Neutral Citation Number [2023] EWHC 1429 (SCCO)
Case No: SC-2022-BTP-000886

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Clifford's Inn, Fetter Lane
London, EC4A 1DQ

Date: 07/06/2023

Before :

COSTS JUDGE LEONARD

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Between :

Yvia Pulford — **Claimant**

- and -

Hughes Fowler Carruthers Limited — **Defendant**

- -
- -

Stephen Innes (instructed by **Overtons Costs Consultants Ltd**) for the **Claimant**
Jack Holborn (instructed by **Hughes Fowler Carruthers Ltd**) for the **Defendant**

Hearing date: 27 February 2023

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Approved Judgment

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

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COSTS JUDGE LEONARD

Costs Judge Leonard:

1. This is the detailed assessment of a series of bills rendered by the Defendants to the Claimant for representing her in divorce proceedings between 12 November 2018 and November 2020. According to evidence filed on behalf of the Defendant, the bills total £300,569.04. The last in the series, rendered on 7 December 2020, comes to £91,406.50 and remains unpaid.

2. I will offer a brief summary of the background. This is extracted primarily from the Defendant's witness evidence, which, for reasons I shall give, I accept.

3. The Claimant first consulted Frances Hughes, the senior partner of the Defendant firm, in March 2012. The Claimant was at that time provided with a retainer letter and standard terms of business. There was then some intermittent communication between the parties which terminated in October 2013. No proceedings were issued at that time.

4. On 5 November 2018, the Claimant contacted Ms Hughes again and they met on 12 November 2018. The Claimant, who was at the time amicably separated from her husband, wanted a divorce. She instructed the Defendant to initiate divorce proceedings and to deal with the ancillary relief and other matters that arose in consequence.

5. The Claimant's case was managed by Ms Hughes. Between March 2019 and March 2020 Ms Hughes was assisted primarily by Joseph Fennelly. From March 2020 onwards, Ms Hughes was assisted primarily by Kate Brett, a partner in the Defendant firm with greater seniority than Mr Fennelly.

6. The Claimant's former husband , Mr Pulford, was very wealthy and a great deal of work was, accordingly, undertaken in relation to the "ancillary relief" (financial settlement) aspect of the divorce proceedings. The retainer was terminated by the Claimant following a Financial Dispute Resolution ("FDR") hearing on 24 November 2020.

7. An order for the assessment of all of the bills rendered by the Defendant to the Claimant was made by consent in February 2022. The Defendant then served a breakdown of the bills and the Claimant raised Points of Dispute against the breakdown. Provision was made for a number of issues raised in the Points of Dispute to be addressed as preliminary issues. I will set them out in some detail, because they do not always match the evidence given by the Claimant. I have paraphrased in an attempt to reduce their tendency to repeat the same points, and to put the events referred to into chronological order, which the Points of Dispute do not always do.

Point of Dispute 1

8. Whilst the parties have in the course of these assessment proceedings agreed to be bound by the Defendant's terms of retainer, the Claimant maintains that she did not see the Defendant's terms and conditions at the time that the retainer was entered into, and was not given a copy.

9. The Claimant says that she raised with the Defendant at the outset a concern that she might be required to pay the Defendant's fees and that she would be left penniless. She was told by Ms Hughes, between October and November 2018, that the overall likely costs of her divorce would be in the region of £80,000. The costs actually incurred exceed £300,000, without the Defendant having completed the work on her divorce.

10. The Claimant says that she relied upon that £80,000 estimate and from assurances from Ms Hughes that she would not have to bear such costs. Had she known the level of costs to be incurred, she would either have approached another law firm or potentially aborted the divorce. The Defendant was aware that the Claimant did not have means to meet the Defendant's legal costs at the time that she initially instructed the Defendant.

11. The Claimant refers to the Form H (a formal costs estimate) filed for the FDR on 24 November 2020, which put the Claimant's incurred costs at £298,009.54 with a further £356,520 to be incurred: a total of £654,529.54, which the Points of Dispute contrast with the initial alleged estimate of £80,000. They also contrast the figures in Mr Pulford's Form H which put his fees at £209,372.05 incurred with a further £198,000 to be incurred, and point out that those incurred costs included £61,000 paid by Mr Pulford for the majority of the experts' fees. Excluding that figure, Mr Pulford's incurred fees were about half the Claimant's.

12. The fees incurred by the Defendant were initially, by agreement, paid by Mr Pulford (until March 2019 to the Claimant, and thereafter directly to the Defendant). He withdrew that agreement in February 2020. The Claimant made payments to the Defendant thereafter, but she was not provided with any advance details of the Defendant's increasing costs and she only became aware of their costs in February 2020. The Defendant then rendered an invoice for £58,916.40. Given her belief that the overall costs of the matter would not exceed £80,000, this was a shock to the Claimant. The Defendant was aware that the Claimant was unable to pay the Defendant's fees from her own money and there should, she says, have been an effort at least to attempt to mitigate the level of costs being incurred.

13. The Claimant was not clearly told that there would be any circumstances where she would be required to pay the Defendant's fees. When she was eventually informed of that, she was assured by the Defendant and understood that payments she made to the Defendant would eventually be repaid by Mr Pulford in the divorce, so that she would never be required to pay. The Claimant has no familiarity with legal matters and placed her utmost trust in what was being told to her by the Defendant.

14. In any event, at that stage the Claimant would have expected to have been told how much the likely costs would be, given that she was now paying those costs. Although the Defendant prepared Forms H for a First Directions Appointment ("FDA") in February 2020, which showed incurred costs of £77,642.60, and for the FDR in November as detailed above, the Claimant has no memory of seeing those documents, nor was their significance explained to her at all. The Claimant maintains that she should have been provided with this relevant paperwork, but that no record of that is to be found in the Defendant's files.

15. In the light of those matters the Claimant contends that there has been a significant departure from the estimates provided to the Claimant throughout the matter and that costs payable to the Defendant should be limited to the initial alleged estimate of £80,000.

Point of Dispute 2

16. In a slight variation from this Point of Dispute 1, Point of Dispute 2 says that it was not until April 2020 that the Claimant began paying the Defendant's fees, when Mr Pulford ceased doing so on the basis that the Claimant had inherited a sum of money. Point of Dispute 2 repeats the assertion that that was done on the understanding that the Claimant would be repaid those sums.

