Neutral Citation No. [2021] EWHC 3859 (SCCO)

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

SCCO REFS: 1802567
(SC-2018-DAT-002542)
SC-2020-DAT-00470

Royal Courts of Justice
Strand, London WC2A 2LL

Date: 23 April 2021

Before:
COSTS JUDGE JAMES

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Between:

AB

Claimant

— and —

The Ministry of Justice

Defendant

JUDGMENT

AB Solicitor Advocate, instructed by his own Limited Company, for AB/the Claimant.
Mr Paul Joseph Counsel, instructed by the Government Legal Department, for the Defendant.
(Both providing written submissions)

Headline points

1. The Court's Judgment in its complete and unabridged form runs to 167 paragraphs and 3 Appendices, across 35 pages. If there is an Application by either party for Leave to Appeal this Judgment, it must be attached in its complete and unabridged form. It deals with certain key legal principles, particularly those regarding Misconduct, but a significant portion of it consists of findings of fact regarding Misconduct. Hence any higher Court asked to consider the merits of any Application to Appeal this Judgment, will need the complete and unabridged Judgment in order to do so.

2. AB acted for himself, initially through a law firm in which he is a Partner and subsequently through a limited company of which he is the sole Director. AB is both the Claimant and the Solicitor for the Claimant and has indisputably acted with the Claimant's full knowledge and upon instructions. He is also a Solicitor Advocate bound by ethical and professional standards including the Code of Conduct for Solicitors. This matter has gone on for so long (the main Order for Costs was made as long ago as 28 November 2014) that the Code has changed during these proceedings; any references to the Code, are to the relevant Code at the time.

3. This Court made an Order for Directions on 2 November 2020, including Directions regarding written Submissions in relation to Misconduct, which it did after both parties had accused each other of Misconduct, alleged to have occurred during both the underlying proceedings ('the main action') and the Detailed Assessment proceedings. The assertions by AB's law firm in Points of Dispute on the Defendant's second Bill that there had been *"sharp practice and incompetence"* (Objection 2, items 1-3) and that the fees claimed, indicated *"something ulterior"* (Objection 26, item 21) are two of the milder examples. AB stating in a Hearing held remotely via BT MeetMe (and audio recorded) on 14 September 2020 that Costs Judge James had fabricated matters and refusing to continue with the Hearing, and AB stating in Court 95 on 3 May 2019 that he had had *"absolute shit"* from the Defendant (transcript, page 36, paragraph E) before walking out of Court several times, leading that Hearing to come to an equally abrupt end, are two of the more extreme examples; there are more below but this is not a comprehensive list.

4. Under AB's fee structure as a Partner in his own law firm back in 2014, his charge-out rate was already £779.48 per hour. The 2014 Guideline Hourly Rate ('GHR') for a Grade 1 fee earner in National 1 (where the law firm on record in the main action are based) was £217.00 per hour. That is just under 28% of the rate claimed by AB in 2014. Had matters continued with his law firm under the same fee structure, by 2021 AB's hourly rate would have been £1,519.00 (see **Appendix 1** below for calculation) 7 times the GHR. AB's current fee structure as sole Director of his limited company is not known. In the Claimant's Bill, 100% Success Fee was claimed on top of AB's law firm's hourly rates, despite (on the facts in this case) being irrecoverable. These, plus other matters including AB's habitual sending of multiple letters in a single day to the same recipient (on one occasion sending 17 letters to Counsel within a 31-minute period) and charging each one at the full 6-minute unit Grade A rate plus 100% Success Fee, have led to egregious overcharging in a matter where costs were being claimed against the public purse, given that the Defendant is the Ministry of Justice.

5. As shown below, this Court finds that the actions of AB, his law firm and his limited company, have substantially lengthened and made these proceedings more complicated and expensive, with multiple breaches of professional standards and the Civil Procedure Rules in terms of wasting Court time alone. Worse, as the Assessment has gone on, AB, his law firm and his limited company have repeatedly alleged, in writing and at Hearings, that the proceedings, and/or the conduct of the Defendant, this Court and others, are causing the Claimant ongoing distress, which (he asserts) will lead to further litigation. The fully contested Trial in the main action resulted in damages of £2,251.00 for AB as Claimant and a Bill of £936,875.78 for AB's law firm, whose time spent is alleged to total 1,313 hours and 18 minutes. The man on the Clapham Omnibus might think, in the main action and in the proposed future litigation, that costs for AB, his law firm and his limited company (rather than damages for the Claimant) have been the true driver of this litigation.

Introduction

6. As shown below, there is ample foundation for a ruling on Misconduct from matters in the Detailed Assessment proceedings ('the SCCO matter') alone. Hence, as the facts in the main action are well-known to the parties, there is no need to address them in any detail. Suffice to say, after a two-day contested Trial before Jeremy Baker J sitting in Chester on 25 and 26 February 2014, the Claimant was awarded damages of £2,251.00 on his claim plus 20% of his costs to pre-trial review on 20 January 2014 and 100% thereafter (including Trial costs – the Claimant's Bill). The Defendant was awarded 80% of its costs to pre-trial review on 20 January 2014 and none of its costs thereafter (Defendant's first Bill). The Defendant was successful on the Claimant's Application to set aside its Default Costs Certificate as the DCC was set aside by DJ Jenkinson in Liverpool on 12 March 2018, but the Claimant was ordered to pay the costs since the DCC had been properly and timely obtained. Those costs were awarded on the Standard Basis but when there then had to be a further telephone Hearing to finalise the Order (on 16 March 2018) those further costs were ordered to be paid on the Indemnity Basis (Defendant's second Bill).

7. Both parties served Bills of Costs, Points of Dispute and Points in Reply on these Bills, and eventually both parties requested a Detailed Assessment of their respective Bills in the SCCO. There were repeated adjournments of live Hearings in the SCCO matter, mainly due to AB (but at his request and in view of Covid-19 as well, on 11 May 2020). Hearings on 3 May 2019 (at which AB swore at Counsel for the Defendant and walked out) and 14 September 2020 (at which AB refused to continue on BT MeetMe) collapsed on the day. To avoid wasting yet more scarce Court resources, the Court indicated, before the September 2020 Hearing collapsed, that it would be possible to make use of the three days of listed time, by undertaking a Provisional Assessment of all three Bills, and ordered written Submissions to be filed and served on the issue of the recoverability Success Fees by the Claimant. The results of that exercise (endorsed upon Precedents G) were e-mailed to the parties on 23 October 2020.

8. This Judgment is made pursuant to the Court's Directions Order of 2 November 2020, in particular paragraphs 3 to 5 thereof, which read as follows:

> *3. The parties shall, by 4pm on 13 November 2020, file and serve on each other written submissions on the issues set out in this paragraph at a to e below, together with, as appropriate, schedules of costs (or revised and updated schedules) for summary assessment:*
>
> *a. the incidence and quantification of the costs of the Defendant's application dated 6 April 2018 for a further default costs certificate against the Claimant;*
>
> *b. the incidence and quantification of the costs of the Hearing on 3 May 2019 (abandoned);*
>
> *c. the summary assessment of the Defendant's costs of its application for directions dated 19 December 2019, including the Claimant's application dated 7 April 2020 to set aside the order of 2 April 2020 ("the set aside application");*
>
> *d. the summary assessment of the Defendant's costs of the Claimant's application dated 26 June 2020 and submitted on 6 August 2020 via CE-file;*
>
> *e. whether all or any part of the parties' costs, as provisionally assessed, should be disallowed pursuant to CPR Part 44.11 (and if so, upon what conduct such a disallowance would be based, together with any evidence relied upon in this regard).*
>
> *4. The parties may, if so advised, by 4pm on 20 November 2020, file and serve brief written submissions in response to those served pursuant to paragraph 5 above (together with any evidence relied upon in respect of paragraph 5(e) above).*
>
> *5. The court shall, by 4pm on 4 December 2020, notify the parties of its decisions on the issues set out in paragraph 5 hereof.*

9. There were regrettably delays by both parties in filing their Submissions pursuant to the above Order; the Defendant filed and served a 23-page document (comprising its written Submissions) accompanied by a 377-page bundle of documents and a 2-page draft Order, but did not serve them by email upon the Claimant until 5:14 p.m. on Friday 13 November 2020 and did not file them at Court by email until 3:00 p.m. on Monday 16 November 2020, towards the end of the next business day and after a weekend had passed. The Claimant's 2-page document headed *AB'S SUBMISSIONS FOLLOWING THE ORDER OF MASTER JAMES DATED 02.11.2020* was also filed late, as it was not uploaded until 4:02 p.m. on Friday, 13 November 2020; in addition to being filed late, the Claimant's Submissions were not served. An email, with no attachment, purportedly sent them to the generic address of the Interim Treasury Solicitor. Pursuant to CPR Part 6, service should have been effected by sending the document to the Government Legal Department as Solicitors on record (ideally to Mr Sivarayan, Senior Costs Lawyer Grade 7 on the MoJ Cost & Inquests Team (Costs section) who is acting in this matter and whose direct email was known to AB).

10. The Court's Order dated 23 November 2020 gave the Defendant a retrospective extension of time to admit its Submissions, despite the late service and filing thereof. AB chose to submit little more than a bald statement that there was not enough time to draft Submissions and (after the offer of an extension) filed a longer set of reasons seeking to justify the failure or refusal to submit anything more; nor have any Submissions been uploaded since then, out of time. Where this Judgment refers to **(page)** numbers, accordingly, those are page numbers from the Defendant's bundle, which the Court has found helpful, as it has found the Defendant's Submissions and the case law contained therein helpful, both in and of themselves and absent anything more useful from AB.

AB's firm, AB's limited company and AB's Head of Personal Injury ('PC') and IT Expert ('IFP')

11. Where it is clear that AB alone is responsible for certain conduct (such as his behaviour in Hearings on 3 May 2019 and 14 September 2020) 'AB' alone is used. Another Solicitor was present at several Hearings and has signed documents as Solicitor for the Claimant; he is referred to as 'PC'. On 27 March 2020, the matter passed from AB's firm to AB's limited company. According to the Law Society the postal address for AB's limited company is "Care Of [AB's law firm]". This Court understands that AB ran the SCCO matter almost entirely by himself initially at his law firm and latterly at his limited company, but in case 'PC' or indeed anyone else at those two entities, has been responsible for other misconduct, the relevant firm/company description has been used where appropriate. It matters not for the purpose of this Judgment but may make a difference if the Defendant chooses to refer these matters to the Solicitors Regulatory Authority. 'IFP' drew the Bill of costs.

Indemnity Basis Costs (a) to (d) above

12. This Court's jurisdiction to award indemnity basis costs, flows from CPR Part 44.2 which states (under Court's discretion as to costs) as follows (see paragraph 32 below for CPR Part 44.3):

"(1) The court has discretion as to –
(a) whether costs are payable by one party to another;
(b) the amount of those costs; and
(c) when they are to be paid.
(2) If the court decides to make an order about costs –
(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
(b) the court may make a different order.
…
(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
(a) the conduct of all the parties;
(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
(c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to

which costs consequences under Part 36 apply.
(5) The conduct of the parties includes –
(a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
(b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
(c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim…"

13. The criteria for the making of an indemnity basis costs order are set out in the Defendant's Submissions, by reference to case law and are, briefly, as follows. In *Excelsior Commercial and Industrial Holdings Ltd -v- Salisbury Hamer Aspden and Johnson* [2002] EWCA Civ 879, Waller LJ stated as follows:

"39. The question will always be: is there something in the conduct of the action or the circumstances of the case which takes the case out of the norm in a way which justifies an order for indemnity costs?"

14. In *Esure Services Ltd -v- Quarcoo* [2009] EWCA Civ 595, the Court of Appeal expanded upon this saying that the word "*norm*" was not intended to reflect whether what occurred was something that happened often, but was intended to reflect, *"something outside the ordinary and reasonable conduct of proceedings"*.

15. It is not necessary for there to have been conduct which could be categorised as "*disgraceful or deserving of moral condemnation*" (see *Wailes -v- Stapleton Construction and Commercial Services Ltd and Unum Ltd* [1997] 2 Lloyd's Rep 112, before Newman J in the Queen's Bench) but such behaviour would readily fall for consideration as constituting circumstances taking the situation "*out of the norm*" as envisaged in *Excelsior*. The discretion to order indemnity basis costs is to be exercised so as to deal with the case justly, in accordance with the overriding objective of the CPR.

16. In *Excelsior*, the Court of Appeal declined to give any specific guidance as to the circumstances in which an indemnity order might be made because those circumstances were infinite and down to the discretion of the Judge concerned. The Defendant's submissions seek to draw a comparison with cases relating to wasted costs orders against legal representatives where costs can be ordered if there has been improper or unreasonable conduct:

a. "*improper*" covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty. Improper conduct is that which would be regarded as such, "*according to the consensus of professional (including judicial) opinion*" (see *Fletamentos Maritimos SA -v- Effjohn International BV* [2003] Lloyd's Rep PN 26) which has to do with wasted costs and was heard by three Lords Justice in the Court of Appeal;

b. "*unreasonable*" describes conduct which is vexatious, designed to harass the other side, rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive (commentary at CPR Part 46.8.4 (page 1607 of Vol 1 of the 2021 Edition of the White Book)). The acid test is whether the conduct permits of a reasonable explanation; again, CPR Part 46.8 has to do with wasted costs but is again relied upon by the Defendant as regards the similarity between behaviour deserving of a wasted costs Order and behaviour deserving of indemnity basis costs.

17. Per the Defendant, there can be no doubt that an indemnity basis costs order made on the ground of conduct (whether improper or unreasonable), as opposed to one which is made as a result of the operation of CPR Part 36.17 (which has no bearing on the facts in this case) carries with it something of a stigma against the party concerned. By taking the unusual step of making an indemnity order, the Court could mark its disapproval of the manner in which the party concerned has chosen to conduct himself in the litigation (see later points under CPR Part 44.11).

