Neutral Citation Number [2023] EWHC 2189 (SCCO)
Case No: SC-2022-APP-001077

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
Strand, London WC2A 2LL
Date: 23/08/2023

Before :

COSTS JUDGE LEONARD

- -

Between :

Mr Bidzina Ivanishvili	**Claimant**
- and -	
Signature Litigation LLP	**Defendant**

- -
- -

Roger Mallalieu KC (instructed by **Blake Morgan LLP**) for the **Claimant**
Ben Williams KC (instructed by **Signature Litigation LLP**) for the **Defendant**

Hearing date: 16 May 2023

- -

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.

.....

COSTS JUDGE LEONARD

Costs Judge Leonard:

1. On 25 November 2022, the Claimant filed an application under CPR Part 8 seeking a declaration that a series of invoices delivered by the Defendant, in the course of a retainer that started in January 2016 and ended on 23 September 2022, were not "statutory bills" by reference to the Solicitors Act 1974. In the alternative, the Claimant seeks an order under section 70 of the 1974 Act for assessment.

Statutory Bills and Assessment

2. Section 70 of the 1974 Act sets out the statutory regime for the assessment of the amount due under a bill delivered by a solicitor to a client. It reads, at subsections (1) to (4):

> "(1) Where before the expiration of one month from the delivery of a solicitor's bill an application is made by the party chargeable with the bill, the High Court shall, without requiring any sum to be paid into court, order that the bill be assessed and that no action be commenced on the bill until the assessment is completed.
>
> (2) Where no such application is made before the expiration of the period mentioned in subsection (1), then, on an application being made by the solicitor or, subject to subsections (3) and (4), by the party chargeable with the bill, the court may on such terms, if any, as it thinks fit (not being terms as to the costs of the assessment), order—
>
> (a) that the bill be assessed ; and
>
> (b) that no action be commenced on the bill, and that any action already commenced be stayed, until the assessment is completed.
>
> (3) Where an application under subsection (2) is made by the party chargeable with the bill—
>
> (a) after the expiration of 12 months from the delivery of the bill, or
> (b) after a judgment has been obtained for the recovery of the costs covered by the bill, or
> (c) after the bill has been paid, but before the expiration of 12 months from the payment of the bill,
>
> no order shall be made except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the assessment as the court may think fit.
>
> (4) The power to order assessment conferred by subsection (2) shall not be exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill."

3. To be assessed under section 70 a solicitor's bill must be what is referred to as a "statute" or "statutory" bill. That is a bill compliant with the requirements of section 69 of the 1974 Act for signature and delivery, and which meets additional criteria established by case law. Otherwise, in law, no bill has been delivered. The solicitor (by virtue of section 69(1)) cannot sue for fees and there is nothing for the court to assess.

4. I am very grateful to both Mr Mallalieu KC for the Claimant and Mr Williams KC from the Defendant, for their comprehensive and detailed exposition of the authorities in relation to statutory bills. Those authorities include *In re Romer & Haslam* [1893] 2 QB 286, *Chamberlain v Boodle and King* [1982] 1 WLR 1443; *Boodia and another v Richard Slade and Co Solicitors* [2018] EWCA Civ 2667, *Bari v Rosen* [2012] 5 Costs LR 851, *The Winros Partnership v Global Energy Horizons Corporation* [2021] EWHC 3410 (Ch), *Sprey v Rawlison Butler LLP* [2018] 2 Costs LO 197, *Richard Slade & Co v Boodia* [2018] EWCA Civ 2667, *Abedi v Penningtons* [2000] EWCA Civ 85, *Davidsons v Jones-Fenleigh* [1980] 124 SJ 204 and *Richard Slade & Co v Erlam* [2022] EWHC 325 (QB). I must also mention *Adams v Al Malik* [2014] 6 Costs LR 985, a decision on permission to appeal and therefore persuasive rather than directly authoritative, but extensively referred to.

5. I shall set out in broad terms some of the principles that bear upon the issues I have to determine.

The Burden of Proof

6. Section 69 of the 1974 Act, at subsection (2E), provides that where a bill meets the requirements of that section for signature and delivery it is to be presumed, until the contrary is shown, to be a statutory bill. Before me it was common ground that the initial burden of demonstrating that the invoices rendered by the Defendants to the Claimant are statutory bills, falls upon the Defendant.

7. Both parties, in that context, referred me to *Romer & Haslam.* They do not seem to me however to be entirely in agreement as to exactly how the burden of proof works. Mr Williams argues that if the Defendant shows that the invoices meet the statutory criteria for signature and delivery (and it does not appear to be in issue that they do) then, by virtue of section 69, it is incumbent upon the Claimant to show that they are not statutory bills. Mr Mallalieu argues, by reference to *Romer & Haslam* (in particular the judgment of Bowen LJ at 298-299), that the burden of establishing that an interim invoice is in fact an interim statutory bill rests on the solicitor.

8. For the purposes of this judgment I have adopted the approach urged on me by Mr Williams, though none of my conclusions would have been different had I adopted Mr Mallalieu's approach.

Contracts of Retainer and Interim Billing

9. The default position for a contract between a solicitor and the client who retains that solicitor is that it is an "entire contract" (aptly compared by Mr Williams to a contract with a courier, who will not be paid for bringing a package halfway to its destination). In consequence the solicitor is entitled to render a statutory bill only at the end of the retainer, as on the completion of a transaction or the conclusion of litigation.

10. There are exceptions to this rule. Some contracts of retainer, such as for the management of complex, multi-party litigation, may not lend themselves readily to the "entire contract" model. In such cases, the solicitor may be able to rely upon *Romer & Haslam* and other authorities which establish that a solicitor may have the right to render a statutory bill at a "natural break". It must be clear on the evidence that the parties understood and intended that the bill so rendered be treated as final (that being the context in which the burden of proof, in *Romer & Haslam*, was found to lie with the solicitor).

11. More generally, the "entire contract" principle is, as one would expect, subject to agreement to the contrary. The solicitor and client may agree that the solicitor may, during the currency of the contract of retainer, render interim bills. To qualify as interim statutory bills, they must however be complete and final for the work that they cover. As Spencer J put it in *Bari v Rosen*:

> "… a solicitor may contract with his client for the right to issue statute bills from time to time during the currency of the retainer. Such bills are known as "interim statute bills". They are nevertheless final bills in respect of the work they cover, in that there can be no subsequent adjustment in the light of the outcome of the business. They are complete self-contained bills of costs to date."

12. Simon Brown LJ in *Abedi v Penningtons* (at page 207) quoted (evidently with approval) a similar definition of interim statutory bills from *Cordery on Solicitors*:

> "Although they are interim bills they are also final bills in respect of the work covered by them. There can be no subsequent adjustment in the light of the outcome of the business."

13. An agreement between a solicitor and a client to the effect that the solicitor may render an interim statutory bill or bills may be inferred from conduct.

