Neutral Citation No. [2022] EWHC 2314 (SCCO)

Case No: SC-2021-APP-001263

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 07/06/2022

Before:

Costs Judge Rowley

- -

Between:

Mr Andrew Sweeney	**Claimant**
- and -	
Wise Solicitors Limited	**Defendant**

- -
- -

Shoshana Mitchell (instructed by **JG Solicitors**) for the **Claimant**
Martyn Griffiths (instructed by **Kain Knight (North & Midlands) Ltd**) for the **Defendant**

Hearing date: **21 February 2022**

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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COSTS JUDGE ROWLEY

Costs Judge Rowley:

Introduction

1. This judgment concerns an application by the defendant to strike out the claimant's Part 8 Claim on one of two grounds. The claim is for the assessment of bills provided by the defendant to the claimant. The defendant says that the bills are not capable of assessment because the necessary formalities have not been completed. But if I am against the defendant on that argument, the defendant says that the claimant can only bring these proceedings if he can show "special circumstances" and it is the defendant's case that the claimant cannot do so.

2. On 21 February 2022 the defendant's application was presented by Martyn Griffiths of counsel and was opposed by Shoshana Mitchell of counsel. Witness statements of the claimant and his solicitor; as well as from Simon Wise, the senior partner of the defendant, and his costs draftsman were all available to the court together with relevant documents including a transcript of a telephone call between the claimant and Mr Wise. This is my reserved judgment on that application and which, I regret, has taken longer to produce than I had indicated to the parties.

Background

3. The claimant instructed the defendant in respect of a personal injury case concerning an accident at work which occurred on 11 September 2019. The claimant's then employers made two interim payments totalling £3,000 during the course of the claim and paid a further £10,000, excluding recoverable benefits, in settlement at the conclusion.

4. When the interim payments were made, they were forwarded to the claimant by Katie Wise, Mr Wise's wife, who is also a solicitor at the defendant firm. In the letters enclosing those payments, it was made clear that any deductions to be made from the sums recovered would be accounted for at the end of the case. Consequently, the interim payments were forwarded to the claimant in full.

5. When the final payment of £10,000 was received, Mr Wise indicated to the claimant that the costs incurred by his firm in acting for the claimant were sufficient to justify claiming the maximum 25% of the damages by way of a success fee under the conditional fee agreement entered into by the claimant and the defendant.

6. Mr Wise calculated a success fee of £3,250 based on 25% of the total damages recovered of £13,000. The claimant told Mr Wise that he thought the 25% should only be based on the final figure of £10,000 so that the deduction was £2,500. Mr Wise told the claimant that he would set out the figures in a letter as well as providing copies of the earlier letters to show that the proposed reduction of £3,250 (inclusive of VAT) was justified. This conversation took place on 26 July 2021.

7. During that conversation, the transcript shows the claimant explained his position in the following passages:

> "It's just that I was expecting you just to take £2,500.00 which is the 25%, I weren't expecting, like, £6,500.00, £6,400.00 out

> the £10,000.00, you know what I mean. I just weren't expecting that at all.
>
> …
>
> "I'm not going to be, not going to be had off. I'm not going to do it. I've been waiting three years for this man an [sic] £6,400.00 is not enough for me man. It's not."
>
> …
>
> "I'll take the 25% back mate, you know I can with the PPI thing, the same, going round now. I got a phone call the other day off them saying if your solicitor's taking 25% you can claim that back. I don't want to do that to you as I know you've worked hard, but if you're going to lowball me on it then I'll claim it back. I'm not going to be had off on it Simon. I'm not. I'm not gonna do it. I've got people to pay. I've borrowed money over this time to see us through and that got that back. It's gonna leave me with nothing. It'll leave me £3,000.00. £3,000 for three years is not enough it's not, I've got stuff that needs to be paid out of it."

8. On the same day Mr Wise emailed the promised letter to the claimant setting out Mr Wise's position. From the £10,000 received from the employer's insurer, the claimant would receive the sum of £6,430.80 which represented the deduction of £3,250 together with an After The Event insurance premium of £319.20. Mr Wise provided an authority for signature so that the sum of £6,430.80 could be paid by BACS into the claimant's nominated bank account. The letter concluded by saying:

> "The insurers have made the payment by BACS and so as soon as we receive the signed authority from you we will be able to transfer funds.
>
> I look forward to hearing from you as soon as possible if you have any questions on the content of this letter please telephone to discuss."