17. In email exchanges with Ms Hughes between 8 and 11 March 2019, Ms Hughes said "Don't worry about the bills. I am assuming you won't pay and we will make an application". The Claimant then said by email to the Defendant on 11 March 2019 that: "I would love to pay but I can't afford it. At the moment all I have is my monthly allowance which I need to live off". The final response from Ms Hughes on 11 March 2019 was "You don't understand! I do not want you to pay. Please don't. I do have to bill you each month."

18. An email from Mr Fennelly to the Claimant on 10 February 2020 said "Piet is paying your legal fees and we will say he should pay these costs. If Piet says no the judge will decide what should happen." An email sent by Ms Hughes to the Claimant on the same day said "Calm down! Who says you are paying?"

19. In an email of 15 April 2020 to Ms Hughes the Claimant queried whether Ms Hughes believed that Mr Pulford had adequate finances to pursue and in relation to the fees paid by her, whether there was "'a wash' it can come out of in the end?" Ms Hughes' response to that was that "Of course there is money".

20. Even as late as 8 October 2020, the Claimant was still questioning whether the payments made by her would "come out in the wash". It was not until 16 November 2020, just before the FDR, that the Defendant communicated that neither party would be reimbursed its legal costs. On 19 November 2020 the Claimant outlined that she still wanted Mr Pulford to reimburse the fees paid.

21. The Claimant maintains that it was, from the outset, her understanding, based upon consistent representations made to her by the Defendant, that the Defendant's fees would be paid by Mr Pulford and accordingly she had little (if any) interest in the fees being incurred. A substantial portion of these invoices (totalling £42,621) were paid by Mr Pulford. Although the invoices during this period were also sent to the Claimant via email only, she did not take any notice of them.

22. In the circumstances, says the Claimant, the Defendant cannot say that its fees were knowingly authorised by the Claimant, as required by the Defendant's terms and conditions of business, and the Court should consider the reasonableness generally of all costs, in particular counsel's fees, on that basis.

23. In the alternative, if the Court finds that the Claimant was able to provide informed consent for the costs paid directly by her, then the Court should still direct that she did not provide authorisation for those costs which were incurred in the period during which Mr Pulford paid them.

24. This is particularly relevant in relation to significant counsel's fees incurred in February 2020, where it is the Claimant's position that the first knowledge she had of the level of counsel's fees was when Mr Pulford contacted her via text message to explain that counsel's fees had been incurred at £26,000 for the FDA hearing on 26 February 2020. The Claimant maintains that she did not provide consent for, nor was aware of, the costs incurred.

Point of Dispute 4

25. Points of Dispute 4 and 5 are only raised as preliminary issues to the extent that they relate to the terms of the retainer and responsibility for counsel's fees. In brief, Point of Dispute 4 states that although the Defendant's terms and conditions of business provide for increases in hourly rates over time, and although the Claimant has agreed that she is bound by those terms and conditions, she says that she did not see those terms and conditions and so is not bound by any hourly rate increases.

26. Point of Dispute 4 raises a further issue which does not seem to me to relate either to the terms of the retainer or responsibility for counsel's fees. It was however addressed at the hearing of the preliminary issues, so I will deal with it.

27. The Claimant challenges Ms Brett's hourly rate on the basis that she was told, on Ms Brett taking over, that although Ms Brett's hourly rate was higher than Mr Fennelly, due to her seniority Ms Hughes's further input would be "minimal", so saving costs. This proved not to be the case. There was says the Claimant no need for two partners to be handling the case, or for Ms Brett to be overseen by Ms Hughes.

Point of Dispute 5

28. Point of Dispute 5 relates to counsel's fees. The Claimant refers to paragraph 8.3 of the Defendant's Terms and Conditions, which provided for the Claimant to advise the Defendant of any major disbursements before they were incurred. This was not done, and the Claimant says that she had no indication at all of any of the fees incurred. She was (as she says at Point of Dispute 2) unaware that she would be ultimately responsible for paying those fees, so that there was no informed authorisation of any fee.

29. As a separate point, Claimant submits that many of the fees are of an unusual nature and as such, pursuant to CPR 46.9(3)(c)(i) and (ii), are presumed to have been unreasonably incurred. There was no need for both Leading and Junior Counsel to have been involved. Mr Pulford used the services of one junior counsel. There was no need for Leading Counsel to be instructed, so counsel's fees should be reduced to the reasonable fees of two junior counsel.

The Defendant's Replies

30. I will briefly summarise the Defendant's replies to the above Points of Dispute. The Defendant denies ever offering the Claimant an estimate of £80,000. This figure, says the Defendant, was never mentioned by the Claimant until after the retainer was terminated. The Claimant was in February and November 2020 shown forms H which would have made nonsense of the alleged £80,000 estimate, and observations on accruing costs made by the Claimant herself are inconsistent with her ever having been given an estimate. Regular bills were delivered to the Claimant so as to keep her up to date on accruing costs.

31. The Defendant never suggested to the Claimant that she would not be responsible for the Defendant's fees. On the contrary, she was repeatedly told that she was personally liable, regardless of whether her husband paid them. The Claimant did sign the Defendant's contract of retainer, which make her responsible for paying the Defendant's reasonable fees and disbursements. The Claimant in any case accepts that she is bound by the Defendant's terms and conditions. The position as to payment of fees by Mr Pulford only changed when the Claimant disclosed substantial financial resources of which she had not previously informed the Defendant.

32. The Claimant was not told that Ms Hughes' further input would be "minimal" when Ms Brett took over conduct of the matter. The Claimant was told that Ms Hughes would need to spend less time on her case, which would help to keep costs down, and that Ms Hughes was still involved. This was intended to reassure the Claimant as she was concerned about Ms Hughes no longer being involved in the case. She sought the ongoing involvement of Ms Hughes throughout the retainer.

33. The Claimant expressly authorised the use of leading and junior counsel in conference on 7 August 2019, and specifically requested the services of Charles Howard KC, who was instructed to represent her by the Defendant. The Claimant was notified of the choice of junior counsel, and raised no objection.

34. It is entirely standard in complex and high value divorce cases (as this was) for parties to be represented by both Leading Counsel and Junior Counsel. That is particularly the case for the financially weaker party, in this case the Claimant, where there is substantial financial disclosure from the financially stronger party (as there was) which requires detailed forensic analysis.

The Defendant's Terms and Conditions of Business

35. Appended to the Claimant's witness statement is a copy of a client care letter dated 12 November 2018. It is a one-page letter which confirms that it encloses the Defendant's "formal terms and conditions of professional service", draws attention to certain of those terms and conditions and sets out hourly charging rates.