14. The necessity of completeness and finality as characteristics of a statutory bill was considered by the Court of Appeal in *Richard Slade & Co v Boodia*, in which the court found that there was nothing to prevent a solicitor rendering separate statutory bills, at different times, for profit costs and disbursements, but otherwise left the requirements of completeness and finality as I have described them.

The Issues

15. The Defendant rendered 79 invoices to the Claimant between 31 March 2016 and 26 October 2022. They come to £12,781,354.66. All have been paid.

16. The point of the Part 8 application made by the Claimant is to preserve such rights as he has to challenge the amount of the Defendant's billing through an assessment under section 70. His primary case is that none of the invoices rendered by the Defendant to date qualify as statutory bills. That is because the contract of retainer between the parties incorporated a Conditional Fee agreement ("CFA") and those invoices represent only a part of the fees that may become due to the Defendant for the work undertaken under that contract. As a result, they were neither complete nor final. In consequence, he says, the time for him to make an application for assessment will not start to run until a final bill has been delivered.

17. The Defendant argues that the invoices rendered to the Claimant were, at the time of delivery, complete and final bills. For that reason, says the Defendant, only one of the bills rendered, dated 26 October 2022, is open to assessment (and the assessment of that bill is not contested). Otherwise, all of them having been paid, either they can only be assessed if special circumstances are established (section 70(3)(c)); or, as they were paid more than 12 months before the date of the application for assessment, the court has no power to order their assessment at all (section 70(4)).

18. Alternatively, the Defendant says that it would be right to conclude, by reference to *Chamberlain v Boodle and King* and *In re Romer & Haslam*, that the invoices became final statutory bills when the Defendant terminated the contract of retainer in September 2022. It would follow that the court could order now that the entire series could be assessed, but at least there would be no delay pending the delivery of any further bill.

The Work Undertaken by the Defendant

19. The Claimant is a Georgian businessman, resident in Georgia. Since the 1980s, he has founded and invested in a number of successful business ventures, and is now (as his solicitors put it) a "high net worth" individual. It is I believe common ground that his current wealth can be measured in billions of US dollars.

20. In about 2005, the Claimant engaged Credit Suisse AG ("CS") to manage some of his assets. Assets to the value of approximately US $1 billion were settled on trusts, administered by CS, for the benefit of the Claimant and members of his family. The trusts were established by various companies within the CS Group and the assets held in CS accounts.

21. Since 2016 the Claimant, along with beneficiaries under the trusts and corporate entities created for the purposes of the trusts, has been engaged in litigation against CS and related entities ("the CS litigation"). The CS litigation is based upon the alleged mismanagement of the Claimant's assets, including the proven fraudulent activities of one Patrice Lescaudron, an employee of CS Bank and the Claimant's relationship manager over a period of several years. In February 2018, Mr Lescaudron was sentenced to 5 years' imprisonment for fraud against the Claimant and others. I understand that the losses to the Claimant resulting from Mr Lescaudron's fraudulent activities alone are measurable in hundreds of millions of US dollars.

22. Given the complexity, scale and international distribution of the assets invested by the Claimant with CS, the CS litigation is highly complex. It has extended to the Eastern Caribbean Supreme Court, the Supreme Court of the Bahamas, and the courts of New Zealand, Singapore, Bermuda, Switzerland, Guernsey, Canada, and England & Wales. The CS litigation has the potential to run for more than seven years before all issues are resolved.

23. In 2016, the Defendant was instructed to act on behalf of the Claimant, other family beneficiaries and a BVI company of which the Claimant was the ultimate beneficial owner. The essence of the retainer was that the Defendant was to perform the role of global coordinating counsel in the CS litigation.

24. Mr Graham Huntley, a partner in the Defendant firm giving evidence for the Defendant, says that the retainer entered into in 2016 was the outcome of early "in principle" discussions with the Claimant's representatives in late 2015. This led to a round of meetings starting at the beginning of 2016. The Claimant and his representatives had been working with Swiss legal advisers, experts, consultants and investigators in seeking to advance and negotiate claims for substantial losses against CS in Switzerland, but had identified serious legal and other risks. No reliable expert work had been done to assess overall losses. CS itself was not willing to make any formal offers to pay substantial sums, and the Claimant was very frustrated. That was the situation that the Defendant was brought in to address.

The June 2016 Retainer and Terms of Business

25. The parties signed an engagement letter dated 7 June 2016 ("the June 2016 Retainer"), which enclosed the Defendant's standard terms of business ("the June 2016 Terms"). The pertinent provisions of the June 2016 Retainer, for present purposes are as follows. (The emphasis in bold in parts of the retainer documentation quoted here and elsewhere, is reproduced from the original).

26. Under the heading "Engagement Letter in relation to dispute with Credit Suisse AG":

> "Our relationship with you… is governed by the accompanying Terms of Business and also by the terms in this letter, which is specific to this particular matter and will prevail if there is any conflict between the two documents…"

27. Under the heading "Our client":

> "We will accept instructions either individually from you on behalf of Signature's Clients or (i) from Hunnewell Partners (UK) LLP **("Hunnewell")** on behalf of Signature's Clients, acting through Mr. Irakli Rukhadze and assisted by his colleague Ben Marson or (ii) from Mr. George Bachiashvili and Mr. Irakli Karseladze on behalf of Signature's Clients. In addition we will ensure that Mr. George Bachiashvili and Mr. Irakli Karseladze are provided with copies of all communications of relevance on the matter…"

28. Under the heading "The scope of our instructions":

> "The scope of our instructions will involve acting as global coordinating counsel to investigate and, if appropriate, pursue claims against Credit Suisse AG (and/or related entities). Such work will in the first instance include (i) instructing and coordinating foreign lawyers in relevant common law jurisdictions (ii) working with and instructing Swiss lawyers (iii) instructing investigators, experts, investment advisors and a forensic accountant as appropriate, dealing with all privilege, confidentiality and billing issues (iv) carrying out initial investigations with the aforementioned into the potential claims against Credit Suisse AG (and/or related entities), the nature of losses incurred, and the apparent reason for those losses, with a view to reporting to you and Hunnewell on the strategy of bringing claims against Credit Suisse AG (and/or related entities) and the costs involved in pursuing such claims (v) taking such steps as are necessary to pursue such claims on behalf of Signature's Clients in the relevant jurisdictions and (vi) controlling the costs of all of the above mentioned service providers and making best efforts to optimize the costs associated with the Claim. In conjunction, we will also advise as appropriate on matters relating to a potential settlement of the dispute with Credit Suisse AG.
>
> You, on behalf of Signature's Clients, and/or Hunnewell and Mr. George Bachiashvili and Mr. Irakli Karseladze, will be responsible for giving us timely and prompt instructions and you and/or Hunnewell and Mr. George Bachiashvili and Mr. Irakli Karseladze will let us know of any queries regarding our costs estimates and bills…"