9. The email containing the letter is timed at 3:43:34pm. The second line of the email stated that:

> "Please find attached the letter regarding the legal fees and the invoices raised in this matter."

10. According to the claimant's witness statement, there were five attachments to the email. In addition to the letter and the authority, were two invoices, an email exchange between Katie Wise and the claimant on 9 April 2020 and a letter from Katie Wise to the claimant dated 11 December 2019 regarding the interim payments.

11. The wording of the authority records that the claimant had read the letter from the defendant, understood that he was not liable for any shortfall in the defendant's base

costs and that the deduction related to the success fee agreed at the beginning of the claim. In the centre of the authority is the following:

> "I understand and consent to the following deductions which will be made from my compensation.
>
> £3,250.00 (which is £2,708.33 plus VAT) being the success fee element.
>
> £319.20 in respect of the ARAG insurance premium."

12. The claimant responded by a brief email timed at 16:11 as follows:

> "Like I said if you want to take that much i will persue [sic] the 25% be returned back to me or take the 2500 like. I thought you would and I won't do this"

13. I was told that eight minutes after this email was sent, the authority was returned by email to the defendant having been signed by the claimant. According to paragraph 13 of the claimant's witness statement, he returned the authority for the following reason:

> "I did sign the authority form that Mr Wise sent to me on the same day because I was in severe financial difficulty at the time and I thought this was the only way to get money from the solicitor quickly. I owed my mother £2,000.00 of the anticipated settlement payment at that point, we had fallen behind on rent, and we owed money to other people as well and we were relying on receiving the compensation money to keep us going."

14. Whilst waiting for the letter to arrive, the claimant lodged an enquiry with a legal marketing company at 15:31 asking for a call back to discuss his claim. Apparently, two days later (28 July) the claimant received an email from that company asking him to call them back to discuss this potential claim. However, the claimant's evidence is that he did not pick up the email at the time because it went into his junk mail folder. It appears that the claimant did not take any further steps in respect of his potential claim until he saw a further advert from the legal marketing company "a few weeks later" and left details again on 14 September 2021 asking for a call back. He received a call from the company and this led to him being introduced to his current solicitors, JG solicitors. He formally instructed them on 23 September 2021, and they began court proceedings on the claimant's behalf on 4 October 2021.

The invoices

15. Two invoices were included with the email sent to the claimant on 26 July 2021. They both bear that date and are headed "tax invoice." Invoice numbered SI3549 concerned the fixed recoverable costs received from the employer's insurer in the sum of £2,800 plus VAT together with a medical report which was charged at £594 with no VAT. As I understand it, the medical report was also paid for by the insurer and therefore the total sum of £3,954 for this invoice had already been received from that insurer.

16. Invoice numbered SI3548 is for a total sum of £3,250 made up of £2,708.33 plus VAT of £541.67. The narrative to the bill is in the following terms:

> "Our Professional Charges in connection with your compensation claim. The fees are limited to the amount explained in our letter 26 July 2021 and in accordance with the conditional fee agreement signed in this matter"

17. Both invoices contain the following notice:

> "This constitutes notice of your right under paragraph (1) of Article 3 of the Solicitors Remuneration Order 1972 to require us within one month of receipt hereof to obtain a Certificate from the Law Society stating that in their opinion the costs charged are fair and reasonable. Also there are provisions in section 70, 71 and 72 of the Solicitors Act 1974 relating to taxation of costs which give you the right to have the Bill checked by an officer of the High Court."

18. It is common ground that the invoices were only sent to the claimant via email. In his witness statement, Mr Wise says the following at paragraph 8:

> "The letter itself refers to a free post envelope as we usually send this sort of correspondence by post rather than email, especially in circumstances where documents require a signature. It was clear from my discussion with the Claimant that he wanted an explanation urgently, hence my decision to use email. The letter was not sent by post."