18. The Defendant has structured its submissions on indemnity basis costs, by reference to the specific Applications or dates concerned; this is a clear and sensible way of looking at things and again, absent anything helpful from AB, this Court has adopted the same structure below.

(a) The incidence and quantification of the costs of the Defendant's application dated 6 April 2018 for a further default costs certificate against the Claimant:

19. The Defendant mistakenly obtained a default costs certificate ('DCC') against the Claimant, from the SCCO instead of the Liverpool District Registry, where the case still was at the relevant time. The Claimant's Application to set the DCC aside was heard by DJ Jenkinson in Liverpool on 12 March 2018. Per the Defendant, the learned Judge concluded that any defect in the request for the DCC could and should be cured by means of CPR Part 3.9 because exactly the same procedure would have been utilised by the Liverpool District Registry had the request been made there, and it would have been granted anyway. The Defendant accepts that AB strongly disagreed with that decision, but be that as it may, the DCC was set aside on discretionary grounds (rather than as of right) and various Orders were made (see **pages 7-9**) from which the Defendant has extracted three in particular:

"3. Unless the Claimant do, by 4pm on 2 April 2018, pay to the Defendant the sum of £50,000 on account of the Defendant's costs, the Defendant shall be at liberty to apply for a further default costs certificate.

10. The Claimant shall pay the Defendant's costs of and occasioned by the two applications dated 10 January 2018 and 7 February 2018 to be assessed on the standard basis by detailed assessment if not agreed.

12. The Claimant shall, by 4pm on 2 April 2018, pay the sum of £10,000 on account of the costs ordered by paragraph 10 above."

20. On 21 March 2018, the Government Legal Department wrote to AB's law firm (see **page 10**) giving the appropriate bank account details to make a bank transfer, the reference to be quoted in any correspondence he might send in the event that AB chose to pay by cheque and an instruction that any cheque should be made out to the "Treasury Solicitor". As the Court's deadline (2 April 2018) fell on a Bank Holiday the payments were due by 4pm on 3 April 2018. At all times, including at the relevant Hearings, AB knew that the Defendant was represented by the Treasury Solicitor, later renamed the Government Legal Department ('GLD').

21. By 3 April 2018, according to the Defendant, they had not received funds from AB's law firm or otherwise and accordingly believed that AB had failed to comply with the two paragraphs of the order of 12 March 2018 which required him to pay a total of £60,000 by 3 April 2018. The GLD accordingly issued the application for a further DCC against the Claimant, supported by the third Witness Statement of Mr Sivarayan (**pages 14 - 20**).

22. In his fourth Witness Statement, Mr Sivarayan records what the GLD subsequently found out had happened, specifically that AB's law firm had made out two cheques, each dated 26 March 2018 and each payable to "The Ministry of Justice" (see **pages 24 - 27**) with "AB -v- MOJ" endorsed on the reverse of each cheque (see **pages 24 - 27**). Both cheques had been sent to the office of the Permanent Secretary of the Ministry of Justice in a single envelope with no covering letter; neither had on its reverse either the court case numbers or the GLD reference set out in the letter of 21 March 2018 and after the cheques were passed to Mr Michael Rimer, a Senior Lawyer at the GLD, three letters were sent to AB's law firm (see **pages 21 - 23**) in which Mr Rimer explained in clear terms that he was presently unable to ascertain the matter to which the cheques related and in which he asked AB's law firm to provide him with appropriate details so that the cheques could be allocated.

23. Per the Defendant, AB's law firm failed to respond to those letters and did not inform the GLD that they had sent cheques directly to its client; once the GLD had ascertained what AB's law firm had done, it withdrew the Application for the further DCC, asking the Court to reserve costs. The Court made the order of 15 June 2018 (**page 39**) as a result.

24. In the Defendant's submission, the person responsible for this situation is AB, the fee earner conducting and a Solicitor Advocate with higher rights of audience in all proceedings, a Partner in his law firm (and sole Director of his limited company) and an officer of the Court. AB's actions are described as a blatant breach of his then Code of Conduct (extract at **pages 35 – 38**) as he sought to take an unfair advantage of his opponent by sending the cheques directly to the Permanent Secretary without any attempt to identify the matter concerned. He communicated directly with his opponent in a manner which was, self-evidently, not permitted by his Code and he deliberately failed and/or refused to answer entirely reasonable correspondence from Mr Rimer, sent to find out what AB's law firm had done and to ascertain how the funds should be allocated.

25. AB is said to have completely disregarded the entirely reasonable, sensible and practical instructions and/or requests given to him by the letter of 21 March 2018, and, per the Defendant, the reasonable inference is that he deliberately and intentionally failed to tell his opponent's Solicitors what he was doing, purposely to deceive them and cause their client to incur wholly unnecessary costs, to no good purpose. His actions are characterised by the Defendant as incapable of any rational or reasonable explanation as, once a party has instructed Solicitors, an opposing Solicitor is entitled to correspond with his opponent directly only in exceptional circumstances, and no circumstances in this case could possibly have justified AB corresponding directly with the Defendant in this manner.

26. According to the Defendant, this conduct misled the GLD into thinking, reasonably, that the Claimant had failed to comply with the orders made against him on 12 March 2018 and they say that arguably AB's actions were improper because they would justify disciplinary action against him by his professional body. If they were not improper, they were unreasonable to the high degree which justifies an indemnity basis costs order being made against him and were "*disgraceful or deserving of moral condemnation*" (see above).

27. This conduct came after the Hearing on 12 March 2018 when AB attempted to change a costs order which had been made, causing DJ Jenkinson to order another Hearing (on 16 March 2018) to finalise the Order. At the second Hearing, the learned Judge made an indemnity basis costs Order in favour of the Defendant on the grounds of unreasonable conduct and (per the Defendant) the entirely justified criticism which the Court made against AB on 16 March 2018 (in awarding indemnity basis costs) clearly fell on deaf ears given his actions thereafter.

28. The Defendant therefore seeks its costs on the indemnity basis, as set out in the draft Order filed with its submissions, categorising such an Order as the only way in which justice can be done between the parties. AB did not file Submissions on his own law firm's costs beyond saying he had not had sufficient time to do so and did not respond to the Defendant's Submissions on their costs despite the offer of an extra week (see Order of 23 November 2020).

29. AB has again resorted to writing direct to the (Interim) Treasury Solicitor over the GLD's heads on 13 November 2020, regarding late filing, when there was no justification for doing so; see this Court's Order of 23 November 2020. Per the Defendant, upon further investigation it appears that £40,000 was paid on account of the Claimant's liability to the Defendant as required by the Order of 2 November 2020. It was paid from the client account of AB's limited company but without any reference attached to it and without any prior indication to the GLD that it was being paid. AB's limited company had been asked (in a letter dated 3 November 2020) to ensure that they quoted the correct reference because of the many payments that the GLD receive every day. These recent matters are entirely separate to issues of conduct in March and April 2018, but suggest that, despite the clearest possible steer from DJ Jenkinson in Liverpool, AB has not taken that learned Judge's words to heart.

SCCO ruling upon incidence and quantification of costs on this issue:

30. To cite a case not referred to by the Defendant, in *Borealis v Balmoral* [2006] EWHC 2531 Comm, Christopher Clarke J summarised the test for an award of indemnity basis costs, as follows: *"The discretion is a wide one to be determined in the light of all the circumstances of the case. To award costs against an unsuccessful party on an indemnity scale is a departure from the norm. There must, therefore, be something – whether it be the conduct of the Claimant or the circumstances of the case – which takes the case outside the norm. It is not necessary that the Claimant should be guilty of dishonesty or moral blame. Unreasonableness in the conduct of the proceedings and the raising of particular allegations, or in the manner of raising them may suffice. So may the pursuit of a speculative claim involving a high risk of failure or the making of allegations of dishonesty that turn out to be misconceived, or the conduct of an extensive publicity campaign designed to drive the other party to settlement.* ***The making of a grossly exaggerated claim may also be a ground for indemnity costs.****"* [this Court's emphasis].

31. This Court finds that AB and his law firm's conduct in March and April 2018 above referred-to, clearly meets (and in fact substantially exceeds) the test for indemnity basis costs. It would in the Court's view be regarded as improper according to the consensus of professional (including judicial) opinion and can be fairly stigmatised as such whether or not it violates the letter of a professional code. It is certainly unreasonable for AB, being in possession of bank details and the contact information of the person responsible for the claim at the GLD, to avoid taking almost any step (short of writing "AB v MoJ" on the back of the cheques) to assist the Defendant (or the GLD) in assigning those cheques to this case without a great deal of wasted time and effort. AB has never given a satisfactory explanation of this conduct and has repeated it within the last five months in writing direct to the (Interim) Treasury Solicitor on 13 November 2020 and paying monies to the GLD without giving the correct reference, despite having been ordered to do so by this Court, precisely because of the March/April 2018 incident.

32. The conduct in March and April 2018, which as a question of fact this Court finds was unreasonable and improper, warrants the imposition of an indemnity basis costs Order in the Defendant's favour and this Court therefore awards the Defendant's costs of the Defendant's Application dated 6 April 2018 to the Defendant, on the indemnity basis. As to quantum, the imposition of indemnity basis costs means that the usual burden of proof in Detailed Assessment proceedings is reversed and means that proportionality is no longer an issue. The relevant provisions appear at Part 44.3 under the heading Basis of assessment:

"(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –
(a) on the standard basis; or
(b) on the indemnity basis,
but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.

(2) Where the amount of costs is to be assessed on the standard basis, the court will –
(a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
(b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.
(Factors which the court may take into account are set out in rule 44.4.)

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.
…

(5) Costs incurred are proportionate if they bear a reasonable relationship to –
(a) the sums in issue in the proceedings;
(b) the value of any non-monetary relief in issue in the proceedings;
(c) the complexity of the litigation;
(d) any additional work generated by the conduct of the paying party,
(e) any wider factors involved in the proceedings, such as reputation or public importance; and
(f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.
…" **[Emphasis on indemnity basis provision by this Court]**

33. The reference to standard basis costs (and proportionality) has been left in the above paragraph because it highlights the difference between standard and indemnity basis costs, and because this Judgment also deals with some standard basis costs below.

34. Upon considering the Defendant's Statement of Costs on this Application, the claim by the Defendant is for 1.4 hours at £260.00, 1 hour at £210.00 and 20.3 hours at £170.00 per hour, for a total of 22.7 hours and £4,025.00 of costs. 15 hours of this was spent on Documents and the remainder was spent on correspondence and attendances including attendances on the Defendant, on the Claimant, on Counsel and on this Court. There is an additional claim for Counsel's fees at £2,790.00 (which, as Counsel's hourly rate is £100.00 per hour, is a further 27.9 hours). There is also a Court Fee to issue the request for a DCC in the sum of £255.00, for a total claim of £7,070.00.

35. The claim in respect of Counsel's fees is misconceived. As shown in paragraph 18 above, DJ Jenkinson in Liverpool ordered the Claimant to pay the Defendant's costs of and occasioned by the two applications dated 10 January 2018 and 7 February 2018, to be assessed on the standard basis by detailed assessment if not agreed, and ordered a payment on account of those costs, in the sum of £10,000.00. It appears that a significant proportion of the £2,790.00 claimed, was on the original Application and not the Application for the second DCC, which was over and done with in short order after it came to light that AB's law firm had paid money direct to the Defendant rather than their Solicitors (the GLD) with no covering letter. Fees in relation to the second DCC were only incurred during the month of April, in the sum of £680.00 (or 6.8 hours) for a total time claim of 29.5 hours, or £4,960.00 including the Court fee.

36. To be clear, the remaining £2,110.00 of Counsel's fees would (if covered by the order made by DJ Jenkinson) fall to be paid by the Claimant; it may be that they should have been claimed in the Defendant's second Bill accordingly. If they have been omitted from the correct Bill, that is the Defendant's misfortune, but they do not belong in this Statement of Costs. There will need to be a reckoning at the end of the SCCO matter, in respect of any costs not yet accounted for; that will need to include careful cross-referencing to ensure that fees covered by other orders, do not reappear. It may be that the quote at paragraph 30 above, regarding the making of a grossly exaggerated claim as a ground for indemnity costs, comes into play on the issue of any costs of Detailed Assessment, not otherwise accounted for.

37. Be that as it may, a total of 29 hours and 30 minutes spent on an Application for a DCC which did not ultimately proceed, would perhaps be troubling under normal circumstances. However, AB's law firm chose to send monies in the manner above described, to ignore sensible instructions upon how to pay the sum ordered by the learned Judge in Liverpool, and to ignore requests for information from Mr Rimer for the Defendant. In addition, the Code of Conduct in relation to contacting Solicitors on record and not the client direct, was ignored.

38. Based upon his CFA fee structure at AB's law firm (**Appendix 1** below) by the time these costs were incurred in 2018, AB would have charged his time at £1,141.25 per hour plus 100% success fee. It is not determinative of this issue, but the fact that the Defendant's 29 hours and 30 minutes of work, has come in at a figure corresponding to just over 2 hours of AB's work plus success fee, had he won on this issue, is certainly striking.

39. As stated at paragraph 2 above, the actions of AB's law firm (and latterly of AB's limited company) were undertaken with the Claimant's full knowledge and instructions and in this Court's judgement it is just to visit the costs of those actions, upon the Claimant. Summarily Assessed, the Defendant's costs of the Application dated 6 April 2018 have been allowed on the indemnity basis, and the amount allowed on a broad-brush basis, is £4,500.00.

(b) The incidence and quantification of the costs of the Hearing on 3 May 2019:

40. This matter was transferred to the SCCO in London from Liverpool on 12 March 2018, by DJ Jenkinson. By December 2018, little progress had been made with the assessment of any of the Bills and (per the Defendant) it concluded that it should take active steps to progress the matter. On 10 December 2018, the Defendant made an Application for Directions for the assessment of the various costs due to it from the Claimant, suggesting that some of the Points of Dispute raised by the Claimant to the Defendant's two Bills should be dealt with as Preliminary Issues.