29. The June 2016 Retainer goes on to identify the team that will be working on the case, headed by Mr Huntley, and continues under the heading "Our fees - basis of charging" to identify the Defendant's standard hourly rates for fee earners of different levels of seniority, subject to the discounting provisions set out under the heading "Conditional Fee Arrangement":

> "We have agreed in principle a Conditional Fee Agreement pursuant to which you, on behalf of Signature's Clients, will be liable to pay **65%** of the Standard Fee mentioned above in any event in accordance with our usual invoicing and payment terms (the **"Discounted Rate"),** and the remaining **35%** (the **"Additional Portion of the Standard Fee")** will only be chargeable in the event that a successful recovery above an agreed amount is achieved. We have also discussed and agreed in principle the basis on which you, on behalf of Signature's Clients, will be liable to pay to us an **Uplift Fee** and a **Success Fee,** again on the basis that a successful recovery is achieved between a certain range and/or up to an agreed amount. For the purposes of charging the Additional Portion of the Standard Fee, the Uplift Fee and the Success Fee, a successful recovery will be defined as occurring if and when the Claim is resolved in favour of Signature's Clients, either by agreement or following a trial or other final hearing, which in this case shall mean that Signature's Clients receive money or monies worth (e.g. assets with an intrinsic value) up to the specified ranges and/or amounts to be finally agreed between us. The precise terms of our agreement, evidencing the agreement in principle already reached, will be set out in a subsequent letter.

> In the interim, and until the aforementioned letter is issued, we will continue to invoice you at the Discounted Rate on the basis that you, on behalf of Signature's Clients, will be liable to pay us the Additional Portion of the Standard Fee on all invoices issued by us to you (whether before or after the date of this letter) as and when there is a successful recovery within the agreed specified range applicable to the Additional Portion of the Standard Fee. The Uplift Fee and Success Fee will likewise be chargeable as and when there is a successful recovery within the agreed specified range and/or amount applicable to the Uplift Fee and the Success Fee…"

30. Under the heading "Other costs associated with this matter" the June 2016 Retainer provides for the Claimant to be responsible for payment of the Defendant's fees and disbursements.

31. Under the heading "Our invoices and payment terms" the June 2016 Retainer says:

> "Unless we agree otherwise, we will normally issue invoices to you on a monthly basis, and will then send a final invoice when the work has been, or is about to be, completed. This should help to keep you informed of the costs which are being incurred.
>
> In addition, each bill delivered by us will:
>
> (a) identify the value of the bill based on the hourly rates as stated above:
>
> (b) contain a breakdown of hours worked for each fee earner and a narrative of tasks carried out during the period, with further information to be supplied as agreed with you; and
>
> Our invoices must be paid within 30 calendar days. We reserve the right to charge interest on any overdue amounts on a daily basis at the official rate payable on judgment debts…"

32. The June 2016 Terms included the following provisions.

33. At paragraph 2.1, under the heading "The contract":

> "Our relationship with you is governed by these Terms of Business and by any Engagement Letter which you receive for a particular matter, and the latter will take precedence if there is any conflict between the terms. Together, **these documents constitute our contract**, which will apply retrospectively to replace any previous discussions, correspondence and agreement between you and us. This is the case even if you do not sign and return a copy of our Engagement Letter. The terms contained in this document will also apply whenever we work with you in future, except to the extent that they are varied in writing by a partner of Signature Litigation LLP…"

34. At paragraph 5.5, under the heading "Payment on account of costs":

> "From time to time we may ask our clients to pay sums on account of the charges, disbursements and other costs which are anticipated at that stage of the matter. We will keep any such sums in our client account and unless otherwise agreed, we will credit these sums toward your invoices in a manner and at a time which is at our discretion…"

35. At paragraph 6, under the heading "Our invoices & payment terms":

> "6.1… Unless otherwise agreed in writing, you will receive **invoices on a monthly basis** for all work undertaken during the relevant period…
>
> 6.3… (a) You agree that our **invoices are payable within 14 days** of the date of the invoice. If possible please make payment by bank transfer (our bank details appear on our invoices). We may charge interest on all or part of an invoice which remains unpaid after 30 days at the prevailing rate for judgment debts…
>
> (b) You agree that our fees, disbursements and other costs will be payable by you irrespective of whether the outcome of any proceedings or other dispute is favourable to you.
>
> (c) You have the **right to complain about an invoice** through the Firm's complaints procedure (see clause 3.4). You may also have the right to apply to the court for an assessment of a bill under Part III of the Solicitors Act 1974…"

36. On 7 November 2016 the Defendant sent a further letter to the Claimant, the purpose of which appears to have been to identify further persons for whom the Defendant was authorised to act and from whom the Defendant could receive instructions.

37. A further letter sent by the Defendant to the Claimant on 3 December 2019:

> "… records our agreement that Signature's engagement with me will now be managed through MKD who will provide instructions to Signature on my behalf and who will consult with you. For that and any other purpose requested by MKD we will take all steps available to us to ensure MKD are able at any time to contact any and all lawyers and experts engaged by Signature in any jurisdiction in furtherance of Signature's mandate…
>
> We understand and recognise that you reserve the right to request any and all such lawyers to be directly instructed (or disinstructed) by MKD or any other lawyers instructed by you."

38. On 19 September 2021, the Defendant sent a letter to the Claimant ("the 19 September 2021 Variation") setting out the "Uplift" and success fees referred to, in the June 2016 Retainer, as agreed in principle. It read:

> "… This letter evidences the detailed agreement referred to at paragraph 5 of the letter of 7 June 2016, which we previously agreed would be set out later in writing. Unless otherwise defined herein, capitalised terms used in this letter shall have the same meaning as in the letter of 7 June 2016.

1. You have agreed to pay the Standard Fee on a time-spent basis calculated at the agreed hourly rates we charge for the various team members from time to time. To date, and as agreed, you have paid 65% of the Standard Fee ie the Discounted Rate. This generates a low margin for the firm. If, at the conclusion of the case, your successful recovery does not exceed USD350 million, then you will not pay anything more to us than 65% of the Standard Fee. To date we are agreed that there has been a recovery of USD79.08 million.

2. If there is a successful recovery of at least USD350 million, and the case continues, then our Standard Fee for all future time spent following the date of receipt by you of that amount will be chargeable in full (ie 100%).

3. We have also agreed that if your final successful recovery exceeds USD450 million, then you will pay to us at the conclusion of the case and following receipt of that recovery:

(a) the Additional Portion of the Standard Fee for all work billed at the Discounted Rate;

(b) an Uplift Fee, in addition to the Standard Fee, of 35% of the Standard Fee for work done during the whole of the period of billing, if the final successful recovery exceeds USD450 million but does not exceed USD550 million; and

(c) if the final successful recovery exceeds USD550 million, a Success Fee of 4.5% of the total amount of the final recovery, less Agreed Costs (as defined below)1 payable by the Claimants pursuant to invoices known by Signature to have been delivered to any of those Claimants in respect of existing and anticipated claims by those Claimants worldwide (save for the avoidance of doubt that nothing in this paragraph 3(c) shall disentitle Signature to the entitlements which may be due pursuant to paragraphs 2 and 3(a) to (b) above).