36. The Defendant's standard terms and conditions of business, as referred to in the client care letter, incorporate at paragraphs 8 and 9, the following payment provisions:

> "Our charges are normally based on time spent but we may also take into account a number of other factors including: speed at which action must be taken; the expertise or specialised knowledge required; the difficulty or novelty of the questions involved, the financial value and the importance of the matter to you…

> We reserve the right to increase our fees from 1st January each year up to 5% or in line with inflation (whichever is the greater) without notice. We will advise you of any other changes as the need arises…
>
> Our charges are exclusive of VAT and any out of pocket expenses (disbursements) such as counsel's fees, expert witnesses (e.g. accountants), company searches, court fees, travel, etc., incurred on your behalf. We will advise you of any major disbursements before we incur them…
>
> It is our normal practice to ask you to provide us with money on account of charges and expenses. This will be credited against your bill, but it is important that you understand your total charges and expenses may be greater than any advance payments. We reserve the right to terminate the retainer in the event that any request for payment on account is not met promptly…
>
> We will send you bills on a regular basis while work is in progress...
>
> You will be responsible for our bills whatever the result of your case… Even if you are successful in a court action, the other party may not be ordered to pay your charges and expenses or they may not be recovered in full…"

The Principles

37. Before turning to the facts of this case I should refer to the principles by reference to which I must address the issues I have summarised above.

38. In *Guest Supplies International Ltd v Ince Gordon Dadds LLP* [2022] EWHC 2562 (SCCO), I had to consider similar arguments relating to cost estimates and informed consent, and in the light of the arguments I heard, I set out a quite detailed analysis of the relevant principles. It is not necessary to repeat that full analysis here, but the relevant authorities and the conclusions that I draw from them are the same, so I will offer a short summary.

39. Costs as between solicitor and client, by virtue of the Civil Procedure Rules ("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."

40. The question on assessment will be 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 (subject to being reasonable in amount) 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 they have been reasonably incurred.

41. A key authority on the nature of informed consent for the purposes of the presumption at CPR 46.9(3)(a) (albeit decided under similar, pre-CPR provisions), was *Macdougall v Boote Edgar Esterkin* [2001] 1 Costs LR 118, which established that consent must be secured "… following a full and fair exposition of the factors relevant to it…" (Holland J at paragraph 8).

42. In *Guest* I rejected the contention that solicitors' costs or counsel's fees not incorporated within an advance estimate, or for which the client has not given specific advance authority, are irrecoverable for lack of informed consent. I regard that proposition as misconceived and inconsistent with the authorities to which I am about to refer.

43. In *Guest* I referred to *Garbutt v Edwards* [2005] EWCA Civ 1206, *Leigh v Michelin Tyre plc* [2004] 1 WLR 846, *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*").

44. In *Mastercigars no 1* Morgan J observed (paragraph 98):

> "Solicitors are entitled to reasonable remuneration for their services: see s15 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….."

45. The relevant legislation has changed, but that overriding principle, that the solicitor has a right to reasonable remuneration, remains.

46. From the authorities referred to above, I derived the following conclusions.

47. A solicitor undertaking work for a client has a professional obligation, incorporated in the Solicitors Regulation Authority's Code of Conduct, to provide the client with an estimate of costs and to keep that estimate of costs up to date. (The specific provisions of the Code of Conduct changed during the course of the retainer between the Claimant and the Defendant, but not, for present purposes, in any material way.)

48. If a solicitor is also 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. At paragraph 110 of his judgment Morgan J observed:

> "The breach of contract would not necessarily disentitle the solicitor from recovering a reasonable fee. A breach of contract would have the normal consequence that the client could sue for damages caused by the breach of contract. That 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..."

49. 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.

50. 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.

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

The Evidence

52. The Claimant has given evidence in support of her Points of Dispute in two witness statements dated 27 August 2021 and 9 December 2021. The evidence for the Defendant in support of its Replies was given by Ms Brett, in a statement dated 29 October 2021, and by Ms Hughes in a statement dated 2 August 2022.

53. Ms Brett was not called to give evidence. The only challenges to her evidence are made in the Claimant's second witness statement, in which the Claimant takes issue with the accuracy of file records relied upon by the Defendant. The evidence of the Claimant and Ms Hughes was tested on cross-examination.

54. The Claimant points out that some of the evidence given by Ms Brett refers to matters of which she has no personal knowledge. That is a fair point, but Ms Brett's evidence is based not only on her personal knowledge of the case but on her knowledge of the Defendant's practices and a review of the Defendant's file record. On matters of substance, where the evidence of the Claimant conflicts with that of Ms Brett or Ms Hughes I prefer their evidence to hers. I am also unable to accept the Claimant's challenges to the accuracy of the Defendant's file record. These are my reasons.

55. As I have observed, Ms Brett's evidence was not tested on cross-examination. Ms Hughes, under cross-examination, struck me as straightforward, forthright and frank in her evidence. The Claimant did not.

56. It does not assist the Claimant that her witness statements, set out as they are in rather lawyerly fashion, do not appear to be (as required by Practice Direction 32, paragraph 18.1) in her own words. The Claimant has in evidence put some emphasis upon the fact that her first language is not English. Although, as was evident under cross-examination, she has a perfectly good command of English, her witness statements do not reflect her manner of speaking and it does seem unlikely that words and phrases in her evidence such as "purportedly", "therein" or "I refute the relevance", are her own. Her witness statements say that they were prepared from emails sent to her advisers and from the documentary record, but that does not really explain why she could not have given her evidence in her own words.

57. This matters, because the Claimant's evidence under cross-examination (as I shall explain) could be strikingly different to that given in her witness statements.

58. Most importantly, the Claimant's evidence is larded with inconsistencies; much of it is not really credible; it appeared, under cross-examination, that she was embellishing some of her previous evidence as she went along; and it was evident she has been less than perfectly frank. The following are examples, some of which go to the heart of the matters in issue.

59. In her Part 8 claim form, the Claimant accepts that in November 2018 she signed the Defendant's "Terms of Engagement". In her witness evidence, however, the Claimant denies signing any retainer document. In her first witness statement she says that she was asked to "sign a document" of which she was given no details, only that they were standard terms and conditions "and nothing for me to be concerned with". This rather remarkable assurance is not expressly attributed to any individual but by necessary implication to Ms Hughes, with whom the Claimant was meeting and whom, as her legal adviser, she says she trusted implicitly at the time.

