



Neutral Citation Number: [2020] EWCA Civ 178

Case No: A2/2019/0601

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE (Chancery Division)
His Honour Judge Klein (sitting as a High Court Judge)
CH2018000302

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/02/2020

Before:

LORD JUSTICE LEWISON
LORD JUSTICE PETER JACKSON
and
LADY JUSTICE ASPLIN

Between:

Ainsworth
- and -
Stewarts Law LLP

Appellant

Respondent

Mr Joshua Munro (instructed by **Clarke Barnes Solicitors**) for the **Appellant**
Mr Robin Dunne (instructed by **Stewarts Law LLP**) for the **Respondent**

Hearing date: 4th February 2020

Approved Judgment

Lady Justice Asplin:

1. This is an appeal from the decision of the senior Costs Judge, Chief Master Gordon-Saker, to dismiss the Appellant’s Point of Dispute 10 in respect of the costs of work done on documents at a hearing of a solicitor and own client assessment of costs pursuant to section 70, Solicitors Act 1974. It raises the question of how detailed points of dispute must be on a solicitor and own client assessment, particularly where a challenge is made to all of the items in an invoice on a number of grounds.

Background

2. On 17 October 2017, the Appellant, Mr Kjerulf Ainsworth, instructed the Respondent, Stewarts Law LLP, to act for him in respect of financial claims and allegations arising out of the breakdown in his relationship with his former partner. Mr Ainsworth was not satisfied with the services Stewarts Law provided and terminated their retainer on 23 November 2017. He then applied for a detailed assessment of Stewart Law’s invoices dated 6 November 2017, 22 November 2017 and 29 November 2017, pursuant to Part III of the Solicitors Act 1974.
3. Directions were agreed and an order dated 5 February 2018 was made by consent. The consent order provided for service of a breakdown of the invoices, the ability of Mr Ainsworth to inspect Stewarts Law’s files and the filing of points of dispute and replies and that either party might apply for a hearing date no later than 4 May 2018. It was expressly stated that CPR r46.10 applied save as varied by the order.
4. In accordance with the consent order: Stewarts Law served a Breakdown of Costs; Mr Poole, Mr Ainsworth’s costs draftsman, inspected Stewart Law’s file on 15 March 2018 and subsequently acknowledged by email that he “got everything [he] needed by way of a feel for the case, consideration of communications with the client etc”; Points of Dispute were served on 3 April 2018; Stewarts Law served Points of Reply on 17 April 2018; and Stewarts Law applied for a hearing with an agreed time estimate of 1½ days.
5. The focus of this appeal is on work done on documents in the period from 17 October to 31 October 2017. Stewarts Law’s Breakdown of Costs of that work, which featured in its invoice dated 6 November 2017, took the following form:

“Work done on Documents

See attached Schedule 1

40. Engaged 1 hr 12 mins (SF)

41. Engaged 2 hours 54 mins (DC)

42. Engaged 2 hrs 24 mins (TA)

43. Engaged 20 hrs 6 mins (LG)

44. Engaged 11 hrs 42 mins (HF)

45. Engaged 8 hrs 30 mins (Paralegals)”

Schedule 1 contained thirty-two timed entries, each of which comprised a length of time and the fee earner in question. For example:

“18/10/17 Preparation for the first meeting with the client; post-meeting correspondence and consideration to include liaising with counsel in respect of the planned consultation and follow-up email exchange with the client (LG) – 2hrs 24 mins

...

20/10/17 Strategic discussion with LG following visit with the client to 4 De Vere Gardens; working on draft letter to Kingsley Napley and reviewing follow-up emails for the client (HF) – 30 mins

20/10/17 Settling the Notice of Change of Solicitor together with letters to the court, previous solicitors and Kingsley Napley; discussion with HF regarding strategy and her visit with the client to 4 De Vere Gardens; general review of correspondence received from the client. (LG) - 1 hr 6 mins

20/10/17 Preparing draft letters and Notice of Change of Solicitor; reviewing and collating documents sent by the client (Paralegals) - 4 hrs

...

29/10/2017 Engaged reviewing documents and correspondence in advance of the call with counsel and the client (HF) - 3 hrs 36 mins.”

6. Mr Ainsworth’s Points of Dispute 10 in respect of “Items 40 – 45 Documents Time” was as follows:

“The Claimant requests the court to note that over a period of 11 working days the Defendant seeks to claim 46.8 hours of work which is equivalent to approximately 4.3 hours of time every single day. It is the clear opinion of the Claimant that under any stretch of the imagination, the level of time expended can in no way be justified and against the relevant test, the time expended, and its subsequent cost must be deemed to be unusual in nature and amount.