4. "Successful recovery" shall be defined as occurring if and when the Claim is resolved in favour of Signature's Clients and/or the companies beneficially owned by Signature's Clients or any of them (the "**Claimants**"), either by agreement or following a trial or other hearing, whereby the Claimants receive money or monies' worth (eg assets with an intrinsic value) over the agreed threshold.

In all other respects, our instruction continues as set out in our letters of 7 June and 7 November 2016. In particular, references herein to "you" mean you and each of Signature's other clients… It goes without saying that if any part of the amount(s) due under our retainer generally, and paragraph 3 above in particular, cannot be claimed because of professional conduct rules as they may exist at any relevant time in any relevant jurisdiction, then that part will not be due and payable…"

39. On 28 September 2021 Liza Edwards, a PA to Mr Huntley, sent an email to Mr Victor Kipiani of the Georgian law firm MKD, established in the Defendant's letter of 3 December 2019 as the conduit for any further instructions from and communications to the Claimant. The email was copied to Mr Huntley, two colleagues at the Defendant firm and to Mr George Bachiashvili, another adviser to the Claimant:

> "… Please see attached our current terms of business (May 2021) which accompany the supplemental engagement letter.
>
> For completeness, I also attach our terms of business from June 2016, together with a comparison document which shows the changes to our terms since then.
>
> Our terms of business dated June 2016 will apply from the date of our Engagement Letter of 7 June 2016 through to the date of our supplemental letter, so that those terms then apply from then on."

40. The updated terms of business ("the May 2021 Terms") attached to Ms Edwards' email contain the same paragraph 2.1 under the heading "The contract", and the same provisions at paragraph 5.5 in relation to payments on account, as do the June 2016 Terms.

41. Paragraph 6 again provides, at 6.1, that

> "Unless otherwise agreed in writing, you will receive invoices on a monthly basis for all work undertaken during the relevant period…"

42. The provisions in relation to periodic billing, under the heading "Our invoices & payment terms", have however been revised to include the following provisions at 6.4(a) to (e):

> "(a) We shall bill you monthly during a matter unless otherwise agreed (see clause 6.1). Generally, our invoices are interim statute bills meaning that they are final in their own right for the period covered, whether or not they contain the disbursements and/or all costs incurred. You agree that we have the right to issue an additional interim statute bill for costs and disbursements incurred in respect of the same period. Unless stated otherwise, you may assume that your bill is an interim statute bill.
>
> (b) On occasion, we may, and reserve the right to, issue interim 'payment on account' invoices which shall be labelled as such. Payment on account invoices may contain charges pursuant to conditional or contingent fee arrangements as agreed between you and the Firm. We may invoice you for additional costs subsequent to the issue of "payment on account" invoices.
>
> (c) You have the **right to complain about an invoice** through the Firm's complaints procedure (see clause 3.4).

> (d) Subject to clause 6.4(e) below, if you wish to make a complaint about an interim statute bill or a statute bill, you have the right to apply to the court for an assessment of such a bill under section 70 of the Solicitors Act 1974, normally within twelve months of the delivery of the bill…
>
> (e) A "payment on account" invoice is not a statute bill under the Solicitors Act 1974 and cannot be assessed under section 70 of that Act..."

43. The 19 September 2021 Variation was signed by the Claimant on 17 December 2021, after Mr Kipiani requested and received copies of the Defendant's earlier retainer documentation.

44. In a letter dated 23 September 2022, the Defendant terminated the retainer. Under the heading "Payment" the letter included the following provisions:

> 45. "Following termination we will deliver to you our final invoices for all outstanding work.…
>
> We also draw your attention to your entitlement to challenge the reasonableness of some of our invoices, either through the firm's complaints procedure… or by way of an application to the Court for an assessment under the Solicitors Act 1974 (clause 6.4(d))."

46. Mr Huntley explains that (apart from the letter of 7 November 2016) every contractual arrangement entered into with the Claimant by the Defendant was the subject of lengthy consideration and negotiation.

47. In those negotiations the Claimant was, Mr Huntley says, supported by a number of financial and legal advisers, including a least one legally qualified in this jurisdiction.

48. The letter of 3 December 2019 was the outcome of a meeting with the Claimant and Mr Kipiani in which the Claimant specified that the Defendant was to have no further direct contact with him; that all communications were to go to Mr Kipiani; and that all further instructions would come from Mr Kipiani. Mr Kipiani was to have the unfettered right to be involved in any and all communications between the Defendant and the various lawyers and experts instructed on behalf of the Claimant in different jurisdictions, and to be able to speak to them directly.

49. The Claimant required the letter of 3 December 2019 to be written, and he himself dictated part of it (hence the misuse of the word "me" in the extract quoted above). From that point of the relationship deteriorated to the point that (according to the Defendant) the Defendant was accused of acting in the interests of CS rather than at the Claimant. For that and other reasons set out in its letter of 23 September 2022, the Defendant came to the conclusion that it would be necessary to terminate the retainer.

The Form of the Defendant's Invoices

50. The Defendant's invoices were rendered to the Claimant regularly, normally (in accordance with the June 2016 Retainer) on a monthly basis. They are not described on their face as "final". The Defendant's termination letter of 23 September 2022 does describe as "final" the invoices delivered following termination of the retainer, but in context that appears to be no more than a reference to them as the last of a series, representing payment at the Discounted Rate for outstanding work.

51. Each bill however identifies the period to which it applies. Each appears, consistently with the June 2016 Retainer, to represent the discounted charge for all of the work undertaken by the Defendant during the stated period. Each was accompanied by a detailed narrative and a statement of the full and discounted value of the work done at the Defendant's hourly rates. Each, again consistently with the terms of the June 2016 Retainer, was presented as a demand for payment.

52. The periods covered by the last two invoices in the series overlap. The penultimate invoice covers the period 1 to 31 August 2022. The last covers the period 22 August 2022 to 26 September 2022. This appears to have resulted from a time-recording error. It is not disputed that the amount of work involved is minimal.

53. In my view this was an error with no real significance. I am unable to accept Mr Mallalieu's suggestion that it evidences an understanding on the Defendant's part (by reference to the May 2021 Terms, discussed below) that it was free to render more than one bill for the same period.

54. I heard submissions about the import of the following words, which appear in small print at the foot of each invoice:

> "You are also entitled to invoke our complaints handling procedures and may be entitled to have our charges reviewed by the court by way of the assessment procedure under Sections 70,71 and 72 of the Solicitors Act 1974."