41. On 10 January 2019, the Defendant wrote to AB at his law firm to invite him to agree the Defendant's list of Preliminary Issues or to concede them. One of the points the Claimant wished to pursue was a "*Re Eastwood*" challenge to the hourly rates claimed by the Defendant in both of its bills, and it was proposed that this issue should be one of the Preliminary Issues, but the Defendant also invited the Claimant to concede it, saying:

"Your challenge to In Re Eastwood was, in the Defendant's view, always utterly hopeless and devoid of merit and is now even more so in the light of the decision of HHJ Eyre QC, sitting as a High Court Judge, in the case of [AB's law firm] *-v- The Lord Chancellor 31 October 2018 (unreported), a copy of which is enclosed. I observe that your firm was a party to that case. In the light of this case which is binding on the SCCO, and which has not been appealed, I invite you to withdraw Preliminary Point A."*

42. On 29 January 2019, this Court made an Order which, amongst other things, listed the matter for a 1-day Hearing on 3 May 2019 to determine the Preliminary Issues which the Defendant had identified, as set out in the schedule to that order (see **pages 72 - 73**). The schedule included Preliminary Point A. The Court ordered the parties to file and exchange Skeletons and the Defendant to file a bundle, to be agreed with the Claimant if possible. **Pages 74 - 84** are a copy of the Skeleton filed on behalf of the Defendant, written by Paul Joseph, Counsel for the Defendant. A substantial bundle was prepared and filed by the Defendant to which AB's law firm (for the Claimant) failed and/or refused to agree.

43. The Hearing commenced at 10.30am in Costs Judge James' Courtroom in the SCCO (Court 95). Proceedings were recorded and there is a transcript, which the Court has considered prior to handing down this Judgment. AB (for the Claimant) and Mr Joseph (Counsel) and Mr Sivarayan of the GLD (for the Defendant) were present in Court 95 on that day.

44. It became clear during the Hearing that the Claimant's Bill, which AB had personally lodged at Court by hand, a few days prior, had not been signed by him, in breach of the applicable Practice Direction. AB therefore signed the Bill at the Hearing, in the presence of Mr Joseph and Costs Judge James, certifying its accuracy and bringing the signature on the Bill within the remit of *Bailey v IBC Vehicles* [1998] 3 All ER 570.

45. Master James took up with AB the issue of the Conditional Fee Agreements (CFAs) on which he relied to be entitled to recover success fees from the Defendant and the nature of those CFAs was aired in open Court; per the Defendant, the matters discussed (to do with AB signing a CFA with his own firm) were not previously known to them. A 5-day Hearing was fixed to commence in early September 2019, by reference to the availability of both AB and Counsel for the Defendant.

46. Pausing here, AB has expressed dissatisfaction with Costs Judge James' having raised CFAs during the Hearing on 3 May 2019 before it collapsed; after the Hearing on 14 September 2020 also collapsed, the Court set a timetable for written submissions on CFAs in order to move matters forward. Given that the parties had been aware the issue of CFAs was of concern since (at the very latest) May of 2019, both parties had ample time to consider their positions prior to Provisional Assessment.

47. The Defendant made timely submissions which addressed the entitlement of the Defendant to raise Points of Dispute (including Supplemental Points of Dispute) which challenged the claim by the Claimant that he was entitled to recover success fees from the Defendant and the amount of any success fees recoverable from the Defendant if the Court should decide that success fees were, in principle, recoverable. The Claimant had an opportunity thereafter to respond to the Defendant's points on CFAs and did not do so. As such, the Precedent G on the Claimant's Bill served on 23 October 2020 (over 17 months after the 3 May 2019 Hearing) records how the question of the Court's intervention on 3 May 2019 has been addressed, as follows:

"There is nothing material to the point had it been taken (which, absent any Reply, it has not) that the question of a Partner entering into a CFA with himself was raised by Master James at the Hearing on 3 May 2019 before that Hearing had to be abandoned. Master James' role is to decide upon costs in accordance with the overriding principle of the CPR and as such, to reach a just outcome according to the law.

If [AB] *has submitted a claim for £442,715.95 of Success Fee and VAT to which he/his firm has no legal entitlement whatsoever, it is incumbent upon the Court to address this issue. The parties have been given ample time to address the issue; it is not a case of Master James peremptorily disallowing it."*

48. Returning to 3 May 2019, Counsel for the Defendant then attempted to start his submissions on the *Re Eastwood* issue at which point AB evidently lost control. He started shouting and swore at Counsel and Mr Sivarayan in the presence of the Costs Judge who recorded in her Written Reasons for making her Order of 5 June 2020 (**pages 88 - 97** – para xxvi) that AB described the Defendant's arguments as "*shit*". In fact, the transcript records on page 36 at paragraph E that AB said, *"I've had absolute shit from them"* which is slightly different but not materially so. AB then walked out of the Hearing and came back in (the Defendant states this happened at least twice, which the transcript confirms) and given this turn of events, the Court had to abandon the Hearing, reserving costs.

49. The Defendant's *Re Eastwood* arguments have subsequently been accepted in full by the Court, not because of AB's outburst but because the law was and is very clearly in favour of the Defendant on this point. Other than abusing the Defendant, AB has never produced a cogent let alone a compelling argument to the contrary; the Defendant has therefore sought its costs of and occasioned by this Hearing on the indemnity basis, Summarily Assessed in the sum claimed in the Defendant's updated schedule (**pages 98 - 118**). The Claimant's only submission on the costs of 3 May 2019 is that he intends to claim these, although on what basis the Defendant could be ordered to pay the Claimant's costs after AB's conduct on this date, is unclear (and has not been explained by him, nor by AB's limited company, despite having the offer of an extension of time in which to do so).

50. The Defendant asserts that the Order of 29 January 2019 (**pages 72 - 73**) should have enabled the parties, after a 1-day Hearing to resolve various points of principle, to attempt to resolve the remaining issues between themselves, thereby avoiding further substantial costs. This (having a separate Hearing on Points of Principle) is a common approach in the SCCO and in High and County Courts throughout the jurisdiction, and the Court agrees with the Defendant's assertion that a considerable number of Detailed Assessments settle after such a Hearing, without the need for the Court to remain substantively involved. Even if they could not settle the remainder, had the Hearing proceeded on 3 May 2019 it would at the very least have afforded the parties an opportunity to narrow some of the issues to save time, costs and scarce Court resources. Per the Defendant, the Application by the Defendant was entirely appropriate and sensible and the aim of it was entirely supported and endorsed by the Court. Had AB conducted himself properly, the 1-day preliminary issues Hearing could have resolved a great deal and opened a dialogue on what remained in issue.

51. AB, as a Solicitor Advocate, is deemed to know how to behave properly in Court and, more particularly, how not to behave. His behaviour on 3 May 2019 is inexcusable; if he found proceedings in the SCCO too much, he could and should have sent someone else instead of causing a day-long Hearing to be abandoned with no progress made in the assessment of any of the Bills, putting the progress of the SCCO matter back considerably and wasting scarce Court time and resources, which could have been put to better use hearing other litigants or dealing with other matters.

52. In Court on 3 May 2019, AB objected strongly to Counsel referring to the unreported case of [AB's law firm] -*v*- *The Lord Chancellor* but the Defendant had expressly given notice that it intended to rely upon this authority on the hourly rates point, in its letter of 10 January 2019 (**pages 68 - 71**). Per the Defendant, the authority considerably assisted the Defendant and equally emphatically was against the Claimant; as such both parties were under an obligation to draw this binding authority to the attention of the Court. In the Defendant's skeleton argument at para 51 (see **pages 74 - 84**), it was put as follows:

"51. There is one matter raised in the Claimant's application to which the Defendant does wish [to] respond now. It is the status of the judgment of HHJ Eyre QC mentioned in paras 18 – 20 above. The Defendant's position, for the avoidance of any possible doubt, is as follows:

- *any comments made by HHJ Eyre QC as to the publication of his judgment in that matter plainly related only to his substantive judgment in the arbitration claim. They were made at the handing down of the substantive judgment and not in connection with the judgment of 31 October 2018;*

- *the Defendant does not seek to place before this court the substantive judgment and never has sought to do so;*

- *that substantive judgment has not been inappropriately disseminated and no credible evidence has been adduced by the Claimant to suggest, let alone properly establish, otherwise;*

- *the judgment of 31 October 2018 is given by a Circuit Judge sitting as a High Court Judge and is a decision which is binding on the SCCO. It involves the very point of law which is raised by the Claimant in Preliminary Point A to both the First and Second Bills and which is disputed by the Defendant;*

- *both the writer, as Counsel for the Defendant, and the Solicitor Advocate for the Claimant, are bound by their respective Codes of Conduct, to draw this decision to the attention of this court, regardless as to which side of the argument the decision might support. Any deliberate failure by either advocate to draw the decision to the attention of this court would almost certainly be a serious breach of his Code of Conduct because it would amount to an attempt deliberately to mislead the court;*

- *the Claimant appears to be attempting to conceal from the court the existence of a binding decision which plainly decides the point against him;*

- *the principle of open justice is paramount in this context. The idea that a binding High Court decision could or should be supressed to the advantage of one party is plainly wrong and should not be entertained."*

53. Per the Defendant, AB failed to act in accordance with his own (Solicitor's) Code of Conduct in wrongly objecting to this authority being drawn to the attention of the Court and criticising Counsel for doing his best to comply with his own (Barrister's) Code of Conduct by trying to do so. Putting it bluntly, he attempted to conceal an authority ([AB's law firm] -*v*- *The Lord Chancellor*) from this Court. His behaviour was thereby improper, disgraceful and deserving of moral condemnation and would be regarded as such by any reasonable judicial or professional person.

54. Alternatively, it was unreasonable to a high degree and permits of no reasonable explanation (per the Defendant). If the Defendant had been wrong to draw this authority to the attention of the Court, which it does not admit, such an error could never have justified the quite disgraceful conduct of AB, an officer of the Court; his conduct amounted to a contempt in the face of the Court. As such, the Defendant asserts that an indemnity basis costs order is required in order to mark the Court's disapproval of the behaviour of one of its officers and to do justice between the parties given that this conduct caused considerable costs to be thrown away and prevented the Court from furthering the overriding objective. Whatever AB's personal feelings about this case, it is asserted that he still owed a duty to assist the Court, which duty (per the Defendant) he failed to fulfil.

SCCO ruling upon Indemnity Basis Costs on this issue:

55. The Claimant has, at various times, asserted that he reserves his rights in relation to what happened on 3 May 2019 and AB has referred to his own "alleged" conduct on that date. Based upon the transcript, there is no "alleged" about it. AB's behaviour, in particular his use of foul language in Court, and his repeatedly walking out of a Hearing without having been released by the Court (effectively ending the Hearing) was wholly unacceptable. Bearing in mind his statement (transcript, page 36 at paragraph E) that, *"I've had absolute shit from them"* (meaning the Defendant) AB may have found proceedings stressful, but that does not excuse his conduct on that date. Swearing in Court and repeatedly walking out would clearly be regarded as improper according to the consensus of professional (including judicial) opinion and could fairly be stigmatised as such whether or not it violates the letter of a professional code. The Claimant stated an intention to claim costs of this Hearing, which must include AB's time; given that AB's conduct violates professional standards and/or the Civil Procedure Rules in terms of courtesy to the Court and opponents and wasting Court time at the very least, that is extraordinary.

56. As well as being improper, contrary to the duty to help the Court in furthering the Overriding Objective of the CPR (Part 1.3 refers) and (possibly) contempt of Court, AB's conduct was clearly unreasonable. He is a Solicitor and an officer of the Court; he behaved in an unprofessional, disruptive and (frankly) offensive manner, and instead of apologising to the Defendant and to the Court at the earliest opportunity (or at all) he continues to say that the Claimant's rights in relation to his "alleged" behaviour are reserved. He knew the Hearing was being recorded and his subsequent stance compounds the impropriety and unreasonableness of his conduct on 3 May 2019. This is of great concern when the reference to his "alleged" behaviour appears in the context of correspondence in which AB refers to the Claimant's ongoing distress and to contemplated future proceedings against the Court, the Defendant and others, in which AB (through his limited company) is apparently instructed.

57. Taken as a whole, the conduct of AB's law firm, as Solicitor for the Claimant, in relation to the Hearing on 3 May 2019 and as recorded in the transcript, clearly meets (and again substantially exceeds) the test of improper and unreasonable conduct and warrants the imposition of an Indemnity Basis costs Order in the Defendant's favour.

58. In its Statement of Costs for this Hearing, the Defendant seeks 2.2 hours at £260.00 and 49.3 hours at £170.00, for a total of 51.5 hours and £8,953.00 of costs. 44 hours of this was spent on Documents and the remainder was spent on correspondence and attendances including attendances on the Defendant, on the Claimant, on Counsel and on this Court, as well as the Hearing on 3 May 2019 (1 hour) and travel and waiting to attend the Hearing (2 hours). There is an additional claim for Counsel's fees at £5,080.00 (which, as Counsel's hourly rate is £100.00 per hour, is a further 50.8 hours). There is also a Court Fee of £100.00, for a total claim of £14,133.00.

59. This Court set aside time to hear this matter and the Defendant prepared for a contested Hearing; AB's law firm may well have prepared too but having caused the Hearing to collapse in the manner above described, AB's law firm caused hours of work by the Defendant's legal team (to say nothing of this Court's time) to be wasted. It has still not been possible to hold a live, in-person Hearing nearly two years later, and everyone's knowledge of the detail on the file would surely need to be refreshed if such a Hearing were listed after all this time.

60. Based upon his CFA fee structure as a Partner at AB's law firm (**Appendix 1** below) by the time these costs were incurred in 2019, AB would have charged his time at £1,255.37 per hour plus 100% success fee. It is not determinative of this issue, but the fact that the Defendant's 102 hours and 18 minutes of work, has come in at a figure corresponding to approximately 5.6 hours of AB's work plus success fee, had the Claimant won on this issue and recovered costs, is certainly striking.