19. Mr Wise continues at paragraph 10 of his statement in the following terms:

> "It was not my intention for the documents sent to the Claimant on 26 July 2021 to be regarded as final statute bills, and they were merely sent in an attempt to allow the claimant to better understand the position on the deductions, as they related to the interim payments already received. I would have explained this to the Claimant/his Solicitors, had any attempt been made to discuss the matter with me prior to proceedings being issued."

<u>Have final statute bills been delivered?</u>

20. In line with the evidence given by Mr Wise, the defendant's argument is that final statute bills have not been delivered to the claimant so that the current proceedings should be struck out. The defendant's argument is not based on the format of the bills themselves, as is sometimes the case. Rather it is based on formalities which the defendant says are required in order for any bills to be the subject of Solicitors Act 1974 ("the Act") proceedings. In particular, the defendant says that the bills were not signed and nor were they delivered in accordance with the Act. These shortcomings are reflected by the intention of Mr Wise simply to provide information to the claimant rather than to deliver formal self-contained bills as expected by the Act. In order to look

at these formalities, it is necessary to set out the relevant parts of sections 69 and 70 of the Solicitors Act 1974.

> **69.— Action to recover solicitor's costs.**
>
> (1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to a solicitor before the expiration of one month from the date on which a bill of those costs is delivered in accordance with the requirements mentioned in subsection (2); but if there is probable cause for believing that the party chargeable with the costs—
>
> (a) is about to quit England and Wales, to become bankrupt or to compound with his creditors, or
>
> (b) is about to do any other act which would tend to prevent or delay the solicitor obtaining payment,
>
> the High Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the solicitor be at liberty to commence an action to recover his costs and may order that those costs be assessed.
>
> (2) The requirements referred to in subsection (1) are that the bill must be–
>
> (a) signed in accordance with subsection (2A), and
>
> (b) delivered in accordance with subsection (2C).
>
> (2A) A bill is signed in accordance with this subsection if it is–
>
> (a) signed by the solicitor or on his behalf by an employee of the solicitor authorised by him to sign, or
>
> (b) enclosed in, or accompanied by, a letter which is signed as mentioned in paragraph (a) and refers to the bill.
>
> (2B) For the purposes of subsection (2A) the signature may be an electronic signature.
>
> (2C) A bill is delivered in accordance with this subsection if–
>
> (a) it is delivered to the party to be charged with the bill personally,
>
> (b) it is delivered to that party by being sent to him by post to, or left for him at, his place of business, dwelling-house or last known place of abode, or
>
> (c) it is delivered to that party–

(i) by means of an electronic communications network, or

(ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible,

and that party has indicated to the person making the delivery his willingness to accept delivery of a bill sent in the form and manner used.

(2D) An indication to any person for the purposes of subsection (2C)(c)–

(a) must state the address to be used and must be accompanied by such other information as that person requires for the making of the delivery;

(b) may be modified or withdrawn at any time by a notice given to that person.

(2E) Where a bill is proved to have been delivered in compliance with the requirements of subsections (2A) and (2C), it is not necessary in the first instance for the solicitor to prove the contents of the bill and it is to be presumed, until the contrary is shown, to be a bill bona fide complying with this Act.

70.— Assessment on application of party chargeable or solicitor.

(1) Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no action be commenced on the bill until the assessment]3 is completed.

(2) Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the solicitor or, subject to subsections (3) and (4), by the party chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the assessment), order—

(a) that the bill be assessed; and

(b) that no action be commenced on the bill, and that any action already commenced be stayed, until the assessment is completed.

(3) Where an application under subsection (2) is made by the party chargeable with the bill—

> (a) after the expiration of 12 months from the delivery of the bill, or
>
> (b) after a judgment has been obtained for the recovery of the costs covered by the bill, or
>
> (c) after the bill has been paid, but before the expiration of 12 months from the payment of the bill,
>
> no order shall be made except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the assessment as the court may think fit.
>
> (4) The power to order assessment conferred by subsection (2) shall not be exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill.
>
> …

Submissions

21. In Mr Griffiths' submission, the invoices have neither been signed nor delivered in accordance with s69(2A-D). The invoices have not been signed at all and there are no accompanying signed letters which refer to the invoices which might suffice in terms of signature. Indeed, the covering letter explains the deductions to the client's damages and makes no reference to the invoices themselves. The automated signature on the email which enclosed the letter and invoices cannot assist the claimant because the Act expressly requires an unsigned bill to be accompanied by a signed letter and not by a signed email.