55. It seems to me that that wording (and similar wording in the June 2016 Terms) is entirely neutral, and has no bearing upon the status of the invoices. A complaint can be made about anything, and the word "may", in relation to the possibility of detailed assessment, leaves the status of the bill entirely open. It has the appearance of standard wording that can be attached to any invoice without leaving the solicitor open to accusation either of misleading the client or leaving the client uninformed.

56. That said, there is nothing about the form or content of the Defendant's invoices generally that is obviously inconsistent with their being interim statutory bills.

"Finality" and the Effect of a Finding in the Claimant's Favour

57. In arguing that none of the Defendant's invoices, as rendered to date, have been final the Claimant has put much emphasis upon the fact that they only represent a part of the Defendant's potential fees for the work done during the period specified by each invoice. Accordingly, on the Claimant's case, none of them have the finality that is an essential characteristic of an interim statutory bill.

58. Mr Williams submits that where an agreement provides for payment A to be made on a specified date, but also for payment B to be made at a later date, depending upon outcome, then an invoice for payment A is nonetheless the final invoice for payment A.

59. The difficulty with that argument is that it goes directly against the concept of finality explained by Spencer J in *Bari v Rosen* and Simon Brown LJ in *Abedi v Penningtons*, as quoted above.

60. The test is not whether a given invoice is final for the charges it represents, but whether it incorporates a final charge for the work it represents. Bills may be described as final for the period they cover, but that amounts to the same thing: they are final and complete for any work performed during that period.

61. Mr Williams also points out that if the Claimant is right, so that no final bill can be rendered until the outcome of the CS litigation is known, it would follow that the Defendant may be unable to do so for more than 7 years, with the prospect of a very stale assessment procedure at the end of that period. The whole process could take 10 years.

62. One answer to that is, as Mr Mallalieu has pointed out, that this may be the effect of the agreement which the Defendant chose to enter with the Claimant. The parties could have, but did not, incorporate within the contract of retainer termination provisions designed to address that potential delay, for example providing for the Defendant to opt for an identified, final fee to be payable immediately on termination.

63. Another pertinent point seems to me to be that Mr Williams' concern is, necessarily, based on the premise that if any given invoice rendered to date is indeed final so that is too late to apply for assessment of that invoice, then the work covered by that invoice is no longer open to examination on the assessment of any future bill (as appropriate for the balance of the Claimant's standard hourly rates, for the Uplift Fee and for the Success Fee) for the same period. Otherwise there could be a "stale assessment" in any event.

64. That is how the Defendant's case, as I understand it, has been put. The Defendant's monthly invoices identify all the work done during the period covered by each invoice and the full amount payable for that work at the Defendant's standard hourly rates (the "Standard Fee"). Notwithstanding that they represent only a proportion of the Defendant's Standard Fee, the Defendant says that they are statutory bills, representing the unconditional element payable under the terms of the parties' retainer. Any challenge to the work undertaken, as detailed in those statutory bills, must be made within the time limits provided for by section 70.

65. Any future invoices representing the balance of the standard hourly rates and, as appropriate, the Uplift Fee and Success Fee would, says the Defendant, represent only a mathematical increase applied to the amount of the invoices already delivered. Any challenge to them could only be made to that mathematical increase.

66. This argument (or something very similar) was referred to, but not determined, in *Sprey v Rawlison Butler LLP*. I find myself unable to accept it.

67. Section 70 confers upon a solicitor's client a statutory right to apply for assessment of a solicitor's bill. It sets out time limits by reference to which the right may be lost. It does not limit the scope of such a challenge.

68. I appreciate that (as HHJ Gosnell observed in *Richard Slade & Co v Erlam*) the purpose of the time limits set out in the 1974 Act is to strike a balance between allowing a reasonable time for a client to question the quantum of costs, whilst protecting solicitors from having to deal with stale allegations of overcharging.

69. Those time limits, nonetheless, run from the date of delivery of a bill. They do not extend to bills that have not yet been delivered. Even if the time has expired for challenging invoices requiring part-payment for a given body of work, I am unaware of any authority that could justify the conclusion that it would not be permissible, on the assessment of further bills rendered for full payment and/or for an uplift on that payment, for an assessment to extend to the critical examination of the work upon which those further fees would necessarily be based.

70. I can see that if the relevant body of work had already been subject to an assessment, then the parties would be bound by the outcome of that assessment. Nor, I expect, would the assessment of later bills have any impact upon earlier statutory bills that are not being assessed. Otherwise, it seems to me it would be open to the court, on the delivery of a bill only for the conditional element payable under a CFA, to consider whether the work undertaken justifies the further payment sought.

71. It might be possible to for a solicitor and client to agree some arrangement to the contrary. Assuming however that it is possible to limit the Claimant's statutory rights by agreement, then one would at the very least expect such an agreement to be in very clear terms. There is no such agreement in this case. The premise that the Claimant's statutory rights would be limited in respect of any future bills seems rather to represent an attempt by the Defendant to overcome some of the difficulties raised by the proposition that invoices representing only a part of the potential full charge for its work are nonetheless final.

72. One comes back to Mr Mallalieu's point: if a solicitor enters into an agreement whereby a complete bill cannot be rendered for a lengthy period of time, it is not for the solicitor to complain that this may result in a "stale" assessment.

73. For those reasons, my view is that a finding to the effect that the invoices delivered to date by the Defendant are statutory bills, will have the effect only of preventing an assessment of those bills, insofar as the passage of time prevents it. It will not limit the scope of the assessment of any further bills rendered for the claimed balance of the Defendant's fees.

Informed Consent

74. The Claimant argues that any contractual agreement to the effect that the Defendant's regular invoices would be interim statutory bills would require the Claimant's "informed consent". In this context, that term refers to the proposition that, in order for any such agreement to be effective, the Defendant would have had to make the consequences of such an arrangement clear to the Claimant. That means in particular the loss, through the passage of time, of his right to apply for assessment of the Defendant's monthly invoices, even as the Defendant continued to act for him.

75. I believe that Mr Williams is right in saying that "informed consent", in this sense, has no bearing upon the appropriate interpretation of a contract of retainer. *Adams v Al Malik*, *The Winros Partnership v Global Energy Horizons Corporation* and other authorities which emphasise the importance of client knowledge, seem to me to address the delivery of an interim statutory bill where that is not authorised by the contract of retainer. The contractual position, in my view, is consistent with the judgment of HHJ Gosnell, sitting as a deputy judge of the High Court, in *Richard Slade & Co v Erlam*.

76. In *Richard Slade & Co v Erlam*, HHJ Gosnell (sitting as a deputy judge of the High Court) found that the following provisions in a contract of retainer permitted the delivery of interim statute bills:

> "Bills are rendered monthly in arrears. Our bills are detailed bills and are final in respect of the period to which they relate, save that disbursements (costs and expenses which we incur on your behalf) are normally billed separately and later than the bill for our fees in respect of the same period."