As with the timed attendances upon the Claimant, the Claimant is mindful of the requirements of the Civil Procedure Rules as to the need to keep Points of Dispute brief and succinct. It must therefore be stated that all entries are disputed. By way of general indication however, the Claimant can confirm the main issues with the document time are as follows:

1. Significant duplication between fee earners
2. Wholly excessive time expended by fee earners reviewing documentation provided by the Claimant
3. Too much time claimed generally in relation to preparation
4. An excessive level of time claimed in relation to drafting of communications
5. Unnecessary inter-fee earner discussions arising due to the duplication

6. Excessive time spent collating documentation
7. Significant preparation time claimed in relation to meetings with the Claimant.

It can be confirmed that the above stated list is not exhaustive of the issues but provide a general overview as to the reason why the time claimed is unusual in nature and/or amount. The Claimant reserved their position generally.”

In response in Stewarts Law’s Points of Reply in relation to each of Items 40 - 45, stated:

“The defendant cannot provide any meaningful reply to this general point. In the absence of itemised points of dispute being served (permission to rely on the same being a matter for the court and the Defendant’s position will be reserved), the Court will be asked to dismiss this point”

7. The court gave notice of the detailed assessment hearing on 19 April 2018 with the hearing listed for late September. Despite Stewart Law’s reply in relation to Items 40 – 45 in the Points of Dispute, nothing further was served on behalf of Mr Ainsworth.

The Hearing

8. At the detailed assessment hearing before Chief Master Gordon-Saker, the senior costs judge dealt with the Points of Dispute until he came to Points of Dispute 10 - Items 40 - 45. At that point, Mr Poole, Mr Ainsworth’s costs draftsman, who was representing him at the hearing, stated that general arguments had been raised and what he would like to do was to “run through some of the entries in relation to the schedule and . . . sort of consider some of those entries and then form a view as to the costs as a whole . . .” (See the transcript of the hearing at 73E.) The Chief Master described such an approach as “broad brush.” Mr Dunne, on behalf of Stewarts Law, objected to that approach because specific objections to items had not been made and consideration of a few items and a broad brush reduction would not be satisfactory because his clients did not know what had been objected to and there was not time to go through everything. (See the transcript at 73G – 74B and C-F.)
9. The Chief Master went on to note that: “While the claimant has indicated that all entries are disputed, it isn’t stated why any particular entry is disputed and that does cause the defendant a bit of a problem because how can they prepare for a detailed assessment when they don’t know what is being alleged against them.” Mr Poole submitted that the “general principles or general arguments” had been adopted and later accepted that the Points of Dispute did not state why any particular item was in dispute. The Chief Master also noted that ‘They [Stewarts Law] wouldn’t know which general objection relates to which point.’ (See the transcript at 75B -G.) Mr Poole, on behalf of Mr Ainsworth, went on nevertheless, to submit that the items which would be referred to would inevitably be the “larger entries” which would be questioned “as to their reasonableness and appropriateness” and that it could not be suggested that the receiving party (Stewarts Law) was in the dark or that there was any unfair prejudice. (See the transcript at 77B-E.)

10. Having been invited to do so, the Chief Master then dismissed Point of Dispute 10 on the basis that it had not been properly pleaded. The relevant paragraphs in his judgment delivered *ex tempore* are as follows:

“8. In oral submissions, Mr Poole on behalf of the claimant seeks to take a broad brush approach to the document schedule and indicated that what he would like to do is to identify some particular items and explain why those are unreasonable, with a view to persuading the court that the time overall should be reduced on a broad brush approach and he candidly accepted, as one might expect, that the items which he would be relying on in particular would be the biggest items in terms of the time spent.

9. The difficulty with that, it seems to me, is that the claimant has not set out in his points of dispute which items he wishes to challenge and why and that does cause, as the defendant has indicated in its reply, a difficulty insofar as – in respect of items which have not yet been identified – they would need to look at the attendance notes to see what work was done and why and the context in which it was done in order to seek to explain why the time claimed is reasonable, if indeed that is the objection, or why a particular fee earner was engaged in doing it and why possibly more than one fee earner was engaged in doing it.