22. As far as delivery is concerned, Mr Griffiths referred to the strict requirements of s69 of the Act regarding service by electronic means. In particular, the recipient of the bill must have consented to it being delivered by email and to have provided a specific address to which the bill must be sent. Mr Griffiths contended that there is no evidence that the claimant did either in this case.

23. Mr Griffiths submitted that an invoice that was otherwise capable of being a statute bill could not be said to be delivered to the client if they came into possession of it by some other means than set out in the Act. Mr Griffiths relied on the case of Parvez v Mooney Everett Solicitors [2018] EWHC 62 (QB) and, in particular, paragraphs 57 and 58 where Soole J concluded:

> "… It is only the solicitor who can determine the content and terms of what is his demand or claim for payment. Neither the client nor the Court can make that determination on his behalf.
>
> …
>
> It is for the solicitor to provide "a bill" of his costs; and for the process of assessment to deal with any challenge thereto."

24. In response, Ms Mitchell relied upon a combination of the email referring to the invoices and the letter enclosed with the email having been signed to submit that the signature requirements under s69 had been met.

25. In respect of delivery of the invoices, Ms Mitchell submitted that the electronic service of the invoices complied with the Act. In particular, she relied upon a decision of mine called Potts v Amanda Cunliffe Solicitors Limited where I held that previous email communication between the client and the solicitor was sufficient to demonstrate consent to the delivery of statute bills by that method.

26. During the course of argument, I raised the question of whether the requirements of s69 applied to cases where the application was being made by the client. The heading of s69 refers to solicitors bringing proceedings whereas s70 refers to proceedings brought either by the client or the solicitor. A distinction between the requirements of the two sections was referred to in the case of Parvez, for example at paragraph 61:

> "*Ex parte d'Aragon* provides no support for APs case. The solicitors in that case had physically delivered a bill to their client as a demand for payment. By the ruse of not signing the bill they were seeking, in the event of a challenge by the client, to both (i) obviate taxation and (ii) preserve the ability to serve a fresh bill. That *was* an example of solicitors seeking to rely on their own breach in order to defeat the client's entitlement to tax the bill. The decision anticipates the distinction between the formalities of s69 and s70.
>
> 62. That distinction is immaterial in the present case. Section 70 requires delivery by the solicitors of a bill of costs. There was no such delivery. For the reasons given above, AP was not entitled to treat the document as if it were a bill of costs which had been delivered by ME."

27. Mr Griffiths' response to my query was to submit that there was no difference in the requirements of signature and delivery, regardless of whether it was the solicitor or client who commenced proceedings. Ms Mitchell supported the lesser requirements based upon s70 but it is fair to say that her own skeleton concentrated on requirements under s69 rather than the alternative that I posed.

28. In my judgment, the claimant, as the former client and the party chargeable with the invoice (to use the terminology in the Act) only needs to show that a bill has been delivered in order to bring the proceedings under s70. There is no mechanism by which the client can bring proceedings under s69 as that is solely the province of solicitors. The approach of s69 is to restrict a solicitor's ability to bring proceedings for the recovery of fees until the client has been afforded an opportunity to take advice and / or reach a compromise. The hiatus of one month is the most obvious example of this but the requirements regarding service of the bill also militate in that direction.

29. Where, as here, the client is in possession of invoices which are ostensibly suitable for assessment under the Act, the absence of a signature by the solicitors seems to me to be of no consequence. As was expressed by the Court of Appeal in Ex Parte d' Aragon [1887] 3 TLR 815, and referred to in Parvez, relying on a lack of signature is not an

attractive device for a solicitor to seek to avoid the scrutiny of his bill by the court when requested in time by the client to do so.

30. In these circumstances there is no need for me to reach any conclusion as to whether not an email which enclosed invoices together with a signed letter which dealt with the question of fees but did not refer to the invoices amounts to a signed bill for the purposes of s69. It seems to me that the 'angels dancing on the head of a pin' quality of this point, if anything, simply points towards it not being the appropriate test for whether a bill ought to be assessed.