77. The logic of HHJ Gosnell's decision was that it was clear, by reference to that contractual provision, that the solicitor's monthly bills (final as they were for the work undertaken in relation to the period covered by each bill) were to be interim statutory bills, final for the work they represented. Although there is an obvious disadvantage to any client whose time to challenge a solicitor's interim statutory bill begins to run whilst that solicitor is still actively instructed, there is no statutory or regulatory obligation upon a solicitor whose retainer incorporates such a clear contractual term to spell out the full legal consequences of the delivery of such bills.

78. Although HHJ Gosnell's decision ultimately rested on the terms of a CFA which he found to have replaced the retainer in question, the conclusion to which I have referred seems to me to have been a part of his chain of reasoning, and not merely obiter. In any event I respectfully agree with him.

79. Whether a contract empowers a solicitor to render interim statutory bills falls, in my view, to be determined upon the normal principles of contractual interpretation. As HHJ Gosnell found, a solicitor and a client can agree that the solicitor may render interim statutory bills without delving into the legal consequences of that agreement. There is no requirement that the agreement itself should do so, and the client's subjective knowledge of the legal position is not to the point. If the retainer provides for the solicitor to deliver complete, final interim statutory bills for a given period, that will be sufficient.

CFAs and Interim Statutory Bills

80. I have been referred to the judgment of Nicklin J in *Sprey v Rawlison Butler LLP*. Like this case, *Sprey v Rawlison Butler LLP* concerned a discounted CFA: the client would pay 40% of the solicitor's standard hourly rates if the claim did not succeed, and if it did succeed would pay their full hourly rate plus a success fee of 50%. Nicklin J found that it was not open to the solicitor, under the terms of the CFA, to render monthly interim statutory bills.

81. Mr Williams submits that although that judgment is widely cited as authority for the proposition that it is not possible for a solicitor acting under a Conditional Fee Agreement to render an interim statutory bill, Nicklin J's judgment did not go that far. His findings were based upon his conclusion that the terms of the CFA did not permit the delivery of interim statutory bills.

82. I agree, but at paragraphs 25 and 40 of his judgment Nicklin J highlighted the difficulties of reconciling the necessary qualities of completeness and finality in an interim statutory bill, with the fact that under a CFA, a solicitor's charges are not finalised until its conclusion (I have removed references to termination which have no application to this case):

> "At the heart of an assessment is whether the sum charged by the solicitors to the client is reasonable. The charge for work done at 40% of the normal rates might well be reasonable, but at 100% not reasonable. A client would not know until the end of the claim… at which rate he was being charged…"
>
> (*Nicklin J's*) "... construction of the CFA is consistent with the principle that a statute bill cannot subsequently be amended… The effect of the clauses I have identified was that the 40% invoices were liable to be later changed. What was ultimately to be paid for the work that was the subject of any 40% invoice would not be known until the appellant won or lost the claim..."

83. At paragraph 37 of his judgment in *Richard Slade & Co v Erlam* HHJ Gosnell observed, of *Sprey v Rawlinson Butler LLP*:

> "I accept in that case there was an added complication that the solicitors hourly rate increased if the condition which triggered the success fee applied. Not surprisingly Mr Justice Nicklin found that an interim bill at the lower hourly rate could not be an interim statute bill because it was not a self-contained and final bill for that period…"

84. Assuming that it is possible to agree that interim statutory bills may be rendered for any unconditional element of a solicitor's charges under a CFA, one would expect the relevant retainer to contain clear terms overcoming the difficulties of reconciling the conditional element of any CFA with the concept of a complete and final interim bill.

Whether the June 2016 Retainer Authorised the Delivery of Interim Statutory Bills: Conclusions

85. My conclusion is that the June 2016 Retainer did not confer upon the Defendant any contractual right to render interim statutory bills.

86. The June 2016 Retainer did provide for the Defendant to render regular invoices, normally monthly, which would identify (as they subsequently did) their full value at the Defendant's standard hourly rates and which would be (as they subsequently were) accompanied by a breakdown of the hours worked by each fee earner. Read as a whole, but with particular reference to paragraph 6.1 of the June 2016 Terms, it is clear that the June 2016 Retainer provided that whatever further charges might be rendered by the Defendant for the period covered by each invoice would be based upon the same work.

87. What the June 2016 Retainer (or the terms of business that accompanied it) did not say was that the Defendant's monthly invoices would be final. That is wholly unsurprising, given that it was understood that each invoice represented only part of the Defendant's fees for the work described in the accompanying breakdown. That the conditions under which any further charges would be payable for that work had not yet been agreed, only served to increase the uncertainty surrounding the final charge to be rendered.

88. Further, the proposition that the Defendant's monthly invoices were to be final is inconsistent with the wording of the June 2016 Retainer to the effect that a final invoice would be sent when the work encompassed by the retainer had been, or was about to be, completed. It would follow that bills rendered in the meantime were not final, and that (as Mr Mallalieu says) the final invoice, when delivered, would incorporate the conditional elements of the Defendant's fees. In the meantime, as the June 2016 Retainer put it, the monthly invoices would help keep the Claimant "informed of the costs which are being incurred": a phrase consistent with final billing at a later point.

89. Mr Williams has drawn my attention to the fact that the June 2016 Terms provide both for payment on account (as does the June 2016 Retainer itself) and interim invoicing. There is however nothing determinative about that. Solicitor's terms of business commonly provide separately for payments on account in advance and for interim bills, which may or may not be statutory bills. Payment in advance will be held on client account. Interim billing provides a mechanism through which the solicitor can properly address cashflow needs by appropriating funds received from the client to office account. That is the case whether or not the bills are interim statutory bills.

90. I can find nothing in the June 2016 Retainer or the June 2016 Terms that could be said to have the necessary clarity attendant upon an agreement for the delivery of interim statute bills, much less in the context of a CFA. I am unable, on the evidence, to reach the conclusion that the June 2016 Retainer, together with the June 2016 Terms, authorised the delivery of interim statutory bills.

Whether an Agreement for the Delivery of Interim Statutory Bills Can Be Inferred from the Parties' Conduct

91. The Defendant relies upon authorities, notably *Abedi v Penningtons* and *Davidsons v Jones-Fenleigh*, which establish that, where a client acquiesces to the delivery of interim bills in the requisite form, one may properly imply an agreement to the effect that they were interim statutory bills. As Simon Brown LJ put it in *Abedi v Penningtons* (at page 207):

> "Before a solicitor is entitled to require a bill to be treated as a complete self-contained bill of costs to date, he must make it plain to the client expressly or by implication that that is his purpose of sending in that bill for that amount at that time. Then, of course, one looks to see what the client's reaction is. If the client's reaction is to pay the bill in its entirety without demur, it is not difficult to infer an agreement that the bill is to be treated as a self-contained bill of costs to date" – per Roskill LJ in *Davidsons v Jones-Fenleigh*…"

92. It seems to me that an insurmountable difficulty for the Defendant in pursuing this line of argument is that the monthly bills rendered and paid under the terms of the June 2016 Retainer were rendered by the Claimant and paid by the Defendant under the terms of a CFA which provided that they were not to be final. Payment without demur, under those circumstances, cannot be taken of evidence of an agreement to the contrary.

