Neutral Citation Number [2022] EWHC 2562 (SCCO)

Case No: SC-2020-BTP-000047

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

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

Date: 10/10/2022

Before :

COSTS JUDGE LEONARD

- -

Between :

Guest Supplies International Ltd	**Claimant**
- and -	
Ince Gordon Dadds LLP	**Defendant**

- -
- -

Lois Aldred (instructed by **Knapp Richardson Ltd**) for the **Claimant**
John Churchill (instructed by **Ince Gordon Dadds LLP**) for the **Defendant**

Hearing date: 8 July 2022

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Judgment Approved

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 LEONARD

Costs Judge Leonard:

1. This is the detailed assessment of a series of 12 bills delivered by the Defendant solicitors to the Claimant between February and October 2020, when the Defendant represented the Claimant in pursuing a claim for breach of contract against South Place Hotels Limited. It would seem that South Place Hotels Limited's holding company, D & D London Limited, was also a party to litigation but it is unclear to me what the Claimant's case against D & D London Ltd might have been. For simplicity's sake I shall refer to the defendant or defendants to the Claimant's breach of contract claim as "SPH". The bills are as follows:

Bill No.	Date	Total
161983	14/01/2020	£2,730.00
162506	31/01/2020	£10,962.00
162591	31/01/2020	£23,656.80
163783	29/02/2020	£27,015.00
165153	31/03/2020	£34,712.20
166143	30/04/2020	£43,834.20
167158	29/05/2020	£31,801.20
168284	30/06/2020	£30,160.80
169396	31/07/2020	£43,883.20
170470	29/08/2020	£40,128.60
171789	30/09/2020	£40,534.20
174146	31/10/2020	£2,868.00
Total		**£332,286.20**

2. The amount of the unpaid balance of the bills is not formally agreed, but the Defendant's calculation (excluding any claim to interest) of £227,356.20 is slightly lower than the Claimant's as incorporated in its Part 8 claim form, so the Defendant's figure seems unlikely to be in issue.

3. The purpose of this judgment is to address preliminary points 1 and 2 in the Points of Dispute served by the Claimant upon the Defendant in response to the Claimant's detailed breakdown of its bills. Evidence and submissions on preliminary points 1 and 2 were heard on 8 July 2022.

The Points of Dispute and Replies: Preliminary Point 1

4. At preliminary point 1 the Claimant asserts that the costs recoverable by the Defendant should be limited, inclusive of counsel's fees and disbursements, to £40-£50,000 plus VAT. That is the amount of an estimate allegedly given by the Defendant to the Claimant, at an initial meeting on 22 November 2019, to take the litigation to a Costs and Case Management Conference ("CCMC"). Alternatively, by reference to *Wong v Vizards* [1997] 2 Costs LR 46, the Claimant says that the Defendant's fee should be limited to a margin of 15% over that figure because the Claimant was not provided by the Defendant (in accordance with its professional duties and the terms of retainer) with

the best information in order to make an informed decision on the costs that have been billed by the Defendant.

5. The Claimant also refers at preliminary point 1 to a costs budget in Precedent H format prepared by the Defendant for a CCMC initially listed for May 2020 (but subsequently adjourned). The Claimant says that the budget shows costs to 30 May 2020 of £125,354 (just over £150,000 with VAT) whereas bills rendered to the end of May 2020 totalled £174,711.40. Projected profit costs to the end of the trial, according to the budget, were £118,650 whereas billed post-budget profit costs were £113,311.50. The relevant phases of work had not been completed when the retainer between the Claimant and the Defendant was terminated; witness statements had not been exchanged; there were no settlement discussions, nor the 6-day trial provided for in the budget. Nonetheless, billed profit costs and disbursements claimed exceeded the budget by some margin. The budget should have been increased, but no application was made.

6. The Claimant's Points of Dispute do not say that this comparison between budgeted and billed figures justifies any alternative limit, beyond the £50,000 plus VAT proposed by the Claimant, upon the amount of costs and disbursements recoverable by the Defendant from the Claimant.

7. In the Defendant's Replies to the Claimant's Points of Dispute, this is said about estimates. The first meeting between the Claimant and the Defendant on 22 November 2019 was a "beauty parade". At that stage the Defendant had been provided with very limited documentation by the Claimant's Accountant, who was at the meeting to brief the Defendant. With no knowledge of the specific facts the Defendant was asked if a fee of about £45,000 to get a case to the first CCMC was reasonable and the Defendant said that it sounded about right.

8. Subsequently the Defendant had to amend Particulars as the Claimant had pleaded the case incorrectly. The matter subsequently developed far beyond what the "Claimant" (I take this as an intended reference to the Defendant) had been told before the Defendant was instructed.

9. The Claimant (says the Defendant) was kept regularly informed of the costs by way of interim bills delivered on a monthly basis. As matters developed and the Claimant fell behind with payments for bills delivered, the Defendant made clear the costs going forward and the Claimant was aware of the budget approved at the CCMC.

10. "The Claimant", say the Replies, is an experienced businessman and worked closely with both of the main fee earners throughout the matter, often attending conferences with counsel and communicating on a regular basis. (This would appear to be a reference not to the Claimant but to Mr Aristos Aristodemou, the managing director of the Claimant company who in that capacity managed the litigation on the Claimant's behalf and who would appear, on the evidence, to have been in effective control of both the Claimant and of the litigation.)

11. With regard to the budget, the Defendant says that the total of £125,354 to which the Claimant refers was not the total to the end of May 2020. The CCMC was originally listed for 5 May 2020 and the budget was served and filed in accordance with the relevant rules in April 2020.

12. With VAT, says the Defendant, the total incurred costs in the budget amount to £150,424.80. Bills to the end of April 2020 amount to £142,910.20 including VAT. Further, as the Claimant was advised at the time the budget was drafted, the costs of amending the Particulars of Claim were not included. The budget figures offer a fair and accurate reflection of the actual costs incurred.

13. As for anticipated costs, the Defendant had made the Claimant aware that the budget would require updating, not least in respect of disclosure, and had the Claimant not changed Solicitors an appropriate application would have been made. Further, SPH had proposed that its budget should be increased by consent but the Claimant would not agree to that.

The Points of Dispute and Replies: Preliminary Point 2

14. At preliminary point 1 the Claimant raises arguments in relation to counsel's fees (and, to some extent, to costs more generally) which to my mind are best considered in the context of preliminary point 2. At preliminary point 2 the Claimant maintains that throughout the period of the retainer, the Defendant did not provide the Claimant with details of the disbursements likely to be incurred before they were incurred, which were in consequence not agreed or approved, expressly or impliedly, by the Claimant and that no invoices or fee notes of disbursements had been provided.

15. With regard to counsel's fees, the claimant refers to the judgement of Lavender J in *Belsner v Cam Legal Services Ltd* [2020] EWHC 2755 (QB) which, says the Claimant, establishes a need not only for a written agreement between the Claimant and the Defendant but also for the Claimant as client to have given informed consent to that agreement. In this case there is, as the Point of Dispute put it, "nothing to suggest" that the Claimant gave informed consent to the Defendant's costs or the level of counsel's fees. The Claimant has not approved the fees and disbursements set out in the disputed bills and in consequence they are unreasonable in amount and unreasonably incurred. As a fiduciary, a solicitor may not receive a profit from his client without his client's fully informed consent.

The Acknowledgement of Debt

16. I need to address one more point raised at preliminary point 1 of the Points of Dispute. Reference is made to a document signed by Mr Aristodemou on 19 June 2020 ("the Acknowledgement of Debt"), acknowledging the Claimant's liability to pay the Defendant's billed costs and disbursements to 31 May 2020. What the Points of Dispute have to say about the Acknowledgement of Debt, for present purposes, is not entirely clear although it is evident that it is not considered by the Claimant to be an obstacle to limiting the Defendant's costs by reference to the alleged estimate of 22 November 2019.

17. By way of reply the Defendant says that it was made clear to the Claimant that if the document was not signed the Defendant would no longer continue to act for the Claimant. Further, the Claimant was required to pay certain monies on account to cover counsel's fees so that a formal brief could be delivered. The document took into consideration both billed and unbilled costs up to 18 June 2020 and following the signing of the agreement the Defendant continued to act for the Claimant for a further 3 months.

Documentary Evidence

18. The Defendant has produced an attendance note of the meeting of November 2019. The attendance note is dated 21 November 2019, which seems to be the correct date, rather than 22 November.

19. The point of the meeting was that the Claimant needed to change solicitors, his current solicitors Fahri LLP having advised Mr Aristodemou that a conflict of interest had arisen and that they could no longer act. This, insofar as pertinent, is the account of the meeting given by that note.

20. Present at the meeting were Mr Philip Cohen of the Defendant firm; Mr Aristodemou; Mr George Georgiou, a forensic accountant instructed by the Claimant to prepare a report for the purposes of the litigation against SPH; a second Mr George Georgiou, who is a solicitor and consultant to the Defendant firm and who appears (given that he bears the same name as the Claimant's forensic accountant) to have been invited by mistake; and a Mr Andrew Brown-Martin, referred to as "Leon", a primarily corporate solicitor, no longer in private practice and with little or no contemporaneous litigation experience, apparently advising the Claimant.

21. Prior to the meeting Mr Cohen had spent, between two occasions, 3 hours reviewing papers supplied by Mr Georgiou, the Claimant's forensic accountant. Mr Georgiou had on a previous occasion supplied Mr Cohen with several hundred pages of papers relating to the litigation for a proposed meeting which was then cancelled at short notice. Mr Cohen had, in preparation for the 21 November meeting, re-read those papers and some supplemental documents sent to him the previous evening, which included an application to amend the Claimant's Particulars of Claim, the amended Particulars (which appear to have been drafted by Leon without reference to counsel who drafted the original) and witness evidence in relation to an application for specific disclosure.

22. Mr Cohen expressed the opinion that the Claimant had entered into an extraordinary form of consent order giving security for costs in the sum of £50,000. His concern about the form of consent order was that it provided for Mr Aristodemou to provide the funds, which in Mr Cohen's opinion exposed Mr Aristodemou to a potential claim (as a funder of the litigation) for all of SPH's costs. Mr Cohen asked Mr Aristodemou whether Fahri LLP had warned him that the Claimant would be required to provide security for costs and he said that they had not. Mr Cohen advised Mr Aristodemou that he might wish to sue Fahri LLP for negligence. Mr Aristodemou replied that Fahri LLP were the company's and the family's solicitors of long standing and that he would never sue them for anything.

23. Referring to the apparent poor financial performance and limited assets of the parties to the litigation, Mr Cohen compared it to "two bald men fighting over a comb" and asked whether consideration had been given to whether SPH could pay if the Claimant were successful. He referred to particular difficulties that had arisen as a result of an assertion by Fahri LLP to the effect that the Claimant and SPH had entered into a written, signed 5-year contract, which in turn had led to a burdensome demand from SPH for specific disclosure of "native format" documents.