10. The purpose of points of dispute is really to prevent that work being done on the hoof in the course of a hearing. The solicitors are entitled to know specifically which items are challenged and the reasons for the challenge. Insofar as the claimant states that all entries are disputed, it seems to me that it would be beholden on him to explain why each particular entry is challenged and whether he is asserting that no time should be allowed or reduced time should be allowed or whether the work should have been done by a different grade of fee earner. But, as pleaded, the points of dispute, it seems to me, do not raise a proper challenge to the documents items and certainly do not raise a challenge which can be properly answered by the defendant without a considerable amount of time being spent in looking at the papers to reply to that challenge and that, it seems to me, is a process, which if it is to be done, should be done in advance of the hearing rather than at the hearing.

11. One can well understand why Mr Poole is seeking to adopt the approach that he is of encouraging the court to take a broad brush but the difficulty with that approach is that we are not going to be looking at every item, we will only be looking at particular items and presently, apart from Mr Poole, none of us knows which items those are going to be. It seems to me that that does put the defendant in a difficult position. It also puts the court in a difficult position. I read the papers in the light of the

points of dispute as they are pleaded and I was not able to identify which particular items are challenged or why.

12. In the circumstances, I think the only fair course is to dismiss that point of dispute 10 on the basis that it has not been properly pleaded.”

11. An adjournment was then sought in order that further Points of Dispute could be filed. The Chief Master refused an adjournment on the basis that: the deficiency in the Points of Dispute had been pointed out in the Points of Reply almost six months before the hearing but Mr Ainsworth chose not to serve anything more; Mr Poole had had access to Stewarts Law’s files and further itemised points of dispute should have been served; there had been sufficient opportunity to do so; there was a reasonable expectation that the matter would be concluded within the 2 days [1 ½ days] which had been allotted; and it would be unjust and disproportionate if the detailed assessment were extended to enable something to be done which ought to have been done in advance of the hearing. See paragraphs 13 – 17 of the judgment. There was no appeal against this aspect of the Chief Master’s judgment.
12. Mr Ainsworth did appeal the Chief Master’s decision to dismiss Point of Dispute 10, however, on grounds which in summary are as follows: the dismissal was a breach of Mr Ainsworth’s rights under section 70, Solicitors Act 1974 and that he was entitled to be heard; and the Points of Dispute 10 contained more detail than is required under CPR r47 and Precedent G of the Schedule of Costs Precedent. That appeal was heard by His Honour Judge Klein sitting as a High Court Judge in the Chancery Division, on 26 February 2019. He gave a short and careful judgment, the citation of which is [2019] EWCA Civ 897.
13. The judge held that he was “not satisfied that the Chief Master’s decision was outside the range of acceptable decisions and that it did not further the overriding objective or that it was plainly wrong, or indeed, wrong at all.” See paragraph 48. He had concluded at paragraph 44 that the Chief Master’s decision had been “robust” but subject to the “entitlement ground of appeal” (to which I shall refer below) he was not satisfied that it did not further the overriding objective. At paragraph 42 he had stated that the choice the Chief Master made might only have been “illegitimate in the sense of not furthering the overriding objective . . . if that choice was not a proportionate response the claimant’s failure himself to further the overriding objective.” He went on to set out seven reasons why that was not the case. In summary, they were:
 - (i) The hearing was fixed five months before it took place.
 - (ii) By 5 February 2018 Mr Ainsworth had the right to inspect Stewart Law’s files and that right was exercised.
 - (iii) By April 2018, five months before the hearing, Mr Ainsworth knew from Stewart Law’s reply to the points of dispute that Stewarts Law could not properly respond to the points of dispute on work done.
 - (iv) Mr Ainsworth had the prima facie right to amend the points of dispute and give further particulars of his objections but did not do so.
 - (v) Mr Ainsworth’s representative at the hearing before the Chief Master clearly appreciated that the points of dispute did not particularise the complaints about the individual items.