93. Nicklin J came to a similar conclusion in *Sprey v Rawlinson Butler LLP*, in which the CFA provided for monthly billing at the 40% rate:

> " … an inferred agreement between the parties that the 40% invoices that were rendered would be statute bills… would have been inconsistent with the terms of the CFA as I have held them to be and inconsistent with the principle from *Bari* that the bills had to be final bills in respect of the work that they purported to cover (because they were liable to be increased if the claim were won …"

94. My conclusion is that, in the period up to the 19 September 2021 Variation, there is no proper basis for inferring, from the parties' conduct, any agreement for the delivery of interim statutory bills. From 19 September 2021, the same principle must apply. If the June 2016 Retainer, as varied from that date, did not provide for the Defendant's monthly invoices to be interim statute bills, then there is no basis upon which to infer, from the Defendant's paying those invoices, any agreement to the contrary.

Whether the 19 September 2021 Variation Retrospectively Applied the May 2021 Invoicing Terms

95. The Defendant's case is that paragraph 2.1 of the May 2021 Terms provided for those terms to supersede any previous agreement. In consequence, even if the June 2016 Retainer did not provide for the Defendant's monthly bills to be interim statutory bills, the parties agreed in September 2021 that they were.

96. Putting aside for the present the question of whether the May 2021 Terms did indeed confer upon the Defendant the right to render interim statutory bills, in my view that there are several fatal obstacles to that argument.

97. It is plain that the Defendant went to some trouble to draw the Claimant's attention to its revised terms of business at the time that the Defendant was considering signing the 19 September 2021 Variation. It seems right, on the evidence, to conclude that the May 2021 Terms, insofar as consistent with the June 2016 Retainer as varied in September 2021, were adopted by the parties as part of that variation, so that the "usual invoicing and payment terms" upon which the Claimant was to pay 65% of the Standard Fee became the May 2021 Terms. It does not follow that the May 2021 Terms retrospectively converted previous non-statutory interim bills into statutory interim bills.

98. Paragraph 2.1, common to the June 2016 Terms and the May 2021 Terms, appears to be a standard clause designed to achieve clarity regarding the terms upon which any work has been done prior to the retainer being signed.

99. The May 2021 Terms were sent to the Claimant under cover of an email, sent by Mr Huntley's PA, copied to and self-evidently authorised by him, which confirmed expressly that they were not to have retrospective effect. If it is right to conclude (as I have) that the parties agreed to incorporate the May 2021 Terms into the 19 September 2021 Variation, this was, expressly, part of their agreement and the standard retrospectivity provisions of paragraph 2.1 would have to give way to that express agreement.

100. That aside, I do not believe that the May 2021 Terms could have the effect contended for by the Defendant. Those parts of the May 2021 Terms that apply to billing, expressly refer to future billing ("… You will receive invoices … shall bill you monthly…"). There was no suggestion that they were to apply to past bills.

101. A further point is that, even given that a contract of retainer authorises the delivery of interim statutory bills, it does not follow that any bill delivered during the course of that retainer is an interim statutory bill. As Spencer J put it in *Bari v Rosen* (at paragraph 7):

> "Even if there was a contractual right to issue interim statute bills, it would be a question of fact whether any individual bill issued to the client was a statute bill."

102. It would follow that if the May 2021 Terms conferred upon the Claimant the right to render interim statutory bills at the Discounted Rate, the adoption of those terms, even retrospectively, could not in itself change the fact that the bills previously rendered under the original terms of the June 2016 Retainer had not been interim statutory bills.

103. The only circumstances, as far as I am aware, in which non-statutory bills can in effect become final is where they become part of a *Chamberlain* series (discussed below), and as such part of a final bill delivered at a later time. It is not however suggested that the May 2021 Terms created a *Chamberlain* bill, and on the facts of this case I do not see how they could have done.

104. For those reasons, my conclusion is that the May 2021 Terms, even if they did confer upon the Defendant the right to render interim statutory bills at the Discounted Rate, could not have changed the non-statutory status of the invoices delivered by the Defendant before 19 September 2021.

Whether the 19 September 2021 Variation Authorised the Delivery of Interim Statutory Bills

105. I have found that the terms of the June 2016 Retainer are in themselves inconsistent with any right on the Defendant's part to render interim statutory bills, but also that the "usual invoicing and payment terms" upon which the Claimant was to pay the Discounted Rate of 65% of the Standard Fee became, from 19 September 2021, the May 2021 Terms.

106. The question then is whether this change provided for the Defendant's monthly invoices, as delivered after 19 September 2021, to be interim statutory bills.

107. Paragraph 6.4(a) of the May 2021 Terms provides that "generally" the Defendant's monthly invoices will be interim statutory bills and that they should be taken to be interim statutory bills unless stated otherwise. Paragraph 6.4(b) provides, as an alternative, interim "payment on account" invoices, to be identified as such. Paragraph 6.4(d) offers a partial explanation of the time limits appropriate to applications for the assessment of statutory bills.

108. Paragraph 6.4(b) makes specific reference to the delivery of "payment on account" invoices for charges rendered under CFAs or in contingency fee cases. Mr Williams submits that this is an entirely neutral clause which deals generally with payments on account, and that there is nothing in it to suggest that it is intended to have particular application to arrangements such as the June 2016 Retainer.

109. I am unable to agree. The May 2021 Terms, at paragraph 5.5, carried over and preserved the general provisions for payment on account already in the June 2016 Terms. It follows that paragraph 6.4(b) adds something. It seems to me tolerably clear that it adds a provision (entirely appropriate, to my mind) for interim non-statutory billing of the non-conditional element in retainers such as the June 2016 Retainer, with specific provision for further billing when the conditional elements become due. In contrast, paragraph 6.4(a) does not seem to be designed for a CFA or contingency arrangement: it does not mention such agreements.

110. That aside, it is difficult to see how paragraph 6.4(a) could work. Paragraph 6.1 (as in the June 2016 Terms) provides that the Defendant's monthly invoices will cover all work undertaken during the relevant period. Paragraph 6.4 (a), on its face, provides for those monthly invoices to be final bills but at the same time not final, conferring upon the Defendant the right to render an unlimited number of purportedly final bills for the same work. This is the antithesis of completeness and finality, as they are understood for the purposes of identifying a statutory bill.

111. Mr Williams concedes, rightly in my view, that paragraph 6.4(a) of the May 2021 Terms would be unlikely to survive scrutiny were the contract of retainer between the Claimant and the Defendant a consumer contract (which it is not). The more fundamental problem however is to my mind that paragraph 6.4(a), in conjunction with paragraph 6.1, does not make sense. Either a bill is final for a given body of work, or it is not.