24. The attendance note does not fully explain this issue, which has come up in evidence before this court on at least one previous occasion and which came up again during the cross-examination of Mr Cohen on 8 July 2022. It concerned the nature of the contract upon which the Claimant relied against SPH. The Claimant's case was that a 2-year supply contract between the Claimant and SPH had been replaced by a 5-year exclusive supply contract. That contract was not in writing, but according to Mr Cohen there was documentation supporting the existence of such an agreement.

25. The Claimant's case as set out in the original, unamended Particulars of Claim was however that there was a written contract. SPH's solicitor, Mr Emmerson, demanded a copy of the document and Mr Aristodemou produced a 5-year contract, apparently signed by SPH. That signature however had been cut and pasted from the 2-year contract. The Claimant's position, as set out in its application for amendment, was that the document had been created only for the purposes of illustration and that Fahri LLP had incorrectly treated it as the substantive contract. Further, the PC upon which the document had been created had according to Mr Aristodemou been stolen without the theft being reported to the police. One of the concerns expressed by Mr Cohen at the meeting on 21 November 2019 was that this might be characterised as "a bit incredible and convenient".

26. Mr Cohen asked if Mr Aristodemou was sure that he wanted to go ahead with the action, observing that the damages claim, which amounted to about four times the Claimant's gross turnover, seemed improbable. Mr Aristodemou said that not all of the Claimant's turnover was going through the books and Mr Cohen said it wouldn't be a good idea seeking to justify the disparity to the court on that basis. He advised that it was going to costs hundreds of thousands of pounds to pursue a claim for £400,000, during which Mr Aristodemou would be constantly called upon to put more security (which Mr Cohen put at several hundred thousands of pounds, with Mr Aristodemou facing personal liability for any shortfall) into the pot. The odds for a reward and the possibility that SPH didn't have the money to meet an award anyway, looked no better than going into the casino.

27. Mr Aristodemou said that he had started this off and he had to finish. Mr Cohen said that he didn't have to finish. He could "chuck his hand in" now, kiss goodbye to what was probably an exaggerated damages claim that SPH probably couldn't meet, and lose his £50,000. Mr Aristodemou wasn't interested, saying it was personal. When asked, Mr Cohen said that he had not enough of what was evidently a very large file of papers to offer an opinion on the prospects of winning the action, which appeared arise from some improbable contractual arrangements. It could be about 50/50, but said that he hoped to improve on that.

28. Mr Cohen stated that he had only seen very select (although extensive) papers and hadn't even seen if there was a Defence or Counterclaim. Leon then produced the Defence. Mr Cohen (who says that he reviewed the defence quite briefly) noted that there was no Counterclaim, but that SPH had pleaded a set-off.

29. Mr Cohen confirmed that he would provide retainer documentation and that there would be a requirement for a "chunky" retainer in relation to the size of the claim, which he described as a complete mess. Mr Aristodemou promised to provide further documents, and to deliver Fahri LLP's file to the Defendant. The Defendant would then go on the record, put together a strategy and set about reconstituting the claim. Mr

Cohen said that the Claimant would have to expect a costs penalty for not getting it right the first time, but if Mr Aristodemou was insistent that he wanted his day in Court then "we will have to reflect, take a deep breath and get it right this time".

30. The attendance note of 21 November 2019 does not mention a costs estimate. It does say that Mr Cohen confirmed that if he took over the case, he would charge £500 per hour plus VAT and disbursements; that the Claimant should change barristers as well as solicitors; that Mr Cohen said that he expected he was probably about twice as expensive as Farhi LLP; and that Mr Aristodemou confirmed that he was exactly twice as expensive.

31. On 22 November 2019, Mr Cohen sent to Mr Aristodemou by email a "Client Care Letter" along with standard terms of business. This documentation specified that the Client Care Letter and the terms of business between them would form the contract of retainer between the parties, and that in the event of any conflict between their provisions, the Client Care Letter would prevail.

32. The Client Care Letter provided for Mr Aristodemou to be a personal guarantor for the applications of the Claimant to the Defendant. It set out the hourly rates to be charged by various fee earners within the Defendant firm. With regard to estimates it said:

> "I do not presently have sufficient information concerning the amount of work we will be required to do in this regard. Once we have a better understanding of this I will be able to provide you with an estimate. Pending any such estimate, our charges will be calculated on the number of hours spent by the relevant fee earner multiplies by the fee earners' applicable hourly rate."

33. The Client Care Letter provided for invoices to be rendered monthly and to be payable on delivery. It included the following provision in relation to costs budgeting:

> "The court may make a costs management order requiring you to complete each stage of the litigation process in accordance with an approved budget. Any costs incurred in excess of the approved budget are unlikely to be recoverable from the other party or parties even if you are successful in the litigation and the excess costs were proportionate to the matters in issue and reasonably incurred. We will keep track of the costs incurred and, if necessary, apply to the Court for an increase in the approved budget but there is no guarantee that the Court will grant such an application. ln any event you will remain liable for the total of the fees incurred with us."

34. The accompanying terms of business included the following provisions.

35. At part 3, under the heading "Services":

> "We shall seek your prior written approval before we engage third parties and incur their charges as agent on your behalf. We shall obtain a fee estimate for any such charges in advance, and keep charges under review. We shall disclose to you any arrangements or payments (if any) that we obtain as a result of such instruction. We shall have no liability to you for the services

provided by any third party provider engaged pursuant to this clause or for any other loss arising from the third party services."

36. At part 7, under the heading "Quality and Levels of Service":

> "We aim to act at all times in accordance with the SRA Code of Conduct 2011 and other relevant regulatory requirements… We will report to you at appropriate intervals during your matter and on its conclusion. Unless otherwise agreed, we will notify you of all significant telephone conversations and meetings, and make you aware of any significant emails or written correspondence. Where a matter is ongoing, we will report our progress at regular intervals, and regularly update you as to the level of our fees. We will communicate with you by telephone, email or in writing, as appropriate in each instance, or as specifically agreed with you."

37. At part 8, under the heading "Fees":

> "You agree to pay our fees. Unless otherwise specified in the Client Care Letter or otherwise agreed to by us in writing, our fees will be calculated by reference to the current hourly rate of the individual(s) engaged on your matter, recorded and charged for on a task related basis in units of one tenth of an hour. We may adjust the resulting time value to take account of factors such as the complexity, value or urgency of your matter.
>
> The time recorded by all individuals will be charged, including time spent taking instructions; considering, preparing, advising and working on papers; attending meetings with you and/or third parties; attending court; travelling; preparing cost calculations; dealing with correspondence (including emails) to or from you and/or third parties; and making and receiving telephone calls to or from you and/or third parties.
>
> We will provide you with an estimate of our fees at the outset of your matter in the Client Care Letter. We may also provide you with further updated estimates as your matter progresses. If it is impossible to provide a meaningful estimate at the outset of your matter, for example because we do not know in advance how much work may be required, we will give you the best information available at the time, including the rate at which our charges will be incurred, and we will update you as your matter progresses.
>
> Unless we state otherwise in writing, any estimate provided by us as to our fee is only a guide, and is not a quotation or an offer to carry out services at a fixed price…"

38. At part 10, under the heading "Disbursements":

> "You agree to pay any disbursements which we incur on your behalf. This may include any courier charges, travel expenses, court fees, counsel's fees, expert's fees, witness' fees, costs draftsmen's fees, Companies House fees, local and other search fees, Land Registry fees, stamp duty, charges for foreign currency conversion, and money transmission and other costs.

> We may require you to pay, and you agree to pay, any substantial disbursements in advance of such disbursements being incurred on your behalf. This may include court fees, stamp duty, counsel's fees, expert witness' fees, and registration and other official fees.
>
> We are not obliged to incur any disbursements on your behalf."

39. At part 14, under the heading "Invoices";

> "We will be entitled to invoice you for our fees, additional charges and disbursements at monthly intervals or earlier when appropriate, unless otherwise agreed with you in writing or specified in the Client Care Letter.
>
> All invoices are payable in full on delivery.
>
> All invoices are payable in full regardless of the outcome of the matter, including whether a matter completes or a claim succeeds.
>
> All invoices are final invoices for the period to which they relate rather than interim invoices, unless otherwise stated. However, as there may be a delay invoicing disbursements incurred on your behalf pending receipt of the relevant invoice from suppliers, our invoices may not be final invoices in relation to disbursements."

40. On 6 February 2020 the Defendant sent to the Claimant by email invoices 162591, 161983 (in respect of counsel's fees) and 162506, which between them came to £37,348.80. Thereafter, it is accepted that the Defendant's invoices were rendered monthly (with the exception of invoice 169396 of 31 July 2020, which appears initially to have been overlooked and to have been delivered shortly before invoice 170470 of 28 August 2020). They would appear, as Mr Cohen has confirmed in evidence, to have been rendered at about the end of each month.

41. On 3 March 2020 the Defendant sent to the Claimant by email invoice 163783 for work done over the month of February 2020, (£27,015) bringing the total billed to the end of February to £64,363.80. The evidence indicates that invoice 165153 was delivered at the end of March, so the total sum billed to the end of March 2020 would have been £99,076 inclusive of VAT.

42. On 16 April 2020 Mr Aristodemou sent to Mr Cohen an email setting out an agenda for a telephone discussion he proposed for the following day. The first of six items on the agenda was:

> "Costs of case…Current balance of fee's from December 19 to March 20 based on what was projected… Where we are in the scheme of the case and the anticipated costs moving forward to conclusion (best and worst case scenarios)… A way of making these anticipated costs work so both sides are happy going forward…"

43. Prior to the meeting, on 17 April, Mr Savani, a senior associate solicitor at the Defendant firm working with Mr Cohen, emailed to Mr Aristodemou a draft costs budget (in the usual way, excluding VAT) dated 16 April 2020, showing incurred costs and disbursements of £73,520. Estimated costs and disbursements to trial were

£195,455. The budget total shown was £257,562.50 (the draft budget of 17 April 2020 evidently incorporates some arithmetical errors). It is evident from a subsequent email sent by Mr Savani to Mr Aristodemou on 21 April 2020 that the figure shown for incurred costs in the 17 April draft budget did not include those of Fahri LLP.

44. An attendance note of the telephone discussion of 17 April 2020 indicates that it was attended by Mr Cohen, Mr Savani, Mr Aristodemou, the accountant Mr Georgiou and Mr Andrew Andronikou, an accountant and insolvency practitioner who appears to have been advising Mr Aristodemou. Discussion of incurred and accruing costs seems to have taken up only a small part of the meeting.