- (vi) If Mr Ainsworth had been allowed to proceed, the hearing would have had to have been part-heard. Even if it had been appropriate to adopt a broad brush approach or because Mr Ainsworth had abandoned his challenge to some items, the judge was not confident on the available information that the hearing could have been concluded on time.
 - (vii) It was incumbent on the parties to ensure that the court had an accurate time estimate for the hearing before the Chief Master to ensure it is reasonable to suppose that the hearing did not have to be adjourned part heard.
14. The judge also noted that: even if Practice Direction 47, para 8.2 is complied with simply by the adoption of Precedent G (to which I shall refer below) which he said it was not, it did not follow that there was no overarching obligation on the claimant to further the overriding objective; it is possible to understand why costs judges adopt a benign approach to the content of points of dispute in inter partes costs assessments where the burden of proof is effectively on the receiving party and the paying party does not have access to the solicitor's files; but even if the Chief Master might have approached the matter in that way, it does not lead to the conclusion, amongst other things, that Mr Ainsworth is relieved from furthering the overriding objective; the case is not distinguishable on the basis that the assessment was to be conducted on the indemnity basis and Mr Ainsworth had access to Stewarts Law's files and that the Chief Master's decision was wrong. See paragraphs 44 – 46 of the judgment.
15. Lastly, the judge went on to consider what was described as the "entitlement ground of appeal". He did so for the sake of completeness, Mr Munro, on behalf of Mr Ainsworth, having accepted that the ground took the matter no further if the Chief Master's decision was otherwise a legitimate case management decision. Nevertheless, the judge rejected the submission that Mr Ainsworth had an unrestricted right to litigate the detailed assessment proceedings because they arose under the Solicitors Act 1974. See paragraphs 50 and 51 of the judgment.

The Grounds of Appeal and Respondent's Notice

16. In summary, it is said on behalf of Mr Ainsworth that the Chief Master's refusal to assess the costs in respect of Document Time under Items 40 – 45 at Points of Dispute 10 was wrong and the judge was wrong to uphold it because:
- i) The Chief Master's decision amounted to a strike out but he was not referred to and did not consider CPR r3.4 before deciding to do so;
 - ii) The Chief Master failed to consider Practice Direction 47 para 8.2 or Precedent G at all;
 - iii) The Chief Master struck out that part of the points of dispute, despite the fact that they were adequately and properly pleaded; and
 - iv) even if he was correct that there was insufficient time at the hearing and that the matters were insufficiently pleaded, there were fairer courses which could have been taken, including adjourning the matter and giving directions for further, more detailed Points of Dispute.

17. On behalf of Stewarts Law, it is said that the Chief Master and the judge were right for the reasons they gave and, in the alternative, or in addition, the decision should be upheld because it was made on a solicitor and own client detailed assessment where Precedent G does not apply.
18. When granting permission to appeal Longmore LJ stated that he was persuaded that a genuine point of principle arose, namely “How detailed Points of Dispute should be in a case in which a challenge to a number of items is made on a number of grounds.” Having warned that there was a risk that the court would consider that the Chief Master did no more than make a case management decision with which it is not possible to interfere, Longmore LJ stated that Stewarts Law should provide three examples of points to which they say they were unable to respond.

Section 70 Solicitors Act 1974

19. Although the “entitlement ground” (as it was described before the judge) which is based upon section 70, Solicitors Act 1974 is not a separate ground of appeal before us, Mr Munro relied upon it more generally. As section 70 goes to the nature of the assessment which the Chief Master conducted, it is a convenient place to begin. Section 70, Solicitors Act 1974, where relevant, provides as follows:

‘70 Assessment on application of party chargeable or solicitor.

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

...

(5) An order for the assessment of a bill made on an application under this section by the party chargeable with the bill shall, if he so requests, be an order for the assessment of the profit costs covered by the bill.

(6) Subject to subsection (5), the court may under this section order the assessment of all the costs, or of the profit costs, or of

the costs other than profit costs and, where part of the costs is not to be assessed, may allow an action to be commenced or to be continued for that part of the costs.

(7) Every order for the assessment of a bill shall require the costs officer to assess not only the bill but also the costs of the assessment and to certify what is due to or by the solicitor in respect of the bill and in respect of the costs of the taxation.

...

(12) In this section “profit costs” means costs other than counsel’s fees or costs paid or payable in the discharge of a liability incurred by the solicitor on behalf of the party chargeable, and the reference in subsection (9) to the fraction of the amount of the reduction in the bill shall be taken, where the assessment concerns only part of the costs covered by the bill, as a reference to that fraction of the amount of those costs which is being assessed.”