60. On cross-examination, quite unprompted, the Claimant asserted that in their first meeting on 12 November 2018 Ms Hughes, in a meeting which the Claimant described as "leisurely" and not involving any paperwork, called her names. She did not say what the names were other than that Ms Hughes told her that she was "stupid". This of course is strongly denied by Ms Hughes, and would be distinctly unlikely behaviour for any professional adviser seeking, in a "leisurely" meeting, to enter into a contract of retainer with a new client. It is also something that one might expect to have seen in the Claimant's witness statements.

61. It would be difficult in any event to accept that after over 6 years since their last meeting, the Claimant could on 12 November 2018 have developed such an immediate and implicit trust in Ms Hughes that she could be persuaded completely to ignore the terms of a short letter that she says Ms Hughes wanted her to sign and in which Ms Hughes expressly drew her attention to the Defendant's terms and conditions of business. It is quite impossible to accept that Ms Hughes inspired such trust in the Claimant by calling her names and telling her that she was stupid.

62. The text of the client care letter leaves enough space at the bottom of its first page for Ms Hughes's signature, but not for the requested countersignature by the Claimant. The top of the second page, as one might expect in those circumstances, has simple lines for countersignature and dating. It appears to be signed by the Claimant and hand-dated 12 November 2018, and Ms Hughes confirms that it was.

63. In her first witness statement the Claimant says that she "purportedly" signed the client care letter, raising a clear implication that her signature has been forged or attributed to the client care letter in some other illegitimate fashion. In her second witness statement, following a predictable response from the Defendant, she says that she is not alleging forgery but only that she appears to have signed a blank page, which she does not believe was attached to a client care letter. Why she might have signed a blank page goes unexplained, as does her admission in her Part 8 Claim Form to having signed the Defendant's "Terms of Engagement".

64. The Claimant confirms in both her witness statements that she vaguely remembers, in the meeting of 12 November 2018, seeing a document that mentioned hourly rates. This could only have been the client care letter. At the hearing of the preliminary some brief discussions in 2012 and 2013 and another issues, she amended her evidence in chief to say rather that she saw a document referring to hourly rates in her first meeting with Ms Hughes in 2012.

65. Given the vagueness and the variable nature of the Claimant's account of the meeting of 12 November 2018, it is difficult to see how she could have any reliable memory of what happened in another meeting more than 6 years earlier. Taken as a whole, her evidence in relation to the signing of the Defendant's client care letter is not credible.

66. The Claimant's insistence that she has a precise memory of matters that support her case is hard to reconcile with her poor recollection of other matters. On cross-examination the Claimant was referred to a letter dated 12 December 2018, referred to in an exhibit to her first witness statement. The letter was sent by the Defendant to Mr Pulford's solicitors and it incorporated a request that he pay the Defendant's fees on behalf of the Claimant. The Claimant claimed not to be able to remember the letter because it was too long ago.

67. In contrast, when asked about Ms Hughes's alleged October/November 2018 estimate of £80,000, the Claimant claimed to recall as if it were "the day before yesterday" a conversation in which she spoke to Ms Hughes from a telephone in a Notting Hill coffee shop, about two weeks before their 12 November 2018 meeting, and in which she said that Ms Hughes advised her that a divorce would cost between £30,000 in £40,000, or if Mr Pulford proved to be very difficult, up to £80,000.

68. This and other details of the alleged conversation given by the Claimant under cross examination is not to be found in her witness statements, which say only (in her first statement) that in a discussion in or around October and November 2018, she was told that the likely overall cost of her divorce would be in the region of £80,000, and (in her second) that Ms Hughes told her that if the matter was complicated then costs would possibly be £80,000. If the Claimant had remembered that the alleged conversation as well as she says, one might have expected her evidence in that respect to be consistent.

69. The Claimant's case in relation to receipt of the Defendant's periodic bills is equally inconsistent. Point of Dispute 2 confirms that the Claimant received the Defendant's bills by email but says that she took no notice of them. In her first witness statement, however, the Claimant says that says that the bills that were sent to Mr Pulford for payment were not sent to her at all and that she only became aware of the Defendant's increasing costs after Mr Pulford stopped paying.

70. Ms Brett, in her written evidence in response, demonstrated that all of the Defendant's bills had been sent by email to the Claimant and, from 13 June 2019, were also copied to the Claimant's Personal Assistant, Ms Camilla Hill of Camilla James Limited.

71. In her second witness statement of the Claimant says:

> "I have, since receiving Ms Brett's statement, revisited that email account and undertaken a search for the invoices using the dates provided in the exhibit. I now confirm that I have located these 'missing' invoices in my email account and confirm that all of the invoices challenged by me in this claim were received by email. That said, I do not recall seeing these invoices at the time. My Husband was paying the Defendant's fees then and I had no reason to even look at these invoices, with these payments made directly with no involvement of me."

72. Under cross-examination the Claimant gave a different account, saying that she had been too nervous to look at the bills sent to her by the Defendant.

73. None of this is consistent with the email correspondence upon which the Claimant relies in support of her assertion that she was given to understand that she would never have to pay the Defendant's fees.

74. On 8 March 2019, the Claimant sent an email to Ms Hughes: "I'm getting all nervous about this outstanding money. Piet/Martin wrote they would pay your bills so why don't they? I thought that our last move made it clear that they will have to pay?"

75. This is the email to which Ms Hughes replied on the same date: "Don't worry about the bills… I am assuming you won't pay and we will make an application." The Claimant replied "Thank you… I would love to pay but I can't afford it…" Ms Hughes replied on 11 March: "You don't understand!! I do not want you to pay. Please don't. I do have to bill you each month… I can't make an application until I get the petition back".

76. I will address the appropriate interpretation of that correspondence in the context of the Claimant's claim to have been assured that she would never have to pay the Defendant's fees. For present purposes, it is sufficient to observe that it cannot be reconciled with the Claimant's insistence that she did not, before Mr Pulford stopped paying the Defendant's bills, have any idea of the Defendant's accruing costs. Plainly she did, and had to be reassured that payment would be sought from Mr Pulford. According to Ms Hughes, this was typical of discussions that took place every time the Defendant copied to the Claimant a bill which had been sent to Mr Pulford for payment.

77. I turn to my conclusions on the specific issues raised in the Points of Dispute.

Whether Ms Hughes Gave an Estimate of £80,000

78. Ms Hughes vigorously denies ever estimating the potential costs of the Claimant's divorce proceedings at £80,000. She adds, entirely credibly, that it would have been absurd for her to do so. She did not, at the outset, know Mr Pulford's financial position, and nor did the Claimant. It was she says impossible to know how the case

would unfold, which is entirely typical of divorce cases. Until the other party's financial position is known, solicitors conducting divorce proceedings do not know what issues there might be, what further evidence may be required, whether court proceedings will be necessary or how the other party will approach the case and any negotiations.

