims to be outstanding, and (iii) what sum the solicitor is demanding that the client (or a third party) is required to pay.

47. The practice of imposing conditions on the face of a statutory bill is confusing and unhelpful. If conditions are to be imposed, they should be transparent. If, for example, the bill is for £5,000, but the solicitors wish to say that they will accept £4,000 in full and final settlement if payment is made within 14 days, that should be clearly stated. The amount of such a bill would be held to be £5,000, just as it was in *Carthew*.

48. There was discussion about whether anything about this case changes because the Bill was, in the event, for non-contentious, rather than contentious, costs. I do not think so. But points made about gross sum bills and the legal (as opposed to good practice) requirements for the content of bills were not in the grounds of appeal and we have not, therefore, decided them.

49. I have, however, decided that the proper question for the court to ask in determining "the amount of the bill" under section 70(9) is, in respect of the category or categories of costs being assessed, "what is the total sum that the bill is demanding be paid to the Solicitors, whether or not all or part of that total sum has actually been paid".

50. I would dismiss this appeal with costs.

Sir Julian Flaux, Chancellor of the High Court:

51. I agree.

Lord Justice Nugee:

52. I also agree.