45. The attendance note includes these passages:

> "AA says he has money but it's a cash-flow issue because of the pandemic (unlikely to be a long term thing). Fine balancing act…
>
> In terms of costs, AA says he asked how much this would cost to take to trial. Apparently PGC said £40-50k to take it to the CCMC. AA says GG was aware that the costs have exceeded that and we are three weeks away from the CCMC. AA thinks the costs are, to the end of March, £100k and wants an agreement for fees to take this to trial, as there is not an open chequebook.
>
> PGC doesn't recall the conversation but says that the he (*sic*) gave the figure to the CCMC but that has been adjourned since then. We have also had discreet issues to deal with which have increased costs. AA says this is about winning financially and also making a point where he was wronged….
>
> AA says he doesn't want to be a nuisance and wants us to work together and wants us to win for him.
>
> There is £64k outstanding. AA is going to make another goodwill payment today but, moving forward, the cash-flow is zero but he doesn't want that to mean the case stops. AA wants an arrangement whereby he can pay when the business starts again. PGC suggests £20k/month to pay the outstanding debt. AA doesn't seem impressed with the offer of making such a monthly payment. AA is going to make a £15k goodwill payment today.
>
> GG suggests him and AA take it offline and go through the cash-flows. VXS points out that GG has the budget, which shows £200k to take this to trial from here.
>
> Discussion from AND if AA wants to walk away, PGC says that AA has been put forward as a funder by his former solicitor."

46. By May 2020 communications between the Defendant and the Claimant were becoming heated. On 12 May Mr Cohen sent an email to Mr Aristodemou expressing his strong disapproval of communications sent by Mr Aristodemou to certain parties with a view to uncovering what Mr Aristodemou believed to be a conspiracy to get rid of the Claimant and of a contract that did not benefit them:

> "You ask me why me the % chances of your success are going down. The frank answer is that I hadn't factored in your constantly undermining your own case…
>
> I would appreciate it if you could do what we have asked for which is to respond to the RFI not constantly prejudice your own case by taking steps we haven't asked for and have positively advised against."

47. Mr Aristodemou replied by email on 13 May 2020 strongly rejecting Mr Cohen's advice. His response included this passage:

> "Using my actions as a way of explaining away the 300% increase in costs budgeted is a bit of a cheap (but clever) shot which we will come to in due course when we look at a breakdown your invoices in accordance to the statements made in your last 2 emails re my actions being the cause of the escalated costs."

48. The "300% increase" would seem to be a reference to the fact that by the end of April 2020, billed costs, disbursements and VAT came to £142,910.20.

49. To put further communications from June 2020 into context, I need to refer to extracts from the Claimant's invoices and supporting narratives, which are exhibited to a witness statement of Mr Aristodemou, and to the evidence of Mr Cohen, who says that by the beginning of June 2020 unpaid fees had risen to £97,411.40.

50. According to Mr Cohen, the Court had listed four applications to be heard on 2 or 3 July 2020, at which counsel was to represent the Claimant. Two of the applications were of particular significance for the Claimant. The first was an application by SPH for further security for its costs. The second was an application by the Claimant for release of the £50,000 security already provided under the terms of the consent order, apparently on the grounds that accounts filed by the Claimant over a period of years, which had indicated that it was not profitable, had been incorrect and that the Claimant had in fact been sufficiently profitable to justify the return of the security previously provided by consent. (Mr Cohen says that he advised that this was a risky tactic: not credible and likely to expose the Claimant to tax liabilities and penalties).

51. It is evident that the Defendant, by late June 2020, was on the verge of terminating the retainer over unpaid fees. A narrative to invoice 168284 for the month of June 2020 indicates that on 25 June 2020 the Defendant filed an application to be removed from the court record but that the application was withdrawn on the following day, following agreement to the terms upon which the Claimant would continue to act.

52. On 18 June 2020 Mr Cohen sent an email to Mr Aristodemou:

> "We need to resolve the issue of our fees and your representation. Can I

> suggest we discuss this at 3.00 today? If this is convenient, we can circulate a dial in so that George can also participate if he is interested."

53. It would appear that on 19 June Mr Aristodemou forwarded to Mr Cohen a copy of a judgment of mine, supplied to him by Fahri LLP, on an application by another client of the Defendant to limit the Defendant's fees by reference to estimates.

54. Subsequently Mr Andronikou assisted with the discussions between the Defendant and the Claimant. On 22 June 2020 Mr Cohen sent this email to Mr Aristodemou:

> "Thank you for sending us £10K on account. When we spoke with Andrew Andronikou, we understood from him you were sending us £20K on account, but you now appear to be counting the previous £10K as part of that £20K., which it is not. The £10K that you kindly
> sent us previously was used to clear the money owed to counsel, but once we deliver his brief, which we need to do very urgently, as you know, we will owe him another £12.5K + VAT (£17,760.00). We may be able to negotiate counsel down to £11.5K + VAT, but that's still £13,800.00, so we would still have insufficient fuds to pay counsel, let alone anything to reduce your indebtedness to us, which stands at £94,711.40 without taking account of the June wi.p.
>
> Furthermore, it was apparent from our conversations last week and the link you sent me to the case provided to you by Fahri & Co., that your game-plan is to reward our generosity in continuing to act for you despite the unpaid nature of your account by mounting a fee dispute as and when we arrive at a point where we are not willing to provide you with any further credit. With this in mind, I attach an Acknowledgement of Debt which I must ask you to sign and return, because I am not willing to allow you to both take the credit and purport to reserve to yourself some future right to argue about the fees. The agreement is dated 19 June because that is when I understood you were originally supposed to meet or talk with Andrew, but the meeting was put back several times and, I believe, eventually downgraded to a 'phone call this morning.
> Assuming we can talk counsel down to £11.5K + VAT, if you would send the remaining£10K., that will leave £6.2K left over to apply towards the historic £94.7K odd, which is a drop in the ocean, especially as there is already over £16K w.i.p since those figures were
> prepared.
>
> I would therefore be obliged if you would sign the Acknowledgment of Debt and transfer the remaining £10K by return.."

55. Mr Aristodemou's furious response, by email on the same date, included this:

> "If I'm reading your email correct...your trying to take away any right I have to question my fees questioned? Is that correct?
>
> For the record I sent £10k today that I really broke my neck to get, to get this response is nothing short of a disgrace."

56. On 25 June Mr Cohen sent this email to Mr Aristodemou:

> "Andrew communicated to me the terms of a deal he said he'd brokered on your behalf this morning, which I said was fine with me.
>
> The terms were
> 1 . £6K TT'd to us straight away;
> 2. The Acknowledgment of Debt signed and sent to us straight away; scanned copy is fine;
> 3. Your £15K personal cheque in favour of Ince Gordon Dadds LLP to be post-dated a fortnight and handed to George today;
> 4. We do the hearing
> 5. Regular monthly payments from you, but the line went bad so I didn't catch the figure of the monthly payments
>
> I have now been waiting 4 hours for you to perform the agreement. In half an hour's time your barrister is taking on another case as we couldn't keep him hanging on any longer. If you sort this out in the next 30 minutes, we can keep him. Otherwise we have to reinvent the
> wheel with another barrister.."

57. Mr Aristodemou replied on the same date:

> "As you have me over the proverbial barrow as it were, I have little option but to bow to all your
> requests.
>
> - £6,000,00 further payment will be made today
> - Acknowledgement of debt doc that you prepared will be signed and email over with just the agreed addition of my statutory rights not being affected.
> - £15,000,00 post-dated personal cheque will be ready for George to collect this evening
>
> I think I've made my feelings in this matter very clear, I've been given no realistic alternative to contest any of your demands, I do not agree about the way this has all come about but we are where we are."

58. Later in the evening, Mr Aristodemou sent this email:

> "Please see attached signed Acknowledgement of Debt Letter for which I am sending without prejudice top any of my statutory rights."

59. The email attached a document headed "Re Litigation against South Place Hotels Limited and another: Claim number QB-2019-002382":

> "In consideration of your firm granting time and forbearance to pay and continuing to represent GUEST SUPPLIES INT'L LIMITED in the above litigation and advise us on matters ancillary to that litigation, we acknowledge our indebtedness to you as at 31 May 2020 in the sum of £94,711.40 (after giving credit for our recent payment on account in the sum of £10,000.00) and

> agree to make an immediate further payment in reduction of that indebtedness in the sum of £20,000.00. Further, we understand that your current work in progress for the month of June to date is in the sum of £16,524.00..."

60. It was signed by Mr Aristodemou as managing director of the Claimant.

61. On 18 June 2020 Mr Cohen sent an email to Mr Aristodemou:

> "We need to resolve the issue of our fees and your representation. Can I suggest we discuss this at 3.00 today? If this is convenient, we can circulate a dial in so that George can also participate if he is interested."

62. On 18 June 2020 Mr Cohen sent an email to Mr Aristodemou:

> "We need to resolve the issue of our fees and your representation. Can I suggest we discuss this at 3.00 today? If this is convenient, we can circulate a dial in so that George can also participate if he is interested."

Mr Aristodemou's Witness Evidence

63. For the purposes of this decision, I have two written witness statements from Mr Aristodemou. Much of his written evidence tends to shade into submissions and has the appearance of having been drafted by lawyers. I have focused on his factual evidence.

64. Mr Aristodemou's first witness statement is dated 2 July 2021. It is the statement to which copies of the Defendant's bills and supporting narratives are appended.

65. Mr Aristodemou says that as a result of gross overcharging and other matters, in addition to costs becoming disproportionate, new solicitors took over conduct of the case in place of the Defendant. He says that the Defendant failed to provide costs estimates as the matter progressed, the only estimate given being Mr Cohen's verbal estimate in the meeting of November 2019 for costs up to the CMC at between £40,000 and £50,000 plus VAT. He had numerous telephone conversations with the Defendant in which the costs were discussed, but his concerns appeared to fall on deaf ears.

66. In his second witness statement, dated 4 March 2022, Mr Aristodemou says that the purpose of the meeting on 21 November 2019 was to plan and formulate the best possible strategy and for him to answer any outstanding questions from information already provided prior to the Defendant taking over conduct, on the condition that the Defendant provided an agreeable fee estimate once it took over conduct of the underlying litigation.

67. As a result of the initial oral estimate provided in the meeting of 21 November 2019, Mr Aristodemou was content to instruct the Defendant Firm to take over conduct from Fahri LLP on the understanding that the costs of taking the matter up to the CCMC would be in the region of £40-50,000 (plus VAT). He understood this to include SPH's outstanding Application for Specific Disclosure, of which the Defendant was aware at the time.

68. Mr Aristodemou says that he placed reliance upon the oral estimate provided in the meeting of 21 November 2019 and upon the assurance in the Defendant's Client Care Letter of 22 November that written estimates would be provided, together with further

updated estimates as the matter progressed. Had the Defendant provided him with such estimates he would not have approved costs in excess of the estimates, but the Defendant did not provide them. Had the Defendant prepared an updated estimate showing that the costs up to the first CCMC would exceed £40,000-£50,000 plus VAT, he would not have instructed the Defendant to continue to be instructed and would have changed solicitors, as he subsequently did well before the CCMC.

69. Mr Aristodemou denies that that he approved the Defendant's invoices simply because they were delivered on a monthly basis. He says that they were on their face confusing and provided insufficient information for him to discern how the charges were being incurred. He was unsure as to whether the Defendant was doing this to comply with other obligations (such as those arising from the Precedent H) or some other reason.