20. Mr Munro submitted that the Chief Master’s failure to hear the assessment in relation to Items 40 – 45, which comprised over half of the entire bill of costs, was unfair. He submitted that dismissing Points of Dispute 10 was contrary to Mr Ainsworth’s right to be heard and to have a solicitor and own client assessment under section 70, Solicitors Act 1974 and that the Chief Master was under an obligation to assess those costs pursuant to section 70(7). Accordingly, directions should have been given for filing further Points of Dispute and the matter should have been adjourned to be dealt with on another occasion, if necessary. Mr Munro accepted, however, that the process was governed by the procedure set out at CPR r46.10 and that the right to an assessment was subject to the consideration of proportionality both in relation to the costs and time of the parties and court time and resources. He submitted, nevertheless, that even if the paying party on a solicitor and own client assessment failed to serve any Points of Dispute they would have a right to be heard.
21. It seems to me that, at its highest, this is to misunderstand the nature of the right under section 70. Although Mr Ainsworth, as the party chargeable, was entitled to an order for the assessment of Stewart Law’s bill, having requested such an assessment within the relevant period (see section 70(5)) that right, and the concomitant obligation of the “costs officer” under section 70(7) to assess those costs and the costs of the assessment itself, are not absolute. When Parliament provided for a right to apply to court, it must have envisaged that the rules of court would apply to such an application. Both the right and the obligation must inevitably be subject to the rules and procedures which relate to the exercise of that right which include the rules of the court itself. Had it been intended that the right, and the obligation for that matter, was absolute, it seems to me that section 70 would have been worded very differently. As it stands, in my judgment, the ordinary meaning of section 70 is that the solicitor and own client assessment will be carried out by the court in accordance with the rules by which such matters are governed, including the case management powers of the court.
22. Not only are the words of the statute naturally to be read in that way, if the matter were otherwise, one would reach the absurd position in which all assessments of costs under

the Solicitors Act 1974 would be ungoverned and ungovernable by any procedure and the paying party would be entitled to demand a hearing before the court of indeterminate length, whatever that party's behaviour and whether or not such a hearing would be proportionate in all the circumstances. That cannot be the case.

23. In fact, as I have already mentioned, Mr Munro accepted that the right to an assessment under section 70 is governed by the principles of proportionality and it is part of his case that various provisions of the CPR apply. It is appropriate at this stage, therefore, to turn to the question of whether the Points of Dispute 10 were properly pleaded in accordance with the rules which applied to them.

Which are the relevant provisions of the CPR and what is their effect?

24. Despite the breadth of some of Mr Munro's submissions in relation to section 70, in fact, there is no dispute that CPR r46.9 and r46.10 apply to a detailed assessment of solicitor and own client costs. They form part of Part 46 which is entitled "Costs – Special Cases". CPR 46.9 is headed "Basis of detailed assessment of solicitor and client costs" and CPR r 46.9(1) states that it applies to every assessment of a solicitor's bill to a client except for certain exceptions, for example, where a bill is to be paid under the Legal Aid Act 1988.

25. CPR r46.9(3) provides that 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

(ii) the solicitor did not tell the client that as a result the costs might not be recovered from the other party.”

It is not in dispute that those presumptions are rebuttable.

26. CPR 46.10 then sets out the procedure to be followed where the court has made an order for the detailed assessment of costs payable to a solicitor by the solicitor's client. That rule provides for the service of the breakdown of costs, points of dispute and a reply, and the application for a hearing date. That procedure is to apply, subject to any contrary order made by the court: CPR r46.10(6). That is the procedure which applied in this case.

27. Neither CPR r46.10 nor the Practice Direction 46PD.6 gives any indication as to the form which Points of Dispute are required to take. However, paragraph 6.14 of the Practice Direction provides where relevant that:

“Unless the court gives permission, only . . . and only items specified in the points of dispute may be raised.”

Paragraph 6.15 is concerned with varying a breakdown of costs, points of dispute or reply and it is of note that it provides that any amended or supplementary document must be served on all other relevant parties and that although permission is not required, the court may disallow the variation or permit it upon conditions, including conditions as to the payment of any costs caused or wasted by the variation.

28. It is also important to note at this stage that the editorial note to CPR r46.10, numbered 46.10.2, at page 1527 of the present White Book, states, amongst other things, that the procedure set out in Part 47 (Detailed Assessment of Costs and Default Provisions) applies subject to the provisions of CPR 46.10 and to any contrary order made by the court. Mr Munro fairly points out that a previous reference in the note to Precedent G has been removed. Part 47 is concerned primarily with the detailed assessment of costs on a party and party basis.
29. The only indication as to the form which Points of Dispute must take is to be found in the Practice Direction to CPR Part 47. The provisions upon which Mr Ainsworth relies are contained in 47PD.8 which is headed: "Points of dispute and consequences of not serving: rule 47.9". 47PD.8, where relevant, provides as follows:

"8.2 Points of Dispute must be short and to the point. They must follow Precedent G in the Schedule of Costs Precedents annexed to this Practice Direction, so far as practicable. They must:

- (a) Identify any general points or matters of principle which require decision before the individual items in the bill are addressed; and
- (b) Identify specific points, stating concisely the nature and grounds of dispute.