112. Mr Williams reminds me of the established law in relation to the variation of statutory bills. The starting point (subject to certain statutory provisions that have no bearing for present purposes) is that, a statutory bill being final for the relevant period, the solicitor who renders the statutory bill is bound by it and cannot vary it unilaterally.

113. The solicitor can however vary the statutory bill either with the permission of the court or by agreement with the client. Mr Williams argues that if a solicitor and client can agree to vary a statutory bill after it is delivered, there is no reason in principle why they cannot agree to the variation of a statutory bill before it is delivered.

114. I have two difficulties with that proposition. The first is that paragraph 6.4(a) does not describe the variation of statutory bills. It simply confers upon the Defendant the right to render an infinite number of purportedly final bills for the same work. The second is that, to my mind, if it is agreed in advance that a bill is subject to variation then it cannot be described as final, and if it is not a final bill it cannot be a statutory bill.

115. Another point made raised by Mr Williams is that even if paragraph 6.4(a) of the May 2021 Terms cannot justify the delivery of more than one statute bill for the same work, it would have the effect only of invalidating the second and any subsequent purportedly statutory bills. It would not invalidate the first statutory bill.

116. It seems to me that this line of thinking does not assist the Defendant. It would be inconsistent with the appropriate interpretation of the varied June 2021 Retainer as a whole, to find that paragraph 6.4(a) provides for the Defendant to render only one valid, final and complete statutory bill at the Discounted Rates. If anything, the point seems to illustrate the fact that the application of paragraph 6.4(a) of the May 2021 terms is wholly unclear.

117. I bear in mind that the June 2016 Retainer (as varied in September 2021) is a Conditional Fee Agreement under which further invoices will be rendered for the same work as and when the conditional elements of the agreement are met; the specific provisions of the June 2016 Retainer to the effect that a final invoice will be rendered when the work has been, or is about to be, completed (with the necessary implication that invoices rendered before that point are not final); and the inherent contradictions in paragraph 6.4(a) itself.

118. My conclusion is that paragraph 6.4(a) of the May 2021 Terms lacks the necessary clarity to confer upon the Defendant's monthly invoices from 19 September 2021 the status of interim statutory bills.

119. As a further point I refer back to Spencer J's confirmation, in *Bari v Rosen*, that it does not follow from the fact that a contract of retainer confers upon a solicitor the right to render interim statutory bills, that a given bill is in fact an interim statutory bill.

120. It seems to me that the true position is that (as Mr Mallalieu suggests) the Defendant, from 19 September 2021, rendered interim non-statutory bills in accordance with the provisions of paragraph 6.4(b) of the May 2021 Terms, but omitted to label them as such. That conclusion appears to me to be consistent with the evidence of Mr Huntley to the effect that he had always understood the Defendant's monthly invoices to be "final". Under those circumstances it would not have occurred to him to consider whether paragraph 6.4(b) imposed upon the Defendant an obligation to identify its monthly invoices as "payment on account" invoices.

Whether the Defendant Rendered Statutory Invoices at "Natural Breaks"

121. Mr Williams did not pursue that argument before me, except to the extent that it might be said to apply to the point where the Defendant terminated the retainer.

122. That is in my view a proper and appropriate concession. It is difficult to see how the "natural break" principle could apply in circumstances in which there was no correlation between the delivery of the Defendant's invoices and any "natural break" that might be said to have occurred in the CS litigation.

123. Limited as the "natural break" argument is to the termination of the retainer, I can consider it together with the question of whether the Defendant's invoices could be said to have constituted a *Chamberlain* series, culminating in a final bill rendered on the termination of the retainer.

The Effect of Termination

124. A series of non-statutory bills may culminate in, and be incorporated within, one final statutory bill (*Bari v Rosen* at paragraphs 55 and 56, referring to *Chamberlain v Boodle and King*). The Defendant argues that, absent contractual provision for interim statutory bills, such would be a proper construction of the events in this case, and in the alternative that (looking at the same facts in a different way) the termination of the retainer could properly be identified as a "natural break" at which the Defendant was entitled to finalise its billing.

125. The difficulty with both approaches is that although the retainer has ended, the Defendant's billing is not yet final. The Defendant reserves the right to charge more for the work that has been done.

126. Underlying the *Chamberlain* principle is the understanding that, billing has been finalised, typically on the termination of a retainer. In that context, it is appropriate (and is likely to be convenient) for a solicitor to render a final bill that incorporates previous non-statutory bills. If however further payment is potentially due, then billing cannot yet be finalised and the *Chamberlain* principle has no application.

127. Nor could the termination of the retainer be identified as a "natural break" by reference to which the Defendant could be entitled to treat all invoices previously rendered as final statutory bills.

128. That is, again, primarily because the Defendant's invoices were not final. As Lord Esher, MR put it in *Romer v Haslam* (at 294):

> "… a solicitor cannot be said to have sent in a final bill if he has sent in something which neither party understood nor intended to be final."

129. I can find no basis for concluding that on the termination of the retainer on 23 September 2022 either party intended, contrary to the terms of the June 2016 Retainer (either before or after variation from 19 September 2021), that in consequence all bills were to become final. That would require, on the Defendant's part, an abandonment of any further claim for payment for the same work, and that is not the Defendant's position.

130. I believe that the correct interpretation of the position must, consistently with the provisions of the June 2016 Retainer as varied in September 2021, be that the invoices delivered to date can only be finalised when either the Defendant delivers a bill for such additional fees as may be due (for the balance of its hourly rates and/or, as appropriate, the Uplift Fee and the Success Fee) or the Defendant accepts that nothing further is due, and finalises its billing on that basis. In those circumstances it could be right to treat the monthly invoices rendered by the Defendant to date as part of a *Chamberlain* series, but not otherwise.

Summary of Conclusions

131. The monthly invoices rendered by the Defendant under the terms of the June 2016 Retainer before it was varied from 19 September 2021 were not statutory bills.

132. The May 2021 Terms adopted by the parties from 19 September 2021 did not have retrospective effect, because the parties agreed that they would not have such effect. Even if they did have retrospective effect it would not have extended to monthly invoicing, given that the May 2021 Terms expressly applied to future invoicing. Nor could any such agreement have converted retrospectively what were, as a matter of fact, non-statutory invoices into interim statutory bills.

133. The monthly invoices rendered by the Defendant under the terms of the June 2016 Retainer after it was varied in September 2021 were not statutory bills.

134. There is no basis for inferring, from the conduct of the parties at any time, an agreement to the effect that the Defendant's monthly invoices were statutory bills, because any such agreement would have been inconsistent with the terms of the retainer under which they were rendered and paid.

135. I find no basis for concluding that the Defendant's monthly invoices became statutory bills on the termination of the Defendant's contract of retainer on 23 September 2022, whether together as a *Chamberlain* series or by reference to a natural break. Neither the *Chamberlain* nor the natural break principles can apply when billing has not been finalised.