31. S70 requires the bill to be delivered but is not prescriptive as to how that delivery is undertaken. Consequently, there is also no need for me to consider the question of whether a bill can be delivered electronically without the consent of the recipient. The case of Potts was an unusual one and I think that it ought to be confined to its own facts as befits a judgment at first instance.

32. The defendant's argument about delivery is as valid under s70 as it is under s69. It says that the bill has not been delivered because it was not intended by Mr Wise to be delivered as a statute bill. It was merely produced and provided in order to aid clarification of the fees to which the solicitors were entitled. But that description highlights the difficulty of the defendant's position in my view. Unlike the circumstances in Parvez, the solicitors here intended the client to receive the documents as drafted. There is no question of a draft document simply being on the file which was copied to the client.

33. What then was the purpose of providing those invoices? It was to demonstrate how much the solicitors were entitled to under the terms of the agreement, at least in the solicitors' view. It seems to me to be plain that provision of those invoices was, at the very least, part of a demand for payment when combined with the explanatory letter (referred to in one of the invoices). The ultimate aim was to have the client sign an authority for the deduction to take place to pay his solicitors' fees.

34. Although each invoice was described as a "tax invoice", there was no suggestion that the format of the invoices did not amount to a statute bill. The defendant's only objection to the court concluding that the invoices had been delivered is the final paragraph of Mr Wise's statement where he simply states that it was not his intention for the invoices to be regarded as final statute bills and that they were provided "to allow the claimant to better understand the position on the deductions, as they related to the interim payments already received."

35. The covering email describes the invoices as being the ones "raised in this matter". Whilst one invoice records the sums received from the opponent's insurers, the other directly (and solely) relates to the deduction of £3,250 and shows the split between the VAT and non-VAT elements. This is the sum at the heart of the client's challenge and the "better understanding" which the solicitor hoped his client would have is based on that invoice and the letter which accompanied it. Once the client understood the figures, the expectation was clearly that the money held on client account could be transferred to pay the invoice already raised in this matter. I consider it to be unarguable that the tax invoice can be described as anything other than a demand for payment in the form of a final bill.

36. For these reasons I find that the invoices have been delivered to the claimant and so he is entitled to bring s70 proceedings in principle based upon the two invoices delivered to him by the defendant.

Have the invoices been paid?

37. The invoices were delivered on 26 July 2021 and so in order to bring s70 proceedings as of right under s70(1), those proceedings needed to be commenced by 25 August 2021. As that did not occur, the question of which subparagraph of s70 applies depends upon whether the invoices have been paid. If the invoices are treated as having been paid, then the claimant needs to demonstrate that special circumstances exist in order to have the invoices assessed under the Act. If, however, the invoices are treated as being unpaid, then there is no need for special circumstances to be demonstrated and the court can simply order an assessment on such terms as it thinks fit. The defendant says that the bills have been paid and therefore s70(3) applies. The claimant says that they have not been paid and so s70(2) applies.

38. The defendant received clear funds from the opponent on 26 July 2021 and that was the catalyst for the conversations and correspondence with the claimant on that date. The sum of £3,250 in respect of the success fee together with the cost of an ATE premium was deducted from the funds received and the balance forwarded to the claimant. The question is whether that deduction from the damages amounts to a payment of the invoice or not.

39. Given that a solicitor's deduction of its fees from monies received from elsewhere is a common occurrence, it might be thought that there would be helpful authority from the higher courts as to what actually constitutes payment of an invoice in the circumstances. However, there only appear to be a couple of Victorian cases (Re Ingle (1855) 52 ER 865 and Re West, King & Adams [1892] 2 QB 102) which bear on the matter and even then, they are of only limited assistance. Nevertheless, the essence of the guidance of the authorities is that the client needs to agree to monies being applied to pay the bills. "Mere acquiescence" is not sufficient and the existence of the retainer between solicitor and client is not sufficient in itself either.