61. As such, this Court has Summarily Assessed the Defendant's costs of the Hearing on 3 May 2019 on a broad-brush basis (and on the indemnity basis) and the amount allowed is £12,750.00.

(c) The Summary Assessment of the Defendant's costs of its Application for Directions dated 19 December 2019, including the Claimant's Application dated 7 April 2020 to set aside the Order of 2 April 2020 ("the set aside Application")

62. The Defendant made an Application for Directions on 10 December 2018 which resulted in the order of 29 January 2019. This Court listed a 1-day Hearing to take place on 3 May 2019, which was abandoned in the circumstances above described. Before that Hearing had to be abandoned, the Court fixed a 5-day Hearing to commence on 8 September 2019. AB's law firm had demonstrated no great expertise in respect of Costs law by then, nor have they since. AB had demonstrated that he could not be relied upon to behave in a proper manner. This led to the Court suggesting that the Claimant might be better served going forward, instructing either a Costs Lawyer or Counsel to advance the Claimant's case in the SCCO matter.

63. The Court and the Defendant were then informed that the Claimant intended to instruct Leading Counsel (Miss Naomi Ellenbogen QC) to appear at the next Hearing; AB's law firm sought the Defendant's consent to an adjournment because the Claimant's choice of Counsel was unavailable for the Hearing in September 2019. Per the Defendant, in reliance upon those representations, the Defendant duly consented and as a result the September 2019 Hearing was adjourned by the Court. On 6 November 2019, the Court relisted the matter for a 5-day Hearing to commence on 11 May 2020, which date was chosen to suit Counsel's (Miss Ellenbogen QC's) diary.

64. On 25 March 2020 AB's law firm requested an adjournment of the 11 May 2020 Hearing and the Court (which had in fairness already indicated it might not be possible to proceed on that date due to Covid-19) agreed to adjourn. Miss Ellenbogen QC never appeared in the SCCO matter; AB's law firm obtained an adjournment in September 2019 by stating that she would appear but that she could not upon the dates listed. At some point, she dropped out of the picture and neither she nor her clerk, Ian Smethurst, were included in email strings anymore. The situation has never been explained; before the Hearing on 14 September 2020 collapsed, AB appeared to indicate that Miss Ellenbogen QC would have been Briefed but would have needed certain documents sooner.

65. Be that as it may, per the Defendant, before the adjournment, there were no meaningful Directions in place to regulate the 5-day Hearing listed from 11 May 2020, which was intended to carry out the Detailed Assessment of both of the Defendant's Bills as well as that of the Claimant, plus various other outstanding matters. Given previous issues with conduct and attitude on AB's law firm's side, the Defendant was concerned that without a meaningful plan in place for this Hearing, it would not run properly, and time and resources would be wasted again. The Defendant therefore issued a further Application for Directions for the 11 May 2020 Hearing.

66. That Application was initially listed as an in-person Hearing on Friday 3 April 2020, again fixed by reference to availability of Counsel for the Defendant and Leading Counsel for the Claimant. However, due to Covid-19 and a request by AB's law firm in an email dated 25 March 2020, seeking to adjourn, by an Order of 2 April 2020, (**pages 187 - 190**) this Court vacated that Hearing and instead ordered written submissions from the parties.

67. As the 2 April 2020 Order had been made without a Hearing, it contained a provision that the parties could apply to set it aside, stay or vary it. The Claimant chose to apply to set it aside and purported to use that Application as an opportunity to apply for other Directions (see Application Notice at **pages 133 - 136**). However, apart from varying certain dates, this Court dismissed the Claimant's Application and ordered as follows (see **page 187 - 190**):

"The Claimant do pay the Defendant's costs of and occasioned by the Claimant's set aside application, such costs to form part of the costs of the Defendant's application for directions issued on 19 December 2019, and to be summarily assessed at the Hearing."

68. These costs fall to be assessed on the standard basis, and the Defendant has drawn to this Court's attention, CPR Part 44.3(5), cited at paragraph 32 above. Costs are proportionate if they bear a reasonable relationship to the following:

- the sums in issue in the proceedings;
- the value of any non-monetary relief in issue;
- the complexity of the litigation;
- any additional work generated by the conduct of the paying party; and
- any wider factors involved, such as reputation or public importance.

69. The Defendant had two Bills to be assessed; the Bill for 80% of its costs in the main action at £114,662.72 and costs of the Bill for its costs in the Application to set aside the first DCC at £43,288.45, totalling £157,951.17. The Claimant's Bill was claimed at £936,875.78; much of that represented 20% of what AB claimed had been spent on pursuing the claim (to the pre-trial review on 20 January 2014) and 100% thereafter. Hence the sums in issue in the proceedings were £1,094,826.90 (excluding interest at 8%, which on the total sum would accrue at £239.96 per day, or £87,586.15 per year, from the date of the final costs Order on 28 November 2014).

70. As shown below at **Appendix 2** the amount of time spent/work done certified by AB when he signed the Bill of AB's law firm at Court on 3 May 2019, is 1,313 hours and 18 minutes overall, with 779 hours and 18 minutes thereof claimed by AB himself. Due to the 20% Order in respect of Claimant's costs to pre-trial review, not all the time has been claimed. Were it not for the 20% Order, the claim for AB's own time spent/work done, would have been in the region of £873,067.92, in a case where the Claimant's award of damages was £2,251.00. The comparison between those figures is striking, as is the comparison between the damages award and the Bill of AB's law firm at £936,875.78, including disbursements, Counsel's fees and VAT, after applying 80% reduction.

71. Be that as it may, at the relevant point, little meaningful progress had been made in the Detailed Assessments of the three Bills. Per the Defendant, this litigation has become more complex as it has developed and whilst both parties should have assisted this Court in finding solutions to enable this Court to do justice between them, and to hold fair Hearings in the face of an unprecedented national and international emergency (the Covid-19 pandemic) only the Defendant has consistently sought to do so. AB's law firm and AB's limited company have either declined to engage at all in that process or has, it is submitted by the Defendant, actively obstructed it.

72. Per the Defendant, the Claimant chose to make a fruitless application to set aside a perfectly reasonable and pragmatic order for Directions, which had itself required considerable documentation to be produced, as can be seen from the recitals to the Order of 5 June 2020 (**pages 187-190**). The Defendant asserts that it had no real alternative but to incur

costs in dealing with and responding responsibly to all of this, and to assist this Court in furthering the overriding objective, adding that its updated schedule (**pages 191 - 228**) is therefore reasonable and proportionate.

SCCO ruling on Defendant's Standard Basis Costs of its Application for Directions dated 19 December 2019, including the Claimant's Application dated 7 April 2020 to set aside the Order of 2 April 2020 ("the set aside Application")

73. This Court accepts the Defendant's assertion that considerable additional work has been generated by the conduct of AB, Solicitor for the Claimant, at both AB's law firm and AB's limited company, which is borne out by this Court's experience over the past few years and certainly from May 2019 to date. The Defendant asserts that it has received little, if any, practical or sensible assistance from him, as he contented himself with persistently raising with the Defendant (and this Court) matters which were irrelevant to the conduct of the SCCO matter such as data protection, the identity of those giving instructions to the Defendant, the provision of documents to him by this Court and the security of the files held at Court.

74. AB has, as the Defendant asserts, persisted in this conduct even after receiving reasonable responses both from the Defendant and this Court to his questions and enquiries. For example, he has on several occasions expressed concern as to papers being held at Court, despite being reassured more than once that they are in Costs Judge James' private Chambers, which are adjacent to Court 95 and to which only she has access. They are therefore held within a locked, secure room within a secure building, within a secure estate (the Royal Courts of Justice).

75. AB has made it clear on numerous occasions that further litigation is contemplated in respect of the distress suffered by the Claimant including distress as to whether his data is being dealt with appropriately. As a question of fact, this Court finds that AB's own actions have substantially lengthened these proceedings, and any distress has likely been contributed to or indeed caused by AB's actions. The figures above illustrate why this is a matter of grave concern, particularly as the proposed Defendants in this proposed litigation, are all (in one way or another) public bodies. The prospect of AB's law firm or AB's limited company seeking further eye-watering sums by way of legal costs in proposed litigation against the public purse, as they have in the main action, is both deeply troubling and is an example of the tail wagging the dog, taken to the extreme.

76. As to other remedies in the main action (the SCCO matter has been about the costs alone) the Claimant did secure an apology and an assurance that certain sensitive materials would be destroyed; those are of course matters of significance. However, the sensitive materials (some 25 to 30 pages or so) were destroyed back in 2014, as was (it appears) confirmed to the Claimant in writing at the time. Yet despite repeated confirmation of this from the Defendant, AB continues to refer to the Claimant's distress due to uncertainty regarding these materials and the matter seems to be reaching a state of perpetual motion. AB's limited company threatens proceedings, based upon matters arising in the main action and the SCCO matter. By refusing to accept repeated assurances as to destruction or safe handling of materials and so on, AB's law firm and AB's limited company set up uncertainty regarding these matters, leading to distress to the Claimant leading to the threat of further proceedings and so it continues. In this Court's judgement, this is an abuse of the Court's process and epitomises costs building on an industrial scale.

77. AB has sent to this Court and (presumably) the Defendant a great deal of pointless correspondence, routinely sending (or uploading onto CE-file) multiple letters in a single day and concentrating upon his own concerns rather than complying with requests from, or even Directions of, this Court (which he appears to regard as a mere inconvenience). The conduct of AB's law firm and AB's limited company has been most unhelpful; substantial costs have been unnecessarily incurred and Court time wasted in relation to the Defendant's Application for Directions dated 19 December 2019 and AB/the Claimant's Application dated 7 April 2020 to set aside the Order of 2 April 2020.

78. Taking into account the factors at CPR Part 44.3(5) the sums in issue in the SCCO matter were well in excess of £1 million; the litigation was made much more complex than a run-of-the-mill Detailed Assessment by the conduct of AB's law firm and (after they took over conduct) AB's limited company, and this has led to a great deal of additional work, for which the paying party (the Claimant) is responsible on the facts in this case.

79. The wider factor of public importance is as follows. It is of grave public concern that a claim of modest financial value (award £2,251.00) by AB as the Claimant, begat a costs claim of £936,875.78 by AB's law firm. It is of equal if not greater concern that AB's law firm and AB's limited company have heavily telegraphed that distress caused by the way that costs claim has been handled may lead to yet more litigation, all being or to be pursued against the public purse.

80. In its Statement of Costs for this Hearing, the Defendant seeks 68.6 hours at £170.00, for a total of £11,662.00 of costs. 58.4 hours of this was spent on Documents and the remainder was spent on correspondence and attendances including attendances on the Defendant, on the Claimant, on Counsel and on this Court. There is an additional claim for Counsel's fees at £7,870.00 (which, as Counsel's hourly rate is £100.00 per hour, is a further 78.7 hours). There is also a Court Fee of £255.00, for a total claim of £19,787.00.

81. Based upon his CFA fee structure at AB's law firm (**Appendix 1** below) by the time these costs were incurred in 2020, AB would have charged his time as a Partner at £1,380.91 per hour plus 100% success fee. It is not determinative of this issue, but the fact that the Defendant's 147 hours and 18 minutes of work, has come in at a figure corresponding to just over 7 hours of AB's work plus success fee, had the Claimant won on this issue, is very striking. Although the costs on this issue are on the standard basis, this Court finds that they are largely reasonable and proportionate; on a broad-brush basis they have been summarily assessed at £15,000.00.

(d) The summary assessment of the Defendant's costs of the Claimant's application dated 26 June 2020 and submitted on 6 August 2020 via CE-file (on the Standard Basis, pursuant to Order dated 23 October 2020;

82. This Court dismissed this Application and declared it to be totally without merit. The Defendant asserts that its schedule of costs (**pages 241 - 258**) is entirely reasonable and proportionate; this amounts to 15.9 hours at £170.00 (£2,635.00) plus Counsel's fees of £1,170.00 (so, a further 11.7 hours). By the time the Application in question was filed (in August 2020) the Claimant was represented, not by AB's law firm but by AB's limited company, whose fee structure is not known. The Claimant stated that he intended to claim all of the costs at (a) to (d) above; this Court is unaware of any Statement(s) of Costs having been filed or served by the Claimant. The Defendant's costs are assessed (on a broad-brush basis) in the sum of £3,000.00. The total allowed against the Claimant, across (a) to (d) is therefore £35,250.00.

(e) Whether all or any part of the parties' costs, as provisionally assessed, should be disallowed pursuant to CPR Part 44.11 (and if so, upon what conduct such a disallowance would be based, together with any evidence relied upon in this regard).

Misconduct – Defendant

83. The Claimant has accused the Defendant of *"sharp practice and incompetence"* (Objection 2, items 1-3) and has alleged that the fees claimed, indicated *"something ulterior"* (Objection 26, item 21). AB has accused the Defendant of fraud, one instance being during the Hearing on 3 May 2019, when he stated that, *"Caroline Featherstone* [of the GLD] *lied and threatened me. So what evidence did she put in in that case, so, could be fundamentally fraudulent."* (Transcript, page 40, paragraph G). However, despite being directed to do so (Court's Directions Orders of 2 November 2020 and 23 November 2020) AB's limited company have neither filed nor served proper written submissions on the issue of whether all or any part of the Defendant's costs, as provisionally assessed, should be disallowed pursuant to CPR Part 44.11 (and if so, upon what conduct such a disallowance would be based, together with any evidence relied upon in this

regard). Instead, AB's limited company chose to submit little more than a bald statement that there was not enough time to draft Submissions and (after the offer of an extension) a longer set of reasons still seeking to justify the failure or refusal to submit anything more.