70. Mr Aristodemou says that he did not agree or approve the costs in the Claimant's costs budget. They were presented to him in Precedent H form, but Precedent H is not a document that is easy to comprehend. The Defendant made no effort to explain to him how the Precedent H figures were calculated, nor their relation to the Claimant's liability for costs. Given the terms of the Client Care Letter of 22 November 2019, he expected that the Defendant would have a separate conversation with him to discharge that obligation. He assumed that the Claimant's Precedent H was prepared for the purposes of furthering the litigation and not by way of discharging the Defendant's responsibilities to keep the Claimant updated on costs.

71. After the approval of costs budgets on 20 May 2020, Mr Aristodemou says that he was still not provided with updated estimates of fees before they were incurred. There was no application to increase the Claimant's budget, although there were some discussions in respect an increase on the disclosure phase.

72. The Claimant's budget was supposed to include a 6-day Trial. Witness Statements, settlement discussions and disclosure were not complete when he disinstructed the Defendant. No witness statements were prepared, and yet the costs billed by the Defendant came close to the approved budgeted sum to take the case to its conclusion.

73. I have mentioned that much of Mr Aristodemou's written evidence shades into legalistic submissions. This includes the following extract from his statement dated 4 March 2022:

> "Insofar as the costs up to and including the CCMC of 17th May 2020 are concerned, as well as the costs being excessive based on the fact of reliance placed upon the verbal estimate provided and subsequent failure to provide estimates, costs up to 17th May 2020 should not exceed £50,000 plus VAT howsoever incurred. Further, as the Post Budget Costs are concerned, and Invoices Post 31st May 2020 should be restricted to a reasonable sum reflecting the lack of fee estimates provided after that date and in accordance with the Points of Dispute and considering issues of Professional Negligence if the costs are to be assessed which are yet to be determined less the payments on account."

74. Mr Aristodemou's evidence in relation to counsel's fees, again, consists almost entirely of submissions in lawyerly language. He does say however that the Defendant failed to obtain his specific "and/or express" authorisation for counsel's fees before they were incurred.

Accountant Mr Georgiou's Witness Evidence

75. Mr Georgiou, the forensic accountant instructed by the Claimant, has provided a brief witness statement dated 4 March 2022. He confirms that he was instrumental in introducing the Claimant to the Defendant. He also confirms that to the best of his recollection, based on the documentation that he had provided to the Defendant and the matters discussed in the meeting of 21 November 2019, Mr Cohen provided a verbal estimate of between £40,000 and £50,000 to take the case up to the first CCMC.

76. Mr Georgiou was not notified of the date of the hearing of preliminary points 1 and 2 and so was unable to attend court to allow his evidence to be tested on cross-examination. In consequence the amount of weight I can attach to his evidence is limited, but it seems to me in any event to add little to what has already been said on behalf of both parties.

Mr Cohen's Witness Evidence

77. Mr Cohen has provided a witness statement dated 1 April 2022. Much of what he says about the meeting of 21 November 2019 confirms the accuracy of and repeats what is said in the attendance note of that date produced by the Defendant, so I will not repeat it here.

78. I should say however that he emphasises that as at 21 November 2019, Mr Cohen had been provided only with parts of what was obviously a much larger amount of documentation, all of which he would need were the Defendant to be instructed by the Claimant: and that Mr Aristodemou eschewed the possibility of discontinuing the claim and instead was bent on the Claimant pursuing its claim, despite the likely costs of so doing amounting to a very substantial proportion of the amount of the claim and at substantial risk to the Claimant.

79. With regard to estimates, Mr Cohen's stated recollection is that he was asked whether he thought that £50,000 plus VAT (the amount that had been given by the Claimant as security for SPH's costs to the CCMC) was a realistic figure for SPH's costs rather than the Claimant's. He said that he had not seen enough of the paperwork to express a view either way, but as Mr Aristodemou insisted and stated that he would not hold Mr Cohen to anything and that they were just discussing "ballpark" figures. Mr Cohen said that, from the little he had read, that seemed like a reasonable "ballpark" figure.

80. Mr Cohen accepts that no formal written fee estimates were later provided to the Claimant during the period of the Defendant's instruction. Under cross-examination he expressed his regret for that but also expressed the opinion that the costs budget prepared for the Claimant would have been, and would have been understood to be, an estimate in all but name. He pointed out that Mr Aristodemou, following the meeting of 17 April 2020, had the opportunity to review it with two accountants.

81. Mr Cohen says that throughout the period of the Defendant's retainer the Claimant, via Mr Aristodemou, was very much aware of the nature and volume of the work being carried by the Defendant on its behalf. In addition the Claimant received monthly invoices, attached to which were time sheets which from which the Claimant should have been able to make its own assessment of the time spent, on what tasks that time was spent and of the reasonableness of the amount of each invoice.

82. Mr Cohen says that the Claimant turned out to be a very demanding client that took a very active part in the claim. It was not unusual for the Defendant to receive multiple emails from Mr Aristodemou on a daily basis in which Mr Aristodemou raised questions, provided instructions and suggested other courses of action relating to the proceedings, which he was apt to pursue irrespective of Mr Cohen's advice. It was also apparent that, although Mr Aristodemou had disinstructed Fahri LLP, he was taking advice and litigation from a source other than the Defendant.

83. Mr Aristodemou, says Mr Cohen, would then want things done a different way to that advised by the Defendant. He would never give the Defendant instructions when asked to do so, but would say that he wanted "to sleep on it", seek advice elsewhere, come back with other requirements and then have protracted conversations second-guessing the Defendant's advice, with obvious costs consequences.

84. With regard to the telephone discussion of 17 April 2019, Mr Cohen confirms the accuracy of the Defendant's attendance note, the content of which I have summarised above.

85. As for the discussions of June 2020 and the applications listed for 2 or 3 July, Mr Cohen says that apart from his concerns relating to payment of the Defendant's unpaid fees he was also concerned that the Defendant would incur a liability for counsel's brief fee for the hearing, so at a minimum the Defendant would need to receive payment from the Claimant to cover that brief fee.

86. He had telephone discussions with Mr Aristodemou on 18 and 19 July in which, following his usual pattern of seeking advice elsewhere, Mr Aristodemou (counsel instructed by the Defendant having indicated that he saw the prospects of success of the case as no better than 50/50) advised Mr Cohen that he proposed to instruct alternative counsel who he hoped would provide an opinion on the merits of the Claimant's claim against SPH of 65%, the threshold for obtaining possible funding for the claim.

87. Mr Aristodemou also expressed the view that he would like to "dump the case" but he recognised that this would leave the Claimant with an obligation to pay the Defendant's fees and would result in the security of £50,000 being released to SPH. He also spoke about instructing alternative solicitors to represent the Claimant but recognised that they too would require funding.

88. Mr Cohen made clear that he was attempting to ensure that Mr Aristodemou had sufficient time to find alternative representation for the forthcoming hearing if the Claimant and the Defendant were unable to agree on a way forward.

89. Mr Cohen had become increasingly concerned from their conversations that Mr Aristodemou was likely to raise a fee dispute as soon as matters reached the position where the Defendant might refuse to extend further credit to the Claimant and cease to

act. He had the impression that someone with a limited knowledge of the pertinent issues, probably at Fahri LLP, was furnishing Mr Aristodemou with tactical points for him to use in a dispute with the Defendant (I understood Mr Aristodemou, under cross-examination on 8 July 2022, to accept that he had indeed sought advice from Fahri LLP with regard to both the Defendant's conduct of the litigation and the attendant cost).

90. Hence Mr Cohen's insistence on the "Acknowledgement of Debt": he was not prepared for the Defendant to continue to extend credit only later to find later that the Claimant would subsequently dispute its liability for the fees incurred in consequence.

91. Mr Aristodemou told Mr Cohen that he wanted to preserve his right to challenge the Defendant's invoices. Mr Cohen said if Mr Aristodemou wanted to challenge his fees that was fine, but that he was not prepared to continue to act running up more and more fees for him not to pay. Mr Aristodemou's response was that he would pay the Defendant's fees if the Claimant won the case.

92. After the Acknowledgement of Debt was provided, and in reliance upon it, says Mr Cohen, the Defendant continued in good faith to act and to allow the Claimant further credit when his existing bills remained unpaid. But for the Acknowledgement of Debt, the Claimant would have refused to act further. Further, Mr Cohen had understood the Acknowledgement to put an end to the issue raised by Mr Aristodemou about a purported estimate given in November 2019.

93. He also says that there are a number of good reasons why the Claimant's billed costs, as at the termination of the retainer, came close to the budgeted costs to trial but he has not responded to Mr Aristodemou's complaint in that respect in more detail on the understanding that the Claimant accepts that questions arising relating to post-budget costs are a matter for detailed assessment and not to be determined as a preliminary issue.

94. Under cross-examination Mr Cohen pointed out that as he had not prepared the costs budgets himself and could not give detailed evidence in that respect; his understanding was that the Claimant's case on preliminary point 1 was based on estimates, not upon the costs budget. He gave some reasons however for the scale of costs incurred.

95. These were that the Defendant was asked by the Claimant (Mr Aristodemou being of a litigious nature and involved in a multiplicity of actions) to advise upon a number of matters not within the compass of the claim against SPH. These included a libel action, a section 994 Companies Act petition, a conspiracy action and two sets of criminal proceedings. There was also Mr Aristodemou's practice of refusing to accept the Defendant's advice and challenge it with advice received from elsewhere and Mr Aristodemou's tendency to expose the Claimant to unnecessary costs, typically where SPH made a reasonable procedural request to which he would not agree, with the consequence that the Claimant was then exposed unnecessarily to the costs of an application.

96. These included his refusal to contemplate agreeing any increase to SPH's cost budget (making it impossible to agree an increase to the Claimant's cost budget) and his refusal to agree a trial window on the basis that he wished to take his wife abroad when the case had concluded, to which Mr Cohen pointed out, unsuccessfully, that the case would never conclude without a trial window.

97. With regard to preliminary point 2, Mr Cohen in his witness statement accepts in part the allegation that the Defendant did not provide details of each and every disbursement to be incurred before incurring it. However in relation to counsel's fees to the period end May 2020 he says that the Clamant was aware of the amount of disbursements, including counsel's fees, first because they were included in the Defendant's invoices and second because in relation to counsel's fees Mr Aristodemou had been involved in all conferences and had reviewed and commented on counsel's work product on witness statement evidence and statements of case throughout. The Claimant did not dispute those disbursements, the fact that they had been incurred or their amount thereof until after these detailed assessment proceedings had started.

98. In relation to prospective disbursements after the end of May 2020 Mr Cohen points out that the Claimant had its own costs budget containing details of the estimated disbursements including counsel's future estimated fees.

Mr Georgiou's (Solicitor) Witness Evidence

99. Mr Georgiou's witness statement is dated 1 April 2022. His evidence is confined to the meeting of 21 November 2019. In his statement he recalls Mr Cohen's concerns about the likelihood that the Claimant would have to provide further security for costs Mr Aristodemou's likely personal exposure to costs given the way in which security had been given: according to Mr Georgiou Mr Cohen described the security given to date as "the tip of the iceberg".