40. In this case, Mr Griffiths was able to point to the signed authority which was emailed by the claimant to the defendant on 26 July 2021. That authority specifically stated that the claimant understood and consented to the two deductions and that he further understood that he was not liable for any other shortfall in the solicitors' charges. The authority also confirmed that the balance of the damages was to be paid into the bank account whose details the claimant had previously provided to the defendant.

41. Faced with that document, Ms Mitchell was required to contend that the form of authority was not enforceable and not evidence of any agreement to pay the bills. She submitted that the defendant had applied illegitimate pressure by stating that the insurers had made the damages payment by BACS so that, as soon as the authority was signed, the defendant would be able to transfer funds to the claimant. On this point, Ms Mitchell also referred to the claimant's email which I have set out at paragraph 12 of this judgment. In that email, there is what I can only describe as a threat to pursue the return of the 25% deduction if Mr Wise did not accept a reduction of the success fee to £2,500. Eight minutes later the formal authority was returned by the claimant.

42. Ms Mitchell also referred to the emails I have set out above regarding the claimant's need to settle various debts and which was something of which the claimant said Mr Wise was well aware. According to the claimant, he faced severe pressure and stress in relation to his finances and was relying on the damages to assist him in improving his financial situation. (See, for example, paragraph 13 of his witness statement set out at paragraph 13 above).

43. In Ms Mitchell's submission the claimant had no option but to sign the authority in order to release monies quickly. He was not advised to take independent legal advice and after entering the contract the claimant took steps to make the contract void by taking advice from the legal marketing company. Given these failures, it was the claimant's argument that the agreement and authority form was void and so the bills have not been paid within the terms of s70 of the Act.

44. The test I need to apply is whether the claimant agreed to the deduction of money from the damages received in the expectation that it would be put towards payment of the bills rendered by the solicitors. In my judgment the answer to that question is clearly yes. The authority form signed by the claimant is perfectly clear and is obviously drafted for exactly this purpose.

45. What is also perfectly clear from the transcript is that the claimant hoped to reopen the bargain he had struck with Mr Wise at the outset of the claim by reducing the elements on which the 25% success fee would bite. Having failed in his argument that the success fee did not apply to the interim payments – clearly contradicted by the correspondence – the claimant sought to reduce the sum payable from £3,250 to £2,500 based on a barely veiled threat to bring a claim against the defendant for the return of the entirety of the deduction.

46. Having looked at Mr Wise's email and its contents, the claimant plainly took the view that either his negotiation had failed and he was liable for the £3,250 or that he would pursue the matter via the company that had contacted him on that same day. Whatever is the case, there is nothing in my view in the contemporaneous transcript and emails to suggest that the authority was returned because of the pressure to pay debts straightaway. There is clearly a reference to monies needing to be repaid in the transcript. But the claimant's concern relates to the amount of the money available to pay other people rather than the speed with which it was required. The overwhelming impression is that the claimant simply wanted to hold onto as much of his damages as possible because he was not satisfied with the end figure. That view might be entirely reasonable in itself but it does not support an argument that the claimant was pressured into authorising the solicitors to retain monies from the damages.

47. Consequently, I reject the argument that the authority signed by the claimant is void and instead find that the invoices were paid on 26 July 2021.

Special Circumstances?

48. My findings so far mean that the claimant finds himself needing to demonstrate that special circumstances exist in order to have the defendant's bills assessed in accordance with s70(3)(c).

49. Ms Mitchell's first argument under this heading is that the notification to the claimant that he could have the costs "taxed" in accordance with sections 70 to 72 of the Act was insufficiently prominent on the invoice. Furthermore, there was no indication that a strict time limit applied. Ms Mitchell relied upon dicta from two first instance decisions that this level of information was insufficient.

50. Ms Mitchell also submitted that the claimant had in fact acted with alacrity in contacting the legal marketing company to seek advice upon his options. The delay in being able to speak to that company was no fault of the claimant, since the email from the legal marketing company went into the junk folder of the claimant's email address without him being aware of it. The defendant's attitude of indicating that any claim would be defended was also said to be a special circumstance and the speed with which proceedings were commenced once JG solicitors are instructed was also prayed in aid. Finally, Ms Mitchell said that no significant prejudice had been caused to the defendant.