84. The Claimant has been given the opportunity to file and serve Submissions and evidence and has been offered an extension of time besides. The assertions (in Points of Dispute on the Defendant's second Bill) that there had been *"sharp practice and incompetence"* (Objection 2, items 1-3) and that the fees claimed, indicated *"something ulterior"* (Objection 26, item 21) not to mention use of the term *"fraud"* to describe the Defendant's conduct, could have opened the door to submissions (and any evidence relied upon in this regard, as provided for at paragraph 3(e) of the Order of 2 November 2020) from the Claimant, had AB's limited company filed any. They chose not to do so and without submissions or evidence this Court, having seen nothing in the Defendant's conduct to warrant accusations such as those cited above, makes no finding adverse to the Defendant in respect of its own conduct, pursuant to CPR 44.11.

Misconduct – Claimant

85. The Defendant complied with the Directions (slightly late as shown at paragraph 9 above). Its submissions were that the Claimant's costs in the main action, as provisionally assessed, should be reduced or disallowed for misconduct, pursuant to CPR Part 44.11, which states as follows (under the heading Court's powers in relation to misconduct):

(1) The court may make an order under this rule where –
(a) a party or that party's legal representative, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or
(b) it appears to the court that the conduct of a party or that party's legal representative, before or during the proceedings or in the assessment proceedings, was unreasonable or improper.
(2) Where paragraph (1) applies, the court may –
(a) disallow all or part of the costs which are being assessed; or
(b) order the party at fault or that party's legal representative to pay costs which that party or legal representative has caused any other party to incur.
(3) Where –
(a) the court makes an order under paragraph (2) against a legally represented party; and
(b) the party is not present when the order is made,
the party's legal representative must notify that party in writing of the order no later than 7 days after the legal representative receives notice of the order.

Proceeding on the papers

86. The Defendant cites the Practice Direction to CPR Part 44 in regard to the requirement (before making an order under rule 44.11) that the Court must give the party or the legal representative in question a reasonable opportunity to make written submissions or, if the legal representative so desires, to attend a Hearing. The Practice Direction goes on to assert that conduct which is unreasonable or improper includes steps which are calculated to prevent or inhibit the Court from furthering the overriding objective.

87. Pausing here, the Postscript to the Judgment of Hickinbottom LJ in *Gempride Limited -v- Bamrah and others* [2018] EWCA 1367 (pages 301 – 342) reads as follows:

> *165. In his judgment, Judge Mitchell was particularly critical of Master Leonard for proceeding with the CPR rule 44.11 application without evidence from Ms Bamrah. He may have had in mind the general requirement to allow an individual an appropriate opportunity to respond to any case against him; or the observation of Sir Thomas Bingham in Ridehalgh to the effect that in wasted costs applications "a Solicitor against whom a claim [for wasted costs] is made must have a full opportunity of rebutting the complaint" (see page 229D); or the particular requirement of CPR PD 44 paragraph 11.1 which provides that, before making an order against a legal representative under rule 44.11, the court must give the representative a reasonable opportunity to make written submissions or, if the representative so desires, to attend a Hearing.*

166. In any event, in my respectful view such criticism was unjustified. In his directions of 18 November 2013, the Master expressly gave Ms Bamrah the opportunity to file and serve evidence. For the reasons I have given, the Master was entitled to proceed on the basis that Lawlords would consider with Ms Bamrah whether any evidence was appropriate; and, Lawlords not seeking any adjournment or further time to prepare and file evidence, he was entitled to go ahead with the 13 January 2014 Hearing on the basis that Ms Bamrah, having been given a proper opportunity, did not wish to rely upon any evidence in defending the application.

167. Of course, the judge has a flexible discretion as to how to proceed with a CPR rule 44.11 application; but, in the parallel wasted costs jurisdiction, it has long been emphasised that it is a summary jurisdiction that is only sensible and appropriate in cases where the scope of the application is narrow and clear, and may not be appropriate where there are allegations of dishonesty or breach of professional rules (see, e.g., Turner Page v Torres Design cited at paragraph 20 above, and Regent Leisuretime Limited v Skerrett [2006] EWCA Civ 1032). In Ridehalgh at page 238G-H, Sir Thomas Bingham said that the procedure must be "as simple and summary as fairness permits", words which are reflected in CPR PD 46 paragraph 5.6 which requires the procedure to be "fair and as simple and summary as circumstances permit".

168. It seems to me that those observations are equally applicable to the CPR rule 44.11 jurisdiction. I appreciate that the competence and even integrity of a legal representative may be brought into issue in such an application – but that is equally the case in wasted costs applications. It is noteworthy that, in similar terms to CPR rule 46.8(2) which applies to wasted costs applications, CPR PD 44 paragraph 11.1 provides that the court must give the relevant legal representative no more than an opportunity to make written submissions or, if the representative so desires, to attend a Hearing.

88. The Directions Order was made only after several requests/reminders to the parties to agree Directions or to submit the Directions they wished to have made, on the remaining issues including Misconduct and CPR Part 44.11. In particular, the Directions Order dated 2 November 2020 was made without a Hearing, after this Court had asked both parties for their drafts; these requests were made in writing, by email dated:

23 October 2020, sent at 14:29,
26 October 2020, sent at 08:04 and
29 October 2020, sent at 13:44

89. This Court stated in terms that the ultimate decision on Directions was for this Court, but that both parties were welcome to agree Directions, or each to submit a draft of their own if they could not agree. The Defendant served a draft upon the Claimant on 29 October 2020, inviting his agreement to/comments upon it by 2 p.m. on 30 October 2020. AB through his limited company did not respond but uploaded a letter dated 30 October 2020 onto CE-file, at 17:27 (therefore deemed filed on 2 November 2020).

90. In that letter, AB's limited company commented upon the Defendant's Bill calculations, asserting that they had not yet had the opportunity to fully consider matters but that issues of concern would include an hourly rate for drawing the Claimant's bill. There were various other comments including regarding the fact that there was still time to request an oral Hearing in respect of the Precedents G served on 23 October 2020 (indicating that the Claimant *"…intends to file and serve a written request for an oral Hearing and shall do so by 20.11.2020 in accordance with the Order dated 14.09.2020* ***or later…****"*) **[this Court's emphasis]**

91. However, other than that, AB's limited company said little about the Defendant's draft Order. In particular, they said nothing whatsoever about the Direction at paragraph 3(e) above referred-to, in relation to Misconduct under CPR Part 44.11. The reference to an oral Hearing was in the context of the Precedents G (which contained Costs Judge James' decisions upon the Provisionally Assessed Bills). The Claimant indicated his intention to seek to reopen this Court's decisions upon the Bills, made on the papers following the collapse of the Hearing on 14 September 2020, listed for 3 days, which itself followed the collapse of the Hearing on 3 May 2019, listed for 5 days. In both cases, the Hearings had collapsed due to the actions of AB (and his law firm) in refusing to continue or to delegate and in walking out.

92. To be clear, in the letter of 30 October 2020 there was no mention, nor has there been any since, of AB requesting an oral Hearing specifically to deal with Misconduct under CPR Part 44.11. He has indicated in a later request for an oral Hearing in relation to the Provisional Assessment of all three Bills, that he wishes to challenge every decision adverse to the Claimant. However, as this Court had yet to reach a decision upon Misconduct until now, the request for an oral Hearing could only be in relation to decisions recorded in Precedents G served upon the parties on 23 October 2020. Whilst he purported to grant himself a general extension by adding the words *"or later"* AB was clearly directing his mind to the deadline in relation to Precedents G being 28 days from 23 October 2020, i.e., 20 November 2020. His request for an oral Hearing was filed after hours on 18 November 2020 and therefore deemed filed on 19 November 2020, one day before the deadline.

93. Accordingly, the Claimant having been given the opportunity to have put forward draft Directions, having had an extension of time in which to comply with them, having neither filed and served proper Submissions nor requested an oral Hearing regarding Misconduct and (by no means least) having continued to insist upon AB's limited company's instruction despite their track record in reference to Hearings in this matter, this Court considers that it is reasonable (and just) to determine the issue of Misconduct on the papers and recordings, without an oral Hearing.

Defendant's submissions on the law

94. The Defendant asserts that it relies upon *Gempride Limited -v- Bamrah and others* [2018] EWCA 1367 ('Gempride' pages 301 – 342) which it describes as the leading case on the operation of CPR Part 44.11, particularly in the context of unreasonable or improper conduct. The Court of Appeal reviewed the jurisdiction extensively and considered its relationship to the wasted costs jurisdiction which is described as "plainly similar" to that set out in CPR Part 44.11. The points relevant to this case (per the Defendant) are as follows:

- the jurisdiction under CPR Part 44.11 is <u>not</u> compensatory and it thereby differs from the wasted costs jurisdiction which <u>is</u> compensatory. When invoking CPR Part 44.11, it is not necessary to show that a loss has been suffered as a result of the misconduct. It is a jurisdiction intended to mark the court's disapproval of the failure of a party or his legal representative to comply with his duty to the court, by way of an appropriate and proportionate sanction (paras [12] and [14]);

- the CPR does not contain definitions of "unreasonable" or "improper". They have the meaning attributed to them in the wasted costs provisions (para [17]). See paragraph 16 above for those meanings;

- the leading case on the wasted costs provisions is *Ridehalgh -v- Horsefield* [1994] Ch 205 which was endorsed by the House of Lords in *Medcalf -v- Weatherill* [2002] UKHL 27;

- the jurisdiction to make a wasted costs order against a Solicitor is founded on a breach of duty owed by the Solicitor to the court as an officer of the court. To establish such a breach, it is not necessary to show dishonesty (para [20]);

- CPR Part 44.11 does not engage if the conduct concerned is no more than merely negligent. "*Negligent*" in this context should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession (para [22]). Conduct which is unreasonable may also be improper and conduct which is negligent may also be unreasonable (para [23]). Mistake, error of judgment or negligence are insufficient to justify an order under CPR Part 44.11;

- a Solicitor cannot abrogate his professional responsibility to another legal professional (para [25]);

- the burden of proof is on the applicant to show that CPR Part 44.11 is engaged, and that the discretion should be exercised (para [26]);

- even when the threshold criteria are present, the court still has a discretion as to whether an order should be made (para [26]);

- any order made must be proportionate to the misconduct which the court finds has occurred.

95. Per the Defendant, both CPR Parts 44.11(1) (a) and (b) are engaged in this case; notwithstanding the requirement to identify specific breaches of rules and practice directions, the Defendant makes the overarching submission that AB's conduct throughout the SCCO matter, right from 28 November 2014 (the date of the Costs Orders) has been, at best, unreasonable and obstructive and, in some cases, improper.

96. Per the Defendant, AB has persistently failed and/or refused to cooperate, both with the Defendant when it has made reasonable, pragmatic and justified attempts to resolve outstanding matters by agreement, and with this Court. He has failed to help this Court further the overriding objective of the CPR; he has persistently made allegations of fraud and of improper motives against personnel at the GLD without any justification and has made numerous complaints against such people, again, without proper justification. All of those allegations and complaints have to be dealt with responsibly and comprehensively by the GLD and considerable costs have been incurred in doing so. His conduct has (in the Defendant's submission) been relentlessly unreasonable.

97. In an updated chronology (**pages 259 - 277**) and in the first and second Witness Statements of Mr Sivarayan signed on 7 and 20 February 2018 respectively and their exhibits (**pages 278 - 300**) used in opposing the Application by the Claimant to set aside the DCC heard by DJ Jenkinson in Liverpool on 12 March 2018, the Defendant detailed (and exhibited the relevant correspondence and documentation showing) AB's law firm's conduct up to that point.

98. After the Hearings before DJ Jenkinson on 12 and 16 March 2018, the matter was transferred to the SCCO. From that point, this Court has (as the Defendant suggests) its own understanding, experience and personal knowledge of the manner in which AB's law firm and AB's limited company have behaved towards the Defendant, the GLD and this Court (including the Court staff dealing with the matter). The Defendant amended its chronology to highlight in red specific examples of AB's law firm's misconduct on which the Defendant sought to rely to invoke the operation of CPR Part 44.11 and, in order to comply with para 3(e) of the Order of 2 November 2020, the Defendant attempted to distil into separate categories the alleged misconduct throughout a 6-year period, but submitted that, arguably, such an exercise is somewhat artificial because AB's conduct has been relentlessly unreasonable.

Claimant's submissions on the law

99. As indicated above, the Claimant has made no submissions.

Court's reasons for narrowing scope of evidence considered on Misconduct under CPR Part 44.11

100. This Court is (as it has been throughout) mindful of the need to further the overriding objective of the CPR and to deal with this matter justly, and at proportionate cost. Accordingly, whilst the numerous allegations of improper and unreasonable conduct by AB's law firm and AB's limited company, towards personnel at the GLD and numerous allegations regarding conduct prior to Costs Judge James' involvement in this matter are noted, they are set to one side without any formal finding of fact being made for the purpose of a ruling upon Misconduct. This is being done for practical reasons that also have to do with the need to do justice (at proportionate cost) to both parties.

101. Ms Caroline Featherstone and Mr Satheskumar Sivarayan of the GLD were apparently shouted and screamed at down the telephone, by AB on various dates. Members of staff at the SCCO including Costs Judge James' clerk, have been shouted at down the telephone, by AB. In setting the Defendant's accounts to one side (and in not seeking full accounts from SCCO staff) for the purpose of ruling on Misconduct under CPR Part 44.11, this Court makes no finding of fact (positive or negative) on any of these issues. Similarly, the poor conduct prior to Costs Judge James' involvement, need not be canvassed for present purposes; they are all quite simply surplus to requirements.

102. Due to the way in which Hearings in the Royal Courts of Justice are organised, every interaction between Costs Judge James and AB, AB's law firm and AB's limited company, has either been reduced to writing (via email or otherwise) or has been audio recorded in a Courtroom or via BT MeetMe etc. Likewise, the Emergency Injunction Hearing before Cavanagh J on 13 September 2020, was audio recorded.