100. Mr Georgiou does recall that a figure of £50,000 for costs to the CCMC was discussed, but is he says unclear if this was Mr Aristodemou asking Mr Cohen what Ince's costs would be to the CCMC if he retained them, or whether the figure was discussed in relation to the security that the Claimant had already provided, Mr Aristodemou wanting to know whether that was a realistic figure or if there was likely to be any left over to be deployed towards the Defendants' next application for security, which Mr Cohen indicated would be made at the CCMC.

101. He does however remember very clearly that Mr Cohen refused to be drawn on the point, saying that he had only been provided with an unrepresentative selection of papers by Leon, and that much of the meeting was devoted to Mr Cohen telling those present what was obviously missing and what he was going to need to see before progress could be made.

102. Despite Mr Cohen's misgivings, says Mr Georgiou, Mr Aristodemou kept badgering Mr Cohen to comment on whether the £50,000 was a reasonable figure for costs down to CCMC (Mr Georgiou being uncertain as to whether this meant the Claimant's costs or the costs of SPH). Eventually, after Mr Aristodemou kept returning to the topic, he remembers very clearly that Mr Aristodemou said that he wouldn't dream of holding Mr Cohen to whatever figure he said, because he accepted Mr Cohen's caveat that he was only being allowed a partial glimpse into what the issues in the case were. On that basis Mr Cohen agreed that £50,000 sounded like a reasonable "ballpark" figure for costs down to a CCMC, assuming there were no other applications, as there had already been an application for security for costs.

103. Under cross-examination, Mr Georgiou firmly restated his evidence to the effect that Mr Cohen clearly said that he did not have enough information to give a costs estimate,

and that Mr Aristodemou had assured Mr Cohen that he would not hold him to whatever figure he gave. He himself had understood the figure of £50,000 to refer to the Claimant's likely costs to the CCMC, rather than HFC's, but he could not be sure that his understanding was correct.

104. The Claimant contends that Mr Georgiou's evidence is tainted by his association with the Defendant, to the extent that he refused (according to Mr Aristodemou) to sign an accurate statement supplied to him by the Claimant's Costs Lawyers. Under cross-examination Mr Georgiou very clearly stated that this was not the case. He was not happy with the accuracy of the draft statement put to him by the Claimant, which made no mention of Mr Aristodemou's confirmation that he would not hold Mr Cohen to a figure. Once he knew that the Claimant was making allegations of negligence against the Defendant, he took the view that it would not be appropriate to prepare his evidence in conjunction with the Claimant.

105. I will say now that I accept what Mr Georgiou says. His evidence, both in his statement and as given under cross-examination, seems to me to be clear, frank and convincing. Mr Georgiou was a consultant to the Defendant firm. It is wholly unremarkable in the circumstances of this case that he should have thought it appropriate to prepare his evidence in conjunction with the Defendant, rather than the Claimant. That is the usual course for a professional in his position. I have no reason to doubt his evidence, and I do not doubt it.

The Principles

106. Before explaining my conclusions in relation to preliminary points 1 and 2, I should refer first to the relevant principles and then to the effect, if any, of the Acknowledgement of Debt signed by Mr Aristodemou on behalf of the Claimant in June 2020.

107. I have been referred in submissions to two of my own judgments: *Dunbar v Virgo Consulting Services Ltd* [2019] EWHC B12 (Costs) and *Newman v Gordon Dadds LLP* [2020] EWHC B23 (Costs). The latter is I believe the judgment sent to Mr Cohen by Mr Aristodemou in June 2020. In both those judgments I attempted to summarise the principles applicable in cases where either no cost estimate has been given by a solicitor or a client seeks limit the costs recoverable by a solicitor by reference to an estimate given. For ease of reference I will reprise that summary here (with a few changes to reflect the facts of, and the submissions made, in this case).

108. I should mention that my summary refers to the Solicitors' Code of Conduct 2011, which was superseded by the current code on 25 November 2019. Arguably, the terms of the Defendant's Client Care Letter of 22 November 2019 were flexible enough to hold the Defendant to the provisions of whatever code was current at the pertinent time, rather than specifically to the 2011 code. It has not however been suggested that for present purposes the updates to the code make any material difference, and I do not think that they do.

109. Costs as between solicitor and client, by virtue of the Civil Procedure Rules, specifically CPR 46.9, are assessed on the indemnity basis. The test is whether costs have been reasonably incurred and are reasonable in amount. A number of rebuttable presumptions apply, as set out at CPR 46.9(3):

> (3) Subject to paragraph (2), costs are to be assessed on the indemnity basis but are to be presumed –
>
> (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
>
> (b) to be reasonable in amount if their amount was expressly or impliedly approved by the client;
>
> (c) to have been unreasonably incurred if –
>
> (i) they are of an unusual nature or amount; and
>
> the (ii) the solicitor did not tell the client that as a result the costs might not be recovered from the other party."

110. To address some of the Claimant's submissions I need also to refer to CPR 46.9(2):

> "Section 74(3) of the Solicitors Act 1974 applies unless the solicitor and client have entered into a written agreement which expressly permits payment to the solicitor of an amount of costs greater than that which the client could have recovered from another party to the proceedings".

111. Section 74(3) provides that, in county court litigation, the amount allowed on a solicitor and client assessment cannot exceed what the court would have allowed as between party and party.

112. A solicitor undertaking work for a client has a professional obligation to provide the client with an estimate of costs and to keep that estimate of costs up to date. That obligation was incorporated in the SRA Code of Conduct 2011, as in effect at the relevant time. The opening words of chapter 1 were:

> "This chapter is about providing a proper standard of service, which takes into account the individual needs and circumstances of each client. This includes providing clients with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost."

113. This general requirement was reflected in required outcome 1.12:

> "clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them..."

and 1.13:

> "clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter…"

114. The general requirement was also reflected in "indicative behaviours" 1.14, which required a solicitor clearly to explain to the client the solicitor's fees and if and when

they were likely to change, and 1.16, which required a solicitor to discuss how the client will pay, including possible sources of funding.

115. The authorities show that failure by a solicitor to provide a client with adequate costs information in accordance with the Code of Conduct may reduce the amount payable to the solicitor by the client, as well as the amount recoverable between opposing parties in litigation. The issue turns upon the solicitor's professional, rather than contractual obligations.

116. The effect upon recoverable costs of a failure by a solicitor to keep a client adequately informed in relation to those costs was considered by the Court of Appeal in *Garbutt v Edwards* [2005] EWCA Civ 1206. In that case, the defendants had been ordered to pay the costs of the claimants. The defendants argued that the contract of retainer between the claimants and their solicitor was unenforceable because the solicitor had not given an estimate of costs in accordance with the professional obligations imposed by the then current conduct rules, the Solicitors' Practice Rules 1990.

117. The defendants raised that argument because, in accordance with the indemnity principle, the order for costs required them only to indemnify the claimants for those legal costs that the claimants themselves were liable to pay. It followed that had the defendants' argument succeeded, they could have escaped any actual liability to pay, on the basis that there was nothing to indemnify.

118. The court found that failure by a solicitor to give an estimate did not in itself render a contract of retainer between a solicitor and a client unenforceable. It did however have an effect on recoverable costs. At paragraph 49 of a judgment with which Tuckey and Brooke LLJ agreed, Arden LJ set out these principles:

> "Where there is simply no estimate at all for the costs in dispute, then the guidance that I would give is that… the costs judge should consider whether and if so to what extent the costs claimed would have been significantly lower if there had been an estimate given at the time when it should have been given. If the situation is that an estimate was given, but not updated, the first part of the guidance given in *Leigh v Michelin Tyre plc* [2004] 1 WLR 846 can be applied here. The guidance was as follows, at para 26:
>
> > 'First, the estimates made by solicitors of the overall likely costs of the litigation should usually provide a useful yardstick by which the reasonableness of the costs finally claimed may be measured. If there is a substantial difference between the estimated costs and the costs claimed, that difference calls for an explanation. In the absence of a satisfactory explanation, the court may conclude that the difference itself is evidence from which it can conclude that the costs claimed are unreasonable.'
>
> However, the above guidance is at a very general level. Like the court in the Leigh case, I would stress that the guidance given above is not exhaustive since it is impossible to foresee all the differing circumstances that might arise in any individual assessment."

119. Although the Court of Appeal was addressing the amount recoverable between opponents in litigation, the underlying point is that if the amount payable by the receiving party to his or her own solicitor would have been lower had adequate costs advice been given, costs unreasonably incurred as a result will be irrecoverable from an opponent. The same, of necessity, applies as between the solicitor and the client. A solicitor will not, on assessment, recover costs that have been unreasonably incurred as a result of failure by the solicitor to provide adequate costs advice.

120. The principles identified in *Garbutt v Edwards* have been considered and developed in a number of detailed assessments between solicitor and client.

121. In *Mastercigars Direct Ltd v Withers LLP* [2007] EWHC 2733 (Ch) ("Mastercigars No 1") and *Mastercigars Direct Ltd v Withers LLP* [2009] EWHC 651 (Ch) ("Mastercigars No 2") Morgan J considered the importance of any estimate of costs given by a solicitor to a client, and considered the extent to which that estimate might limit the amount that the client should pay the solicitor.

122. In *Mastercigars No 1* he considered, at paragraphs 68 and 110, the consequences of a solicitor's failure to meet a contractual obligation to keep estimates updated:

> "What remedy would Mastercigars have if the promise to update the estimates was not complied with? The obvious remedy would be a claim to damages. Such a claim would require the client to prove on the balance of probabilities that it would have been in a better position if an estimate had been provided. That would be quite a difficult thing for a client to prove. The promise to update estimates was not, in my judgment, a condition precedent to Withers recovering any sum in addition to the sums set out in the estimates which had been provided."

123. Morgan J made similar observations at paragraph 110.

124. At paragraph 92 he addressed the appropriate application of the principles identified in *Garbutt v Edwards* and *Leigh v Michelin Tyre plc*:

> "In a case where a solicitor does not give his client an estimate, the result will not generally follow that the solicitor is unable to recover any costs from his client. In a case where a solicitor does give his client an estimate but the costs subsequently claimed exceed the estimate, it will not follow in every case that the solicitor will be restricted to recovering the sum in the estimate. What these two decisions of the Court of Appeal repeatedly state is that the court may "have regard to" the estimate or may "take into account" the estimate and the estimate is a "factor" in assessing reasonableness. For the reasons given by Arden LJ in Garbutt's case at para 50, these two cases do not themselves provide very much detailed guidance as to how one should react on the facts of a particular case because it was felt by the Court of Appeal it was impossible to foresee all the differing circumstances that might arise in any individual assessment".