79. Ms Hughes says that every divorce case evolves, and the financial information alters. These factors, and the fact that the family courts have a very wide discretion in determining financial remedy cases, make it difficult to predict how a case will progress and therefore the costs that are likely to be incurred. It is even more difficult to estimate costs in cases such as this, where the Claimant did not know Mr Pulford's financial position, his financial disclosure was provided very late and when it was provided, it proved to be inadequate. This resulted in a need to obtain further disclosure and expert evidence, both of which were badly delayed in part due to Mr Pulford's failure to co-operate properly and promptly with the process (the difficulties are set out in some detail in Ms Brett's statement).

80. In the client care letter of 12 November 2018, Ms Hughes stated:

> "It is very difficult at the outset of a matter to give a reliable assessment of the total costs that will be involved… As soon as the position becomes clearer, I will of course let you know and I will in any event deliver you bills at regular intervals so that you are kept informed".

81. Whether or not the Claimant received this letter at the time it was written (and as I shall explain, I accept that she did) it is wholly inconsistent with the Claimant's alleged estimate of £80,000.

82. I have already explained my concerns about the Claimant's evidence in relation to the alleged estimate.

83. I am unable to accept that Ms Hughes ever gave, or ever would have given, an estimate of £80,000 (much less £30-40,000) for the costs of the Claimant's divorce proceedings. Even if she had been given such an estimate the Claimant would or at least should have realised, by the time she received the Defendant's client care letter, that Ms Hughes simply could not give a reliable estimate at that stage.

Whether There Is any Other Ground for Limiting the Defendant's Costs by Reference to Estimates

84. The Claimant's case in relation to estimates rests largely upon the assertion that the Defendant offered an initial overall estimate of £80,000, which I have found to be untrue.

85. I still have to consider whether better advance costs information could have been provided by the Defendant, and what the potential consequences would have been had such information been provided.

86. Any conclusion to the effect that the costs and disbursements payable to the Defendant should be limited by reference to non-existent or inadequate estimates,

rests necessarily on the assumption that the Defendant should have provided the Claimant with better information on likely future costs.

87. Ms Hughes's evidence is that because of the difficulties in extracting the necessary evidence from Mr Pulford, and the Claimant's conviction that Mr Pulford was concealing from her very substantial assets, it was not possible to offer a reliable estimate for the overall costs of the divorce proceedings before the FDR on 24 November 2020, immediately after which the Claimant terminated the retainer.

88. That the Claimant believed that Mr Pulford was concealing assets is borne out by the file record, which includes an attendance note of a meeting on 7 August 2019 between the Claimant, Ms Hill, Ms Hughes and Mr Fennelly when the Claimant is recorded as saying that "Piet" (Mr Pulford) "is going to hide everything", and the following email sent by the Claimant to Ms Hughes on 24 October 2020:

> "Got this through the grapevine… This is all this person knows (who does not want to be mentioned under no circumstance)… Piet has LOADS of money , he is not a millionaire he is a billionaire. He had loads of money abroad… He put money into companies / had money in LUXEMBOURG and Switzerland… A company? in Luxembourg… He is lying about everything through his teeth… Must delay the divorce if they haven't found everything… There is so much money he did not declare…. PIET PLAYS PAUPER - plays poverty… In one of the British accounts there is a big transfer. Are we sure we have ALL the British accounts?"

89. Under cross-examination the Claimant claimed to have had no idea of Mr Pulford's assets, saying that she relied upon Ms Hughes' assurances that he did have substantial assets. Although it would appear that in this (as in other matters) she did seek assurances from Ms Hughes, plainly she had her own ideas about Mr Pulford's likely asset position and she did not trust him to give a full account of it.

90. Ms Hughes has, in evidence, offered a cogent account to the effect that in the circumstances of this case, the Defendant could not have provided better advance costs information than it did. I am not completely convinced about that. It may be, for example, that some estimates might have been offered on the basis of assumptions. Any such assumptions would however most probably have been superseded by the difficulties encountered in obtaining information from Mr Pulford, in circumstances where the Claimant was convinced that he had, and was concealing, assets of an extremely high value. I do not think that they would have been likely to be particularly helpful.

91. As for the Claimant's case in relation to what she would have done had she understood the scale of costs that was likely to be incurred in the divorce proceedings, that is, again, inconsistent.

92. Point of Dispute 1 says that had the Claimant known the level of costs to be incurred, she would either have approached another law firm or potentially aborted the divorce. The Claimant's witness evidence does not support that assertion. In her first witness statement she says that had she seen the Form H prepared for the hearing on 26 February 2020, giving costs of £77,642.60 to the end of that hearing, she would have challenged the level of the estimate against the alleged initial estimate of £80,000. She

also complains, in October 2020, of being inadequately informed of the costs of preparing for the FDR, and says that had she been properly informed she would immediately have queried the cost and requested that no more work be done. She does not say that she would have ceased to instruct the Defendant, and it is difficult to see how she could simply have called a halt to the work being undertaken for a crucial hearing the following month.

93. In her second witness statement the Claimant says that had she been informed at the outset that the costs would have escalated to the level incurred by the Defendant, she would not have proceeded with the divorce until she was sure as to what, if anything, she would have to pay and had secured the funds to be able to meet such costs. She would not have instructed the Defendant on an open-ended basis as to fees.

94. What the Claimant does not say is that, had she anticipated the full level of costs attendant on recovering the Defendant to conduct divorce proceedings, she would have found alternative solicitors or changed her mind about the divorce.

95. It is also clear that the Claimant knew a great deal more about accruing costs than she is now prepared to admit. I have already referred to her inconsistent and unreliable case in relation to the regular delivery of bills by the Defendant. Similarly, I am quite unable to accept the contention that she did not see a copy of the Form H prepared for the FDA in February 2020.

96. Form H, and the information it contains about accrued and accruing costs, is an essential part of ancillary relief proceedings. It is given to the judge, and the court expects that it will be seen by the client. It reflects a policy to the effect that the parties to ancillary relief proceedings should be given the best possible information as to accruing and future costs, which of necessity reduce the body of assets that is available for distribution on divorce.

97. Ms Hughes has stated plainly that she was present when the Claimant was given a copy of the February 2020 form H, and that it was discussed with the Claimant, which is what one would expect.

