Neutral Citation Number [2024] EWHC 2172 (SCCO)
Case No: SC-2024-BTP-000027

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Courtroom No 94

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

Date: Wednesday, 3 July 2024

Before:

DEPUTY COSTS JUDGE ROY KC

- -

Between:

MS N CHRISTODOULIDES	**Applicant**
- and -	
MR C HOLBECH	**Respondent**

- -
- -

The Applicant appeared **in Person**
Mr L Thompson appeared for the **Respondent**

- -

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.

....

DEPUTY COSTS JUDGE ROY KC

Costs Judge Roy KC:

1. I am giving judgment on the claimant's application dated 16 May 2024.

2. This is an application in effect to order an oral hearing to revisit my previous provisional assessment of the second defendant's bill.

3. Therefore, it is in effect an application for me to revisit my order of 7 May 2024 made without a hearing. That order said that upon my having considered letters from the claimant dated 12 April 2024 and from the defendant dated 15 April 2024, and determining that the claimant had failed to produce a properly formulated request for an oral hearing, I ordered that the provisional assessment stand as the final assessment.

4. The basis upon which I did that was by reference to the relevant rules in the CPR.

5. **Rule 47.15(7)** provides (emphasis added):

> *When a provisional assessment has been carried out the court must send a copy of the bill as previously assessed to each party with a notice stating that any party who wishes to challenge any aspect of the provisional assessment must within 21 days of receipt of the notice file and serve on all of the parties a written request for an oral hearing. <u>If no such request is filed and served within that period the provisional assessment shall be binding upon the parties save in exceptional circumstances</u>.*

6. **Rule 47.15(8)** provides (emphasis added):

> *The written request referred to in paragraph seven <u>must –</u>*
>
> *(a) <u>identify the item or items in the court's provisional assessment which are sought to be reviewed</u> at the hearing; and*
>
> *(b) provide a time estimate for the hearing.*

7. I treated, as I am sure it was intended to be, the claimant's letter of 12 April as a request for an oral hearing, i.e. to re-open the provisional assessment. I read it carefully at the time. I

have reread it several times currently again over the past two days

8. Having done so, I was and remain of the view that even on the most generous interpretation it cannot be said to be compliant with **CPR 47.15(8)**.

9. The letter simply does not identify the item or items in the provisional assessment, which are to be reviewed. There were 43, I think, items provisionally assessed. What was required was for them to be identified by number, or at least one way or another. The letter simply does not do this. Likewise, although I can see that this is less problematic, it fails to provide a time estimate.

10. Therefore, it follows that applying **rule 47.15(7)** the provisional assessment is binding save in exceptional circumstances.

11. I pause here to add that non-compliance of the 12 April letter is in no way cured by the subsequent application. It likewise does not identify the items in the provisional assessment to be challenged.

12. Instead, very much like the letter of 12 April, it contains wide-ranging complaints of unfairness, lack of transparency, improper conduct of various practices and so forth on behalf of the second defendant and/or his lawyers. It still does not "*identify the item or items in the court's provisional assessment which are sought to be reviewed*".

13. The application also contains a request that the assessment of the second defendant's costs be conducted alongside an assessment of the first defendant's costs. However, this formed no part of the provisional assessment. It therefore does not come within the scope of what is open for me to consider following a provisional assessment.

14. I have listened very carefully to what the claimant has said today. I have explained the rules more than once. I have ensured that they are set out for her, and indeed physically displayed in front of her in the *White Book*. I repeatedly explained the nature of the hearing and encouraged her to focus her submissions on the question of why there should be an oral

hearing despite what the rules say. Having done so I have heard nothing to change my original view.

15. I appreciate it is difficult for a litigant in person to direct their arguments with appropriate focus, but the fact of the matter is that virtually all of the claimant's submissions have really been directed at the allegations of misconduct and fabrication which go to the substance of the case rather than why the provisional assessment should be re-opened despite non-compliance with the rules. I asked her why the rules could not have been complied with and she was not able to identify any real answer to that.

16. I should say I fully accept in principle that, for example via **CPR 44.14**, if there has been misconduct that does empower the court to disallow some or all of a party's costs. However, that does not change the fact that the claimant was required to comply with **CPR 47.15** in order to re-open the provisional assessment.