Once a point has been identified it should not be repeated but the item numbers where the point arises should be inserted in the left hand box as shown in Precedent G."

In its previous form, the paragraph had stated that the Points of Dispute "should follow" Precedent G "as closely as possible" rather than "must follow Precedent G".

30. As CPR Part 47 sets out the procedure for the detailed assessments of costs between the parties, it contains provisions which are not applicable in relation to a solicitor and own client detailed assessment at all, such as CPR 47.9, which contains the rules relating to default costs certificate. Furthermore, the indemnity basis and the presumptions which apply when conducting a detailed assessment of a solicitor's bill are not relevant to the Part 47 regime. However, Mr Munro says that both 47PD.8 and Precedent G apply to Points of Dispute served in a solicitor and own client assessment under CPR r46.10. Mr Dunne, on the other hand, submits that the Chief Master's and the judge's decisions should be upheld on the additional or alternative basis that Precedent G does not apply.
31. Precedent G is now to be found online. It is a hypothetical, simple example of Points of Dispute and is drafted in a way which is directly relevant to a detailed assessment between parties. It adopts a format which is similar to a Scott schedule. The left hand column contains numbered points which are described, for example, as "Point 1 General point", "Point 2 Point of principle" and "Point 3" which is followed by the reference numbers for the specific items which are complained of in the adjacent box.

That box to the right contains the short complaint in relation to each point and space underneath for the Receiving Party's reply and the Costs Officer's decision.

32. The example complaints at Point 3 which relate to the specifically referenced items are that: the number of conferences with counsel was excessive and should be reduced to three amounting to nine hours in total; and that there was no need for two fee earners to attend and that one assistant solicitor on each occasion would have been enough. The sample wording for the complaint in relation to time spent on documents which appears at Point 5 of Precedent G, is as follows:

“The total claim for work done on documents by the assistant solicitor is excessive. A reasonable allowance in respect of documents concerning court and counsel is 8 hours, for documents concerning witnesses and the expert witness 6.5 hours, for work done on arithmetic 2.25 hours and for other documents 5.5 hours. Reduce to 22.25 hours.”

The left hand column contains a number in brackets which is intended to refer to the item complained of.

33. Mr Munro submits that Points of Dispute 10 was quite sufficient to comply with Precedent G and 47PD8 para 8.2 and is consistent with Sir Rupert Jackson's Review of Civil Litigation Costs: Final Report, 2009. He referred us, in particular, to Chapter 45 at paragraphs 2.7 and 5.11. They are as follows:

“2.7 Points of dispute and points of reply. Points of dispute are said to be overlong, therefore expensive to read and expensive to reply to. Points of reply are similarly prolix. Both of these pleadings are in large measure formulaic and are built up from standard passages held by solicitors on their databases. In addition, there are lengthy passages in the points of dispute and points of reply dealing with time spent on documents. It would be better if the points of dispute...concentrated on the reasoning of the bill, not the detailed items...

...

5.11 Points of dispute and points of reply. Both points of dispute and points of reply need to be shorter and more focused. The practice of quoting passages from well know judgments should be abandoned. The practice of repeatedly using familiar formulae, in Homeric style, should also be abandoned. The pleaders on both sides should set out their contentions relevant to the instant cases clearly and concisely. There should be no need to plead to every individual item in a bill of costs, nor to reply to every paragraph in the points of dispute.”

Mr Munro points out that as a result, the requirements in the Practice Direction in respect of Points of Dispute were changed, in April 2013, to omit the requirement to “identify each item in the bill of costs which is disputed”.

34. He also took us to the headnote of the report of *Mount Eden Land Ltd v Speechly Bircham LLP* 2 [2014] Costs LR 337. Mr Munro relies upon it for the proposition that points of dispute in proceedings under section 70, Solicitors Act 1974 should identify those issues challenged by the client as if the assessment had been taking place between

the parties, unless the court has ordered otherwise. It seems to me that that distilled explanation does not provide the reader with an accurate view of the case.