103. There are more than sufficient recorded examples of unreasonable and improper conduct, upon which to reach a fair decision on this issue. Any perceived unfairness to the Claimant in respect of the lack of a Hearing on Misconduct has been weighed against the fact that every incident upon which this decision depends, can be read or listened to at the next tier if the need should arise.

104. In this Court's judgement, the behaviour of AB, AB's law firm and AB's limited company constitutes Misconduct under CPR Part 44.11 in and of itself. More significant is the way in which such behaviour has manifested at times or in ways which appear calculated to turn matters in a particular direction. This Court has not enumerated each and every incident (AB's conduct in particular has been consistently poor) but has concentrated upon incidents where there is an underlying concern that the misconduct in question, appears to have been deployed deliberately in an attempt to gain some advantage in the litigation.

Findings of fact on specific instances of Misconduct (CPR Part 44.11)

3 May 2019

105. Audio recording of AB shouting at Mr Joseph, Counsel for the Defendant, including the word *"shit"* has been transcribed as above referred-to; his conduct on this date (3 May 2019) in shouting abuse but also in walking out of the Hearing multiple times, so that it had to be abandoned, was unreasonable and improper in and of itself and would warrant a sanction accordingly.

106. What makes it considerably more worrying, is that the trigger for this outburst was that Defendant Counsel tried to direct this Court's attention to the binding (but unreported) decision of HHJ Eyre QC, sitting as a High Court Judge, in the case of [AB's law firm] *-v- The Lord Chancellor*. This is (per the Defendant) a case on the precise issue before this Court, namely the basis upon which the Court should approach hourly rates of lawyers within the GLD, with the title indicating that it was a case very well-known to AB, Partner in the Claimant firm in that case Pursuant to *Re Eastwood*, the GLD was claiming market rates and (per the Defendant) HHJ Eyre QC in the above case, had already found in their favour so that the authority would have assisted the SCCO. Both parties to litigation have a duty to bring to this Court's attention, any binding authority on a point upon which the Court has to decide.

107. In the event, this Court decided the hourly rates point considerably later, without reference to the decision of HHJ Eyre QC. However, but for AB's behaviour on 3 May 2019, hourly rates in respect of the Defendant's Bills, could and should have been resolved on that date. The significant delay, wastage of Court time and costs on this issue, on that date and subsequently, is entirely due to AB's own conduct.

108. AB behaved in a way which was clearly improper and would be seen as such according to the consensus of professional (including judicial) opinion. In regard to the Defendant's assertion that he did so in order to attempt to gain an advantage in the litigation, given this Court's own experience of his conduct on that date and thereafter, and bearing in mind the Claimant's failure or refusal to respond as provided for in the Directions, this Court finds as a question of fact that AB's behaviour on 3 May 2019 was not only improper but was also calculated. He did not wish this Court to hear the binding decision of HHJ Eyre QC, sitting as a High Court Judge, in the unreported case of [AB's law firm] *-v-The Lord Chancellor* and his actions on that date ensured that it did not do so.

14 September 2020

109. 14 September 2020 was supposed to be Day 1 of a 3-day Detailed Assessment, listed via BT MeetMe due to the pandemic; after joining the Hearing (almost 15 minutes late) AB first asserted that he had submitted a Note, stating that he could not participate by telephone because his hearing impairment meant that he spoke loudly, and he did not wish to be accused of shouting**.** After Costs Judge James assured AB that he would not be accused of shouting, he continued with the Hearing for some time but then asserted that he could not hear and that continuing with the Hearing would constitute a breach of his Human Rights.

110. It was notable that before and after saying he could not hear, AB responded very promptly to certain points. When Costs Judge James referred to a previous Hearing (in April or May 2020) being adjourned on medical grounds at AB's request, he vehemently denied this. When Counsel for the Defendant asked whether he had referred Cavanagh J to the decision of Johnson J dismissing his Application for Leave to Appeal as totally without merit (or at least to his Application for Leave) AB replied that there was no need to go into what happened yesterday. When Counsel for the Defendant referred to the Claimant's CFAs AB promptly said that before the Court could even get to the CFAs there was a preliminary issue as to whether it was too late in the day to challenge them.

111. When AB was asked why he had not raised his hearing impairment at the Injunction Hearing less than 24 hours previously, he responded to the effect that the Hearing before Cavanagh J had been by telephone but that the point of that Hearing had been different to the issue today, that he could not hear and so the matter would have to be adjourned. That is a circular argument; at the Hearing on 13 September 2020 AB's hearing impairment caused no difficulty yet according to him by 14 September 2020 (less than 24 hours later) it caused such difficulty that a 3-day Hearing had to be abandoned, and he has never explained why this should be.

112. Costs Judge James asked AB why PC who, as shown above, has signed numerous documents as Solicitor for AB/the Claimant and who was on the call, could not assist, and why, if AB knew he would be in difficulty participating via BT MeetMe on 14 September 2020 due to a hearing impairment, he had not arranged for someone else from his limited company (or Counsel) to attend to ensure that the Hearing could proceed. At this point AB shouted down the phone at Costs Judge James that this question was contrary to the Equality Act and was the most offensive thing that he had ever heard, and that Costs Judge James was saying that a hearing-impaired person could not conduct Litigation, which was utterly appalling, offensive and outrageous, and would result in a claim.

113. Costs Judge James did not say that a hearing-impaired person could not conduct Litigation. This was the second occasion upon which AB had caused a Hearing to be adjourned on the day (the last time being on 3 May 2019, when he swore and walked out). His Application for Leave to Appeal (and his Injunction Application) do not say anything about hearing impairment; he had not submitted an Application to adjourn the Detailed assessment, supported by medical evidence. Instead, he raised hearing impairment for the first time, during the Hearing on 14 September 2020. He stated first that he did not wish to be accused of shouting, and then asserted that he could not hear. However, he could clearly hear the matters above, and responded robustly when he chose. The background was of AB's strenuous efforts (including seeking Leave to Appeal Directions but also seeking an Emergency Injunction) to prevent Costs Judge James from hearing this matter on 14, 15 and 16 September 2020.

114. Even so, Costs Judge James took the view that it would not be appropriate to continue given AB's protestations, but it did not mean that matters had to be adjourned until such time as a live, in-person Hearing could take place. Instead, Costs Judge James told the parties that she would use the remainder of the three days set aside to hear the Detailed Assessment, to conduct a Provisional Assessment, certainly of the Defendant's two Bills (which were lodged considerably earlier than the Claimant's Bill) and of the Claimant's Bill if time permitted. That would avoid the mischief of proceeding when AB said he could not hear, but equally would avoid the mischief of matters being held in abeyance (at the last minute) yet again and no progress being made until some future date as yet unspecified. It was an exercise of her case management powers in an endeavour to make the best of a bad situation.

115. There is evidence upon the Court's file to show that AB had requested to adjourn the 11 May 2020 Hearing (which he did on 25 March 2020, in the same email as a request to adjourn 3 April 2020 as well) He had produced a Medical Report regarding adjournment. It was unreasonable and improper to shout at Costs Judge James about this on 14 September 2020 when, at its highest, it was a misunderstanding by her as to which Hearing AB wished to adjourn due to ill-health and which he wished to adjourn without giving any reason. His conduct was not only discourteous in the extreme, but substantial Court time was wasted on the day and in reviewing the file.

116. Similarly, contrary to AB's assertion during the Hearing that there was not a scintilla of evidence that he was shielding (and that – as he stated more than once - this was a fabrication by Costs Judge James) there are several references on file to him being locked down with his son, to him self-isolating, to the office being inaccessible to him etc. It was clearly improper and unreasonable of AB to shout at Costs Judge James in the way that he did, over a situation not of her making. However, the more worrying issue is that, in this Court's judgement, this was likely done on purpose to achieve what the Leave to Appeal and Injunction Applications did not achieve, i.e., to prevent Costs Judge James from hearing this matter on 14, 15 and 16 September 2020.

13 September 2020 Emergency Injunction telephone Hearing

117. When, on 14 September 2020, Counsel for the Defendant pointed out that a telephone Hearing had taken place on 14 May 2019 without apparent difficulty, AB specifically asserted that hearing impairments deteriorate over time. However, he did not say that, on the previous afternoon, he had made an Emergency Application for an Injunction to prevent Costs Judge James from hearing the case on Monday 14 September 2020 and that the Hearing had taken place before Cavanagh J by telephone.

118. Cavanagh J sent his Order through in draft form shortly after the Sunday afternoon Hearing; unfortunately, the learned Judge's draft Order did not say upon its face that the Injunction Hearing had taken place by telephone and neither Costs Judge James nor Counsel for the Defendant knew the position until very late in the Hearing on 14 September 2020. Viewed in that context, AB's reference to hearing impairments deteriorating over time, was highly misleading. He (and PC) alone knew that he had participated without difficulty in a BT MeetMe Hearing mere hours prior, before Cavanagh J. Again, this Court's genuine concern is that the real issue was AB's determination that proceedings before Costs Judge James should not proceed on 14, 15 and 16 September 2020 or at all.

119. When Cavanagh J sent through the Sealed Order made on 13 September 2020 (which he did at Costs Judge James' request, on 19 November 2020) it was the first time she had seen it. AB appears never to have uploaded the Order onto the SCCO's CE-file system in either its draft or its sealed form.

120. Further, having been Ordered by Cavanagh J to, *"…notify the Master or Costs Judge who deals with the detailed assessment of costs tomorrow, **at the outset of the Hearing**, that this application was made and that this order was made…"* **[this Court's emphasis]** AB did not do so. Having seen Cavanagh J's Order by a side wind, Costs Judge

James prompted AB multiple times as to whether there was anything else he thought he ought to bring to the Court's attention. AB made a number of submissions about matters of concern to himself, including recusal of Costs Judge James, the practicalities of continuing by telephone, alleging that Costs judge James had entered the arena by querying VAT, secure data handling and the setting up of a secure CJSM account. However, nothing was said about an Injunction until this Court asked AB about the Hearing on the previous day; the distinct impression was that he would not have mentioned it otherwise. It was certainly not mentioned (as ordered) at the outset of the Hearing, but some fifteen minutes after AB joined the Hearing (and hence, as he joined fifteen minutes late, approximately half an hour after the Hearing began).

121. PC, who was on the call on 14 September 2020 and had apparently been on the Emergency Application call on 13 September 2020 as well, made no comment either. As a Solicitor and an officer of the Court his own conduct on 14 September 2020 was inappropriate; even as a subordinate of AB (Partner) PC (Head of Personal Injury) has an overriding duty to assist the Court and given that AB was asked multiple times if there was anything else he thought he ought to bring to the Court's attention, it is regrettable that PC made no mention of the Order of Cavanagh J from the previous afternoon, nor did he prompt AB to do so.

122. As well as failing to comply with the Order as above described, AB and PC gave Cavanagh J an undertaking to serve the Order of 13 September 2020 and reasons, on the Defendants, on Counsel acting for the other party or parties in the costs proceedings, and on Costs Judge James and/or her clerk, forthwith by email. However, short of ignoring that undertaking completely, and not sending the Order and reasons at all, it is hard to see how AB/the Claimant could have done <u>less</u> to ensure it came to Costs Judge James' attention "forthwith".

123. The SCCO file in the detailed assessment proceedings bears the file number JJ1802567 and migrated in mid-July 2020 to CE-file under SC-2018-DAT-002542 – 'the 2018 CE-file'. The 2018 CE-file number appeared on several items sent to AB/the Claimant prior to 13 September 2020 (and at least one sent prior to 6 August 2020). It is the main file on which all matters in these proceedings should have been uploaded (and were being uploaded by this Court and the Defendant).

124. On 6 August 2020, AB uploaded an Application and a letter onto CE-file but started a completely new file reference (SC-2020-APP-000470 – 'the 2020 CE-file'). The only email this Court ever received about this (prior to 13/14 September 2020) was from Costs Judge James' clerk on 7 August 2020 stating that there was a new file, linked to the existing AB v MOJ file. Nothing was received via e-mail from AB regarding his creation of the 2020 CE-file or what he had put on there, prior to 13/14 September 2020. To complicate matters further, what was uploaded on 6 August 2020 was an old Application that AB/the Claimant had previously emailed direct to Costs Judge James at the end of June 2020 and that he – very reluctantly – CE-filed over a month later, after being told that was the proper form under Practice Direction 51O and that simply emailing an Application direct to the Judge for her to issue, is inappropriate.

125. Cavanagh J's Order of 13 September 2020 came through to Costs Judge James' clerk from AB's limited company at 17:30 on the Sunday evening. The learned Judge's draft Order (in Word format, unsealed) and AB's "urgent memo" of 13 September 2020, were the sole contents of the zip file. Neither the draft Order nor the "urgent memo" contained any of the SCCO or CE-file references above referred-to and those reference numbers were not cited in the Emergency Injunction Application either: that was made in anticipation of a collateral claim against HM Attorney General, the Secretary of State for Justice and the Treasury Solicitor.

126. Any search by reference to the SCCO CE-file numbers (2018, 2020 or even the old JJ1802567 number) or by the parties' names, would not have revealed the Order of Cavanagh J; the only common name between matters, was AB which is such a common anonymised name it is very little use for search purposes. All that appeared in Costs Judge James' clerk's inbox on the morning of the Hearing (14 September 2020) was the header to AB's message which reads:

AB v MOJ [Liverpool case numbers] *Our ref: 054587-1 TSol ref: COSTS/LT6/3583G/SVS* with no SCCO references contained in the header. Most concerning of all, the words *"Urgent"* and *"Must be seen by Costs Judge James prior to Hearing listed for 10:30 on 14 September 2020"* (or some form of words to similar effect) are conspicuous by their absence. It is no wonder none of this was forwarded to Costs Judge James in time for the BT MeetMe Hearing at 10:30 on 14 September 2020.