98. An attendance note from the Defendant's file, prepared by a junior fee earner employed by the Defendant, records the discussions held between the Claimant, Ms Hughes, Mr Fennelly and Charles Howard KC on attending the 26 February 2020 FDA. Notably, it includes confirmation by Mr Fennelly that a particular expert has not been instructed because of a high fee estimate, and the Claimant's response to the effect that if that expert is best she should be instructed, whatever the cost. It also includes a reference by Mr Howard to experts' fees of £300,000, of which the Claimant may have to pay half.

99. The note also records a discussion of form H, which according to the note had been given to the Claimant but not yet to the FDA judge, with the Claimant enquiring why, of a figure of £77,000, £28,000 remains unpaid and Ms Hughes responding to the effect that the figure includes work for that month, up to the date of the FDA.

100. On cross-examination the Claimant disputed the accuracy of that note. She said that she had not been given form H and that she had not been told that she might have to

pay half of experts' fees. She claimed clearly to remember that she had never been given any paperwork, and said that she did not even know who Mr Howard was.

101. The Claimant offered no reason why the Defendant's junior fee earner should have produced, in effect, a fictitious account of the discussions held on 26 February 2020. That aside, the note reads as one would expect it to read, in contrast with yet another unconvincing account from the Claimant of knowing nothing and being given nothing. It is telling that on 8 October 2020 the Claimant emailed the Defendant to say that she was running short of money in the light of "another , say, £60.000 court hearing on 24 Nov!"

102. It would be difficult to accept that the Claimant did not know who her own KC was, even if the Defendant's file note of the meeting on 7 August 2019 did not record the Claimant as saying that she wanted Christina Estrada's legal team to represent her and Ms Hughes replying to the effect that the Claimant already had that team: Ms Hughes and Charles Howard KC. Ms Hughes added that the expense of instructing them would be ameliorated by the involvement of Mr Fennelly and a junior for Mr Howard.

103. Again, the Claimant has denied that this discussion took place, saying on cross-examination that she left it to Ms Hughes to choose the best counsel (for, as she put it, her £30,000-£40,000).

104. Ms Hughes, in contrast, stated that the Claimant had made enquiries with friends and chosen her team accordingly. She wanted to have the same legal team as Christina Estrada had had in her divorce, so she wanted Ms Hughes and Mr Howard to represent her. As Ms Hughes considered Mr Howard to be one of four or five KCs suitable for the case, and as he was in fact less expensive than two of the suitable alternatives, Ms Hughes was content with that.

105. I accept Ms Hughes's account. As ever, her evidence is more convincing than that of the Claimant and it is consistent with the Defendant's file record, which I have no good reason to doubt.

106. Even if there had been any material failure on the part of the Defendant to provide the Claimant with adequate estimates of costs for her divorce proceedings, I do not accept that it would have had any material effect upon the Claimant's choices. Notably the great majority of the future costs estimated in the form H of 24 November 2020 (which the Claimant accepts she saw) were counsel's fees; £221,400 of the total figure of £356,520. That reflected the Claimant's choice of counsel.

107. The Claimant evidently believed that Mr Pulford was concealing his assets from her, and she was prepared to spend whatever was necessary to obtain a satisfactory divorce settlement. As is evident from correspondence with the Defendant (to which I will refer in more detail, when considering the Claimant's assertion to the effect that she was given to understand that she would never have to pay the Defendant's fees) she did not want to pay for that herself, and thought that her husband should have to do so. Nonetheless, as Ms Hughes as stated in evidence and as the Defendant's file reflects, the Claimant did have sufficient assets at her disposal to raise the required funding if necessary.

108. All that aside, it is not possible to reconcile any of the Claimant's various statements about what she might have done if she had had a better idea of future costs, with her assertion that she thought that she was ultimately not going to have to pay anything, or at least anything that would not be refunded in full. If that were the case, she would not have been concerned about accruing or future costs. For reasons I shall give, I do not accept that she did think that, but the point is that it is not possible to rely on any of her assertions about what she might have done if the Defendant had been in a position to, and had, provided more advance costs information.

109. For those reasons, I do not think that it would be right to find that the overall amount payable by the Claimant to the Defendant for its services should be limited on the basis that inadequate costs information was provided.

Whether the Claimant Signed the Client Care Letter and Received a Copy of the Defendant's Terms and Conditions of Business

110. Ms Hughes states that at their initial meeting on 12 November 2018, the Claimant signed the client care letter formally instructing the Defendant. The Defendant's practice is she says to prepare two copies each of the client care letter and the Defendant's standard terms and conditions, so that both parties can retain a copy signed by the other. The Defendant has the original client care letter signed by the Claimant on file, but the original terms and conditions on file are not signed by the Claimant, for reasons that Ms Hughes cannot now explain.

111. The practice described by Ms Hughes of retaining a copy of a signed client care letter on file, is fairly standard practice for any well managed firm of solicitors. The Defendant's additional requirement that a client sign and return a copy of the solicitor's standard terms and conditions of business may be less typical, in being particularly cautious. In my own experience, most firms of solicitors would be content with a client's signature on a letter of retainer, relying upon the fact that that it binds the client contractually to the solicitor's standard terms of business. Many will be content to rely upon terms of business given or sent to the client, without insisting upon a signature.

112. In any event, for the reasons I have given, I do not doubt that the Claimant, in her first meeting with Ms Hughes on 12 November 2018, signed and returned to the Defendant a copy of the Defendant's client care letter of that date. The fact that Ms Hughes cannot find on file an additional signed copy of the Defendant's terms and conditions of business seems to me only to illustrate that such things happen, even in the most carefully managed practices.

113. I accept Ms Hughes's evidence to the effect that she provided all of the retainer documentation to the Claimant in their November 2018 meeting; that she would, as one would expect of any competent solicitor, have given a copy of the Defendant's terms and conditions to the Claimant with the client care letter; that she would have invited the Claimant to discuss any aspect of the terms that concerned her; and that she could hardly have failed to notice any omission to hand over, with a one-page client care letter, an eight-page set of terms and conditions of business. I am unable to accept the Claimant's evidence to the effect that she did not receive a copy of either of those documents.