35. That case, to which the pre April 2013 Costs Practice Direction applied, was concerned with two decisions made by a master in the course of a detailed assessment of various bills rendered by solicitors to their client. The former client, having served discursive Points of Dispute, sought to challenge the solicitor's costs line by line at the hearing and raised matters which went beyond the Points of Dispute. The Master gave directions that the parties meet to narrow the issues and that in the event that it did not prove possible to resolve their differences, Mount Eden (the paying party) should serve a schedule setting out the items that remained in dispute "as briefly as possible." The schedule which was later provided did not comply with the Master's order. It relied on two broad headings: "excessive" and "no supporting evidence" and identified the items challenged by reference to the solicitor's timesheets rather than the breakdown of their bills. At a further hearing, the Master held that neither the Points of Dispute as originally served nor as amended would enable a detailed assessment to be carried out at proportionate cost without loss of fairness to the defendant and that it would not be dealing with the case justly to permit the client a third opportunity to put its case into an intelligible form. Accordingly, he stayed the assessment. Teare J gave permission to appeal but dismissed the appeal.

Conclusion:

36. It seems to me quite clear, that although CPR r46.9 and r46.10 apply in relation solicitor and own client assessments, it is necessary to look to CPR Part 47 for assistance in relation to the form which points of dispute should take. In my judgment, therefore, the notes in the White Book at 46.10.2 are accurate. They provide that the procedure in Part 47 applies to a solicitor and own client assessment subject to CPR r 46.10 itself and any contrary order of the court.
37. Accordingly, 47PD.8 para 8.2 is directly relevant. It makes it absolutely clear that points of dispute should be short and to the point and, therefore, focussed. Furthermore, subparagraphs (a) and (b) leave no doubt about the way in which the draftsman should proceed. General points and matters of principle which require consideration before individual items in the bill or bills are addressed, should be identified, and then specific points should be made "stating concisely the nature and grounds of dispute." Such an approach is entirely consistent with the recommendations and observations made in the Review of Civil Litigation Costs: Final Report, 2009 to which we were referred.
38. Common sense dictates that the points of dispute must be drafted in a way which enables the parties and the court to determine precisely what is in dispute and why. That is the very purposes of such a document. It is necessary in order to enable the receiving party, the solicitor in this case, to be able to reply to the complaints. It is also necessary in order to enable the court to deal with the issues raised in a manner which is fair, just and proportionate.
39. As I have already mentioned, the complaint should be short, to the point and focussed. As para 8.2(b) of 47PD.8 indicates, that requires the draftsman not only to identify general points and matters of principle but to identify specific points stating concisely the "nature and grounds of the dispute". In the case of a solicitor and own client assessment, it seems to me, therefore, that in order to specify the nature and grounds of

the dispute it is necessary to formulate specific points by reference to the presumptions contained CPR 46.9(3) which would otherwise apply, to specify the specific items in the bill to which they relate and to make clear in each case why the item is disputed. This need not be a lengthy process. Having explained the nature and grounds of dispute succinctly, the draftsman should insert the numbers of the items disputed on that ground in the relevant box. The principle is very simple. In order to deal with matters of this kind fairly, justly and proportionately, it is necessary that both the recipient and the court can tell why an item is disputed. The recipient must be placed in a position in which it can seek to justify the items which are in dispute.

40. It follows that in my judgment, the sample wording which appears in the hypothetical example at Precedent G is of no assistance to Mr Munro. Para 8.2 itself provides that Precedent G should be followed “as far as practicable”. It is only an example and is premised upon a party and party detailed assessment in which the paying party will not have had sight of the relevant documentation and the presumptions in CPR 46.9(3) do not apply. Nevertheless, it seems to me that points of dispute in a solicitor and own client assessment should adopt the format of Precedent G to the extent practicable and that the numbers attributed to the individual items to which a complaint relates should be set out in the appropriate box.
41. It follows that were it necessary to do so, I would reject Mr Dunne’s alternative submission that Precedent G does not apply at all to solicitor and own client assessments. In my judgment, it provides the form which should be adopted, the content having been explained at 47PD.8 para 8.2. Precedent G is, after all, only a simple example of the kind of challenges to items which might arise in a party and party assessment.
42. The relevance of 47PD.8 and the form of Precedent G is of no assistance to Mr Munro, therefore. Points of Dispute 10 was general in nature and stated that all items were disputed, that the list provided was not exhaustive of the issues but provided a general overview and that Mr Ainsworth reserved his position generally. It did not contain cross references to the numbers of the items disputed on particular grounds. In fact, it was accepted that it did not state why any item in the bill was disputed. In my judgment, therefore, it did not comply with 47PD.8 para 8.2, nor, for that matter, did it take the form of Precedent G.