125. He added, at paragraphs 98 and 102:

> "Solicitors are entitled to reasonable remuneration for their services: see s 15 of the Supply of Goods and Services Act 1982. In considering what is reasonable remuneration, the court will want to know why particular items of work were carried out and ask whether it was reasonable for the solicitors to do that work and for the client to be expected to pay for it…
>
> … (*Wong v Vizards* [1997] 2 Costs LR 46) …is an authority at first instance, prior to *Leigh v Michelin Tyre plc*, of a case where there was reliance by a client on his own solicitor's estimate. The judge in that case… indicated that 'regard should be had' to the level of costs the client had been led to believe he would have to pay. The question was then expressed as to whether it was reasonable for the client to pay much more than the estimated costs. In my judgment, the proper response to this decision is to hold that the court in that case was finding that, for the purpose of assessing reasonable remuneration payable to the solicitor, it is relevant as a matter of law to ask: 'what in all the circumstances it is reasonable for the client to be expected to pay?' Thus, even if the solicitor has spent a reasonable time on reasonable items of work and the charging rate is reasonable, the resulting figure may exceed what it is reasonable in all the circumstances to expect the client to pay, and to the extent that the figure does exceed what is reasonable to expect the client to pay, the excess is not recoverable."

126. At paragraph 112 he addressed submissions on the relationship between estimates and obligations under the contract of retainer between solicitor and client:

> "The first aspect is the contention that Withers were retained to do the work in the estimate and no other work. If Withers did other work then it was outside the retainer and they were not entitled to be paid for it. A second aspect is the contention that the client only agreed to pay the costs in the estimate and was not liable to pay anything beyond the estimate unless it was asked to, and expressly agreed, to do so. I reject both these contentions. As to the second, it is clear from Withers' standard terms of business that the estimate was not placing an upper limit on costs and much less was it placing a definition on the work required of Withers. As regards the first contention, I hold that the estimate did not define the extent of the work to be done. Withers were instructed to do what was reasonably necessary on behalf of the client in the litigation as it evolved…"

127. In *Mastercigars No 2* Morgan J (at paragraphs 47 and 54) considered the burden upon a client to demonstrate that a solicitor's failure to provide adequate costs information had had adverse consequences:

> "…my formulation of what is required does not go so far as to require the client to prove on the balance of probabilities that he would have acted differently…the way in which the estimate should be reflected on the costs concerned was left to the good sense of the court… it is not necessary for the client to prove detriment in the sense of showing on the balance of probabilities that it would have acted in a different way, which would have turned out more advantageous to the client. In a case where the client satisfies the court that the inaccurate estimate deprived the client of an opportunity of acting differently, that is a relevant matter which can be assessed by the court

> when determining the regard which should be had to the estimate when assessing costs. Of course, if a client does prove the fact of detriment, and in particular substantial detriment, that will weigh more heavily with the court as compared with the case where the client contends that the inaccurate estimate deprived the client of an opportunity to act differently and where the matter is wholly speculative as to how the client might have acted...
>
> …The court should consider the deductions which are needed in order to do justice between the parties. It is not the proper function of the court to punish the solicitor for providing a wrong estimate or for failing to keep it up to date as events unfolded. In terms of the sequence of the decisions to be made by the court, it has been suggested that the court should determine whether, and if so how, it will reflect the estimate in the detailed assessment before carrying out the detailed assessment. The suggestion as to the sequence of decision making may not always be appropriate. The suggestion is put forward as practical guidance rather than as a legal imperative. The ultimate question is as to the sum which it is reasonable for the client to pay, having regard to the estimate and any other relevant matter."

128. In *Mastercigars Direct Ltd v Withers LLP* [2009] EWCA Civ 1526, in which the Court of Appeal refused permission to appeal from the judgment of Morgan J, Lord Neuberger observed that if one simply holds a solicitor to the amount of an estimate as if it were a binding quotation, that may produce a windfall for a client who may not have relied upon it or who would (given a more accurate estimate) have taken the same course of action, but with other solicitors.

129. In my view those authorities, and Civil Procedure Rules support the following conclusions.

130. If a solicitor is contractually obliged to provide a client with estimates of future costs, it does not follow that costs not anticipated by estimates will, on assessment between the solicitor and the client, be irrecoverable.

131. If however on the assessment of costs between a solicitor and a client, it is found (a) that the solicitor has never provided the client with an estimate of the costs and disbursements that the client was likely to pay, or that an estimate given was inadequate, and (b) that if a proper estimate had been given, the client would have paid less than the solicitor is claiming, it may be appropriate to limit the amount payable by the client to the solicitor to an amount that it is reasonable, in all the circumstances, to expect the client to pay. That may be less than would otherwise be payable for work reasonably done by the solicitor at a reasonable rate.

132. In order to demonstrate that it is right to limit the solicitor's recoverable costs in that way, it is not necessary for the client to prove on the balance of probabilities that they would, if adequately advised, have acted in a different way which would have turned out more advantageous for the client. It may be sufficient that the failure to provide adequate advice deprived the client of an opportunity of acting differently, though that is likely to carry less weight, particularly where it is not possible to do more than speculate as to the way in which the client might have acted, if properly advised.

133. The ultimate aim will always be to identify the sum that, in all the circumstances, it is reasonable for the client to pay.

134. The Claimant's points of dispute refer to *Reynolds v Stone Rowe Brewer (A Firm)* [2008] EWHC 497 (QB), which (whilst it applies the principles to which I shall refer) has to my mind a limited bearing on the facts of this case.

135. I should also say that at paragraphs 117 and 118 of his judgment in *Mastercigars No 1* Morgan J made it clear that *Wong v Vizards* (which was decided before *Garbutt v Edwards*) did not establish a general principle to the effect that a solicitor's costs, where restricted by reference to an estimate, should be capped at the amount of the estimate plus a margin. To take that as a starting point would be wrong in principle. The approach to be taken depends upon the facts of the case.

136. As for *Belsner v Cam Legal Services Ltd*, I read the Points of Dispute as relying upon that authority in support of the contention that solicitors' costs or counsel's fees not incorporated within an estimate, and for which the client has not given specific advance authority, are irrecoverable for lack of informed consent.

137. That proposition, in my view, muddles different Civil Procedure Rules and different principles, with the result that it runs directly contrary to the authorities and the rules to which I have just referred.

138. *Belsner v Cam* concerns the application of CPR 46.9(2). In that case a solicitor had entered into a conditional fee agreement ("CFA") with a litigation client without explaining adequately that the costs payable to the solicitor by the client under the CFA would very substantially exceed those recoverable from the client's opponent under the fixed costs regime. The solicitor could not rely upon a written agreement with the client to recover the difference, because the client had not given informed consent to that agreement.

139. CPR 46.9(2), *Belsner v Cam,* and the Claimant's brief reference in the Points of Dispute to fiduciary duty, have no bearing on this case. One must look to the other provisions of CPR 46.9, in particular CPR 46.9(3). The question is whether costs and disbursements have been reasonably incurred by the solicitor acting in accordance with the terms of the solicitor's retainer. If they have, then they will be recoverable. If the client has expressly or impliedly approved those costs or disbursements, then a lack of informed consent may rebut the presumption at CPR 46.9(3)(a) to the effect that those costs have been reasonably incurred. That is the only context in which informed consent has any application to this case, and even then the relevant items will not automatically be disallowed.

The Acknowledgement of Debt

140. I accept that Mr Cohen was trying in June 2020 to find a way to preserve the Defendant's relationship with the Claimant, but that he did not consider it appropriate for the Defendant to continue to act unpaid in the face of a fairly evident intention by Mr Aristodemou, evidently on the advice of others, to challenge the Defendant's right to recover those unpaid fees.

141. The Acknowledgement of Debt was his solution to that problem, and I can understand that he took the view (and, according to his evidence on cross-examination, continues to take the view) that it put an end to any arguments about estimates. I am unable however to accept that the Acknowledgement of Debt has that effect.

142. Before explaining my reasons for saying that, I should mention that Mr Aristodemou complains in his evidence that he had no choice but to sign the Acknowledgement of Debt. That to my mind can have no bearing upon the effect of the document. Mr Churchill for the Defendant has referred me to the decision of the Supreme Court on duress, in *Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] 3 W.L.R. 727. Mr Cohen was perfectly entitled to insist that if Mr Aristodemou did not sign the Acknowledgement of Debt, the Defendant would not continue to act for the Claimant.

143. The effect of the Acknowledgement of Debt, accordingly, stands to be determined in accordance with the established principles of contractual interpretation.

144. The Acknowledgement of Debt does not on its face make any reference to estimates. For that reason I cannot accept the proposition that it somehow preserves the Claimant's right to challenge the Defendant's costs to 31 May 2020 with the exception of any argument about estimates. If it has any contractual effect at all, it can only be to debar the Claimant from arguing on any ground that the Defendant is entitled to recover, by way of billed costs and disbursements to 31 May 2020, less than £94,711.40.

145. In my view however the Acknowledgement of Debt does not have that effect either. That is because it was expressly provided by Mr Aristodemou "without prejudice to my statutory rights".

146. Mr Churchill for the Defendant makes the point that Mr Aristodemou purported to reserve his own statutory rights, not those of the Claimant. My conclusion is that read appropriately in context, that the purpose and effect of the wording employed by Mr Aristodemou was to preserve all appropriate statutory rights to challenge the Defendant's fees.

147. The Acknowledgement of Debt could, however, have some bearing upon the question of what it is reasonable for the Claimant to pay, because it was an instrument by which Mr Aristodemou persuaded Mr Cohen that the Defendant could continue to act without then facing a challenge to its unpaid fees, at least in so far as billed to the end of May 2020.

148. Because of the conclusions I have reached on estimates generally, however, it is not necessary to consider that further.

The Figure Discussed on 21 November 2019: the Evidence

149. Before expressing my conclusions on the discussions of 21 November 2019, I need to make some observations on the evidence.

150. My starting point is the contemporaneous documentary evidence. Mr Churchill reminds me, by reference to *Gestmin SGPS S.A. v Credit Suisse (UK) Limited* [2013] EWHC

3560 (Comm), of the importance of attaching due weight to documentary evidence as opposed to fallible human memory.

151. The correspondence between the parties (most of which has been selected and produced by the Claimant) says a great deal. The attendance notes relied upon by the Defendant are also of great evidential value. I have no good reason to, and I do not, doubt their accuracy.

152. I have already said first that the evidence of Mr Georgiou, chartered accountant, (untested in cross-examination) adds little of value and second that I accept the evidence of Mr Georgiou, solicitor, which is particularly helpful in relation to the figure of £40-£50,000 discussed on 21 November 2019.

153. I also accept, for the most part, the evidence of Mr Cohen. I have my doubts about the accuracy of some of his evidence not because I believe that there was any intention on his part to be less than frank, but because I suspect that he has inadvertently allowed a certain amount of indignation at the Claimant's conduct (as he sees it) to colour some of what he intended to be frank and reasonably objective evidence.

154. By way of example, I understood Mr Cohen, on cross-examination, to say that he did not anticipate at the outset the difficulties created by the Claimant's former reliance upon the purported written 5-year contract, whereas it seems to me that the attendance note of 21 November 2019 indicates that he was aware of the problem.