17. I appreciate that the claimant feels very strongly about all these matters and I also appreciate that acting without lawyers is very difficult, stressful and challenging. I agree that some leeway is justified. However, it cannot justify this level of non-compliance. I refer here to the judgment of ***Barton v Wright Hassell LLP*** [2018] UKSC 12; [2018] 1 WLR 1119, per Lord Sumption at [18], and I quote:

> *In current circumstances the court will appreciate that a litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with the rules or orders of the court. The overriding objective requires the court so far as practical to enforce compliance with the rules,* ***CPR rule 1.1(1)(f)****. Rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of the court against him.*

18. There are other cases to that effect quoted therein. With reference to ***R (Hysaj) v Secretary of State*** [2014] EWCA Civ 1633; [2015] 1 WLR, Lord Sumption continued:

> *At best, it may affect the issue "at the margin", as Briggs LJ observed (para 53) in the latter case, which I take to mean that it may increase the weight to be given to some other, more directly relevant factor. It is fair to say that in applications for relief from sanctions, this is mainly because of what I have called the disciplinary factor, which is less significant in the case of applications to validate defective service of a claim form. There are, however, good reasons for applying the same policy to applications under CPR rule 6.15(2) simply as a matter of basic fairness. The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take.*

19. In my judgment the rules applicable to a request for an oral hearing are neither particularly inaccessible nor particularly obscure. Indeed, I do not consider them to be in any way inaccessible or obscure.

20. Against that background, I turn to the question of whether there are exceptional circumstances justifying discretionary relief from non-compliance. I am not persuaded that there are. Again I did not really hear form the claimant much if anything which was really directed towards that beyond assertions of the strength and seriousness of the allegations of impropriety.

21. I have come to the decision for the following reasons.

22. First of all, whilst there is no authority on this rule of which I am aware, applying the natural meaning of the words the threshold exceptional circumstances is by definition a high bar.

23. Secondly, I can see nothing exceptional here. The claimant has, for no good reason which I have been able to identify or which has been evidenced or explained, simply failed to comply with the rules. Indeed, she has made no attempt to do so, and still today does not seem to

recognise the need to do so. There is no suggestion that, for example, she took the basic step of trying to ascertain what the relevant rules (which are readily available on the internet) said and required. By reference to the case of ***Barton***, which I have just quoted, being an unrepresented party is not by itself a good reason for non-compliance.

24. Thirdly, there are powerful factors militating against relief:

(1) This is not a minor slip. It is not, for example, a case of a request being served a day later. There has been wholesale non-compliance.

(2) This non-compliance is persistent and continuing. Notwithstanding the terms of my order of 7 May 2024, there has still be no attempt to provide a compliant request. The application notice did not contain or append any such. It was really just more of the same. In my judgment it would be contrary to the overriding objective to allow what would be a third bite of the cherry. This is especially as the claimant has not stated any intention to rectify the problem by producing a compliant request.

(3) To allow non-compliance here would undermine the very point of the rule, which is to ensure that any oral hearing should be conducted properly and fairly and within properly identified limits in accordance with the overriding objective. See by analogy ***PME v The Scout Association*** [2019] EWHC 3421 (QB); [2020] 1 WLR 1217 and ***Ainsworth v Stewarts Law LLP*** [2020] EWCA Civ 178; [2020] 1 WLR 2664. In other words it is not to be a free-for-all. If I were to allow an oral hearing on the basis of the current request I am afraid to say that free-for-all is precisely what the assessment would be.

25. I finally turn to the point which the claimant emphasised the most, namely that she raises very serious allegations. I accept that she does. I also accept that such allegations could only really be properly determined on a full assessment on an oral hearing.

26. However, that is not sufficient to outweigh the other factors. This is especially do as:

(1) The fact that serious allegations are raised is not by itself any excuse for non-compliance: ***Gentry v Miller*** [2016] EWCA Civ 141; [2016] 1 WLR 2696.

(2) In this case, the point cuts both ways. Indeed, in my view overall it tells against the application. Fairness to those facing such serious allegations (and at the moment they are just allegations, I can make no finding either way as to their merits) requires that the allegations be clearly and precisely identified so that they have a fair and proper chance to meet them. That would simply will not be possible given the non-compliance here.

27. Therefore, for all these reasons, I dismiss the application and the provisional assessment remains final.

End of Judgment