Whether the Claimant was Given to Understand by the Defendant That She Would Not Ultimately Be Responsible for the Defendant's fees

114. It is common ground that when the Claimant first instructed the Defendant, she led Ms Hughes to believe that she did not have the immediate means to pay the Claimant's accruing fees (although on the evidence of Ms Hughes, which I have accepted, she could have raised funds against property if necessary). That is why Ms Hughes set out to arrange, and succeeded in arranging, that Mr Pulford would pay the Defendant's bills. This changed when the Claimant's Form E (a formal statement of means) was served on Mr Pulford, as is required in ancillary relief proceedings. Ms Hughes summarised the position in an email dated 14 April 1990:

> "As you know, until February Piet was meeting your legal costs. Now that he knows you have c£340,000 in the bank, he has refused to pay your legal costs. As you will recall, we discussed this issue at length outside court. We may make an application for legal costs later but at present it would be very difficult to do so, particularly given the coronavirus situation. The court's view would be that while you have the money to meet your costs you should do so, and that the loss of your inheritance to meet legal costs will be dealt with later in the financial proceedings and so the legal costs will all "come out in the wash" later.
>
> Piet is meeting most of the valuation costs and he has agreed to pay the January bill. He will not meet your legal costs after that. This means that I will need you to meet my outstanding costs and the bills going forward. My February bill is outstanding, as is the March 2019 bill because Piet says he gave you the money to pay it at the time.
>
> We are writing to Irwin Mitchell disputing that but in the meantime it will need to be paid. I will be sending you my bill for March shortly. The costs were unexpectedly high due to the very difficult circumstances arising from the coronavirus outbreak and lockdown and because of the difficulties you had with Nicky but those costs could not have been avoided."

115. The Claimant replied on the same day:

> "Why can't we make an application for Piet to cover my legal costs – what is difficult about this at the moment (other than the impact Covid-19 is having on the world in general)? We have frequently discussed this matter when I've expressed my concern about having to spend my own money on this and I have always felt reassured by your response that, if Piet refused to pay, you would make an application to Court. If I didn't have the money to cover the costs, an application would surely have to be made?
>
> - If I do pay, how will I be reassured that these costs, as well as any future costs, will be recouped in the final settlement?"

116. Ms Hughes responded on 15 April:

> "Piet agreed to meet your legal costs when he did not know that you had your inherited money. We had to disclose your inherited money in your

> Form E. We always knew that when Piet saw your Form E and discovered you had about £340,000 in the bank, he would almost certainly stop paying your legal costs. As expected, this is what he did.
>
> You are absolutely right that if you did not have money in the bank and Piet was refusing to pay your costs, we would make an urgent application. You are not however in that position because you have £340,000 in the bank. As we discussed outside court and I explained again in my email yesterday, we can't make an application for legal costs when you have money in the bank which you can use to meet your costs. Any application would fail because the court will say you can and should meet the costs yourself and that you are not prejudiced because the costs will be taken into account later. Due to coronavirus, the court is prioritising only very urgent applications and you would be criticised for trying to argue that this is urgent.
>
> This does not mean we cannot make an application later. It is obviously more difficult to spend money when you are in lockdown but if you start to run out of money and Piet refuses to pay, we will look again at making an application.
>
> We all want to resolve matters as soon as possible for you… The proceedings are continuing and there are a number of things to do in order to be ready for the private FDR in July…
>
> We are not able to continue running up costs with this level of costs outstanding and so I do need you to make arrangements to pay them. We are writing to Irwin Mitchell again to dispute that Piet paid you the money for the March 2019 invoice but as I have explained this does need paying in the meantime. If any of the above is still unclear, then I would be happy to discuss it in a telephone call."

117. The Claimant replied:

> "Ok understood i will transfer the money straight away.
>
> One question : are you confident Piet has money , that there is 'a wash' it can come out of in the end?"

118. That is the email to which Ms Hughes replied:

> "Of course there is money".

119. This reassurance was based, as I understand it, on the understanding that Mr Pulford had very substantial assets, which was entirely correct: according to the evidence of Ms Hughes and Ms Brett his disclosed assets (viewed as his disclosure was with scepticism, at least on the part of the Claimant) came to some £17 million, so that the assets available for distribution in divorce rendered relatively insignificant both incurred and estimated legal costs.

120. Ms Hughes, in other words, was doing no more than stating the obvious: that the Defendant's costs and disbursements were simply part of the overall picture, and

would ultimately be taken into account insofar as appropriate on the distribution of assets in the ancillary relief proceedings.

121. There are several reasons why the Claimant cannot escape liability for the Defendant's costs and disbursements on the allegation that she was assured that, ultimately, she would never have to bear them.

122. The first is that the Claimant accepts that she is bound by terms and conditions which made her personally responsible for the Defendant's fees and disbursements, whether or not the court ordered another party to pay them.

123. The second is that, as I have found, the Claimant signed an agreement to be bound by, and received a copy of, those terms and conditions.

124. The third is that it is quite impossible to extract any such assurance from Ms Hughes's communications. The assurances given by Ms Hughes during the period that Mr Pulford agreed to pay the Defendant's bills, were based upon the understanding that he would pay the Defendant's bills because the Claimant could not. When it became apparent that in fact the Claimant could pay the Defendant's bills, two quite understandable things happened. The first was that Mr Pulford refused to pay them. The second was that the Claimant was told, in the plainest terms, that she would have to do so.

125. As for legal costs coming out "in the wash", it seems perfectly evident that Ms Hughes was saying no more than that the legal costs were just part of the picture, which would in due course be considered in the context of the distribution of assets that were worth many times more than either incurred or anticipated costs. It is an obvious distortion to elevate that into a promise that the Claimant, contrary to the Defendant's express terms and conditions, would not be responsible for the Defendant's fees and disbursements, or that someone else would be made to pay them instead.

126. The Claimant complains in her Points of Dispute that she was not told until the November 2020 FDR that neither party would, as she puts it, "be reimbursed its legal costs", but does not explain why she would ever have had any such expectation. The Defendant's terms and conditions made it plain that no such order would necessarily be made, and that she would be responsible for the Defendant's costs and disbursements in any event. Costs orders are not typically made in in ancillary relief proceedings, and it is not suggested that the Defendant ever gave her what would have been misleading advice to the contrary.

127. In summary, I find no substance in the Claimant's attempt to escape the clear terms and conditions of the Defendant's retainer by relying upon an assurance, which she was never given, to the effect that she would never have to bear, or that she would be directly reimbursed for, any of the Defendant's costs or disbursements.

Whether Fees or Disbursements Were Not "Knowingly Authorised" by the Claimant

128. The grounds given for the Claimant's assertion in her Points of Dispute that she should not be taken "knowingly" to have authorised any of the Defendant's fees and disbursements do not, for the reasons I have given, stand up to examination.