155. I am also slightly baffled by the apparent discrepancies between Mr Cohen's evidence and the Defendant's position as expressed in its Replies to the Claimant's Points of Dispute. It is difficult to understand why, if Mr Cohen referred in the meeting of 21 November 2019 only to the costs of SPH to the CCMC, the Points of Dispute indicate otherwise. Similarly, one might have expected the person who approved the Defendant's replies to have been aware that the need to amend the Claimant's Particulars of Claim in the litigation against SPH was already known to Mr Cohen on 21 November 2019.

156. Mr Cohen said on cross-examination that he played no part in the preparation of the Defendant's Replies. That is in itself surprising, bearing in mind that he was the partner responsible for the litigation. He suggested that the Replies might have been prepared by reference to the Defendant's file record, but it would appear that the Defendant's file record makes no reference to an estimate of costs to the CCMC. All things considered, the source of the information upon which the Defendant's replies on some key points is based, is remarkably obscure.

157. My reservations about Mr Cohen's evidence (such as they are) do not however extend to his account of the events of 17 April 2020. It was put to him on cross-examination that if he had not, on 21 November 2019, provided a £40-50,000 estimate of the Defendant's costs to CCMC, he would have said so when Mr Aristodemou purported to remind him of it on 17 April 2020. His answer was simply that there was no need to be confrontational about the point. He had no recollection of saying any such thing, but in any event matters had moved on. That would have been a perfectly realistic and sensible response. Obviously solicitors avoid arguing with their clients, if they can.

158. I have much greater reservations about the evidence of Mr Aristodemou. He is evidently a man of strong feelings, and I have concluded that his evidence is partisan, and driven by the desire to win, to the extent that he recalls events as he wants to recall them, rather than as they were. This is illustrated by the fact that under cross-examination he attempted to justify inconsistencies between his witness evidence and undisputed documentary evidence by reference to his subjective perception, rather than admit that his written evidence might not be entirely factually accurate. He appears to me to have prioritised supporting the Claimant's case to the extent that his evidence is unreliable. For that reason, where Mr Aristodemou's evidence conflicts with that of either Mr Cohen or the solicitor Mr Georgiou (not to mention the documentary record) I prefer their evidence to his. I will explain this by reference to some examples.

159. I start with the clear impression given by Mr Aristodemou's written evidence that he ceased to instruct the Defendant for, among other reasons, overcharging. In fact, as Mr Cohen pointed out on cross-examination, it was the Defendant that refused to act further for the Claimant once certain matters had come to light in the course of preparing for disclosure in the SPH litigation.

160. Further detail is furnished by the narrative that accompanies the Defendant's invoice 171789 of 30 September 2020, appended to Mr Aristodemou's witness statement of 2 July 2021. For the sake of the Claimant and Mr Aristodemou himself I will not repeat the detailed content here, other than to say that according to the narrative Mr Cohen advised Mr Aristodemou, in September 2020, that in the light of what had emerged the action should be settled urgently; that Mr Aristodemou was unwilling to take that advice; that the Defendant, refusing to act further, subsequently supplied the Claimant with a notice of change; and that when Mr Aristodemou delayed signing the notice, the Defendant warned that it would if necessary apply to be removed from the court record.

161. There is then Mr Aristodemou's evidence to the effect that he did not understand the Claimant's invoices and their supporting narratives. I do not find that assertion (presumably made in order to forestall the obvious conclusion that he was at least kept informed of costs as they accrued, mostly on a monthly basis) to be credible. Both the bills and the narratives are perfectly clear and informative, as illustrated by the passages from the September 2020 narrative to which I just referred. I also find quite incredible Mr Aristodemou's assertion that he was under the impression that the Defendant was rendering bills to the Claimant for any other purpose than to secure payment for its services.

162. I am equally sceptical about Mr Aristodemou's claimed inability to understand the costs budgets prepared on behalf of the Claimant and Defendant, his attempts to distance themselves from those costs budgets and his attempts to treat them as irrelevant to his complaints about lack of estimates.

163. The first page of Precedent H on its own offers an admirably clear summary of past and estimated future costs: I cannot believe that Mr Aristodemou would have been incapable of understanding terms such as "incurred" and "estimated".

164. That aside, Mr Aristodemou was reminded in the meeting of 17 April 2020 that he could use the draft precedent H that had been sent to him on that date as a reference point for considering future costs, and it would appear that he was going to consider it with his forensic accountant, Mr Georgiou. A few days later, Mr Savani followed that

up with a letter reminding Mr Aristodemou that more information was needed to update the draft budget.

165. For those reasons I am unable to accept Mr Aristodemou's assertion that he was not properly advised in relation to budgeting, and that he did not approve the budget. I would add that the narrative to the Defendant's bill number 167158 of 29 May 2020, as appended to Mr Aristodemou's witness statement of 2 July 2021, appears to record the Claimant's approval of the budget on 18 May 2020, two days before it was filed.

166. This takes me to the meeting of 21 November 2019. Mr Aristodemou says in his witness statement of 2 July 2021 that it was a condition of instructing the Defendant that he obtain an agreeable estimate of the Defendant's costs to the CCMC. Under cross-examination he was entirely unable to point to any evidence to the effect that any such condition had been communicated to the Defendant.

167. Any such precondition would be wholly inconsistent with Mr Cohen's clear written explanation, in the Client Care Letter of 22 November 2019 (which Mr Aristodemou accepted, on cross-examination, having read) that Mr Cohen could not at that stage give an estimate of costs. Further, if an estimate of costs to the CCMC had been essential to the instruction of the Defendant by the Claimant Mr Aristodemou would no doubt have expressed dissatisfaction at what the Client Care Letter said, and he did not.

168. On cross-examination Mr Aristodemou continued to insist that an estimate of costs to the CCMC was essential to the instruction of the Defendant by the Claimant and (although, on the evidence, he would not have been in a position to know) that Mr Cohen had everything he needed to give such an estimate at the meeting of 21 November 2019. Ultimately however he admitted that he had been aware that, at least for a period, Mr Cohen was unable to give such an estimate.

Whether an Estimate was Given on 21 November 2019

169. As to exactly what was said about costs on 21 November 2019, these are my conclusions. *Gestmin SGPS S.A. v Credit Suisse (UK) Limited* notwithstanding, it would not be right to conclude that no estimate was given simply because the attendance note of that date does not refer to it. The one point upon which all the witness evidence agrees is that a figure of around £50,000 was discussed, and the attendance note does not address that at all. One has to look to the witness evidence.

170. Bearing that evidence in mind, it is to my mind more likely than not that Mr Cohen communicated to Mr Aristodemou (whether he meant to or not) that an estimate of up to £50,000 plus VAT for the Defendant's costs sounded like a realistic "ballpark" figure. That figure was however so heavily qualified as to be effectively meaningless, and it may well be that it was not mentioned in the attendance note of 21 November for that reason. Mr Cohen had already emphasised more than once that he was not in a position to give a reliable estimate of costs and he only did so on Mr Aristodemou's assurance that he would not hold him to it. Mr Cohen put much more emphasis upon the likelihood that the litigation overall would probably cost hundreds of thousands of pounds.

171. The above conclusions are consistent both with the evidence of the solicitor Mr Georgiou, which as I have already said I accept; with Mr Cohen's clear statement in the

Client Care Letter, one day later, that he could not give an estimate of costs at that stage; with Mr Aristodemou's evident acceptance of that statement; and with Mr Aristodemou's eventual acceptance, under cross-examination, that he knew that Mr Cohen could not at that stage provide him with an estimate upon which he could rely.

The Effect of an Estimate of Costs to the CCMC

172. Mr Aristodemou also says that he should at some point have been given an estimate of costs to the CCMC, and that if he had been given an estimate in excess of £50,000 he would have acted differently.

173. Leaving aside my concerns about Mr Aristodemou's evidence, the Claimant's case in this respect is in itself not particularly credible. I have seen nothing to explain the proposition that a figure for costs to the CCMC was or should have been of crucial importance to the Claimant. There was no suggestion, for example, that the litigation against SPH would not proceed beyond the CCMC. On the contrary, Mr Cohen warned Mr Aristodemou when they first met that the overall cost of the litigation could run into hundreds of thousands of pounds.

174. That was a much more pertinent figure, and one which did not seem to trouble Mr Aristodemou at all, notwithstanding his potential personal exposure to costs at that level. Under cross-examination he indicated that at the relevant time he regarded the Defendant as one of the best, or at least one of the most established, litigation solicitors and it would seem that (his priority being to win the case) he was willing to incur the additional cost attendant on instructing such a solicitor.

What Estimate Should Have Been Given, When, and the Likely Effect

175. Mr Cohen accepts that an estimate should have been given before 17 April 2020, but argues that the draft cost budget sent to Mr Aristodemou on 17 April 2020 incorporated, for all intents and purposes, an estimate of costs from that date. I agree, not least because Mr Aristodemou was specifically advised that he could treat it as such.

176. Evidently an estimate could and should have been given before 17 April 2020 but as I have already indicated I see no reason to suppose that it would or should have been confined to costs to the CCMC. An estimate of costs of the litigation overall would have in line with the Defendant's professional and contractual obligations, not to say more to the point.

177. Depending upon timing, the likelihood is that any such estimate would have been broadly consistent with Mr Cohen's tentative figure, as given on 21 November 2019, of hundreds of thousands of pounds, or with figures put before Mr Aristodemou on 17 April 2020. Neither of those changed either Mr Aristodemou's approach to the litigation or his choice of solicitor, and there is no reason to suppose that an earlier estimate would have done so either.

178. On 17 April 2020, knowing that costs billed to that point were in the region of £100,000, Mr Aristodemou evidently did mention the purported estimate of 21 November 2019. Given the evidence to which I have referred, the only conclusion I can draw from that is that having agreed in November 2019 not to hold Mr Cohen to that figure, he attempted on 17 April 2020 to do so anyway (as he is doing now).

179. In any event Mr Aristodemou raised no complaint but promised to raise further funds and expressed a desire to find a way of moving forward to the satisfaction of both parties. His main preoccupation (understandably) seems to have been with the inevitable drying-up of the Claimant's income stream following the events of March 2020, but significantly, he did not then see that as a long-term problem.

180. As time went on it would seem that the Claimant became trapped in a situation where it did not have the means either to pay the Defendant's fees or to instruct alternative solicitors, but evidently Mr Aristodemou did not anticipate that in April 2020. If he had any reservations about the Claimant's ability to meet the future estimated costs referred to in the budget, he did not mention them. His view seems to have been, as it had been in November 2019, that the Claimant could if necessary fund litigation to the extent of hundreds of thousands of pounds.

181. I do not suggest that Mr Aristodemou was not concerned about costs at all. Clearly he was, but it was only one of the considerations, and his motivation for the pursuit of his litigation against SPH seems to have been based more on personal than purely commercial considerations. Hence his determination to pursue a risky claim that could cost him personally hundreds of thousands of pounds with a substantial risk of non-payment in even the event of success. The documentary evidence shows that he was convinced that there had been a conspiracy to cheat his business out of a contract, and he was evidently strongly driven by a desire for compensation, if not retribution against the alleged conspirators. His animosity extended even to SPH's solicitor, Mr Emmerson. Mr Aristodemou's priority, as he said more than once to Mr Cohen, was upon winning, and that evidently applied as much to costs risks as to anything else.