Was it wrong to dismiss the assessment in relation to Points of Dispute 10?

43. Was the Chief Master wrong, nevertheless, to dismiss the assessment in relation to Points of Dispute 10? I have already addressed and rejected Mr Munro’s argument that because the assessment arose under section 70, Solicitors Act 1974, Mr Ainsworth had an absolute right to be heard. I also reject Mr Munro’s submissions about the way in which the Chief Master could have dealt with matters at the hearing. He sought to use the three examples which Stewarts Law had been directed to produce by Longmore LJ and the comments upon them to show that there were matters which the Chief Master had already dealt with under other heads which fed through to the work on documents, and could easily have been dealt with at the hearing. That was not the way in which Mr Poole, on behalf of Mr Ainsworth, said that he intended to proceed, however. In effect, he said that he intended to pick out items as he went along, without having warned Stewarts Law of the ones he intended to choose, or the specific reason for choosing

them, and then to ask the Chief Master to adopt a broad-brush reduction of the costs claimed.

44. In those circumstances, and given the fact that Mr Ainsworth had had five months warning that the point would be taken and was entitled to amend the Points of Dispute, it seems to me that although no express reference was made at the hearing to CPR r3.4 or 47PD.8 (of which the Chief Master would have been well aware) the Chief Master was entitled to form the value judgment he did and to dismiss the assessment in relation to Points of Dispute 10. It seems to me that that decision falls within the wide ambit of the court's discretion under CPR r3.4(2)(b) and or (c). The Chief Master was entitled to decide that it was not possible to conduct a fair hearing on the basis of Points of Dispute 10 as pleaded, the matter could not be conducted fairly "on the hoof" and was likely to take too long. Despite his very considerable experience in these matters the Chief Master himself noted that having read the papers in the light of the points of dispute as they were pleaded he was unable to identify which particular items were challenged or why and Mr Poole accepted that that was the case.
45. It follows that I consider that the judge was entitled to take the course he did which was well within the ambit of the proper exercise of his discretion and for all the reasons to which I have referred, this appeal should be dismissed.

Lord Justice Peter Jackson:

46. I agree.

Lord Justice Lewison:

47. I also agree.

**SCHEDULE OF COSTS PRECEDENTS
PRECEDENT G: POINTS OF DISPUTE**

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim number: 2000 B 9999

OXBRIDGE DISTRICT REGISTRY

B E T W E E N

WX

Claimant

- and -

YZ

Defendant

POINTS OF DISPUTE SERVED BY THE DEFENDANT

Point 1 General point	Rates claimed for the assistant solicitor and other fee earners are excessive. Reduce to £158 and £116 respectively plus VAT.
	Receiving Party's Reply:
	Costs Officer's Decision:
Point 2 Point of principle	The claimant was at the time a child/protected person/insolvent and did not have the capacity to authorise the solicitors to bring these proceedings.
	Receiving Party's Reply:
	Costs Officer's Decision:
Point 3 (6), (12), (17), (23), (29), (32)	(i) The number of conferences with counsel is excessive and should be reduced to 3 in total (9 hours). (ii) There is no need for two fee earners to attend each conference. Limit to one assistant solicitor in each case.
	Receiving Party's Reply:

	Costs Officer's Decision:
Point 4 (42)	The claim for timed attendances on claimant (schedule 1) is excessive. Reduce to 4 hours.
	Receiving Party's Reply:
	Costs Officer's Decision:
Point 5 (47)	The total claim for work done on documents by the assistant solicitor is excessive. A reasonable allowance in respect of documents concerning court and counsel is 8 hours, for documents concerning witnesses and the expert witness 6.5 hours, for work done on arithmetic 2.25 hours and for other documents 5.5 hours. Reduce to 22.25 hours.
	Receiving Party's Reply:
	Costs Officer's Decision:
Point 6 (50)	The time claimed for preparing and checking the bill is excessive. Reduce solicitor's time to 0.5 hours and reduce the costs draftsman's time to three hours.
	Receiving Party's Reply:
	Costs Officer's Decision:

Served on [date] by[name] [legal representative of] the Defendant.