127. Some documents were uploaded onto the 2020 CE-file on the Sunday afternoon, including the Application and a 199-page Bundle, and a Memo saying the Order 'was being sent' (which could have inferred that the learned Judge himself, was sending it) but AB did not upload the Order itself onto CE-file. As this was all taking place late on the Sunday afternoon, in any event none of these were "filed" (by being accepted by the system) until the following day during/after the Hearing – sometime after 11:00 on 14 September 2020. This Court could not have opened any of them even if it had been clear that they were there (which it was not).

128. Yet during the Hearing on that date, AB repeatedly made reference to Costs Judge James not having read the papers and referred more than once to her having the *courtesy* to read the papers. She could not have seen those papers, due to AB's last-minute filing, over which she had no control. Given that two of the grounds upon which the Emergency Injunction Application was refused, were lack of notice and delay (given that the matters contained therein, were hardly recent) AB's repeated haranguing of Costs Judge James over failure to read papers which he had not even uploaded onto CE-file until something like 17 hours beforehand, was improper and unreasonable.

Abuse of the Court's Emergency Injunction process/breach of duty of full and frank disclosure

129. The Emergency Injunction list is intended to deal with genuine emergencies. Matters such as patients wishing to refuse (or being denied) life-saving treatment, parties seeking to freeze assets or to search premises before money, goods and evidence can be spirited away, or victims of abuse seeking Orders for protection of life and limb, are the sort of cases heard in the list, on a regular basis. AB and PC attending before Cavanagh J on a Sunday afternoon, to try to stop a Detailed Assessment taking place before Costs Judge James in the SCCO on the following day, indicates nothing more than an attempt to forum shop because the decisions made by Costs Judge James were not to AB's liking (as indeed Cavanagh J's Order of 13 September 2020 states).

130. What Cavanagh J did not say in his Order (and what, evidently, AB and PC did not tell him about) is that Johnson J had already refused, as totally without merit, an Application by the Claimant, seeking to set aside this Court's Directions. Hence Cavanagh J was put to the trouble of hearing, in the Emergency Injunction list on a Sunday afternoon, matters already rejected by Johnson J as totally without merit. This is an extremely serious conduct issue because of the ethical duty upon parties appearing on Applications without notice, to give full and frank disclosure of matters which go against them, as well as matters in their favour. For the Claimant to make an Emergency Application for an Injunction, without explaining that another Court had already heard substantially the same issues, is both unreasonable and improper.

Other matters

131. This Court notes other matters relied upon by the Defendant, including the fact that AB, *"frequently writes letters which cut and paste previous letters and/or writes letters multiple times to the same addressee in a single day"* and persistently raises issues which have been dealt with previously causing costs to be unnecessarily incurred in responding; both of these are amply borne out by the Court's (and the Claimant's) file and have been addressed elsewhere in this Judgment. The fact that AB persistently failed to keep to agreements as to service of costs information and Bills and conduct elsewhere, for example in causing a further Hearing to have to take place on 16 March 2018 due to refusal to accept what the learned Judge in Liverpool, had Ordered on 12 March 2018, are noted.

132. As a question of fact, the Claimant's conduct (or rather that of AB, his law firm and his limited company) has been consistently bad, certainly throughout Costs Judge James' conduct of proceedings. It would almost be quicker to list incidents of good behaviour than it is to list incidents of bad behaviour. The matters referred to throughout this Judgment, but in particular AB swearing at his opponent and walking out, causing the Hearing on 3 May 2019 to collapse, shouting at Costs Judge James on 14 September 2020 and refusing to continue, causing that Hearing to collapse and (having taken up the Court's time in the Emergency Injunction List) failing to tell Cavanagh J about the failed Application before Johnson J, were all extremely serious examples of misconduct.

133. As to whether such conduct would justify disbarment, striking off, suspension from practice or other serious professional penalty, is a matter for the SRA if the Defendant chooses to involve them; it is certainly improper conduct as "*…the consensus of professional (including judicial) opinion*" would clearly deplore such conduct. It also meets the definition of "*unreasonable*" being conduct which is vexatious and designed to harass the other side, rather than advance the resolution of the case, and it appears to flow from the improper motive of derailing the proceedings before Costs Judge James by refusing to participate, after several failed attempts to derail them by Applications before Johnson J and Cavanagh J.

134. In this regard, another key background fact, is that AB's law firm and AB's limited company have repeatedly accused Costs Judge James of bias despite decisions at the next tier that such allegations are totally without merit. Per the Defendant, this is a most serious breach of AB's Code of Conduct in that it patently fails to uphold the administration of justice. It is certainly unreasonable and improper to persist, when Johnson J and Cavanagh J have already ruled against AB on Costs Judge James' alleged bias.

The Claimant's Bill/Egregious overcharging constituting Misconduct under CPR 44.11

135. The Defendant draws attention to and relies upon defects in the Claimant's Notice of Funding and Bill, and to the fact that copies of the CFAs were not served as AB had alleged. They cite the Practice Direction to CPR Part 47, saying that the Claimant should have set out in the narrative to his Bill, details of his funding arrangements and of any additional liability (which a 100% Success fee would certainly be).

136. By signing the Bill in Court on 3 May 2019, AB was certifying to the Court, as well as to the Defendant, that the indemnity principle had not been breached and that the claim made in the Bill is one which is sustainable in principle, as a matter of law, in his capacity as an officer of the Court (see *Bailey -v- IBC Vehicles Ltd* [1998] 3 All ER 570 and the judgment of Henry LJ (**page 343 - 349**)).

Success fee

137. By signing the Bill, AB made representations, as well as monetary claims, which he intended both the Court and the Defendant to rely upon in their subsequent dealings with him. The Court has now found that both CFAs were unenforceable and that the whole of the success fee (in the sum of £442,715.95) was wrongfully claimed, supported by AB's signature on the Bill. That is not a matter of small consequence; it is both unreasonable and improper to have raised a claim for this amount of irrecoverable costs in the first place, but to have persisted in it for so long, and to have accused Costs Judge James of entering the arena by raising it, and of bias by disallowing it, is considerably worse. Costs Judge James' suggestions that the Claimant might be better served by instructing a Costs Lawyer or Counsel, were unheeded and this issue has taken up hours of Court time, wholly unnecessarily.

138. The Defendant draws attention to and relies upon further comments made about the Claimant's Bill by the Costs Judge in her provisional assessment (recorded upon the relevant Precedent G), namely that the Claimant's costs are manifestly and grossly disproportionate, that hourly rates as high as £750 per hour were claimed for AB's work when

only £250 per hour was allowed and that many claims were made for 100% of costs incurred when the Court had ordered that only 20% (pursuant to the Costs Order from 28 November 2014) was recoverable. The Defendant specifically points to the fact that the Claimant's Bill of £936,875.78 was reduced to approximately £55,000.00, (a reduction of around 95%) as being evidence in and of itself, of misconduct.

Hourly Rates and over-recording of time

139. Taking the hourly rates point; by reference to **Appendix 1** below, in 2014 AB's hourly rate as claimed in the Bill was £779.48. That is 3.59 times the GHR of £217.00 for a Grade A fee earner in Liverpool in 2014 (or, put another way, the GHR for 2014 was just under 28% of AB's rate). At his 2014 rate plus success fee, AB would take just over 8 minutes to incur charges of £217.00, which should have been the Guideline Hourly Rate. Extrapolated to 2021, AB's hourly rate would have been £1,519.00 or 7 times the GHR (or the GHR would have been just over 14% of his rate). As such, it would have taken him just over 4 minutes to incur charges of £217.00. If this were all, it would be bad enough, but as well as charging hourly rates many times the reasonable and proper amount (and this Court has allowed rates over GHR even though the damages award was as low as £2,251.00) the time in the Bill has been over-recorded to a substantial degree.

140. For example, on 27 November 2009, between 10:23 and 10:54 (31 minutes) AB sent Counsel (Mr Daniel Lightman) 17 separate emails, each attaching documents. All were of the briefest gist and some were blank. Yet they were charged in the Bill at 6 minutes apiece at AB's Grade A rate for 2009 i.e., £484.00. With the 100% success fee, that equates to £1,645.60 for 31 minutes of work. This is far from an isolated incident; these are not even the total number of letters to Counsel or his clerk on that date. There are 9 letters sent on each of two other dates in November 2009 as well; the total claim for letters to Counsel in Part 6 of the Bill, is 55. By charging each one out as a 6-minute unit plus Success Fee, AB claims £5,324.00 plus VAT for a couple of hours' work, even though there was no "thinking time" on any of the 17 letters above referred-to. Despite the Costs Order awarding the Claimant 20% of his costs to pre-trial review on 20 January 2014, he has claimed this (item 93 on page 14 of the Bill) at 100%.

Drafting, checking and signing the Bill

141. The single worst example of overcharging in the Claimant's Bill, is the claim for drafting and checking it. It was allowed at 40 hours for preparation and 2 hours for checking, both figures offered by the Defendant and allowed as reasonable and proportionate for a short Bill based upon a single Banker's box of loose-leaf documents (which is all that AB's law firm lodged for Detailed Assessment). In requesting an oral Hearing of all three Bills on 18 November 2020, AB stated the following in relation to this Court's reduction of time spent/work done on drafting and checking the Bill:

"It is noted that in respect of the most serious allegation made the Costs Judge has failed to take the step in the case referred to by her. Before reaching the conclusion, she has she should have sought further information. Such an approach is unacceptable and unfair and is akin to Alice in Wonderland of Execution first and Trial later."

142. However, the ruling by this Court (as recorded on Precedent G) says the following:

"The Court is in no doubt that the claim for costs of drafting and checking the Bill of Costs of the Claimant is manifestly and grossly disproportionate; at 82% of the base costs, it is by a very wide margin the highest claim the Court has ever seen. Based upon the single box of loose-leaf files lodged at Court, and the very basic and (as the Defendant points out) frequently non-compliant Bill of Costs filed by the Claimant, the Court finds it hard to accept that it took anything like the time claimed to draw the Bill or to check the Bill. Any finding of fact that this very straightforward Bill did not take as long to draft or to check, as has been claimed by the Claimant, would have serious consequences pursuant to CPR

Part 44.11 and might in addition lead to a report to the SRA. Per Bailey -v- IBC Vehicles Ltd [1998] 3 All ER 570 and the judgment of Henry LJ (page 61): "…the taxing officer may and should seek further information where some feature of the case raises suspicions that the whole truth may not have been told. And the other side of the presumption of trust afforded to the signature of an officer of the court must be that breach of that trust should be treated as a most serious disciplinary offence." ***For present purposes*** *it is sufficient to say that a single week's work (40 hours) at £125/hour, should have been ample, and is certainly a reasonable and proportionate amount, to allow to draw this Bill; the offer of 2 hours to check such a straightforward Bill, is (if anything) generous and is certainly not too low; as that is what has been offered, that is allowed."* [this Court's emphasis]

143. That was clearly not, and did not purport to be, a finding of fact that the Bill did not take as long to draft or check as AB claimed; it was a straightforward exercise of this Court's discretion to allow 40 hours at £125/hour as a reasonable and proportionate time to draw a very straightforward paper Bill, with a generous 2 hours allowed as offered by the Defendant, to check it, together with an indication that this Court was considering a finding of fact. "For present purposes…" clearly delineates present from future issues.

144. The effect of this Court's decisions to allow 40 hours at £125.00 plus 2 hours at £250.00 for Bill drafting and checking, was to reduce that single claim from £167,510.42 excluding VAT and Success Fee to £6,600.00 including VAT. The amount claimed (including Success Fee and VAT) was £402,025.00, just to draft and check the rest of the Bill. That was reduced by £395,425.00 or over 98%, purely by exercising discretion as to what is reasonable and proportionate. The Bill does not claim VAT on the Additional Liability (see page 32) but if the Success Fee had been recoverable, it would be VAT-able as well. See this Court's Order of 16 November 2021(paras 30 to 35); AB intended to claim VAT on the Success Fee and obtained an Advice from Mr Oliver Marre, specialist Tax Counsel, in this regard.

145. This raised concern that the charge for drawing and checking the Bill, was grossly inflated, and as such this Court rightly reminded AB of the comments of Henry LJ in *Bailey v IBC Vehicles* on the seriousness of such a finding of fact, but it did not <u>at that stage</u> make such a finding. AB knows the difference between allowing £6,600.00 including VAT on the Standard Basis (as this Court did in the Precedent G on his Bill) and finding that the remaining £395,425.00 was not only unreasonable and disproportionate but that the whole truth may not have been told. AB was asked to provide evidence of the time spent/work done on Bill drafting and checking, and it seems to this Court that the evidence he has provided, does not assist him/his law firm.

146. According to the Witness Statement of 'IFP' dated 27 November 2020, he has a BSc in Computer Science and is currently employed as an IT Infrastructure Support Analyst. He states that during his employment by AB's law firm (between September 2008 and July 2019) he was tasked with various matters, including Bill preparation, but he does not refer to any legal or costs qualifications and, given the reason for his evidence, he would certainly have referred to them if he had any. As such it is curious that his time has been billed at rate 4, as *"other Solicitors and Legal Executives and other staff of equivalent experience."* Not only is an IT Support professional with AB's law firm clearly not equivalent to a Solicitor or Legal Executive, both of whom will have passed stringent examinations and be bound by a Code of Conduct, but this issue raises grave concern as to the accuracy of the description of other fee earners within the Claimant's Bill as well. Bearing in mind that the hourly rate charged for IFP's work in 2014, was £350.76, he was, as a legally unqualified person, being charged at nearly 165% of the GHR for a Grade A Solicitor with over 8 years' post-qualification experience, to draft the Claimant's Bill.

147. Nor is that all. According to his Witness Statement (which, interestingly, is almost a mirror image of part of AB's own Witness Statement dated 27 November 2020) IFP spent 280 hours drafting a short, non-compliant Bill from what appears to be a single box of loose-leaf papers. 280 hours would be 7, 40-hour weeks; including 100% success fee and VAT, the amount sought against the public purse for IFP's input, was £235,710.72. IFP gives little insight into what this work involved; he says that if the matter proceeds, he will have to take time off to review what he did.