129. I assume, although it is not entirely clear to me, that the Points of Dispute distinguish between bills paid by Mr Pulford and bills paid by the Claimant because the Defendant accepts that payment of a bill raises the presumption of reasonableness under CPR 46.9(3)(a). I would have to leave that point open: it is not clear to me what the Claimant's position is, and I have not heard argument on the point.

130. It may also be that (although the Defendant, as promised, did provide the Claimant with regular invoices to help keep track of the growing costs) the Defendant did not, in accordance with the terms of retainer, always specifically notify the Claimant in advance before large disbursements, in particular Counsel's fees, were incurred. It may be necessary to consider that on a fee by fee basis: Ms Hughes insists that the Claimant was advised of major fees in advance, and the Defendant did its best to negotiate counsel's fees down.

131. I should make it clear that even if that advance notice was not given, it does not follow that the relevant fees are irrecoverable. That is not just because the Claimant chose the leading counsel she wanted, and accepted the junior that she was offered. It is because Morgan J found in *Mastercigars* that costs do not become irrecoverable because a solicitor has failed to comply with a contractual obligation to estimate them in advance. The question will be rather whether they were reasonably incurred and reasonable in amount. The same must be true where disbursements are incurred without the solicitor complying with a contractual obligation to notify the client before they are incurred.

Whether Recoverable Counsel's Fees Should Be Limited to Junior Fees

132. I have already found that the Claimant specifically authorised (and in fact insisted upon) the instruction of Charles Howard KC. It follows, in accordance with CPR 46.9(3)(a), that the additional element of costs attendant on instructing leading counsel is presumed to have been reasonably incurred, and I have seen nothing to rebut that presumption.

133. That aside, I accept that it is not remotely unusual, in ancillary relief proceedings on this scale and of this complexity, for leading and junior counsel to be instructed. CPR 46.9 (3)(c) is not engaged.

134. There is, accordingly, no reason for concluding that the fees of counsel payable by the Claimant should be limited to the hypothetical fees of junior counsel. Counsel's fees will fall to be assessed, on the usual principles, by reference to any specific objections taken in the Points of Dispute, and bearing in mind the point taken about advance notice of fees.

Whether the Defendant is Entitled to Recover Increased Hourly Rates

135. I am unable to follow the logic of the Claimant's Points of Dispute in accepting that she is bound by the Defendant's terms and conditions of business, and yet arguing that the Claimant is not bound by an increase in hourly rates specifically authorised by those terms and conditions, because she claims not to have seen them. In any case, as I have said, I accept that she did see them.

136. In fact only Ms Hughes's hourly rate changed during the course of the retainer, increasing from £675 to £700 on 1 January 2019. That is an increase well within the parameters of the terms and conditions of business, which provide for an annual increase, without notice, at the beginning of each calendar year either of 5% or in line with inflation, whichever is the greater.

137. For all the reasons I have given, the Defendant is fully entitled to claim that increased rate.

Whether the Claimant was Advised that, Following the Involvement of Ms Brett, Ms Hughes's Involvement Would be "Minimal"

138. This allegation is contradicted by the Defendant's file record, which records a conversation between Ms Hughes and the Claimant to the effect that Ms Brett's involvement would help keep costs down and reduce the time spent on the case by Ms Hughes. It does not say anything about Ms Hughes's future time on the case being "minimal", and in fact records her assurance to the Claimant that she would continue to be involved.

139. On cross-examination Ms Hughes explained that there were certain aspects of the Claimant's domestic circumstances which she preferred not to discuss with Mr Fennelly, which is why it occurred to Ms Hughes to bring in someone more senior. Ms Hughes remained involved because that was what the Claimant wanted, but costs were saved by the involvement of Ms Brett (it would appear that Ms Hughes' time on the case, from the point that Ms Brett took over, was a fraction of Ms Brett's).

140. The Claimant, on cross-examination, professed not to know whether she had been told that the involvement of Ms Brett would lead to a reduction in costs. She admitted that she continued to copy Ms Hughes in on all communications but said that that was because Ms Hughes insisted, which is not consistent with an assurance from Ms Hughes to the effect that her involvement would be "minimal".

141. As ever, I prefer the evidence of Ms Hughes to that of the Claimant. There was no assurance that Ms Hughes's continued involvement with the Claimant's case would be "minimal" and there is no proper ground for challenging Ms Brett's fees on the basis that there was any such assurance.

Summary of Conclusions

142. I do not accept that the Defendant ever estimated its costs and disbursements for representing the Claimant in her divorce proceedings at £80,000.

143. Nor is there any other good reason for limiting the amount payable to the Defendant by the Claimant by reference to the costs information provided to the Claimant by the Defendant from time to time.

144. I accept that in a meeting with Ms Hughes on 12 November 2018 the Claimant agreed to instruct the Defendant; that she signed and returned to the Defendant a copy of the Defendant's client care letter; and that in doing so the Claimant agreed to be bound by the Defendant's terms and conditions of business. I also accept that in the meeting, she received a copy of those terms and conditions.

145. I do not accept that the Claimant was ever led by the Defendant to believe that she would not be responsible for the payment of the Defendant's fees and disbursements, or that when she did pay those costs and disbursements, she would obtain a refund from Mr Pulford. The Claimant agreed to be bound by terms and conditions of business that made it clear that she was ultimately responsible for the payment of the Defendant's fees and disbursements, regardless of whether any other person might reimburse them. Nor was she ever told anything to the contrary.

146. There is no proper basis for concluding that the Claimant's fees and disbursements generally were not "knowingly authorised" by the Claimant. The extent to which this leaves it open to the Defendant to rely upon CPR 46.9(3)(a) remains to be determined.

147. There is no proper basis for limiting the fees of counsel, incurred by the Defendant on the Claimant's behalf and recoverable from the Claimant by the Defendant in accordance with the terms of the Claimant's retainer, to the hypothetical fees of junior counsel. The Claimant not only authorised the instruction of leading counsel, but selected the KC she wanted to represent her.

148. Counsel's fees do not fall to be disallowed merely because (if such is the case) the Defendant did not specifically notify the Claimant in advance of those fees. Counsel's fees must be assessed, on the usual principles, on a fee by fee basis.

149. There is no basis for limiting Ms Hughes's recoverable hourly rate to that applicable before the increase of 1 January 2019. The terms of retainer, by which the Claimant is bound, permit the increase which took place on that date.

150. There is no proper basis for limiting the hourly rate recoverable for the work undertaken by Ms Brett by reference to an alleged assurance that, after she became involved in the management of the Claimant's case, Ms Hughes' own involvement would be "minimal". No such representation was ever made, nor would the Claimant have accepted such "minimal" involvement.