51. Mr Griffiths disputed that the solicitors were under any obligation to inform the client of the time limits. He relied upon the very recent case of Richard Slade and Company LLP v Erlam [2022] EWHC 325 (QB) where HHJ Gosnell, sitting as a Judge of the High Court, expressed the view that previous case law did not say that a solicitor should tell the client that, if such a bill had been delivered, this started the clock running for the purposes of an assessment under the Act. He pointed out that it was not normal for provisions explaining the legal consequences of contractual terms to be applied into a contract unless there was some additional statutory or regulatory obligation to do so as a result of a perceived need for consumer protection. If there had been any such perceived need, it had not resulted in any change to the Act or other regulatory reform (see paragraphs 27 and 28).

52. In any event, Mr Griffiths pointed to the transcript (see paragraph 7 above) where the claimant volunteered that he had received a call from a company advertising the opportunity to claim back percentages of damages retained by solicitors. On the basis that the claimant knew of his right to bring a claim against the solicitors even before he had signed the authority, it was difficult to see what more the claimant needed in order to exercise his rights should he wish to do so. If his failure to take advice and bring proceedings within a month as expected by the Act so as to avoid having to show special circumstances was a special circumstance, then it could be demonstrated in pretty much every case.

53. I note that in the claimant's witness statement he makes reference to the cold call that is mentioned in the transcript of the telephone call. In that paragraph (paragraph 7) he says, rather puzzlingly, that he had not actually spoken to anybody about the possibility of recovering fees at that point. On the face of it, that would be exactly what the cold caller would have wished to discuss.

54. Furthermore, the claimant says that he started an online chat with somebody working for a legal marketing company displaying one of the online adverts about recovering fees. He decided to wait before putting forward a formal enquiry in order to see if he could reduce the amount of the reduction having spoken to Mr Wise. That must mean that the claimant had also obtained website details to contact a company for advice prior to signing the authority on 26 July 2021.

55. The claimant lodged his formal enquiry at 15:31 on 26 July 2021. Apparently, the legal marketing company came back to him on 28 July by email but the claimant did not find that email in his junk folder. That is perhaps an understandable situation. However, there is no explanation given as to why the claimant did not follow up his formal enquiry at any point either before or after he eventually found the email of 28 July in his junk folder. The next step taken by the claimant did not occur until 14 September when he responded to another online advert from the same legal marketing company. By that time, the claimant's opportunity to challenge the delivered final statute bills as of right had already expired.

56. In my judgment there is nothing in this case which suggests that any special circumstances exist. The fact that the claimant initially acted with alacrity in contacting the legal marketing company does not seem to me to assist the claimant. If he had continued to act with any sort of promptness in following up his initial enquiry, then proceedings could have been commenced within the one month time limit provided for by the Act. Having not done so, the knowledge of the claimant as to the existence of companies who would assist him, if anything, makes it harder for him to show up that he acted promptly. In any event, I accept Mr Griffiths' submission that the simple fact of making the application, nearly but not quite, within the month of payment of the bill, is no pointer towards a special circumstance.

57. Sometimes a client can point to the conduct of the solicitor in some way but there is nothing of that sort indicated here. On other occasions, the nature of the bill is said to "call for an explanation" because of its size or some other facets of it. But again, the claimant has been unable to point to anything of this nature.

58. In the light of HHJ Gosnell's recent decision, there is nothing to be said against the wording used by the solicitors in drawing the client's attention to the existence of remedies under the Act. If, as the claimant says in his statement, he did not understand what taxation meant, then it was incumbent upon him to ask for information. However, the client did not do so and has then not commenced proceedings within the relevant time. There is nothing to which he can now point to cause the court to exercise its discretion in holding that any special circumstances exist.

59. Ms Mitchell suggested that no significant prejudice had been caused to the defendant but it seems to me that that cannot be right. The cost of proceeding to a detailed assessment would far outweigh the value of the invoices being assessed. Unless there is a good reason for the detailed assessment proceedings to take place, then the defendant would be prejudiced by having to incur its own costs in defending the claim and with no guarantee of recovering those costs if successful. In the absence of special circumstances, there is no such good reason.

60. Accordingly, the defendant's application succeeds and the claimant's application under s70 is dismissed.