148. He adds that the Court should be aware that preparing the Bill involved a lot more than the papers lodged. The CPR and Practice Directions (and this Court's Directions in this case) make very clear that the Detailed Assessment of all three Bills should be based upon the papers lodged by the receiving parties; if AB chose only to lodge one Banker's box of loose-leaf papers, this Court was entitled to base its decisions upon that evidence alone. Anything that IFP or AB may produce now, to explain what they did back in 2014, would likely be given little or no weight. The process is not to wait until the Court's concerns have been enumerated and then produce items after the fact, to gainsay that concern. Parties are directed to produce what is being relied upon, at the outset, so that the Court can review everything and be sure that nothing has been devised to bypass any concern expressed by the Court on looking at the papers lodged first time around. In effect, that is exactly what both IFP and AB state they will have to do, in taking time off to review and produce something to justify the times claimed.

149. Both IFP and AB assert in their Witness Statements that when the Bill was completed the total time spent on it was considered as against the claim for time claimed by the Defendant, that the Bill for the Defendants was not accurate and was far simpler than that of AB/the Claimant and that *"…it is reasonably simple to see that proportionately the total time claimed was reasonable"*. Each states that this was something that they both commented on at the time, which raises a very real concern that the IT Support person who drafted the Bill and the Partner who signed it (and charged 56 hours to do so, at a fee of £104,762.11 including success fee and VAT, to sign his own firm's Bill) claimed not the time that these tasks took, but the time that they thought the market would bear, given the amounts claimed by the Defendant.

150. Criticism of the Defendant's Bills (there were two, not one) is unwarranted; the Defendant's Bills were compliant with the Rules and Practice Directions, were detailed and were accurate, and their time spent/work done in producing those Bills from the ten Banker's boxes of lever arch files lodged at Court, made sense.

151. In contrast, the time claimed by the Claimant for drafting, checking and signing this Bill, makes no sense at all. It is a short Bill, it contains little detail and the only evidence lodged by AB was a single box of loose-leaf papers; probably two or three lever arch files' worth if it had been hole punched and filed to make the contents easier to follow. Yet the claim for drafting, checking and signing the Bill (including Success Fee and VAT*) was £402,025.00. To be clear, that is over 7 times the amount that this Court has allowed on the Claimant's entire Bill. It is clearly an egregious overcharge, and the other troubling question is as to whether the whole truth has been told. *Paragraph 144 above makes clear that, although it is not claimed on the face of the Bill, AB clearly intended to claim VAT on the Success Fee.

152. Based upon everything that AB chose to lodge at Court, this Court does not believe that it took over 48 minutes for every 60 minutes of time spent on the main action, to draw up this Bill. Nor does this Court believe that it took 280 hours to draft and 56 hours to check, such a straightforward and short paper Bill. The failure or refusal of AB, AB's law firm and AB's limited company to involve anyone with expertise in Costs Law in this process, even after this Court suggested it, speaks for itself.

153. However, if this Court is mistaken, and if AB genuinely chose to devote in excess of two months of fee earner time to drafting, checking and signing his own firm's Bill, at a cost of £402,025.00, there is absolutely no doubt that it was neither reasonable nor proportionate to do so. It was an overcharge to the public purse so egregious that in its own right it is both unreasonable and improper, and hence constitutes misconduct worthy of sanction. Given that the law (as clarified in *Gempride*) does not require a finding of dishonesty in order to find Misconduct, this Court proceeds on the basis of paragraph 153 rather than paragraph 152 accordingly.

Reductions for success fee and bill drafting etc.

154. The Claimant's Bill as drawn, at £936,875.78, has been assessed to approximately £55,000.00. The disallowance of Success Fee (£368,929.95) and most of the Bill drafting (£162,010.42, not to double count the success fee) with VAT thereon, account for some £637,128.44 of the reduction and it is this Court's Judgment that it was both unreasonable and improper to pursue both of these claims. There have been further reductions due to over-recording of time, claiming at 100% costs which were allowed at just 20% and other factors. Given that those reductions amount to nearly a quarter of a million pounds more, it is this Court's Judgment that the decision to present the Claimant's Bill in its original state was both unreasonable and improper and was Misconduct worthy of sanction under CPR Part 44.11.

155. As the Defendant states, and as this Court finds, no reasonable Solicitor and officer of the Court could properly have signed the certificate on the Claimant's Bill. It has been reduced by approximately 95%. Had it been properly drawn, it would have been assessed on paper initially, by the process set out in CPR Part 47.15. The fact that it has unnecessarily gone to a full detailed assessment (with both live Hearings being abandoned due to AB's actions on 3 May 2019 and 14 September 2020) is the fault entirely of AB, AB's law firm and AB's limited company. This Court agrees with the Defendant that, when all the relevant circumstances, instances of improper and unreasonable conduct and breaches of Rules and Practice Directions are taken into account, in the round, this matter is a paradigm case for a very substantial reduction for misconduct under CPR Part 44.11.

Misconduct – the law

156. In *Gempride*, Mrs Bamrah had claimed success fees on the back of a CFA which she had concluded with her own firm, as AB did in this case. It was common ground in that case, that the CFA was unenforceable and void. The Court of Appeal started from the figure which had been arrived at after disallowance of the success fees (see para [162]). Mrs Bamrah's default was twofold. She mis certified the bill by claiming rates which exceeded those for which she was liable, and she misrepresented the availability of BTE insurance. Half the profit costs were disallowed (see para [163]).

157. The Defendant submits that AB's conduct has been far worse than that of Mrs Bamrah in *Gempride*, which is clearly true. In *Gempride* Mrs Bamrah had instructed Costs Law professionals to draft her Bill, and whilst the Court held that she could not avoid sanction due to their default (not least because she was fixed with knowledge of how much she was liable for, and of the true position on BTE cover) it is notable that, once the errors were made plain, she did accept that her Bill was wrong and did not try to press it fully.

158. Here, AB has failed or refused to involve a Costs Law professional, even after this Court suggested it. When significant issues with the Bill have been picked up on, AB has not accepted them but has continued to press the Bill in its current form, seeking by means up to and including seeking an Emergency Injunction, to have Costs Judge James taken off the case. The Defendant has reminded this Court that any sanction must be proportionate and has indicated that in its submissions on the incidence, basis of assessment and quantum of any remaining costs, it will rely upon the same conduct above referred-to.

159. The Defendant respectfully submits that the appropriate reduction for misconduct under CPR Part 44.11 is 70% of the costs, as provisionally assessed, which it describes as an exceptional and possibly extreme result. Such a result is, it is submitted, entirely justified and appropriate because this is an exceptional and extreme case.

160. To be clear, this Court would have been minded to disallow the Claimant's costs entirely; even the above is not a full list of AB's unreasonable and/or improper actions, such as his use of cut and paste to omit key phrases when seeking to challenge Costs Judge James' previous Orders. That is misleading and it is the reason for the direction at paragraph 1 above, to include this Judgment in its complete and unabridged form if matters are taken further. However,

this Court is not minded to go behind the generous offer from the Defendant, and accordingly, the amount by which the Claimant's costs in the main action are hereby reduced is, as the Defendant requested, 70%.

Consequential matters

161. It is clear that, with Claimant's costs reduced by 70% and the Defendant's costs at (a) to (d) above allowed at £35,250.00, there will be no costs payable to the Claimant in the main action as the Defendant is owed considerably more than it now owes. There are some costs still to be decided, and there will be interest due and owing to the Defendant (which will of course be reduced somewhat by set-off of any costs due to the Claimant, plus the payments on account paid to the Defendant thus far).

162. If the parties can agree an Order, well and good, but if not, then each party may submit a draft Order in Word format, for Costs Judge James to decide on paper; those draft Orders should be filed on CE-file (on the existing 2018 file) no later than 16:00 on 30 April 2020.

163. The draft Order(s) should deal with:

I. Payment of the Defendant's costs at (a) to (d) above, in the sum of £35,250.00.
II. Payment to the Defendant of a sum equivalent to the 70% reduction to the Claimant's costs.
III. Payment of any other costs already quantified but not yet paid to the Defendant.
IV. The process by which the remaining costs in this Detailed Assessment, are to be decided (as to both incidence and quantum)**.**
V. The process by which interest on the above, is to be calculated and paid.
VI. Any other consequential matters the parties wish to address.

164. The Claimant has requested an oral Hearing and the Defendant has opposed this on grounds that the Claimant has not yet paid everything that the Court had Ordered to be paid. That is a valid objection, given the circumstances. However, if the matters at I to V above are addressed, and the Defendant is paid up to date, it would seem to this Court that an oral Hearing could go ahead. If the Claimant was not holding substantial sums of money due and owing to the Defendant, that would take away a major source of concern for the Defendant in agreeing to such a Hearing.

165. Furthermore, if the Claimant was not holding such sums, it would hopefully have a salutary effect upon the conduct of AB and his limited company as, if they were seeking the Court's indulgence on certain issues, they must surely recognise that swearing, shouting and walking out, would not have beneficial effect. If, given his repeated assertions of bias by Costs Judge James, AB wishes to go straight to the next tier, it will be a matter for him as to whether such a course of action is permitted under the law, and as to the costs consequences thereof.

166. This Judgment was uploaded on CE-file in draft, with the names of AB, his law firm and his limited company included (as well as the names of PC and IFP), for the parties' comments. AB asserted that, because he is the Claimant, his own name and the names of his law firm and his limited company, could not appear as it would compromise the Claimant's anonymity. This Court does not believe that the anonymity granted to the Claimant back in 2014 was ever intended to extend to AB's conduct of the Detailed Assessment proceedings in 2019 to 2021, particularly when that conduct is as above described.

167. However, the Defendant has recently indicated that it may apply to lift the anonymity order before a High Court Judge in the Queen's Bench Division in London (because the anonymity order was made by a High Court Judge). The unredacted version of this Judgment may be exhibited to any such Application, provided it is exhibited in its entirety. The anonymised version has been handed down and is a document of public record in the normal way.

APPENDICES

Appendix 1 AB's law firm's CFA Rates (with National 1 GHR for comparison):

Year	Grade A	National 1 GHR	Grade C	National 1 GHR	Grade D	National 1 GHR
2007	400	195	200	145	180	106
2008	440	203	220	151	198	110
2009	484	213	242	158	217.80	116
2010	532.40	217	266.2	161	239.58	118
2011	585.64	217	292.82	161	263.54	118
2012	644.20	217	322.10	161	289.92	118
2013	708.62	217	354.31	161	318.88	118
2014	779.49	217	389.43	161	350.76	118
2015	854.43	217	428.72	161	385.85	118
2016	943.18	217	471.58	161	424.43	118
2017	1,037.49	217	518.75	161	466.87	118
2018	1,141.25	217	570.62	161	513.56	118
2019	1,255.37	217	627.69	161	564.92	118
2020	1,380.91	217	690.45	161	621.41	118
2021	1,519.00	217	759.49	161	683.55	118

Each year's hourly rate is 110% of the previous year's rate; the Bill claims time spent/work done up to 2014 and rates from 2015 through 2021 are extrapolated.

Appendix 2 time spent/work done as recorded in Claimant's Bill (6-minute units) – some apportioned 20/80

Part of Bill	Grade A time recorded	Grade C time recorded	Grade D time recorded	Total time recorded
Part 1	396	0	4	400
Part 2	276	0	310	586
Part 3	126	4	28	158
Part 4	521	0	231	752
Part 5	38	0	0	38
Part 6	2703	7	778	3488
Part 7	358	0	0	358
Part 8	77	8	0	85
Part 9	195	0	5	200
Part 10	416	4	108	528
Part 11	31	0	0	31
Part 12	761	0	431	1192
Part 13	249	0	0	249
Part 14	1288	0	0	1288
Part 15	560	2800	420	3780
Total	**7995**	**2823**	**2315**	**13133**

Appendix 3 time spent/work done (Appendix 2) calculated at Hourly Rates in the CFA (Appendix 1):

Part of Bill	**Grade A**	**Amount**	**Grade C**	**Amount**	**Grade D**	**Amount**	**Total**
Part 1	396/£375	14,850.00	0	0	4/£180	72.00	14,922.00
Part 2	276/£375	10,350.00	0	0	310/£180	5,580.00	15,930.00
Part 3	126/£400	5,040.00	4/£200	80.00	28/£180	504	5,624.00
Part 4	521/£440	22,924.00	0	0	231/£198	4,537.80	27,497.80
Part 5	38/£440	1,672.00	0	0	0	0	1,672.00
Part 6	2703/£484	27,514.00	7/£242	169.40	778@ £217.80	16,944.84	44,628.24
Part 7	358/£532.40	19,059.92	0	0	0	0	19,059.92
Part 8	77/£585.64	4,509.43	8/£292.82	234.25	0	0	4,743.69
Part 9	195/£585.64	11,419.98	0	0	5/£263.53	131.77	11,551.75
Part 10	416/£644.20	26,978.72	4/£322.10	128.84	108/£289.89	3,130.81	30,238.37
Part 11	31/£644.20	1,997.02	0	0	0	0	1,997.20
Part 12	761/£708.62	53,925.98	0	0	431/£318.88	13,743.73	67,669.71
Part 13	249/£779.48	19,409.05	0	0	0	0	19,409.05
Part 14	1289/£779.48	100,477.32	0	0	0	0	100,477.32
Part 15	560/£779.48	43,650.88	2800/ £389.74	109,127.20	420/£350.77	14,732.34	167,510.42
Total	**7995 (779 h 30m)**	**363,778.30**	**2823 (282h 18m)**	**109,739.69**	**2315 (231h 30m)**	**59,377.29**	**£532,895.28 (1313h 18m)**

To be clear, the above shows what AB's law firm would have billed, but for the 80/20 split in the Costs Order.

The above figures are AB's law firm's base profit costs only and exclude the 100% Success fee (wrongly) claimed, and VAT; with those added the claim would have been £1,278,948.67 plus Disbursements and Counsel's fees, in a matter worth £2,251.00.