182. I have not lost sight of the fact that it is not necessary for the Claimant to prove, on the balance of probabilities, that if it had received an estimate before 17 April 2020 it would have acted differently, for example by instructing cheaper solicitors. All the reliable evidence however points to the conclusion that the Claimant would not have acted differently, and there is no evidence to suggest what the alternative would have cost even if the Claimant had acted differently.

183. In her submissions Ms Aldred for the Claimant suggested that as an alternative to limiting the Defendant's costs to £50,000 plus VAT would be to limit them to 50% of what was actually charged. I understand that suggestion to be based upon Mr Cohen's evidence (as supported by the attendance note of 21 November 2019) to the effect that on 21 November 2019, Mr Aristodemou confirmed that Mr Cohen's hourly rate was exactly twice that of his previous solicitor at Fahri LLP.

184. There are to my mind a number of obvious difficulties with that proposition. It is not, for example, the Claimant's case as set out in the Points of Dispute, and so is not a case that the Defendant has had any proper opportunity to meet. It is also inconsistent with Mr Aristodemou's denial, under cross-examination, that he had been told that Mr Cohen's hourly rate was twice that of his previous solicitor. There is then the fact that the Defendant's charges are not based exclusively upon Mr Cohen's hourly rate, so that capping the Defendant's costs at 50% would be entirely arbitrary.

185. The fundamental problem is however that the submission is based upon the proposition that the Claimant was, by being given an inaccurate estimate on 21 November 2019, denied the opportunity to instruct cheaper solicitors, and for the reasons I have given I

do not accept that that (or the fact that no other estimate was given before 17 April 2020) offers any sound ground for limiting the costs recoverable by the Defendant.

Post-Budget Costs

186. I have mentioned that Mr Aristodemou's witness evidence incorporates an alternative case for the Defendant to the effect that (costs of the CCMC being limited to £50,000 plus VAT) costs recoverable by the Defendant after the Claimant's cost budget was approved, should likewise be limited by reference to a lack of written estimates and unspecified "professional negligence" considerations.

187. It is inappropriate to attempt to amend Points of Dispute in witness evidence, and the point as put is too vague to be of much value. In submissions Ms Aldred, for the Claimant, attempted to put the Claimant's case on budgeted costs into better order by advancing the primary submission that (for want of estimates) the Defendant should not recover any costs at all for the period after the CCMC and as an alternative that the Defendant's post-budget costs should be limited to a proportion of budgeted costs, depending upon the extent to which work under the relevant phase was completed.

188. Leaving aside the procedural objections to the Claimant's attempts to amend its case in evidence and submissions I am unable to accept either proposition, for these reasons.

189. It seems to me that the significant date, when it comes to considering budgeted costs, was 17 April 2020, not the dates of filing or approval of the Claimant's costs budget. That was the date upon which the Claimant was first given estimated future costs and disbursements to trial in the form of a draft budget.

190. The proposition that the Defendant should recover no costs or disbursements at all, for any period after 17 April 2020, is insupportable. The Claimant had before him what amounted to an estimate, and he knew that it amounted to an estimate. He admitted on cross-examination that he had not have expected the Defendant or counsel, post-CCMC, to work for nothing. Nor would any reasonable person.

191. As for limiting costs by reference to the budgeted figures, that would not be appropriate or fair. I accept Mr Cohen's witness evidence (which is supported by the documentary evidence) to the effect that the work undertaken by the Defendant on Mr Aristodemou's instructions went well beyond the budgeted parameters of the SPH litigation.

192. I also accept Mr Cohen's evidence to the effect that Mr Aristodemou's conduct undermined the Defendant's attempts to manage and budget the SPH litigation. A solicitor's budget will of necessity be based upon the assumption that the client will (for the most part, at least) accept the solicitor's advice on the management of the litigation and the solicitor's advice generally. Mr Aristodemou did neither. One cannot budget for the costs of constantly arguing with a client.

193. The same applies to costs unnecessarily incurred by Mr Aristodemou's apparent inability to accommodate any procedural request made by SPH's legal representatives.

194. There can in any event be no good reason to limit the Defendant's recoverable costs by reference to a budget which needed to be increased. That might well have been done by

agreement, had Mr Aristodemou not refused to allow the Defendant to accommodate SPH's request for increase in its own budget.

195. There is then the point made by Mr Churchill to the effect that Mr Aristodemou claims not even to have understood the Claimant's costs budget, much less approved or relied upon it. Notwithstanding my scepticism about that claim, what Mr Aristodemou says is inconsistent with any case for limiting the costs recoverable by the Defendant by reference to budgeted figures.

Conclusions on Preliminary Point 2

196. I have already referred to the authorities and the Civil Procedure Rules that make it clear that there is no general principle to the effect that a client must specifically approve in advance any disbursements incurred by a solicitor, if they are to be recoverable from the client, and why recovery of costs and disbursements does not turn only upon whether they have been incurred with the client's "informed consent".

197. Apart from that, even if a given item of cost, or a given disbursement, does not fall within an estimate already given or has not been expressly authorised in advance, it simply does not follow that informed consent to the expenditure has not been given. By reference to the terms of the Defendant's retainer, as in *Mastercigars No 1*, the Defendant must be taken to have been instructed to do whatever was reasonably necessary to manage the Claimant's litigation.

198. If (as in this case) a client is contractually bound to pay the disbursements incurred on the client's behalf by a solicitor and if (as discussed below) the solicitor is under a contractual obligation to obtain a client's advance authority before incurring disbursements, it does not follow that, if such authority is not obtained, those disbursements will be irrecoverable. On assessment the test will be whether the disbursements were reasonably incurred.

199. That could only be determined by reference specifically to the fees incurred from time to time and the circumstances under which they were incurred. The assessing judge will take into account the fact that they were not authorised in advance, but there is no basis for a blanket disallowance.

200. As to whether the Defendant was under any such contractual obligation, the Points of Dispute do not identify any basis for that conclusion. The Claimant's case as put to Mr Cohen on cross-examination appeared to be based upon paragraph 3.7 of the Defendant's terms of business.

201. As far as I can see, paragraph 3.7 of the Defendant's terms of business is not even mentioned in the Points of Dispute. That aside, I do not believe that paragraph 3.7 extends to counsel's fees. It concerns the instruction of third parties as agents for the Claimant. To the extent that this might apply to counsel (and the relevant principles of agency have not been discussed) it seems to me that Mr Churchill is right in saying that it would have to give way to the more specific and very clear provisions of paragraph 10 of the terms of business, which define counsel's fees as a disbursement, give the Defendant the authority to incur such fees, and provide for the Claimant to pay them.

202. It is in any case evident from the documentation produced by the Claimant himself that he did authorise at least some of counsel's fees in advance.

Summary of Conclusions

203. I accept that Mr Cohen of the Defendant firm, on 21 November 2019, communicated to Mr Aristodemou of the Claimant company a tentative figure of up to £50,000 plus VAT which was understood (at least by Mr Aristodemou) to represent the Defendant's estimated costs to the CCMC in the litigation against SPH.

204. Given (a) that Mr Cohen only provided that figure on Mr Aristodemou's express assurance that the Claimant would not hold him to it and (b) that Mr Cohen confirmed in writing the following day that he was not in a position to give an estimate, I do not accept that the Claimant was, or is, entitled to rely upon that figure as a basis for limiting the costs recoverable by the Defendant.

205. Nor am I able to accept that an estimate of costs to the CCMC was in itself of crucial significance to the Claimant. Mr Aristodemou was warned by Mr Cohen on 21 November 2019 that the litigation overall could cost hundreds of thousands of pounds, and that was a much more significant figure which did not appear to concern Mr Aristodemou.

206. I accept (a) that the Defendant was under a professional and contractual obligation to supply the Claimant with a reliable estimate as soon as it was able to do so; (b) that the Defendant could and should have done so before 17 April 2020, when the Defendant supplied the Claimant with a draft costs budget which included an estimate of future costs to trial, and (c) that the Defendant did not do so. Mr Cohen has admitted as much.

207. Had the Defendant done so, the Claimant would have been in a better position to make an informed decision about the future conduct of the proceedings, including if appropriate a change of solicitor. There is however no reason to assume that any such estimate would have been confined to the Defendant's costs to the CCMC. It would have been consistent with the Defendant's professional and contractual obligations to provide an estimate of costs to the conclusion of the litigation.

208. Any pre-17 April 2020 estimate, depending upon its timing, would have been likely to be consistent with the broad figure of hundreds of thousands of pounds offered by Mr Cohen on 21 November 2019, or the draft budget provided to the Claimant on 17 April 2020. The best indication of what the Claimant is likely to have done, had an estimate been provided in good time, is what the Claimant did do on 17 April 2020, which was to continue to instruct the Defendant. Nor do I have any idea of what the Claimant's costs, following a change of solicitor, might have been, so it is not possible to limit the cost recoverable by the Defendant to any such figure.

209. It follows that there is no sound basis for concluding that the amount reasonably payable by the Claimant to the Defendant for work performed to 17 April 2020 is less than the figure that will be identified, on detailed assessment, by reference to individual objections to items of cost as taken in the Points of Dispute.

210. The Claimant was expressly advised that the Defendant that the Draft budget sent to the Claimant on 17 April 2020 could be referred to as a guide to future costs. For all

practical purposes that draft, and subsequent versions of the budget, stood as estimates of future costs. The fact that the Defendant (as Mr Cohen admits) did not provide formal estimates as a separate exercise is of no significance. It would have achieved nothing but the unnecessary duplication of the costs payable by the Claimant.

211. I do not accept that the Claimant did not understand that the budgeted figures for its future costs, as produced on 17 April 2020 and thereafter, could be treated as an estimate; that the Claimant did not understand the budgeted figures; that the Claimant did not approve the budget that was ultimately filed at court on 20 May 2020; or that the Claimant at the relevant times expected or needed anything further by way of an estimate.

212. When it comes to post-CCMC costs 17 April 2020 is a more significant date than the date of filing or approval of the Claimant's costs budget, because that is when the Claimant first had an estimate of future costs.

213. The suggestion that the Defendant should be debarred from recovering any costs or disbursements at all for any period after 17 April 2020 is insupportable. Nor should recoverable costs or disbursements be limited by reference to any version of the budget. The costs payable by the Claimant to the Defendant for costs after 17 April 2020 will (again) be no less than the figure that will be identified, on detailed assessment, by reference to individual objections to items of cost as taken in the Points of Dispute

214. There is no legal or factual basis for a wholesale disallowance of the disbursements incurred by the Defendant on behalf of the Claimant. That includes counsel's fees. Whether disbursements are recoverable must be determined on an item by item basis by reference to the detailed Points of Dispute.